

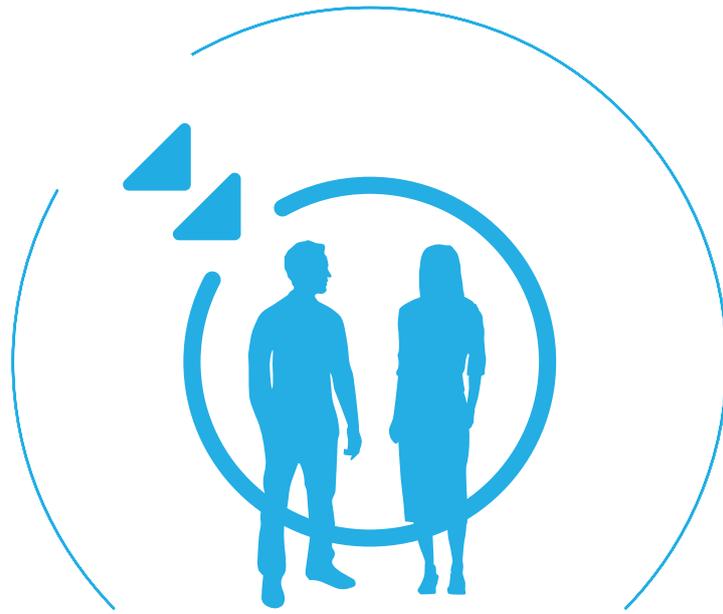


PROVICTIMS REPORT

THE ROLE OF THE PUBLIC PROSECUTION
IN THE PROMOTION OF VICTIMS' RIGHTS

By Catarina Abegão Alves & Sónia Moreira Reis
With the support of João Gouveia de Caires





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Project: PROVICTIMS - The role of the Public Prosecution in the Promotion of Victims' Rights

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By Catarina Abegão Alves & Sónia Moreira Reis

With the support of João Gouveia de Caires

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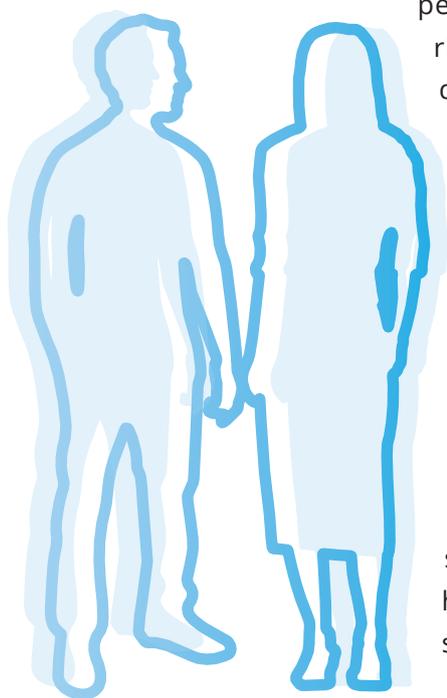
FOREWORD

The PROVICTIMS Project was designed to examine how the role of public prosecution services in promoting the rights of victims is being effectively implemented in the European Union (EU) context.

The Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing *minimum* standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (hereinafter referred to as the Victims' Directive) is the light under which this Project was conceived and implemented. Victims' rights and protection are not self-executing. Even if those rights were fully recognized and legally established in a mandatory way at national level that would not be enough for an effective access and effectiveness for the right(s) in question. One can say that, without proper application of the law, victims may be usufructuaries' of rights that don't have material existence. In practice, this means the rights correspond to *law in books*, but not to *law in action*.

Across Europe, with larger or lesser level of influence, depending on the kind of legal model in case, prosecution services do play a role on the effectiveness of victims' rights. Even at a minimum level, there is the need for involvement and cooperation from prosecution services to turn victims' rights effective. Therefore, from a conceptual

perspective, they can be conceived as gatekeepers of victims' rights, even though, at the same time, they must reconcile that duty with the representation of the State and the protection of State's interests. This is not an immediate balance nor easily achieved but is one at which any prosecutor should aim at. Despite the undeniable centrality of prosecutor's services as gatekeepers of victim's rights, they are not alone. At head, victim support services are fully committed to victims' rights recognition and effectiveness in their daily work. However, the awareness of the existence of this shared objective and the advantages of synergies exchange are not embodied and put into practice in the same way in all the EU space. In this light, understanding how prosecution services act in practice as gatekeepers of victims' rights and how they seek to articulate their work, namely with victim support services, was the main motivation supporting this Project's birth and represents one of its milestones.



The PROVICTIMS Project results from a collaboration between the consortium leader Associação de Apoio à Vítima – APAV (Portuguese Association for Victim Support, Portugal) with partner institutions from four European countries, involving the Irish Council for Civil Liberties (Ireland), the IRSE-EBI – Asociación Instituto de Reintegración

Social de Euskadi (Association Institute for Social Reintegration of Euskadi, Spain), the *Procuradoria Geral da República* – PGR (Attorneys General Office, Portugal), the Victims Help and Support Organization White Circle Croatia (Croatia) and one research institution, the Centro de Investigação de Direito Penal e Ciências Criminais da Faculdade de Direito da Universidade de Lisboa - CIDPCC-FDULisboa (Centre of Investigation for Criminal Law and Criminal Sciences of the Faculty of Law of the University of Lisbon, Portugal).

Its five main established objectives are:

- To increase the knowledge about specific provisions of the EU acquis and national laws regulation;
- Mapping victims' rights to information and communication, protection, access to victim services, access and safeguards in restorative justice services and rights of victim's resident in other Member-State, whilst determining how these rights are being addressed in practice, namely by the prosecution services;
- To increase the prosecution services' capacity to address victims' rights, by reinforcing their crucial role in making those rights available for victims and by providing them with practical recommendations on this matter;
- To improve cooperation between prosecution services and victim services, enhancing aspects where this cooperation may take place, increasing the quality of the services provided by victim services; and
- To promote compatibility of judicial and administrative practice related to victims' rights with the EU acquis.

In order to achieve those main objectives, partner meetings, workshops and technical visits were undertaken, a spiral line of work always having as candle light the research of both legal and practical role of prosecution services regarding victims' rights to information and communication, individual needs assessment and protection, access to victim support services (including the topic of cooperation between prosecution services and victim support services), access and safeguards in restorative justice services and rights of victims resident in other Member-State. Another part of this spiral was composed by desk research to map the role (legal and administrative) of public prosecution services in practice, while assessing compatibility between national legal frameworks and practices with the provisions set out in the Victims' Directive. This part of the work was in line with the submission of a questionnaire, mainly to prosecution and victim support services, in order to gather rigorous and accurate background information about the transposition of the rights provided on the Victims' Directive. Although written by researchers from the CIDPCC-FDULisboa, the report now coming into light is the result of serious and engaged work of all partners, to whom we wish to publicly thank, especially to APAV, always available for further networking. Furthermore, a significant part of its content was only possible due to the generosity of all of those prosecutors and victim services collaborators and beyond, who took their time to answer the assessment questionnaire. Here is a public reconnaissance to their indispensable availability and technical knowledge.

Coming to an end, one final word for the making off of the final part of this working spiral: the present report. It was written part in confinement part living in a new world reality in which personal proximity turned into danger due to Covid-19. It was challenging and demanding working this way as a researcher team, used to long hours of joint work and busy days of library readings. That actually was not possible. But an undisputable result stood out: we are able to adjust to new realities no matter how strange and hard they are and that can also be taken as a motte for the Victims' Directive enforcement – victims' rights effectiveness can and must prevail, even if one must come up with creative ways to do it!





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REPORTS OVERVIEW: OBJECTIVES AND METHODOLOGY

As already pointed out, the gravity center of the PROVICTIMS Project entails prosecution services and assessment of their binding with Victims' Directive compliance, from both legal and practical perspectives. To do so, alongside with partnership meetings, workshops, technical visits and desk work investigation, a major part of the research was materialized through the analysis of a questionnaire, integrating a range of questions conceived to systematically characterize the legal content of prosecution services intervention at domestic level while victims' rights gatekeepers. At the same time, the questionnaire maps, from a practical standpoint, how prosecution guarantees victims' rights accomplishment and how, if so, manages to articulate the line of work and concrete intervention with victim support services.

All considered, this report reflects the results of a joint work and has as main objectives:

- To improve the knowledge about specific provisions of the EU acquis and national laws regulating victims' rights to information and communication, individual needs assessment and protection, access to victim support services, access and safeguards in restorative justice services and rights of victims resident in other Member-State and about if and how are these rights being addressed in practice, namely by the prosecution services;
- To identify vulnerabilities regarding the role of prosecution services in promoting the above-mentioned rights;
- To identify best or innovative practices;
- To increase the capacity of prosecution services to address issues related to the above-mentioned rights;
- To improve cooperation between prosecution services and victims support services;
- To promote the compatibility of judicial and administrative practice related to victims' rights with the relevant EU acquis;
- To deliver practical recommendations regarding cooperation between prosecution services and victim support services and the way prosecution services may make the above-mentioned rights available for victims in a more effective way.

The methodology applied to this report to achieve the mentioned objectives reflects the line of work developed during the Project`s execution, presented below in detail:

a) Firstly, partnership meetings took place between February and December of 2019 to better align all the partners for the kind of delivery the research team seek from them, namely local contacts with prosecutors and victims support agencies in order to guarantee active participation in the survey. Secondly, attendance to the workshops held in Bilbao (June 2019) and Dublin (December 2019), organized by local partners, involving academics and practitioners (prosecutors, lawyers, victims` rights advocates) as keynote speakers, to better understand the national specificities from both theoretical and practical perspectives. Thirdly, technical visits, again, in Bilbao (June 2019) and Dublin (December 2019), through which it was possible coming into contact with field enforcement of the mentioned rights in courts and, more specifically, in prosecutor, victims` support and restorative justice services. In sum, this was the field work in which the research team engaged with the final aim of coming into contact with the national reality of partner countries;

b) Meanwhile, desk research was already undertaken. It was time to initiate the theoretical part of the investigation, collecting documents, available materials, including previous researches, and literature references, to draft the questionnaire;

c) The questionnaire was afterwards elaborated, between March and June of 2019. Generally, it comprised open-ended descriptive and close-ended multiple choice questions, distributed along six parts, including 1) overall legal framework, to better understand the internal legal regimes of the respondents, followed by the analysis of five rights, as follows 2) right to information; 3) rights when making a complaint; 4) right to support services; 5) right to safeguards in the context of restorative justice services; and 6) right to protection and individual assessment. The questionnaire was designed aiming at:

- Supplement, clarify and interpret the exact terms of Victims Directive transposition into national legislations;
- Map the most common practices regarding victims` rights delivery, identify existing and emerging models and dogmatically reflect about them in light of scientific literature and EU Victims` Directive assessment reports; and
- Investigate new practice models going beyond and above the Victims` Directive and their coverage regarding victims` rights effectiveness;

d) The survey questions were displayed for 13 EU countries, from August to September 2019, involving both partner and non-partner countries, to get an accurate picture of how victims` rights are being dealt with across the EU;

e) Once the results were received, it was time for the research team to turn to this report delivery. This task was developed between October 2019 and early September 2020. Focusing on its structure, it offers a Victims Directive analysis (**Part I**), with its historical and victimological *raison d'être*, followed by considerations on the state of the art regarding the victims' rights selected under the PROVICTIMS Project, upon which the questionnaire was elaborated. Their range evaluation and a brief overview of the Directives recent assessment carried under the EU initiative are also undertaken. The report then turns into core literature review for those same rights (**Part II**), offering an insight on hodiern trends that allows us to better interpret and critically analyze the questionnaire results regarding the prosecution services role promoting the rights of victims. Afterwards, the report shifts into its core, the questionnaire results assessment (**Part III**) and, besides a general overview of the partner participating countries, mapping the legal role of their prosecution services in guarantying the Directives provisions and making its rights available for victims, it offers general information on the questionnaire recall, then describing, in a very detailed way, the answer trends to all survey questions, followed by a discussion of the major findings of the previous results and a mapping good practices identified. Finally, recommendations for practice and research will be delivered (**Part IV**).



Part I

VICTIMS DIRECTIVE ANALYSIS

1 THE EUROPEAN POLICY ON VICTIMS' RIGHTS

In the last decades, the EU has been committed to repositioning the victims' role in criminal proceedings and guaranteeing their rights. That is a considerable shift from the time when the same EU held the opinion that it did not have the competence to interfere with the criminal justice affairs of its Member States (Groenhuijsen & Pemberton, 2009, p. 44).

This newfound concern shown by EU policymakers, seemingly following the initiatives of the UN¹ and the Council of Europe² represents a breakthrough that required Member States to readjust the way victims of crime have been treated in criminal justice systems. The Victim is now considered a new actor in the judicial system of most countries (Bahr and Melum, 2017, p. 17), with new established powers to access and sometimes even conform the penal procedure. But this is an EU modern tendency. The state of the art was not always drawn this way.

Historically, the English word *victim* made a later appearance, in the second half of the XV century (Wemmers, 2009, p. 33). But the previous and subsequent story behind *victima* is long. For Western languages, grounds can initially be found in the idea of animal sacrifice, which leads to dramatic symbolic consequences for a person labelled as such, either because once the crime is committed he or she is dead independently of the nature of the crime in question, like the sacrificed lamb or goat, or due to religious connotation and an alleged higher religious sacrifice in presence, like the one present in the word holocaust (sacrifice by fire), that lead Jewish survivors from the WWII to refuse to be labeled as holocaust survivors (Van Dijk, 2020, p. 74)³. But the etymological origin of the word victim can also be explained through a latter historical approach, with a different line of reasoning, one that associates victims to Christ suffering in the cross, a kind of suffering that endures in time, like the one He experienced and victims might also survive to (Van Dijk, 2020, pp. 74-75).

1- "Often referred to as the 'Magna Carta' of victims' rights" (Groenhuijsen, 2014, p. 32), is the United Nations 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

2- The Council of Europe Recommendation (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure.

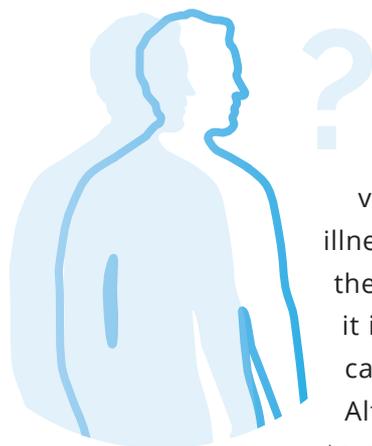
3- The line of exposition is focused on the Western meaning of the word victim, but the Oriental etymological history of the same word seems to lead to different conclusions, for the sacrificial dimension is absent (Van Dijk, 2020, p. 74). Regarding the discussion around the Arabic word for victim, Van Dijk (2020): p. 76.

From a criminal perspective, history shows victims have occupied a marginal position in criminal proceedings. Although they “were not always marginal in the pursuit of justice”, since the “lost [of their] place in the system of criminal justice only [occurred] during the second period of the Middle Ages” (Gavrielides, 2017, p. 22). Nevertheless, the victims’ role in criminal proceedings was traditionally limited to reporting the crime and testifying as witnesses. Victims were in some measure treated as outsiders, because they were not involved in the legal battle between the state on the one hand and the defendant on the other, and that was a deliberate choice from institutions in power (Groenhuijsen, 1999, p. 2). Considering this instrumental role of victims, Godfrey points that “despite the view presented in modern criminological studies, victims have been both central to and indispensable for the processes of Justice” (Godfrey, 2018, p. 14), for criminal procedures were always dependent on victims inputs, despite their procedural neutral position, a dependence pointed out as one of the factors that later on pressured states to reposition victims in criminal systems, in fear of victim activism, since unhappy victims might generate angry activist movements (Christie, 2009, p. 76, Rock, 2014, p. 11).

From a dogmatic perspective, the undermined position of victims was grounded on the conception of crime as an act against the State. And that can be explained from different arguments. From one side, “the ‘disappearance’ of the victim of crime from the process of prosecution during a short period of the latter stages of the nineteenth century can be equated with the growing regulatory role of the local and national state” (Godfrey, 2018, p. 17). From another, crimes started to be perceived as attacks on the prince himself (Robalo, 2019, p. 17-18). Moreover, “a crime used to be defined as a violation of the public order. It was an act against society, against the collective body of citizens, defying the standards set by the democratic institutions of the community” (Groenhuijsen, 1999, p. 2). The truth is that “As long as a crime is seen as an intrusion on the public order, it is only natural that the state - representing the community at large - as the injured party is the sole agent seeking redress for the act committed” (Groenhuijsen, 1999, p. 2).

The political disregard for victims in criminal justice, mainly focused on the offender criminal behavior and need for punishment, led criminologists to another line of approach around the second half of the past century, when space for victims was recognized (Robalo, 2019, p. 19). In fact, during the aftermath of WWII, with the start of a human rights-based approach, reformers and academics began to focus on victims (Godfrey, 2018, p. 29, Wemmers, 2009, p. 35), mapping the needs that weren’t being responded to by the traditional criminal system and, at the same time, trying to find new ways of addressing them. For this, criminal systems’ legitimacy, traditionally grounded on a state-based conception of crimes, was forced to reinvent itself, passing from the conception of criminal law as protecting public interest to criminal law protecting rights of individuals and respecting human dignity. Therefore, both victim and offender’s right and needs ought to be addressed (Dearing, 2017). For they were then as they are now the main actors of a play that can’t be played without them. Probably, the victim plays

the leading role, for their complaints absence might dry out the criminal justice system (Shapland, 1984, pp. 131 e ss.).



The scene was staged for the emergence of victimology. But that was not an immediate process. Initially, scholars delivered studies with the main focus on victims, but through a criminological lens. That was the case of Hans Von Henting, for example (Wemmers 2009, p. 33). Later, Benjamin Mendelsohn appeared as a key figure, setting the groundwork for a new science that he called *victimology*, demanding to know why society ignored victims for so long (Wemmers 2009, p. 34). That was the beginning of an academic approach to victimology, through a large concept involving other victims beyond crime victims, such as victims of natural disasters and illness, for example, one with a long process of enhancement. For some, the rise of victimology is the result of the failure of the welfare state and it is seen as a “new discipline dedicated to the analysis and, in many cases, the amelioration of the standing of victims” (Rock, 2014, p. 12). Although “It would be difficult to conclude that victimology amounts to a coherent whole” (Rock, 2018, p. 48), it’s rigorous to say that, as a science, it aims to understand the extension of physical, psychological and emotional damage caused in victims of crimes, as well as how victims are treated by the criminal system and explaining how victims’ perspective is taken in consideration by the police, public prosecutors and judges (Robalo, 2019, p. 13). In the end, “Theories based upon them [victims] have been grouped together and awarded their own title, victimology” (Rock, 2018, p. 30).

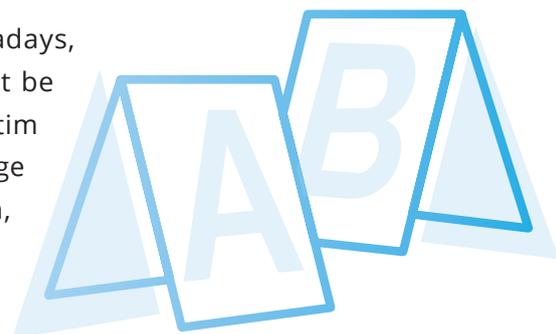
In practice, the (re)introduction of victims’ rights in the criminal justice process has not, as a rule, been informed by a systematic rationale” (Pemberton, 2014, p. 33). One can see this reintroduction as the culmination of a concatenated succession of events (Rock, 2014, p. 11), which took place mainly in the second half of last century. For that, a particular mention is due to the civil rights movement, which had a crucial impact on the recognition of victims’ rights, also to the ‘second generation’ feminist movement, which pressured for change, especially in regard to crimes of domestic and physical violence and rape, and, finally, to restorative justice advocates, whose focus was on the benefits of restorative practices processes for victims of crime (Rock, 2014, p. 11; Robalo, 2019, pp. 19-20). The idea that victims should have the opportunity to regain the power taken away by the offender whenever a crime was committed, through restorative processes designed to allow victims empowerment (Reis, 2019, p. 232), is a distinctive one. The emergence of this so-called new theory of justice, Restorative Justice, began during the 70’s, when the first formal victim-offender mediation processes held in the context of ongoing criminal procedure was reported in Canada (Kelly, 2006, Yantzy, 1998, p. 52), and afterwards replicated, namely in the US (Van Ness & Strong, 2015, p. 28). This movement gained strength and space all over the world. Europe was no exception.

From a scientific lens especially focused on the European context, a turning point occurred when Christie (1977) pressured to transit from the already signed narrow perspective on the role of the victim in penal procedures to a broader one. At the same time argued his suspicious that criminology had “to some extent (...) amplified a process where conflicts [had] been taken away from the parties directly involved” (1977, p. 1). He’s findings that crimes had been “taken away, melt away, or made invisible” (1977, p. 7) from their true owners, made a real impact for a paradigm shift on victims’ policy, starting in Northern Europe. In fact, the reconnaissance of a conflict lying underneath the crime committed and the recognition of its ownership as belonging to the victim, the offender and the community, allowed, from the victim’s side, to regain the case from the state. And that was a turning point in the European context. It was also from then on that Restorative Justice gained space in academy, policy lobbying and formal legislation. In this light, the idea of justice as a blindfolded lady with a sword in hand should be replaced by a new one, where the persons involved in a conflict created by a crime could actually see each other and create from there solid basis to handle the conflict (Christie, 2013, pp. 15 e ss.). That was one of many Christie’s legacies.

Of course, one is not forgetting the UN’s initiative to take a stand on victims’ rights, influenced by pioneers in victimology and victim advocacy (Groenhuijsen, 2014, p. 30). In fact, influence was also made that way. But that line of action took place mainly in the 80’s and, therefore, after Christie’s major contribution, which began during the 70’s.

Progressively, this new paradigm allowed victims to start taking back ownership of a conflict that had long belonged to them (Robalo, 2019, p. 107), and “there is by now widespread agreement on the hard core of victims’ rights in the criminal justice system” (Groenhuijsen, 1999, p. 3). One cannot forget budgetary considerations that might undermine victims’ rights implementation (Groenhuijsen & Pemberton 2011, p. 12), nor fears for balance of powers disturbance in the dialogue between prosecution and defense rights when recognizing victims’ procedure participation rights (European Union Agency for Fundamental Rights, 2019, p. 9), neither the fact that it is easier to implement uncontroversial victims’ rights or the ones in line with criminal justice agencies (Groenhuijsen & Pemberton, 2011, p. 12 & 13) and the case that politicians, practitioners, lawyers and academics can feel on the verge of a nervous breakdown whenever empowering victims is the topic of discussion (Rock, 2014, p. 25), because, “The upsurge of the victim is not always welcomed” (Pemberton, 2014, p. 32).

However, despite all of those considerations, nowadays, it is widely accepted that a crime must first and foremost be regarded as a violation of the individual rights of the victim (Groenhuijsen, 1999, p. 2). This seems to be the logical heritage from the Western etymological history of the word victim, centered in the person harmed by the wrongdoing. But one not constrained by victim labeling as someone weak,



powerless, helpless, without agency, or, in a word, stigmatized (Van Dijk, 2020, p. 75). The search for a positive attitude regarding victims resulted in the need for rethinking criminal justice legitimacy and gave way to a novel perception of victims as entitled to participate and see their interests and needs safeguarded in criminal systems, in face of the wrong they endured (Kirchengast, 2018, p. xxiii). The idea that when crime is conceived as an hostile act by one citizen against another, the latter individual will also have to play a part in the aftermath of the event takes us to a next step, one in which criminal procedure can no longer be exclusively considered as an affair between the government on the one hand and an accused on the other (Groenhuijsen, 1999, p. 2).

For the EU legal framework, the realization that the victim is also the *raison d'être* for the criminal proceeding's existence played a major role, but that recognition must also be aligned with the 'pressure for change' originated by a reality brought by the Treaty of Maastricht in 1992, when the right to freely move was established, originating the so-called cross-border victims of crime emergence and severe need for protection (Biffi, 2016a, p. 3). And from there, huge steps were taken in the EU legal context...

2 THE 2001 EU FRAMEWORK DECISION

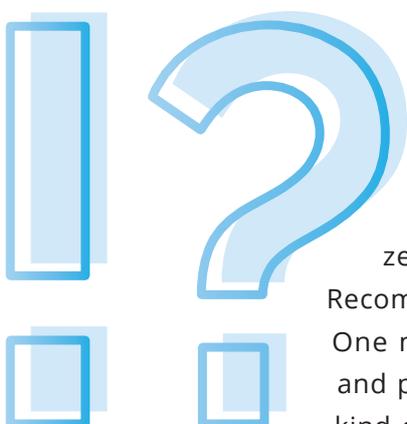
The Council's Framework Decision of 2001 on the standing of victims in criminal proceedings (2001/220/ HJA) was a Portuguese Government initiative (Blásquez Peinado, 2013, p. 902) and at the time it was considered a milestone in the development of victims' rights. It was the first so-called 'hard law' instrument made available at international level, covering a wide range of victims' rights (Groenhuijsen & Pemberton, 2011, p.1). This was a big shift in the EU policy, since, until then, the EU had never regulated on the matter of criminal justice, given the principle of subsidiarity for this topic, established through article 5 of the Treaty on European Union.

Besides accompanying the aforementioned new take on the position of victims of crime, one must stress that the Decision's main goal was the harmonization of the status of cross-border victims, whose lack of uniform protection collided with the unrestricted freedom of movement and led to nationality-based discrimination. And that was a paradox. At the time, that consideration was the main driver for the realignment of the European competence in the protection of victims of crime. However, since it wasn't practically feasible to regulate the position of cross-border victims without doing so for nationals as well, the result was a Framework Decision aiming at synchronizing the position of *all* victims of crime across the EU (Groenhuijsen & Pemberton, 2011, p. 4).

To achieve this, the Framework Decision introduced a number of rights for victims of crime, namely: the right to receive information and safeguards in communication, the right of specific assistance to victims, the right to protection and the right to compensation

in criminal proceedings. It also regulated rights of cross-border victims, mediation, specialized services and victim support organizations, cooperation between Member States and training for personnel.

Despite the recognized value of this legal initiative and the fact that most of the rights it enshrined have afterwards transitioned into the Victims' Directive, one should not overestimate the Framework Decision results (Groenhuijsen & Pemberton, 2009, p. 59). In fact, when it comes to the transposition of the Framework Decision's articles into national law and to the enforcement of victims' rights in practice, it's recognized a less encouraging picture (Groenhuijsen & Pemberton, 2011, p. 1).



From a comparative perspective, the 'soft law' impact regarding victims' rights had been already tested in the European context, through the Council of Europe Recommendation (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure. The implementation results were far from perfect, with zero countries out of twenty-two fully implementing the Recommendation (Brienen & Hoegen, 2000, pp. 1153 *et seq.*⁴).

One might think that 'hard law' should than be the natural and pacific step, but, from the beginning, the choice for that kind of instrument and the belief that this would provide for more effectiveness than 'soft law' was questioned (Groenhuijsen, 2014, p. 31). In practice, it is argued that the impact of this 'hard law' instrument wasn't qualitatively different from previous soft-laws instruments (Groenhuijsen & Pemberton, 2009, p. 59). This can be partially explained by the fact that although the Member-States were obliged to reach the results established in the Framework Decision, the way to do it wasn't formally addressed (Groenhuijsen & Pemberton 2009 p. 49) and, at the same time, neither the EU Commission nor individuals could bring infringement proceedings against any Member States, which is discouraging to say the least from a compliance perspective (Groenhuijsen, 2014, p. 33). Ultimately, the legal nature of the Decision, with a limited binding character for Member States, and the vagueness of its content, leading to misunderstandings regarding some of the norms which also made difficult for the States to decide how to implement it resulted into interpretation conflicts within the Member States (Groenhuijsen, 2014, p. 36, Groenhuijsen & Pemberton, 2009, p. 5) and disagreements between the EU Commission and the Member States (Groenhuijsen & Pemberton, 2011, p. 5). From out of this dark scenario a highly negative report of the Framework Decision came into light in 2004⁵, followed by a once more

4- The study main findings regarding legislative initiatives and best practices shows that the participating countries scored poorly at least twice in the developmental schemes, in a scale with four levels (poor, adequate, good and excellent), being The Netherlands the best scored country, followed by England and Wales and Norway (pp. 1158-1159).

5- Report from the Commission pursuant to article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), Brussels 16 February 2004, COM (2004) 54 final.

disappointing assessment in 2009⁶. By the end of that year, the final judgment on this matter could be a persistent incapability from all Member States to properly deliver a correct transposition of the Framework Decision, even if seven years for the deadline of its compliance (Groenhuijsen & Pemberton, 2011, p.10). All considered, the outcome was, truly, discouraging.

But the failure in the implementation of the Framework Decision was also an opportunity to reflect on the kind of engagement that should be looked for from Member States, because this experience turned evident that if they were not interested or willing to allocate the necessary resources to make the implementation of this kind of legal instrument a reality, victim's rights could not be fulfilled in practice (Ezendam & Wheldon, 2014, p. 63). Therefore, a 'hard law' instrument alone would not make a Spring happen. It didn't have that kind of magic. But the conjuncture was demanding for a change. At a time when The Lisbon Treaty specifically mentioned the rights of victims of crime under the title "Area of Freedom, Security and Justice" (Article 82.2), and when the Academy was claiming from the EU Commission not only coordination but also a long-term strategy to better align Member States national legislations in a way that could improve victim's rights (Gavrielides, 2017, p. 22), a shift occurred. In 2009, the Stockholm Program was initiated. Consequently, in 2011, the Budapest Roadmap was drafted to adopt measures and actions that should reinforce the rights of victims of crime and establish *minimum* standards, a process that culminated in the Victims' Directive.

3 THE VICTIMS' 2012 DIRECTIVE

With the adoption of the Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing *minimum* standards on the rights, support and protection of victims of crime as part of the EU horizontal approach on victims' rights set in the Budapest Roadmap, the EU aimed at the harmonization of these rights in Member-States through the establishment of *minimum* standards which ought to be transposed into domestic legal systems.

From a systematic perspective, the Directive is structured in six main topics, as follows: General Provisions (articles 1-2); Provision of Information and Support (articles 3-9); Participation in Criminal Proceedings (articles 10-17); Protection of Victims and Recognition of Victims with Specific Protection Needs (articles 18- 24); Other Provisions (articles 25- 26); and Final Provisions (articles 27-32).

The following paragraphs serve as a summary of the main provisions postulated in the Directive and takes into account the 2013 non-binding European Commission

6- Report from the Commission pursuant to article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), Brussels 20 April 2009, COM (2009) 166 final.

Directorate General Justice Guidance Document, which provides guidance for the interpretation and transposition of the Directives provisions. For methodological purposes, besides general considerations on the Directive, the analysis offered below is particularly focused on the articles which specifically mention the set of victims' rights subject of the present Report: rights to information and communication, protection, access to victim services, access and safeguards in restorative justice services and rights of victim's resident in other Member-State.

3.1- GENERAL CONSIDERATIONS

Generally, throughout the Directive, one can find a persistent tension of a rights-based approach, materialized not only in the recognition of victims' rights but also of the rights of other actors of the criminal justice scene, namely the offender. The compliance with a tension of a rights-based approach can initially be found for instance in recital 9 regarding victims' rights⁷ while recital 12 does the same for offenders, guaranteeing that rights established to victims cannot compromise the ones recognized to offenders, an idea also perceivable in several Directive's provisions. And that's a clear attempt to safeguard the alleged offender and, ultimately, the criminal justice system itself. In some way, it is assumed that the recognition and establishment of victims' rights demands for upstream solving of possible tension and/or collision of rights. And that's one of the many Directive's tasks.

This idea is present in article 1, where the Directive's main goals are set, namely: to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings and, at the same time, the demanding from Member States for the certainty that victims are recognized and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner each time they are in contact with relevant services (v.g. victim support or restorative justice services) and authorities (for example prosecutors) at all stages of the proceedings. These rights are set in an articulated manner with the ones recognized to offenders. But then the manifestation of the already mentioned tension of the rights-based approach emerges *à propos* of the child victim when their best interests and needs are presented as the main focus and chain that must prevail. Here, the tension is solved *mostly* in the benefit of the child's interests and needs.

Afterwards, article 2 provides definitions that will perform along all the normative set: victim, family member, child and restorative justice,

7- In line with the EU Charter of Fundamental Rights, article 47 on the right to an effective remedy and to a fair trial.

▶ Let's begin by highlighting the core definition that justifies the Directives existence: the definition of *victim*. One can find a broader concept than the one firstly adopted in the Framework Decision. Victim is now considered the natural person who has suffered harm (physical, mental, emotional or economic loss), caused by a criminal offense⁸, regardless of whether the offender has been identified, apprehended, accused or convicted and despite the relation between victim and offender. But, and here comes the innovative part, if the crime results in the death of the (let's say) direct victim, the concept will then cover the victims' family members (meaning spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependents of the victim), given they (also) suffered *direct* damage(s) as result of the crime⁹. Moreover, the Directive is applied to all victims in the EU, regardless of their nationality or residence, as long as the crime is committed, or a criminal proceeding is ongoing, in the EU territory (recital 13). However, one must stress that victims of crime under international law are not specifically mentioned in the Directive. Nevertheless, since "most of the Member States have recently taken steps to incorporate international crimes such as genocide, war crimes and torture into their national criminal codes and to establish universal jurisdiction over them, so that these types of crimes may be prosecuted within their national legal systems even if committed abroad" (European Commission, 2013, p. 7), there is no room for criminal irresponsibility nor to victims' deprotection. On the victims side, this generates the Directives' application under two assumptions: *i*) the typology of crime in question must be recognized by the national law; *ii*) the measure of the victim rights involved on an extra-territorial offence will be the same as the one recognized for that kind of criminal proceeding taking place within a Member State's jurisdiction. This can be viewed as a manifestation of the equality principle (v.g. article 2 of the Treaty on European Union). All considered, extra-territorial victims are, to some extent, also under the purposes of the victims' Directive definition. Finally, another general aspect worthy of mention related to victims is their variable participation in criminal proceedings. In fact, despite showcasing an evidently broader scope in comparison to the Framework Decision¹⁰, the diagnosis on this matter is as follows: while the amplitude of victim's concept is intangible under the Directive, their procedural position and role texture in criminal proceedings may vary according with Member-States' internal law. And this kind of national approach differences is allowed. Recital 20 recognizes that the manner in which victims might participate in criminal proceedings may vary

8- The directive does not define 'crime', since this can vary according to the notion of crime under national law (European Commission, 2013, p. 7).

9- From a comparative perspective, it is also interesting to see that, still, the concept of victim established by the Victim's Directive remains narrower than the one recognized under the European Convention on Human Rights by the European Court of Human Rights. For a detailed analyzes, Parmentier (2009): pp. 43 *et seq.*

10- As it provides for the guarantee of victims' rights in all stages of the proceedings, as well as before the crime is reported and once the proceedings are concluded. According to recital 22, the moment a complaint is made it is considered part of criminal proceedings for the purposes of the Directive.

in light of national systems. But that variation must be determined by one or more of the following criteria: “whether the national system provides for a legal status as a party to criminal proceedings; whether the victim is under a legal requirement or is requested to participate actively in criminal proceedings, for example as a witness; and/or whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, where the national system does not provide that victims have the legal status of a party to the criminal proceedings”. This entails that Member States ought to specify the position of victims in national criminal proceedings and, according to that, transpose the procedural rights contained in the Directive which are dependent on the definition of that position¹¹. However, despite an evident margin of discretion, Member States are obliged to the Directive’s transposition and to “support and protect all victims of all crimes” (European Commission, 2013, p. 11).

► Turning to the term *child*, it comprehends any person under 18 years old. This is a quite relevant concept, given the specific focus on children victims of crime as part of the general concern showcased in the Directive regarding certain categories of victims, assumed to be more susceptible to secondary victimization. Therefore, children are clearly on that category (along with “victims of human trafficking, terrorism, organized crime, violence in close relationships, sexual violence or exploitation, gender-based violence and victims of hate crime. Victims with disabilities and child victims [also] tend to experience a high rate of secondary and repeat victimization, of intimidation and of retaliation”, as established in recital 57, and to whom the Directive grants specific provisions throughout).

► Finally, *Restorative Justice* is defined as any process whereby the victim and the offender, if freely consented, participate actively in the resolution of matters arising from the criminal offence, assisted by an independent third party. This is not an innovative definition. It is still aligned with the United Nations Economic and Social Council Resolution 2002/12 on the Basic Principles on the use of restorative justice programs in criminal matters, that has firstly established Restorative Justice as *a process* from an international framework perspective. Nevertheless, the literal reference to Restorative Justice represents an important step forward in the EU policy. It now emerges as an umbrella concept under which many practices can take place, such as victim-offender mediation, family group conferencing or sentencing circles (recital 46). The Directive has broken the previous chains and went over and beyond the Framework Decision. It is no longer captive of a narrower notion, only recognizing mediation in the course of criminal proceedings¹². Intendedly or not, there is now a broader concept,

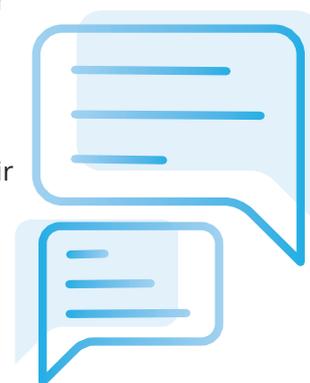
11- Namely: the right to be heard, rights in the event of a decision not to prosecute, the right to legal aid, the right to reimbursement of expenses and the right to the return of property, right to decision on compensation from the offender.

12- Cf. article 10.º of the Framework Decision.

aligned with an orientation that recognizes dogmatic performance to Restorative Justice as a theory of Justice.

3.2- THE RIGHT TO INFORMATION AND COMMUNICATION

Article 3 of the Directive provides for communications safeguards, to be used as an interpretation basis of the subsequent articles. It sets rights of victims regarding effective communication, namely: from the first contact of victims with competent authorities in criminal proceedings¹³, victims have the right to understand and to be understood; language used orally or in writing ought to be simple and accessible, as well as regard victims' individual characteristics and needs (it is further reinforced in recital 21 that competent authorities must take into account the victims' knowledge of the language used to provide information, as well as their age, maturity, intellectual and emotional capacity, literacy and any mental or physical impairment, in order to assure effective comprehension and communication); victims have the right to be accompanied by a trustworthy person of their choice in the first encounter with competent authorities, in case they need assistance for communicating, except for situations in which the victim's interests or the course of the proceeding would be prejudiced.



Article 4 sets the duty to ensure that victims are offered information, without delay, from their first contact with the competent authorities, in order to enable them to effectively benefit from rights set out in this Directive. The information in question covers all victims' rights, from support, access to legal aid and participation in criminal proceedings. The provision of article 1(d) regarding the reference to "any other sort of advice" should be interpreted broadly by the Member States, as referring to all types on necessary information and not mere legal nor administrative advice (European Commission, 2013, p. 15). This right requires its observance throughout the successive procedural stages of the criminal procedure system. However, this should not be mistaken for disclosing criminal proceedings-related information when not adequate (European Commission, 2013, p. 15).

The detail and the extent of the information provided may vary due to the needs of the victims as well as for personal characteristics of the victim and the crime committed (article 4.2), in line with its general individual needs approach - hence why the directive does not specify a standardized way of providing information. Although victims do not get to cherry-pick the information they want to receive, they have the right to choose if they want to receive information and competent

13- Recital 21 mentions that these obligations are applied not only to competent judicial or executive authorities but also to other stakeholders, namely victim support organizations and restorative justice services.

entities have the duty to proactively enforce that right and to adapt the information provided to the victim in hand. Information can also be provided in supplementary manner later on in proceedings.

Article 5 regulates victims' rights when making a complaint, obliging Member States to ensure that victims receive a written acknowledgement of the formal complaint, containing the basic elements of the criminal offence (recital 24 specifies as basic elements: the type of crime, the time and place, and any damage or harm caused by the crime). The acknowledgment should include a file number and the time and place in which the reporting of the crime occurred. Moreover, victims have the right to carry out the complaint in a language they understand and of receiving the necessary linguistic assistance, without associated costs. In articulation with the article 5 under analyses, one must also consider recital 25, which stipulates that the delayed reporting of a criminal offence due to fear of retaliation, humiliation or stigmatization shall not result in a refusal to acknowledge the victim's complaint. Despite not literally established, article 5 should be read in accordance to article 22 (European Commission, 2013, p. 17).

Article 6 determines that victims ought to be notified in due time of their right to receive information on procedural rights. Following the general rule, information may be provided to the victim orally or in writing. However, simply posting the information on the authority's official website should not be enough to ensure that victims receive the requested information (recital 27). Once aware of their rights, victims can choose to receive information, on their request. Information on any decision not to proceed with an investigation or to end an investigation or not to prosecute the offender, and on the time and place of the trial, and the nature of the charges against the offender, is due to all victims. Other information may be limited by and will vary according to the role of the victim in each Member State's criminal proceedings, as previously tackled. Paragraph 4 of article 6 reinforces the general principle of the Directive that information will only be provided according to the will of the victim (which can change at any time during proceedings), unless information must be provided in the name of the victims' right of participation in criminal proceedings. On the following paragraph 5 we find that all victims shall be offered the opportunity to be notified of the offender's release or escape from detention and informed of any protection measures available, and paragraph 6 provides that when requested, this information should be submitted, at least in cases of danger or identified risk of harm for the victim. However, and according to the aforementioned recital 12, this information may not be provided in case of risk of harm to the offender.

