

**IMPROVING PROTECTION OF VICTIMS'
RIGHTS: ACCESS TO LEGAL AID**



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Paweł Wiliński, Piotr Karlik (eds.)



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Improving Protection of Victims' Rights: Access to Legal Aid

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Reviewer: Professor Robert Zawłocki

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PREFACE

Legal aid is a vital tool by which the right of access to justice of the victims is protected. Up to now great attention has been given to Legal Aid granted to suspects while less attention has been paid to ensure full protection of victims' right and access to Legal Aid in criminal proceedings. In spite of numerous recommendations, EU countries grant different extent of legal aid to victims, so that outstanding disparities among Member States are evident.

The book focuses on the access to justice of victims of crime, especially through the identification of common criteria for the legal aid to victims to be applied in harmonization of EU legislation, and namely with reference to the adoption of 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.

This recommendation is also targeting those new Member States in which the system of legal aid for victims is in a phase a development or should be a subject of adjustment. However, the same challenges, resulting from the development of the law and the concept of fair trial also face against old Members of the EU.

The book contains advance research on the legal systems of different EU countries: Bulgaria, Italy, Latvia, Poland and Spain. Presents detailed analysis and comparison to the EU normative and recommended practices aimed to detect findings and flaws in the current practices. Studies on development of victims' protection system in England, Portugal, Wales and before the International Criminal Court are also included.

Important part of the publication is information addressed to law enforcement personnel, that have vital roles to play in responding to and supporting victims of crime. As an appendix the "The practice facilitation handbook. Training session on improving protection of victims' rights: access to legal aid." is presented. It should be used as an useful tool for training sessions with Police officers, judges, prosecutors and counsels, improving protection of victims' rights in practice.

Paweł Wiliński,
Piotr Karlik

Poznań, July 2014

IMPROVING PROTECTION OF VICTIMS' RIGHTS: ACCESS TO LEGAL AID IN EU. LEGAL FRAMEWORK AND BEST PRACTICES

M. Ilcheva, K. Hughes, P. Karlik, A. Lesinska, S. Sile, P. Wiliński, A. Woźniak

The analysis of the current legal framework and practices on access to legal aid for victims of crime, including international standards, the work of the International Criminal Court, as well as five countries under study – Bulgaria, Italy, Latvia, Poland and Spain – is an important stepping stone of the project *Improving protection of victim's rights: access to legal aid*. It explores the existing legal status of victims in each Member State under scrutiny, as regards access to justice, in order to discover best legislative and practical models and systematic flaws. Special attention is given to the situation of particularly vulnerable victims, including foreigners, whose access to justice can be more complicated.

The aim of the research is to explore international and domestic legislative framework and practices on legal aid to victims, in order to:

- identify differences and common points to contribute towards creating minimum standards for the help of victims of crime;
- describe the framework and assess Member States' compliance with *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, the 2012 Directive)¹ and other related acts.

Account was taken of the fact that in various national contexts legal aid and advice to victims of crime encompassed a much broader range of services and providers than those strictly defined in relevant legal aid legislation. For this reason, the concept has been explored in a larger setting.

¹ **European Parliament and Council of the European Union** (2012): Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, pp. 57-73), Strasbourg: European Parliament and Council of the European Union, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:01:EN:HTML> (12 November 2013).

A. Structure and notes on methodology

To ensure comprehensiveness and comparability of the analysis, the present paper was compiled out of country reports, prepared by project partners, which follow a similar **structure** and approximate level of detail.

Firstly, **relevant international and EU standards** are discussed, grouped by standard-setting institutions.

Structure in the national law parts includes **discussion of the normative framework on information to victims about their legal situation and legal aid to victims in a stricter and wider sense**. Where there is no relevant regulation to be discussed, all efforts were made for this to be explicitly indicated, together with reasons, if those are known. Where possible, links are explored between the normative framework, described through desk research and the opinions of stakeholders.

As an accompanying point in the country reports, efforts were also made to explore **best practices** on access to justice for victims of crime, as described in written sources and by practitioners, in terms of implementing bodies, target groups, activities and results.

An overview of the **regulatory and practical achievements of the International Criminal Court** in the field of victim protection gives an important insight of the Court's system, synthesising solutions from different legal orders.

At the end of the present paper **the overall opinion of researchers and practitioners approached, as well as of project experts, is presented** on the situation of victims' access to justice in the respective countries, including identification of major gaps and possible solutions, as well as **recommendations** for the areas of legislation, policy and practice. Recommendations are to serve as a point of departure for the subsequent phases of the project, namely training of practitioners and awareness raising campaign on legal aid and rights of victims of crimes.

Main research methods used were **desk research** and **questionnaires/requests for information to stakeholders**.

Desk research was performed using the following sources of information in varying proportions, bearing in mind the main purposes of the research:

- Laws and regulations (international law provisions, transposition of EU legal acts at national level, primary and secondary legislation);
- Policy documents (strategies, action plans, etc.);
- Internal acts of legal aid entities;
- Studies and reports by governmental agencies and/or national and international organisations;

- Other relevant information.

Questionnaires/requests for information were aimed at relevant stakeholders, such as prosecutors' offices, bar associations, police units, academics, NGOs dealing with victims of crime and other practitioners. Two questionnaires were used by partners, one of open and one of closed type.

In **Bulgaria**, the closed type questionnaire was distributed among 50 stakeholders, comprising 28 regional bar associations, Supreme Bar Council, NGOs, including magistrates' professional associations, and state institutions.² Among the difficulties identified were respondents' busy schedules and narrower understanding of the legal aid concept - organisations with no legal departments or structured activities in the legal area perceived the questionnaire as not referring to them.

In **Italy**, the open ended questionnaire was used to interview privileged observers and law enforcement authorities specialised in the field. The closed type questionnaire was administered to 30 stakeholders, both members of public (police, prosecutors) and non-governmental offices (women's shelter, immigration front office), to see how rules concerning legal aid to victims were applied on an everyday basis.³ Stakeholders were chosen on the basis of, inter alia, knowledge of law in the area of victim support and experience in working with victims.⁴ Main problems encountered were respondents' busy schedules, general disappointment with the functioning of the legal system, professional stress, and difficulty in understanding the legal aid concept.

In **Latvia**, a closed type questionnaire was made available online and distributed among key institutions, including police, Prosecutors' Office, Legal Aid Administration, NGOs, State Probation Service, universities and legal clinics. The decision to use an online questionnaire proved to be successful as 28 stakeholders were reached. A problem in some cases was the lack of comprehensive knowledge about legal system. Respondents had in-depth knowledge about the field they are working in and the problems they are encountering but the questionnaire required detailed knowledge about other aspects of the system as well.

In **Spain**, since there is a draft law on criminal procedure that includes most of the norms of the 2012 Directive, some questions regarding the status of the victims according to this draft were

² The communication channel chosen was e-mail, with the only exception being the respective department of the Ministry of Interior, where an official letter to the head of department had to be sent. Follow-up calls were made to all stakeholders.

³ 20 replies were received back.

⁴ The stakeholders were contacted by email. A cover letter was sent explaining the theoretical and methodological objectives of the research. Follow up telephone calls were made to increase response rates. Interviews were also conducted with certain stakeholders using the questions from the two questionnaires. One in-depth interview was conducted with an NGO in order to point to general problems in the area of victim support faced by NGOs. In some cases questionnaires were filled in by a group of lawyers, non-governmental officers or judges during a meeting to get a more realistic and complete picture of the situation.

added to the questionnaires. The open questionnaire was used to interview representatives of Free Legal Advice and Free Legal Aid services. The closed type questionnaire, sent by email with a cover letter explaining the objectives of the research, was answered by 16 representatives of stakeholders, members of public (Judiciary, Universities, Free Legal Advice and Free Legal Aid Services of Bar associations, Justice Observatory of Bar association, General Councils of the Catalan and the Spanish Advocacy) and non-governmental offices (lawyers, women and children NGOs, etc.). The main difficulty was the respondents' busy schedules.

B. Regulation on status and legal aid to victims of crime on EU level

1. Victims and legal aid – definitions and legislative history

Protection of the rights of crime victims has always constituted one of priorities of the European Union in the area of freedom, security and justice. Bearing in mind the different legal systems of Member States, different protection standards and entitlements have been provided for victims in the course of proceedings. This problem has additionally intensified in relation to the increased mobility of residents of Europe, which has led to increasing the number of cases, in which citizens of Member States staying outside of their native country become victims of crime. This concern, however, quickly expanded into an intended and, not long afterwards, functioning legal regulation on victims of crime.

However, the history of those issues in criminal justice norms, doctrine and practice is long and its roots can be traced back to, inter alia, the workings of the Council of Europe and the United Nations. They have produced a number of important legal documents, binding to a greater or lesser extent upon most of the EU Member States and inevitably influencing the regulation of the topic on domestic and EU level.

1.1 Council of Europe

One of the first milestone efforts to authoritatively pronounce on the matter was *Resolution 77 (27) of September, 1977 of the Committee of Ministers of the Council of Europe on the Compensation of Victims of Crime*,⁵ which put a strong emphasis on regulating the issue of state compensation to victims or their dependants and, inter alia, developed an initial concept of victims of crime and proclaimed the subsidiary nature of state compensation, coming into play where compensation could not be ensured by other means.

The Resolution's concepts were followed up in Council of Europe's *European Convention on the Compensation of Victims of Violent Crimes of 1983*,⁶ which was, as put in its Explanatory Report, to harmonise at European level guidelines on compensation of victims, give them binding force and ensure co-operation between Parties in the compensation of foreign victims. The Preamble

⁵ **Council of Europe Committee of Ministers** (1977): Resolution 77 (27) on the Compensation of Victims of Crime (Adopted by the Committee of Ministers on 28 September 1977, at the 275th meeting of the Ministers' Deputies), Strasbourg: Council of Europe Committee of Ministers, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=595033&SecMode=1&DocId=659298&Usage=2> (26 November 2013).

⁶ **Council of Europe** (1983): European Convention on the Compensation of Victims of Violent Crimes CETS No.: 116, Strasbourg: Council of Europe, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/116.htm> (26 November 2013).

of the Convention re-states the fundamentals of why the situation of victims of intentional crimes of violence should be dealt with – ‘for reasons of equity and social solidarity’. Art. 2 (1) builds upon the definitions of the Resolution on who is to be compensated and upholds the subsidiary nature of state compensation. The Convention develops further the principle that compensation is awarded even if the offender cannot be prosecuted or punished (Art. 2 (2)). It provides for compensation of nationals of States Parties to the Convention, as well as nationals of Member States of the Council of Europe, who are permanent residents in the State, where the crime was committed (Art. 3) and expands upon the main features of state compensation. The Convention also sets the foundations of international cooperation in the area (Art. 12).

The issues of victims of crime are later dealt with by the Council of Europe in two important recommendations of the Committee of Ministers to the Member States. *Recommendation No R 85 (11) of June, 1985 on the Position of the Victim in the Framework of Criminal Law and Procedure*⁷ adds important aspects to the otherwise compensation-oriented international regulation and recommends a number of legislative and practical measures to be undertaken on police, prosecution, court and enforcement level. *Recommendation No R 87 (21) on Assistance to Victims and the Prevention of Victimisation*⁸ moves beyond the strictly state-centred approach and directs attention to the ‘substantial contribution... by private bodies’ and the need ‘to combine and to co-ordinate the efforts of public and private services’ (Preamble). The Recommendation speaks about victim assistance, helped by victimisation surveys and awareness-raising among the general public (paras. 1-2), prescribes identification of ‘currently existing public and private services’ (par. 3) and provides a list of victim services to be created and developed (par. 5). A strong emphasis is put on the distribution of relevant information among the public and the victims themselves (paras. 8, 13).

1.2. United Nations

At an earlier stage, the United Nations also contributed to the standard-setting in the area by adopting the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.⁹

⁷ **Council of Europe** (1985): Recommendation No R 85 (11) of the Committee of Ministers to Member States on the Position of the Victim in the Framework of Criminal Law and Procedure (Adopted by the Committee of Ministers on 28 June 1985 at the 387th meeting of the Ministers’ Deputies) , Strasbourg: Council of Europe Committee of Ministers, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=605227&SecMode=1&DocId=686736&Usage=2> (26 November 2013).

⁸ **Council of Europe** (1987): Recommendation No R 87 (21) of the Committee of Ministers to Member States on Assistance to Victims and the Prevention of Victimisation (Adopted by the Committee of Ministers on 17 September 1987 at the 410th meeting of the Ministers’ Deputies) , Strasbourg: Council of Europe Committee of Ministers, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=608023&SecMode=1&DocId=694280&Usage=2> (26 November 2013).

⁹ **United Nations** (1985): Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34, 29 November 1985, 96th plenary meeting), United Nations General Assembly, available at: <http://www.un.org/documents/ga/res/40/a40r034.htm> (27 November 2013).

On a fundamental level, it develops the definition of victims of crime and abuse of power (paras. 1, 2 and 18), introduces the concept of abuse of power as ‘violation of internationally recognized norms relating to human rights’ (par. 18) and bans discrimination in treating victims (par. 3). Furthermore, it elaborates on the concept of ‘access to justice and fair treatment’ by prescribing a treatment of compassion and respect for victims’ dignity (par. 4), emphasising the establishment of ‘judicial and administrative mechanisms’ of certain functions (paras. 5-6) and promoting the use of mechanisms like mediation and arbitration for conciliation and redress (par. 7); the functioning of restitution (paras. 8-11) and compensation (paras. 12-17) is also tackled.

1.2 European Union

1.1.1. Treaty level

On treaty level, rights of victims are regulated in the *Treaty on the Functioning of the European Union*¹⁰ under the chapter on judicial cooperation in criminal matters. Art. 82, par. 2 of the Treaty postulates that, to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules, concerning, inter alia, the rights of victims of crime (item c). Adoption of the minimum rules shall not prevent Member States from maintaining or introducing a higher level of protection for individuals. In declaration 19 to the Treaty, Member States have been called to take all necessary means to the purpose of the prevention of violence in the family and punishing such acts, as well as supporting and protecting victims of such violence.

1.1.2. Legislative and policy steps

Following the *Action Plan of the Council and the Commission on How Best to Implement the Provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice, adopted on 3 December 1998*,¹¹ the *Commission Communication to the Council, the European Parliament and the Economic and Social Committee of 14 July 1999 on ‘Crime Victims in the European*

¹⁰ **European Union** (2008): Consolidated Version of the Treaty on the Functioning of the European Union (OJ C115/47, 09.05.2008), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF> (27 November 2013)

¹¹ **European Council** (1998): Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice - Text adopted by the Justice and Home Affairs Council of 3 December 1998 (OJ C 19/1, 23.01.1999), European Council, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999Y0123%2801%29:EN:NOT> (27 November 2013)

*Union: Reflections on Standards and Action*¹² speaks about the issue of victims as an aspect of access to justice and the process of establishing an area of freedom, security and justice. It advocates for a wider approach to the problems of victims, since ‘the rights of victims of crime would only be partially addressed by dealing with the compensation issue in isolation’. In line with the EU’s initial concern about foreign victims and travellers, the Communication offers for consideration issues, such as: prevention of crimes and victimisation, including the language problem of foreigners, especially at high-frequency locations; assistance to victims and, in particular, provision of information; procedural problems, concerning foreign victims’ access to and standing in their own process, as well as the compensation to be claimed from the Member State in which the crime took place.

The Presidency Conclusions of the Tampere European Council of 15 and 16 October 1999,¹³ in their point 32, marked the placement of victim assistance and protection on EU’s political agenda by stating that ‘minimum standards should be drawn up on the protection of the victims of crime’ and ‘national programmes should be set up to finance measures... for assistance to and protection of victims’.

In June, 2000 the European Parliament adopted a resolution on the Commission’s Communication,¹⁴ dwelt upon above, which welcomed the Communication, but called for all victims of crime on EU territory to be covered, irrespective of their status (par. 1) and expressed its expectation that the Commission will focus on a number of areas, as regards victim protection and assistance. The list of areas is contained in the Resolution’s par. 6 and includes, inter alia:

- definitions (‘a’);
- assistance and provision of information (‘b’, ‘c’, ‘l’, etc.);
- procedures victims should go through (‘p’, ‘q’, ‘r’, etc.);
- compensation and funds (‘s’, ‘t’).

The real synthesis of developing EU standards on victims in criminal proceedings was made, however, with the adoption of the *Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings* (2001 Council Framework Decision).¹⁵ Although the

¹² **European Commission** (1999): Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee of 14 July 1999 – Crime victims in the European Union – Reflections on standards and action (COM/99/0349 final, not published in the Official Journal), European Commission, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51999DC0349:EN:NOT> (27 November 2013).

¹³ **European Council** (1999): TAMPERE EUROPEAN COUNCIL 15 AND 16 OCTOBER 1999 PRESIDENCY CONCLUSIONS, European Council, available at: http://www.europarl.europa.eu/summits/tam_en.htm (27 November 2013).

¹⁴ **European Parliament** (2000): European Parliament resolution on the Commission communication to the Council, the European Parliament and the Economic and Social Committee on crime victims in the European Union: Reflexions on standards and action (COM(1999) 349 - C5-0119/1999 - 1999/2122(COS)), Strasbourg: European Parliament, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP5-TA-2000-0280%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN> (27 November 2013).

¹⁵ **Council of the European Union** (2001): COUNCIL FRAMEWORK DECISION of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) (OJ L 82/1, 22.3.2001), Brussels: Council of the European Union,

Decision does not require Member States to treat victims in a manner, equivalent to that of a party to proceedings (preamble par. 9), it:

- marks, in its Art. 1, a significant step in defining concepts like ‘victim’, ‘proceedings’ and ‘mediation in criminal cases’;
- deals in depth, in Art. 4, with victims’ right to receive information on the type of services or support they can get, on potential access to legal advice and legal aid, on requirements for compensation, etc.
- entitles victims and, where appropriate, their families or persons in a similar position, according to Art. 8, to protection when ‘there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy’;
- promotes, like the previous standard-setting documents, penal mediation in the course of criminal proceedings and, according to Art. 10, “any agreement between the victim and the offender reached in the course of such mediation” is supposed to be taken into account;
- develops further, in Art. 11, the regulation on victims resident in another Member State in view of minimising ‘the difficulties faced where the victim is a resident of a State other than the one where the offence has occurred’.

After one transposal report in 2004, in 2009,¹⁶ the European Commission, analysing the way of implementing the 2001 Council Framework Decision in Member States, acknowledged that it was not satisfactory and the harmonisation of provisions was not achieved. The 2001 Council Framework Decision turned out to be insufficient to realise the purposes set by the Union.

The Stockholm Programme – An open and secure Europe serving and protecting citizens was meanwhile adopted for the period 2010-2014.¹⁷ This document, determining the conditions and areas of cooperation in the scope of judiciary and internal affairs, created instruments constituting legal grounds for further legislative actions towards enhancing the position of victims in and outside criminal proceedings.

A subsequent step in strengthening the rights of victims was the *Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings*.¹⁸ Subsequently, the European Commission took up works aiming at

available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:082:0001:0004:en:PDF> (12 November 2013).

¹⁶ **European Commission** (2009): 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) [SEC(2009) 476] /* COM/2009/0166 final */ , Commission of the European Communities, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0166:FIN:en:HTML> (27 November 2013).

¹⁷ **European Council** (2010): *The Stockholm Programme – An open and secure Europe serving and protecting citizens* (OJ C 115/1, 4.5.2010), Stockholm: European Council, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:EN:PDF> (27 November 2013).

¹⁸ **Council of the European Union** (2011): RESOLUTION OF THE COUNCIL of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings (OJ C 187/1, 28.6.2011), Council of the European Union, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:187:0001:0005:en:PDF> (27 November 2013)

raising standards of treating victims in criminal proceedings. As a result, on 18 May 2011 a legislative package was introduced concerning minimal norms on the rights, support and protection of victims of crimes, including among others a proposal for a directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime.

The *2012 Directive* was adopted with the aim of providing all victims, irrespective of the type of the crime they have been victimised by, with high standards of protection in the area of the Union. The issue of creating appropriate conditions for the victims' participation in criminal proceedings, including professional treatment by the bodies of administration of justice, was also considered extremely important.

The *2012 Directive* applies in relation to crimes committed in the Union and to criminal proceedings taking place in the Union. The instrument guarantees rights for victims of crimes committed outside the territory of the Union exclusively in connection with criminal proceedings taking place in the Union.

Above all, the Directive offers a new, standardised definition of victim. According to Art. 2, a victim is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence. In case of death of the victim, directly caused by the criminal offence, this status is also granted to family members (spouse, cohabitant, a registered partner, relatives in the direct line, siblings and dependants of the victim) who have suffered harm as a result of the person's death.

2. The Victims' right to information

The *2012 Directive* offers ample regulation on the victim's right to be informed about his/her procedural entitlements and sets provision of 'appropriate information' among its very objectives. This information is supposed to be made available from the moment of first contact of the victim with a competent authority, and then - regularly in the course of the entire proceedings. Already in the document's preambular par. 21, it is stated that information and advice should be provided, as far as possible, 'by means of a range of media and in a manner which can be understood by the victim'.

The information provided should be detailed enough to guarantee treating victims with respect and enable them to take conscious decisions as for their participation in proceedings. It is also deemed a crucial safeguard for enjoying victims' entitlements, as seen, for example, in preambular par. 15, stipulating that facilitating access to information is a guarantee for victims with disabilities to enjoy their rights on an equal basis with others.

At the same time however the Member States are not obliged to transmit information, whose disclosure may influence the correct course of proceedings or if they recognise the information as contradictory to basic safety concerns (preambular par. 28). Member States should provide

information in simple and accessible language, taking into account the personal characteristics of the victim, as part of his/her general right to understand and be understood (Art. 3, 2012 Directive). Information to a victim should be provided to the last known correspondence address or electronic contact details given to the competent authority by the victim. In exceptional cases, for example due to the high number of victims involved in a case, it should be possible to provide information through the press, through an official website of the competent authority or through a similar communication channel (preambular par. 27).

Information, advice and support relevant to the rights of victims are also among the specific tasks of victim support services (Art. 9, 2012 Directive).

2.1 Information from the first contact with a competent authority and rights when making a complaint

From their first contact with a competent authority (Art. 4, 2012 Directive) victims should obtain information without unnecessary delay about, *inter alia*:

- the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;
- how and under what conditions victims can access legal advice, legal aid and any other sort of advice;
- how and under what conditions victims can access compensation;
- the available procedures for making complaints where victims' rights are not respected by the competent authority operating within the context of criminal proceedings;
- the contact details for communications about their case;
- how and under what conditions their procedural expenses can be reimbursed.

When making a complaint (Art. 5, 2012 Directive), victims should receive written acknowledgement of their formal complaint, stating the basic elements of the criminal offence, with the necessary translation, if victims do not understand or speak the language of the competent authority. Those victims who do not understand or speak the language of the competent authority should be enabled to make the complaint in a language they understand or by receiving the necessary linguistic assistance.

According to Art. 6, par. 4 of the 2012 Directive, **the wish of victims as to whether or not to receive information** shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.

2.2. Information about status of proceedings and about rights during proceedings

In general, *the 2012 Directive* points out that ‘information allowing the victim to know about the current status of any proceedings’ and information to enable him/her to decide whether to request a review of a decision not to prosecute are particularly important, to be provided orally or in writing, including through electronic means (preambular par. 26).

Victims’ right to receive information about their case is essential in enhancing their status. Art. 6 of *the 2012 Directive* postulates, unconditionally, that victims are notified without unnecessary delay of their right to receive information and, upon request, to receive information about:

- any decision not to proceed with or to end an investigation or not to prosecute the offender; in addition, victims are notified without unnecessary delay of their right to receive sufficient information to decide whether to request a review of any decision not to prosecute upon request (Art. 11, par. 3);
- the time and place of trial and the nature of charges against the offender.

The right to information about the time and place of a trial resulting from the complaint with regard to a criminal offence suffered by the victim should also apply to information about the time and place of a hearing related to an appeal of a judgment in the case (preambular par. 31). On the other hand, information about any final judgement in a trial and information enabling the victim to know about the state of the criminal proceedings (unless in exceptional cases the proper handling of the case may be adversely affected by such notification) are conditioned on the victims’ role in the relevant criminal justice system.

The information should include reasons or a brief summary of reasons for the decision concerned, except in the case of a jury decision or a decision where the reasons are confidential in which cases reasons are not provided as a matter of national law.

The procedures, related to victims’ right to be heard and present evidence during criminal proceedings are determined by national law (Art. 10, *2012 Directive*).

According to Art. 6, par. 5-6 of *the 2012 Directive*, **victims should be offered the opportunity to be notified**, without unnecessary delay, **when the person** remanded in custody, prosecuted or sentenced for criminal offences concerning them **is released from or has escaped detention** and about any relevant measures issued for their protection in case of release or escape of the offender. Victims shall, upon request, receive the information at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

The prior ‘full and unbiased information’ about restorative justice services and their potential outcomes, as well as information about the procedures for supervising the implementation of any agreement is seen as essential safeguard in the context of the victims’ **participation in restorative justice services** (Art. 6, par. 1b, *2012 Directive*).

3. Special arrangements regarding provision of information; translation and interpretation

As regards **foreigners**, their specific position is underlined already in the Stockholm Programme, pointing among those who are 'most vulnerable or who find themselves in particularly exposed situations' the persons who fall victim to crimes in a Member State of which they are not nationals or residents and stating that they are in need of special support and legal protection (par. 2.3.4). This conclusion is also supported by *the 2012 Directive* (preambular par. 38).

In relation to foreigners and other vulnerable victims, one of the underlying themes of *the 2012 Directive* is that all Information and advice given by the competent authorities to the victims should be given in a way enabling the victim to understand them. Such information should be provided in **simple, understandable language**, adapted to the victim's language skills, age, maturity, intellectual and emotional state, reading and writing skills, as well as all possible forms of mental or physical impairment. Also, the victim must be understood during the proceedings by the competent authorities. Any problems with understanding or communications and the possible limitations in the abilities of the victim in this regard should be taken into account (preambular par. 21).

The 2012 Directive contains detailed elaboration and relevant norms regarding **translation and interpretation**. On one hand, the fact that a victim speaks a language which is not widely spoken should not, in itself, be grounds to decide that interpretation or translation would unreasonably prolong the criminal proceedings (preambular par. 36). On the other hand, the Directive notes (preambular par. 34) that justice cannot be effectively achieved unless victims can properly explain the circumstances of the crime and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure that victims are treated in a respectful manner and that they are able to access their rights. Interpretation should therefore be made available, free of charge, during questioning of the victims and in order to enable them to participate actively in court hearings, in accordance with their role in the relevant criminal justice system. For other aspects of criminal proceedings, the need for interpretation and translation can vary depending on specific issues, the role of the victim in the relevant criminal justice system and his or her involvement in proceedings or specific rights. As such, interpretation and translation for these other cases need only be provided to the extent necessary for victims to exercise their rights. According to preambular par. 35, the victim should have the right to challenge a decision finding that there is no need for interpretation or translation, in accordance with procedures in national law. However, that right does not entail the obligation for Member States to provide for a separate mechanism or complaint procedure in which such decision may be challenged and should not unreasonably prolong the criminal proceedings.

In addition to specific aspects, regulated in different norms, the Directive has a **special provision, Article 7, defining a right to interpretation and translation**. It builds upon the concepts from the preambular paragraphs by regulating victims' entitlement, upon request, to

be provided with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings. The Directive also opens the opportunity for the use of communication technology (Art. 7, par. 2). Translation is also provided for victims who do not understand or speak the language of the criminal proceedings concerned, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, for information essential to the exercise of their rights in criminal proceedings, to the extent that such information is made available to the victims. Translation is foreseen, if need be, for the information about the time and place of the trial. Victims may challenge a decision not to provide interpretation or translation. The procedural rules for such a challenge shall be determined by national law. Interpretation and translation and any consideration of a challenge of a decision not to provide interpretation or translation under Article 7 shall not unreasonably prolong the criminal proceedings.

4. Legal aid to victims of crime

Legal aid to victims of crime in *the 2012 Directive* is a projection of access to justice as a more general theme of the document. Preambular par. 9 states that victims should be provided with 'sufficient access to justice'. In terms of norms, according to Art. 13 of *the 2012 Directive*, Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid are conditioned upon national law. During criminal investigations victims may be accompanied by their legal representative, unless a reasoned decision has been made to the contrary (Art. 20, item c). In addition, with due respect for the independence of the legal profession, Member States should recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims (Art. 25, par. 3).

5. Specific aspects, concerning particularly vulnerable victims

The 2012 Directive provides for the application of specific measures to protect victims and to recognise their special needs in terms of protection. Under the Directive, victims should be assessed individually in the light of their personal characteristics and the nature and circumstances of the crime committed against them (Art. 22). Such an assessment is to be carried out in order to identify the specific needs in terms of protection and determine whether and to what extent victims during criminal proceedings would benefit from special measures, due to their specific exposure to a repeated, secondary victimisation, intimidation and retaliation (preambular par. 55). Art. 22 is also the provision, highlighting the main categories of particularly vulnerable victims within the framework of the Directive – 'victims who have

suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable... victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities'. According to preambular par. 38, they should get specialist support services, including, inter alia, legal advice.

5.1. Children

Children, understood as persons below 18 years of age (Art. 2, par. 1c), are given a prominent place within the framework of the Directive as a group of particularly vulnerable victims and are 'presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation' (Art. 22, par. 4). Already in its preambular par. 14, the document stresses that 'children's best interests must be a primary consideration' in accordance with the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child. This is reflected in the very objectives of the Directive in Art. 1, postulating an individual 'child-sensitive' approach, taking into account the child's age, maturity, views, needs and concerns. Within victims' general right to be heard, due account should be taken of the child victim's age and maturity (Art. 10, par. 1). In addition to a number of specific aspects, in its central provision on children, Article 24, the document stipulates right to protection of child victims during criminal proceedings. It entails, inter alia, that (par. 1b) in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family. Where the child victim has the right to a lawyer (par. 1c), he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

Another act that enhances the special position of the child as a victim is *Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children*.¹⁹ The directive emphasises the need to provide long-term support for children as victims of sexual offences, if need be, even until adulthood, so that the victim could regain his/her mental and physical health. There is also the possibility of

¹⁹ **European Parliament and Council of the European Union** (2011): DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335/1, 17.12.2011), Strasbourg: European Parliament and Council of the European Union, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF> (29 November 2013)

providing support to the parents or legal guardians of the child victim, unless they are suspected for the specific crime, to help them support the child victim in the course of the investigation.

5.2. Victims of gender-based violence, violence in close relationships, sexual violence

The 2012 Directive looks at the concepts of gender-based violence, violence in close relationships and sexual violence under different constructs. In some cases (preamble par. 17) gender-based violence, understood as violence directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is used as an umbrella notion for the relevant cases of violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crimes'. In the majority of cases, however, those notions are used as close, but separate categories, pointing to victims' specific protection needs. Specific attention is directed towards violence in close relationships, which affects women disproportionately (preamble par. 18). As pointed out above, all such victims are explicitly included among the particularly vulnerable groups, meriting specific protection (Art. 22) and should be provided with 'targeted and integrated support' (Art. 9, par. 3b).

6. Legal support for victims of crime – institutional structure

Already in *the Stockholm programme*, the European Commission and the Member States are called upon by the Council to examine how to improve legislation and practical support measures for the protection of victims and the implementation of existing instruments.

The 2012 Directive offers a variety of institutional solutions to address victims' specific needs.

Firstly and foremost, the *Directive* stresses the need to provide help to victims 'in a respectful, sensitive and professional manner' without discrimination on grounds like 'race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health' (preamble par. 9), which is also reflected in Art. 1, par. 1 of the *Directive*. The *Directive* further stipulates that in all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice (preamble par. 9).

In its Articles 8-9, the *Directive* regulates victims' right to victim support services and the support those services provide, including, inter alia, 'information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial' (Art. 9, par. 1a).

Victims' access to support services should not be dependent on a formal complaint with regard to a criminal offence to a competent authority (Art. 8, par. 5, *2012 Directive*). The Directive does not impose on the services providing support to victims an obligation to provide extensive expertise and professional knowledge. Such services should, however, help the victims in obtaining accessible professional support, such as psychologists (preamble par. 39).

As a central idea, the Directive promotes cooperation between state authorities and civil society organisations and stipulates that public services should work in a coordinated manner and consider developing 'sole points of access' or 'one-stop shops' (preamble par. 62).

C. Regulation on status and legal aid to victims of crime on national level

1. Definitions and legislative history

1.1. Definition of victims in domestic legislation; direct and indirect victims

The **Bulgarian** *Criminal Procedure Code* (hereinafter, CPC)²⁰ defines the direct victim of a crime as the physical person, having sustained material or moral damage from the crime. In case of death of the direct victim, the victim capacity passes on to the indirect victims – his/her heirs (Art. 74, CPC).

The *Law on Assistance and Financial Compensation to Victims of Crime* (hereinafter, Law on Victims' Assistance)²¹ is a specific law with a narrower scope, regulating the assistance and compensation to victims of terrorism, premeditated murder, premeditated grave bodily injury, carnal abuse and rape, out of which grave injuries have ensued, human trafficking, crimes, committed by order or in execution of a decision of an organised criminal group, as well as other serious (carrying a punishment of more than 5 years of imprisonment) premeditated crimes as a legally stipulated result of which death or grave bodily injury have occurred (Art. 3, *Law on Victims' Assistance*). It defines explicitly the category of indirect victims of such crimes by including in it, in case of the direct victim's death, his/her children, parents, spouse or the person, with whom he/she co-habited (Art. 3, *Law on Victims' Assistance*). Both the assistance and the financial compensation the Law regulates are applicable only to its specific circle of victims, which, partly due to financial realities, is fairly narrow.

The **Italian** system of criminal procedure²² does not provide for specific legal status of a victim of a crime. What is present in Italian *Criminal Procedure Code* (hereinafter, CPC)²³ is the figure

²⁰ **National Assembly of the Republic of Bulgaria** (2006): Наказателно-процесуален кодекс [Criminal Procedure Code] (State Gazette 86/28.10.2005), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135512224> (12 November 2013).

²¹ **National Assembly of the Republic of Bulgaria** (2007): Закон за подпомагане и финансова компенсация на пострадали от престъпления [Law on Assistance and Financial Compensation to Victims of Crime] (State Gazette 105/22.12.2006), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135540550> (12 November 2013).

²² The Italian criminal trial system is divided into investigation and trial. The system is based on the adversarial principle, i.e. evidence of the crime is verified in the discussion phase before the courts. The investigation ends with the decision whether to prosecute or not the person under investigation (preliminary hearing), whilst the term trial refers to the stage of the procedure in which evidence is provided.

²³ **Italian Parliament** (1988): Codice di procedura penale [Code of Criminal Procedure] (Testo coordinato ed aggiornato del D.P.R. 22 settembre 1988, n. 447), Rome: Italian Parliament, available at: <http://www.altalex.com/index.php?idnot=2011> (29 November 2013).

of a *persona offesa dal reato* (person who suffers the effects of a crime) - the passive subject of the crime, the person affected by the act or omission, constituting the crime/misdemeanour. Procedure-wise, this is the victim, if he/she does not have a specific procedural status. The Code also delineates the figure of the *danneggiato dal reato* (the offended person/civil party/plaintiff) - the person seeking compensation within the framework of criminal proceedings for the damage incurred. In this capacity, the victim will have a more active role.

The distinction between a civil party and the victim is important, since it is assumed that the victim is directly interested in the prosecution and punishment of the offender, while the damaged person seeks to obtain compensation for the damages he/she sustained. When the victim of the crime dies as a direct consequence of an offence, his/her rights may be exercised by his/her 'close relatives', defined as the parents, children, siblings, uncles, aunts and nephews of the direct victim (§307 *Criminal Code*), as well as foster parents and children and co-resident partners.

In **Latvia**, the *Law on Criminal Proceedings* (hereinafter, the LCP)²⁴ uses the term 'victim' in two meanings:

- substantively, a person to whom harm has been caused by the criminal offence, and
- a victim in the procedural meaning – a participant of the criminal proceedings with a legally stipulated criminal procedural standing.

A person can be procedurally recognised as a victim under the following prerequisites: (1) it is a natural or legal person to whom a moral injury, physical suffering or material loss has been caused (if the person is deceased, the victim in the criminal proceedings may be the surviving spouse, one of the ascending or descending relatives of the deceased, the adopter, or a collateral relative of the first degree); (2) the moral injury is not caused to the person as a representative of a specific group of society; (3) the person himself or herself or the representative thereof has expressed a written wish or consent regarding the acquisition of the status of a victim; (4) the person has been recognised as a victim with a special decision of the investigator, public prosecutor or the court.

A victim who has not yet acquired a procedural status has only several procedural rights: for instance, to submit an application regarding the initiation of criminal proceedings and to get information regarding the possibility to be recognised as victim. A person who has acquired the legal status of a victim has all the rights, prescribed by law, including the right to receive state provided legal aid.²⁵ The person directing the proceedings informs the victim in a timely manner regarding his/her right to be recognised as such. A person who does not want to acquire the status of a victim usually obtains the status of a witness.

²⁴ **Latvian Saeima** (2005) Kriminālprocesa likums [Law on Criminal Proceedings] ("Latvijas Vēstnesis", 74 (3232), 11.05.2005., "Ziņotājs", 11, 09.06.2005), Riga: Latvian Saeima, available at: <http://likumi.lv/doc.php?id=107820> (29 November 2013).

²⁵ **Strada-Rozenberga K.** (2008) Cietušais un tā tiesības kriminālprocesā [Victim and His/Her Rights in the Criminal Proceedings], "JuristaVārds", 04.11.2008, No.42 (547).

Polish criminal law does not use the term ‘victim of crime’, but ‘injured party of the crime’. Differences between these two are not just terminological,²⁶ so they cannot be used interchangeably.²⁷ It is agreed upon that the most accurate term to use would be ‘potentially injured party’ as introduced in victimological studies.²⁸ The normative definition of ‘injured party’ is found in Art. 49 of the *Code of Criminal Procedure* (hereinafter, CCP).²⁹ This is a physical or legal person whose legal interests have been directly violated or threatened by the crime, but it may be as well a state-run institution, general government or social institution even if it does not have legal personality, where procedural actions will be performed by the relevant authorities entitled to act on behalf of those institutions (Art. 51 § 1, CCP). Granting the status of injured party³⁰ depends on the violation or threat to its interests being direct and immediate³¹ and on substantive criminal law, defining which interests are protected by law.³² The statutory definition of an ‘injured party’ has a number of functions.³³ Polish law also recognises subjects, which are supposed to be acknowledged as injured and subjects which are authorised to exercise injured parties’ rights.³⁴ The CCP also considers the case of death of the

²⁶ **C. Kulesza** (2005): *Rola pokrzywdzonego w procesie karnym* [The Role of the Victim in the Criminal Process], Białystok, p. 21 et seq.

²⁷ Scholarly literature emphasises that using term ‘victim of crime’ prejudices the fact of committing the crime on victims’ damage before a legally valid decision about the criminal liability of the person prosecuted. **C. Kulesza** (2011): *Projekt Europejskiej Dyrektywy z dnia 18 maja 2011 r., w sprawie wsparcia i ochrony ofiar w świetle prawa polskiego* [The draft European Directive of 18 May 2011 on support and protection of victims under Polish law], *Prokuratura i Prawo* 2011, nr 12, p. 5; **P. Hofmański, E. Sadzik, K. Zgryzek** (2007): *Kodeks postępowania karnego, Komentarz* [Code of Criminal Procedure, Commentary], 2007, t. I, s. 308.

²⁸ **J. Goodey** (2005): *Victims and Victimology. Research, Policy and Practice*, Essex, p. 10.

²⁹ **Polish Parliament** (1997): *Ustawa z dn. 6 czerwca 1997 r., Kodeks postępowania karnego* [Code of Criminal Procedure] (Dz. U. z 1997 r., Nr 89, poz. 555 ze zm.), available at: <http://www.lex.pl/akt-prawny/-/akt/dz-u-97-89-555-u> (29 November 2013).

³⁰ **K. Marszał** (2013): *Proces karny. Zagadnienia ogólne* [Criminal Trial], Katowice, p. 234.

³¹ **W. Daszkiewicz**, *Prawo karne procesowe*, Bydgoszcz 2000, t. I, s. 212; post.SN z dnia 25 marca 2020 r., sygn.IV KK 316/09, OSPriP 2010, nr 7-8, poz.11; post.SN z dnia 17 listopada 2005 r., sygn.II KK 108/05, R-OSNKW 2005, poz. 2094.

³² See critical: **W. Daszkiewicz**, *Refleksja nad pojęciem pokrzywdzonego przestępstwem* [Reflections on the Concept of a Crime Victim](in **J. Białocerkiewicz** (ed.) (2004): *O ludzki wymiar prawa. Księga jubileuszowa Profesora Tadeusza Jasudowicza*, Toruń, p. 94.

³³ One function is considered to be reducing the number of persons allowed to participate in the criminal trial **B. Gronowska** (1989): *Ochrona uprawnień pokrzywdzonego w postępowaniu przygotowawczym. Zagadnienia karnoprocesowe i wiktymologiczne* [Protection of the rights of the victim in the preparatory proceedings. Criminal Procedural and Victimological Issues], Toruń, p. 24.

³⁴ According to Art. 49 § 3 of the CCP, among the first are insurance companies to the extent it has covered the damage caused to an injured party by the crime or is obliged to indemnify it. They derive their capacity from the civil law obligations, resulting from the insurance contract or from the fact of covering the damage (**P. Hofmański, E. Sadzik, K. Zgryzek** (2007): *Kodeks postępowania karnego, Komentarz* [Code of Criminal Procedure, Commentary], 2007). Among subjects entitled to execute injured parties’ rights are: the National Labour Inspectorate in cases of crimes against rights of gainful employees (Art. 218-212 Penal Code and Art. 225 § 2 Penal Code) if they have discovered the crime or have applied for proceedings (provision Art. 49 § 3a); state control authorities which have exposed a crime or have appealed for proceedings in cases of crimes that have inflicted property damage on a state-run institution, general government or social institution if the injured institution is not acting (Art. 49 § 4, CCP). The rights of the juvenile or completely or partly incapacitated injured party may be also executed by his/her statutory representative or his/her legal guardian (Art. 51 § 2, CCP). Similar regulation is provided for about persons incapable on grounds of age or health condition (Art. 51 § 3, CCP).

injured party. In this case his/her rights may be executed by his/her closest ones, or in case there are no such persons or they are not known - by the prosecutor (art. 52 § 1, CCP).

The **Spanish** *Ley de Enjuiciamiento Criminal* (the Code of Criminal Procedure, hereinafter referred to as LECr)³⁵ does not define the term ‘victim’, whereas it can be found in other specific or sectorial regulations.³⁶ The *LECr* uses the terms ‘*ofendido*’ (article 109) to refer to the passive subject of the crime, the person affected by the act or omission constituting the crime, and ‘*perjudicado por el delito*’ (article 110) to refer to the person who is seeking compensation within the framework of criminal proceedings for the damage incurred. Both can be plaintiffs in a criminal proceeding. The notion of ‘*perjudicado por el delito*’ can include also family members (in a broad sense) or third parties. Article 113 of the Penal Code, as well as article 1 of *Ley de Ayudas y Asistencia a las Víctimas de delitos violentos y contra la libertad sexual* (Law 35/1995 of 11 December, regarding aid and assistance to the victims of violent crimes and crimes against a person's sexual freedom, hereinafter, Law 35/1995), entitle these subjects to reparation and compensation. The Spanish legal system protects also collective interests through popular action.³⁷ So, the notion of victim in the Spanish legal system is quite broad, while the actual victim protection and scope of victims’ rights vary.

The current proposal for a new Criminal Procedure Code to replace the LECr (hereinafter, the *CPC proposal*)³⁸ in article 59 defines the victim as ‘the party offended or injured by the punishable offence object of the claim’, including the person who ‘suffered personal or property damage when trying to prevent the crime or to help the victim when the crime was being committed or immediately afterwards’. In contradiction to the *2012 Directive*, it does not include family members. Moreover, article 61 of the *CPC proposal* states that ‘the persons who due to their age, health conditions, disabilities or particular situation can suffer detrimental

³⁵ **MINISTERIO DE GRACIA Y JUSTICIA** (1882): Real Decreto de 14 de septiembre de 1882, aprobatorio de la Ley de Enjuiciamiento Criminal [Royal Decree of 14 September 1882, approving the Criminal Procedure Code] (Publicado en GACETA de 17 de Septiembre de 1882), available at http://noticias.juridicas.com/base_datos/Penal/lecr.html (29 November 2013).

³⁶ Section 114 of the Penal Code, **JEFATURA DEL ESTADO** (1995): Ley 35/1995, de 11 de diciembre, de ayudas y asistencia a las víctimas de delitos violentos y contra la libertad sexual [Law 35/1995 of 11 December, regarding aid and assistance to the victims of violent crimes and against a person's sexual freedom] (Publicado en BOE de 12 de Diciembre de 1995), available at http://noticias.juridicas.com/base_datos/Penal/l35-1995.html (29 November 2013).

³⁷ Moreover, in the Spanish legal system, unlike those of other European countries, any citizen, or legal person, may start criminal proceedings for the so called ‘public offences’ (section 125 of the Spanish Constitution of 1978, and articles 101 and 270 LECr), without the Public Prosecutor's Office having the complete control over the start of such proceedings. Thus citizens, or legal persons, may appear as plaintiffs in the proceedings by filing a complaint or during the pre-trial proceedings, although their claim is limited to prosecution of such public offences and they are subject to some constraints – plaintiffs can only be Spanish citizens (article 270.1 LECr) and they are required to provide bond or guarantee in order for the abuse of the right to be avoided (article 280 and 281.1.1º sensu contrario LECr), the amount being determined according to the principle of proportionality. Victims may also join as private prosecutors in criminal proceedings against juvenile delinquents.

³⁸ The proposal was presented in February 2013 and was drafted by a panel of experts. It includes normative solutions from the 2012 Directive.

effect related to their intervention in any legal proceedings" are to be considered victims of particular vulnerability.

1.2. Definition of legal aid in domestic legislation

Legal aid under **Bulgaria's** specific *Law on Legal Aid*³⁹ does not have an explicit definition, but the concept can be delineated by its scope, as reflected in different norms in the Law. It includes criminal, civil and administrative cases before all court instances, i.e. regarding criminal cases, a strong emphasis is put already by definition on the trial phase. It is provided by attorneys-at-law and is financed by the state budget with the aim of guaranteeing equal access to justice to physical persons (Art. 1-5, *Law on Legal Aid*). It covers, inter alia: consultation in view of reaching an agreement before court proceedings or of instituting proceedings; preparation of documents for instituting proceedings and procedural representation (Art. 21, *Law on Legal Aid*). It is organised by the National Legal Aid Bureau and the bar councils.

Legal aid both for the indigent subjects of the crime and offended persons/civil parties in **Italy** is regulated in *Testounico in materia di spese di giustizia D.P.R. , testo coordinato 30.05.2002 n° 115* (Decree 115/2002 Consolidated rules and regulation on legal costs)⁴⁰ without a specific definition. The Decree regulates legal aid for both offenders and victims. The only condition relating to obtaining legal aid is economic, except for victims of *femicidio* and genital mutilation. If during the trial the victim obtains legal status and is entitled to civil compensation, which amounts to more than the economic limit established for obtaining legal aid, they are required to reimburse the legal costs incurred.

Section 92 of the Constitution of the Republic of **Latvia**⁴¹ stipulates that everyone has a right to the assistance of counsel. This is an instrument of ensuring the right to defend a person's rights and lawful interests in a fair trial with the aim to provide timely, accessible and high quality legal aid. The right to assistance of counsel includes the right to receive assistance by qualified legal service providers and the duty of the state to provide such aid to persons who are not able to afford it themselves.

³⁹ **National Assembly of the Republic of Bulgaria** (2006): Закон за правната помощ [Law on Legal Aid] (State Gazette 79/4.10.2005), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135511185> (12 November 2013).

⁴⁰ Testo unico in materia di spese di giustizia [Consolidated rules and regulation on legal costs] (D.P.R. , testo coordinato 30.05.2002 n° 115), available at <http://www.altalex.com/index.php?idnot=4777>.

⁴¹ **Latvian Saeima** (1993) Latvijas Republikas Satversme [The Constitution of the Republic of Latvia] ("Latvijas Vēstnesis", 43, 01.07.1993.), Riga: Latvian Saeima, available at: <http://likumi.lv/doc.php?id=57980> (29 November 2013).

In the criminal proceedings, the person has the right to attorney's assistance not only in the court hearings but also during pre-trial proceedings.⁴² Thus, legal aid in the criminal proceedings is the assistance paid for by the victim himself/herself or by the state to solve legal issues and protect the infringed or disputed rights or lawful interests of the person. Persons determined by law have the right to apply for qualified state ensured legal aid in order to protect their rights and lawful interests in a wholesome manner.

There is no legislative act in **Polish** law defining legal assistance.⁴³ According to the Law on the Bar,⁴⁴ Art. 4 sec. 1, the function of attorneys is to render 'legal assistance'. Specifically and non-exhaustively, it consists of: providing legal assistance, compiling legal opinions, drafting legal acts and appearing before courts and other offices. A similar statement also occurs in Art. 4 sec. 1 of the Law on Legal Advisors,⁴⁵ although they cannot be defenders in criminal proceedings and in prosecutions in cases of fiscal offences, adding the purpose of giving legal assistance: legal protection of the interests of subjects for whose benefit it is undertaken (Art. 2). The CCP in Art. 88 stipulates that a legal representative may only be a lawyer or legal adviser.⁴⁶ It means that only two groups of professions mentioned in Art. 17 of the Constitution may represent the interests of the injured party in criminal proceedings.

The **Spanish** legal system does not provide any definition of legal aid. Constitutional rights regarding legal aid, defence and technical support, together with the principles of equality of arms and *audi alteram partem* entitle the victims to be assisted by a lawyer during a trial in which they appear as a plaintiff, either to claim compensation or conviction.

Specifically, the Spanish legal system provides free legal aid to persons who do not have the necessary financial means to litigate (art. 119 of the Spanish Constitution and articles 2 and 3 of the Law regarding Free Legal Aid 1/1996, of 10 January)⁴⁷.

1.3. Legal aid to victims of crime – brief legislative history

Chronologically, in **Bulgaria** the current CPC and the two laws, on which legal aid to victims is mainly based – the *Law on Legal Aid* and the *Law on Victims' Assistance* – were adopted and

⁴²Comments on the Constitution of the Republic of Latvia (Satversme). Chapter VIII. Fundamental Human Rights. Published in the official publication "LatvijasVēstnesis", 2011, 160 – 164 pp.

⁴³Zob.Wyr.TK z dnia 19 kwietnia 2006 r., sygn.K 6/06, Dz. U. Nr 75, poz. 529.

⁴⁴ **Polish Parliament** (1982) Ustawa z dn. 26 maja 1982 r., Prawo o adwokaturze [Law on the Bar] (Dz. U. z 1982 r., Nr 16, poz. 124 zezm.), available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820160124> (29 November 2013).

⁴⁵ **Polish Parliament** (1982) Ustawa z dn. 6 lipca 1982 r., o radcach prawnych [Law on Legal Advisors] (Dz. U. z 1982 r., Nr 19, poz. 145 zezm.), available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820190145> (29 November 2013).

⁴⁶Wyr.TK z dnia 26 listopada 2003 r., sygn. SK 22/02.

⁴⁷ **JEFATURA DEL ESTADO** (1996) Ley 1/1996, de 10 de enero, de Asistencia Jurídica Gratuita [Law regarding Free Legal Aid 1/1996] (Publicado en BOE de 12 de Enero de 1996), available at http://noticias.juridicas.com/base_datos/Admin/l1-1996.html (29 November 2013).

entered into force within a short period of time between 2006 and 2007. The CPC talks about legal representation of victims only in terms of who can represent them, while the Law on Victims' Assistance regulates state-provided legal aid for its specific circle of victims by reference to the Law on Legal Aid. The latter's scope was notably widened in 2013 in accordance with Bulgaria's international commitments and in harmonisation with a number of other domestic legislative acts.

In **Italy**, the institution of legal aid is guaranteed on constitutional level (Art. 24, par. 3)⁴⁸ and there have been numerous efforts to build up the legislative regulations. Law No. 533 of 1973 established for the first time legal aid provisions, but only in labour disputes and social security issues. This law introduced into Italian legislation the principle of remuneration paid by the State for defenders and other subjects who carry out their work on behalf of people with little economic means. Subsequently, Law No. 117/1988 regulated legal aid in judgments for civil liability of judges. Only in 1990, following the enactment of the new Criminal Procedure Code, was State legal aid provided in criminal proceedings and in civil proceedings for compensation and criminal injury. All these provisions, however, provided no unified framework of legal aid, but rather, limited, specific norms within individual jurisdictions.

The enactment of the recent law No. 134 of 29 March 2001 reformed the entire system of legal aid for the indigent in criminal proceedings, civil, administrative procedures, as well as those of voluntary jurisdiction. The law reformed Law No. 217/1990 and established state-provided legal aid also in civil and administrative matters. Law No. 134 was never put into practice, as it was transfused in Decree 115/2002.

Since the restoration of the independence of **Latvia**, two laws have regulated the criminal proceedings. Until 1 October 2005, proceedings were regulated by the Code of Criminal Procedure of 1961 with several amendments. Afterwards, the *LCP* came into effect. The *1961 Code* stipulated that the decision for the recognition of a person as a victim might be made regardless of his or her consent, possibly even against the person's will. Besides, the duty of the state to ensure legal aid to the victim was significantly modified by the amendments to the *LCP* of 2011, according to which a private accusation process is no longer possible. At the moment, references to previous division (private and public accusation process) are yet to be changed in several laws and regulations, including the Constitution.

In **Poland**, the legislation on legal aid to victims has a relatively short history. Provisions, granting the injured party the right to use the help of a professional representative have appeared since the adoption of the current CCP in 1997, previously only Civil Code provisions were in place. Art. 87 § 1 of the Code states that any party, different from the accused, may have a legal representative. The 1997 Code also defines for the first time the expenses for a

⁴⁸ According to Article 24 of the Constitution of the Italian Republic, 'everyone can take legal action to protect their legitimate rights and interests. Defense is an inviolable right at every stage and level of the proceedings. The indigent are protected through appropriate institutions and defense at each level of jurisdiction. The law determines the conditions and means for the redress of judicial errors.'

legal representative as procedural expenses (Art. 616 § 1). A number of other regulations have also been implemented, including such in relation to Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.

In **Spain** since the promulgation of the current LECr in 1882, victims may appear as plaintiffs in criminal trials together with the public prosecutor, establishing a participative system which allows any citizen to take part in a trial for the so called 'public offences' by exercising popular action (art. 125 of the Spanish Constitution). Moreover, the Spanish criminal law system has traditionally allowed the joining in criminal trials of civil claims for compensation (art. 100 LECr) to be enforced either through the victim's direct claim or the public prosecutor's request.

The progress in the regulation of rights of victims in Spain, including the right to legal aid, has been illustrated by several important legislative reforms over the last years, among which the one of the LECr, Penal Code, Law regarding the Free Legal Aid, Organic Law 5/2000 of 12 January regarding the criminal responsibility of minors. Moreover, new laws were passed, both at national and autonomous community level, to provide financial aid to victims as well as sectorial regulations, regarding victims of violent crimes and crimes against sexual freedom, victims of terrorist acts, victims of domestic and gender violence, etc.⁴⁹ The CPC proposal should also be taken into account.

2. Right to information about victims' legal situation

The right of the person, harmed by the crime, to information about his/her legal situation is an important pre-requisite for him/her to exercise his/her ensuing procedural rights, including the right to legal aid. Lack of proper information, on the other hand, often discourages victims from pursuing their claims and defending their rights and legitimate interests.

⁴⁹ - Law 35/1995 of 11 December regarding aid and support to victims of violent crimes and crimes against sexual freedom. This Law introduced in Spain a system of public aid, unlike other EU countries in which aid is provided by private bodies, establishing a network of Counseling Centres for Victims of Crimes.

- Royal Decree 739/1997 of 23 May, establishing regulations regarding aid to victims of violent crimes and crimes against sexual freedom.

- Royal Decree 288/2003 of 23 May, establishing regulations regarding aid and compensation to victims of terrorist acts.

- Law 27/2003 of 31 July, regulating the protection orders for victims of domestic violence.

- Organic Law 1/2004 of 28 December regarding the measures to completely protect victims of gender based violence. This regulation introduces in the legal system the Courts for Violence against Women and creates a new professional profile, the Public Prosecutor on violence against women. Moreover, it establishes that Bar Associations should provide specific training to lawyers registered as free of charge duty lawyers for gender based crimes as well as immediately appoint court attorneys in proceedings against gender based violence.

- Royal Decree 355/2004, regulating the record office for the protection of victims of domestic violence.

- Law 29/2011 of 22 September regarding the recognition and complete protection to victims of terrorism acts.

2.1. Information about the procedure for submitting a complaint

In **Bulgaria**, the *Law on Victims' Assistance* provides explicitly for the right of victims to be informed about the bodies, before which they can submit a complaint, the procedures following the submission of a complaint and the options victims have under those procedures. The *CPC* contains a general norm about informing victims about their rights in criminal proceedings, but whether authorities would perceive their obligation as covering also the moment of submitting a complaint,⁵⁰ would practically be subject to discretion. In any case, the victim can report a crime to the police or to the Prosecutor's Office, where, if the victim appears in person, authorities would direct him/her on how to properly file the complaint. The websites of the Ministry of Interior and the Prosecutor's Office offer authorities' contact details, including e-mail addresses, and the Prosecutor's Office's website even offers a general web contact form, but no specific information is given on how to submit a crime report/complaint.

In **Italy**, there are no bodies specifically established to inform the victims of crime of their rights - this 'gap' is bridged by some associations established to support people in specific cases, such as associations for the victims of road accidents, associations for the protection of women and children victims of violence, etc. Legal advice is also provided by trade associations which have their own legal departments or are affiliated with law firms, such as trade unions and employees' associations, employers' associations, trade associations, etc.

Having in mind that in the Italian legal system all crimes must be prosecuted (*Obbligatorietà dell'azione penale*, art. 112, Italian Constitution), when a crime occurs, victims first report to a law enforcement authority (Police, *Carabinieri*, *Guardia di Finanza*, the Prosecutor's Office) - §333 and §336 Code of Criminal Procedure. For the offences, prosecuted *ex officio*, the complaint is called *denuncia*. For certain types of lesser offences (e.g. libel, slander, threats, injuries, damage, fraud, embezzlement) the report is not sufficient for the law enforcement authorities to proceed: the victim (or somebody else on his/her behalf) must explicitly request that the offender be identified and punished by the so called *querela di parte*.⁵¹ Police stations

⁵⁰ As stipulated to par. 22 of the 2012 Directive '[t]he moment when a complaint is made should... be considered as falling within the context of criminal proceedings' and Art. 4 of the Directive, providing that victims are offered information 'from their first contact with a competent authority'.

⁵¹ The persons, entitled to lodge a complaint, are:

- the offended person, personally or by means of a special prosecutor (e.g. a lawyer, formally authorised);
- the parent or guardian, if the victim is under the age 14 or mentally incapacitated;
- if the person under the age of 14 or mentally incapacitated does not have any representative or in the event that the representative is in conflict with the interests of the person represented, the right of action shall be exercised by a guardian ad litem appointed by the court, following the request of the public prosecutor or the bodies that deal with children's care, education, custody and aid;
- as for minors who are at least 14 years old, the right of action may be exercised by them or by their parent or guardian, on their behalf, notwithstanding any adverse will expressed by them;

offer language support to foreigners, but it may vary from city to city and depending on the language of the victim.

No official form is required or provided for any type of complaint.

When an offence falls among those pertaining to the justice of the peace (misdemeanours) and is prosecuted upon complaint, the victim may - in addition to lodging a complaint - appeal immediately to the judge. In this case, it is necessary to be assisted by a lawyer.

At the moment of the filing of a report/complaint, the offended person has no specific right of information. However, the victim should specify in the complaint, or separately, his/her request to be informed of the prosecution's decision to request the dismissal of the case (§408 para 2 *Code of Criminal Procedure*) and the prosecution's decision to request an extension in time of the investigation (§406 para 3 *Code of Criminal Procedure*), both via a formal service of notification.

In **Latvia**, if a person has suffered from a criminal offence, he/she has the right to turn to a law enforcement agency (usually the police) with an application to initiate criminal proceedings. After the examination of the application the relevant official decides on initiating criminal proceedings and recognising the person as a victim, or refuses to initiate criminal proceedings.

In addition to the explanations of the relevant official, the victim can find information about the procedures for submitting a complaint on the website of the State Police⁵² where the information for victims is visually well-indicated. The information mainly consists of the textual excerpts from the law; besides, the section about the victim's rights is as big in size as the part about the duties and responsibilities of the victim, including the interpretation and explanatory information about particular sections of the Criminal Law and indicating the punishment the victim can be imposed in case of wrongful actions. Therefore, experts admit that, despite a number of improvements, the way of information delivery could be improved. In addition to the formal information, there should be references to the institutions or NGOs that provide not only legal but also psychological assistance and other types of support.⁵³ The website of the Prosecutor's Office⁵⁴ does not provide any information for victims. The situation is rather

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- the legal representative of a legal person, an institution or an association (who must state the source of their powers of attorney).

The right of action is extinguished by the death of the plaintiff, but if the complaint has already been lodged, the death of the victim does not erase the crime. A person is entitled to waive the right to lodge a complaint by providing a written statement signed by the interested party or by his/her representative or by declaring it verbally to the criminal police or to a notary. The waiver may also be tacit: this happens when the victim has a conduct incompatible with the will to complain. The complaint must be filed within three months from the moment the plaintiff has become completely aware of the fact. In case of sexual assaults and sexual practices with minors, the term is six months.

⁵² <http://www.vp.gov.lv/>

⁵³ Interview with the lawyer from the society *Patvēruma Drošāmāja* [Shelter Safe House], 02.07.2013. Not published.

⁵⁴ <http://www.prokuratura.gov.lv/>

similar on the websites of the Latvia Courts Portal⁵⁵ and the Supreme Court.⁵⁶ On the website of the Ombudsman,⁵⁷ general information about fundamental rights can be found, but there is no special information for victims. Useful information for victims can be found on the websites of particular NGOs,⁵⁸ however the information is fragmented and also incomplete.

The Centre for Public Policy PROVIDUS created a special website in Latvian (also in Russian) for victims <http://www.cietusajiem.lv>. The website provides a wide range of information that is presented in various formats. The maintenance and updating of the site is handed over to the Legal Aid Administration.⁵⁹

The **Polish** legislative system lacks provisions on informing the injured party about the procedure for filing a complaint on crimes prosecuted by public indictment. Provisions on crimes subject to private complaint do not offer such solutions either. In this case, the general provision of art. 16 § 2, CCP is applicable - the authority conducting the proceedings is to provide the injured party with proper information. In private charge cases the injured party is informed of the possibility to lodge a private charge if the prosecutor does not find any reasons to institute ex officio proceedings (§ 270 Public Prosecutors Office Regulations⁶⁰). Further detailed information is delivered after the first contact with the Police or Public Prosecutors Office.

In **Spain**, victims of any type of crime may receive information about the procedure for reporting a crime at Counselling Centres for Victims, Legal Advice Services and NGOs, before going to the Police station or Court. For instance, article 18 of Law 1/2004 of 28 December regarding measures to provide complete protection in case of gender based violence, establishes that 'Women victims of gender based violence are entitled to receive thorough information and advice regarding their personal situation, by Public Administration Services, bodies and centres.

2.2. Information about status of proceedings

In **Bulgaria**, according to the *CPC* (Art. 75), during the pre-trial stage the victim has the right to, inter alia, be informed about his/her rights in criminal proceedings and about the progress of proceedings. He/she is entitled to that information, if he/she has specifically requested to participate in the pre-trial proceedings and has specified an address for summoning in the

⁵⁵ <http://www.tiesas.lv/>

⁵⁶ <http://at.gov.lv/>

⁵⁷ <http://www.tiesibsargs.lv/>

⁵⁸ For instance, <http://www.patverums-dm.lv/>, <http://marta.lv/>

⁵⁹ The Legal Aid Administration provides the payment of the state ensured compensation to the victims of intended criminal offences - Interview with the director of the Legal Aid Administration, 03.07.2013. Not published.

⁶⁰ **Ministry of Justice** (2010): Rozporządzenie Ministra Sprawiedliwości z dnia 24 marca 2010 r., Regulamin wewnętrznego urzędowania powszechnych jednostek organizacyjnych prokuratury [Regulation of the Minister of Justice of 24 March 2010 on the Public Prosecutors Office Regulations] (Dz. U. z 2010 r., Nr 49, poz. 296).

country. Also, he/she is immediately informed of the institution of pre-trial proceedings, if he has specified an address for summoning in the country. In line with the 2012 Directive and preceding documents, the *Law on Victims' Assistance* explicitly mentions many of the instances, where the limited circle of victims it covers should get information and the status of proceedings is among them.

In **Italy**, the victim does not have a specific right to information about status of proceedings, but can call the respective police station on an informal basis and request more information concerning his/her complaint. Investigators are not obliged to confer to the victim the information on the case; in particular, it is forbidden to disclose to the victim any confidential information on the investigation.

The victim may also file a request to the Official Registry of Reported Offences. The Registry can inform him/her about the actual filing of the complaint, and the name of the alleged offender. The prosecutor, however, may withhold that information for a period of time or indefinitely if the investigation requires secrecy.

In **Latvia**, crime reports are given a reference number. The victim can check how the case is proceeding by using this reference number, the date of reporting or the name of the person who has reported the crime. In practice, victims can make inquiries by appearing personally at the police station or public prosecutor's office, calling by phone or sending a letter.

In **Poland**, Art. 306 § 4 of the *CCP* postulates that the person or institution having submitted the crime report, including the injured party, must be informed about starting the proceedings or rejection thereof within 6 weeks after submitting the report. If that obligation is not met, the person or institution may lodge a complaint to the Prosecutor General or the authority, supervising the one which has to send the notification. The injured party is also informed of the sending of the indictment to the court (Art. 334 § 1, *CCP*). The *Code* does not contain other specific possibilities to receive information because of the principle of secrecy during the pre-trial stage.

In **Spain**, if the victim appears as a plaintiff, he/she shall be informed about the status of proceedings and is entitled to appeal against the measures applied. As established by the current *LECr*, the victim has to be represented by a lawyer and solicitor in order to appear as a plaintiff and bring private prosecution, contrary to what happens with the accused, whose lawyer defends and represents him/her until the oral proceedings (articles 121, 221 and 241 *LECr*). In compliance with article 2, paragraph g of Law 1/1996 regarding Free Legal Aid, indigent victims can apply for free legal aid.

2.3. Information about rights throughout the proceedings

In **Bulgaria**, both under the *CPC* and the *Law on Victims' Assistance*, victims have the right to be informed about their rights in criminal proceedings and their opportunities to participate in them. Under the *Law on Victims' Assistance*, concerning specific crimes, the victim has the right to be informed by police and victim support organisations, in writing or orally, in a language he/she understands, about:

- how and where he/she can obtain counselling, support and legal aid free of charge;
- how and where he/she can receive protection for him/her and his/her relatives and financial compensation;
- how to protect his/her rights and interests, if he/she is a foreigner or if he/she has been victimised abroad.

Besides the victim's general right to information, covering all stages of criminal proceedings until the pronouncement of the final court act (Art. 75), the *CPC* stipulates specific information-related entitlements at various points throughout the criminal proceedings, among which:

- the right of the victim to obtain information from the court or pre-trial authorities about his/her entitlement to lodge a civil claim (Art. 73);
- the right to maintain requests, notes and objections, as well as appeal acts, infringing his/her rights and lawful interests;
- the right to be notified about the refusal of the prosecutor to institute pre-trial proceedings (Art. 213) or his/her move to terminate or suspend criminal proceedings after receiving the investigation file from investigative authorities (Art. 243-244); the right to appeal accordingly;
- the right to get acquainted with investigation materials after closing the investigation, upon specific request (Art. 227), except in cases of fast-track and immediate proceedings (Art. 356, 362);
- the right to be notified about the termination of proceedings by the judge-rapporteur (Art. 250) and appeal accordingly;
- the right to be notified about the scheduling of the trial (Art. 255);
- the right to be granted by the judge rapporteur the opportunity to get acquainted with trial materials (Art. 257);
- the right to be notified about a plea agreement, closing the proceedings (Art. 382).

In **Italy**, upon receipt of the crime report, the Public Prosecutor's Office and the Criminal Police begin investigations, the leading role being played by the Public Prosecutor's Office. Investigators may invite the offended party to recount the facts. The party may, inter alia, appoint a defence counsel and submit pleadings and evidence.

During the preliminary investigation, victims are entitled to receive information concerning the proceeding against the alleged offender via various notifications:

- when evidence is collected in a special pre-trial hearing - *incidente probatorio* (§392 *Code of Criminal Procedure*) before the judge of the preliminary investigations, in the presence of the prosecutor and defence counsel, when there are serious reasons to believe that the victim or informant may later be subject to threats, intimidation, risk of death, flight or memory loss.⁶¹
- if he/she has declared his/her will to be notified, the victim shall receive notice of the request made by the public prosecutor to the judge to extend the deadline provided by law to conclude the preliminary investigations or the request to dismiss the case.

Once the decision to prosecute is made, the victim must be informed of the date of either the trial (§429 para 4 *Code of Criminal Procedure* – 20 days advance notice for trials that require a preliminary hearing, §552 para 3 *Code of Criminal Procedure* - 60 days advance notice for trials in which a preliminary hearing is not required) or the preliminary hearing (§419 *Code of Criminal Procedure* – 10 days advance notice). Victims can also access the case file in order to decide whether to become civil parties, although practically they are allowed to be present at trials regardless of their role as civil parties.

A decision to dismiss a case is subject to the judicial review of the judge of the preliminary investigation and is notified to the victim, if he/she has specifically requested so. The victim has the right to appeal against such decision before the judge (§410 para 1 *Code of Criminal Procedure*). During the hearing before the judge, the victim, through his or her lawyer, is entitled to support his or her position, requiring a supplementary investigation also highlighting new facts to be explored and indicating the supporting evidence.

During the trial, the rights of the victims depend on whether they have joined proceedings as a civil party. Victims without procedural status are treated as regular witnesses. Civil parties are entitled to various rights, including rights to information and notification, among which:

- to submit pleadings and indicate evidence;
- to participate in the trial represented by a lawyer, whose appointment is mandatory;
- to challenge the sentence in its civil aspects.

In **Latvia**, victims' rights in pre-trial criminal proceedings, in a court of first instance, in a court of appeals and in a court of cassation are regulated in Sections 98 to 101 of the *LCP*. The victim implements his or her rights voluntarily and to an extent determined by him or her. The non-utilisation of rights shall not delay the progress of the proceedings.

In the pre-trial criminal proceedings, the victim, inter alia, has the right:

- to familiarise himself or herself with the Criminal Proceedings Register and submit a recusation to officials entered therein;

⁶¹ Statements given at the *incidente probatorio* count as evidence in subsequent proceedings. It is often used in proceedings for sexual offences involving individuals under the age of 16 due to the opportunity for early collection of evidence.

- to submit applications and complaints regarding the performance of investigative and other operations, including expert examinations;
- to appeal procedural decisions in the pre-trial criminal proceedings in accordance with the cases, term and procedures specified by law;
- after the completion of the pre-trial criminal proceedings, to receive copies of the materials of the criminal case to be transferred to the court that directly apply to the criminal offence with which harm has been caused to the victim, if such materials have not been issued earlier, or with the consent of the public prosecutor to become acquainted with these materials of the criminal case;
- to submit a request to the investigating judge to get acquainted with the materials of special investigative actions that are not appended to the criminal case (primary documents);
- in questioning and interrogation, the victim also has all the rights and duties of a witness.

In a court of first instance the victim, inter alia, has the right:

- to find out the place and time of the trial in a timely manner;
- to personally participate in the examination of the criminal case; to express his or her view regarding every matter to be discussed;
- to submit applications and speak in court debates;
- to familiarise himself or herself with a court adjudication and the minutes of a court session;
- to appeal a court adjudication in accordance with the procedures specified by law.

If the adjudication of a court of first instance or a court of appeals is appealed in the part regarding the criminal offence with which harm was caused to the victim, the person leading the proceedings sends copies of the appellate or cassation complaints to the victim, and a court of appeals or of cassation notifies the victim regarding the time, place and procedures for the examination of the complaints. In a court of appeals and of cassation, the victim has the same rights as in a court of first instance. In Latvia, the victim is not informed separately regarding the progress of the execution of the judgement and the offender's serving of the punishment, information is not provided to the victim either regarding the release of the offender from imprisonment.

In **Poland**, before his/her first interrogation the injured party is advised by the authorities conducting it about his/her rights and obligations.⁶² The injured party receives his/her briefing in writing and a copy containing his/her signature is added to the case file. Police officers are additionally obliged to clarify the contents of the pre-prepared instruction, which is provided to the injured party and is basically an excerpt from the *Code of Criminal Procedure* containing the

⁶²This prosecutors' obligation comes from § 167 of the Prosecutors' Office Regulation whereas the police obligation can be found in § 19 of the Guidelines of the Commander in Chief of Police – **Commander in Chief of Police** (2012): Wytuczne nr 3 Komendanta Głównego Policji z dnia 15 lutego 2012 r. w sprawie wykonywania czynności dochodzeniowo – śledczych przez policjantów [Guidelines of the Commander in Chief of Police on Conducting Police Investigation] (Dz. Urz. KGP z dnia 16 lutego 2012).

rights and obligations of the injured party during both the pre-trial stage and the trial. In case of refusal to open proceedings or dismissal of proceedings, the injured party may send a complaint (Art. 306 § 1, *CCP*), of which right the injured party should be duly informed (Art. 299 § 1, *CCP*).⁶³

If the prosecutor refuses again to open proceedings or to reconsider the dismissal of proceedings, the injured party can lodge the so-called subsidiary indictment within one month after the new decision (Art. 330 in relation to Art. 55, *CCP*), which involves compulsory representation by a lawyer. In such situation the injured party becomes subsidiary auxiliary prosecutor.

