

Comparative legal research
Rights and Protection of Vulnerable
Victims in Criminal Proceedings



This report presents the conclusions of comparative legal research on the rights and protection of victims in criminal proceedings. It exposes most relevant results on the 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 in nine European Union Member States, including Spain, with a special focus on victims with specific protection needs.

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To ensure minimum level of victims' rights in all Member States, the EU adopted the Directive 2012/29/EU on 25 October 2012, which establishes minimum standards on the rights, support and protection of victims of crime to ensure that persons who have fallen victim of crime are recognised, treated with respect and receive proper protection, support and access to justice. The Directive strengthens the rights of victims and their family members to information, support and protection and victims' procedural rights in criminal proceedings. The Directive also requires that the Member States ensure appropriate training on victims' needs for officials who are likely to come into contact with victims and encourage cooperation between Member States and coordination of national services of their actions on victims' rights. EU Member States were required to implement the provisions of the Directive into their national laws by 16 November 2015.

Since 1948, the Carmen Pardo-Valcarce Foundation (hereinafter, the Foundation) has worked for the rights and participation in society of people with intellectual disabilities in Spain. In addition to its other services, the Foundation developed the first specialized support service for victims of crime who have intellectual disabilities in order to help end their vulnerability to abuse. Through this service, they accompany and support victims and witnesses with intellectual disabilities throughout the criminal process, they advocate for their ability to participate in the process on an equal basis with others, and they train professionals who are directly involved in these cases (i.e. police, judges, public prosecutors, forensic and clinical psychologists) to help them communicate and engage with these vulnerable victims/witnesses in the most appropriate way.

A growing part of the work of the Foundation now involves advocacy for the comprehensive implementation of this EU Directive and the UN Convention on the Rights of Persons with Disabilities. To support this work, the Carmen Pardo-Valcarce Foundation joined Trustlaw¹ to conduct a comparative study of several EU Member States (Belgium, Finland, France, Germany, Italy, Netherlands, Portugal, England & Wales, and Spain) to understand how they have implemented the EU Directive in national legislation, as concerns the rights and protections of particularly vulnerable victims in criminal proceedings. In particular, the aim of the report asked for each jurisdiction was to identify and analyse the specific measures adopted in each country to assist victims with specific protection needs (such as people with disabilities), as required under Chapter 4 of the EU Directive. In the research have participated two international law firms: White & Case² and WilmerHale³.

1 Trustlaw is a Thomson Reuters Foundation's global pro bono service that connects NGOs and social enterprises with the best law firms around the world.

2 On behalf of White & Case were: Laurent Lantonnois (Belgium); Tanja Törnkvist, Essi Lavikkala, Jussi Kukko and Terhi Salmi (Finland); Patrick Rickefor (England and Wales); And Matthias Goetz (Germany).

3 On behalf of WilmerHale were: Philippe Claessens (Netherlands); And Frédéric Louis and Mercedes Segoviano Guilarte (Netherlands, Italy, France and Portugal).

The result of the research is this report, that is divided by Member States and structured as follows: first, a summary that identifies and analyses the legislation and regulations that have been adopted to set protocols for treatment victims with special protection needs during criminal proceedings, and how the local legislation compares to the EU Directive; second, a detailed description of the specific measures and procedures adopted to protect victims with special protection needs in criminal proceedings, which includes measures applicable to judges, prosecutors, court staff, police officers, healthcare practitioners and any other practitioners that come in contact with victims as part of criminal proceedings; and finally, a summary of case law and any reported data that shows how this legislation and the EU Directive are being interpreted and how these special measures and procedures are being applied in practice.

The research will be used to inform the work of professionals in the administration of justice in Spain and to promote the adoption of regulations and specific protocols containing measures to assist and protect particularly vulnerable victims during their way through the criminal justice system, as well as to disseminate the findings of the research more widely among EU members to encourage the adoption of best practices and enhanced protections.

Belgium

1. Summary of applicable legislation and regulations

1.1. Provision of information to victims

Article 3bis of the Belgian Criminal Procedure Code ("BCPC") provides that "*victims of a criminal offense and their relatives must be treated in a correct and conscientious matter, particularly by providing them the necessary information and directing them, if necessary, to specialized services and notably to judicial assistants*". This obligation, albeit very general in its wording, applies to all the members of public authorities in contact with the victim of a criminal offense, including police authorities, assistants, prosecutors and judges.

Al. 2 of Article 3bis moreover provides that victims are informed of the possibility and the practical details of declaring themselves as an aggrieved person (*'personne lésée'*) or a plaintiff (*'partie civile'*). Indeed, a victim will be granted different rights and protections depending on his or her role in the criminal procedure. Any person declaring to have suffered damage from a criminal offense can obtain the status of aggrieved person by filing a short statement at the office of the competent district attorney (Art. 5bis BCPC). By entering a more formal complaint with the investigative judge (*'juge d'instruction'*) a victim can become a plaintiff and participate actively in the criminal proceedings (Art 69 BCPC) (see below section C).

The status of aggrieved person gives right, among other things, to be informed of the main steps of the criminal procedure (decision not to prosecute and motives thereof, decision to prosecute and date of hearings and of the pronouncement of the ruling) (Art. 5bis BCPC). Note that the motivation of the decision not to prosecute remains very general in its wording (it is not opportune to prosecute, no perpetrator has been identified, statute of limitations...) (Art. 28quater BCPC).

The aggrieved person can also consult the criminal file or request a copy thereof, in the same way as a plaintiff who is party to the criminal procedure. The judge can refuse such a request if it would hinder the proper handling of the case, put persons in danger, seriously threaten privacy

rights, or if the plaintiff does not have a legitimate reason to request access, and such decision is subject to appeal (Art 61ter BCPC)⁴. Persons that do not have the status of aggrieved party or plaintiff can only ask the district attorney for access to the file, without any formal right hereto nor any right to appeal a negative decision (Art 21bis BCPC).

Regarding the execution of sentences, the rights of victims have recently been improved by a law of 15 December 2013, entered into force on 1 January 2014. By filing a simple declaration, any victim (including victims who failed to take a formal role in the earlier criminal proceedings because of their vulnerabilities or lack of interest) can ask to be fully informed of the execution of the sentence and any important events in that regard. They can voice their concerns and requests regarding the conditions of execution of a criminal sentence.

Although comprehensive, the Belgian provisions therefore lack the scope and the breadth of the provisions of the Directive. Firstly, there is no systematic right for all victims to obtain information about the status of the procedure (Art. 6 of the Directive), such right being subject to a formal status of aggrieved person at least. Secondly, victims who do not speak a national language do not have a right to a translated copy of the complaint or of the relevant procedural acts (Art 5.3 and 7 of the Directive)⁵. Finally, the general rule of having to provide tailored and victim-oriented information is not sufficiently embedded in Belgian legislation, which relies rather on administrative regulations and non-enforceable rules to ensure proper treatment of victims (see below in Part 2). In practice however, victim-oriented information is usefully provided by the relevant support services described below, once the victim has been put in contact with such services.

1.2. Support of victims

In each court, a justice house (*“maison de justice”*) offers the services of judicial assistants, charged by the law to accompany and assist victims of criminal offenses during a criminal procedure. Article 3bis of the BCPC provides that victims are *“if necessary [directed] to specialized services and notably to judicial assistants”*. Upon request of a victim, or on recommendation of the court or the public prosecutor, a judicial assistant may be appointed to assist the victim. Those judicial assistants provide the victims with all the necessary information regarding the procedure and the rights of the victims and with the necessary emotional support, and can liaise directly with the judges in charge of the investigation and the proceedings to obtain the relevant information needed by the victim. They can assist victims during the hearings of the court, reconstitutions or when evidence is returned to the victims, which is often a very difficult moment⁶.

In addition to this first line of assistance, where victims receive information on their rights and on the status of the procedure, the local authorities⁷ have set up victim support services providing psychological and medical assistance to victims. Those support services can accompany victims at all the stages of the criminal procedure, including by accompanying victims to interviews with the investigators or experts. They are available at simple request of the victim, the court or the judicial assistant.

⁴ Aggrieved persons cannot appeal a refusal to consult the criminal file, see art 21bis BCPC.

⁵ Note that the right to be assisted by a certified translator at the various levels of the procedure, with no costs, is embedded in the Belgian legislation.

⁶ Circular from the College of Prosecutors N 16/2012 of 12 November 2012, on the treatment of victims in courts and tribunals.

⁷ Belgium as devolved the competences regarding the support of victims to the three linguistic communities since 1 January 2014.

Finally, various NGO's provide, often thanks to state subsidies, specific help to certain categories of victims that are deemed more vulnerable. Noteworthy are, amongst numerous others, Child Focus and SOS Enfants, assisting children victims of criminal offences and child abuse, or the Centre against human trafficking. Such NGO's can also provide shelter and interim accommodation to victims who need it.

All the victim support services in Belgium are all free of charge and confidential, in accordance with Article 8 of the Directive.

1.3. Participation of victims in criminal proceedings

The general rule set out in Article 10 of the Directive that victims shall be heard and may provide evidence is implemented in Belgian criminal procedure law through the possibility of a victim to gain the status of aggrieved person or plaintiff.

Rights during the investigation

Aggrieved persons do not have extensive procedural rights other than the right of information described above. They can merely ask for documents to be added to the repressive file during the investigative phase (Art. 5bis BCPC).

Plaintiffs, on the other hand, are integral parts of the criminal proceedings and may intervene at all the stages of the judicial procedure by filing briefs and motions. Moreover, they have access to the criminal file from the investigation stage onwards (see above), may request specific documents they deem relevant to be added to the prosecution file and even request specific acts of research to be performed by the public prosecutor. They have also the right to be heard at least once during the investigation by the judge in charge of the investigation before the formal proceedings begin (Art. 61ter, 61quinquies and 63 BCPC).

When a victim is interviewed by the investigators, he or she can be assisted by a lawyer and a certified translator if necessary, has the right to a transcript of the audition and can enclose documents to the transcript. The victim is also informed of his or her rights when interrogated and does not have to swear to tell the truth if he or she is not heard as a witness but as a victim (Art. 47bis). A transcript of the interview is delivered to the victim. In the case of children, however, if there is a risk that such transcript would be taken from them, the delivery of the transcript can be refused. The child can then consult a copy of the transcript, accompanied by his lawyer or a judicial assistant (Art. 28quinquies BCPC)

Decision to prosecute

The prosecutor has in Belgium full discretion on the decision to prosecute or not, but he must give a motive to his decision not to prosecute. However, a victim can always choose to file a complaint directly with the courts and thereby become a plaintiff. This complaint will put in motion the judicial investigation notwithstanding the prosecutor's possible earlier decision not to prosecute⁸. The examining judge and the public prosecutor are in charge of these proceedings and may decide whether or not to ultimately proceed with the prosecution after the investigation concluded. This decision not to prosecute is not subject to appeal in Belgium, which is contrary to article 11 of the Directive.

⁸ With the caveat that, if such complaint is unsuccessful, the plaintiff can in certain situations be held liable for the costs of the enquiry and the procedure, and the legal costs of the state and the accused (Art. 162 BCPC). A deposit for such costs might also be requested when the complaint is filed.

Legal aid and indemnification

Victims participating in a formal role to criminal proceedings (as a witness or plaintiff, but not as an aggrieved person) have the right to benefit from legal aid and legal assistance subject to certain income conditions. By becoming a plaintiff, a victim can also ask the courts to rule on the indemnification by the offender, and this decision on indemnification may even be reformed because of later events (e.g. in the event of an early release, indemnification can be increased). A Fund for Victim Support has been created to indemnify victims whose offenders are either unknown or insolvent. The State then takes in charge the indemnification of victims (Law of 1 August 1985).

Finally, the role of victims in the execution of criminal sentences has been improved by several new laws since 2006. The victim is now heard and taken into account when discussing early release of the perpetrator and victims have received broader information rights at this stage of the proceedings as well (see above).

Restorative justice

Article 216ter of the BCPC provides that restorative justice services (i.e. criminal mediation) are available for the less severe crimes (those punished by less than two years of imprisonment), and at the condition that the perpetrator accepts to fully indemnify the victim. Mediation with the victim is then limited to the calculation of damages. Victims do not have to participate and can still request in court indemnification if they have not accepted the mediation procedure. However, restorative justice is not only used in the victim's interest in Belgium but also to lower the workload of courts, contrary to what is required by Article 12.1(a) of the Directive.

Conclusion

If the protections granted by Belgian law regarding the participation of victims in the procedure are broadly in line with the provisions of the Directive, the more transnational aspects such as the right to file a complaint from another Member State (Art. 17.2 of the Directive) or the right for a translation of the relevant documents for persons that do not speak a national language (Article 7.3 of the Directive) have yet to be implemented. The victim has also no right to appeal the decision not to prosecute contrary to article 11 of the Directive).

1.4. Protection of vulnerable victims

Notwithstanding all the general rights granted to victims under Belgian criminal procedure law, Belgium has not adopted a coherent set of rules for the treatment of victims with special protection needs. Rather, the treatment of vulnerable victims will depend on their situation, their exact role in the proceedings (witness, aggrieved person or plaintiff) and the specific procedural provisions applicable.

Children (i.e. less than 18 years old), however, benefit from specific protections, namely when being interviewed by police and judicial authorities. Firstly, they can be accompanied by any adult of their choice (in addition to a lawyer) if interviewed for a range of criminal offenses⁹. Only by a specific decision motivated by the interests of the child or the manifestation of the truth can such assistance of an adult be refused (Art. 91bis BCPC). Secondly, for a range of criminal offenses¹⁰,

⁹ Those relate to child abuse, abandonment, exploitation and mistreatment, amongst others.

¹⁰ *Idem*.

interviews of children are to be video-recorded. Even if the child is not victim of one of those specific offenses, the interview can be video-recorded if the public prosecutor or the magistrate deems that exceptional circumstances require it. In any event, no recording can take place without the child's consent if it is more than 12 years old (Art. 92 BCPC). The rights of a child during such recorded interview are laid out in detail in the BCPC: the interview has to be conducted by designated persons, in a safe environment, with a limited public.¹¹ The child must receive clear indications as to why the interview is recorded and informed of its right to stop the recording at any time. The transcript must show the main elements of the interview and possibly a literal transcript of the most important passages. Only two copies of the recording are made, to be destroyed after the limitation periods have expired, and only professionals participating in the procedure, as well as the parties to the proceedings –upon request-, can view the recording.

The main purpose of such recording is to avoid for the child to have to be present in the courtroom during the proceedings. Such a presence can nevertheless be specifically requested by the court if necessary for the truth to come out. For the same privacy reasons, children's pictures and names cannot be published in the media.

Finally, as explained above in Section C, specific support organizations exist that provide shelter to children in need of protection. Moreover, the Family Court can always pronounce urgent or interim measures necessary for a child's protection.

Persons with disabilities might be accommodated by video- and teleconferences when unable to present themselves at interviews or hearings (Art. 112-112ter BCPC), but for the remainder the provisions of the BCPC fully apply to persons with disabilities, even when this leads to unacceptable situations in practice¹².

Reference is made, for instance, to the fact that rights of a person heard by an investigator are provided to that person in written format – even to blind or mentally disabled persons. Whilst a child can be accompanied by an adult of their choice when interviewed by the police, such right is not extended to persons with disabilities, the criterion being the age of 18 and not mental capabilities.

Victims that are in special need of protection in light of the specific circumstances of the case can benefit of a wide array of protection measures (psychological assistance, police protection, alarms or tracking devices, relocation or witness protection programs...). However, such protection measures only extend to witnesses and their relatives. In situation where the victim does not (want to) appear formally as a witness and lacks the formal status of witness in a criminal investigation or procedure he or she will be left without protection, contrary to the provisions of the Directive.

Victims support organizations have resources to provide assistance and shelter to victims of certain categories of crimes (domestic violence, human trafficking, child abuse...).

Belgium broadly provides children victims of criminal offenses with the protections required by the Directive, and a corpus of guidelines and regulations now provides professionals in contact with child victims with sufficient guidance as to how best protect the interests of the child in criminal procedures. This can however not be said of other victims in vulnerable positions, be it due to the nature of the crime or their mental or physical disabilities. Those will often have to

¹¹ The adult accompanying the child, the interviewer, a psychiatric expert and a technician.

¹² See also the critical report made by the Centre pour l'égalité des chances on the third report made by Belgium to the Committee against torture, August 2013. <unia.be/files/legacy/int_cat_ngo_bel_fr_0.docx> (Accessed 14 April 2016).

rely on the more informal network of victims support organizations and will be treated by the law on the same footing as all victims. Belgium is therefore not yet compliant with the rules set out in articles 22 and 23 of the Directive.

2. Specific measures and guidelines for professionals in contact with vulnerable victims

2.1. Provision of information to victims

In addition to the general principle stated at article 3bis BCPC, that “*victims of a criminal offense and their relatives must be treated in a correct and conscientious matter*”, various public authorities have established guidelines on how police forces, judicial authorities and social assistants must interact with victims in order to allow a victim to overcome his or her trauma and reach a new equilibrium as soon as possible and avoid a secondary victimization that could result of the judicial or police intervention.

Those two objectives are based on the following principles, directly inspired from the 2001 EU Framework Decision¹³:

- No one can substitute himself to the victim in the procedure;
- The State remains responsible for prosecution, sanctions and enforcement;
- The main rights of the victim are the right to be treated in a correct and conscientious matter, the right to give and receive information, the right to judicial assistance, the right to indemnification, the right to protection and the right to privacy;
- Victims should be referred diligently to the appropriate service or support organization when needed.

It should be noted from the onset that those overarching principles and objectives have not been updated or replaced with the entry into force of the Directive. It is questionable whether they are still up to date today.

If permanent training, specifically appointed professionals (police officers, prosecutors, judges) in charge of handling victims and interdisciplinary and interdepartmental coordination have been put in place at the various levels, none of the guidelines and protocols provide for specific treatment of victims with specific vulnerabilities.

The guidelines for police officers for instance state that “*police officers must be particularly attentive to certain forms of victimization*”, and that children and women victim of physical or sexual violence require a specific approach, but as a practical consideration the guidelines only offer that such victims should be interviewed in a separate room with sufficient discretion, before referring them squarely to specialized services set up at regional level¹⁴. Those support services and NGO’s therefore bear the brunt of accompanying and assisting vulnerable victims. And, as described above, they have to do so in the context of legislation that does not provide for any specific protection of vulnerable victims (except for children, whose vulnerable status is acknowledged by the Belgian legislator).

¹³ Circular from the College of Prosecutors N 16/2012 of 12 November 2012, on the treatment of victims in courts and tribunals.

¹⁴ Circular GPI 58 on the assistance to victims in the integrated police force, 4 May 2007. Articles 5.2.1 and 5.3.

The prosecutorial guidelines towards members of the court system are silent on any specific treatment or protections to be granted to vulnerable victims. And in the context of our research, we have not been able to locate specific guidelines, protocols or regulations aimed specifically at addressing the needs of vulnerable victims in criminal investigations and proceedings.

3. Summary of case law

Although the Directive has not yet been (fully) implemented under Belgian law, the case law of the European Court of Justice provides that once the implementation deadline of a directive has expired, national courts shall interpret the existing legislative provisions in a manner conform to the directive¹⁵. As described above, the Directive is wider in scope than the applicable provisions of Belgian law (inter alia by providing a general right of information and right to be heard to victims, whatever their formal role in the proceedings). As a consequence, victims could in Belgium successfully invoke the provisions of the Directive in front of the national courts to request, for instance, a broader access to information.

However, from a search of the publicly available resources, there seems not yet to be case law regarding the application of the Directive by the Belgian courts.

The Belgian case law in respect of the rights of victims is scarce, but Belgian courts have had the opportunity to precise that the general principle stated in article 3bis BCPC has a concrete effect on how victims must be treated¹⁶. For instance, the Belgian State has been held liable for failure to act conscientiously towards a victim, in a missing child's case where the state authorities have not acted with the diligence and care required from them under this standard¹⁷.

We have not been able to locate any case law regarding rights and protections granted to vulnerable victims in criminal proceedings, but such cases might occur with more frequency in the future now that the implementation period of the Directive has expired.

Finland

1. Legislation and Regulations

1.1. Implementation of the Directive

Working Groups Preparing the Implementation

On October 7, 2014 the Finnish Ministry of Justice set up a working group to prepare the implementation of the Directive. The task of the working group was to assess the legislative amendments required to implement the Directive and to prepare such amendments. The working group was further to assess what other actions apart from legislative amendments were needed to implement the Directive.