Article 7 focuses on the right to interpretation and translation for victims who do not understand or speak the language of the criminal proceedings in which they take part. The article only refers to victims' participation in criminal proceedings, since articles 3.1 and 5.2 already provide for effective communication prior to

these, and is stricter in terms of linguistic assistance demands, compared to these articles (European Commission, 2013, p. 17). According to Paragraph 1 of this article, the right to interpretation depends on the victims filing a request and varies according to victims' needs and role in the criminal proceedings. Recital 34 clarifies that victims shall be treated in a respectful manner and must be able to access and understand their rights, for it is important to provide the victim, for example, with free oral translation during questioning and active participation in court hearings - depending on the victim's role in the relevant criminal justice system. Paragraph 2, on translation, concedes victims the right to require translation of the necessary information concerning victims' rights in criminal proceedings, including, at least, the translation of any decision not to prosecute. Member States shall also provide for victims to receive translated information on the date and place of trial in a language they understand. Moreover, victims can make a request for a document to be considered essential, and thereby have it translated. This article also provides that competent authorities' ought to assess whether a victim who has requested interpretation or translation actually needs such assistance, a decision subject to challenge from the victims, albeit the way in which they can challenge it is up for discretion of Member States. Lastly, in paragraph 8, we find a declaratory provision based on feasibility and respecting the demands of the justice system - it is imperative to ensure availability in all languages; however it may be practically impossible for Member States to ensure the availability and to offer interpretation and translation in every language (European Commission, 2013, p. 17 & 22).

3.3- THE RIGHT TO ACCESS TO SUPPORT SERVICES

Article 8 provides that victims shall have access to victim support services, confidentially and free of charge, which act in the interests of the victims before, during and, for an appropriate time, after criminal proceedings. Recital 37 mentions the need for a sufficient geographical distribution of support centers across the Member States so as to allow all victims the opportunity to access such services. Support should be ensured from the earliest stages of the process after a crime has been committed, irrespective of whether the crime has been reported or a criminal proceeding has been initiated *ex officio*¹⁴. Victims must have access to victim support services in accordance to their need. Family members may also have access to these services depending on their needs and the degree of harm suffered as a result of the crime committed against the victim. The competent authorities have a margin of discretion to determine how to assess such needs, since a formal needs assessment for this specific purpose is not explicitly required in article 8¹⁵. Paragraph 2 requires Member States to facilitate victims' referrals from

14- Nevertheless, support services should encourage victims to report crimes, as well as facilitate it (recital 63).

15- It is possible to consider this as an implicit demand for victim support services to establish internal procedures or protocols for assessing the support needs of victims and their families, parallel to article 22 on individual assessment (European Commission, 2013, p. 24).

competent authorities (generally, police forces) or other entities (such as hospitals, schools, etc.) to victim support organizations without prejudicing confidentiality, to be interpreted in parallel with article 26 and recital 40. Paragraph 3 mentions specialized support for victims with specific needs ought to be promoted by Member States. Both general and specialist support may be provided by governmental or non-governmental organizations, on a professional and/or voluntary basis. Access to support services should not involve excessive procedures or formalities for victims, as these might reduce effective access to such services.

Article 9 refers to the types of support victim support services ought to provide. Victim support services shall provide services, information and relevant advice on the rights of victims, information on specialized services, moral and psychological support, advice on financial matters related to the crime and advice on the risks of secondary victimization, intimidation and retaliation. Paragraph 3 requires Member State to incite victim support services to pay special attention to specific needs of victims who have suffered considerable harm due to the severity of the crime. According to paragraph 2, Member States shall provide and/or encourage specialized support services to provide shelter and personalized support for victims with specific needs, namely victims of sexual violence, victims of gender-based violence and victims of domestic violence, as well as cross-border victims (*cf.* recital 38).

3.4- THE RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

Article 12 enshrines the right to safeguards in the context of Restorative Justice services. The purpose of this article is to ensure that when such services are provided and victims wish to take part in a restorative practice, safeguards will be in place to guarantee these are safe and competent, in order to protect the victim from secondary and repeated victimization, from intimidation and retaliation. Member states shall facilitate the referral to these services, where they exist, through the establishment of procedures or guidelines on the conditions for such referral¹⁶. The safeguards entail that these services are only to be used in the interest of victims, and based on a voluntary, informed and revocable decision; the victim must be given the complete and impartial information on these services beforehand; the offender must have acknowledged the basic facts of the case; any agreement that results from a Restorative Justice process must be arrived in a voluntarily way and should be possible to taken into account in any further criminal proceeding; these processes are confidential unless parties agree on disclosure or if an overriding public interest prevails. Recital 46 enumerates factors which may jeopardize a beneficial outcome for the victim, such as power imbalances and the age, maturity or intellectual capacity of the victim. These factors must be taken into consideration

¹⁶ According with the non-binding interpretation of this article, the article "does not oblige the Member States to introduce restorative justice services if they do not have such a mechanism in place" (European Commission, 2013, p. 32).

in referring a case or conducting a restorative process.

3.5- THE RIGHTS TO PROTECTION AND INDIVIDUAL ASSESSMENT

Article 18 requires Member States to ensure that a wide range of protection measures is available to protect victims and their family members from secondary and repeat victimization, intimidation and retaliation, including from physical, emotional and psychological harm, and to protect the dignity of victims during questioning and when testifying.

Protection is due when there are serious grounds for considering that a victim's life, physical or psychological integrity, personal liberty, security or sexual integrity is at risk, granting a wide scope of possible measures which must be determined on an individual assessment basis (European Commission, 2013, p. 39). However, the measures of protection that shall be granted to victims are not specified in the Directive.

The subsequent articles of the Directive set a number of rights within the right to protection, namely the right to avoid contact between victim and offender, the right to protection of victims during criminal investigations and the right to protection of privacy, which entail specified obligations for Member States, such as ensuring that new court premises have separate waiting areas for victims or that victims may be accompanied by a legal representative and a person of their choice, etc.

The Directive introduced the right to an individual assessment in order to identify victims' specific protection needs. This provision obliges authorities to determine whether and to what extent the victims would benefit from special measures in the course of criminal proceedings, as provided under articles 23 and 24, given their particular vulnerability to secondary and repeat victimization, intimidation or retaliation. The Directive does not provide for a uniform way of carrying this assessment, leaving it up for Member States to regulate by setting national procedures. The assessment must, however, consider victims' personal characteristics, the type or nature and the circumstances of the crime. Particular attention is due to certain victims, enumerated in paragraph 4 of article 22¹⁷, and when assessing children, it shall always be presumed that these have specific protection needs. The assessments can be adaptable to the type of crime and the harm caused to the victim, and they shall be carried out with close involvement of the victim. The victims wish is to be taken under consideration and victims can refuse protection measures.

17- Victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender makes them particularly vulnerable. In this regard, victims of terrorism, organized crime, human trafficking, gender-based violence, violence in close relationships, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

When specific protection needs are identified, article 23 provides that victims can benefit from specific protection measures during criminal investigations and court proceedings. A specific measure is set for victims of sexual violence, gender-based violence or domestic violence on article 23.2 d). Paragraph one, however, safeguards that these measures shall not be made available if they are not feasible for operational or practical constraints or in cases when it might put the course of the proceedings at risk. Children are only subject to this second part of the assessment – the determination of which specific measures are due -, and they may benefit not only from the measures listed in article 23, since article 24 specifically sets measures applicable to children.

3.6- THE RIGHTS OF VICTIMS' RESIDENT IN ANOTHER MEMBER STATE

Article 17 obliges Member States to ensure that difficulties faced by victims of crime who reside in a Member State distinct from the one where the crime occurred are minimized, particularly in what relates to the manner in which the proceedings are organized. In order to achieve the aforementioned goal, authorities from the Member State in which the crime was committed must be in a position that allows them to take the victims statement immediately after the complaint is made and that necessary resources ought to be available, to the possible extent, namely through video conferencing and telephone conference calls, as laid down in the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU (2000), for the purpose of hearing victims who are abroad. Furthermore, victims in this situation must be able to make the complaint to the competent authorities of their state of residency when unable to do so in the state where the crime occurred or, in case of a serious offence, when they do not wish to do it in the state of the offense. The complaint must be transmitted without delay to the state where the crime occurred. As an exception to this rule, exception established in order to prevent conflicts of jurisdiction in cross-border cases (which may be triggered by the strict application of the legality principle and *ex officio* prosecution), there is no obligation to transmit the complaint if the competent authorities in the State of residence have already exercised their national competence to prosecute (European Commission, 2013, p. 38). Although not explicitly mentioned in the article, this provision reflects a general rule of cooperation and shared responsibility between Member States in assuring that victims' rights are guaranteed for victims in this specific situation¹⁸.

18- Recital 51 clarifies this obligation regarding other rights - if the victim has left the territory of the Member State where the criminal offence was committed, that Member State should no longer be obliged to provide assistance, support and protection other than in direct relation to any criminal proceedings related to the concerned criminal offence, such as special protection measures during court proceedings. The Member State in which the victim resides should provide that assistance, support and protection required for the victim's need to recover (European Commission, 2013, p. 38).

4 THE DIRECTIVE'S TRANSPOSITION ASSESSMENTS AND THE NEW EUROPEAN STRATEGY

The Victims' Directive was part of a set of rules and instruments on victims' rights that the EU has progressively adopted in the last decades¹⁹, providing a pretense mandatory hard law instrument and conceding broader protection to victims. However, the reports on the implementation of the Directive have also revealed an unsatisfactory assessment.

Article 27 of the Directive states that Member States were obliged to bring its provisions into force through the adequate national laws, regulations and administrative provisions by November 16th, 2015. Article 28 predicted that Member States would have to provide the Commission with data on how victims have accessed the rights set out in the Directive by November 16th, 2017, and every three years thereafter. According with article 29, this would be followed by a report from the European Commission explaining the national measures undertaken to comply with the Directive that should, specifically, detail actions and measures adopted by the Member States under articles 8, 9 and 23. In the end, none of those provisions were accomplished.

The European Parliament's report of 2018 (European Parliament, 2017) and the European Commission's report, delayed from the original set year of 2016 to 2020 (European Commission, 2020a) showcase disappointing results. At the time of the European Commission's report, there were 21 on-going infringement proceedings for incomplete transposition of the Victims' Rights Directive against Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden. The European Commission report on the transposition of the Directive concluded that for most provisions, Member States have failed in achieving a complete transposition (2020a). Notably, only four Member States had provided (on their own initiative) the relevant empirical data required. Moreover, Denmark opted out of the Victim's Directive and the United Kingdom, despite Brexit, was still considered in this assessment. The European Commission concluded that the full potential of the Directive has not yet been reached, both due to the lack of transposition by Member States, despite the comprehensive nature of Victims Directive regarding transposition (one must keep in mind recital 20 mentioned *supra*) and given practical limitations to its implementation.

19- Namely: Directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography (2011/93/EU); Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims (2011/36/EU); Directive of the European Parliament and of the Council on combating terrorism (2017/541/EU); Directive on the European Protection Order (2011/99/EU); Regulation of the European Parliament and of the Council on Mutual Recognition of Protection Measures in Civil Matters (606/2013/EU); in 2017, the EU signed the Council of Europe's Istanbul Convention on preventing and combating violence against woman and domestic violence (2011).

Nevertheless, both evaluations (2017 & 2020) recognize the merits of the adoption of the Directive and the improvements of victims' position within Member States. European bodies seem to be set on overcoming the challenges that keep impairing the aimed results.

On this positive note, the European Commission adopted a new EU Strategy on victims' rights, which will design the Commission's work for the time frame 2020-2025 (European Commission, 2020b), counting on the efforts of Member States, civil society and other stakeholders to improve victims' rights. Based on the aforementioned report results, as well as on the Milquet report which was part of the set strategy (2019), this new line of approach focuses on five key priorities: empowering victims of crime, strengthening cooperation and coordination, improving protection and support of the most vulnerable victims, facilitating victims' access to compensation and working on the international dimension of victims' rights. It follows a strategic line, involving different actors at EU and national level, aiming to cover a large spectrum of victims' related topics, specifically the ones identified currently as the most concerning²⁰.

The new strategy will be composed mainly of non-legislative actions. Some of the key actions foreseen in the new EU Strategy are: setting a victims' rights platform at a EU level, promoting actions that build on the lessons learnt from the COVID-19 pandemic²¹, engaging in awareness raising actions, promoting training activities, providing EU funding and strengthening cooperation to improve support and protection for EU citizens victimized in third countries.

20- "Reports show that victims of crime still cannot fully rely on their rights in the EU. Victims' difficulties in accessing justice are mainly due to lack of information, insufficient support and protection. Victims are often exposed to secondary victimization during criminal proceedings and when claiming compensation. Those who become victims of crime when travelling abroad find it even more difficult to access justice and compensation. For the most vulnerable victims, such as victims of gender-based violence, child victims, victims with disabilities, elderly victims, victims of hate crime, victims of terrorism or victims of trafficking in human beings, it is particularly challenging to go through criminal proceedings and to deal with the aftermath of crime" (European Commission, 2020b, p. 3).

21- "The lockdown of society during the COVID-19 pandemic saw a rise in domestic violence, child sexual abuse, cybercrime, and racist and xenophobic hate crime. It is therefore crucial to strengthen the framework for support and protection of victims and ensure it is resilient in crisis situations" (European Commission, 2020b, p. 2).



Part II

LITERATURE REVIEW ON THE VICTIMS' DIRECTIVE

The elaboration of this literature review serves one core purpose: to offer a theoretical frame around the Victims' Directive that allows us to better interpret and critically analyze ahead the questionnaire results regarding the role of prosecution services in promoting the rights of victims. For that, one will be offering the reader an insight systematically oriented for three major topics:

1. Difficulties on the framing of Directive victims' rights which are under the radar of the present report (again, generally restricted to rights to information and communication, protection, access to victim support services, access and safeguards in restorative justice services and rights of victims' resident in another Member-State);
2. Characterization of the more frequent models of Victim's Directive transposition into domestic law; and
3. The prosecutor's role in the Victims' Directive.

It is our belief that the mentioned topics will impact the following survey analyses. Therefore, it is nuclear to begin by understand what are the difficulties and orientations one can find through a literature review regarding the Victims' Directive.

1 DIFFICULTIES ON THE FRAMING OF VICTIM'S RIGHTS IN THE DIRECTIVE

As already noted, the broader concept of victim present and underlying all the Victims' Directive contents convokes both the natural person who has suffered harm and (some) family members. This enlargement of the victims' notion is apprehended and explained as such in literature (v.g. Peers, 2013, p. 10, Shapland 2018, p. 196). It may appear to be a pacific concept. But the truth is that even in face of a concept with a long history²², underneath, one can find a sea of turbulence, with a direct impact on the framing of the Victims' Directive rights.

22- Even so, the Victims' Directive concept of victim doesn't go so far as it could if, for example, a dogmatic approach on the concept of survivor had been opted for, as the one brought by Dijk (v.g., for an overview, 2020, pp. 75, 76).

It all can start by defining who should determine whether a person has endured harm or not. Should the person in question, the *victim*, be the one to do it or is it necessary to have an external evaluation on this matter, namely by victim support services or state service(s) that actually confirm the effective existence of a victim? Focusing the analyses on article 4, one can find an immediate recognition of all victims' rights listed there, with no further demands, and Shapland (2018, p. 196) sustains that the right to access to victims' support services present in article 8 indicates that this is actually a right of the victims, it belongs to them. Therefore, they will not be dependent of an individual assessment of the case nor of the evaluation of specific needs in place, in order to access to support (nor to other rights). The decision about being labelled as victims or not is therefore a personal one. As it is the decision regarding the access to the criminal justice system, to make a complaint or not, to access victim support services or other type of support, or not doing so. This seems to be the only possible interpretation in light of the conception already expressed that figures crime as a violation of individual rights. But when the victim steps forward, assuming this label, other problems emerge.

One group of questions regards the effectiveness of the right to information (article 4). We are no longer discussing if a person can directly invoke his/her victim status. That is solved positively. The problem is now broader. The general right to information is of a decisive nature, because, without its practical materialization, the victim will not be aware of other rights (Groenhuijsen & Pemberton, 2011, p. 15). So, this is actually a critical act, for it allows victims to reach an equal standing position with parties, witnesses and authorities (Pérez Marín, 2015, p. 382). But investigation shows examples where standardized written communication or even integral copies of legal provisions are delivered, alongside with zero oral or written adaptation of the information to the specificities of the case (Ivankovic, *et al.*, 2019, pp. 7-8), which seems very far from the aiming of article 4, since that way the specificities of the victim in hand are not addressed, nor their personal characteristics or the circumstances of the case (Pérez Marín, 2015, pp. 383-384). Therefore, there's a real possibility of finding here a merely formal right to information. The victim receives information, but not one fitting the case. Furthermore, regarding the delivery of an acknowledgment of the complaint to the victim, there are findings that it might depend on victims' request (Ivankovic, *et al.*, 2019, p. 7), which, considering victims' lack of knowledge on this right, often hampers the practical enjoyment of the right, and, again, it also seems in collision with the Directives' route regarding information (cf. articles 4 & 5), since if the victim is not taught on the procedures for making complaints, it will be difficult to cope with them. And even if the victim is aware of those proceedings, one can still wonder about the legitimacy of a, let's say, copy of the complaint on demand, for if the Directive states 'that victims receive a written acknowledgement' (article 5), this entails direct significance and command for the receiver of the norm, one that doesn't cope with adding intermediaries or proceedings, otherwise, it's content will be a different and unexpected one. All considered, procedures regarding the right to receive information about making a complaint of a criminal offense under article 4 cannot collide or demand further requirements than the ones already

established on article 5, otherwise the content and reach of this right will be distorted, which means that any legal solution from a Member State that submits the victim to any procedure to get a written proof of the acknowledgement will be colliding with the Victims Directive.

Another group of problems links the concept of victim itself with victim support services, and one can still find misconceptions on this matter, or, at least, a narrower understanding at a national level, since several states limit the access to victim support services to specific kinds of victims or contexts, namely abused women, abused children, and victims of trafficking and/or terrorism (Gavrielides, 2015, p. 77, Ivankovic, *et al.*, 2019, p. 55)²³. Although one must be aware of different approaches on the victim support services organization, since in some states services can be found organized solely by the state, while in others the work is delivered mainly through NGO's, one can conclude that a well-coordinated system could demand for a multi-agency working group to create a coherent service from the victims perspective (Shapland, 2018, p. 207). Nevertheless, Siamese services across Europe could generate a top-to-bottom effect (Gavrielides, 2015, p. 15), neutralizing local diversity and institutional creativity. A middle way solution could be guarantying victim support services coordinated alongside with police, prosecution and courts through a common culture on some nuclear areas (Bahr & Melum, 2017, p. 18). But, with such a model, or with any other in the way to be designed, there are non-negotiable points, such as mutual understanding on the mandatory nature of the existence of victim support services and the necessity of all crimes victims coverage. That figures to be the minimum standards to agree on. Otherwise, there will be, simultaneously, transversal and limitative effects not only on the access to those rights but also on the way they are provided.

As a final reference to the difficulties on the framing of the Directive, one must consider the access to Restorative Justice services. Article 12 assumes a new paradigm. One that no longer has the strains of a certain restorative practice, like previously happened in the Framework Decision, anchored (only) in penal mediation in the course of criminal proceedings (article 10) and drafted in a way that allowed the states to constrain it to petty crimes or to exclude some type of crimes, like domestic violence, for example (Lauwaert, 2013, p. 415). For the first time, the EU regulates Restorative Justice, opening the door to several practices (Recital 46), at all stages of the process, including pre and post sentencing (Gravrielides, 2017, p. 39), treating Restorative Justice, from a dogmatic perspective, both as an alternative, when is used as a diversion measure for example, and as a complementary way of doing justice, as it can also take place along with the criminal process (Gravrielides, 2017, p. 23), being much more than a way out from the criminal justice system (Barona Villar, 2013, 450). One can say the EU policy on this particular topic was forefront, anticipating the orientation that the Council of Europe

23- The other side of the coin is given by countries where all victims of crime are supported by the State through financial uphold offered to generalist NGO's, *i.e.*, NGO's supporting all types of victims, alongside with support specifically addressed to certain typologies of victims, like domestic violence or transgender victims. That's the Portuguese example, with APAV as a generalist victims support service and UMAR – *União de Mulheres Alternativa e Resposta* or ILGA Portugal, *Intervenção Lésbica, Gay, Bissexual, Trans e Intersexo* as examples of victim support services with specialized contexts.

would afterwards embrace through the Recommendation (2018)⁸ concerning Restorative Justice in criminal matters²⁴. Despite this apparently positive note, perplexities rapidly emerge. While the Framework Decision presented mediation as mandatory to Member States, the Victims' Directive does not do the same regarding Restorative Justice. The assumption in which article 12 relies is that victims do not have a *right to restorative justice services*, only having the *right to safeguards* in the context of Restorative Justice. Therefore, victims are protected through a number of safeguards when assessing those services²⁵, albeit they are not recognized the right to demand these services from Member States (Lauwaert, 2013, p. 423). If the services are there, they must be offered respecting certain standards (Gravrielides, 2017, p. 38), otherwise the Directive has nothing to declare. This sounds like a paradox. Restorative Justice appears in the list of rights to which the victim must have access to (article 4.1, al. j), but, apparently, if the rights are not available in the specific country in question, that part of the information delivery should be left in blank, or erased from the information delivery to the victim. While there is an active support to the training of Restorative Justice practitioners through article 25, still, victims have no right to directly demand from Member States to turn these services available, even if they are a way to respond to victims needs that, apparently, are a priority for the Directive design. On this matter the EU cannot argue that Restorative Justice services are already in place across Europe, at least because Bulgaria and Romania only became EU Member States in 2007 and Croatia in 2013, therefore afterwards the binding effect of article 10 of the Framework Decision ceased. So, in practice, at least in those countries, not to mention the other ones in line to become EU Member States, there is a high possibility of never having Restorative Justice Services after all. It can be argued that the Directive's present solution rests fears of having the State perverting one of the original reasons for the Restorative Justice emergence: giving back the conflict underlying the crime to the victim, the offender and the community, putting an end to a sort of State monopoly on this matter (Gravrielides, 2015, p. 80). However, from our perspective, an option was made that represents a step back on the recognition of a concrete victims' right, without considering models that could fit into different realities, away from a one-fits-all solution (Gravrielides, 2015, p. 84). Maybe there is a deeper problem, related to the way restorative processes are being implemented across Europe: they emerge largely from the traditional criminal justice system, as article 10 of the Framework Decision apparently demanded, are mostly offender-oriented and pressure for victim participation might also be in place (Walgrave, 2009, p. 81). So perhaps the perversion of the original constructions around Restorative Justice that are now being pointed out and demanding steps back from the EU policy happened from within the EU policy itself. Instead of stepping back, the problem could be directly faced, adapting the

24- Which offers a wide and ambitious world of possibilities to Restorative Justice intervention, not restricted to the formal criminal proceeding, since it allows for the application of restorative practices, for example in a prison context, at post sentencing level, as a way to promote conflict resolution between inmates and prison staff. For an overview of the content in the Council of Europe Recommendation, Hagemann (2018): pp. 156 et seq. One should also stress that the Victims Directive is too in line with the major orientations of the United Nations 2nd edition of the Handbook on Restorative Justice Programmes by Dandurand, Vogt and Lee (2020). Accordingly, the Directive is mentioned in the Handbook on a positive note, as a legally binding international instrument (pp. 19 & 55).

25- Within criminal proceedings, but not in the case of restorative practices undergone as an extra-judicial approach (Martín Diz, 2013, p. 507).

existing models to a truly victim oriented Restorative Justice. And the EU should have a central role on such process. The conclusion on the topic of Restorative Justice is: the Directive falls short (Lauwaert, 2013, p. 425).

After going through the difficulties on the framing of the Directive victims' rights, there is one emerging conclusion: the Directive's content shouldn't represent the Wittgenstein lion (1953, p. 223), whose language is not understood by humans, only by other lions. By that one wants to stress that the way rights are framed, reduced into words at EU up level cannot be seen by the Member States and their citizens as something incomprehensible, unreachable, like lion talk is for humans. At the same time, the way Member States apply the Directive in practice cannot create obstacles to access its rights, otherwise one will have different languages for the same rights across Europe and that will turn us into aliens on our own Continent. Wittgenstein's lions aphorism in the context of the Victims' Directive demands for more articulation on the rights' design, but no stepping back regarding rights already under the EU radar should be taken. Beyond that, it exalts to a non-surprising interpretation of victims' rights, so that everyone speaks about the same dimension and content of rights across Europe. Maybe this is an obvious conclusion, but after going through all the difficulties regarding the Directives' rights framing, it seems they are hard goals to reach.

2 CHARACTERIZATION OF THE MORE FREQUENT MODELS OF VICTIM'S DIRECTIVE TRANSPOSITION

From an international perspective, the Victims Directive is a unique legal instrument, for it recognizes a set of victims' rights, demanding from the Member States ways to cope with them. By making a comprehensive set of victim friendly principles of justice legally binding (Van Dijk and Groenhuijsen, 2018, p. 275) EU intentions were made clear but, considering the European different legal texture, from Anglo-Saxon to continental models, and different institutional solutions, with differentiated architecture and articulation regarding polices, courts, victim support and restorative justice services and other organizations, one could not ask for homogeneous outcomes (Biffi *et al.*, 2016b, p. 9). Even when the starting point is the same legislation, in this case the Victims Directive, national lived realities will most certainly determine variation in compliance, since the way (any) Directive is implemented nationally varies (Bahr & Melum, 2017, p. 9). One must keep in mind that besides assumed obligations inside the EU, national governments are also bonded to their citizens and, even more specifically, to their electorate, which can dictate tactical movements and special decisions regarding the way to transpose a concrete directive. Furthermore, social and media environment, and institutional pressure from some professional bodies might also influence the way the normative set of transposition

is made. Besides the external environment already mentioned, governments must cope with the existing national legal frame when deciding how the transposition is going to take place, and then opt for: the creation of new piece(s) of legislation, the adaptation of existing laws, the (mere) introduction of practical adjustments to state departments and or professional bodies functioning, or no kind of formal transposition at all, allowing for the direct enforcement of the directive at national level (Conway, 2015, pp. 213 *et seq.*, Schütze, 2018, pp. 95 *et seq.*, Turner 2014, pp. 21 *et seq.*).

All those possible national constraints turn hard any prospective exercise aimed at anticipating the way a concrete Directive coming into light is going to be internally transposed and, beyond that, outline the expected outcomes. Even so, there are examples.

Falkner and Treib's studies regarding EU Directives compliance across Member States propose 'worlds of compliance'. The most recent orientation they've delivered on this matter, in 2008, points out 'four worlds of compliance', enlarged from three to four after European Economic Community (EEC) Member States from Central and Eastern Europe entrance back in the 1990's. The first proposed world is the 'World of Law Observance' (2008, p. 296), where transposition observes EU orientation and occurs in time. The goal of compliance overrides domestic concerns and, once is put into force, the transposition outcomes are characteristically successful. Following the same studies, Denmark, Sweden and Finland belong to the world of law observance. In the 'World of Domestic Politics' (2008, p. 297) there is a persistent tension between EU requirements and domestic politics. EU transposition into domestic law is not a goal in itself, because obeying EU-rules is one goal amongst many. Therefore, in cases of manifest clash between EU requirements and domestic interest politics, non-compliance is the likely outcome. But application and enforcement of transposition laws are not a major problem, since the main obstacle to compliance is political resistance and that mainly occurs at transposition stage. Accordingly, Austria, Belgium, Germany, The Netherlands, Spain and the United Kingdom characteristically belong to the world of domestic politics. The 'World of Transposition Neglect' (2008, p. 297), is one where transposition obligations are often not recognized. Therefore, shortcomings in enforcement and application are a frequent phenomenon. Greece, France, Luxembourg and Portugal are reconducted to the world of transposition neglect. Finally, in the 'World of Dead Letters' (2008, p. 308), EU Directives transposition might even occur in a compliant manner, depending on the prevalent political constellation among domestic actors, but, from the enforcement and monitoring perspectives, noncompliance is the motto. Thus, there is a significant lack of effectiveness of statute books and that's also why their letters are dead. Czech Republic, Hungary, Ireland, Italy, Slovakia and Slovenia form the world of dead letters.

The Victims' Directive brings us additional challenges on the matter of complying worlds, not only because we are moving in an area where Member States sovereignty still has (some) value, but also due to the fact the adhesion to victims' rights enforcement is anchored on a number of factors marked by the national nomenclature such as good

governance and active civil society (Groenhuijsen & Pemberton, 2011, p. 15). If, before the Victims Directive, one could find different speeds in victims' rights enforcement across EU Member States, the Directive definitely impacted State Members criminal justice and victim support system, but that transformation process cannot be seen as a single phenomenon, rather as a free market operation (Groenhuijsen & Pemberton, 2011, p. 18). And from this later perspective, state capacity and civil society organization of the older EU democracies are statistically at helm (Sissenich, 2010, 2010, p. 11). Therefore, when the Victims' Directive transposition speed track begun, the countries were not perfectly aligned. Some of them had already departed, arriving first to the world of law observance, while others, the ones with lowest level of victims' protection, were already a world of dead letters on departure.

The idea of variation in compliance can also be linked to another line of analyses. One by Flyvbjerg, inspired in the Aristotelian *phronesis*, reinterpreting the idea of practical wisdom in a way that takes into account the needs of contemporary social science (2001), namely through public reaction and consequent capacity to change the world of political decision-making (Flyvberg, 2014). For that, instead of pure abstraction, there is the need for considering the actual actors. Literature already offers a societal ecology methodology, and there are examples of its application related with part of the topics embraced by the Directive, *v.g.* with an only focus on Restorative Justice (Brennan & Johnstone, 2018). But there is one line of investigation regarding the criminal justice context of victim assistance (Bifi *et al.*, 2016b, pp. 78 e ss.), combining the analysis of criminal justice systems, penal climate, worry about crime, trust in government and corruption, rule of law and trust in justice, that suggests a EU Member States division into five groups (Bifi *et al.*, 2016b, pp. 88-89). The first one is the Anglo-Saxon, with common law/adversarial systems, which present relatively high and rapidly increasing incarceration rate. Regarding concern about crime, the rule of law, corruption and trust in justice, the Anglo-Saxon countries are similar to those in the North-Western Europe, *i.e.*, low worry about crime, high trust in justice, experience of rule of law and low levels of perceived corruption. The second group is the Eastern, where civil law systems are in place, with even higher, but moderately increasing incarceration rates, relatively high worry about crime, relatively high levels of perceived corruption and lower levels of experience of rule of law. The third is the Southern group, also with civil law systems, moderate, but increasing incarceration rates, relatively high worry about crime and level of perceived corruption and an experience of rule of law which is higher than in Eastern Europe, but lower than North-Western and Nordic Europe. North Western is the fourth group, again with civil law systems, with moderate, but increasing incarceration rates, low worry about crime, high trust in justice and experience of rule of law and low levels of perceived corruption. Finally, the Nordic group, with civil law systems, showcasing a low, and only moderately increasing incarceration rate, lowest worry about crime, high trust in justice and experience of rule of law.

Although the previous approach was not aimed at designing models for (any)

Directive transposition, its core is still aligned with the purpose of the present line of exposition, since it presents the fundamental characterization of different EU groups of Member States regarding the criminal justice context of victim assistance. Therefore, knowing if one is facing a more or less victim friendly State can also be a way to anticipate what is going to be the behavior of the country in question regarding compliance with victims' rights external instruments, such as EU directives.

Going through a prospective cross-checking exercise, combining both the "four worlds" of directives compliance approach and the methodology from the social ecology previously outlined, the results regarding the impact of EU legislation on national legislation might offer a specific victim-oriented perspective. Such a study was already undertaken (Bifi *et al.*, 2016b, pp. 100 et seq.) and the results are, again, quite similar. Like in the world of law observance, the Nordic group of countries is the one most likely to fully implement EU legislation. The world of domestic politics is composed both by North-Western and Anglo-Saxon group of countries. The world of transposition neglect corresponds to the Southern group. Finally, the world of dead letters is composed by the ones from Eastern Europe.

For the purposes of the present report, three findings can be drawn from the previous cross-checking considerations: 1) Spain was originally situated in the world of domestic politics, but since the social ecological approach reappointed this country to the Southern group, this means it is now, from a theoretical point of view, somewhere between a model of directives compliance limited to domestic politics and a world of transposition neglect; 2) Ireland has a counter movement, because, while being firstly in the world of dead letters, it's inclusion in North Western group allows for a significant theoretical transport to the world of domestic politics; 3) Croatia was not a EU Member State at the time of Falkner and Treib's studies, but, considering the fact their worlds were originally three, enlarged to four precisely to accommodate the, by 2008, newcomers, namely from Eastern Europe, Croatia should be, in this light, a world of dead letters representative, assumption confirmed by its already mentioned positioning in the group of Eastern countries.

The combined theoretical approaches also offer the more frequent models of the Victims' Directive transposition. It confirms that both the world of transposition neglect (Southern) and dead letters (Eastern) are likely to have more turbulence on the transposition process and weaker impact of the Victims Directive, differently from the performance of the world of law observation (Nordic), in the opposite polo, with high levels of EU policy and victims' rights compliance, and, in between, the world of domestic politics (Anglo-Saxon and North Western). However, the specific field of victims' rights seems to create some theoretical disturbance, for the practical results that it leads to do not match perfectly in both approaches. Revisiting both lines of investigation with a specific Victims' Directive focus can be a necessity, mainly to figure out the more difficult cases, like Ireland and Spain, who seem to have the power of ubiquity, transiting between different constellations of worlds and group countries.

3 THE PROSECUTOR'S ROLE IN THE VICTIMS DIRECTIVE

Going through the Victims Directive, one will find three direct references to prosecutor out of thirty-two articles: regarding victims' rights emerging from the prosecutor's decision to prosecute or not prosecute (article 11.5), relating to rights to protection of victims with specific protection needs during criminal proceedings when being interviewed by someone who isn't a prosecutor (or a judge, article 23.2, al. d) and about training (article 25.2), the only article truly oriented to the activity of prosecutors. From a quantitative perspective, this could be seen as a diminished role, but that line of thinking would be misleading. Quantitative considerations alone on this field of analyses don't lead to informed and undemented conclusions. Just to take one example, judges are referred on the same diploma only two times (articles 23.2, al. d & 25.2) and that doesn't seem to signify judges don't play a significant role in guarantying victims' rights, for they are the ones who convict (or not) the offender, so the *Right to Justice* is in their hands.

From a conceptual standpoint, the Directive was designed trough a victim-centric approach, which means that after a general framework offered by the Directive's recitals, namely on prosecutor and prosecution, references to (other) criminal actors and identification of specific services are made along the articles whenever is necessary, always with the aim of better detailing victims' specific rights. The prosecutor is presented as a criminal justice stakeholder amongst others, like judges. The fact they are largely absent from Directive's formal normative set doesn't exclude them from being a normative stakeholder. What happens is a kind of mirroring effect, in the sense victims' rights established under the Victims Directive will reflect on the role of the prosecutor. This effect emerging from mirroring the position of the victim in criminal procedure has been long identified (Gershman, 2005, pp. 559-560), signifying that examining how the victim takes part in the criminal procedure also illuminates the prosecutor role. This mirroring effect assumes a new dimension here, for victims' rights are now putt into force from outside the criminal justice procedure, *i.e.*, through an international instrument: The Victims' Directive. And this instrument demands compliance from Member States. However, as the Directive itself recognizes through recital 20, the role of victims in the criminal justice system and how they can participate actively in criminal proceedings varies across EU Member States, depending on national systems, as *supra* outlined. Therefore, the victims' rights mirroring effect on the role of prosecution might vary in this context, as different countries will have different thin curtains between the image and its reflection, changing the intensity of the mirror reflection. The curtains are made out of the national criminal justice architecture. They must be thin, otherwise the mirroring effect will not take place, meaning the criminal justice system national organization and normative set is prohibited from blacking out EU mandatory victims' rights.

One key question now emerging is of whether the Victims' Directive gives any orientation on how the curtain should be produced regarding the prosecutor. The kind of fabric that should be nationally used. It was already argued there is a new triangular model in criminal proceedings emerging from the Directive, one that comprehends public prosecution services, victims and offenders (Vervaele, 2013, p. 30), but that alone doesn't answer our demand. As previously mentioned, the Directive is victim-centered, but, still, it's possible to find one direct command to Member States regarding prosecutors: training on victim's needs must be provided, both general and specialized, as article 25.2 establishes and recital 61 further explains²⁶. However, the way the content of this article should be transposed into national legislation is not clear. It seems to allow a mere administrative intervention, without turning mandatory for the prosecutor (and other actors named on the same article) the training attendance. Consequently, Directive's compliance regarding professional training can be jeopardized, causing a butterfly effect, because, without proper training, as best as national legislations transposing Victims' Directive might be and as best as technical preparation of prosecutors is found in place, they will not be fully trained on its content and when addressing, receiving, informing or forwarding a victim, there is a serious possibility of not having the best performance nor contributing to the best possible outcome for the victim after all. One cannot forget the latitude of prosecutors' intervention has enlarged over the years (Giliéron, 2014, p. 5) and keeping up with all new legislation is not always easy for any judicial actor. In the end, that's probably one of the reasons why the Victims' Directive fixed an article on prosecutor (and another actors) training. Guaranteeing compliance with it was not fully accomplished. Hence, the curtain's fabric is not perfect in this sense. And it may tear. Besides a close engage with victims during criminal proceedings and a major role before and after the trial, prosecutors also play a key role in cooperation, v.g. with prosecutor services from other Member States, and coordination, namely with the police and victim support services. Thus, training absence, again, might risk cooperation and coordination outcomes related to victims' rights.

Additionally, on the matter of prosecutors' curtain thickness, the right to an impartial, independent, and timely investigation, is formally absent from the Directive. But without a proper investigation, victims will not be truly able to access justice through criminal justice processes (Ezendam & Wheldon, 2014, p. 61). From an incentive for practitioners compared perspective, when offenders rights are neglected, historically, national systems have built up remedies (v.g. exclusionary rule), but if basic rights of victims are violated, not always are national criminal justice systems prepared to react and the Victim's Directive does not offer any kind of systematic redress (Groenhuijsen, 2014, p. 42). Thus, in what concerns to consequences for such violations, it is all about national policies and legislations. This could be an important point to be weighted on a following EU binding legal instrument, for it allows to turn victims' rights effective.

26- A training that should be complemented by guidelines, recommendations and exchange of best practices in accordance with the Budapest roadmap.

Intermediate conclusion: The Victims' Directive only gives orientation on how the curtain should be produced regarding prosecutors' training, even so with a limited range.

Amid to interpret the prosecutor's role one must then turn to national criminal justice systems. And it is exactly where the concrete characterization of the prosecutor as normative stakeholder will be found. The Victims' Directive recognizes the prosecutor as a normative stakeholder the way national criminal justice systems do. It's an interdependent relation. However, if victims' rights are not self-executing and if victims are not justice stakeholders (Kirchengast, 2018 p. 7), they must rely on national criminal justice stakeholders to turn them effective. The prosecutor, in the center of the present Report, is one of them. And the way its role is played out directly impacts on public trust in justice. Treating victims in a respectful and victim sensitive manner enhances a human and effective criminal system, also influencing on the way the criminal justice system is perceived (Hough & Sato, 2011, p. 6). In this manner, prosecutors can be seen as a bridge between the law and justice image.

One final consideration. Across EU Member States, despite national legislative differences, prosecutors have, at least, one or more of the following powers: to receive or not a complaint, to deliver or not a written acknowledgement of the formal complaint, to apply or not a specific victim protection measure, to forward victims to victim support or Restorative Justice Services or not. Therefore, besides being a normative stakeholder of national criminal justice, in light of the Victims' Directive, the prosecutor emerges as victims' rights gatekeeper, for the access and effectiveness of these rights largely dependents on prosecutors. This double role, national criminal justice stakeholder and Directive's gatekeeper, might cause the risk effect of 'victim fatigue' (Groenhuijsen, 2014, p. 31). One must not forget that Directives are negotiated far from prosecutors daily work, although they have, as other criminal justice authorities, expectations on what regards to new obligations they ought to comply with: they expect the international formal instrument to be effective and easy to carry out in practice in connection with existing procedures (Ezendam & Wheldon, 2014, p. 54). When that doesn't occur, when (new) proceedings are way too demanding, 'victim fatigue' emerges and victims' rights can turn under stress. The opposite process might also take place, *i.e.*, when formal law and proceedings do not suffice and there is a need for the work and creativity of prosecutors to turn Victims' Directive's rights effective, that can, likewise, generate 'victim fatigue'.

That was theorization. The time is for turning into concrete data.



Part III

THE QUESTIONNAIRE

All the previous considerations were aimed at contributing to the report's core, now reached: the questionnaire. As initially explained, the questionnaire was mainly submitted to prosecution and victim support services, in order to gather rigorous and accurate background information about the transposition and implementation of the rights provided on the Victims' Directive, specifically focused on rights to information and communication, protection, access to victim services, access and safeguards in restorative justice services and rights of victim's resident in another Member-State. For that, a range of questions were conceived around those six groups of victims' rights. The questions were designed to better understand how the mirroring effect of those victims' rights settled by the Victims' Directive reflect in what relates to prosecutors and prosecution services. The kind of curtains found in national legislations and adopted practices will allow for a better understanding of their role as victims' rights gatekeepers, *i.e.*, the way they guarantee victims' rights accomplishment and the kind of articulation with victim support services one can find nationally.