The procedural position of the injured party is different during the trial. To become a party, he/she should apply to become either an auxiliary prosecutor or a civil claimant before the start of the main proceedings. Otherwise, he/she remains a witness. There have been arguments as to whether the injured party should be informed of the place and time of the trial, if he/she is not a party, but it is still assumed that this should be done,⁶⁴ because he/she may wish to file a motion for becoming a party.

The *CCP* does not provide for a specific notification to the injured party about his/her rights during the trial, different from the one provided before the first interrogation. The prosecutor, however, is obliged (Art. 334, *CCP*) to inform the injured party about the sending of the indictment to court and about Art. 335 and 387 of the *CCP*, regulating the consensual methods for closing the criminal proceedings. The injured party should also be informed about his/her entitlements, regarding the property rights investigation, the possibility for applying for compensation and the option to become an auxiliary prosecutor (Art. 334 § 2, *CCP*). The general duty of authorities to provide information, regulated by the *CCP*, is also applicable (Art. 16 § 2, *CCP*).

The injured party can lodge an appeal only if he/she is a party to the proceedings (Art. 444, *CCP*). As an exception, the injured party as such can appeal the decision, which conditionally discontinues the proceedings (Art. 341, *CCP*), of which he/she should be duly informed according to the general rule of Art. 100 § 6, *CCP*. During appeal, the injured party, as party to the proceedings, has the same rights as before the first instance.

The Criminal Execution Code regulates the last stage of the criminal trial,⁶⁵ the execution proceedings.⁶⁶ The injured party has no general role in these proceedings, but has some rights about which he/she must be instructed. For example, Art. 168a the *Code* stipulates that the

⁶³ E. Bieńkowska, L. Mazowiecka (2012): *Uprawnienia pokrzywdzonego przestępstwem*, Warszawa, p. 24.

⁶⁴ Wyr. SN z dn. 26 stycznia 2007, sygn.I KZP 33/06.

⁶⁵ W. Sych (2006): *Wpływ pokrzywdzonego na tok postępowania przygotowawczego w polskim procesie karnym*, Kraków, p. 14.

⁶⁶ Polish Parliament (1997): *Ustawa z dn. 6 czerwca 1997 r., Kodeks karny wykonawczy [Criminal Execution Code] (Dz. U. z 1997 r., Nr 90, poz. 557 zezm.)*.

injured party has the right to submit an application to be notified each time the convicted person leaves the penitentiary. According to Art. 253 § 3, *CCP* similar stipulations exist about notifying the injured party about each change, concerning the temporary detention of the alleged perpetrator or other preventive measure. However, a duty on the authorities to inform the victim about his/her entitlements in the execution proceedings is lacking, but the general duty from the *Criminal Procedure Code* can be applied accordingly. The injured party has a possibility of influencing the execution of the court resolution only concerning claims, related to property rights. Under Art. 196 § 1 of the *Criminal Execution Code* the court sends to the victim its decision *ex officio*, if it contains obligations concerning property claims. However, it is up to the injured party to file a motion for execution (Art.107, *CCP*), including forwarding the sentence to the bailiff for execution.⁶⁷ However, a specific obligation of informing the injured party of such possibility is missing.

In **Spain**, the legislation establishes that victims are entitled to receive information about their rights by any authority or subject they may enter in contact, especially police constables, court officers, the Public Prosecutor and jurisdictional bodies.

In compliance with article 771, *LEcr*, the Criminal Police should provide information to victims, as stipulated by law: information about their rights in written form, in compliance with article 109 and 110, *LECr* (to appear as a plaintiff and renounce or not the restitution of the property, damage reparation and compensation for the harm caused by the offence). The offended party shall be informed about:

- his/her right to appear as a plaintiff without the need to file a complaint;
- his/her right to appoint a defence counsel or to have one appointed by court if he/she is entitled to receive free legal aid; and
- if he/she appears as a plaintiff, about the right to be informed about the proceedings.

In addition, the offended party shall be informed that if he/she does not appear as a plaintiff and does not waive or reserve the right to bring civil actions, it will be done by the Public Prosecutor.

In compliance with article 776 *LECr*, the court officer shall inform victims about their rights, if the Criminal Police did not inform them, as well as about the measures regarding aid to victims: the right to medical and psychological assistance in case of violent crimes and crimes against sexual freedom, the right to receive financial public aid (art. 15 *Law 35/1995*); the right to know the date and place of the trial (art. 785.3 *LECr*), the right to receive a notice of the sentence pronounced (articles 789.4 and 792.4 *LECr*), the right to know the proceedings which may affect their safety (art. 109.4 *LECr*).

Law 35/1995 regarding the provision of aid and advice to victims of violent crimes and crimes against sexual freedom, establishes that the police is obliged to inform victims about the status

⁶⁷ **W. Sych** (2006): Wpływ pokrzywdzonego na tok postępowania przygotowawczego w polskim procesie karnym, Kraków, p. 139.

of the investigations, unless it jeopardises their results. Moreover, victims of an incident which has the features of a crime, when the incident is reported or, in any case, when they appear before the competent body, shall be clearly informed about the possibility to obtain restitution and reparation of the harm suffered with the criminal trial, and the possibility to receive free legal aid. They shall also be informed about the date and place of the trial and shall receive notice of the sentence, even if they do not appear as plaintiffs.

After having received thorough information by the police or Court, the victim may choose to appear as a plaintiff or not. If the victim does not appear as a plaintiff, he/she will be considered as a witness. If the victim does appear as a plaintiff, he/she will be the claimant.

If the victim appears as a plaintiff, he/she will be informed of the rulings which may be applied in the proceedings, as different decisions may be taken (decision to end investigation or not to prosecute the offender, etc.).

The time and place of the trial shall be notified to the victim as plaintiff, or witness if he/she did not appear as plaintiff. In both cases the victim shall receive notice of the sentence. If the victim appears as a plaintiff, he/she has the opportunity to appeal the sentence and other rulings.

The *CPC proposal* presents substantial progress in the area of victims' rights. It enlists in its Article 14 the legal assistance to victims as one of the aims of criminal proceedings, with specific attention to particularly vulnerable victims. In the special provision on rights of victims, Article 60,⁶⁸ the proposal proclaims victims' right to be, inter alia, informed of the development of the proceedings, including the right to know the status of the investigations, if they have not been declared secret, the decisions about the defendant's status and its later modifications, the dismissal rulings and those regarding the beginning of the trial and the sentence pronounced. Notably, this right is accorded regardless of whether victims appear as plaintiffs, which is a substantial step, compared to the current situation. Moreover, the proposal also includes mediation as 'a procedure freely and voluntarily chosen by both the victim and the offender to

⁶⁸ Victims are given the following rights:

1. right to immediate protection of their lives, integrity, freedom, honor, privacy and any other right violated or threatened by the offence;
2. right to be treated respectfully during the investigations and the proceedings;
3. right not to have their bodies checked without their assent;
4. right to have their personal data protected;
5. right to be heard by the Public Prosecutor during investigations;
6. right to bring criminal and civil action regarding the offence suffered;
7. right to receive free legal aid, in compliance with the requirements and the methods provided by the Law on Free Legal Aid;
8. right to be informed of the development of the proceedings, including the right to know the status of the investigations, if they have not been declared secret, the decisions about the defendant's status and its later modifications, the dismissal rulings and those regarding the beginning of the trial and the sentence pronounced;
9. right to obtain the reimbursement, remedy or compensation for the damage suffered by crime committed by the offender or the State, in the cases provided by law;
10. right to be informed about the above mentioned rights.

solve the conflict, in which a third party intervenes to help them to reach an agreement' (art. 143), but it does not include all safeguards offered by Art. 12 of the *2012 Directive*.

2.4. Information about opportunities to obtain legal advice/legal aid

In **Bulgaria**, the right to legal aid, the bodies, conditions and procedure for providing it are among the explicit issues, which the *Law on Victims' Assistance* provides for information on. State-provided legal aid is not mentioned as such in the *Criminal Procedure Code*, but the *Code* postulates the right of private accusers, private complainants and civil claimants as parties to the trial to have counsel appointed by the court, if they present evidence they do not have means to pay an attorney, want to have counsel and the interests of justice so require. In the opinion of legal aid practitioners, relevant authorities give timely information about legal aid, sometimes even over-referring victims to hire an attorney/get legal aid in order to ease their own workload.

In **Italy**, individuals can obtain information about getting legal aid from: the bar council, lawyer/solicitor, police force, the court, NGOs and victim support agencies, trade unions, hospitals, immigration front offices and drop in centres (Law No. 134/2001; Decree No. 115, articles 74- 141).

In **Latvia**, victims receive formal information about their legal rights and obligations. Victims must be informed that they are entitled to legal assistance and representative. However, information about possibilities to obtain free legal aid is very general and in most cases depends on how understanding and willing to help the police officer or prosecutor is.

In **Poland**, information about the possibility of obtaining legal assistance is passed on to the injured party before his/her first interrogation. The injured party is informed that according to Art. 88, *CCP* the counsel in criminal proceedings can only be a lawyer or a legal adviser. Before his/her first interrogation the injured party is instructed about the possibility for filing a request for an attorney ex officio (Art. 88, *CCP*). The injured parties are also informed, that in order to get the legal assistance ex officio they must adequately demonstrate their inability to cover the attorney's costs without detriment to their or their families' maintenance.

In **Spain**, information about opportunities to obtain free legal aid so that victims can have a lawyer/solicitor are provided by Counselling Centres for Victims, Legal Advice Services, NGOs as well as by the police when a report is filed or by a jurisdictional body as soon as possible after the proceedings have begun (articles 771 and 776 *LECr* paragraph 2.3).

2.5. Information about opportunities for reimbursement of expenses, related to proceedings

In **Bulgaria**, although not explicitly regulated, reimbursement of expenses would undoubtedly fall under victims' procedural rights and authorities are bound to provide information on how to obtain such.

In **Italy**, information about reimbursement is generally given at the trial stage, because victims may claim reimbursement for expenses incurred during the preliminary investigations only if they later join the proceeding as a civil party.

In **Latvia**, no state fee is to be paid for criminal proceedings, whereas in civil proceedings, if the victim requests compensation from the perpetrator of the crime for the pecuniary losses and moral injury in accordance with civil legal procedures, the victim is discharged from the state fee (*LCP*, Section 350, part 4). Moreover, in accordance with Section 367 of the *LCP*, the victim has the right to receive compensation for procedural expenditures – the compensation to cover travel expenses that are related to arriving at the place of a procedural action and return to the place of residence, payment for accommodations, as well as the sum that corresponds to the amount of an average work remuneration for the term wherein the victim did not perform the work due to the participation in the procedural action.

In **Poland**, a possibility of exemption from the payment of the costs for the State Treasury exists in criminal proceedings, but no provision of informing the injured party of such possibility is present.

In **Spain**, in compliance with art. 772 *LECr*, it is possible to obtain reimbursement for appearing before court, if demanded. The court officer shall set the amount, taking into account only travel expenses and the lost profits due to attendance as witness. The Court does not provide any information about the reimbursement, therefore it must be claimed.

2.6. Information about opportunities to participate in restorative justice services

Bulgarian legislation does not provide for restorative justice mechanisms within the framework of criminal proceedings.

In **Italy**, information about opportunities to participate in restorative justice services is generally obtained during specific judicial proceedings, as it is only formally possible in proceedings against juveniles and proceedings before the justice of the peace, while in ordinary proceedings against adults there is no formal restorative procedure.

In **Latvia**, detailed information about the possibilities to participate in the measures of restorative justice is available in the State Probation Service and the information it publishes.

In **Poland**, as part of the information before the first interrogation the injured party is also instructed about the possibility of lodging an application or giving consent to conduct mediation proceedings between him/her and the accused (Art. 23, *CCP*). However, mediation is not an alternative to criminal proceedings, but is only regulated as a way of communication between the accused and the injured party, while obligations to clarify the idea and rules of mediation to parties are missing.

According to current **Spanish** legislation, the types of restorative justice services available are:

- Conciliation prior to the trial, mandatory in private offences - e.g. libel and slander against private subjects. In these cases and as a requirement for accepting the complaint (art. 804 *LECr*), the parties are obliged to seek conciliation;
- The victim's pardon, which drops the charges or cancels the sentence in specific cases (art. 215.3 of the *Penal Code*);
- Juvenile justice system includes mediation (art. 19 of *Organic Law 5/2000 of 12 January*, which regulates the criminal responsibility of minors);
- Compensating the victim in order to obtain legal benefit - it is considered an extenuating circumstance (art. 25 of the *Penal Code*), provided that it is made before the trial and it is possible to apply measures alternative to prison (articles 81 and 88 of the *Penal Code*).

There are no specific regulations regarding information about participating in restorative justice services.

2.7. Information about opportunities to obtain state compensation

In **Bulgaria**, state compensation, and the right to obtain information about it, are explicitly regulated in the *Law on Victims' Assistance*, but fall outside the scope of the *Criminal Procedure Code*. Information is received from the National Council for Assistance and Compensation of Victims of Crimes, regional governors, Ministry of Interior or victim assistance organisations.

In **Italy**, information about state compensation and application templates are received from the Ministry of Interior.

Once the existence of the crime and the culpability of the offender have been verified, the injured party may obtain compensation for the material and non-material damages suffered. To this end, the injured party may choose to appear as a plaintiff in the criminal proceedings and ask for the condemnation of the offender and the liable party, such as a car insurance company, to pay immediately, otherwise he/she may opt for bringing an independent civil lawsuit for compensation through an independent civil trial. The civil lawsuit for damage compensation may be included in the criminal trial, in compliance with the same terms established to appear

as a plaintiff between the beginning of the criminal proceedings and the beginning of the trial of first instance.⁶⁹

In **Latvia**, state police officers inform the person also about the right to obtain state compensation, but the victim should seek detailed information himself/herself on the website of the Legal Aid Administration, in brochures, through consultations or via the free of charge information telephone number 80001801.

Polish legal system provides a possibility of granting compensation to victims of some crimes. The relevant law of 2005⁷⁰ regulates in its Art. 10 that the Public Prosecutor informs the victim about possibilities and conditions of applying for compensation. Upon request the injured party is also provided with the application form for compensation and assistance in completing it.

In **Spain**, Law 35/1995 regarding aid and support to victims of violent crimes and crimes against sexual freedom establishes that offences for which it is possible to receive public compensation are those causing death, serious injuries or serious physical or mental disorders. A similar regulation exists in Law 32/1999 of 8 October, regarding solidarity with victims of terrorist acts.⁷¹ Granting compensation is subject to the pronouncement of the final judgement which ends the trial, except for the provisional aid granted when a difficult financial situation is established in the specific case of the victim or his/her heirs. Financial compensation is incompatible with compensation for damage and harm caused by the crime granted by a criminal sentence.⁷²

The application for compensation is sent to the Ministry of Finance, which is in charge of the system.

⁶⁹ The conviction in criminal court (with the exception of cases where the criminal trial has ended with a plea bargain or with the issuance of a penalty notice) will be effective towards the victim who appeared as a plaintiff, whilst it will not be effective when the injured party opted only for the independent civil lawsuit, started before the criminal trial or before the pronouncement of the first instance criminal sentence. If the civil action is exerted after the latter period, the criminal decision will be effective in the civil lawsuit. The civil action for compensation may also be exercised regardless of the criminal trial.

⁷⁰ **Polish Parliament** (2005): Ustawa z dn. 7 lipca 2005 r., o państwowej kompensacie przysługującej ofiarom niektórych przestępstw [Law on State Compensation for Victims of Certain Crimes] (Dz. U. z 2005 r., Nr 169, poz. 1415 ze zm).

⁷¹ Art. 15 of Law 35/1995: 'the judges involved in the investigations about the facts shall inform the alleged victims about the possibility and the procedure to request compensation'.

Art. 2 of Law 35/1995: 'the persons entitled to this right are those who at the time of the commission of the crime are Spanish citizens or citizens of any other Member State of the European Union or any other country that provides the same rights to Spanish citizens. In case of death of the victim, the compensation may be received by his/her heirs as indirect victims, regardless of the nationality or regular residence of the deceased'.

⁷² For example, the legal framework for compensating victims of terrorist acts is found here: <http://www.interior.gob.es/ayudas-38/a-victimas-de-actos-terroristas-356/normativa-basica-reguladora-357?locale=es>.

2.8. Information about any special arrangements available to protect victims' interests, if they are resident in another EU Member State or non-EU residents

In **Bulgaria**, the right to information about foreigners' specific entitlements is explicitly provided for in the *Law on Victims' Assistance*. The *Criminal Procedure Code* contains a number of special arrangements, regarding foreigners, including right to interpretation, so criminal justice authorities are bound to inform EU and non-EU residents about their additional rights within their general duty to give information.

In **Italy**, foreigners/non-native Italian speakers, victimised by a crime, can:

- report the crime in their own language to a public prosecutor or any of the State or local police forces;
- use the assistance of an interpreter appointed by the police or prosecutor or police officer in charge of receiving a report, at the expenses of the police;
- join proceedings as a civil party and then be entitled to translation.

Foreign victims receive information about their special entitlements from the relevant authorities.

The legislation of **Latvia** does not provide for a specific regulation regarding the accessibility of information to victims who are citizens of other Member States of the European Union.

Polish law does not provide for any additional guarantees for an injured party who is not a Polish citizen. The only specificity would be that the initial information should be given in a language, understandable to the foreign victim. An additional safeguard is Art. 204, *CCP* which imposes an obligation on the body interrogating such injured party to call an interpreter if the person interrogated does not speak Polish.

In **Spain**, a special practice that protects the interests of victims residing in other countries is the possibility to produce evidence before the trial, established by art. 797.2 *LECr*.⁷³ Foreigners can have an interpreter free of charge, if they do not speak Spanish or the respective regional language.

⁷³ 'If due to the place where a witness or victim resides or any other reason there is the possibility that a piece of evidence may not be produced during the oral proceedings or could cause their suspension, the duty magistrate shall produce it immediately, guaranteeing the parties' right to challenge. This piece of evidence should be provided using a proper device to record and reproduce sounds and images or through an act certified by the Court Officer, with details regarding the parties. In order to be accepted as evidence, the interested party should provide the recording or the literal reading of the piece of evidence'.

2.9. Ethical issues in providing information to victims of crime

In **Bulgaria**, apart from some ethical aspects of the general principles of the *Criminal Procedure Code*, an attempt to regulate part of the ethical issues, related to, inter alia, providing information to victims of crime, is reflected in a special *Instruction of the Ministry of Interior on Receiving Citizens and Assisting Victims of Crime*.⁷⁴ The *Instruction* stipulates that receiving citizens and assisting victims of crime is done, following the principles of, inter alia, upholding fundamental rights and freedoms and police professional standards in the area (Art. 3). Police officers, receiving and assisting victims of crime should hear each citizen, regardless of the problem he/she poses (Art. 9, par. 1). Police officers receiving citizens and assisting victims of crime should, inter alia (Art. 12):

- hear citizens with sufficient consideration,
- report on the necessity of providing an interpreter, teacher, psychologist, a person of medical background, etc.,
- guarantee the confidentiality of facts and circumstances, established while hearing the citizen;
- show the necessary attention, patience and courtesy and not make improper comments;
- not allow discrimination or privileges;
- keep neutrality and impartiality.

Ethics rules for magistrates, however, deal with victims of crime and their position only very indirectly.

In **Italy**, the provision of support services to victims of crime is very fragmented. Even victim support centres, which are already present in many countries, are still virtually absent. There are few services or support centres for victims, and those that exist are all entrusted to specific initiatives in health care facilities, municipalities and regions. These structures work with the police and the justice system, as well as with social services and voluntary associations in the respective area.

Victims of crime can go to the various regional Police Forces (State Police, *Carabinieri* and *Guardia di Finanza*), where there is always staff to provide practical advice directly or through contacting institutions, organisations, associations, offices and entities giving assistance to victims of specific offences (usury, fraud, racketeering, sexual exploitation) or for cases of

⁷⁴ **Ministry of Interior of the Republic of Bulgaria** (2008): ИНСТРУКЦИЯ № 13-507 от 26 март 2008 г. за осъществяване на прием на граждани и подкрепа на жертви на престъпления в структурните звена на Национална служба "Полиция" [Instruction № 13-507 of 26 March 2008 on Receiving Citizens and Supporting Victims of Crime in the Structural Units of the National Police Service] (State Gazette 38/11.04.2008), Sofia: Ministry of Interior of the Republic of Bulgaria, available only in Bulgarian at: www.compensation.bg/Documents/iiz-507.doc (12 November 2013)

vulnerable individuals (children, women, elderly). There is no institutional code of ethics that applies to all those who, for various reasons, provide information and assistance to victims (Law No. 38/2009, Legislative Decree No. 204/2007, Legislative Decree No. 274/2000).

In **Latvia**, upon receiving a complaint regarding the criminal offence committed, the police officer is supposed to explain the rights of the victim provided for by law in the process of the initiation of the criminal proceedings and in pre-trial proceedings in general, including the right to receive legal aid and consultations from an attorney. Usually, this is done by presenting a paper copy of the text of the relevant legal provisions. In each case, the information delivery depends on the understanding of the state police or public prosecution about the situation of the victim and their attitude. There is no special code of ethics to regulate that. The Professional Ethics and Conduct Code of the State Police Personnel⁷⁵ stipulates, inter alia, that in his/her contacts with other persons the police officer respects and protects their dignity, treats them with politeness and tolerance. The Code of Ethics for Prosecutors of Latvia⁷⁶ stipulates that the prosecutor has to be tolerant and polite to the victims and other participants in the proceedings. The Ethics Code of Latvian Judges⁷⁷ envisages that the judge has to be patient, dignified and courteous to the participants in hearings.

In **Poland**, informing the injured party of the rights he/she is entitled to has a legal, but also an ethical dimension, since the victim has to have easy access to the administration of justice including the possibility of obtaining all the information about his/her status in proceedings. Authorities should not only deliver the excerpt of the relevant legal provisions, but also explain all nuances resulting from the relevant provisions. Accordingly, the ethical principles of public prosecutors⁷⁸ stipulate that criminal proceedings should not enhance the negative feelings of injured parties, triggered by the crime.

In **Spain**, there is no specific regulation about ethical issues regarding the provision of information to victims of crimes. The only partly relevant provision, concerning interrogation of victims, is art. 15.3 of Law 35/1995, which stipulates that during each step of the proceedings, the interrogation of the victim should be conducted respecting his/her personal situation, rights and dignity.

⁷⁵ **State Police** (2005): Valsts policijas darbinieka profesionālās ētikas un uzvedības kodekss [The Professional Ethics and Conduct Code of the State Police Personnel], Riga: internal legal act of State Police of Republic of Latvia, available only in Latvian at: http://www.vp.gov.lv/faili/sadalas/policijas_darbinieka_etikas_kodekss.pdf (28 November 2013).

⁷⁶ **Council of Prosecutor General** (1998): Latvijas prokuroru ētikas kodekss [The Code of Ethics for Prosecutors of Latvia], Riga: internal legal act of Council of Prosecutor General, available only in Latvian at: http://www.prokuratūra.gov.lv/upload_file/Faili/Normativie_akti/etikas_kodekss.pdf (29 November 2013).

⁷⁷ **Conference of the Republic of Latvia Judges** (1998): Latvijas tiesnešu ētikas kodekss [The Ethics Code of Latvian Judges], Riga: internal legal act of the judges of Republic of Latvia, available only in Latvian at: <http://www.tiesas.lv/normativie-akti-3> (27 November 2013).

⁷⁸ **Association of Prosecutors of Republic of Poland** (2002) Uchwała II Krajowego Walnego Zjazdu Członków Stowarzyszenia Prokuratorów RP w sprawie "Zbioru Zasad Etycznych Prokuratora" z dnia 25 maja 2002 roku [Resolution of the General National Congress of the Association of Prosecutors of the Republic of Poland on the Standards of the Ethical Prosecutor on 25 May 2002].

2.10. Sufficiency of information and problems in obtaining it – opinions of stakeholders

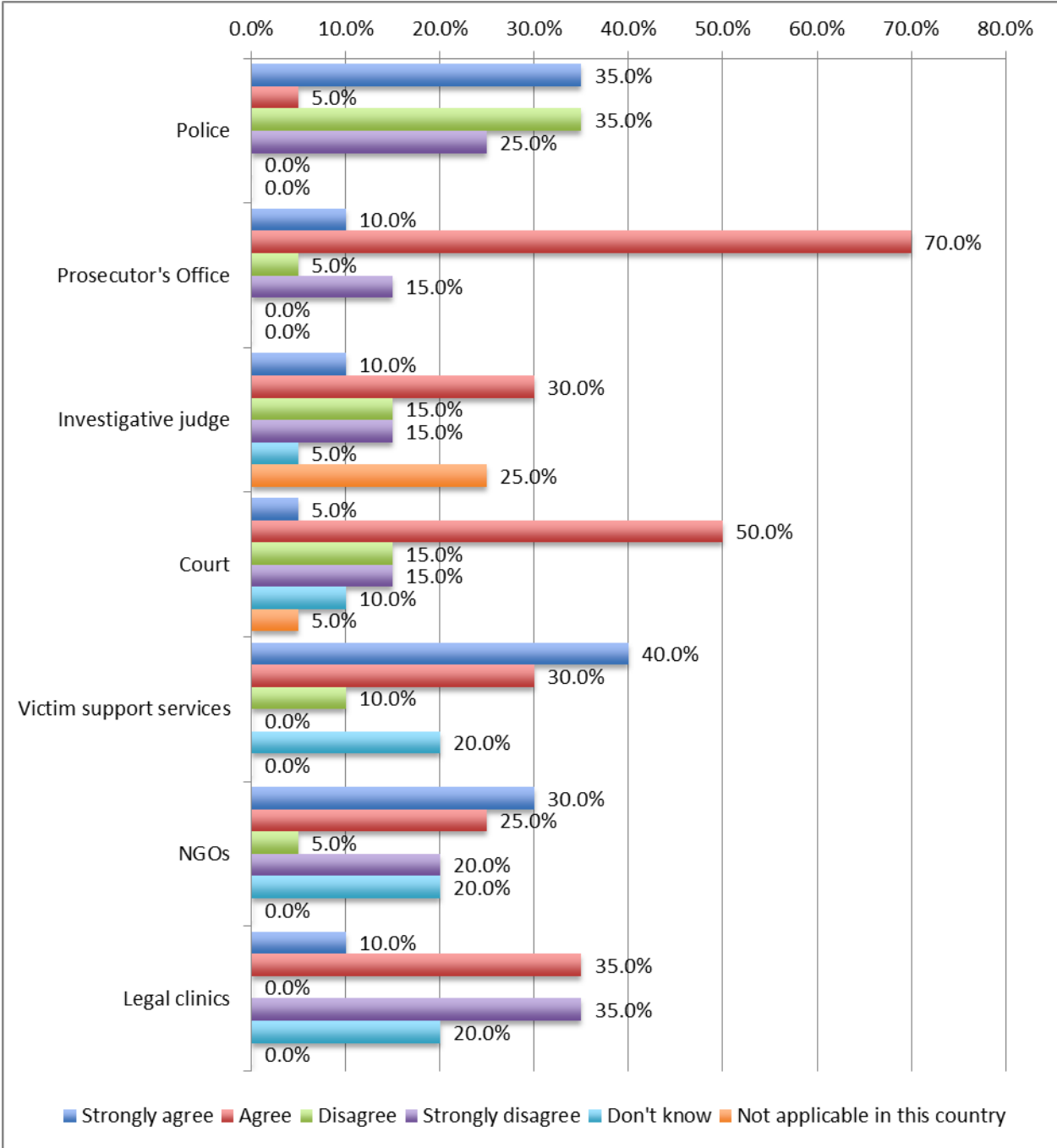
In **Bulgaria**, the few practitioners, having elaborated in more detail on the problems victims face in obtaining information, express general criticism towards the capacity and commitment of institutions involved towards informing victims about their rights. On an overall level, an NGO representative states that authorities and organisations involved do not allocate enough time for providing adequate information, while a judge points among the reasons the excessive workload of those involved. Another NGO representative is of the opinion that only the court during trial meets in full the obligation to inform victims about their rights, while information by police is often not sufficient or competent enough, when citizens submit complaints, and the Prosecutor's Office is sometimes overly formalistic, informing only about the right to appeal. The NGO representative thinks highly of the publicisation of the role of the Ministry of Justice and the website of the National Council for Assistance and Compensation of Victims of Crime (the body co-ordinating the activities under the Law on Victims' Assistance, deciding on and administering financial compensations), but fears it is only useful to citizens regularly using the Internet and states there is lack of preliminary (before any victimisation occurs) provision of information throughout society. A judge, on the contrary, considers the Law on Victims' Assistance generally unknown to citizens and competent institutions, victims are allegedly informed about their options under this Law rather by exception and the National Council is not very active in publicising forms of assistance.

In **Italy**, stakeholders are fairly negative about victims of crime receiving sufficient information about their legal status. Issues, gathering most concern on the part of experts, are the opportunities to participate in restorative justice services and opportunities to obtain state compensation, where clear need for state intervention via information campaigns is seen.

Specifically on legal aid and advice, 55 per cent of stakeholders deem the level of information fairly sufficient and 5 per cent deem it very sufficient. This response can be seen as partly encouraging, but the level still needs to be raised and intervention is also needed in this area.

As to whether institutions and organisations inform victims sufficiently about their rights, the results are depicted in the figure below:

Figure 1. Would you agree that the following authorities and entities in Italy inform victims sufficiently about their entitlements in legal proceedings?



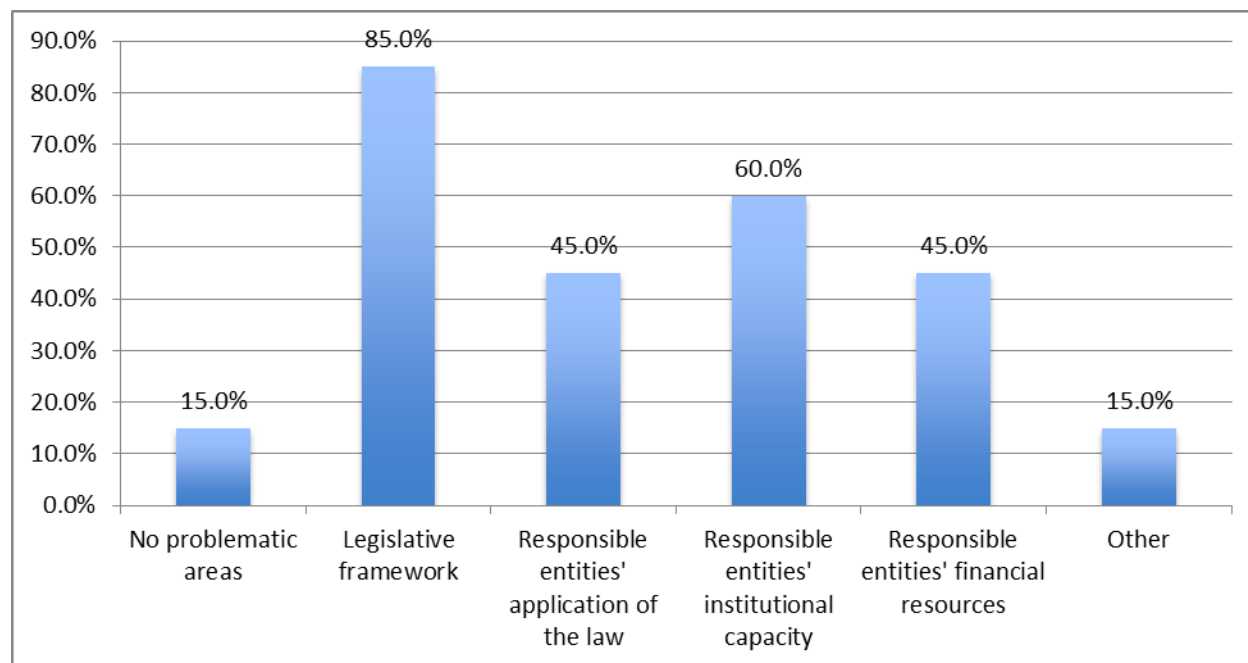
Source: COINFO – Italy

The entities, gathering most vocal agreement about informing victims sufficiently, are the victim support services, but it should be noted that there were representatives of police and

the prosecutor’s office among the respondents and they were probably reluctant to respond negatively about their institutions’ capacity to inform victims. Problems, related to the role of police in the information process, came out during interviews, including statements that immigrants complain of bad treatment at the hands of the police and are as a consequence reluctant to report the crimes or sometimes drop cases.

Stakeholders were also asked to comment on whether there were problematic areas in victims being provided with information. Only 15 per cent stated that there were no problematic areas showing a necessity to intervene to improve victims’ rights. The most problematic area is considered to be the legislative framework, as shown by the figure below:

Figure 2. In your opinion, are there problematic areas in Italy in victims being provided with information?



Source: COINFO – Italy

According to another survey, in **Latvia**, 88 per cent of the population indicate that they would know where to seek for help immediately if harm was caused to them or their relatives or acquaintances. Not knowing where to turn to in case of help needed was admitted by respondents over 75 years of age, who do not speak the national language on daily basis, with basic education and monthly income below 100 lats (142 Euro) per capita per household.⁷⁹

⁷⁹Kronberga I., Judins A., Zavackis A. (2013): Noziedzīgos nodarījumus cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā [Meeting the Needs of Crime Victims: Support for Victimization Prevention in Latvia]. Riga: PROVIDUS

Before each procedural action, in which the victim participates, the nature of the action, the victim's rights, duties and responsibilities regarding the action have to be explained.⁸⁰ Persons directing proceedings and experts admit shortcomings in the practice regarding informing the victim, regarding insufficiency of information and regional differences.⁸¹

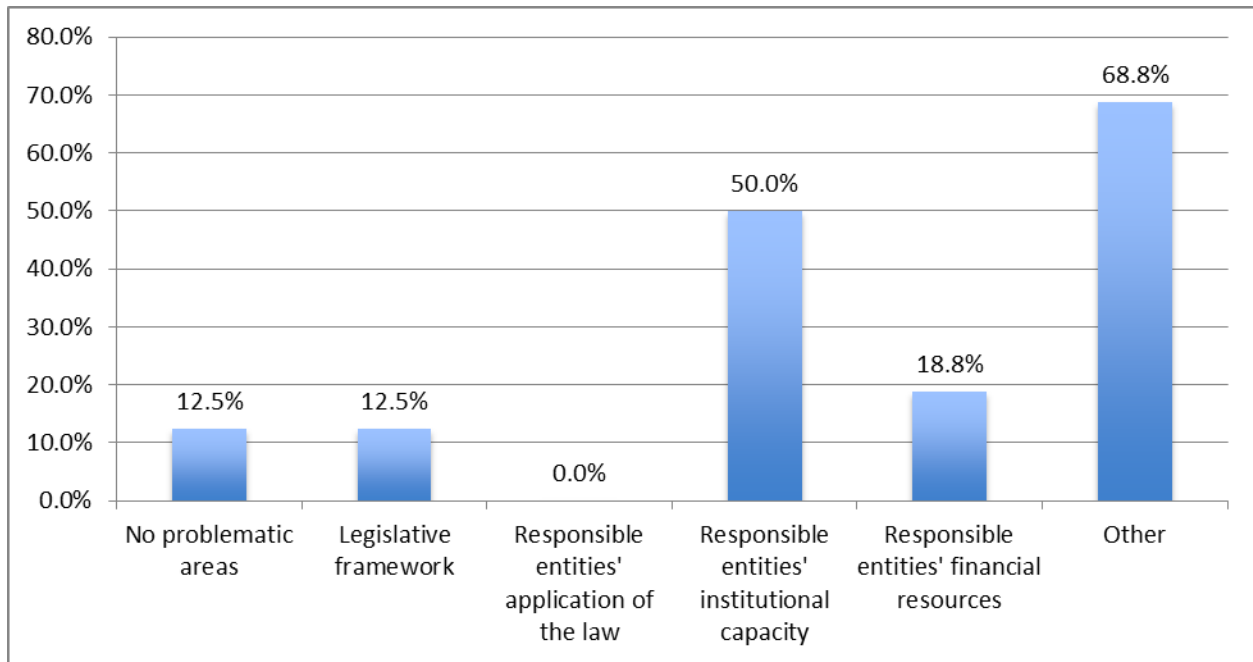
The evaluation of the accessibility of information about victim's rights in general leads to the conclusion that the state does not perform its tasks adequately. This is partially compensated by the information provided for the public by NGOs, but sometimes these sources may fail to reflect up-to-date information. Besides, the implementation of victim's rights is influenced also by the possibility to execute these rights in practice. Currently, the victim has a limited opportunity to express his or her opinion and even less possibilities to influence the decisions made during the criminal proceedings and their result, being deemed 'just a tool to prove the guilt or innocence of the offender'. The victim has a secondary role in the criminal proceedings and that is admitted both by prosecutors and judges.⁸² This is witnessed also by the opinion of stakeholders approached, which place financial resources, usually suspected as reason for victims' unfavourable position, among the least problematic areas, while responsible entities' institutional capacity, application of the law, as well as the legislative framework, top the list of problems.

⁸⁰ On the one hand, no one can plead ignorance of the legal enactments or official announcements published in the official publication, on the other hand, the state should consider the special standing of the victim and ensure the accessibility to these rights to be efficient, namely, the possibility of efficient protection of the rights.

⁸¹ 'There are cases when the victim is not informed sufficiently in the duty unit of the police. There have been cases when the victim has not understood that he has to go to the forensic examination to check the bodily injuries.' 'People are very poorly informed. They lack information about where to turn to, how to solve the situation, what applications to submit in which institution. In Riga surroundings and big cities they have easier access to the information than in the countryside' - **Kronberga I., Judins A., Zavackis A.** (2013): *Noziedzīgos nodarījumus cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā* [Meeting the Needs of Crime Victims: Support for Victimisation Prevention in Latvia]. Riga: PROVIDUS.

⁸² 'Not always the presence of the victim is necessary at the court, he/she gets interrogated and, in fact, we do not need him/her anymore, I don't need him/her in the debates and also it is not important whether he/she comes to the announcement of the decision – he/she may come and may fail to come.'

Figure 3. In your opinion, are there problematic areas in Latvia in victims being provided with information?



Source: PROVIDUS

In **Poland**, the degree of legal awareness of society still remains very low,⁸³ hence the importance of informing the injured party about his/her procedural entitlements. The subsidiary use of the *Code of Civil Procedure* is not always adequate, relevant provisions in the CPC are sparse and some regulations fall outside it. Regarding the most important matters, the legislator has imposed the duty of informing the injured party on the authorities conducting the proceedings. The *Code* imposes a general duty on the authorities to inform participants in proceedings about their rights and obligations and this includes the injured party. Respondents approached are generally satisfied with the sufficiency of information, given to injured parties, including the caution the party is given at the beginning of proceedings, before his/her first interrogation.

In **Spain**, information given to victims about their procedural status is not considered sufficient for the following reasons:

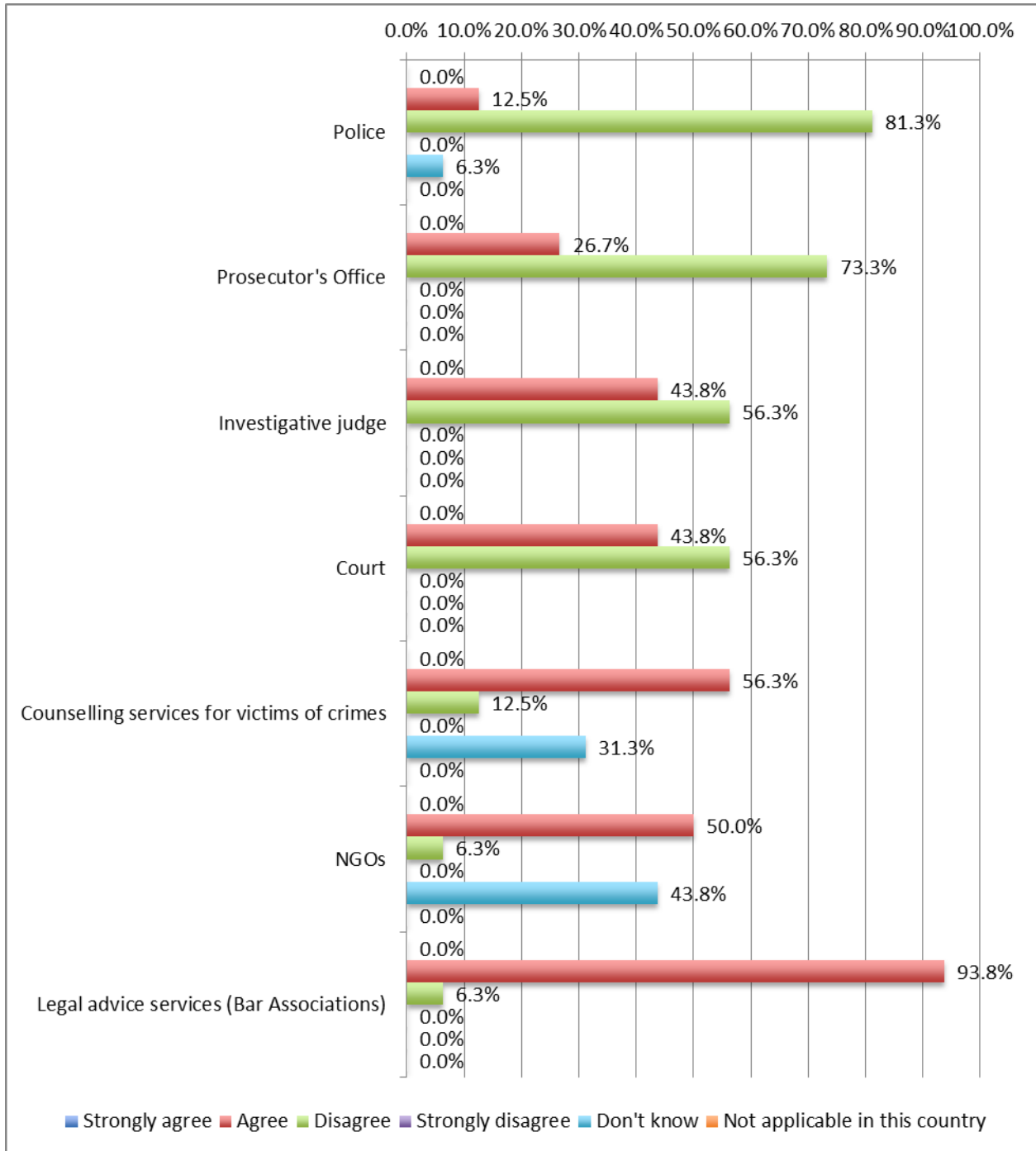
- information is too general, provided through fact sheets or in court orally, so in the vast majority of cases it is not effective as victims do not understand it thoroughly; according to the comments of stakeholders, authorities need to provide information in accordance with the specific circumstances of the different categories of victims, especially particularly vulnerable ones - minors, people with disabilities, foreigners, victims of trafficking of human beings.

⁸³ P. Karlik, P. Libertowski: The role of criminal proceeding in shaping legal awareness of the society, in D. Czajkowska – Ziobrowska (ed.) (2011): Academic areas of scientific knowledge, Poznań, p. 90 et seq.

- the needs of particularly vulnerable victims (minors, disabled persons, etc.) are not sufficiently taken into account;
- as for gender based violence, despite the specific training programmes provided at institutional level victims complain about the lack of satisfactory information regarding their rights or the proceedings, it is considered necessary to adapt information to the specific situation of victims of gender based violence and to use simpler terminology. Moreover, court officers should take sufficient time to inform effectively victims of violence about their rights.

The insufficiency of information provided is also reflected by the opinions of stakeholders approached, in which the disapproval over the activity of major criminal justice institutions is prevailing:

Figure 4. Would you agree that the following authorities and entities in Spain inform victims sufficiently about their entitlements in legal proceedings?



Source: COINFO – Spain

3. Legal aid to victims of crime – general considerations

3.1. Characteristics and selection criteria for a victim to be entitled to legal aid

Bulgarian Law on Legal Aid delineates two main groups of physical persons, who can benefit from state-provided legal aid, in accordance with the stage it is provided for – and each group comprises several categories.

State-provided legal aid for consultation in view of reaching an agreement before court proceedings or of instituting proceedings and for preparation of documents for instituting proceedings (Art. 22), so called ‘primary legal aid’, as regards victims of crime, is given to several socially disadvantaged groups,⁸⁴ children at risk, as well as victims of domestic or sexual violence, or human trafficking, who do not have means, but wish to be defended by an attorney. Those facts about the persons eligible are certified by court decisions, documents, issued by relevant competent authorities and declarations on persons’ family and property situation. Although not explicitly stipulated in the *Criminal Procedure Code* or the *Law on Legal Aid*, based on the right under the *Code* (Art. 75) of the victim to have counsel, in practice pre-trial authorities can and do receive, as well as rule on, requests from the above groups for procedural representation during the pre-trial phase.

Legal aid for procedural representation (Art. 23), as regards victims of crime, concerns the parties to the criminal proceedings, who do not have means for paying an attorney, wish to have one and the interests of justice so require. Practically, this hypothesis covers victims, who have entered trial proceedings as civil claimants or private accusers. Victims of lesser crimes, triable by a ‘private complaint’, submitted directly to court, or the so called ‘crimes of private nature’, are also eligible for legal aid under this provision. The assessment of eligibility is done by the court, based on the person’s income, a declaration on property situation, the person’s family, health and employment status, age and other circumstances.

Legal aid can be refused if, inter alia, it would not be justifiable with regard to the benefit, which it would bring to the person applying for it (Art. 24), but legal aid practitioners state it has never been refused to victims of crime.

Primary legal aid is decided upon, after a request by the person concerned, by the Chair of the National Legal Aid Bureau within 14 days after presenting the relevant documents. Legal aid for procedural representation is decided upon, depending on the stage of proceedings, by pre-trial authorities or by the court after a request by the person concerned and the submission of relevant documents. A refusal thereto is subject to appeal. The written act for providing legal aid is sent immediately to the bar council in the relevant region for appointing an attorney from

⁸⁴ Persons and families eligible for monthly or targeted support under the social support legislation, persons, accommodated in specialised social institutions or using other social accommodation; children, accommodated in foster families or families of relatives.

the National Legal Aid Register – if possible, the attorney of the person’s choice, if the legal aid applicant has pointed to one (Art. 25). The attorney appointed covers legal aid at all phases and court instances, unless there is an objection for that, can re-authorise another attorney from the national register and can be replaced upon request of the deciding authority (Art. 26).

The person, to whom legal aid is provided, should notify the deciding authority about any change in the circumstances, based on which legal aid was provided and the deciding authority may terminate it. If the person does not notify the authority on time, he/she should reimburse the expenses made as of the moment of change (Art. 27).

In **Italy**, legal aid is generally only provided to victims, appearing at trial as civil parties, under the same conditions to those for defendants (§98 *Code of Criminal Procedure*), if their income falls below the threshold, set by law.

To obtain legal aid, one must have a net income of less than €10,766.33 per year, the limit increasing, only in criminal cases, with € 1,032.91 for each member of the family living with the applicant (e.g. if the applicant has a wife and a child, the income limit is €12,693.98). There are certain exceptions.⁸⁵ Finally, there are also some cases where one cannot obtain legal aid, e.g. if he/she has been convicted of crimes of mafia or involvement with other types of criminal associations and of tax fraud and bankruptcy.

Although in Italy there exists no dedicated structure for assistance to victims in criminal proceedings, exceptions cover certain categories of victims and offences, where specific regulations exist for protection through special funds and free legal aid (sexual offences, mafia crimes, usury, etc.) Associations, involved in supporting persons in such specific situations, allow victims to receive free legal advice from their legal advisor, which is different from the system of legal aid, but there are no regulations for funding the legal aid provided by these associations. In certain cases, the local authorities (provinces and municipalities) fund these associations, which therefore can indirectly pay for the legal fees for defending the victims of crime. To receive this kind of aid, the victim has to be a member of the association. Generally speaking, the legal advisors of the associations apply very low fees and practically work for free in view of the compensation which the victim may receive from which they can deduct the legal fees.

In **Latvia**, in order to ensure the enjoyment of his/her rights, the victim or the representative thereof may invite an attorney for the provision of legal assistance. The counsel has the right to participate in all procedural actions that take place with the participation of the victim, and on the basis of a request of the victim may exercise his/her rights fully or partially.

⁸⁵ In case of separation, divorce, custody of minor children or other cases involving personal rights, the individual income of the applicant is considered and not that of the other members of the family, paragraph 4 of art. 76 of *Presidential Decree No. 115/2002*. In other situations legal aid is granted regardless of income, e.g. it is always given to victims of crimes of sexual violence, sexual acts with a minor, sexual assault by a group, even if the victim has a higher income limit than that established.

However, Section 104, part 5 of the *LCP* imperatively indicates that in case the protection of the rights and interests of a minor is encumbered or otherwise not ensured, or if the representatives of the minor submit a substantiated request, the person directing the proceedings makes a decision on retaining an attorney as the representative of the minor victim.

In exceptional cases, if it is otherwise not possible to ensure the protection of the rights and interests of the person, the person directing the proceedings makes a decision on retaining of an attorney as a representative of the victim who is a needy or low-income person of legal age. In such cases, the amount of payment for the provision of state ensured legal aid and the reimbursable expenses related to the provision of state ensured legal aid, their amount and procedures for payment are determined by the government.

In such cases, the person directing the proceedings notifies the elder of the sworn attorneys on the territory of the relevant court proceedings about the decision on the necessity to ensure a representative for the victim in the criminal proceedings. The elder notifies the person directing the proceedings regarding the participation of the relevant attorney in the criminal proceedings not later than three days after the receipt of the request. If necessary, the person directing the proceedings retains an attorney for ensuring legal representation in the procedures, which are to be carried out immediately and in which the victim is involved, in conformity with the schedule of the attorneys on duty compiled by the elder of the sworn attorneys on the territory of the relevant court proceedings.

In **Poland**, legal assistance granted to the injured party is deemed a requirement for achieving procedural justice⁸⁶ and a basic component of reliable criminal proceedings.⁸⁷ However, legislation lacks general assumptions on legal assistance, of which the injured party would be a beneficiary, for example stipulations on the minimal scope of assistance provided. Rights of injured parties are contained throughout the *Code of Criminal Procedure* and in other procedural acts. Legal assistance is also provided by a number of non-governmental organisations with specific statutory purposes in this field. Also, a number of public campaigns aim directly to bring aid to injured parties or increase the social awareness in this regard (e.g. Week of the Help to the Persons Injured by the Crime). However, for the purposes of this study

⁸⁶ About fairness in the criminal process: J. Skorupka (2013): *O sprawiedliwości procesu karnego* [About fairness in the criminal process], Warszawa.

⁸⁷ On the subject of due process, see.: P. Wiliński, The concept of a fair criminal trial, [in:] J. Eggshell, W. Jasinski (eds.), *Reliable criminal trial*, Warszawa 2010, pp. 171 ff; idem, *Reliable criminal trial courts of Polish and international*, Warsaw 2009; idem, the concept of a fair criminal trial [in:] idem, A. Gerecka-Żołyńska, H. Paluszkiwicz, P. Gorecki, *Skargowy model of the criminal process. Book offered to Professor Stanisław Stachowiakowi*, Warszawa 2008, pp. 399 ff On the subject of due process: P. Wiliński, *O koncepcji rzetelnego procesu karnego*, [w:] J. Skorupka, W. Jasiński (red.), *Rzetelny proces karny*, Warszawa 2010, s. 171 i n.; tenże, *Rzetelny proces karny w orzecznictwie sądów polskich i międzynarodowych*, Warszawa 2009; tenże, *Pojęcie rzetelnego procesu karnego* [w:] idem, A. Gerecka-Żołyńska, H. Paluszkiwicz, P. Górecki, *Skargowy model procesu karnego. Księga ofiarowana Profesorowi Stanisławowi Stachowiakowi*, Warszawa 2008, s. 399 i n.

the possibility of using the assistance of an attorney and the possibility of exemption from bearing the costs of the legal assistance shall be mainly examined.

When the injured party does not have financial means allowing him/her to cover the costs of the participation of the attorney or other court fees, an attorney can be granted to him/her *ex officio* and he/she can be dismissed from paying the court fees. The condition for granting the injured party an attorney *ex officio* is an adequate demonstration that he/she is not capable of incurring the costs of defense without prejudice to the essential maintenance of himself/herself and his/her family. The injured party must file an appropriate application including information on his/her financial situation. For that purpose he/she should attach appropriate documents, e.g. confirmation of receiving an annuity or retirement pensions, his/her earnings statement, etc. The application should be filed with the court, where proceedings are pending. In pre-trial proceedings the application is lodged via the prosecutor's office to the court competent for examining the case. Decision of granting an attorney *ex officio* is made by the chairman of the respective court. The decision cannot be repealed.

In **Spain**, free legal aid is granted to persons who do not have or demonstrate not to have sufficient financial resources to litigate (article 119 Spanish Constitution and articles 2 and 3 of Law 1/1996 regarding Free Legal Aid). It is regulated by Law 1/1996, Law regarding Free Legal Aid of 10 January. Article 2 of this Law establishes the scope of persons, covered by the law: Spanish citizens, citizens of the other Member States of the European Union and foreigners who are in Spain when they do not have sufficient financial resources to litigate.

The procedure to obtain free legal aid is the following: Bar Associations begin the filing of the complaint, analyse the sustainability of the requests before the court and the lack of resources to litigate in compliance with the limits set and temporarily appoint or dismiss a lawyer and a solicitor to defend the rights of the applicant for free legal aid. Counsels begin to provide their services as soon as they receive their temporary appointment. These provisional resolutions are reviewed by the Commissions for Free Legal Aid, which are bodies formally responsible for the final decision and consist of representatives of the following institutions: Public Prosecutor Office, Bar Association, Solicitors' Association, Public Administrations. It is possible to lodge an appeal against the Commission's final decision. Lawyers and solicitors are appointed for the entire proceedings, including appeals, and their fees are paid by the State, thus they are free for the beneficiaries.

The recent Royal Decree-law 3/2013 of 22 February added to the scope of the law, regardless of the availability of resources for litigation, the immediate provision of free legal aid to victims of gender based violence, terrorism acts and trafficking in human beings in the relevant proceedings, as well as to minors and persons with psychological disorders if they are abused or ill-treated. This right is granted also to their successors in case the victim passed away, provided they are not the offender. Applications for legal aid submitted by the two groups recently added are accepted immediately notwithstanding the availability of means for litigation.

For the purpose of provision of free legal aid, the victim status is acquired when the crime is reported or the complaint filed, or the criminal proceedings begin, regarding one of the above crimes, and is maintained for the whole duration of the criminal proceedings or when the trial ends with a condemnation sentence. The benefit of free aid is lost in case of a judgement in favour of the defendant or if the criminal proceedings are dismissed, without the obligation to repay for the services received up to then.

Another group to receive free legal aid regardless of the availability of resources for litigation, is persons who due to an accident suffer permanent damages which impede them from working and who need to be aided by other persons to perform the basic tasks of everyday life, if the object of the litigation is the claim for compensation for the personal and non-material damages suffered.

According to art. 6 of the Law, the right to free legal aid in criminal cases includes:

- free advice and guidance before the proceedings to those who claim the legal protection of their rights and interests, when their aim is to avoid the legal conflict, or analyse the feasibility of the claim;
- free defence and representation by a lawyer and solicitor in the legal proceedings;
- free experts' aid - the judge or court, in duly justified cases, may agree to let private expert professionals provide - possibly immediately - their aid when the interested party is a minor or a person with mental disorders who is a victim of abuse or ill-treatment, given the circumstances of the case and the best interest of the minor or the person with mental disorder.

3.2. Special conditions for foreigners – EU and non-EU residents

In **Bulgaria**, EU residents certify their material status with relevant documents from the Member States they come from. Legal aid practice has not yet come across non-EU resident victims, but, given the rapid changes in the influx of refugees in the country, that is bound to change soon.

In **Italy**, special provisions exist in the field of immigration. Art. 18 of the *Consolidation Act on Immigration* establishes the so-called residence permit for reasons of social protection.⁸⁸ The victims, having such a permit, are included in aid and social integration programmes provided by the Municipality where they live or stay. A ministerial regulation has established the

⁸⁸ The provision reads that 'when, during police operations, investigations or the proceedings regarding one of the offences listed in article 3 of law n.75 of 20 February 1958, or one of those listed in article 380 of the Criminal Procedure Code, as well as during aid interventions of the social services of the local bodies, serious events of violence and exploitation against a foreigner are established and his/her safety is jeopardy due to his/her attempt to escape from one of the organisations committing one of the crimes mentioned above or due to the statements declared during the preliminary investigations or the trial, the chief of police, also upon request of the public prosecutor or with the consent of this authority, issues a special residence permit to allow the foreigner to escape from the criminal organisation and to take part in an aid and social integration programme'.

requirements to identify in each municipality the associations which can aid these persons as well as the availability of suitable facilities which can host them. The residence permit issued under that regime has a duration of six months and may be extended for another year or the necessary period required by the law enforcement authorities and it is revoked if the programme is interrupted or in case of a conduct inconsistent with its purposes. This permit also provides access to social services and education, the person can be registered as unemployed and can be hired, subject to minimum age requirements.

Legal aid is available for all Italian and foreign citizens from EU and non-EU countries, in, inter alia, criminal, civil, administrative, accounting and voluntary jurisdictions before the courts. It must be stated that many asylum seekers and migrants have lost their chance to assert their rights of defense and appeal by having access to legal status, due to the rapidity of the expulsion procedures and review of denials of applications for asylum that is sometimes faster than the procedure for the recognition of legal aid. Added to this are the difficulties of adequate representation by public defenders, the absence of freelance interpreters, together with the immediate execution of the decisions of forced removal, and recently the suspension of the right to appeal.

The Legislative Decree No. 25 of 28 January 2008, in addition to intervening on the most controversial issues, such as the obligation of receipt of the application for international protection by police offices and the differentiated regime of detention, addresses appeals against decisions refusing status by a specific provision on legal aid at the state's expense. Art. 16 of the Decree implementing EU directives on asylum procedures provides that:

1. The foreigners may be assisted at their own expense by a lawyer;
2. In the case of appeals to courts, the foreigners shall be assisted by lawyers and are granted legal aid if the conditions laid down by *Decree No. 115 of 30 May 2002* are met. In any case, the foreigner must present a statement of the income earned abroad.⁸⁹

In **Latvia**, the *LCP* does not stipulate specially on victims who are citizens of other Member States of the European Union or a third country. All the victims, regardless of their citizenship, have equal rights to be recognised as victims and, under the prerequisites mentioned before, to receive state ensured legal aid.

⁸⁹ The Constitutional Court recalls that under Article 24 of the Constitution the right of defense belongs also to foreigners (Judgement nos. 120/1967, no. 109/1974), even if they are foreigners illegally present on the territory of the State, so the expelled foreigner has the right to return to Italy solely for the purpose and for the time necessary to attend the trial (Judgment no. 492/1991). In any case, access to justice concerns not only the foreigner as suspect or defendant in a criminal case, but also as a victim of crime (with the associated right to bring a civil case) or recurrent in the work process to defend their rights as workers or plaintiff or defendant in civil proceedings involving the rights of the person and the family. The foreigner's right to know the contents of the act and the right to have an interpreter of their choice and compensation from the State was reaffirmed and clarified by the Constitutional Court.

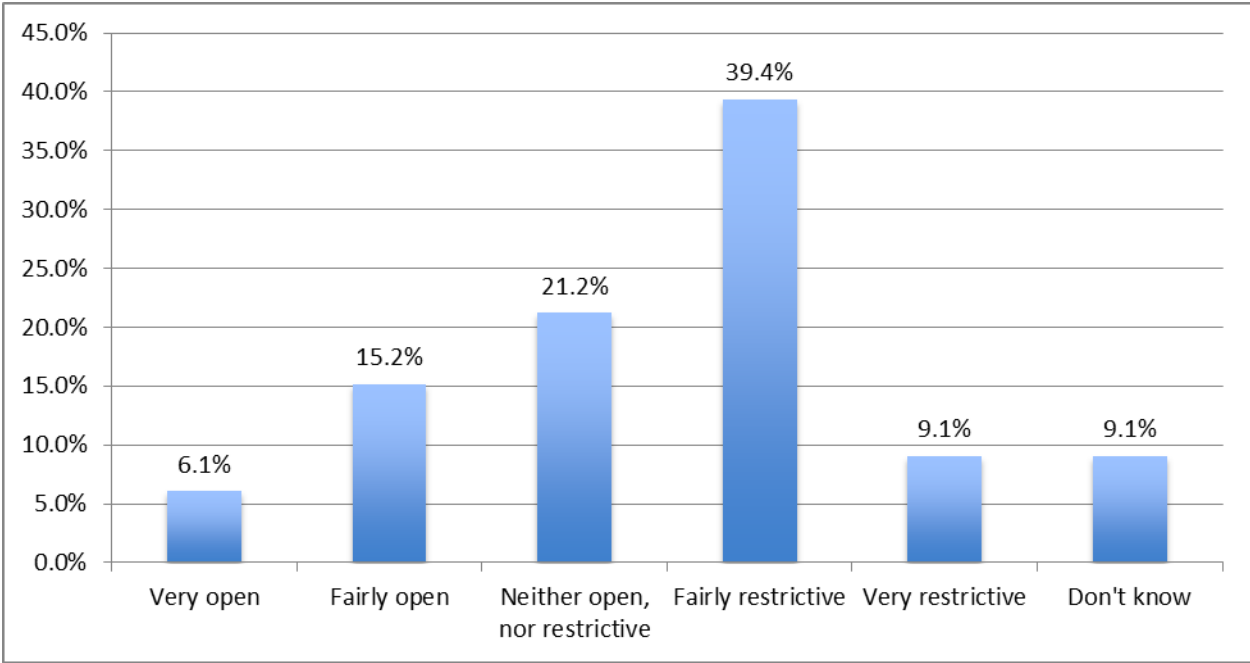
Polish law does not provide for additional criteria for granting legal assistance to persons who are not citizens of the Republic of Poland. Therefore requirements are identical to those for Polish citizens.

In **Spain**, according to article 2. a) of *Law 1/1996*, there are no special conditions regarding the right to free legal aid of victims of other EU countries or citizens of non-EU countries.

3.3. Assessment of degree of restrictiveness of conditions for granting legal aid to victims – opinions of stakeholders

In **Bulgaria**, legal aid practitioners deem the conditions for granting legal aid fairly restrictive because of the fairly low threshold of indigence, set by referral to the social assistance legislation. There has been an idea to set the threshold of indigence at the level of the minimum monthly wage (currently around 155 Euro), but it has not been implemented yet legislation wise. This is confirmed by the opinions of stakeholders approached:

Figure 5. How would you assess the conditions, which a victim in Bulgaria has to meet to qualify for state-provided legal aid in your country?

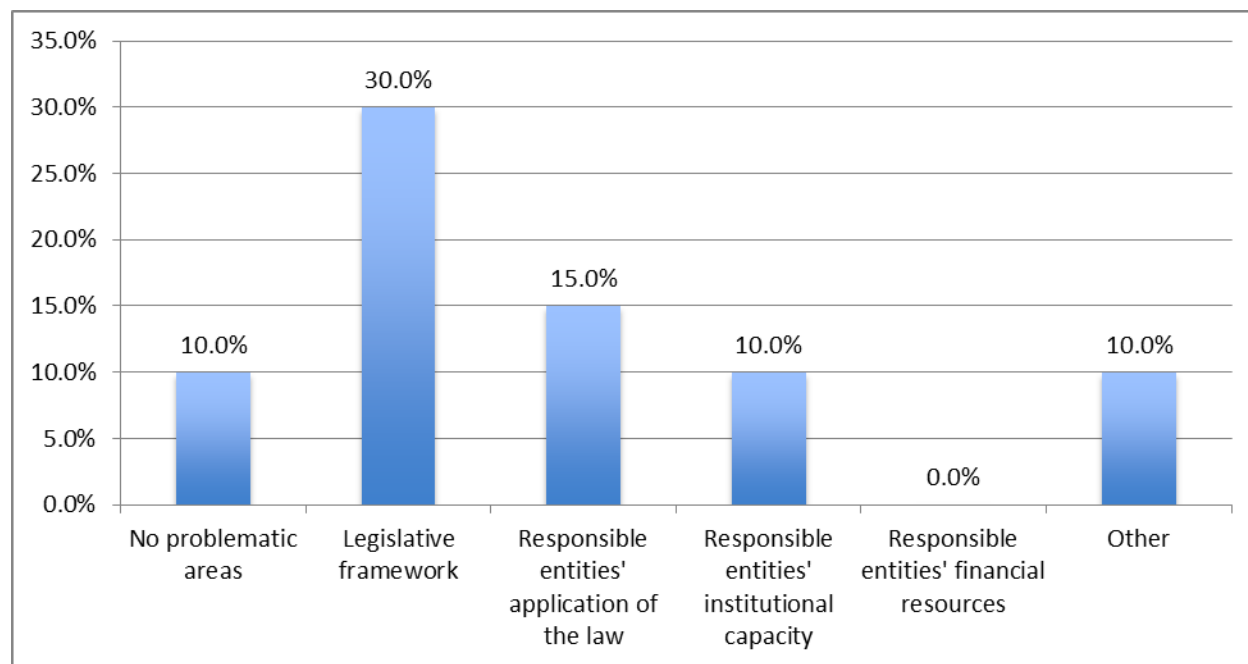


Source: Center for the Study of Democracy

In **Italy**, 55 per cent of stakeholders state that conditions victims have to meet in order to qualify for legal aid are restrictive, whilst just 15 per cent state that they are neither restrictive or favourable, maybe due to their lack of knowledge in the area. As shown in the figure below,

30 per cent of stakeholders state legislative framework as the most problematic area in victims' state-provided legal aid, as stipulated in relevant legislation.

Figure 6. In your opinion, are there problematic areas in Italy in victims obtaining state-provided legal aid as stipulated in relevant legislation?



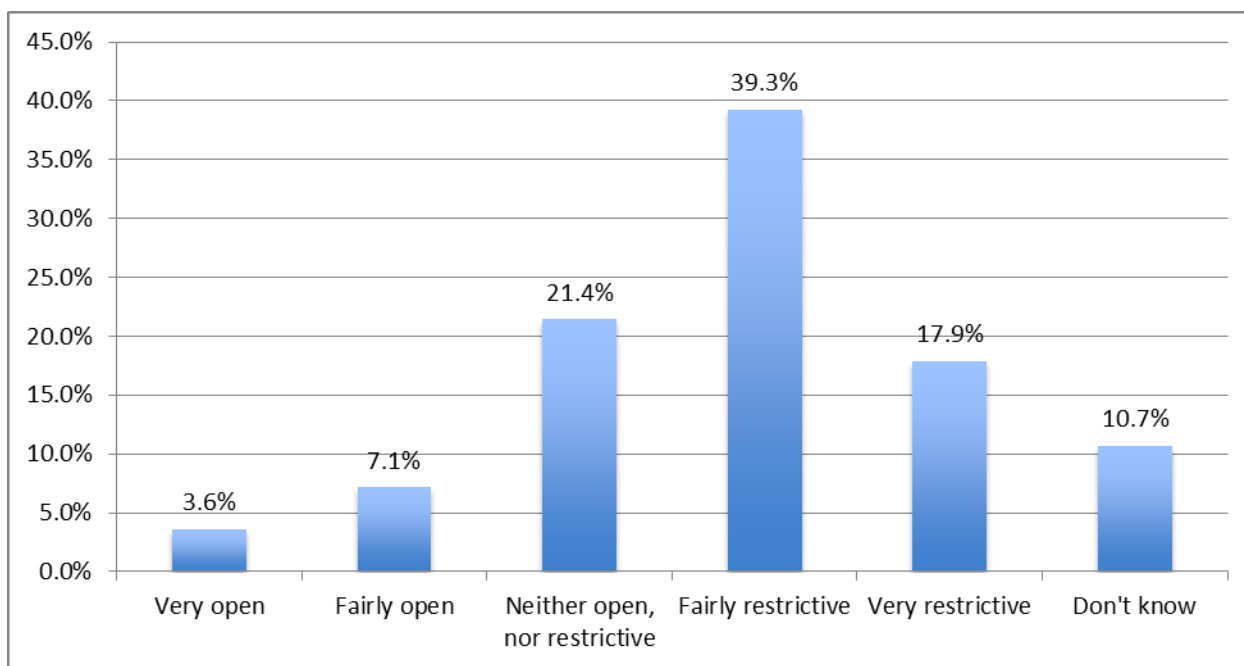
Source: COINFO - Italy

In fact, Italian legislation formally guarantees the right of access to legal aid, governed by the Presidential Decree No. 115 of 2002 and by Art. 98 of the Code of Criminal Procedure, which allows those who are not wealthy, including all citizens, Italians and foreigners, to qualify for free legal assistance in a civil or criminal case. To exercise this right, the victim may make use at no expense of a patron who is the defender. Not all lawyers can defend those who have been granted legal aid. It is necessary for the accused or victim who wants to make use of legal aid to consult one of the lawyers registered in the register of patrons of the State, kept by the relevant Councils of Belonging (Bar councils in Italy). Allegedly, the lawyers in the register are not among the top ranking and often the victim waives the right to free representation and/or opts to be represented by a more skilled lawyer at a private law firm, thus having to pay the fee himself/herself.

In **Latvia**, the accessibility of state ensured legal aid is seen as insufficient and the existing criteria excessively limit the number of cases where such aid is provided. Legal aid is not ensured to the person affected by a crime until the person has been legally recognised as a victim. Besides, after the acquisition of the legal status of a victim only a particular, limited group of victims may apply for receiving legal aid, while the demand is much bigger. First, the person directing the proceedings has to acknowledge that the protection of the rights and

interests of the person is encumbered or otherwise not ensured, and the formal prerequisite has to be satisfied that the victim is a minor or an adult with the status of a needy or low-income person.⁹⁰ The restrictiveness of conditions is also confirmed by the stakeholders approached.

Figure 7. How would you assess the conditions, which a victim in Latvia has to meet to qualify for state-provided legal aid in your country?



Source: PROVIDUS

In 2011, 51,582 criminal offences and 15,403 formally recognised victims were recorded in Latvia, whereas in 2012 there were 49,905 crimes and 12,600 victims.⁹¹ Unfortunately, there is no statistical data about the number of victims who have received state ensured legal aid. Moreover, it must be taken into account that not reporting a crime is a widespread

⁹⁰ In accordance with Section 33 of the *Law on Social Services and Social Assistance* and the *Cabinet Regulations No.299 of 31.03.2010. on the recognition of a family or person living separately as needy*, a family (person) may be recognised as needy if the average monthly income per each family member during the last three months does not exceed 90 lats (appr. 128 Euro) and if it does not own monetary accumulations, securities or property; it has not entered into a maintenance contract; it does not receive services from long-term social care and social rehabilitation institutions or is not imprisoned; the person is registered as unemployed. In their binding regulations, each local government can specify more favourable conditions for the recognition of a family (person) as needy, including such family (person) who has debt liabilities.

⁹¹ **Kronberga I., Judins A., Zavackis A.** (2013): *Noziedzīgos nodarījumus cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā* [Meeting the Needs of Crime Victims: Support for Victimisation Prevention in Latvia]. Riga: PROVIDUS.

phenomenon in Latvia and the dark number of crime victims ranges from 40 to 80 per cent.⁹² Survey data show that in approximately 39 per cent of the cases victims need legal aid. Being in need of legal assistance, in practice the victims often expect that help in proceedings would be ensured by the public prosecutor, but this is not among the prosecutors' responsibilities.⁹³

The ombudsman is also able to provide legal assistance, however the office receives more complaints from convicted persons or prisoners than from victims.⁹⁴ Legal aid can also be received from NGOs, but they do not have sufficient resources to meet the various needs over a long period.⁹⁵

Specific help can be received also from the persons directing the proceedings, but the amount of such help depends directly on the wish and ability of the person directing the proceedings.⁹⁶

All in all, the victim is often left on his/her own and the assistance by a qualified lawyer is available only if the victim seeks for it actively.⁹⁷

The majority of respondents approached agree that in **Poland** the system of legal assistance is beneficial for the injured party. He/she has a possibility of using both the attorney chosen by himself/herself and the one assigned by the State. Respondents emphasised that the granting of legal assistance, depending on the financial situation of the victim, is justified and constitutes protection for the interests of the poorest. It was also emphasised that the mode of granting the legal assistance is clear.

In **Spain**, the recent partial reform of the Law regarding free legal aid 1/1996, through Royal Decree-law 3/2013 of 22 February, granted free legal aid immediately, regardless of their financial situation, to victims of gender based violence, trafficking in human beings, terrorist acts as well as minors and persons with mental disorders who suffer abuses and ill-treatment. However, the law does not include victims of domestic violence, which would have concerned also persons who actually suffer the same violence as women, namely elderly people or

⁹² **Kronberga I., Judins A., Zavackis A.** (2013): Noziedzīgos nodarījumos cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā [Meeting the Needs of Crime Victims: Support for Victimisation Prevention in Latvia]. Riga: PROVIDUS.

⁹³ **Kronberga I., Judins A., Zavackis A.** (2013): Noziedzīgos nodarījumos cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā [Meeting the Needs of Crime Victims: Support for Victimisation Prevention in Latvia]. Riga: PROVIDUS.

⁹⁴ Interview with a representative from the Ombudsman's Office, 21.06.2013. Not published.