The working group met nine times between October 15, 2014 and February 27, 2015. The group consisted of representatives from the Ministry of Justice, the Ministry of Interior, the Ministry of Social Affairs and Health, the Prosecutor's Office, the judicial authorities, the Finnish Bar Associ-

¹⁵ See CJUE, *Marleasing SA v. La Comercial Internacional de Alimentacion SA*, 13 November 1990, C-106/89.

¹⁶ Bruxelles (jeun.) n° 219/05, 10 October 2005 (right of victim to be treated correctly implies sufficient time to be informed about a hearing, even though good administration of justice required a swift procedure).

¹⁷ Bruxelles, 11 March 2010.

ation and Victim Support Finland¹⁸. The working group gave its report to the Ministry of Justice on April 29, 2015 (the "Working Group Report")¹⁹. A number of authorities, companies and experts gave statements on the Working Group Report, and most of the statements supported the Working Group Report and considered the suggested amendments necessary to implement the Directive.

In addition to the above mentioned working group, a separate commission set up by the Ministry of Justice, the Ministry of Social Affairs and Health, and the Ministry of Interior on May 6, 2013 prepared the implementation of Articles 8 and 9 of the Directive. This Commission for Victim Policy was set up to prepare a national strategy for the organization of victim support services and the funding of such services²⁰. In addition to general victim support services, attention was paid to special support services for particularly vulnerable victims.

The Commission for Victim Policy met 24 times between May 6, 2013 and early 2015. The group consisted of representatives from the Ministry of Justice, the Ministry of Interior, the Ministry of Social Affairs and Health, The Ministry of Finance, The Association of Finnish Local and Regional Authorities²¹, Finland's Slot Machine Association²², Victim Support Finland, The Federation of Mother and Child Homes and Shelters²³, Tukinainen ry²⁴, and MONIKA – Multicultural Women's Association, Finland²⁵. A number of other authorities, associations and experts were also heard during the term of the Commission for Victim Policy.

18 Victim Support Finland (in Finnish: Rikosuhrapäivystys) offers practical advice and support to victims of crime, persons close to a victim of crime and witnesses in crime proceedings. They also work to improve the social status of crime victims by influencing general attitudes and legislation. Limited information available in English at, <http://www.riku.fi/en/in+english/>

19 Available in Finnish at, http://www.oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/1430196504063/Files/OMML_30_2015_Uhridirektiiv_taytantaonp_ano_94s.pdf

20 The Ministry of Justice led project aimed (i) to prepare a plan for the structural solutions of the support services and the financial models required for such plan, (ii) to assess common procedures and good practices to implement the Directive and to fulfil other international obligations and recommendations, (iii) to coordinate the implementation of the victim support service targets of the Finnish Government Programme; and (iv) to make a proposal for the promotion of wider victim political question in the future to possibly be included in the next Government Programme. Information about the project is available in Finnish at, <http://www.oikeusministerio.fi/fi/index/valmisteilla/kehittamishankkeita/kansallinenrikosuhripolitiikkajauhrientukipalveluthanke.html>

21 The members of the Association of Finnish Local and Regional Authorities (in Finnish: Suomen Kuntaliitto) consist of the towns and municipalities in Finland. The Association also provides services to hospital districts, regional councils and joint authorities. The Association's goal is to promote the opportunities for local authorities to operate and co-operate and to enhance their vitality and viability for the benefit of the residents. Information available in English at, <http://www.localfinland.fi/en/Pages/default.aspx>

22 Finland's Slot Machine Association (RAY) (in Finnish: Raha-automaattiyhdistys (RAY)) offers adult players slot machines and casino games at various locations around Finland, online, and at Casino Helsinki, the profits of which are used for promoting health and social welfare in Finland. RAY grants funding on the basis of applications to various types of social and healthcare organizations and associations. The fund allocation is guided by policies created by RAY's Board of Directors and a result agreement prepared with the Ministry of Social Affairs and Health. Information available in English at, <http://www2.ray.fi/en>

23 The Federation of Mother and Child Homes and Shelters (in Finnish: Ensi- ja turvakotien liitto ry) is a nationwide child welfare organization that helps children and families in difficult and insecure situations and prevents domestic violence. Information available in English at, http://www.ensijaturvakotienliitto.fi/in_english/

24 Tukinainen is a national crisis center for the people who have been sexually assaulted and/or abused. Information available in English at, <http://www.tukinainen.fi/english/home-3>

25 MONIKA – Multicultural Women's Association, Finland (in Finnish: Monika-Naiset Liitto ry) is an NGO developing and providing specialized services for immigrant women and their children who have been subjected to violence, and acts as an expert and advocates in issues related to ethnic non-discrimination and violence, as well as promoting integration by supporting civil society activities for immigrants. Information available in English at, <http://monikanaiset.fi/en/>

The Commission for Victim Policy gave an interim report on January 20, 2014 (the “Commission Interim Report”)²⁶ and a final report on March 27, 2015 (the “Commission Final Report”)²⁷ to the Ministry of Justice, the Ministry of Social Affairs and Health and the Ministry of Interior. The Commission Final Report assessed measures other than legislation that were needed in order to implement the Directive.

1.2. Legislative Amendments

Required Amendments

Based on the reports mentioned in Section 2.1 above, less than half of the articles of the Directive required changes to the Finnish legislation as the Finnish legislation already met the requirements of the Directive for the most part. The articles that did not require legislative actions were Articles 1, 2, 3, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26 and 28, and articles that required legislative actions were Articles 4, 5, 6, 7, 12, 22 and 23. In order to implement the articles by amending relevant legislation, the Finnish Government gave the government bill number 66/2015²⁸ (the “Government Bill 2015”), which was approved by the Parliament of Finland with minor changes²⁹. While some EU member states adopted the exact language of the Directive, in Finland the required changes and wordings were tailored into various acts relevant for criminal processes.

Articles 8 and 9 of the Directive are implemented in Finland by a new crime victim fee act. In order to enact the new act, the Finnish Government gave the government bill number 293/2014³⁰ (the “Government Bill 2014”), which has been approved by the Finnish Government but has not yet entered into force. The Ministry of Justice has also managed to strengthen the portion of resources allocated to victim support services.

Changes to Legislation

The Government Bill 2015 proposed amendments to the following acts in order to implement the Articles 4, 5, 6, 7, 12, 22 and 23 of the Directive:

- (i) Criminal Investigation Act (805/2011, as amended)³¹. The Criminal Investigation Act sets forth procedural rules for criminal investigation in pre-trial phase.
- (ii) Code of Judicial Procedure (4/1734, as amended)³². The Code of Judicial Procedure sets forth rules of court proceedings in general courts of law.

²⁶ Available in Finnish at, http://www.oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/1390205795513/Files/OMML_03_2014_toimik_valimietintos.pdf

²⁷ Available in Finnish at, http://www.oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/1426574076935/Files/OM_13_2015_VALMIS.pdf

²⁸ Available in Finnish (Hallituksen esitys eduskunnalle laiksi esitutkintalain muuttamisesta ja eräksi siihen liittyviksi laeiksi, HE 66/2015) at, <http://finlex.fi/fi/esitykset/he/2015/20150066>

²⁹ Information on enacting legislation in Finland is available in English at, <https://www.eduskunta.fi/EN/lakiensaataaminen/Pages/default.aspx>

³⁰ Available in Finnish (Hallituksen esitys eduskunnalle laiksi rikosuhrimaksusta ja eräksi siihen liittyviksi laeiksi, HE 293/2014) at, https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/he_293+2014.pdf

³¹ In Finnish: esitutkintalaki. Unofficial English translation available at, <http://www.finlex.fi/fi/laki/kaannokset/2011/en20110805.pdf>

³² In Finnish: oikeudenkäymiskaari. Unofficial English translation available at, <http://www.finlex.fi/en/laki/kaannokset/1734/en17340004.pdf>

- (iii) Criminal Procedure Act (689/1997, as amended)³³. The Criminal Procedure Act sets forth rules of court proceedings in criminal cases in general courts of law.
- (iv) Act on Publicity of Court Proceedings in General Courts (370/2007, as amended)¹⁷. The act on Publicity of Court Proceedings in General Courts sets forth what kind of cases may be heard publicly in courts and which documents are public.
- (³⁴v) Prison Act (767/2005, as amended)³⁵. The Prison Act sets forth procedural rules for execution of imprisonment and standard rules for treatment of prisoners.
- (vi) Pre-trial Detention Act (768/2005, as amended)³⁶. The Pre-trial Detention Act sets forth procedural rules for execution of pre-trial detention.
- (vii) Act on Treatment of People Kept by the Police (841/2006, as amended)³⁷. The Act on Treatment of People Kept by the Police sets forth standard rules for treatment of remand prisoners and persons who are arrested or apprehended.
- (viii) Act on Processing of Personal Data by the Criminal Sanctions Agency (1069/2015, as amended)³⁸. The Act on Processing of Personal Data by the Criminal Sanctions Agency sets forth rules for processing data of personal information registers by the Criminal Sanctions Agency.
- (ix) Act on Conciliation in Criminal and Certain Civil Cases (1015/2005, as amended)³⁹. The Act on Conciliation in Criminal and Certain Civil cases sets forth preconditions for mediation in criminal and certain civil cases as well as procedural rules for such mediation.
- (x) Act on Openness of Government Activities (621/1999, as amended)⁴⁰. The Act on Openness of Government Activities sets forth provisions on the right of access to official documents in public domain, public officials' duty of non-disclosure, and secrecy of governmental documents.

The Government Bill 2014 proposed the enactment of a new law to implement Articles 8 and 9 of the Directive:

- (xi) Act on Crime Victim Fee (669/2015)⁴¹. The Act on Crime Victim fee sets forth provisions on a new crime victim fee. The aim of the law is to strengthen the portion of government resources allocated to victim support services with an amount corresponding to the proceeds of the crime victim fee.

33 In Finnish: laki oikeudenkäynnistä rikosasioissa. Unofficial English translation available at, <http://www.finlex.fi/fi/laki/kaannokset/1997/en19970689.pdf>

34 In Finnish: laki oikeudenkäynnin julkisuudesta yleisissä tuomioistuimissa. Unofficial English translation available at, <http://www.finlex.fi/fi/laki/kaannokset/2007/en20070370.pdf>

35 In Finnish: vankeuslaki. Available in Finnish at, <http://www.finlex.fi/fi/laki/ajantasa/2005/20050767>

36 In Finnish: tutkintavankeuslaki. Available in Finnish at, <http://www.finlex.fi/fi/laki/ajantasa/2005/20050768>

37 In Finnish: laki poliisin säilyttämien henkilöiden kohtelusta. Available in Finnish at, <http://www.finlex.fi/fi/laki/ajantasa/2006/20060841>

38 In Finnish: laki henkilötietojen käsittelystä Rikosseuraamuslaitoksessa. Available in Finnish at, <http://www.finlex.fi/fi/laki/alkup/2015/20151069>

39 In Finnish: laki rikosasioiden ja eräiden riita-asioiden sovittelusta. Unofficial English translation available at, <http://www.finlex.fi/fi/laki/kaannokset/2005/en20051015.pdf>

40 In Finnish: laki viranomaisten toiminnan julkisuudesta. Unofficial English translation available at, <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990621.pdf>

41 In Finnish: laki rikosuhrimaksusta. Available in Finnish at, <http://www.finlex.fi/fi/laki/alkup/2015/20150669>

1.3. Entry into Force

The legislative changes implementing the Directive by amending existing legislation came into force on March 1, 2016. The new Act on Crime Victim Fee is expected to enter into force in December 2016 at the same time as the amendment of the legislation related to summary penal fees (*i.e.*, fines and on-the-spot fines); the exact date for entry into force has not been confirmed.

2. Specific Measures and Procedures Adopted

2.1. Detailed Description of Legislative Changes

(i) The Criminal Investigation Act

The Criminal Investigation Act is the act that was amended the most in the implementation of the Directive.

In order to implement the requirement of the Directive concerning written confirmations given when a suspected crime is reported (Article 5, Section 1 of the Directive), a new rule has been added to the Criminal Investigation Act (Chapter 3, Section 1, Subsection 3). According to the new rule, victims must receive a written confirmation of acknowledgement when they file their report of an offence with the police. The confirmation has to include basic information of the suspected crime and the filing of the report.

The act previously stipulated that the investigating authority has to direct a victim to victim support services when the nature of the suspected crime so requires (Chapter 4, Section 10, Subsection 2). The said subsection has now been supplemented by a rule according to which a victim, who is in the need of 'special protection', as defined elsewhere in the act and in Article 22 of the Directive, must always be directed to victim support services.

Already before the implementation of the Directive, the act has included a rule concerning translations of documents of pre-trial investigations (Chapter 4, Section 13, Subsection 1). According to the previous wording, investigating authority assesses the need for document translations for all parties to the criminal process. The section has now been amended to stipulate that the victim must be provided with a translation of a document that is necessary for the victim in order for him/her to protect his/her rights, when he/she requests for a translation. The translation has to be given in a language which the victim understands, but the chosen language does not have to be the victim's first language. According to the new wording, any translated document can be translated orally, if this does not risk the victim's legal protection.

A new section setting an obligation for the investigating authority to inform the victim of his/her procedural rights has been added to the act (Chapter 4, Section 18) in order to implement Articles 4 and 6 of the Directive. The information must be given to the extent necessary taking into consideration the nature of the crime and the personal situation of the victim. The information covered by the section include information on a) the available support services, b) the right to a legal counsel or a support person, c) the right to receive free legal aid, d) the right to a translator and translations of material documents, e) the right to submit a civil claim in connection with the criminal process, f) the available means of protection in order to protect the health and safety of the victim, g) the right to receive information on the decision on cancelling or closing of the pre-trial investigation, or the decision by a prosecutor to waive the criminal charges, h) the right

to receive reimbursement for the costs of arriving to the hearings in a court, and i) the right to receive information on the proceedings, time and place of the hearings in the court as well as the judgment given in the criminal matter.

Another section (Chapter 4, Section 19) has been added providing for a right for the victim to be informed when the suspect is released from detention during pre-trial investigation. The investigating authority has the duty to inform the victim in situations where the suspected crime has been directed towards health, freedom or sexual autonomy of the victim and in cases of other serious crimes. The victim must be informed of this right beforehand, but the information of the releasing is given only if the victim has requested it.

Further, a new section has been added to the act (Chapter 7, Section 21) providing rules for interrogations of victims who need special protection. The aim is to reduce the mental suffering that might be caused for the victim during the criminal process. According to these rules, interrogations of this type of victims must be conducted in a special room, which has been designed for this use. If the victim so requests, the whole interrogation must be conducted by one person. In addition, during investigations of sexual crimes, and in other situations where the nature of the crime so requires, the person conducting the interrogation must be of same sex with the victim, if the victim so requests. The new section implements a part of Article 23 of the Directive.

Finally, a new section has been added to the act (Chapter 11, Section 9a) to set out the rules for conducting personal assessment of victims in order to determine whether or not a victim is in the need of 'special protection' referred to elsewhere in the new sections of the act and in the Directive. According to a new rule, the investigating authority has a duty to conduct such assessment without unnecessary delay so that the needs for protective measures, which each victim may need during the legal process, can be determined. In the assessment special attention should be paid to the nature of the suspected crime and the personal situation of the victim. In addition to the overall assessment, the authority must also determine the need for each protective measure under the act available during the interrogations or oral court hearings. The new section implements Article 22 of the Directive.

(ii) The Code of Judicial Procedure

The Directive also required changes to the provisions on taking of evidence in the Code of Judicial Procedure. The code includes rules on how and when a party, a witness or an expert witness can be examined in the main hearing of the court proceedings behind a screen or without the presence of a party or other person (Chapter 17, Section 51). In order to implement a part of Article 23 of the Directive, a new provision has been added to these rules (Chapter 17, Section 51, Subsection 1, Point 4). According to the new provision, a victim, who is in the need of 'special protection' referred to in the Criminal Investigation Act, can be heard behind a screen or without the presence of a party or other person even in situations where there is no threat towards his/her health or safety but the victim would otherwise suffer during a standard oral examination. The court must observe the nature of the suspected crime and the personal situation of the victim when deciding on the use of this measure.

Another change to the provisions on taking of evidence was made to the section determining situations where a party, a witness or an expert witness can be examined in the main hearing of the court proceedings through video connection or other similar means. A new provision was added

to the relevant section (Chapter 17, Section 52, Subsection 1, Point 6) and it sets out a possibility for hearing of a victim, who is in the need of 'special protection', using the said technical means. The standard is equivalent to the section regarding hearing of a person behind a screen introduced above. The new provision implements a part of Article 23 of the Directive.

(iii) The Criminal Procedure Act

A new provision concerning translations of decisions by a prosecutor to waive the criminal charges was added to the Criminal Procedure Act (Chapter 1, Section 9, Subsection 2). According to the new rule, a victim, who is not a native speaker of Finnish, Swedish or the Sami language, must be given a translation of such decision in a language which the victim understands. The reasoning of the decision does not have to be translated as a whole, but a summary is sufficient. The translation must be given free of charge and in a reasonable time. The new provision implements a part of Article 7, Section 3 of the Directive. However, these translations have been produced in prosecutor's offices already before the Directive and, therefore, the change is not significant in practice.

Another provision was added to the Criminal Procedure Act concerning the duty to inform a victim of time and place of oral court hearings (Chapter 5, Section 15, Subsection 4). According to the previous rules, the court only had a duty to inform the victim of the hearings when the victim was submitting claims independently (*i.e.*, instead of the prosecutor) in the criminal proceeding. According to the new rule, the court must always inform the victim of the time and place of the hearings, if the victim has requested it. The new provision implements a part of Article 6, Section 1 of the Directive.

The third provision amended in the Criminal Procedure Act concerns translations provided to the victim (Chapter 6a, Section 3, Subsection 1). Previously, the provision stipulated that a victim, who is not a native speaker of Finnish, Swedish or the Sami language, must be given a translation of certain key documents of the criminal process when he/she requests for a translation, including the final judgment, other decisions by the court and the statement of claim, if the translations are required in order for him/her to protect his/her rights. The provision was now amended to cover also the notice of the time and place of the hearings and other material documents of the process. The amendment of the provision implements a part of Article 7, Section 3 of the Directive and Article 7, Section 4 of the Directive.

(iv) The Act on Publicity of Court Proceedings in General Courts

The implementation of the Directive also required changes to the Act on Publicity of Court Proceedings in General Courts. The first provision amended in the Act on Publicity of Court Proceedings in General Courts concerns trial documents that are to be kept secret (Section 9, Subsection 1, Point 5). Previously, the provision stated that a trial document shall be kept secret to the extent that it contains victim's contact information. The provision was now amended to also cover a victim's request to receive a notice when the person remanded in custody, prosecuted or sentenced for criminal offences concerning such victim is released or has escaped detention. Thus, this kind of request is now also confidential in trial documents. The amendment of the provision implements a part of Article 6 of the Directive.

Article 6 of the Directive sets out the victim's right to receive information about his/her case. The previous provision (Section 12, Subsection 2, Point 1) stated that a party does not have

the right to be informed about the contents of trial documents other than public trial documents if it includes the victim's contact information. According to the new provision, a trial document shall also be kept secret from the party to the extent that it contains information on the victim's request to receive a notice when the person remanded in custody, prosecuted or sentenced for criminal offences concerning such victim is released or has escaped detention.

The third provision amended in the Act on Publicity of Court Proceedings in General Courts (Section 15, Point 6) concerns closed proceedings. According to the previous provision, the court may decide that the oral proceedings shall be held in full or to the extent necessary without the presence of the public, if a person below the age of 15 years or a person whose legal capacity is limited, is heard in the case. Pursuant to the amended provision, the criminal case may also be held without the presence of the public if a person who has a special need for protection, taking into consideration the personal characteristics of the person and the nature of the crime, is heard in the case. The new provision implements Article 23, Section 3, Point d, of the Directive.

(v) The Prison Act

The Directive also required changes to the provisions of the Prison Act. Previously, the provision (Chapter 2, Section 1a) stated that the court shall record all necessary information to the National System of the Judicial Administration. According to the amended provision, the court shall also record to the National System of the Judicial Administration the information concerning the victim's request to receive a notice when the person remanded in custody, prosecuted or sentenced for criminal offences concerning such victim is released or has escaped detention in order for the Criminal Sanctions Agency to get the relevant information. The amendment of the provision implements a part of Article 6 of the Directive.