The questionnaire was raised around the four partner countries legal diversities, comprehending Anglo-Saxon and Continental traditions, diverse penal procedure models and different nature of institutional relations between prosecutor and victim support services, in order to offer an enlarged sample of EU Member States' realities, enabling a questionnaire content that could be understood and answered by respondents with diverse legal and institutional background. One must keep in mind the ultimate aspiration of the Pro Victims Project is to examine how the role of public prosecution services in promoting the rights of victims is being effectively developed in the EU context. Therefore, one should deliver a questionnaire prepared to embrace all EU realities.

All considered, it turns necessary to start by mapping the legal partner countries diversities, to better understand the questionnaire results ahead.

1 PARTNER PARTICIPATING COUNTRIES

Prosecution is considered to be an integral part of the criminal justice system (Giliéron, 2014, p. 5; Ma, 2008, pp. 190-196), as it mostly occurs on behalf of the State through public prosecution services except for when private prosecution is permitted. These are composed by public prosecutors who are generally responsible for executing the States' function of prosecuting criminal acts, representing public interest, as well as of assisting courts on the process of finding the truth and assuring that the criminal process is conducted in a lawful manner. But the way this role is carried out nationally differs across EU Member States, as a result of different historical paths and political options. Historically, those results can be clustered into two main models of conducting criminal proceedings which emerged after the thirteenth century (Ma, 2008, pp. 190-191): the adversarial (*accusare*) and the inquisitorial (*inquirere*), respectively associated to common law and civil law legal traditions. Although there no longer are pure models of penal procedure, since reciprocal influences occurred across history and places (Mendes, 2018, p. 21), looking at the present Project partners, one can wonder if it is possible to reconduct each legal national penal system to one or the other pure models of penal procedure, in line with different theoretical designs and existing EU Member States' traditions.

The line of adversarial legal tradition has a remote origin and can be explained through Greek and Roman heritage of private prosecution and party-proceedings, but the *Magna Charta Libertatum* of King John of England, dated from 1215, has also been considered a benchmark of this tradition, based on the idea of limiting the judge's discretionary powers, later recaptured during the age of enlightenment, when the penal procedural reform became a priority, namely through the writings of the Marquis Cesare Beccaria, all contributing to a theoretical model where the procedural initiative traditionally belonged to the offended, the truth was discovered with the *contradiction* between parties and the judge was an arbitrator above them (Mendes, 2018, pp. 21 e ss. *et seq.*).

The line of inquisitorial legal tradition had its origin in the Low Roman Empire, continuing throughout the Middle Ages. The inquisitorial process was progressively enforced in European States from the XII century on and, more specifically, with the codification process, until the XVIII century. The and the emerging theoretical orientation is one in which there is a concentration of powers to investigate, accuse and judge in one sole entity: the judge (Mendes, 2018, pp. 27 e ss. *et seq.*).

Naturally, both theoretical models briefly explained don't have modern existence in their pure essence, but from them one can infer two modern tendencies: the first is closer to the Anglo-Saxon tradition, where the English adversarial system assumed penal proceedings as a party-process, in which the accuser does not judge and is

responsible for the proceedings in face of a judge (Hodgson, 2010, p. 320); differently, through the second model, one can infer a state penal procedure monopoly, where a judge is responsible, in the State's name, for criminal investigations, prosecution and trials (Mendes, 2013, pp. 29-30) and this will be mainly a continental reality.

But penal model procedures currently in force in Europe are also explained by a so-called mixed model brought in the 19th century by the French revolution (Ma, 2008, p. 198), in which the structure of the process was mainly accusatory, but it was divided into two different stages – instruction and trial. The instruction phase was led by an instruction judge, in charge of investigating crimes, while initiative and power to prosecute belonged to an independent official from the executive power, the prosecutor (Mendes, 2018, p. 31). It was the Napoleonic 1808 French *Code d'instruction criminelle* that established this so-called “anglo-french” system, one that greatly influences continental Europe jurisdictions until the present day²⁷.

Consequently, in Continental Europe, nowadays one observes a bias for mixed proceedings systems, with stronger or lesser influence recognized to prosecutors. Being generally labelled as inquisitorial processes, albeit not without being target of criticism, for they still place more emphasis on the pre-trial phase than on trial, being the pre-trial phase of investigation heavily centralized, putting much reliance upon the dossier of written evidence gathered by the judge, the truth is one can increasingly find a turning of the judge figure into a neutral element on that stage (Hodgson, 2010, p. 321). One other identifiable trace of these models is the existence of different mechanisms to balance the roles of public prosecution services and instruction judges, for there ought to be a guarantee of the impartiality of public prosecutors when these hold control over both investigations and prosecution (Armenta Deu, 2012, pp. 72-76).

After the Second World War, in the Common Law countries, the classic conception of criminal proceedings also suffered an important evolution, since cases were no longer fought out between the victim and the accused, as in the civil process, and, beyond that, police action was introduced as a sort of public prosecution service. It's also important to note that only by this time was the professional prosecution service effectively created (Vogler, 2005, p. 636). This evolution led to a model where the role of accusation is passed first to the police and then to the public prosecution service, the Crown Prosecution Service (Hodgson, 2010, p. 320), and that's, generally, the current model in force in the United Kingdom world. From a global perspective, this is a model essentially flourishing in places where it was imposed by the British and nowhere else (Vogler, 2005, pp. 632-633), a reality also confirmed in the European context, since the new countries emerging after the fall of the Iron Curtain corroborates this tendency. They didn't opt for an Anglo-Saxon inspired model.

27- An influence not free of criticism, for it is considered by some as a flawed and fundamentally oppressive hybrid model which became the dominant form of trial around the world and, with very little modification, proved to be the weapon of choice of European totalitarianism in the first half of the twentieth century, particularly in Soviet Russia and Nazi Germany, where it needed very little reform to make it serviceable for those regimes (Vogler, 2005, pp. 632-633).

Even so, there are those who consider that this dichotomy between inquisitorial and adversarial systems should be replaced by a more detailed analysis of each legal system, taking into account the mutual influence and that the current systems are, most often, mixed (Winter, 2008, pp. 33-37). However, even recognizing this miscegenation, and as long as the mutual influence of the two systems is considered, there are advantages in the distinction between the adversarial system when comparing with the Anglo-Saxon tradition (Haas, 2008, p. 427).

This leads us to the intermediate conclusion that a strong legal heritage still determines differentiations between adversarial common-law legal tradition, based on the classic English criminal system, and the continental European model. Furthermore, this dichotomy is yet relevant given the fact they share basic characteristics but are marked by essential contrasting features in the manner of how formal adjudication takes place (Ainsworth, 2015, p. 2), namely determining differences in the scope of competences and powers of Public Prosecutors, albeit in the modern prosecutorial system, in a general way, Public Prosecution Services hold the monopoly over prosecution.

On another perspective, through the comparison between prosecution systems, one can find important distinctions going beyond these legal traditions, such as: whether a prosecution system takes the approach of discretionary prosecution (the opportunity principle) or mandatory prosecution (the legality principle); whether prosecutors are a part of the executive or the judicial power; whether the prosecutor may be subject to political instruction; or whether the prosecution service is ordered hierarchically or rather operates on the basis of the independence of each individual prosecutor (UNODC & IAP, 2014, p. 4).

All considered, different kinds of prosecutors' performance design and the way they behave as the Victims' Directive's gatekeepers nationally, the way the reader is going to find in the questionnaire assessment, it's important to have a brief overview of the diverse national legal systems and legal domestic frameworks in the different partner countries. It is time to perform a mapping of the legal role of prosecution services in guarantying the Victims' Directives provisions and making its rights available for victims, systematically taking into account four major points of orientation for each partner country: i) historical and legal national context; ii) legal framework which establishes prosecutors competences and powers, especially in what regards to the rights of victims of crime; iii) method and outcome of the transposition of the Victims' Directive; and iv) the way victim support services are organized.

A – Croatia

The Republic of Croatia, located between Central and South-Eastern Europe, became a member of the European Union in 2013, after applying in 2003.

I. Historical and Legal National Context:

As a post-conflict and war-affected country, which is still heavily afflicted by a social, economic and political transition towards democracy and a market economy, Croatia's legal system presents struggles with rule of law and good governance, and, in line with the tendency of Balkans' jurisdictions, it does not present a "conventional crime problem", instead, it shows country-specific crime issues (Getoš Kalac & Bezić, 2017, pp. 242-256; Getoš Kalac, Vidlička & Burić, 2020, pp. 4-5).

The former Croatian Criminal Procedure Code, dated from 1875, is traditionally considered a descendent of the Austrian Criminal Procedure Code of 1873, heavily influenced by the already mentioned French Napoleon Code. On that legal instrument, manifesting both inquisitorial and adversarial features, the investigative judge was the most important figure, required to personally investigate into any suspicion of a criminal offence, and in case of a vague suspicion it would be left to the public prosecutor to clarify the circumstances in which it occurred (Ludwig Boltzmann Institute of Human Rights, 2006, p. 52). The following developments in Criminal Justice in modern Croatia were characterized by systematic changes regarding the pre-trial stage, namely shifts of control over this procedural stage between judge, public prosecutor services and the police.

After the Croatian Independence in 1991, the Criminal Procedure Code (CPC) of 1997 entered into force, distinguishing between a first phase of pre-investigatory proceedings, competence of the public prosecutor (and under her/his guidance, the police), and a second stage of investigation entrusted to an investigative judge (or examining magistrate), followed by prosecution, a competence of the public prosecutor service (Horvatić & Derenčinović, 2002, pp. 27-28; Ludwig Boltzmann Institute of Human Rights, 2006, pp. 54-55). More recently, the Croatian justice system has continued to endure changes and fluctuations, showcasing a strong influence of German and Austrian criminal law, rooted in Croatian tradition (Horvatić & Derenčinović, 2002, p. 8), despite still showing influences of the French System as well (Turković, 2008, p. 265).

From seeing the investigative judge as the main actor in the investigation phase while prosecution was left to public prosecutors, the CPC's version of 2008 imposed the return of a system in which Public Prosecution had control over the investigation, a change that had been

called for and predicted (Turković, 2008, p. 286). The following amendments of 2013 and 2017 to the CPC gave prosecutors the control of investigations as well as of prosecution and determined that the greater investigative role is now placed by police forces (Getoš Kalac, Vidlička & Burić, 2020, p. 6).

Overall, the Croatian Criminal System can be characterized as a combination of adversarial and inquisitorial features, falling into the category of a mixed Continental European procedure.

II. Prosecutors' Legal Framework:

Specifically regarding to public prosecution services, the development of this institution was already observable in the Kingdom of Yugoslavia in 1938 as a "state body entrusted to represent the state in judicial and administrative procedures" (Aleksov & Georgievska, 2018, p. 85).

The Croatian Constitution enshrined the existence of a Public Prosecution Service as "an autonomous and independent body authorized to act against perpetrators of criminal acts, to undertake activities for protection of the property of the Republic of Croatia and to apply legal remedies for protection of the constitutionality and legality" (article 125). In this context, a new Law was adopted in 2001 regulating matters of Public Prosecution Office's powers and organization. Also important to take into consideration is the establishment in 2001 of The Office for the Suppression of Organized Crime and Corruption as a separate prosecutor's office with a mandate regarding the crime of corruption and organized crime, working closely with an also special police unit for this effect (Aleksov & Georgievska, 2018, p. 86).

Within the judicial system, the legal basis of the public prosecution's competences and organization is grounded in the Constitution of the Republic of Croatia, paired with the CPC and the Law of the Public Prosecution Office. In light of the mentioned legal framework, this role can be summed into three main attributions: to instigate prosecution of perpetrators of criminal and other penal offences, to initiate legal measures to protect the property of the Republic of Croatia and to apply legal remedies to protect the constitutionality and legality. In doing so, public prosecution is responsible for effecting criminal policy and representing victims' interests in criminal proceedings (Turković, 2008, p. 266).

The Public Prosecutors Office of the Republic of Croatia (*Državno odvjetništvo Republike Hrvatske* or DORH) has the legal authority to initiate criminal proceedings mainly independently from judges and courts, which happens after police investigation. Notably, criminal proceedings are

conducted at prosecutors' request when these can be initiated *ex officio*, following the legality principle. Otherwise, a private prosecutor may be competent (Getoš Kalac & Bezić, 2017, p. 257)²⁸.

In what regards specifically to the Croatian Police, one can find sub-specializations for crime investigations, namely the 'basic police', the criminal police, and the aforementioned specialized police unit for investigating corruption and organized crime. They are usually the first point of contact with the victim when a criminal offence has been committed, as they carry criminal investigations and, besides dealing with criminal offences, the police is competent for handling misdemeanors as well, included in criminal law in a broader sense (Getoš Kalac & Bezić, 2017, p. 258).

III. Method and Outcome of the Transposition of the Victims' Directive:

Victim participation in criminal proceedings was already an old inheritance of the Croatian Jurisdiction, since Yugoslavia's Criminal Procedure Code of 1976 provided for different forms of victim participation in criminal proceedings, which were taken over by the Croatian law, for the victim of a criminal offence could already participate in criminal proceedings as: injured person, in cases where a criminal offence was subject to public prosecution; subsidiary prosecutor, in cases where the public prosecutor failed to institute the prosecution; private prosecutor, in cases where the criminal offence was prosecuted by way of private charge (Krapac, 2002, pp. 155-156). Moreover, victims had other, despite narrow, rights of participation, for example regarding the decision to suspend proceedings, which is dependent on the consent of the victims (Turković, 2008, p. 283). Victim formal participation in Croatian criminal proceedings was influenced by the need for victims in prosecuting war crimes (Getoš Kalac, Vidlička & Burić, 2020, p. 14). However, it was also seen as a utilitarian way of taking away the load of cases from prosecution services, rather than an actual concern for victims' rights (Turković, 2008, p. 284).

These forms of participation are still in force today. Victims of crime can participate as an injured person, and as such prosecute on their own accord, through private prosecutors. Moreover, in some cases, for which the victim can then intervene as subsidiary prosecutor, public prosecution is only possible after a motion from the victim.

28- The legal institution of private prosecutor is restricted in Croatian law to minor criminal offences or to cases where public prosecution may prove harmful to the victim's private interests, which represents an exception to the inquisitorial feature of the prosecution *ex officio*. Differently from other continental countries, in Croatia, whenever a criminal offence is subject to private prosecution, the public prosecutor is not allowed to intervene (Krapac, 2002, p. 162).

In face of the Framework Decision of 2001, Croatia initiated the process of recognition of victims of crime's rights in criminal proceedings. In the past decade, the Croatian criminal justice system endured profound reforms, or, as it has already been alleged, "complete novelties" (Getoš Kalac, Vidlička & Burić, 2020, p. 5), specifically regarding the improvement of the position and rights of victims of crime, considering that the term 'victim' was only introduced in 2008, with the Criminal Procedure Act (Anić & Frankić, 2019, p. 11).

Nevertheless, a few norms already established rights for victims that were not dependent on their formal status of participation in criminal proceedings (Getoš Kalac, Vidlička & Burić, 2020, p. 15), namely the right to access victim support (articles 43.1.1 & 43.2.1. of CPC 2008), and the right to information (article 43.3 of CPC 2008). In 2008, state compensation for victims was also enshrined (Getoš Kalac, Vidlička & Burić, 2020, p. 16). Moreover, some victims were already specifically protected in the criminal system, namely children and victims of sexual crimes (specific rights enshrined in articles 44 and 45 of the CPC of 2008). Furthermore, Croatia has passed different laws on specific victims: in 2003, the misdemeanors' Law on protection against Domestic Violence (a new law was approved in 2018); in 2008, a law on victims of human trafficking (a new law was also approved in 2018); and in 2015, the law on the right to compensation for war rape victims. Recently, the country ratified the Istanbul Convention. Regarding children, in 2000, amendments to the Criminal Code had aimed to enhance protection of children, for instance by augmenting penalties' frameworks. Influenced by the German and Austrian traditions, Croatia implemented juvenile courts with a specific jurisdiction, the Juvenile Courts Law, in which rights for victims are enshrined (Horvatić & Derenčinović, 2002, pp. 11-12).

The Croatian Criminal Code, which entered into force in 2013, manifested this shift in the legislative treatment of victims of crime, giving primacy to the term 'victim' over the term 'injured person', assuring sensibility for vulnerable victims, as well as providing a definition for victims of crime (Getoš Kalac, Vidlička & Burić, 2020, p. 3). The definition put into force is aligned with the Victims' Directive and introduces a distinction between "indirect" (married and extramarital partner, life partner or informal partner and a descendant, or, if the victim does not have a predecessor, the brother and sister of those whose death is directly caused by a criminal offence) and "direct" (natural person who has suffered physical and mental consequences, property damage or substantial violation of fundamental rights and freedoms) victims of the criminal offence (Anić & Frankić, 2019, pp. 73-74).

Importantly, the CPC Amendment 70/17 has separated the role of the victim in a proper sense from the role of the injured party. And from there important consequences can be pointed out: the victim is someone who is suffering consequences from the criminal offence and their victim status is recognized independently of a complaint or report to the competent entities; the victim in question receives the status of victim through a statement before the competent authority, in line with the legal orientation (Anić & Frankić, 2019, p. 10). However, the most important measure within this amendment regards Chapter V of the Criminal Procedure Code, for other victim's rights were added to article 43, and in article 44 specific rights were granted for certain categories of victims of crime, namely for victims who have suffered severe harm as a result of a criminal offence punishable by imprisonment for more than five years, victims of an intentional violent crime, children victims of crime, victims of sexual criminal offences and human trafficking, and victims with special protection needs (Getoš Kalac, Vidlička & Burić, 2020, p. 17). In order to identify the latter, the Amendment also introduced in article 43 a mandatory individual assessment, a competence of the authority interrogating the victim (police officer, prosecutor or judge) in cooperation with entities providing support services (Anić & Frankić, 2019, p. 5; Getoš Kalac, Vidlička & Burić, 2020, p. 18).

This legislative amendments can be seen as a manifestation of willingness to "take on the positive practice of European countries that have recognized the importance of active participation of victims in the criminal proceedings", which was followed by the recognition of additional rights and protection measures for victims, as well as of the need of a sensible approach to victims (Anić & Frankić, 2019, p. 12).

However, regarding the formal transposition and implementation of the Directive, Croatia was one of the Member States suffering an infringement proceeding in 2016 for lack of transposition of the Victims' Directive provisions, which is still ongoing (European Commission, 2020a). This Member State is also reported to verify a delayed transposition of the Directive. Nevertheless, by 2017, Croatia had communicated 22 measures of transposition since the directive entered into force (European Parliament, 2017, p. 48), and counts up to 67 instruments that are in accordance to the Directive's provisions²⁹.

In sum, the implementation of the directive led to the empowerment of victims of crime in criminal proceedings and to the acceptance of a

29- Cf. Information accessible at: <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029> (last consulted in August 31st 2020).

victimological consideration for victims. But there are still important issues regarding victims' rights (Getoš Kalac, Vidlička & Burić, 2020, p. 45), some of which are identified in the Vociare National assessment, mainly associated with the poor execution of good intentions and with the youthfulness of the process of implementation of the Victims' Directive in Croatia, as well as with specific aspects of this jurisdiction (Anić & Frankić, 2019, pp. 6 & 81).

Some aspects and outcomes of the Croatian transposition are worth mentioning, namely: the vagueness in the distinction between the statuses for 'victims' and 'injured parties'; the inequality for victims of misdemeanors; and the residual existence of restorative justice mechanisms.

IV. Victim Support Services Organization:

Regarding Victim Support Services in Croatia, one can state the country is still in the process of establishing its victim support system (Getoš Kalac, Vidlička & Burić, 2020, p. 17). In 2002, Croatia had no such system in place, but NGOs were already recognized as providers of support for victims, namely victims of sexual offense and violent crimes (Horvatić & Derenčinović, 2002, p. 49). Victims' right to access these services was transposed into article 43 of the CPC. Croatia provides for both generalist and specialized services and these are guaranteed both stately and through civil society organizations, presenting a mixed support system for victims, managed at state level. However, there is no national generalized support provider, and support focuses mainly on victims of war, victims of domestic violence and human trafficking victims (Victim Support Europe, 2018, p. 17).

Regarding the State Services, the main coordinating body is the Independent Office for Support to Victims and Witnesses, established back in 2006, which is a result of a Ministry of Justice initiative within the United Nations Development Program in Croatia. This body is responsible for the coordination, harmonization and supervision of the work of the County Departments for support to victims and witnesses operating in courts providing emotional support, and information on rights. However, and despite recent improvements, state departments are geographically scarce and limited to specific types of support, namely financial (Anić & Frankić, 2019, pp. 25-26). On this topic, it is also worth of mention the fact that where state support services do not exist, NGO's play a fundamental role and that is why they are funded by the government. Therefore, civil organization services are of great relevance in Croatia, because it's through them that the state tries to fill in the subsistent gaps (Victim Support Europe, 2018, p. 14; Getoš Kalac, Vidlička & Burić, 2020, p. 21).

All considered, one is facing an illogical system characterized by lack of cooperation, and impaired geographical distribution (Anić & Frankić, 2019, pp. 24-28; Getoš Kalac, Vidlička & Burić, 2020, p. 21). From a coordination perspective, a system built upon a fragile puzzle of victim support services can be considered in practice as not assuring an effective judicial referral system.

Intermediate conclusion:

The Prosecutor Service's main role in Croatia regarding victims' rights consists of 1) guiding police conduct in regard to victims in the aforementioned pre-investigative stage and, 2) respecting and facilitating the different ways in which victims are recognized participation in criminal proceedings 3) which might impact on the prosecutors' concrete intervention on the procedure.

B – Ireland

Ireland is situated in northern Europe and has been an EU member-state since 1973.

I. Historical and Legal National Context:

The Northern Ireland Peace Agreement was signed in 1998, therefore, we are facing a country which has not so long ago transitioned from a conflict situation into a peace status. Therefore, understanding the Irish criminal system implies an understanding of its historical and political background, as well as of British influence, for there is an umbilical link between those matters (O'Mahony, 2000, p. 3). One must not obliterate the fact that the existent Irish political structures, criminal laws and procedure systems can only be fully understood taking into account a history built upon English colonization lived *au pair* with a struggle for independence.

As a Common-Law country, Ireland has inherited the classical adversarial English criminal system (Puckhaber, 2019, p. 9), in which victims and offenders were traditionally seen as parties in criminal proceedings and crime was understood mainly as a personal altercation (Kilcommins, 2017, p. 505). In the nineteenth century, however, the state took charge and property of the crime conflict and a state-accused logic of action was put into place, shadowing over criminal process relations in the nineteenth and twentieth centuries (Kilcommins, 2017, pp. 507 *et seq.*).

Precisely in the twentieth century, as a consequence of the Peace Agreement, there was a rapid economic development and both a cultural

and social shift, which inevitably transpired into the criminal justice system, creating a rise of criminal rates and a shift in criminal context (O'Mahony, 2000, pp. 3-4) adding to what at the time were specific threats in the country, namely terrorism and organized crime (Walsh, 1999, pp. 112-113). This coincided with an increase of powers attributed to criminal authorities, such as police forces, "to swing the balance of the criminal process in favor of the prosecution" (Walsh, 1999, pp. 112-113). At that point in history, authors pointed to the need for a reform of the criminal justice system (McDermott, 2000, p. 41; Walsh, 1999, p. 110). Nevertheless, by then it was recognized that change was already in the way, because, despite the strengthening of "the arm of law", the adoption of "more activist, revisionist and innovative political orientations", was being undertaken, namely regarding restorative justice (O'Mahony, 2000, pp. 8-10).

In last decades, the justice system has been reconstructed in some measure, with the return of the consideration for the interests of the conflict owners, the victim and the offender (Kilcommins, 2017, p. 516)³⁰.

On a final note, is important to stress that, following the Anglo-Saxon heritage, Ireland does not have a set criminal and procedure code and Criminal law is mostly comprised of statutes and court decisions.

II. Prosecutors' Legal Framework:

Relevant legal instruments on this matter are the Criminal Procedure Act of 1967 and the Prosecution of Offenses Act of 1974, as well as respective amendments and other following Acts regulating specific criminal system matters.

In light of the Constitution of Ireland, the Prosecutor prosecutes serious/indictable offenses in name of the people (article 30.3 of the Constitution). Prosecutors are organized within the Director of Public Prosecutions (hereinafter, DPP) (Leahy & Spain, 2017, p. 526; Puckhaber, 2019, p. 9). The Irish police force - the *An Garda Síochána* (hereinafter, *Gardaí*) - is supervised by the Ombudsman Commission and is responsible for the investigation of crimes. Minor assaults or public offenses can also be prosecuted by this force in the name of the prosecutors (Kilcommins, Leahy, Walsh, Spain, 2018).

According to the official Guidelines for Prosecutors, the DPP has no power of direction over the investigative entities, as investigation and

30- This conception of crime as a matter of the community, which has been acclaimed once more, precedes the ideology of criminal procedures as a state function: "the enforcement of these criminal laws was primarily a matter for the community. Even the police officer in the form of the ancient constable and his predecessor the tithingman emerged at common law as a local officer appointed to discharge the community's collective responsibility for the apprehension of criminal" (Walsh, 1999, p. 110).

prosecution are distinct and separate functions in Ireland. However, the Prosecutor may give advice to the police forces on investigative matters. Moreover, the *Gardaí* can only prosecute on some matters specified in a General Direction from the DPP and prosecution on these terms may be subject to a previous notice to the DPP (Office of the Director of Public Prosecutions, 2019, pp. 24-26).

Regarding victims of crime, and despite not being in charge of investigation or even prosecution at times, for the fact that they ought to work together with the *Gardaí*, prosecution services still have an important role to guarantee the effectiveness of victim rights. Specifically, the 2019 DPP Guidelines establish several responsibilities for the prosecutors towards victims of crime in the criminal proceedings, particularly because these are granted little participation. Here are some examples of what has just been mentioned:; Public Prosecutors ought to work with the *Gardaí* to ensure that the victim is kept fully informed in relation to criminal prosecution and proceedings (Section 8, Subsections 2-8; Sections 9 and 10; Section 11, Subsections 2(c) and 3 and; Sections 22-25 of the Victims Act); to arrange at the victim's request a meeting with the offender at pre-trial proceedings (Office of the Director of Public Prosecutions, 2019, p. 46); to keep the victim informed on what is happening in the course of the trial (Office of the Director of Public Prosecutions, 2019, p. 46); to arrange giving of evidence appropriate to the victim and the case (as for example in sections 14 and 14A of the Evidence Act of 1992, amended by the Victims' Act); to appeal a court decision whenever the decision is considered to be "unduly lenient" (Office of the Director of Public Prosecutions, 2019, p. 40).

It is acknowledged that The Office of the DPP has been particularly proactive in seeking to meet its obligations under the Victims' Directive, promoting changes even before this was required by national legislation (Leahy & Spain, 2017, p. 526). Confirming this, this Irish public prosecution service has published several documents which have implications for victims' experiences of criminal justice organizations (*The Role of the D.P.P.; Attending Court as a Witness; Statement of General Guidelines for Prosecutors* and; *Prosecution Policy on the Giving of Reasons for Decisions*) (Kilcommins, Leahy & Spain, 2015, pp. 19-20), as well as created a Victims' Liaison Unit to respond to the needs of victims and their families (Kilcommins, Leahy, Walsh, Spain, 2018).

III. Method and Outcome of the Transposition of the Victims' Directive:

Victims in Ireland are not a party to criminal proceedings and have limited participation rights, being "generally regarded as witnesses during

the investigation and trial” (Puckhaber, 2019, p. 9), a result of the classic adversarial background of this legal system. Nevertheless, efforts in favor of victims’ position in the criminal justice system were made. In 1993, the Criminal Justice Act provided for the use of victim impact statements (Kilcommins, Leahy & Spain, 2015, p. 7). Later, in 1999, the Victims’ Charter represented an important policy development for crime victims, expressing the desire for conceding victims a more central role in criminal justice. In 2001, a provision was also set, regarding a, albeit narrow, possibility of victim participation at trial stage through a legal counsel, but only for cases of rape or sexual assault (Doak, 2005, p. 296).

Specific victims were also regarded in criminal law instruments, for example: the Rape Act of 1981; the Domestic Violence Act of 1996; the Child Trafficking and Pornography Act of 1998 and the Human Trafficking Act of 2008.

The Victim’s Charter was reviewed in 2010, aiming to strengthen victims’ position regarding criminal justice stakeholders, such as the *Gardaí*, the DPP and courts, but it did not, however, grant victims any actual legal rights (Kilcommins, Leahy & Spain, 2015, p. 18; Leahy & Spain, 2017, p. 250). Thus, a Victims’ Rights Bill started to be drafted in 2008 and the Irish Government committed to guaranteeing the victims’ position in a criminal justice reform between 2011-2016, “including greater use of victim impact statements and statutory rights to information” (Kilcommins, Leahy & Spain, 2015, pp. 21-22). However, and despite the increased recognition of victims in the Irish criminal process, at the time it was considered that “lack of knowledge among criminal justice agencies and actors about the needs of victims of crime” remained problematic (Kilcommins, Leahy & Spain, 2015, p. 29).

In 2015, the Criminal Justice (Victims of Crime) Bill was introduced as part of the process of implementing the Victims’ Rights Directive. The Victims’ Rights Alliance, started in 2013, is a collective of victims’ support and human rights organizations aimed at ensuring the Victims’ Directive is implemented within the proposed time frame, i.e. by November 2015. Hence, it is currently understood that NGO’s played a very important role in the development and implementation of the Criminal Justice (Victims of Crime) Act, which entered into force in 2017 (Puckhaber, 2019, p. 9).

The European Parliament Assessment reports that Ireland transposed the Directive through one measure of implementation, approved in 2016 but put into force only in 2017 (European Parliament, 2017, pp. 48-49). The official EU website counts five legal instruments of the Directive’s

transposition³¹. According to this assessment, Ireland was one of the countries which had not fully transposed the Directive into national law by that time, given that the Victims of Crime Bill (2016) was still going through ratification in the domestic system. Therefore, the European Commission initiated an infringement proceeding against Ireland in 2016 for not communicating transposition measures, but such proceeding is no longer on-going (European Commission, 2020a). Moreover, other Bills have been published for the implementation of victims' rights obligations, namely the Domestic Violence Bill of 2017 and the Criminal Law (Sexual Offences) Act of 2017.

The more recent Criminal Justice Act (Victims of Crime) of 2017 led to significant developments in what regards to victims. Prior to this, there was no legal definition of victim of crime in Irish criminal law, rather, legislation referred to a 'complainant'. However, the term 'complainant' only referred to the ones who submitted a formal complaint to the *Gardaí* (Puckhaber, 2019, p. 11). Therefore, this was an important landmark on the definition of victim. Victim is defined as "a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by an offence". Notably, the Act also recognizes rights to victim's family members, namely to the spouse, civil partner, cohabitant, child or stepchild, parent or grandparent, brother, sister, half-brother or half-sister, grandchild, aunt, uncle, nephew or niece of the victim or another person considered to be dependent on the victim or considered to be close enough to be treated as such (part 1, section 2). Furthermore, the Act is focused on guarantying victims' rights, namely the right to information, to which several detailed provisions are devoted, by establishing that the *Gardaí* or the DPP are obligated to provide victims with reasons not to prosecute and by introducing a process for reviewing such decision (Section 10 of the Act) (Kilcommins, Leahy & Spain, 2015, pp. 21-22). Moreover, it determined amendments to several other acts, such as the Criminal Evidence Act of 1992 and the Children Act of 2001, aiming at guaranteeing accordance to the Directive's provisions. More recently, in the beginning of 2020, a new Charter on Victims' Rights was approved, in cooperation with victim support organizations. Despite being non-binding and serving essentially as guidelines, this new Charter enshrined the victims' rights of the 2017 Act.

Despite all the positive notes mentioned above, some gaps are still identifiable, such as: the lack of complete transposition of article 12 on regard to restorative justice systems' safeguards (Puckhaber, 2019, p. 37); referrals to support services are mainly limited to police and prosecution

31- Cf. <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029> (last consulted in August 31st 2020).

services, but ought to be made effective by other relevant entities (Leahy & Spain, 2017, p. 557); the Act presents a narrow range of rights, mainly the rights to information and protection of victims while participating in investigations and criminal proceedings lead by the *Gardaí* or the Ombudsman Commission (Leahy & Spain, 2017, p. 557). Nevertheless, and according to the Vociare report, a cultural shift has been identified in Ireland regarding victims' rights, taking its place next to the concerns with fair trial and rights of the accused (Puckhaber, 2019, p. 63).

IV. Victim Support Services Organization:

Regarding support services for victims, both general and specialized support is provided by several non-governmental organizations and, nowadays, particularly through helplines. Face-to-face support for victims is provided by regional victim support organizations. Ireland used to have a national organization provider, Victim Support Ireland. However, in 2005, government funding was withdrawn from that one provider in face of internal difficulties.

Funding of support organizations is assured by state agencies, such as the Department of Crime Office, established in 2008, and the Tusla Child and Family agency, founded in 2014. Although the *Gardaí* used to refer victims automatically to Victim Support Ireland, sharing victims' contact information, at the present time there are no formal nor automatic referral mechanisms to victim support services organizations, since back in 2001, the Data Protection Commissioner advised that this kind of procedure should only take place after express consent of the victim was given (Kilcommins, Leahy, Walsh, Spain, 2018). Therefore, between 2001 and 2015, the *Gardaí* provided victims with information on the existent support organizations and nothing else. After 2015, in most cases, an automatic referral occurs within the *Gardaí*. It's through Police Using Leading Systems Effectively (PULSE) system, a *Gardaí* database, that generates a letter which provides the PULSE reference number, the investigating officer's name and the contact number along with a leaflet with contact details of victim support organizations (Kilcommins, Leahy, Walsh, Spain, 2018). However, regarding victims of domestic violence, sexual crimes, human trafficking and family members of victims of crimes which have suffered serious harm, information is given in person (Puckhaber, 2019, p. 29).

The *Gardaí* also has specific Officers competent for assisting specific victims, like the Family Liaison Officer, which may refer family members of victims of violent crimes, such as homicide or kidnap, to the adequate support services; the *Gardaí* Ethnic Liaison Officer, which provides support and advice for victims of race-based discrimination crimes; or the Tourist

Assistance Service, a free and confidential service which provides assistance and support for cross-border victims in Ireland. Moreover, Ireland has a national referral mechanism in place for victims of human trafficking³².

Despite these efforts, NGOs are considered to be underfunded (Puckhaber, 2019, p. 27), and in face of the lack of a referral mechanism in place and given the diversity of providers, it showcases a fragmented approach, leaving space for gaps and inadequacies in the Irish support system.

Intermediate conclusion:

1) The Prosecutor Service's main role in Ireland regarding victims' rights consists of assuring victims access to criminal proceedings, since the law itself doesn't recognize many formal possibilities of direct intervention to victims; 2) The Prosecutor acts as a truly victims' rights gatekeeper in criminal proceedings, ensuring their interests in the face of the general lack of opportunity for them to do so.

C – Portugal

Portugal is located in the South of Europe and has been a Member-State of the EU since 1986.

I. Historical and Legal National Context:

Historically, the Portuguese Criminal System lost its adversarial nature to canonic and roman influences which determined an inquisitorial structure, as in most continental European countries and in line with the enlargement of the power and functions of the State. Only after the liberal Portuguese revolution of 1820 and under French influence was the public prosecution service introduced and adversarial features reentered the country's criminal system (Dias, 1974, pp. 67-68). In this context, the first Portuguese Criminal Procedure Code (hereinafter, CPC), dated from 1929, attributed the control of pre-trial proceedings to an instruction judge, leaving public prosecution services the role of conducting instruction diligences. An amendment to the code occurred in 1945 introducing a preceding phase in which the public prosecutor was responsible for investigating and, if adequate, prosecute. However, this criminal policy choice was criticized for being a result of the authoritarian political regime in power at the time, given the distrust in prosecutors' independence, for they were under the Government's wing (Mendes, 2018, p. 36).

32- More information can be found at: http://blueblindfold.gov.ie/en/bbf/pages/national_referral_mechanism (last consulted in August 31st 2020).

The Portuguese revolution of 1974 brought the dictatorship to an end, but it also brought instability to the criminal system, as the Portuguese Constitution of 1976 enshrined that the criminal proceedings are of an accusatory structure and pre-trial proceedings ought to be under the control of a judge (article 32.4 & 5). However, this occurred while the CPC of 1929 was still in force, which led to amendments to the procedural code and, ultimately, to its replacement in 1987, when the second Criminal Procedure Code came into light, remaining in force until today.

In light of the existing CPC, the general stages in criminal proceeding have the prosecutor's intervention. Importantly, at the investigation stage, in which is established whether a crime has been committed or not and identified who by, the prosecutor is the *dominus* (articles 53 and 263 of the CPC). In this procedural architecture, this may be followed by the optional instruction phase, led by the judge of instruction and playing a major role for it allows for a jurisdictional control of the previous prosecutor's decision relating to the process in question (*v.g.* to accuse or not). Furthermore, being optional, the overture of the instruction phase depends on a combination of factors, namely the existence of a charge allowing the accused to require it, or an absence of charge, in which case a specific procedural subject named *assistente*, usually the offended/victim, or the persons the law allows to intervene under article 68 of the CPC, might demand for this phase (article 287 of the CPC). This reference alone brings to evidence two important findings: firstly, the victim, when turned *assistente*, can conform the penal process progress, determining the actual existence of a judicial phase, which reinforces the role of the offended/victim; secondly, in what specifically relates to the Prosecutor, the instruction phase is aimed at guarantying a judicial control of is/hers decision and that's why they cannot require the overture of this control judicial phase (article 287 CPC). This means the *assistente* has a very broad power, and independent of the Public Prosecutor, to participate in the Portuguese criminal process.

The previous exposition enlightens the fact the Portuguese CPC of 1987 established the investigation stage as mainly an attribution of public prosecution services (Ministério Público), in line with article 219.1 of the Constitution. Prosecution services can delegate competences in the Police according to article 55 of the CPC. In that case, the investigation is put into place under the direction of the public prosecution service (article 56 of the CPC) and the Police can only take on some competences (article 270 of the CPC). In order to respect the constitutional provision of the judges' control over this investigation phase (article 32.4 Constitution), the attributions of the public prosecution service are limited by citizen's

fundamental rights and safeguarded by the instruction judge (articles 268 and 269 of the CPC), who is seen as the judge of liberties, and for that makes a final decision on several proposals of the prosecutor during this phase in what regards to pre-trial detention, diversion measures compliance and beyond (Mata-Mouros, 2011).

All considered, one could argue the Portuguese system is part of the mixed continental criminal systems (Antunes, 2018, p. 21). However, it is assumed Portugal has an adversarial criminal structure, composed by an accusatory principle, materializing the idea that cases must be investigated independently from the court, something that ought to be understood not only as a power, but, more accurately, as a duty of prosecution services. But the articulation of both the accusation and the investigation principle is also recognized to the judge, namely during the instruction phase (articles 288.1, 4 & 290.1 of the CPC), leading to some interpretation difficulties, for, in one hand, it is possible to consider such articulation as a manifestation of the Portuguese Penal Procedure with an adversarial structure underlined by an investigation principle (Dias, 1974, pp. 192), while, in the other hand, it can be understood that the accusatory principle imposes limits to the investigation principle (Mendes, 2018, pp. 203-205).

II. Prosecutors' Legal Framework:

The competences of public prosecutors in Portugal regarding criminal proceedings are regulated in the Portuguese CPC (articles 48-54), and the service's organization is enshrined in Law 68/2019 (Statute of the Prosecution Service/ *Estatuto do Ministério Público*). The public prosecution service is led by the *Procuradoria Geral da República* (PGR), through a hierarchical structure, and according to article 219.2 of the Constitution it is an autonomous magistracy (Moura, 2005, p. 41; Mendes, 2013, p. 115).

The already mentioned article 219 of the Constitution binds prosecutors to the legality principle, which means that, generally, they are obliged to initiate criminal proceedings whenever they receive information regarding a committed crime. This principle is tempered by the principle of opportunity (Pinto, 2005, pp. 94-104), which currently allows for the prosecutor's decision for diversion measures, such as the provisional procedural suspension (article 281 CPC) or for special forms of process considered faster in achieving the final decision, for example (articles 381, 392 and 391.A of the CPC), as well as sending the case to a victim-offender mediation system (article 3.1 of Law 21/2007).

Given the earlier pointed procedural structure present in the CPC,

the prosecutor assumes a very important role, not only due to those diversion measures that he/she can propose to the instruction judge, or even decide on his or her own as in the case of the victim-offender mediation system, but also because, as one might deduce, prosecutors lead the entire investigation phase, with the support of the police, deciding if the case is going forward or not, as well as facilitate victims' formal ways of intervention in criminal proceedings and assure their rights at the trial stage. Furthermore, the Prosecutor also decides to appeal the court's decision (401 of the CPC) and promotes the execution of penalties and protection measures.