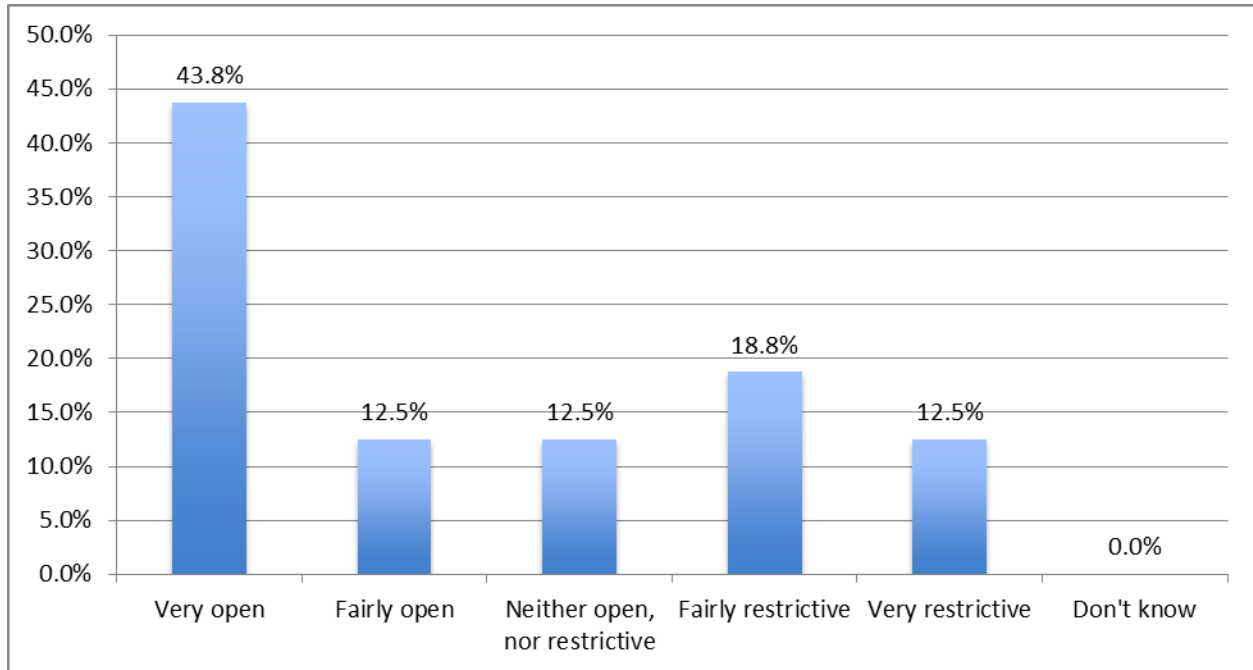
⁹⁵ For instance, the resource centre for women 'Marta' provides a wide range of services: assistance of a social worker, lawyer, psychotherapist, as well as the specialist in coaching.

⁹⁶ **Kronberga I., Judins A., Zavackis A.** (2013): Noziedzīgos nodarījumos cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā [Meeting the Needs of Crime Victims: Support for Victimisation Prevention in Latvia]. Riga: PROVIDUS.

⁹⁷ **Kronberga I., Judins A., Zavackis A.** (2013): Noziedzīgos nodarījumos cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā [Meeting the Needs of Crime Victims: Support for Victimisation Prevention in Latvia]. Riga: PROVIDUS.

homosexual couples. Still, the majority of stakeholders approached consider the eligibility conditions for legal aid as very open:

Figure 8. How would you assess the conditions, which a victim in Spain has to meet to qualify for state-provided legal aid in your country?



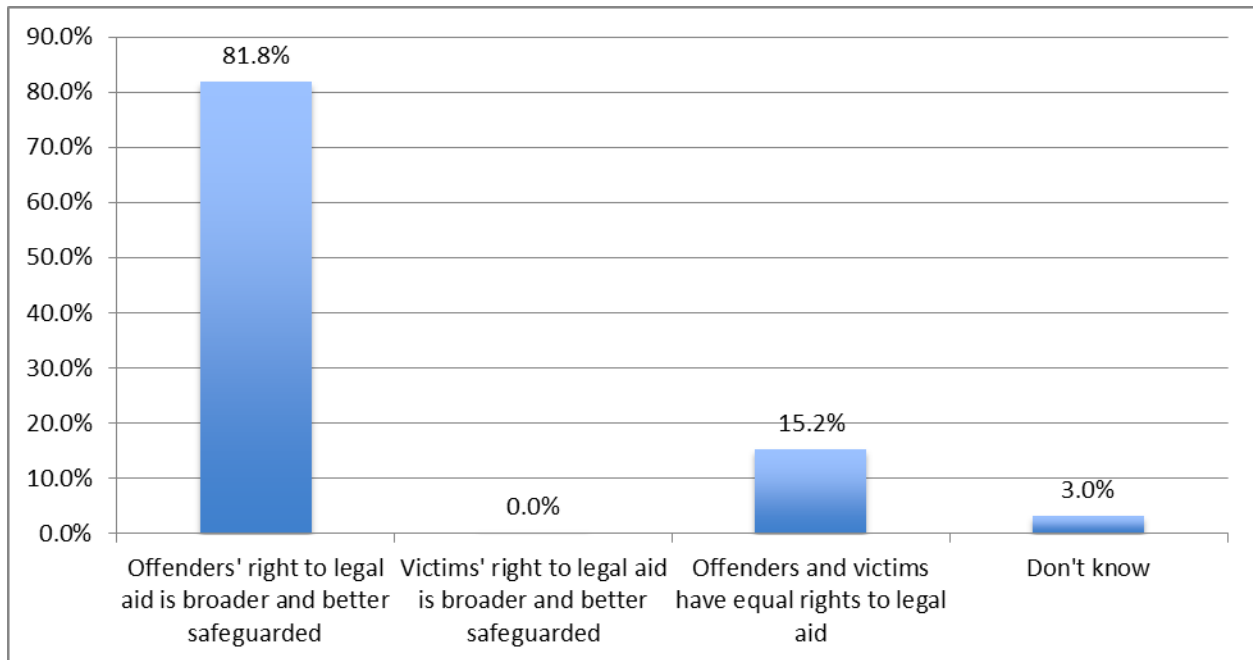
Source: COINFO - Spain

3.4. Legal aid to victims vs legal aid to offenders – is there a balance? – opinions of stakeholders

In **Bulgaria**, when elaborating on the general concept of balance between legal aid to victims and offenders, an NGO representative claims they are not ‘communicating vessels’ and there cannot be a balance between them. Legal aid practitioners state that, in terms of access to an attorney, defendants receive more aid and advice, one of the reasons being that legal aid is relatively not well known, especially among victims of crime.⁹⁸ This is also confirmed by the responses of all stakeholders approached:

⁹⁸ An NGO representative contacted further relays that victims rarely hire an attorney and participate in proceedings also when the crime was committed within their own family/relationship for fear punishment will be sought for people they co-habit with. On the contrary, offenders are informed about their rights by investigation and prosecution authorities, because they often have their own attorneys, who check, inter alia, whether their rights under the European Convention on Human Rights have been complied with.

Figure 9. How would you assess the balance between the right to legal aid available to victims and to offenders in Bulgaria?



Source: Center for the Study of Democracy

Before the expansion in 2013 of the circle of victims, who can obtain legal aid before trial has started, scholars argue⁹⁹ that, during the pre-trial phase, victims should get adequate means of defence, like the ones the defendant has, because oftentimes they do not have sufficient means to hire an attorney, which demotivates them from further participation to the trial. This argument is still valid, since there are still a number of categories of serious crimes, whose victims, if not indigent, fall outside the scope of the *Law on Legal Aid*. Legal aid practitioners claim that the intention behind the 2013 amendments was to make legal aid at least for trafficking, sexual and domestic violence victims absolutely free, without victims needing to prove indigence, but this idea was abolished.

In **Italy**, 30 per cent of the stakeholders approached via questionnaire state that the offender's right to legal aid is broader and better whilst 60 per cent state that offenders and victims have equal rights to legal aid. This percentage is seen as quite low and needing appropriate intervention.

⁹⁹ **Doichinova, Vladislava** (2010): Правото на защита на пострадалия на досъдебното производство според българския НПК и според минималните международни стандарти [The right of defense of the victim at pre-trial proceedings according to the Bulgarian Criminal Procedure Code and international minimum standards]. In: Правна мисъл [Legal Thought], volume 1, 2010. Sofia: Bulgarian Academy of Sciences

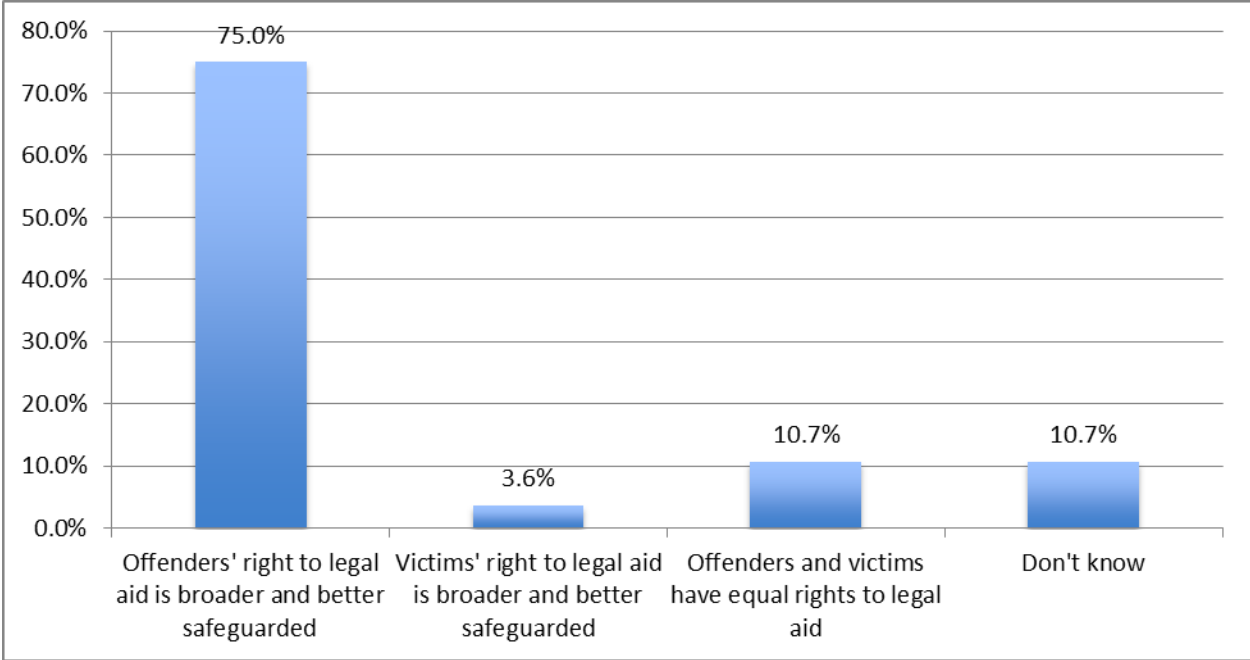
Victims of crime have often been ignored by both the justice system and governments. However, during the 1970s groups began to mobilise in the public and private sector for the protection of the rights of victims and for their assistance. In fact there is increasingly growing awareness of the material and emotional needs of the victims both during and after the commission of a crime. Victims may receive assistance from people close to them, but also from official organs of justice and services in the public and private sector. Most of the existing legal system structures, however, are geared towards the perpetrators. As a result, victims are often subjected to marginalisation or even to further victimisation often inflicted by the same justice system that views victims as evidence providers rather than as individuals with needs and rights to be protected.

In recent years however a few improvements have been made, even if these remain largely only formal. There is at present on the Italian territory a national service that deals specifically with victims of crime, which is able to respond to the needs of the victims and avoid further victimisation. However there is need for the foundation of a more comprehensive national service for victims that is recognised and supported at a governmental level. In relation to legal protection, the Italian system of protecting civil liberties (*garantista*) presents a marked difference in the treatment of victims and offenders, even if the Constitution affirms the principle of equal treatment.

In **Latvia**, there is imbalance between the right to state ensured legal aid for the victims and the accused. Contrary to a victim, any person regarding whom an assumption or allegation has been expressed for committing a crime does not need the status of a needy or low-income person to receive state ensured legal aid and the financial situation of the person is evaluated in each individual case. Moreover, in cases specified by law the participation of a defence counsel is mandatory.

The above mentioned is also confirmed by stakeholders as 75 per cent of all respondents indicated that offenders' right to legal aid is broader and better safeguarded while only about 4 per cent indicated the opposite – that victims' right to legal aid is broader and better safeguarded.

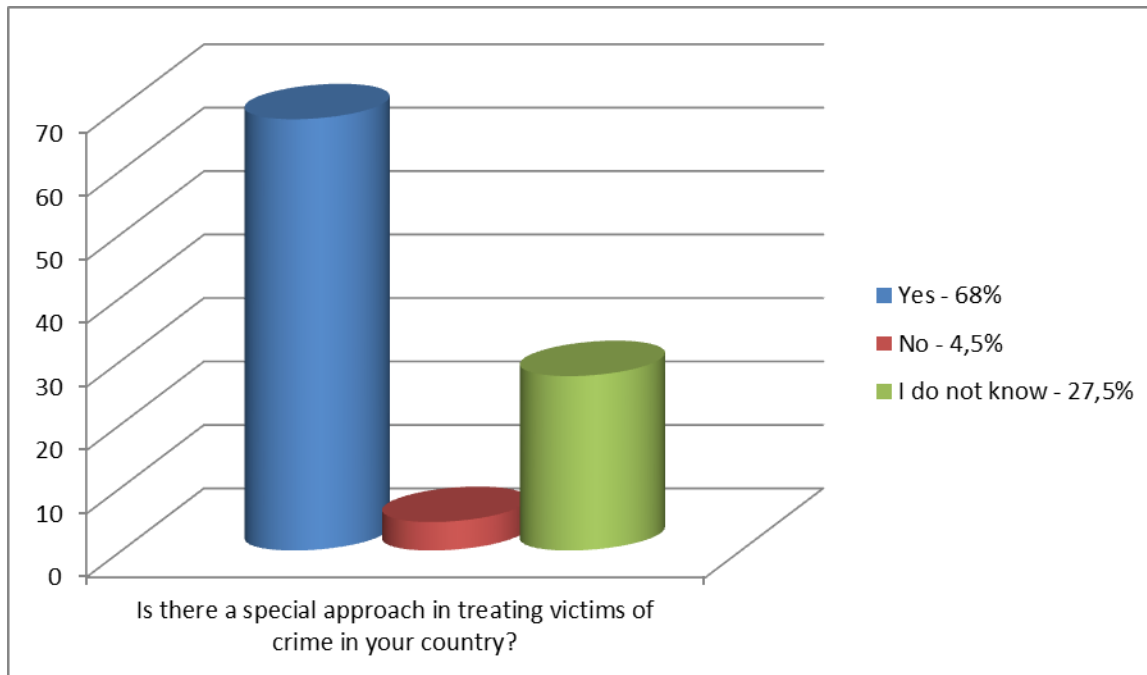
Figure 10. How would you assess the balance between the right to legal aid available to victims and to offenders in Latvia?



Source: PROVIDUS

In **Poland**, the majority of respondents pointed out that the balancing of the legal assistance given to the accused and to the injured party has recently undergone substantial change. Currently, much greater role is being attached to the protection of the interests of the injured party, although differences in comparison to the accused are still visible. Still, respondents emphasise that the conditions of legal protection of the injured party and the accused are being systematically equalised. Respondents note the greater role of bodies of the European Union in the enhancement of the status of the injured party. From a more general standpoint, the majority of stakeholders agree that there is a special approach in treating victims of crime in Poland:

Figure 11. Is there a special approach in treating victims of crime in Poland?

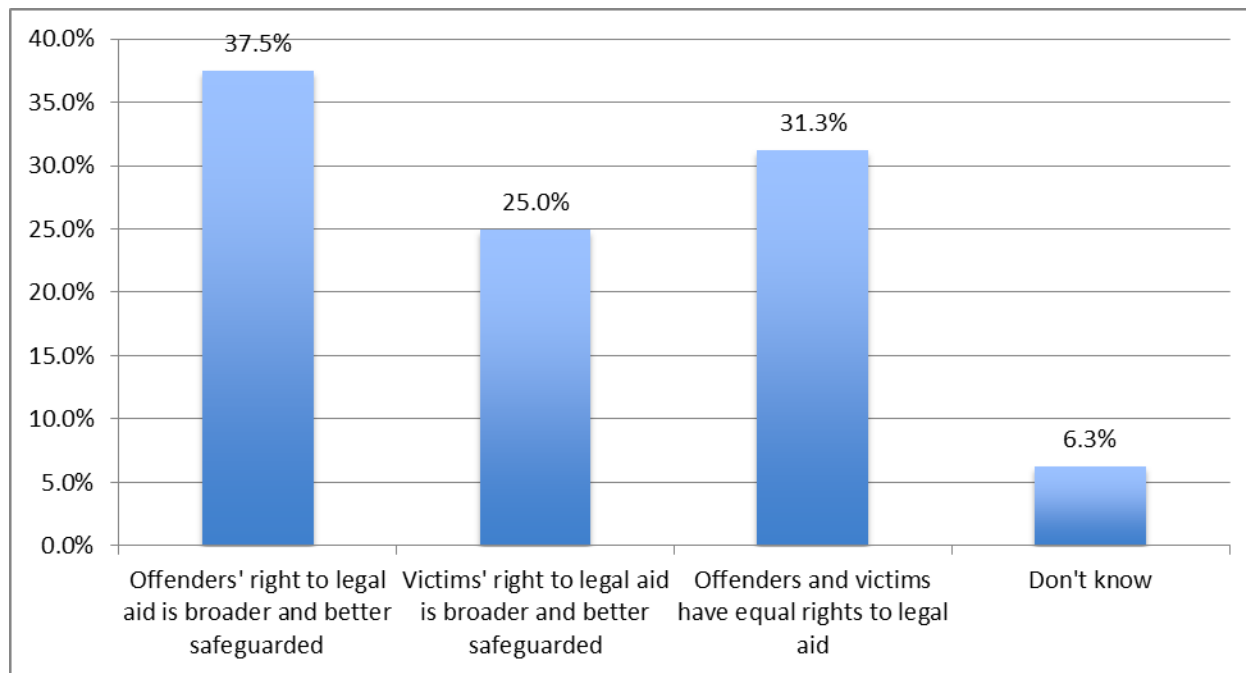


Source: AMU – Poland

In **Spain**, the constitutional system of guarantees provides that offenders have immediate legal aid, without applying for free legal aid. On the other hand, victims need to carry out procedural activities (appear as a plaintiff through a lawyer and solicitor) and if they do not have the financial means, they are obliged to apply for free legal aid. The recent partial reform of the Law regarding free legal aid 1/1996, through Royal Decree-law 3/2013 of 22 February, has granted the status of victims who obtain free legal aid immediately, regardless of their financial situation, to victims of gender based violence, trafficking in human beings, terrorist acts as well as minors and persons with mental disorders who suffer abuses and ill-treatment. Thus, this recent reform of the Law establishes a balance for these victims towards the free legal aid provided to the accused.

Among stakeholders approached, a slight majority thinks that offenders' right to legal aid is broader and better safeguarded than that of victims. Similar is the share of those who consider offenders and victims as having equal rights to legal aid:

Figure 12. How would you assess the balance between the right to legal aid available to victims and to offenders in Spain?



Source: COINFO - Spain

4. Scope and extent of legal aid, granted to victims of crime

4.1. First moment when victims can use legal aid

In **Bulgaria**, under the Law on Legal Aid, indigent victims, children in institutions/foster families and children at risk, as well as victims of domestic or sexual violence, or human trafficking, who do not have means and wish to be defended by an attorney, can use legal aid already at the stage of 'consultation... in view of instituting proceedings', which, translated into the system of the Criminal Procedure Code, would mean from the moment of submitting a complaint or the institution of proceedings *ex officio*, when authorities have themselves come across information about a crime committed. For procedural representation pre-trial, however, they would have to apply again to pre-trial authorities. All other eligible victims, including private complainants in cases of 'crimes of private nature', triable directly by court, can use legal aid from the moment they are constituted as parties to the trial.

In **Italy**, victims can generally use legal aid, if constituted as civil parties, from the trial stage (with the exception of *incidente probatorio*), if they satisfy the minimum income threshold under *Decree 115/2002*. At the trial, they are represented by lawyers, specialised in criminal

law, who lodge the so-called plaintiff act in which they assess the quality and quantity of the non-material damage suffered by the victim because of the offence.

In **Latvia**, the victim has a possibility to receive state ensured legal aid in case of initiated criminal proceedings - when a procedurally authorised official is convinced that there are real grounds for believing that a criminal offence has been committed, and if the signal contains information about a possible criminal offence that can be disclosed only with the use of the resources and methods of criminal proceedings. Therefore, the first moment when a person may receive state ensured legal aid is the moment criminal proceedings are initiated and the person directing the proceedings has already made decisions about the recognition of the person as a victim.

In **Poland**, legal assistance to injured parties during criminal proceedings includes benefiting from an attorney and the possibility of exemption from the costs of legal assistance. The injured party can make use of these possibilities from the moment of acquiring the status of party to proceedings – also in pre-trial proceedings by virtue of being injured by the crime. As for exemption from court fees, according to Art. 626 § 1, *Code of Criminal Procedure*, this is done at the closing of court proceedings, where the court determines who, in what part and in what range should cover the costs, including the costs of the auxiliary prosecutor.

In **Spain**, in compliance with paragraph 6.1 of Law 1/1996, the earliest component of free legal aid time wise is free advice and guidance before the proceedings provided to those who claim legal protection of their rights and interests, when their aim is to avoid legal conflict, or analyse the feasibility of the claim. Victims may apply to Counselling Centres for Victims, Legal Advice Services and NGOs to obtain free legal aid.

The first moment, in which the injured party can benefit from legal assistance, is the first procedural activity, in which the party is involved. However, the procedural body is not obliged to allow the participation of an attorney, contrary to the express possibility for the accused to be interrogated in the presence of his/her defender.

4.2. Stages of criminal proceedings, where victim can receive legal aid

In **Bulgaria**, indigent victims, children in institutions/foster families and children at risk, as well as victims of domestic or sexual violence, or human trafficking, who do not have means and wish to be defended by an attorney, can receive legal aid, upon relevant applications, all throughout criminal proceedings, until the court pronounces its final judgement. All other eligible victims can benefit from legal aid only during trial, also until the court's final judgement. The execution of the offender's sentence, the enforcement of the court's final ruling and the decision to release the offender are stages, where the victim's procedural role is basically over. In this line, the law does not provide the victim with the right to get information about the release of the perpetrator or to participate in the work of the authorities involved in the early release or amnesty procedures.

In **Italy**, legal aid for victims is available only during the trial, when they appear as civil parties, from the preliminary hearing and the court summons to the possible appeal to the Court of Cassation. Concerning any previous stages, the victim is considered only as an injured party and declarant and cannot have any other role. From this point of view, it is deemed that the aid provided is restricted, considering that investigations may last several years. The only exception is the *incidente probatorio*, where victims' rights include free legal aid and assistance in the case of needy victims, by virtue of §74 of the Decree 115/2002. Because of the stringent means test to pass, the provision is only relevant for a limited number of victims. In 2009, free legal aid was extended to victims of certain sexual offences (cf. Decree 11/2009). Legal aid is granted regardless of income, i.e. is always given to victims of crimes of sexual violence, sexual acts with a minor, sexual assault by a group, even if the victim has a higher income limit than that established (Decree Law, coordinated text 14.08.2013 n° 93 , OJ 16.08.2013).

In **Latvia**, after making the decisions about the initiation of criminal proceedings and the assignment of legal aid, the aid is provided until the termination or completion of the criminal proceedings (when the court adjudication enters into force). Legal aid is not available in the stages of the execution of the court decision and the serving of the offender's punishment. The state ensures the following types of legal aid in criminal proceedings: preparation of procedural documents during pre-trial proceedings and litigation, and representation in pre-trial proceedings and court hearing.

In **Poland**, the injured party can benefit from the help of a professional attorney during pre-trial and trial proceedings, after lodging an application to be a procedural party. The attorney's task is to render legal assistance to the injured party in all aspects associated with appearing as party to the penal proceedings. The injured party can also file a motion to have an attorney ex officio appointed to perform specific actions in the course of the proceedings.

In **Spain**, the victims of the crimes listed in the new provisions of Law 1/1996 (gender based violence, trafficking in human beings, terrorist acts as well as minors and persons with mental disorders who suffer abuses and ill-treatment) are entitled to receive free legal aid, provided immediately by an assigned lawyer and solicitor. The status of victim is acquired when the crime is reported, or the complaint is filed, or the criminal proceedings begin.

Victims of other crimes shall apply for free legal aid according to the common procedure, and if it is granted, they are assigned a lawyer and solicitor.

When victims are entitled to free legal aid, they will be defended by the same lawyer and solicitor up to the final sentence, including any other procedure, claim and enforcement, lodging and subsequent proceedings on the appeals against the final decisions which end the trial (art. 7 Law 1/1996).

4.3. Legal aid in obtaining compensation

In **Bulgaria**, state provided legal aid in obtaining compensation is not provided for by the legislation.

In **Italy**, the system of compensation is very much related to the separate frameworks for aiding victims of specific crimes. In general, there are a substantial number of rules that guarantee to victims of certain crimes economic intervention by the State. However, Italy has no general system of compensation for violent intentional crimes, which is also a subject of a procedure against the country for infringement of EU law. Italian legislation only provides for compensation for the victims of some violent intentional crimes, such as terrorism and organised crime and the country has not taken the necessary steps to amend its legislation - as a result some victims of violent intentional crime may not have access to compensation which they are entitled to.

First, there are the victims of *usury*, who can be persons running all types of businesses or performing liberal arts or professions, being offended parties in the relevant criminal proceedings. Besides the crime of usury, these people are also victims of extortion because the perpetrator of the usury usually induces them to hand over the extra money by using violence and threat. For the victims of that type of crime and/or requests for undue payments (*pizzo*) by members of the organised crime, the law provides the possibility to receive money from the funds for those who decide to report a crime and refuse to pay the illegal requests for money. More specifically, the Ministry of the Interior has set up a solidarity fund for victims of extortion subject to requests for undue payments. According to Law No. 44 of 23 February 1999, provisions concerning the Solidarity Fund for victims of extortion and usury (GU n.51 del 3-3-1999), the victims of extortion and of refundable damages may count on rapid disbursement of contributions.

Law No. 108 of 7 March 1996 establishes two Funds:

1. Solidarity Fund for the victims of usury (Article 14): applies only to events occurred after 1 Jan 1996 and is earmarked for loans to persons engaged in business or self-employment that are parties to criminal proceedings for the crime of usury;
2. Fund for the prevention of usury (Art. 15): earmarked contributions to consortia or cooperatives, collective credit guarantee (CONFIDI) or to foundations and associations recognised (as having the characteristics specified by the Ministry of Treasury) for the prevention of usury.

Art. 18 bis of Law No. 44 of 23 February 1999, *Provisions Concerning the Solidarity Fund for victims of extortion and usury* (OJ 51 of 03.03.1999) has unified the Solidarity Fund for the victims of extortion referred to in Article 18 of the Law and the Solidarity Fund for the victims of usury referred to in Article 14 of the Law March 7, 1996, n. 108. This unified Fund is subrogated

as to the sums paid to the persons entitled towards those responsible for the damage referred to in this law.

In particular, the types of victims who may apply for these contributions provided by law are those who also suffered from *extortion*. These persons may apply for a full compensation of the damage suffered, as well as an interim compensation of up to 70 per cent of the damage suffered. In their application, they should specify:

- who they are and why they are applying for compensation;
- the date and the place of the complaint;
- the fact of having refused or no longer accepting the extortion requests and
- the type of business ran at the time the extortion took place.

Moreover, they should enclose an indication of the damage suffered and the causal connection between the harmful event and the purpose of the extortion, tax and income statements from the two years preceding the harmful event or the extortion requests, the amount requested as interim compensation and a statement regarding the possible application for the benefits provided by Law No. 302/90 (regulations in favour of victims of terrorist acts and organised crime), specifying if for the same offence they have received any interim compensation related to that law or to any other and indicating the amount, plus copies of any insurance policies.

To be helped and supported in the submission of the application, the interested persons may apply to the National Council of their professional association, to one of the National Trade Associations, represented by CNEL (the Italian National Council of Economy and Labour) or to one of the anti-racketeering organisations registered with the Prefectures. The application should enclose the consent declaration of the applicant.

Both for usury and extortion, a request for suspension of legal deadlines may be presented together with the compensation demand. This suspension, if approved, entitles the applicant to have specific deadlines suspended for one year after the date of the offence, such as deadlines for administrative fulfilments, bank loan and mortgage instalments, as well as any other enforceable act; tax payments (for 3 years); legal, conventional, substantive and procedural deadlines causing the party to be no longer entitled to the right, act or exception expired or due to expire within a year from the date of the offence; execution of measures and deadlines regarding the release of properties, security and property foreclosures, including sales and mandatory allocation.

This case of suspension concerns:

- a person running a business who suffered extortion, being he/she an entrepreneur, a tradesman, a craftsman, or a person performing liberal arts or profession, as well as, upon approval of the interested party, the National Council of their professional association or one of the National Trade Associations, represented by CNEL (the Italian National Council of Economy and Labour), or one of the anti-racketeering and anti-usury organizations registered with the Prefectures, aimed at providing aid and advice to persons who suffered extortions;

- members of associations of solidarity;
- others (injured third parties);
- survivors.

Secondly, there is the revolving fund for solidarity with the victims of organised crime, extortion and usury, which includes, according to Section 1, paragraph 6 sexies of Law No. 10 of 26.2.2011 the existing Funds:

- Solidarity Fund for the victims of extortion and usury, established by Presidential Decree 455/99, which merged the existing Solidarity Fund for the victims of usury and the Solidarity Fund for the victims of extortion, regulated by laws 108/96 and 44/99, respectively.
- Revolving fund for solidarity with the victims of organised crime, established by Law No. 512/99.

However, the two different Committees of Solidarity continue to be organs of the 'merged' Fund. They are based at the Ministry of the Interior and they are chaired by a Commissioner appointed by the government who has deliberative functions.

In **Latvia**, according to the Law on State Compensation to Victims,¹⁰⁰ the victim is not eligible for legal aid when applying for state compensation. This law regulates the procedures by which the compensation shall be paid to the victim by the Legal Aid Administration. It is an administrative, not a criminal procedure. One of the most frequent reasons for refusal of state compensation for victims is the missed deadline for the submission of the request. Very often the persons directing the proceedings fail to inform the victim about his or her right to request compensation. Victims receive the information about the possibility to obtain the compensation only at the court.¹⁰¹

In **Poland**, in accordance with the law, regulating state compensation to victims, compensation is accorded only if, as a result of the offence, an individual has died or has experienced physical injury or health disturbance defined in Art. 156 § 1 or 157 § 1 Penal Code. The district prosecutor grants to the person entitled to receive compensation all necessary information about the conditions and possibilities to apply for it. The authority also provides a copy of the application form for granting compensation, as well as assistance in filling it in at the request of the entitled person. The above actions also take place if the crime was committed at the territory of another Member State of the EU.

In **Spain**, obtaining state compensation is an administrative practice, for which the assistance of a lawyer is not required and it does not fall within the right to free legal aid. The Counselling Centres for Victims provide information about the financial aid to which victims may be entitled

¹⁰⁰ **Latvian Saeima** (2006) Par valsts kompensāciju cietušajiem [Law on State Compensation to Victims] ("Latvijas Vēstnesis", 87 (3455), 06.06.2006., "Ziņotājs", 13, 13.07.2006.), Rīga: Latvian Saeima, available at: <http://likumi.lv/doc.php?id=136683> (29 November 2013).

¹⁰¹ **Kronberga I., Judins A., Zavackis A.** (2013): Noziedzīgos nodarījumus cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā [Meeting the Needs of Crime Victims: Support for Victimisation Prevention in Latvia]. Rīga: PROVIDUS

as compensation for the offence suffered, as well as about the relevant application to the Ministry of Finance.

4.4. Legal aid to participating in restorative justice mechanisms

Bulgarian legislation does not provide for restorative justice mechanisms within the framework of criminal proceedings.

In **Italy**, conciliation during the investigation stage can be reached only in the cases for which the victim's complaint is a condition for prosecution. Again in such cases, the victim can withdraw his/her complaint at the trial or during the appeal. Where a complaint is withdrawn the legal costs and expenses must be paid by the offender, unless otherwise determined. A reconciliation procedure is possible in criminal proceedings for minor offences before the justice of the peace and in proceeding before the juvenile court for acts, committed by minor offenders.

There are also cases where plea-bargaining is possible between the public prosecutor and the offender. In case plea-bargaining is made at the investigation stage, the court cannot pass a judgment on the civil claim and the victim needs to resort to a civil action.

In **Latvia**, settlement with the perpetrator is among the victim's rights. In accordance with Section 108, part 3 of the LCP, the provider of legal aid has the right to participate in all procedural actions that take place with the participation of the victim. Therefore, legal aid can be provided during the settlement procedure if it is performed within the criminal proceedings, however, in practice, there are only few cases of the sort.¹⁰² This fact is related to the low accessibility of legal aid and the fact that the participation of the legal aid provider does not play a significant role in the process of settlement. In accordance with Section 13 of the State Probation Service Law,¹⁰³ the State Probation Service ensures the possibility for the victim and the person who has committed a criminal offence to engage voluntarily in the process of mediation. The State Probation Service provides the organisation of the settlement procedure free of charge not only within the criminal proceedings but also before the initiation of the criminal proceedings, as well as after the imposition of the punishment on the guilty party.

Polish law provides some possibilities for participation of the aggrieved party in restorative justice mechanisms. The *Code of Criminal Procedure* of 1997 has largely strengthened the concept of settling criminal cases in that way. According to Art. 66 § 3 Penal Code reconciling of the accused with the injured party opens a possibility of applying conditional redemption

¹⁰² Interview with a representative from the State Probation Service, 02.07.2013. Not published.

¹⁰³ **Latvian Saeima** (2004) Valsts probācijas dienesta likums [State Probation Service Law] ("Latvijas Vēstnesis", 183 (2948), 30.12.2003., "Ziņotājs", 2, 29.01.2004.), Rīga: Latvian Saeima, available at: <http://likumi.lv/doc.php?id=82551>.

towards perpetrators of crimes, punishable with deprivation of liberty not exceeding 5 years. Moreover, when noticing the possibility of communication between the accused and the injured party, the court can adjourn proceedings (Art. 341 § 3 *Code of Criminal Procedure*). However, the idea of restorative justice is implemented mostly via mediation. It is regulated in Art. 23 *Code of Criminal Procedure* and permits the procedural body to direct the case to mediation in order to achieve communication between the injured party and the accused. Mediation is voluntary and its proceedings are in principle secret. The injured party has a possibility of direct contact with the perpetrator which can contribute to the simpler reconciliation and mutual understanding. Mediation is also a better tool of pursuing claims by the injured party. However it is necessary to remember that not all matters are suitable for mediation, but mainly juvenile justice cases.

In cases of private accusation a reconciliation sitting always precedes the first instance hearing (Art. 490 § 1 *Code of Criminal Procedure*). Failure to appear on the part of the private prosecutor to the conciliatory sitting is treated as withdrawal of the indictment. In this case, however, the reconciliation sitting takes place before a court.

In **Spain**, the beneficiaries of free legal aid are entitled to a lawyer and solicitor for restorative justice services provided by law.

4.5. Length of period legal aid covers

In **Bulgaria**, the *Regulation on Remunerating Legal Aid*¹⁰⁴ separates the sums, due for legal aid on criminal cases, into sums for the pre-trial and sums for each court instance in the trial phase. They all have a minimum and a maximum amount, the maximum being mostly double the minimum amount. There are also legally regulated supplements, if the attorney aids more than one person or works nights, weekends or holidays, but the length of proceedings is not among the pre-requisites for the fee to be supplemented.

In **Italy**, legal aid for civil parties lasts for the duration of the trial and the appeal, the exception being the *incidente probatorio*, which takes place pre-trial.

In **Latvia**, the law does not provide for minimum or maximum length of state ensured legal aid, unless the standing of the victim changes throughout the criminal proceedings and the criteria for granting state ensured legal aid is no longer satisfied.

In **Poland**, legal assistance lasts from the moment it is granted, i.e. appointing the attorney, until the moment the criminal proceedings are completed on the subject matter. Exceptionally,

¹⁰⁴ **Council of Ministers of the Republic of Bulgaria** (2006): Наредба за заплащането на правната помощ [Regulation on Remunerating Legal Aid] (State Gazette 5/17.01.2006), Sofia: Council of Ministers of the Republic of Bulgaria, available only in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2135515376> (12 November 2013)

an attorney may also be appointed for effecting a specific act, after which his/her power of attorney is terminated.

In **Spain**, in compliance with article 7, *Law 1/1996*, which establishes the duration of free legal aid, it lasts from the granting of the right until the end of the proceedings for which it has been granted, including any other procedure, claim or enforcement. The right to free legal aid is also maintained for lodging and subsequent proceedings on the appeals against the final decisions ending the trial.

4.6. Language(s) in which legal aid is provided

In **Bulgaria**, the *Law on Legal Aid* does not have a specific provision about the provision of legal aid in a language, different from Bulgarian, so it is all left to the language capacities of the appointed attorneys, as regards consultations and preparation of documents. As for procedural representation, the general principle of the *Criminal Procedure Code* is applicable: criminal proceedings take place in the Bulgarian language and persons, who do not speak Bulgarian, can use their native or another language and an interpreter is appointed in those cases.

In **Italy**, the majority of stakeholders approached state that 100 per cent of them/their entities give information in Italian, 70 per cent in English and 55 per cent in French, with no other languages being mentioned, which potentially affects the situation of immigrants.

In **Latvia**, in all stages and types of criminal proceedings, the victim has the right to participate in the proceedings using the language that he or she understands, and, if necessary, using the assistance of an interpreter free of charge (*LCP*, Section 97).

Polish legislation provides a number of options if the injured party does not speak Polish, but a comprehensive solution does not exist. In pre-trial proceedings, according to § 167 of the *Prosecutors' Regulation*, if the injured party does not speak Polish sufficiently, an interpreter should be called to all procedural actions, involving that party. The initial information about the rights, to which the party is entitled, is also given in a language, understandable to the person. Similar regulation exists regarding police investigation.¹⁰⁵ During the trial, the issue is regulated by Art. 5 § 2 of the *Law on the System of General Jurisdiction Courts*, which determines that a person not speaking the Polish language in the sufficient level has the right to appear before

¹⁰⁵ **Commander in Chief of Police** (2004): Zarządzenie z dnia 23 grudnia 2004 r [Order No. 1426 of the on the methodology of the performance of investigation activities by police services appointed for discovering crimes and prosecuting perpetrators] (Dz. U. KGP z 2005 r., nr 1, poz. 1), § 111 stipulates that the police officer shall call an interpreter to every procedural act, to which participation is essential, in order to enable parties to participate actively in proceedings, including the persons not speaking Polish - **M. Żbikowska** (2012): O projektowanych zmianach zasady lojalności procesowej [About the proposed changes...], *Prokuratura i Prawo*, nr 9, p. 95.

the court using a language understandable by him/her and the free of charge help of an interpreter.¹⁰⁶

In **Spain**, free legal aid is provided in any of the country's official languages. Moreover, in Counselling Centres for Victims and Legal Advice Services subject to Bar Associations, lawyers speak also English and/or French.

4.7. Practical elements of legal aid offered to victims of crime – observations of stakeholders

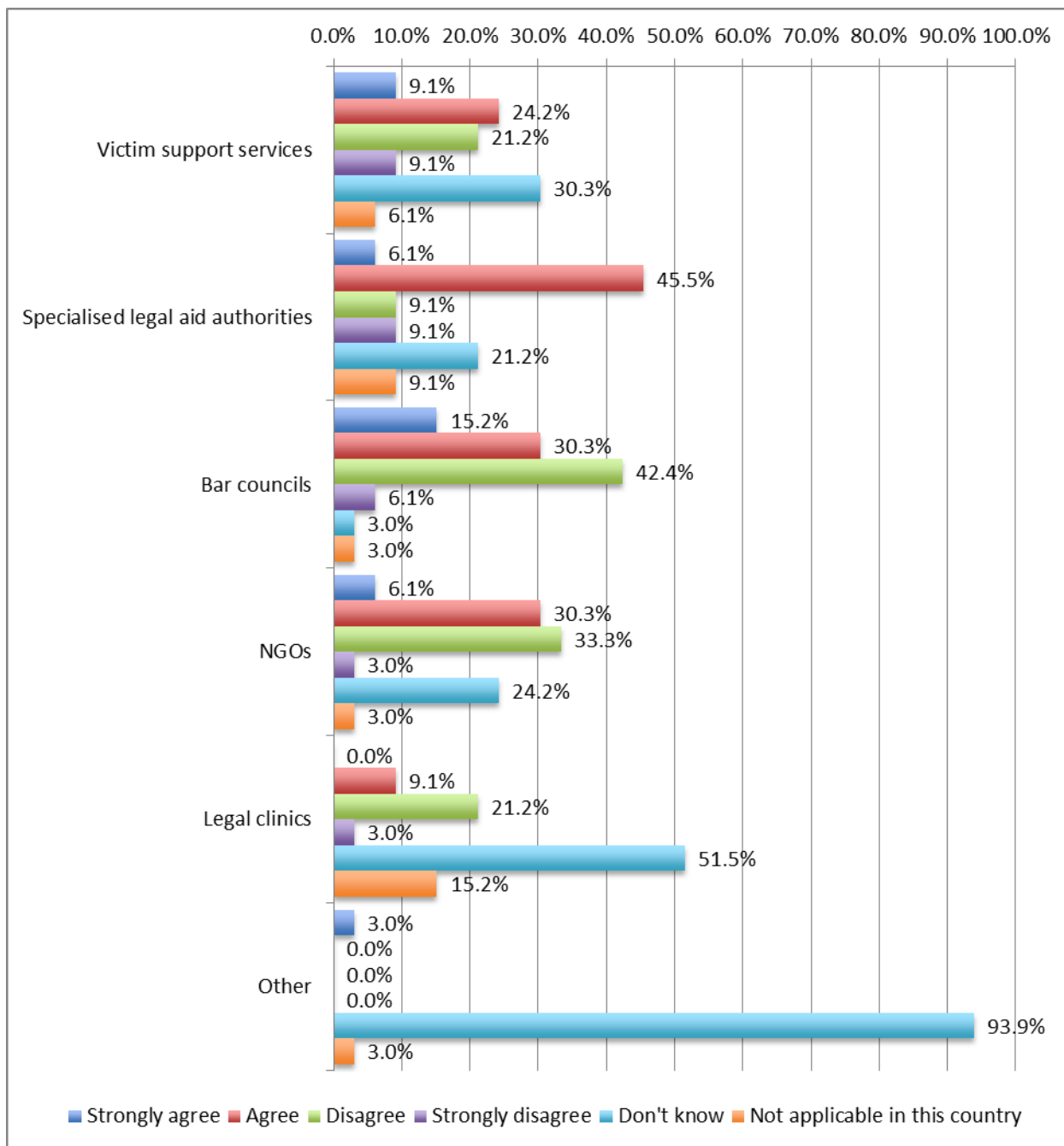
In **Bulgaria**, each citizen may appear before state authorities with counsel¹⁰⁷, so the victim may be accompanied by an attorney at each procedural action he/she takes part of. The victim is obligated to act in person only when it concerns his/her testimony as a witness, as the testimony should reflect his/her direct impressions of what happened.

In terms of recognition by relevant stakeholders, legal aid authorities gain most support as providing sufficient legal aid during pre-trial, while bar associations take the lead during trial:

¹⁰⁶ Art. 204 § 1, *CCP* stipulates an obligation of calling an interpreter when a need to interrogate a person not speaking Polish arises. This is a rather narrower regulation, compared to the *Law on the System of General Jurisdiction Courts*, not granting the injured party not speaking the Polish language the right to use an interpreter throughout the whole course of proceedings, while such a right is fully granted to the accused.

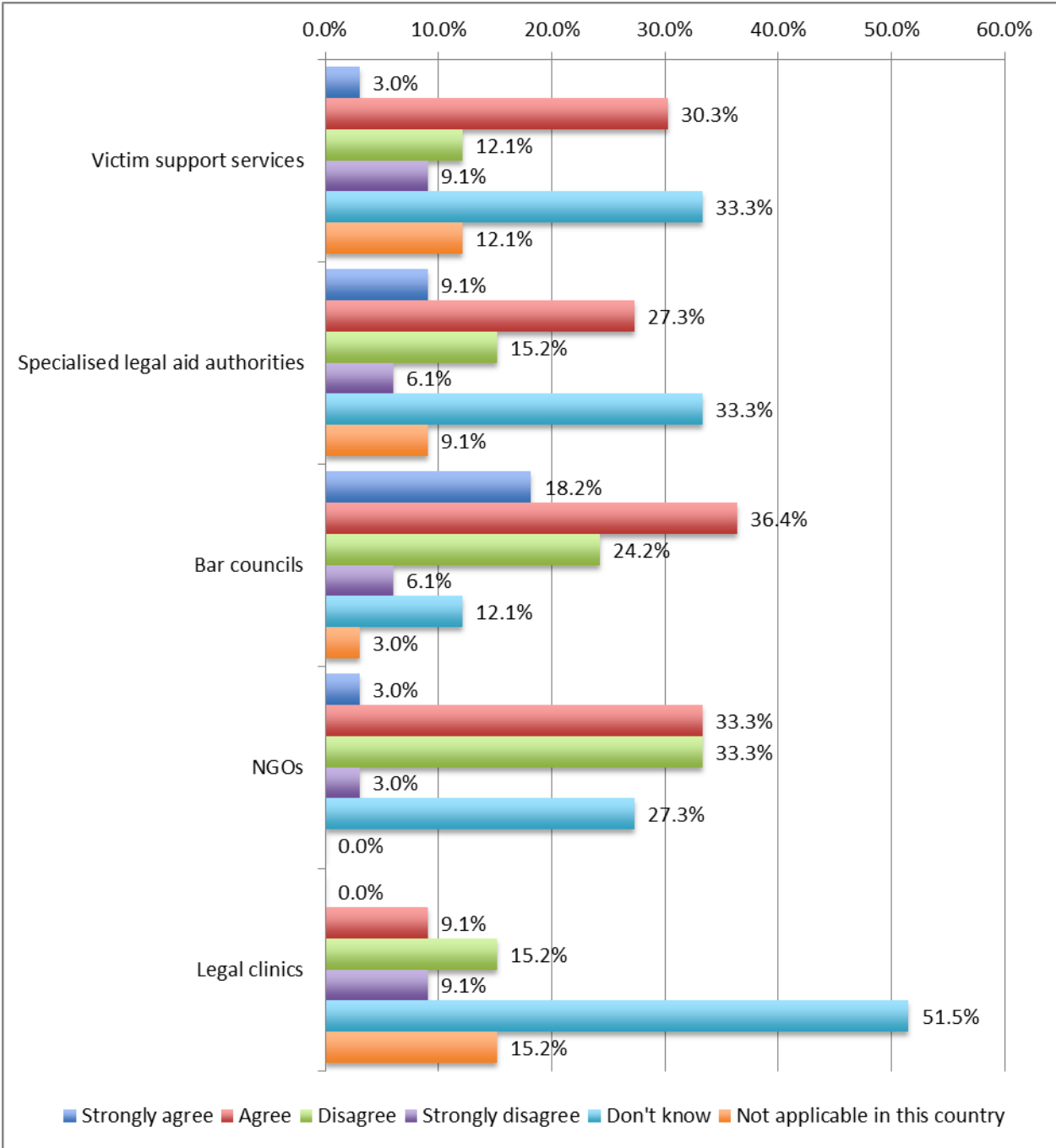
¹⁰⁷ Art. 56 of the *Constitution of the Republic of Bulgaria - National Assembly of the Republic of Bulgaria* (1991): Конституция на Република България [Constitution of the Republic of Bulgaria] (State Gazette 56/13.07.1991), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/521957377> (12 November 2013)

Figure 13. Would you agree that the following entities in Bulgaria provide sufficient legal aid and advice to victims during the investigation of the crime committed?



Source: Center for the Study of Democracy

Figure 14. Would you agree that the following entities in Bulgaria provide sufficient legal aid and advice to victims during trial and appeal?



Source: Center for the Study of Democracy

In **Italy**, stakeholders approached via questionnaire reviewed the state of legal aid and advice to victims of crime both during the investigation of the crime and during the trial and appeal.

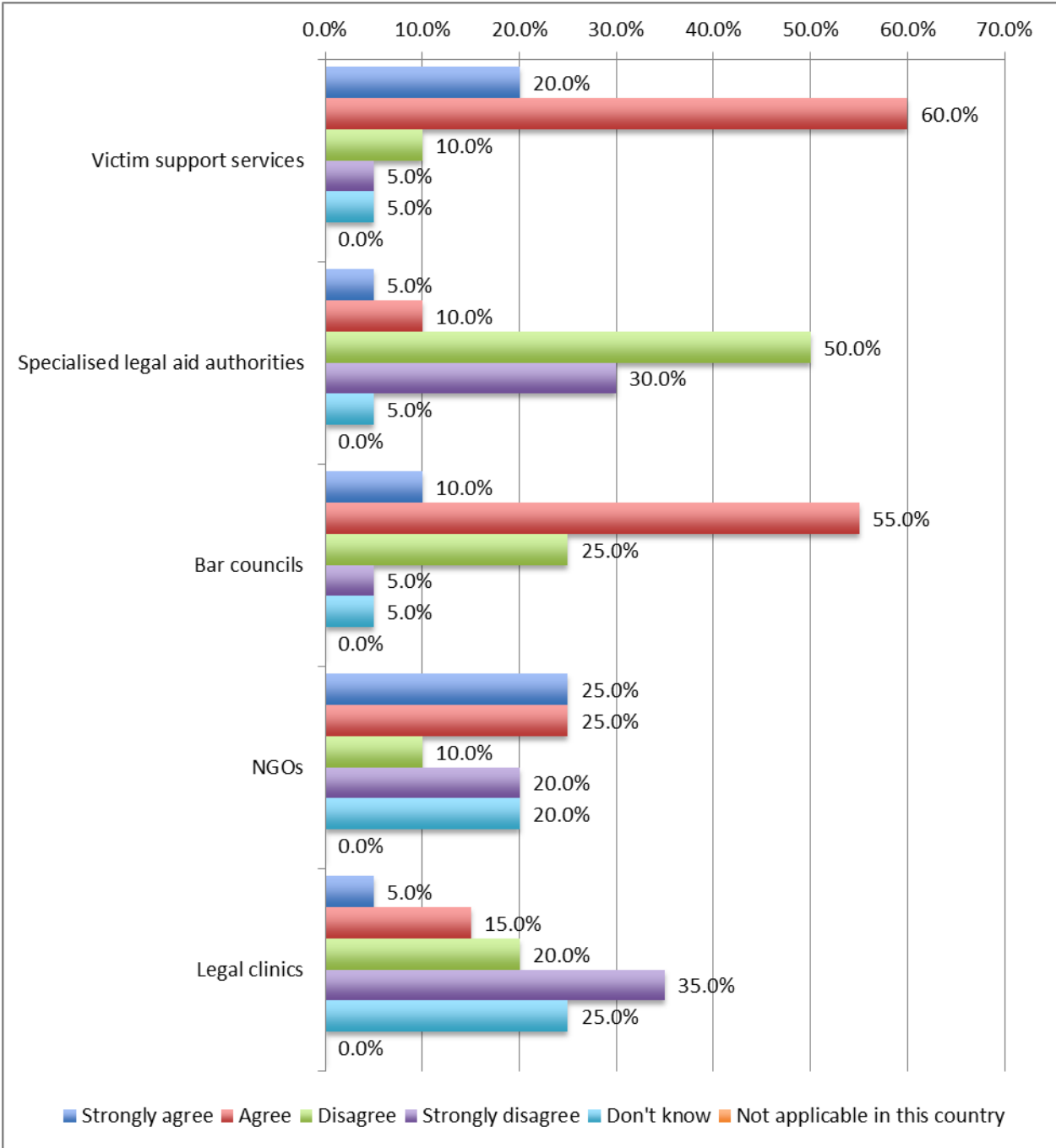
Regarding sufficiency of aid and advice during the investigation institutions were rated, as follows:

- Victim support services: 85 per cent;
- Specialised legal aid authorities: 70 per cent of respondents agree that they provide sufficient aid;
- Bar Councils: 45 per cent of respondents agree that they provide sufficient aid;
- NGOs: 50 per cent of respondents agree that they provide sufficient aid;
- Legal Clinics: 30 per cent of respondents agree that they provide sufficient aid;

Seemingly, stakeholders perceive that victim support services function better than other institutions, including NGOs which are involved in assisting victims. The legal clinics have the lowest percentage of agreement, thus showing that work needs to be done in this area, also because there is little knowledge as to how these function in Italy with 25 per cent of stakeholders responding that they do not know.

During trial and appeal, as seen in the figure below, victim support groups are seen to be adequate in giving advice to victims of crime, the percentage is also high for bar councils. The figure however is very low for legal clinics thus highlighting the need for intervention in this area. The figure is also quite low for NGOs. For authorities, just 15 per cent respond positively to this question (strongly agree/agree), thus highlighting the need for intervention in this area:

Figure 15. Would you agree that the following entities in Italy provide sufficient legal aid and advice to victims during trial and appeal?



Source: COINFO - Italy

Respondents state that their own role in assisting victims during the investigation practically consists of online information materials (70 per cent), 50 per cent work on legal consultation and 45 per cent on representation before authorities, while about 15 per cent work on drafting legal documentation and referral and participation in restorative justice mechanisms.

In **Latvia**, legal representation and participation of victims is regulated in detail by law as the victim's rights in pre-trial criminal proceedings, in a court of first instance, in a court of appeals and in a court of cassation are regulated in Sections 98 to 101 of the *Criminal Procedure Law*. Implementation of victim's rights is voluntarily and in an amount designated by the victim while the non-utilisation of rights does not delay the progress of the proceedings. The issue of secondary victimisation is one of the shortcomings highlighted by stakeholders in interviews – practitioners often display lack of understanding which leads to victims' dissatisfaction with the criminal proceedings.

In **Poland**, respondents approached emphasise that the current system of legal assistance for injured parties basically fulfils its objectives, but point out a number of shortcomings in the functioning of specific mechanisms. Lack of proper legislative regulation leads to continuing disproportions in the access to legal assistance of the injured party and the accused. On the other hand, lack of appropriate approach of procedural bodies towards injured parties should be remedied by relevant trainings and workshops. Respondents have also mentioned the low legal awareness of society. Such a state of affairs makes it difficult for injured parties to make use of their entitlements especially directly after the injury.

In **Spain**, practitioners observe that, considering that victims are not obliged to appear as plaintiffs in criminal proceedings and that they are informed that if they do not appear as plaintiffs and do not waive or reserve the right to bring civil action, it will be done by the Public Prosecutor, many times persons do not appear to defend their interests, convinced that they will be defended by the Prosecutor. If there is a conflict of interests, for instance regarding the amount to be claimed as compensation, the Public Prosecutor defends the public interest and not the interest of victims, who may have claimed a higher amount if they appeared as plaintiffs.

The new CCP proposal is seen to limit victims' right to defence, as it allows the Court of Guarantees to impose the representation and defence of victims in cases where the injured party is composed of several victims and they did not reach an agreement to be represented by the same lawyer - and there is no appeal to this act. Practitioners claim that victims should be entitled to choose freely the professionals to represent and defend them without having them imposed.

4.8. Payments for legal aid

In **Bulgaria**, legal aid is paid for by the National Legal Aid Bureau, based on the attorney's report and a decision by the Chair of the Bureau (Art. 39, *Law on Legal Aid*). The attorney does not get remuneration, if he/she does not provide the legal aid conscientiously and competently, and may have to reimburse the remuneration already received in such a case (Art. 37, *Law on Legal Aid*). The attorney providing legal aid does not have the right to obtain from the legal aid recipient remuneration or funds for covering expenses (Art. 40, *Law on Legal Aid*). The

attorney's business trip expenses, when he/she has to visit detention places or other locations to provide aid, are reimbursed separately (Art. 38, *Law on Legal Aid*).

The person, to whom legal aid is provided, should notify the deciding authority about any change in the circumstances based on which legal aid was provided, and the deciding authority may terminate it. If the person does not notify the authority on time, he/she should reimburse the expenses made as of the moment of change (Art. 27, *Law on Legal Aid*). In cases, determined by the law, legal aid beneficiaries reimburse to the National Legal Aid Bureau the expenses made (Art. 27a, *Law on Legal Aid*).

In **Italy**, to obtain legal aid one must have a net income of less than € 10,766.33 per year, that limit increases, only in criminal cases, with € 1,032.91 for each member of the family living with the applicant. In case of separation, divorce, custody of minor children or other cases involving personal rights the individual income of the applicant is considered and not that of the other members of the family (paragraph 4 of art. 76 of *Presidential Decree No. 115/2002*). In other situations legal aid is granted regardless of income, e.g. it is always given to victims of crimes of sexual violence, sexual acts with a minor, sexual assault by a group, even if the victim has a higher income limit than that established.

In **Latvia**, legal aid is free when the rights and interests of a minor are encumbered or otherwise not ensured, or if the representatives of the minor submit a substantiated request. In exceptional cases, the person directing the proceedings shall take a decision on retaining a representative for needy or low-income persons of legal age, if it is otherwise not possible to ensure the protection of the rights and interests of the person in criminal proceedings (Art. 104 of *Criminal Procedure Law*). Free legal aid is also provided by specific NGOs, however, their help is based on the financing received from various projects therefore it is not available regularly and does not receive support from the state. In all other cases, if a person wants to receive legal aid, a fee will apply.

In **Poland**, where the injured party cannot afford paying for an attorney in a criminal trial, he/she can file an application for appointing an attorney ex officio. According to Art. 88 in relation to Art. 78 § 1 *Code of Criminal Procedure* the court will appoint the attorney ex officio if the injured party demonstrates that he/she is not able to cover the costs of defense without prejudice to his/her or his/her family's essential maintenance. In the end, all costs associated with the participation of the ex officio attorney are assigned by the court at the end of proceedings. The court can also exempt the injured party in full or in part from costs, due upon lodging a complaint, if he/she demonstrates that on account of his/her family, property or financial situation they would be too burdensome for him/her (Art. 623, *CCP*).

In **Spain**, legal advice for victims is always free at Legal Advice Services and Counselling Centres for Victims.

Regardless of whether victims have the necessary means to litigate, legal aid is free in criminal proceedings for:

- victims of gender based violence, terrorist acts and trafficking in human beings when the proceedings are linked, derived or are a consequence of their status of victims, as well as to minors and persons with psychological disorders if they are abused or ill-treated;
- those that due to an accident suffer permanent damages which impede them to work and need to be aided by other persons to perform the basic tasks of everyday life, if the object of the litigation is the claim for compensation for the personal and non material damages suffered.

Any other victim is entitled to receive free legal aid if their application is accepted by the Commission for Free Legal Aid, provided that the applicant does not have the necessary financial means in compliance with the provisions of the regulation in force and the claim can be filed to court.

NGOs' may provide free legal aid or apply a fee for it.

4.9. Reimbursement of victims' legal fees

In **Bulgaria**, the attorney providing legal aid does not have the right to obtain from the legal aid recipient remuneration or funds for covering expenses (*Art. 40, Law on Legal Aid*). Therefore, in cases of state-provided legal aid victims do not pay for any legal fees to be reimbursed later.

In **Italy**,¹⁰⁸ when the criminal court sentences the defendant to pay compensation and reimbursement of legal expenses incurred by the plaintiff, the offender is forced to comply by paying the sum fixed by the judge in the criminal conviction. If the evidence obtained during the proceedings is insufficient to quantify the exact amounts of the above, the judge puts the parties before a civil judge who after a lawsuit establishes the actual monetary quantification of the damage. To avert the practical disadvantage of having to bring a civil action after the establishment as a civil party in criminal proceedings aimed at quantifying all of the damages, the plaintiff may ask – always in advance or in written form at the end of the trial - the accused in the case of conviction to the generic damages, which is called provisional and is ordered by the criminal court, to pay a sum provisionally enforceable.

If the criminal court believes it can directly make the payment for any damage claimed by the victim, the judgement will be put in force in order to save time and money for the plaintiff of a civil law suit. In the case of payment by the criminal judge of all damages claimed by the plaintiff (without providing the intervention of the civil court), the judge may - at the request of counsel for the plaintiffs - declare the sentence to compensation (or refunds) provisionally enforceable, when the reasons are justified.

¹⁰⁸ Damaged is not synonymous with the notion of victim. Damaged, more specifically, is the individual or party who as a result of the offence can be said to be the holder of a compensable injury, for damage for which compensation is defined as pecuniary or non-pecuniary, and even moral damage, following the crime.

This order of payment includes the costs and liabilities incurred by the plaintiff to participate in the criminal process (essentially the costs for legal assistance when one does not benefit from legal aid, if they satisfy the requirements).

In **Latvia**, no state fee is to be paid for criminal proceedings, whereas in civil proceedings, if the victim requests compensation from the perpetrator of the crime for the pecuniary losses and moral injury in accordance with civil legal procedures, the victim is exempted from state fees (*LCP*, Section 350, part 4). Moreover, in accordance with Section 367 of the *LCP*, the victim has the right to receive compensation for procedural expenditures covering travel expenses that are related to arriving at the place of the procedural action and return to the place of residence, payment for accommodation, as well as a sum that corresponds to the amount of average work remuneration for the term wherein the victim did not perform his/her job due to the participation in the procedural action.

In **Poland**, in the statement, finishing proceedings, the court determines who and in what part covers the legal costs (Art. 626 § 1, *CCP*). In case of sentencing the accused, the court assigns to him/her the court fees for the auxiliary prosecutor (Art. 627, *CCP*). Therefore the injured party must file a proper application for joining proceedings as auxiliary prosecutor. Only justified expenses of parties are included in the costs, including the services of one attorney.

In **Spain**, in case of a judgement in favour of the defendant victims of gender based violence, terrorist acts and trafficking in human beings when the proceedings are linked, derived or are consequence of their status of victims, as well as minors and persons with psychological disorders if they are abused or ill-treated are not obliged to pay for the services received up until that moment.

Other victims should reimburse the legal expenses to the lawyer and solicitor for the work done, if their application for free legal aid is rejected.

4.10. Sufficiency and accessibility of legal aid for victims – opinions of stakeholders

In **Bulgaria**, an NGO representative approached summarises that legal aid is not provided by institutions, but by specific lawyers. NGOs provide little, sporadic and small scale legal aid in terms of specific types of crimes – and their services are free for their clients, but involve the costs for expensive projects, which are limited in time.

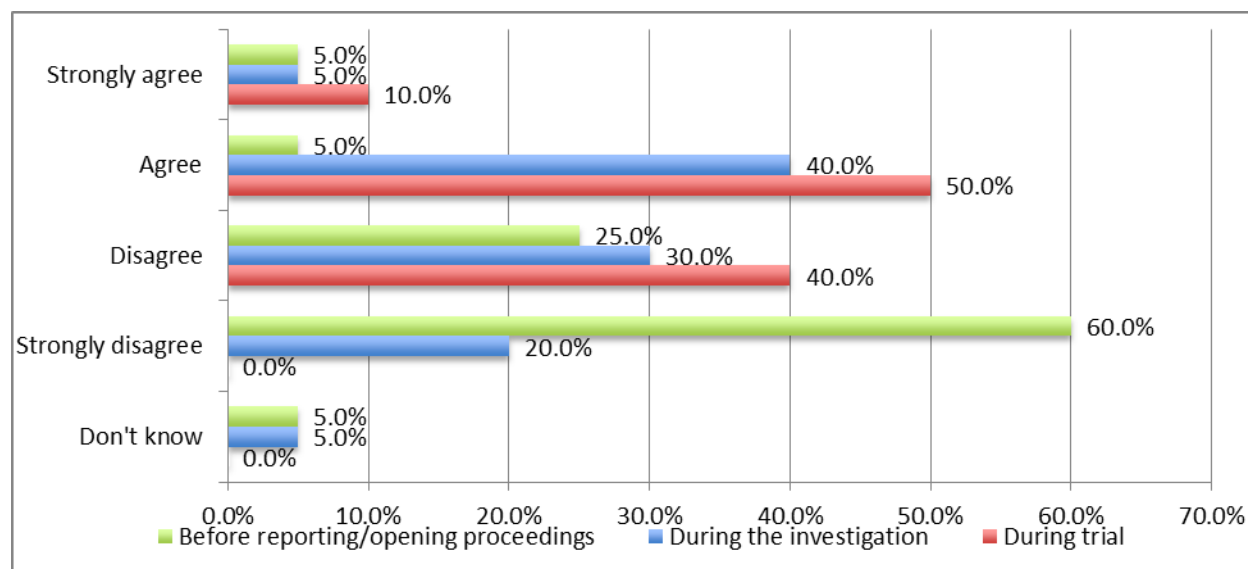
A representative of a state institution, involved in victim assistance and protection, points out that the requests indigent citizens direct to the Chair of the National Legal Aid Bureau are often not supplemented with all the necessary documents, which delays proceedings, since the Bureau has to return requests with directions for additional evidence. Moreover, people living outside the capital, Sofia, are in considerable difficulty contacting the Bureau, and so are those of low level of literacy, who cannot phrase correctly their request in terms of the law. This

slows down the work of the Bureau and leaves citizens with the impression that its work is too slow and bureaucratic. The state institution representative is of the opinion that the present system of financing legal aid guarantees steady increase in the costs, since there is a more or less fixed price per case and it is multiplied by the number of cases. At the same time, there are incentives to have more cases with higher remuneration both for the institutions and the attorneys, while there are few incentives for effectiveness and limitation of expenses.

This sceptical view is supported by the Bureau’s Annual Report for 2012,¹⁰⁹ which talks about budget shortages, delays in paying attorneys’ remuneration and, finally, about a raise in the Bureau’s budget allocations as a way to overcome the problems.

In **Italy**, an overwhelming majority of respondents approached via questionnaire – 85 per cent – disagree that the advice made available to victims of crime meets the demand during the stage before the reporting/opening the proceedings on the crime, 60 per cent expressing even strong disagreement. At the phase of investigation, there is no notable difference between those who agree and disagree, while for the trial phase those who agree prevail by 60 per cent over 40 per cent of those who disagree. This is indicative of the crucial importance of the first phase, where victims come into contact with authorities - if the assistance is not adequate, many victims may give up and not continue with their cases:

Figure 16. Would you agree that the legal aid and advice, available to victims of crime in Italy, meet the existing demand?

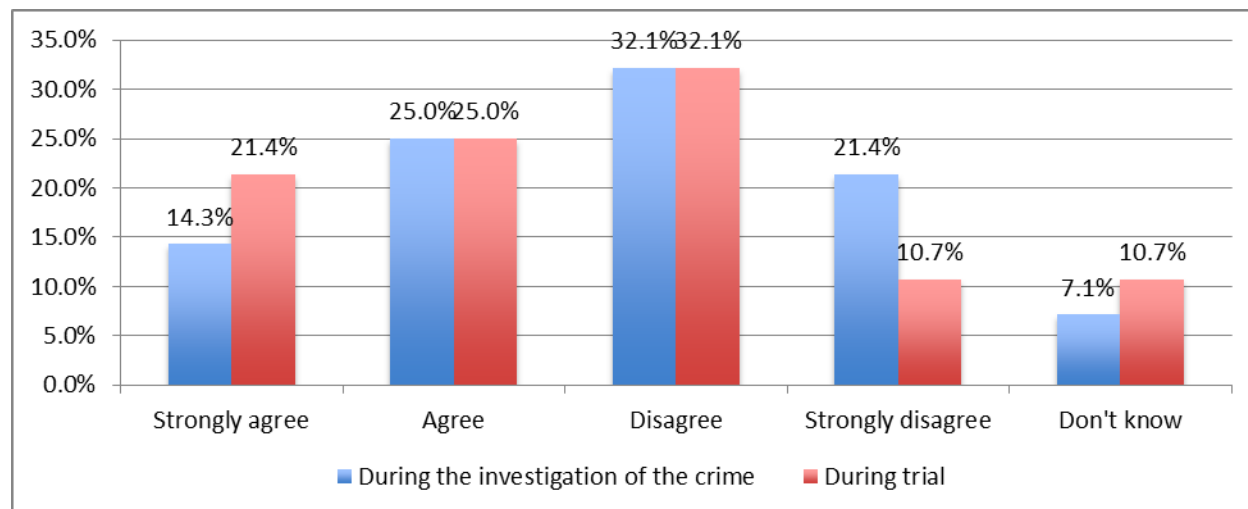


Source: COINFO – Italy

¹⁰⁹ National Legal Aid Bureau (2013): Годишен отчетен доклад за дейността на Национално бюро за правна помощ през 2012 година [Annual Report on the Work of the National Legal Aid Bureau in 2012], Sofia: National Legal Aid Bureau, available in Bulgarian at: http://www.nbpp.government.bg/images/Otchetnen%20doklad_2012.pdf (12 November 2013).

In **Latvia**, legal aid is free in cases strictly regulated by law and also when provided on a project basis by specific NGOs – in all other cases, a fee will apply. In the opinions of stakeholders approached, disagreement over legal aid and advice meeting the existing demand prevails for the investigation stage of proceedings, while for the trial phase the opinions are more nuanced.

Figure 17. Would you agree that the legal aid and advice, available to victims of crime in Latvia, meet the existing demand?

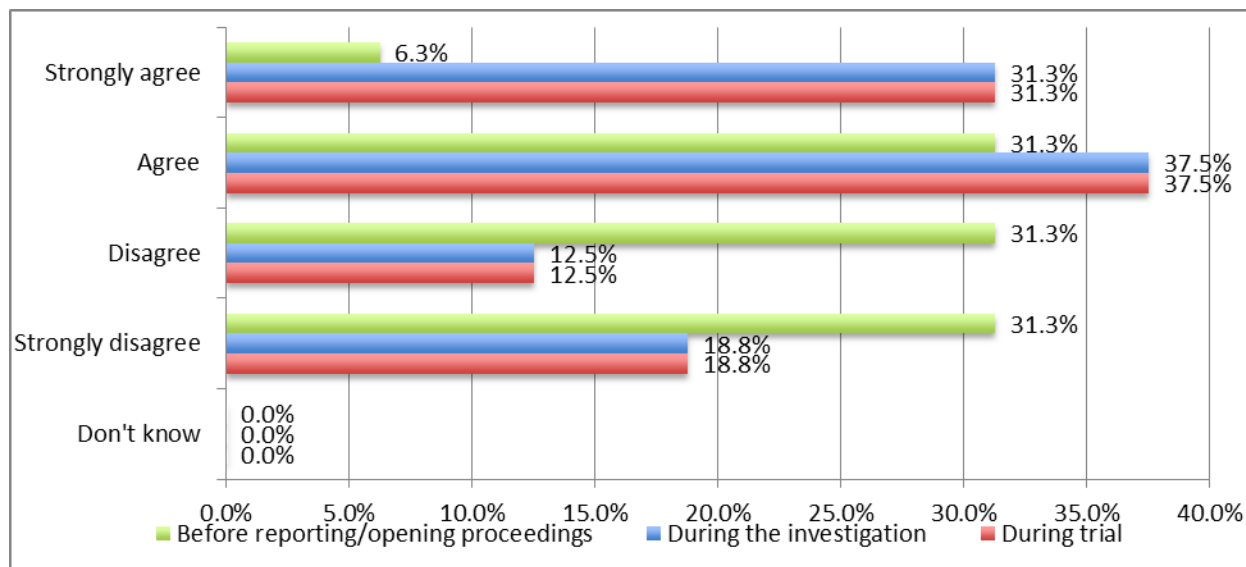


Source: PROVIDUS

In **Poland**, the access of the injured party to legal assistance was assessed by respondents as satisfactory. The victim has the possibility to use assistance during the entire criminal proceedings. Respondents have also pointed out to the existence of a number of non-governmental organisations which also provide help to the injured parties. The issue of legal assistance to the injured party, however, lacks systematic approach on the part of the legislature. At present, relevant provisions are scattered throughout different pieces of legislation of different rank, while practitioners think that all provisions should be in one legal document, preferably the Criminal Procedure Code, as they are for the accused.

In **Spain**, the opinions of stakeholders approached over legal aid’s meeting the existing demand tend towards the negative, as regards the stage before the opening of proceedings, while the investigation and trial phase earn rather respondents’ approval than disapproval:

Figure 18. Would you agree that the legal aid and advice, available to victims of crime in Spain, meet the existing demand?



Source: COINFO - Spain

5. Legal aid to particularly vulnerable victims

In **Latvia**, the legal framework on legal aid specifies only two groups of victims – minors (under 18 years of age) and needy adults. In addition, assistance is provided to the persons who are testifying in criminal proceedings or participate in the disclosure, investigation or adjudication of a serious or particularly serious crime, if the victim is under special protection in accordance with the *Law on Special Protection of Persons*.¹¹⁰

Polish system of legal assistance does not offer specific protection to particularly vulnerable victims. There is no provision, mirroring the one about the obligatory defense of the accused in certain cases (Art. 79, *CCP*). Non-governmental organisations are the ones mainly dealing with the protection of particularly vulnerable injured parties – Foundation Nobody’s Children, La Strada, etc. There are also a number of government programmes, co-ordinated by the Ministry of Justice, aiming to protect victims of certain crimes.¹¹¹

The following sections offer examples of specific regulations, regarding certain groups of particularly vulnerable victims, wherever such are recognised. Minorities, victims, dependent

¹¹⁰ **Latvian Saeima** (2005) Personu speciālās aizsardzības likums [Law on Special Protection of Persons] ("Latvijas Vēstnesis", 85 (3243), 31.05.2005., "Ziņotājs", 12, 22.06.2005.), Riga: Latvian Saeima, available at: <http://likumi.lv/doc.php?id=109241> (27 November 2013).