The second provision amended concerns the notice given to the victim when the person sentenced for criminal offences is released or has escaped detention. According to the previous provision, the victim shall be informed if the person who is released from the prison has given a special reason to suspect that he/she will commit a crime directed towards life, health or freedom of the victim. Also a victim who has a restraining order against the person released from the prison shall be informed. Pursuant to the amended provision, the Criminal Sanctions Agency shall also inform the victims who have requested to get a notice of the release of the prisoner when the person sentenced for criminal offences concerning them is released, escaped, left unauthorized the prison or not returned from a prison leave. The duty of giving a notice according to the amended provision is applicable only if the prisoner is sentenced for certain crimes directed towards life, health, freedom or peace. The amendment of the provision implements Article 6, Section 6 of the Directive.

(vi) The Pre-trial Detention Act

The amendments made to the Criminal Investigation Act (described in Section 3.1 (i) above) resulted in a need to amend Chapter 2, Section 2 of the Pre-trial Detention Act as well.

The new wording includes an obligation for the court to inform the Criminal Sanctions Agency of the victim's request to be informed of the release of the prisoner or a person suspected for

criminal offences from imprisonment or other detention. The court's information obligation can be fulfilled either through the National System of the Judicial Administration or the Legal Register Centre⁴².

The second amendment to the Pre-trial Detention Act (Chapter 16, Section 1) needed to be done due to the new rule regarding information on release of a prisoner sentenced for a crime directed towards life, health, freedom or peace or a sexual crime added to the Prison Act (described in Section 3.1 (v) above). For the sake of clarity, a new Subsection 2 was added, according to which the relevant provisions of the Prison Act are applied to information given on the release of a person suspected of a crime directed towards life, health, freedom or peace or a sexual crime from pre-trial detention. The decision to give such information is made, pursuant to the Prison Act, by the prison governor or an officer responsible for safety appointed by such governor.

(vii) The Act on Treatment of People Kept by the Police

The amendments made to the Criminal Investigation Act (described in Section 3.1 (i) above) also resulted in a need to amend the Act on Treatment of People Kept by the Police (Chapter 16, Section 2).

The previous wording did not mention suspects released from detention during the pre-trial investigation. The new wording, included as a new Subsection 2, includes the obligation to inform a victim of the release of such suspect if the victim has requested to be informed of the release.

The previous Subsection 1 was not amended. Subsection 1 includes the rules about notification of release of other persons that have lost their freedom than suspects during a pre-trial investigation. The rule is discretionary and includes information given to also other persons than the victim. Pursuant to this provision, it is possible for a victim who has not requested information of release to be informed of the release, should there be reason to fear, based on the behavior or threats made by the person to be released, that he/she would commit a crime directed towards the life, health or freedom of the victim or someone close to the victim.

According to the new Subsection 2, the victim must be informed of the release or escape, if the suspect is/was detained due to certain crimes directed towards life, health, freedom or peace or a sexual crime⁴³. If a person suspected of any of the crimes listed in the wording of the new provision is released or escapes, a victim who has requested to be informed of such release must be informed without undue delay. However, the information may only be given if it is assessed that such information will not endanger the life or health of the suspect.

The previous Subsection 2 was transferred to be Subsection 3 and expanded to include notices included in both Subsection 1 and Subsection 2. Overall, any release or escape information given must be given with discretion and the information must not be given contrary to the consent of the victim or other person considered to be in danger. Regards information given pursuant to

⁴² The Legal Register Centre (in Finnish: Oikeusrekisterikeskus) is an agency in the administrative sector of the Ministry of Justice. Its function is, among others, to act as the controller for information systems and registers in the administration sector of the Ministry of Justice as well as to convey information reported by authorities in the administration sector to other authorities. Information available in English at, <http://www.oikeusrekisterikeskus.fi/en/index.html>

⁴³ The information obligation applies to the following crimes: rape, aggravated rape, coercing someone into a sexual act, sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, manslaughter, murder, homicide, aggravated battery, preparation of an aggravated crime against life or health, aggravated invasion of domestic premises, aggravated deprivation of personal liberty, human trafficking, aggravated human trafficking, hostage taking, preparation of hostage taking, stalking, aggravated robbery or preparation of aggravated robbery or attempt or implication to any such crime.

Subsection 2, this would mean that a victim who has requested to get the information in question earlier, may inform the investigation authority that he/she does not wish to get such information in the future.

(viii) The Act on Processing of Personal Data by the Criminal Sanctions Agency

The implementation of Article 6, Sections 5 and 6 of the Directive also required adding two new provisions to the Act on Processing of Personal Data by the Criminal Sanctions Agency: one provision concerning recording certain information in the supervision and activity register⁴⁴ kept by the Criminal Sanctions Agency (Section 7, Subsection 1, Point 10) and another one regarding an exception to the right to access to the register information (Section 31, Subsection 1).

Section 7 of the act includes rules on the supervision and activity register, which register includes information required for maintaining the order of the prison system and the supervision and activity of the prisoners and the persons held by the Criminal Sanctions Agency. According to the new rule, information on notifying the victim of the release or other leave of a prisoner or other person held at a Criminal Sanctions Agency unit, the request by the victim to get such notification, and the victim's contact information may be recorded in the register in question.

Section 31 of the act includes exceptions to the right of a person whose information has been registered in the register to access the register information. According to the new rule, a person whose information has been registered in the register does not have the right to access the victim related information described above. Limiting the right to access the register information is required to guarantee the safety of the victim.

(ix) The Act on Conciliation in Criminal and Certain Civil Cases

In order to implement the requirements of the Directive concerning certain conditions for participation in restorative justice services (Article 12, Section 1, Subsections a) and c) of the Directive), Section 3, Subsection 1 of the Act on Conciliation in Criminal and Certain Civil Cases was amended.

According to Article 12, Section 1, Subsection c) of the Directive, a condition for providing restorative justice services is that the offender acknowledges the basic facts of the case. This condition corresponds to the practice already applied in Finland in mediation of criminal cases. The aim of mediation of a crime is that the offender takes responsibility of his/her actions, and the success of the process requires that the parties can for the relevant parts agree on the basic facts of the case and on what has happened. This condition has previously not been included in the Act on Conciliation in Criminal and Certain Civil Cases and thus the act was amended to include a provision stating that mediation of a criminal case requires that the offender acknowledges the basic facts of the chain of event. However, the aim of mediation is not to determine culpability and the statement of the offender cannot be used as evidence of the offender's guilt in criminal court proceedings.

According to Article 12, Section 1, Subsection a) of the Directive, restorative justice services are used only if they are in the benefit of the victim and the victim has given a free and informed consent to such, which consent can be withdrawn at any time (with further guidelines in section 46 of the introductory part of the Directive). Pursuant to the Act on Conciliation in Criminal and

⁴⁴ In Finnish: valvonta- ja toimintarekisteri.

Certain Civil Cases, mediation always requires the voluntary consent of the victim and that the victim is able to understand the meaning of mediation and the decisions made in it. In addition is required that crime is suitable for mediation when taking into account the nature and method of crime, the relationship between the victim and the offender and other matters related to the crime as a whole. According to the government bill on the act in question, when considering whether a crime is suitable for mediation or not, the aim to protect the more vulnerable party must be taken into account, which may lead to a result where a crime is not suitable for mediation even though both parties consent to mediation and understand the meaning of it⁴⁵. According to the Legal Affairs Committee⁴⁶, mediation may not take place for example when the offender is taking advantage of the victim's vulnerable state so that the victim is afraid of him/her. Further, violence between people close to each other should not be mediated when the violence in the relationship is continuous or the offender considers violence an acceptable means for solving issues in the relationship.

Consequently, under Finnish law it has been possible to consider that in some cases mediation is not in the benefit of the victim and thus the matter should not be mediated though the victim consents to mediation and understands the meaning of mediation. However, the Directive's requirement to consider the benefit of the victim has not specifically been mentioned in the Act on Conciliation in Criminal and Certain Civil Cases, and thus the act was amended so that the benefit of the victim is a condition for mediation of a crime. When considering the benefit of the victim, matters which may limit or lessen the victim's ability to make a choice based on information or endanger the positive outcome for the victim, such as imbalance of power and age, maturity and intellectual capacity of the victim, must be taken into account. It may be noted that the benefit of the victim does not mean that the victim should financially benefit from mediation compared to the matter being handled in a court.

(x) The Act on Openness of Government Activities

The implementation of the Article 6, Section 5 of the Directive required two amendments to the Act on Openness of Government Activities.

The first amendment was to add a provision that a party to a criminal case, his/her representative or assistant has no right to information from documents that include information about the victim's request in accordance with the Criminal Investigation Act (Chapter 4, Section 19) to be informed of the release or escape of the prisoner or a person suspected of a crime or information on such notices (Section 11, Subsection 2, Point 7a). According to the new rule, information regarding the victim's request to get such information and information about such information given to the victim is under the duty of secrecy to guarantee the safety of the victim. Previously, in accordance with the Criminal Investigation Act (Chapter 4, Section 15, Subsection 3) and the Act on Publicity of Court Proceedings (Section 12, Subsection 2, Point 1) in force, a party had no right to get information about the victim's contact information if the victim requesting such information had reason to be afraid for his/her safety.

⁴⁵ Page 16 of the government bill number 93/2005.

⁴⁶ Page 5 of the Legal Affairs Committee statement 13/2005. The Legal Affairs Committee is one of the permanent special committee of the Finnish Parliament, and it prepare Government bills, legislative initiatives, Government reports and other matters for handling in plenary session. The matters dealt with by the Legal Affairs Committee include legislation related to family law, the law of succession, the law of obligations and property law, criminal and procedural law, the courts and the prison service.

The second amendment was to add a similar provision to Section 24, Subsection 1, Point 31b regarding secrecy of the documents with information about release information as described above. According to the new rule, information regarding the victim's request to get release information and information about such information given to the victim is under the duty of secrecy to guarantee the safety of the victim. Previously, pursuant to the relevant Subsection 1, Point 31, a victim could request that his/her contact information was kept secret if he/she had reason to be afraid for his/her safety. Pursuant to The Act on Publicity of Court Proceedings in General Courts (Section 9, Subsection 1, Point 5) such contact information is kept secret even during court proceedings. Consequently, the contact information of a victim could be kept secret in government documents also under the previously valid legislation. However, to guarantee the safety of a victim, the secrecy of the victim's contact information in the Criminal Sanctions Agency's documents is needed even though the victim has not asked for the information to be kept secret during court proceedings.

The up-to-date contact information of the victim is saved in the Criminal Sanctions Agency's register in order to give release information, but in addition to this information being kept secret also the contact information related to the request to get such release information is always to be kept secret. The time period for keeping such documents secret is in accordance with what has been prescribed about secrecy related to protection of private life (*i.e.*, 50 years as from the date of the death of the person who the documents concern, or if such information is not available, 100 years).

(xi) The Act on Crime Victim Fee

The Act on Crime Victim Fee was the only new law that needed to be enacted due to the implementation of the Directive, specifically Articles 8 and 9 of the Directive. The new law is a short law with only eight sections, and the aim of the law is to strengthen the portion of government resources allocated to victim support services with an amount corresponding to the proceeds of the crime victim fee.

Pursuant to the Act on Crime Victim Fee, a person 18 years or older who is sentenced for a crime for which the severest punishment is imprisonment is liable for paying a crime victim fee. Also legal entities are liable for paying the fee, which will be imposed in form of a corporate fine.

The fee is sentenced by the court handling the relevant crime proceedings and an appeal against the payment liability can only be made in connection with the main crime case. If the crime victim fee is issued in proceedings pursuant to the Summary Penal Fee Act⁴⁷, the fee is issued by the prosecutor, police, customs officer, border officer or forest officer. However, the fee may not be issued if its amount would be higher than the penal fee/fine sentenced or issued at the same time.

The amount of the fee is 40 Euros if the maximum sentence for at least one of the crimes committed is six months imprisonment, and 80 Euros if the maximum sentence for at least one of the crimes committed is over six months imprisonment. For a legal entity the fee payable is 800 Euros.

Based on the Government Bill 2014, it is estimated that the crime victim fees collected will amount to over 7 million Euros annually. Approximately 65 percent of that amount, *i.e.*, 4.5 million Euros, is intended to be allocated to victim support services.

⁴⁷ In Finnish: sakon ja rikesakon määräämisestä annettu laki. Available in Finnish at, <http://www.finlex.fi/fi/laki/alk-up/2010/20100754>

2.2. Description of Other Proposed Amendments

The Government Bill 2015 proposed that some of the articles of the Directive that did not require any legislative actions should be implemented by other amendments than legislative changes. Also some of the articles that required legislative actions were implemented by other type of amendments as well.

According to the Commission Final Report, training and communication are the key issues when improving protection of victims of crime. In addition, methods and practices used in crime support services should be developed to improve the position of a victim of crime. Authorities and organizations should cooperate to promote sufficient training and communication, the victims' possibilities to find and have access to relevant support services, and the competence of different authorities to meet the victims of crimes. To ensure the fulfilment of the targets of the Directive, good practices and methods should be introduced and special attention should be paid to the needs of particularly vulnerable groups.

Projects Contributing to Meeting the Needs of Victims

In Finland, victim protection has been promoted by authorities and organizations in the last few years and below are some examples of projects that aim to improve victim protection.

(i) Project based on MARAC

The National Institute for Health and Welfare⁴⁸ coordinates two extensive projects which aim to improve the level of victim protection.

The first project, based on the British MARAC (Multi Agency Risk Assessment Conference)⁴⁹ model, is a method which strives to help the victims of domestic violence and people at risk of such. The police, shelters, social services, health care services and other professionals work in collaboration to help the victims of domestic violence. The idea is to create a safety plan for a person who is in need of it. Measures that are taken in a safety plan may for example be arranging a place in a shelter, providing opportunity for peer support, help to find accommodation or help to apply for a restraining order. Victims are also assigned a trained support person who, among other matters, helps them to deal with practical matters.

The project piloted in 2009 and the National Institute for Health and Welfare gave its report concerning the MARAC in 2014.⁵⁰ The MARAC model is now in use in Finland.

(ii) Project LASTA

The second project is a pilot project called Project LASTA. The aim of the project is to find an operating model for the investigations of cases in which a child is a victim of physical or sexual violence. Project LASTA seeks to find a way to establish a nationwide collaboration model for the police, prosecutors, child welfare and psychiatric health care. The operating model created in Project LASTA may be in use in the beginning of 2017 at the earliest.⁵¹

48 The National Institute for Health and Welfare (In Finnish: Terveystieteiden ja hyvinvoinnin laitos) is a research and development institute under the Finnish Ministry of Social Affairs and Health.

49 In Finnish: MARAK moniammatillisen riskiarvioinnin kokous.

50 Report 10/2012 of the National Institute for Health and Welfare available in Finnish at, http://www.julkari.fi/bitstream/handle/10024/90818/URN_ISBN_978-952-245-601-4.pdf?sequence=1

51 Information on Project LASTA (In Finnish: LASTA-hanke) is available in Finnish at, <https://www.thl.fi/fi/web/lasten-suojelunkasikirja/ajankohtaista/lastensuojelu-thl-tutkimus-ja-kehittaminen/lastensuojelun-kehittaminen/lasta-hanke>

(iii) Children's Affairs House

The Finnish Ministry of Social Affairs and Health proposed in 2009 (Report 2009:30) that a so-called "Children's Affairs House" model should be established in Finland. Following this the Finnish National Institute for Health and Welfare initiated a project for establishing the model which aims to provide comprehensive assistance to child victims of sexual and physical abuse and centralize the criminal investigation process in respect of child victims.

The model calls the officials investigating and assisting the criminal investigations (e.g., the police, prosecutors, health and social care) to act together as a single expert group in order to avoid the children from having to attend and undergo many different interviews and investigations. Also it is intended that a child would receive the psychological consultation it needs immediately after/during the investigations and the need for further assistance would be clarified already during such consultation. The Children's Affairs House provides also the crisis assistance the victim of child sexual abuse and his/her family need and thus the access to services for both the victim and people close to him/her is better secured.

Special Training for Police, Doctors or Other Actors

According to the Commission Final Report, authorities should have the ability for meeting victims, assessing the need of a victim for protection and advising victims to find and have access to relevant services. Therefore, training and education provided for authorities is very important. In Finland, training is usually trusted to different authorities and organizations. Authorities and organizations have also published guides and brochures in simple language and in different language versions for victims, their families and people who meet victims at work.

Below are some examples of training for and guidelines by authorities and other actors.

(i) Law professionals

Article 25 of the Directive requires that EU member states ensure that officials likely to come into contact with victims receive both general and specialist training to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.

In Finland, this article is implemented by the SENJA-model created in Project Sensitivity Training for Legal Professionals⁵². SENJA-model provides procedures for working with victims of crime as well as information on impacts that becoming a victim of domestic violence or sexual violence may have. All in all, the sensitivity training project aims to increase the awareness of judges, judicial assistants, prosecutors and police in how to encounter and approach victims of domestic and sexual violence.

The prosecutors in Finland have a so called key and special prosecutor system, which means that the specialized prosecutors are to maintain and develop the skills of the other prosecutors in that certain special area and function as a contact person for the local prosecutors in case they need assistance. From 2008 five prosecutors have functioned as special prosecutors within the field of crimes against women and children.

⁵² In Finnish: Sensitiivisyyskoulutus juridiikan ammattilaisille -projekti.

(ii) Police

The Police College keeps an annual two week course on sexual crimes and the child in police work, which aims to provide basic information on crimes against children to all policemen. The police also provide special training for the policemen investigating crimes against children, and in 2009 a pilot training project was launched for police officers and health care professionals who interview child victims. The investigations of crimes against children are, or at least should be, always directed to units familiar with this kind of investigation or to policemen with special training. In general, the police aims to do the pre-trial investigations in such a way that the true interests of the child actualize, and the Ministry of the Interior has also issued guidance on how the children's pre-trial hearings are to be conducted when crimes against children are investigated. In addition, the police follow the guide issued by Finnish National Institute for Health and Welfare on the investigation of sexual abuse and violence of children.

The National Police Board's guidelines "Child as a plaintiff and witness in policing and preliminary investigation"⁵³ aim to harmonize the procedure of being in contact with an underage witness in policing, and especially with an underage victim of a crime in pre-trial investigation. According to the guidelines, the Police should pay special attention to the welfare of a child during the investigations. The Police should also make sure that after meeting a child, his/her situation and conditions continue to be safe and in accordance with the interests of the child. The guidelines provide instructions on how, for example, Article 1 of the Directive is being interpreted and applied in practice. Pursuant to Article 1, the child's best interests shall be a primary consideration and a child-sensitive approach shall prevail.

(iii) University Hospitals

In connection with the university hospitals in the largest cities in Finland are special units specialized in interviewing children who have been victims of a crime. These units are designed so that they have childfriendly spaces and all the interviews are conducted by specially trained experts. In addition, these units collaborate closely with the Police.⁵⁴

(iv) Media

The interpretation of Article 21 of the Directive is affected by the Guidelines for Journalists⁵⁵ given by the Council for Mass Media⁵⁶. According to the Guidelines for Journalists, delicate matters concerning people's personal lives may only be published with the consent of the person in question or if such matters are of considerable public interest. Discretion must always be exercised when reporting on victims of crimes. Information about the convicted, charged or suspected individual should not be published if it may reveal the identity of the victim of a highly sensitive crime. Also, according to the Guidelines, the identity of a victim of a highly sensitive crime must be protected, unless the matter is of considerable public interest.

⁵³ In Finnish: Lapsi asianomistajana ja todistajana poliisitoiminnassa ja esitutkinnassa 2020/2013/5071. Available in Finnish at, <https://www.innokyla.fi/documents/942857/4e3bbfd3-cbcf-4c1d-aa34-de6c507c9c14>

⁵⁴ Information available in Finnish at http://ec.europa.eu/justice/news/consulting_public/0009/contributions/public_authorities/027_finland.pdf. The report by the Ministry of Justice is dated October 4, 2010.