In this light, Public Prosecutors assume a determinant role, mainly during the earlier stage of the process, but their legal intervention might be limited by the crime's nature and, consequently, by the victim's formal role in criminal proceedings. Regarding the type of crime in hands, there is a legal classification in the Criminal Code that distinguishes between public, semi-public and private crimes, which determines the way in which proceedings are initiated, either *ex officio* by the Prosecutor in crimes of public nature, or dependent on the offended person's initiative, through a complaint, for both semi-public and private crimes, as reflected in articles 49 to 51 of the CPC. This influences the formal performance possibilities of the Prosecutor (Mendes, 2013, p. 55). Once the process is initiated, the Prosecutor can lead it and decide how the investigation phase is going to end. But when the crime is one of a private nature, that decision belongs only to the *assistente*, which is a subject in the criminal process or an "assisting party to the prosecutor" (Carvalho & Carmo, 2019, p. 12). In reality, he/she is the 'offended person' of the criminal act who chooses to assume a conforming role in criminal proceedings, a figure which emerged with the CPC of 1987 (Pereira, 2019, p. 20). While in crimes of private nature the *assistente* is the one who ultimately decides to charge or not, taking that role from the Prosecutor, on both public and semi-public crimes that decision belongs to the Prosecutor. But even when the *assistente* exists in the process the Prosecutor still assumes an active role. It's also worth of mentioning that not all victims can become *assistentes*, as the definition of victims is broader than the one of 'offended' (Vieira, 2016, p. 184) and the ones who can must fulfill formal requirements, namely request it to the instruction or trial judge, accordingly to the stage in which they choose to exercise this right (always the instruction judge in the case of private crimes). Overall, it is traditionally considered that *assistentes* have a limited intervention as a cooperative and subjected intervenient in the process in face of the public prosecutor (Pereira, 2019, p. 23; Sousa, 2019, p. 192), who mainly leads. But one must keep in mind they have a very distinctive power in what concerns to crimes of a private nature, since they are the

ones who decide how the investigative phase ends (article 285 of the CPC).

III. Method and Outcome of the Transposition of the Victims' Directive:

From a broad perspective, recognition of victims' rights has constitutional tradition, since the constitutional revision of 1997 included the right of the offended (*ofendido*) to participate in criminal proceedings, according to the law (article 32.7).

The CPC amendment of 2007 assumed a particular importance regarding victims' rights, for there was a reinforcement of the protection of victims (Mendes, 2018, pp. 41-42). Previously to this revision, victims of crime would only see their right to participation recognized if they were legitimized to (and opted for) participate in criminal proceedings as *assistantes*. Even as such, their participation rights were limited to the role of collaborators of the prosecution service. Otherwise, victims using only their victim status and not the one recognized to the *assistente*, were granted limited rights, besides reparation through civil proceedings. With the 2007 amendment, and despite the concept of victim still not being defined within the Code by that time, new articles dictated that the offended person (*ofendido*) had rights regardless of his or hers formal participation as *assistente*, namely the right to be informed of an ongoing process when not aware (article 247.1 of the CPC) and the right to be informed of the date in which the offender would be freed (at the time, articles 217.3, 480.3, 482.2 of the CPC), alongside with the need for the consent of victims of domestic violence to temporary suspension of the process under article 281.6, which was also a novelty. In this light, and despite some improvements of the victims' position enacted through this 2007 revision, it did not represent a shift in the conception of the criminal justice system, still viewed as a matter of community, hence represented by the state (Santos, 2010, p. 1149).

Moreover, in 2009, specifically for Victims of Domestic Violence, a law regulating their rights entered into force (Law 112/2009) providing, amongst others, rights to specific protection measures (articles 20 and 25 and following) and to support services through a national network (article 53 and following). This law has undergone a number of changes, namely through the amendment of 2015, which revoked the article that previously mentioned the possibility of restorative encounters (article 39) and created a domestic violence victims' data-base (article 37-A).

In face of the legal demands of the Victims' Directive, Portugal transposed its provisions in 2015 through the Statute of the Victim (Law

130/2015) that also introduced amendments to the CPC, namely including a definition of victim (article 67-A) and enshrining victims' rights provided for in the Directive. This is the first time the CPC includes a definition of 'victim', emerging as the natural person who has suffered harm, including an attack on their physical or mental integrity, moral or emotional damage, or damage to property, directly caused by act or omission, under the commission of a crime and also the family members of a person whose death has been directly caused by a criminal offense and that have suffered harm as a result of that death. Family members refers to the surviving spouse, or the person who coexisted with the victim in conditions similar to those of spouses, descendants and ascendants, brothers and persons economically dependents of the victim. This definition seems to be more detailed and wider than the one present in the Victims' Directive (Vieira, 2016, p. 184).

This Statute of the Victim is recognized in the European Parliament Assessment of 2017 as the 1 measure of transposition of the Directive in Portugal (European Parliament, 2017, pp. 48-49). Overall, there are 8 legal measures which implement victims' rights in Portugal, including the previously mentioned diplomas, from the Portuguese Constitution to the Statute of the Victim and also Law 21/2007, that established a victim-offender mediation system in criminal proceedings, at the time in compliance with the Framework Decision of 2001³³. However, an infringement proceeding was initiated against Portugal and is still on-going for incomplete transposition of the Directive's provisions (European Commission, 2020a).

Before the amendment to the CPC in 2015, the word 'victim' was already part of the code's lexicon but in a very narrow way and without any definition being provided (Vieira, 2016, pp. 182-183). Nowadays, the concept of 'victim' is present in 17 articles of the CPC, and the victim was conceded more rights in terms of participation in criminal proceedings and outside of that dominium, regardless of the formal role he/she opts for. However, this is considered to have been merely a way of recognizing that victims, even if not participating in criminal proceedings as *assistentes*, may have some procedural participation and ought to be respected and protected by the criminal system. As previously mentioned, they can participate in proceedings as *assistentes*, based on the victim being considered an 'offended person', seen in procedure as a procedural subject assisted by a lawyer; they can also get reparation, as an injured person, through civil proceedings; or intervene in the criminal proceedings as witnesses (Vieira, 2016, pp. 179-182). Before the transposition of the Directive, it was considered that the victim in Portuguese criminal proceedings

33- Cf. <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029> (last consulted in August 31st 2020).

mentioned as such did not have a determinant role (Reis, 2010, pp. 15-16). Now, victims are recognized a wider range of rights without having to assume a formal role in the penal process. However, in the end, the formal participation model essentially survived the transposition of the Directive and the relevance of the victims of crime's interests was accepted without fundamentally changing the public nature of criminal justice (Pereira, 2019, p. 25; Santos, 2019, pp. 193-194). Out of the 17 articles in which victims' are mentioned in the CPC, two provide for definitions and a general mention of victims' rights in criminal proceedings, namely of cooperating with authorities; one regards reparation; nine refer to victim's protection; one regards information; three concede victims the right to be heard; and one gives victims the right to participate in the decision to suspend the process. This last provision (article 281 of the CPC) may be the only one that effectively gives victims as such power to actually influence the outcome of criminal proceedings, providing (only) for victims of domestic violence the possibility of requesting the provisory suspension of the criminal process. Lastly, the Law on Mediation provides the possibility of victims to require the referral of proceedings to a mediation process (article 3 of Law 21/2007), but still refers to the offended person (*ofendido*), a narrower concept than victim.

Moreover, it's also important to note that the intervention of victims as subjects/participants in the process by becoming *assistentes* is dependent on the type of crime in hands and allows them to get an answer to the criminal matter and to effectively conform criminal proceedings – namely by substituting the public prosecutor in the decision to prosecute at the aforementioned optional instruction case. However, not all victims can become *assistentes*, and the ones who can, as already mentioned, must fulfill formal requirements, and will have limited intervention as a cooperative subject to the public prosecutor, despite the Victim's Statute claim of providing victims active participation in criminal proceedings (Robalo, 2019, p. 192).

Furthermore, despite the fact that the majority of the Victims' Directive's provisions were transposed, some articles were not sufficiently materialized, and others were not transposed at all (Carvalho & Carmo, 2019, p. 12), which is evident in what relates to lack of specific mention to cooperation with victim support or to Restorative Justice services. All considered, some of the issues identified in the transposition and implementation that are worthy of mentioning are: the breach regarding restorative justice services, determining lack of compliance with the duty of facilitating the reference of procedures to existing restorative justice services; the flawed transposition of provisions regarding individual

assessment; and, finally, the fact that it is not mandatory for judicial officers, namely prosecutors, to receive training on victims' rights – and, specifically regarding training of prosecutors, it is considered to be insufficient in Portugal when it comes to the topic of victimology (Carvalho & Carmo, 2019, p. 5, Vieira, 2016, p. 196).

IV. Victim Support Services Organization:

In terms of victim support services, the Portuguese Victim Statute is silent on article 8 of the Directive, despite mentioning the right of victims to be informed of the services available (article 11.1) as well as of the right to psychological support, a need that ought to be determined, namely, by prosecution services (article 15.3).

Portugal presents a mixed and civil organization-based network of victim support services, with general and specialized services, mostly dependent on private initiative and established through partnerships with the competent authorities, such as prosecutor services (Carvalho & Carmo, 2019, pp. 31-34). Protocols between public prosecution services and victim support services have provided for cooperation between public and private entities in guaranteeing support for victims. Recently, in 2019, a Government initiative, made up by protocols of the PGR with victim support services, led the latter (DIAVs) being introduced within the public prosecution services, an initiative which has been progressively expanding geographically. However, these services are mainly oriented to supporting victims of domestic and gender-based violence. Moreover, law enforcement and particularly public prosecution services in the field of domestic violence and abuse against vulnerable groups is considered to be increasingly specialized, associated with appropriate training (Victim Support Services 2018 p. 25).

Nevertheless, the main provider of victim support services in Portugal is APAV (*Associação Portuguesa de Apoio à Vítima*), a national, private, charitable and non-profit non-governmental organization, that provides comprehensive and general support (Victim Support Europe, 2018, p. 14), as well as specialized support for victims of crime, in diversified ways and with a national coverage, through an itinerant strategy. Other NGOs provide for specialized support, such as *União de Mulheres Alternativa e Resposta - UMAR* and *Associação de Mulheres Contra a Violência (AMCV)*, oriented to support women who are victims of violence, or *Intervenção Lésbica, Gay, Bissexual, Trans e Intersexo (ILGA)*, which provides support to victims of sexual orientation-based discrimination.

Victim support services are not geographically available for all

victims in Portugal, and specialized assistance is lacking for some victims. Therefore, despite the commendable efforts of APAV to bridge this reality, gaps must be stressed. Moreover, there is a lack of national strategy between support providers (Carvalho & Carmo, 2019, pp. 34), no model of referral for victim support services is identifiable and one can only find formal protocols, to ensure cooperation, which are considered to be inadequate in regards to referral (Victim Support Services, 2018, p. 19).

Intermediate conclusion:

1) Prosecution services in Portugal are specifically important in coordinating Police action during investigations and in filling the gaps left by the transposition of the Directive, namely regarding cooperation with victim support services, informing and referring victims to restorative justice systems (victim-offender mediation) and assuring the due treatment and measures for vulnerable victims; 2) Furthermore, prosecutors ought to guarantee that participation rights of victims are effective and that victims are treated with respect regardless of the way Portuguese criminal system provides for their participation in criminal proceedings.

D – Spain

Spain, situated in the south of Europe, has been an EU member-state since 1986.

I. Historical and Legal National Context:

Considering the authoritarianism experienced through a large part of the XX century lived by this country, it's worthy of mention the noticeable social change, particularly accentuated in Spain. This could have led to an increase in crime, but actually it turns out that while crime rates have decreased, reporting crime rates have indeed increased in the last decades (Garcia-España, *et al.*, 2010, pp. 1-5 & 24-25). Moreover, analyzing the Spanish jurisdiction also entails considering the differences in administration amongst the Ministry of Justice and autonomous communities, where some competences have been assumed by the Autonomous Governments, namely in the case of Andalusia, Catalonia, Valencia, Basque Country and Navarra.

As a result of the reform movement of late XVIII and early XIX centuries, modern Spanish Criminal Law was developed based on the ideas of humanism and utilitarianism, as well as of liberalism and codification and, as many European legal systems, the Spanish criminal justice system particularly derives from the Napoleonic *Code d'Instruction Criminelle* of 1808 (Vogler, 2005, p. 631; Díez & Chiesa, 2009, p. 11). The way the

procedural system was formulated through the *Ley de Enjuiciamiento Criminal* (hereinafter, LECrim) of 1882, which remains into force until today, it is considered to be an example of mixed continental systems, but it allowed during the Francoist Spain for “Fascist militaries to manipulate and even dominate the ordinary processes of justice” (Vogler, 2005, p. 633).

In 1978, a liberal Constitution was enshrined in Spain, conflicting with the criminal procedure laws in effect, which were altered in the period of 1984-1998, reforms that, despite dismantling the previous authoritarian and unlawful system and attempting at introducing adversarial aspects into the criminal procedure, were highly disputed at the time and it was considered that only around 2005 did they begin to settle (Vogler, 2005, p. 634).

All considered, the Spanish legal system is still an accusatory formal or mixed system, for the investigative judge still has direction and control over the investigative stage (*instrucción*). However, a reform of the criminal justice system has been called for in the last decades, particularly regarding the need to attribute direction of *instrucción* to the public prosecution service, albeit it is not peaceful amongst scholars and politicians (Gómez Colomer, 1997, pp. 28-29), as some distrust remains regarding *Ministerio Fiscal*, historically associated with the executive power. This reform has integrated different government programs in the last years, but it has yet not taken place, despite amendments to this effect, such as the Law 42/2015, included in the changes which are said to have led to a new criminal process in practice (Alonso-Cuevillas Sayrol, 2019, p. 101). Despite this, a shift in control of the investigation stage was once more in the plans for a reform just this year³⁴.

II. Prosecutors’ Legal Framework:

Procedure rules in the Spanish jurisdiction are contained in the LECrim and the judicial power is further regulated in Law 6/1985. The organization of Public Prosecution Services is regulated in Law 50/1981 (*Estatuto Orgánico del Ministerio Fiscal*), as well as article 124 of the Spanish Constitution. Public Prosecution services’ competences are also regulated internally through *Circulares e Instrucciones de la Fiscalía General del Estado*.

Spanish criminal procedures are divided into two main stages: the *instrucción* phase, in which investigation is conducted, competence of the investigative judge/examining magistrate - as results from article 303 of LECrim and article 87 from Law 6/1985 - through the police, albeit

34- Cf. <https://elderecho.com/reforma-la-ley-enjuiciamiento-criminal-modernizar-la-justicia-penal> (last consulted in August 31st 2020).

prosecutors also have some important investigative competences and authority; and *the juicio* or the trial phase, conducted by a judge (Díez & Chiesa, 2009, p. 11; Alfonso Rodríguez, 2019, pp. 175-176). An intermediate stage between the two is also identified, under direction of the investigative judge as well, one which has suffered great changes from its configuration of 1882 (Armenta Deu, 2012, pp. 69-70).

Investigation is conducted by the so-called *Policía Judicial* or Judicial Police, under the direction of the *juez de instrucción* or the investigative Judge and the *Ministerio Fiscal*, or public prosecution service. These three authorities share, albeit differently, the investigation/ instruction stage's titularity (Alfonso Rodríguez, 2019, p. 172). The police is generally the first intervenient in criminal proceedings (Alfonso Rodríguez, 2019, p. 173), but it acts in name of the Instruction Judge as well as of the Public Prosecutor (articles 282, 283 and 287 of LECrim), namely regarding acts which may affect victims' fundamental rights (Alfonso Rodríguez, 2019, p. 174).

Despite the aforementioned fact that the investigation stage is under the direction of the investigative judge, Prosecutors play an important role (namely one of inspecting proceedings at the instruction stage, *cf.* article 306 of the LECrim), and increasingly so, which has led to profound discussions of the need for a change in the Spanish Criminal Process (Armenta Deu, 2018, pp. 98-100). The Instruction 1/2008 has given public prosecutors more responsibilities in the investigation stage, and as they were put into force, a more prominent role emerged and their relation with police services became more and more based on direction and coordination, a reality that teased some criticism on the matter of the public prosecution service's independence and impartiality (González i Jiménez, 2019, pp. 347-349 & 356-357).

They are responsible for different diligences throughout criminal proceedings and in different forms of the criminal process, namely investigative, preliminary, informational and procedural diligences (Alfonso Rodríguez, 2019, pp. 177-178), some of which are: Public Prosecutors ought to initiate proceedings, when not a case of a private offense, as they become aware of a possible commitment of a crime (105 of the LECrim); once the police becomes aware of a public offense, it has to inform the judicial authority or the prosecutor (article 284 of the LECrim); the judge, *ex officio* or at the request of the prosecutor or the victim, orders measures to protect victims' privacy (article 301a of the LECrim); some acts of the instruction judge are under the inspection of the competent public prosecutor in crimes of public nature (article 306 of the LECrim); regarding the diligences that the investigative judge is obliged to take in

this stage the Prosecutor has a role to play (article 311 of the LECrim); civil measures can be requested by the prosecutor if the victim is a minor or someone whose capacity has been modified by the court (article 544b of the LECrim); prosecutors can order measures while offenses are being investigated to protect minors or victims whose capacity has been modified by the court and prosecutors are notified by the judge if a minor is at risk during proceedings (article 544d of the LECrim); prosecutors ought to give instructions to the Police for a more effective fulfillment of their duties, intervene in proceedings, suggest evidence and require evidence from the judge to be collected, require the adoption of protection measures to the judge and urge for the termination of proceedings once the necessary evidence is collected (article 773.2 of the LECrim); once public prosecutors are notified of an alleged criminal act, directly or on account of a complaint being made, they shall notify the victim of his/her rights, carry out a provisional assessment and make a provisional decision regarding the victim's needs as well as take the necessary steps to verify the offense, directly or through the police, then deciding to proceed or to dismiss the case, in this case giving grounds for their decision and notifying the victim so that he/she can repeat the complaint to the investigative judge (article 773. 2 of the Criminal Code).

Moreover, Public Prosecutors have a broader scope of investigatory competences for some special forms of proceedings (as indicated previously, such as the abbreviated form) as well as for proceedings which fall under minors' jurisdiction, according to Law number 5/2020, article 16.1 (Gómez Colomer, 1997, p. 16; Armenta Deu, 2018, p. 101; Alfonso Rodríguez, 2019, p. 175). They have also been conceded some competences based on the opportunity principle, which has recently been reinforced in Spain (González Granda, 2019, p. 383).

Once the investigative stage is completed, if the examining magistrate/investigative judge finds there is enough evidence, the following prosecution of crimes that takes place after the investigative stage, is a competence of the prosecution services, according to article 780 of the LECrim, exception made for the cases of '*quarella privada*' (Armenta Deu, 2018, pp. 105-108). Nevertheless, one must stress that when an accusation is made, it must be confirmed by the instruction judge (article 783 LECrim).

III. Method and Outcome of the Transposition of the Victims' Directive:

Article 124 of the new democratic Spanish Constitution of 1978 enshrines that public prosecutors (*Ministerio Fiscal*) shall safeguard the interests of victims throughout proceedings, as responsible for assuring

lawfulness and public interest in criminal proceedings, determining the independent nature of public prosecution services, not as representatives of the Government while dealing with the judicial power (Moreno Caetana, 2002, pp. 142, 146 *et seq.*). Hence, the provision of article 3.10 in Law 50/1981, establishing the organizational statute of Public Prosecution Services, expressly states that public prosecutors ought to protect victims in the course of proceedings, as well as article 773.1 of the LECrim. Article 4 of Law 5/2000 on criminal responsibility of minors also enshrines the duty of public prosecutors to protect victims of child offenders.

In terms of victims' formal participation in criminal proceedings, victims can take part as witnesses or as parties, through different forms. *Ofendidos*, or the offended persons in face of the crime in question, can take part in proceedings and prosecute the alleged offender, depending on the nature of the crime (according to article 105.1 of the LECrim). For some types of crimes, proceedings will be limited to a complaint by the victims in order for investigations to take place, unless in cases of crimes committed against minors or incapable persons, in which the public prosecutor will be able to initiate proceedings (article 105.2 LECrim). Reparation for victims can also be enacted within criminal proceedings as a civil claim by public prosecutors (article 108 of the LECrim), conceding limited rights for these victims in the process (Díez & Chiesa, 2009, pp. 13-14). The formal participation of victims is a distinctive feature of the Spanish criminal procedure, which has led to some difficulties in granting victims' rights at a national level, as the inherent limits of this broad formal way of participating were not always recognized (Tamarit Sumalla, 2013, p. 45).

Regarding the rights of victims regardless of their formal participation in proceedings, several amendments and reforms have been enacted in Spain with the goal of reinforcing the victims' position in the Spanish criminal system. Before the Victims' Directive, there was no general legal statute for Victims in the Spanish jurisdiction, and their rights, namely the ones enshrined in the 2001 Framework Decision, specifically the ones regarding victims of violent crimes, were dispersed throughout different legal instruments, which made it more difficult for an effective application (Olmos, 2008, p. 15). Some examples are: Law 35/1995 providing for support and assistance for the victims of violent crimes and crimes against sexual freedom; Law 1/2004 on comprehensive Protection Measures against gender-based violence, in which specific courts were created to intervene in civil and criminal proceedings based on violence against women (article 14); Law 29/2011 for victims of terrorism; and the national

protocol on victims of human trafficking of 2011³⁵. Moreover, in 2005, and in accordance to the Framework Decision of 2001, an instruction (8/2005) was published by the Public Prosecution Office on the duty to inform and protect victims in criminal proceedings.

In 2013, a new law gave way to the Statue for Victims of Crime, enshrining victims' rights and good practices for practitioners and state authorities. It was only approved, however, in 2015, through Law 4/2015 (Garcia Rodriguez, 2016, pp. 32-33). With this new statute, albeit some consider that most of the *minimum* standards enshrined in the Directive were already provided for in the Spanish jurisdiction (Sánchez-Arjona, 2014, p. 335), the Spanish law maker is considered to have aimed to guarantee that victims are granted not only reparation for the harm caused, through criminal proceedings, but also a social response that minimizes any traumatic impact that can result of the crime and independently of their position in criminal proceedings (Garcia Rodriguez, 2016, p. 34). Nevertheless, the transposition of the Directive contains, in its preamble, references to safeguarding the national criminal system, for instance: "the state (...) retains absolute monopoly on the enforcement of sentences, which is not incompatible with victims being provided with certain channels for participation".

According to the European Parliament's Assessment, Spain transposed the Victims' Directive through 3 legislative initiatives (European Parliament, 2017, pp. 48-49) and counts 12 legal instruments in conformity with the Directive's provisions³⁶. The Victim's Rights Law of 4/2015 presents a comprehensive set of rights for victims, particularly necessary in the Spanish jurisdiction for victims who do not take part in proceedings, and that now have the right to review a decision not to prosecute even if not parties in criminal proceedings (article 12) and are entitled to being notified and appeal from some decisions on enforcement of the sentence (article 13), for example. Regarding victims' right to protection, in article 19, the law specifically provides for the prosecutor to take particular care to ensure that it is complied with in case of minors and article 26.2 determines that prosecutors ought to obtain from the judge a court-appointed guardian for minors, victims with disabilities or victims with special protection needs, when necessary. Worthy of reference is also the particularity in the Spanish transposition of the Directive of opting for including in this Law a provision on fraudulent victims (article 35).

As assessed for the other partner countries, specificities of the

35- Cf. <https://violenciagenero.igualdad.gob.es/va/otrasFormas/trata/normativaProtocolo/marco/docs/ProtocoloTrataEN.pdf> (last consulted on the 31st of August 2020).

36- Cf. <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029>

Spanish system and jurisdiction determine particular issues in the implementation of the Directive, such as the wide range of options for participation of victims; the coexistence of different statutes for specific victims (like victims of terrorism, gender-based violence and domestic violence, under positive discrimination), which led to some challenges when transposing the Directive; and the lack of development in regard to Restorative Justice (Tamarit Sumalla, 2015, pp. 31-33).

IV. Victim Support Services Organization:

The lack of a consistent and efficient support service system is appointed as one of the characteristics that were foreseen as a challenge to the implementation of the Directive in Spain (Tamarit Sumalla, 2015, p. 31). Regarding victim support services, article 27 of the 2015 Victims' Statute established that the Government and the autonomous regions with powers in relation to justice shall organize the victim support services for which they are respectively responsible, and article 28 statutes that the Ministry of Justice of the autonomous regions may enter into collaboration agreements with public or private non-profit entities to provide the assistance and support services to victims. In Article 29 we find an association between victim support services and restorative justice services and other out of court procedures – the first ones are competent for giving information to victims on the services available (Garcia Rodriguez, 2016 p. 60).

Victim support was originally provided for in article 16 of the Law 35/1995 (now Law 4/2015) only for victims of violent crimes and sexual violence and nowadays there is a public network of *Oficinas de Asistencia a las Víctimas*, i.e. Victim Assistance Offices (Tamarit Sumalla, 2013, p. 46). In 2015, the enactment of the Royal Decree 1109/2015, generalized this support for all victims of crime through article 8, albeit some offices provide specialized support (namely the office for victims of terrorism, according to article 33 of the decree) and vulnerable victims are still given specialized support. These Offices are managed by the Ministry of Justice or the competent Autonomous Government. Moreover, we find designated prosecutors (*Fiscales Delegados*) for the proception of victims in criminal proceedings³⁷ (in line with article 4.6 of Law 50/1981), as well as prosecutors for designated types of victims, namely victims of violence against woman and gender-based violence (instructions 7/2005 and 2/2008, respectively, of the Public Prosecution Office).

However, it is considered that there has been a deficient development of this system in Spain due to lack of resources and funding of these

37- List of the current Offices for the protection of victims in criminal proceedings available at: <https://www.fiscal.es/web/fiscal/-/organigrama-proteccion-y-tutela-de-las-victimas-del-proceso-penal> (last consulted on the 31st of August 2020).

services, and the provision of victim services happens within a system dictated by bureaucracy demands and regional differences of effectiveness of this right (Tamarit Sumalla & Villacampa Estiarte, 2019, pp. 30-32). This is aggravated by the lack of general civil organizations providing support to victims, as these NGOs mainly provide specialized support for woman, victims of sexual abuse, minors, people with disabilities and victims of terrorism (Tamarit Sumalla & Villacampa Estiarte, 2019, pp. 30-32), leaving other victims unprotected. Finally, criticism has been made to the fact that the Spanish statute explicitly predicts that none of the provisions of the Law will lead to a budget increase (on the second additional provision), furthering impairing support for victims (Garcia Rodriguez, 2016, p. 76).

An exception to this somewhat disappointing scenario are the realities experienced in the autonomous regions of Andalusia (García Rodriguez, 2016, p. 69), the Basque Country and Catalonia (Tamarit Sumalla & Villacampa Estiarte, 2019, pp. 30-31), where the developments of victim support services are strongly commendable.

Intermediate conclusion:

1) The Prosecutor role in Spain in regard to Victims' Rights, will specifically be one of respecting their participation rights in face of the different possibilities the law provides, as well as of assuring their interests are met while acting within their scope of competences to protect victims in criminal proceedings and, more importantly, balance victims interests in proceedings in the investigative stage, given it is placed under the direction of the investigative judge; 2) distinctively, the Spanish Prosecutor assumes a more influential role regarding victims of crimes practiced by minors.

CONCLUSION

As Kirchengast points out, traditional model boundaries distinguishing one system of justice from another, namely adversarial *versus* inquisitorial, constitutional *versus* common law, code *versus* common law, are being slowly dismantled by statutory and policy amendment to afford victims a greater role in government decision-making, in legal proceedings, as community stakeholders, and as individuals with enforceable rights (Kirchengast, 2018. p. 4). This allows us to comprehend the *vero* impact victim legal status might also have in the penal procedures model as well, namely when is recognized as a significant stakeholder in criminal law and justice in an international context. There is a tendency of borrowing practices from other systems. Juries are now used in many civil law countries, like in Croatia (Ivković, 2001, p. 63). Plea-bargaining is now used in a number of civil law countries, even in a mitigated way, like in Portugal. Many civil law systems have adopted more adversarial procedures, as for Spain. As an example

of a *contra* movement, the now universal system of public prosecutor was a civil law institution that had no equivalent in the original common law system (Langbein, 1973, p. 313; Ma, 2008, p. 196; UNODC & IAP, 2014, p. 4). And from an even broader perspective, the previous mapping enhances the fact Prosecutors performance nature and content is converging and mainly centered in the investigation phase, independently of the procedural system in question. Therefore, those historical dividing lines have begun to break down in the past several decades. More and more countries that traditionally maintained inquisitorial systems have come to adopt in whole or in part many of the characteristics of adversarial systems (Ainsworth, 2013, p. 3). So, we can join Spencer's question - adversarial *versus* inquisitorial systems: is there still such a difference? (2016).

2 OVERVIEW OF THE QUESTIONNAIRE

The questionnaire is divided in six chapters: overall legal framework; right to information; rights of victims when making a complaint; right to support services; right to safeguards in the context of restorative justice services; and rights to protection and individual assessment; following the sectioning of the Victims' Directive.

In each chapter, respondents were provided with a number of questions to which they were requested to reply affirmatively or negatively, in accordance to the law and practice of their respective jurisdictions, to whether or not a specific provision or solution was in effect in their country.

Additionally, the questionnaire contained questions to which respondents were required to give more precise answers regarding the specific rights of victim, the procedure followed in order to ensure them or the entity responsible for making them effective.

The questionnaire also included several opened questions, providing space for observations, in order to allow the respondents to specify and clarify their answers.

For the present analysis, the results of the questionnaire are presented as averages, with indication of the frequency of occurrence of extreme answers. In order to showcase the differences between countries in terms of their position regarding the role of public prosecutor concerning victims' rights in Europe today, some of the results are displayed in charts.

It ought to be emphasized that answers to this questionnaire are likely to be subjective at times, depending on the respondent's professional and personal experiences.

From the 13 countries originally contacted, only eight delivered. Four from the *consortium*, Croatia, Ireland, Portugal and, Span. Notably, from Spain, one only received

contributions from the Basque Country, which means that regarding that specific case, the questionnaire results only reflect the Basque Country's reality. Also, four from extra partnership countries, including Germany, Hungary, Malta and Sweden. In total, 53 surveys were received.

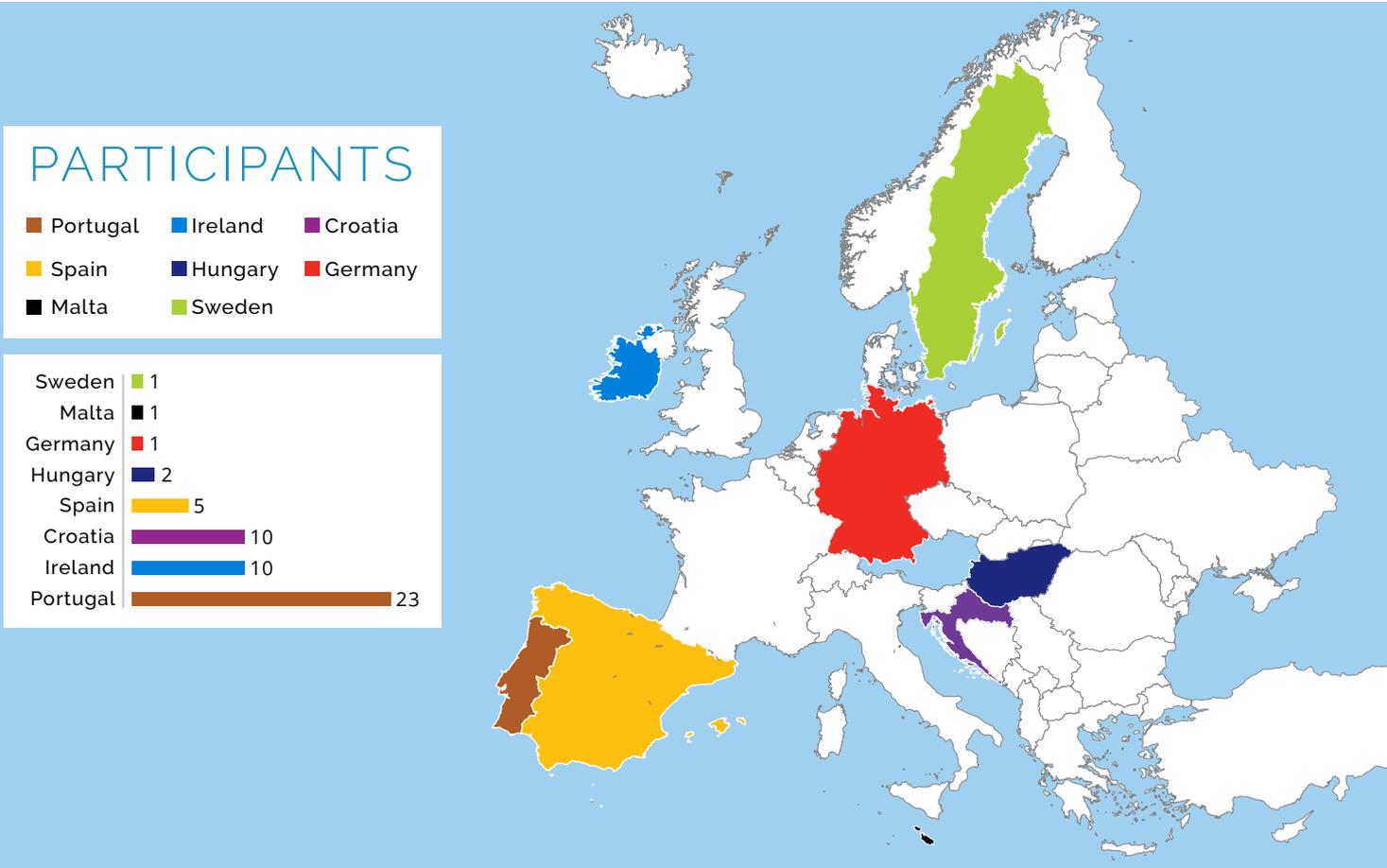


Figure 1: questionnaire participants illustration.

As shown in figure 1 above, Portugal was the country with the largest number of participants, 23 in total, followed by Croatia and Ireland, *ex aequo* with 10, the Basque Country with 5, Hungary with 2 and Germany, Malta and Sweden with 1. Regarding the surveyed professional background, 30 prosecutors, 13 victim support members staff and 4 professionals from other from other law related activities answered the questionnaire. Although the adherence was not massive, neither from a country nor a persona quantification point of view, still, the analyses of the results of the survey suffices, quantitatively speaking, as 53 questionnaires from 8 countries were received and analyzed. More importantly, one must stress the questionnaire designs seeks for a more qualitative rather than quantitative measurement.

3 ANALYSIS OF THE RESULTS

I. OVERALL LEGAL FRAMEWORK

a. Source of the provisions establishing the competences of Public Prosecution Services within criminal proceedings

All country respondents answered that the law is the source of the provisions establishing the competences of public prosecution services within criminal proceedings. Two country respondents (from Portugal and Croatia) answered that internal guidelines are also a source of these provisions. Only in one country (Ireland) were regulations are pointed as a source of provisions as well.

b. There is a legal differentiation of regimes regarding the type of victim

Respondents from three countries (Germany, Sweden, Malta) disagreed with this statement and respondents from four countries agreed (Ireland, Portugal, Croatia, the Basque Country and Hungary). Thus, the average response was 1.2.1.

c. Application of the differentiation

According to respondents from Ireland, Portugal and Croatia, their legal systems recognize a differentiation of regimes for victims of domestic violence. Respondents from Portugal and the Basque Country answered that they have a special regime for vulnerable victims. Participants from Ireland, Portugal, Croatia and Hungary indicated that there is a special legal framework for victims of sexual violence crimes. Only one respondent (from the Basque Country) answered that there is a special status for victims of gender-based crimes. Two country respondents (Portugal and Croatia) answered that their countries have a special regime for victims of human trafficking. In Portugal almost 70% of the respondents answered that there is also a legal regulation for victims of violent crimes. In Croatia the legal system also operates a differentiation in relation with child victims. Only one respondent (from Malta) did not differentiate between the types of victims.

d. Delegation of powers from the public prosecution services to law enforcement agents during the investigation proceedings

In four countries, respondents replied negatively (Ireland, the Basque Country, Hungary and Sweden), while in the other four (Portugal, Croatia, Germany and Malta), participants responded that there is a delegation of competences to the police, mainly generic delegation, albeit sometimes specific powers are delegated in accordance to the type of crime, such as the competences to inquire witnesses, to attribute the statute of accused or to gather evidence (Portugal, Croatia).

Germany obs.:

“It’s not a real delegation of powers, as the prosecution leads the investigations and can use police to carry out investigations, according to the law. But in most cases the police investigate without specific guidance from prosecution and present the case to the prosecutor when investigations are finalized”.

e. Which victims’ rights are dependent on being explained and/or applied by the Prosecutor to be effective?

Amongst participants from Portugal, the Basque Country and Ireland, the average response is the right to obtain protection, including protection measures (1.4.12.). Furthermore, in Ireland and in the Basque Country the right to interpretation and/or translation and the right to be informed about their rights within the criminal proceedings are also dependent on Prosecutor Services to be effective (1.4.2. and 1.4.6.). In Ireland and in Croatia, the right to request a review of a decision not to prosecute also depends on the Prosecutor (1.4.8.). In Croatia, 70% of the respondents considered that the victims’ right to be informed about their rights within the criminal proceedings depends on the Prosecutor to be effective as well (1.4.2.). In the Basque Country the same was considered for the rights to intervene in the criminal process (1.4.4.), the right to obtain legal advice, legal aid and/or any sort of advice (1.4.5.), and the right to be accompanied by a person of the victims’ choice (1.4.7.), as well as the right to compensation (1.4.10.) and the right to receive medical and/or psychological support (1.4.11.).

The respondents from Germany, Hungary, Sweden and Malta, the respondents selected each one of the options, except the right to appeal (Germany and Hungary), the right to compensation (Hungary) and the right to receive medical and/or psychological support (Hungary and Sweden) and the right to intervene in the criminal process (Sweden).

Hungary Obs.:

A respondent further specified that “The victim shall be entitled to: provide evidence and make motions and objections; be present at the procedural measures specified by this Act and to pose questions under the rules of this Act; and inspect the documents related to the criminal offense which affect the victim, with the exceptions set out by this Act”.

f. Effectiveness of each right according to the procedural phase

The right to make a complaint is made effective by the Prosecutor Services on a preliminary phase in Portugal, the Basque Country, Malta, Sweden, Hungary and Germany. In Ireland, a number of respondents answered that this right is made effective on a preliminary phase, others that it is made effective on all procedural phases and some answered that it is made effective after a decision not to prosecute. In Croatia some respondents answered that this right is made

effective on the trial stage, others answered that it is made effective during the appeal and some answers indicated that this happens in all procedural phases.

The right to be informed about their rights within the criminal proceedings is made effective by the Prosecutor on a preliminary phase in Portugal (majority of the respondents), Croatia, Ireland, the Basque Country, Germany, Sweden and Hungary. In Portugal (12,5%), Croatia (57,14%), the Basque Country (66,67%), Ireland (66,67%) and Malta some respondents also answered that this right is also made effective in all procedural phases. In Croatia, one respondent provided that this happens during court proceedings.

The right to receive a written acknowledgement of the complaint is due by the Prosecutor on a preliminary phase in Portugal (majority of the answers), the Basque Country (25%), Sweden, Malta, Hungary and Germany. In Croatia, respondents answered that this right is made effective during the appeal phase. In Ireland, such as in The Basque Country (75%), respondents answered that it's made effective in all procedural phases.

The right to intervene in criminal proceedings is made effective by the Prosecutor on a preliminary phase in Portugal (all respondents), the Basque Country (50%), Germany and Hungary. The respondent from Sweden skipped this question. In Ireland this right is made effective during the trial and, in Croatia and in Malta, in all phases of the criminal proceeding.

The right to obtain legal advice, legal aid and/or any sort of advice is made effective by the Prosecutor on a preliminary phase in Portugal, the Basque Country, Germany, Hungary and Sweden. In Ireland and in Croatia this right is made effective during the trial phase. In Portugal, in the Basque Country, in Croatia and in Malta some respondents also indicated that this right is made effective during all procedural phases.

The right to interpretation and/or translation is made effective by the Prosecutor on a preliminary phase in Portugal (55,56% of the respondents), in the Basque Country (only 16,67% of the respondents), in Ireland (33,33% of the respondents) and in Germany, Sweden and Hungary. Respondents from Portugal (44,44%), Croatia (66,67%), the Basque Country (83,33%), Ireland (33,33%) and Malta also answered that this right is made effective during all phases of the criminal procedure. In Ireland, 33,33% of the respondents stated that this right is made effective by the Prosecutor during the trial.

Regarding the right to be accompanied by a person of the victims' choice, 75% of the respondents from Portugal answered that this right is made effective by the Prosecutor on a preliminary phase. 33,33% of the respondents gave the same answer

in the Basque Country and regarding Ireland, it was emphasized that the victim may be accompanied by a person of his or her choice when making a complaint to the police, but this right does not really depend on the Prosecutor, because the authority responsible for this preliminary phase is the police). Furthermore, in Germany, Hungary and Sweden, this right is also made effective during a preliminary phase of the criminal proceedings. Additionally, in Croatia and in Malta this right is attributed to all phases of the criminal proceedings and in Ireland this right is also considered to be made effective also during the trial and the appeal.

Concerning the right to a review of a decision not to prosecute, 6 respondents in Ireland, 5 in Portugal, 4 in Croatia, 2 in the Basque Country and 1 in Hungary, as well as Germany, Sweden and Malta answered that this right depend on the Prosecutor to be effective during a preliminary phase of the criminal proceedings. In Croatia participants answered that this right is made effective in all phases of the criminal proceedings, as well as 2 respondents from Ireland. 2 other respondents from Ireland pointed that this right is made effective in other phases, e.g. after a decision not to prosecute.

The right to access to Restorative Justice Services is made effective by the Prosecutor Services during a preliminary phase of the criminal proceedings in Portugal, Germany, Hungary and Sweden. In the Basque Country only 1 respondent replied in that sense. 2 other respondents answered that this right is made effective during the trial and another 2 indicated that this right is made effective during all phases of the criminal proceedings as did the respondent from Malta. In Croatia all respondents skipped this question. In Ireland, 12 respondents skipped this question and the one respondent who answered did not specify the respective procedural phase.