¹¹¹ Among them are the procedure of the ‘blue card’, devoted to victims of domestic violence, and a National Programme for Counteraction of Domestic Violence.

on the perpetrator and victims of hate crime are among the universally recognised particularly vulnerable groups, on which no specific legal aid-related regulation was found in any of the national systems looked at.

5.1. Children

In **Bulgaria**, according to the *Law on the Protection of Children*,¹¹² each child (a person under 18 years of age) has the right to legal aid and appeal in all proceedings, concerning his/her rights and interests (Art. 15, par. 8). Social Protection Directorates may represent the child in the cases, provided for in law (Art. 15, par. 7) and provide legal aid to children, their parents, guardians or persons, taking care of them, by offering advice and consultation on issues, related to children's rights. In practice, Social Protection Directorates have a large portfolio of activities and social groups to ensure assistance to, which causes significant overload and insufficiency of human and financial resource. Moreover, there is no information about specialised trainings social workers undergo in order to provide legal aid to children. Thus, the inclusion in 2013 of a significant number of children, especially children at risk (which would practically include all children victims of crime), among the groups to receive legal aid already before the start of any proceedings was a much needed step to subsume children's legal aid explicitly under the general system. Before the 2013 amendments, children were still provided procedural representation by attorneys under the *Law on Legal Aid*, but there were often discussions as to whether social assistance authorities or the National Legal Aid Bureau should pay for the aid provided.

In **Italy**, victims under 16 years of age are heard in a pre-trial hearing, before the judge of the preliminary investigations, in the presence of the prosecutor and defence counsel and their statements count as evidence in subsequent proceedings. During trial, minors are heard in a private court session. Minor victims of sexual offences are not asked questions about private and sexual life, unless such questions are essential in determining the fact of the case.

In **Spain**, regardless of the availability of financial means to litigate, minors (persons under 18 years of age) are entitled to receive free legal aid which will be provided immediately if they are abused or ill-treated. This right is also granted to the successors if the victim died, provided they are not the offender (art. 2 g) *Law 1/1996*). In compliance with *art. 19.6 Law 5/2000 of 12 January*, which regulates the criminal responsibility of minors, in cases where the victim of the crime or harm is a minor or mentally incapable, the conciliation and reparation agreement should be reached by the legal representative of the victim, upon approval of the Judge of the Juvenile Court.

¹¹² **National Assembly of the Republic of Bulgaria** (2000): Закон за закрила на детето [Law on the Protection of Children] (State Gazette 48/13.06.2000), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2134925825> (12 November 2013).

5.2. People with mental or physical disabilities and illnesses

In **Spain**, in compliance with article 2 h) *Law 1/1996*, regardless of the availability of resources for litigation, the right to free legal aid is granted to those that due to an accident suffer permanent damages which impede them to work and who need to be aided by other persons to perform the basic tasks of everyday life, if the object of the litigation is the claim for compensation for the personal and non material damages suffered. Article 5 of *Law 1/1996* establishes a special granting of the right: the Commission for Free Legal Aid may accept the request to exceptionally concede in duly justified cases to grant the right to those persons whose financial means and income do not satisfy the requirements set for this case, taking into account the health conditions of the applicant and of the persons with disabilities mentioned in article 1 of *Law 51/2003 of 2 December*, for equal opportunities, no discrimination and universal accessibility of persons with disabilities, as well as to those persons who are responsible for them when they appear in criminal proceedings on their behalf and interest, provided that the proceedings concern the health conditions or disabilities which entitled the exceptional granting of the right.¹¹³

5.3. Foreigners

Article 22 of *Organic Law 4/2000 of 11 January regarding the Rights and Freedoms of foreigners in Spain and their social integration*, regulates foreigners' right to free legal aid and establishes that foreigners on the Spanish territory are entitled to receive free legal aid in criminal proceedings if they appear as plaintiffs, regardless of the jurisdiction in which they take place, on the same basis as Spanish citizens. In practice, considered that many times they are not able to produce the documents to demonstrate their financial situation, Commissions for Free Legal Aid grant the right to free legal aid to allow foreigners to access the legal system.

In addition, based on Article 31 bis of *Organic Law 4/2000 of 11 January regarding Rights and Freedoms of foreigners in Spain and their social integration*, foreign women victims of gender based violence, regardless of their administrative situation, are entitled to the rights granted by *Organic Law 1/2004 of 28 December regarding measures for complete protection against gender based violence*, as well as measures for safety and protection established by the legislation in force. If a case of gender based violence against a foreign woman is filed and it is established that the victim's legal status is not regular (i.e., she does not have the necessary

¹¹³ Article 1 of *Law 51/2003 of 2 December* establishes that: 'Disabled persons are those affected by long term physical, mental, intellectual or sensorial disabilities, who are faced with many barriers which impede them to participate thoroughly and effectively in society, on the same basis as the others. This law also considers disabled persons, those with a certified degree of disability higher or equal to 33 per cent. In this case, a disability with a degree higher or equal to 33 per cent is recognised to Social Security pensioners entitled to a disability pension, with a total, absolute or major degree of permanent disability and to retired public servants entitled to a retirement benefit or annuity for permanent disability or inability to work. The certification of the degree of disability is made in accordance with law, and it is valid all over the national territory'.

legal residence permits), the administrative disciplinary proceedings initiated shall be suspended until the criminal proceedings are concluded. The foreign woman falling into that situation may apply for an exceptional residence and work permit from the moment a protection order in her favour is issued or, alternatively, a document issued by the public prosecutor testifying the existence of evidence of gender based violence. This authorisation is valid until the conclusion of the criminal proceedings. The competent authority may issue a provisional residence and work permit in favour of the foreign woman for the exceptional permit to be issued. The provisional permit is valid until the application for an exceptional permit is accepted or rejected. If the criminal trial is concluded with a condemnation sentence, the interested party will receive a temporary residence and work permit. If she did not apply for it, she will be informed about the possibility to obtain a residence and work permit for exceptional circumstances establishing a deadline for the application. If it is not possible to demonstrate the gender based violence act at the end of the criminal procedure, the suspended administrative inquiry will be continued.

5.4. *Victims of violence in close relationships and gender based violence*

In **Bulgaria**, a number of victims of violence in close relationships and of gender based violence are likely to fall into the new group of 'victims of domestic or sexual violence who do not have means and wish to be defended by an attorney' and as such will have access to legal aid throughout the whole criminal proceedings.

In **Spain**, victims of violence in close relationships do not benefit from a specific regime of free legal aid, but can be subject to a number of protection measures under articles 544 bis and terLECr, like protection and stay away orders.

According to Art. 2 g) of *Law 1/1996*, regardless of the availability of resources for litigation, the right to free legal aid is granted and provided immediately to victims of gender based violence in those proceedings linked, derived or that are a consequence of their status of victims. This right is granted also to their successors in case the victim passed away, provided they are not the offender. Article 20 of *Law 1/2004* establishes that the victims of gender based violence are entitled to be defended and represented for free by a lawyer and solicitor in any administrative proceedings and procedure directly or indirectly linked to the offence suffered. Under these premises, the same lawyer will defend the victim. In this way, the lawyer and the solicitor assigned to the victim will be the same in any legal or administrative procedure directly or indirectly linked to the offence (criminal procedures for injuries, divorce proceedings, etc.) Article 20 also establishes that the Bar Associations shall adopt all necessary measures to immediately appoint a counsel in gender based violence proceedings.

In criminal proceedings, Articles 62 and 69 of *Law 1/2004* establish legal measures for the protection and safety of victims of gender based violence.¹¹⁴

5.5. Victims of terrorist offences

In **Bulgaria**, victims of terrorist offences are eligible for legal aid under the *Law on Victims' Assistance* in accordance with the *Law on Legal Aid*.

In **Spain**, Art. 2 g) of *Law 1/1996* establishes that, regardless of the availability of resources for litigation, the right to free legal aid is granted and provided immediately to victims of terrorist acts in those proceedings linked, derived or that are a consequence of their status of victims. This right is granted also to their successors in case the victim passed away, provided they are not the offender. No specific regulations exist for those types of victims in the system of criminal procedure.

5.6. Victims of human trafficking

In **Bulgaria**, human trafficking entitles its victims to legal aid both under the *Law on Victims' Assistance* and the *Law on Legal Aid*. Legal aid to trafficking victims is also developed in detail in the National Mechanism for Referral and Support to Trafficked Persons,¹¹⁵ which is not a legislative, but yet a binding act for all institutions and organisations involved in protecting and assisting those victims. According to anti-trafficking and criminal procedure legislation, if the trafficked person makes an informed and voluntary decision to cooperate with authorities after the so called 'reflection period', he/she becomes a participant in the criminal proceedings. If the trafficked person decides to take part in the criminal proceedings, he/she has the right to choose a legal representative who will represent him/her during investigation and trial, in the latter case if the person is constituted as civil claimant or private accuser. Before, during and after the trial the victim's legal representative works together with his/her individual consultant (psychologist, social worker) in order to avoid further traumatising of the victim.

According to information, provided by the National Commission for Combatting Trafficking in Human Beings, the NGOs, which are the main service providers for trafficking victims, provide to victims psychological and social assistance, but also legal aid, including via hotlines. The two

¹¹⁴ Protection order under art. 544 ter *LECr*; protection of victims' privacy through data protection, hearings must be held in camera and actions must be confidential; measures to send the offender away from the domicile; measures to take the victim away or to interrupt any communication with the offender; suspension of the offender's right to own, keep and use weapons.

¹¹⁵ **National Commission for Combatting Human Trafficking, Animus Association Foundation and La Strada International** (2010): Национален механизъм за насочване и подпомагане на жертви на трафик [National Mechanism for Referring and Supporting Victims of Trafficking], Sofia, available at: <http://combattrafficking.eu/sites/default/files/NM.pdf> (12 November 2013).

shelters for trafficking victims, which the National Commission finances and manages, provide to the victims accommodated also legal advice.

In **Spain**, Art. 2 g) of *Law 1/1996* establishes that regardless of the availability of resources for litigation, the right to free legal aid is granted and provided immediately to victims of trafficking in human beings in those proceedings linked, derived or that are a consequence of their status of victims. This right is granted also to their successors in case the victim passed away, provided they are not the offender. No specific regulations exist for those types of victims in the system of criminal procedure.

5.7. Other vulnerable groups

A **Bulgarian** prosecutor lists among the other vulnerable groups of victims illiterate persons or persons with low level of literacy, elderly persons and persons with reduced mobility, especially in rural regions, and specifies the types of dependency the victim may have within the context of his/her family and community: moral, religious, practical or financial.

Among the vulnerable groups of victims, who have fallen under research attention, are the groups who are particularly vulnerable due to carrying multiple vulnerabilities. A recent report by the Center for the Study of Democracy, dealing with children victims of trafficking,¹¹⁶ explored them being at the ‘crossroad’ of a number of different laws and regulations (on protection of children, protection of victims of trafficking, legal aid, etc.), which may have left those of them with most complex cases into a relative lacuna. Notably, the explicit inclusion of children at risk and victims of trafficking among the groups to receive legal aid before any proceedings have strengthened the normative correspondence, as regards children victims of trafficking, and thus their protection.

5.8. Extent to which particular vulnerabilities and specific needs are taken into account, needs for further training – opinions of stakeholders

In **Bulgaria**, according to the Annual Report of the National Legal Aid Bureau,¹¹⁷ it currently implements a project under the Norwegian Financial Mechanism for a hotline for primary legal

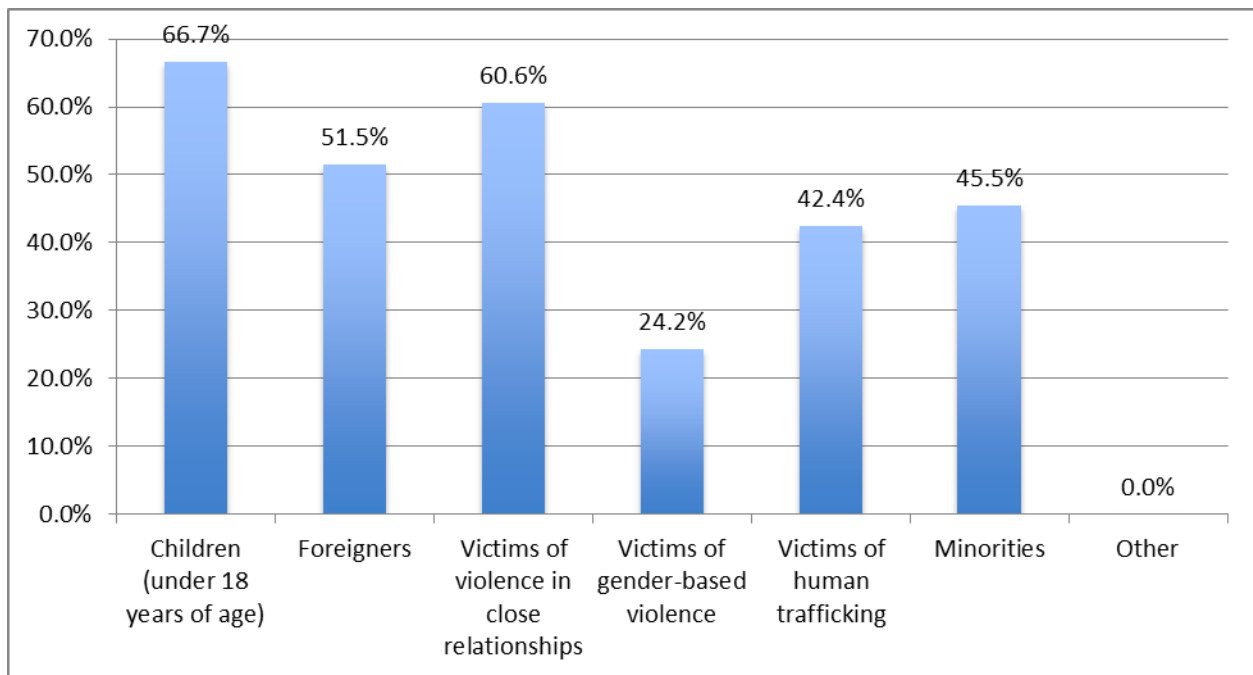
¹¹⁶ **Center for the Study of Democracy** (2013): Подкрепа и реинтеграция на децата-жертви на трафик в България: законодателство, институционална рамка и политики [Assisting and reintegrating child victims of trafficking in Bulgaria: legal, institutional and policy framework]. Sofia: Center for the Study of Democracy, available at: <http://www.csd.bg/artShow.php?id=16325> (12 November 2013).

¹¹⁷ **National Legal Aid Bureau** (2013): Годишен отчетен доклад за дейността на Национално бюро за правна помощ през 2012 година [Annual Report on the Work of the National Legal Aid Bureau in 2012], Sofia: National Legal Aid Bureau, available in Bulgarian at: http://www.nbpp.government.bg/images/Otchetnen%20doklad_2012.pdf (12 November 2013).

aid and regional consulting centres, directed towards society’s most vulnerable groups: socially disadvantaged groups and people placed in institutions, minorities, people of special needs or people in remote regions. The project encompasses the creation and pilot approbation of a national hotline of the Bureau for providing citizens with primary legal aid. Vidin and Sliven are the regions, where pilot consulting centres will be opened. According to legal aid practitioners, those regions were chosen for their various specificities, including a relatively large share of minority population. As for the hotline, it is expected to at least sift cases eligible for legal aid, thus optimising the work of entities, responsible for providing it. It is planned that the hotline be serviced by teams of civil and criminal attorneys. The hotline (0700 18 250) and the centres were launched at the end of October 2013. The aid, provided by the attorneys servicing the hotline, includes civil, administrative and criminal issues, but excludes commercial and tax cases.

The quantitative data gathered from approaching relevant stakeholders present a somewhat different orientation than that of the National Legal Aid Bureau. The respondents, mostly prosecutors, put at the front of the list of problematic categories of victims children and victims of violence in close relationships, most probably because of the threat of their secondary victimisation during proceedings. Minorities and victims of trafficking, potentially strongly covered by the Bureau’s pilot initiatives, are further down the list, but still among the priority groups:

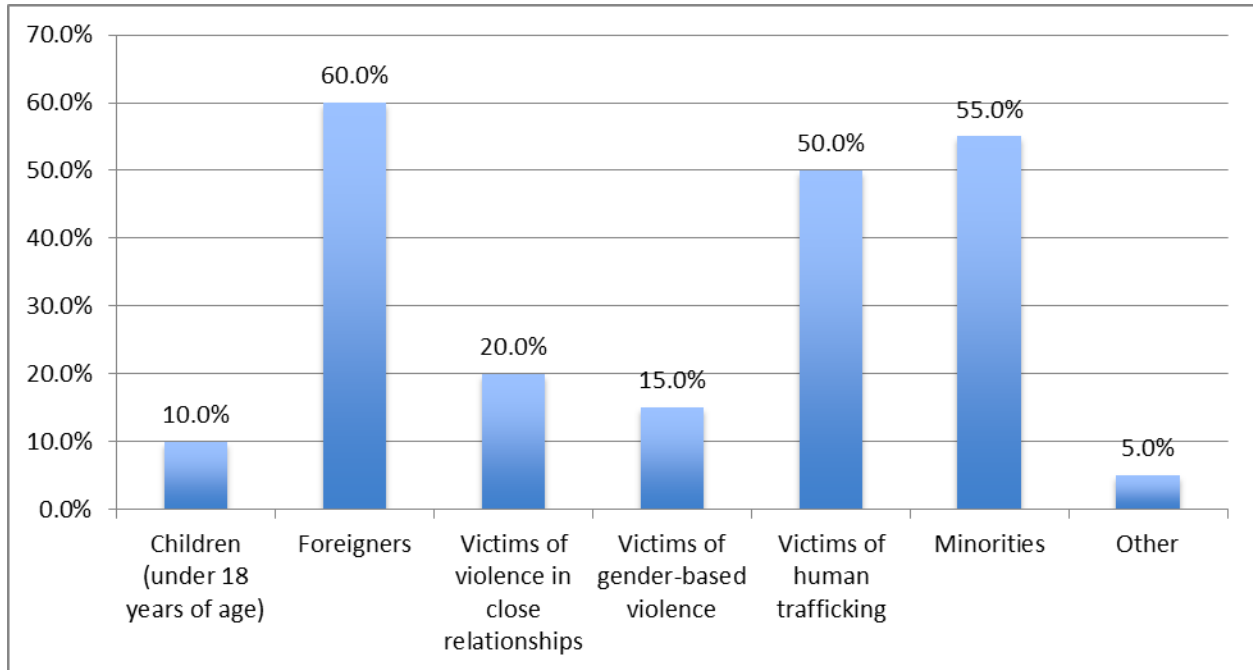
Figure 19. Are there any specific groups of victims in Bulgaria who fall into a category that is more deprived of access to legal aid?



Source: Center for the Study of Democracy

In **Italy**, the figure below shows the opinion of respondents on groups of victims who are thought to be more deprived of access to legal aid:

Figure 20. Are there any specific groups of victims in Italy who fall into a category that is more deprived of access to legal aid?

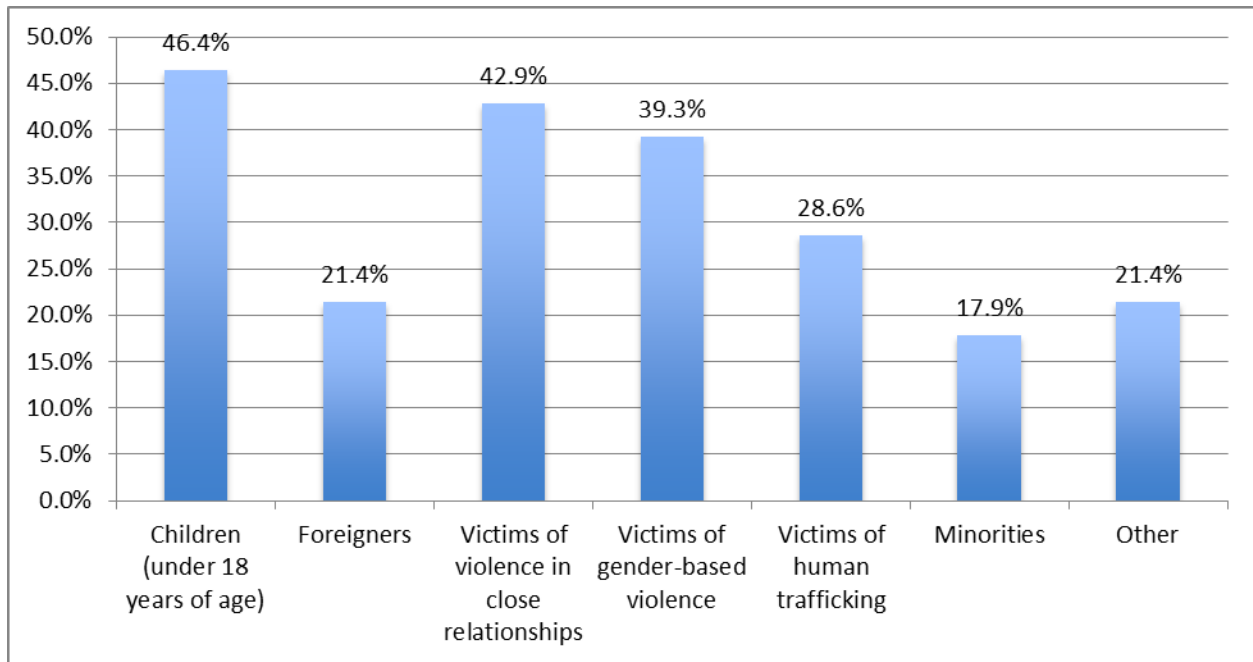


Source: COINFO – Italy

Those indicated as being denied access are victims of human trafficking, minorities and foreigners – a situation, confirmed by interviews. Among the factors cited, influencing the situation, are: lack of finances to assist these groups, lack of priority with available finances being used to assist other groups of victims, lack of expertise and training to work with such victims, especially taking into account the often transnational nature of these crimes.

In **Latvia**, according to the opinions of the stakeholders, children under 18 years of age, victims of violence in close relationships and victims of gender-based violence are most deprived of access to legal aid. This is also confirmed by the expertise of NGOs working in the field – the most influential ones concentrate on the special needs of victims of domestic violence, children as victims of violence, victims of gender-based violence and victims of human trafficking.

Figure 21. Are there any specific groups of victims in Latvia who fall into a category that is more deprived of access to legal aid?

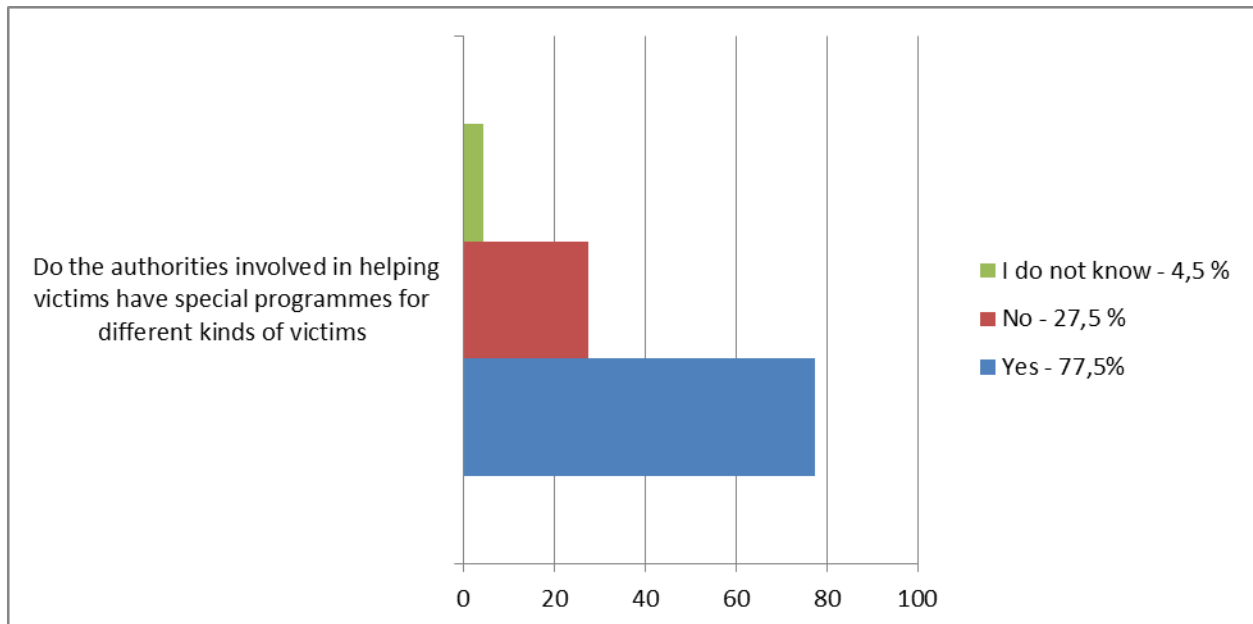


Source: PROVIDUS

Currently, a work group under the Ministry of Justice is established in order to introduce the *2012 Directive* into national legislation. Representatives of several NGOs are included in the work group so as to ensure that necessary changes in legislation will correspond to the specific needs of victims.

In **Poland**, stakeholders approached agree that authorities involved in helping victims have special programmes for different kinds of victims, as shown in the figure below:

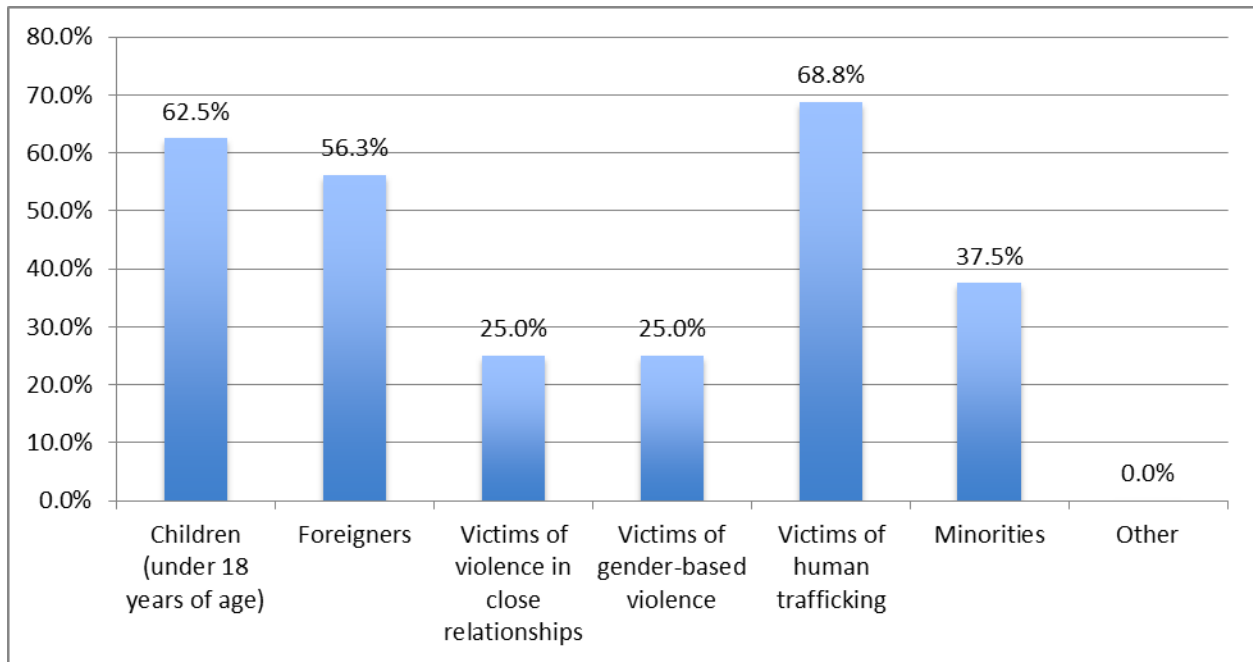
Figure 22. Do the authorities involved in helping victims in Poland have special programmes for different kinds of victims?



Source: AMU - Poland

Currently in **Spain**, apart from having implemented some measures such as to avoid visual confrontation between victim and offender, the legal system does not always take into account the specific situation of victims, such as persons who do not understand the language of proceedings, have impaired hearing or disability. The various actors involved are trained by their respective institutions, but in some cases need is observed for greater sensitivity in interacting with, inter alia, victims of gender violence. Apart from purely legal education, it would be useful to focus more on the psychological aspect of the victim's situation which may be helpful to better understand how to act when those harmed report a crime, during the pre-trial proceedings and during the trial. Among stakeholders approached, children and victims of human trafficking are deemed most deprived of access to legal aid, followed by foreigners and minorities:

Figure 23. Are there any specific groups of victims in Spain who fall into a category that is more deprived of access to legal aid?



Source: COINFO - Spain

6. Institutional structure and capacity of the system of legal aid for victims of crime

6.1. System structure and place within the overall victim support system

In **Bulgaria**, the overall state policy in the area of legal aid lies within the responsibilities of the Minister of Justice. Legal aid is organised by the National Legal Aid Bureau and the bar councils (Art. 6, *Law on Legal Aid*).

The National Legal Aid Bureau is an independent state authority,¹¹⁸ whose maintenance is part of the state budget, with the Minister of Justice (Art. 6, *Law on Legal Aid*). It has its own administration (Art. 7, *Law on Legal Aid*) and, inter alia (Art. 8, *Law on Legal Aid*):

- drafts the annual legal aid budget;
- disposes of the funds in the legal aid budget;
- organises the maintenance of the National Legal Aid Register;
- pays for and controls the legal aid provided.

¹¹⁸ The National Legal Aid Bureau has a Chair and a Deputy Chair, appointed by the Prime Minister, and three members, appointed by the Supreme Bar Council.

Bar councils organise the provision of legal aid in their respective regions by, inter alia, appointing lawyers from the National Legal Aid Register, exercising operative control over the quality of legal aid, provided by their member attorneys, administering legal aid and assisting persons in obtaining it. In practice, all bar councils have an employee, responsible for the administration of legal aid, and are at least theoretically required to do preliminary sifting of cases as to their eligibility for legal aid.

Bar councils receive funds from the National Legal Aid Bureau budget for managing legal aid in the amount of 10 per cent of the sum, paid to the attorneys from the respective bar council for the previous quarter of the year (Art. 28, *Regulation on Remunerating Legal Aid*).

In **Italy**, there is no structured state system for supporting victims of crime, apart from associations, helping persons in specific situations.

In **Latvia**, there is no established system of victim support that would envisage and ensure assistance due to lack of financial resources.¹¹⁹ Latvia has problems with the protection of victims against threats by the offender and the prevention of repeated (secondary) victimisation. The victim survey that was carried out in 2012 under European Commission (Criminal Justice Programme) funded project 'Substantial Support to Victims: Towards a Holistic Response to Crime – Latvia and Beyond'¹²⁰ indicates several reasons for the victims' dissatisfaction with the criminal proceedings, namely: the remaining sense of unfairness to the victims after the termination of the proceedings, the victims are not satisfied with the punishment imposed on the offender, the sense of security is not regained, the dissatisfaction with the outcome of the criminal proceedings due to the failure to obtain compensation for the crime committed.¹²¹ Therefore, the lower accessibility of legal aid is only one of the problems in the victim support system.

In **Poland**, there is no separate system of legal assistance for the injured parties. According to the legislation regulating the work of lawyers and legal advisers, they are obliged to provide the legal assistance ex officio at the moment of their assignment to a case by the regional court in the district in which they have their registered office. The activity of individual lawyers and legal advisers is supervised by the competent District Chambers of Lawyers or District Chambers of Legal Advisers. Overall supervision is performed by the Ministry of Justice (e.g. Art. 3 act 2 of the *Law on the Bar*), where there is a special department on the legal professions and the access to legal assistance.¹²²

¹¹⁹ **Kronberga I., Judins A., Zavackis A.** (2013): *Noziedzīgos nodarījumos cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā* [Meeting the Needs of Crime Victims: Support for Victimisation Prevention in Latvia]. Riga: PROVIDUS

¹²⁰ Please find more information on the project at <http://www.providus.lv/public/26862.html>

¹²¹ Please find more information on the project at <http://www.providus.lv/public/26862.html>

¹²² The productivity of such system is determined by the accessibility to lawyers entitled to provide legal assistance. Currently about 10 thousand lawyers work as the advocates while there are about 23 thousand of professionally active legal advisers. Poland still is a country, in which the number of lawyers and legal advisers is

Legal assistance for injured parties is just one of the aspects of assisting victims. According to Art. 43 of the *Executive Penal Code*, the Postpenitentiary Assistance Fund is established. It is a national fund under the Minister of Justice, whose funds are allocated, among others, for the help to the persons injured by the crime and for members of their families, especially regarding medical assistance, psychological, rehabilitation, legal and financial aid, granted to individuals and organisations, providing aid to such individuals.¹²³

In **Spain**, not common to other Western countries, specific public bodies provide aid to victims and only exceptionally services are outsourced by tender. The Spanish public administration model is based on *Law 35/1995 of 11 December regarding aid and support to victims of violent crimes and crimes against one's sexual freedom*. Art. 16 of this *Law* establishes a network of Counselling Centres for Victims of Crimes (OAVD), which provide aid and information to victims in order to alleviate the negative effects of the crime and help them exercise their rights. These centres provide free public service to victims of any crime, although priority is given to those who suffered violent crimes resulting in death, serious injuries, or health or mental problems, as well as the victims of crimes against a person's sexual freedom and the victims of domestic violence and/or gender based violence, regardless of whether they are direct or indirect victims. This is regardless of the fact that the Centres have been established in compliance with a law which allocates public funds only for victims of violent crimes and against one's sexual freedom. In these Centres, victims are helped by court service officers and a psychologist, and in some cities also by social workers who provide information and psychological support. These centres may be subordinate to the Ministry of Justice or the Autonomous Communities. As for the actual influence of the OAVD, they have relatively low influence and, due to the economic depression affecting the country, have been closed in many cities.

On the other hand, *Law 1/1996 regarding Free Legal Aid* tackles the need for free legal aid to victims by establishing services for legal advice (specialised in gender based violence, minors, etc.) and aid in criminal procedures. Free legal aid is conceived as a public service provided by the Bar and the Public Prosecutor's Office, financed with public funds to cover the victims' needs.

Unlike other countries, in Spain there are very few private non-specialised organisations which provide aid and support to victims. The existing organisations have been conceived and established to represent victims of specific crimes, in particular terrorist acts, gender based violence or child abuse, as well as road accidents.

low with regard to the numbers of population. According to reports of Council of Bars and Law Societies of Europe (CCBE) in Poland 1 lawyer is falling to about 1050 residents - <http://www.ccbe.eu/index.php?id=29&L=0>.

¹²³ According to the financial plan of the Fund in 2012 the funds for granting assistance for the persons injured by the crime and members of their families were estimated to the amount of 10 million zlotys - <http://bip.ms.gov.pl/pl/dzialalnosc/fundusz-pomocy-pokrzywdzonym-oraz-pomocy-postpenitencjarnej/pomoc-pokrzywdzonym/>.

6.2. Public funds for victims' legal aid – means of allocation

In **Bulgaria**, the legal aid budget is part of the state budget and is adopted as part of the budget of the Ministry of Justice. The draft budget is prepared by the National Legal Aid Bureau.

In **Italy**, there are no predetermined funds for victims of crime because they are private parties participating in a public trial. However, it is important to mention that for some types of offences, especially those regarding organised crime, some non-profit organisations patronised by the State provide legal advice and aid and possible compensation.

In **Latvia**, state ensured legal aid is covered by the state budget. There are no special public foundations that would ensure legal aid for victims. Only several NGOs,¹²⁴ within particular projects or on the basis of a contract with a state institution, provide legal aid in addition to the aid specified in the *LCP*.

In **Poland**, expenses for legal assistance not paid by the injured party are provisionally covered by the State Treasury. In its act upon completion of proceedings the court determines who and in what scope covers the costs. In case of conviction, the defendant is assigned the State Treasury costs, including those of the auxiliary prosecutor and the legal aid he/she received free of charge. In case of acquittal, the injured party covers the costs himself/herself - Art. 632 in relation to Art. 620 *Code of Criminal Procedure*.

In **Spain**, funds for free legal aid to victims are public and comprise costs regarding free legal aid, Counselling Centres for Victims and grants paid to NGOs.

As for free legal aid, in compliance with *Law 1/1996*, it is a public service provided by Bar Associations and solicitors which includes both legal advice services (counselling before the proceedings) and the duty solicitor (the assistance of a lawyer and solicitor during the proceedings). There is no distinction among the costs afforded for supporting victims, as the legal advice centres provide information to anyone, regardless of whether they are the victim or not. A distinction of this kind is not even made during the procedures to grant the right as they do not specify if the applicant is the victim or not. These data are provided only for the proceedings regarding gender based violence, as this category of victims has the highest rate of cases discussed before a court.

In compliance with the provisions of article 149.1 of the *Spanish Constitution*, the vast majority of Autonomous Communities hold the competence in this specific matter, therefore there are substantial differences among the amounts assigned to free legal aid in the Autonomous Communities.¹²⁵

¹²⁴ For instance, society *Patvērumš Drošā māja* [Shelter Safe House], society *Resursu centrs sievietēm* [Resource Centre for women Marta], society *Krīžu un konsultāciju centrs Skalbes* [Crisis and consultation centre Skalbes].

¹²⁵ Over the last three years, due to the economic depression, the total amount of the funds assigned to Public Administrations for free legal aid in Spain has been reduced and in 2011 the total amount was € 240.000.000,

6.3. Regional specifics and problems in providing legal aid – opinions of stakeholders

In **Bulgaria**, in the opinion of an NGO representative, there are no regional differences in providing legal aid at the trial phase, because this issue is subject to control by the higher court instances, but the specific legal aid services NGOs provide usually cover a fairly small geographical region. A judge considers the region of Vidin, a town in Northwestern Bulgaria with severe economic problems, as a typical example of regional specifics. There are no specialised NGOs in the region, to which victims can turn for help, and authorities often neglect their victim capacity and commit procedural violations.

In **Italy**, the impression of stakeholders approached via questionnaire on the phase before the reporting of the crime/opening of proceedings is quite negative, regarding the equal standard of legal aid throughout the country's regions – 65 per cent of respondents disagree that this is the case at this phase, whilst there is no notable difference between those who agree and disagree regarding investigation and trial. Stakeholders point out that even though the norms regarding access to legal aid are the same for every region, the actual assistance and consultation given vary, because these depend on the initiative of local institutions, private structures and organisations. Southern regions, in particular, are seen to function less efficiently than those in the north, especially regarding immigrant victims, in the view of local NGOs. When asked about the problematic factors, regarding regional level access to legal aid, respondents stated as main problem the availability of advice throughout the different geographic areas, while the lack of awareness among citizens was rated second in the list of problems.¹²⁶

In **Latvia**, the territory and the number of population is rather small with a strong trend of centralisation, therefore regional problems are not typical. In several regions the level of victims' awareness is notably lower and there are fewer attorneys who could provide legal aid. It is a deficiency but it is not considered threatening the provision of legal aid in general.

In **Poland**, respondents approached did not state any regional specifics, but pointed to a decisive factor in providing legal assistance - the low awareness on the part of citizens. This is mainly the case in the countryside, where the injured parties often have very insufficient

including compensations for the infrastructure costs paid by Bar associations. This figure represents a reduction of 4 per cent compared to 2010, when the amount was €256.000.000, which was also the first year in which the funds received a 3.8 per cent reduction. Therefore the growing positive trend of the years previous to 2010 was interrupted. In fact, in 2009 they received a 21 per cent increase, while between 2007 and 2008 an 11 per cent increase. In 2011 Catalonia became once again the Autonomous Community with the highest amount invested in free legal aid with about €58.000.000, 26 per cent of the total expense, followed by the Community of Madrid with €42.000.000 (19 per cent of the total amount), Andalusia with €41.000.000 (18 per cent), the Valencian Community with €23.000.000 (10 per cent) and the Canary Islands with €16.000.000 (7 per cent). The four autonomous communities with the highest investments in free legal aid together account for 66 per cent of the total expense at national level.

¹²⁶ It is important to note that around 30 per cent of stakeholders did not respond to this question, due mostly to the difficulty of the question and also to their knowledge of this area.

knowledge about their entitlements resulting from being harmed by the crime, resulting from inadequate treatment by procedural authorities. Proper trainings which would sensitise judges, public prosecutors, and especially police about the low legal knowledge of injured parties are missing and the injured party is allegedly treated as ‘a necessary evil’ in criminal proceedings.

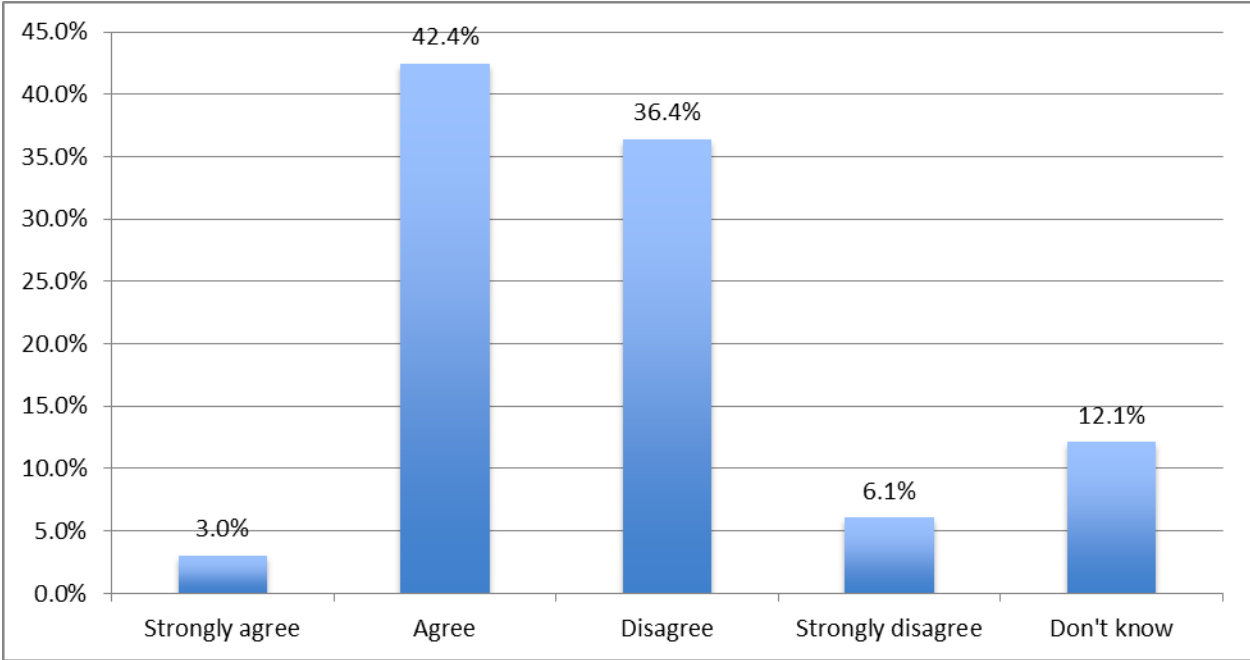
In **Spain**, the system of state provided legal aid is basically the same all over the country, specifics being as to whether it is within the competence of autonomous communities and what funds are allocated for it. In fact, autonomous communities assigned with this competence are seen to allocate more funds to the matter. Autonomous communities with more funds for free legal aid usually provide a larger number of services to victims, sometimes even covering social needs which the Law is yet to regulate.

6.4. General and specialised training, further needs – opinions of stakeholders

In **Bulgaria**, while NGOs do report on their own efforts to improve their general and specialised training both domestically and internationally, all stakeholders, deliberating on the issue admit that there is lack of adequate training for institutions and organisations involved in aiding victims, following international and EU standards. A legal aid practitioner admits that trainings for working with specific vulnerable groups are still within the realm of future plans, but the Legal Aid Bureau takes every effort to organise regional trainings at least once a year, where information is given, based on attorneys’ specific needs and questions. An NGO representative acknowledges that attorneys, providing legal aid, have only general legal training, but not specific skills for communicating with victims of crime or persons of various ethnic and cultural background. The expert states that there are no specific trainings on those issues and the system relies on the experience of attorneys. Also, according to the expert, lists of attorneys in the National Legal Aid Register are not divided by specialisation or the specialisation is too general. The Attorneys’ School with the Supreme Bar Council organises thematic courses for attorneys, but their capacity cannot match the fast pace of amending legislation. The National Register also suffers from a high turnover of incoming and outgoing attorneys with no entry test or training.

In general, however, the opinions of stakeholders approached are split:

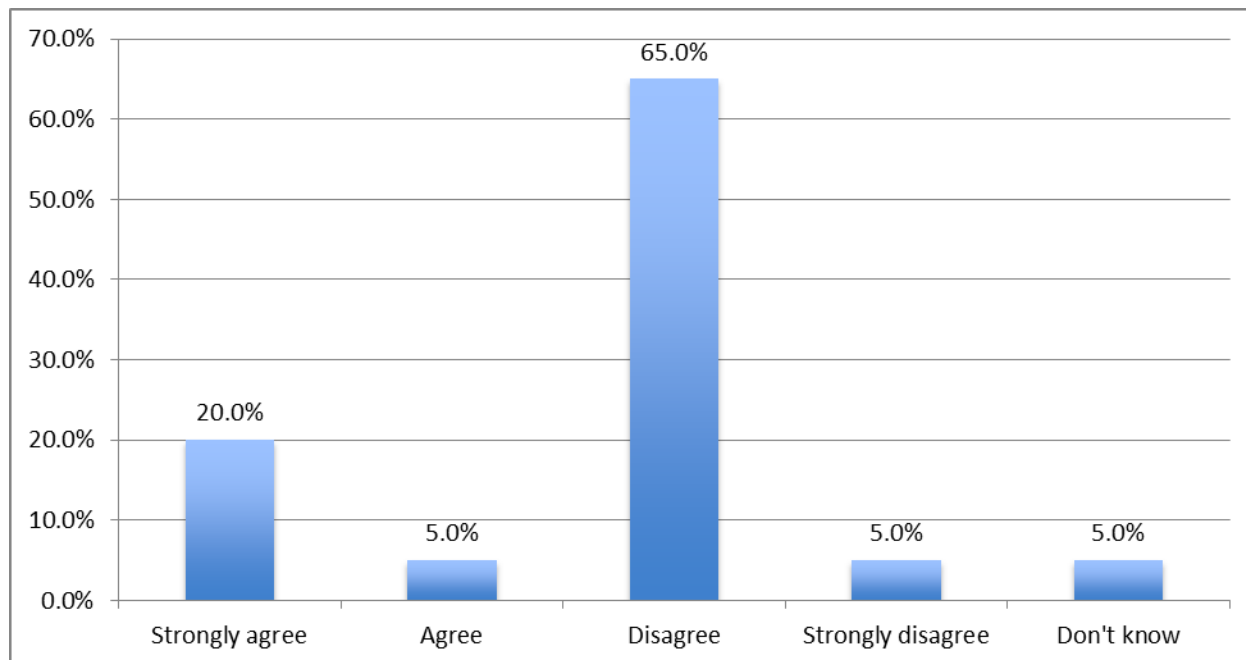
Figure 24. Would you agree that the persons, providing legal aid and advice to victims of crime in Bulgaria, have received sufficient general and specialist training?



Source: Center for the Study of Democracy

In **Italy**, 70 per cent of stakeholders approached state that they do not agree that the individuals providing legal aid and advice to victims of crime have received sufficient general and specialist training:

Figure 25. Would you agree that the persons, providing legal aid and advice to victims of crime in Italy, have received sufficient general and specialist training?

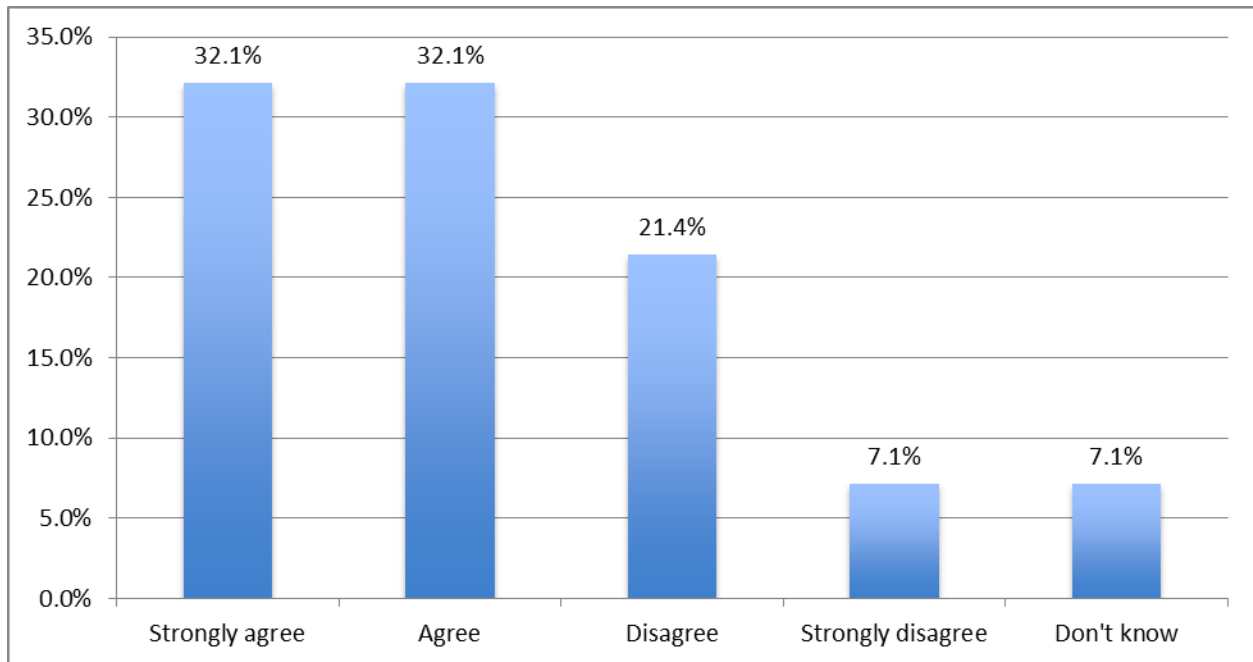


Source: COINFO – Italy

In **Latvia**, training is needed for the officials from state institutions that come into contact with the victim. Until now, the attention towards the persons working with victims, in particular, victims of violence has been insufficient. The persons directing the proceedings – police officers, prosecutors, judges – often demonstrate empathy for the victim, but the victim in the criminal proceedings is considered not as a person to whom harm has been done by the crime and assistance is due, but rather as a source of information that can be used to obtain evidence in the criminal proceedings. Both normatively and practically, the rights of victims are recognised and satisfied, but work with the victim is often seen as additional time consuming workload for officials. Victim’s testimony is necessary for disclosing the crime, but the needs of victims are sometimes regarded as factors encumbering the criminal proceedings. Although the law indicates to the necessity of satisfying the victim’s interests and ensuring the possibility to execute his/her rights, the work with the victim and attempts of helping the victim are not considered the duty of the person directing the proceedings.¹²⁷ This view is also strongly supported by the stakeholders approached.

¹²⁷ **Kronberga I., Judins A., Zavackis A.** (2013): *Noziedzīgos nodarījumos cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā* [Meeting the Needs of Crime Victims: Support for Victimisation Prevention in Latvia]. Riga: PROVIDUS

Figure 26. Would you agree that the persons, providing legal aid and advice to victims of crime in Latvia, have received sufficient general and specialist training?



Source: PROVIDUS

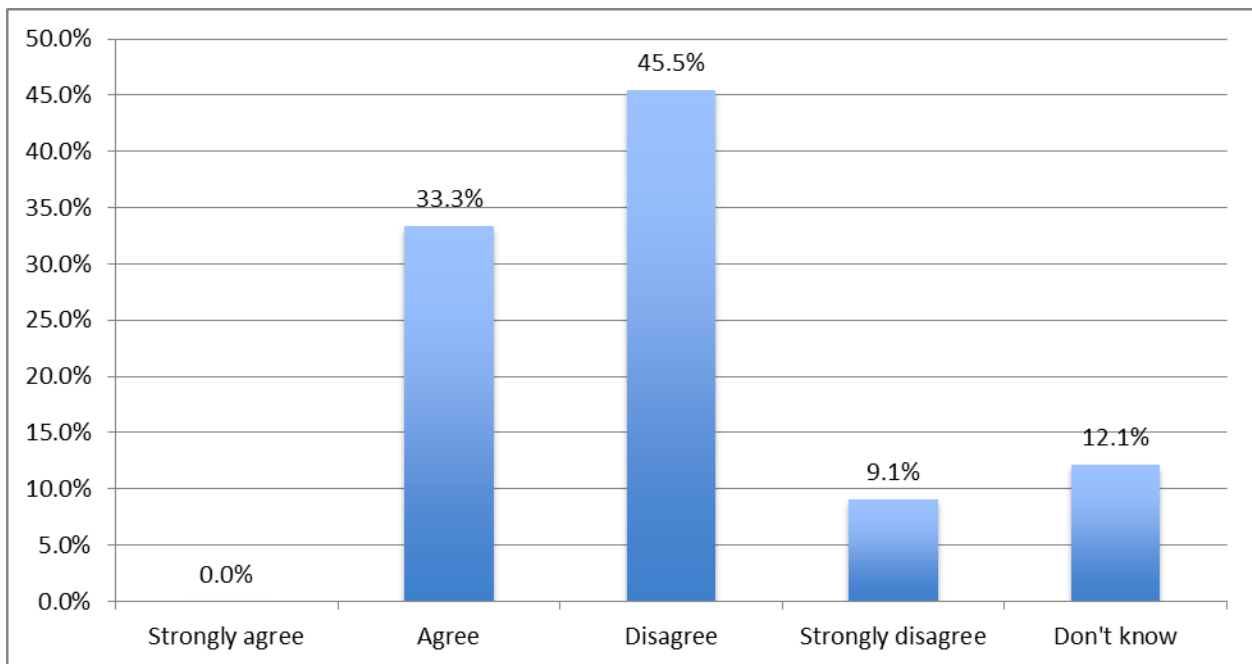
In **Poland**, respondents approached emphasised the need of increasing the number of trainings to provide effective and successful legal assistance to the injured party. Comprehensive information about victim’s entitlements in criminal proceedings is considered missing. Police officers and public prosecutors also lack proper psychological training, which leads to secondary victimisation. Moreover, despite a number of campaigns, procedural bodies still do not refer cases to mediation. Workshops are needed to delineate the problems of persons, appearing as injured parties during proceedings.

In **Spain**, the persons employed by the competent bodies providing legal advice and aid to victims have generally received the necessary training to perform their tasks. Nonetheless, it is recommended that the personnel employed at the courts who have contacts with the victims during the trial should have better knowledge of victims' rights and should be more sensitive when dealing with them. As for gender based violence, all lawyers providing free legal aid must have specific education and training. Nevertheless, the difficult economic situation of the public administrations in Spain caused the disappearance in 2012 and 2013 of many free legal counselling services working with specific categories of victims (victims of gender based crimes, minors, immigrants, etc.)

6.5. Transparency and effectiveness of the system, responsiveness to victims' needs – opinions of stakeholders

In **Bulgaria**, a judge approached concludes that Bulgaria lacks both the tradition and the overall legal framework for working with victims of crime. Informing victims should not only be done by providing the relevant information materials and a general procedure needs to be created for assisting and protecting victims from the submission of their complaints to their ultimate resolution. This is also confirmed by the opinions of stakeholders approached:

Figure 27. Would you agree that the practices of the entities, providing legal aid and advice to victims of crime in Bulgaria, respond to victims' needs?



Source: Center for the Study of Democracy

In **Italy**, 55 per cent of respondents do not agree that the practices of the entities providing legal aid and advice to victims of crime respond to victims' needs thus showing training courses are needed.

Interviews with attorneys and NGOs show that best rated lawyers usually do not accept to provide legal aid, but rather prefer to take cases against payment. This is to show that even if legal aid is obtained, it is not certain that the best lawyers would represent the victims. Another issue reported is that the payments for legal aid are substantially delayed, which further discourages attorneys from taking such cases. In-depth interviews show that lawyers have a lot of influence over their clients and they can dissuade victims from proceeding due to their own little interest in pursuing the case, thus acting as gatekeepers. There is much work to

be done in the area of assistance to immigrants and training police officers and medics who work at legal clinics on giving advice to victims.

In **Latvia**, the main problems in aiding victims are directly related to the establishment of the victim support system in general, of which legal aid is an important element. In practice, there are quite many situations when, if the victim has a well-qualified attorney, the progress of the criminal proceedings is faster thus streamlining the actions of the person directing the criminal proceedings.¹²⁸ Therefore, legal aid is fundamental for the provision of the victim's rights, at the same time enhancing the efficiency of criminal proceedings.

Generally, state ensured legal aid is available only to low-income people. Free of charge legal aid should be ensured to all victims who are involved in the criminal proceedings, or at least one free consultation should be ensured to those who, for example, do not know whether and where to report a crime, who to report to, how to submit a report, etc. Legal aid should be ensured also to those victims who are involved in the proceedings as witnesses.¹²⁹

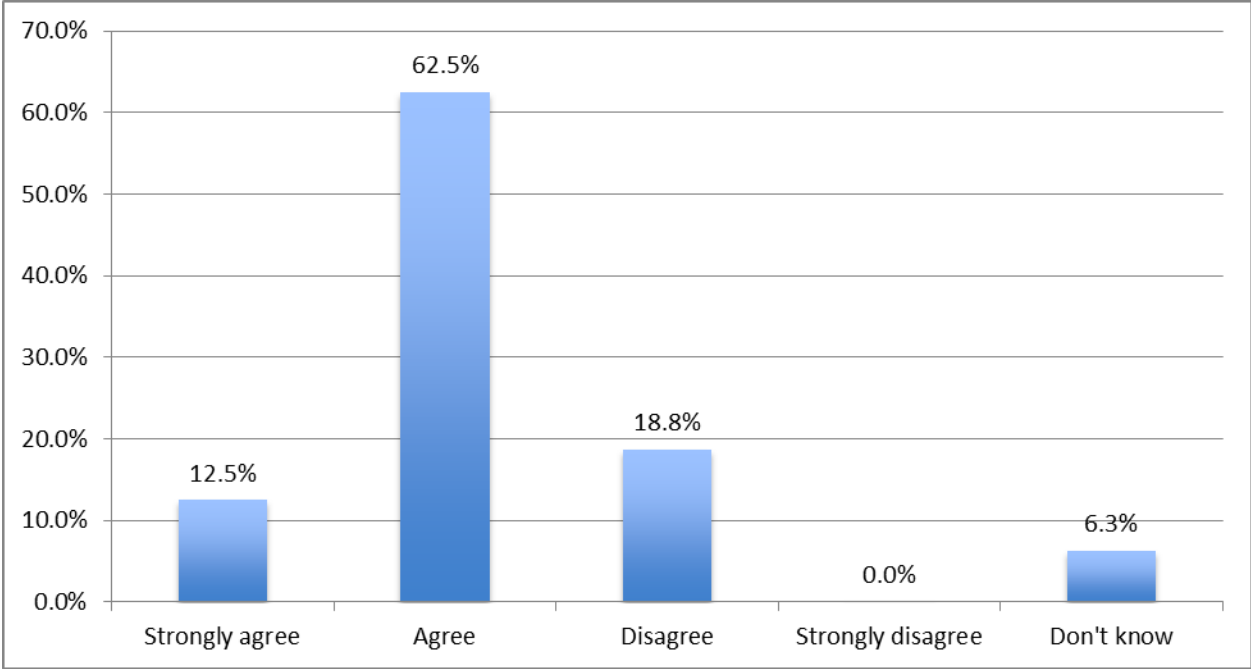
In **Poland**, the system of legal assistance for the injured parties is seen by respondents as non-transparent - information is lacking as to the scope of assistance offered, as well as on the legal regulations on the matter. The legislative excerpts, given to injured parties before their first interrogation, do not help sufficiently persons without a legal background and at the same time victims expect psychological support and sympathy, rather than pure legal assistance. Respondents have also pointed out a tendency for more frequent use of restorative justice mechanisms, since the majority of injured parties prefer an explanation of the perpetrator's motives and sufficient compensation for the damage inflicted rather than a punishment by the state.

In **Spain**, the free legal aid system is considered both efficient and transparent, and responding to victims' needs, as witnessed by the opinion of stakeholders approached:

¹²⁸ Interview with a representative from the State Police, 18.07.2013. Not published.

¹²⁹ **Kronberga I., Judins A., Zavackis A.** (2013): Noziedzīgos nodarījumus cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā [Meeting the Needs of Crime Victims: Support for Victimisation Prevention in Latvia]. Riga: PROVIDUS.

Figure 28. Would you agree that the practices of the entities, providing legal aid and advice to victims of crime in Spain, respond to victims' needs?



Source: COINFO – Spain

Still, because of the lack of resources due to the current economic depression, the capacity to satisfy the needs of the victims is limited, as the demand is higher than the available counselling services.

D. Best practices on access to justice for victims of crime

In **Bulgaria**, best practices identified consist mainly of the efforts of the National Legal Aid Bureau to keep an equal standard of legal aid throughout all the country's regions. According to legal aid practitioners, attorneys from the National Legal Aid Register have been gathered in larger groups in several regional centres and have been given training and explanations, based on their specific questions and information requests. As a result, the relations between the Bureau, the bar councils and the individual attorneys, providing legal aid, have been strengthened and the attorneys' specific qualification has been improved.

In **Italy**, a famous initiative took place in the southern part of the country, province of Lecce, called 'On the Road' and having immigrants as a target group. It was implemented in 2010-2012 by LILA Lecce and was funded by the Institute of Mediterranean Cultures and the Province of Lecce, with the collaboration of Upter - Università Popolare di Roma, the Italian Council for Refugees and Centro Studi Kairòs. Under the project, a team of cultural mediators and lawyers travelled with a camper van to remote villages in order to give free advice to immigrants and refugees, regarding their rights and health. The team was in constant contact with the ATM Immigrants - Immigration Services Salento, as well as the mediators in the Areas of State and at the Centre for Employment.

Under another initiative, *the Support Center and listening service for victims of violence – Demeter* directed its efforts towards victims of violence experienced in their own home – insults, threats, physical violence, blackmail, economic, emotional and psychological abuse, and stalking. In terms of support, it has provided:

- guided medical advice dedicated to the victims of gender violence and stalking; appropriate health services with active support during the diagnostic and therapeutic stage;
- assistance and legal support including proper reporting;
- specialist consultations in order to detail the events of violence;
- preparation of guidelines and protocols for health professionals;
- consulting for telephone operators of health care facilities lacking adequate services;
- activation of the network of public and private services to support victims of violence;
- specific training of the operators.

The Center Demeter helps victims escape from violence and accompanies them on the path of immediate help and restoration of their skills and resources. The centre opens up areas of active listening in which the person can state what has happened to them and describe their mood, fears and needs.

The project *Daphne Network*¹³⁰ provides for the establishment of a network of initiatives and services able to respond in an articulated manner to the needs of people facing the

¹³⁰ Subject leader: Province of Turin - Department of Political Active Citizenship, Social Rights and Equality; Subject partners: 1. City of Turin - Department of Health, Social Policy and Housing; 2. Local Health TO2 - Department of

consequences of a crime. It intends to take charge of the effects of crimes related to domestic violence and other violent criminal events that affect the physical and psychological integrity of individuals. It helps individuals who are considered to be in a state of victimisation and who consequently decide to report their grievance in a formal way to a court or a police station. The project does not deal with crimes committed against children, since the latter are protected by services and initiatives specifically dedicated to them.

The Network also provides 'Never be alone! An aid to immigrant women' – an active service in four languages: Italian, Arabic, English and French, which receives requests for help from all women of all nationalities, victims of abuse and psychological and physical violence, and provides support for victims of violence, from first aid to psychological support, giving legal advice and information regarding the anti-violence centers in Italy.

A *toll-free line* is also maintained, 0800911753, tackling violence against women in Arabic, Italian and French and offering psychological support and legal guidance in addition to specialised structures in the fight against violence inflicted on women. It provides information about complaint procedures, moral and legal support.

The *Family Counseling of the Italian Red Cross* in Genoa offers many services including counseling and legal assistance.

In **Latvia**, a special webpage for victims has been created - www.cietusajiem.lv. Although it was launched as part of a European Commission funded project, currently Legal Aid Administration is responsible for updating and maintaining the webpage. It is developed as one stop platform for victims of crime and provides relevant information in simple, easy to understand language. The webpage includes information about legal aid, addresses the issues of psychological help and explains the Criminal Law and Criminal Procedure Law in a practical way. In addition to that, all content is available also in Russian – before the webpage, there was no source of information for Russian speaking victims available.

In **Spain**, an example of good practice is the Protocol of Action in Cases of Domestic and Gender Based Violence on the Territory of Girona (Autonomous Community of Catalonia) of 2006. Based on this document the institutions of the government of the Generalitat, the Audiencia Provincial, the Public Prosecutor's Office of the Audiencia Provincial, the Health and Social Security branches, the Social Welfare branch, the Justice branch, the Police, the Bar Association of Girona and that of Figueres and the representatives of the coroners coordinated innovatively their efforts to find a way to tackle victims' issues most efficiently, especially regarding preventive measures, but also the ones concerning the stage when the crime has been committed. The monitoring of the implementation of the Protocol through commissions

Mental Health Giulio Maccacaro; 3 . Gruppo Abele Onlus Association; 4. Association Ghenos. Promoters and other parties involved: the Public Prosecutor of Turin.

formed by representatives of the institutions that signed it (regular meetings to discuss the problems that arise in implementation of the Protocol; updated proposals for approval and coordination in accordance with new situations, in order to have flexibility to adapt to needs) is the culmination of lifelong vocation to persevere in the fight against domestic and gender violence. There are local commissions that have direct contact with the people who work with victims and have exact knowledge of the resources and their functioning on each territory.

Another best practice is the gender based violence victim's right to free legal aid, granted and provided immediately in the proceedings linked, derived or that are a consequence of the victim status. Victims of gender based violence are also entitled to be defended and represented for free by a lawyer and solicitor in any administrative proceedings directly or indirectly linked to the offence suffered. In this way, the lawyer and the solicitor assigned to the victim will be the same in any legal or administrative procedure directly or indirectly linked to the offence (criminal procedures for injuries, divorce proceedings, etc.).

The Bar Associations shall adopt all necessary measures to immediately appoint a counsel in gender based violence proceedings. In this way, the victim of gender based violence has the right to receive immediately legal advice by a specialised lawyer in the Police before opening the proceeding, the lawyer assigned to the victim will be the same in any legal or administrative procedure directly or indirectly linked to the offence, and the legal aid will be for free in all these procedures regardless of the availability of resources for litigation.

Bar Associations organised a system to provide specially trained lawyers round the clock to be provided immediately to victims of gender based violence in the related proceedings. The right to have the same lawyer is important in order to avoid the double victimisation and guarantees the best defence, since the lawyer is familiarised with the situation of the victim and the status of proceedings.

E. The legal assistance to the victim before the International Criminal Court (ICC)

1. The definition of victim before the ICC

The position of the victim before international tribunals has been changing due to a significant evolution. In accordance with the tradition of the common law system, which is reflected quite accurately in the proceedings before the ad hoc tribunals,¹³¹ the victim has a limited range of rights. He/she is primarily a source of evidence, subject to providing evidence to the proceedings. It is not possible for him/her to participate actively in the proceedings as a party. His/her interests in the course of the trial are represented by an attorney. This is due to the general assumptions of the functioning of the ad hoc tribunals, which put the accent on the role of the Prosecutor and the accused as the main participants to the proceedings. Mostly for that reason the main part of the pertinent regulation of the Statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) refers to the protection of victims in the proceedings, and to ensuring their safety. The main change, however, is already visible in the regulations covering the functioning of the ICC, which have led to strengthening the position of the victim as participant of the proceedings. To the traditional Anglo-Saxon adversarial system next to the accuser and the accused in this way, the third participant - the victim, was introduced. Referring to the rules of fair trial, the scope of the active participants in disputes before the International Criminal Court has been thus extended.

The definition of the victim was one of the most contentious issues in the course of the preparatory work related to the creation of the ICC. Finally, the definition of the victim is determined by rule 85 of the Rules of Procedure and Evidence (RPE).¹³² As stated there, for the purposes of the Rome Statute¹³³ and the Rules of Procedure and Evidence 'victims' mean natural persons who have suffered harm as a result of the commission of any crime within the

¹³¹ The first international criminal tribunals were established in the 1990's, to respond to atrocities committed during the conflict in the former Yugoslavia and the mass-killings in Rwanda. The International Criminal Tribunal for the former Yugoslavia (ICTY) and its sister court for Rwanda (International Criminal Tribunal for Rwanda - ICTR) were both created by the UN Security Council. Since then, special courts have also been set up to prosecute domestic and international crimes. Examples of such mixed tribunals can be found in Kosovo, Bosnia Herzegovina, East Timor, Sierra Leone, Cambodia, and most recently Lebanon. Source: <http://www.icrc.org/eng/war-and-law/international-criminal-jurisdiction/ad-hoc-tribunals/overview-ad-hoc-tribunals.htm>.

¹³² **International Criminal Court** (2002): Rules of Procedure and Evidence (ICC-ASP/1/3 (Part.II-A) Adoption: 09.09.2002 Entry into Force: 09.09.2002), The Hague: Assembly of States Parties, available at: http://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/official%20journal/Documents/RulesProcedureEvidenceEng.pdf (4 December 2013).

¹³³ **International Criminal Court** (2002) Rome Statute of the International Criminal Court (A/CONF.183/9 Entry into Force: 01.07.2002, Source: UNDCPEICC, Adoption: 17.07.1998), The Hague: Assembly of States Parties, available at: http://www.iccpi.int/en_menus/icc/legal%20texts%20and%20tools/official%20journal/Pages/rome%20statute.aspx (4 December 2013).

jurisdiction of the Court.¹³⁴ Victims may also include organisations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.¹³⁵

In practice, there are doubts as to whether, for example, in a situation where the accused disputes not so much his/her participation in the crime, but the nature of the criminal act (e.g., paragraph 8 2a vii Rome Statute unlawful deportations) the injured party should be the discussion object before the issue of whether the act was a crime is settled. For victims can also be considered the organisation or institution, that have experienced any direct loss in scope of its ownership, intended for religious purposes, educational, art and science or charitable purposes, and also if historical monuments, hospitals and other places and objects used for civilian uses have been included. In particular, it is about crimes referred to in art. 8 paragraph 2 point (b) section (ix) Rome Statute and art. 8 paragraph 2 point (e) section (ii) and (iv).

2. Right to participate in the proceedings

The victim's right to participate in proceedings as party, granted by the Rome Statute, is new and unknown to the previous systems of international tribunals or the ICTY and the ICTR. This is undoubtedly a breakthrough procedural solution. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.¹³⁶ Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence (article. 68.3 of the Rome Statute).¹³⁷ According to Rule 89 RPE in order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the Defence, who shall be entitled to reply within a time limit to be set by the Chamber. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements. The Chamber, on its own initiative or on the application of the Prosecutor or the Defence, may reject the application if it considers that the person is not a victim or that the criteria set forth in article 68, paragraph 3, are not otherwise fulfilled. A victim whose application has been rejected may file a new application later in the proceedings.

¹³⁴ See e.g. ICC-01/04-101-tEN-Corr, Pre-Trial Chamber I, 17 January 2006, par. 79. See also No. ICC-01/04-177, Pre-Trial Chamber I, 31 July 2006, p. 7.

¹³⁵ See No. ICC-01/04-423-Corr, Pre-Trial Chamber I (Single Judge), 31 January 2008, paras. 140-143.

¹³⁶ See e.g. No. ICC-02/04-112, Pre-Trial Chamber II, 19 December 2007, paras. 31-32, 35, 42.

¹³⁷ See also No. ICC-01/04-01/07-357, Pre-Trial Chamber I (Single Judge), 2 April 2008, pp. 11-12.

In order to allow victims to apply for participation in the proceedings the Court shall notify victims concerning the decision of the Prosecutor not to initiate an investigation or not to prosecute, decision of the Chamber to hold a hearing to confirm charges. Such a notification shall be given to victims or their legal representatives who have already participated in the proceedings or, as far as possible, to those who have communicated with the Court in respect of the situation or case in question. Where victims or their legal representatives have participated in a certain stage of the proceedings, the Registrar shall notify them as soon as possible of the decisions of the Court in those proceedings (Rule 92, RPE).

In case of acceptance of the victim's application the Chamber specifies the proper procedure and manner of participation of the victim in the proceedings. In particular, this may apply to statements made at the opening and closing of the trial. Time and manner of occurrence may not, however, violate the principles of fair conduct and the interests of the accused. The Trial Chamber may request for the victim's or representative's expressing the opinion on any issue, amongst others in accordance to the refusal of the accusation by the Prosecutor, making up the allegations before the trial, joining or separating proceedings, admitting of the defendant to being guilty (rule 93, RPE).

In case of submission of the application to participate in the proceedings as a party it is the victim's responsibility to demonstrate a link between the alleged crime and the harm suffered. It is essential to present sufficient evidence to establish that the person has suffered harm directly linked to the crimes set out in the arrest warrant or, that the person has suffered harm by helping victims directly or by helping him/her to avoid injuries as a result of committing a crime. In its judgment from 10 August 2007, the ICC provided to victims whose identity and reliability has been confirmed the status of active participants in the preparatory proceedings on ICC-01/04-01/06 The Prosecutor v. Thomas Lubanga Dyilo.

The terms of reference of the victim, however, are dependent upon the nature of the proceedings of the Court, and so the discretion of whether the investigation relates to: (a) the situation examined by the ICC, b) case examined by the ICC. The situation is a generally specified collection of circumstances and factors, temporal, territorial, sometimes subject, indicating the need to check whether there are grounds for suspicion of committing a crime and the eventual initiation of criminal proceedings. The case is a strictly understood event involving committing a specific crime or crimes by a particular person or persons.¹³⁸ Injured parties participating in the preparatory proceedings on a 'situation' shall have the right to present opinions and conclusions, present documents and submit applications to make procedural steps. For example, the ICC has taken the decision to grant rights to four victims on the Lubanga Dyilo case from the DRC. ICC pointed out that the right of the victim to participate in proceedings also includes preparatory proceedings, including the decisions taken by the Court before the trial (article 68(3)) and sittings concerning the issue of arrest warrants.¹³⁹

¹³⁸ Congo, Jan. 17, 2007, at paragraph 65.