⁵⁵ In Finnish: Journalistin ohjeet. Available in English at, http://www.jsn.fi/en/guidelines_for_journalists/

⁵⁶ The Council for Mass Media (CMM) (In Finnish: Julkisen sanan neuvosto (JSN)) is a self-regulating committee established in 1968 by publishers and journalists in the field of mass communication. Information available in English at, http://www.jsn.fi/en/Council_for_Mass_Media/the-council-for-mass-media-in-finland/

3. Case Law and Reported Data

Since the amendments to the legislation have come into force only on March 1, 2016 and the new law on the crime victim fee is yet to come into force, there is no case law or reported data available that would show how the legislative amendments are interpreted and applied in practice.

France

1. Legislation and regulations

1.1. Legislative Amendments

Although in a scattered way, the vast majority of guarantees provided by the Directive already exist in the French Code of Criminal Procedure. The Directive has been transposed into French law by two means: the adoption of Article 7 of Law 2015-993 of August 17, 2015 relating to the adaptation of EU Criminal Law⁵⁷ ("Law 2015-993") and the adoption of the Decree 2016-214 of February 26, 2016 on the Rights of Victims⁵⁸ ("Decree 2016-214" or "the Decree").

Law 2015-993

Law 2015-993 completes the Preliminary Title of the Code of Criminal Procedure by adding a third subtitle on victims' rights. By creating Articles 10-2 to 10-5, 40-4-1, 183-1 and 391, the Code of Criminal Procedure includes several rights in favour of the victim that were not previously captured, such as the right to be informed of the guarantees that already exist in substantive law, the right to interpretation and translation and the right to be accompanied in all stages of the proceedings.

Decree 2016-214

The Decree 2016-214 complements the procedural regulations protecting minors victim of sexual offences by adding that, when the age of a victim is unknown and chances are that the victim could be a child, the victim shall benefit from all provisions applicable to minors. Furthermore, the Decree fixes the implementation methods of the right to interpretation and translation of Article 10-2 of the Code of Criminal Procedure. Lastly, the Decree details rules for the implementation of the individual assessment of victims to identify specific protection needs as set out in Article 10-5 of the Code of Criminal Procedure.

1.2. Entry into Force

The legislative changes implementing the Directive by both adding new legislation and amending existing one came into force in two different moments. Law 2015-993 entered into force on November 15, 2015 and the Decree came into force on February 29, 2016.

⁵⁷ Loi n° 2015-993 du 17 août 2015 portant adaptation de la procédure pénale au droit de l'Union européenne, available in French at :

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031045937&categorieLien=id>

⁵⁸ Décret n° 2016-214 du 26 février 2016 relatif aux droits des victimes, available in French at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032113212&categorieLien=id>

2. Specific Measures and Procedures Adopted

2.1. Detailed Description of Legislative Changes

Article 7 of the Directive

Article 7 of the Directive foresees the right to interpretation and translation for victims who do not understand or speak the language in which the criminal proceedings concerned are carried out.

Law 2015-993 of August 17, 2015 completes the Preliminary Title of Book I of the Code of Criminal Procedure by adding a Subtitle III relating to Victims' Rights.⁵⁹ It first sets out the right for the victim to be informed of the guarantees that already exist in French substantive law. The Directive refers to it as the "right to receive information from the first contact with a competent authority". The victim should be informed of its rights from this first contact, i.e. the right to compensation, the right to be assisted by a lawyer, and the right to be assisted by a public service. Additionally, victims should be informed of their right to be informed of the measures of protection they can benefit from, including protective measures laid down in Articles 515-9 to 515-13 of the Civil Code, and of the penalties the perpetrators may incur in.

In addition to the right to be informed, Article 10-2 of the Code of Criminal Procedure provides for the victim the right to be assisted by an interpreter and the right to have a translation of the information that is essential for the exercise of its rights. Furthermore, Article 391 of the Code of Criminal Procedure foresees that when the victim does not understand French, at its request, a translation of the notice of the hearing should be available. Exceptionally, this could be in the form of an oral translation or an oral summary.

Article 3, Section 3 of the Decree 2016-214, modifying Articles D. 594-11 to D. 594-15 of the Code of Criminal Procedure fixes the modalities of the victim's right to translation and of its right to an interpreter as set out by Article 10-2 of the Code of Criminal Procedure. This provision also specifies that, in application of Article 10-3 of the Code of Criminal Procedure, information deemed essential for the victim to exercise its rights might be relevant excerpts of a document. In any case, translation must be available within a reasonable time.

Article 22 of the Directive

Article 10-5 of the Code of Criminal Procedure foresees the individual assessment of victims in order to identify specific protection needs as set out by Article 22 of the Directive. It states that an individual assessment should be carried out as soon as possible in order to determine if the victim needs specific measures of protection, in particular to prevent intimidation and reprisals.

Article 3 of the Decree 2016-214 implements Article 10-5 of the Code of Criminal Procedure by modifying Articles D. 1er-3 to D. 1er-9 of the Code of Criminal Procedure. Article D. 1er-3 explains the conditions that the individual assessment shall take into account, i.e. personal characteristics of the victim, circumstances of the crime, type or nature of the crime and the existence of a risk of intimidation and retaliation. In this sense, this article of the Code goes beyond what was set out in paragraph 2 of Article 22 of the Directive. Furthermore, Articles D. 1er-4 and D. 1er-5 provide

⁵⁹ Droit Pénal n 10, Octobre 2015, étude 21, Loi portant adaptation de la procédure pénale au droit de l'Union européenne : tout ça pour ça ?, Étude par Cédric Ribeyre professeur à l'Université Grenoble Alpes.

that the police officer conducting the interview of the victim shall carry it out in a timely manner, avoiding additional interviews that are not justified and must ensure that only medical examinations that are strictly necessary to the investigation are performed.

In addition, the Decree goes beyond the Directive's scope and foresees an in-depth evaluation modifying Articles D. 1er-10 to D. 1er-12 of the Code of Criminal Procedure. Such in-depth evaluation should be carried out by victims' associations or the Victims of Crime Support Office when the judge estimates that it is needed. The outcome of the in-depth evaluation should be updated throughout the proceedings.

As regards the individual assessment of victims, before the implementation of the Directive in France, the SADJAV (Service de l'accès au droit de la justice et de l'aide aux victimes)⁶⁰ has carried out the project EVVI (Evaluation of Victims)⁶¹. The SADJAV has funded local experiments to prepare the effective implementation of the Directive. In this sense, seven pilot sites have been implemented within a period of three to seven months through several spots of the national territory (Bobigny, Lyon, Nancy, Draguignan, Béthune, Pau et Sain-Malo) in order to put into perspective the local work carried out by partnerships. The outcome of the pilot is the creation of a methodological sheet to anticipate and facilitate the implementation of Law 2015-993 for court personnel as well as victim associations.

Article 23 of the Directive

Measures that should be available to ensure the right to protection of victims with specific protection needs during criminal proceedings as set out in Article 13 of the Directive are envisaged in Article 3 of the Decree, which modifies Articles D. 1er-6 to D. 1er-8 of Code of Criminal Procedure. These articles adopted almost the exact same language as the Directive's. In this sense, Article D. 1er-7(1) foresees that interviews with the victim should be carried out in premises designed or adapted for that purpose; Article D. 1er-7(2) provides that when there is a sexual violence crime, interviews with the victim should be carried out by or through professionals trained for that purpose; Article D. 1er-7(3) sets out that all interviews with the victim should be conducted by the same persons. Moreover, Article D. 1er-8 conceives the possibility for the authority of not applying the measures set out in the above-mentioned provisions when this is contrary to the good administration of justice. Finally, and in accordance to paragraph 2(d) of Article 23 of the Directive, Article D. 1er-6 provides that all interviews with victims of sexual violence, gender-based violence or violence in close relationships, should be conducted by a person of the same sex as the victim if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.

Article 24 of the Directive

In its Article 4, the Decree 2016-214 foresees the inclusion of Article D. 47-11-1 in the Code of Criminal Procedure implementing paragraph 2 of Article 24 of the Directive. In particular, it sets

⁶⁰ SADJAV is a service of the French Justice Ministry that is in charge of the access to justice and assistance to victims, organigram available in French at: <http://www.justice.gouv.fr/le-ministere-de-la-justice-10017/secretariat-general-10021/>

⁶¹ EVVI (Evaluation of Victims), outline available in English at: http://www.justice.gouv.fr/publication/evvi_guide_en.pdf
This project is co-funded by the Criminal Justice Programme of the European Union and aimed at assisting member States in the practical implementations of requirements of Article 22 of the Directive in accordance with national procedures. In particular to develop a practical tool to facilitate the individual assessment of victims and that enables the identification of specific protection needs.

out that several dispositions of the Code of Criminal Procedure are applicable when the age of a victim is uncertain and there are reasons to believe that the victim is a child.

Article 25 of the Directive

In the context of the promotion of the restorative justice by Member States as foreseen by paragraph 4 of Article 25 of the Directive, the SADJAV carried out several measures to implement it within France.⁶² These measures include the following: meetings involving convicts and victims, circles of support and accountability, restorative mediation and family group conferences. In France, Article 41-1 of the Code of Criminal Procedure gives the prosecutor the possibility to resort to mediation at the request of the victim or with the victim agreement.

2.2. Existing French Provisions in compliance with the Directive

Several French provisions were already in line with Chapter 4 of the Directive on the protection of victims and recognition of victims with specific protection needs. In France, criminal proceedings are mainly set out in the Code of Criminal Procedure.

Article 20 of the Directive

Paragraph (d) of Article 20 of the Directive, regarding medical examination is foreseen in France for child victims. Since a child can experience a medical examination as an aggression, to ensure that such examinations are not frequent, they may only be requested by the Public Prosecutor or police officer (*réquisition*), or by one of the parents.⁶³ Nevertheless, parents may refuse permission for a medical examination. It might also be the case that the child was brought to the hospital by third parties: in this case, the Public Prosecutor must make use of the emergency procedure of temporary care⁶⁴ before any medical examination takes place.

Specialized medical care units may take the form of forensic units (*unités médico-judiciaires*), as explained below.

Finally, a physical examination is not required in all cases. It may be resorted to depending on the circumstances of the case and the child's endangerment – it is notably used in cases of alleged assault, sexual assault and mistreatment. A psychological examination is never compulsory and can only be ordered in the case of certain serious offences or in certain circumstances.⁶⁵

Article 21 of the Directive

As regards the right to protection of privacy, as set out in Article 21 of the Directive, in particular that "Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim"

62 SADJAV, *Les mesures de justice restaurative*, available in French at: http://www.justice.gouv.fr/art_pix/justicerestaurative_20160126.pdf

63 European Commission, *Study on children's involvement in judicial proceedings, Contextual overview for the criminal justice phase - France*, June 2013, available in French at: <http://www.childreninjudicialproceedings.eu/docs/ContextualOverview/France.pdf>

64 In emergency situations the Public Prosecutor is competent to take protective measures for children, rather than the Juvenile Court. The Public Prosecutor is then able to take the same measures as the Juvenile Court, but must contact the Juvenile Court within eight days. The Juvenile Court must then confirm or quash the Public Prosecutor's decisions within 15 days.

65 See footnote 63.

is covered by an old French law, which was amended in 2000.⁶⁶ This law punishes the dissemination with any means of information concerning the identity or allowing to identify a minor in different situations: when a minor has run away from his/her parents' or custodian's house; when a minor has been abandoned in the cases provided in articles 227-1 and 227-2 of the *Code Pénal* (crime of child abandonment); when a minor committed suicide; and finally when a minor was a victim of a crime. This law forbids disclosing the identity, address, or other elements that allow the identification of a child. Even diffusion of the real first name of the child, his or her school or a picture of his or her parents is sufficient to constitute an offence. The dissemination of information is punished with a fine up to 15,000 €.

It must be highlighted that French legislation is not clear and is fragmented when it comes to the right to protection of privacy of minors. For instance, Article 306 of the Code of Criminal Procedure concerns closed door hearings for victims in general, but does not apply specifically to minors.⁶⁷ Additionally, to further increase confusion, Article 388-1 of the French Civil Code recognises the right of the minor to be heard in all judicial proceedings. It could be argued that, since it is contained in the Civil Code, one can assume this article is only applicable to private and civil proceedings but its wording is so general that, by extension, it also applies to criminal proceedings.⁶⁸ It remains to be seen how the French system will deal with this fragmentation that seems against the spirit of the Directive, which aims at establishing a general status for child victims of crime.⁶⁹

Article 22 of the Directive

Article 22 of the Directive sets out an individual assessment of victims in order to identify specific protection needs. As explained above, Law 2015-993 modifies Article 10-5 of the Code of Criminal Procedure to introduce the individual assessment of victims in French Law.

Nevertheless, Paragraph 4 of Article 22, which encourages to offer specific protection to victims, especially "due to their vulnerability to secondary and repeated victimisation, to intimidation and retaliation" is captured since 2000 in France by the figure of the Children's Ombudsman (*Défenseur des enfants*).⁷⁰ The Children's Ombudsman is in charge of promoting and ensuring the protection of minors and can take action if he or she becomes aware in any way of individual cases in which those rights have been violated.⁷¹

Another provision that was implemented in French legislation in 2000 was Law 2000-197 that aimed at achieving a more effective prevention and identification of child abuses and, above all, at improving training to teachers in French schools.⁷² This training for teachers also complies with

66 Article 39 bis, loi du 29 juillet 1881 sur la liberté de la presse, amended by Article 3 of Ordonnance n° 2000-916 du 19 septembre 2000, available in French at: <https://www.legifrance.gouv.fr/affichTexteArticle.do?idArticle=LEGIARTI000006419771&cidTexte=LEGITEXT000006070722&dateTexte=20041230>

67 Victims and Criminal Justice, European Standards and National Good Practices, Edited by Luca Luparis, 2015, pages 243-244 available in English at: <http://www.protectingvictims.eu/upload/pages/85/English-volume.it.en.pdf>

68 See footnote 66.

69 See footnote 66.

70 In May 2011, the French Government merged the office of the Children's Ombudsman (*Défenseur des enfants*) with the main ombudsman agency and other bodies, creating a new body named the Defender Rights (*Défenseur des droits*).

71 Loi n°2000-196 du 6 mars 2000 instituant un Défenseur des enfants, available in French at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000398170>

72 Loi n°2000-197 du 6 mars 2000 visant à renforcer le rôle de l'école dans la prévention et la détection des faits de mauvais traitements à enfants, available in French at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000581430&categorieLien=id>

Article 25 of the Directive, which deals with training of practitioners that are likely to come into contact with victims.

Article 23 of the Directive

In line with paragraph 2(a) of Article 23 of the Directive, several public authorities count with premises designed and adapted for interviews of victims with specific protection needs.⁷³ On one hand, the gendarmerie nationale has special hearing rooms as well as offices equipped with specific audio-visual technology that allow hearing and filming the minor victim under better conditions. Within the French national police, fifty-one rooms are specifically equipped for hearings of child victims. On the other hand, special multidisciplinary structures for child victims called UAMJ (Unités d'Accueil Médico-Judiciaire) are in place in hospitals.⁷⁴ These structures facilitate the collection of the word of children by allowing his or her hearing to be performed in a safe place set for this purpose and, at the same time, allowing medical practitioners to carry out the necessary examinations. These structures are now mainly dedicated to offences mentioned in Article 706-47 of the Code of Criminal Procedure (serious offences) and usually involve vulnerable victims. Nevertheless, it must be underscored that the judge has the possibility to use this type of structures if he or she deems it convenient, in cases of domestic violence or if the personality of the victim requires it.

Additionally, several protocols regarding the hearing have been developed in France. In particular, the protocols for auditory techniques set out by the NICHD (National Institute of Child Health and Human Development) revolve around four main phases: making contact with the victim, free recall of facts, specific questioning and closing the interview.⁷⁵ This way of questioning aims at increasing the quality of the testimony through accuracy and the amount of detail provided. This protocol is currently used on the trainings given to the national police, the gendarmerie nationale and the judges.

Article 24 of the Directive

Some of the French provisions that were in place exceeded the goals of the Directive, in the sense that they provide additional protection compared to the minimum standards of the Directive.

- Paragraph 1(a)

In France, Article 706-52 of the Code of Criminal Procedure requires the questioning of the child to be recorded on video when the offence is among the ones set out in Article 706-47 of the same code. Recording the interview aims at minimising the number of interviews. In practice, however, the child will be interviewed at least three times: once by the police as the formal interview, once by his or her lawyer, and once by the judge who will ask the child to reiterate or approve previous statements.

Recording the questioning of a child victim also allows ensuring the mode of questioning of the child and further analysing the child's non-verbal communication.⁷⁶ Upon written decision of the Public Prosecutor or investigatory judge, the recording can be exclusively a sound recording when the best interests of the child require so (for instance when the child has been the victim of

⁷³ Ministère de la Justice, Direction des affaires criminelles et des grâces, Guide relative à la prise en charge des mineurs victimes, Septembre 2015, available in French at: http://www.justice.gouv.fr/art_pix/guide_enfants_victimes.pdf

⁷⁴ See footnote 73.

⁷⁵ See footnote 73.

⁷⁶ See footnote 63.

crimes of a pornographic nature). In the absence of conclusive evidence (for instance from medical examination), the interview as well as its recording will become key elements of the trial. A new interview can only take place with prior agreement of the Public Prosecutor or investigatory judge. When the suspect requests a 'confrontation' with the victim, the judge might require that the suspect first hear or see the recording. This might discourage the suspect from going ahead with the confrontation. If a confrontation is nonetheless required, it is possible for this confrontation to take place in different rooms and it will in any case take place in a child-friendly environment and in the presence of both sides' lawyers, as well as police officers.

- *Paragraph 1(b)*

Article 706-53 of the Code of Criminal Procedure foresees that, at all stages of the procedure, a minor victim may, at his request, be accompanied by his or her legal representative and, where appropriate, by a person of his or her choice, unless an ad hoc administrator has been designated by the competent judicial authority. In accordance with the spirit of paragraph 1(b) of Article 24 of the Directive, the presence of a legal representative shall reassure the minor and ensure that the minor is heard.

Article 706-50 of the Code of Criminal Procedure sets out the role of the ad hoc administrator and provides that the ad hoc administrator shall be designated for the benefit of a minor victim when the protection of his or her interests is not completely ensured by a legal representative. The ad hoc administrator is in charge of guaranteeing the interests of the minor victim.

The ad hoc administrator may be appointed among the child relatives or from a list of representatives established in each court of appeal.⁷⁷ It must be noted that, according to Article R53-7 of the Code of Criminal Procedure, the appointment of the ad hoc administrator is subject to appeal within ten days.

The primary duty of the ad hoc administrator should not be limited to the appointment of a lawyer for the child victim but he or she must be a true interlocutor defending the rights of the minor. He or she must prepare the minor victim for all steps of the procedure and accompany him or her during those. Additionally, the ad hoc administrator must regularly inform the child victim of the status of the procedure and make sure that the minor understands its development.⁷⁸

- *Paragraph 1(c)*

In France, a child has the right to consult a lawyer without needing to prove that he or she has authorisation from his or her parents to do so.⁷⁹ When the child consults a lawyer spontaneously, legal advice is, in principle, provided free of charge.

Usually, lawyers of child victims only become involved in criminal proceedings once the matter has been referred to a judge. Moreover, according to Article 1186 of the French Civil Code, the judge has the duty to ask the child to choose a lawyer during their first interview. The only situation where a lawyer would intervene in the preliminary investigation is in case of 'confrontation' between the victim and the suspect. In this case, the lawyer would be able to provide information to the child early in the proceedings.

⁷⁷ Article 706-51 and R53 of the Code of Criminal Procedure.

⁷⁸ See footnote 73.

⁷⁹ See footnote 63.

The lawyer must be present throughout the proceedings, for instance, when the child victim is heard by the investigatory judge.⁸⁰ The lawyer is considered to be the information provider and has also an accompanying role. He or she should explain to the child the legal implications of the choices made as well as ensure that judges and other actors respect the rights of the child.

The lawyer takes also a protective role towards the child victim. In this sense he or she can request: a closed-doors hearing; that the child is positioned in such a way that avoids eye contact with the suspect; that the child hesitations are noted in the official statement; and that certain investigatory acts, such as confrontation, additional interviews, etc., do not take place.

Finally, the lawyer is responsible for assisting the child victim during the trial, for representing him or her when the child victim chooses not to attend the trial as well as for requesting compensation for damages, if applicable.