In Portugal, 20 respondents skipped the question related to the right to compensation and replies from other respondents were disparate: 1 attributed this right to the preliminary phase, 1 to trial and another to all phases. In Ireland, 12 respondents skipped this question as well and only 1 participant answered that this right does not depend on the Prosecutor. In the Basque Country the majority of respondents (3) answered that this right is made effective during preliminary phases of the criminal proceedings, but a vast majority skipped this question, as happened with Croatia, where only 2 respondents answered that this right is made effective in all phases. In Germany and Sweden this right is made effective in the preliminary phase of the criminal proceedings, in Malta in all phases and the respondents from Hungary skipped this question.

The right to receive medical and/or psychological support is made effective by the Prosecutor during a preliminary phase in Portugal, in the Basque Country and in Germany. Some respondents from the Basque Country answered that this

right also is made effective during all stages of the criminal proceeding, as well in Croatia, in Portugal and in Malta. All the respondents in Ireland, Hungary and Sweden skipped this question.

The majority of the respondents from Portugal as well as the respondents from Germany, Sweden and Hungary answered that the right to obtain protection, including protection measures, is available during a preliminary phase of the criminal proceeding and a minority of the respondents selected the option of it being available in the trial phase and all phases. In the Basque Country, Croatia and Malta the majority of respondents answered that this right is made effective during all phases of the criminal proceedings. In Ireland the majority of the respondents selected the option of it being effective during trial.

Finally, the right to do an appeal is made effective in Portugal during a preliminary phase, as well as during the appeal. In the Basque Country the options that this right is made effective during the trial, the appeal and during all the phases of the criminal proceeding were chosen by 1 respondent each, as well as 2 by respondents from Croatia.

In Germany this right is made effective during a preliminary phase, in Malta it is due during the appeal phase and in Sweden, during the trial (the respondents from Hungary skipped this question).

Ireland obs:

One of the respondents answered that “The victim is not a party to the criminal proceedings in Ireland. The victim, however, can request the DPP to review the decision not to prosecute”, without specifying the phase.

g. Differentiation of the type of victim in relation with the right to obtain to obtain protection

16 of the respondents from Portugal answered that their legal system provides for a differentiation before victims of domestic violence. In Germany, the respondent gave the same answer. In Croatia and in Ireland this differentiation regards child victims, victims of sexual offenses and victims of trafficking in human beings. In the Basque Country, Sweden, Hungary and Malta, the respondents answered that this differentiation is recognizable in domestic violence victims, gender-based violence victims and violent crime victims, as well as victims of sexual violence in Hungary.

Germany obs.:

“In principle, there are no differences regarding the type of victim. But in respect to domestic violence victims there are some specific measures, fitting only for them (e.g. order that only the victim is allowed to live in the previously shared flat)”.

h. Which victims' rights depend on being explained and/or applied by the Judge to be effective?

In Portugal, the majority of the respondents identified the right to compensation, the right to obtain protection, including protection measures, and the right to intervene in the criminal process as dependent on the Judge. In the Basque Country, the majority of the respondents pointed as such the right to compensation, the right to obtain protection including protection measures, the right to obtain legal advice, legal aid and/or any sort of advice, the right to interpretation and/or translation, the right to access to Restorative Justice Services, the right to receive medical and/or psychological support and the right to do an appeal. In Ireland, the majority of the respondents answered that none of the rights are explained or applied by the Judge, but one respondent answered that the right to give a victim an impact statement prior to sentencing is applied by the Judge. In Croatia, a majority of the respondents answered that the victims' right to interpretation and/or translation is explained and/or applied by the Judge, as well as the right to be informed about their rights within the criminal proceedings, the right to compensation and the right to obtain protection including protection measures. In Germany, the respondent selected all options, except for the right to a review of a decision not to prosecute.

The respondent from Malta selected the option “none”.

The respondent from Sweden selected the right to intervene in the criminal process, the right to obtain legal advice, legal aid and/or any sort of advice, the right to interpretation and/or translation, the right to be accompanied by a person of the victims' choice, the right to compensation, the right to obtain protection, including protection measures and the right to an appeal as dependent of the Judge.

From Hungary, one respondent selected the options: the right to be informed about their rights within the criminal proceedings, the right to intervene in the criminal process, the right to obtain legal advice, legal aid and/or any sort of advice, the right to interpretation and/or translation, the right to be accompanied by a person of the victims' choice, the right to compensation and the right to obtain protection including protection measures.

Germany obs.:

“When a Trial is pending at the court, the Judge has in principle the same obligations of the prosecutor in the pre-trial phase. But normally the victims are informed by prosecution/police about their rights at an earlier stage”

Malta obs.:

“Normally victims are assisted by a lawyer and are admitted as a civil party whereby they can participate actively in the criminal proceedings inter alia by asking questions to witness (by means of their lawyer), cross examination, etc.”

Hungary obs.:

“The victim shall be entitled to: provide evidence, make motions and objections; make an address during the pleadings; be present at the trial and the procedural measures specified by this Act, and to pose questions under the rules of this Act; and inspect the documents in connection with the criminal offense which affect the victim, with the exceptions set out by this Act”

i. Effectiveness of each right according to the procedural phase

In Portugal, the victims' right to be informed about their rights within the criminal proceeding is made effective during the trial, as well the right to intervene in the criminal process, the right to interpretation and/or translation, the right to be accompanied by a person of the victims' choice, the right to access Restorative Justice Services, the right to compensation, the right to obtain protection including protection measures (also during the preliminary phase by instruction of the Judge), the right to do an appeal, and the right to receive medical and/or psychological support (also on the preliminary phase). The right to a review of a decision not to prosecute depends on the instruction judge during a preliminary phase.

In the Basque Country the right to obtain legal advice, legal aid and/or any sort of advice, the right to receive medical and/or psychological support and the right to access to Restorative Justice Services depend on the Judge in a preliminary phase. The majority of the respondents answered that the right to interpretation and/or translation, the right to obtain protection, including protection measures, and the right to compensation are made effective during all phases of the criminal proceedings. The right to do an appeal is will be made available during the trial or appeal phase.

In Croatia, the participants stated that that the right to interpretation and/or translation is explained and/or applied by the Judge either during the trial or during all phases of the criminal proceedings. The right to be informed about their rights within the criminal proceedings is made effective during all phases, as well as the right to obtain protection including protection measures. The right to compensation is made effective during the preparatory hearing and during the

trial, until the end of the evidentiary proceedings before the first instance court.

In Germany, all the options of rights were selected as dependent on the Judge during the trial. With regard to the right to an appeal, the respondent wrote: *"When the case is pending at the court of appeal the judges have the same obligation"*. In relation to the right to obtain protection, including protection measures, there are particularities regarding victims of domestic violence.

In Sweden the respondent answered that the right to intervene in the criminal process, the right to interpretation and/or translation, the right to be accompanied by a person of the victims' choice, the right to compensation, the right to obtain protection, including protection measures and the right to an appeal are made effective during the trial phase of proceedings. The right to obtain legal advice, legal aid and/or any sort of advice is made effective during a preliminary phase. The respondent denied that there are differences in the application of the right to obtain protection, including protection measures, according to the type of victims, which a respondent from Hungary also did.

In Hungary the victims' right to be informed about their rights within the criminal proceedings is made effective during the trial, as well as the right to intervene in the criminal process, the right to obtain legal advice, legal aid and/or any sort of advice, the right to interpretation and/or translation, the right to be accompanied by a person of the victims' choice, the right to compensation and the right to obtain protection, including protection measures

The respondent from Malta skipped the question.

j. Which victims' rights are dependent on being explained and/or applied by the Police to be effective?

In Portugal, the respondents identified four rights which depend on the Police's conduct to be effective: the right to make a complaint, the right to be informed about their rights within the criminal proceedings and the right to receive a written acknowledgement of the complaint, as well as the right to be accompanied by a person of the victims' choice.

In the Basque Country the rights considered as dependent on the Police are the following: the right to make a complaint, the right to obtain legal advice, legal aid and/or any sort of advice, the right to receive medical and/or psychological support and the right to obtain protection, including protection measures.

In Ireland the rights selected were: the right to make a complaint, the right to interpretation and/or translation, the right to a review of a decision not to prosecute, the right to obtain protection, including protection measures, the right to be

informed about their rights within the criminal proceedings, the right to receive a written acknowledgement of the complaint and the right to be accompanied by a person of the victims' choice.

In Croatia, participants pointed as dependent on the police: the right to be informed about their rights within the criminal proceedings, the right to interpretation and/or translation, the right to be accompanied by a person of the victims' choice and the right to obtain protection, including protection measures.

Portugal obs.:

Nevertheless, these rights do not depend exclusively on the Police, since each of the aforementioned rights can also be made effective by Public Prosecutors.

k. Effectiveness of each right according to the procedural phase

In Portugal, the Basque Country, Ireland, Croatia, Germany, Malta, Sweden and Hungary all the victims' rights that can be explained and/or applied by the Police are made effective during the preliminary phases of the criminal proceedings.

In Germany, in relation to the right to obtain protection including protection measures, there is differentiation regarding victims of domestic violence.

In Malta, Sweden and Hungary, the respondents stated that there is no differentiation regarding the right to obtain protection including protection measures, according to the type of victims, whereas in Hungary one respondent specified that there is a specific legal status for victims of sexual violence.

Intermediate conclusions:

- Finding 1 -** Victims' rights in criminal proceedings are associated to all stages of the process and assured by all its participants, not only through prosecution services;
- Finding 2 -** Predominance in regard to victims of domestic violence protection;
- Finding 3 -** The legal differentiation factors on the matter of victim's rights are marked by the lived social reality of each State.

II. RIGHT TO INFORMATION

a. There is a legal obligation to provide information to victims

To this statement almost all countries replied affirmatively, while the respondent from Malta responded negatively.

b. The public prosecutor has a role in the provision of that information

To this statement almost all countries replied affirmatively, while the respondent from Malta responded negatively.

c. Which is the source that demands the public prosecutor to provide the information to victims?

Most of the respondents from all countries replied that the source is the criminal procedure code (Portugal, the Basque Country, Croatia, Germany, Sweden and Hungary). In Ireland, in Portugal and in Sweden, a specific law demands the public prosecutor to provide information to victims and in Ireland there are also internal guidelines in which these specific demands are included. In Croatia one respondent specified the Victims' Rights Directive.

d. When is the information provided to victims?

In average, respondents replied that the information is provided to victims at all stages, depending on the victim's needs (Portugal, the Basque Country, Croatia, Germany and Hungary), whereas in Ireland and in Malta, most of the respondents answered that this information is provided during a preliminary phase. The participant from Sweden selected the three stages: preliminary, trial and appeal.

e. How is the information provided to victims?

Almost all respondent countries provide this information to victims through written minutes with a standardized list of rights (Portugal, the Basque Country, Croatia and Germany) and in these countries the delivery of the minute is followed by an oral explanation (except in Germany).

An oral explanation is therefore an important way to provide the information to victims (Ireland, Portugal, Croatia and the Basque Country) and only in Ireland do victims just receive documents.

In Malta, the information is provided only orally and in Sweden information is given orally, in a standardized manner, following a guideline and through written minutes with a standardized list of rights.

Hungary obs.:

"The victim shall be informed of his or her rights by the court, prosecutor or investigating authority before carrying out the procedural measure affecting him or her, particularly orally. However, there are cases specified by the Act when a written form of providing information is required".

f. The information given to victims is the same in the entire national territory

To this statement almost all countries replied affirmatively while only in two countries 50% (Ireland) and 40% (Croatia) of the respondents answered negatively.

g. That procedure was preceded by workshops/training or similar initiatives in order to guarantee a good articulation

The majority of respondents in Portugal answered negatively and 5 respondents answered affirmatively. The negative answers are justified by respondents as due to the fact that a national strategy to provide information was never discussed and in each region the competent entity to provide information has autonomy to decide how to do so.

In Ireland, Croatia and Malta the majority of the respondents answered affirmatively (because training is provided). In Germany, Sweden and Hungary the respondents answered negatively. These replies were justified by the following arguments: In Germany, because in each region the institutional authority responsible for providing information in practice has autonomy to decide how to do so; in Sweden because the rights of victims are the same in the entire country; and in Hungary because the Criminal Procedure Code defines the content of the information to be provided to the victims, as well as the procedure to provide it.

Participants from the Basque Country showed division regarding this question - half of the respondents answered negatively and the other half answered affirmatively. The negative answers were justified by the fact that in each region the competent authority has autonomy to decide how to provide information in practice.

h. Which is the content of the information provided to victims?

In Portugal, victims are provided with a list of their specific rights, according to the type of crime in question (ex. domestic violence, homicide, etc.), which also happens in the Basque Country, and/or a generic list of all the rights defined by law, a practice also seen in Croatia, Germany and Hungary.

Regarding to information being provided to victims through a list of specific rights according to the type of crime or victim in question, participants specified the crimes of domestic violence, sexual crimes and gender-based crimes (this last one in the Basque Country).

In Ireland, in the Basque Country, in Portugal, in Malta and in Sweden, the information provided also entails a list of all the rights defined by the Victims Directive.

i. The Public Prosecutor gives instructions to the Police on how to provide information to victims

Respondents from six countries gave negative answers (the Basque Country, Croatia, Germany, Sweden, Malta and Hungary). In Portugal replies were affirmative, while from the participants of Ireland results were inconclusive, given half of the respondents answered negatively and the other half answered affirmatively. Respondents who gave affirmative answers identified these instructions as given in written form, with generic orientations or through written form, with specific orientations for certain types of crimes or victims, mainly domestic violence and sexual crimes.

Obs.:

A respondent from Germany observed that: "The prosecutor could do that but in practice it's not necessary". In Malta the justification is that the public prosecutor is not involved at investigation stage. The respondent from Sweden wrote that "According to law and decree it is the police that provides the information". In Hungary one respondent wrote that these instructions are given "In a written form, with specific orientations for certain types of crimes, as regulated by the Act".

Intermediate conclusions:

- Finding 1 -** Special association of the right to information with the role of public prosecutors;
- Finding 2 -** Importance of giving an oral explanation to victims;
- Finding 3 -** Lack of systematic and standardized procedures, on a national and institutional basis, to provide information to victims;
- Finding 4 -** Disparity of the content of the right to information.

III. RIGHTS OF VICTIM WHEN MAKING A COMPLAINT

a. Who can receive complaints?

The majority of the respondents from Portugal answered that not only the police, but also the public prosecutor can receive complaints. Notwithstanding, 6 of the respondents replied that the National Institute of Legal Medicine and Forensic Sciences is also able to receive complaints. On the contrary the majority of the respondents in Ireland answered that it is the police who can receive complaints. In Croatia only 2 respondents answered that this is a competence of the public prosecutor and 4 participants replied that it is the judge's function. In the Basque Country 2 respondents answered that not only the police, but also the public prosecutor and the judge can receive complaints; 1 respondent answered that it is solely the police's competence; 1 respondent answered that it is the

public prosecutor's; and 1 respondent replied that it is the police and the court's competence.

In Germany all entities can receive complaints: judge, police and public prosecutor; in Hungary public prosecutors and police officers can receive complaints; and in Malta and in Sweden these can only be received by the police.

Ireland obs.:

In the Irish legal system it is the police who conducts the preliminary phase of investigation

b. The legal solution is the same for all your country

All respondents answered affirmatively, except for 1 respondent from Croatia.

c. There are specific services/departments within the Prosecutors' Office to receive complaints/investigate certain types of crimes

In the Basque Country all respondents answered affirmatively to this question, likewise in Portugal, where only 2 respondents answered negatively, whereas in Croatia, Germany, Malta, Sweden and Hungary all respondents gave negative answers. In Ireland, the majority of the replies were affirmative (6), with only 4 negative answers.

In the countries in which the respondents answered affirmatively, it was pointed that there are specific services to receive complaints of domestic violence (from Portugal, 18 respondents and from the Basque Country, 2 respondents), sexual violence crimes, crimes against women and children, all gender motivated crimes. In Portugal, one respondent stated that there are also some specific sections to investigate economic and financial crimes, as well as more serious crimes.

In Portugal, these services are the *Departamentos de Investigação e Acção Penal – Secções especializadas de violência doméstica e crimes sexuais*; in the Basque Country the service is *Unidades Específicas de Fiscalia*. In Portugal, the majority of respondents answered that these specific services do not exist in all the country, whereas in the Basque Country most of the respondents answered affirmatively to this question.

In Ireland this question is not applicable, since victims do not make complaints directly to the prosecutor, as the prosecutor does not have a statutory power to investigate a crime. This power is assigned to the police.

Regardless of negative answers, in Hungary one respondent answered that there are specific services to receive complaints of domestic violence: the Central Chief Prosecution Office of Investigation, a service that exists across the country.

d. There is an obligation to deliver a written acknowledgement of the complaint to the victim

The majority of the respondents answered affirmatively to this question, except for Croatia and Malta's.

It was also possible to make the following observations:

- In Portugal it is not mandatory to deliver a written acknowledgement of the complaint to the victim, but if the victim asks for it, he/she will receive a copy;
- In Ireland the victim is entitled to a copy of their written statement by law;
- In Croatia, when the victim files a complaint, if he/she files it in the State Attorney's Office, he/she immediately receives a stamp on one copy that he/she has filed the complaint, and he/she submits it by registered mail in order to have proof that he/she has filed the complaint;
- In the Basque Country, the copy delivered to the victim does not have to contain all the information of the complaint, especially if that content has to be translated.

e. The source of that obligation

In Portugal, the majority of the respondents answered that the source of that obligation is the Law. The majority of the respondents in Ireland and the Basque Country (as well as the respondent from Germany) replied it is the Law as well, but 1 respondent from Ireland indicated that there is also a recommendation from Ombudsman. It was not possible to recognize a valid answer from Croatia, since most participants skipped this question. In Hungary this source is an order of the Prosecutor General, and in Sweden it is a Regulation.

f. That obligation is effective/respected in all your country

The majority of the respondents in Portugal, Ireland, the Basque Country, and Croatia (as well as from all respondents from Germany, Hungary and Sweden) answered affirmatively.

In Portugal, 6 respondents answered negatively and justified it with the lack of a discussion about a national strategy to deliver a written acknowledgement of the complaint (3) and with the lack of police training (3).

g. There is a standardized form/manner to provide the written acknowledgement of the complaint to the victim

The majority of the respondents in Portugal, the Basque Country, Germany, Hungary and Sweden answered affirmatively to this question. In Croatia participants mainly replied negatively, as well as the respondent from Malta, and in Ireland it was not possible to recognize a tendency of reply, since 50% of the respondents answered negatively and the other half answered affirmatively.

h. Type of document given to the victim

In Portugal, the victim receives a copy of the complaint with the number of the process (9) and in some cases receives a minute of the complaint with the number of the process (4). In Ireland the majority of the respondents (2) answered that victim receives a receipt that acknowledges that she/he presented the complaint with the number of the process. In the Basque Country the majority of the respondents (2) answered that the victim receives a copy of the complaint. In Croatia 1 respondent answered that victims receive a copy of the complaint with the number of the process, another participant replied that victims receive a receipt that acknowledges that he/she presented the complaint and 1 answered that if the victim files a complaint directly or by mail, he/she receives a confirmation that he/she has sent or submitted the complaint. In Sweden the victim receives a copy of the complaint with the number of the process. In Germany the victims receive a receipt that acknowledges that she/he presented the complaint with the number of the process. In Hungary the respondent answered that if the complaint is made through a minute, the victim receives a copy of given minute.

i. Is the procedure followed in all your country?

The majority of the respondents in Portugal, Ireland, the Basque Country, Germany, Hungary and Sweden answered affirmatively.

In Croatia, most respondents skipped this question, except for two participants, who answered negatively.

In Portugal, 2 respondents answered negatively and justified it with the lack of a discussion on a national level procedure (same arguments used by a respondent from Croatia). One respondent wrote that in a considerable amount of cases the victim only receives a standardized document with the victim's statute and in other circumstances the victims simply does not receive any acknowledgement.

j. Who delivers the written acknowledgement of the complaint?

The majority of the respondents answered that it is the same entity that receives the complaint (Portugal, Ireland, the Basque Country, Germany, Sweden, Malta and Hungary). In Croatia, only 2 respondents gave that answer, whereas the other generally stated that there is no obligation to provide written confirmation of the complaint.

k. There is an obligation establishing the right of the victim to be accompanied by a person of his/her choice during the proceedings

The majority of the respondents from Portugal answered negatively (12), while 11 respondents answered affirmatively. In Portugal, two respondents clarified that this is not an actual obligation, since article 12.3 of Statute of Victims only enshrines that as a possibility.

All the respondents in the Basque Country answered affirmatively, except for one participant who stated that this is a novel option and despite the fact that it is now recognized on positive law, many judges/public prosecutors apply it only as a manifestation of good will.

The majority of the respondents in Ireland answered affirmatively. In Croatia it was not possible to recognize a tendential reply, since 50% of the respondents answered negatively and the other half answered affirmatively.

In Germany and in Sweden the respondents answered affirmatively. In Hungary and in Malta the respondents answered negatively.

Croatia obs.:

One respondent stated that “There is no obligation, even though this right is provided by the Criminal Procedure Code. Namely, if the public prosecutor or the court did not allow the victim to consume this right, the victim would not have the opportunity to appeal such decision, but could possibly file an objection with the court president but filing such an objection does not delay the collecting of evidence”

l. Source of that obligation

The respondents from Portugal, Ireland, the Basque Country and Croatia, as well as the respondents from Germany and Hungary replied that the source of that obligation is the Law. In Sweden the respondent selected the option “Regulation”.

In Portugal, the legal source is pointed to be the Statute of Victims, as in the Basque Country paired with article 24 of the Spanish Constitution. In Ireland the source is the Victims of Crime Act from 2017, Section 4 and in Croatia, the Victims’ Rights Directive was mentioned.

In Germany and in Hungary the source is the Criminal Procedure Code. The Swedish respondent skipped this question.

m. Who may accompany the victim?

In Portugal the answers were: a person in whom she/he trusts, such as a friend or similar (17); victim support services (16); a relative (13); a legal representative, besides the lawyer (11) and Social Services (11). 1 respondent added: “Those that the due competent authority allows”.

In the Basque Country, respondents replied: the victim can be accompanied by a lawyer (3); by a relative or a person in whom she/he trusts, such as a friend or similar (3); by a legal representative, besides the lawyer, by victim support services or by Social Services (2); the victim may choose a person to accompany her/him (3).

In Croatia, respondents answered: by a person in whom the victim trusts, such as a friend or similar (7); by a relative or by victim support services (6); by a lawyer or a legal representative, besides the lawyer (4); and by Social Services (3).

In Ireland, the options chosen were: the victim can be accompanied by a relative, a person in whom she/he trusts, such as a friend or similar or by victim support services (6); by a lawyer or Social Services (5); or by a legal representative besides the lawyer (3).

In Germany, in Malta and in Sweden the respondents selected all the available options.

In Hungary, one respondent selected the option of the lawyer as well as the option 'others'.

Hungary obs.:

"An adult person named by the victim may also be present at the procedural measures, at which the attendance of the victim is required or possible, if it does not hurt the interests of the proceedings"

n. When are victims allowed to be accompanied by a lawyer?

In Portugal, in the Basque Country and in Croatia, the majority of the respondents (and all the respondents in Hungary and in Sweden) answered 'In all procedural phases and acts', which includes the contacts with the police.

In Ireland, it was not possible to retrieve one tendential reply, since the answers were disparate: 'During the contacts with the Police' (3); 'In all procedural phases and acts' (2); 'Other' (6).

In Germany the respondent replied that this is possible during the contacts with the Police, the Prosecutor and/or the Judge, as well as during the victims inquires/statements.

In Malta the respondent selected the options 'In all procedural phases and acts', 'During the contacts with the Police', 'During the victim inquires/statements' and 'Other', specifying that "There are no contacts with the prosecutor or the Judge".

Ireland obs.:

Respondents made the following observations: "a person can always be accompanied but see previous response for potential interference"; "Not allowed unless specific type of questioning on previous sexual history"; "Lawyers can assist in the exercise of the right to be given reasons for a decision not to prosecute and a review of same"; "There is no right to be accompanied by a lawyer"; "At trial"

o. When are victims allowed to be accompanied by the person of their choice?

In Portugal, in the Basque Country, in Croatia and in Ireland, the majority of the respondents (and the respondents from Hungary and Sweden) answered 'In all procedural phases and acts', which include the contacts with the police. In Germany the respondent selected the option 'During the victim inquires/statements'. From Malta, the respondent selected the options 'In all procedural phases and acts', 'During the contacts with the Police' and 'During the victim inquires/statements'.

Intermediate conclusions:

- Finding 1 -** Disparity regarding the competent authority to receive complaints;
- Finding 2 -** Effectiveness of the right to receive a written acknowledgment of the complaint;
- Finding 3 -** Disparity regarding the type of document given to the victim;
- Finding 4 -** Obligation establishing the right of the victims to be accompanied by a person of his/her choice during the proceedings.

IV. RIGHT TO SUPPORT SERVICES

a. There is a provision establishing a legal obligation for the public prosecutor to refer victims to victim support services

In Portugal, the majority of respondents answered affirmatively, but only for certain types of crimes, and 3 of the respondents added that this is not a legal obligation but rather an orientation and possibility foreseen in article 15.3 of the Statute of the Victim. In Croatia the majority of the answers were affirmative, as well as the replies from the respondents from Hungary and Sweden. On the contrary, in Ireland and in the Basque Country, the majority of answers were negative, as well as the replies from the respondents from Germany and Malta.

Ireland obs.:

One participant from Ireland specified that the police should provide information on support services available to victims of crime, but there is not actually a right to access to support services.

b. What types of crimes are covered by the public prosecutor's obligation to refer victims to victim support services?

In Portugal respondents answered: domestic violence crimes (10), sexual violence crimes (5), human trafficking crimes (3), motivated crimes (3), crimes against women (3), crimes against children (3) and crimes against women and children (3).

In Ireland, the referral is made by the police in case of human trafficking crimes (there is a national referral mechanism in place) and sexual violence crimes.

In Croatia, 9 respondents skipped this question, but 1 replied that referral is due in face of victims of sexual violence crimes.

Participants from the remaining countries skipped this question.

c. In practice, public prosecutors refer victims of crime to victim support services

The majority of the answers in Portugal, in the Basque Country and in Croatia, as well as one respondent from Hungary, replied affirmatively to this question. Nevertheless, 2 respondents from Portugal and Croatia and 1 from the Basque Country answered negatively. The majority of the answers in Ireland were negative.

The respondent from Germany answered negatively, specifying that "They just provide Information". The respondent from Malta replied negatively as well, specifying that "Police officers do this". From the participant from Sweden the answer was the same, with the justification that "In practice the police refer the victim to victim support services".

Ireland obs.:

In practice, police shall provide information, but it is not really a referral: "There is no right to access support services. In Ireland victim support services are supplied by NGOs that are very under-resourced by statutory funding".

d. What model of referral is in place?

In Portugal 10 respondents answered that: 'The public prosecutor only provides information on the existing support services, leaving it to the victim the decision on whether or not to resort to such services'; whereas 11 replied that 'The public prosecutor provides information on the existing support services and has the obligation to ask the victim whether he/she authorizes the referral to victim support services'.

In the Basque Country, 3 respondents selected the first option, while 2 selected the second one and in Croatia 9 respondents selected the first option, whereas only 1 selected the second option. In Ireland, Germany, Sweden, Malta and Hungary all the respondents selected the first option.

e. How is/are the referral procedure(s) between public prosecution services and victim support services established?

The majority of respondents in Portugal answered that a referral procedure is established through protocols, agreed upon by prosecution services and victim support services (22) and only 7 answered that is established through law.

In Croatia, the majority of the respondents selected the option 'By the Law' (5) and 4 respondents selected the option 'Protocols agreed upon by prosecution services and victim support services'.

In the Basque Country and in Ireland the answers were quite imprecise. Nevertheless, the main idea retrieved from the replies is that in Ireland a referral procedure does not exist and in the Basque Country victim support services are voluntary services and referral protocols are not in place.

In Germany the respondent selected the option 'by the law'. In Hungary the respondent selected the option 'other', specifying that referral happens "through an order of the Prosecutor General". In Malta the respondent selected the option 'through protocols agreed upon by prosecution services and victim support services' and in Sweden the respondent selected the option 'by Regulations'.

f. What kind of information does the public prosecutor provide to victim support services?

The majority of the answers in Portugal were of the option 'The victim's contact details' (18), while 15 respondents selected the option 'The name of the victim', and 13 opted for 'The type of crime perpetrated against the victim', while 8 also chose 'The victims' address' and 'Basic facts about the case'. Only 3 participants selected the option 'Detailed facts about the case'.

In the Basque Country, respondents answered: 'The victim's contact details' (4); 'The name of the victim' 'The type of crime perpetrated against the victim' and 'Basic facts about the case' (3); and 'Detailed facts about the case' (1).

In Croatia 6 respondents selected the option 'Basic facts about the case' and 3 the options 'The victim's name', 'The victim's contact details' and 'The type of crime perpetrated against the victim'. Only 1 selected the option 'The victims' address'.

In Ireland, most of the observations express the idea that the Prosecutor does not provide information to victim support services and only 2 respondents selected the option 'The victim's name'.

The respondent from Germany pointed that this question is not applicable in his/her country. The respondent from Hungary selected the options 'The victim's name',

'The victim's contact details', 'The victims' address', 'The type of crime perpetrated against the victim' and 'Detailed facts about the case'. From Malta, the respondent selected the option 'other', stating that "The Police provides information". The participant from Sweden also chose the option 'other', specifying that "In practice, information is given by the police, not the public prosecutor".

g. Cooperation between public prosecutors and victims support services

The majority of respondents from Portugal, Ireland and the Basque Country and one respondent from Hungary (the other one skipped this question) answered that there is cooperation between public prosecutors and victim support services. In Croatia, the majority of the respondents, as well as the participants from Malta and Sweden, answered negatively. The respondent from Malta pointed that "the Police cooperates with victim support services". The respondent from Germany skipped this question.

h. Type of cooperation

The majority of the respondents in Portugal replied that public prosecutors request victim support staff to accompany victims (16); public prosecutors participate in the implementation of projects in cooperation with victim support organizations (15); public prosecutors request reports from victim support services (13); public prosecutors participate in training initiatives from victim support organizations (13); public prosecutors attend joint trainings with victim support workers (11); public prosecutors participate in awareness raising initiatives developed by victim support organizations (11) and public prosecutors participate in working groups together with victim support organizations (10). One respondent pointed that the only joint training that he was aware of was related to risk assessment and it was a recent one. 2 respondents added that there are victim support offices within *Departamentos de Investigação e Ação Penal*.

The majority of the respondents in the Basque Country answered that: public prosecutors request Victim Support workers to accompany victims (4); public prosecutors request reports from victim support services (3), public prosecutors attend joint trainings with victim support workers and participate in training initiatives from Victim Support organizations as well as in working groups together with victim support Organizations (2); and public prosecutors participate in the implementation of projects in cooperation with victim support organizations and that they participate in awareness raising initiatives developed by Victim Support Organizations (1). Moreover, 1 respondent replied that sometimes public prosecutors request referrals for support and care.

In Ireland, the majority of the respondents answered that: public prosecutors request reports from victim support services and participate in training initiatives from Victim Support Organizations (4); public prosecutors participate in awareness

raising initiatives developed by Victim Support Organizations (3); and public prosecutors request Victim Support workers to accompany victims, as well as to participate in the implementation of projects and in working groups in cooperation with victim support organizations (2).

The majority of the answers in Croatia were: public prosecutors participate in working groups together with victim support organizations (3); public prosecutors participate in training initiatives from victim support organizations as well as they participate in the implementation of projects in cooperation with victim support organizations (2); public prosecutors request victim support workers to accompany victims, prosecutors attend joint trainings with victim support workers and participate in awareness raising initiatives developed by victim support organizations (1).

In Germany the respondent selected the option 'other'. In Hungary the respondent selected the options 'public prosecutors attend joint trainings with victim support workers' and 'public prosecutors participate in training initiatives from victim support organizations'. The respondents from Malta and Sweden skipped this question.

Ireland obs.:

One of the respondents stated that "All the above can happen but is totally ad hoc" and one other pointed that there is a "national referral mechanism".

Germany obs.:

"Whether any of the mentioned points apply depends on the decision of the prosecutor. It is not possible to answer this for all prosecutor's offices. Some may have a close cooperation with support services, some may not".

i. Functioning of victim support services

The majority of the respondents in Portugal answered that victim support services function within the Public Prosecutor Office (15). 8 respondents selected the option 'Not applicable' and only 1 respondent selected the option 'Within courts'.

In Ireland, the majority of respondents selected the option 'Within courts' (4), while the options 'Within the Public Prosecutor Office' and 'Not applicable' were each chosen by 3 respondents.

In the Basque Country, the majority (3) of the respondents selected the options 'Not applicable' and 'Within the Public Prosecutor Office' (3), while 2 participants selected the option 'Within courts'.

In Croatia all respondents selected the option 'Within courts' and 1 respondent observed that it exists only in some national courts.

In Germany, Hungary and Malta the respondents selected the option 'Not applicable'. The respondent from Sweden selected the option 'Within courts'.

Portugal obs.:

One respondent answered that there is a pilot project in two counties and another stated that these services function outside the *Departamentos de Investigação e Ação Penal* and outside Courts.

Intermediate conclusions:

- Finding 1 -** Disparity regarding the referrals' formal base;
- Finding 2 -** No homogeneity in the way the responsible bodies refer victims to victim support services;
- Finding 3 -** Referrals to victim support services are not mandatory
- Finding 4 -** Uncertainty on the information(s) that ought to be provided to victim support services;
- Finding 5 -** Referral systems in place mainly to specific kinds of crime as a reflection of the tendential inexistence of victim support services with generic competences, *i.e.*, for all types of crimes.

V. RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

a. There is a legal provision to refer cases to Restorative Justice Services

In Portugal, the majority of respondents answered affirmatively to this question (13), while 10 respondents answered negatively. The same results were achieved in the Basque Country, where the majority answered affirmatively (3), while 2 answered negatively.

In Ireland and Croatia, the majority of respondents answered negatively (6), while 4 respondents answered affirmatively.

In Germany, Malta and in Sweden, the respondents answered negatively. In Hungary, one of the respondents answered affirmatively.

b. Source of that provision

In Ireland the source is the Law, although it only states that if a restorative justice scheme is being administered, certain protections will be set in place.

In Portugal, the source is equally the Law (Law no. 21/2007 - *Regime de Mediação Penal*). 1 respondent selected the option criminal procedure code.

From the Basque Country 4 respondents selected the option the law (*Protocolo coordinación, estatuto jurídico de la víctima del delito and legislación sobre mediación civil y mercantil*) and 1 respondent selected the option 'Both the Penal Code and the Penal Procedure Code'.

In Croatia the majority of the respondents selected the option 'criminal procedure code'. 2 respondents answered 'Law on Juvenile Courts'.

The majority of the respondents in Portugal, Croatia and Ireland replied that there is no other formal source establishing a provision to refer cases to Restorative Justice Services besides the one chosen.

In Portugal only 3 respondents answered affirmatively to this question and identified a protocol (2) and a rule (1). In Ireland 3 respondents answered affirmatively to this question but did not specify the source.

From Croatia, 2 respondents answered affirmatively to this question and one of them identified a rule.

In the Basque Country the majority of the respondents answered affirmatively to this question and identified a protocol.

In Hungary the respondent selected the option 'Both the Penal Code and the Penal Procedure Code'. Participants from other countries skipped this question.

Ireland obs.:

One respondent answered: "I don't know. I had to indicate either yes or no above. As I am not a practicing legal professional, I'm not 100% sure of all aspects of the legal provisions in this regard. There are a number of restorative practice initiatives but I'm not sure of their level of formality or whether they are pilots"; another participant answered: "Restorative justice can take place in cases involving juvenile offenders as part of a family conference. Family conferences have their basis in the Children's Act of 2001. However, the application of restorative justice itself is not referred to in the Act".

Croatia obs.:

One respondent answered the following: "As far as restorative justice and victims (mediation and settlement) are concerned, I know that there is such a possibility that a settlement can be made between the perpetrator with whom the victim must agree. However, I have no practical experience in this part of the criminal proceedings".

c. *There are other formal sources establishing a provision to refer cases to Restorative Justice Services*

In Portugal (19), Ireland (7) and Croatia (6), as well as within the respondents from Germany, Hungary and Malta, the majority of the answers were negative, with only 3 positive replies from Portugal and Ireland and 2 from Croatia.

The respondents who answered affirmatively in Portugal added that the formal source is a protocol (2) and a rule (1).

One of the respondents from Croatia who answered affirmatively replied that the formal source is a rule (1).

Regarding the formal source, respondents from Ireland who answered affirmatively chose the option 'Other' (3). Notwithstanding, only 1 specified ("legislation"), because the other 2 did not know the answer.

In the Basque Country the majority of the respondents answered positively (3), while only 1 answered negatively. The respondents answered that the formal source is a protocol.

The respondent from Sweden also answered positively and identified the formal source as a Law (*Brottskadelagen*) which enables victims to contact restorative justice services.

Ireland obs.:

"Section 26 of the Criminal Justice (Victims of Crime) Act 2017"; "The Children Act 2001 does provide a process under statute for accused persons who are children but again not very developed".

The Basque Country obs.:

"The Statute of the Victim, expressly, and the needs assessment that the VSS can make, where all those practices that are most favorable for the recovery of the victim will appear, being able to propose the referral, even if it is voluntarily for the parties involved in the conflict or in the networks that may participate"

d. *Possibility of referring cases to Restorative Justice provided through any other way*

From Portugal, 8 respondents selected the option 'Soft law', while 11 respondents selected the option 'Other', but the average (5) of the respondents did not know of another way and 5 replied that this possibility does not exist.

In Ireland only 1 respondent selected the option 'Soft law', while 6 respondents selected the option 'Other'.

In the Basque Country only 1 respondent answered to this question and selected the option 'Soft law', specifying that this soft law has "an inter-institutional nature, as a previous step to a normative development that values the usefulness of alternative means of conflict resolution, beyond the traditional adversarial justice".

5 respondents from replied to this question: 2 selected the option 'Soft law' and the other 3 selected the option 'Other'. In the observations' space, one of the participants explained that he did not know the answer and one other wrote that "in the Republic of Croatia, the system of restorative justice is almost non-existent".

In Germany the respondent answered that this question is not applicable. In Hungary and Malta, the respondents selected the option 'Soft law'. The respondent from Sweden skipped this answer.

Ireland obs.:

"The Probation Service can facilitate victim/offender mediation but there is no requirement under the law"; "A judge may seek the view of the victim in advance of sentencing"; "At the victim's request. This is sometimes facilitated by the Probation Service"; and "In juvenile cases restorative justice processes may be used by the police".

e. Public prosecutors have an obligation to refer cases to Restorative Justice Services

In Portugal, the Basque Country, Ireland and Croatia, the majority of the respondents answered negatively to this question.

However, in Portugal 6 of the respondents answered affirmatively and one respondent justified it with the affirmation that the decision of referral requires an opportunity judgment. In this country, the majority of the respondents answered that this obligation does not cover all types of crimes, but only the ones foreseen in Article 2 of *Lei de Mediação Penal*. Furthermore, public prosecutors are only obliged to refer to Restorative Justice Services cases of adult victims (3) and youngsters (1). According to the Portuguese legal system, two respondents answered that Restorative justice may only be applied to semi-public and private crimes, except those that are punishable by a sentence greater than 5 years, crimes against sexual freedom and self-determination or crimes of embezzlement, corruption or influence peddling.

In Croatia, only 3 respondents answered affirmatively, being that one respondent answered that the Court Victims' Department also has this obligation. Nevertheless, through the analysis of the Croatian results, it was possible to conclude that in this legal system the referral is only a possibility, not an obligation. In this country, the majority of the respondents answered that this does not cover all types of victims,

but only youngsters (3), victims of juvenile offenders. 1 respondent answered that public prosecutors are only obliged to refer to Restorative Justice Services cases related to crimes against children (1) and sexual violence crimes (1).

In the Basque Country only 1 respondent answered affirmatively. In this country, the majority of the respondents replied that this obligation does not cover all types of victims, but only youngsters victims of crime.

In Germany and Hungary, the respondents answered affirmatively (the other respondent from Hungary skipped this question). In Germany this obligation covers all types of victims, since public prosecutors are obliged to refer to Restorative Justice Services regardless of the type of victim. The one respondent from Hungary answered that this obligation does not cover all type of victims. The respondents from Malta and Sweden replied negatively and stated that this obligation does not cover all types of victims.

Basque Country obs.:

“Public prosecutors have to inform when any of the parties requests to participate in these services and, in case of minor’s jurisdiction, where the principle of opportunity governs, he can refer it directly, even before referring it to the judicial body”.

Germany obs.:

“At every stage of the proceedings the prosecution and the court are to examine whether it is possible to reach a mediated agreement between the accused and the aggrieved person”.

Hungary obs.:

“According to the main rule, the Restorative Justice Service may only be applied in certain types of crimes defined by Law, in particular misdemeanors committed against life, physical integrity or health, personal freedom, human dignity and fundamental rights, any traffic offense, offenses against property or against intellectual property rights, or any crime punishable by imprisonment not exceeding three years”.

f. *Minimum age of the victims for the cases to be referred to Restorative Justice Services*

In Portugal: 8 respondents answered it is 16; 3 answered 18; 4 answered 12; 1 answered 29; and 5 replied that the question was not applicable.