¹³⁹ Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, January 17, 2006.

Despite such broad rights it should be noted, however, that the victim is not entitled to have access to the materials of the case, participate in the preparatory proceedings, summon witnesses at the trial (evidentiary initiative) or submit appeal which makes his/her participation relatively passive.

3. Legal assistance to victims of crime

An important novelty in the proceedings before the ICC is the right of victims to have a legal representative (Rule 90, RPE). Pursuant to this regulation a victim is free to choose his or her Legal Representative and there is no provision that, in principle, prohibits a victim from choosing the Legal Representative of a victim in another case.¹⁴⁰ Power to impose legal representation, whenever the victims are unable to make the choice, is bestowed on the Chamber.¹⁴¹ The Office of Public Counsel for Victims shall be automatically appointed by the Registrar as Legal Representative to provide support and assistance to unrepresented applicants at the stage of the proceedings which precedes a decision by the relevant Chamber on their status until such time as the procedural status of victim is granted to them and a Legal Representative is chosen by them or appointed by the Court.¹⁴²

However, the right to have a representative is limited by the protection of victim's interest and does not always justify having a representative in the course of the entire proceedings.¹⁴³

Where there are a number of victims, the Chamber may, for the purposes of ensuring the effectiveness of the proceedings, request the victims or particular groups of victims, if necessary with the assistance of the Registry, to choose a common legal representative or representatives.¹⁴⁴

In facilitating the coordination of victim representation, the Registry may provide assistance, inter alia, by referring the victims to a list of counsel, maintained by the Registry, or suggesting one or more common legal representatives. If the victims are unable to choose a common legal representative or representatives within a time limit that the Chamber may decide, the Chamber may request the Registrar to choose one or more common legal representatives. The Chamber and the Registry shall take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of the victims, particularly as provided in

¹⁴⁰ See No. ICC-01/04-01/07-474, Pre-Trial Chamber I (Single Judge), 13 May 2008, par. 7.

¹⁴¹ See No. ICC-02/04-01/05-134, Pre-Trial Chamber II (Single Judge), 1 February 2007, paras. 2-12.

¹⁴² See No. ICC-01/04-374, Pre-Trial Chamber I, 17 August 2007, paras. 43-44.

¹⁴³ Situation 01/04 in Democratic Republic of the Congo, ICC, Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, January 17, 2006, http://www.icc-cpi.int/library/cases/ICC-01-04-101_tEnglish-Corr.pdf, p. 42).

¹⁴⁴ See i.a. No. ICC-02/04-01/05-252, Pre-Trial Chamber II (Single Judge), 10 August 2007, paras. 80 and 162; also No. ICC-02/04-125 and ICC-02/04-01/05-282, Pre-Trial Chamber II (Single Judge), 14 March 2008, par. 192).

article 68, paragraph 1, are represented and that any conflict of interest is avoided. A victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance.

The legal representative of the victim has the right to participate in the proceedings under the conditions laid down by the provisions of the Chamber leading proceedings. With the consent of the Chamber he/she may take part in the interrogation of witnesses, ask them questions, as well as ask questions to the accused and experts.

4. Participation of the victim's legal representative in the proceedings

A legal representative of a victim shall be entitled to attend and participate in the proceedings in accordance with the terms of the ruling of the Chamber. This includes participation in hearings unless, in the circumstances of the case, the Chamber concerned is of the view that the representative's intervention should be confined to written observations or submissions. The Prosecutor and the defence shall be allowed to reply to any oral or written observation by the legal representative. The representative of victim may, acting on behalf of the client, attend and participate in the hearings before the Court under the conditions of Rule 91(2) of the RPE, make opening and closing statements, present views and concerns, make representations in writing to a Pre-Trial Chamber in relation to a request for authorisation of an investigation pursuant to article 15(3) of the Statute and rule 50(3) of the RPE, submit observations in the proceedings dealing with a challenge to the jurisdiction of the Court or the admissibility of a case in accordance with article 19(3) of the Rome Statute; request a Chamber to order measures to protect victims' safety, psychological well-being, dignity and privacy in accordance with article 68(1) of the Rome Statute and rule 87(1) of the Rules of Procedure and Evidence; and request a Chamber to order special measures (article 68(1) Statute, rule 88(1) RPE).

When a legal representative attends, participates and wishes to question a witness, an expert or the accused, the representative must make an application to the Chamber. The Chamber may require the legal representative to provide a written note of the questions and in that case the questions shall be communicated to the Prosecutor and, if appropriate, the defence, who shall be allowed to make observations within a time limit set by the Chamber. The Chamber shall then issue a ruling on the request, taking into account the stage of the proceedings, the rights of the accused, the interests of witnesses, the need for a fair, impartial and expeditious trial. The Chamber may also, if it considers it appropriate, put the question to the witness, expert or accused on behalf of the victim's legal representative.

5. Victims of crime as witnesses

Appearance before the Tribunal as a witness is voluntary, and it is the responsibility of the organs of the ICC and States Parties, to which the parties belong, should help in this regard.¹⁴⁵ The victim will not always submit testimony as a witness, but when this turns out to be necessary, and if it will not affect the rights of the defence at a particular stage in the case.¹⁴⁶ A witness who was summoned by the Court, with some exceptions, is obligated to testify (rule 65, RPE). The rules for interrogating the victim as a witness, preserving his/her safety, dignity and fair trial principles are the subject of special attention for the ICC.¹⁴⁷

Applying article 64 of the Rome Statute and with respect to rules 87 and 88 of the Rules of Procedure and Evidence, the Chamber will ensure that appropriate steps are taken to guarantee the protection of all victims and witnesses, and particularly those who have suffered trauma or who are in a vulnerable situation. The Chamber will rule on the merits of individual applications under rules 87 and 88 taking into account, inter alia, whether i) the testimony of a vulnerable witness is to be treated as confidential and access to it is to be limited to the parties and the participants in the proceedings; ii) evidence in appropriate circumstances can be given out of the direct sight of the accused or the public; iii) a witness should be able to control his or her testimony, and, if so, to what extent; iv) breaks in the evidence should be allowed as and when requested; a witness can require that a particular language is used.¹⁴⁸

In proceedings before the ICC it is acceptable to keep the identity of the witness secret, but only at the stage of preparatory proceedings if this is necessary to ensure his or her safety.¹⁴⁹

6. Protection of victims of crime – general regulations

6.1. General regulations

There is a common belief that in a fair trial before international tribunals the victims and witnesses need to be provided due guarantees, such as active role in the process, protection of their safety, dignity and privacy. Solutions implemented by the ICC in this regard are extremely

¹⁴⁵ Article 93 paragraph 1e and paragraph 7 of the Rome Statute; see also No. ICC-01/04-01/06-1379, Trial Chamber I, June 5, 2008, paras. 52-78; also No. ICC-01/05-01/08 -807-Corr, Trial Chamber III, July 12, 2010, paras. 50-54.

¹⁴⁶ See No. ICC-01/04-01/06-1119, Trial Chamber I, January 18, 2008, paras. 132-137.

¹⁴⁷ See No. ICC-01/04-01/07-1665, Trial Chamber II, 20 November 2009, at paragraph 60-83; see also No. ICC-01/04-01/06-2127, Trial Chamber I, September 16, 2009, paras. 21-30; see also No. ICC-01/04-01/06-1140, Trial Chamber I, January 29 2008, at paragraph 36.

¹⁴⁸ See No. ICC-01/04-01/06-1140, Trial Chamber I, 29 January 2008, par. 35.

¹⁴⁹ See i.a. No. ICC-01/04-01/06-Red -2763, Trial Chamber I, 25 July 2011, paras. 11 and 13.

innovative and represent a fundamental step forward in relation to the regulations applicable in the national legal systems, as well as under international human rights instruments, relating essentially to the accused' guarantees. These measures can be used at any stage of the proceedings, depending on the need to protect the interests of witnesses and victims.

The obligation to take the necessary measures to ensure the safety of witnesses and victims in the preparatory proceedings is the responsibility of the Prosecutor, and in actual proceedings - of the Trial Chamber or the Appeal Chamber.

General assumptions on the protection of the victims' position are provided for in art. 68 of the Rome Statute. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.¹⁵⁰ In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6 of the Statute. Where the disclosure of evidence or information pursuant to the Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

6.2. Specific measures

Victims, as well as witnesses, are subject to special protection under the provisions of the Statute and the Rules of Procedure and Evidence of the ICC. Regulations adopted deserve recognition and appear to be a reflection of contemporary trends in criminal law to achieve reasonable balancing between the procedural rights of the accused and the interests and safety of the victim and witness.

¹⁵⁰ See No. ICC-01/04-01/06 -1980-Anx 2, Trial Chamber I, 24 June 2009, at paragraph 48

Rule 86 of the RPE establishes in relation to article 68 of the Rome Statute the general principle according to which all the authorities of the Court are obligated to take into account the needs of victims and witnesses in the performance of their functions and activities, in particular children, elderly people, people with disabilities, victims of sexual offences. Both the victim and the witness are entitled to the right of protection against risks arising from the fact of testifying and have the opportunity to testify at the trial in camera or ex parte.

Each Chamber (rule 87 paragraph 3 of the RPE) may, in justified cases, issue a warrant for application of specific protection measures designed to prevent transmitting to the public or the media of the identity or whereabouts of the victim or a witness, or another person exposed to danger because of testimony of a witness. These measures may amongst others include an order of removal from publicly available records of the names of the victim, witness or other person exposed to the danger because of testimony of a witness, or to remove any information that could lead to their identification, including using pseudonyms in relation to those persons. Testimony may be presented by electronic or other special means, including the use of technical means enabling the alteration of pictures or voice, the use of audio-visual technology, in particular videoconferencing and closed circuit television, and the exclusive use of the sound media. Chamber may also conduct part of its proceedings in camera.

Moreover, the Chamber should show vigilance in controlling how to ask questions to the witness or the victim, in order to avoid any harassment or intimidation, paying particular attention to the attacks directed to the victims of crimes of sexual violence (Rule 88 paragraph 5, RPE).

These measures, however, in accordance with rule 67 paragraph 1, RPE must enable asking the victim and a witness questions by the Prosecutor, the defence and the Tribunal in the course of testifying. This is primarily a consequence of the principle that the scope of protection for witnesses and victims must not lead to violations of the rights of the defence. On the Lubanga case the ICC allowed witnesses with preserved anonymity to participate in the investigation, but pointed out that this will reduce their entitlements in the proceedings. These entitlements included the right to present opinions only to the extent to the objections raised by the Prosecutor's Office, a ban on the expansion of the charges brought by the Prosecutor, presentation of new evidence, interrogation of witnesses (for the sake of the right to defence), restrictions on access to the acts of case.¹⁵¹ Protection of victims and witnesses, though it may perhaps impact the openness of the trial, may not, however, result in a violation of the integrity of the process.

¹⁵¹ Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, Decision on the Arrangements for Participation of Victims a/0001/06, a/0002/06 and a/0003/06 at the Confirmation Hearing, September 22, 2006, http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-462_tEnglish.pdf, pp. 7-8

7. The institutional structure and capacity of the system of legal assistance to victims of crime

For the purpose of providing the necessary conditions and means for victims and witnesses to participate in the proceedings, the ICC set up within the framework of the Registry (article 43, paragraph 6 of the Rome Statute) a Victims and Witnesses Unit, similar to those of the ICTR and the ICTY. This Unit provides, in consultation with the Office of the Prosecutor, protective measures and security arrangements,¹⁵² counsels and gives other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses.¹⁵³ The Unit includes staff with expertise in trauma, including trauma related to crimes of sexual violence. The Victims and Witnesses Unit may provide the Prosecutor and the Court with appropriate protective measures, steps taken to ensure the safety, counselling and other assistance (article 68 paragraph 4 of the Rome Statute). An important role in ensuring protection to victims is played by the Trust Fund for Victims, established in September 2002 by the Assembly of States Parties of the ICC, acting under regulation of article 79 of the Statute. The Trust Fund is independent from the Court and is supervised by a Board of Directors. It is administered by the Registry of the ICC. Its main task is to implement reparation awards ordered against convicted persons in accordance with article 75 of the Rome Statute. The Trust Fund also grants reparations awards to victims in the case of collective awards or in cases where it is impossible to award compensation to each victim on an individual basis. The Trust Fund collects funds from voluntary contributions made by governments, international organisations and individuals and from fines, forfeiture and awards of reparations ordered by the Court against convicted persons.

The key role in effective representation of victims before the ICC plays the Office of Public Counsel for Victims, established in accordance with regulation 81 of the Regulations of the Court on 19 September 2005. Its main goal is to ensure effective participation of victims in the proceedings before the Court. Pursuant to regulation 80 of the Regulations of the Court, members of the Office may be appointed as legal representatives of victims, providing their services free of charge. The Office supports external legal representatives by providing legal advice and research.¹⁵⁴ It is the task of the Office to provide victims applying to participate with any support and assistance which may be appropriate at the stage of the proceedings which precedes the determination on their status, to inform victims having communicated with the Court of their rights and prerogatives in relation to article 53 of the Rome Statute.¹⁵⁵ The Office of Public Counsel for Victims actively responds to any requests for information and help with understanding procedural steps required for victims' participation. The Office may also act as

¹⁵² See No. ICC-01/04-01/06-1379, Trial Chamber I, 5 June 2008, paras. 52-78. See also No. ICC-01/05-01/08-807-Corr, Trial Chamber III, 12 July 2010, paras. 50-54

¹⁵³ See No. ICC-01/04-01/06-2766-Red, Trial Chamber I, 5 August 2011, paras. 66-68, 72, 83-86

¹⁵⁴ See i.a. No. ICC-02/04-01/05-134, Pre-Trial Chamber II (Single Judge), 1 February 2007, par. 13

¹⁵⁵ See No. ICC-02/04-101, Pre-Trial Chamber II (Single Judge), 10 August 2007, paras. 95, 101 and 103; see also No. ICC-02/04-125 Pre-Trial Chamber II (Single Judge), 14 March 2008, par. 194 as well as the operative part of the decision.

the Legal Representative of unrepresented applicants for reparations until their status is determined or until the Registrar arranges a Legal Representative to act on their behalf; and represent the interests of victims who have not submitted applications but who may benefit from an award for collective reparations.¹⁵⁶

¹⁵⁶ See No. ICC-01/04-01/06-2858, Trial Chamber I, 5 April 2012, paras. 7-13

F. Conclusions and recommendations

On **EU level**, the analysis of legislation regulating the position of victims of crimes shows that the improvement, which has been made during the last couple of years is outstanding. Most of the major problems concerning the system of legal aid seem to have reached some solution. Member States start to implement common, European standards in providing protection to victims of crime. Still, one way of improving European Union's legislation concerning the system of legal aid for victims of crime could be the implementation of common standards concerning means of allocation of public funds for victims' legal aid.

Based on the review of the relevant legal framework and publicly available information, as well as on the opinions of stakeholders approached, it can be concluded that in **Bulgaria** much effort is taken in striving to provide adequate legal aid to victims of crime as part of the overall process to enhance the position of those harmed by criminal activities. This is witnessed by, inter alia:

- the 2013 amendments in the *Law on Legal Aid*, expanding considerably the circle of victims of crime, eligible to receive state-provided legal aid;
- the efforts of the National Legal Aid Bureau to ensure a qualified pool of attorneys with proper specialisation, to the extent possible, who are part of the National Legal Aid Register and as such are able to provide high quality legal aid to victims;
- the recent launch of a much awaited initiative for a national hotline for primary legal aid and pilot consulting centres in disadvantaged regions;
- the ongoing strengthening of the institutional and practical framework to support specific, particularly vulnerable, groups of victims, like victims of human trafficking.

Nevertheless, taking into account the current situation and the overall status of victims in Bulgarian criminal procedure, the following recommendations can be made:

- Regarding legislation, a full review is to be made of the compliance of Bulgarian legislation with the new *2012 Directive* and relevant transposition effort should be taken, where needed;
- Regarding research, a thorough study should be made of relevant legislation, policies and practices of EU Member States, regarding legal aid and advice to victims of crime; relevant policies and practices should be transposed in close cooperation with Member State entities which generated them;
- Regarding institutional capacity, the National Legal Aid Bureau is recommended to use all channels via which its knowledge base for working with victims of crime can be expanded, including its cooperation with bar councils and victim protection NGOs;
- Regarding practical framework, the experience to be gathered by the newly launched national primary legal aid hotline and pilot consulting centres is to be

- analysed carefully and replicated via other consulting centres to be opened especially in other vulnerable regions;
- Regarding general and specialised training, the existing efforts to give attorneys involved general training on working with victims and specialised legal and psychological knowledge on their particular situation should be strengthened and enhanced.

The **Italian** system suffers a cultural gap about the importance of the victims' status - Italian legal system has higher awareness on the detainee status and on the related problems caused by overcrowded prisons, than on the victims' status. A clear and comprehensive framework on victims' rights is missing in the Italian legal system – substantive assistance is only offered to those who are seriously threatened by certain types of offences and the support is given because of their contribution to the investigations. A recent initiative piloted by local communities consists of programmes devoted to the reintegration of the victims of crimes in the society. This help is, in certain circumstances, more appreciated than the *stricto sensu* financial compensation. Again, the risk in Italy is that priority is given to the reintegration of those who have committed a crime and have served their prison term, than to the awareness of the emotional distress of victims of crimes. In 2001, the Minister of Justice set up an "Observatory on problems and support of the victims of crimes" (*Osservatorio sui problemi e sul sostegno delle vittime dei reati*) with the main task to raise the public awareness on the rights and needs of victims. However, in 2003 the Observatory was closed. Re-establishing such an important institution would be very useful for opening a fruitful debate on the victims' status which remains weak in the Italian society. Furthermore, several drafts recognising a set of rights to the victim during the pre-trial investigations have been submitted to the Italian Parliament and their adoption should be supported.

In **Latvia**, stakeholders indicated the formalistic approach of legal practitioners as one of the main problems. If this attitude does not change, new initiatives and law amendments will not achieve the expected results. Particular attention should be paid to informing the victims about their rights and their role in criminal proceedings as well as about the possibilities to receive legal aid, compensation and psychological help.

It is recommended that the *Criminal Procedure Law* expands the existing responsibilities of specialists from law enforcement institutions with the obligation to provide a detailed excerpt from the regulatory enactments that define the victims' rights and to explain these in an understandable and simple language. The one stop online platform (www.cietusajiem.lv) should be recognised on a national level and key institutions should contribute to its content with updated information on all relevant issues.

Not only should the victims be informed about their rights, they should also be provided with professional assistance to exercise them. State ensured legal aid should be ensured not only after the initiation of the criminal proceedings but also before it in particular cases. Moreover, the criteria of assigning legal aid should be reviewed, allowing the person directing the

proceedings to evaluate the financial situation of the person in each individual case instead of using a formal status of needy person.

In **Poland**, recommendations are to be made concerning two main fields. Regarding the **scope of information passed to the injured party**, changes should address the issue of notice of the injured party of his/her entitlements. The provisions in the *Code of Criminal Procedure* do not contain an obligation for a comprehensive explanation to the victim of his/her entitlements and duties. Such an obligation exists with respect to the accused, which means that from the very beginning of the criminal proceedings the injured party is treated unequally. This is contrary to the principle of equality of arms as part of an adversarial criminal proceeding. In light of the above, the *Code of Criminal Procedure* should provide for informing the accused and the injured party equally. However, understanding is also needed on the part of procedural authorities of the situation of the injured party. Transmission of information that includes a list of the most important provisions is not sufficient, since legal terminology is usually not understandable to the victim.

The issue of **mentality of the procedural authorities** is raised due to the fact that the injured party cannot be treated merely as a source of evidence. Procedural authorities should seek to protect victims of crime from double victimisation, while the existing practice in this respect leaves a lot to wish for. In light of the above, when addressing the need for mandatory training for police officers, prosecutors and judges for proper treatment of victims of crime psychological issues should also be considered, in addition to the legal matter. Victims of crime often experience great trauma as a result of the committed crime, which is why it is so important that the activities of the procedural authorities do not intensify this trauma.

In **Spain**, prosecutors (Round Table 2010) insist that it is necessary to strengthen the relationship with the Counselling centres for victims of crimes (OAVD). Lawyers (Round Table of General Council Spanish Advocacy and Bar Associations, Round Table September 2013) are of the opinion that the advice provided by a specialised lawyer to the victims of gender based violence before opening the proceeding should be mandatory, and not just a right of the victim, since the victim can waive the right ignoring the subsequent consequences for not being previously advised.

NGO Save the Children (Report November 2012, Spain) recommends trainings regarding minors' rights and capabilities for the employees of the Justice Administrations that deal with children, Judiciary and Prosecutors.

RECOMMENDATIONS FOR THE EUROPEAN LEGAL AID SYSTEM

Paweł Wiliński

1. Disappearing Victims

If we check the statistic data, official numbers from yearbooks, we can see a very surprising factor explaining actual position of a victim in the assessment of the official bodies. Almost none of them contain indication of the number of crime victims. We may find detailed information about a number of crimes committed in a specific country, region, district. Without much effort we can get information about specific types of crimes committed in a given year or a period, detailed information on the amount of damages, etc. There will be a lot about an offender, a suspect, an accused, about people' age, vulnerable groups, etc. However, no information can be found about the group of victims facing those crimes and about the way their interests are protected. For example, in Poland there were 1.063.906 crimes reported (identified) and 438.820 suspects in 2013. In 2012 the number of reported crimes was 1.119.803 and there were 500.539 suspects identified. However, in the same data there is no given number of victims of those crimes. It is similar, with some exceptions, in all EU countries.

We know that the number of victims is significant. It is at least as big as a number of crimes reported. At the same time victims are very rarely a full-fledged subject of a process of settlement of the crime, participating to the criminal trial as a person that calls for the protection of their rights infringed by a crime. In many cases it results from the content of existing legislation, placing a victim only in a position of a witness.

We not always identify properly all reasons why a victim is not a desirable participant of the proceedings. All, or at least majority of professionals – the judges, the prosecutors, the police officers, the legal representatives, participating to any activities that result from crime (like investigations, trails), confirm that a victim is not always welcomed or desirable if he wish to seek actively the compensation of a crime or a restitution.

Anyone who has ever been a victim may confirm that the position of a crime victim is very powerless. It is weak not because of a lack of formal guaranties and procedural safeguards, constitutional rights and freedoms. The formal list of provisions is sometimes quite long. The main reason comes from two factors:

- 1) victims' lack of the knowledge,
- 2) victims' lack of understanding of their own rights.

Formal guaranties and procedural safeguards have itself no value for victims. It is mostly because victims do not know what and how they can protect their interest.

2. Access to Information or to Legal Aid?

Awareness of personal rights is the foundation of an attentive and effective protection for victims. For that reason all activities aimed at ensuring access to information are of a great importance. In recent years, an increasing number of initiatives can be noticed. Research grants, special brochures, information leaflets dedicated to victims, internet guides, actions pushing legislators to formulate instruction in an understandable way are the tools that may bring some positive effect. Yet, we should have no illusions. All this will not bring a desirable effect. It should be rather understood as the first and necessary step that should be supported but not replaced.

All previous experience and activities taken during a grant programme *Improving Protection of Victims' Rights: Access to Legal Aid* implementation, i.a. a comparative study conducted in the EU Member States and before ICC, trainings of practitioners (the judges, the prosecutors, the police officers, the NGO members) and meetings with citizens, clearly lead to the point that there is nothing more important for a victim than an access to a legal aid.

The access to a legal aid allows a victim to understand the complex situation, current legislation, jurisprudence, existing practice, legal language, activities of state organs, meaning of behaving of other participants. It is the most effective tool for victims.

3. Common access to legal aid for victims.

The real answer for the problem of a lack of victims' protection system in the EU is a common access to a legal aid for victims. **We need not only an access to legal aid but also a real Legal Aid System.** So far, we have been ready, as every Member State separately and the EU together, to establish and develop legal acts on:

- a) the minimum rights of a suspect, an accused, deprived of liberty, the minors;
- b) special instruments or cooperation in criminal matters – i.a. European Arrest Warrant, European Evidence Warrant;
- c) principles of mutual trust and mutual recognition.

There is a discussion, but in my opinion still not very successful, about the European standards on the access to a lawyer for a suspect and an accused.

Common access to legal aid for victims was removed from the table when the final version of *DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012* establishing minimum standards on the rights, support and protection of victims of crime was decided. This guarantee we can find in Commission Recommendation of 27th November 2013 on the right to legal aid for suspects or accused in criminal proceedings, 2013/C 378/03, but the right to legal aid is only restricted to a suspect or an accused person.

There is no doubt that we should seek for instruments similar to those introduced in directive on right of access to a lawyer in criminal proceedings (2013/48/UE, from November 22 2013). Therefore, the following crucial question arises: Why the common access to a legal aid was deleted from a discussion on victims' rights and restricted to suspects and accused only? The answer seems very simple. It was because of money, of course.

4. Is legal aid for victims really too expensive?

Is legal aid for victims really too expensive? No one knows that for sure. No one has ever calculated such a cost. THE COST. The real costs. Not only economic costs. Even when speaking about economic costs, not only the direct one, most visible and countable, that is the money that had to be paid to a lawyer. No one has ever counted real COSTS of a lack of legal aid! This failure relates not only to a victim's protection but also to a protection addressed to an accused or a suspect.

Governments have some unclear calculations of this direct economic cost (in a short term perspective) and they usually use them in a discussion as a convenient and easy to manipulate argument. This kind of arguments are obviously difficult to overturn because no one else carries such calculations. No doubt that Governments are and will be against the extension of the legal aid system in both, inner (national) and the EU legal systems. This approach is not a surprise and can be easily understood. Any extension of the legal aid system means real money from the EU budget to be spent on legal aid in a country.

However, the point is that these direct numbers are always misleading. They do not take into account the real economic costs of ignorance, fraud, incompetence, mistakes (all that create the hidden costs of ineffective legal aid).

5. Can we really afford "the Hidden Costs of ineffective legal aid"?

Some EU countries deal with the "legal aid system" with great results and efficiency (see Portugal). Some are traditionally recognized as strong in legal aid support system and active voluntary sector with citizens advice system supplementing somehow legal aid (England, Wales). Yet, the discussion that has taken place in the UK in recent years, financial cuts and reduction tasks show that nothing is given for good in this field.

For all above reasons we should start to discuss about real costs of the legal aid system. We should speak about: the financial, the social, the justice system, the individual and all other kind of such costs.¹⁵⁷ What we have to do at the very beginning is:

- a) to estimate costs of the legal aid changes;
- b) to estimate costs of the lack or ineffective legal aid.

The evaluation of the direct economic costs must concentrate not only on the estimation of amount of money necessary for employment of legal aid. Also, additional costs of prolonging the proceedings should be calculated. They are not as visible but this costs exist (costs of additional court proceedings, salaries, costs of courtrooms, service, correspondence, etc). It has to be focused on real analysis of few crucial questions:

- **Is this really true that participation of a lawyer in a trial is more expensive than its absence?**
- **Is this true that most violations of victims' and accused rights in due process result from the absence of a lawyer during a trial?**
- **What is the cost of actions taken as a result of lack of legal aid?** - effective appellate proceedings, extra proceedings, long term imprisonment, usage of preventive measures, cassations, resumptions of proceedings, compensations, etc.;
- **What are the costs of the Justice System?** The costs of lengths of proceedings are difficult to assess, time consumed can not be used for other cases, excessive lengths increases;
- **What are social costs?** Trust to the justice system is crucial for proper existence of society, community, country. The cost of loss of confidence is always very high (visible in the attitude towards the state and its community);
- **Individual, human costs are probably the highest costs**, arising from the isolation from the society, feelings of abandonment or helplessness in the face of the state mechanisms, the lack of support. All this creates passive attitude towards society, breaking individualism by so called the justice system which breaks individuality as a value in the society.

All this questions must be answered before we can finally decide about the future of the legal aid in the Europe. However, I strongly believe that answers will give us irresistible financial, social and human reasons for necessity of the European Legal Aid System.

6. The basics of the European Legal Aid System

Creation of the European Legal Aid System is a long term perspective. Many legal, political, economic, social issues should be discussed and taken into account. We should not forget about existing activities in the third sector (voluntary sector), citizens advice systems, social advice service supplementing public service in many countries, legal pro bono programs,

¹⁵⁷ More on that topic P. Wilinski, *Ineffective Legal Aid: the Hidden Cost or How to Fill the Barrel*, ECBA conference, June 2014.

activities of legal clinics in some EU countries. All of these initiatives should be the basis for the creation of a coherent system of legal aid.

The European Legal Aid System should be based on at least following assumptions:

- a) **Legal aid and Access to a lawyer “are twins” that should be inseparable.**
- b) **Legal aid is the fundamental right. Without it most of fundamental rights have no value. The right to defense by a lawyer is a part of such a legal aid right.**
- c) **The access to legal aid to every victim and accused should be granted on the basis of the same criteria (the merit test, the means test, the quality test, the rights to review decisions).**
- d) **The access to legal aid to every victim and accused does not always mean legal aid for free (see Polish example).**
- e) **The obligation to all EU Member States to introduce legal aid for victims and accused as equal minimum standard.**

DIRECTIVE 2012/29/EU OF 25 OCTOBER 2012 ESTABLISHING MINIMUM STANDARDS ON THE RIGHTS, SUPPORT AND PROTECTION OF VICTIMS OF CRIME

Cezary Kulesza

1. Introductory remarks

We can distinguish two basic directions of the European criminal procedures' development: 1/ mutual functional assimilation of those systems and 2/ harmonization and cooperation¹.

The justice systems' natural tendency towards assimilation may be perceived from at least two perspectives: the human rights protection and aspiration for the increasing effectiveness of the justice systems. Undoubtedly, the leading role in the development of the human rights protection in the criminal procedure has been played by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, along with the jurisdiction of the European Court of Human Rights which increased the accused person's rights to effective defence to all the stages of the procedure. Moreover, to a certain extent, the Court started applying the principle of fair trial also to the victim.²

As far as the victim is concerned, the limited decisions of the ECtHR concerning the victim and the fact that the Convention focuses, in principle, on the rights of the defendant demonstrate that the rights of the victims are sometimes sacrificed in the name of narrowly defined cost-effectiveness of the trial. One can mention, for instance, the opinion of S. Waltoś: "One can suspect that the time for revising the European Convention of Human Rights will come. The Convention was devised as a charter protecting the rights of the person against whom the process is conducted and as a noble confrontation with what happens in the world that has been subdued. Today the situation is different. No one doubts now that protection should be extended to cover the rights of the victim in a criminal process. Such regulations are increasingly numerous in contemporary codes of criminal procedure and the time is approaching to properly update the European Convention of Human Rights."³

¹ See C. Kulesza, *Developments of the European Criminal Justice Systems- Defence Perspective* (in:) *Current Problems of the Penal Law and Criminology*, (ed. E. W. Pływaczewski), Warsaw 2012, pp. 317- 318.

² See ECtHR judgments: *Doorson v. the Netherlands* (26 March 1996, para.76 and 71-75) and *Van Mechelen and others v. the Netherlands* (23 April 1997, paras 56-65).

³ S. Waltoś: *Wizja procesu karnego XXI wieku* [A vision of the criminal process of the 21st century], in: *Postępowanie karne w XXI wieku: materiały z ogólnopolskiej konferencji naukowej, Popowo 26–28 października 2001 r.* [Criminal

It should be also noted, that article 6 (1) of the ECHR does not provide any right to judicial proceedings for the victim of an offence as such. However, the Convention does protect the right of any individual to a fair trial of a matter affecting his: civil rights and obligations”, which thus guarantees a right to trial for a person claiming compensation for a criminal offence. Where a States’ legal system allows a combination of the two actions (civil and criminal), Article 6(1) can be properly invoked in joint proceedings.⁴

In contrary to the natural resemblance processes of the European criminal justice systems, harmonization and cooperation of those systems was a top-down process, carried out in a bureaucratic way, by supranational organs: European Economic Community at first and then by European Community.⁵ Legal basis for the legal provisions to be incorporated into the EC primary law for the cooperation of Member States in the field of justice and home affairs was provided by the Treaty of Maastricht (TEU) of 1992. At the beginning, the basic form of cooperation in the frame of the third pillar was created by conventions – international agreements binding Member States. Then, based on the Amsterdam Treaty of 1997, which significantly changed TEU, new legal instruments for the third pillar were introduced: framework decisions and decisions which to a high degree supplanted the conventions.

Framework decisions issued based on the authorization provided by art. 34 (2) (b) TEU, can be looked at, similarly to the resemblance processes described above, from a human rights perspective, perspective of a states’ interests protection including criminal policy and from a perspective of effectiveness increase concerning criminal justice systems.

2. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replaced Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ L 82, 22.3.2001, p. 1).

The main goal of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings (Article 1 point 1)

procedure of the 21st century. materials from the Poland-wide academic conference, Popowo 26-28 October 2001], P. Kruszyński, ed., Warsaw 2002, pp. 17–18.

⁴ See ECtHR judgment: *X and Y v. The Netherlands* (1985), 8 EHRR 235

⁵ Compare: S. Waltoś, A. Wąsek, *Harmonizacja prawa karnego w Europie z polskiej perspektywy*, cz. II [Harmonisation of criminal law in Europe from the Polish perspective, part. II], *Palestra* 1997, No. 1–2, p. 12; E. Eser, *Wege und Hürden transnationaler Strafrechtspflege in Europa*, in: *Verbrechensbekämpfung in europäischer Dimension: Arbeitstagung des Bundeskriminalamtes Wiesbaden vom 26.–28. November 1991*, Wiesbaden 1992, pp. 21–53; J.R. Spencer, *Why Is the Harmonisation of Penal Law Necessary?*, in: A. Klip, H. van der Wilt [eds.], *Harmonisation and harmonising measures in criminal law*, Amsterdam 2002, pp. 47–28; O. Lagodny, *Grundkonstellationen des internationalen Strafrechts*, ZStW 1989, Band 101, pp. 987–1011; H. Jung, H.J. Schroth, *Das Strafrecht als Gegenstand der Rechtsangleichung*, GA 1983, pp. 244–246.

According to the title this Directive lays down minimum standards and Member States may extend the rights set out in this Directive in order to provide a higher level of protection.

It is very important to underline, that the rights set out in this Directive are without prejudice to the rights of the offender. The term 'offender' refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence (preamble, point 15). Such an assumption can be found in both the preliminary provisions of European codes of criminal procedure and in amendments introducing new rights for victims into these codes. For example, the reform of criminal procedure in France in 2000 added a preliminary article to the beginning of the *Code de procédure pénale*, (CPP) setting out guiding principles: the judicial authority ensures that victims are informed and that their rights are respected throughout any criminal process ("*L'autorité judiciaire elle à l'information et à garantie des droits des victims au cours de toute procédure pénale*").⁶

The same article includes one of the guaranties of the accused's right to defence - namely presumption of innocence: "*Toute personne suspectée ou poursuivie est présumée innocente tant que sa culpabilité n'a pas été établie. Les atteintes à sa presumption d'innocence sont prévenues, réparées et réprimées dans les conditions prévues par la loi*"⁷

In German "Draft Bill for an Act to Strengthen the Rights of Injured Persons and Witnesses in Criminal Proceedings", or the Second Victims' Rights Reform Act (2. *Opferrechtsreformgesetz*) of 2009 it was stated that above all, the aim of this act was to achieve practical improvements for the victims of crime without challenging the right of the accused to a fair trial in accordance with the rule of law⁸.

Of note are also opinions in the Polish literature concerning the provision of art. 2 §1 (3) of the Polish Code of Criminal Procedure (CCP) (criminal proceedings must be shaped so as to "take into account the legally protected interests of the victim") that "in the procedural justice concept, the sole objective is to take into account, and not to assure, proper protection of the victim's rights."⁹

As mentioned in the preamble of the Directive, the role of victims in the criminal justice system and whether they can participate actively in criminal proceedings vary across Member States, depending on the national system, and is determined by one or more of the following criteria:

⁶ J.F. Renucci, E.Allain, *Code de procédure pénale*, (ed.48), Paris 2007, p. 11.

⁷ .F. Renucci, E.Allain, *Code de procédure pénale*, pp. 12-13.

⁸ M.Peter, *Measures to protect victims in German criminal proceedings. A summary with special focus on the key points of the Second Victims' Rights Reform Act . The 144th International Senior Seminar. The 144th The Enhancement of Appropriate Measures for Victims of Crime at Each Stage of the Criminal Justice Process Visiting Experts Papers*, Resource Material Sources Nr 81, www.e-bookspdf.org, pp. 125 – 126.

⁹ P. Wiliński, *Sprawiedliwość proceduralna a proces karny* [Procedural justice and the criminal process], in: *Rzeczony proces karny. Księga jubileuszowa Profesor Zofii Świdwy* [Fair trial. Anniversary book for Professor Zofia Świdwa], Warsaw 2009, p.87.

- 1/ whether the national system provides for a legal status as a party to criminal proceedings;
- 2/ whether the victim is under a legal requirement or is requested to participate actively in criminal proceedings, for example as a witness;
- 3/ and/or whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, where the national system does not provide that victims have the legal status of a party to the criminal proceedings.

Member States should determine which of those criteria apply to determine the scope of rights set out in this Directive where there are references to the role of the victim in the relevant criminal justice system (Preamble, point. 20).

The rights and interests of victims of crime can be implemented using two different models: the extension of their rights to participate actively in the process (procedural rights) - "model of procedural rights" or widening of the goals and tasks of the police, prosecutors and courts which are targeted at meeting the needs of victims of crime - "model of services." First model treats the victim as an entity, which should be given broad powers to pursue their interests in criminal proceedings¹⁰. Service model perceives the victim as a special target group for services and activities provided by the procedural agencies. In a certain range, both models can be used together in various combinations.

Among the rights granted to victims by the Directive the following can generally be distinguished: provision of information and support (chapter 2), participation in criminal proceedings (chapter 3), protection of victims and recognition of victims with specific protection needs (chapter 4). It must be noted, that in the case of strengthening the rights of victims a conflict with the right of the accused to defence may arise. This conflict may be particularly apparent in the model of procedural rights, where the victim may act as a prosecutor (subsidiary or private) or civil plaintiff. Even in countries that have adopted the model of services, conflict can arise between the rights of the accused to a defence and the right of the victim to protection. This problem has been recognized in the art. 23 of the Directive, which states that the right to protection of victims with specific protection needs during criminal proceedings can not prejudice to the rights of the defence. However, in this paper we make a brief analysis of the procedural rights of victims in the justice systems of Germany, Poland, France and England. One can assume that the German and Polish system of criminal process include main elements of the model of procedural rights, in the French system the elements of both models are balanced, and the English justice system adopted mainly services model¹¹.

¹⁰ See J.J.M. Van Dijk, *Victim's Rights: A Right to better Services or a Right to Active Participation*, (in:) *Criminal Law in Action. An Overview of current issues in Western Societies* (J.J.M. Van Dijk, C. Hoffmans, J. Schuttler, S. Stoliwijk – eds.) Arnhem 1986, pp. 251 – 255.

¹¹ Compare C.Kulesza, *The injured person in the Polish criminal proceedings in the light of law and practice of the selected western countries*, Białystok 1995, pp. 157 -199.

German proceedings is ruled by the obligation on the part of the public prosecution office, which is the lead investigating agency in criminal procedural law, to launch investigation proceedings and investigate the factual situation, provided that sufficient actual indications of a crime exist. This principle, which is set forth in § 152 (2) and §160 (1) StPO, and obligates the public prosecution office to take action, is referred to as the *Legalitätsprinzip*, or the “principle of legality.”¹² As stated in the doctrine, this principle is based on the absolute equality of all citizens before the law in criminal matters. However it must be noted, that today in Germany this rule only really concerns crimes (*Verbrechen*) und offences (*Vergehen*) of a certain level of importance. In reality, a development linked to the growth of petty and moderate crime (*Bagatelldelikte*) has gradually replaced the principle of legality with that of discretion to prosecute (*Opportunitätsprinzip*).¹³

After completing its investigations, the public prosecution office considers whether public charges are to be preferred. If it does not prefer public charge, it must inform the complainant of its decision and indicate the reasons therefore. Moreover, the public prosecution office must inform the victim of the criminal offence of the possibility of contesting this decision (§ 171 StPO). The victim then has the opportunity to lodge a complaint within two weeks with the Office of the Public Prosecutor General against the decision of the public prosecution office (§ 172 (1) StPO). If this complaint is dismissed by the Office of the Public Prosecutor General, the victim may move within one month to the Higher Regional Court for a decision on whether to reopen the investigation proceedings (§ 172 (2-4) StPO)¹⁴.

In the German legal system actions such as the private accusation (*Privatklage*) and the subsidiary accusation (*Nebenklage*) open up a wide range (at least theoretically) for the initiative by the victim. From the point of view of victim protection, it is important for victims to be able to join the public prosecution as a subsidiary prosecutor (*Nebenkläger*). Joining the public prosecution as a private accessory prosecutor gives the injured persons named in § 395 StPO comprehensive powers to participate in the entire proceedings starting with the preferment of public charges. Private accessory prosecutors have the possibility of contributing actively to the proceedings and influencing them by means of statements, questions, motions and even appellate remedies¹⁵.

As opposed to a further step-by-step expansion of the group of persons entitled to join the public prosecution as a subsidiary prosecutor, the Second Victims’ Rights Reform Act of 2009

¹² See S. Beukelmann, (in:) *Strafprozessordnung. Mit Gerichtsverfassungsgesetz. Kommentar* (J.P.Graf – Ed.) C.H.Beck, München 2010, pp. 632-633; C. Roxin, B. Schünemann, *Strafverfahrensrecht*, 26 Auflage, C.H. Beck, München 2009, pp.

¹³ R. Juy-Birman, *The German system*, (in:) *European Criminal Procedures*, pp. 308 – 309.

¹⁴ This procedure is called in Germany „Klageerzwingungsverfahren” – C. Gorf, (in:) *Strafprozessordnung*, pp.755 – 762.

¹⁵ M.Peter, *Measures to protect victims in German criminal proceedings. A summary with special focus on the key points of the Second Victims’ Rights Reform Act . The 144th International Senior Seminar. The 144th The Enhancement of Appropriate Measures for Victims of Crime at Each Stage of the Criminal Justice Process Visiting Experts Papers*, Resource Material Sources Nr 81 , www.e-bookspdf.org, p. 132.

strived to provide a coherent overall concept and new direction for § 395 StPO¹⁶. This overall concept was designed to revolve consistently and recognisably around the criterion of protecting those victims who are particularly vulnerable. With this concept, the Federal Government legislative initiative followed the recommendations of academics and practitioners¹⁷.

Subsidiary prosecution is an accessory action, which may be applied parallel to public prosecutor's action, and is applicable to a large number of offences¹⁸. In the case of private accusation, a "private initiative" is (at least in theory) more effective as the action taken by individual than it appears as an autonomous means of seizing the courts. It is worth to underline some risk: the public prosecutor can take over the case from the victim seizing of the court and the accused may counter-claim for damages. The private accusation is, however, extremely limited in its sphere of application private action does not exclude the power of the public prosecutor to drop the case.

In Germany the victim has also the possibility of asserting a claim for damages against the wrongdoer as early as the criminal proceedings stage by means of a so-called "adhesive procedure" (*Adhäsionsverfahren*) provided for in § 403 et seqq. StPO¹⁹.

Polish justice system just like the German one is based on the principle of legality and upholds the model of procedural rights. Therefore, the victim is a party to the preparatory proceedings and during the trial he may exercise the rights of subsidiary prosecutor, private prosecutor or submit a civil action to the court ("adhesive procedure"). The Polish CCP of 1997 compared with the former CCP of 1969 largely removed the unwarranted restriction of rights of subsidiary prosecutor and the civil plaintiff. The CCP guaranteed the victim the right to lodge a subsidiary complaint when the public prosecutor redeemed proceedings. Procedure for bringing such a complaint has been simplified as a result of amendments to the CCP by the Act of 29.03.2007 (OJ No 64 poz.432). amending the Law on the Prosecutor's Office and other laws, in force from 12.07.2007. As a major shift from the previous codification should be considered an introduction of victim-offender mediation to the Polish judicial system., The rank of victim-offender mediation significantly increased after the amendment of 10.01.2003 (Journal Laws No. 17, item 155) came into force²⁰.

The French criminal procedure works on the basis of discretionary prosecution. The public prosecutor has the task to initiate the prosecution (article 31 CPP), and he must evaluate not

¹⁶ B. Weiner, (in:) *Strafprozessordnung. Mit Gerichtsverfassungsgesetz. Kommentar* (J.P.Graf – Ed.) C.H.Beck, München 2010, pp. 1712 – 1720.

¹⁷ M.Peter, *Measures*, p.132

¹⁸ Compare, C. Roxin, B. Schünemann, *Strafverfahrensrecht*, , pp. 474 – 477.

¹⁹ C.Roxin, B. Schünemann, *Strafverfahrensrecht*, pp. 477 – 480.

²⁰ Compare C. Kulesza, *The implementation of European standards on the treatment of victims of crime in the Polish penal law*, (in :) *Position of the victim in criminal proceedings - European standards and national law /* edited by T. Cielecki, J. B. Banach-Gutierrez, A. Suchorska /, Szczytno 2008, pp. 24 -40.

only the legal basis of the case but also the appropriateness - of prosecution²¹. The victim has no official role in the investigation stage. Like any other citizen, he has no rights other than the right to report the offence (in his case the report being called a *plainte*). Even then, the police have no obligation to inform him about the progress of the proceedings²².

Once a prosecution has been formally instituted, the victim plays a more important role in the prosecution. He will be informed by the public prosecutor if the case is dropped (article 40 § 1 CPP); reparation for damage to him may be a condition for the case being dropped; and he plays a major role in the mediation procedure.

The victim of an offence, if he has suffered personal and direct damage (article 2 CPP), may come before the criminal court as a *partie civile*, either by joining in a prosecution already started, or by starting one²³.

In the first situation, he may join in proceedings that are already pending (before the *juge d'instruction* or the court of judgment), in order to demand compensation for the damage done. In the second situation, he may bypass the decision of the public prosecutor not to bring an action, either by complaining of an offence and constituting himself *partie civile* before the most senior *juge d'instruction*, or by directly denouncing the offender before the *tribunal correctionnel* or the *tribunal de police*; however, the victim must pay costs in advance.

The *partie civile* is questioned in the presence of his lawyer, unless he decides otherwise (article 114 CPP)²⁴. The accused and the victim may call on the *juge d'instruction* by written request, accompanied by reasons, that certain investigations be carried out (article 82-1 CPP): for example, interrogation, confrontation, hearing of a witness or *partie civile*, visit to the scene of crime, or production of important objects of evidence. The law of 15 June 2000 also provides that a request of this sort may be formulated by the parties concerning "any other acts which seem to them to be necessary to the discovery of the truth" (article 82-1 CPP). The judge may only refuse this request by an order, accompanied by reasons, delivered at the latest one month after receiving the request²⁵. If the instruction seems unusually long, the *partie civile* may, one year after his constitution as *partie civile*, request the *juge d'instruction* to reach a decision, under the same conditions as the accused (article 175-1 CPP)²⁶.

There are two objectives in bringing a civil action before a criminal court: to obtain a ruling on the guilt of the person and to obtain compensation for the damage suffered. However, the victim's action is not dependent on a claim for damages, and the admissibility of

²¹ J.F. Renucci, E.Allain, *Code de procédure pénale*, p.121.

²² See V. Dervieux, *The French System* (in:) *European Criminal Procedures*, pp.238 – 239.

²³ See M. Chiavaro, *Private parties: the rights of the defendant and the victim*, (in:) *European Criminal Procedures* (ed. M. Delmas-Marty, J.R. Spencer), Cambridge 2008, p. 543 – 544; J.F. Renucci, E.Allain, *Code de procédure pénale* pp.,23 – 37.

²⁴ F. Renucci, E.Allain, *Code de procédure pénale*, pp. 338 -347.

²⁵ V. Dervieux, *The French System* (in:) *European Criminal Procedures*, pp. 242, 250.

²⁶ F. Renucci, E.Allain, *Code de procédure pénale*, pp. 480-483.

the civil action does not automatically imply that damages will be awarded to the victim. On the other hand, compensation of the victim by the criminal court does suppose, as a general rule, the conviction of the defendant. However, the acquittal by the *tribunal correctionnel* or by the *tribunal de police* of a person prosecuted for an offence which does not require proof of intention is no barrier to the court awarding damages (article 470-1 para. 1 CPP as modified by law no. 96-393 of 12 May 1996). More broadly, the defendant is acquitted, if it is clear from the facts that the defendant has committed a civil wrong even if not guilty of the crime for which he has been tried (article 372 CPP; Cass. Crim., 14 January 1981, *Bull.*, no. 24.)²⁷.

In English law the victim, as such, has no right to start a prosecution. However, in principle any citizen (whether personally affected by the offence or not) has the right to institute a private prosecution. The official Committee on whose recommendations the Crown Prosecution Service was created thought that an unrestricted right of private prosecution was incompatible with the new organization that it proposed – but the government of the day thought otherwise, and in the section 6(1) of Prosecution of Offences Act 1985 the right of private prosecution is expressly preserved. However, by section 6(2) the right to bring a private prosecution is subject to the power of the DPP to take it over – and, if he thinks it proper, to discontinue it²⁸. Because of the fact that English criminal justice system works on the basis of discretionary prosecution, the police and Crown Prosecution Service have a lot of possibilities to drop the charges.²⁹

Although private prosecutions in England are now comparatively rare, they are far from unknown – despite the practical difficulties for the would-be prosecutor, which include the risk that the DPP will take over the prosecution and formally end it. Most private prosecutions are brought by those claiming to be the victim of the offence in question, or (in cases of homicide) by their relatives.³⁰

During the investigation, the victim has no rights whatsoever. The *Victim's charter*, a document published by the Home Office, tells them that they can expect the police to keep them informed, but they have no legal right to information. English criminal law, unlike the law of some other countries, does not make it a precondition for the prosecution of certain types of offence that the victim consents. Thus the victim has no legal right to put a stop to an investigation or a prosecution, although in practice the police will often be only too happy to drop a case if the victim have any legal right to insist on the police taking action. To some extent he may be able to put pressure on the police by threatening to bring a private prosecution; but if he does start a private prosecution, he has no right to require the police to share with him the information they have collected.³¹

²⁷ See V. Dervieux, *The French System* (in:) *European Criminal Procedures*, p. 226 – 227; F. Renucci, E.Allain, *Code de procédure pénale*, pp. 775 -777.

²⁸ J.R. Spencer, *The English system* (in:) *European Criminal Procedures*, pp. 152 – 153, 156.

²⁹ E. Matthias, *The balance of power between the police and the public prosecutor*, (in:) *European Criminal Procedures*, pp. 470 – 471.

³⁰ J.R. Spencer, *The English system*, p. 198.

³¹ *R. v. DPP, ex p. Hallas* (1988) 87 CrAppR 340

In practice, an agreement between the victim and the accused can result in the prosecution being dropped. This only occurs, however, where the police and the Crown Prosecution Service are prepared to discontinue the prosecution: in law, the victim has no right to prevent them from continuing with the prosecution even if he or she wishes to put an end to it.³²

If there is a public prosecution, the victim has no right to join in as *partie civile* – and although the courts are obliged to make compensation orders where this is feasible³³, the victim has no formal *locus standi* to ask for one. Against this background there has been considerable pressure in recent years to improve the position of the victim. There is public discussion about the victim as an element to weigh up when deciding on the sentence³⁴.

The resemblance of the European criminal justice systems is accompanied also by the closeness of the concept of crime prosecution accepted in systems declaring to be directed by the rule of the prosecution's legalism and those which for many years have been examples of opportunism. It is a very important issue because, as it is aptly noticed even in Polish literature, in the attitude toward the binding prosecution concept we can find the attitude toward the goals of criminal procedure and its role in the solution of social problems deriving from committed crimes and in the creation of the principles of criminal policy. Observing the evolution of those ideas for example in Germany, France or England, M. Rzewnicka-Rogacka finds legalism and opportunism in prosecution; although they express different ideas of reaction to the crime, they do not remain in a simple relation occurring between the procedural principle and exception from the principle. Their mutual relation is not expressed only in mutual functional antinomy, but it consists in their simultaneous presence in the legal systems of different states, regardless of which of them adopted *in concreto* holds a dominating position. Presently, neither legalism, nor opportunism of the prosecution occurs in a clear form. That is why, the division of the legal systems into continental Europe and common law tradition is not a deciding factor³⁵. The problem of the competition of legalism and opportunism principles is in fact the problem of mutual competition of their advantages and depreciation of the raised disadvantages. Those were the pragmatic aspects which decided that the rules of opportunism spread in continental Europe's countries with legalism tradition and that the opportunism system was not accepted *in corpore* but functional and financial arguments brought a new „softer” face of prosecution's legalism.³⁶

It must be noted, that the degree of recognition given by a legal system to the right of the victim to institute criminal proceedings is not necessarily related or proportional to the ability

³² J.R. Spencer, *op.cit.*, s. 210 – 211.

³³ The Powers of Criminal Courts (Sentencing) Act 2000, s. 130(3), requires the court, when sentencing, to give reasons where it fails to make a compensation order in a situation where it has the power to do so.

³⁴ R v. *Perks* [2000] CrimLR 606; *Blackstone*, paras. D17.1 and E1.12; *Practice Direction (Crime: Victim Personal Statements)* [2001] 1 WRL 2038

³⁵ Compare: M. Rzewnicka-Rogacka, *Oportunizm i legalizm ścigania w świetle współczesnych przeobrażeń procesu karnego* [Opportunism and the legalism of law enforcement in light of contemporary transformations in the criminal process], Warsaw 2007.

³⁶ M. Rzewnicka-Rogacka, *Oportunizm i legalizm ścigania*, pp. 126 – 127.

of the victim to play an active part during the course of prosecution. Thus, more accurate is a statement, that the importance of the role of the victim depends upon the competence of criminal courts to award compensation for harm arising from the offence. A good example is the English system, which gives the victim the widest rights to initiate a private prosecution, but virtually no rights during the public one, and no right – as such – to claim compensation³⁷.

Article 3 of the Directive provides the victim's right to understand and to be understood. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority (art.4 p.1). Article 4 stipulates the victim's right to receive information from the first contact with a competent authority. Member States shall ensure that victims are offered the information included in this regulation (i.a. how and under what conditions they can access legal advice, legal aid and any other sort of advice) without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive.

When reporting a crime, victims should receive a written acknowledgement of their complaint from the police, stating the basic elements of the crime, such as the type of crime, the time and place, and any damage or harm caused by the crime. This acknowledgement should include a file number and the time and place for reporting of the crime in order to serve as evidence that the crime has been reported, for example in relation to insurance claims (Preamble, point. 24)

The Directive requires, that when providing information, sufficient details should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings. In this respect, information allowing the victim to know about the current status of any proceedings is particularly important. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute. Unless otherwise required, it should be possible to provide the information communicated to the victim orally or in writing, including through electronic means (Preamble, point 26).

The right to information about the time and place of a trial resulting from the complaint with regard to a criminal offence suffered by the victim should also apply to information about the time and place of a hearing related to an appeal of a judgment in the case (Preamble, point 31)

As stated in the Directive, justice cannot be effectively achieved unless victims can properly explain the circumstances of the crime and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure that victims are treated in a respectful manner and that they are able to access their right (Preamble point. 34). The Directive explains that the right of victims to be heard should be considered to have been

³⁷ M.Chiaavario, *Private parties*, p.544.

fulfilled where victims are permitted to make statements or explanations in writing (Preamble point. 41).

The victim's right to information is particularly important in the jurisdictions that have adopted the model of procedural rights. In Poland, after the amendment of the CCP by the Act of 27 September 2013 (Official Journal of 25 October 2013 - entering into force on 1 July 2015), the code clearly defines and expands the victim's right to information. Due to the need for equal treatment of the parties to the investigation – the suspect and the injured person - the amendment introduced a new § 2 to the art. 300 CCP, which states that prior to the first hearing, an injured person shall be advised to have the status of the party to the preparatory proceedings and on his rights, in particular: to submit requests for procedures in investigation or inquiry or activities and the conditions to participate in these activities, as defined in art. 51, 52 and 315 - 318 CCP, to be assisted by an attorney, to become familiar with the material gathered at the end, as well as on the right specified in Article 23a § 1, 87a and 306 and on the duties and consequences specified in Article 138 and 139. The injured party should be instructed in particular about those rights that are associated with its activity as party to the preparatory proceedings. As indicated in the justification of the draft amendment, the provision does not provide for transfer of information on an injured party to pursue civil claims in criminal proceedings, as well as those associated with obtaining the status of parties to the proceedings (these rights are in fact communicated to the injured party together with the notice of the indictment transfer to court (Article 334 § 2 CCP) or already in course of judicial proceedings³⁸. These instructions shall be given to the injured party in writing. The injured party shall confirm their receipt with his signature. The authority should also give the victim an explicit instruction of the right to be represented by an attorney of his choice, as well as the submission of an request for the appointment of a representative *ex officio*, if he proves in a proper manner that he is not capable of bearing the costs of defence without a detriment to the necessary maintenance of himself and his family.

In Germany, after the amendment of the StPO by the Second Victims' Rights Reform Act (2. *Opferrechtsreformgesetz*) of 2009³⁹, the right of victims to the information set out in par. 406h was significantly enhanced. Para. 406h contains comprehensive information requirements for victims of crime. According to this regulation, victims are to be made aware in particular of the following rights⁴⁰:

- The possibility according to section 406d StPO of being notified, upon application, not only of the outcome of proceedings, but also whether custodial measures against the defendant or convicted person have been ordered or terminated, and whether relaxation of the conditions of detention or leave from detention has been granted for the first time; this applies if the victim can show a legitimate interest in receiving this

³⁸ *Justification*, pp. 27-28 .

³⁹ See: M.Peter, *Measures to protect victims in German criminal proceedings. A summary with special focus on the key points of the Second Victims' Rights Reform Act . The 144th International Senior Seminar. The Enhancement of Appropriate Measures for Victims of Crime at Each Stage of the Criminal Justice Process Visiting Experts Papers*, Resource Material Sources Nr 81 , www.e-bookspdf.org, pp. 125 – 126.

⁴⁰ B. Weiner, *Strafprozessordnung*, pp. 1763 – 1766; M.Peter, pp. 130 – 131.

information and if there is no overriding interest on the part of the defendant or convicted person which constitutes an obstacle to providing such information⁴¹;

- The possibility as stipulated in section 406e StPO for an attorney to inspect the court files on behalf of the victim, and/or for the victim to himself receive information and copies from the files, which is required e.g. for asserting civil claims⁴²;

- The possibility according to section 406f StPO of availing oneself of the assistance of an attorney (*Beistand*) or of being represented by such attorney in criminal proceedings; or, if being examined as a witness, the possibility that the witness may bring along a person he trusts to the examination (section 406f (3) first sentence StPO)⁴³;

- The possibility provided by section 403 et seqq. StPO of asserting a claim for damages against the wrongdoer as early as the criminal proceedings stage by means of a so-called “adhesive procedure” (*Adhäsionsverfahren*);

- Information of a potential entitlement to benefits pursuant to the Victims’ Compensation Act (*Opferentschädigungsgesetz*) was adopted. These can be considered if, as a result of the offence, the injured person has suffered serious health damage;

- Similarly, § 406h StPO number 4 creates on the side of the investigating authority a duty to provide information on the Act on Civil Law Protection against Violent Acts and Stalking (*Gewaltschutzgesetz*) and the possibilities created by this act, which allow the injured person to move for the issuance of an interim injunction to protect against further victimization;

- Like all other duties to inform, the duty to inform victims of the possibility of receiving help and support from victim support organizations has also been made mandatory.

With the amendments in section 406h first sentence StPO, it is now explicitly regulated in law that the information required by section 406h StPO must be provided at the earliest possible stage⁴⁴.

The right stipulated in Art. 11 of the Directive to a review of a decision not to prosecute should be understood as referring to decisions taken by prosecutors and investigative judges or law enforcement authorities such as police officers, but not to the decisions taken by courts⁴⁵. Any review of a decision not to prosecute should be carried out by a different person or authority to that which made the original decision, unless the initial decision not to prosecute was taken by the highest prosecuting authority, against whose decision no review can be made, in which case the review may be carried out by that same authority. The right to a review of

⁴¹ B. Weiner, *Strafprozessordnung*, pp.1752 – 1754.

⁴² B. Weiner, *Strafprozessordnung*, pp. 1754 - 1758

⁴³ B. Weiner, *Strafprozessordnung*, pp.1758 - 1763

⁴⁴ B. Weiner, *Strafprozessordnung*, pp. 1763 – 1764.

⁴⁵ See: C. Kulesza, P. Starzyński (in:) *Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime. Commentary* (ed. E. Bieńkowska, L. Mazowiecka), Warsaw 2014, pp. 130 – 140.

a decision not to prosecute does not concern special procedures, such as proceedings against members of parliament or government, in relation to the exercise of their official position (preamble, point. 43)

A decision ending criminal proceedings should include situations where a prosecutor decides to withdraw charges or discontinue proceedings (preamble, point 44)

A decision of the prosecutor resulting in an out-of-court settlement and thus ending criminal proceedings, excludes victims from the right to a review of a decision of the prosecutor not to prosecute, only if the settlement imposes a warning or an obligation (preamble, point 45).

The main regulation concerning victim's access to legal aid is art. 13 stating, that Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The right to legal advice is a key issue in procedural rights for victims. A victim who is assisted by an effective lawyer is in a far better position with regards to the enforcement of all his other rights, partly because he is better informed of those rights and partly because a lawyer is able to assist him in ensuring that his rights are respected⁴⁶.

One of the basic obligations of a lawyer is to assist his client, not only in the preparation for the trial itself, but also in ensuring the legality of any measures taken in the course of the proceedings. The question then arises whether the victim's right to the assistance of counsel must be effective? If so, ECtHR case-law relating to the right of the accused to the effective assistance of counsel may be referred to the victim's attorney respectively. According to the ECtHR, legal assistance must be effective and the State is under an obligation to ensure that the lawyer has the information necessary to conduct a proper legal aid.⁴⁷ But effective criminal defence undoubtedly requires not only the right to competent legal assistance. Legislative and procedural context should also be considered, as well as organisational structures, that enable and facilitate effective defence as a crucial element of the right to fair trial. In the European literature an opinion can be found, that it is necessary to approach the assessment of access to effective criminal defence in any particular jurisdiction at three levels:⁴⁸

- (a) Whether there exists a constitutional and legislative structure that adequately provides for criminal defence taking ECtHR jurisprudence, where it is available, as establishing a minimum standard.
- (b) Whether regulations and practices are in place that enable those rights to be "practical and effective.
- (c) Where there exists a consistent level of competence amongst criminal defence lawyers, underpinned by a professional culture that recognises that effective defence is concerned as process as well as outcomes, and in respect of which the perception and experiences of suspects and defendants are central.

⁴⁶ Compare: C. Kulesza, P. Starzyński, (in:) *Directive...*, pp. 200 – 220.

⁴⁷ See referring to the effective criminal defence E.Cape, Z. Namoradze, R. Smith, T. Spronken, *Effective Criminal Defence in Europe*, Antwerp-Oxford-Portland 2010, pp. 38-44.

⁴⁸ *Ibidem*, pp.5-6.

According to the European Commission (DG Justice Guidance)⁴⁹ national law must provide for the appropriate legal framework to ensure that victims have the right to legal aid. Member States may define the conditions and procedures for ensuring victims' access to legal aid. However, if a victim has the right to access legal aid under national law, it should at least cover legal advice and legal representation free of charge.

Therefore Member States are invited to consider.

- Specifying in national criminal law legislation under what conditions and circumstances victims are able to access legal aid, bearing in mind the need to ensure equal access to justice and victims' right to a fair remedy⁵⁰.
- Adopting administrative procedures to implement victims' access to legal aid, without excessive bureaucratic requirements. Good practice suggests that application forms for legal aid should be available in a range of different languages, or assistance should be given to victims not speaking the official language of the country but looking to apply for legal aid.
- Ensuring that victims are informed about how and under what conditions they can access legal aid at their first contact with the competent authorities (linked to Article 4, paragraph 1(d)).

But the conditions or procedural rules under which victims have access to legal aid shall be determined by national law. With this regulation is strictly connected art. 14 establishing right to reimbursement of expenses and stating, that Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.

The interpretation of the above mentioned rights we can find in the Directive's preamble which provides, that victims should not be expected to incur expenses in relation to their participation in criminal proceedings. Member States should be required to reimburse only necessary expenses of victims in relation to their participation in criminal proceedings and should not be required to reimburse victims' legal fees. Member States should be able to impose conditions in regard to the reimbursement of expenses in national law, such as time limits for claiming reimbursement, standard rates for subsistence and travel costs and maximum daily amounts

⁴⁹ DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, European Commission, DG Justice, December 2013, Ref. Ares(2013)3763804 – 19/12/2013, s. 30, http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf

⁵⁰ Member States could draw on the Human Trafficking Directive wording: 'Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge when the victim does not have sufficient financial resources.'

for loss of earnings. The right to reimbursement of expenses in criminal proceedings should not arise in a situation where a victim makes a statement on a criminal offence. Expenses should only be covered to the extent that the victim is obliged or requested by the competent authorities to be present and actively participate in the criminal proceedings (Preamble, point. 47).

The Polish CCP provides for, that in contrast to the defence, the appointment of an attorney by the injured party is always optional. The doctrine postulates to introduce into the CCP a provision requiring from judicial body (in case of the private prosecution proceedings only by the court) establishment of legal aid in the event of apparent helplessness of the person mentioned in Art. 87 § 1 CCP.

The doctrine and jurisprudence very often encounters the view that the costs and other circumstances of fact cannot restrict the individual's right to fair trial.⁵¹

The most important reasons for the participation of victims' attorneys in criminal proceeding are the following⁵²:

- the reason of expertise - because the attorney has the knowledge and legal experience necessary to conduct the case, and the victim usually lacks such particularly practical skills;
- the reason of mental state - attorney is not involved in the legal defence of their interests, so its relationship to the case is less emotional than the victim's one, which allows him to evaluate realistically the facts and evidence and undertake appropriate action tactics;
- the reason of substitution – an attorney has the ability for substituting his client in situations where he is not able to perform all the steps in the proceedings . Lawyer or legal adviser has better access to the procedural authorities or secretariats of the courts, and his help is particularly important when the victim because of bad health condition is not able to personally perform certain actions;
- the reason of mental help - because an attorney should be in principle a trusted person of the injured party, and to be able to awaken the activity of victims of crime to defend its rights and interests of the process.

An attorney may be appointed by the injured person (so-called agent of choice) or appointed by the president of the court (so-called agent *ex officio*). Power of attorney of choice, given by the injured person, usually comprises contract for appropriate lawyer's or solicitor's services and gives him power of attorney. Power of attorney *ex officio* shall be issued by the president of the court competent to hear the case, when the injured person proves in a proper manner that he is not capable of bearing the costs of defence without a detriment to the necessary maintenance of himself and his family The possibility of establishing a

⁵¹ D. Gil, *Attorney of private prosecutor* (in :) *Proceedings in cases of private prosecution in the Polish criminal proceedings*, LEX 2013.

⁵² See: C. Kulesza, *The role of the attorney in protecting the rights of the victim* (in :) L. Mazowiecka (ed.), *Secondary victimization. Origin, essence and role in transforming crime policy for the treatment of victims*, Warszawa 2012, pp. 118 and 127 – 128 and the literature cited thereof.

representative *ex officio* is called "the law of the poor". As pointed out in the case law, in criminal proceedings for the issue of the establishment of legal aid will prevail only the facts of the financial situation of the parties. The wording of Article 88 CCP indicates clearly that the provisions relating to mandatory defence do not apply to legal aid for victims (decision of the Supreme Court on 5 August 2005, III KK 503/02, OSNwSK 2003, No. 1, pos. 1685).

Therefore, contrary to civil proceedings, an exemption from court costs is not a condition to gain the right to make such a request. It should be added that the application for appointment of a representative *ex officio*, filed in the criminal proceedings by a party other than the defendant (Article 88 in conjunction with Art. 78), is subject to the procedure appropriate to examine the accused's application for establishment of public defender.

The independence of the attorney *ex officio* who is appointed for the subsidiary prosecutor was underlined in the decision of the Supreme Court of 20 November 2011 (II, KZ 63/08, OSNwSK 2008, No. 1, pos. 2339), which emphasized that the victim's lawyer appointed to prepare the appeal is totally sovereign in its assessment of the legal situation of the person he represents. Lawyer's decision is not subject to the court's opinion, and it does not raise the victim's right to appoint *ex officio* of another attorney.

After the amendment of the CCP by the Act of 27 September 2013 (Official Journal of 25 October 2013 - entering into force on 1 July 2015), the Polish model of criminal procedure came significantly closer to the assumptions of the model of "procedural rights". Therefore, the doctrine of the criminal process recognizes an important role of the victim's attorney in the amended CCP⁵³. The reform should involve forcing the activity of the parties at the trial primarily by the amended Article 167 CCP and greater opportunities for discontinuance of the proceedings by the court as a result of the institution to withdraw the complaint.

The new shape of the adversarial principle was introduced by Article 167 CCP which provides that:

- in the main proceedings instituted at the initiative of the parties evidences are carried out by the parties, following their release by the president of the court or by the court. In the event of the absence of the party on the request of which the evidence was admitted as well as in exceptional justified cases, the evidence is carried out by the court within the limits of the evidence thesis. In exceptional justified cases, the court may admit and carry out evidence *ex officio* (§ 1);
- In other proceedings before the court and during preparatory proceedings the evidence shall be carried out by the authority which conducts the proceedings. This does not exclude the right of the party to request the evidence (§ 2).

⁵³ Compare: M. Flis - Świeczkowska, *Strengthening the role of the victim's attorney in the light of the adversarial criminal process*, (in :) *Adversariality in the Polish criminal proceedings* (ed. P. Wiliński), Warsaw 2013, pp. 539 - 553; M. Mańczuk, *The role of the victim's attorney in an adversarial criminal process - due to the background of the draft amendment dated 8 November 2012* (in :) *Adversariality in the Polish criminal proceedings*, op.cit., pp. 651-662).

In the justification of amendment to Article 167 § 1 CCP it was stated that on the one hand it exempts the court from the evidence activity at the main hearing when the prosecutor is passive in this respect. On the other hand, the court in a lesser degree than before will play the role of "a guarantor" to the accused, who - as a party - will take the material burden of proof in a greater extent"⁵⁴. It seems that this statement will equally address the victim, as an active party to the proceedings.

A new approach to Article 14 § 2 CCP required to safeguard the interests of subsidiary prosecutor, which should not be deprived of their rights due to the fact that the public prosecutor withdraws the indictment. Provided, therefore, a design change in Article 54 § 2 CCP, according to which the withdrawal by the public prosecutor of the indictment does not deprive the subsidiary accuser of his rights. The injured person, who previously did not use the powers of the subsidiary accuser will be able to declare that joins to act as the subsidiary accuser, within 14 days of being notified of the withdrawal of the indictment by the public prosecutor. However, a successful subsidiary prosecutor's accession to the proceedings in circumstances stated above as a rule will require assistance from an attorney

Article 370 CPP that was clarified by an amendment will acknowledge the rule stated in Article 167 CCP that the parties take the evidence and should be active in asking questions at the trial. In the cases referred to in the amended Article 391 CCP the court may also read out the testimony of witnesses at the trial primarily at the request of the parties, and *ex officio* only in exceptional and justified cases (Article 167 § 1 sentence 3 CCP) or in the proceedings initiated *ex officio* (Article 167 § 2 CCP). The purpose of the above changes is to ensure that the parties would be more active in the field of evidence, while limiting the activity of the court acting *ex officio*⁵⁵.

It should be noted that, as the defendant, the victim will bear in appeal proceedings the consequences of earlier passivity during the main trial. These consequences may involve a ban to raise in appellate measure that facts of the case were established erroneously. In the light of the new Article 427 § 4 CCP the appellant will not be able to plead that a court missed to take a specific evidence if the party did not submit such evidentiary requests, or a court took an evidence despite the lack of evidentiary requests of a party in the matter or outside the scope of the request. However, according to § 3 of the above provision the appellant may also indicate new facts or evidence, but only if they could not be relied in proceedings before the court of first instance.⁵⁶

⁵⁴ Justification of the draft amendment, the Parliament print No 870 , p 29

⁵⁵ Justification of the project, pp. 87 - 88, See as well: T. Grzegorzczuk, *Situation of the parties to the proceedings in an adversarial hearing in light of the draft amendment to the Criminal Procedure Code of 2012*, (in:) *Adversarial*, op.cit. , pp. 45-56 .

⁵⁶ C. Kulesza, *Adversariality of appeal proceedings in the light of the draft amendment to the Criminal Procedure Code prepared by the Codification Committee of 8 November 2012* (Parliament Print No. 870), (in :) *Adversarial...*, pp. 121 – 137.

The new regulations of the institution of legal aid comprised in Article 87a CCP should also be considered as significant. They provide that:

- at the request of a party other than the defendant who has no attorney of choice in a judicial proceedings, the president of the court, the court or the legal secretary shall appoint attorney *ex officio* (§ 1);
- the provision of § 1 shall be applied *mutatis mutandis* to appoint a representative to perform a particular procedural activity in the course of judicial proceedings (§ 2);
- when serving a notice of the main trial or session referred to in Article 341 § 1, 343 § 5 and 343a CCP, a party shall be advised on the right to apply for attorney *ex officio* and that he may be ordered to pay the costs of attorney *ex officio* depending on the result of the case (§ 3);
- re-appointment of a representative in the manner referred to in § 1 and 2 is permitted only in particularly justified cases (§ 4).