Article 25 of the Directive

In France, whenever possible, investigations of offences relating to minors are entrusted to specialized investigators within the public authorities. In this sense, specialized trainings are given to police officers, the gendarmerie nationale as well as judicial officers.⁸¹

i. Police officers

All police officers have an obligation to follow a specific training of twenty nine days, carried out over a period of approximatively three years. This training consists of six modules, two of them being related to the psychological and technical aspects of the hearing of a minor victim. These modules address the physical, linguistic and intellectual development of the minor, as well as the techniques of the hearings. In addition, there are optional modules that officers who wish to deepen their knowledge in the field can follow. Each year, approximately 150 police officers complete these trainings. As regards the two specific modules for the hearing of minors, they were followed by 227 police officers in 2014.

Police officers must also be able to help the child who is suffering or having difficulties to recall its experiences, to ensure proper understanding of its words, to assess the child's ability to verbalise and to take into account his or her logical thinking. Finally, the police officer learns to recreate with precision and with objectivity the child's statements (including his or her gestures).⁸²

Furthermore, fact sheets regarding the duties of a head of a family protection brigade and those of investigators within such brigade were developed recently. These fact sheets focus on the support and the accompaniment of victims as well as on the importance of partnerships with social actors.

ii. Gendarmerie Nationale

In accordance with the recommendations set out in a Circular of the Ministry of Justice of 2 May 2005 concerning the improvement of judicial treatment in procedures relating to sexual offences⁸³, it seems desirable that the Prosecutor of the Republic seeks a list of investigators specifically trained

⁸⁰ Article 706-50 of the Code of Criminal Procedure.

⁸¹ See footnote 78.

⁸² See footnote 63.

⁸³ Circular of the Ministry of Justice of 2 May 2005 on the improvement of judicial treatment in procedures relating to sexual offences (circulaire du Ministère de la Justice du 2 mai 2005 relative à l'amélioration du traitement judiciaire des procédures relatives aux infractions de nature sexuelle).

for minor victims' hearings. Each year, several trainings relating to minor hearings are carried out. They usually last one week and are organised by the national centre for training of the judicial police (CNFPJ) of Rosny-sous-Bois, for territorial investigators (enquêteurs de brigades territoriales) and research units. The training aims at the acquisition of essential knowledge regarding the psychological development and functioning of the child (memory, language, etc). Another objective is to enhance the know how in terms of communication, listening and interview techniques.

iii. Medical Practitioners (Forensic Units)

The questioning of a child victim can be done by specially trained professionals in a police station or in police or gendarmerie youth brigades. However, questioning can also happen in forensic units (unités médico-judiciaires), where the medical practitioner collaborates with the judicial authority and where medical procedures are performed at the request of the police or judge. Forensic units provide appropriate care of the child given its age and the victim status through offering a child friendly environment (walls and furniture are in bright colours, there are children's drawings, toys, etc.). Sometimes hearings are held in these settings. For instance in Paris, the police youth brigades are competent for all child sexual abuse and often question children in the forensic unit of the Trousseau hospital with whom it has an agreement.

iv. Judicial Officers

Judicial officers and magistrates that regularly perform hearings of child victims have the possibility to follow a continuing education on top of the training provided by the National School for Magistrates (École Nationale de la Magistrature). These trainings include "child abuses: jurisdictional issues", "construction of personality", "the word of the child in justice" or "judicial maintenance: approaches and methods".

2.3. Description of other measures

In France, a vast network of institutions and victim support centres is in place throughout the territory. Most of them focus on child victims and aim at supporting victims but also at preventing risks when possible.

i. Antenne des mineurs

The Paris Bar Association (Barreau de Paris) has established a children's office (antenne des mineurs).⁸⁴ This office provides children with free and confidential legal advice daily either over the phone (nationwide) or in person in its office in Paris.⁸⁵ Other local Bar Associations have done the same, and there also exist youth houses (Maison des jeunes) in many French localities that provide legal information to children.

ii. GIP Enfance en danger

La GIP Enfance en danger⁸⁶ is a public interest grouping relating to child protection in France. It supervises the activity of two services: the National Observatory for Children in Danger (ONED) and the National Helpline for Children at risk (SNATED).

⁸⁴ Barreau de paris, Antenne des mineurs, available in French at: <http://www.avocatparis.org/mes-contacts/antenne-des-mineurs>

⁸⁵ See footnote 63.

⁸⁶ GIP Enfance en danger, Official web site: <http://www.giped.gouv.fr/>

The National Observatory for Children in Danger (ONED) was created in 2004 in order to prevent and identify cases of child abandonment and abuse. Its main objective is to furthering knowledge of the field of children in danger in order to better prevent it. It mainly develops and disseminates knowledge regarding child protection by gathering statistical data as well as knowledge regarding the processes of child endangerment and child protection. Furthermore, it analyses and disseminates best practices in the field of child protection and supports actors within this field.⁸⁷

The Helpline for Children at Risk (SNATED) was created in by the July 10, 1989 Law and was consolidated by the March 5, 2007 Law regarding child protection. The SNATED mission consists of prevention and protection by assisting, informing and advising any person confronted with a situation where a child is in danger or at risk to be. It also has a transmission goal that consists of transmitting any information susceptible of giving rise to concern to the relevant services.

iii. Victim Support Helpdesks

Victim Support Helpdesks (Bureaux d'Aide aux Victimes) are located within the French Justice Palaces (Palais de Justice) and are managed by victims' associations.⁸⁸ At the moment, 160 helpdesks are open in high courts to inform, guide and accompany victims of criminal offences. Its main objective is to give practical information to victims as well as explaining all stages of the procedure. In addition, and if applicable, victims are oriented towards the compensation scheme they might be entitled to. Services provided by victims support helpdesks are free and strictly confidential.

3. Case Law and Reported Data

The legislation implementing the Directive, i.e. Law 2015-993 and Decree 2016-214, entered into force on November 15, 2015 and February 29, 2016, respectively. Since their entry into force, two cases refer to the Directive in France.⁸⁹ Nevertheless, none of the rulings expand or shed any light on the interpretation of the content of the Directive, therefore there are mentioned just for informative purposes.

Germany

1. Summary of applicable legislation and regulations

Since the 1980s, Germany had already passed at least nine different laws focussing on the protection and rights of victims in criminal proceedings. The four most important pieces of legislation are:

- Act to improve the position of victims in criminal proceedings (*Gesetz zur Verbesserung der Stellung des Verletzten im Strafverfahren*; 18 December 1986);
- Act to protect witnesses when being interviewed in criminal proceedings and to improve the protection of victims (*Gesetz zum Schutz von Zeugen bei Vernehmungen im Strafverfahren und zur Verbesserung des Opferschutzes*; 30 April 1998);

⁸⁷ Groupement d'Intérêt Public Enfance en Danger, available in English at: <http://www.giped.gouv.fr/page/in-english>

⁸⁸ Ministère de la Justice, Généralisation des bureaux d'aide aux victimes, available in French at: <http://www.justice.gouv.fr/aide-aux-victimes-10044/generalisation-des-bureaux-daide-aux-victimes-25121.html>

⁸⁹ Conseil Constitutionnel, Décision n°2015-508 QPC du 11 décembre 2015, available in French at: www.conseil-constitutionnel.fr/decision/2015/2015508qpc.html, and Cour de Cassation, chambre criminelle, Audience publique du 9 septembre 2015, n° de pourvoi 14-86579, available in French at : <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000031193018>

- Act to improve the rights of victims in criminal proceedings - the Act to Reform Victim's Rights (*Gesetz zur Verbesserung der Rechte von Verletzten im Strafverfahren – Opferrechtsreformgesetz*; 26 June 2004); and
- Act to strengthen the rights of victims and witnesses in criminal proceedings – 2. Act to Reform Victim's Rights (*Gesetz zur Stärkung der Rechte von Verletzten und Zeugen im Strafverfahren – 2. Opferrechtsreformgesetz*; 29 July 2009).

On 21 December 2015, the German legislator passed the Act to strengthen the rights of victims in criminal proceedings - 3. Act to Reform Victim's Rights (*Gesetz zur Stärkung der Opferrechte im Strafverfahren – 3. Opferrechtsreformgesetz*) (the "Act"), which came into force on 31 December 2015 and which transposes the provisions of the Directive into German national law. It mainly amends the German Code of Criminal Procedure (*Strafprozessordnung*; the "StPO"). German law already provided a very high level of protection for victims in criminal proceedings. Therefore many of the provisions in the Directive were already implemented in German law - albeit in piecemeal fashion - with only minor adjustments required to existing legislation to bring them in line with any new requirements.

However, due to the federalism in Germany the German federal states enjoy far-reaching autonomy, including legislative authority in many areas of law. Therefore the federal legislator could not implement all of the Directive's provisions as some of the subject matter falls under the competence of the federal states (for further details please see below).

The Act mainly amends several sections in the StPO, partly by adding new content and partly by changing the structure and the wording of the relevant sections. Furthermore, the German federal legislator took the implementation process as an opportunity to introduce the concept of psychosocial support during the criminal proceedings into the StPO. By doing so, the measures put in place by the Act go beyond the required minimum standards as set out in the Directive.

Chapter 4 of the Directive, which concerns the protection of victims and recognition of victims with specific protection needs, required barely any changes to the rights and protections of vulnerable victims already existing in German law. Details are set out below.

2. Specific Measures and Procedures Adopted

Since all articles in the Directive also apply to vulnerable victims and since there is often an overlap between the general rights of victims and the special rights for vulnerable victims in German law, this memo will discuss each chapter of the Directive and its implementation into German law.

Chapter 1 – General Provisions

The German legislator did not have to change German law to implement Art. 1 (Objectives) and Art. 2 (Definitions) of the Directive. The legislator did not define the term "victim", but instead, left it to the interpretation of the courts based on the respective situation.

Art. 2 (1) (c) of the Directive defines child as "any person below 18 years of age". This was already covered in German law under the Act to strengthen the rights of victims and witnesses in criminal proceedings – 2. Act to Reform Victim's Rights (*Gesetz zur Stärkung der Rechte von Verletzten und Zeugen im Strafverfahren – 2. Opferrechtsreformgesetz*; 29 July 2009).

Chapter 2 – Provision of Information and Support

The provisions regarding information in Chapter 2 of the Directive (Art. 3 to 7) fall under the competence of the German federal legislator, while the provisions regarding support in the same chapter (Art. 8 and 9) mainly fall under the competence of the federal states.

Articles for which no amendments were required

The right to understand and to be understood in Art. 3 of the Directive was already provided for in various German law provisions. The requirement that victims should be assisted to understand and to be understood from the first contact they have with a competent authority in the context of criminal proceedings, and that communications with victims should be given in simple and accessible language (taking into account the personal characteristics of the victim including any disability), were covered by section 406h StPO, which is now codified in sec. 406i StPO and which sets out that victims should be informed about their rights in accessible language. Sec. 186⁹⁰ and sec. 191a⁹¹ of the German Code on Court Constitution (*Gerichtsverfassungsgesetz*; the “GVG”) set out how the courts have to communicate with hearing-impaired, speech-impaired and blind persons. The requirement to allow victims to be accompanied by a person of their choice in the first contact with a competent authority where the victim requires assistance to understand or to be understood was already covered by sec. 406f (2) StPO.

Articles requiring amendments

Art. 4 of the Directive (the right to receive information from the first contact with a competent authority) required some changes in the German law. Art. 4 (1) (h) of the Directive (information about available procedures for making complaints) and Art. 4 (1) (i) of the Directive (information about the contact details for communications about the case) were already covered in existing legislation (cf. sec. 171 and sec. 158 StPO). However, other rights to information as set out in Art. 4 of the Directive required the German legislator to amend the catalogue of sec. 406h StPO. Since the structure of the sections setting out the information rights was not very clear, the legislator decided to restructure and rewrite the relevant sections so that the language would be easier to understand. The new sec. 406i provides for the right to information regarding the victim’s rights in criminal proceedings, sec. 406j provides for the right to information regarding the victim’s rights outside criminal proceedings and sec. 406k concerns the right to other information. The StPO

90 Sec. 186 GVG: (1) Communication with a hearing-impaired or speech-impaired person during the hearing shall, at his choice, take place orally, in writing or with the assistance of a communication facilitator to be called in by the court. The court shall furnish suitable technical aids for oral and written communication. The hearing-impaired or speech-impaired person shall be advised of his right to choose. (2) The court may require written communication or order a person to be called in as an interpreter if the hearing-impaired or speech-impaired person has not availed himself of his right to choose pursuant to subsection (1) or if adequate communication is not possible in the form chosen pursuant to subsection (1) or would require disproportionate effort. (Source of English translation: http://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html#p0841).

91 Sec. 191a GVG: (1) A blind or visually impaired person may, as provided in the statutory instrument pursuant to subsection 2, demand that the court documents intended for him also be made available to him in a form accessible to him to the extent that this is necessary in order to safeguard his rights in the proceedings. There shall be no charge for this. (2) The Federal Ministry of Justice shall specify in a statutory instrument, which shall require the approval of the Bundesrat, the conditions under which and the manner in which the documents mentioned in subsection (1) and the documents submitted by the parties for the record shall be made accessible to a blind or visually impaired person as well as whether and how this person is to participate in the safeguarding of his rights. (Source of English translation: http://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html#p0841).

now covers all requirements as set out in Art. 4 of the Directive, in particular under no. 5 of the new sec. 406j the victim has a right to be informed about the type of support he or she can obtain and from whom, including medical support and psychological support.

Sec. 158 StPO was also amended to provide for a victim's right to receive a written acknowledgement of his or her formal complaint that was made to the competent authority, stating a summary of the crime, its time and its place, as required under Art. 5 (1) of the Directive (the right of victims when making a complaint). The new paragraph 4 of sec. 158 StPO ensures that victims who do not understand German receive a translation and assistance to file the formal complaint in a language they understand.

Most of what is required under Art. 6 of the Directive (the right to receive information about the case) was already covered by sec. 406d StPO; however, it required an amendment to include the right to information about the time and place of the trial, the nature of the charges against the offender and information about an escape of the offender from detention.

The German legislator has also amended sections 161a (5) and 163 (3) StPO to clarify that sec. 185 (1) and (2) GVG (the right to a translator) also applies to examinations by the police or the public prosecutor, as required by Art. 7 of the Directive. Although sections 161a (5) and 163 (3) StPO do not refer to sec. 186 GVG (see fn. 1), it can be assumed that sec. 186 GVG applies as well to examinations by the police or the public prosecutor.⁹²

Articles containing subject matter falling under the competence of the German federal states

Art. 8 and Art. 9 of the Directive concern the right to access victim support services and the support from such victim support services. This is a subject matter that mainly falls under the competence of the German federal states. In practice, Germany already has a good network of victim support services (e.g., Weisser Ring e.V.)⁹³. Statistics show that there are at least 1360 different institutions that deliver victim support services in the country.⁹⁴ However, there is still room for improvement. Not all states have the same number of institutions and same level of support services. Some of them are specialized, some are not. Often the funding structure varies greatly. Some of the institutions are funded by the federal states, some by the communes, and others by private institutions and persons.

Chapter 3 – Participation in Criminal Proceedings

Chapter 3 of the Directive did not require any further implementation because the national law already covered all of the requirements.

The right to be heard (Art. 10 of the Directive) is implied in the language of sec. 69 (examination as to subject matter) and sec. 257c (3) StPO (negotiated agreement between court and participants). Furthermore, under certain circumstances, a victim has the right to join as a private accessory

⁹² Ferber, Stärkung der Opferrechte im Strafverfahren – Das 3. Opferrechtsreformgesetz, NJW 2016, p. 279 (280).

⁹³ Cf. Müller-Piepenkötter, Die EU-Opferschutz-Richtlinie 2012/29/EU – Handlungsbedarf bei Unterstützungsdiensten in Deutschland, NK Neue Kriminalpolitik, Jahrgang 28 (206), Heft 1, p. 9-14.

⁹⁴ Cf. Müller-Piepenkötter, Die EU-Opferschutz-Richtlinie 2012/29/EU – Handlungsbedarf bei Unterstützungsdiensten in Deutschland, NK Neue Kriminalpolitik, Jahrgang 28 (206), Heft 1, p. 9-14.

prosecutor.⁹⁵ In such a position, he or she can also present evidence under sec. 397 StPO. The requirement to take into account a child's age and maturity is covered by no. 19 of the Guidelines for criminal proceedings and fine proceedings (*Richtlinien für das Strafverfahren und das Bußgeldverfahren*; the "RiStBV").

All rights provided under Art. 11 of the Directive (rights in the event of a decision not to prosecute), are covered by sections 170 (2) and 172 StPO (proceedings to compel public charges), and sec. 400 para. 1 and 2 StPO (private accessory prosecutor's right to appellate remedy) for a victim that joins as a private accessory prosecutor.

The right to safeguards in the context of restorative justice services (Art. 12 of the Directive) is covered by sec. 46a of the German criminal code (*Strafgesetzbuch*, the "StGB"), and sections 136 (1), 153a (1) and 155a StPO. According to sec. 155a StPO, an agreement may not be accepted against the express will of the aggrieved person.

Similarly, Art. 13 to Art. 17 of the Directive are covered by the already existing national law, in particular sec. 397a StPO (legal aid) and section 403-406 StPO (compensation for aggrieved person).

Chapter 4 – Protection of victims and recognition of victims with specific protection needs

The symbolic character of sec. 48(3) StPO

To comply with Art 18 (the right to protection) and Art. 22 (individual assessment of victims to identify specific needs) of the Directive, the German legislator amended sec. 48 StPO by adding a third paragraph which sets out an obligation for the courts to determine at all times if the victim needs specific protection. This applies in the course of the proceedings, hearings and all other court and investigation activities. According to sec. 161a (1) and sec. 163 (3) StPO, this also applies to the actions by the police and the public prosecutor. Sec. 48 (3) StPO makes clear, that all personal circumstances and also the circumstances and the kind of the criminal act that was committed have to be taken in account. In particular, it has to be determined (i) if measures according to sec. 168e (separate examination) or sec. 247a (witness examination in another place) are necessary due to an imminent risk of serious detriment to the well-being of the witness; (ii) the public may be excluded to prevent the violation of interests meriting protection (sec. 171b (1)

⁹⁵ Sec. 395 (1) and (2) StPO: (1) Whoever is aggrieved by an unlawful act pursuant to

1. sections 174 to 182 of the Criminal Code,
 2. sections 211 and 212 of the Criminal Code, that was attempted,
 3. sections 221, 223 to 226a and 340 of the Criminal Code,
 4. sections 232 to 238, section 239 subsection (3), sections 239a and 239b, and section 240 subsection (4) of the Criminal Code,
 5. section 4 of the Act on Civil Law Protection against Violent Acts and Stalking,
 6. section 142 of the Patent Act, section 25 of the Utility Models Act, section 10 of the Semi-Conductor Protection Act, section 39 of the Plant Variety Protection Act, sections 143 to 144 of the Trade Mark Act, sections 51 and 65 of the Designs Act, sections 106 to 108b of the Copyright and Related Rights Act, section 33 of the Act on the Copyright of Works of Fine Art and Photography, and sections 16 to 19 of the Act against Unfair Competition
- may join a public prosecution or an application in proceedings for preventive detention as private accessory prosecutor.

The same right shall vest in persons 1. whose children, parents, siblings, spouse or civil partner were killed through an unlawful act, or 2. who, through an application for a court decision (Section 172), have initiated the preferment of public charges.

(Source of English translation: https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p2240).

GVG); or (iii) to what extent certain questions that concern facts that may dishonour the witness or a person who is his relative or that concern his or her personal sphere of life must not be asked. However, these rights already existed under the German law before the transposition of the Directive. Therefore sec. 48 (3) StPO is deemed to have only a symbolic character, and does not change current law or practice.⁹⁶ The protection that is required under chapter 4 of the Directive was already covered by existing German law in the acts that relate to criminal procedure law (e.g., sec. 68 (3) StPO⁹⁷).

Articles for which no amendments were required

Art. 20 of the Directive provides for the protection of victims during criminal investigations. In particular, the number of interviews of victims needs to be kept to a minimum and victims may be accompanied by a person of their choice. No. 5 RiStBV sets out that the interviews shall be conducted without unjustified delay. The possibility and the requirement to keep the number of interviews to a minimum are achieved through sections 58a StPO (examination by audio-visual medium) and 255a StPO (showing audio-visual recordings). Sec. 406f (2) StPO provides that at the examination, a person whom the victim trusts who has appeared at the examination, shall, at the victim's request, be permitted to be present. Medical examinations have to be kept to a minimum according to Art. 20 (d) of the Directive. This is covered by sec. 81c (1) StPO, which states that persons other than the accused, who may be called as witnesses, may be examined without their consent only insofar as establishing the truth involves ascertaining whether their body shows a particular trace or consequence of a criminal offence.