In Ireland, the majority of the respondents answered that it was not applicable.

In the Basque Country 3 respondents answered it is 18 and 1 participant replied 14.

In Croatia only 1 respondent answered, indicating 14, while the others either didn't know or replied that it was not applicable.

The respondent from Germany wrote: "No threshold". Likewise, in Sweden, where there is no minimum age. The respondent from Hungary which replied answered that the minimum age is 14. In Malta the respondent wrote indicated 14 to 16.

g. Restorative Justice Services are/are not available for all types of crimes

In Portugal, the Basque Country, Ireland and Croatia, as well as within the respondents from Hungary and Sweden, the majority of the answers were negative.

In Portugal, one respondent answered that restorative justice is only available for crimes foreseen at Article 2 of *Lei de Mediação Penal*.

In Ireland one respondent answered that they can be but there is a special sensibility (or should be) in respect of sexual crimes.

In Croatia, one respondent answered that it is only available for criminal offenses punishable by imprisonment for up to 5 years.

In Germany and in Malta the respondents answered affirmatively.

Germany obs.:

"In practice mostly used in respect of bodily injury, insult, robbery".

h. Application of restorative justice

7 respondents from Ireland replied that restorative justice is applicable to youngsters (one respondent: "12 - 18 years"; another respondent: "Some adolescents are offered restorative justice by the police, not the prosecutor") and 5 respondents answered that restorative justice is applicable to adults.

In Portugal, 17 respondents answered that restorative justice is applicable to adults and 12 respondents answered that restorative justice is applicable to youngsters (one respondent indicated the age of 12).

In the Basque Country 5 respondents answered that restorative justice is applicable to adults and 4 respondents answered that restorative justice is applicable to youngsters.

6 respondents from Croatia answered that restorative justice is applicable to youngsters (one stated: "From 14 to 18 years, but also up to 21 years if juvenile law applies"; and one other pointed: "Probably up to 18 years, exceptionally 21 years") and 4 respondents answered that restorative justice is applicable to adults.

One respondent from Croatia added that “In the Republic of Croatia, the system of restorative justice is almost non-existent” and one other answered that they do “not see such a system in the Republic of Croatia, unless we are talking about financial compensation for victims under a special law”. Another respondent answered that it is available to all victims.

In Germany, Hungary, Malta and Sweden the respondents selected both options of ‘Adults’ and ‘Youngsters’.

Ireland obs.:

“Restorative justice in Ireland is patchy and not structured in legislation”.

i. When can Restorative justice services intervene?

In Portugal the majority (11) of the respondents selected the option ‘Only during the investigation phase lead by the Prosecutor’. 3 participants selected the option ‘At any stage of the criminal process’, 2 selected the option ‘At any stage of the criminal process and also after sentencing’ and 2 others answered ‘During the investigation phase’ (inquiry).

In Ireland only 1 respondent selected the option ‘At any stage of the criminal process and also after sentencing’. Others wrote: “Only if referred by the judge”; “Sentencing”; “Upon admission of guilt by perpetrator”; “After a guilty verdict/plea”; “Only after conviction, prior to sentencing”. Some added that “Restorative justice is very underdeveloped in Ireland” and “there is no restorative justice intervention except in juvenile cases facilitated by the police”.

From the Basque Country, the options ‘At any stage of the criminal process’ and ‘Only during the investigation phase lead by the Prosecutor’ were selected by 3 respondents and the options ‘At any stage of the criminal process and also after sentencing’ and ‘Only during the investigation phase lead by the Judge’, by 1 respondent each.

In Croatia, respondents answered ‘At any stage of the criminal process’ (3), ‘Only during the investigation phase lead by the Prosecutor’ (2) and ‘At any stage of the criminal process and also after sentencing’ (1).

In Germany the respondent selected the option ‘At any stage of the criminal process’. One respondent from Hungary selected the option ‘Other’ and wrote “During the investigation phase before the charge being filled by the Prosecutor”. In Malta, the respondent selected the options ‘At any stage of the criminal process’ and ‘At any stage of the criminal process and also after sentencing’. In Sweden the respondent selected the option ‘Other’ and added: “At no time during the criminal process”.

j. Who refers/sends/requires the cases for the Restorative Justice Services?

In Portugal, the majority of the participants selected the option 'The prosecutor' (16), being that the options 'Victims support services', 'Victim' and 'Victim and the offender, through a joint requirement' were selected by 3 respondents. The option 'The judge' was chosen by 2 respondents and the options 'The police' and 'The offender' only by 1 respondent.

In Ireland the majority of the respondents selected the option 'The judge' (6) and the options 'The police' and 'The victim and the offender, through a joint requirement' were each selected by 1 respondent. One participant answered that "It can be a judge at sentencing or probation services after sentencing". Another respondent added that "Restorative justice schemes provided for in section 26 of Criminal Justice (victims of crime) Act 2017 but not really operational". Lastly, one answered that "Only in juvenile cases, where a family conference has been arranged".

In the Basque Country, 2 respondents selected the option 'The judge', while only one answered 'The public prosecutor'. One respondent answered that victim support services may also do this referral. Other respondent replied that "If both parties request it, it will have to be verified by the examining body (the Court in the jurisdiction of adults – after a request from the judicial body or at the request of both parties – and the Attorney General in minors' jurisdiction)".

Only 3 participants from Croatia selected the option 'Prosecutor', while one respondent answered that "They can have a support system, and the police, and the attorney general, and the court, and the victim. There is no common requirement". Another respondent answered that "There are no restorative justice services".

In Germany the respondent wrote: "Prosecutor or judge". In Hungary the respondent that replied wrote that "The cases are referred for the Restorative Justice Services by the Prosecutor, upon the motion of the victim or the offender, and with the consent of the other". In Malta the respondent selected the option 'The judge', while in Sweden the respondent selected the option 'The victim'.

k. There are protection measures available for the Restorative Justice Services' intervention

The majority of the respondents in Portugal answered negatively to this question (18), while only 5 answered affirmatively. The ones who answered affirmatively, specified: 'The Restorative Justice Services are only used if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time' (5); 'Before agreeing to participate in the Restorative Justice process, the victim is provided with full and unbiased information about that process and the potential outcomes

as well as information about the procedures for supervising the implementation of any agreement' (2); 'The Restorative Justice Services only intervene if the offender has acknowledged the basic facts of the case' (2); and 'Discussions in Restorative Justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest' (1).

In Ireland, it was not possible to retrieve a majority result, since 5 respondents answered negatively, while other 5 replied positively. The majority of the respondents answered: 'The Restorative Justice Services are only used if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time' (5); 'Before agreeing to participate in the Restorative Justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement' (4); 'Any agreement is arrived at voluntarily and may be taken into account in all further criminal proceedings' (3); 'The Restorative Justice Services only intervene if the offender has acknowledged the basic facts of the case' (2); and 'Discussions in Restorative Justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest' (2). One respondent specified that "The programs in Ireland are ad hoc and have no proper framework" and another indicated "Details contained in Section 26 of the Criminal Justice (Victims of Crime) Act 2017".

In the Basque Country the majority of the respondents answered affirmatively to this question, specifying that 'Before agreeing to participate in the Restorative Justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement' (3), while the other options were each selected by one respondent.

The majority (9) of respondents in Croatia answered negatively to this question, while only 1 respondent answered affirmatively, specifying that 'Before agreeing to participate in the Restorative Justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement'. One respondent answered that they did "not know what measures are meant, but there is psychological and other professional help, such as medical, etc. Precautions, e.g. bans on contact with the victim, are determined by the court or the state attorney's office and not by restorative justice".

The respondent from Germany answered negatively, such as the Maltese and the Swedish respondents did. The Hungarian respondent who replied answered positively, selecting all the available options.

Ireland obs.:

One respondent answered that “Protection measures have been included in the Criminal Justice (Victims of Crime) Act 2017 but, as said above, restorative justice is used in hardly any cases”.

1. In the context of the Restorative Justice Services' intervention, there are personalized protection measures for certain victims

The majority of respondents from Portugal answered negatively to this question (16), while only 7 answered affirmatively, specifying that these measures are personalized for victims of domestic violence (6); for vulnerable groups of victims, e.g. minors, women and people with disabilities (5); for victims of gender-based crimes (4) and for victims of sexual crimes (4). Participants from this country specified that for groups of vulnerable victims ‘Mediators/facilitators must have specific training to conduct restorative practices in the context of this crime’ (4) and ‘Psychological evaluation, in order to check if the victim is prepared to be confronted with her/his offender’ (1). For victims of domestic violence ‘Mediators/facilitators must have specific training to conduct restorative practices in the context of this crime’ (3), ‘Psychological evaluation, in order to check if the victim is prepared to be confronted with her/his offender’ (2) and ‘Accompanying measures of the offender’ (1). For victims of gender-based crimes ‘Mediators/facilitators must have specific training to conduct restorative practices in the context of this crime’ (2), ‘Psychological evaluation, in order to check if the victim is prepared to be confronted with her/his offender’ (2). For victims of sexual crimes ‘Psychological evaluation, in order to check if the victim is prepared to be confronted with her/his offender’ (3) and ‘Mediators/facilitators must have specific training to conduct restorative practices in the context of this crime’ (1).

In Ireland the majority of the respondents (7) also replied negatively to this question, whereas only 3 respondents answered affirmatively. Each of these 3 respondents selected one type of victims from the survey: 1 respondent specified that for groups of vulnerable victims, victims of domestic violence, victims of gender-based crimes and victims of sexual violence crimes ‘Mediators/facilitators must have specific training to conduct restorative practices in the context of this crime’.

On the contrary, the majority of the respondents in the Basque Country answered affirmatively to this question, specifying that these measures are personalized for vulnerable victims, e.g. minors, women and people with disabilities. Respondents specified that for vulnerable groups of victims it was due: ‘Psychological evaluation, in order to check if the victim is prepared to be confronted with her/his offender’

(2) and “Mediators/facilitators must have specific training to conduct restorative practices in the context of this crime’ (1).

All the respondents in Croatia answered negatively to this question. One respondent replied that “They depend on the specific victim and are determined for each person separately”.

The German, the Hungarian and the Swedish respondents answered negatively. Nevertheless, the Hungarian respondent answered that there are personalized protection measures for victims of domestic violence crimes: ‘Mediators/facilitators must have specific training to conduct restorative practices in the context of this crime’. The Maltese respondent answered positively and selected all options available.

Intermediate conclusions:

- Finding 1** - Unfamiliarity with Restorative Justice;
- Finding 2** - There are no mandatory referrals;
- Finding 3** - Differentiated referral competence;
- Finding 4** - Ambivalence on safeguards.

VI. RIGHTS TO PROTECTION AND INDIVIDUAL ASSESSMENT

a. Availability of protection measures

In Croatia, Ireland, Portugal, the Basque Country, Germany, Hungary and Malta, the majority of respondents answered affirmatively.

Only in Sweden did the respondent answer negatively.

b. Source of that provision

The majority of the respondents from Portugal answered that the source of that provision is the Law (11), while 10 respondents selected the option ‘Penal Code’, 3 selected the option ‘Penal Code and Penal Procedure Code’ and 1 identified another source, a resolution from the Council of Ministers. These Laws are: *Lei n.º 112/2009 de 16 de Setembro* (Law on victims of Domestic Violence), *Lei n.º 130/2015, de 4 de Setembro* (Victims Statute) and *Lei n.º 93/99, de 14 de Julho* (witness protection law).

In Ireland the majority of the respondents also answered that the source of that provision is the Law (5), while only 1 selected the option ‘Penal Code’. The Law in question is The Criminal Justice Victims of Crime Act 2017.

The same results were achieved in the Basque Country, where 3 respondents selected the option 'The Law', while only 1 selected the option 'Penal Procedure Code' and 1 selected the option 'Penal Procedure Code and Penal Code'. One respondent identified protocols and an Organic Law of Criminal Responsibility of Minors as a source as well. The Laws are: *Ley 4/2015, de 27 de abril* (Victims Statute), Spanish Constitution, *Ley Orgánica del Poder Judicial*, *Ley de Enjuiciamiento Criminal* and *Ley Orgánica de Responsabilidad Penal del Menor*.

On the contrary, in Croatia the source of that provision is mainly the 'Criminal procedure code' (7), an 'Ordinance on the manner of conducting an individual victim assessment' (3) and 'Both the Penal Code and the Penal Procedure Code' (2) and 'a Law' (2).

The German respondent and one respondent from Hungary selected the option 'The Penal Procedure Code'. The German respondent also selected the option 'A law', specifying 'Law on Protection against Violence'. The Maltese respondent selected the option "The Penal Code". The respondent from Sweden skipped this question.

c. Public prosecutors have a role in the application of any of the following measures

The respondents answered in the following away:

PORTUGAL	
Measures	Sample 23
Safe houses	14
Psychological assistance	15
The privilege to not disclose victim's identity in the media	12
Protection orders	23
Restraining orders	20
Precautionary restraining orders	15
Record of a statement for later use (prior to trial)	23
Anonymity of the report regarding the victim's address	13
Anonymity of the report regarding victim's identity	12
Anonymous inquiring	9
Offenders' contact ban	22
Offenders' area ban	22
Certain locations ban	20
Assignment of an emergency telephone to the victim	18
Police protection	20
Covered residence	15
New identity	10
Protection under a restraining or exclusion order	17

IRELAND	
Measures	Sample 10
Safe houses	0
Psychological assistance	0
The privilege to not disclose victim's identity in the media	7
Protection orders	2
Restraining orders	2
Precautionary restraining orders	1
Record of a statement for later use (prior to trial)	2
Anonymity of the report regarding the victim's address	3
Anonymity of the report regarding victim's identity	3
Anonymous inquiring	1
Offenders' contact ban	2
Offenders' area ban	0
Certain locations ban	0
Assignment of an emergency telephone to the victim	0
Police protection	0
Covered residence	0
New identity	0
Protection under a restraining or exclusion order	2

CROATIA	
Measures	Sample 10
Safe houses	0
Psychological assistance	0
The privilege to not disclose victim's identity in the media	4
Protection orders	6
Restraining orders	6
Precautionary restraining orders	4
Record of a statement for later use (prior to trial)	1
Anonymity of the report regarding the victim's address	1
Anonymity of the report regarding victim's identity	1
Anonymous inquiring	1
Offenders' contact ban	5
Offenders' area ban	5
Certain locations ban	6
Assignment of an emergency telephone to the victim	2
Police protection	1
Covered residence	1
New identity	1
Protection under a restraining or exclusion order	2

THE BASQUE COUNTRY	
Measures	Sample 5
Safe houses	2
Psychological assistance	1
The privilege to not disclose victim's identity in the media	3
Protection orders	4
Restraining orders	4
Precautionary restraining orders	3
Record of a statement for later use (prior to trial)	3
Anonymity of the report regarding the victim's address	2
Anonymity of the report regarding victim's identity	3
Anonymous inquiring	3
Offenders' contact ban	3
Offenders' area ban	2
Certain locations ban	3
Assignment of an emergency telephone to the victim	2
Police protection	1
Covered residence	1
New identity	2
Protection under a restraining or exclusion order	3

GERMANY	
Measures	Sample 1
Safe houses	0
Psychological assistance	0
The privilege to not disclose victim's identity in the media	1
Protection orders	0
Restraining orders	0
Precautionary restraining orders	0
Record of a statement for later use (prior to trial)	1
Anonymity of the report regarding the victim's address	1
Anonymity of the report regarding victim's identity	1
Anonymous inquiring	0
Offenders' contact ban	0
Offenders' area ban	0
Certain locations ban	0
Assignment of an emergency telephone to the victim	0
Police protection	1
Covered residence	1
New identity	1
Protection under a restraining or exclusion order	0

HUNGARY	
Measures	Sample 1 (the other respondent skipped this answer)
Safe houses	0
Psychological assistance	0
The privilege to not disclose victim's identity in the media	1
Protection orders	1
Restraining orders	1
Precautionary restraining orders	0
Record of a statement for later use (prior to trial)	1
Anonymity of the report regarding the victim's address	1
Anonymity of the report regarding victim's identity	1
Anonymous inquiring	1
Offenders' contact ban	1
Offenders' area ban	0
Certain locations ban	1
Assignment of an emergency telephone to the victim	0
Police protection	1
Covered residence	1
New identity	0
Protection under a restraining or exclusion order	0

SWEDEN	
Measures	Sample 1
Safe houses	0
Psychological assistance	0
The privilege to not disclose victim's identity in the media	0
Protection orders	0
Restraining orders	0
Precautionary restraining orders	0
Record of a statement for later use (prior to trial)	0
Anonymity of the report regarding the victim's address	0
Anonymity of the report regarding victim's identity	0
Anonymous inquiring	0
Offenders' contact ban	1
Offenders' area ban	1
Certain locations ban	1
Assignment of an emergency telephone to the victim	0
Police protection	0
Covered residence	0
New identity	0
Protection under a restraining or exclusion order	0

MALTA
Obs.: The Maltese respondent skipped this question and wrote "The Public Prosecutor does not do this".

One respondent from Portugal answered “In particular, in Portugal, the interdiction and restriction measures provided in the Istanbul Convention are neither transposed nor possible” and another respondent answered that the role of the public prosecutor, in most of the cases, is not decisive, but instead one of initiative, of promotion”.

In Ireland, one respondent answered that “Prosecutors may request of a judge but sometimes these are civil applications through family law courts and sometimes police act as prosecutors (in domestic violence cases). I do not know what the official procedure is for witness protection and new identity but think this is dealt with primarily though the police” and another participant stated that “Offenders’ contact ban/protection under a restraining/exclusion order only where the crime of harassment contrary to section 10 of the Non-Fatal Offences Against the Person Act, 1997 is being charged”.

In Croatia one respondent answered that “It is possible to determine the secrecy of the investigation, i.e. the procedure, so the data should not reach the media. If that happens and he finds out who betrayed them, he commits a crime”.

d. National application of measures

PORTUGAL

Safe houses		
All types of victims	14,29%	2
Victims of serious crimes	14,29%	2
Victims of sexual violence crimes	21,43%	3
Victims of domestic violence crimes	85,71%	12
Victims of gender-based crimes	28,57%	4
Victims of murder/attempted murder crimes	14,29%	2
Victims of terrorism crimes	14,29%	2
Victims of forced marriage crimes	14,29%	2
Child victims	14,29%	2
Other (please specify)	7,14%	1
	Answered	14

Other: Especially vulnerable victims.

Psychological assistance		
All types of victims	60,00%	9
Victims of serious crimes	20,00%	3
Victims of sexual violence crimes	13,33%	2
Victims of domestic violence crimes	33,33%	5
Victims of gender-based crimes	13,33%	2
Victims of murder/attempted murder crimes	6,67%	1
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	20,00%	3
Other (please specify)	6,67%	1
	Answered	15

Other: Especially vulnerable victims.

The privilege to not disclose victim's identity in the media		
All types of victims	50,00%	6
Victims of serious crimes	16,67%	2
Victims of sexual violence crimes	25,00%	3
Victims of domestic violence crimes	25,00%	3
Victims of gender-based crimes	8,33%	1
Victims of murder/attempted murder crimes	8,33%	1
Victims of terrorism crimes	8,33%	1
Victims of forced marriage crimes	8,33%	1
Child victims	41,67%	5
Other (please specify)	16,67%	2
	Answered	12

Other: Child victims and especially vulnerable victims.

Protection orders		
All types of victims	39,13%	9
Victims of serious crimes	30,43%	7
Victims of sexual violence crimes	21,74%	5
Victims of domestic violence crimes	60,87%	14
Victims of gender-based crimes	17,39%	4
Victims of murder/attempted murder crimes	17,39%	4
Victims of terrorism crimes	17,39%	4
Victims of forced marriage crimes	13,04%	3
Child victims	26,09%	6
Other (please specify)	4,35%	1
	Answered	23

Other: Especially vulnerable victims and witnesses under witness protection.

Restraining orders		
All types of victims	35,00%	7
Victims of serious crimes	55,00%	11
Victims of sexual violence crimes	40,00%	8
Victims of domestic violence crimes	65,00%	13
Victims of gender-based crimes	30,00%	6
Victims of murder/attempted murder crimes	35,00%	7
Victims of terrorism crimes	30,00%	6
Victims of forced marriage crimes	25,00%	5
Child victims	35,00%	7
Other (please specify)	5,00%	1
	Answered	20

Other: The restraining measure is only possible due to the prison frame with which a certain crime is punishable, not depending, therefore, on the quality of the victim, but on the penal frame.

Precautionary restraining orders		
All types of victims	33,33%	5
Victims of serious crimes	40,00%	6
Victims of sexual violence crimes	26,67%	4
Victims of domestic violence crimes	40,00%	6
Victims of gender-based crimes	6,67%	1
Victims of murder/attempted murder crimes	13,33%	2
Victims of terrorism crimes	13,33%	2
Victims of forced marriage crimes	6,67%	1
Child victims	13,33%	2
Other (please specify)	13,33%	2
	Answered	15

Other: If the measure is understood as an administrative caution order there is no law. If it is understood as a coercion measure, it applies to all types of victims.

Record of a statement for later use (prior to trial)		
All types of victims	17,39%	4
Victims of serious crimes	43,48%	10
Victims of sexual violence crimes	52,17%	12
Victims of domestic violence crimes	56,52%	13
Victims of gender-based crimes	13,04%	3
Victims of murder/attempted murder crimes	13,04%	3
Victims of terrorism crimes	13,04%	3
Victims of forced marriage crimes	8,70%	2
Child victims	47,83%	11
Other (please specify)	17,39%	4
	Answered	23

Other: Especially vulnerable victims, victims of sexual crimes, victims of domestic violence, absence abroad, minor victims or for those who are ill.

Anonymity of the report regarding victim's address		
All types of victims	61,54%	8
Victims of serious crimes	15,38%	2
Victims of sexual violence crimes	7,69%	1
Victims of domestic violence crimes	30,77%	4
Victims of gender-based crimes	7,69%	1
Victims of murder/attempted murder crimes	7,69%	1
Victims of terrorism crimes	7,69%	1
Victims of forced marriage crimes	7,69%	1
Child victims	7,69%	1
Other (please specify)	7,69%	1
	Answered	13

Other: In case of need of protection - protection of witnesses Law.

Anonymity of the report regarding victim's identity		
All types of victims	58,33%	7
Victims of serious crimes	16,67%	2
Victims of sexual violence crimes	8,33%	1
Victims of domestic violence crimes	25,00%	3
Victims of gender-based crimes	8,33%	1
Victims of murder/attempted murder crimes	8,33%	1
Victims of terrorism crimes	8,33%	1
Victims of forced marriage crimes	8,33%	1
Child victims	8,33%	1
Other (please specify)	16,67%	2
	Answered	12

Other: In case of need of protection - protection of witnesses Law.

Anonymous inquiring		
All types of victims	77,78%	7
Victims of serious crimes	33,33%	3
Victims of sexual violence crimes	11,11%	1
Victims of domestic violence crimes	11,11%	1
Victims of gender-based crimes	11,11%	1
Victims of murder/attempted murder crimes	11,11%	1
Victims of terrorism crimes	11,11%	1
Victims of forced marriage crimes	11,11%	1
Child victims	11,11%	1
Other (please specify)	0,00%	0
	Answered	9

Offenders' contact ban		
All types of victims	31,82%	7
Victims of serious crimes	54,55%	12
Victims of sexual violence crimes	36,36%	8
Victims of domestic violence crimes	54,55%	12
Victims of gender-based crimes	13,64%	3
Victims of murder/attempted murder crimes	22,73%	5
Victims of terrorism crimes	13,64%	3
Victims of forced marriage crimes	13,64%	3
Child victims	18,18%	4
Other (please specify)	4,55%	1
	Answered	22

Other: This measure is only possible due to the prison frame with which a given crime is punishable, not depending, therefore, on the quality of the victim, but on the penal frame.

Offenders' area ban		
All types of victims	31,82%	7
Victims of serious crimes	40,91%	9
Victims of sexual violence crimes	27,27%	6
Victims of domestic violence crimes	54,55%	12
Victims of gender-based crimes	13,64%	3
Victims of murder/attempted murder crimes	22,73%	5
Victims of terrorism crimes	13,64%	3
Victims of forced marriage crimes	13,64%	3
Child victims	13,64%	3
Other (please specify)	4,55%	1
	Answered	22

Other: This measure is only possible due to the prison frame with which a given crime is punishable, not depending, therefore, on the quality of the victim, but on the penal frame.

Certain locations ban		
All types of victims	35,00%	7
Victims of serious crimes	45,00%	9
Victims of sexual violence crimes	35,00%	7
Victims of domestic violence crimes	45,00%	9
Victims of gender-based crimes	15,00%	3
Victims of murder/attempted murder crimes	25,00%	5
Victims of terrorism crimes	15,00%	3
Victims of forced marriage crimes	15,00%	3
Child victims	20,00%	4
Other (please specify)	5,00%	1
	Answered	20

Other: This measure is only possible due to the prison frame with which a given crime is punishable, not depending, therefore, on the quality of the victim, but on the penal frame.

Assignment of emergency telephone to the victim		
All types of victims	0,00%	0
Victims of serious crimes	11,11%	2
Victims of sexual violence crimes	11,11%	2
Victims of domestic violence crimes	100,00%	18
Victims of gender-based crimes	27,78%	5
Victims of murder/attempted murder crimes	5,56%	1
Victims of terrorism crimes	5,56%	1
Victims of forced marriage crimes	5,56%	1
Child victims	5,56%	1
Other (please specify)	27,78%	5
	Answered	18

Other: Victims of stalking (4) and Law nr. 112/2009.

Police protection		
All types of victims	50,00%	10
Victims of serious crimes	35,00%	7
Victims of sexual violence crimes	20,00%	4
Victims of domestic violence crimes	40,00%	8
Victims of gender-based crimes	15,00%	3
Victims of murder/attempted murder crimes	15,00%	3
Victims of terrorism crimes	15,00%	3
Victims of forced marriage crimes	5,00%	1
Child victims	15,00%	3
Other (please specify)	5,00%	1
	Answered	20

Other: In case of need of protection - protection of witnesses Law.

Covered residence		
All types of victims	33,33%	5
Victims of serious crimes	46,67%	7
Victims of sexual violence crimes	20,00%	3
Victims of domestic violence crimes	46,67%	7
Victims of gender-based crimes	13,33%	2
Victims of murder/attempted murder crimes	13,33%	2
Victims of terrorism crimes	20,00%	3
Victims of forced marriage crimes	6,67%	1
Child victims	20,00%	3
Other (please specify)	6,67%	1
	Answered	15

Other: In case of need of protection - protection of witnesses Law.

New identity		
All types of victims	30,00%	3
Victims of serious crimes	40,00%	4
Victims of sexual violence crimes	10,00%	1
Victims of domestic violence crimes	10,00%	1
Victims of gender-based crimes	10,00%	1
Victims of murder/attempted murder crimes	10,00%	1
Victims of terrorism crimes	30,00%	3
Victims of forced marriage crimes	10,00%	1
Child victims	10,00%	1
Other (please specify)	30,00%	3
	Answered	10

Other: In case of need of protection - protection of witnesses Law.

Protection under a restraining or exclusion order		
All types of victims	52,94%	9
Victims of serious crimes	35,29%	6
Victims of sexual violence crimes	17,65%	3
Victims of domestic violence crimes	23,53%	4
Victims of gender-based crimes	5,88%	1
Victims of murder/attempted murder crimes	11,76%	2
Victims of terrorism crimes	11,76%	2
Victims of forced marriage crimes	5,88%	1
Child victims	11,76%	2
Other (please specify)	23,53%	4
	Answered	17

Other:

- What the Penal Procedure Code determines about enforcement measures;
- What the Penal Procedure Code determines about the application of protective measures;
- Conditions determined by the CPP;
- This measure is only possible due to the prison frame with which a given crime is punishable, not depending, therefore, on the quality of the victim, but on the penal frame.

CROATIA

The privilege to not disclose victim's identity in the media		
All types of victims	75,00%	3
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	50,00%	2
Other (please specify)	25,00%	1
	Answered	4

Other: For victims for whom special protection measures have been established.

Protection orders		
All types of victims	83,33%	5
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	16,67%	1
Victims of domestic violence crimes	16,67%	1
Victims of gender-based crimes	16,67%	1
Victims of murder/attempted murder crimes	16,67%	1
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	16,67%	1
Other (please specify)	16,67%	1
	Answered	6

Other: They are applied against the defendant in any criminal offense, i.e. any victim.

Restraining orders		
All types of victims	100,00%	6
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	6

Precautionary restraining orders		
All types of victims	100,00%	4
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	4

Record of a statement for later use (prior to trial)		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Anonymity of the report regarding victim's address		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Anonymity of the report regarding victim's identity		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Anonymous inquiring		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Offenders' contact ban		
All types of victims	100,00%	5
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	20,00%	1
Victims of domestic violence crimes	20,00%	1
Victims of gender-based crimes	20,00%	1
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	20,00%	1
Other (please specify)	0,00%	0
	Answered	5

Offenders' area ban		
All types of victims	60,00%	3
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	20,00%	1
Victims of domestic violence crimes	40,00%	2
Victims of gender-based crimes	20,00%	1
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	20,00%	1
	Answered	5

Other: For criminal offenses of violence against a person with whom the defendant lives in a joint household, but a ban on approaching regardless of the offense in question.

Certain locations ban		
All types of victims	100,00%	6
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	6

Assignment of emergency telephone to the victim		
All types of victims	100,00%	2
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	50,00%	1
	Answered	2

Other: National call center for victims of crime and misdemeanors, for victims and family members. Legal, emotional, psychological and other support.

Police protection		
All types of victims	0,00%	0
Victims of serious crimes	100,00%	1
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	100,00%	1
Victims of terrorism crimes	100,00%	1
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Covered residence		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

New identity		
All types of victims	0,00%	0
Victims of serious crimes	100,00%	1
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	100,00%	1
Victims of terrorism crimes	100,00%	1
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Protection under a restraining or exclusion order		
All types of victims	100,00%	2
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	2

Note: Regarding most of the questions on specific measures, 9, 8 or 5 respondents did not reply.

THE BASQUE COUNTRY

Safe houses		
All types of victims	50,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	50,00%	1
Victims of gender-based crimes	50,00%	1
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	50,00%	1
Other (please specify)	50,00%	1
	Answered	2

Other: Based on the risk assessment with respect to the victim.

Note: 3 respondents skipped the question.

Psychological assistance		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	100,00%	1
	Answered	1

Other: Victims according to the necessity.

Note: 4 respondents skipped the question.

The privilege to not disclose victim's identity in the media		
All types of victims	66,67%	2
Victims of serious crimes	33,33%	1
Victims of sexual violence crimes	33,33%	1
Victims of domestic violence crimes	33,33%	1
Victims of gender-based crimes	33,33%	1
Victims of murder/attempted murder crimes	33,33%	1
Victims of terrorism crimes	33,33%	1
Victims of forced marriage crimes	0,00%	0
Child victims	33,33%	1
Other (please specify)	33,33%	1
	Answered	3

Other: Always and especially in vulnerable people, according to the definition of the Brasilia Convention.

Note: 2 respondents skipped the question.

Protection orders		
All types of victims	50,00%	2
Victims of serious crimes	25,00%	1
Victims of sexual violence crimes	25,00%	1
Victims of domestic violence crimes	25,00%	1
Victims of gender-based crimes	50,00%	2
Victims of murder/attempted murder crimes	25,00%	1
Victims of terrorism crimes	25,00%	1
Victims of forced marriage crimes	0,00%	0
Child victims	25,00%	1
Other (please specify)	25,00%	1
	Answered	4

Other: Normally this terminology is used only for the cases provided in article 544 of the Penal Procedure Law, in relation to the persons provided in articles 172 and 173 of the Penal Code. Only 1 skipped the question.

Restraining orders		
All types of victims	75,00%	3
Victims of serious crimes	25,00%	1
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	4

Note: Only 1 skipped the question.

Precautionary restraining orders		
All types of victims	66,67%	2
Victims of serious crimes	33,33%	1
Victims of sexual violence crimes	33,33%	1
Victims of domestic violence crimes	33,33%	1
Victims of gender-based crimes	33,33%	1
Victims of murder/attempted murder crimes	33,33%	1
Victims of terrorism crimes	33,33%	1
Victims of forced marriage crimes	0,00%	0
Child victims	33,33%	1
Other (please specify)	0,00%	0
	Answered	3

Note: 2 skipped the question

Record of a statement for later use (prior to trial)		
All types of victims	60,00%	3
Victims of serious crimes	20,00%	1
Victims of sexual violence crimes	40,00%	2
Victims of domestic violence crimes	20,00%	1
Victims of gender-based crimes	20,00%	1
Victims of murder/attempted murder crimes	20,00%	1
Victims of terrorism crimes	20,00%	1
Victims of forced marriage crimes	0,00%	0
Child victims	40,00%	2
Other (please specify)	40,00%	2
	Answered	5

Other:

- It also depends on other victims of the circumstances;
- when it is not considered prudent to re-testify in court or that statement is not feasible.

Anonymity of the report regarding victim's address		
All types of victims	100,00%	3
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	33,33%	1
	Answered	3

Other: based on risk assessment.

Anonymity of the report regarding victim's identity		
All types of victims	100,00%	2
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	50,00%	1
	Answered	2

Other: based on risk assessment.

Anonymous inquiring		
All types of victims	66,67%	2
Victims of serious crimes	33,33%	1
Victims of sexual violence crimes	33,33%	1
Victims of domestic violence crimes	33,33%	1
Victims of gender-based crimes	33,33%	1
Victims of murder/attempted murder crimes	33,33%	1
Victims of terrorism crimes	33,33%	1
Victims of forced marriage crimes	0,00%	0
Child victims	33,33%	1
Other (please specify)	33,33%	1
	Answered	3

Other: according to the seriousness of the facts and the subtraction from justice that the publicity may entail.

Offenders' contact ban		
All types of victims	66,67%	2
Victims of serious crimes	33,33%	1
Victims of sexual violence crimes	33,33%	1
Victims of domestic violence crimes	33,33%	1
Victims of gender-based crimes	33,33%	1
Victims of murder/attempted murder crimes	33,33%	1
Victims of terrorism crimes	33,33%	1
Victims of forced marriage crimes	0,00%	0
Child victims	33,33%	1
Other (please specify)	33,33%	1
	Answered	3

Other: *Idem.*

Offenders' area ban		
All types of victims	66,67%	2
Victims of serious crimes	33,33%	1
Victims of sexual violence crimes	33,33%	1
Victims of domestic violence crimes	33,33%	1
Victims of gender-based crimes	33,33%	1
Victims of murder/attempted murder crimes	33,33%	1
Victims of terrorism crimes	33,33%	1
Victims of forced marriage crimes	0,00%	0
Child victims	33,33%	1
Other (please specify)	33,33%	1
	Answered	3

Certain locations ban		
All types of victims	100,00%	2
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	50,00%	1
	Answered	2

Other: *Idem.*

Assignment of emergency telephone to the victim		
All types of victims	66,67%	2
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	33,33%	1
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	33,33%	1
	Answered	3

Other: *Idem.*

Police protection		
All types of victims	100,00%	2
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	2

Note: 3 skipped the question

Covered residence		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	100,00%	1
	Answered	1

Note: 4 skipped the question.

New identity		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	100,00%	1
	Answered	1

Note: 4 skipped the question.

Protection under a restraining or exclusion order		
All types of victims	100,00%	2
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	2

Note: 3 skipped the question.

IRELAND

The privilege to not disclose victim's identity in the media		
All types of victims	0,00%	0
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	85,71%	6
Victims of domestic violence crimes	28,57%	2
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	85,71%	6
Other (please specify)	14,29%	1
	Answered	7

Other: Victims who are identified as requiring special measures, as identified in the 2017 Act.

Protection orders		
All types of victims	0,00%	0
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	100,00%	2
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	2

Note: 8 skipped the question.

Restraining orders		
All types of victims	50,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	50,00%	1
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	2

Note: 8 skipped the question.

Precautionary restraining orders		
All types of victims	0,00%	0
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	100,00%	1
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Note: 9 skipped the question.

Record of a statement for later use (prior to trial)		
All types of victims	50,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	100,00%	2
Victims of domestic violence crimes	50,00%	1
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	50,00%	1
Other (please specify)	50,00%	1
	Answered	2

Other: The protections apply specifically to some offences, but also provides that it can be applied to other cases where the victim's particular vulnerability requires it. The prosecutor applies to the Court and the Court grants special measures if it is 'in the interests of justice'.

Note: 8 skipped this question.

Anonymity of the report regarding victim's address		
All types of victims	33,33%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	66,67%	2
Victims of domestic violence crimes	66,67%	2
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	66,67%	2
Other (please specify)	33,33%	1
	Answered	3

Other: Human Trafficking victims and certain offences related with child pornography.

Note: 7 skipped this question

Anonymity of the report regarding victim's identity		
All types of victims	0,00%	0
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	100,00%	3
Victims of domestic violence crimes	66,67%	2
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	100,00%	3
Other (please specify)	33,33%	1
	Answered	3

Other: Human Trafficking victims and certain offences related with child pornography.

Note: 7 skipped this question.

Anonymous inquiring		
All types of victims	0,00%	0
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	100,00%	1
	Answered	1

Note: 9 skipped this question.

Offenders' contact ban		
All types of victims		
Victims of serious crimes		
Victims of sexual violence crimes		
Victims of domestic violence crimes		
Victims of gender-based crimes		
Victims of murder/attempted murder crimes		
Victims of terrorism crimes		
Victims of forced marriage crimes		
Child victims		
Other (please specify)	33,33%	2
	Answered	2

Others:

- Offender contact bans can apply by way of bail conditions in all types of offences;
- A contact ban can also be imposed by a judge after hearing a case alleging criminal harassment;
- Offenders contact ban is generally a condition of bail for offences involving a victim.

Protection under a restraining or exclusion order		
All types of victims	0,00%	0
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	50,00%	1
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	50,00%	1
	Answered	2

Note: One of the options is not mentioned because the respondents skipped it.

GERMANY

The privilege to not disclose victim's identity in the media		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Record of a statement for later use (prior to trial)		
All types of victims	0,00%	0
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	100,00%	1
Other (please specify)	100,00%	1
	Answered	1

Other: The examination of a witness may be recorded on an audio-visual medium. The examination shall, after evaluation of the relevant circumstances, be recorded and conducted as a judicial examination if:

1. the interests meriting protection of persons of less than 18 years of age as well as of persons who as children or juveniles have been aggrieved as a result of one of the criminal offences designated under Section 255a subsection (2) can thus be better safeguarded; or
2. there is a concern that it will not be possible to examine the witness during the main hearing and the recording is required in order to establish the truth.

Anonymity of the report regarding victim's address		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Anonymity of the report regarding victim's identity		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Police protection		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Covered residence		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

New identity		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

HUNGARY

The privilege to not disclose victim's identity in the media		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Protection orders		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Restraining orders		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Record of a statement for later use (prior to trial)		
All types of victims	0,00%	0
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	100,00%	1
	Answered	1

Other: Victims being in need of individual assessment.

Anonymity of the report regarding victim's address		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Anonymity of the report regarding victim's identity		
All types of victims	100,00%	1
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	0,00%	0
	Answered	1

Anonymous inquiring		
All types of victims	0,00%	0
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	100,00%	1
	Answered	1

Other: Victims in need of individual assessment.

Offenders' contact ban		
All types of victims	0,00%	0
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	100,00%	1
	Answered	1

Other: Victims in need of individual assessment.

Certain locations ban		
All types of victims	0,00%	0
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	100,00%	1
	Answered	1

Other: Victims in need of individual assessment.

Police protection		
All types of victims	0,00%	0
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	100,00%	1
	Answered	1

Other: Victims in need of individual assessment.

Covered residence		
All types of victims	0,00%	0
Victims of serious crimes	0,00%	0
Victims of sexual violence crimes	0,00%	0
Victims of domestic violence crimes	0,00%	0
Victims of gender-based crimes	0,00%	0
Victims of murder/attempted murder crimes	0,00%	0
Victims of terrorism crimes	0,00%	0
Victims of forced marriage crimes	0,00%	0
Child victims	0,00%	0
Other (please specify)	100,00%	1
	Answered	1

Other: Victims in need of individual assessment.

SWEDEN

Offenders' contact ban		
All types of victims	0,00%	0
Victims of serious crimes	100,00%	1
Victims of sexual violence crimes	100,00%	1
Victims of domestic violence crimes	100,00%	1
Victims of gender-based crimes	100,00%	1
Victims of murder/attempted murder crimes	100,00%	1
Victims of terrorism crimes	100,00%	1
Victims of forced marriage crimes	100,00%	1
Child victims	100,00%	1
Other (please specify)	0,00%	0
	Answered	1

Offenders' area ban		
All types of victims	0,00%	0
Victims of serious crimes	100,00%	1
Victims of sexual violence crimes	100,00%	1
Victims of domestic violence crimes	100,00%	1
Victims of gender-based crimes	100,00%	1
Victims of murder/attempted murder crimes	100,00%	1
Victims of terrorism crimes	100,00%	1
Victims of forced marriage crimes	100,00%	1
Child victims	100,00%	1
Other (please specify)	0,00%	0
	Answered	1

Certain locations ban		
All types of victims	0,00%	0
Victims of serious crimes	100,00%	1
Victims of sexual violence crimes	100,00%	1
Victims of domestic violence crimes	100,00%	1
Victims of gender-based crimes	100,00%	1
Victims of murder/attempted murder crimes	100,00%	1
Victims of terrorism crimes	100,00%	1
Victims of forced marriage crimes	100,00%	1
Child victims	100,00%	1
Other (please specify)	0,00%	0
	Answered	1

e. *There are automatic forms of protection*

The majority of the respondents in Portugal (22), in Croatia (6) and in Ireland (6) answered negatively.