If the principle of adversarial trial leads in Poland to the consistent separation of three aspects of the proceedings: accusing, defending and ruling, and the prosecutors are more inclined to opportunistic practices, the current conflict between the principle of legality and the rights of the victim will weaken. It can therefore be assumed that similar to the defence counsel it may fall to the victim and his attorney in fact to act as Cassandra of rule of law⁵⁷.

⁵⁷ See: C. Kulesza, *Opportunism and the legalism of law enforcement and the victim's rights in the light of the revised penal legislation of 2013*, (in:) *Polish penal process and substantive criminal law in the light of the amendment of 2013. Jubilee book dedicated to Professor Janusz Tylman on the occasion of his 90's birthday* , Warsaw 2014, (in print).

NORMATIVE AND NON-NORMATIVE LIMITATIONS OF VICTIMS' PROTECTION SYSTEM IN POLAND

Piotr Karlik

1. Present legal situation of victim in Polish criminal proceeding

Position of victims in Polish criminal proceedings is continuously changing. Status of person injured by the crime went really great distance, from total oblivion to almost number one matter. This complete turnover was caused by influence of EU legislation concerning victims situation in criminal proceedings. Implementation of them, especially Council Framework Decision of 15 March 2001 2001/220/JHA on the standing of victims in criminal proceedings, changed perception of victims' status. Before this moment victims were regarded only as a source of information about committed crime. No special regulations ensuring protection of injured person¹ were provided. Whole effort of, as well European legislation, as Polish one was focused on rights and guarantees of perpetrator. That situation might caused the feeling of total discrimination and double-victimization which resulted in many negative consequences. Victims were reluctant to cooperate with law enforcement authorities fearing that this might bring only aggravation of their situation. However, implementation of mentioned framework and further 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 has changed status of victims in Polish criminal proceedings, there is still lot to be done on this area. Existing limitations might be divided into two categories: normative and non-normative. They are strictly combined together impacting the present status of victim in criminal proceedings in Poland. The common mistake is separate recognition of this factors which brings many misunderstandings on this field. There is high need of new approach to this issue which included both kind of limitations. There will be no development without awareness of it.

¹ Polish criminal law does not use the term 'victim of crime', but 'injured party of the crime'. Differences between these two are not just terminological,¹ so they cannot be used interchangeably. It is agreed upon that the most accurate term to use would be 'potentially injured party' as introduced in victimological studies. The normative definition of 'injured party' is found in Art. 49 of the *Code of Criminal Procedure*. Scholarly literature emphasises that using term 'victim of crime' prejudices the fact of committing the crime on victims' damage before a legally valid decision about the criminal liability of the person prosecuted. C. Kulesza: *Projekt Europejskiej Dyrektywy z dnia 18 maja 2011 r., w sprawie wsparcia i ochrony ofiar w świetle prawa polskiego [The draft European Directive of 18 May 2011 on support and protection of victims under Polish law]*, *Prokuratura i Prawo* 2011, nr 12, p. 5; P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego, Komentarz [Code of Criminal Procedure, Commentary]*, 2007, t. I, s. 308.

2. Normative limitations in access to legal aid

General act that regulates situation of victims in Polish criminal proceedings is code of criminal proceedings (hereafter: CCP)². There are also many other legal regulations determining position of victims. Nevertheless the code is the most important legislation and it should provide the same level of protection to the victims as it does to a perpetrator. Unfortunately there are some situations that offender has more rights that it is ensured to the victims. The most important one that needs to be mentioned is “right to information”. This basic right has a great value especially in criminal proceedings. Of course it has many dimensions and aspects, that’s why here it will be described only in general. Information provided to every participant of proceedings create possibility to gain the full access to rights and obligations during criminal trial. Without this knowledge one might have much worse position than others. Criminal proceedings authorities to fulfill a “fair play” standards of a trial must ensure that information provided to each and every participant will be equal. Existing regulations do not pursue that standards.

Just before first interrogation suspect of a crime receives whole package of information regarding his rights and obligation during the whole trial. Authorities are obliged to act like that by the power of article 300 of CCP That means that the alleged offender has entire picture of his position, not only in present stage of the proceedings, but also in future ones. Inexplicable is that victims has not the same entitlement. There is no regulation in on CCP level that obliges bodies conducting proceedings to familiarize victim with his right and obligations³. According to this position of victims is much worse in very beginning of the trial. Victims’ access to legal aid is strictly limited by the lack of that kind of regulations. Without being informed person injured by a crime might not exploit its rights, i.e. right to pledge a civil action in criminal trial or pledge a motion for compensation. These are very important guarantees that might be use only till certain moment of the proceedings. Having no knowledge about it complicates victims position and expose them to bear the burden of civil proceedings which might last for additional couple of years.

² Ustawa z dn. 6 czerwca 1997 r., Kodeks postępowania karnego [Code of Criminal Procedure] (Dz. U. z 1997 r., Nr 89, poz. 555 ze zm.), available at: <http://www.lex.pl/akt-prawny/-/akt/dz-u-97-89-555-u> (29 November 2013).

³ There is only prosecutors’ obligation that comes from § 167 of the Prosecutors’ Office Regulation whereas the police obligation can be found in § 19 of the Guidelines of the Commander in Chief of Police – Commander in Chief of Police (2012): Wytyczne nr 3 Komendanta Głównego Policji z dnia 15 lutego 2012 r. w sprawie wykonywania czynności dochodzeniowo – śledczych przez policjantów [Guidelines of the Commander in Chief of Police on Conducting Police Investigation] (Dz. Urz. KGP z dnia 16 lutego 2012); see also: Association of Prosecutors of Republic of Poland (2002) Uchwała II Krajowego Walnego Zjazdu Członków Stowarzyszenia Prokuratorów RP w sprawie "Zbioru Zasad Etycznych Prokuratora" z dnia 25 maja 2002 roku [Resolution of the General National Congress of the Association of Prosecutors of the Republic of Poland on the Standards of the Ethical Prosecutor on 25 May 2002].

Position of victims and a perpetrator, especially according to right to information must be equal⁴. Both of them should have the same chances during the proceedings. It is not the matter of authorities if they are going to make use of it. One cannot forget that right to information concerns not only privileges but obligation as well. Perpetrator and victims must be aware of every obligation. It is important not only for participants but also for authorities. Fair trial provides feeling of justice for victim which allowing better cooperation between Police, prosecutors, judges, and victims. It was noted by legislator, and the nearest amendment of CCP ensures right to information for victim on the same conditions as perpetrator has. That means that full, broad access to legal aid will be regain.

Second normative limitation that need to be mentioned is lack of regulations concerning special, vulnerable groups of victims. It is obvious that some groups of citizens are more vulnerable and needs much more attention than others. Conducted researches shows that among that kind of groups we might find:

- elders,
- juveniles,
- sex crimes victims,
- hate crimes victims,
- domestic violence victims,
- human trafficking victims,

Special protection of them must be provided. Of course not always there is a necessity to implement regulations regarding all of vulnerable groups on CCP level. Authorities should be aware of types of crime committed in each state and numbers of injured person that need that kind of protection. Those who are the most vulnerable and numerous should gain the special guaranties during trial. The best example of that kind of treatment is juvenile protection in Polish criminal proceedings. Juvenile victims of certain crimes (i.e. sexual abusing) can be interrogated only by judge accompanied by a psychologist, and it can be conducted only once. Unfortunately that kinds of provisions are still very rare, and has exceptions which limit their application. Law should protect the weakest participants of criminal proceedings. Courtroom cannot be a place where victims not only gets no assistance, but can suffer double-victimization process. To avoid that kind of situation authorities must be prepared and have perfectly designed tools for aiding.

3. Non-normative limitations in access to legal aid

Non-normative limitations are factors which have the same impact on the present status of victim in criminal proceedings but cannot be changed by simple amendment. It makes them

⁴ E. Bieńkowska, L. Mazowiecka, *Uprawnienia pokrzywdzonego przestępstwem*, Warszawa 2012, p. 24.

much harder not only to notice but also to accept. Unfortunately there is common trend to underestimate that kind of factors and its impact on existing situation of victims in criminal proceedings. Among that limitation we can point on two, the most important ones, that is: legal awareness of society and Bodies approach. Each of them needs different kind of actions.

Social legal awareness is without doubt a commonly used term and most often it is intuitively recognized, both in the realm of science and in public life. It may, however, be difficult to precisely define it. This issue mostly touches upon fields from between sociology and legal sciences. The subject of the term in question remains knowledge of law, whose level is determined mostly by activity of the state and its institutions in this field, but also by the content and means of communication of law⁵. Legal awareness is shaped by a range of factors. Functioning of law applying entities, the way of communicating any changes in legislation to society, decisions made in individual matter and individual cognitive abilities of a recipient of legislation and his attitude towards them are not without significance for legal awareness.

As it comes from recent studies legal awareness of society in Poland is still at a very low level. It's rising systematically but not in the pace which could be acceptable. There are many reasons for that situation, but among them we can point on the most important ones. First of all we can observe huge difference in law knowledge among citizens. In urban centers, where people are more educated, basic knowledge on legal aspects of being a victim exist on satisfactory level. The biggest problem is on rural areas, where people are undereducated and their access to legal aid is strictly limited. Very often the problem is much deeper than one might even imagine. Basic difficulties concern communication with that kind of people. Lawyers, and representatives of NGO's organizations should use special, very simple language to reach that kind of person. Frequently incomprehensible is the concept of a crime – victims do not know that the crime was committed, they accept the situation as something normal, i.e. domestic violence or sexual abuse. That means that the general effort should concentrate on rising people awareness on what is the crime and what kind of possibilities they have. Without that kind of actions those person will remain vulnerable for crimes.

We also have to remember that rural areas are very specific. Reporting a crime on small village where everybody knows each other is not an easy task. There should be created special ways of communication between i.e. Police or social care in order to avoid stigmatization in their small society. There could not be acceptance of situation where victims starts to feel guilt because of committed crime.

To raise the legal awareness of society, especially in rural areas, many actions have to be undertaken. First of all, there is high need to launch the special educational programs focusing on explanation of what is a crime, and how one can report it. In present situation presenting the rights and obligations of victim in criminal proceedings to whole society without reaching as many as possible with just a basic knowledge is pointless. Second thing is, that in rural areas

⁵ P. Karlik, P. Libertowski, *The role of criminal proceeding in shaping legal awareness if the society*, [w:] *Academic areas of scientific knowledge*, ed. Dominika Czajkowska-Ziobrowska, Poznań 2011, s. 91.

access to legal aid is limited. There is not enough professional lawyers that could assist all those in need. That is why it is so important to develop efficient system of legal aid. There should be special organizations whose representatives must be trained in basic knowledge in law, that they could be the first line of assistance. Existing social centers very often fulfill this type of task but it is still not efficient and effective system. There is a lack of a general idea of how that kind of system should operate. Nevertheless the most difficult obstacle to overcome is economic factor. As long as non-government organization and social centers are under-donated there won't be common access to legal aid.

Approach of the Bodies is second non-normative limitation that deserves to be presented. As it was said it is one of the most if not the most factor that shapes the actual situation of victims in criminal proceedings. Police or prosecutors are commonly the very first to meet the victim and to bring assistance. Thus their approach should be appropriate, they must be sympathetic and show understanding to victims problem even if they are not strictly related to a crime. Nevertheless the first thing which seems to be obvious are personal manners. Injured person cannot meet with arrogance, rudeness or absence of attention. Unfortunately that kind of approach still exist in Polish law enforcement system. It causes many damages and is unacceptable. Because of such a behavior victims are exposed on double-victimization process. It is very dangerous effect. One might accept that the crime was committed but very often it is much harder to accept that authorities that are supposed to bring assistance are reason of even more pain and disgrace. This problem exist especially in domestic violence and in sexual crime field. In such cases the question of the proper approach to the victim is extremely delicate. Once lost trust probably is trust lost forever.

Appropriate approach to the victim is also very important from authorities point of view. Person well treated during the whole proceeding is more likely to cooperate with law enforcement system. Victim very often is the only witness of the crime, so it is crucial for bodies conducting proceedings to get as credible testimony as possible. Victims mistreated refuse not only to cooperate but also to participate in proceedings, they even can withdraw the request for prosecution or not report a crime if the first contact were inappropriate. Thus it is easy to observe that approach of the bodies of all stages of the proceedings is very important.

Unfortunately among some representatives of the judiciary there is a belief that the victim is merely a witness of a crime and does not deserve any special treatment. Furthermore very often they believe that the victim interfere in the conduct of criminal proceedings. Not only they do not constitute aid and support to victims of crime, but often treat them condescendingly, boredom or even with contempt. There are many reasons of such behavior. Some of Police officers, prosecutors or judges were trained during communism times. Some of them just do not realize the necessity of right approach, because they are not trained in this field.

To change existing situation and to emphasize the problem of approach to victims certain actions must be undertaken. Within the project "Improving protection of victims' rights: access to legal aid" special trainings for practitioners were conducted. Participants got knowledge not

only about newest EU legislation but also information regarding psychological aspects of dealing with victims. What is most important they have told that this short training just opened their eyes on crucial problems of approach to a victims. Among participants there were Police officers, prosecutors and judges and all of them stressed that there is high need to conduct such a trainings more often. Conclusion that comes out of it is very simple: bodies of proceeding can handle legal regulations, but there is no regulation how to deal with victims. Knowing the processes taking place in the psyche of the victims authorities could adjust their approach to a certain person. This would allow them not only to avoid double-victimization but also to extract the most important information regarding committed crime. They would have a knowledge of what kind of question they can ask, and what kind of question cannot be asked by any costs. All this means that special trainings concerning psychological aspects of dealing with victims of the crime should be organized. It is very important to train especially young lawyers during their professional training in order to inculcate them appropriate approach till the very begging. Other thing are regular training for more advanced lawyers where they could exchange their experiences. There also should be training designed to show how to deal with particular groups of victims.

4. Summary

As it is easy to notice that normative and non-normative limitations in access to legal aid in Poland are strictly combined together. Nowadays more attention is being paid to normative limitation while forgetting those non-normative. In comparison, in my opinion those non-normative factors are the one of great importance. Their cannot be changed by simple amendment, it takes time, sometimes even long time to invert the society way of thinking and approach of bodies of the proceedings. That is way we should focus not only on legal changes, which of course are important but on rising level of legal education among society as well. The truth is that the sooner we will start to think about normative and non-normative limitation as the combined issues, the better it will be for increasing the access to legal aid in Poland.

CHALLENGES BEFORE VICTIMS' PROTECTION IN BULGARIA IN VIEW OF HARMONISING PROTECTION FRAMEWORKS THROUGHOUT THE EUROPEAN UNION

Miryana Ilcheva, Dimitar Markov, Maria Yordanova

Bulgaria's current effort to protect its victims of crime within a modern criminal justice framework dates back to a short period of time between 2006 and 2007, when the Bulgarian *Criminal Procedure Code* (hereinafter, *CPC*)¹ and the *Law on Assistance and Financial Compensation to Victims of Crime* (hereinafter, *Law on Victims' Assistance*)² entered into force.

The *CPC* defines the direct victim of a crime as the physical person, having sustained material or moral damage from the relevant act. In case of death of the direct victim, the victim capacity passes on to the indirect victims – his/her heirs. The *Law on Victims' Assistance* is a specific law with a narrower scope, regulating the assistance and compensation to victims of terrorism, premeditated murder, premeditated grave bodily injury, carnal abuse and rape, out of which grave injuries have ensued, human trafficking, crimes, committed by order or in execution of a decision of an organised criminal group, as well as other serious (carrying a punishment of more than 5 years of imprisonment) premeditated crimes as a legally stipulated result of which death or grave bodily injury have occurred. It defines explicitly the category of indirect victims of such crimes by including in it, in case of the direct victim's death, his/her children, parents, spouse or the person, with whom he/she co-habited. The *Law*, carrying a specific legal framework on the status of victims of specific crimes, is a document, attempting to follow international and EU standards in the area more closely than the *CPC*. However, both the assistance and the financial compensation it regulates are applicable only to its specific circle of victims, which, partly due to harsh financial realities, is, at present, fairly narrow.

Victim support organisations, other members of the civic sector, involved in judicial reform and strengthening the capacity of the criminal justice system, among which the Center for the Study of Democracy (CSD), as well as institutions, tasked with improving the position of those harmed by crime, have identified in the last few years four main challenges before victims' protection in Bulgaria in view of harmonising protection frameworks throughout the Member States of the European Union.

¹ National Assembly of the Republic of Bulgaria (2006): Наказателно-процесуален кодекс [Criminal Procedure Code] (State Gazette 86/28.10.2005), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135512224> (12 November 2013).

² National Assembly of the Republic of Bulgaria (2007): Закон за подпомагане и финансова компенсация на пострадали от престъпления [Law on Assistance and Financial Compensation to Victims of Crime] (State Gazette 105/22.12.2006), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135540550> (12 November 2013).

1. Transposition of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA³

According to Article 27 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (hereinafter, the 2012 Directive), all Member States should bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 16 November 2015. With this deadline approaching, the transposition of the Directive is undoubtedly the largest normative and practical challenge Bulgaria currently faces in improving its victim protection framework.

In 2014 Bulgarian Ministry of Justice initiated a legislative effort to amend the *Law on Victims' Assistance*, based on the challenges faced throughout the years since its entry into force. However, the timing of the project has coincided with the period, during which Bulgaria has to take most decisive steps in transposing the 2012 Directive into its primary and secondary legislation. Therefore, the CSD, as member of the working group to draft the amendments to the *Law*, undertook a number of steps to raise the awareness of responsible authorities about the need to transpose the Directive both in the country's *CPC* and the *Law on Victims' Assistance*, as suggested by the transposition technique options, offered as guidance by the European Commission.⁴

As one of those steps, the CSD offered to institutions a comprehensive overview of Directive's principles and concrete provisions to be transposed immediately into the *Law on Victims' Assistance* and be followed by timely and adequate harmonisation of the *CPC* with EU norms.

According to the overview, the following areas had to be further regulated in the *Law*:

- ***Right of victims to understand and be understood and right to receive information from the first contact with a competent authority (Articles 3-4 of the Directive)***

³European Parliament and Council of the European Union (2012): Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, pp. 57-73), Strasbourg: European Parliament and Council of the European Union, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF> (22 June 2014).

⁴European Commission (2013): DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Brussels: European Commission, available at: http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf (20 June 2014), p. 5.

The Law on Victims' Assistance should strengthen the rights to understand, be understood and receive information in an unequivocal way, parallel to widening the group of organisations and institutions, tasked to inform victims about their entitlements. At the time of drafting the present article, this group is fairly narrow (bodies of the Ministry of Interior and victim support organisations) and the right to information under the Law can be construed narrowly as limited only to the victims of the crimes, for which the Law allows compensation. Moreover, tackling unnecessary delay, which should not be allowed in dealing with victims, could prove a challenge in a system, where immediacy is still liberally implemented. The individual approach towards victims, proclaimed widely throughout the Directive, is also to be developed further both in Bulgaria's specialised law and in its *CPC*.

- ***Right of victims to access victim support services and the support they provide (Article 8-9 of the Directive)***

Accessing victim support services independently of whether the victim has made a formal complaint with regard to a criminal offence to a competent authority is a right to be firmly regulated in the *Law on Victims' Assistance* especially in view of the substantial number of crimes, about which victims in Bulgaria never complain or stumble upon 'police filters', and the general distrust of the police and justice system.⁵ In addition, the referral of victims by the competent authority that received the complaint and by other relevant entities to victim support services should be clearly established and supported by relevant secondary legislation to tackle the often lacking inter-institutional co-ordination.

- ***Training of practitioners and provision of data and statistics (Articles 25, 28 of the Directive)***

Stipulating explicitly the need for training practitioners coming into contact with victims both in the *Law on Victims' Assistance* and the specialised laws could be the necessary first step to raise the awareness of various authorities about the issue and boost the allocation of financial resources for training purposes. On the other hand, Member States are obligated to regularly provide data and statistics to the European Commission as to how victims have accessed the rights set out in the Directive. This effort requires a consistent and robust data gathering and statistical framework, which has proved a major challenge for Bulgarian institutions involved.⁶

Bulgarian authorities have shown a high degree of responsiveness to CSD's proposals and have designed a comprehensive set of amendments to the *Law on Victims' Assistance* to harmonise it with the 2012 Directive. It remains to be seen how those amendments would go through Parliament and whether they would be followed by timely and pertinent modifications to the *CPC*, other specialised laws and institutions' internal rules and codes of conduct.

⁵ Center for the Study of Democracy (2013): *Crime Trends 2012-2013: Policy Brief N 41*, October 2013, Sofia: Center for the Study of Democracy, available at: <http://www.csd.bg/fileSrc.php?id=21575> (22 June 2014).

⁶ Center for the Study of Democracy (2013): *Assisting and reintegrating child victims of trafficking in Bulgaria: legal, institutional and policy framework*, Sofia: Center for the Study of Democracy, available at: <http://www.csd.bg/fileSrc.php?id=21155> (22 June 2014), p. 7.

2. E-tools to improve the position of victims of crime

Prior to transposing the 2012 Directive, another legislative effort was taken, again spearheaded by the CSD, to improve the situation of victims through the wider introduction of e-tools in the criminal process.

Although the initial Concept for development of e-justice in Bulgaria did not include criminal procedure for reasons of it being highly intrusive on citizens' rights and the draft of the Concept ultimately publicised included it only summarily,⁷ it was established that Bulgaria seriously lags in introducing electronic tools in the relations between criminal justice authorities and citizens, especially in the area of crime complaints. Many good, mostly multilingual, practices have been present throughout EU Member States, including specialised electronic portals in Belgium and Lithuania, e-complaint forms in Finland, and other electronic options in countries like France and the Netherlands.⁸ At the same time, efforts in Bulgaria to digitise the process of crime reporting have been mostly sporadic, with main institutions' websites offering neither e-forms for crime complaints, nor multilingual support.

Therefore, several urgent amendments to the Bulgarian *CPC* were proposed by the CSD on this and other occasions:

- options to report a crime electronically, with subsequent validation of the report in accordance with the Code's rules – to be further developed in the legislation, regulating the work of investigative police;
- options to inform the victim about the progress of criminal proceedings electronically;
- options for victims and other parties, excluding suspects, defendants and their counsels, to receive notifications electronically;
- options for wider application of videoconference in pre-trial and trial phase to accelerate the completion of investigations of crimes committed both abroad and in the country and ensure greater victims' safety.

Earning the vocal support of authorities involved and legal scholars alike, most of the proposed new norms were included in a short piece of legislation, amending the Code.⁹ Moreover, in its

⁷ Ministry of Justice of the Republic of Bulgaria (2012): Концепция за електронно правосъдие [Concept on E-justice], Sofia: Ministry of Justice of the Republic of Bulgaria, available only in Bulgarian at: https://mjs.bg/Files/Koncepcia_e-pravosadie.doc (22 June 2014), p. 34.

⁸ Source: Factsheets on rights of victims of crime in criminal proceedings, available at https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-en.do (22 June 2014).

⁹ Ministry of Justice of the Republic of Bulgaria (2012): Закон за изменение и допълнение на Наказателно-процесуалния кодекс [Law on Amending and Supplementing the Criminal Procedure Code], Sofia: Ministry of Justice of the Republic of Bulgaria, available only in Bulgarian at: <https://mjs.bg/Files/ЗИД%20НПК-28.11.-final.doc> (22 June 2014).

assessments of government's judicial reform strategies the CSD has also consistently proposed a number of measures for accelerated introduction of e-justice. However, all e-justice amendments were stalled due to political tensions and the latest e-justice strategy of the government¹⁰ does not foresee any significant steps in the criminal justice field.

Introduction and further development of e-tools for criminal case management, including relations with victims, have been at the forefront of states' criminal justice agenda in the last several years.¹¹ Therefore, the further delay in introducing e-justice tools in Bulgarian criminal procedure, including such concerning victims, could result in further hindrances in their protection, their access to justice and the respect of their rights, especially in cross border cases and cases involving vulnerable groups. It would impact negatively the interaction of the Bulgarian judicial system with the judicial authorities of other Member States.

3. Legal aid to victims of crime

Legal aid to victims of crime in Bulgaria has been subject of significant progress, but has also faced a number of normative and practical problems in the last few years. CSD's country report on improving protection of victims' rights¹² identified a number of positive developments, as well as further needs in the area.

According to the Bulgarian *Law on Legal Aid*¹³, free state-provided legal aid for consultation in view of reaching an agreement before court proceedings or of instituting proceedings and for preparation of documents for instituting proceedings, so called 'primary legal aid', is given to the following recipients, including victims of crime:

- persons and families eligible for monthly or targeted support under the social support legislation;
- persons, accommodated in specialised social institutions or using other social accommodation;
- children, accommodated in foster families or families of relatives;

¹⁰ Ministry of Justice of the Republic of Bulgaria (2014): Секторна стратегия за въвеждане на електронно управление и електронно правосъдие 2014-2020 г. [Sectoral Strategy on Introducing E-Government and E-Justice], Sofia: Ministry of Justice of the Republic of Bulgaria, available only in Bulgarian at: https://mjs.bg/Files/Strategy_MJ-2014_635279697128265703.docx (22 June 2014).

¹¹ For more information, please see Center for the Study of Democracy (2012): E-Tools for Criminal Case Management within Selected EU Member States (CD), Sofia: Center for the Study of Democracy, available at <http://www.csd.bg/artShow.php?id=15850> (22 June 2014).

¹² Center for the Study of Democracy (2013): Improving Protection of Victims' Rights: Access to Legal Aid, Research paper on legal framework and best practices: Country report - Bulgaria, Sofia: Center for the Study of Democracy, available at <http://www.csd.bg/fileSrc.php?id=21771> (22 June 2014).

¹³ National Assembly of the Republic of Bulgaria (2006): Закон за правната помощ [Law on Legal Aid] (State Gazette 79/4.10.2005), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135511185> (12 November 2013).

- as supplemented in 2013, children at risk and victims of domestic or sexual violence, or human trafficking, who do not have means, but wish to be defended by an attorney.

Further on, based on the right of the victim under the *CPC* to have counsel, in practice pre-trial authorities can and do receive, as well as rule on, requests from the above groups for procedural representation during the pre-trial phase.

Legal aid for trial representation concerns victims having entered trial as civil claimants or private accusers, who do not have means for paying an attorney, wish to have one and the interests of justice so require. Victims of lesser crimes, triable by a 'private complaint', submitted directly to court, are also eligible for legal aid.

Legal aid practitioners deem the conditions for granting legal aid fairly restrictive because of the fairly low threshold of indigence, set by referral to the social assistance legislation.

Legal aid is organised by the National Legal Aid Bureau and the bar councils.

Stakeholders admit that there is lack of adequate training, following international and EU standards, for institutions and organisations involved in legal aid to victims. Trainings for working with specific vulnerable groups are still within the realm of future plans. Still, the National Legal Aid Bureau takes significant effort to organise regional trainings at least once a year, where information is given, based on legal aid providing attorneys' specific needs and questions.

In sum, the report established¹⁴ that much progress was made in providing adequate legal aid to victims of crime as part of the overall process to improve their situation. This was witnessed by, *inter alia*:

- the 2013 amendments in the *Law on Legal Aid*, expanding considerably the circle of victims of crime, eligible to receive state-provided legal aid;
- the efforts of the National Legal Aid Bureau to ensure a qualified pool of attorneys with proper specialisation, to the extent possible, who are part of the National Legal Aid Register and as such are able to provide high quality legal aid to victims;
- the recent launch of a much awaited initiative for a national hotline for primary legal aid and pilot consulting centres in two of Bulgaria's most vulnerable regions - Sliven and Vidin.

Still, several recommendations were made to improve the process of providing legal aid to victims:

¹⁴ Center for the Study of Democracy (2013): *Improving Protection of Victims' Rights: Access to Legal Aid*, Research paper on legal framework and best practices: Country report - Bulgaria, Sofia: Center for the Study of Democracy, available at <http://www.csd.bg/fileSrc.php?id=21771> (22 June 2014), p. 20.

- regarding **research**, a thorough study was necessary of relevant legislation, policies and practices of EU Member States, regarding legal aid and advice to victims of crime; relevant policies and practices should be transposed in close cooperation with Member State entities which generated them;
- regarding **institutional capacity**, the National Legal Aid Bureau was recommended to use all channels via which its knowledge base for working with victims of crime could be expanded, including cooperation with bar councils and victim protection NGOs;
- regarding **practical framework**, the experience of the national primary legal aid hotline and pilot consulting centres was to be analysed carefully and replicated via other consulting centres;
- regarding **general and specialised training**, the existing efforts to give attorneys involved general training on working with victims and specialised legal and psychological knowledge on their particular situation had to be strengthened and enhanced.

In the long term, the work of the National Legal Aid Bureau should be adequately planned and funded to ensure effective administration of justice, high quality legal aid and equal access to justice for citizens, including victims of crime. It is also necessary to constantly promote legal aid and to increase public confidence in the institution of state-provided counsel.

4. State compensation

The last, but not least important challenge before victim protection in Bulgaria the present article will elaborate upon is also the cause of greatest hope, since it is already tackled through a legislative effort (see above) and drafting is underway in a joint effort by institutions and civic sector involved.

After a long period of identifying and analysing problems in applying the *Law on Victims' Assistance*, the National Council for Assistance and Compensation to Victims of Crime, the main interinstitutional body entrusted with victim care, came out in 2013 with a decision¹⁵ to initiate a working group to amend the *Law*. The decision offered a succinct overview by authorities involved of problematic issues of normative and practical nature, showing, at the same time, a clear stand to overcome obstacles and improve victims' situation. Among problems identified and proposals made have been:

- expanding the circle of serious premeditated crimes to entail assistance and compensation for their victims, including medium bodily injury;

¹⁵ National Council for Assistance and Compensation to Victims of Crime (2013): Протокол от заседание на Националния съвет за подпомагане и компенсация на пострадали от престъпления 19.03.2013 г. [Minutes of the Session of the National Council for Assistance and Compensation of Victims of Crime of 19 March 2013], Sofia: National Council for Assistance and Compensation to Victims of Crime, available at http://www.compensation.bg/Documents/protokol_19_03_2013.doc (22 June 2014).

- making procedures for providing compensation easier, including creating a mechanism for providing advance compensation before the closing of criminal proceedings, Bulgaria being one of the few countries without such possibility;
- expanding the group of institutions and organisations, tasked with giving information to victims;
- including social aid among the forms of assistance to victims;
- more detailed regulation of the interaction of the National Council with victim protection NGOs.

The amendments are still at drafting stage and, together with those transposing the 2012 Directive, will be a test for the political will of government and Parliament to improve the situation of citizens, harmed by crime, in an adequate manner, consistent with EU legislation and current developments.

In conclusion, as witnessed by the overview of problematic areas of victim protection in Bulgaria, the situation of victims is a clear reflection of many of the general challenges before the country's criminal justice system as a whole. The use of electronic tools, the co-ordination among institutions and their co-operation with the civic sector are indispensable components of every EU Member State's modern criminal policy and have to be implemented by both normative and policy steps. In this sense, Bulgarian authorities and NGOs involved have to, like their counterparts throughout Europe, re-define the balance between the entitlements of the defendant and those of the victim and work on both in their correlation to achieve efficient and effective functioning of criminal justice and the higher trust of the general public.

IMPROVING PROTECTION OF VICTIMS' RIGHTS IN LATVIA – ACCESS TO LEGAL AID AND MEDIATION AS A TOLL TO SETTLE THE CONFLICT

S. Sile, D. Ziedina

Latvia is quite a small country with approximately 2 million inhabitants and does not have a comprehensive victim support system, nor is there a single policy that might lead to assume that the development of such a system would be seen as a priority in a nearest future. According to the research made by Centre for Public policy PROVIDUS, the victim is not the central figure in the criminal proceedings in Latvia. However, it does not mean there is a total disregard of the victim's needs. Today, the needs of the victim are subordinated to general interests of the criminal proceedings – obtaining and examining information, as well as terminating the criminal proceedings within a reasonable timeframe, free from prolonged delay. Nevertheless, not paying sufficient attention towards the victim's interests it is not possible to regulate criminal legal relations in a fair manner¹.

The number of initiated criminal proceedings in Latvia is rather high – for instance, in 2011 there were 49'528 criminal proceedings initiated, in 2012 the number decreased to 45'018 and in 2013 it was 45'096.² As for a specific number of crime victims – the latest available statistics are from 2011 and 2012 with 15'403 and 12'600 officially recognized victims respectively³. Within the context of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA⁴, these numbers indicate the approximate target group of its implementation.

In 2012, Victimization Survey of the Latvian Population was carried out⁵. Survey showed that the most crucial need of crime victims is that of legal aid 39% of crime victims mentioned this as their first priority.

¹ http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Victim%20support/ANG_105_finishdoc.pdf, 80 pp

² Annual reports of State Police, http://www.vp.gov.lv/faili/sadalas/2013._gada_publicais_parskats.pdf

³ Dzenovska I, Judins A., Zavackis A. "Noziedzīgos nodarījumos cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā", http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Victim%20support/Noziedz%C4%ABgos%20nodar%C4%ABjumos%20cietu%C5%A1o%20vajadz%C4%ABgu%20nodro%C5%A1in%C4%81jums_PK.pdf.

⁴ 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. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF> (last visited on 19 June 2014).

⁵ Victimization Survey of the Latvian Population. Centre for Public Policy PROVIDUS, SIA Fieldex, 2012. Available at: http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Victim%20support/Viktimizācijas_petijums_Fieldex_2012_Final.pdf (last visited on 19 June 2014).

1. How needs of victims addressed within Latvian legal system?

Criminal Procedure Law of Latvia includes a specific chapter dedicated to victims and the representation thereof – a chapter which also includes procedural rights and obligations of the victims. Victim's (or representative thereof) right to invite a sworn advocate or an assistant of a sworn advocate⁶ for the provision of legal assistance is indicated as one of the general principles of the rights of a victim.⁷ However, there are several questions to be asked before one can assure that the main need of victims – need for legal aid, is ensured.

Firstly, the importance of status “a victim” must be stressed. In Latvia, the mere fact of harm that has been caused to a person is not sufficient to be recognized as a victim within the understanding of Criminal Procedure Law (CPL). Section 95 of CPL states that a victim in criminal proceedings may be a natural person or legal person to whom harm was caused by a criminal offence, that is, a moral injury, physical suffering, or a material loss. Section 96 CPL stipulates that a person shall be recognised as a victim by an investigator, a public prosecutor, or a member of an investigative group, with a decision thereof, which may also be written in the manner of a resolution. Taking into consideration the above mentioned, the process of being recognized as a victim within the understanding of CPL consists of four steps. First of all, **criminal procedure must be initiated** which, among other aspects, requires reporting the crime to police. It must be noted that in Latvia the level of unreported crime is rather high – depending on the type of crime, it can reach 40%-80% of all crimes⁸, which gives an approximate impression on the number of victims excluded from the Criminal justice system at its first stage. Secondly, there must be information obtained that allows to assume that **as a result of an offence, a harm has been caused to the person**. Thirdly, the **person who has suffered from harm must agree to become a victim within criminal proceedings**. Finally, the person leading the criminal proceedings recognizes the person as a victim within understanding of CPL. Undergoing these steps leads the victim to have rights to have legal assistance. It must be noted that different conditions apply in case a minor needs legal aid but due to the limitations of this article, this aspect will be left out of overall description and analysis.

When evaluating access to legal aid after person has been recognized as a victim of crime, the second question to consider is to how many victims legal aid is actually accessible. Expenses paid for legal assistance can be reimbursed from the offender, nonetheless the victim has to be able to cover these expenses at the moment they occur. In accordance with the Victimization Survey of the Latvian Population, for more than a half of victims the average income (per family

⁶ Criminal Procedure Law, Section 79.pantu.

⁷ Criminal Procedure Law, Section 97 General Principles of the Rights of a Victim.

⁸ Kornberga I., Judins A., Zavackis A. Noziedzīgos nodarījumos cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā. Rīga: PROVIDUS, 2013.

member) in 2012 did not exceed EUR 285 per month.⁹ For comparison – EUR 285 also corresponds to the minimal monthly wage for 2012.¹⁰ This data leads to founded doubts as to whether the majority of victims will be able to afford legal aid.

For those who cannot afford legal aid, State ensured legal aid should be available. In accordance with State Ensured Legal Aid Law (SELAL), person has to meet rather strict conditions to be entitled for state's help. As stated in Section 3 of SELAL, person has the right to request legal aid if: (1) one has obtained the status of a low-income or a person in need, in accordance with the procedures specified in the regulatory enactments regarding the recognition of a natural person as a low-income or needy person¹¹; or (2) one finds oneself suddenly in a situation where the material conditions prevent them from ensuring the protection of one's rights (due to a natural disaster or *force majeure* or other circumstances beyond one's control), or are on full support of the State or local government.¹²

Conditions for receiving State ensured legal aid are also considered as fairly restrictive by the vast majority of stakeholders in the field. As shown in Figure 1, 39% of all stakeholders consider the conditions fairly restrictive while 18% of all stakeholders think that the conditions are very restrictive. Only 4% of stakeholders assess the conditions as very open and only 7% - as fairly open.

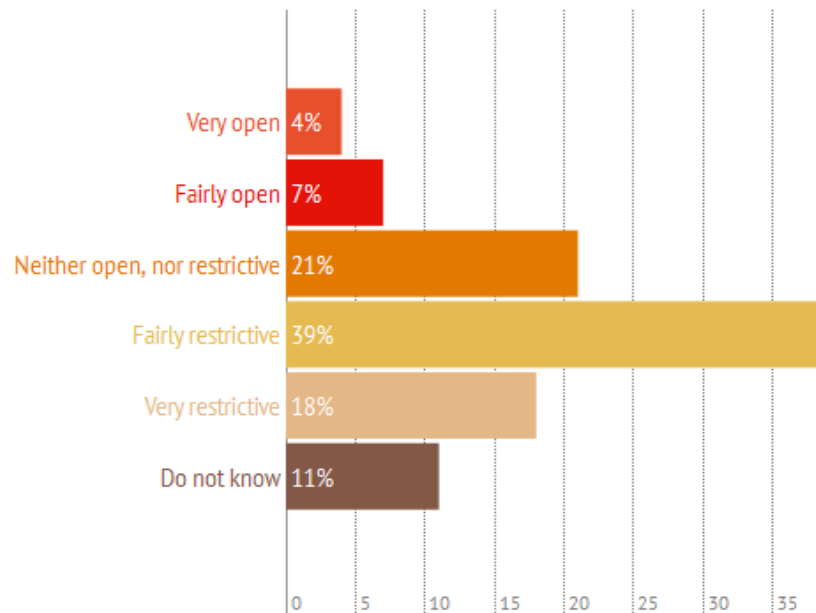
⁹ Victimization Survey of the Latvian Population. Centre for Public Policy PROVIDUS, SIA Fieldex, 2012. Available at: http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Victim%20support/Viktimizacijas_petijums_Fieldex_2012_Final.pdf (last visited on 19 June 2014).

¹⁰ <http://www.lm.gov.lv/news/id/2983>.

¹¹ Author's note: in accordance with national rules, person's average income of last three months cannot exceed EUR 128 EUR per month (per family member). <http://likumi.lv/doc.php?id=207462>

¹² State Ensured Legal Aid Law, Section 3. Available at: <http://likumi.lv/doc.php?id=104831> (last visited on 19 June 2014).

Figure 1. Assessment of the conditions that a person has to meet to qualify for state-provided legal aid

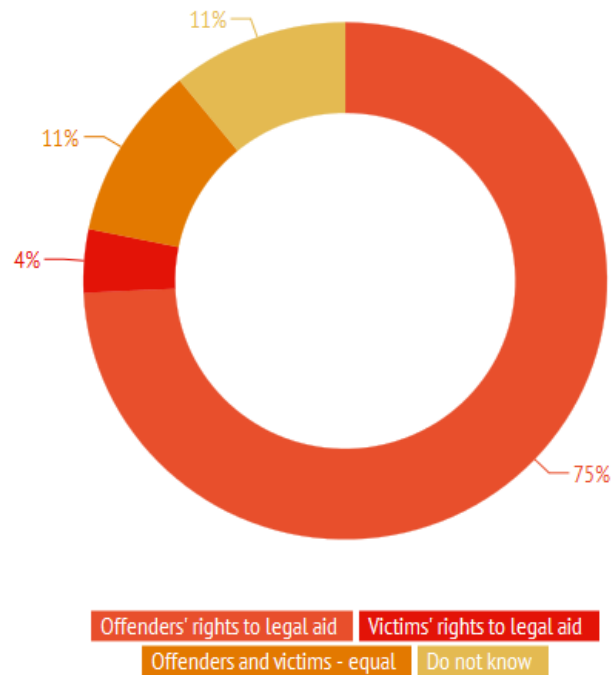


Source: Survey of stakeholders within the project Improving Protection of Victim’s Rights: Access to Legal Aid (2013).

For comparison – Section 20 of CPL states the conditions that has to be met by a person who has the right to defense, namely: “If a person may not invite a defense counsel due to his or her financial situation, the State shall ensure assistance of a defense counsel for such person and decide on the remuneration of the defense counsel from State resources, completely or partially discharging such person from payment.” Generally, in case of offender there are only two aspects to consider – whether the person has been recognized as a person who has the right to defense within the understanding of CPL (a) and whether this person cannot afford defense council (b) in which case the solution is ensured by the state by providing a state ensured defense council.

As for the victims of crime, the main difference is not in the number of aspects for consideration but in the consequences of the fact that person cannot afford legal aid – a very limited group of victims is entitled to additional help form state. This also leads to the opinion the majority of stakeholders have – when evaluating the broadness of safeguarding rights to legal aid of offenders and victims, 75% of all respondents indicated that offenders’ rights to legal aid are broader and better safeguarded. Only 11% of respondents thought that the offenders and victims are in equal circumstances while as little as 4% if respondents indicated that victims’ rights to legal aid are broader and better safeguarded.

Figure 2. Whose rights to legal aid are broader and better safeguarded?



Source: Survey of stakeholders within the project Improving Protection of Victim's Rights: Access to Legal Aid (2013).

It must be noted however, that the issue of victims' access to legal aid and defence councils should be looked at from several viewpoints. It is stressed out that the presence of a defence council on victim's part contributes to timely execution of criminal procedure and, in a way, disciplines the person directing the proceedings to fulfil one's obligations.¹³ It might be necessary to address this problem otherwise – by changing the attitude of persons directing the proceedings, among other things. In many cases victims do not need defence – they need information and explanations. This was also confirmed by participants in Victimization Survey of the Latvian Population as 26% (the third priority of all needs) of respondents indicated a need for information about their further actions in specific situation.¹⁴

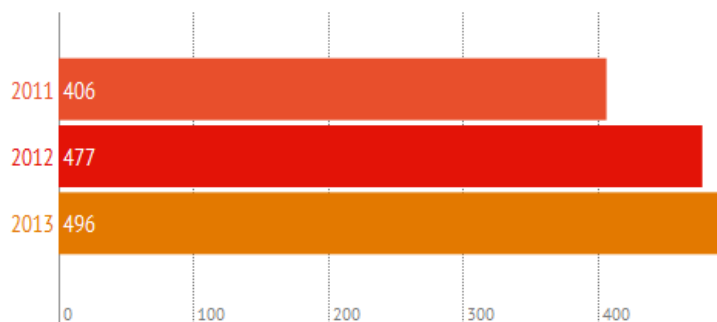
As the next aspect to be analyzed within this article is compensation to victims, an example that is directly linked with the topic that can be used to highlight the importance of information as well. In case of state compensation for victims, the most common grounds for refusing the request for compensation was the fact that the deadline of one year after the offence was missed. However, as the persons directing the proceedings are obliged to inform victims about

¹³Litvins G., „Improving protection of victims' rights: access to legal aid”, Latvian National Report, available at: http://www.providus.lv/upload_file/Publikācijas/Kriminalt/Report_Latvia.pdf, (last visited on 19 June 2014)

¹⁴Victimization Survey of the Latvian Population. Centre for Public Policy PROVIDUS, SIA Fieldex, 2012. Available at: http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Victim%20support/Viktimizācijas_petijums_Fieldex_2012_Final.pdf (last visited on 19 June 2014).

their rights and obligations within criminal proceedings (including the right to request compensation), there has been a steady increase of granted requests.

Figure 3. Granted requests of State compensation for victims of crime.



Source: Annual report of Legal Aid Administration¹⁵

To continue the analysis of victims rights to compensation in Latvia, it must be stressed out that the right to receive compensation is another general principle of the rights of a victim and it is viewed as an important component within the context of victims' rights to legal aid.

Section 97 of CPL states that: "A victim, taking into account the amount of financial loss, physical suffering, and moral injury caused to him or her, shall submit the amounts of such harm, and use his or her procedural rights for acquiring moral and material compensation." Chapter 26 of CPL provides further framework on receiving the compensation for harm caused by a criminal offence. Firstly, victim can receive compensation from the offender and it can be paid voluntarily or on the basis of a court adjudication. Victim has the right to submit an application regarding compensation for a caused harm in any stage of criminal proceedings up to the commencement of a court investigation in a court of first instance and the application can be submitted both in writing or expressed orally. If a victim believes that the entire harm caused to him or her has not been compensated with the compensation, he or she has the right to request the compensation thereof in accordance with the procedures laid down in the Civil Procedure Law. In determining the amount of consideration, the compensation received in criminal proceedings shall be taken into account.¹⁶

If the offender does not fulfil the court adjudication regarding the compensation to the victim, writ of execution is sent for compulsory execution by the court of first instance. There are however, several practical difficulties regarding compulsory execution in Latvia – in addition to vertical and horizontal problems of bailiffs' system in Latvia, from the victim's point of view the

¹⁵ Annual Report of Legal State Administration. Available at : http://www.jpa.gov.lv/uploads/filedir/jpa_2013_publiciskais_parskatspdf.pdf, last visited 19 June 2014.

¹⁶ Author's note: to see more on the procedure of receiving the compensation and determining the amount of compensation etc., please see Chapter 26 of Criminal Procedure Law „Compensation for Harm Caused by a Criminal Offence”.

writ of execution does not ensure receiving the compensation. This is due to the fact that offenders' level of income is often below the minimum against which compulsory execution can be applied and this issue is even more topical in case of imprisonment of the offender.¹⁷

Victims of certain type of crimes are also entitled to state compensation for their moral injury, physical suffering or financial loss - conditions are foreseen in Law On State Compensation to Victims¹⁸. Namely, a victim is entitled to state compensation in case of intentional criminal offence, if the criminal offence has resulted in the death of the person or caused severe bodily injuries to the victim or the criminal offence has been directed against sexual inviolability of the person, person has been a victim of trafficking in human beings or the victim has been infected with human immunodeficiency virus, Hepatitis B or C.

The victim has the right to the State compensation also if a perpetrator of a criminal offence or a joint participant thereof has not been identified or he or she in accordance with the Criminal Law shall not be held criminally liable.

In 2014, the maximum amount of state compensation is five minimal monthly wages¹⁹. In accordance with Law On State Compensation to Victims, in case of person's death, 100% of maximum amount is granted - EUR 1600. If the criminal offence has caused severe bodily injuries to the victim or the criminal offence has been directed against sexual inviolability of the person or the person has been a victim of trafficking in human beings, 70% of maximum amount is granted – EUR 1120, but if the victim has been infected with human immunodeficiency virus, Hepatitis B or C, he or she receives 50% of maximum amount – EUR 800.

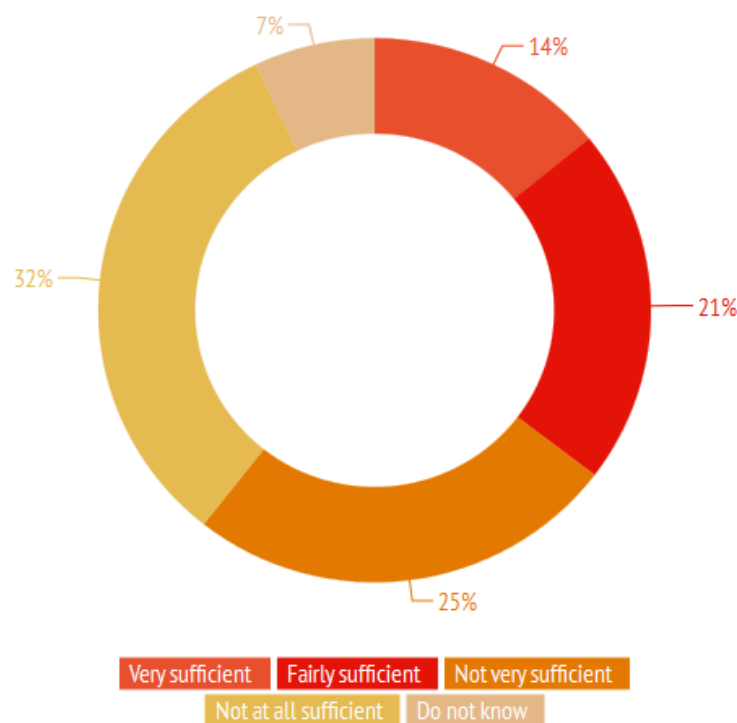
Even though the number of granted requests for state compensation increases over the last few years (please see Figure 3), stakeholders are still of an opinion that the victims could be better informed about their possibilities to receive state compensation. When asked to evaluate the sufficiency of information about possibilities to obtain state compensation, only 14% indicated that the information is completely sufficient and 21% thought that information is sufficient. Majority of all respondents think that the information is not very sufficient or is not at all sufficient (25% and 32% respectively).

¹⁷ Kronberga I., Litvins G. et.al. Mehānismi cietušo kompensācijai kriminālprocesā Eiropas Savienībā. Rīga, 2013. Available at: <http://www.providus.lv/public/27819.html> (last visited on 25.06.2014.).

¹⁸ Law on State Compensation to Victims. Available at: <http://likumi.lv/doc.php?id=136683> (last visited on 25.06.2014.)

¹⁹ Author's note: in 2014, the minimal monthly wage in Latvia is EUR 320.

Figure 4. How would you evaluate sufficiency of information available to victims about possibilities to obtain state compensation?



Source: Survey of stakeholders within the project **Improving Protection of Victim’s Rights: Access to Legal Aid (2013)**.

2. Mediation process in criminal cases

Since 2005 victim-offender mediation in criminal cases is available in Latvia and is carried out by the State Probation Service. Article 381 of Criminal Procedure Law stipulates that in case of a settlement, an intermediary trained by the State Probation Service may facilitate the conciliation of victim and the offender. A person directing the proceedings (police office, prosecutor or a judge) may invite specialist from State Probation Service to start the mediation process.

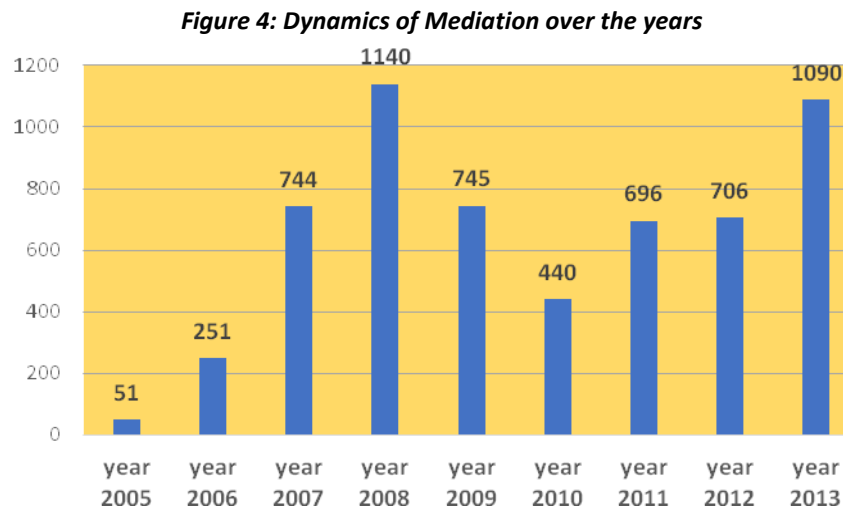
Article 13 of State Probation Law stipulates that specialists from State Probation Service (SPS) shall ensure that the victim and a probation client can voluntarily engage in the process of mediation. SPS is also responsible for training volunteer mediators. Article 13 also indicates that Cabinet of Ministers of Republic of Latvia must determine the procedure of volunteer probation officers’ certification and qualifying as intermediaries in cases of settlement.

In general, mediation practice is based on principles of Restorative Justice where crime is defined as a conflict between members of society, not a law-breaking instance. It is available for all types and all stages of criminal proceedings in Latvia and can be described by the

following principles:

- Participation in the process has to be voluntary;
- There needs to be an indication that the involved parties wish to resolve the conflict;
- The offender admits that a crime was committed;
- No minor victims participate, if their wellbeing might be at risk as a consequence of the mediation process;
- A legal representative participates when a minor is involved;
- Parties are allowed to withdraw from mediation at any given time;
- Process is facilitated by a trained mediator;
- Mediator adheres to ethical principles and confidentiality;
- Mediation is possible in all types of offences and all stages of criminal proceedings;
- Participation in mediation process is free of charge.

The first training for mediators in Latvia was organized in 2005 in cooperation with National Mediation Service of Norway and during the first year when this opportunity was provided, 51 mediation cases took place. Currently, there are 73 trained mediators at the SPS and 25 volunteer mediators in Latvia and the number of mediation cases has risen to 1090 in 2013. (Figure 4).



According to the law, mediation can be initiated by a police officer, a prosecutor, a judge and both parties – victims and offenders. However, in 2013 there were 39 cases for mediation initiated by victims.

Figure 5: Dynamic of referred mediation cases

	year 2008	year 2009	year 2010	year 2011	year 2012	year 2013
Police	187	79	83	185	166	244
Procecutor	83	64	69	53	71	76
Court	68	7	0	0	0	22
Judge	0	0	4	3	7	4
Both parties	28	41	9	11	4	17
Offender	743	539	239	433	445	688
Victim	31	15	36	11	13	39
	1140	745	440	696	706	1090

The majority of offenders, who are involved in mediation process have committed crimes that have to do with property – thefts, robberies and fraud; while offenders of more serious crimes participate less frequently.

Figure 6: Type of crime²⁰

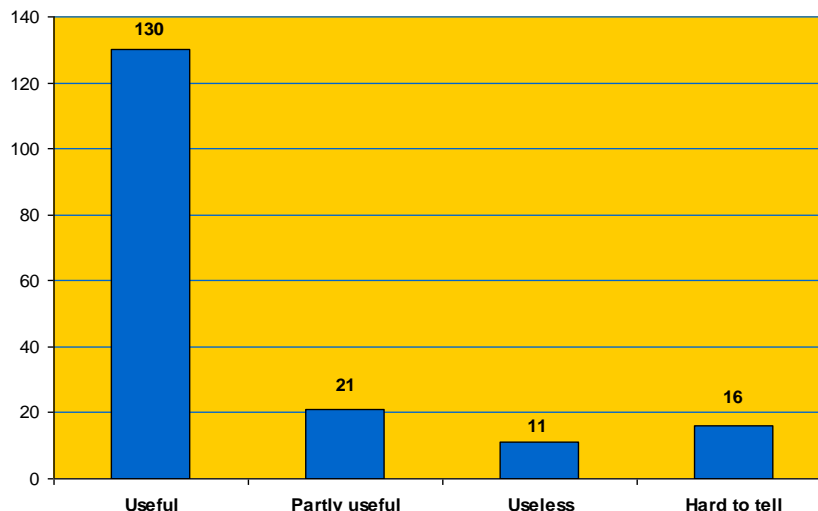
Type of crime	
Different types of theft	306
Destruction of property of another person	84
Different types of bodily injury, including cases with serious consequences	74
Violations of road traffic	26
Hooliganism	11
Other	25

Starting from 2009, mediators offer the involved parties to fulfil a questionnaire on the process they are involved in. In 2013 there were 484 questionnaires filled - 208 from offenders, 178

²⁰ Kronberga I. "Restorative Justice in Latvia: Advancement, Perspectives and Challenges in Future" available at: http://www.providus.lv/upload_file/Publikacijas/Kriminalt/Restorative_Justice_Latvia_Report.pdf

from victims and 98 from support persons of both parties on measuring the usefulness of the mediation process. In most cases, parties agreed that the process was very useful for them.

Figure 7: Was it useful to meet other party in mediation?



From 2009 the SBS organizes a public activity called “Mediation week”, where members of general public are informed about the constructive resolving of the conflicts and values of Restorative Justice. In addition, the SBS also organizes discussions and seminars for police officers, prosecutors and judges about Restorative Justice Principles and mediation. Mediators, on the other hand, can improve their expertise via regular educational activities, which are provided by SPS.

3. Conclusions

As it has been highlighted in previous studies²¹, Latvia has series of important components of victim support system in place, but not a comprehensive system in its own right as a task-oriented body of measures.

The state compensation and legal aid to victims of criminal offences are only two small elements of what such system should entail. The victim compensation system as described in the Criminal Procedure Law and in the Criminal Law is only a part of the compensation mechanism and support provided to certain groups of victims does not mean that Latvia has a victim support system. Similarly, financing assigned annually for payment of the state guaranteed compensation from the state budget is not to be considered a victim compensation fund.

The support system for victims of crime is comprised of horizontal and vertical directions of

²¹ Kronberga I., Litvins G. et.al. Mehānismi cietušo kompensācijai kriminālprocesā Eiropas Savienībā. Rīga, 2013. Available at: <http://www.providus.lv/public/27819.html> (last visited on 25.06.2014.).

activities. The vertical directions of activities are related to financing, administration and management of the system, including identification, quality management, analysis and monitoring of services provided to victims. The horizontal victim support system concerns itself with the accessibility of services provided to victims, including rural regions of Latvia, range of services that would suit the needs of victims, and legal regulation of inter-authority cooperation at the local level (the place where a victim receives the respective support) and at the state level, where decisions are met, financing is assigned and regular evaluation of the system performed.²²

Without a doubt, 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/JHA²³ (Directive), will be of significant relevance when it comes to improvement of both legal framework and the general attitude towards the victims of crime. Transposition of the Directive is still an ongoing process, nevertheless it is already quite certain that, among other changes, the circle of persons that are entitled to the status of a victim (if the criminal offence has resulted in a death of a person) will become broader; more attention will be paid to specific needs of victims and, most importantly, the issue of victims' support services will be addressed providing all victims with a possibility to receive initial legal and psychological help.

Even though it still might be too early to affirm that a victim support system is finally being built in Latvia, several new components, such as the increased use of mediation process for settlement, are being added to the already existing ones and serve as a positive indicator of support system developing, the relevance of which should not be underestimated.

²² Kronberga I., Litvins G. et.al. Mehānismi cietušo kompensācijai kriminālprocesā Eiropas Savienībā. Rīga, 2013. Available at: <http://www.providus.lv/public/27819.html> (last visited on 25.06.2014.).

²³ 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. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:-PDF> (last visited on 19 June 2014).

THE ENGLISH AND WELSH PERSPECTIVE ON LEGAL AID FOR CRIME VICTIMS

Louise Taylor

1. Introduction

It should be explained at the outset that in spite of the growing commitment to improving the plight of crime victims in England and Wales, victims in this jurisdiction do not have any right to access legal aid in order to protect their interests in the context of criminal proceedings. That this state of affairs could be possible whilst the UK is also a signatory to Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (the 'Directive') might seem unusual to some of our continental counterparts, but this situation was clearly envisaged when Article 13 was drafted in that the protection of the right to access legal aid was specifically restricted to those member states who recognise victims as parties to proceedings. As a result of the common law bipartisan adversarial system of justice that operates in England and Wales, victims are not recognised as parties to criminal proceedings and therefore the obligation to ensure access to legal aid does not apply.

The purpose of this paper is to give a brief overview of the English and Welsh Criminal Justice System and to explain the role of crime victims within it; to offer an insight into some of the soft law provisions that have been developed in England and Wales as alternatives to more formal provisions such as legal aid in offering protection and support to crime victims; and to question whether a right to legal aid to provide independent legal representation (ILR) for victims should and could be developed in this jurisdiction.

2. The role of crime victims within the English and Welsh Criminal Justice System.

In England and Wales criminal cases usually begin with a complaint of criminal wrongdoing being made to a relevant state authority, normally the police. If there is thought to be merit in the complaint it is then for the police to investigate the crime and if an alleged perpetrator is apprehended, for the Crown Prosecution Service (CPS) to select the relevant charges and initiate criminal proceedings. Throughout this process there are numerous decisions taken by criminal justice personnel without any direct input from the victim. For example, while the Code for Crown Prosecutors (governing the decision-making processes of the CPS) indicates that the victim's views should be considered when reaching a decision whether or not to prosecute, it is made clear that this decision is ultimately for the CPS to take regardless of any

opinion that the victim may have on the matter.²⁴ This is so because the English and Welsh criminal justice system has developed to prosecute crimes on behalf of the state and in order to protect wider public interests beyond those solely relevant to the victim.

A rarely used exception to this approach is the possibility that a victim may raise a private prosecution, however the financial and other resources required to pursue such an action make the availability of this procedure limited in practice. Even in those rare cases where a private prosecution does get off the ground, the extent of this right in real terms is again limited because the CPS will usually take over the case in order to discontinue it or to take control of the decision-making processes if they determine that the prosecution should proceed. It is also notable that victims who choose to pursue a private prosecution are not entitled to legal aid in order to do so.

So then, in the initial stages of a victim's case they are likely to feel largely excluded from the process, but what of their status within the criminal proceedings themselves, presuming of course that their case ever gets that far? Jonathan Doak explains that: 'Conceptually, victims have no role to play in the modern criminal justice system other than to act as 'evidentiary cannon fodder'. In contrast to many continental systems, they have no 'right to be heard' or give a narrative account, and they are denied any form of proactive participation in the trial, since their interests are deemed to fall outside the remit of the criminal trial as a forum for the resolution of the dispute between the state and the accused.'²⁵

Thus as a result of the nature of the system of justice operating in England and Wales a defined role for victims within criminal proceedings has not developed. At best, victims are passive participants in that they are restricted in the narrative they can put before the court, being able only to answer questions as put to them by counsel for the state or counsel for the defendant. They are powerless to influence the course of proceedings or direct questions to witnesses, and are ultimately excluded from the various decision-making processes involved in shaping their cases.

3. The development of soft law provisions to protect and support crime victims.

But things are not at all as bleak as the account above might suggest. While a defined role for crime victims has not developed in this jurisdiction that is not to say that the protection of victims' interests in England and Wales has been overlooked. Indeed, since the mid-1990s there has been a growing awareness of the plight of crime victims throughout the UK and this has been addressed in England and Wales through the introduction of soft law enactments designed to provide victims with a range of service standards to be met by the criminal justice agencies dealing with their cases.

²⁴ CPS, 'The Code for Crown Prosecutors', 2013, p. 8-9.

²⁵ Jonathan Doak, 'Victims Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties', Hart: Oxford, 2008, p 35.

The current emanation of these service standards, the Code of Practice for Victims of Crime (the 'Code'),²⁶ was placed on a statutory footing under the Domestic Violence, Crime and Victims Act 2004 (the '2004 Act') and was first issued in 2006. This was subsequently revised and reissued in October 2013 to make the Code more user-friendly for victims, to make it more outcome-focussed rather than process-orientated, and to give good effect to the requirements of the Directive.

The Code defines a victim as: a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by criminal conduct; or a close relative of a person whose death was directly caused by criminal conduct.²⁷ This is a relatively wide definition and takes significant steps in meeting the broad definition of victim provided under the Directive.²⁸

The Code outlines a whole host of services to which victims are entitled, and identifies a range of criminal justice agencies that are obligated to deliver these.²⁹ Of particular interest in the context of the current analysis is the entitlement under the Code to criminal injuries compensation, the availability of victim support services, and the right to participate in criminal proceedings. These aspects are worthy of a brief further exploration here because they are markers which allow others to compare the support and protection afforded to victims in those jurisdictions where a right to access legal aid is provided, and the support and protection afforded in jurisdictions, such as England and Wales, where it is not.

I. Criminal Injuries Compensation.

Access to compensation is likely to be an issue of concern for victims under both types of system, and something that victims will seek advice about regardless of a right of access to legal aid. In England and Wales criminal injuries compensation is available under the government funded Criminal Injuries Compensation Scheme (CICS) which seeks to financially compensate blameless and law-abiding victims of violent crime as a demonstration of public sympathy for their suffering.³⁰

While the Code requires that the Criminal Injuries Compensation Authority (CICA) operating the CICS, advises victims about the scheme's eligibility criteria and the progress of their claim,³¹ the CICA is not required to offer much in the way of additional assistance to victims who apply for

²⁶ Ministry of Justice, 'The Code of Practice for Victims of Crime', HMSO: London, 2013.

²⁷ *Ibid.* para 4.

²⁸ The Directive, Art 2(1).

²⁹ Amongst other, services outlined within the Code include: to be kept informed about the progress of their case, to be referred to victim support organisations, to make a Victim Personal Statement, to visit the court prior to criminal proceedings and to apply for compensation.

³⁰ Criminal Injuries Compensation Authority; Ministry of Justice, 'Criminal Injuries Compensation: A Guide' 2012. Available at: <https://www.gov.uk/criminal-injuries-compensation-a-guide#how-to-use-this-guide> [accessed 15/06/2014].

³¹ *Op. cit.*, n 3 Chapt 2, Part A, Section 8.4.

compensation. A notable exception to this is the enhanced service required from the CICA in cases involving victims identified as being in need of special measures of protection. For those victims the Code requires that the CICA assists victims in obtaining evidence in support of their application and in completing the CICS application process.³² This means that for the majority of victims who seek compensation through the CICS they will be faced with an application process which they are expected to negotiate in the absence of any assistance from the CICA. It is again also notable here that legal aid is not available to provide victims with free legal advice and representation in connection with their compensation application or to assist in seeking review of a CICA decision where an application has been unsuccessful.

II. Victim Support Services.

Access to victim support services is another important marker in comparing England and Wales against those jurisdiction where victims are afforded legal aid. This is so for a variety of reasons, but most significantly in this context because victims in this jurisdiction are likely to seek out some of the advice and support from victim support personnel that victims in jurisdictions where legal aid is provided may otherwise seek from their legal representative.

In spite of the comprehensive victim support services that are available in this jurisdiction, victims have no particular entitlement to support services protected under the Code and similarly victim support service providers are not listed within the Code as being agencies with any particular obligations towards victims in the range of quality of services that they should provide. Instead the Code entitles victims to information provided from the police about the services that may be available to them and entitles them to receive contact details for relevant victim support providers. Victims are also entitled to have their information referred to a relevant support service within two days of making a complaint to the police, but can alternatively request for their information not to be shared with support agencies where they do not wish to pursue support.³³

III. Victim Participation in Criminal Proceedings.

The final marker to be considered here is the ability of victims to participate within criminal proceedings. As already stressed, victims in England and Wales are not regarded as parties to proceedings but the Code does allow for limited participation in the criminal process through a scheme known as the Victim Personal Statement Scheme.³⁴ Under the Scheme victims are entitled to provide an impact statement to police in addition to their evidential statement in which they can outline the effect that the crime has had upon their lives. This statement then becomes part of the case papers which can be considered by the various criminal justice personnel involved in the case and can be taken into account in appropriate decision-making processes. The statement is also available to the sentencing court and through this mechanism

³² *Op. cit.*, n 3 Chapt 2, Part A, Section 8.6.

³³ *Op. cit.*, n 3 Chapt 2, Part A, Section 1.

³⁴ *Op. cit.*, n 3 Chapter 2, Part A, Sections 1.11-1.21.

the victim is facilitated in participating in criminal proceedings in a way that was previously impossible. Even although the Scheme was rolled out nationally in 2001 it was only protected under the Code for the first time in 2013. The added protection afforded to the Scheme by its inclusion in the Code indicates the willingness of our government to protect the limited participatory rights that victims currently have in this jurisdiction, and to give better effect to the participatory ethos which is apparent in the Directive.

IV. Problems with the Code.

While the latest version of the Code looks to have put in place significant improvements for crime victims, and makes real strides in giving effect to the intentions of the Directive, the level of provision it provides for victims continues to prove problematic for a variety of reasons. In particular, the availability of services under the Code is restricted in that only those direct victims who have made a formal allegation of criminal conduct to the police are entitled to access services. Furthermore, while the Code does provide services to secondary victims of crime, this is restricted to only those secondary victims who are the close relatives of a person who has died as a result of criminal conduct. This can prove problematic in cases where the criminal nature of the victim's death is yet to be determined, and also in cases where the close family members of the deceased are at odds in respect of the services which they wish to access under the Code or in respect of the representations that they wish to make to the criminal justice agencies dealing with their case.

Beyond these restrictions an additional problem inherent in providing services for victims via such soft law enactments is that the Code does not provide victims with an effective mechanism through which they can seek legal redress if its terms are not met. Section 34 of the 2004 Act specifically states that a breach of the Code cannot give rise to criminal or civil liability and this, in addition to the Code's complicated and relatively ineffectual complaints mechanism, has the result that victims have no real means of ensuring that they receive the level and range of services which the Code leads them to expect.³⁵ The very apparent danger in this approach is that improvements for victims are secured on paper but not in practice. It is against such a backdrop that the call for the introduction of a right to access legal aid in order to secure independent legal representation (ILR) for crime victims has gathered weight.

4. Developing Legal Aid for Crime Victims in England and Wales.

There are various points throughout the English and Welsh criminal justice process where victims would benefit from the provision of ILR provided through the state-funded legal aid system. Such a development would be of particular benefit to victims in reducing the secondary

³⁵ Marie Manikis, 'Navigating through an Obstacle Course: The Complaints Mechanism for Victims of Crime in England and Wales' (2012) 12(2) *Criminology and Criminal Justice* 149.

victimisation that many experience as a result of their interactions with the Criminal Justice System.

Victim dissatisfaction and secondary victimisation can result from the lonely and sometimes hostile environment that victims are required to navigate in their pursuit of justice. This could be greatly ameliorated if victims were able to access free legal representation from an adviser who represented only the interests of the victim and who was experienced in the language and procedures of the criminal justice system. Access to ILR would also be of benefit to victims in ensuring that the agencies dealing with their cases were held to account in meeting the standards of support and protection required under the Code. The victim's legal representative would be a 'single adviser with the specialist knowledge and legal authority to access information'³⁶ on the victim's behalf and this would prove particularly useful for those victims who wished to challenge the decisions of criminal justice agencies or utilise the Code's complaints mechanisms.

In the context of our adversarial system of justice the most controversial aspect of ILR relates to the provision of legal representation for victims during the trial process. Sam Garkawe advocates that 'given [the] specific interest of the victim, the laws of procedural fairness seem to suggest that victims should receive consideration throughout the proceedings on the basis that they are substantially affected'.³⁷ Arguably the best way of protecting these specific interests is to provide victims with legal aid in order that they can secure their own legal representation. Not only would this allow victims to be better supported to give their best evidence in court, but this would also provide victims with much more robust protection from over-zealous questioning by defence counsel than could ever be achieved under our current arrangements.³⁸

However, opponents of ILR contend that such a development would interfere with the defendant's right to receive a fair trial, and more particularly, that the introduction of a third party to proceedings who would stand in opposition to the defendant's position would undermine the central tenet of equity of arms which underpins our bipartisan adversarial tradition. This may be so if an ILR approach was adopted which put victims on an equal footing with the defendant, but there are clearly approaches that could be adopted that would fall short of that, allowing for the observance of the defendant's rights while offering increased support and protection to victims. Other common law jurisdictions have been successful in doing so and there is no reason to think that this could not be similarly achieved in this jurisdiction:

³⁶ Fiona E. Raitt, 'Independent Legal Representation for Complainers in Sexual Offence Trials' Rape Crisis Scotland, 2010, para 8.05.

³⁷ Sam Garkawe, 'The Role of the Victim During Criminal Court Proceedings' (1994) 17 UNSWLJ 595, p 630.

³⁸ For a discussion of the difficulty faced by prosecutors and judges in trying to protect victims' interests while observing their other obligations during criminal proceedings see: Fiona E. Raitt, 'Independent Legal Representation in Rape Cases: Meeting the Justice Deficit in Adversarial Proceedings' 2013 9 Criminal Law Review 729-749, p 734-738, and Jonathan Doak, 'Victims' Rights in Criminal Trials: Prospects for Participation' 2005 32(2) Journal of Law and Society 294, p 305-6.

'Several common law jurisdictions, e.g. Ireland and Canada, have introduced specialised procedures for legal representation at specific procedural stages, or, as in the US, promote a far more robust, prosecutorial-driven case-building approach linked to more direct access by complainants to prosecutors.'³⁹

If one of these compromise approaches could be adopted in England and Wales then the adversarial nature of our system should not, in itself, constitute an insurmountable barrier preventing the provision of ILR through legal aid for crime victims.⁴⁰ A much more real and present threat is however presented by the extensive austerity measures that were introduced to this jurisdiction in 2013 under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. In a climate where the government are seeking to save £220 million from the £1 billion annual criminal legal aid budget⁴¹ it is unlikely to prove politically and economically viable for the government to support the introduction of ILR for victims funded by the public purse.

During such challenging times it is also likely that the legal profession would be reluctant to support such a development. Where would the legal representatives for victims come from if not from the existing pool of criminal solicitors and barristers who may be understandably reluctant to become further embroiled in the uncertain and challenging legal aid market? Many of these potential advisers may also feel precluded from supporting ILR for victims at a point when many consider that the interests of defendants have been significantly and inappropriately undermined by the government's cuts to the legal aid budget.

5. Conclusion.

The position of victims in England and Wales has improved enormously in recent years but they continue to be denied any defined role within criminal proceedings. In spite of this, victims within our jurisdiction are supported and protected by dedicated professionals working hard to provide services to victims which meet the requirements of the Code of Practice for Victims of Crime. Unfortunately, on the occasions where these standards are not met there is no adequate way of calling agencies to account and this represents one of the main problems in our approach to providing services to victims via soft law enactments. This, in addition to the growing awareness that current arrangements within the criminal trial process are inadequate in protecting victims' specific interests, has given rise to calls for the introduction of publicly funded independent legal representation for crime victims. Such proposals are likely to be met with scepticism and occasional hostility,⁴² particularly from the stalwarts of the legal profession, but that does not mean that there is no value in working towards the development of

³⁹ *Op. cit.*, n 13, para 8.01.