In addition, everything that is required under Art. 21 of the Directive (right to protection of privacy), was already covered by national law before the transposition of the Directive, e.g. sections 68 (2)-(5), 200 (1), 222 (1) and 475 StPO. Sec. 169 GVG states that audio and television or radio recordings as well as audio and film recordings intended for public presentation or for publication of their content shall be inadmissible.

Art. 23 of the Directive sets out (i) protection measures during criminal investigations to victims with specific protection needs, and (ii) protection measures during court proceedings for such victims. No. 220 RiStBV requires that the physical investigation of victims of sexual violence is to be conducted by someone of the same sex. Measures to avoid visual contact between victims and offenders are covered by sec. 247a StPO, which states that if there is an imminent risk of serious detriment to the well-being of the witness where he or she is to be examined in the presence of those attending the main hearing, the court may order that the witness remain in another place during the examination. A simultaneous audio-visual transmission of the testimony shall be provided in the courtroom. Moreover, sec. 58b StPO states that the examination of a witness outside the main hearing can be effected in such a way that the witness is located in another place than the person being examined, and the examination is simultaneously transmitted audio-visually to the place where the witness is located and to the examination room. Sec. 68a (1) StPO covers Art. 23 (3) (c) of the Directive, while sec. 171b GVG (see above) covers what is required under Art. 23 (3) (d).

⁹⁶ Ferber, *Stärkung der Opferrechte im Strafverfahren – Das 3. Opferrechtsreformgesetz*, NJW 2016, p. 279.

⁹⁷ Sec. 68 (3) StPO: If there is well-founded reason to fear that revealing the identity or the place of residence or whereabouts of the witness would endanger the witness' or another person's life, limb or liberty, the witness may be permitted not to provide personal identification data or to provide such data only in respect of an earlier identity.

It is worth mentioning sec. 24 (1)-(2) GVG, which states that in criminal matters, the local courts shall have jurisdiction unless the public prosecution office prefers charges before the regional courts due to the particular need for protection of persons aggrieved by the criminal offence who might be considered witnesses.

Furthermore, Art. 24 of the Directive (right to protection of child victims during criminal proceedings) did not require any further implementation by the German legislator, because all of the protections, measures and rights were already covered by the law. For example, the following sections offer a strong protection of victims who are under the age of 18:

Sec. 58a (1) StPO: The examination of a witness may be recorded on an audio-visual medium. The examination shall, after evaluation of the relevant circumstances, be recorded and conducted as a judicial examination if the interests meriting protection of persons of less than 18 years of age as well as of persons who as children or juveniles have been aggrieved as a result of one of the criminal offences designated under Section 255a (2) StPO can thus be better safeguarded.

Sec. 255a (2) StPO: In proceedings relating to criminal offences against sexual self-determination (sections 174 to 184g StGB) or against life (sections 211 to 222 StGB) or for ill-treatment of an individual placed in the charge of another (section 225 StGB) or to criminal offences against personal liberty pursuant to sections 232 to 233a of the StGB, the examination of a witness under 18 years of age may be replaced by the showing of an audio-visual recording of his previous judicial examination if the defendant and his defence counsel were given the opportunity to participate in such examination. This shall also apply to witnesses who have been aggrieved by one of these criminal offences and were under the age of 18 at the time of the offence.

Articles containing subject matter falling under the competence of German states

The means of protection that are related to court premises (Art. 19 (2) and Art. 23 (2) of the Directive) as well as the requirement that interviews with the victim shall be carried out by or through trained professionals (Art. 23 (2) of the Directive) fall under the competence of the German federal states. In practice, many premises already offer these options.

Chapter 5 – Other Provisions

Art. 25 of the Directive concerns the training of practitioners to learn how to deal with victims. The transposition of the law regarding training of public prosecutors, police and judges falls under the competence of federal each state. It would go beyond the scope of this memo to conduct an analysis of how the different federal states conduct the required training.

Psychosocial support during criminal proceedings

The Act came into force on 31 December 2015, with the exception of the new rules on psychosocial support during criminal proceedings, which will come into force on 1 January 2017. This will give the federal states enough time to build up an appropriate infrastructure. The law providing the right to psychosocial support is not required by the Directive, and therefore goes beyond what the Directive mandates. Such a right already existed in some federal states (e.g., in Schleswig-Holstein), but by far not in all. The aim of this law is to reduce the emotional and men-

tal pressure on the victim when being a part of criminal proceedings. It offers non-legal support during criminal proceedings to victims that need special protection to prevent secondary victimisation.

According to the new sec. 406g stop, victims have the option of getting psychosocial support during criminal proceedings. The person who will deliver this support is allowed to be with the victim during interviews and during the proceedings. The specific rules are set out in a separate act, the Act about the psychosocial support in criminal proceedings (*Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren*; the "PsychPbG"), which sets out the principles, the expected level of education and training of the person that delivers the support, and the remuneration. If the requirements of sec. 397a (1)⁹⁸ no. 4 and 5 StPO are fulfilled, a person trained in such support will be allocated to the victim, and if sec. 397a (1) no. 1-3 are fulfilled, such a person can be allocated to the victim for free. The decisive element is the need for special protection. This usually applies to children but also to disabled victims.⁹⁹ According to sec. 142 (1) StPO, which applies accordingly, the victim shall be given the opportunity to name a person of his choice that can provide psychosocial support before such a person is appointed. The victim must do so within a specified time limit. The presiding judge shall then appoint such person unless there is an important reason for not doing so.

It is important to point out that sec. 2 (2) PsychPbG clearly states that the psychosocial support has to be strictly separated from any legal support.

3. Application in Practice

There are no cases in Germany yet about the new law and changes to the existing law since the Act came into force.

Italy

1. Legislation and Regulations

1.1. Legislative Amendments

The Directive has been transposed into Italian law by the adoption of the Legislative Decree No. 212/2015, of December 15, 2015¹⁰⁰ ("Decree No. 212" or "the Decree"). Although the vast majority of guarantees provided by the Directive already existed in the Italian Code of Criminal Proce-

⁹⁸ Sec. 397 para 1 StPO: Upon application of the private accessory prosecutor an attorney shall be appointed as his counsel if he (1). has been aggrieved by a felony pursuant to sections 176a, 177, 179, 232 and 233 of the Criminal Code; (2). has been aggrieved by an attempted unlawful act pursuant to sections 211 and 212 of the Criminal Code or is a relative of a person killed through an unlawful act within the meaning of Section 395 subsection (2), number 1; (3). has been aggrieved by a felony pursuant to sections 226, 226a, 234 to 235, 238 to 239b, 249, 250, 252, 255 and 316a of the Criminal Code which has caused or is expected to cause him serious physical or mental harm; (4). has been aggrieved by an unlawful act pursuant to sections 174 to 182 and 225 of the Criminal Code and had not attained the age of 18 at the time of the act or cannot sufficiently safeguard his own interests himself; or (5). has been aggrieved by an unlawful act pursuant to sections 221, 226, 226a, 232 to 235, 237, 238 subsections (2) and (3), 239a, 239b, 240 subsection (4), 249, 250, 252, 255 and 316a of the Criminal Code and has not attained the age of 18 at the time of his application or cannot sufficiently safeguard his own interests himself.

⁹⁹ Ferber, Stärkung der Opferrechte im Strafverfahren – Das 3. Opferrechtsreformgesetz, NJW 2016, p. 279 (283).

¹⁰⁰ Decreto legislativo 15 dicembre 2015, n. 212, Attuazione della direttiva 2012/29/UE del Parlamento europeo e del Consiglio, del 25 ottobre 2012, che istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato e che sostituisce la decisione quadro 2001/220/GAI. (15G00221), available in Italian at: www.gazzettaufficiale.it/eli/id/2016/01/05/15G00221/sg

ture¹⁰¹, the Decree allows for significant improvements to the Code and its implementing rules, given the victims' important rights and powers. The new implementing measures focus particularly on the category of vulnerable victims.

The Decree is organized into four main areas, concerning respectively the right to information (Articles 3 to 7), the right to access to health care (Articles 8 and 9), the right to participate in criminal proceedings (Articles 10 to 17) and the right to received protection, individualized depending on any specific needs of protections (Articles 18 to 23).

In particular, the Decree amended eight articles of the Italian Code of Criminal Procedure, (i.e. Articles 90, 134, 190-*bis*, 351, 362, 392, 398 and 498) and added four new articles (i.e. Articles 90-*bis*, 90-*ter*, 90-*quater*, and 143-*bis*). In addition, an implementing regulation has been introduced into Italian legislation (i.e. Article 107-*ter* of the Decree No. 271¹⁰², implementing the Code of Criminal Procedure).

1.2. Entry into Force

The Decree No. 212 implementing the Directive in Italy came into force on January 20, 2016, more than a month after the transposition deadline set out in Article 27 of the Directive.

2. Specific Measures and Procedures Adopted

2.1. Detailed Description of Legislative Changes

Article 4 of the Directive

Article 4 of the Directive foresees the right for the victim to receive information from the first contact with a competent authority. To comply with the Directive, the Decree includes Article 90-*bis* within the Code of Criminal Procedure that provides a list of information that the victim is entitled to receive from the first contact with the authority. This information includes information regarding the status of the proceedings, how they can access legal aid, the conditions to access compensation, the conditions to qualify as a vulnerable victim, and the right to translation and interpretation.

Article 6 of the Directive

Article 6 of the Directive sets out the right for the victim to receive information about his or her case, which was not entirely covered by Italian legislation. In particular, to be in line with paragraph 5 of Article 6 of the Directive, the Decree adopted Article 90-*quater* of the Code of Criminal Procedure. The latter provides that victims must be informed immediately when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention.

In addition, the Decree modifies Article 107-*ter* of the Decree¹⁰³ implementing the Code of Criminal Procedure that provides for the victim who does not speak Italian, to use his or her own

101 Governo Italiano, Presidenza del Consiglio dei Ministri, Relazione, available in Italian at: http://www.governo.it/sites/governo.it/files/REL_ILL.pdf

102 Decreto legislativo 28 luglio 1989, n.271, available in Italian at: <http://www.altalex.com/documents/news/2013/11/11/disposizioni-di-attuazione-del-c-p-p-titolo-i-capo-i-iv>

103 See footnote 103.

language. It also recognises the victim the right to interpretation and translation of relevant documents.

Article 7 of the Directive

The right to interpretation and translation, as set out in Article 7 of the Directive, is captured by the new Article 143-*bis* of the Code of Criminal Procedure adopted by the Decree. In particular, it foresees that, when the victim does not understand or speak Italian, he or she has the right to be assisted by an interpreter for free. The victim is also entitled to receive all information regarding the proceedings and translation of documents that are essential to the exercise of his or her rights.

Article 18 of the Directive

The Decree modifies the wording of Article 498, 4-*quater* of the Code of Criminal Procedure, enhancing the rights of victims with specific protection needs. In particular, it foresees that, when a vulnerable victim needs to be heard, the judge can, at the request of the victim or his or her counsel, trigger the adoption of specific protection measures during the hearing. These specific protective measures are set out in Article 398, 5-*bis* of the Code of Criminal Procedure and involve, among others, the hearing taking place in a specialized facility, recording of the interrogation, etc.

Before the new wording was introduced, the specific protection measures were strictly applicable to specific offences (i.e. offences referred to in paragraph 4-*ter* of Article 498), whereas the new formulation allows for the Court to apply these measures to victims with specific protection needs in general, irrespectively of the alleged offence.¹⁰⁴

The Decree also modifies Article 392, 1-*bis* of the Code of Criminal Procedure in order to extend the application of the “incidente probatorio”¹⁰⁵ to victims with specific protection needs. In this sense, when the public prosecutor deems it convenient or at the request of the victim, the “incidente probatorio” applies to the victim’s testimony. In practice, due to the specific protection needs of the victim, his or her testimony will be taken before than it would have been taken in normal circumstances.

Article 19 of the Directive

In addition to the Italian provisions that were already in line with the Directive, the Decree modifies Article 190-*bis* of the Code of Criminal Procedure, which regards the general provision of the right to evidence. The modification extends the limits of the right to evidence to victims with specific protection needs. Before the modification the admissibility of the right to prove was only applicable when the facts or circumstances of the first testimony had changed or when the judge or one of the parties considered it necessary based on specific needs. This provision was already applicable to child victims under sixteen.¹⁰⁶

104 Diritto Penale Contemporaneo, Nuove prospettive per le vittime di reato nel procedimento penale italiano, Martina Cagossi, 19 Gennaio 2016, available in Italian at: http://www.penalecontemporaneo.it/area/3-/-/-/4416-nuove_prospettive_per_le_vittime_di_reato_nel_procedimento_penale_italiano/

105 “Incidente probatorio” refers to a concept that is specific to the Italian legal system and is set out in Article 392 of the Italian Code of Criminal Procedure. Such figure allows for the public prosecutor, at his request or at the victim’s request, to ask for an admission of evidence earlier in the trial in order to protect the genuineness of the evidence at stake. It is an extraordinary procedure that is rare in practice. Definition available in Italian at: <http://www.studiocataldi.it/guide-procedura-penale/incidente-probatorio.asp>

106 See footnote 105.

Article 22 of the Directive

- Paragraphs 1, 2, 3, 5, 6 and 7

Article 22 of the Directive, which is the individual assessment of victims in order to identify specific protection needs, was not captured within any Italian regulation. Therefore, the Decree includes Article 90-*quater* in the Code of Criminal Procedure to entirely comply with Article 22 of the Directive. Article 90-*quater* defines the conditions to qualify as a victim with specific protection needs. These conditions include whether it is a violent crime, whether it involves terrorism, organized crime, human trafficking or it is due to any sort of discrimination, and whether the victim is emotionally, psychologically or financially dependent to the offender.

It could be argued that the Italian legislator was too rigid when implementing the individual assessment into its legislation. In this sense, the spirit of the Directive seems to be the instauration of a general safeguard for the vulnerable victims, whereas the Italian legislator has established fixed criteria in order to hold this status, failing to provide a flexible assessment.¹⁰⁷

Article 23 of the Directive

- Paragraph 1

The right to protection of victims with specific protection needs during criminal proceedings, as set out in Article 23 of the Directive was not entirely captured within the Italian legislation. For this reason, and according to the explanatory memorandum of the Italian Government¹⁰⁸, to fully comply with the Directive Articles 398 5-*quater* and 351 1-*ter* have been included in the Code of Criminal Procedure and Article 498-*quater* has been modified.

The modification of Article 498-*quater* is explained above, in the detailed description of modification of Article 18 of the Directive. Article 498-*quater* covers both articles. Article 398 5-*quater* states that when the "incidente probatorio" is applicable to a victim with special needs, the provisions of Article 498-*quater* will apply.

- Paragraph 2

Paragraph 1-*ter* has been included in Article 351 by the Decree. Under this Article, judicial police can be helped by an expert appointed by the public prosecutor to carry out interviews with the vulnerable victim. This is in line with paragraph 2(b). It will enable the expert to ensure that interviews with the victim are kept to a minimum and to avoid contact between the victim and the offender. The latter has been also included by the Decree in paragraph 1-*bis* of Article 362 of the Code of Criminal Procedure.

Article 24 of the Directive

As regards the right to protection of child victims during criminal proceedings, the Italian legislation was in line with paragraphs 1(b) and (c) but the Decree has introduced new articles in order to comply with paragraphs 1(a) and 2 of Article 24.

¹⁰⁷ For this line of argumentation see La tutela della vittima del reato nel processo penale italiano e francese: riflessioni comparate sull'attuazione della direttiva 2012/29/EU, Caroline Peloso, available in Italian at: <http://rivista.eurojus.it/la-tutela-della-vittima-del-reato-nel-processo-penale-italiano-e-francese-riflessioni-comparate-sullattuazione-della-direttiva-201229ue/>

¹⁰⁸ Direttiva 2012/29/EU del Parlamento Europeo e del Consiglio del 25 ottobre 2012 che istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato e che sostituisce la decisione quadro 2001/220/GAI, Tabella di concordanza, available in Italian at: <https://www.giustizia.it/giustizia/protected/1177015/0/def/ref/SAN1176988/>

- *Paragraph 1(a)*

Rules for audiovisual recordings are set out in the new Article 134 of the Code of Criminal Procedure that completes Article 139 of the same code. Article 139 provides that all interviews may be audiovisually recorded and such recordings may be used as evidence in criminal proceedings. Article 134 sets out specific rules for the documenting and recording procedures. In particular, it includes that, when documenting an act by written is not deemed sufficient, an audiovisual recording must be included.

- *Paragraph 2*

A paragraph 2-*bis* was added to Article 90 of the Code of Criminal Procedure. It foresees that where the age of a victim is uncertain and there are reasons to believe that the victim is under fourteen, the victim shall be presumed to be a child.

2.2. Existing Italian Provisions in compliance with the Directive

Before the implementation of the Directive into national law, several Italian provisions were already in line with Chapter 4 of the Directive on the protection of victims and recognition of victims with specific protection needs.

Article 18 of the Directive

Article 18 of the Directive foresees the right to protection, which was partially covered by the Italian Code of Criminal Procedure. In particular, Article 498 4-*ter* of the Italian Code of Criminal Procedure provides for special methods during hearings to victims of the specific crimes captured in several articles of the Italian Criminal Code¹⁰⁹ (i.e. child prostitution, family violence, human trafficking). In this sense, Article 498 4-*ter* of the Code of Criminal Procedure establishes that the examination of a child victim or of a mentally ill adult will be, at his or her defender's request, carried out using an intercom system. As explained above in the detailed legislative changes regarding Article 18, Article 498 4-*ter* must be read in conjunction with Article 498 4-*quater*, as modified by the Decree.

Article 19 of the Directive

Article 19 of the Directive foresees the right to avoid contact between the victim and the offender. In particular, Member States should enable the avoidance of contact between victims and the offender within the premises where criminal proceedings are conducted. This is captured by Article 149 of the provision implementing the Code of Criminal Procedure, which provides that any contact between the person testifying and other parties should be avoided. This provision is completed by Article 21, paragraph d, of the Regulation implementing the Code of Criminal Procedure¹¹⁰, which sets out that the public official should follow the instructions of the judge. As analysed in the explanatory memorandum of the Italian Government¹¹¹, among these measures are included measures regarding separate waiting areas for victims.

¹⁰⁹ Articles 572, 600, 600-*bis*, 600-*ter*, 600-*quater*, 600-*quinquies*, 601, 602, 609-*bis*, 609-*ter*, 609-*quater*, 609-*oc-ties* and 612-*bis* of the Italian Criminal Code, available in Italian at: <http://www.altalex.com/documents/codici-altalex/2014/10/30/codice-penale>

¹¹⁰ D.M. 30 settembre 1989, n.334, regolamento per l'esecuzione del codice di procedura penale, articolo 21, available in Italian at: <http://www.altalex.com/documents/news/2013/04/16/regolamento-per-l-esecuzione-del-codice-di-procedura-penale>

¹¹¹ See footnote 109.

In addition, the explanatory memorandum of the Italian Government points out that, according to Article 398 5-*bis* and 5-*ter* of the Code of Criminal Procedure, the judge has the discretion of determining the place, timing and modalities of the “incidente probatorio”. This complies with the Directive in the sense that its rationale is preventing secondary and repeated victimisation.

Article 20 of the Directive

The right to protection of victims during criminal investigations as set out in Article 20 of the Directive is in line with internal provisions of Italian law.

- *Paragraph (a)*

According to the explanatory memorandum of the Italian Government, interviews are not always necessary. In this sense, when it is deemed necessary, interviews are carried out during the preliminary investigation by the judicial police or the public prosecutor.

- *Paragraph (b)*

According to the explanatory memorandum of the Italian Government, Italian provisions allows for the number of interviews with victims being kept to a minimum. Indeed, the concerned authority has the discretion to determine the number of hearings that are strictly necessary during the preliminary investigation. Therefore, it is competence of the judge to resolve where an additional interview is needed, but it is presumed that he or she will keep them to a minimum.