Only 1 respondent from Portugal replied affirmatively (regarding measures for domestic violence victims). The observations provided that this right is not automatic, rather dependant on the previous personal assessment, a right of all victims.

4 respondents in Ireland answered affirmatively: for victims of sexual violence crimes and child victims (4); for victims of domestic violence crimes (3) and for victims of serious crimes (2).

4 respondents from Croatia answered affirmatively (regarding measures for all types of victims) and One of the respondents specified these measures were due for organized crime, war crimes

All the respondents in the Basque Country answered affirmatively: 3 respondents for all types of victims, and 2 only for specific victims. These 2 selected all the options available of in following question, except for forced marriage, only selected by one of the respondents.

The German, the Maltese and the Swedish respondents answered negatively. One of the Hungarian respondents (the other one skipped the question) answered positively, explaining that these automatic forms of protection are for "Victims under the age of 18, victims with disabilities, and victims of sexual violence crimes".

Ireland obs.:

"An assessment must be carried out by the *Gardaí*" and "The Office of the DPP has no role in the investigation of crime".

f. *There is an obligation to conduct a victim's individual assessment*

The majority of the respondents in Portugal, Ireland, the Basque Country and Croatia answered affirmatively.

In Portugal, the majority of the respondents answered that this obligation only applies to a certain type of victims (10), while 7 answered that this obligation always applies.

In Portugal, respondents identified the specific type of victims: victims of domestic violence (7), victims of sexual violence and child victims (4), victims of gender-based crimes, of serious crimes and especially vulnerable victims (3), victims of murder/attempted murder crimes and terrorism (2) and victims of forced marriage crimes (1).

The majority of the respondents from Ireland (7), the Basque Country (3) and Croatia (7) replied that this obligation always applies, for all types of victims.

In Croatia, 2 respondents specified as victims for who this applies: victims of serious crimes (1), victims of sexual violence (1), victims of domestic violence crimes (1), victims of gender based crimes (1), victims of terrorism crimes (1) and child victims (1).

In Ireland, 2 respondents specified the victims: victims of serious crimes (1), child victims and people identified as being vulnerable (1).

In the Basque Country, two respondents specified the victims, selecting all the options available, except for victims of forced marriage, selected by only one respondent.

One of the Hungarian respondents (the other one skipped the question), as well as the Maltese and the Swedish respondents answered positively. The Hungarian respondent replied that this obligation applies only for certain types of victims ("Victims under the age of 18, victims with disabilities, and victims of sexual violence crimes can be considered as victims being in need of individual assessment, automatically. In case of other types of victims this status is based on the decision of the judge, prosecutor or investigating authority"), while the Maltese and the Swedish respondents answered that this obligation is always applicable, for all victims. The Hungarian respondent answered that this obligation only applies for the German respondent answered negatively.

g. Public prosecutors conduct individual assessment

In the Basque Country, one respondent answered affirmatively, while the other one answered negatively. In Portugal the majority (7) of the respondents answered affirmatively to this question. In Ireland two respondents answered negatively and 8 skipped this question. It was specified that this individual assessment in Ireland is conducted by the police. In Croatia two respondents answered affirmatively and 8 skipped this question.

The German, the Maltese and the Swedish respondents skipped this question. One of the two Hungarian respondents answered affirmatively and the other skipped this question.

h. When is the individual assessment conducted

In Portugal, the majority of the respondents selected the option 'At the earliest opportunity' (6), while 5 selected the option 'During the investigation phase', 2 answered that it should be a progressive assessment and one answered that assessments should always be reviewed.

In Croatia, the majority of the respondents selected the option 'At the earliest opportunity' as well (5), while 3 opted for the statement that the individual assessment is conducted 'At all stages of the proceedings' and only 1 selected the option 'During the investigation phase'.

In Ireland, 3 respondents selected the option 'At the earliest opportunity', 3 selected the option 'During the investigation phase', while only 1 selected the option 'It depends on the type of crime'.

In the Basque Country 2 respondents selected the option 'During the investigation phase', and 1 selected the option 'it depends on the type of crime'.

The Maltese, the Swedish respondents and one of the Hungarian respondents selected the option 'At the earliest opportunity' and the German respondent skipped this question.

The Basque Country obs.:

"In principle it should always be done, but especially in cases of gender violence, including against sons and daughters, and when there are people in vulnerable situations"

i. Where is the individual assessment carried out?

In Portugal the majority of the respondents selected the option 'Wherever it's possible' (9), 5 selected the option 'Whenever the victim is a child, in a special room, specially prepared to receive children', 4 selected the option 'In a special room, specially prepared to receive victims' and one replied 'In a room where you can have the minimum of comfort, security and confidentiality guarantee'.

In Ireland, the majority of the respondents also selected the option 'Wherever it's possible' (5), 2 selected the option 'Whenever the victim is a child, in a special room, specially prepared to receive children' and 2 responded that this procedure is conducted by the police.

In the Basque Country 4 participants selected the option 'Whenever the victim is a child, in a special room, specially prepared to receive children' and 2 the option 'In a special room, specially prepared to receive victims'.

In Croatia 3 respondents selected the option 'In a special room, specially prepared to receive victims', 2 selected the option 'Whenever the victim is a child, in a special room, specially prepared to receive children' and 1 the option 'Wherever it's possible'.

Other answers from Croatian participants were: "At the police station, later at the state attorney's office and in court"; "In contact with the victim (police station, state attorney's office, court), the assessment may also be carried out in the absence of the victim"; "The public prosecutor during the first contact with the victim"; "When questioning the victim with the Attorney General and where the victim is questioned".

One of the Hungarian respondents (the other skipped the question) selected the option 'In a special room, specially prepared to receive victims. The Maltese and the Swedish respondents selected the option 'Wherever it's possible'. The German respondent skipped this question.

j. When conducting the individual assessment, the Prosecutor is clear about its purposes, namely that aims to evaluate specific protection needs or special measures.

Most of the respondents in Portugal (14 to 1) and in Ireland (6 to 1) answered affirmatively to this question.

All the respondents in Croatia answered affirmatively (9).

In the Basque Country it was not possible to conclude for a general tendency given the fact that 2 respondents answered affirmatively, while other 2 answered negatively. One respondent replied that victim support services may also develop this assessment.

One of the Hungarian respondents (the other skipped the question) and the Maltese respondent answered affirmatively. The Swedish respondent answered negatively, because "It is the police that conducts the individual assessment". The German respondent skipped this question.

Ireland obs.:

"In Ireland it is important to clarify that despite the fact that the prosecutor is clear, is it the police who carries out the individual assessment under section 15 of the Criminal Justice (Victims of crime) Act 2017".

Croatia obs.:

"Determines it in cooperation with witness support bodies and institutions with the personal characteristics of the victim".

k. How is this information provided?

In Portugal this information is provided mainly orally (12), through documents (9) and through a legislation copy (2).

In Croatia this information is also provided mainly orally (9), through documents (3) and through a legislation copy (2).

In Ireland information is provided mainly through documents (4), orally (3), and through a legislation copy (1).

In the Basque Country this information is provided mainly through documents (2) and through a legislation copy (1).

One of the Hungarian respondents (the other skipped the question) selected the option 'Through documents'. The Maltese respondent selected the options 'Through documents' and 'Orally'.

The German and the Swedish respondents skipped this question.

Ireland obs.:

“The legislation required the Police to carry it out at an investigative stage and the results of the assessment are communicated to the prosecutor by documents” and other “Information leaflet is available on the police’s website”.

I. The individual assessment takes into consideration:

IRELAND	
Measures	Sample 7
The personal characteristics of the victim (gender, age, etc.)	6
The type of relation between the victim and the offender	6
The type or nature of the crime	6
The type of crime victims, specially whenever victims of terrorism, organized crime, human trafficking, gender-based violence, violence in intimate relationship, sexual violence, exploitation or hate crime, and victims with disabilities are at stake	6
The circumstances in which the crime was committed	6
The fact that the crime was committed with a bias or a discriminatory motive which could be related to the victims personal characteristics	5
The victims' wishes	5

PORTUGAL	
Measures	Sample 15
The personal characteristics of the victim (gender, age, etc.)	13
The type of relation between the victim and the offender	11
The type or nature of the crime	12
The type of crime victims, specially whenever victims of terrorism, organized crime, human trafficking, gender-based violence, violence in intimate relationship, sexual violence, exploitation or hate crime, and victims with disabilities are at stake	11
The circumstances in which the crime was committed	10
The fact that the crime was committed with a bias or a discriminatory motive which could be related to the victims personal characteristics	9
The victims' wishes	9

THE BASQUE COUNTRY	
Measures	Sample 4
The personal characteristics of the victim (gender, age, etc.)	4
The type of relation between the victim and the offender	4
The type or nature of the crime	4
The type of crime victims, specially whenever victims of terrorism, organized crime, human trafficking, gender-based violence, violence in intimate relationship, sexual violence, exploitation or hate crime, and victims with disabilities are at stake	4
The circumstances in which the crime was committed	3
The fact that the crime was committed with a bias or a discriminatory motive which could be related to the victims personal characteristics	4
The victims' wishes	2

CROATIA	
Measures	Sample 9
The personal characteristics of the victim (gender, age, etc.)	7
The type of relation between the victim and the offender	7
The type or nature of the crime	7
The type of crime victims, specially whenever victims of terrorism, organized crime, human trafficking, gender-based violence, violence in intimate relationship, sexual violence, exploitation or hate crime, and victims with disabilities are at stake	5
The circumstances in which the crime was committed	7
The fact that the crime was committed with a bias or a discriminatory motive which could be related to the victims personal characteristics	5
The victims' wishes	6

HUNGARY	
Measures	Sample 1 (the other respondent skipped this question)
The personal characteristics of the victim (gender, age, etc.)	1
The type of relation between the victim and the offender	1
The type or nature of the crime	1
The type of crime victims, specially whenever victims of terrorism, organized crime, human trafficking, gender-based violence, violence in intimate relationship, sexual violence, exploitation or hate crime, and victims with disabilities are at stake	1
The circumstances in which the crime was committed	1
The fact that the crime was committed with a bias or a discriminatory motive which could be related to the victims personal characteristics	1
The victims' wishes	1

MALTA	
Measures	Sample 1
The personal characteristics of the victim (gender, age, etc.)	1
The type of relation between the victim and the offender	1
The type or nature of the crime	1
The type of crime victims, specially whenever victims of terrorism, organized crime, human trafficking, gender-based violence, violence in intimate relationship, sexual violence, exploitation or hate crime, and victims with disabilities are at stake	1
The circumstances in which the crime was committed	1
The fact that the crime was committed with a bias or a discriminatory motive which could be related to the victims personal characteristics	1
The victims' wishes	1

SWEDEN	
Measures	Sample 1
The personal characteristics of the victim (gender, age, etc.)	1
The type of relation between the victim and the offender	1
The type or nature of the crime	1
The type of crime victims, specially whenever victims of terrorism, organized crime, human trafficking, gender-based violence, violence in intimate relationship, sexual violence, exploitation or hate crime, and victims with disabilities are at stake	1
The circumstances in which the crime was committed	1
The fact that the crime was committed with a bias or a discriminatory motive which could be related to the victims personal characteristics	0
The victims' wishes	0

GERMANY
Note: The German respondent skipped this question.

m. There is a template questionnaire followed to do the individual assessment and the role of public prosecutor

The majority of the respondents from Portugal (12) and Croatia (6) answered negatively to this question.

The majority of the respondents from Ireland (4) and the Basque Country (3) answered affirmatively to this question. In Ireland, public prosecution services had a role in the creation of the template, because they were consulted by the Police during the process of its development

In the Basque Country only the police has a template, namely destined for gender violence victims. Other institutions use their own techniques. The respondents replied that prosecution services also had a role in the creation of the template. The template was prepared by experts from the University and was contracted within the inter-institutional protocols.

In Portugal, 3 respondents answered affirmatively and the majority indicated that prosecution services had a role in the creation of the template, because they participated on the preparation of a document to inform victims and in the preparation of risk assessment sheets, in order to understand the specific needs of that person, taking into account psychological characteristics and social experience, as well as family and social support.

From Croatia, 3 respondents answered affirmatively to this question, specifying that the template does not vary according the type of crime or victim³⁸. One of the participants observed the following: "I think the pattern is the same for all types of crimes".

One of the Hungarian respondents (the other skipped the question) and the Maltese respondent answered negatively. The Swedish respondent answered affirmatively, but the public prosecution services did not have any role in the creation of the template, considered as "a matter for the police". The German respondent skipped this question.

n. The public prosecutor update/repeat the individual assessment during the criminal proceedings

The majority of the respondents in Portugal, the Basque Country, Croatia and Ireland answered affirmatively to this question. In Ireland police can update it at request of public prosecutors during criminal proceedings.

The majority of the respondents answered that this process can be repeated

³⁸- The questionnaire that was widespread in Croatia did not contain a question regarding public prosecutor's role in the creation of the template, but has a question related with template differentiation regarding the type of crime.

“As much as necessary”: 15 in Portugal, 3 in Ireland and in the Basque Country and 6 in Croatia.

One of the Hungarian respondents (the other skipped the question) and the Maltese and Swedish respondents answered affirmatively. Nevertheless, the Swedish respondent added: “But it is a matter for the police to conduct the assessment”. The German respondent skipped this question.

Croatia obs.:

In Croatia it is carried out firstly by the police, then by the state attorney and afterwards by the court and everyone can always do it, i.e. must, if there have been any changes.

o. After the individual assessment, victims are encouraged to contact the authorities if their circumstances change

In Ireland, Portugal and Croatia, the majority of the respondents answered affirmatively to this question. From the answers of responders from the Basque Country it was not possible to retrieve a general tendency since 2 respondents answered affirmatively, while 2 other answered negatively.

In Portugal the encouragement occurs through the following means:

- Deliver police contacts, encouraging additions;
- As is most convenient (by phone, in person, in writing, etc.);
- By personal contact with police or the Public Prosecutor;
- They are informed that they must inform the process of these changes, indicating what they consist of;
- The addition of new information is encouraged whenever new circumstances occur;
- Information;
- By any means at victim’s disposal;
- Providing victims with direct contact with the authorities (emergency lines, police pickets etc.);
- By phone or in person;
- Through the police or the social emergency line. Or, not being an emergency, through the – process;
- Either through information provided orally, or through documents/minutes.

In Ireland the encouragement occurs through the following means:

- The *Gardaí* (police) and DPP must continue to monitor the situation before the trial commences;
- Police Liaison;
- Make contact with the investigating police officer;
- "This would be a matter for the *Gardaí*. I can say that if the prosecutor became aware of a victim requiring special measures that would be communicated to the *Gardaí*".

In the Basque Country respondents answered the following: "The process phase in which concrete needs are met; it will be properly explained how to proceed and if it will be channeled from the victim support services it would include in the evaluation a previous prospecting of the resources that could be used, so as not to confuse it" and "If circumstances change, you can simply make it known, by appearance, or through your legal address".

In Croatia the encouragement occurs through the following means:

- To instruct them in this;
- They are instructed to contact the police, the public prosecutor's office, the court, the victim support department and witnesses if they feel the need to do so;
- The victim is acquainted with the possibility of contacting the police or the public prosecutor office in case of violation of the precautionary measure or the arise of new circumstances;
- If the victim joined the public prosecutor's office, they would go to the Victims Department at the courts to exercise their rights;
- They are orally informed that they either contact authorities or authorities can contact them;
- The individual needs assessment of victims for protection, as far as possible, will also assess the needs of the victim for additional support and assistance. Depending on the result of that assessment, the authority that conducts the assessment will refer the victim to an appropriate institution and / or organization that provides the type of support and / or assistance needed by the victim;
- Probably orally or through a contact with the Help and Support Department.

The Maltese respondent also answered affirmatively to this question ("When there are new developments, victims can contact the authorities"), as well as the Swedish respondent ("It is up to the police to decide"). One of the Hungarian respondents (the other one skipped the question) answered negatively to this question. The German respondent skipped this question.

p. The Prosecutors' Offices provide continuous follow up of the individual need's assessments, namely as the criminal proceedings advance

In Portugal the majority of the respondents answered affirmatively to this question - depending on the level of risk, there is a legal obligation to reassess within a specific period of time. Three respondents replied in a negative sense. One of them justified this by claiming that prosecutors do not have that competence. Another stated that "If there is no information that needs have changed, the reassessment is not determined" and "To choose the appropriate and most effective means of protection".

In Ireland and Croatia, the majority of the respondents answered negatively to this question. One participant from Ireland argued this was given to the fact that prosecutors do not have that competence.

In Croatia 5 respondents also claimed that prosecutors don't have that competence.

From the Basque Country it was not possible to achieve a tendential consensus, since 2 respondents answered affirmatively, while 2 other participants answered negatively. Only 1 respondent justified his answer by stating: "They do not perform their demanding obligation".

One of the Hungarian respondents (the other skipped the question) and the Maltese respondent also answered affirmatively; the Swedish respondent replied negatively ("It is a matter for the police"); and the German respondent skipped this question.

Ireland obs.:

"If needs become apparent, then special measures will be considered"; "The individual assessment of the victim is the responsibility of the Police under Irish law. If the prosecutor became aware of a vulnerability that would be communicated to the Gardai (police)"; "There is no requirement to update assessments"; "The police would/should provide the initial individual assessment so one would assume the prosecutor is relying on the police to provide and update"; and "Legislation provides that it is the responsibility of the police".

Croatia obs.:

One respondent replied that "If the proceedings are continued before the court, then the needs of the victim are further taken care of by the court, but the public prosecutor's Office certainly monitors any changes, especially if, for example, reasons for proposing pre-trial detention are verified".

q. The victim has the right to decline to participate on the individual assessment

In Portugal, Croatia, Ireland and the Basque Country, most respondents answered affirmatively to this question, as well as respondents from Malta, Sweden and one of the Hungarian respondents. The German respondent skipped this question.

r. Public prosecutors have specific procedures for dealing with/investigating cases concerning child victims

By most respondents from Portugal, Croatia, Ireland and the Basque Country (and respondents from Malta and Sweden and one of the Hungarian respondents) this question was answered affirmatively.

The German respondent skipped this question.

Croatia obs.:

“A motion to the investigating judge for an evidentiary hearing at which the children of the victim are examined. Only state prosecutors for the juveniles’ Act in these cases ... and only juvenile judges so specially designated persons (and in the police), and a special law ... Law on Juvenile Courts”.

Ireland obs.:

“There are specific statutory provisions and rights that apply to children that do not apply to adults. They are automatically vulnerable and in need of protection and special needs”.

The Basque Country obs.:

“In cases of people in vulnerable situations, the right to decline the victim’s participation may be limited”.

s. Role of public prosecutors in the application of protection measures in cases concerning child victims

IRELAND	
Measures	Sample 10
All interviews are audio-visually recorded and such recorded interviews may be used as evidence in criminal proceedings	5
All interviews are carried out in a special room, specially conceived for children	3
Appointment of a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family	2
Other (please specify)	6

Other:

- These are matters to be done by the *Gardaí*. Where possible, all of the above apply;
- Police lead on this;
- No, the Police has these obligations;
- Delivery of evidence from behind a screen, use of video-link evidence;
- The direct evidence of a child, which is a recorded interview with social worker/police, can be admitted into evidence under section 16 of the Criminal Evidence Act 1992. The child, when being cross examined, can give evidence via video link. The prosecutor's role is in the courtroom not at the initial recorded interview stage;
- No. The Police are responsible for all of these issues.

PORTUGAL	
Measures	Sample 21
All interviews are audio-visually recorded and such recorded interviews may be used as evidence in criminal proceedings	9
All interviews are carried out in a special room, specially conceived for children	4
Appointment of a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family	11
Other (please specify)	7

Other:

- Appointment of a specially trained technician to accompany the victim;
- Alternatives not adequate to the question;
- It must be ensured that they are only interviewed on a single occasion, being accompanied by qualified technicians and with prior preparation;
- None of the hypotheses is applicable.

Obs:

- Only when there are means available - regarding audio-visual means and the special room;
- In the case of children, not being represented by "holders of parental responsibility", it is the Public Ministry that will represent their interests.

CROATIA	
Measures	Sample 8
All interviews are audio-visually recorded and such recorded interviews may be used as evidence in criminal proceedings	6
All interviews are carried out in a special room, specially conceived for children	6
Appointment of a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family	5
Other (please specify)	2

Other: All the above are possible.

Obs: Are examined with the help of an expert, always a judge.

THE BASQUE COUNTRY	
Measures	Sample 5
All interviews are audio-visually recorded and such recorded interviews may be used as evidence in criminal proceedings	4
All interviews are carried out in a special room, specially conceived for children	3
Appointment of a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family	5
Other (please specify)	1

Other: Reconstruction of the evidence, with all the legal guarantees for victim and perpetrator.

GERMANY	
Measures	Sample 1
All interviews are audio-visually recorded and such recorded interviews may be used as evidence in criminal proceedings	1
All interviews are carried out in a special room, specially conceived for children	1
Appointment of a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family	1
Other (please specify)	0

HUNGARY	
Measures	Sample 1 (the other Respondent skipped this question) respondent skipped this question)
All interviews are audio-visually recorded and such recorded interviews may be used as evidence in criminal proceedings	1
All interviews are carried out in a special room, specially conceived for children	1
Appointment of a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family	1
Other (please specify)	0

MALTA	
Measures	Sample 1
All interviews are audio-visually recorded and such recorded interviews may be used as evidence in criminal proceedings	0
All interviews are carried out in a special room, specially conceived for children	0
Appointment of a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family	0
Other (please specify)	1

Other: The Police applies these measures.

SWEDEN	
Measures	Sample 1
All interviews are audio-visually recorded and such recorded interviews may be used as evidence in criminal proceedings	1
All interviews are carried out in a special room, specially conceived for children	1
Appointment of a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family	1
Other (please specify)	0

Intermediate conclusions:

- Finding 1 -** Lack of automatic forms of protection;
- Finding 2 -** Insufficient compliance with the obligation to conduct individual assessments;
- Finding 3 -** The right of victims to deny assessment is assured;
- Finding 4 -** Protection measures are in general associated with measures against the offender;
- Finding 5 -** General sensibility regarding protection measures for specific crimes;
- Finding 6 -** General sensibility regarding protection measures for children victims of crime.

4 DISCUSSION

The beginning of the discussion of the questionnaire results demands for some initial remarks. The following discussion is mainly focused on the realities of the partner countries, since, on one hand, a detailed legal and institutional framework analyses has already been undertaken for those countries and, on the other hand, because the previous description of the questionnaire results has shown that's also the main provenance of the questionnaire respondents. In fact, extra-partnership countries were generally represented only by one respondent, making it difficult to draw trends through such a small sample. Therefore, extra-partnership participation is mainly considered to confirm, or not, a certain tendency or to extract innovative or inspiring legal or practical approaches.

Besides the discussion itself, each part of the analyses ends with a positive note focused on good practices that can be identified in each partner countries.

Here are the main findings pointed out along the questionnaire results description:

I. OVERALL LEGAL FRAMEWORK

- Finding 1 -** Victims' rights in criminal proceedings are associated to all stages of the process and assured by all its participants, not only through prosecution services;
- Finding 2 -** Predominance in regard to victims of domestic violence protection;
- Finding 3 -** The legal differentiation factors on the matter of victim's rights are marked by the lived social reality of each State.

II. RIGHT TO INFORMATION

- Finding 1 -** Special association of the right to information with the role of public prosecutors;
- Finding 2 -** Importance of giving an oral explanation to victims;
- Finding 3 -** Lack of systematic and standardized procedures, on a national and institutional basis, to provide information to victims;
- Finding 4 -** Disparity of the content of the right to information.

III. RIGHTS OF VICTIM WHEN MAKING A COMPLAINT

- Finding 1 -** Disparity regarding the competent authority to receive complaints;
- Finding 2 -** Effectiveness of the right to receive a written acknowledgment of the complaint;
- Finding 3 -** Disparity regarding the type of document given to the victim;
- Finding 4 -** Obligation establishing the right of the victims to be accompanied by a person of his/her choice during the proceedings.

IV. RIGHT TO SUPPORT SERVICES

- Finding 1 -** Disparity regarding the referrals' formal base;
- Finding 2 -** No homogeneity in the way the responsible bodies refer victims to victim support services;
- Finding 3 -** Referrals to victim support services are not mandatory;
- Finding 4 -** Uncertainty on the information(s) that ought to be provided to victim support services;
- Finding 5 -** Referral systems in place mainly to specific kinds of crime as a reflection of the tendential inexistence of victim support services with generic competences, *i.e.*, for all types of crimes.

V. RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

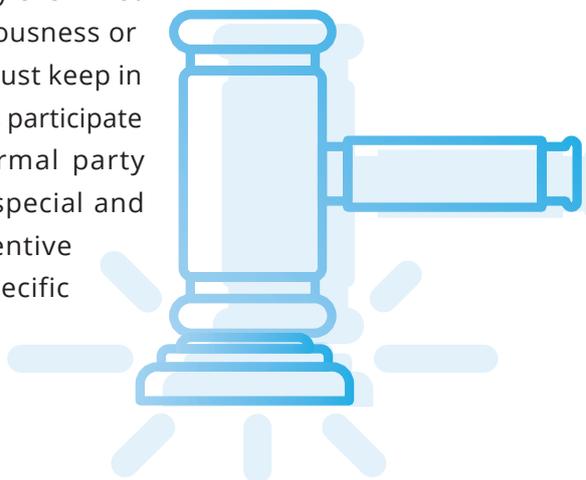
- Finding 1 -** Unfamiliarity with Restorative Justice;
- Finding 2 -** There are no mandatory referrals;
- Finding 3 -** Differentiated referral competence;
- Finding 4 -** Ambivalence on safeguards.

VI. RIGHTS TO PROTECTION AND INDIVIDUAL ASSESSMENT

- Finding 1 -** Lack of automatic forms of protection;
- Finding 2 -** Insufficient compliance with the obligation to conduct individual assessments;
- Finding 3 -** The right of victims to deny assessment is assured;
- Finding 4 -** Protection measures are in general associated with measures against the offender;
- Finding 5 -** General sensibility regarding protection measures for specific crimes;
- Finding 6 -** General sensibility regarding protection measures for children victims of crime.

From the perspective of the **overall legal framework**, responses to the questionnaire indicate victims' rights in criminal proceedings are associated to all stages of the process and also that those rights are assured by all its participants, not only through prosecution services. This observation leads to the positive conclusion that there is awareness on the emergence of victims' position in criminal proceedings and that their rights do not go overlooked by practitioners. It also showcases victims' rights are dependent of all intervening parties in the criminal process, *i.e.*, Police, Judges and, of course, Public Prosecution Services, with the evident exclusion of the offender. However, the responses to the questionnaire turns even more vivid the analysis of the partner countries' legal framework developed above, while confirming a strong link between victim's rights and the criminal justice system under consideration. Particularly regarding the pre-trial stage of proceedings, the stage in which the prosecutors play, across jurisdictions, a prominent role, one can observe different dynamics in different jurisdictions. This stage has suffered profound changes in the last centuries, specifically in continental criminal justice systems, and it is now shared between the police, public prosecution services and, at times, instruction judges. This is the case in Croatia, Portugal, and Spain. As one can see throughout the partner participant countries analyses, for instance in Portugal, both investigation and prosecution are under public prosecutors' dominium. However, the instruction judge is regarded as the judge of guarantees or the judge of liberties, since he/she is tasked with fundamental competences regarding victim's rights, such as admitting that the victim/offended turns into *assistente*, or the right to accept an appeal (during the instruction phase) of the victim turned *assistente* regarding the prosecutor's decision not to charge. In Spain, albeit the instruction judge still has ownership in regard to the investigation stage, public prosecutors have gradually taken over the investigation stage, albeit the instruction judge retains relevant competences during this stage as well, with impact on what regards to victims' rights assurance. Prosecutors in Spain are responsible for different diligences throughout criminal proceedings, namely investigative, preliminary, informational and procedural diligences (Alfonso Rodriguez, 2019, pp. 177-178), such as ordering protection measures (544d of the LEC) or giving instructions to

the police (773.2 of the LEC), also having some influence regarding the investigative judge's actions (306 of the LEC). Moreover, public prosecution services in Spain are responsible for prosecuting crimes (780 of the LEC,) detaining powers even in reference to the judge's competences. Similarly, in Croatia, tensions between the two forces are found, having resulted in consistent changes in the justice system in the past decades, pointed by several significant legislative changes over a number of years. Nevertheless, there is some relation of influence of prosecutors over the police, the result of a long legislative evolution process. In fact, from seeing the investigative judge as the main actor in the investigation phase while prosecution was left to public prosecutors, the CPL of 2008 imposed the return of a system in which Public Prosecution had control over the investigation, a change that had been called for and predicted (Turković, 2008, p. 286). The following amendments of 2013 and 2017 to the CPL gave prosecutors the control of investigations as well as of prosecution and determined that the greater investigative role is now placed in police forces (Getoš Kalac, Vidlička & Burić, 2020, p. 6). In insular Ireland, the two main stakeholders at this stage are the police and public prosecutors. Respondents made note that the Police is in fact the one in charge of effecting several of victim's rights in criminal proceedings. Therefore, Police play a fundamental role in criminal proceedings, not only during investigations but also detaining competences to prosecute. It is not dependent on the public prosecution service although there is a relation of influence between the two bodies, as mentioned along the countries mapping. Particularly on what regards to victims, one can point out the fact that not only are prosecutors crucial to ensure victim rights are fulfilled in the investigative stage – both through within their competences in this stage and in relation to the police for crimes which this authority can investigate and prosecute on its own, but also do they play an important role during the trial stage, namely in keeping the victim informed and in regards to giving evidence. Now, if victims' rights are put in place across all the stages of the process, it's nevertheless important to stress that the formal position that victims occupy in criminal proceedings is different when comparing continental jurisdictions and Ireland. Victims can participate in criminal proceedings in Portugal, Spain and Croatia, albeit through different degrees. The national legislative framework design determines that in some cases victim's participation in the process is not solely dependent of Public Prosecution Services on what regards to prosecute, as victims can also do so on their own behalf. However, this possibility is mostly enshrined for crimes which are considered of less seriousness or of a private nature. More importantly, one must keep in mind the existing differences in the way victims participate in the criminal proceedings, *i.e.*, as a formal party recognized as such by the law that offers special and differentiate rights and procedural interventive possibilities, or as a *mere victim* with no specific *status*. But those differences should not allow for the disregard of victim's position, specially from the Prosecutors side. One is



aware of the long announced dangers on placing the victim in criminal proceedings as a third party, as an “opponent to the accused, with offensive rights of his own”, with the risk of new vulnerabilities or abuses from the offender and even from the criminal system as a whole (Groenhuijsen 1999, p. 27). But EU framework and national legal policies are hand in hand on the matter of recognizing expansive rights to victims of crime. The Victims’ Directive is a living proof of that reality as the present Report tried to turn evident. Therefore, even when public prosecutors and victims assume opposing narratives in the same criminal proceeding, the formers still have the obligation to stand in for the victims whenever is necessary, as a safe barrier between victims and offenders (Skelton, 2019, p. 35). And that might not be an easy thing to do, because in reality the Prosecutor will be defending a victim’s rights that opposes this professional perspective on the process. But that is in fact mandatory. It even might ask for supra powers from a Prosecutor that, in the end of the day, is only human. In some jurisdictions, these difficulties have been formally addressed. For example, in Croatia, the Public Prosecutor will not intervene in case of a private indictment, rather a private prosecutor will represent the victim (Krapac, 2002, p. 162; Turković, 2008, pp. 281-282) and in Spain, albeit for very limited types of crimes, proceedings will be dependent only on a private initiative from the victims as well (Armenta Deu, 2018. p. 101-105). Moreover, in Spain, albeit victims contain a considerable leeway to participate in criminal proceedings, the Victims’ Rights Law of 2015 has made a point that “the state (...) retains absolute monopoly of the national criminal system” and, as a way to facilitate this perspective, opted to include an article on fraudulent victims (article 35). In Ireland, victims lack the recognition of a formal role in criminal proceedings, depending only in the police and public prosecutors. Nevertheless, Ireland allows for victim impact statements to be made during the trial stage. The previous considerations turn evident different legal options as a reflex of different criminal systems. And those differences were anticipated and addressed by the Victims’ Directive that has in some way admitted differentiate formal courses to address victims by Member States, by leaving some of the rights enrichment dependent on the victim’s formal role across jurisdictions. For instance, in Portugal, a victim can only require reviewal of the prosecutor’s decision on whether prosecution is due or not if he/she has assumed the formal position of *assistente*, whereas in Ireland everyone who falls under the concept of victim has legitimacy to request for the revision of such a decision. All considered, victims’ rights in criminal proceedings are associated to all stages of the process and assured by all its participants. Therefore, there is a tendency for different stages present different gatekeepers for those same rights, as a reflex of criminal system in case, although it is possible that the same stage demands for differentiated gatekeepers, as previously shown. Nevertheless, and after all the previous considerations, from the countries sample this Project partners offers, one can conclude Prosecutors play a decisive role on this matter, even in Ireland, since they are, systematically, across different jurisdictions, the front office of criminal proceedings, in the sense that they are the ones who, after the first contact between victims and the police, turn effective victims’ rights even when the protection of those rights is contrasting with the line of action of a given Prosecutor.

Another differentiation noticed that is simultaneously an autonomous finding is in regard to victims of specific crimes, within the scope of especially vulnerable victims. As mandated by the Victims Directive, each Member State ought to assure legal regimes for victims of specific crimes, which was confirmed by responses to the questionnaire in the majority of participating countries. Albeit this EU orientation comes in a non-constricting way, in the sense that not only those specific kinds of victims should be legally protected. From assessing the questionnaire results, one can promptly conclude that there is a specific regard for victims of domestic violence across the participating countries. An exception consists of the Croatian reality, in which Domestic Violence is framed as a criminal offense, but mostly qualified and regarded by authorities as a misdemeanor (Anić & Frankić, 2019, pp. 60-61), and it is considered that, culturally, Croatia presents a lenient prosecution framework towards domestic violence, generally normalized by the police (Kalac, Vidlička & Burić, 2020, p. 41). Nevertheless, Croatia introduced specific regulations on these victims' rights in 2003 and in 2018, and has adopted a National Strategy for Protection against Domestic Violence in 2017. Despite such efforts, it was recently target to an Amnesty International Report denouncing that existing laws in Croatia fail victims of domestic violence (2020).

This specificity from the Croatian system is a good example of another tendency we were able to identify. The way in which jurisdictions tend to differentiate victims according to the type of crime endured showcases a link with the countries' historical and social reality and lived experiences. In Portugal, for example, most respondents indicated that differentiation is in place for victims of domestic violence, and, effectively, a special statute for these victims has been legally enacted, as previously explained. From the Basque Country, responses showcased the existence of a specific legal framework for victims of terrorism and women victims of gender-based crimes. Moreover, not only a statute but also a specific jurisdiction for women in such circumstances can be found, despite targeting some criticisms (Mortilla, 2013, p. 203/220-221). Finally, in Croatia, victims of Human Trafficking, war crimes and sexual violence, as well as child victims are tendentially more protected, seen as country specific issues for its recent experiences of war and independence. In Ireland, one could not identify such a tendency from the questionnaire results, although through the countries analyses above we were able to identify that there is a specific system in place for victims of human trafficking and that victim of sexual assault are a great concern amongst victim support services provided in the country.

In sum, the previous two findings lead to the conclusion that culture influence towards specific victims will determine the legal protection they will benefit from. Taking into consideration the Victims' Directive orientation and pondering the national legal legacy of the different partner countries specially under discussion, it turns out as positive the fact the countries have found ways to respond to the type of criminality generating more vulnerable victims and protecting them effectively. However, that doesn't legitimate deprotecting all the other victims and that's why there is a world of

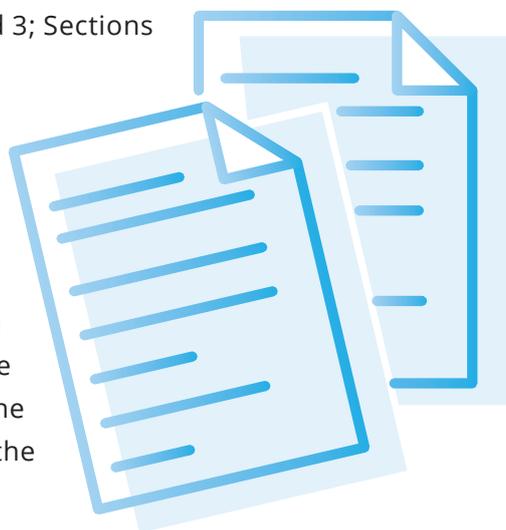
neglect behind those omissions. Furthermore, one should be wary that Prosecutors, for the role they play in each jurisdiction and which has already been assessed, must not enable cultural influences to distract them from the individual assessment of each victim imposed by the Directive and prescribed by what we've learn from victimology so far, as analyzed at the beginning of the present report.

In general, and as predicted in the literature review above, the societal ecology of countries determines the victims' position in jurisdictions.

Good Practices: 1) in Ireland, there are guidelines for Prosecutors which regulate the relation between them and the Police but also detail governmental provided guidelines on how Prosecutors ought to treat and interact with victims; **2)** as a way to avoid clashes between the Prosecutor and the victim, in **Portugal** the instruction judge acts as a kind of intermediary person; **3) Spain** as specific Jurisdictions for victims of gender-based violence, with physical distance from the rest of the court, with privacy to receive victims.

Regarding the **right to information**, according to the questionnaire results, the public prosecutor has a role in the provision of information to victims. The provision that demands public prosecutors to give information to victims is a law, whether a criminal procedure code, a specific law or internal guidelines. This is obviously related with the major role of the public prosecutor on the initial phase of criminal proceedings in most of criminal procedure codes (v.g. Portugal and Croatia). Even in the Spanish system, where the investigation phase is conducted by the investigative judge/examining magistrate, through the police, prosecutors are responsible for different diligences throughout criminal proceedings, namely investigative, preliminary, informational and procedural diligences (Alfonso Rodríguez, 2019, pp. 177-178). Also, in the Irish system, where the Director of Public Prosecution has no power of direction over the investigative entities (police), the guidelines also provide for the two entities to work together and for the public prosecutor to advice the police. Therefore, prosecution services still have an important role to guarantee the effectiveness of victim rights, namely Public Prosecutors ought to work with the *Gardaí* to ensure that the victim is kept fully informed in relation to criminal prosecution and proceedings (Section 8, Subsections 2-8; Sections 9 and 10; Section 11, Subsections (c) and 3; Sections 22-25 of the Victims Act).

However, in most of the countries, there is a lack of instructions from the Public Prosecutor to the Police on how to provide information to victims (to this statement six countries responded negatively - the Basque Country, Croatia, Germany, Sweden, Malta and Hungary). This is preoccupying, since it is the police who normally has the first contact with victims and the transmission of information should be controlled by the



public prosecutor. It is particularly preoccupying when one considers the relevance of this right, since the effectiveness of all other rights will be dependent on information on such rights being given to victims (Groenhuijsen & Pemberton, 2011, p. 15).

It was also possible to conclude that even when this information is given by the prosecutor, there is no systematic and standardized procedure, on a national and institutional basis, to provide information to victims. In some countries, such as Portugal and Germany, the reason might be the regional autonomy of the public prosecutor office, because there are regional sections of public prosecutor, according to the Public Prosecutor Statute – Law 68/2019, article 67 (*Regional General Public Prosecutor's Office - Procuradoria-Geral Distrital*), that can give specific orders and instructions (cf. Law 68/2019, article 68. 1a) which hinder the construction of a national strategy. In Germany, given the country's Federal construction (*Länder*), the regional public prosecution offices are able to issue instructions to the public prosecutor's offices, for they are subordinate to a regional public prosecution office established at every Higher Regional Court (§§ 142 and 147 of the Courts Constitution Act) (Siegismund, 2003, p. 60).

Besides what has already been mentioned, the procedure was not preceded by workshops/training or similar initiatives in order to guarantee a good articulation in most of the countries (v.g. Portugal, Germany, Sweden and Hungary). Notwithstanding, this is not contrary to the Directive, since it does not demand for a standardized way of providing information. It only demands from Member States to ensure victims are offered the information established in article 4.1, something that creates some subjectivity on the proceeding to provide this information. Despite the fact that there are examples where standardized written communication or even integral copies of legal provisions are delivered to victims (Ivankovic, *et al.*, 2019, pp. 7-8), in the answers received from all the countries it was possible to find the importance given to oral explanation of the rights to the victim, beyond mere delivery of written minutes with a standardized list of rights. A good example of this tendency is Ireland, in which competent offices within the *Gardaí* standardly provide for pamphlets and written information to victims, but will give oral information to specific victims, such as family members of victims of violent crimes, for example, showcasing the importance of oral information being provided at least to certain victims.

On the analysis of the results it was possible to observe some disparity of the content of the right to information, given that in some cases this does not depend on the severity of the crime, rather on the typology of certain crimes, which varies amongst countries. For instance, in the Basque Country and in Portugal victims are provided with a list of their specific rights, according to the type of crime in question, and with a generic list of all the rights defined by law, while in Croatia, Germany and Hungary victims only receive a generic list of all the rights defined by law. The Basque and Portuguese solutions are in line with the Directive, since article 4.2 specifies that the detail and the extent of the information provided may vary due to the needs of the

victims, as well as for personal characteristics of the victim and the crime committed, also in line with its general individual needs approach. Nevertheless, this disparity may occur because of the difficulty regarding the concept of victim, since Victims' Directive contents convokes both the natural person who suffered the harm and (some) family members, but it can be discussed if it is necessary to have an external evaluation on this matter, namely by victim support services or state service(s), that confirm the effective existence of a victim. Assuming that subjectivity, the content of the right to information given to the victim might rely on a individual assessment made by an external authority, something that might be considered dangerous to the effectiveness of the article 4 of the Directive. To solve this problem, a solution would be the one found in Portugal: the creation of specialized offices within public prosecution services which, in collaboration with victim support organizations, provide specific victims, amongst other things, with oriented information.