⁴⁰ *Op. cit.*, n 13, para 8.02.

⁴¹ Owen Bowcott, 'Legal Aid Overhaul – What the changes will mean for you.' Available at: <http://www.theguardian.com/law/2013/jun/04/legal-aid-overhaul-changes-cuts> [accessed 01/07/2014].

⁴² *Op. cit.*, n 13, para 8.10.

appropriate legal aid funded ILR provision for the benefit of victims within our adversarial system. How this can be successfully achieved in the current climate of hostility towards cuts to the legal aid budget is problematic however, and may just prove one hurdle too far for the proponents of legal aid for victims to be able to take a workable solution forward at the present time.

LEGAL AID FOR VICTIMS IN CRIMINAL PROCEEDINGS IN PORTUGAL¹

Vânia Costa Ramos

The following article gives an overview of legal aid for victims in criminal cases in Portugal. It addresses the issues of a victim's access to a lawyer, when and how the right is granted (right to legal assistance), and under what circumstances the victim has a right to financial legal aid (right to financial legal aid).

Before addressing financial legal aid, the article will outline the victim's right to legal assistance, as the latter defines the scope of the former. If a victim has the right to legal assistance in a certain procedural setting, she will also be entitled to financial legal aid for that procedure, if she meets the legally established eligibility criteria.

1. The Constitutional Framework of the right to legal assistance and to legal aid

In the Portuguese legal system the victim's role and right to legal assistance are recognised and protected by the Portuguese Constitution (CRP).

Firstly in a general manner the Constitution grants every citizen the right of access to justice stating "*justice may not be denied to anyone due to lack of sufficient financial means*"².

Secondly the right of access to justice in Portugal includes a far reaching constitutionally granted right to legal assistance, according to which "*everyone has the right to legal information and advice, to legal counsel and to be accompanied by a lawyer before any authority*"³. This means that citizens participating in any proceedings, including victims of a crime, have the right to have a lawyer present with them.

2. The role of the victim in criminal proceedings in Portugal

A victim is any person who, as a result of a crime, was directly harmed or affected in their physical integrity, honour, health or property. If the victim has passed away, is a minor or lacks mental capacity she can be represented by her closest family members. Similarly, a company can be victim of a crime.

¹ I thank Xenia Rivkin for her support in drafting this paper. For any thought or comments please e-mail the author on vaniacostaramos@carlospintodeabreu.com.

² Art. 20 (1) CRP. An English translation of the Portuguese Constitution is available on <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>.

³ Art. 20 (2) CRP.

A criminal procedure is mainly about identifying the actor responsible for the commission of a crime. The victim *per se* is therefore not at the centre of the proceedings. However, this doesn't mean that her interests cannot be taken into account in a criminal procedure. The importance of the participation of the victim in the criminal proceedings has long been recognised and is even constitutionally protected⁴. The Constitution grants the victim a right to intervene in criminal proceedings, but leaves its definition to the law. The law accordingly establishes the rights of victims to intervene in criminal proceedings, to legal assistance and to financial legal aid. The most relevant legislative instruments in this regard are the Code of Criminal Procedure⁵ (CPP), the Regulation on Procedural Costs⁶ (RCP) and the Law on Access to Law and to Courts⁷. There are also special regulations for the victims of violent crimes and of domestic violence, which will not be addressed in this article⁸.

3. When does a victim have the right to have access to a lawyer in criminal cases in Portugal?

In order to enforce her rights in criminal proceedings the victim has various possibilities, which depend on her desire to take a less or more active role.

One can distinguish three different forms of intervention in criminal proceedings for the victim: *i*) as a mere *testemunha* (witness) or *queixosa* (complainant); *ii*) as a *demandante civil* (civil claimant) or as an *iii*) *assistente* (assistant, i.e. collaborator of the Public Prosecutor).

The Code of Criminal Procedure lays down the defendant's statute (i.e. his rights and duties within the criminal proceedings), but not the one of the victim as such in general. Nevertheless there are specific rules concerning the status of the assistant, the civil claimant, the complainant and, ultimately, the witness, which are spread throughout the Code. It should be noted that victims of domestic violence have their status and rights defined by special legislation, which currently leads to a different treatment between these victims and victims of other crimes.

It should further be noted that when intervening in criminal proceedings the victim is always entitled to the right to legal assistance, irrespective of the form of intervention.

⁴ Art. 32 (7) CRP.

⁵ A partial English translation is available on http://www.gddc.pt/codigos/code_criminal_procedure.html.

⁶ Law Decree 34/2008, of February 26.

⁷ Law 34/2004, of July 29.

⁸ Law 104/2009, of September 14, on compensation to victims of violent crimes; Law 112/2009, of September 16, on prevention of domestic violence and protection and assistance to its victims; Law Decree 120/2010, of October 27, on the Commission on the Protection of Crime Victims.

a. The intervention as a complainant and witness

Firstly, a victim can be a mere *testemunha* (witness) and/or complainant. For example, a victim who was subject to an armed robbery may intervene during the phase of investigation and at a later stage during the trial, in order to convey her view of the facts of the crime. In this case, the intervention of the “*vítima-testemunha*” (victim-witness) is passive. Even so, the victim has several rights: *i*) she may ask for compensation for travelling expenses⁹; *ii*) she may ask for protection, in case she fears the author of the crime could harm her because she is testifying¹⁰; *iii*) if the court is not located in her area of residence, she may ask to testify by video conference at the court of her residence during the trial¹¹; *iv*) she may benefit from victim support services (both social and psychological support); *v*) she may request to be informed about whether or not the crime suspect was indicted¹²; *vi*) she may be accompanied by a lawyer during any procedural act¹³ and, if she lacks financial means, she may request financial legal aid from the social security services. However the lawyer can only accompany and advise the witness, he cannot take an active role nor intervene during the proceedings or the trial hearing¹⁴. In certain cases, in which the start of criminal proceedings depends on the victim reporting the crime and asking for criminal proceedings to be instituted¹⁵, the “victim-witness” is called a complainant (*queixoso*). The complainant doesn’t automatically have an active role in the procedure. If the victim remains as a simple complainant she will have the same degree of participation in proceedings as a mere witness. In addition to this she has the right to withdraw the complaint at any stage of the proceedings until the verdict in first instance is read and thereby terminate prosecution¹⁶. This usually does not apply in most serious cases (for example murder).

b. The intervention as civil claimant

Secondly the victim may participate in criminal proceedings as a *civil claimant*¹⁷. If a victim is seeking damages, she may (and usually she must) claim them directly in the criminal proceedings.

Authorities are obliged to inform any victims who suffered damages of their right to claim civil damages as soon as they are aware that there has been a victim who might have suffered damages¹⁸. The victim should then inform the authorities of her intention of claiming civil damages. In this way the victim can ensure that, in case the suspect is accused at the end of the investigation stage (the moment after which the deadline to lodge a claim for civil damages

⁹ Art. 317 (4) CPP.

¹⁰ Art. 139 (2) and (3) CPP; art. 352 (1) (a) CPP; Law 93/99, of July 14th (the translation into English of an outdated version is available on <http://www.gddc.pt/legislacao-lingua-estrangeira/english.html>).

¹¹ Art. 318 CPP.

¹² Art 77 (2) CPP *in fine* and 277 (3) *in fine*.

¹³ Art. 132 (4) and (5) CPP.

¹⁴ Art. 132 (4) CPP.

¹⁵ Art. 113 ff of the Criminal Code; art. 49 of the CPP.

¹⁶ Art. 116 (2) of the Criminal Code.

¹⁷ Art. 71 CPP

¹⁸ Art. 75 CPP.

begins to run) the authorities will inform her that an indictment has been brought against the defendant.

The civil claimant is exempt of the payment of court costs, if the claim is lower than €2040,00¹⁹. If the claim is higher than €2040,00 the civil claimant is not required to pay the court fee in advance²⁰. However, if he loses the case, he will be required to pay the court fee after the final judgment, which can be appealed, within ten days. The judge sets the court fee in view of the complexity of the case.

If the defendant is convicted to pay the civil claim, the amount will also include the expenses incurred in by the civil claimant concerning court costs (but not necessarily the lawyer's fees and, if so, only a small part).

The civil claimant has the same rights as a witness or complainant and he is also entitled to the right to have access to a lawyer²¹. If the claim for civil damages exceeds €5000,00, representation by a lawyer is even mandatory. Should the civil claimant lack financial means she can request financial legal aid from the social security services.

The intervention of the civil claimant and his lawyer does not interfere with the criminal cause of the proceedings. To give an example, if the judge finds the accused to be innocent of committing the crime, the civil claimant does not have the right to appeal the decision. She can only dispute the facts as far as they are also connected to civil liability of the defendant.

c. The intervention as an assistant

Thirdly the victim who wants to have a more active role in the proceedings may choose act as *assistente*²², a form of collaborator of the Public Prosecutor. As an assistant the victim may take part in the proceedings by providing evidence and making interventions in various key-moments of the proceedings²³. The victim may be both civil claimant and *assistente* at the same time, intervening in the criminal and civil part of the criminal proceedings.

In order to be admitted to intervene as an assistant, it is necessary for the victim to pay a court fee in advance (currently €102,00) and to mandate a lawyer²⁴. As mentioned previously, here again the victim may ask for financial legal aid in case of insufficient financial means.

Further to the general rights of victims mentioned above, the assistant has a broader array of rights (information, intervention, hearing, appeal). For example, the assistant has to be consulted and give his approval if the Public Prosecutor decides, despite the existence of

¹⁹ Art. 4. (1) (n) RCP; 1 UC = 102 Euros, 20 UC = 2040 Euros.

²⁰ Art. 15 (1) (d) RCP.

²¹ Art. 76 CPP

²² Art. 68 CPP

²³ V.g. art. 69 CPP.

²⁴ Art. 70 CPP

sufficient evidence against the suspect of crime, not to bring charges against him but merely to order him to comply with certain obligations (such as ask the victim for forgiveness, indemnify the victim for the damages suffered, carry out a civil service, or pay a fixed amount to an institution of solidarity).

The assistant is informed of all decisions throughout criminal proceedings from the moment in which she was accepted to act as such and is heard before any decisions are made.

The assistant also has the right to challenge decisions that are unfavourable to him (i.e. decisions to close the case or to acquit the defendant, or denying production of evidence)²⁵. For example, if the Public Prosecutor doesn't file any charges against the suspect, the assistant may request for the judge of investigation to indict the defendant. At the trial hearing the assistant's lawyer is present and may submit or request evidence, interrogate witnesses and make opening and closing arguments in front of the court. Furthermore the assistant may appeal an acquittal decision and, in certain cases, request a jury trial.

4. How is the right of access to a lawyer granted?

As mentioned above, when intervening in criminal proceedings the victim is always entitled to the right to legal assistance. Nevertheless not every victim of a crime has the right to have a lawyer assigned and paid for by the state.

If a victim has financial means to support herself, she must choose her own lawyer and let herself be accompanied or represented by him/her.

In cases of mandatory representation the court will notify the victim that she has to mandate a lawyer and ask her to appear with a lawyer. If the victim does not mandate a lawyer she will not be admitted to act as an assistant or as a civil claimant (in the latter case only if there is a claim above €5.000,00). In this respect the situation of the victim is different from that of the defendant, as the defendant who does not appoint a lawyer in cases of mandatory representation is assigned a lawyer by the state automatically, irrespective of having sufficient financial means to entertain a private lawyer, and will only pay his fees in case there has been a conviction²⁶.

Only in the event where a victim cannot afford the lawyer's fees and the judicial fees she may request legal aid from the state.²⁷ Should the request for legal aid be granted, the Portuguese Bar Association (*Ordem dos Advogados Portugueses*) will appoint a lawyer²⁸, upon request by

²⁵ Art. 401 (1) (b) CPP.

²⁶ And the fees are set according to the official table for publicly appointed lawyer, being much lower than the fees charged in the private market.

²⁷ More details about the procedure of request for legal aid will be explained in the next section.

²⁸ Art. 25 Law 34/2004, of July 29.

the court, Prosecutor or Police. In this event the Ministry of Justice will pay for the lawyer's fees.

The lawyer is a so-called *advogado officioso*, a lawyer who volunteered to be appointed by the *Ordem dos Advogados* in cases where plaintiffs, victims or defendants do not have financial means to pay for legal assistance. These are lawyers who also work as private lawyers. Every *advogado officioso* is paid the same amount of fees, irrespective of how high his fees as a private lawyer are. If the victim needs a court-appointed lawyer, she is not allowed to choose her own lawyer²⁹. The Bar Association by means of a computer programme designed for legal aid purposes appoints the lawyer randomly.

A victim may also request legal aid during the stage of execution of the judgment (in order to execute the civil damages granted by the court) in order to have the court fees and the fees for the execution agent (*agente de execução*) paid for. This *agente de execução* is also appointed by the state³⁰.

5. When does a victim have the right to financial legal aid in criminal cases in Portugal?³¹

The Portuguese legal system has strictly *means-test* based financial legal aid system. Accordingly the merits of the case or the type of crime are not considered when deciding upon a victim's request for legal aid. A victim therefore has the right to financial legal aid whenever she has the right to be represented by a lawyer as described above and in addition she is able to prove that she has no financial means to bear the costs of the proceedings. The criteria for defining "financial inability" are defined in Law 34/2004, of July 29, and in a Decree³². Since the financial ability of the state to cover such requests for legal aid is limited, financial legal aid may only be granted in situations of real financial need of the victim. Mere financial difficulties do not suffice. Therefore financial legal aid is only granted to those for whom it would be impossible to seek justice without legal aid from the state.

a. When is the victim considered not to have sufficient financial means?

A victim is considered to have insufficient financial means when, after having examined the wealth, salary and expenses of the victim and her family members, the conclusion can be reached that objectively speaking the victim is incapable of bearing the costs of the proceedings³³. The relevant income is the household income, not only that of the victim herself.

²⁹ This is also the case for the defendant.

³⁰ Art. 35 Law 34/2004, of July 29.

³¹ This right is also granted to non-profit organizations.

³² Portaria 1085-A/2004, of August 31 (amended by Portaria 288/2005, of March 21 and by Law 47/2007, of August 28).

³³ Art. 8 (1), Law 34/2004, of July 29.

According to Law 34/2004 a victim whose relevant household income is equal or less than $\frac{3}{4}$ of the IAS (€419,22) is considered incapable of bearing any procedural costs³⁴. In practice, a family household of two persons earning up to a net income of €11300,00 yearly is eligible for full legal aid.

If the victims' household's income is between $\frac{3}{4}$ and 2,5 times the IAS (€419,22 to €1048,05) she will be considered capable of bearing the fixed fees for legal consultation (€30,00) and therefore has no right to full financial legal aid for legal consultation and will only have the right to pay the court costs in instalments³⁵. In practice, a family household of two persons earning a net income between €11.300,00 and €28.710,00 yearly is eligible for partial legal aid.

The calculation of the income for legal aid purposes is based on a formula set on Decree 1085-A/2004. Nevertheless in exceptional circumstances, if the calculation on the basis of that formula results in a decision not to grant financial legal aid and the denial would lead to a flagrant denial of access to justice, the higher officer of the social security services may grant legal aid by means of a especially well reasoned decision³⁶.

b. How are the proceedings for obtaining financial legal aid?

i. When

The request for obtaining financial legal aid should be filed before the first intervention of the victim in the proceedings. Should financial necessity occur at a later stage during the proceedings, a request can still be filed before the first intervention of the victim in the case after having knowledge of the insufficiency of financial means³⁷. The request can be filed using the digital form that can be found online³⁸ personally, by fax, mail or email.

The duration of the procedure is limited to 30 days from the day the form was filed to the day when the social security services make a decision. If the social security services do not respond to the request until 30 days from it being filed, legal aid will be considered as having been granted. Should the social security services decide to deny the applicant's request, they must communicate this intention prior to decision and give the applicant 10 days to make a statement. If the applicant does not respond, the decision to deny financial legal aid becomes definitive.

ii. Evidence

The victim must fill in the specific form and attach all the required documents. Depending on the victim's situation regarding her marital status, the family members sharing her household

³⁴ Art. 8-A (1) (a), Law 34/2004, of July 29.

³⁵ Art. 8-A (1) (b) Law 34/2004, of July 29.

³⁶ Art. 8-A (8) Law 34/2004, of July 29.

³⁷ Art. 18 Law 34/2004, of July 29.

³⁸ <http://www4.seg-social.pt/formularios>.

and her situation of employment, different documents will be needed. These documents usually include a document of identification and residence permit, certificates proving the victim's financial situation, such as tax declarations, salary sheets, relevant documents regarding property of real estate, cars, shares etc. and in case of dependence on social support, the relevant documents.

iii. Competent Authority

The request for financial legal aid is to be made to the social security services of the victim's district of residence (*Centro Distrital de Segurança Social*), or any service in case the victim does not have a residence in Portugal³⁹. If the social security services decide to grant financial legal aid, they will contact the competent court informing them that the victim has been granted legal aid, as well as the *Ordem dos Advogados*, which will appoint a lawyer.

iv. Who can make the request?

Any citizen of Portugal and the EU, or any third-country national with a valid residence permit within the EU may request financial legal aid.⁴⁰ Third-country nationals without a valid residence permit in the EU will only be eligible for legal aid if their home countries ensure legal aid to Portuguese citizens in the equivalent situation. The request is free of charge and can be made by the victim, by the Public Prosecutor in the interest of the victim, or by his or her lawyer⁴¹.

v. Appeal

The applicant may appeal against the definitive denial decision of the social security services within 15 days upon notification of decision. The appeal is to be addressed in writing to the social security services that dealt with the request for legal aid in the first place. Having received the appeal, the social security services have 10 days to either revoke the denial or, in case they decide to maintain the decision, forward it together with the appeal to the competent court⁴².

c. What kinds of costs are included in financial legal aid?

The costs included in financial legal aid are legal advice and legal assistance. This includes consulting a lawyer, to learn which law is applicable and how to proceed in the particular case. Further it includes the appointment of a lawyer, the payment of his/her legal fees, total or partial exemption from the court costs, or payment of court fees and/or state-appointed lawyer

³⁹ Art. 20 Law 34/2004, of July 29.

⁴⁰ Art. 7 Law 34/2004, of July 29.

⁴¹ Art. 19 Law 34/2004, of July 29.

⁴² Art. 27 and 28 Law 34/2004, of July 29.

fees in instalments, and appointment of an agent of execution, a public agent supporting the victim when it comes to the execution of the sentence⁴³.

The fees of a privately mandated lawyer are never covered by legal aid.

d. Advantages and problems of the legal assistance and legal aid system for victims in practice

Observing the Portuguese legal system one can outline its advantages for victims in practice. It is our view that the main advantage of this system for victims is that it allows for them to assume a very active and often decisive role in criminal proceedings, by intervening as an assistant. This intervention not only allows for the victim to positively influence the outcome of investigations and trials, but it also helps the victim to make her interests and needs be taken into account during the different stages of proceedings.

Further to this, it is also very important to stress that, even when victims have a more passive role in the proceedings, a lawyer may always accompany them. This ensures that the victim's rights are fully exercised and respected and also gives the victim a feeling of protection.

Finally, if the victim has no financial means, she is entitled to have a state-appointed lawyer paid for by the state and to exemption of court fees (or at least to benefit from payment in instalments). This right to financial legal aid ensures that the victim's right to intervene in criminal proceedings is not only a theoretical one, or a right granted to those who can afford a lawyer and bear the court costs, but is effective in practice and granted to every citizen irrespective of his financial capacity.

Looking at these advantages we can conclude that the general model of legal assistance and legal aid mandated by our Constitution and established in our laws is a satisfactory one from the victim's perspective. The leading idea is a good one. Nevertheless when looking closer at the specific provisions and at the functioning of the system we will find some issues that need to be improved.

The main problem in practice in our view seems to be the lack of information on the right to have access to a lawyer and to have legal aid to cover these costs. Although there is a general provision in the CPP on the duty to inform those who might have suffered damages derived from criminal action, which usually includes those who fall in the broader concept of "victim", this information does not include information on all of the victims' rights. Despite this limitation, the fact that the victim is informed of her right to claim damages and of her right to have a lawyer appointed by the state for that purpose and to legal aid to pay for the respective costs may end up helping the victims, as they will end up contacting a lawyer who will inform and advise them, also on their rights. The absence of an explicit provision on the rights and duties of the victims is even more striking when one compares the general legal framework

⁴³ Art. 6, 14 and 16 Law 34/2004, of July 29.

of the CPP to that created for victims of domestic violence⁴⁴. These victims are entitled to a special statute in which the right to information on rights – among others – is explicitly enshrined. In our view there is no justification to the different treatment of victims in this regard and the legislator should amend the CPP in order to include a “statute of the victim”.

Another problem is related to the very low income threshold established by Decree for being eligible for legal aid. According to this threshold nearly only indigent victims (or those who do not declare their income to the tax authorities...) are eligible for full legal aid. This may lead to many victims not exercising their right of access to justice, as they would have to bear (even if only in instalments) the costs of the proceedings and many of them are not willing to bear those costs, as they feel it as a secondary victimization. Many lower middle class victims are, in fact, not able to have access to justice, as they have to choose where they will spend their low income (being the choice many times between the legal costs and their children’s nourishment and education, the decision is obviously not for legal costs). Furthermore victims feel that, if they have to pay court costs in instalments, they should at least be able to choose their lawyer freely and have his fees also covered by legal aid, which is not possible. The fact that the court costs and lawyer’s fees are not reimbursed by the state if the victim “wins” the case also discourages victims to act. Sometimes the defendant should repay some of the costs to the victim, but in practice this often does not happen because defendants have no possessions.

It is difficult to overcome the budgetary legal aid limitations and to grant every victim whatsoever the right to full legal aid. Nevertheless it is our view that there should be a debate about the possible creation of a category of victims that would be exempt of paying court fees (or at least initial court fees) as well as the lawyer’s fees. It is difficult to decide who could be included in this category, but the debate could start by looking at the victims of violent crimes and eventually vulnerable victims (children, elderly, etc.).

We also consider that there should be a debate on the need of mandatory defence for certain vulnerable victims (children, victims of organized crime, elderly, foreigners who do not speak Portuguese, etc.). The Portuguese legal system has a system of mandatory defence for defendants that is, in part, justified by special personal characteristics of the person (visual, hearing or speaking impairment, illiteracy, inability to speak or understand the Portuguese language, age under 21, absence or diminution of criminal capacity). The need for special protection of victims who also possess these characteristics should be the object of an open debate, linked to the above-mentioned issue of the exemption of costs for these particularly vulnerable victims.

Finally there is a general problem, which has to do with the level of the fees paid to publicly appointed lawyers. These fees are much lower than the ones in the private market. This can lead to a situation where only the lawyers that are not able to find clients in the private market will volunteer for legal aid. Furthermore lawyers who are poorly paid may have neither time nor

⁴⁴ Law 112/2009, of September 16, on prevention of domestic violence and protection and assistance to its victims.

motivation to study and prepare their cases properly. Ultimately this can lead to a decrease of the quality of the assistance provided in the legal aid scheme.

The particular position of foreign victims should also be considered, as their position is much weaker than national victims, due to the fact that they are unable to communicate in Portuguese and sometimes do not reside in Portugal. On the topic of interpretation and translation, one should underline that currently there is no translation/interpretation of acts of proceedings, nor of essential decisions, nor of the full trial hearing (only interpretation of the victim's and foreign persons' statements⁴⁵). In addition to this the foreign witness has no right to an interpreter/translator for conversations with her lawyer⁴⁶ and there is no guarantee that the state-appointed lawyer can communicate in the victim's language. From another perspective, if the foreign victim lives abroad, legal aid will not cover the costs of a foreign lawyer, even if his intervention in liaison with the Portuguese lawyer is necessary⁴⁷. Finally the problem of the very low threshold of our financial means test mentioned above is even more serious for victims from countries with a higher living standard, as they will usually be ineligible for legal aid, despite the fact that according to their financial situation in their home country they are unable to cover the costs of proceedings in Portugal⁴⁸.

Some of these problems may be solved by implementing 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. But ultimately we are of the opinion that the role and status of the victims in criminal proceedings and its legal configuration should be the object of a broader debate and should be rethought beyond the changes imposed by the Directive. The debate and reflection should enable the legislator to propose a well-thought amendment of the law, in particular regulating the victim's status clearly in the CPP, evidently without jeopardizing the necessary balance with the rights of the defence.

⁴⁵ In this respect – interpretation of the trial hearing – the defendant's position is equally weak.

⁴⁶ The defendant has this right since 2007.

⁴⁷ The defendant does not have this right either.

⁴⁸ The defendant has the same problem, but it is slightly different, as the defendant will have a lawyer appointed by the state anyway, even if he has no financial legal aid, and will pay his fees in the end of the case, according to the table of fees for publicly appointed lawyers, only there is a conviction.

PROTECTION OF THE RIGHTS OF CRIME VICTIMS IN THE ACTIVITY OF THE HUMAN RIGHTS DEFENDER

Marta Kolendowska-Matejczuk

1. Enforcement of victims' rights in practice

Strength and quality of a democratic state under the rule of law is best measured by its attitude to the most vulnerable persons or those in a dramatic situation, such as victims of crime. Fair proceedings must ensure and respect not only the rights of the suspect and the accused, but also the rights of the victim, at each stage of the proceedings, including the pre-trial stage. It is important that the rights of victims are not only guaranteed by the letter of the law, but are also enforceable in practice. They must be appropriately, i.e. clearly and explicitly, communicated to victims so that they could understand them correctly. Therefore, it is not only precise legal regulations on the rights of victims that are extremely important, but also adequate education of citizens, psychological assistance, protection of victims during proceedings, friendly and empathic approach to victims by competent state services, and, most of all, professional legal assistance for victims.

It is a cliché to say that persons affected by crime are in an extremely traumatic and stressful situation and, in most cases, in need of both psychological and legal assistance. However, the instruction about the rights of victims which they receive on a specific form is overloaded with information and thus often incomprehensible and unclear to the victims. It contains 4 pages in small print and consists of 44 points. Victim sign the instruction form, thus declaring that they have been advised about their rights and obligations, but this is not necessarily the case. Assistance of a professional lawyer is therefore indispensable.

Furthermore, as emphasized by the Human Rights Defender¹ in her petitions to the Minister of Justice², the obligation to inform the victims about their rights is not always properly fulfilled by law enforcement agencies, resulting in the victims lacking exhaustive information about their rights and obligations. In the preparatory proceedings, only the suspects have their general right ensured to receive complete information about their rights and obligations prior to the first examination (cf. Article 300 of the Code of Penal Procedure³). Although the authorities conducting the proceedings have an obligation to advise the victim in a specific procedural situation, this does not remedy the deficit of a statutory guarantee to provide complete procedural information to the victim. The Defender points out that the obligation to provide

¹ Hereinafter also: the Defender, the HRD.

² Cf. petition of 9 August 2011, file No RPO-513323.

³ Dz. U. No 89, item 555, as amended; hereinafter also CPP.

the form entitled “Instruction on the victim’s basic rights and obligations” and collect the declaration of the victim that he/she acquainted himself/herself with the instruction is still misinterpreted as the fulfilment of the obligation to appropriately advise the victims about their rights and, due to the way of providing such information, victims often remain passive and helpless in penal proceedings, as evidenced by the complaints submitted to the Defender. Therefore, the Defender asked the Minister of Justice to consider an initiative to amend Article 300 of the Code of Penal Procedure, in order to impose an obligation on authorities conducting preparatory proceedings to advise the victims about their rights, providing them with complete and comprehensible information, as well as to consider an amendment to the current wording of the instructions to make them exhaustive and comprehensible to an average reader. Article 300 of the Code of Penal Procedure is to be amended by introducing, as from 1 July 2015, pursuant to the Act of 27 September 2013 amending the Act - Code of Penal Procedure and certain other acts (Dz. U. of 25 October 2013 item 1247), the new § 2⁴, which provides for an obligation to advise the victims about their rights, including the right to have a counsel of choice and to file a request for a court-appointed counsel⁵.

2. Victims’ access to legal assistance

As regards the issues related to victims’ access to legal assistance, the Polish Code of Penal Procedure provides for the right to use the assistance of a counsel, who can be an attorney or a legal counsellor (cf. Article 87 and Article 88 of the Code of Penal Procedure), as well as for the right of the injured party to apply for a court-appointed counsel if the party can duly prove that he/she is unable to pay the costs of such a counsel without detriment to his/her and his/her family's necessary support and maintenance (cf. Article 88 and Article 78 § 1 of the Code of Penal Procedure). Therefore, when decisions are issued based on evaluative grounds, the risk of errors cannot be eliminated and, what is important, there are currently no means of appeal against the decision of the court president refusing to appoint a counsel.⁶ The above

⁴ Pursuant to § 2 of Article 300 of the Code of Penal Procedure which is to enter into force: “Prior to first examination, an injured party shall be advised of having a status of a party to the preparatory proceedings and of the resulting rights, in particular to submit motions for actions in inquiry or investigation and conditions of participation in such actions specified in Article 51, Article 52 and Articles 315-318, to use the assistance of a counsel, including to file a request for a court-appointed counsel in the circumstances referred to in Article 78, to acquaint himself/herself finally with the materials of the preparatory proceedings, as well as of the rights specified in Article 23a § 1, Article 87a and Article 306 and on the obligations and consequences specified in Article 138 and Article 139. These instructions shall be given to the injured party in writing; the injured person shall confirm receipt of the instructions with his/her signature.” However, pursuant to § 3 of Article 300 of the Code of Penal Procedure: “The Minister of Justice shall specify, by ordinance, the templates of written instructions referred to in § 1 and 2, taking into account the need for the persons not using the assistance of a counsel to understand the instructions.”

⁵ If he/she duly proves in the preparatory proceedings that he/she is unable to pay the costs of a counsel without detriment to his/her and his/her family's necessary support and maintenance, which is described in detail further on in the text.

⁶ In its judgment of 8 October 2013, file No K 30/11 (OTK-A of 2013 No 7, item 98), the Constitutional Tribunal granted the application of the Human Rights Defender (the author of this article drew up the draft application of the HRD) and adjudicated that Article 81 § 1 of the Code of Penal Procedure, insofar as it did not provide for an appeal against a decision issued by the president of a given court to refuse the ex officio appointment of

issue will become even more important when on 1 July 2005 the changes to penal proceedings enter into force, since they transform penal proceedings into a more adversarial process and in practice shift the responsibility for the result of the proceedings from the court onto the parties. The representation of the victim by a professional counsel will be of fundamental importance. However, while the amended regulations stipulate that at the stage of trial the injured party will have the right to request a court-appointed counsel, regardless of his/her financial situation (cf. Article 87a of the Code of Penal Procedure⁷), the appointment of such a counsel in preparatory proceedings will still take place on evaluative grounds (i.e. when the injured party duly proves that he/she is unable to pay the costs of such a counsel without detriment to his/her and his/her family's necessary support and maintenance).

It must be emphasized that the first stage of proceedings (pre-trial) is extremely important and may have a bearing on the entire proceedings, including the outcome. Therefore, there are serious and justified doubts as to whether the victims' rights of access to professional legal assistance are duly guaranteed, both in the current legal situation and in the legal situation as from July 2015. The doubts are further enhanced by the absence of a comprehensive system of legal assistance for the poor in Poland, which has been the subject of numerous petitions of the Human Rights Defender to the Minister of Justice over many years (cf. multiple petitions of the HRD in the years 2004-2013⁸). In the petitions, the Defender pointed to the need for a complete reform of the system of legal assistance provision to the poorest citizens and emphasized that such legal assistance should also include out-of-court legal counselling. The current legal system does not provide any systemic solution for free-of-charge legal counselling concerning extrajudicial actions. The Defender stressed that, from the very beginning, the experience of the Office of the Human Rights Defender revealed an urgent need for providing free-of-charge legal counselling in numerous cases before bringing them to court. All justified needs of the society may be satisfied only by the legal assistance system operating based on the principle of continuity and providing access to professional, free-of-charge legal advice to citizens with limited financial means in a situation where it is justified by the need to protect the legal status of the given individual. In her petitions, the Human Rights Defender called for appropriate legislative action to create a systemic regulation on free-of-charge legal assistance, in particular to introduce into the Polish legal system a real possibility for the poorest citizens to

a defence counsel for a party who had filed a request in accordance with Article 78 § 1 of the Code of Penal Procedure, was inconsistent with Article 42(2) in conjunction with Article 45(1) and Article 78 of the Polish Constitution; and that Article 78 § 2 of the Code of Penal Procedure, insofar as it did not provide for appeals against a decision of the court to revoke the *ex officio* appointment of a defence counsel, was inconsistent with Article 78 in conjunction with Article 42(2) of the Constitution. The judgment is scheduled for enforcement.

⁷ Pursuant to Article 87a of the Code of Penal Procedure which is to enter into force: “§ 1. At the request of other party than the accused, who does not have a counsel of choice, the court president, the court or a court referendary shall *ex officio* appoint a counsel. § 2. The provision of § 1 shall apply accordingly to the appointment of a counsel to perform a specific procedural act in the course of court proceedings. § 3. The party shall be advised of the right to file a request and of the fact that, depending on the outcome of the trial, the party may have to pay the cost of *ex officio* appointment of the counsel, upon delivery of the notice about the date of trial or hearing referred to in Article 341 § 1, Article 343 § 5 and Article 343a. § 4. The repeated appointment of the counsel in line with the procedure referred to in § 1 and 2 is possible only in particularly justified cases”.

⁸ Case with ref. No RPO-481256, which is continued by the Office of the HRD until now.

obtain legal assistance at the pre-trial stage.⁹ The Ministry of Justice agreed with the Defender that the reform of the current system of providing legal assistance to the poorest citizens was justified and necessary due to the lack of a common and coherent system of free-of-charge legal assistance at the pre-trial stage in the Polish legal system.¹⁰ Regrettably, the reform has not been introduced yet.

3. Mediation in criminal cases

Another persisting problem is the need to increase the role of mediation in criminal cases. The legal doctrine stresses that a special advantage of mediation for the victim is that “it restores autonomy and dignity to the victim, prevents - by means of participation and inclusion in the discussion - the feeling of abandonment and isolation which occurs if the case is examined in the traditional penal law system, it allows to obtain information from the perpetrator, to receive compensation for damages and offers an opportunity to express one's feelings and to obtain help in reaching a constructive agreement.”¹¹ However, the statistics of the Ministry of Justice show that the use of mediation is insignificant. Moreover, it is decreasing. In 2006, 5052 cases were submitted for mediation, while in 2011 the figure fell to 3251 and in 2012 it stood at 3252.¹² There are numerous reasons for this, but it primarily results from the lack of confidentiality of the proceedings and the lack of trust in entities conducting mediation. Therefore, the new Article 23a § 7 of the Code of Penal Procedure, which stipulates that mediation shall be impartial and confidential and will enter into force pursuant to the abovementioned Act of 27 September 2013, is a welcome amendment. It should be noted that in her petitions to the Minister of Justice¹³, the Human Rights Defender on several occasions called for wider accessibility of mediation and its new role in penal cases. In the petitions, the Defender proposed to provide an opportunity to submit a case for mediation before the decision on laying charges is issued, to introduce mediation in proceedings concerning petty offences, to initiate legislative work on the Act on the profession of mediator, analogous to the Act on the profession of probation officer, and to introduce mediation at the stage of enforcement proceedings. As regards the last proposal, in her petition to the Minister of Justice of 20 January 2011¹⁴, the Defender emphasized that the introduction of mediation at the stage of enforcement proceedings might be significant for both the perpetrator and the victim. On the one hand, mediation may fulfil a role of restorative justice for the victim by compensating,

⁹ Cf. petition of the HRD of 23 May 2013; RPO-481256-IV/04/AGR.

¹⁰ Cf. e.g. replies of the Minister of Justice of 13 September 2004 (P.II. 4308/727/04) or 13 June 2013 (DPK-II-454-57/13/9).

¹¹ E. Bieńkowska, *Wdrażanie instrumentów sprawiedliwości naprawczej w sprawach karnych: standardy międzynarodowe* [Implementation of restorative justice instruments in penal cases: international standards] [in:] *Mediacja w praktyce prokuratorskiej – dziś i jutro* [Mediation in prosecutors' practice - today and tomorrow], L. Mazowiecka (ed.), Warsaw 2012, p. 33 and the literature quoted therein.

¹² “Postępowania w sprawach karnych w sądach powszechnych zakończone w wyniku postępowania mediacyjnego w latach 1998 – 2012” [Proceedings in penal cases in common courts finished as a result of mediation in the years 1998-2012]; publ. <http://ms.gov.pl/pl/dzialalnosc/mediacje/publikacje-akty-prawne-statystyki/>.

¹³ Cf. the petition of the HRD in the case RPO-458685, e.g. of 7 June 2010; or in the case RPO- 618035.

¹⁴ Case RPO- 618035.

at least partially, the injuries sustained. On the other hand, mediation may act as rehabilitation for the perpetrator allowing him to understand the consequences of his actions and to remedy them. In reply to the said proposal, the Minister of Justice¹⁵ stated that widespread use of mediation in enforcement proceedings was controversial due to fears of possible repeat victimisation of victims and the lack of interest on the part of victims to meet the perpetrators. Therefore, the initiation of legislative work in this regard should be preceded by an analysis of reasonability of introducing mediation at this stage of proceedings and of its scope. In her petitions relating to mediation, the Defender pointed to the need to introduce compulsory training for mediators, their regular assessment and the dismissal procedure.¹⁶ The absence of compulsory trainings results in each social or professional organisation having its own mediator appointment standards. In the opinion of the Defender, this has an adverse impact on professionalization of mediation services. The Defender pointed to the Ordinance of the Minister of Justice of 18 May 2001 on mediation in cases concerning juveniles¹⁷ as a possible source of standards. It is important that the Ordinance stipulates that mediation proceedings in cases concerning juveniles are confidential (§ 12 of the Ordinance) and mediation may be conducted by appropriately trained mediators (§ 8 of the Ordinance¹⁸). The trainings, comprising both theory and practice, are delivered in line with the standards laid down in the Annex to the Ordinance. The Annex to the Ordinance entitled “Mediator training standards” consists of two sections. The first section lists the subjects to be covered by the training (thematic areas concerning legal and organisational aspects of mediation between the injured party and the perpetrator of a prohibited act; psychological mechanisms of emergence, escalation and resolution of conflicts; training in mediation skills), while the second focuses on requirements for institutions and instructors delivering the training for mediators, including the qualifications of instructors and requirements concerning the organisation of training.

In the opinion of the Defender, adoption of similar standards for mediators in criminal cases could contribute to increasing the qualifications of mediators, encourage judges and counsels representing the parties to resort to mediation more frequently and could have a positive impact on its effectiveness. In reply¹⁹, the Minister of Justice stated that actions had been undertaken to popularise mediation among both the authorities conducting the procedures and the parties to the dispute or penal conflict. The actions focus on two areas, namely, on popularisation of mediation and building the network of coordinators for mediation and on trainings for judges, referendaries, probation officers and the employees of customer service centres and registry offices.

¹⁵ Letter of 3 March 2011; DPC-V-072-I/II/3.

¹⁶ Cf. petition of the HRD of 27 June 2011; RPO-458685.

¹⁷ Dz. U. of 2001, No 56, item 591.

¹⁸ Pursuant to § 8(1) of the Ordinance, “the training of mediators consists in learning about the issues related to mediation proceedings and obtaining the knowledge required to act as a mediator.”

¹⁹ Letter of 29 July 2011; DPC V 072 - 3/11/3.

4. Vulnerable victims

“Vulnerable victims”, e.g. children who are victims of crime, are a particular concern of the Human Rights Defender. The Defender welcomes the legal solutions aimed at preventing multiple, arduous interrogation of minors²⁰ and an increasing number of the so-called “friendly interview rooms” (“blue rooms”²¹; in 2013 there were 65 such rooms²²), including appropriate rooms for interrogation of crime victims with two-way mirrors and video and audio recording equipment. The possibility to present the suspect in a way excluding the possibility to identify the victim is an important factor for preventing secondary victimisation. Therefore, all Police units should be appropriately equipped (e.g. in two-way mirrors) to conduct such procedures.

Regrettably, the persisting problem is the lack of appropriate procedures for granting professional legal assistance to minors in penal cases where a parent of the minor is the accused. Guardians assigned to minors in such cases often lack the required legal knowledge which may adversely affect the legal situation of such injured parties in the proceedings. The Defender addressed the Minister of Justice²³ on this issue, but no amendments have been

²⁰ Article 185a of Code of Penal Procedure (in its current wording, in effect from 27 January 2014) stipulates that in cases arising out of offences committed with the use of violence or unlawful threats or specified in Chapters XXIII, XXV and XXVI of the Penal Code, the injured party who, at the time of the examination, was younger than 15 years, should be examined in the capacity of witness only if his testimony may be important for resolution of the case and only once, unless new essential circumstances are disclosed whose elucidation requires repeated examination or when it is demanded by the accused who had no defence counsel at the first examination of the injured person. Furthermore, the amended provision stipulates that apart from an expert psychologist, the prosecutor, defence counsel, attorney of the injured party and the person specified in Article 51 § 2, an adult indicated by the injured party referred to in § 1 of the said provision may also participate in the proceedings, provided that it does not preclude the possibility of free expressions of the examined person. In addition, § 4 of the said Article extends the scope of application of the special examination procedure for minor victims who finished 15 years of age at the time of examination. The minor victim is interviewed in the conditions specified in § 1-3, if there is a reasonable fear that the examination in other conditions could have an adverse impact on the minor’s mental state. The aim of the regulation is to enhance protection of minors against secondary victimisation, which is to be accomplished also due to introducing an obligation for the accused to have a defence counsel and video and audio recording of the interview with the minor. The above changes implement the Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography in terms of strengthening the protection of minor victims.

²¹ The Human Rights Defender has actively promoted the creation of the so-called “blue rooms” and has been a member of the Coalition for Child Friendly Interrogation, established in 2007 upon the initiative of the Nobody’s Children Foundation.

²² According to statistical data of the Police, the total number of “friendly rooms (as of 13 September 2012) was 344 (238 in the Police units), of which the certified rooms – 59 (11 at the Police units); source: <http://www.policja.pl/download/1/100549/NiebieskiepokojenamapiePolski.pdf>.

²³ Cf. petition of the HRD of 29 June 2012 (RPO-685058) where the Defender pointed, *inter alia*, to a more general, systemic problem of procedural representation of persons who for any reason cannot participate in court or administrative proceedings. Complaints submitted to the Office of the Defender reveal frequent problems with finding appropriate candidates for representatives, i.e. those who wish to perform the function responsibly and with commitment. The Defender pointed out that the represented persons are particularly exposed to damage, since they cannot act on their own. The complaints submitted to the Defender suggest that in such cases it is often the members of the family of the represented person or employees of court administration that are appointed as representatives. Those persons usually do not have professional qualifications to manage property and to conduct

introduced to the law thus far. The fact which needs to be emphasized is the need to implement the signal decision of the Constitutional Tribunal of 11 February 2014 (file No S 2/14²⁴), where the Tribunal, having analysed the constitutionality of Article 51 § 2 of the Code of Penal Procedure²⁵, pointed to the necessity to undertake legislative action aimed at eliminating irregularities in penal proceedings, where minors, who are victims of crime committed by their parent or parents, are represented by a guardian appointed by a guardianship court. In the opinion of the Tribunal, the Polish law currently grants the courts extensive discretion in selecting the person to represent a minor in court proceedings, including penal proceedings; general regulations in the Family and Guardianship Code do not ensure appropriate level of representation of a minor in court proceedings, including penal proceedings, and therefore a specific regulation is necessary to introduce requirements for persons appointed as guardians in such cases. The Constitutional Tribunal stated that “the failure to undertake legislative actions aimed at eliminating the said gaps creates a risk of inadequate representation of minors by their appointed guardians and may lead to establishment of a constant, repeated and common practice infringing the rights of children in court proceedings”.

It is impossible to list all actions of the Human Rights Defender aimed at guaranteeing and enforcing the rights of victims of crime²⁶, also to ensure their access to professional legal

another person’s affairs in offices and courts which means that they can cause damage (to property or person) to the represented person and incur financial liability due to inappropriate performance of their obligations.

²⁴ OTK-A of 2014 No 2, item 19.

²⁵ In its judgment of 21 January 2014 (file No SK 5/12), the Constitutional Tribunal adjudicated that Article 51 § 2 of the Act of 6 June 1997 – the Code of Penal Procedure in conjunction with Article 98 § 2(2) in conjunction with Article 98 § 3 in conjunction with Article 99 of the Act of 25 February 1964 – the Family and Guardianship Code (Dz. U. of 2012 item 788, as amended), insofar as they stipulated that a parent of a minor – acting as the child’s statutory representative – might not exercise the rights of the minor when the child was the aggrieved party in criminal proceedings against the other parent, and introduced an obligation to appoint a guardian for that purpose, were consistent with Article 47 in conjunction with Article 51(1), Article 48(2) in conjunction with Article 32(1) and Article 72(1) of the Constitution of the Republic of Poland, as well as were not inconsistent with Article 45(1) in conjunction with Article 32(1) and Article 72(3) of the Constitution.

²⁶ Actions which must be mentioned here include the motion of the HRD to the Constitutional Tribunal to declare Article 55 § 1 of the Act - Code of Penal Procedure, insofar as it does not specify the deadline for filing subsidiary indictment to be the final deadline, to be inconsistent with Article 45(1) and with Article 2 of the Constitution (RPO-628295); petition of the HRD to the Minister of Justice concerning Article 118 § 2 of the Petty Offences Procedure Code, insofar as it stipulates that in cases where an auxiliary prosecutor filed a motion and the penal proceedings were discontinued due to limitation of charges the costs of the proceedings must be covered by the auxiliary prosecutor (RPO-747033); participation of the HRD in the proceedings concerning constitutional complaint SK 65/13, where the HRD presented an opinion that Article 56 § 3 of the Act - Code of Penal Procedure, insofar as it does not allow to appeal against the decision issued pursuant to Article 56 § 2 of the Code and referring to the auxiliary prosecutor referred to in Article 54 of the Code, is inconsistent with Article 45(1) in conjunction with Article 78 in conjunction with Article 176(1) in conjunction with Article 31(3) of the Constitution (RPO-751005); participation of the HRD in the proceedings concerning constitutional complaint SK 22/13, where the HRD presented an opinion that Article 339 § 5 of Code of Penal Procedure in conjunction with Article 54 § 1 of the Code of Penal Procedure, insofar as it does not provide for the right of the injured party to participate in the court hearing on discontinuation of the proceedings before the trial, while the injured party has the right to submit a declaration that he will act as an auxiliary prosecutor until the court proceedings at the main trial begin, is inconsistent with Article 45(1) in conjunction with Article 2 of the Constitution (RPO- 732495), or the

assistance. A lot remains to be done and the situation of crime victims in criminal cases is expected to significantly improve as a result of implementation of the European Union law, including 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.

5. Protection of victims as an obligation

Summing up, it needs to be stressed that the protection of the rights of crime victims is an obligation of the democratic state under the rule of law which should make every effort possible to prevent secondary victimisation and protect the dignity of victims. The obligation to protect the dignity of victims and their family members is enshrined in the abovementioned Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012. In the Polish legal system, the Penal Code provides for respecting the dignity of only the perpetrators, ignoring their victims²⁷ which, in the opinion of the Human Rights Defender, is discriminatory and unacceptable in the democratic state under the rule of law. Therefore, the Defender asked the Minister of Justice²⁸ to consider the introduction of a provision imposing an obligation to respect the dignity of victims of crime into the penal procedure. With satisfaction, it must be specified that the Minister of Justice shared the view of the Ombudsman in this regard and in the letter of 15 May 2014²⁹, admitted that one of the major assets of the victim, which should be protected, is her/his dignity and pointed out that it is possible to concretize the constitutional standard of art. 30 of the Constitution, by including it among the purposes of criminal proceedings. Minister of Justice suggested that this might occur by supplementing the content of art. 2 § 1 item 3 of the Code of Criminal Procedure of the norm expressing the obligation to respect the dignity of the victim. Minister of Justice emphasized that such a change will be the subject of analysis in the further development of the above-cited law.

petition to the Minister of Justice on the lack of the possibility for the injured party to read the files of the case, after the completion of explanatory activities, where the authorised body does not file charges to the court (RPO-676881), and numerous more on the subject.

²⁷ Article 3 of the Penal Code stipulates that “penalties and other measures provided for in the Code shall be applied with a view to humanitarian principles, particularly with the respect for human dignity”. Pursuant to Article 2 § 1(3) of the Code of Penal Procedure, the provisions of the Code aim at establishing the rules of penal procedure ensuring that legally protected interests of the injured party are secured. The interests of the injured party must be secured in a way respecting their dignity.

²⁸ Petition of the HRD of 15 April 2014, file No II.518.24.2014.MK; the draft petition was drawn up by the author of this article.

²⁹ Cf. e.g. replies of the Minister of Justice (DPK IV 072-2/14/3).

CHALLENGES OF LEGAL AID SYSTEM IN POLISH CRIMINAL PROCEEDINGS

Agnieszka Orfin, Aleksandra Woźniak

1. The notion and role of the injured party in criminal proceedings

The injured party plays an extremely important role in the Polish criminal procedure. However, there is a lot left to be desired in terms of binding statutory regulations and the way they are put to practice, especially when it comes to realistic possibilities of protecting one's rights and interests. The array of means available to the victim of a crime should be comparable with the array of means available to the perpetrator and furthermore they should be enforceable. One should bear in mind that the primary aim of a criminal proceeding, apart from identifying and prosecuting the perpetrator, is to respect the legally protected interests of the injured person. It should be noted the victim of a crime plays a crucial role in the criminal proceedings not only because he or she is the sole source of evidence but also due to the fact that this is the person most vulnerable to any kind of negative factors which can arise in the course of the criminal proceedings.

Contrary to the acts of the international law the Polish criminal legislation does not use the term 'victim of crime' but 'injured party of crime'. Thus, for example, the definition of the injured party of crime can be found primarily in the *The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, which defines as a victim of crime a person who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power (Art. 1). Whereas the Article 2 of the above mentioned legal act specifies more precisely the concept of a 'victim; and also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. Moreover, under this *Declaration* a person may be a victim regardless of whether the perpetrator is identified. Different definition can be found in the *Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings* in the Article 1 which provides that a victim is a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law¹. In turn, under the *Polish Charter of Rights of Victims*, a victim is a natural person, and his or her nearest ones, whose legally protected interest has been directly violated or threatened by a crime². According to the Polish Code of Criminal Procedure (CCP) an injured party is a natural person or a legal entity whose legal interest (e.g. health, inviolability, property, virtue, good name, sexual liberty) has been directly violated or threatened as a result

¹Council Framework Decision of 15 March 2001 on standing of victims in criminal proceedings (2001/220/JHA).

² Polish Charter of Rights of Victims, Ministry of Justice, Warszawa 1999 r., p. 10.

of a crime (Art. 49 § 1 CCP)³. It is also important to emphasize that the Polish legislation accounts for the situation when the injured party cannot plead independently in the criminal proceedings and has to be represented by another person. In such case the rights of an injured party, who is a minor or fully or partially incapacitated can be exercised by a statutory proxy or a person who has the custody over the injured party (Art. 51 § 2 CCP). Similar regulation covers those who are incapable due to their age or health. In such case their rights can be exercised by a person who is legally caring for the injured party (Art. 51 § 3 CCP). Moreover, in case of death of the injured party his or her rights can be exercised by the closest ones and, when they are absent or unidentified, by the prosecutor (Art. 52 § 1 CCP)⁴. The Code of Criminal Procedure indicates, as well, that an injured party may be as well a state-run institution, local government or social institution even if it does not have legal personality. According to Art. 52 § 3 CCP, on the other hand, an injured party may be an insurance company in the scope within which it compensated for the damage caused to the injured party of the crime or is obliged to compensate for. Under specific circumstances the authorities of the National Labor Inspectorate or the state authorities can plead in the proceedings (Art. 49 § 3a and § 4 CCP).

The standing of injured party in criminal proceedings is different in different stages of the proceedings⁵. In the preparatory proceedings the injured person is a party in the proceedings regardless of his or her will (Art. 299 CCP). During the court proceedings in turn the functions in which the injured can plead are represented by the outline below:

³Act of 6 June 1997. Code of Criminal Procedure, Journal of Law no. 89, item 555 as amended. More on the evolution of the definition of injured party in Polish criminal proceedings: B. Gronowska *Ochrona uprawnień pokrzywdzonego w postępowaniu przygotowawczym (zagadnienia karnoprocesowe i wiktymologiczne)*, Toruń 1989, p. 11 and n.; W. Sych, *Wpływ pokrzywdzonego na tok postępowania przygotowawczego w polskim procesie karnym*, Kraków 2006, p. 19 and n., K. Dudka, *Skuteczność instrumentów ochrony praw pokrzywdzonego w postępowaniu przygotowawczym w świetle badań empirycznych*, Lublin 2006, p.39; M. Żbikowska, *Status pokrzywdzonego a popełnienie czynu zabronionego*, Palestra 2013, no. 5-6, p. 43-50.

⁴ E. Bieńkowska, L. Mazowiecka, *Uprawnienia pokrzywdzonego przestępstwem*, Warszawa 2011, p. 21. More: W. Daszkiewicz, *Sukcesja procesowych praw pokrzywdzonego w postępowaniu karnym, (in:) Współczesne problemy procesu karnego i jego efektywności*, Toruń 2004, p. 19-38.

⁵ L. Falandysz, *Pokrzywdzony w prawie karnym i wiktymologii*, Warszawa 1980, p. 178.

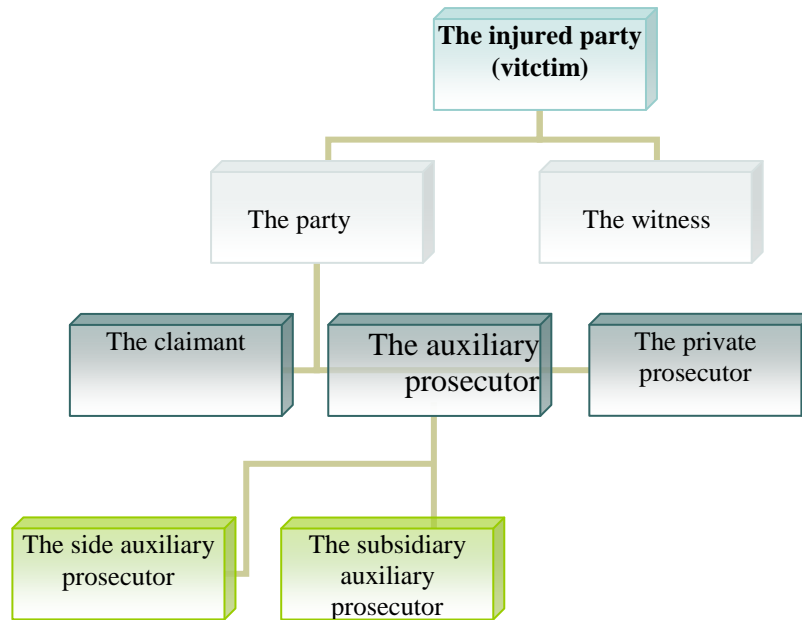


Chart nr 1. Victim's status during trial proceedings (before the court).

Source: own elaboration.

Generally the side auxiliary prosecutor is the injured person who participates in the trial before the court alongside the public prosecutor, while a subsidiary auxiliary prosecutor participates alone. The subsidiary auxiliary prosecutor is also a victim who independently files a subsidiary indictment, when the prosecutor has twice refused to institute or discontinue the preparatory proceedings, provided that the court has accepted an appeal against the first refusal of the proceedings (or discontinuance). Furthermore, a private prosecutor is the injured person who brings and support a private indictment (under special procedure). The claimant is the injured person who has filed a complaint during a trial proceeding, when his civil claims resulting directly from the offence⁶.

The distinction between stages of the process and the roles of process which may take the victim in criminal proceedings is crucial, i.a., for the nature of the rights during the process. The framework of this study do not allow for a detailed discussion about all the rights of the victims, however, by way of example, you can point out some of them. Crime victims' rights during the preparatory proceedings: right to notice of an offence, right to information about victims' legal situation, right to obtain legal aid (also free legal aid: an attorney ex-officio), right to participation in the proceedings conducted by the prosecutor or the Police, right to file a motion as an evidence, right to view the case files and make a copy of them, right to appeal against a decision, right to file a complaint on agencies conducting criminal proceedings.

⁶ P. Wiliński, *Handbook of polish law*, W. Dajczak, A. Szwarz, P. Wiliński (ed.), Warszawa - Bielsko-Biała 2011, p. 208-209.

Moreover, crime victims' rights during the trial proceedings (before the court): right to become a party in the trial, e.g. a subsidiary prosecutor, a private prosecutor, a claimant, or just only a witness, right to information about victims' legal situation, right to obtain legal aid (also free legal aid: an attorney ex-officio), right to obtain information about the planned hearing, right to participate in court operations, right to view the court files and make a copy of them, right to an interpreter, right to appeal against the decision of the court. And crime victims' rights during executive proceedings e. g.: right to obtain information each time the convict leaves the correctional institution⁷.

2. The legal aid granted to the victim of crime

The concept of defending the victims of crime developed rather slowly in Polish legislation. The development of the victimology coincides with the beginnings of the criminal law that came to existence after the II World War and is related to the so-called social defense movement. Its framework encouraged the idea of the reduction of the suffering and damage caused to the victim of crime which was reflected in the proposal to introduce to the penal code the obligation to redress the damage done to the victim⁸. Despite that as early as in the 50s the needs of the victims were apprehended, it was not until the 70s and 80s that Poland began to take specific measures in order to improve their standing. Those measures included the possibility for the victims and their families to benefit, under special circumstances, from the Penitentiary Aid Fund, the creation of the Victims of Crime Aid Fund and the adoption of the Alimony Fund Act of 18 July 1974. The breakthrough, however, came when the criminal code of 1997 mentioned for the first time that the criminal proceedings should also protect the interests of the injured party. Further initiatives were put forward by the Ministry of Justice and thus in 1999 the afore-mentioned Polish Charter of Rights of Victims was prepared and in 2003 the Day for Victims of Crime was established following the example of other European countries. As a consequence, a Week for Victims of Crime was introduced (its present name is the Week for Aid to the Victims of Crime), under which free legal advice is offered throughout the country, and also the Network of Aid to the Victims of Crime was created⁹.

Naturally, the turning point for the improvement of the standing of the victims of crime came when Poland joined EU which resulted in the necessity to take measures for adjusting Polish legislation to that of the EU, including creation of many state and non-government institutions,

⁷ E. Bieńkowska, L. Mazowiecka, *Uprawnienia pokrzywdzonego przestępstwem*, Warszawa 2011.

⁸ B. Gronowska, *Ochrona uprawnień pokrzywdzonego w postępowaniu przygotowawczym (zagadnienia karnoprocesowe i wiktymologiczne)*, Toruń 1989, p. 14.

⁹ A. Augustyniak, *Działania Ministerstwa Sprawiedliwości na rzecz ofiar przestępstw*, (in:) *Pozycja ofiary w procesie karnym – standardy europejskie a prawo krajowe*, Szczytno 2008, s. 224. It is pointed out the primary activity of the project ("network of aid") is the creation of 16 Centers of Aid to the Victims of Crime. At present there is such aid institution in each province. The centers operate at the NGOs, local government and church institutions which have been selected by the Ministry of Justice in the course of a public competition and they have years of experience in aiding the victims of crime. The centers render free legal and psychological assistance. The volunteers who function as the carers of the victims are also involved in the Centers of Aid to the Victims of Crime.

foundations and associations who render legal assistance¹⁰. Putting aside the details of the EU regulations addressing the needs of the victims of crime it has to be pointed out that it is only recently that one can observe a tendency in the politics that focuses on the rights of the victims of crime in the criminal proceedings¹¹. Its manifestation is, among others, the adoption of *the directive establishing the minimum standards within the rights, support and protection of victims of crime (2012.29/EU)*. A wide range of initiatives that intend to broaden the victims' access to the legal assistance and information are also put forward by, among others, the NGOs.

Taking into consideration the above it has to be indicated that the Polish criminal legislation lacks general provisions regarding the legal aid rendered to the victim of crime¹². Above all there are no regulations establishing the minimum of the aid to be rendered. The diagnosis of the current legal, instrumental and organizational status allows even to make a claim that there is no system of aid to the victims of crime. The rights of the injured party are spread throughout the whole Code of Criminal Procedure and in several acts on criminal proceedings (as mentioned before). Legal assistance is also rendered to the injured parties by a number of NGOs whose statutory objective is precisely to render aid to the victims. However, one can notice the above mentioned range of initiatives and social campaigns that are undertaken by NGOs and associations and that aim at increasing the access to the legal aid and information¹³.

Despite this fact, it should be assumed that the legal aid covers, above all: the possibility to have the assistance of a proxy and the possibility to be exempted from paying for the legal aid rendered. In accordance with the provisions of Art. 87 and 88 CCP the injured party can have a proxy - an attorney or a legal advisor (during the whole proceedings). The injured person can select the person to represent his or her interests independently. The right of the injured person to have access to the legal aid is granted once a specific proceeding begins. Naturally, when a proxy is appointed his or her expenses are covered by the injured person, however, it is

¹⁰ E. Bieńkowska, L. Mazowiecka, *Prawa ofiar przestępstw*, Warszawa 2009, p. 27.

¹¹ See also C. Kulesza, *Realizacja europejskich standardów dotyczących traktowania ofiar przestępstw w polskim prawie karnym*, (in:) *Pozycja ofiary w procesie karnym – standardy europejskie a prawo krajowe*, Szczytno 2008, p. 24-46.; J. Beata Banach-Gutierrez, *Prawa pokrzywdzonego – normy europejskie a uregulowania krajowe*, (in:) *Pozycja ofiary w procesie karnym – standardy europejskie a prawo krajowe*, Szczytno 2008, p. 54-56.

¹² The research of the current legal instruments, that the victims are entitled to, and their efficiency was conducted by the professor at UMCS Katarzyna Dudka, Hab. Ph. D. The conclusion was the victims of crime do not show interest in the preparatory proceedings and usually do not exercise the rights that they are entitled to, e.g. the right to participate in the procedural acts or to review the case records. Professor K. Dudka concluded as well that the way the victims are informed about their rights is insufficient. The research proved that the instructions are not comprehensible and intelligible for the injured parties. It has also been emphasized that the judicial bodies rarely show the initiative to give advice and aid to the victims in terms of the rights they are entitled to. Furthermore, it has been pointed out that the standards protecting the rights of the victims (in the preparatory proceedings) are rather adequate except the provision on how the victim is informed about his or her rights (art. 16 CCP) – K. Dudka, *Skuteczność instrumentów ochrony praw pokrzywdzonego w postępowaniu przygotowawczym w świetle badań empirycznych*, Lublin 2006, p. 287-290.

¹³ More: T. Cielecki, *Lokalne ośrodki wsparcia ofiar przestępstw Ministerstwa Sprawiedliwości – jako kolejna próba utworzenia systemu pomocy ofiarom przestępstw w Polsce*, (in:) *Pozycja ofiary w procesie karnym – standardy europejskie a prawo krajowe*, Szczytno 2008, p. 83.

established that those costs can be reimbursed (in case of judgment of guilty or conditional discontinuation of penal proceedings). In such situation the costs are awarded from the convicted to the injured person. However, if the injured person cannot bear the costs related to the legal aid he or she was rendered without a financial damage to the well-being of him/herself or the family, a court-assigned attorney can be appointed (all circumstances have to be proven appropriately). In such situation the cost of the legal aid is incurred by the State Treasury. It should be added that it is always the court's decision whether such attorney would be appointed. Furthermore, the actions on the side of the proxy do not exclude personal engagement of the injured person.

When it comes to the possibility of exemption of the injured person from paying for the legal aid it has to be pointed out that according to the Art. 626 § 1 CCP in the decision concluding the proceedings the court indicates to whom, in which proportions and to what extent the court costs shall be charged. Until the concluding decision is reached all costs are provisionally covered by the State Treasury (Art. 619 CCP)¹⁴. The court decide to exempt from the court fees if it establishes that it would be too arduous for the injured person to pay them and also when the rules of equity apply, e.g. severe illness. The exemption can be full or partial. The exemption from court fees does not exempt from the obligation to reimburse the opposite party the costs that are justified (e.g. the cost of appointing an attorney). It is also possible for the injured person to apply for exemption from putting in the money for the proceeding (e.g. from the fee for private indictment). In addition, just to mention, in specific situations a victim of crime also can apply for financial compensation: state compensation, damage reparation, civil law suit for damage compensation included in the criminal trial.

3. Practical aspects of legal aid in Poland

Within the project *Improving protection of victims' rights: access to legal aid*, co-financed by European Commission which addressed the priority *Supporting victims of crime (VICS)* the open ended questionnaire was distributed among Polish law enforcement authorities - Prosecutors' Office, Lawyers (bar associations) and academics. There were 35 detailed questions asked. The diversity and different points of views of stakeholders were vital tools in gathering information concerning knowledge and practices in helping victim. Stakeholders were chosen on the basis of experience in working with victims of crime and their knowledge in this field. Respondents, despite of their busy schedule, showed extensive knowledge of the problem. The survey was conducted by Chair of Criminal Procedure, Adam Mickiewicz University in Poznan from 23th of April 2014 till 5th of May.

The scope of questions which were asked was supposed to enable recognition of dysfunctions in the current legislation and practices in delivering help to victims of crime in Poland. Answers given by respondents helped in the process of defining differences in legal aid systems in

¹⁴ P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego. Komentarz do artykułów 468-682, Tom III*, Hofmański P. (ed.), Warszawa 2012, p. 1090.

different Member State as well as defining main challenges of delivering help to victims. Given answers could also serve as a help in creating tools, which would improve process of harmonization of state legislation with European Union's legislation. These tools could also be a great facilitation in building mechanism providing help to different groups of victims of crime.

4. Advantages of legal aid system

First of all, it has to be noticed, that respondent pointed out many advantages of the Polish legal aid system. For example, the majority of practitioners believed that there are certain, special regulations concerning especially vulnerable groups of victims (for example sexual, gender and juvenile). Another important information is that the vast majority of stakeholders believed that the state legislation in Poland includes legal norms contained in EU directives on victims' rights.

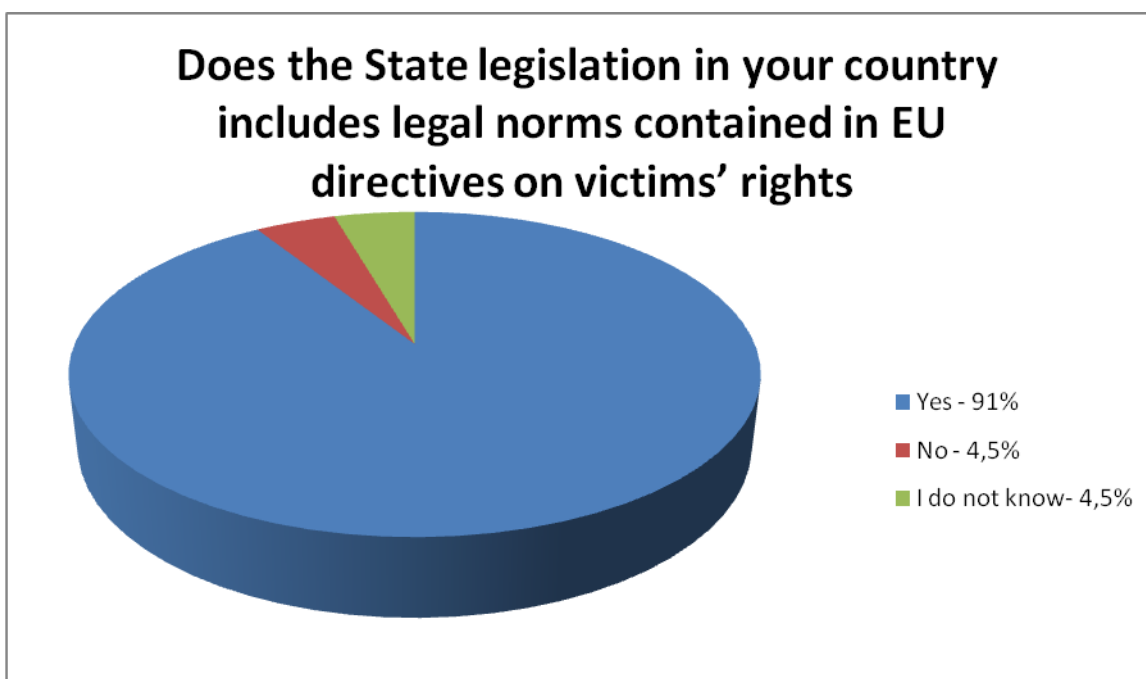


Chart no. 2. Answers given by stakeholders to question: *Does the State legislation in your country includes legal norms contained in EU directives on victims' rights?*

Source: Own elaboration.

It was also stressed out that Polish legislation protects victims in his or her interaction with accused – by means like expelling the accused from courtroom during the hearing of victim or the institution of so – called “little incognito witness”.

Respondents acknowledged that Polish system is familiarized with the “victimless crime” concept (like trafficking, massive environment pollution, corruption and large-scale consumer fraud) and is responding effectively to the visible victims of the crimes mentioned above especially by enabling victims to participate in proceeding.

Respondents believed, that in Poland there is a system of protecting victims against accused actions in the criminal proceedings in order to prevent them from double-victimization. Stakeholders mainly pointed out tools such as special conditions of hearings of minor witness or minor victim (in absence of perpetrator). Practitioners also mentioned the meaning of mediation and keeping in secret identification data, as well as significance of restraining orders. Respondent acknowledged that the free legal advice is given to victims in Poland. The structure of legal aid is composed of legal aid of proxy covered by government and organizing initiatives such as Week for Aid to the Victims of Crime or Network of Aid to the Victims of Crime by Ministry of Justice.

While judging forms of compensation available in Poland stakeholders pointed out that there is a financial compensation as well as non –financial one like apologies. Majority of respondents claimed that victims receive their redress during the executive phase of criminal proceeding. Practitioners also pointed out that beyond the criminal proceeding victims can also get the compensation during the civil proceeding.

5. Challenges of legal aid system

Main challenges of legal aid system for victims, exposed by practitioners can be divided into few, different groups. First of all, stakeholders believed that there are serious problems with the efficiency of the system of victims' compensation in Polish legislation and many times victims are not provided with actual compensation, There was also no clear standpoint on transparency of system of compliant for victims' whose rights have been violated.

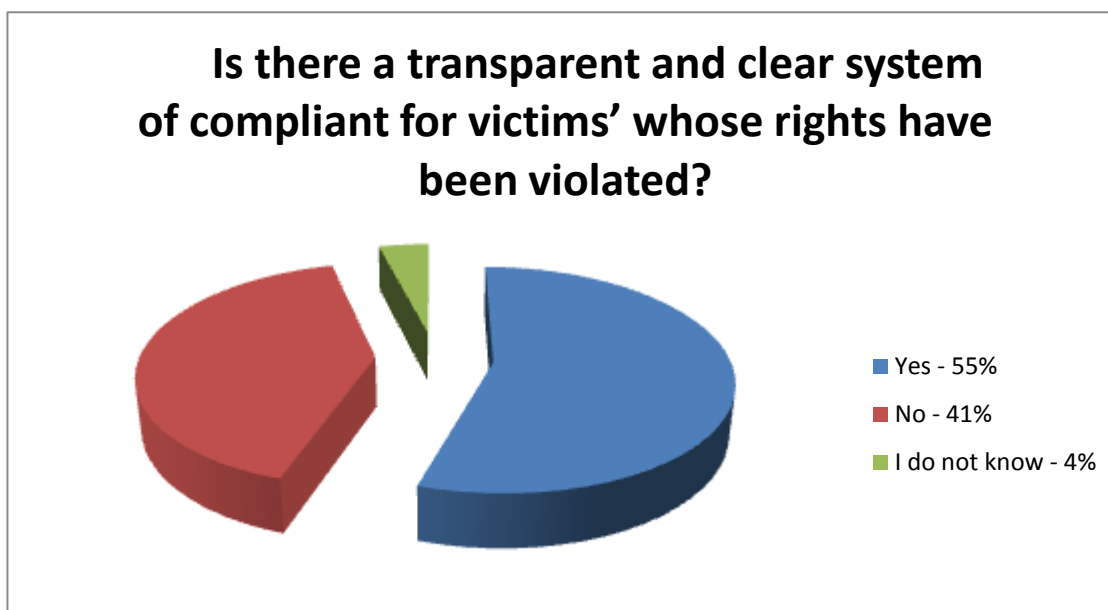


Chart no. 3: Answers given by stakeholders to question: *Is there a transparent and clear system of compliant for victims' whose rights have been violated?*

Source: own elaboration.

Relatively many stakeholders believed that the legal aid provided in Poland is not sufficient. Some respondents claimed that the help is regulated only by legal norms but does not really work properly in practice.

Moreover, on one hand practitioners believed that there is a special approach in treating victims of crime in Poland and they recognized that authorities involved in helping victims have special programs for different kinds of victims such as “blue card”, programs created for victims of sexual crimes or juveniles. Stakeholders even appreciated the engagement of State authorities in implementing these special programs. It was also noticed that there are a lot of non-government organizations specialized in helping victims. On the other hand, relatively not so many stakeholders had any knowledge concerning special trainings created for practitioners dealing with victims in everyday practice. Respondents also did not have knowledge about creating units specialized in contact with different groups of victims.