- *Paragraph (c)*

The explanatory memorandum of the Italian Government clarifies that Italian legislation foresees that victims must always be accompanied by the person of their choice. The only exception set out is the situation where the absolute secrecy of the investigation is incompatible with it.

- *Paragraph (d)*

In line with paragraph (d) of Article 20 of the Directive, Italian provisions foresee that medical examinations can be carried out with the victims’ agreement or in cases of special urgency, as set out in Articles 359-*bis* and 224-*bis* of the Code of Criminal Procedure. In this sense, a medical examination of the victim can be carried out when there is a reason to believe that a delay in the medical examination can result in serious or irreparable consequences for the investigation.

Article 21 of the Directive

The right to protection of privacy is deeply safeguarded by Italian legislation, in particular by Articles 21, 22 and 50 of the Legislative Decree No. 196 of June, 30 2003¹¹².

First, Article 21 of the above mentioned decree sets out the principles applying to the processing of judicial data. In particular, processing of judicial data is only permitted where expressly authorized by law or in situations to aim at preventing organized crime.

¹¹² Decreto legislativo 30 giugno 2003, n. 196, Codice in materia di protezione dei dati personali, articoli 21 e 22, available in Italian at: <http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/export/1311248> and in English at: <http://194.242.234.211/documents/10160/2012405/Personal+Data+Protection+Code+-+Legislat.+Decree+no.196+of+30+June+2003.pdf>

Second, Article 22 of the same decree foresees the principles applying the processing of sensitive data as well as judicial data. This article sets out strong measures where public authorities are processing sensitive data in order to prevent any data dissemination. These measures involve the use of encryption techniques, identification codes or any other system to make the data temporarily unintelligible. This article imposes on public authorities a fair obligation of care when it comes to the manipulation of judicial data.

Third, Article 50 of the same decree specifically protects the right of privacy of minor victims, as it prohibits the publication and dissemination by any means of any report or image allowing a minor to be identified. This prohibition also applies for minors involved in judicial proceedings of a non-criminal nature and is covered by Article 13 of Decree the No. 448 of September, 22 1988.

In addition to the above, Articles 194 and 472 of the Code of Criminal Procedure respectively provide limits for the interviews with the victim and where a closed-doors hearing may occur. Both articles aim at enhancing the right to protection of privacy of the victims during criminal proceedings.

Article 22 of the Directive

- Paragraph 4

As regards the specific protection needs in place to protect child victims during criminal proceedings, the Italian legislation counts on two guarantees: the Juvenile Court (tribunale per i minorenni) and a specialized assistance programme for minor victims of human trafficking.

Article 609-*decies* of the Italian Criminal Code sets out the procedures and ways of communicating to the Juvenile Court when a child is victim of one of the crimes captured in Articles 600, 572, 609-*ter* and 612-*bis* of the Code Criminal Code. In particular, Article 609-*decies* foresees psychological assistance and support for child victims during all stages of the proceedings. Specialized victim associations and foundations are to carry out this assistance. In addition, Article 609-*decies* ensures that, in any event, the child victim should be supported by public and judicial authorities as well as by the services established by local entities that are trained for this specific purpose.

Article 13 of Law No. 228/2003¹¹³, concerning the assistance to victims of human trafficking, foresees a specialized assistance programme for minor victims of human trafficking. In this sense, this programme aims at guaranteeing proper conditions regarding accommodation, food and health care for victims of human trafficking.

Article 23 of the Directive

- Paragraph 3

As explained above, existing Italian legislation covers the measures that shall be available for victims with specific protection needs during court proceedings (see narrative for Articles 19 and 20). In addition it must be noted that Articles 9, 13 and 16-*ter* of Law No. 82 of March 15, 1991¹¹⁴ provide the conditions for the applicability of special measures of protection and their content. These measures include assistance, economic compensation (if applicable) and protection of the victim's family.

¹¹³ Legge 11 agosto 2003, n. 228, Misure contro la tratta di persone, available in Italian at: <http://www.camera.it/parlam/leggi/03228l.htm>

¹¹⁴ Decreto-legge 15 gennaio 1991, n.8, convertito con modificazioni, dalla legge 15 marzo 1991, n.82, available in Italian at: www.gazzettaufficiale.it/eli/id/1991/03/16/091A1317/sg

Article 24 of the Directive

As mentioned above, the Italian legislation was already compliant with paragraph 1(b) and (c) of Article 24 regarding the right to protection of child victims during criminal proceedings. In particular, Article 121 of the Code of Criminal Procedure foresees the right to representation of the child victim by a special representative, if he or she does not have a legal representative or is in conflict with his or her legal representative. It must be noted that Article 121 refers to the minor victim as being under fourteen or to any person who is mentally ill.

Article 25 of the Directive

Several provisions within the Italian legislation cover the training for practitioners, in particular, training for judges, judicial experts, lawyers and judicial police.

First, training for judges is provided in the Decree No. 26 of January 30, 2006¹¹⁵, which foresees the Superior Council of the Magistracy (*Scuola superiore della magistratura*). This entity provides professional training to judges and magistrates, in addition to perform teaching and research tasks. The Council frequently organizes refresher courses and trainings. It must be underscored that, the wording of the Decree remains too general in comparison with the victim-oriented training required by Article 25 of the Directive.

Second, Article 7 of Law No. 228 of August, 11 2003¹¹⁶ regarding measures against human trafficking, foresees a unit of judicial experts in each court. Each of these units counts with judicial experts within different fields (i.e. legal medicine, psychiatry, etc).

Third, Article 14 of the above-mentioned law sets out refresher professional measures as well as specialized courses for lawyers.

Fourth, Article 327 of the Code of Criminal Procedure provides for the public prosecutor the capacity to order specialized training for judicial police in the context of a given investigation.

2.3. Description of other measures

In Italy, a vast network of institutions and victim support centres is in place throughout the territory. Most of them focus on gender-based violence or child victims and aim at supporting victims but also at preventing risks whenever possible.

i. Diritto in rosa

The association *Diritto in rosa*¹¹⁷ is an information point that provides legal and psychological assistance for women and minors. It mainly focuses on victims of gender-based violence, physical and psychological violence as well as victims of sexual offences. In particular, it counts with a strong legal department that specializes in family law, minors rights, criminal law and labour law.

ii. Italian Bar Association in Defense of Family and Minor Victims

¹¹⁵ Decreto legislativo 30 gennaio 2006, n.26, Istituzione della Scuola superiore della magistratura, available in Italian at: <http://www.camera.it/parlam/leggi/deleghe/06026dl.htm>

¹¹⁶ See footnote 113.

¹¹⁷ *Diritto in rosa*, Associazione per la tutela dei diritti della donna, official web site: <http://www.dirittoinrosa.com/>

The Italian Bar Association in Defense of Family and Minor Victims (Associazione Italiana degli Avvocati per la famiglia e per i minori, AIAF)¹¹⁸ is an association of lawyers specialized in family law. It was created in 1993 but is now active in most of the regions of the Italian territory. Its primary aim is to influence Italian legislation regarding family law and the right and protection of children and, ultimately, fight for an amendment of the actual Italian legislation.

Furthermore, it carries out an educational duty in the family law field, which consists of researching and promoting the rights of children by giving conferences, speeches and seminars with the latest legal developments in the field. Importantly, the AIAF has established a School of professional training in the field of family law and children protection. It usually trains lawyers that are active within this field of law.

iii. *Project On the Road (ONLUS)*

On the Road¹¹⁹ is a project financed by the Directorate General for Home Affairs of the European Commission. Its main objective is to better understand the identification of minors that are at risk of being victims of human trafficking. In addition, it aims at enhancing the capacities of vulnerable children to evaluate whether there is a risk. The project is not only active in Italy but also in the Netherlands and Romania.

3. Case Law and Reported Data

The legislation implementing the Directive, i.e. Decree No. 212/2015, entered into force on January 20, 2016. Since its entry into force, three cases of the Italian Supreme Court of Appeal (Corte suprema di cassazione) refer to the Directive.

First, two of the rulings¹²⁰ mention Article 22 of the Directive regarding the individual assessment of victims to identify specific protection needs. These rulings shed light on the victim's vulnerability indices, which evaluation has to be carried out taking into account the personal characteristics of the victim as well as the nature and circumstances of the offence. In particular, a highlight is that the form or content of the threat is irrelevant as long as it conveys fear and coerces the will of the victim. Other aspects that must be taken into account are the objective circumstances, the particularities of the offender's personality, the injustice of the alleged claim, and the particularities of the victim's personality, victim that is presumed to be an impressionable person.

Second, the other ruling¹²¹ of the Italian Supreme Court of Appeal refers to Article 6 of the Directive, regarding victims' right to receive information about their case. Nevertheless, this ruling just mentions the content of Article 6 as set out in the Directive, but does not expand or shed any light on the interpretation of its content. Therefore it is mentioned just for informative purposes.

118 AIAF, Associazione Italiana degli Avvocati per la famiglia e per i minori, official web site: <http://www.aiaf-avvocati.it/l-aiaf/>

119 On the Road, official web site: <http://www.ontheroadonlus.it/cosa-facciamo/progetti/>

120 Corte suprema di cassazione, Sezione Seconda Penale, Num. 2702, Anno 2016, available in Italian at: <http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpen&id=./20160122/snpen@s20@a2016@n02702@tS.clean.pdf> and Corte suprema di cassazione, Sezione Seconda Penale, Num. 6569, Anno 2016, available in Italian at: <http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpen&id=./20160219/snpen@s20@a2016@n06569@tS.clean.pdf>

121 Corte suprema di cassazione, Sezione Seconda Penale, Num. 19704, Anno 2016, available in Italian at: <http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpen&id=./20160513/snpen@s20@a2016@n19704@tS.clean.pdf>

Netherlands

1. Legislation and Regulations

1.1. Implementation of the Directive

On April 12, 2016, the Dutch House of Representatives (Tweede Kamer) adopted draft legislation (the “legislative proposal” or the “proposal”)¹²² that provides for victims of crime to “immediately receive all information about their rights” such as their options for protection and legal counsel, “during their first contact with the police and public prosecutions department.”¹²³ In addition, they will be given advice on the possibilities for compensation and how the reporting on the case is to proceed.¹²⁴

The legislative proposal, which still needs to be approved by the Senate (Eerste Kamer), is scheduled for first discussion in the relevant committee of the Senate on May 24, 2016.¹²⁵

1.2. Legislative Amendments

The victim already has a strong legal position in the Netherlands, but now this position will be further extended.¹²⁶ The rights of victims will apply from the moment of reporting until the case against the suspect has been settled by the court.

Under the current proposal, police, the public prosecutions departments, and other organizations are to pay more attention in practice to contact with victims who are minors. To that end, part of the content of training courses of employees who have contact with young victims will be on the needs of such minors. An important new aspect of the draft legislation is that an individual assessment may be made of a victim’s situation, in order to determine whether they are eligible for special protective measures.¹²⁷

Of the provisions in Chapter 4 on Protection of Victims and Recognition of Victims with Specific Protection Needs (i.e. Articles 18 to 24) of the Directive, only Article 20(c) required a legislative amendment to the Code of Criminal Procedure. All other provisions in Chapter 4 of the Directive were already covered by existing Dutch legislation. However, to the extent that further implementing measures may be required, the Dutch legislator intends to grant the Government the power to adopt governmental decrees.

1.3. Entry into Force

The legislative changes implementing the Directive will enter into force once they have been approved by the Senate. The legislative proposal is scheduled for first discussion in the relevant committee of the Senate on May 24, 2016.

122 The proposal as adopted by the House of Representatives is available in Dutch at: https://www.eerstekamer.nl/behandeling/20160412/gewijzigd_voorstel_van_wet_3/document3/f=/vk3dft46wyzt.pdf.

123 Library of Congress, Global Legal Monitor, Netherlands: Crime Victims’ Rights Enhanced, available at: <https://www.loc.gov/law/foreign-news/article/netherlands-crime-victims-rights-enhanced/>

124 Ministry for Security and Justice website, House of Representatives agrees with extra rights for victims in criminal proceedings, April 12, 2016, available at: <https://www.government.nl/latest/news/2016/04/12/house-of-representatives-agrees-with-extra-rights-for-victims-in-criminal-proceedings>

125 Dutch Senate website, 34, 236 Implementation Directive on minimum standards on the rights, support and protection of victims of crime, available in Dutch at: https://www.eerstekamer.nl/wetsvoorstel/34236_implementatie_riichtlijn#p1

126 See footnote 125.

127 See footnote 125.

2. Specific Measures and Procedures Adopted

2.1. Detailed Description of Legislative Changes

Article 20(c) of the Directive

As mentioned previously, of the provisions in Chapter 4 of the Directive, only Article 20(c) required a legislative amendment to the Dutch Code of Criminal Procedure.¹²⁸ The amendments all relate to Article 51c of that Code, the current version of which reads as follows:

51c

1. *The victim may have legal representation.*
2. *The victim may be represented at the court session by a lawyer, provided this lawyer declares that he has been given express authorisation, or by an authorised representative who has been given a special written power of attorney for that purpose.*
3. *If the victim is not fluent or sufficiently fluent in the Dutch language, he may have the assistance of an interpreter.*

Section D of the legislative proposal implementing the Directive amends Article 51c, which deals with the victim's right to be assisted, as follows.

First, Article 51c, first paragraph of the Code now specifies that the victim may be accompanied, both "during the preliminary investigation and during the court proceedings."

Second, a new second paragraph in Article 51c provides that the victim may be accompanied by a lawyer, his or her legal representative and by a person of his or her choice. A new fourth paragraph provides that the police, the prosecutor, the examining magistrate or the judge is, in the victim's interest, allowed to reject the victim's assistance by a legal representative or a person of his or her choice or to reject the victim's representation by a legal or an authorized representative. Such a refusal must be motivated.

Third, a new sixth paragraph in Article 51c confers the power to the government to adopt specific rules concerning the assistance by a translator as well as the victim's assistance in terms of understanding and being understood in his or her necessary contacts with the police, the prosecutor's office and the judge. It is to be noted that this amendment appears to relate more to Articles 3 and 7 of the Directive regarding respectively the right to understand and to be understood and the right to interpretation and translation.

Articles 18, 19, 20(a), (b) and (d), 22, 23 and 24 of the Directive

As will be shown below, many of the Directive's Articles listed above are at least partially covered by existing Dutch legislation. To the extent that further implementing measures may be required, the Dutch legislator intends to grant the Government the power to adopt governmental decrees. Indeed, the legislative proposal inserts a new Article 51aa in the Code of Criminal Procedure, of which paragraph 3(c) confers the power upon the government to adopt measures by way of

¹²⁸ Dutch Code of Criminal Procedure, available in English at: http://www.ejtn.eu/PageFiles/6533/2014%20seminars/Omsenie/WetboekvanStrafvordering_ENG_PV.pdf

governmental decrees aimed at “the protection of victims, including in particular minors, and their family members.” It remains to be seen to what extent and how the government will make use of this power.

Article 21 of the Directive

Article 21 regarding the right to protection of victims with specific protection needs during criminal proceedings is the only Article in Chapter 4 of the Directive not requiring legislative amendments. The Dutch legislator is of the view that existing legislation sufficiently covers the issues raised in this Article.

2.2. Existing Dutch provisions in compliance with the Directive

Article 18 of the Directive

In the explanatory memorandum accompanying the legislative proposal¹²⁹ the Dutch Minister of Security and Justice, Minister Van der Steur, lists the existing provisions in Dutch law addressing the right to protection, as set out in Article 18 of the Directive:¹³⁰

- Choice of domicile: the complainant has the option to include an address that differs from his or her actual address in the report drawn up by the police.
- Complaint by number: instead of including the complainant’s name and address, the report contains a numeric reference.
- Limited anonymous witness: questions about the witness’ identity are not allowed but the witness can be summoned to the court (Article 190, third paragraph of the Code of Criminal Procedure).
- Threatened witness: the witness receives a special status, his or her identity is hidden and he or she may not have to appear before the court during the proceedings (Article 226a of the Code of Criminal Procedure).
- Anonymous crime reporting: hotline allowing for the anonymous reporting of information relating to serious crimes.
- Possibility for the examining magistrate to prohibit the suspect and/or his lawyer from attending the hearing (Article 226d of the Code of Criminal Procedure).
- Possibility for the public prosecutor to call a witness requested by the suspect or the judge (Article 264 of the Code of Criminal Procedure).
- Possibility for the court to decline to call a witness who did not appear (Article 288 of the Code of Criminal Procedure).

¹²⁹ Tweede Kamer der Staten-Generaal, Implementatie van richtlijn 2012/29/EU van het Europees parlement en de Raad van 25 oktober 2012 tot vaststelling van minimumnormen voor de rechten, de ondersteuning en de bescherming van slachtoffers van strafbare feiten, en ter vervanging van Kaderbesluit 2001/220/JBZ (PbEU 2012, L 315), Memorie van Toelichting, available at: https://www.eerstekamer.nl/behandeling/20150624/memorie_van_toelichting_3/document3/f=/vjv6lyfwi1by.pdf

¹³⁰ An overview of the existing measures in Dutch law for the protection of victims can be found in the report entitled “Maatregelen ter voorkoming van secundair en herhaald slachtofferschap” by the Verwey-Jonker Instituut, dated January 2014, available at: http://www.verwey-jonker.nl/doc/vitaliteit/Maatregelen-ter-voorkoming-van-secundaire-en-herhaald-slachtofferschap_7401_web.pdf.

Article 19 of the Directive

In February 2012 the President of the Justice Council adopted a so-called model regulation concerning the appropriate environments for victims, which provides among other things that unwanted confrontations with the suspect are to be avoided and that the victim is allocated a specific seat in the court room. In order to avoid such confrontations, the court must at all times dispose of a separate waiting room where victims can be hosted. In every court room there is a predetermined space where victims can take a seat.

The Minister of Security and Justice specified in the explanatory memorandum that, in his view, Article 19 of the Directive also relates to the preliminary investigation carried out by the police. Where necessary, the Government can adopt governmental decrees pursuant to paragraph 3(c) of Article 51aa.

Article 20 of the Directive

- Paragraphs a and b

In his letter of July 5, 2013 to the President of the House of Representatives, the Minister of Security and Justice noted that his policy consists of offering an effective and user-friendly declaration process. A careful approach towards the victim is part of that policy. It is common that victims provide a declaration at the time of the complaint, in straightforward cases there will be no other declaration, in more complicated cases victims may have to be heard again.

- Paragraph d

In 2008 the College of General Prosecutors adopted a guidance document on victim support. The guidance document provides that the relevant investigator officer should advise the victim of a sexual offence to consult a doctor. If the victim does not give the authorisation to include his or her medical data in the investigation, then the investigator takes note of that in his report. Refusal to cooperate by the victim does not necessarily imply termination of the investigation. Where necessary, the Government can adopt governmental decrees pursuant to paragraph 3(c) of Article 51aa.

Article 21 of the Directive

In the explanatory memorandum the Dutch Minister of Security and Justice notes that Article 269, first paragraph, of the Code addresses Article 21, first paragraph, of the Directive in that it allows for the possibility for the court to order a hearing behind closed doors. This order can be given in the interest of the suspect, other parties or other individuals who are involved in the case.

The Dutch Council of Journalism has guidelines setting out the views of the Council regarding the social responsibility of journalists and requires journalists to always weight the interest of publication against the interest that can be harmed by publication. A person's privacy may not be invaded more than strictly necessary. Where it is foreseeable that a crime's details will cause additional harm to the victim or his or her close family members and those details are not necessary to communicate the seriousness or the consequences of the crime, those details should be left out. When a person is directly affected by a publication and that publication personally harms that person's interests, a complaint can be filed with the Council of Journalism, which will rule on the case.

Article 22 of the Directive

The explanatory memorandum does not refer to any specific Dutch legislation covering Article 22 of the Directive. Instead, the memorandum notes that, in order to implement Article 22, the Government will adopt one or more governmental decrees pursuant to paragraph 3(c) of Article 51aa and based on two studies commissioned by the Ministry.¹³¹

Article 23 of the Directive

The Dutch Code of Criminal Procedure covers a number of the measures set out in Article 23 of the Directive. One of these measures is captured in Article 269, paragraph 1 of the Code, which allows for the possibility for the court to order a hearing behind closed doors. This order can be given in the interest of the suspect, other parties or other individuals who are involved in the case.