Lastly, and as a way of simplifying the, at times, complex world of criminal proceedings for victims, which one can see from disparity in the questionnaire results, which demonstrates that is also complex for the practitioners involved, victims should be able to access general and victim-friendly information even before addressing authorities. Ireland has developed a great set of online information sources for this effect. This initiative may prove specially beneficial for jurisdictions, such as Ireland, in which victims do not play as formal role in criminal proceedings and can be/felt left out of the process, assuring victims are at an equal standing – or, at least, less unequal – with intervenient parties in the process (Pérez Marín, 2015, p. 382).

Good Practices: 1) importance given to oral explanation of the victims' rights **in all the countries**, beyond mere delivery of written minutes with a standardized list of rights; **2) in Ireland**, oral information is provided to specific victims of crime instead of through patterned written means; **3) in Ireland**, victims can easily access to information regarding their rights in criminal proceedings and out to enact them, online³⁹; **4) in Portugal**, specialized offices can be found in some public prosecution services, which provide information for specific victims of crime.

Regarding the section related with **rights of victims when making a complaint**, different solutions observed on different participating countries reflects, obviously, each legal system. In countries where public prosecutors plays a dominant role at the initial phase of a criminal proceeding, such as Portugal, these receive complaints (albeit not exclusively), whereas in legal systems where the police leads the investigation phase, it is mainly the police that has competence to them, like Ireland.

In other countries, such as the Basque Country and, from extra partnership

39- Examples of such sources are available at: <https://www.garda.ie/en/victim-services/garda-victim-service/english-victim-information-booklet.pdf>; and https://www.citizensinformation.ie/en/justice/victims_of_crime/your_rights_as_a_victim_of_crime.html (last consulted on the 31st of August 2020).

countries, Germany, not only the police, but also the judge and public prosecutors may receive complaints. This disparity does not jeopardize the effectiveness of the rights of victims when making a complaint, since the focus of article 5 of the Directive is not a formal perspective regarding the competent authority to receive complaints, but rather a material one, on the effectiveness of victims' rights when making a complaint. Thus, the concern is the following: the more entities are competent to receive complaints, the more training must be given and coordination guaranteed by national authorities especially when the entity that receives the complaint is not a judicial authority (public prosecutor or judge), but, *e.g.* police or the national institute of forensic medicine.

The Directive, on article 5.1, demands that victims receive a written acknowledgement of their formal complaint and this demand is fully ensured in most countries (except in Croatia and, from the extra partnership side, Malta), being this obligation recognized by law. But the type of document given to the victim differs, even in the same country, since in some cases the victim receives a copy of the complaint with the number of the process, *v.g.* Portugal 9 answers and Croatia, and in other cases only receives a minute of the complaint with the number of the process, *v.g.* Portugal 4 answers and Sweden. Sometimes the victim only receives a receipt that acknowledges that he/she presented the complaint with the number of the process and that is the case of Croatia, Ireland, and Germany. And in the Basque Country, the majority of the respondents answered that the victim receives a copy of the complaint. In Croatia, if the victim only files a complaint directly in the competent services or by e-mail, he/she receives a confirmation that has submitted or sent the complaint. In Hungary the respondent answered that if the complaint is made through a minute, the victim receives a copy of the that given minute. The lack of detail in the Directive promotes this disparity, since the aforementioned article 5.1 only demands that this written acknowledgement of formal complaint contains the basic elements of the criminal offence in question. And that' that.

In most of the countries there is an obligation establishing the right of victims to be accompanied by a person of his/her choice during the proceedings, except in the extra partnership countries Hungary and in Malta. In some countries, such as Portugal, this is not actually a legal obligation, since article 12.3 of the Statute of Victims only enshrines that as a possibility. Also, in Croatia, there is no such obligation, even though this right is provided for by the Criminal Procedure Code. Namely, if the public prosecutor or the court did not allow the victim to consume this right, the victim would not have the opportunity to appeal of such a decision. Additionally, the Portuguese legislation reflects a direct transposition of the Directive, since it only foresees this accompaniment during the first contact with the authorities and not in all the phases of the criminal proceedings, as the solution of article 3.3 of the Directive. But the national legislations, as the Portuguese, do not ensure a real obligation, but only a possibility, while the Directive (using the sentence "Member States shall allow victims to be accompanied") seems to be more demanding. Therefore, the legislations that foreseen only a possibility are not in line with the Directive, as it should not be only a possibility, rather an effective obligation.

Good Practices: in **Ireland, Malta, Portugal** and **Spain** there are specific services/ departments within the Prosecutors' Office to receive complaints/investigate certain types of crimes allowing for individual assessment, especially in the case of victims of domestic violence, sexual violence crimes, crimes against women and children, all gender motivated crimes, economic and financial crimes; **2)** in Ireland, there is a standardized model for providing victims with a letter of acknowledgment.

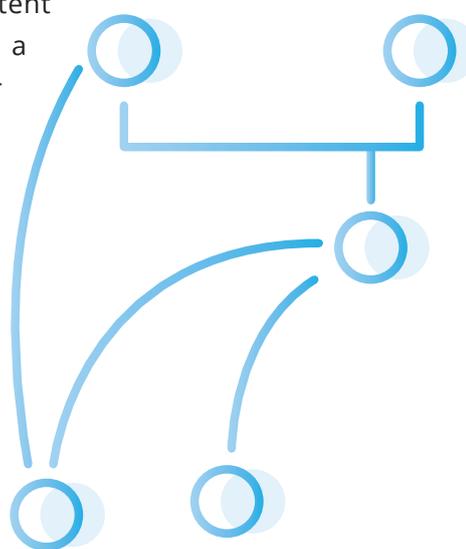
In what relates to **right to support services**, findings reflect important disparities regarding referrals formal base, since the questionnaire results reveals referral models coming in the form of laws, regulations, protocols, and so on, as a mirroring of such criminal systems architecture. Furthermore, generally, there is a lack of national organized and articulated referral system in place. These two findings are probably due to the way article 8 of the Victims' Directive was designed, for there is established the obligation of assuring referral from the competent authorities to victim support services, while leaving to national jurisdictions the autonomy to determine the ways in which they will facilitate such referrals. On one hand, this assures that domestic jurisdictions can adapt the provision of victim support services to national realities. On the other hand, it leads to disparities amongst and within Member States, which can lead to unwanted results - especially when it comes to cross-border victims – compromising the effectiveness of the victims' right to access such services.

Combining what has just been said, with the joint analysis of the questionnaire results and the four partner-countries characterization, it's easy to conclude that, from a global perspective, there is no legal obligation of referral to victim support services from the public prosecution services perspective, despite some respondents from Croatia providing a positive reply. Predominantly, answers from Ireland and Portugal pointed the inexistence of a legal obligation, but, rather, highlighting the existence of such a possibility. Therefore, referrals to victim support services are not mandatory. Aforesaid observation demands for further discussion, for it can be seen as a good start, since referral to victim support services systems under the Directive's scope should ideally result from the individual assessment of the victim in question, and, more importantly, respect the informed victims' will and consent. But, at the same time, the option to disregard a opt out solution might generate material absence of referrals and, with that, lack of effective victim support. All in all, the referral system is not put in place to proceed with demands proper to the criminal process, as it happens for example with referrals to Restorative Justice services while diversion measure. Differently, here referrals take place to assure victim's needs and that's why an automatic system of referrals could, ultimately, disregard the concrete person's will, a person that happens to be a victim on that occasion, and that in other given context could decide on her own to benefit or not of a certain service or support, public or private. Why shouldn't he/she decide on the topic support on his/her own also while being a victim? Freedom of decision is a must.

Further on the previous findings, one must consider what has been previously

discussed regarding the roles of different gatekeepers in criminal proceedings, namely the possibility the described results are a reflection of the fact that, in most cases, across the partner-countries, police is the entity with which victims makes the first contact. In fact, one participant from Ireland stated that, in practice, referrals are made by the police and are not, technically, actual referrals. From extra-partnership countries, the same tendency arouses, for the Maltese and the Swedish participants also indicated the police is competent to promote the referrals under analyses. Therefore, the circumstance Prosecutors aren't legally bonded to a legal referral stablished system doesn't lead to the automatic conclusion referrals do not happen within a given State. Referrals must take place, in line with the Victims' Directive, and respondents from Croatia and Portugal, in their majority, indicated that public prosecution services do refer victims to support services. However, respondents from Ireland answered negatively, as a reflex of the Police being essentially the ones who lead the investigative phase. As explained *supra*, Ireland used to have a referral system in place, which was abandoned after questions raised regarding victim's data protection. This is a good example of the challenges in enforcing direct referral from competent entities to victim support services and on what type of information should be shared. Which leads us to the analyzes of the following finding.

Respondents from all participating countries provided for disparate answers on the matter of what information ought to be provided to victim support services. Some even replied they are given details on the case. Most answers to the question regarding the model of referral revealed victims are provided with information on the existing support services, leaving to the victim the choice to resort to them. From extra partnership countries, the same general tendency emerges, for the respondent from Germany made the observation that, in practice, public prosecution services only provide victims with information on existing support services. But in the case of Portugal, 11 respondents, out of the 21, answered that victim authorizes prosecutors to make such referrals. This raises the question of whether it is enough to inform victims of their rights to support services and list the existing ones. The Directive specifically states that referral should happen from the competent entities to the victim support services. Therefore, a reversed interpretation does not seem to fall under article's 8 scope. Ultimately, this leads us, again, to the sensitive question of whether these referrals can or should take place without the victims' consent, in an automatic way. And, again, one is confronted with the arguing line above, that doesn't neglect qualitative data pointing out to the willingness of victims to proactively receive offers of support without a formal request or to accept an automated national referral mechanism (Victims Support Europe, 2013, pp. 20-21). The point here is that national governments should promote



accurate articulation between formal jurisdictions, namely the police, prosecutors and judges, with victim support services and by accurate one is not willing to merely point the need for a law, a protocol or similar. They don't solve the problem under discussion *per se* as the questionnaire results evidences. On the topic of protocols of coordination between Public Prosecution Services, a respondent from Ireland emphasized that all forms of cooperation can be set in place, but "it is totally *ad hoc*", and a respondent from Germany considered these forms of cooperation as dependent of the decision of the prosecutor office in question, adding that "some have a close cooperation with support services, some no". This seems to cause a deficit in cohesion within national systems. Having this said, and retaking our idea, the approach one is trying to put into motion demands for a common working bases that builds a similar way of communicating to victim the existence of victim support services, with jointly provided training to the professionals working on the same jurisdiction area, on how and what to communicate in a way that could, as the Portuguese respondents mainly pointed out, lead to a victims authorization to be referred to victim support services. This approach might, at the same time, solve the problem of lack of access to victim support services for example automatic referral systems tries to overcome, while observing victims' rights, namely freedom of decision and right to privacy and also what seems to be the willing of Member States under article 8 of the Directive. Designing the idea a little bit further, the articulation in question could even go down to detail of naming the kind of information to provide, for example through a jointly prepared template that considers the minimum and relevant information a victim support service would need to receive for a victim autohorized referrel made by the Prosecutor, naming the victim, her contacts and, at least, the basic facts about the case, in order to prepare the first contact more accurately, guarantying for example that the professional from the victim support service who is going to contact the victim is truly prepared to address the demands/specifies of the case. On a positive note, the questionnaire assessment shows there is some kind of cooperation between public prosecution services and victim support services, except in what regards to respondents from Croatia. Answers on the types of cooperation in place showcase that, mainly, cooperation regards training and participation in initiatives such as awareness raising. The majority of the respondents in Portugal and Spain answered that public prosecutor's request victim support services workers to accompany victims. One respondent, from the Basque Country, replied that prosecutors at times request referrals for support and care of victims. All considered, articulation is in motion, but could be elevated to a 2.0 kind of approach.

Even though a better articulation might be in place, referrals will be in vain if there are no victim support services to access to. And the truth is, despite national government efforts, victim support services are mostly provided by NGOs. From observing the partner countries mapping above, NGOs have played a crucial role in providing these services in the last decades and are still the main providers of support services to victims of crime. In general, they lack sufficient funding and coordination with public entities, and usually suffer from deficient territorial distribution. With this, one is not arguing

that NGOs should be replaced by a State based solution. The problem is that when victim support services work under a free market rationale, geographic considerations, financial resources and even media pressure might dictate NGOs placement in large urban centers and support to the typologies of victims statistically or out of press more in need, leaving all the other ones unprotected. Partner countries try to put in motion ways to overcome these difficulties. In Croatia, for example, victim support services are found within courts, and funding is provided to NGOs operating where such courts do not exist and where, consequently, victim support services are not in place. Nevertheless, there is no victim support service with a generalist mindset, *i.e.*, devoted to providing support to all victims, independently from the type of crime in question. In Ireland, the Police and Public Prosecution Services have engaged in several initiatives to provide for the development of the support system and have created specialized entities within their organizations to provide for information and assist victims. In Portugal, protocols between the public prosecution service and non-governmental support providers have led to the integration of offices for assisting victims within the public prosecution service (and in police headquarters). Spain showcases a public network of specific support offices as well as designated prosecutors for assisting some victims.

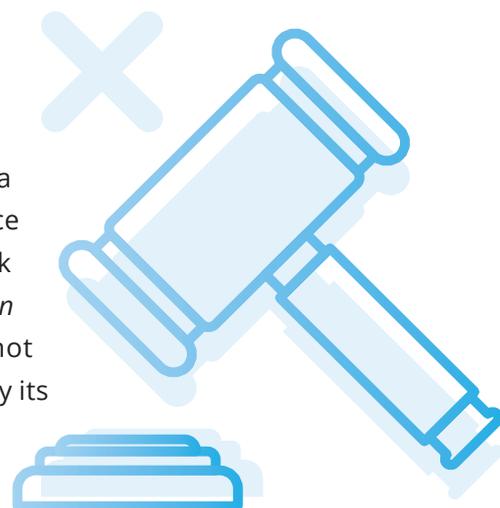
Finally, and confirming the prediction contained in the literature review above, participants indicated that the victims which are referred to victim support services are mainly victims of domestic violence, sexual violence, and human trafficking, *i.e.*, victims of certain types of crimes. The partner countries mapping confirms this tendency, as in all four partner countries, one can observe a context of specialized services for certain victims, once more reflecting cultural aspects of the jurisdiction in question. As an example, in Spain, specific support is granted for victims of terrorism. A different solution emerges from Portugal where Portuguese Association for Victim Support (APAV), promotes a national and universal victim support system, under both government and private financing, while existing other victim support services with a victim typology focused scope.

In sum, EU partner Member States have an ongoing process of institutionalizing organizations which provide for victim's needs. However, this process still lacks the necessary coordination and funding in regard to non-governmental organizations, long-time providers of victim support services, as accounted along these pages. The questionnaire results confirm that "national political and societal circumstances influence the way victim support services are understood and prioritized by individual governments", hindering access to such services (Gavrielides, 2015, p. 76). Nevertheless, one must keep in mind that there has been progress, and that building a culture of victim-oriented cooperation and investment, particularly among the criminal system stakeholders, is foreseen to take time.

Good Practices: 1) in Ireland there is a coordinated system for victims of Human Trafficking, approach that could be considered for other types of crime; **2) in Ireland**

specific divisions were created within the police along with prosecution services specialized to assist victims; **3)** protocols were celebrated in **Portugal** for the development of victim support offices within the public prosecution services; **4)** victim support services in **Spain** are competent for giving information to victims on specific rights, namely on the Restorative Justice services available; **5)** **Croatia** funding of NGOs in regions where courts with victim support services do not exist is seen as a creative solution.

Regarding the topic **Restorative Justice**, if one wants to summarize in a word the major findings of the questionnaire results that would probably be *discouraging* and that's why the following discussion of this specific field demands additional legal analyses and dogmatic considerations efforts. Discouraging because the diagnosis emerging from the questionnaire results is unfamiliarity with Restorative Justice. It seems like we are in face of Wittgenstein Lion after all. In fact, when cross-checking the legal countries mapping above with the questionnaire results, the immediate conclusion is unfamiliarity with the law on the topic of Restorative Justice and restorative practices/services is transversal, *i.e.*, it happens repeatedly in all countries. None of the respondents is fully aware of his/hers won national regulation, something that can be displayed through a number of examples. Although Restorative Justice services are legally established, generally under victims-offender mediation typology, something that can be understood as a Framework Decision of 2001 heritage, still, the exact penal procedural phase in which referrals might occur is not fully internalized. For instance, it's possible to see that while in Portugal referrals to mediation services are only possible during the investigation phase through Prosecutor's initiative or at post-sentencing level (*cf.* Laws 21/2007, article 3.1 and 115/2009, article 47.4), even so, some respondents think Restorative Justice services are available at any stage. On the same topic of unfamiliarity with the law, if one focuses on victims minimum age to participate on a restorative process, the answers overlook shows serious disparities, varying from 14 or 18 in the Basque Country, or 14 years old/non-applicable/not knowing in Croatia, or 12 to 29 years old in Portugal. One must note this is a general tendency, since Malta, an extra-partnership country, also refers an imprecise age, 14 up to 16 years old. Differently, in Ireland, all respondents mention there is no minimum age to be pointed, which is rigorous, since the national legal regime opts not to determine a specific age for victims participation, preferring a solution adaptable to the actual capabilities of the victim in question, which means that in each case there will be an evaluation to decide whether the victim is sufficiently prepared or not to participate on a restorative process. This unfamiliarity with Restorative Justice goes beyond the surface that the national legal framework of each country materializes and dives deeper, to the *raison d'être* of Restorative Justice. Its principles and goals are not fully understood by the persons who have the power to apply its mechanisms, *i.e.*, restorative processes, because affirming that "there is no connection between Restorative Justice



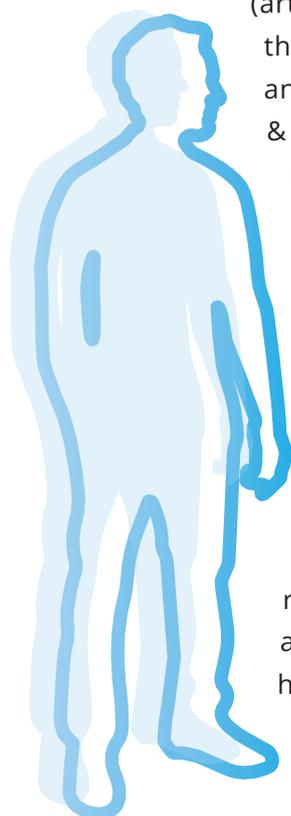
and victims' rights" shows professionals with important responsibilities on this field are not aware that the rising of Restorative Justice theory is umbilically linked to victims' rights, as shown above across literature review.

On a positive note, respondents from the Basque Country show stronger knowledge regarding Restorative Justice, a region that already has a *Servicio de Justicia Restaurativa*, i.e., Restorative Justice Service, a service managed regionally and that is considered an important reference (Sumallia & Estiarte, 2019, p. 40; Sumalla, 2018, p. 181).

The questionnaire results display as general knowledge that Restorative Justice services referrals are not mandatory, being instead dependant on opportunity, adequacy and convenience judgements. This is strictly in line with the Restorative Justice dogmatic legacy, also presented above across literature review, for it would be a paradox to promote Restorative Justice principles, namely voluntariness, and to fix a mandatory system of referrals at the same time.

Still on the matter of referrals, another important finding pointed out above is the following: public prosecutors are not always responsible for referring cases to Restorative Justice services, but they can be considered the main gatekeepers on this field. While in Portugal and Croatia the participants majority confirmed prosecutors are the ones promoting the referral, in Ireland and Spain respondents stated it is a responsibility of judges, but also in Spain and in Croatia participants affirmed this can also be a competence of victim support services, and in Ireland, attempting to observations from participants, police or the country's probation services can also refer cases. This means competence for referral will vary according to the criminal justice system in place as well as the stage in which Restorative Justice can be found in the different jurisdictions. But the questionnaire also confirms another tendency already marked above, and also present on the UN Handbook on Restorative Justice programmes, since this recent review of these services in several common law and civil law countries found that public prosecutors were the most common gatekeepers to restorative programme access (Dandurand, Vogt & Lee, 2020, p. 46). And this is understandable when we consider the role of public prosecution services in criminal proceedings previously disclosed, linked to the finding that Restorative Justice Services are mostly of a diversion nature for pity crimes, and diversion, as already explained, occurs mainly during the investigation phase, where prosecutors are largely *dominus*. Going broader to understand this state of the art, one must take into account the dichotomy of the criminal justice systems' heritage, for they explain the differences in the enforcement of these alternative mechanisms on the traditional justice system: in common law countries, the principle of opportunity comes as a rule, whereas in civil law countries, it has more recently been introduced as an exception. The introduction of the opportunity principle in historically inquisitorial systems has progressively conferred to public prosecutors more discretion, specifically when faced with the decision of prosecuting or not. However, there is still resistance towards this principle and, more accurately, towards the use of Restorative Justice

systems. And that is something that probably explains unfamiliarity with its rational and with the use of restorative practices. To understand why that happens, one must take into account the fact that both the questionnaire and literature from civil law countries show Restorative Justice practices are predominantly inferred as diversion measures with intervention from criminal authorities, *v.g.* the prosecutor or the judge, more specifically, to the decision to suspend the proceedings in face of victim reparation (Bernuz, 2014, p. 2). Albeit Restorative Justice might also be grounded on the opportunity principle (Varona Martínez, 2018, p. 45), namely when implemented as a diversion mechanism alternative to criminal proceedings, this association is not accurate, as diversion measures do not always entail the rationale behind the Restorative Justice theory explored *supra* on literature review. To fully understand why this is so, one must take into account historical and social motivations. For example, in Croatia, that resistance is pointed out to be due to the fact the socialist regime previously in place favored extrajudicial conflict solving methods in detriment of judicial procedures (Krapac, 2002, p. 164). Therefore, if Restorative Justice is solely associated to *alternative dispute resolution* mechanisms, that can rise the (bad) memory of that kind of Justice. From our perspective, labelling Restorative Justice as *ADR* is reducing, for it can operate under the large umbrella of diversion measures, but with different goals from other diversion measures such as the decision to suspend the proceeding, but it can also be envisioned and materialized in national legal framework as a complementary way of doing Justice, either on a pre or post sentencing level, *i.e.*, this schemes should be made available at any stage of the proceedings, when the interested parties agree to do so (Gavrielides, 2019, p. 125), something already happening in some of the respondents countries, like in Spain, where the Penal Code allows for Restorative approaches at any stage of the process (article 21.5), but also in extra partnership countries, for in Germany, the §155a of the *StPO*, country that holds one of the oldest programs and practices on Restorative Justice in the European context (Delattre & Willms, 2020, p. 281), also recognizes victim-offender mediation at every stage of the proceedings. All in all, Restorative Justice schemes do not represent a substitute the criminal justice system, neither should they (Hartmann, 2019, p. 137; Skelton, 2019, p. 35).



Regarding ambivalence on safeguards, this specific finding results from the fact the majority of respondents stated there are no safeguards in place for victims under Restorative Justice services, except the Basque Country and Hungary. Not even specialized safeguards for specific victims, which are crucial for positioning victims, particularly vulnerable victims in a position of equity in regard to offenders (Martín Diz, 2013, p. 514). Again, the exception are the respondents from the Basque Country and Hungary, that have indicated the existence of safeguards in place, respectively, for vulnerable victims and domestic violence victims. This finding is particularly alarming. Considering this Projects partner *consortium*,

the proper conclusion should be that, except for Croatia and (partially) Portugal, the other two countries, Ireland (Victims Act, 26) and Spain (Victims' Rights Law 4/2015, 15), have transposed the Victim's Directive provision on safeguards for victims participating in Restorative Justice services. Therefore, the alarm comes in the form of two waves. The first one confirms once more the unfamiliarity with the law of the questionnaire respondents on a very sensitive matter: the protection of victims. The second wave brings perplexity emerging from the absence of safeguards on this matter both in Portugal and Croatia, in Portugal because the Law 21/2007, prior to the Victims Directive, doesn't fully comprehend the article 12 on safeguards (namely 12.1 *a* first part and c) and in Croatia due the overall lack of Restorative Justice regulation (Kalac, Vidlička & Burić, 2020, p. 23). With this, one is not denying the benefits attributed to the results emerging from the participation in restorative programmes. Our concern is that those potential benefits alone do not suffice, as safeguards are essential to fully reach the goals of this line of intervention. Otherwise, they can be effectively harmful for victims of crime (Hartmann, 2019, pp. 132-137; Skelton, 2019, pp. 37-39). That's why (*minimum*) safeguards must be understood as mandatory.

Albeit some of the discouraging findings mentioned and the general scepticism regarding the use of these methods in serious crimes present in literature, such as gender-based and family violence crimes (Hartmann, 2019, p. 133; Terry, 2019, p. 153), research has already showed Restorative Justice can be beneficial for victims of these types of crimes (Terry, 2019, p. 153), and empirical studies indicate the more serious the crime, the more likely are victims to opt for Restorative Justice schemes (Gavrielides, 2019, p. 125), and the bigger is the need for them (Van Droogenbroeck, 2010, p. 233). Taking the example of domestic violence, Restorative Justice methods have already been implemented for victims of these crimes in Member-States (Drost *et. al.*, 2015, p. 10; Liebmann & Wootton, 2008, p. 4), and there have been successful stories of the use of restorative justice for hate crimes (Gavrielides, 2010, p. 197), and domestic violence, in the last case for both victims (Pelikan, 2000 & 2010) and offenders (Hofinger & Neumann, 2008). Restorative Justice is also now of widespread use for example in face of international crimes and armed conflict: in the Basque Country, restorative meetings were organized by the Direction of Victims of Terrorism for victims of ETA and ex-members of this organization (Pascual Rodríguez & Ríos Martín, 2014, p. 431); in Croatia, restorative justice schemes were used in face of atrocities committed during the armed conflict (Peuraca, 2010, p. 103). It is considered that access to such services should not be limited by legal restriction, but rather casuistically assessed by experienced criminal prosecution services, which would determine the viability of such referrals (Barona Vilar, 2013, p. 473).

Good Practices: 1) keeping in mind there are no referrals to the victim-offender mediation system for many years now, even so, in **Portugal** when cases existed there was a satisfaction inquiry in place once a mediation program was over (Regulation 68-C/2008, 12); **2)** in June 2019, the **Basque Country** (Spain) has moved from penal

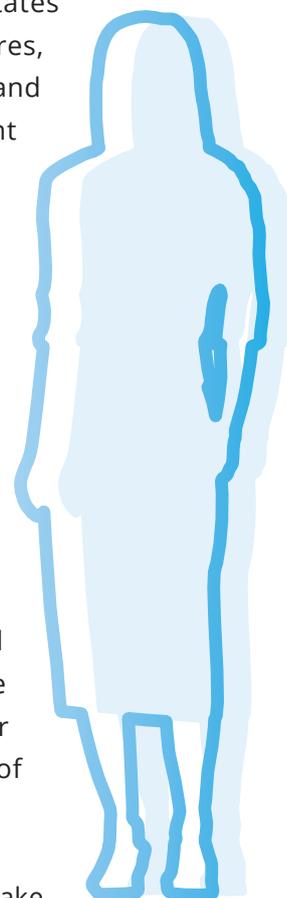
mediation services to a *Servicio de Justicia Restaurativa*, i.e., Restorative Justice Services, embracing other restorative practices beyond mediation; **3)** in **Spain**, the Victims Statute expressly identifies victim support services as responsible for informing victims of available Restorative Justice schemes.

Finally, in what concerns to **rights to protection and individual assessment**, the majority of the respondents in Croatia, Ireland and Portugal, and also from the extra partnership countries, namely Germany, Malta and Sweden, answered that there are no automatic measures of protection in place. Only in the Basque Country respondents answered affirmatively. However, in Spain, criticisms are raised regarding automatic protection measures taking place regardless of an individual assessment, which goes against the Victims' Directive. This lack of automatic measures may be positively understood, if we understand it as a way to make effective the individual assessment. On a procedural point of view, we may suppose that this lack of automatic forms of protection also is explained by the fact that in some legal systems, such as the Irish and the Portuguese, public prosecutors may only promote the application of the measure, for it is the judge who decides for the application.

The majority of the respondents in Ireland, the Basque Country, Croatia and Portugal, answered that there is an obligation to conduct an individual assessment, which is a demand of the article 22.1 of the Directive, but the Directive does not provide for a uniform way of carrying this assessment, leaving for Member States the regulation responsibility and initiative, by setting national procedures, which can lead to some arbitrariness. In some countries, namely Croatia and Portugal, a template questionnaire followed to the individual assessment and the role of public prosecutor does not exist. Despite the fact that the Directive does not demand this template questionnaire, the lack of it might jeopardize the effectiveness of the individual assessment and the content of this procedure, according to article 22.2 of the Directive, since each authority in each country may conduct the individual assessment despite the inexistence of any guidelines. This reveals to be specifically worrying when one considers the great task in which individual assessments materialize. Without these guidelines, and lacking sufficient training, a task which in itself would already be extremely difficult (Groenhuijsen, 2014, p. 36; Shapland, 2018, p. 202), might become impossible.

Furthermore, the right of victims to deny assessment is assured, and the will of victims in assessments is relevant, according to the Questionnaire results, which is a direct demand of article 22.6 of the Directive, for individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes.

Article 22.2 of the Directive dictated that individual assessments must take



into account not only the type of crime, the harm caused to the victim, the circumstances of the crime, but also the personal characteristics of the victim. Nevertheless, the national legislations tend to associate protection measures (general and specific) as measures against the offender, such as protection orders, restraining orders, offenders' contact ban, offenders' area ban, certain locations ban or police protection. Consequently, these measures are not focused in the application of measures that increase the welfare of the victim, such as psychological assistance, which may be alerting.

Additionally, it is possible to notice that countries seem to have a special precaution with victims of some specific crimes, namely domestic and sexual violence and gender-based crimes, but not so much attention in what regards to other crimes, such as forced marriage, which is even disvalued. As examples of what has just been said, one might consider the Irish offenders' contact ban/protection under a restraining/exclusion order, that only occurs when the crime of harassment is in place, which is contrary to section 10 of the Non-Fatal Offences Against the Person Act of 1997. And in Portugal, the Law 112/2009 that came into force in 2009 is specifically tailed for Victims of Domestic Violence, regulating victims' rights in the sol case of victims of domestic violence. Croatia is the only country mentioning organized crime and war crimes as potential beneficiaries of protection measures. As already pointed out, this reflects the national reality, since Croatia has passed different laws on specific victims, not only for domestic violence victims, but also laws on victims of human trafficking and others on the right to compensation for war rape victims, as a reaction to its history heritage.

Moreover, throughout national legislations it is possible to find a general sensibility regarding specific protection measures for children victims of crime. Public prosecutors even have specific procedures to deal with/investigate cases concerning child victims, according to articles 22.4 and 24 of the Victims' Directive. In Spain, for example, public prosecution services have the specific competence of ordering such measures when it comes to children. Despite the ratio of the Directive being that all victims ought to be assessed, leaving behind the stigmatization of vulnerable victims, to effectively identify actual vulnerable victims without labelling them, one may argue that this sensibility is due both in theory and in practice, as throughout the Directive one finds a specific concern for victims of certain crimes as for some types of persons who are victims, such as minors, people with disabilities or victims within close relationships with offenders.

Good Practices: 1) the application of the protection measure 'anonymity of the report' to victim's address is applied in **Ireland** to victims of human trafficking and to certain offences related with child pornography; **2) in all countries**, the individual assessment takes place at the earliest opportunity or during the investigation phase and wherever it is possible; **2) in Croatia**, when conducting the individual assessment, the public prosecutor determines it in cooperation with witness/victims support entities and institutions.

MAJOR CONCLUSION:

Across the four partner countries, one could find very different jurisdictions, applying the same Directive's provisions, but with variable approaches when it comes to transposing and effecting victims' rights. The strong national criminal cultural contexts and the different penal legal frameworks across differentiated worlds of compliance with European Law lead to discrepancies between Member-States. It looks like the specific dominium of victims' rights demands for accurate analyses parameters on the matter of worlds of compliance with the Victims Directive. For example: while predicting Spain would come to include the world of transposition neglect, actually it seems that the world of domestic politics is confirmed, for the transposition occurred, but with strong national affirmation; Ireland is now very far from a world of dead letters when it comes to victims' rights, for although victims do not have formal participation in criminal proceedings, a true victims culture seems to be in place; on a first glimpse, Croatia and Portugal appear to be still trapped in the world of neglect for different reasons named along the previous text, but a further reflexion seems to detached them from such a world, for Croatia made efforts on the matter of Victims Directive transposition but with no true victims culture in place, and Portugal has made efforts to stablish such a culture, namely through better articulation between prosecution services and victim support services, while lacking full transposition of the Victims Directive. Ultimately, one might find whole new worlds of compliance with the Victims' Directive, but that's a new line of research for a new project.

One way or another the Worlds analyses demands for a strong European framework which must comprehend the differences amongst Member-States, as in fact it attempted to do, without compromising victims' rights, as well as specific national practices adapted to and by each Member-State. More importantly, there is a pressing need for practical enforcement of victims' rights, particularly by Prosecution Services.

For the role they play in criminal proceedings, Public Prosecutors are true gatekeepers of the Victims' Directive, as we have had the chance to evidence. The space left by the Directive for national jurisdictions to implement its provisions leaves a considerable leeway for Public Prosecutors, since their role simultaneously influences and depends on the specificities of national legal systems and on the national culture surrounding victims. The possibility of victims reclaiming their role in criminal proceedings depends on them. The way in which Public Prosecutors reinvent their role in criminal proceedings accommodating victims' rights, namely when confronting with novelties on the field of victimization emerging from cyberbullying and beyond, is crucial to turn from *law in books* to *law in action*.

However, for that to happen, a cultural change in regard to victims is required. And this will not happen if the Victims' Directive falls into the trap of Wittgenstein Lion: the Directive must be able to speak the language of the ones enforcing it at a daily basis, particularly when it comes to public prosecutors.

In sum, if we could only take one lesson from the previous pages which made up the present report, that will be that there is a pressing need for a cultural change regarding victims of crime, particularly within public prosecution services. We could wait for this cultural change to come in itself, or we can take active steps to incentivize this process. We prefer the latter, in line with the new strategy of the EU for the upcoming years, and therefore, 20 fundamental recommendations were drafted.





Part IV

20 FUNDAMENTAL RECOMMENDATIONS

TO THE EU

1. Better addressing the question of victim's formal participation in criminal proceedings:

Albeit respecting differences amongst jurisdiction, leaving it up to Member-States to adapt victims' rights to their national criminal justice system in regard to formal ways of victim participation may lead to inconsistencies amongst jurisdictions;

2. Specify the provisions on training:

The Victims Directive addresses training in a general way, imposing the obligation on Member States to ensure it, without setting specific orientations, such as initial specific training on victims' rights under the light of the Victims Directive for professionals of the judiciary spectrum (v.g. judges, prosecutors, lawyers, mediators/facilitators, etc.) and lifelong training for all the others;

3. Specify the provision on coordination between national authorities that have a role on criminal investigations and on criminal procedures:

Albeit the specificity of member states systems of criminal procedure, the coordination of authorities, e.g., between police and public prosecutors, should be improved in order to assure efficiency on the warranty of victims' rights, for example by assuring joint training sessions to better align the way victims and victims' rights are addressed by those entities;

4. Specify the provision on coordination between criminal authorities and NGOs providing victim support services:

Coordination between public and civil provision of support for victims lacks densification, resulting in mixed and un-coordinated systems across jurisdictions;

5. Enhance cooperation and coordination between Member States for cross-border victims:

Having identified several disparities between jurisdictions, one can imagine that cross-border victims will be especially subject to ineffectiveness of their rights. The establishment of new European Networks and development of the existing ones is due;

6. Develop initiatives to publicize and educate on the rights of victims in the EU:

The development of existing initiatives providing victims with information and establishment of new initiatives, particularly on education and sensibilization to victims of crime in the European Union is the only way of guaranteeing a true cultural change. That could be achieved through the creation of specific modules on victims' rights elaborated for example by academics under the EU aegis that could be delivered along different academic levels (basic, high school and, at university level, both at degree and post degree levels), an idea inspired on the UN Education for Justice Program (E4J) on the topic of Education for the Rule of Law. Furthermore, the existing EU webpage on "Rights of victims of crime in criminal proceedings" (www.e-justice.europa.eu) should be enriched through a even more victim friendly scope, in line with the existing in Irish experience;

7. Enshrine a right for victims to access Restorative Justice services:

The Victims' Directive should not only assure safeguards for victims which access Restorative Justice services, but recognize their right to access these services, inciting Member-States to develop such services within their jurisdictions while assuring safeguards and the need for mediators/facilitators training, as already mentioned on § 2 above, as they are true judicial actors;

TO MEMBER STATES

8. Establish a national referral system to victim support services:

The creation of a direct system of referral between the competent criminal authorities and victim support services is due, as long as respect for the free and informed consent of victims is assured. That could be achieved by establishing the minimum information to be transmitted to victim support services, namely the identification of the victim, his/hers personal contacts, the type of crime in question and, when applicable, the kind of protection measures already in place or under appreciation by the competent authorities;

9. Establish victim support services with general competences:

In face of the overall lack of general support services in Member States, the State should provide for their creation, in accordance to the Victims' Directive's *ratio*.

10. Create a coordinated system between statal victim support services and services led by NGOs, where these exist:

Rather than establishing a top-to-bottom system, existent victim support

services should be supported and funded by Member States, in a coordinated system which guarantees a national and uniform network of support is in place, promoting articulation rather than overlapping interventions and align the way victim assessment is put in place, namely by establishing a victim oriented assessment, *i.e.*, an assessment that takes into consideration the typology of victim/crime in question rather than a generalist one;

11. Develop Restorative Justice services which are viable options of achieving justice, accessible and available for all types of crimes throughout all phases of the criminal proceeding, including post sentencing level:

Although there are some exceptions, existing domestic services of Restorative Justice are not being used to their full potential as a way of empowering victims and provide for their recovery. Besides the effective creation of Restorative Justice Services and dissemination of information of their existence to judicial actors and to the general public, the measurement of the impact of those services should be assured, namely the investment in place and the economic return of their use or the recidivism rates when comparing with control groups who would not go through Restorative Justice practices;

12. Provide for national training and specialized offices and practitioners within criminal authorities, in line with recommendation on § 2 above, particularly within Public Prosecution Services:

Demands of individual assessment and general respect for victims requires trained practitioners, capable of treating victims appropriately and of surpassing their own natural biases;

13. Assure victim-friendly information is permanently available and easily accessible:

Trough victim-friendly communication routs, namely via the internet and public television, Member-States ought to ensure there is a general knowledge and awareness of victims' rights, as well as information and contacts of the relevant authorities and support services.

TO PUBLIC PROSECUTION SERVICES

14. Provide for national general guidelines:

For public prosecutors and police forces, uniformized throughout the national territory on the topic of victims' rights under the Victims Directive;

15. Establish standardized protocols and procedures:

From reporting crimes to the conduction of individual assessment, standardized conducts must be guaranteed to ensure an effective respect for victims' rights. For example: in order to avoid secondary victimization, it would be important to guaranty a multi-agency approach and articulation on the matter of victims addressed questions in order to avoid their repetition;

16. Implement mechanisms to measure compliance:

To ensure Victims can see the criminal justice system and its practitioners as trustworthy and safe, public prosecution services must assure internal mechanisms of reporting mistreatments and illegal conduct regarding victims;

17. . Cooperation with victim support services:

Establish and facilitate referral mechanisms between competent entities and victim support services, as well as other joint initiatives for exchange of expertise;

18. Act in name of victims for when these are not allowed to take part in criminal proceedings and respect them as such when they are:

In the context of criminal proceedings, Public Prosecutors will have the added responsibility of seeing victims for victims and not third parties to the criminal process, even when they act as such, taking their rights and needs into consideration throughout proceedings.

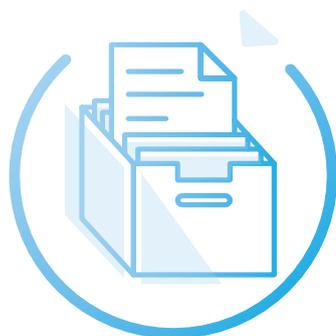
TO REASEARCH

19. Revisit the worlds of compliance from the specific victims' rights niche perspective:

The previous research has evidenced particularities on what regards to the Member states compliance with the Victims Directive and, moreover, with victims' rights, therefore it urges to revisit those worlds on this specific topic, for it seems the particularities of victims' rights compliance demands for distinct parameters of analyses and that ought to be confirmed/unfirmed;

20. Contribute to the coherence of victims' rights framework:

Specific studies on the topic of interpretation and coherence of EU legal framework regarding victims' rights under the Victims Directive should be reinforced, for example through the establishment of lines of investigation on this topic at academic level, for a new strategy of the EU on victims' rights is upcoming and the academy should play a major role when it comes to show where Wittgenstein lions should not exist.



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PROVICTIMS

THE ROLE OF THE PUBLIC PROSECUTION
IN THE PROMOTION OF VICTIMS' RIGHTS



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