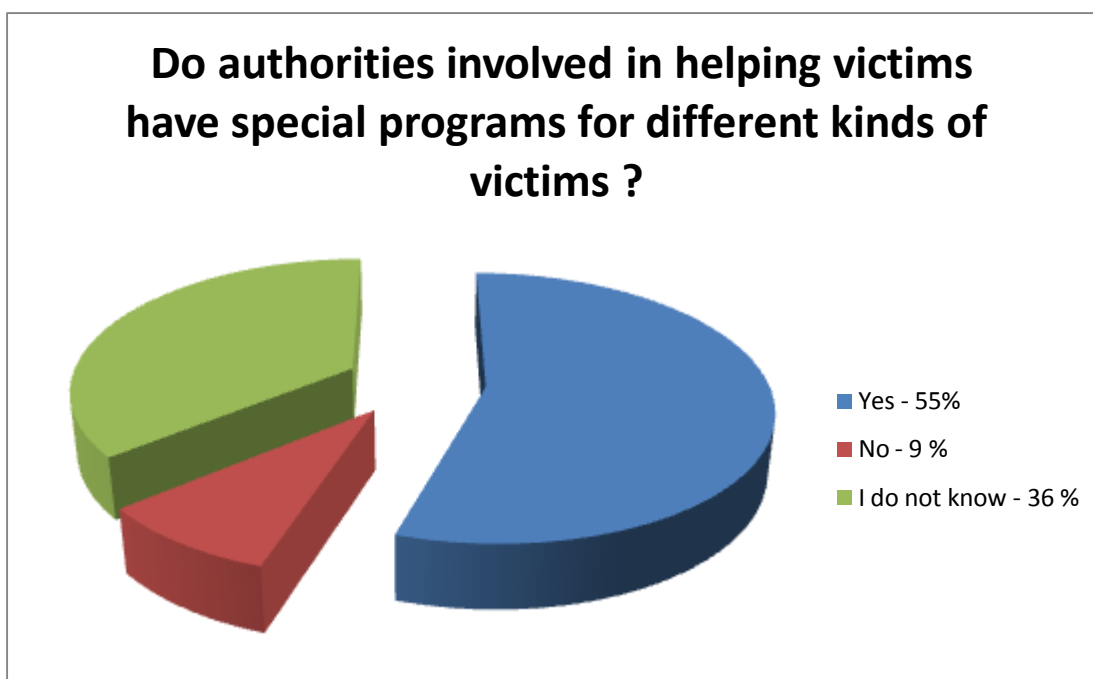


Chart no. 4: Answers given by stakeholder to question: Do authorities involved in helping victims have special programs for different kinds of victims?

Source: own elaboration.

Respondents were also specifically asked to directly define problems of legal aid system. In describing main challenges of the current legal aid system respondents pointed out few different problems. First of all stakeholders underlined lack of professionalism in delivering help to victims. Members of authorities called to assist victims were described by stakeholders as often unprofessional and not specialized enough. It was also underlined that officials who are carrying out their duties assisting victims do not obey regulations established in order to protect victim’s rights. Moreover, it was strongly pointed out, that victims do not have a proper law awareness. Citizens actually have no clue what rights exactly they possess and what kind of

assistance they might require during criminal proceeding. Stakeholders also underlined that many times victims believe that participation in process is really costly. The cost seems to be one of the main reasons for victims to chose not to participate in proceedings. Many times victims do not even decide to report the crime. Another very important disadvantage in creating transparent and sufficient system of legal aid seems to be improper wording of legal norms. In stakeholders opinion, regulations are often completely incomprehensible for victims. Because of the fact that victims do not understand their right they cannot exercise them properly.

Most of respondents believed the there are no special groups of victims deprived the legal aid. Nevertheless, in the same time some of stakeholders claimed that there are some particular groups which seem to be put in the worse position comparing to others. It was pointed out that special care should be delivered to group of undereducated victims and poor ones which are deprived form legal help. Moreover stakeholders underlined that there are certain group of victims which are helpless because of their personality and individual features. Respondents also noticed that foreigners are still underprivileged group when it comes to delivering help to victims of crime in Poland.

Respondents also emphasized that in Polish legal aid system there are means for the protection offered to victims of organizational crime. Nevertheless stakeholders were divided when it came to assess such measures. Some claimed that these tools are basically the same as ones used in proceeding with regular victims and they cannot be recognized as a relief for such crimes. Others believed that the institution of incognito witness might serve as a great solution to the problem of organizational crimes.

In describing position of victim during the criminal proceedings and actions which victims may undertake during the proceedings in order to secure his or hers position in the proceedings, respondents exposed another vital problem. Although it was noticed that victim can participate in proceedings as a part of it (both in pre-trial and judicial phase) it was also underlined that victim has not position equal to defendant. Majority of respondent pointed out that victims of the crimes are not entitled to intervene in all proceedings including in those establishing bail, pre-trial detention. Therefore it cannot be stated that in Poland there is a equality of arms between the victim and the defendant.

Stakeholders also recognized system of conciliation during the criminal proceedings between accused and the victim. The main, most important institution in this field, in respondent's opinion is mediation, which gives the victim status of the part of this proceeding. Unfortunately, stakeholders agreed that mediation is used very rarely during criminal proceeding. Therefore this institution seems to be underestimated by authorities and not properly understood and disseminated among citizens.

6. SUMMARY

Taking everything into consideration can say that we should not lose our focus on the exceptionally difficult position of the victim also due to the risk of being subject to primary and secondary victimization. In general the victims suffer from severe and long-lasting consequences of the crime. That is why the judiciary system and society as a whole cannot ignore their needs. It is the duty of the judiciary authorities to provide help to the victims, minimize the drastic consequences to their lives and to ensure that their dignity respected and they receive compassion and access to restitution and compensation. Therefore it has to be pointed out that it is necessary to disseminate the idea of defending the victims of crimes and protecting their rights and to act for the improvement of their situation in criminal proceedings. The primary task, on the other hand, is to raise the legal awareness of the society regarding the rights that the victims are entitled to during criminal proceedings¹⁵.

To sum up results of the questionnaires presented above, it has to be stated that the general respondents' assessment of Polish legal aid system is quite positive. Stakeholders believe that the current regulation are coherent and provide victims with the acceptable standard of delivered help during criminal proceeding. Nevertheless there are still some major problems and disadvantages of the system which is currently in force. Most serious difficulties that were acknowledge by respondents seems to be lack of knowledge about specialized programs and courses for practitioners, which makes it very hard to create specialized units prepared properly to deal with specific groups of vulnerable victims. Moreover, practitioners believe that the authorities do not always have a solid preparation for working with victims and they do not obey the regulation. What is more, citizens still do not have real, effective access to help, because of the lack of information and improper wording of regulation. The victim is also not a equal party in proceeding. There is also no clear standpoint on transparency of system of compliant for victims' whose rights have been violated. Moreover, the mediation, which could be an useful tool in criminal proceeding is not used in the proper way. In stakeholder's opinion there are also serious problems with the efficiency of system of victims' compensation in Polish legislation and many times victims are not provided with actual compensation.

¹⁵ E. Bieńkowska, C. Kulesza, *Jak postępować z ofiarami przestępstw? Poradnik dla praktyków*, Białystok 1992, p. 6.

THE IMPACT OF INTERNATIONAL REGULATIONS ON MEDIATION IN POLISH CRIMINAL PROCEEDINGS

Hanna Paluszkiewicz, Magdalena Błaszyk

In Polish criminal procedure, mediation is a relatively new institution. It is still developing after being introduced into the Code of Criminal Procedure (CCP) in 1997¹⁶. Initially, mediation was not independent as its application was tied to other consensual trial options. In Polish professional literature, mediation is defined as “a voluntary agreement reached by the victim and offender to repair material and moral harm done through the help of an impartial and neutral person known as mediator”.¹⁷

The beginnings of mediation, or more broadly, consensual measures in Polish criminal trial, are closely tied to the emergence of this option in the United States and Western Europe. It is believed that the modern concept of mediation emerged in the United States.¹⁸ Initially, it concerned mostly labour disputes, but in the 1960s and 1970s, mediation witnessed dynamic growth, owing to the commitment of public administration and courts of law to its promotion. The growth of the idea of mediation in the United States made it popular in Europe, too. Appreciating the many advantages of mediation as an alternative measure to resolve conflicts between an offender and the victim of crime, the Council of Europe made a Recommendation in this matter in 1999.¹⁹ The significance of this Act for the prevailing opinion in Poland whether it was possible to hold mediation in penal matters can hardly be overestimated. It is true that, as mentioned above, at the time when the Recommendation was issued, mediation was already known to the Polish legal system as a criminal procedure option but its significance was rather low due to how it was legally framed. However, it drew attention to the potential of mediation as a special measure implementing the idea of restorative justice. Thus, an opinion may be ventured that any further growth of mediation in Polish criminal procedure law will be closely related to the support for, and understanding of, the need for another way to resolve conflicts created by the commission of an offence, taking into account all (corporeal and incorporeal) interests of the victim, and protecting them against the consequences of pending criminal proceedings. The last-mentioned aspect is strongly emphasized in the Recommendation.

The Recommendation lays great emphasis on the promotion of restorative justice and the education of society.²⁰ It finds it necessary to introduce and improve mediation in penal matters as “a flexible, comprehensive, problem-solving, participatory option complementary or alternative to traditional criminal proceedings”. In the Recommendation, the Council of Europe

¹⁶ Dz. U. 1997, nr 89, poz.555.

¹⁷ A. Rękas, *Mediacje w polskim prawie karnym*, Warszawa 2004, p. 3.

¹⁸ S. Kordasiewicz, ‘*Historyczna i międzynarodowa perspektywa mediacji*,’ [in:] E. Gmurzyńska, R. Morek, *Mediacje. Teoria i praktyka*, Warszawa 2009, pp. 31-51.

¹⁹ Recommendation No. R (99) 19 of the Committee of Ministers to Member States concerning mediation in penal matters.

²⁰ A. Rękas, *Mediacja w polskim prawie karnym*, Warszawa 2011, p. 6.

also set out the principles according to which mediation was to be held. The separate rules governing the process of mediation are highly important and are to be made specific and recognizable, and should be closely adhered to, while mediators must have specific skills and follow ethical rules. For this purpose mediators should be suitably trained in both theory and practice.²¹ Already when the Recommendation was in force, Polish criminal procedure law saw a major normative modification boding well for the future development potential of mediation. The major 2003 amendment of the CCP greatly accelerated the integration of mediation with criminal trial. Although the changes were meant to make mediation an autonomous trial option, with respect to the course of a criminal trial, the amended provisions on mediation made it applicable at any stage of criminal trial (preliminary, jurisdictional, or even executory) and in any mode of criminal proceedings, provided there are conditions facilitating reconciliation between the victim and offender, and reparation of harm done by the offence in question.

The Recommendation defines mediation as “any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator)”.²² Thus, the Recommendation specified clearly what mediation is essentially about. For the aim of mediation is the active and informed participation of the parties in the resolution of a conflict arisen due to the breach of legal norms binding on society or in relation to such a breach. After all, in many cases the commission of an offence is not a ‘one-off incident’ but rather an effect of a long-standing argument, continuing sometimes for many weeks or months, between the offender and victim.

It is the will of the Council of Europe that the fundamental principle of the mediation process be informed and free consent of the parties given after being provided with full and exhaustive information by a competent authority. Mediation cannot exist – and bring effects – if it is not preceded by reliable and detailed information on its course and impact on the criminal proceedings. Although the CCP provisions, as they stand now, do not provide explicitly for this principle in any specific unit of text, there is no doubt that it is incorporated into the Polish legal system. Upon closer scrutiny, the CCP is seen to contain not only an obligation to inform trial participants of their trial rights (CCP, s. 16), but also – already in the provisions on mediation – a rule that a matter may be referred to mediation proceedings only upon the request and consent of the parties concerned (CCP, s. 23a).

Furthermore, the Recommendation holds that there should be no “obvious disparities” between the parties with respect to age, maturity or intellectual capacity. Such disparities may be hard to divine, especially when a matter is referred to mediation in the course of judicial proceedings. It appears that it may be far easier to notice such disparities for an authority conducting preliminary proceedings in direct contact with the parties. The practice of mediation

²¹ E. Gmurzyńska, *Mediacja w sprawach cywilnych w amerykańskim systemie prawnym – zastosowanie w Europie i w Polsce*, Warszawa 2007, p. 261.

²² Recommendation No. R (99) 19 of the Committee of Ministers to Member States concerning mediation in penal matters. Appendix I.

and its use was the object of a nationwide study carried out by the Chair of Criminal Procedure, Faculty of Law, Białystok University.²³ The results show that not only were matters referred to mediation more willingly at the stage of preliminary proceedings but also there was greater approval for the idea of combining reconciliation in the course of mediation with the possibility of discontinuing criminal proceedings. It must be noted, however, that CCP provisions as they stand now, do not explicitly provide for such a possibility, but the Codification Commission²⁴ at a certain stage of their work in 2009-2013, planned to introduce it to the CCP (so-called mediation discontinuance). Finally, this plan was dropped and all that was legislated were other options no less important for the strengthening of mediation.

It must be stressed that the Recommendation clearly indicates that mediation is to be confidential. The Council of Europe maintains that “participation in mediation may not be held against the accused when the matter is referred back to criminal justice authorities after mediation. What is more, the acknowledgement of facts or even ‘confession of guilt’ by the accused in the mediation process cannot be used as evidence in subsequent criminal proceedings with respect to the same act”.²⁵ This is a clear indication that the role of a mediator is not gathering information or collecting evidence but rather one of a comprehensive approach to the conflict between the parties concerned and due assistance in its resolution. The recommendation provides for setting aside confidentiality in the case of especially grave offences, either committed or planned. However, there is no doubt that the confidentiality of mediation is a fundamental principle without which any attempt at reconciliation and conflict resolution is pointless.

Without going into a detailed discussion of individual aspects of the confidentiality principle, it must be observed that its principal purpose is to ensure the participants of mediation have faith that everything that is said and done in mediation meetings will be kept in confidence by the mediator and subsequently will not be held against the parties in criminal proceedings. Bearing in mind the special character of mediation, the present author believes that the principle is justified and fully acceptable. The purpose of mediation is an agreement between the accused and victim, the parties, therefore, must be certain that they can speak freely and – which is equally important – give voice to their emotions, even if very strong. Currently, Polish law does not extend protection to communications in the course of mediation that would be modelled on the attorney-client privilege. However, notice must be taken of an amendment to the CCP suggested in September 2013 that would make it illegal to place the mediator on the witness stand. The amendment will enter into force on 1 July 2015.

The Recommendation leaves it to individual countries as to how to regulate mediation and indicates only certain areas which need to be defined and the principles that must be followed in the course of mediation. Above all, the Council of Europe encourages countries to

²³ D. Kuźelewski, *‘Mediacja w procesie karnym w opinii sędziów i prokuratorów – wybrane zagadnienia’* [in:] (ed.) C. Kulesza, *Ocena funkcjonowania porozumień procesowych w praktyce wymiaru sprawiedliwości*, Warszawa 2009, p. 242 ff.

²⁴ <http://www.sejm.gov.pl/Sejm7.nsf/druk.xsp?documentId=96832B0ED113D8FBC1257AB4004F3B04>.

²⁵ Komentarz, *Archiwum Kryminologii*, Warszawa 1999-2000, Tom XXV, pp. 228-243.

disseminate knowledge on mediation. In Poland, information on mediation has been disseminated already for several years through, for instance, holding Weeks of Mediation or distributing brochures published by the Ministry of Justice. In this context, Council for Crime Victims has been affiliated to the Prosecutor General. Much success is enjoyed by projects undertaken by non-governmental organizations, including the Polish Mediation Centre, which organizes the celebration of mediation days in October each year. The celebrations feature educational sessions, conferences and promotional actions.

The Recommendation by the Council of Europe was the first act of international law devoted entirely to mediation in criminal proceedings. Later, the question of consensual conflict resolution in a criminal trial was taken up by the European Union by issuing Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.²⁶ The Decision has been replaced now by 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. When the former was in force it played a significant role in promoting the institution of mediation and, by the imperative of a pro-EU interpretation, it had an impact on the formation of attitudes favourable to the idea of mediation and its use in proceedings in the everyday administration of justice in Poland.

The EU Council Decision reflects the importance the European Union has always attached to restorative justice and consensual conflict resolution. One of the aims of the Decision was to promote mediation in Member States and regulate the question of honouring any agreements, reached in the course of mediation, by criminal justice authorities.²⁷ Upon closer scrutiny of CCP provisions and the amendments made to it in recent years, especially those referring to victims, it becomes apparent that the Polish legislator has to a large extent taken into account these aims of the Decision. It is worth mentioning that in the Decision, mediation was included among the means and tasks whose purpose was to protect victims and help them return to normal life. The EU Council stressed that on each occasion the needs of victims of criminal offences had to be taken into account and consequently restorative and protective measures should be afforded to them. This understanding of mediation is particularly important. Following the Decision, successive CCP amendments²⁸ reflected the idea of protection of and assistance to victims, especially vulnerable victims. From the point of view of mediation, it appears particularly important that Article 2 of the Decision mentioned the right of a victim to respect and recognition. Therefore the dignity of the victim of a criminal offence is a fundamental value to be protected in criminal proceedings. Special protection should be afforded to vulnerable victims and those exposed to long-term consequences of the offender's act, in particular women, children, the elderly, and people with physical or mental conditions.²⁹ It is true that the CCP does not carry an imperative to take this value into account with respect to a victim (i.e. an

²⁶ OJ L 82, 22.3.2001, p. 1.

²⁷ A. Siedlecka-Andrychowicz, *'Mediacja w polskim postępowaniu karnym,'* [in:] E. Gmurzyńska, R. Morka, *Mediacje. Teoria i praktyka*, Warszawa 2009, p. 205.

²⁸ Dz. U. 2013, nr 849.

²⁹ A. Rękas, *'Mediacja w Polsce na tle doświadczeń państw Unii Europejskiej'* [in:] *Konferencje i Seminaria. Mediacja w krajach Unii Europejskiej i w Polsce*, no. 4(48)03, Warszawa 2003, p. 18.

aggrieved person in the context of a criminal trial) but there is no doubt that it can be derived by way of interpretation from both CCP, s. 2, and other provisions referring to aggrieved persons (e.g. CCP, s. 185a).

Article 9 of the Framework Decision obligated all EU Member States to ensure that the victims of criminal acts were entitled to obtain a decision, in the course of criminal proceedings, on compensation for harm sustained. Moreover, EU Member States were obligated to take appropriate measures to encourage the offender to redress the damage done. It is worth mentioning that the Decision defined mediation as follows: “the search, prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person”. These guidelines are mirrored in Polish law by the provisions on mediation, which not only may involve apologizing to the victim, but also – which is not doubt more important to them – redressing the physical harm done by the criminal act. For mediation may result in an agreement carrying representations of the parties on the manner and time limit for redressing the harm done by the criminal act. Such an agreement is enforceable after it is given a *fieri facias* and thus offers a real chance to the victim to have the harm sustained by them redressed.

It was already mentioned that one of the aims of the Decision was the promotion of mediation. It committed Member States to supporting and developing mediation with respect to those offences in the case of which they considered mediation appropriate. Actually therefore, the Decision gave considerable leeway to individual countries with respect to matters referred to mediation. What counted most, however, was to ensure – by suitable legislation and law enforcement – that agreements reached by the offender and victim are implemented.

Equally important for the development and reinforcement of mediation, the Recommendation of the Committee of Ministers was issued in 2006 by the Council of Europe and concerned assistance to crime victims.³⁰ Its preamble not only noted the issuing of over a dozen other recommendations after 1987 but also and more importantly observed “that significant developments have occurred in the field of assistance to victims including developments in national legislation and practice, a better understanding of the victims’ needs and new research”.³¹ The reasons behind the issuing of this legal act should be looked for in the growing – year by year – need to protect the rights of victims of criminal offences and prevent successive victimization. It is worth noting that the Recommendation defined the concept of victim as a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by acts or omissions that are in violation of the criminal law of a Member State.

The term victim also includes, where appropriate, the immediate family or dependants of the direct victim. The same document defined two other important concepts closely related to the

³⁰ Recommendation Rec (2006) 8 of the Committee of Ministers to Member States on assistance to crime victims (Adopted by the Committee of Ministers on 14 June 2006).

³¹ *Ibidem*.

subject of mediation: 'repeat victimization' and 'secondary victimization'. The former means a situation when the same person suffers from more than one criminal incident over a specific period of time. Mediation, however, is meant above all to prevent secondary victimization that is the stigmatization of a victim that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim. Michałowska claims that "in many instances it entails much greater bitterness and disappointment than primary victimization".³² Speaking of the situation of women subjected to domestic violence, she believes that secondary victimization has many negative mental consequences such as passivity, feeling of loneliness, anger or a desire for revenge. Also Rękas, defining the aims of mediation, mentions protection against secondary victimization as one such.

The Recommendation, in item 13 of the Appendix, gives guidelines on the very mediation process. The Council of Europe recommends that, owing to the potential benefits of mediation for victims, statutory agencies should consider its offering in conformity with Committee of Ministers' Recommendation R (99) 19. It is stressed, however, that the interests of the victim should be fully and carefully considered when deciding upon and during a mediation process. It must not be forgotten that not in all cases will mediation be helpful to the victims. It must be kept in mind that mediation must not be recommended when instead of preventing secondary victimization, it could contribute to the breach of interests of the victim yet again.

The Recommendation advocates the adoption of clear criteria and standards to support the interests of victims, especially as regards confidentiality, the ability of the parties to give free consent or to withdraw from mediation, or the competence of mediators. Basically, in all the legal acts discussed, it is stressed what rules should govern mediators' conduct and the level of competencies and professional skills they ought to possess.

The last legal act of significance to mediation issued by EU institutions is 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. It defines the concept of 'restorative justice services' and gives mediation as an example of such a service. The definition emphasizes the conditions that must be met to make availing oneself of such services possible and above all advantageous to victims. The Directive specifies that factors that determine if using mediation is warranted include the character of criminal offence, the severity of harm sustained, whether the bodily integrity of the victim was violated, and disparity in terms of age or intellectual capacity between the offender and victim.

Thus, the definition ultimately holds that mediation is not always the most favourable solution to be used in the first instance. On each occasion, it must be assessed if, in a given situation defined by factors concerning the people involved and the matter at hand, mediation will represent a proper and adequate solution. Article 12 of the Directive defines also conditions to be applied in performing acts of restorative justice. Upon closer scrutiny these conditions can be

³² A. Michałowska, *Podwójne cierpienie*, Published on the following webpage: <http://www.szkolenia.niebieskalinia.pl/edukacyjne.html>.

seen to be the principles of mediation: voluntariness, impartiality, and confidentiality that were already named in the acts of international law discussed earlier.³³

The CCP will witness major changes as of 1 July 2015, owing, *inter alia*, to the implementation of Directive 2012/29/EU. The amendments to criminal procedure will make questioning a mediator as a witness illegal and will incorporate the principles of mediation – voluntariness, impartiality and confidentiality – into the CCP, making them thereby absolutely binding. Certainly, this will make the institution of mediation develop further in Poland in emulation of other European countries.

³³ E. Bieńkowska, 'O unormowaniu mediacji w sprawach karnych', *Prokuratura i Prawo*, no. 1/2012.

CRIME'S VICTIM AND THE PROCEDURE OF EXECUTING THE FREEZING ORDER AND THE EUROPEAN INVESTIGATION ORDER

Martyna Kusak

Existing rules of obtaining evidence in criminal matters in the EU are based on two different models of cooperation. From the one side, there are instruments based on the mutual legal assistance (hereafter: MLA). On the other side, some instruments based on mutual recognition (hereafter: MR) has been adopted³⁴, including freezing order (hereafter: FO)³⁵ and European investigation order (hereafter: EIO)³⁶.

The 1999 Tampere Conclusions identified mutual recognition as the cornerstone of judicial cooperation in the EU³⁷. In this context, the concept of free movement of evidence have been developed like a measure to solve the problems of criminal law enforcement across borders in an area of security, freedom and justice³⁸. In reaction to mutual recognition in gathering of evidence, a Green Paper on obtaining evidence in criminal matters from one Member State to another and securing its admissibility was published. The Green Paper is establishing the long-term goal of a comprehensive system for obtaining evidence in cross-border cases, as well as envisaged to replace the current legal arrangements for obtaining evidence in criminal matters with a single instrument based on the principle of mutual recognition and covering all types of evidence³⁹.

The Framework Decision on freezing (hereafter: FFWD) was adopted on 22 July 2003 to deal with the execution of orders freezing property or evidence. The freezing order is defined as any measure taken by a competent judicial authority in the issuing state in order to prevent the destruction, transformation, moving, transfer or disposal of property which could constitute evidence⁴⁰. The purpose of FO is to establish rules under which Member States shall recognize and execute in their territory freezing orders, without any further formality

³⁴ G. Vermeulen, W.De Bondt & Y. Van Damme, *EU cross-border gathering and use of evidence in criminal matters, Towards mutual recognition of investigative measures and free movement of evidence?*, IRCP - series, Vol.36,pp.9.

³⁵ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003F0577>.

³⁶ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L .2014.130.01.0001.01.ENG>

³⁷ H. G. Nilsson, *Mutual trust or mutual mistrust?* (in:) G. de Kerchove (ed.), A. Weyembergh (ed.), *La confiance mutuelle dans l'espace pénal européen/Mutual Trust in the European Criminal Area*, Bruxelles, Éditions de l'Université de Bruxelles, 2005, pp. 31.

³⁸ S. Gless, *Mutual recognition, judicial inquiries, due process and fundamental rights* (in:) J.A.E. Vervaele (ed.) *European Evidence Warrant. Transnational Judicial Inquiries in the EU*, pp. 122-123.

³⁹ Green paper on obtaining evidence in criminal matters from one member state to another and securing its admissibility, com (2009) 624 final, http://ec.europa.eu/justice/news/consulting_public/0004/national_parliaments/french_senate_en.pdf.

⁴⁰ A. Suominen, *The principle of mutual recognition in cooperation in criminal matters*, Bergen 2010, pp. 92-93.

being required and shall forthwith take the necessary measures for its immediate execution in the same way as for a freezing order made in domestic case⁴¹. The FO procedure covers 'evidence', what is mean objects, documents or data which could be produced as evidence in criminal proceedings (art. 2e of the FFWD). The FO became the first EU measure for asset recovery in criminal matters which require international judicial cooperation based on mutual recognition⁴², designed to create a system under which the EU Member States will automatically recognize freezing orders issued by each other's courts⁴³. The main disadvantage, as well as the main failure of the FO, is the procedure of transfer of evidence, which is still held within the MLA instruments⁴⁴. It is the reason for sluggishness and insufficiency of FO⁴⁵.

The EIO was created by a directive 2014/41/EU adopted on 3 April 2014 as a measure based on new approach and the principle of mutual recognition. The main aim of the EIO is to replace the comprehensive system for obtaining evidence in cases with a cross-border dimension. A new approach was needed because existing instruments in this area constituted a fragmentary regime. It is called for a comprehensive system to replace all the existing instruments and covering as far as possible all types of evidence and limiting as far as possible the grounds for refusal⁴⁶. The EIO is to be issued for the purpose of having one or several specific investigative measure carried out in the State executing the EIO with a view of gathering evidence. The EIO covers also obtaining of evidence that is already in the possession of the executing authority⁴⁷. The EIO should have a horizontal scope and therefore should apply to all investigative measures aimed at gathering evidence⁴⁸. The EIO is focused on the investigative measure to be carried out⁴⁹. Under the EIO procedure, the Member States would agree to carry out investigations at the request of another Member State on the basis of mutual recognition. EIO would be automatically treaded as valid and executable by the executing State, with only limited grounds for refusal or postponement of recognition or execution, to carry out such investigations⁵⁰. The EIO Directive provides a specific provisions for certain investigative measures, as follows:

- a) temporary transfer to the issuing State of persons held in custody for the purpose of carrying out an investigative measure;
- b) temporary transfer to the executing State of persons held in custody for the purpose of carrying out an investigative measure;

⁴¹ A. Suominen, *The principle of mutual recognition...*, pp. 92-93.

⁴² D. Atkinson, *EU law in criminal practice*, Oxford 2013, pp. 60.

⁴³ J.R.Spencer, *The Problems of Trans-border Evidence and European Initiatives to Resolve Them*, (2007) no. 9, Cambridge Yearbook of European Legal Studies, pp. 469.

⁴⁴ A. Grzelak, T. Ostropolski, *Współpraca policyjna i sądowa w sprawach karnych*, Vol. XI, part 1, Warsaw 2009, pp. XI.1.-108.

⁴⁵ A. Demenko, P. Nalewajko, *Transfer dowodów między państwami Unii Europejskiej* (in:) *Unijna polityka karna*, A.J. Szwarz (ed.), Poznań 2009, pp. 97.

⁴⁶ Preamble of the EIO Directive (6).

⁴⁷ Preamble of the EIO Directive (7).

⁴⁸ Preamble of the EIO Directive (8).

⁴⁹ Preamble of the EIO Directive (9).

⁵⁰ D. Atkinson, *EU law in criminal practice...*, pp. 68.

- c) hearing by videoconference or other audiovisual transmission;
- d) hearing by telephone conference;
- e) information on bank and other financial accounts;
- f) information of banking and other financial operations;
- g) investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time;
- h) covert investigations;
- i) interception of telecommunication.

Above mentioned investigative measures based on the MR could successfully replaced the current environment which is indisputably over complex and cumbersome⁵¹. In the light of those close European criminal cooperation within the mutual trust and recognition in evidentiary proceedings, the following question arises - does the victim have the right to act in the procedure of executing the FO and the EIO and take legal actions directed at the protection of it is rights and interests? The main source for doubts is the victims' right to appeal against the decision to execute FO or EIO where its execution might damage ongoing criminal investigation in the executing state.

FFWD does not explicitly mention a victim in the FO procedure. However, art. 11 of the FFWD states that any interested party, including *bona fide* third parties, have legal remedies without suspensive effect against a freezing order to preserve their legitimate interests, what covers also a victim. Furthermore, the substantive reasons for issuing the freezing order can be challenged only in an action brought before a court in the issuing State. It is mean that victim, in accordance with the national law of the issuing and executing State, has a right to appeal against the freezing order, but challenging only:

- a) substantive reasons for issuing – in the issuing State;
- b) violation of executing procedure – in the executing State.

In the light of quoted articles, the procedure of executing FO does not provide a right to appeal against the authority's the decision to refuse the decision of execute the FO, when it could violated the victims' rights within proceedings ongoing in the executing State. Although art. 8.1 (a) of FFWD states that the competent judicial authority of the executing State may postpone the execution of a freezing order where its execution might damage an ongoing criminal investigation, until such time as it deems reasonable, but still the victim does not have any legal actions to refuse the execution when it was ordered irrespective of grounds for postpone.

Considering the position of victim and the EIO it is worth nothing that the EIO Directive does not define the victims' position in the procedure of executing either. The conclusion is, that it can hardly be doubted that in the procedure of executing the EIO the victims' rights are guaranteed. The same problem as in FO example appears – does the victim have the right to appeal against the decision of execution of the EIO? It should be emphasized, that

⁵¹ G. Vermeulen, W. De Bondt & Y. Van Damme, *EU cross-border gathering...*, pp. 9.

the EIO is far-reaching than FO, especially in temporary transfer of persons context. It cannot be denied, that transfer of person may cause an impossibility a conduction of criminal proceedings against the transferred person that violated the same victim.

According to the art. 14 of the EIO Directive, Member States shall ensure that legal remedies equivalent to those available in a similar domestic case, are applicable to the investigative measures indicated in the EIO. Such as in the FFDW regulations, the substantive reasons for issuing the EIO may be challenged only in an action brought in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State. It should be noted, that quoted article states, that the issuing State shall take into account a successful challenge against the recognition or execution of an EIO in accordance with its own national law. Without prejudice to national procedural rules Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the EIO. It is indisputable, that the fairness of the proceedings covers the protection of victims' rights. Moreover, the judicial authorities of Member States have an obligation to respect and protect the victim and to make sure that the victim is not turned into a mere object of criminal proceedings in each case⁵².

The lack of explicitly constituted position of victim in the procedure of the FO and the EIO does not mean, that the victim is not included and cannot act within this cases. All of the victims' rights should be considered in the light of the art. 6 of the EU Treaty of the European Union, as well as the Directive 2012/29 EU establishing minimum standards on the rights, support and protection of victims of crime which was adopted on 25 October 2012⁵³. Moreover, both instruments states that as in other mutual recognition instruments, FO and EIO does not have the effect of modifying the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty⁵⁴. The same conclusion was reached by the European Court of Justice in the case C-404/07, Katz v. Roland Sos: "It must therefore be concluded that the Framework Decision⁵⁵, while requiring Member States, first, to ensure that victims enjoy a high level of protection and have a real and appropriate role in their criminal legal system and, second, to recognize victims' rights and legitimate interests and ensure that they can be heard and supply evidence, leaves to the national authorities a large measure of discretion with regard to the specific means by which they implement those objectives" (par. 46). Moreover, in the Joined Cases C-74/95 and C-129/95 X [1996] ECR I-6609 the decision reads: "It is true that the national court must apply its domestic law as far as possible in the light of the wording and the purpose of the Directive (...) (par. 24). The national court must therefore ensure that that principle is observed when interpreting, in the light of the wording and the purpose of the Directive, the national

⁵² I. Turudić, T. P. Borzić, I. Bujas, *The position of victim in the procedure of executing the European Arrest Warrant*, Informator of Country court Zagreb of 9. April 2014. , No 6270, pp. 2.

⁵³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0029>.

⁵⁴ Preamble (18) of the EIO Directive, Preamble (6) of the FFDW.

⁵⁵ The Court is referring to the Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

legislation adopted in order to implement it (par. 26)”. Also in the case Pupino C-150/03, the Court concludes that: “The Framework Decision must thus be interpreted in such a way that fundamental rights, including in particular the right to a fair trial as set out in Article 6 of the Convention and interpreted by the European Court of Human Rights, are respected” (par. 59). In this spirit the ECtHR is sentencing (see for example: Doorson v. Netherlands, No. 20524/92, 26 March 1996; T. v. Austria, No. 27783/95, 14 November 2000; Imbroscia v. Switzerland, No. 13972/88, 24 November 1993; S.N. v. Sweden, No. 34209/96, 2 July 2002; as well as the CJEU sentences: C-328/05 paragraph 59; joined cases C-46/87 and C-227/88; C-85/87 and C-94/00).

The similar issue, related to the right of victim to appeal against the court’s decision to refuse the executing of the other MR instrument European Arrest Warrant, was considered within the case carried out in the Supreme Court of the Republic of Croatia (*Kž-eun-5/14*). The final decision reads as follows: “Grammatical or literal interpretation of the quoted articles would suggest that the only parties in the EAW procedure are the wanted person, his or her attorney and the district attorney, and that they are the only parties entitled to appeal against the court’s decision. However, such a grammatical interpretation would call into question the purpose of EU legislation as expressed in the Framework Decision on the EAW, as well as the purpose of other relevant sources of EU law, i.e., directives and framework decisions governing the matter of victim and victim’s rights in criminal proceedings. Therefore, in order to achieve the objectives and principles laid down under EU law, national courts are obliged to interpret national legislation in the light of the spirit of the framework decisions and directives, thereby complying with the provision of Article 34 § 2 item b) of the Treaty on European Union (this is explicitly stated in the judgment of the European Court of Justice in case *C-105/03 P* of 16 June 2005). (...) Article 1 of the Framework Decision on the European arrest warrant and the surrender procedures between Member States defines The European arrest warrant as a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. The same Article states that this Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 6 of the EU Treaty states that The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law. Human rights and freedoms, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, include, among other rights, the [right to a fair trial](#) (Article 6 of the Convention) and the right to an effective remedy (Article 13 of the Convention). Underlying rights are also protected under

Article 47 of the Charter of Fundamental Rights of the European Union, as well as under Articles 8 and 10 of the United Nations Declaration of Human Rights”.⁵⁶

Following the judges I. Turudić, T. P. Borzić, I. Bujas and their interpretation of above case: “In conclusion (...) an obligation to respect the basic human rights and basic legal principles contained in Article 6 of the Treaty on European Union, also creates an obligation to respect and protect the rights of victims. The fact that the Framework Decision does not expressly mention the victim does not mean that the victim is not included. On the contrary, Article 1 of the Framework Decision, which prescribes an obligation to protect human rights pursuant to Article 6 of the Treaty on European Union, includes victims’ rights. This is in keeping with the Framework Decision on the victim, which vests the victim with rights before, during and after the criminal process that is defined by national legislation, and in all other processes in the wider sense of the word, in connection with the victim case (art.1.(c),(d) of the FD). These processes definitely include the surrender procedure (...). Furthermore, Directive 2012/12/EU gives the victim the right to have the decision by which the offender is released reviewed (right to appeal, of which the victim must be warned), as well the decision by which actions in a criminal matter are interrupted before the formal beginning of criminal proceedings. Denial of surrender in the procedure of execution of the European arrest warrant evidently represents “release of the offender” in the procedure, which should be interpreted in the wider sense of the word, that is in connection with the victim case, and which under the Directive gives the victim the right to have the decision reviewed on appeal”⁵⁷.

The above quoted and very well - aimed argumentation proves that only the fact of excluding victim in the FFWD and EIO Directive does not mean that the victim is not included in those proceedings. This conclusion should be considered by the Member States within implementation of the EIO Directive. As said, EIO could provoke and exacerbate feeling of imbalance on victims’ rights, mainly because of lack of possibility to appeal against the decision of execute the EIO. That is mean, that the victim cannot refuse of transfer of evidence which is or could be used within the ongoing proceedings, when the competent authority decides to execute the EIO. It is worth nothing that the proposal of the EIO was widely criticized for affecting safeguards for victim: “An EIO may affect a wide range of persons. In order to uphold the right to fair trial, it is necessary to provide effective access to courts for all these persons. The adoption and execution of an EIO requires specific safeguards in order to ensure that the rights of victims and also those of witnesses are effectively protected. According to the CJEU, the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings must be interpreted so as to ensure respect for fundamental rights, particularly the right to fair trial as guaranteed by Article 6 ECHR and as interpreted by the ECtHR.²⁹ In its case law, the CJEU emphasises that Article 6 ECHR requires the right of the accused to fair trial to be balanced with the rights of

⁵⁶ I. Turudić, T. P. Borzić, I. Bujas, *The position of victim...*, pp. 2-4.

⁵⁷ The decision of the Supreme Court of Croatia, case *Kž-eun-5/14*: " For these reasons, the victim correctly points out that the first instance Court has violated his/her right to seek a legal remedy in the proceeding that is not a criminal proceeding, but rather a court proceeding *sui generis* in which other remedies are not available, and the aim of that procedure is to facilitate the conduct of the criminal prosecution in another EU Member State".

vulnerable victims. Accordingly, states are under an obligation to organize their criminal proceedings in such a way that the interests of victims and witnesses are not unjustifiably endangered”⁵⁸. Above quoted scepticism well reflects the neglected position of the victim in the MR evidence instruments.

In evidence gathering cooperation contexts, the study on position of victim shows, that the procedure of executing the FO and EIO can deprived the victims’ rights who cannot take legal actions directed at the protection of all its rights and interests. The way in which the EIO implementation should be widely consider, is to give the victim right to appeal against the decision of the EIO execution, which should be available in each Member States’ domestic procedure.

⁵⁸ Opinion of the European Union Agency for Fundamental Rights on the draft Directive regarding the European Investigation Order, http://fra.europa.eu/fraWebsite/research/opinions/op-eio_en.htm

APPENDIX. THE PRACTICE FACILITATION HANDBOOK. TRAINING SESSION ON IMPROVING PROTECTION OF VICTIMS' RIGHTS: ACCESS TO LEGAL AID.⁵⁹

Concept of the training session for practitioners

The main subject of the training is victim's access to judicial system as well as delivering help to the victims of crime and protection of their rights. During the training it is also important to stress out the significance of different ways of approaching victims and delivering them help. One cannot overestimate the importance of right attitude of people working in institutions dealing with victims in everyday practice. The training course could be an opportunity to share thoughts and experiences of professionals working in different professions. The aim of the training session is also to create the teaching module for practitioners.

The training session for practitioners should be divided into three parts. First one focuses on legal issues and lasts for two days. It is important to start with legislation on protection of victim's rights because of non-lawyer participants of the training. Even for lawyers it is advisable to acquaint the knowledge concerning international norms and legislation on protection of victim's rights. The second part concerns psychological assistance for the victim and deals with the different ways of treating victims and assisting them during the procedural phase. When participants overestimate importance of building the mutual trust between law enforcement agencies and the victim, the last part of the training can take part. It refers to mediation as a good practice in criminal proceedings. This part of the training should be the last one, because it uses psychological and legal knowledge from the previous days of the training.

All training should took place day-by day, what increases the effectiveness of the training.

The main goals of the workshop are:

- to acknowledge the importance of proper norms and international legislation which create the status of the victim;
- to create some common standards and norms which should be implemented on international level;

⁵⁹ Practice Facilitation Handbook is based on materials received from trainers conducting **International Workshop Session in Poznań, February 2014: legal experts B.A. Nasir and Marie Pegie Cauchois** (United Nations, Standing Police Capacity, Police Division, Department of Peacekeeping Operations, Brindisi); **Marceli Kwaśniewski** (Polish Center for Mediation) and **Agnieszka Nowak Młynikowska** (psychologist), collected and developed by **Martyna Kusak** (AMU, Ph.D. student). See also www.victimrights.eu.

- to enhance knowledge of practitioners in answering problem of how to collaborate with authorities of another Member State in a spirit of a common European judicial and legal culture;
- to understand emotional, social issues and methods of communication with the victims;
- to acknowledge the importance of non-legal aspects of the help given to victims;
- to exchange thoughts and experiences on best practices concerning protection of victims.

These interdisciplinary goals require the assembly of distinguished trainers from a diversity of interrelated fields (lawyers, psychologist and mediator). The format of the training session is designed to creative, effective discussions and case simulations.

The training session should be attended by, at least, 10 participants. Selection of the participants should be connected with the goals of the training session and it's interdisciplinary scope. The diversity of participants, especially international team, serves as a factor provoking animated discussion and exchange of experiences during the training session. The participants should be a law enforcement, justice professionals and people working in institutions dealing with victims in everyday practice like judges, prosecutors, advocates, Police Officers and NGO's representatives.

Module 1: Victims' rights: legal perspective

1. Module summary

Trainers	Lawyers with experience in international norms and legislation on protection of victim's rights
Participants	Law enforcement, justice professionals, people working in institutions dealing with victims in everyday practice (judges, prosecutors, advocates, Police Officers, NGO's representatives)
Duration	2 days of training course Duration of each session: 7 hours 30 min

Aim of this part of the training course is to deepen participant's knowledge concerning international norms and legislation on protection of victim's rights. This module also serves as a platform of exchanging thoughts and experiences on best practices concerning protection on victims. This discussion could be a vital tool in creating some common standards and norms which should be implemented on international level. Another planned outcome of the first module is to enhance knowledge of practitioners in answering problem of how

to collaborate with authorities of another Member State in a spirit of a common European judicial and legal culture.

1. Training objectives

- Participants will be able to describe key UN and EU standards relating to victims' rights.
- Participants will be able to apply UN and EU victim's rights standards in their daily work.
- Participants will be able to describe the implementation status of UN and EU legal framework relating to the victims' rights.
- Participants will be able to identify major challenges relating to the implementation of victim's rights.
- Participants will be able to suggest assessment criteria for victim's rights.
- Participants will be able to suggest mechanism for cooperation amongst different segments of Criminal Justice System to ensure victim's rights.

2. Methodology:

- Power Point presentation
- Role plays
- Video presentation
- Peer learning discussion
- Quiz to assess the impact of training workshop

3. Content

- UN legal framework relating to the victims' rights.
- EU legal framework relating to the victims' rights.

During the first part of the session, the trainer presents and summarizes the overview of the UN and EU legal framework relating to the victims' rights.

- EU Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime.

The second part of the workshop focuses on EU Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime, with aim to describe key points of the EU Directive 2012/29/EU relating to minimum standards on the rights, support and protection of victims of crime. They are studied:

- definition of victim and protection of victims with specific protection needs;
- rights of victim of crime;
- participation of victim in criminal proceedings;
- implementation of the Directive.

During this session participants are asked to divide themselves into four groups, with each group identify some problem (victim’s rights, victim’s protection, victim’s definition etc.) and discuss it. The groups present result of their discussions, and the rest of participants contribute their comments on each of presentations. The session should establish that there is a lot of differences between represented nations relating to victim’s rights, even they share common characteristics.

- Challenges in the implementation of victims’ rights.

The second day begins with a recap of previous day’s activities by the participants. Next part of the session is dedicated to challenges in the implementation of victims’ rights. They are analyzed:

- general challenges (f.eg. lack of political will, adequate budgetary support);
- challenges for the victims (f.eg. lack of support, lack of ability to participate in the criminal justice process or lack of compensation);
- challenges for the criminal justice system (f.eg. lack of knowledge regarding the emotional impact on victims, lack of experience amongst criminal justice professionals how to limit the risk of re-victimisation);
- challenges for victim support organizations (f.eg. data protection restrictions, lack of funding, independence from external influence).

Implementation status of UN and EU legal frameworks relating to the victims’ rights.

Next part of the workshop focuses on issues of implementation status of UN and EU legal framework relating to the victims’ rights. The aim of this part is to describe the implementation status of UN and EU legal framework relating to the victims’ rights, using interactive presentation and peer learning. This module also includes a group exercise on victims’ rights (role play followed by discussion), with aim to practice and understand various elements of victims’ rights. The participants are asked to play a case simulation. The case role is dedicated to practice and understand various elements of victims’ rights. Case roles are, as follows:

Role	Range of tasks
<i>Victim</i>	<i>Your name is Bill. You were on holidays in a foreign country with your family when one night you were attacked and robbed in a street on way to your hotel. When you tried to stop the attackers, they physically assaulted you in front of your family. You reported the crime to the local police but since you could not make yourself understood, you could not give all the details about the assault. The behaviour of police was not sympathetic with you. During the weeks that followed, you didn’t receive any information about the case, and felt frustrated as you and your family members were routinely questioned several times by different police officers. Even your children were repeatedly questioned, which was very upsetting for them.</i>

	<p><i>You approached the Prosecutor but you were not given any information about your case.</i></p> <p><i>You also approached judge and asked about the case but again you did not receive any information from the judge.</i></p> <p><i>When you came back home, you needed several operations for your injuries and could not work for several weeks.</i></p> <p><i>You did not hear anything from the police until one day you were told to appear and testify at the trial of two suspects, taking place abroad. The trial was difficult because nobody explained the foreign court proceedings and you felt intimidated by having to face the accused outside the court room in the same waiting area.</i></p> <p><i>After the trial was over, you didn't hear anything more about the case or what happened to the accused. But for many years after the attack, you and your family lived with the emotional, physical and financial consequences of the crime. Despite it happening in another place and in another country, you and your family members never felt safe anymore, even in your own home.</i></p>
<i>Offenders</i>	<p><i>You have to rob a tourist family from a foreign country. Treat them badly while robbing them.</i></p> <p><i>Intimidate them during the trial. Stare at them while they come to the court to participate in the trial.</i></p>
<i>Police Officers</i>	<ol style="list-style-type: none"> <i>1. The victim has reported the crime to you.</i> <i>2. Do not treat the victim with respect.</i> <i>3. Do not arrange an interpreter for the victims so he could explain what had happened in detail.</i> <i>4. Do not put him in touch with a victim support organization.</i> <i>5. Do not inform him about his rights and entitlement to compensation.</i> <i>6. Do not appoint a contact person from the police kept him up to date with the investigation.</i> <i>7. Do not ask him about any possible needs for protection or assistance during proceedings.</i> <i>8. During the criminal investigation, keep the victim, his wife and children repeatedly questioned about the incident</i>

	<p><i>by different police officers.</i></p> <p>9. <i>When the case is sent to the court, call the victim and his family to come and testify.</i></p> <p>10. <i>Keep victim and his family waiting in the same waiting area where suspects are present</i></p>
<i>Prosecutor</i>	<p>1. <i>The case has been brought before you for processing. The victim approaches you and asks for help in early processing of his case.</i></p> <p>2. <i>You inform the victim that you cannot provide him information about progress in processing of his case.</i></p> <p>3. <i>You inform the victim that you cannot provide him information whether his case will be sent for trial or not!</i></p> <p>4. <i>You did not tell the victim about the criminal proceedings and his rights and role during the process.</i></p> <p>5. <i>You inform the victim that you cannot provide him and his family any help to get in touch with a victim support organization as this is not your job.</i></p>
<i>Judge</i>	<p>1. <i>The case has been brought for trial before you</i></p> <p>2. <i>Your staff has called the victim to appear and testify at the trial of two suspects taking place in a foreign country</i></p> <p>3. <i>Nobody has explained anything to the victim about trial proceedings in a foreign court</i></p> <p>4. <i>You have not arranged an interpreter for the victims so he could explain what had happened in detail.</i></p> <p>5. <i>You have seen victim and his family waiting in the same waiting area where suspects are present</i></p>
<i>Victim support</i>	<p>1. <i>The victim has approached you for help.</i></p> <p>2. <i>You did not entertain him as he has not been referred to you by the police or prosecutor.</i></p>

	<ol style="list-style-type: none"> 3. You inform the victim that you cannot provide him and his family emotional support to cope with the crime. 4. You inform the victim that you cannot provide him any practical help, such as getting medical treatment and sorting out paperwork 5. You do not tell the victim about the criminal proceedings and his rights and role during the process. 6. You do not provide the contact details of a victim support organization in victim's home country, where he can remain in touch after the case is closed.
Team of observers	<ol style="list-style-type: none"> 1. Please take notes of the proceedings of exercise. 2. Please provide feedback what key victim rights were violated? 3. How the Police, Prosecutor, Judge and the Victim Support Officer should have behaved?

- Assessment criteria for victim's rights.

The session continues with analysis of assessment criteria for victims' rights and mechanisms for cooperation amongst different segments of Criminal Justice System to ensure victim's rights, as follows:

- reasons to have cooperation mechanisms;
- benefits of better coordination;
- functions of coordination mechanisms;
- different CJS coordination mechanisms.

- Mechanisms for cooperation amongst different segments of Criminal Justice System to ensure victims' rights.

The first module finishes with the quiz assess impact of training workshop, which checks the participants ability to identify the key learning points. The participants are divided into 2 groups and they are requested to ask short, summary questions related to the first module of the training. The winners can be rewarded with chocolates.

5. Timetable

First day of the training course:

Time	Topic	Objective	Methodology
09.00-09.10	Introduction to the training workshop.	Participants will be introduced to the objective and contents of the training workshop.	Presentation.
09.10-09.30	Introduction of the participants and presentation of the ground rules.	Participants will introduce themselves. They would be briefed about the ground rules for the workshop.	Interactive presentation.
09.30-10.40	Overview of the UN legal framework relating to the victims' rights.	Participants will be able to describe UN standards relating to victims' rights.	Interactive presentation.
10.40-11.00	<i>Tea break</i>		
11.00-12.30	Overview of the EU legal framework relating to the victims' rights.	Participants will be able to describe EU minimum standards relating to victims' rights.	Interactive presentation.
12.30-13.30	<i>Lunch break</i>		
13.30-15.00	EU Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime.	Participants will be able to describe key points of the EU Directive 2012/29/EU relating to minimum standards on the rights, support and protection of victims of crime.	Interactive presentation. Peer and groups learning
15.00-15.20	<i>Tea break</i>		
15.20-16.30	Video on victims participation in trial proceeding.	Participants will be able to understand various elements of victims' participation in trial proceedings.	Video followed by group discussion.

Second day of the training course:

09.00-09.15	Recap of previous day's activities.	Participants will be able to refresh their memory about the activities on previous day.	Presentation.
09.15-10.30	Challenges in the implementation of victims' rights.	Participants will be able to describe the key challenges in implementation of victims' rights.	Interactive presentation. Peer Learning.
10.30-10.50	<i>Tea break</i>		
10.50-12.20	Implementation status of UN and EU legal framework relating to the victims' rights.	Participants will be able to describe the implementation status of UN and EU legal framework relating to the victims' rights.	Interactive presentation. Peer Learning.
12.20-13.20	<i>Lunch break</i>		
13.20-14.00	A group exercise on victims' rights.	Participants will be able to practice and understand various elements of victims' rights.	Role Play followed by discussion.
14.00-15.00	Assessment criteria for victims' rights.	Participants will be able to suggest assessment criteria for victim's rights.	
15.00-15.20	<i>Tea break</i>		
15.20-16.10	Mechanisms for cooperation amongst different segments of Criminal Justice System to ensure victim's rights.	Participants will be able to suggest mechanism for cooperation amongst different segments of Criminal Justice System to ensure victim's rights.	Interactive presentation. Peer Learning.

16.10-16.30	Quiz to assess impact of training workshop.	Participants will be able to identify the key learning points.	Peer Learning.
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6. Materials

- Handouts of presentation;
 - Resource materials - UN and EU Legal Instruments on Victims' Rights:
- 18/05/2011 - COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE AND THE

COMMITTEE OF THE REGIONS – STRENGTHENING VICTIMS’ RIGHTS IN THE EU
(COM(2011)274 FINAL)

- COUNCIL FRAMEWORK DECISION 2001/220/JHA OF 15 MARCH 2001 ON THE STANDING OF VICTIMS IN CRIMINAL PROCEEDINGS
- RESOLUTION OF THE COUNCIL 2011/C 187/01 OF 10 JUNE 2011 ON A ROADMAP FOR STRENGTHENING THE RIGHTS AND PROTECTION OF VICTIMS, IN PARTICULAR CRIMINAL PROCEEDINGS
- 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
- ECOSOC RESOLUTION 2005/20 OF 22 JULY 2005, GUIDELINES ON JUSTICE IN MATTERS INVOLVING CHILD VICTIMS AND WITNESSES OF CRIME
- UNITED NATIONS, RESOLUTION 1998/21, ECONOMIC AND SOCIAL COUNCIL, 44TH PLENARY MEETING 28 JULY 1998
- ECOSOC RESOLUTION 2006/20, UNITED NATIONS STANDARDS AND NORMS IN CRIME PREVENTION
- COUNCIL OF THE EUROPEAN UNION, RESOLUTION OF THE COUNCIL ON A ROADMAP FOR STRENGTHENING THE RIGHTS AND PROTECTION OF VICTIMS, IN PARTICULAR IN CRIMINAL PROCEEDINGS, 309TH JUSTICE AND HOME AFFAIRS COUNCIL MEETING LUXEMBOURG, 9 AND 10 JUNE 2011
- REGULATION (EU) NO 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12 JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS
- COUNCIL DIRECTIVE 2004/80/EC OF 29 APRIL 2004 RELATING TO COMPENSATION TO CRIME VICTIMS
- DIRECTIVE 2011/99/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 DECEMBER 2011 ON THE EUROPEAN PROTECTION ORDER
- 20/4/2009 – 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), (COM(2009) 166 FINAL)

- UN DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER 1985
- 21 MARCH 2006, UNITED NATIONS, BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW, A/RES/60/147

7. Equipment and supplies

- Flipcharts
- Markers
- Selotape
- Laptop
- Multimedia projektor
- Coffee
- Basic articles which show some of the participants as offenders, victims, police officers, prosecutors, judges and victim support officials (Role playing)
- Chocolates (Quiz Prize)

Module 2: Psychological impact of crime

Trainer	Psychologist with experience in psychological trainings connecting with victims' rights
Participants	Law enforcement, justice professionals and people working in institutions dealing with victims in everyday practice (judges, prosecutors, advocates, Police Officers and NGO's representatives)
Duration	6 hours (approximately)

The second module is dedicated to non – legal issues connected with help given to the victims of crime. Emotional, social issues and methods of communication with the victims are extremely important factors in approaching victims of crime. For this reason, second module deals with the different ways of treating victims and assisting them during the procedural phase. One cannot overestimate importance of building the mutual trust between law enforcement agencies and the victim. Only victim who is treated with proper respect can cooperate with jurisdiction and get the due compensation in criminal proceeding. Nevertheless, many time in everyday practice, state authorities forget about the importance

of non-legal aspects of the help given to victims and keep their priorities on the proper performance of legal procedures.

1. Training objectives

- To raise the participants' awareness about psychological needs and difficulties experienced by victims of crime, the immediate and long-term psychological effects of victimization, and their impact on the victim's ability to participate in legal procedures (criminal proceedings perspective) and to function in the community (broader social perspective).
- International exchange of experience, practices, and ideas in providing psychological support for victims of crime.

2. Methodology

- Presentation/lecture
- Group and subgroup discussion
- Case study
- Role playing
- Pair work
- Individual work

3. Content

- The training session starts with issues of victimization as stress/trauma in the victim's life. This part of the session redirects the participants' attention, helping them to take the victim's perspective. They can also learn about types of trauma (with reference to various types of offenses) and about how to recognize post-traumatic stress in the victim. The workshop is based on a group work. The participants are divided into two groups and they are required to find some examples of the acute and chronic trauma. Next they choose one to two representatives each to present their proposals and the dialogue.

- Victimization as disturbance of balance.

This workshop shows, why crime is so stressful for the victim is that it violates the victim's boundaries and disturbs their inner balance (in several ways). The participants are asked to find and mark their small territory in the room. Next, two participants are required to cross and get into the territory of the others. Disturbed participants should tell about their feelings in the light of a danger. In this exercise participants had an opportunity to experience boundary violation to become more able and more willing to see things from the victim's point of view.

- Psychological effects of crime: emotional effects, changes in the brain, cognitive impairment.

Participants learn more about how victimization affects the person's emotions and motivations, the brain, and cognitive or intellectual functions. This part of the training is based on lecture, presentation and group work. Firstly, participants in pairs are required to tell each other about some stressful moments of their life, including all feelings connected with it. Next, in two groups, they try to find what is the victim afraid of and discussed all proposals.

- Psychological effects of crime and the victim's activity in criminal proceedings.

In this part of the training participants try to refer the knowledge from the previous sections to their daily practice. They discuss – in practical terms – about how the emotional, motivational, and cognitive effects of victimization influence the victim's behavior in criminal proceedings, sometimes making the person unable to participate in the process.

- Victimization as a loss.

Participants will learn about how people respond to and cope with a loss to help them realize that victims participating in criminal proceedings may be at different stages of the process, which has an effect on their activity in legal procedures. This part of workshop is based on lecture with presentation and discussion between participants. Especially, the participants discuss: what is lost? They are also presented stages of dealing with loss. After an exercise illustrating the victim's difficult situation in the criminal proceedings and factors increasing the risk of the person being harmed by the legal process itself, the participants are required to think in 2 groups about what is the secondary victimization, what the victim needs and how they, as law enforcement or justice system professionals, may try to meet these needs to prevent secondary victimization. Next, all proposals are discussed.

- Individual differences in coping with victimization.

This part of the workshop focuses on individual differences to make the participants more sensitive to specific features and characteristics that influence how victims cope with victimization and with the legal process itself. The case study method should be used, so the participants can refer directly to their practical experience.

- Different types of victims and their participation in legal procedures.

This part of the workshop is also dedicated to practical experience of the participants. They are presented three categories of victim: provocative victim, participating victim and false victim, with aim to discuss the problem and exchange experiences of participants.

- Systemic solutions of psychological support for victims of crime.

The last part of the training focuses on psychological support offered to victims within various justice systems. Working in international subgroups, participants share their countries

practices in this area and try to work out ways to improve the existing solutions within their systems.

4. Timetable

Time	Topic	Objective	Methodology
10.00 – 11.30	Victimization as trauma in the victim's life and violation of the victim's inner balance.	Participants learn about types of trauma (with reference to various types of offenses) and about how to recognize post-traumatic stress in the victim. Participants experience boundary violation (in the form of play) to become more able and more willing to see things from the victim's point of view.	Power Point presentation and lecture. Group and subgroup discussion. Role playing (boundary violation). Discussion.
11.30-11.45	<i>Coffee break</i>		
11.45 – 13.30	Psychological impact of crime secondary, victimization and how to prevent it.	Participants experience some of the effects through role playing. Participants think about what the victim needs and how they, as law enforcement or justice system professionals, may try to meet these needs to prevent secondary victimization.	Power Point presentation. Role playing.
13.30 – 14.15	<i>Lunch break</i>		
14.15 – 15.30	Individual differences in coping with victimization and victims' characteristics	Participants exchange their experiences and discussed.	The case study method. Participants can refer directly to their practical experience.
15.30 – 15.45	<i>Coffee break</i>		
15.45 0 16.30	Closing session - Psychological support for victims of crime – systemic solutions, closing round, evaluation	Participants share their practices in this area and try to work out ways to improve the existing solutions within their systems.	Work in subgroups.

5. Materials

- Handouts of PowerPoint presentation

6. Equipment and supplies

- Flipcharts
- Markers
- Selotape
- Laptop
- Multimedia projector
- Empty ID badges
- White and colour paper (A4)
- Chalk (to mark a borders)

Module 3: Mediation – why not?

Module summary

Trainer	Mediator with experience in trainings connecting with victims' rights
Participants	Law enforcement, justice professionals and people working in institutions dealing with victims in everyday practice (judges, prosecutors, advocates, Police Officers and NGO's representatives)
Duration	6 hours (approximately)

The mediation as a great tool of reconciliation between parties of criminal proceeding is still underestimated in many countries. During the last part of the training course, trainer exposes some of the vital problems connected with the mediation. This module will show why mediation can not only shorten procedure but also bring fast relief and compensation to the victim. Professional mediators should also explain what typical mistakes are made during a mediation and how to avoid them. During this module, participant will be also taught how to encourage parts of the criminal procedure to use this institution more often. The main goal to achieve within one day training is to root in the minds of participants basic question concerning the mediation as a tool available for all the parties involved in a trial: "why not?" As it is at hand, mediation should be used much more frequently than it is in use now. Why so rare and why not more frequent? The answer can be found in every participants' mind by himself. The other question to be raised is "when – on which stage – the mediation is (should be) applicable"? That question concerns the injured party and his/her psychic/physical condition.

1. Training objectives

- Increasing participants' awareness about the importance of mediation for crime victims and the importance of mediation as a judicial remedy against secondary victimization, and as a standard in the trial proceedings. The aim is also to draw attention to the problem of applying mediation at the appropriate stage of the trial.
- Exchange of experiences and best practices in the use of mediation and its availability in different countries.

2. Methodology

- Role playing (perspective of mediator, victim and violator)
- Interactive training
- Presentation/lecture
- Discussion in groups and general discussion

3. Content

- Mediation as a way to restore a sense of justice by showing the victim's rights and opportunities resulting from mediation.
- The role of the mediator in support of the victim and stopping the perpetrator.
- The objectives of mediation:
 - search for the problem,
 - joined problem connecting the violator and the victim,
 - separating the problem from the penalties and judicial remedies.
- Mediation as an equal instrument in the trial proceedings.
- Changing the perception of the trial perspective from a conclusive to the problem.
- The appropriateness of referring the cases to mediation and finding the right stage of trial for them.
- Trauma of crime disrupting perception of the victim - the role of mediation in the preparation of the victim to participate fully in the trial process.

This part of the training is mainly based on role playing - perspective of mediator, victim and offender. All of the cases are presented in 2 variants, what stress the wide range of common problems connected with mediation. Each and every cases are analyzed and discussed. The cases are, as follows:

Case 1 : Domestic violence

<i>Variant A</i> <i>Role</i>	<i>Range of tasks</i>
<i>Victim</i>	<i>Your husband maltreats you. You are still living together, but you are afraid of him. You want to mediate, to achieve a reconciliation and forgiveness.</i>

<i>Offender</i>	<i>You want to use mediate only to make a good impression on a judge and avoid the punishment.</i>
<i>Mediator</i>	<i>Try to conduct mediation between victim and offender. Do not force anybody to achieve reconciliation.</i>
<i>Team of observers</i>	<i>Observe and take notes of the proceedings of exercise.</i>

<u>Variant B</u> Role	Range of tasks
<i>Victim</i>	<i>Your husband maltreats you. You are still living together, but you are afraid of him. You don't want to reconcile, but to avenge on him.</i>
<i>Offender</i>	<i>You feel guilty and repents a lot. You don't want to hurt your wife anymore.</i>
<i>Mediator</i>	<i>Try to conduct mediation between victim and offender. Do not force anyone to reconciliation.</i>
<i>Team of observers</i>	<i>Observe and take notes of the proceedings of exercise.</i>

Case 2: Punishable threats

<u>Variant A</u> Role	Range of tasks
<i>Victim</i>	<i>You were insulted and threatened. Now you shake of stress and demand a high compensation from offender. You have a demanding attitude.</i>
<i>Offender</i>	<i>You really repent and want to apologize to the victim. You don't want to be punished.</i>
<i>Mediator</i>	<i>Try to conduct mediation between victim and offender. Do not force anyone to reconciliation.</i>
<i>Team of observers</i>	<i>Observe and take notes of the proceedings of exercise.</i>

<u>Variant B</u> Role	Range of tasks
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<i>Victim</i>	<i>You were insulted and threatened. You want a reconciliation with offender and a compensation, but you don't have a demanding attitude.</i>
<i>Offender</i>	<i>You plead guilty but you don't want to compensate to the victim.</i>
<i>Mediator</i>	<i>Try to conduct mediation between victim and offender. Do not force anyone to reconciliation.</i>
<i>Team of observers</i>	<i>Observe and take notes of the proceedings of exercise.</i>

The main goal of the first and second case is to show the diversity of victim's and offender's attitude during mediation. It is also important to recognize the real intention of the parts of mediation (revenge, forgiveness, reconciliation) and remember about psychological impact of crime on victim (trauma, stress, disturbance of balance).

Case 3: Traffic accident, VIP involved

<u>Variant A</u>	Range of tasks
Role	
<i>Victim</i>	<i>You had a harmless car crash caused by VIP driver. You don't care about any compensation. You only want to punish VIP.</i>
<i>Offender</i>	<i>You feel guilty and try to reconcile with victim. You want to have clean criminal record.</i>
<i>Mediator</i>	<i>Try to conduct mediation between victim and offender. Do not force anyone to reconciliation.</i>
<i>Team of observers</i>	<i>Observe and take notes of the proceedings of exercise.</i>

<u>Variant B</u>	Range of tasks
Role	
<i>Victim</i>	<i>You had a harmless car crash caused by VIP driver. You don't want to forget about it, but to reach an agreement</i>
<i>Offender</i>	<i>You are guilty, but you try to force victim to withdraw a prosecution.</i>
<i>Mediator</i>	<i>Try to conduct mediation between victim and offender. Do not force anyone to reconciliation.</i>
<i>Team of observers</i>	<i>Observe and take notes of the proceedings of exercise.</i>

The aim of this case is to show non-legal motives for a mediation and how difficult is to achieve a balance between both parties, especially when one of them put pressure on another.

Case 4 : Fight

Variant A Role	Range of tasks
<i>Victim</i>	<i>You were hitten and humiliated. You know, how the offender should be punished and you demand it.</i>
<i>Offender</i>	<i>You hit victim, but in your opinion both of you are guilty. You really want to stay a person with no criminal record, so you insist on the withdrawal of the prosecution.</i>
<i>Mediator</i>	<i>Try to conduct mediation between victim and offender. Do not force anyone to reconciliation.</i>
<i>Team of observers</i>	<i>Observe and take notes of the proceedings of exercise.</i>

Variant B Role	Range of tasks
<i>Victim</i>	<i>You were hitten and humiliated. You want to know why offender hit you. You want to meet your offender.</i>
<i>Offender</i>	<i>You are guilty, but you but you try to force victim to withdraw a prosecution. You intimidate a victim.</i>
<i>Mediator</i>	<i>Try to conduct mediation between victim and offender. Do not force anyone to reconciliation.</i>
<i>Team of observers</i>	<i>Observe and take notes of the proceedings of exercise.</i>

The main goal of this case it to show the weak position of victim during mediation and, like a result, how mediator should support a victim. It also presents significance of a balance between punishment and compensation.

4. Timetable

Time	Topic	Objective	Methodology
10.00 – 10.45	Introduction: discussion about the international regulations on mediation	Participants will be able to describe international standards relating to mediation	Group and subgroup discussion.
10.45-11.00	<i>Coffee break</i>		
11.00 – 12.30	Workshop I - cases: direct violence in the family and punishable threats	Participants will be aware of the importance of mediation as a judicial remedy against secondary victimization and as a standard in the trial proceedings. The participants will have also an opportunity to practice how to mediate.	Role playing – perspective of mediator, victim and offender
12.30 – 14.00	Workshop II - cases: traffic accident, VIP involved	Participants practice how to mediate.	Role playing – perspective of mediator, victim and offender
14.00 – 14.30	<i>Lunch break</i>		
14.30-16.00	Workshop III - fight	Participants practice how to mediate.	Role playing – perspective of mediator, victim and offender

5. Materials

- PowerPoint presentation.
- Outline of case studies.

6. Equipment and supplies

- Mediation table
- Flipcharts
- Markers
- Selotape
- Laptop
- Multimedia projector

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ABOUT THE GRANT PROGRAMME

IMPROVING PROTECTION OF VICTIMS' RIGHTS: ACCESS TO LEGAL AID

action grant within JUST/2011-2012/JPEN/AG programme.

In order to enhance the implementation of 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 project aims at:

- Increasing the information available for the victims on the legal aid as a means to facilitate the protection of their rights;
- To identify common standards to handle victim of crime cases in order to have a just compensation;
- Reinforcing the capacities of practitioners in dealing with victims, through the implementation of a training course;
- Addressing the main needs of the victims of crimes for a reinforced protection of their rights during the trial, as stated among others by the point 2.3.4 of the Stockholm Programme;
- Facilitating the information of those categories of citizens less aware of their rights, notably the population of rural areas, through the production and delivery of a set of communication tools;
- Enhanced European judicial and security culture among law enforcement agencies, practitioners, members of NGO and associations of victims of crimes;
- Reinforcement / cross fertilization among EU universities, NGOs and police departments in the subject of enhancing protection of rights of victims of crime.

More info and tools can be found at www.victimsrights.eu.

LEADER

Adam Mickiewicz University in Poznań, founded in 1919; one of the leading academic centers in Poland. In addition to its historic and modern facilities in Poznań, it has campuses in Gniezno, Kalisz, Piła, Ostrów, and Słubice on the Polish-German border. The University currently employs nearly 2,800 teaching staff, including 318 tenured professors, 454 AMU professors and 1,514 doctors and senior lecturers. Our professors coordinate or are partners in 18 research projects funded by the European Union Framework Programmes 6 and 7. AMU researchers are currently implementing 451 projects funded by the Polish Ministry of Science.

Adam Mickiewicz University in Poznań has bilateral exchange agreements with universities all over the world. Depending on the specifics of the agreement, bilateral exchange students may accomplish part of their degree, choosing appropriate subjects from our educational offer. **AMU** is a member of: EUA – European University Association, EUCEN – European University Continuing Education Network, The Compostela Group of Universities, The Santander Group – European University Network, RAMIRI Consortium, European Chemistry Thematic Network and other European Research Networks.

The Chair of Criminal Proceedings, Faculty of Law and Administration of Adam Mickiewicz University conducts research on Polish, European and International Criminal Procedure, Human Rights Protection, E-tools, Administration of Justice. Chair is also a partner in project co-financed by European Commission – i.a. *Tracking Progress in Strengthening the Criminal Justice Indicators for Integrated Case Management*. **Prof. UAM dr hab. Paweł Wiliński** is the scientific coordinator of the project on behalf of Polish partner. The aim of the project is to examine the state of practical use of e-tools by judicial system bodies. The project embraced several countries, for example: Finland, Spain, Greece, Germany, England, Italy. More info: www.prawo.amu.edu.pl/en/main-page/Faculty-of-Law-and-Administration/chairs/Chair-of-criminal-procedure

PARTNERS

COINFO - Interuniversity Consortium on Education is a non-profit association involved in education and research for adults employed in Universities and Public Administration. It is a unique institution in the European and international academic scene. In 2004 the Ministry of Education University and Research conferred juridical personality on the consortium (G.U. n. 48 – 27.2.2008) and acknowledged the social utility of its aims.

COINFO was established in 1994 by six Universities and by the Presidency of the Council of Ministers - National School for Public Administration. Soon it became a great network of universities aimed at improving the quality of education and the efficiency in administration. Up to now COINFO has delivered its training services to more than 12.000 people.

Competitive advantage of organizations depends on their ability to recognize the importance of knowledge in innovating systems, processes and services. In the Universities, with the Universities and for the University: this is the mission of COINFO, which promotes a new way of operating based on sharing and active participation in building a common project, capable of reconciling individual interests.

More info: www.coinfo.eu

CSD - Center for the Study of Democracy Founded in late 1989, the Center for the Study of Democracy (CSD) is an interdisciplinary public policy institute dedicated to the values of democracy and market economy. CSD is a non-partisan, independent organization fostering the reform process in Bulgaria through impact on policy and civil society.

The CSD has pioneered in several areas traditionally perceived as the inviolable public property, such as anti-corruption institutional reform, and national security. Their belief is that bringing a new culture of cooperation and trust in a milieu of inherited fragmentation and opacity is equally rewarding as the achievement of concrete social goals.

CSD objectives are: to provide an enhanced institutional and policy capacity for a successful European integration process, especially in the area of justice and home affairs; to promote institutional reform and the practical implementation of democratic values in legal and economic practice; to monitor public attitudes and serve as a watchdog of the institutional reform process.

More info: www.csd.bg

PROVIDUS - Centre for Public Policy **PROVIDUS** is Latvia's leading think tank, devoted to facilitating comprehensive policy change in areas important for Latvia's development. PROVIDUS also provides expertise to other countries undergoing democratic transformation.

PROVIDUS areas of work are: good governance, including anti-corruption, judicial reform, access to information, campaign finance; criminal justice policy; tolerance and inclusive public policy; European policy, including migration policy and energy policy.

PROVIDUS activities include: publishing research and policy analyses, providing expertise to the government in the policy-making process, advocacy and monitoring, consultancy services and training as well as promoting public participation by harnessing new internet-based tools.

PROVIDUS provides an institutional home for the largest on-line policy resource in Latvia – politika.lv. PROVIDUS is a non-governmental, non-partisan and not-for-profit association established in 2002.

More info: www.providus.lv

NOTES