Conversely, some of the measures included in Article 23 of the Directive are not entirely covered by Dutch legislation since the former is limited to certain victims or to specific criminal offences. Therefore, to be fully compliant with the Directive, the scope of these measures should be extended in the Netherlands. In particular, it applies to auditory and audio-visual recordings during interrogations. Where necessary, the Government can adopt governmental decrees pursuant to paragraph 3(c) of Article 51aa. Additionally, measures set out in paragraph 2 of Article 23 of the Directive, such as interviews being carried out in premises designed for this purpose or conducted by a person of the same sex as the victim are not covered by Dutch legislation. There are other types of measures in place, such as restraining orders or a system to monitor and protect the victim. Taking into account the above, the explanatory memorandum notes that the issue of protection needs to be further enhanced in Dutch legislation.

Article 24 of the Directive

The explanatory memorandum notes that the right to a lawyer for child victims during criminal proceedings, as set out in paragraph 1(b) and (c) of Article 24 of the Directive is covered by Article 253q in conjunction with Article 253r. Pursuant to these articles, if the child victim is not accompanied or is separated from his family during the criminal proceedings, the Court may appoint a temporary guardian. In practice, it is more likely that a guardian has been appointed at an earlier stage in the procedure because the parents do not have custody of the minor.

2.3. Additional Recent Legislation on Crime Victims' Rights

On April 26, 2016 the Dutch Senate adopted a legislative proposal put forward by the Minister of Security and Justice that gives victims of serious crimes the right to be heard in the court room, and to express, "for example, what they think about the guilt of a suspect and what the punishment should be."¹³² Formerly, the victims were only permitted to describe what the crime had meant to them personally.¹³³ The new law amends the Code of Criminal Procedure as well as the Damages Fund for Violent Crimes Act.

¹³¹ The first study is carried out by the Erasmus Universiteit and includes a quick scan of the literature concerning risk indicators of repeated victimhood, intimidation and retaliation. The second study, carried out by the Verwey-Jonker Instituut provides an overview of the existing measures in Dutch law for the protection of victims (see footnote 9).

¹³² See footnote 124.

¹³³ Ministry for Security and Justice website, Unlimited Right to Be Heard for Victims as from, April 12, 2016, available at: <https://www.government.nl/topics/crime-and-crime-prevention/news/2016/04/12/unlimited-right-to-be-heard-for-victims-as-from>.

i. Amendment of the Code of Criminal Procedure

The new law amends Article 51e of the Dutch Code of Criminal Procedure by adding a second paragraph setting out that the victim may exercise the right to make a verbal statement at a hearing if the offence is a serious offence which carries a statutory term of imprisonment of at least eight years, or is one of the other serious offences listed in the first paragraph of the same article.

The same right is recognized to the family and relatives of the child victim who may, jointly or separately, make a statement at the hearing about the impact that the criminal offences referred to in Article 51e, first paragraph, have had on them. In order to do so, the person concerned shall notify in writing to the public prosecutor his intention to make such statement before the start of the court session so that the public prosecutor invites him or her to appear at the hearing. It should be noted that this right can be limited by the judge who may deny or restrict the right of the father, mother or caretakers, to make a verbal statement during the hearing if he determines that this would be contrary to the minor victim's best interests.

ii. Amendment of the Damages Fund for Violent Crimes Act

The Damages Fund for Violent Crimes Act implements Directive 2004/80/EC relating to the compensation of victims of crime.¹³⁴ Its aim is to guarantee fair and appropriate State compensation to victims of violent intentional crimes and to ensure that compensation is easily accessible.

The legislative proposal broadens the scope of paragraph 1(b) of Article 3 of the Damages Fund for Violent Crimes Act in the sense that, payments from the Fund will also be made to the survivors of deceased victims of road traffic violations and of crimes of negligence.¹³⁵ In addition, it extends the time limit set out in Article 7(1) of the Act, according to which a compensation application may be submitted to the Fund "within three years of the day on which the crime in question was committed" to ten years.

iii. Rationale for the Amendments

According to the Ministry of Security and Justice, the amending law will serve to eliminate the differences that had formerly prevailed in courts' practice. In some cases, the victim was given the opportunity to comment on the perpetrator's sentence, but not in others, where the court adhered to the strict formulation of the law. The Ministry indicated that victims will be given assistance by various authorities, such as the Netherlands Victim Support group or lawyers specializing in victims' rights, before appearing in front of the court. In particular, the public prosecutor can discuss the case with the victim during the victim interview, to give him or her an idea of what he or she may expect at the hearing, from the interaction with the public prosecutor and from the final judgement.

Under the amending law, the Minister of Security and Justice shall send a report to the Parliament on the effectiveness and the impact of the law five years after its enactment.

¹³⁴ European Commission, Directorate General for Justice, Compensation, available in English at: http://ec.europa.eu/justice/criminal/victims/compensation/index_en.htm

¹³⁵ European Commission, Directorate General for Justice, Damages Fund for Violent Crimes Act, available in English at: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/national_law_cv_net_en.pdf

2.4. Victim Support in the Netherlands

i. Crime Victim Compensation Fund

The Violent Offences Compensation Fund (Schadefonds Geweldsmisdrijven) is a crime victim compensation program that provides financial compensation for victims of violent or personal crime resulting in serious psychological or physical injury.¹³⁶ Founded in 1976, the Compensation Fund is an autonomous division of the Ministry of Security and Justice. It assesses the application autonomously and is financed by general funds.¹³⁷

In addition to the victims themselves, surviving relatives of victims may be entitled to financial support for the costs of matters such as psychological assistance or non-economic damages. Parents, partners, children and siblings of the deceased may be eligible for compensation.¹³⁸

ii. Victim Support Netherlands

Victim Support Netherlands offers practical, emotional and legal support to victims of crime, disasters and traffic accidents as well as legal assistance for victims joining the criminal procedure as civil claimants.¹³⁹ Victim Support Netherlands is well established at a regional level, counting with 75 regional offices.

It primarily offers victim support of a non-legal nature but also provides assistance in claim settlements and legal procedures. In addition, Victim Support Netherlands is committed to improving the position and rights of victims in general and promotes the development of knowledge in this field.¹⁴⁰ In particular, it works with a victim panel contributing to extend research in the field and cooperates with the Ministry of Security and Justice as well as with universities.¹⁴¹

iii. CoMensha Foundation

CoMensha Foundation has regional and local networks for reception and assistance of victims of human trafficking providing information and various forms of support.¹⁴² It functions as the central coordinator for registration of and support to victims of human trafficking. CoMensha has regional and local networks for reception and assistance of victims of human trafficking corresponding to the respective police areas, provides information and advice to victims and provides assistance for obtaining social support. Additionally, CoMensha informs and advises governments and organizations by providing them with relevant data, trends and developments.

iv. Support Points for Domestic Violence

¹³⁶ Crime Victim Compensation Fund, Official website in Dutch: <https://schadefonds.nl/>. Also available in English at: <https://schadefonds.nl/en/>

¹³⁷ Schadefonds geweldsmisdrijven, Have you been a victim of violence? The Violent Offences Compensation Fund can help, available in English at: https://schadefonds.nl/en/wp-content/uploads/2016/01/corporate_brochure_engels_okt_2014.pdf

¹³⁸ See footnote 138.

¹³⁹ Victim Support Netherlands, Official website in Dutch: <https://www.slachtofferhulp.nl/>

¹⁴⁰ See footnote 140.

¹⁴¹ Slachtofferhulp Nederland, Unofficial translation in English available at: https://translate.google.nl/translate?sl=n-&tl=en&js=y&prev=_t&hl=nl&ie=UTF-8&u=https://www.slachtofferhulp.nl&edit-text=&act=url

¹⁴² CoMensha Foundation, Official website: <http://www.mensenhandel.nl/>

TransAct provides a national support point for domestic violence that aims at supporting the whole chain of organizations involved in tackling domestic violence in the Netherlands.¹⁴³ It was funded under the Daphne Funding Programme of the European Commission.¹⁴⁴ TransAct offers advice, courses, training, and information for counsellors, institutions and policy-makers.

Trainings for domestic violence are provided since 2003 to municipalities, police and the Public Prosecution Service (Openbaar Ministerie).¹⁴⁵

- Municipalities

Municipalities have a coordinating role for tackling domestic violence. The task of municipal authorities is to bring the local working partnerships together, stimulating them to agree on mutually binding agreements and to ensure that the agreements are respected. Municipal authorities can assume the managing role themselves or delegate it to the Municipal Health Service. Since 2003, the Association of Dutch Municipalities has implemented an extensive program, subsidized by the Ministry of Justice, aimed at stimulating municipal authorities to promote the tackling of the domestic violence providing them with tools to ensure that they carry out their coordinating role.¹⁴⁶

- Police

On January 1, 2003, a nation-wide project on domestic violence (Huiselijk geweld en de politietaak) was launched and initiated by the Board of Police Commissioners. Its object was to encourage all police regions to develop a policy on tackling domestic violence, to promote police expertise and to set up a registration of domestic violence cases at a national level. Based on the registration developed by the police, an investigation was conducted into the nature and backgrounds of domestic violence in 2004. The study supplied figures on the reports of incidences and on the victims of domestic violence.¹⁴⁷

By now, all police regions have appointed regional portfolio holders at the strategic level and regional coordinators for domestic violence at the tactical level. Furthermore, police forces are training many police officers so they become certified professionals who know how to handle victims and perpetrators of domestic violence. The police project includes a national registration of domestic violence cases that is now being applied almost entirely throughout the Netherlands.¹⁴⁸

- Public Prosecution Service

Of all the authorities mentioned, the Public Prosecution Service is, by far, the one that is mostly managed at a national level. The 2003 Domestic Violence Decree (Aanwijzing

143 TransAct, Official website: <http://www.huiselijkgeweld.nl/english>

144 European Commission, Daphne Toolkit, Projects funded under the Daphne Funding Programme, <http://ec.europa.eu/justice/grants/results/daphne-toolkit/en/content/transact-dutch-centre-gender-issues-health-care-and-prevention>

145 Bureau Beke, Abstract – the approach to domestic violence, available in English at: http://www.beke.nl/english/abstracts/abstract_the_approach_to_domestic_violence

146 Ministerie van Volksgezondheid, Welzijn en Sport, factsheet Ministry of Justice, Dealing with Domestic Violence, available in English at: <http://www.huiselijkgeweld.nl/english/factsheet>

147 See footnote 147.

148 See footnote 147.

Huiselijk Geweld)¹⁴⁹ offers clear guidelines on how this management should be carried out. However, the way the different district courts deal with cases of domestic violence is not uniform. In this sense, the Public Prosecution Service does not really use specific approaches for different target groups, such as children, the elderly or ethnic minorities, but considers each case individually.¹⁵⁰

v. *Byway Foundation*

Byway Foundation is a group of experts who voluntarily assist women and children who are victims of domestic violence or stalking by ex-partners with a focus on female victims.¹⁵¹ The Foundation provides information to female victims, aims to influence policies, regulations and legislation so that the needs of female victims and their children are better represented, and helps prevention by educating about signals of partner-violence and stalking to women.

vi. *Legal Assistance Counter*

The Legal Assistance Counter provides legal aid by helping people who address them with a legal question. Where, because of the complexity of the matter raised, this is not possible the counter will refer to a specialized organization.¹⁵²

3. Case Law and Reported Data

Since the legislative proposal implementing the Directive has not yet been adopted, there is no case law or reported data available that would show how the legislative amendments are interpreted and applied in practice.

Portugal

1. Legislation and regulations

1.1. Legislative Amendments

The Directive has been transposed into Portuguese law by the adoption of Law No. 130/2015, of September 4, 2015¹⁵³ ("Law No. 130/2015" or "the implementing law"). Although several of the guarantees provided by the Directive already existed in different Portuguese provisions, the implementing law allows for a modification of the Portuguese Code of Criminal Procedure and adopts a general status for vulnerable victims.

First, the law amends the Portuguese Code of Criminal Procedure, modifying six of its articles (i.e. Articles 68, 212, 246, 247, 292 and 295).

Second, Article 5 of the implementing law refers to the adoption of an annex, which contains the safeguard of the status of vulnerable victims as defined by the Directive. The annex is organized

149 Aanwijzing Huiselijk Geweld, available at: <http://wetten.overheid.nl/BWBR0027594/2010-06-01>

150 See footnote 146.

151 Zijweg Stichting, Official website: <http://www.stichtingzijweg.nl/>

152 Het Juridisch Loket, Official website: <https://www.juridischloket.nl/>

153 Lei n.º 130/2015 - Diário da República n.º 173/2015, Série I de 2015-09-04/70186153 Assembleia da República Procede à vigésima terceira alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001 available in Portuguese at: <https://dre.pt/application/file/70186153>

into five main areas, containing respectively general provisions on the victims' status (Chapter I), the main principles applicable to the holders of this status (Chapter II), the rights for crime victims (Chapter III), the rights of victims with specific protection needs (Chapter IV), and the final provisions (Chapter V). This section will particularly explore Chapter IV of the implementing law on the protection of victims and recognition of victims with specific protection needs as well as some of the articles on Chapter III.

1.2. Entry into Force

Law No. 130/2015, implementing the Directive in Portugal, came into force thirty days after the publication of the law, that is on October 4, 2015.

2. Specific Measures and Procedures Adopted

2.1. Detailed Description of Legislative Changes

Article 18 of the Directive

Article 18 of the Directive establishes a general safeguard clause for the victim on his or her right to protection. Article 15, paragraph 1, of the implementing law foresees the right to protection, establishing that the right and respect for the private life of the victim and his or her family members is ensured by setting an adequate level of protection by the authorities. In this sense, special attention must be paid to situations risking secondary and repeated victimisation, intimidation or retaliation. Paragraph 3 of this same article envisages psychosocial measures for the victim where the situation requires them.

In addition, Article 25 of the implementing law goes beyond the content of the Directive, establishing access to care facilities when the individual assessment of a victim with specific protection needs concludes that this is convenient.

Similarly, Article 26(1) of the implementing law foresees the right for the victim with specific protection needs to be assisted by the national healthcare service (Serviço Nacional de Saúde). Paragraph 2 of this article specifies that victims are exempted from paying taxes for this assistance.

Article 19 of the Directive

In addition to the Portuguese provision that was already in line with Article 19, paragraph 1 of the Directive, the adopted law foresees in its Article 15, paragraph 2, that the contact between the victim and his or her family members and the offender must be avoided. It refers particularly to all areas within administrative and judicial buildings where the proceedings are carried out and where there could be a potential encounter between the victim and the offender as, for example, the court.

It could be argued that the provision of Article 15, paragraph 2, remains too general since it does not capture the separate waiting areas for victims that the Directive sets out in its Article 19, paragraph 2. There is no other provision within the Portuguese legislation that complies with this part of the Article.

Article 20 of the Directive

- Paragraph c

Although the Portuguese Code of Criminal Procedure contained provisions complying with paragraph c of Article 20 of the Directive (see below), Article 24 of the implementing law goes beyond the scope of the Directive. In this sense, the implementing law establishes in its paragraph 1 the possibility for the judge to interview the victim with specific protection needs at an earlier stage in the procedure if necessary.

Paragraph 2 of the same article foresees that the lawyers or legal representatives of the victim must be informed and notified of the date and place where the interview will be carried out, in order to ensure his or her presence.

Paragraph 3 of the above-mentioned article provides the right for the victim to be assisted during the interview by a technician assigned by the court.

- *Paragraph d*

The safeguard set out in Article 20, paragraph d, regarding medical examinations of the victims being kept to a minimum and being carried out only where strictly necessary has been included in Article 17, paragraph 2, of the implementing law. Article 17 deals with the conditions to prevent secondary and repeated victimization. Its paragraph 2 envisages that medical examinations of the victim are to be carried out with unjustified delay and only where strictly necessary for the purposes of the criminal proceedings. In addition, medical examinations must not be repeated unless strictly necessary.

Article 21 of the Directive

The right to protection of privacy as set out by Article 21 of the Directive is captured in Article 27 of the implementing law, entitled social communication (Comunicação social). Its first paragraph establishes that, when victims are minors or individuals with specific protection needs, the media need to prevent public dissemination of any information that could lead to the identification of a child victim. Among this information are any sound, photo and any other element that could lead to the identification. The person failing to comply with this rule will be guilty of a crime of disobedience. In addition, this article specifies that, taking into account the provision of paragraph 1, media can describe the facts that are public as well as narrate its content.

This right is also captured in Article 22(5) of the implementing law, which establishes the right to protection of child victims during criminal proceedings. In particular, it prohibits the dissemination of any information that could lead to the identification of a child victim, under penalty of being subject to a disobedience crime.

Article 22 of the Directive

The individual assessment of victims to identify specific protection needs as set out in Article 22 of the Directive is captured in Article 20 of the implementing law. This article, entitled attribution of the status of victim with specific protection needs is composed of two paragraphs.

In its first paragraph, Article 20 foresees that as soon as a complaint has been made, the competent judicial or police authorities can, after having carried out an evaluation, give the victim the status of victim with specific protection needs.

The second paragraph of the same article provides the obligation for the competent authorities to provide the victim with a document certifying his or her status as well as listing the rights inherent to it. These rights are set out in Article 21 of the implementing law.

In addition to the above, paragraph 1 of Article 21 of the implementing law foresees that an individual assessment should be carried out in order to determine whether the victim needs specific protection.

Article 23 of the Directive

The right to protection of victims with specific protection needs during criminal proceedings in compliance with Article 23 of the Directive is foreseen in Article 21 of the implementing law.

- Paragraph 1

The general safeguard on the right to protection of victims with specific protection needs as set out in Article 23 of the Directive is transposed by paragraphs 1 and 2 of Article 21 of the implementing law. It must be noted that the implementing law adopted a more general wording when transposing the provision. In this sense, it foresees in its first paragraph that an individual assessment of the victim must be carried out in order to determine whether measures on specific protection needs apply. Paragraph 2 of the same article refers to these specific measures and rights that apply to the victim.

The Portuguese provision has left out the implementation of the second part of Article 23(1) of the Directive, which sets out that the special measures envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible.

- Paragraph 2

Paragraph 2(a) of Article 23 of the Directive is transposed by the implementing law in its Article 24, paragraph 3. The Directive establishes that interviews with the victim are to be carried out in premises designed or adapted for that purpose. The Portuguese implementing law does not adopt the exact same language when transposing the article but lays down a more detailed provision. In this sense, it envisages that interviews with the victim must be carried out in an informal and private atmosphere in view of guaranteeing the spontaneity and honesty of the responses.

Paragraph 2(b) of Article 23 of the Directive is transposed by the implementing law in its Article 23, paragraph 2. It establishes that the victim must be accompanied during interviews by professionals trained for that purpose. It also specifies that these professionals are previously designated by the public prosecutor or the judge.

Letter (c) of paragraph 2 of Article 23 of the Directive is transposed by the implementing law in its Article 21, paragraph 2(a). It foresees that interviews with the victim must be conducted by the same person, if the victim so wishes, and unless it is contrary to good administration. The implementing law adopted the exact same language of Article 23, paragraph 2(c) of the Directive.

As regards paragraph 2(d) of Article 23 of the Directive, it has been transposed into paragraph 2(b) of Article 21 of the implementing law. This article states that all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a pros-

ecutor or a judge, should be conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced. Again, the implementing law adopted the exact same language of Article 23, paragraph 2(d) of the Directive.

- *Paragraph 3*

Measures to avoid visual contact between victim and offender, as set out in paragraph 3(a) of Article 23 of the Directive, has been transposed into Portuguese law by paragraph 2(c) of Article 21 of the implementing law. This article establishes that measures to avoid visual contact between victim and offender must be taken including during the giving of evidence by appropriate means including the use of communication technology. The same wording of the Directive's provision has been adopted in the implementing law.

Paragraph 3(b) of Article 23 of the Directive has been transposed into paragraphs 1 and 4 of

Article 24 of the implementing law. Article 24(1) provides for the judge the possibility to interview the victim with specific protection needs at an earlier stage in the procedure if necessary with the view of ensuring that the victim is heard. Article 24(4) establishes that the interview with the victim is carried out by any appropriate means, including the use of appropriate communication technology. It must be noted that Article 23, paragraph 3(b) of the Directive refers to the situation where the victim is not present in the court room and the adopted provisions does not refer to such situation but remains more general.

Although paragraph 3(d) of Article 23 of the Directive was already covered by the Portuguese Code of Criminal Procedure, it has also been captured in paragraph 2(e) of Article 21 of the implementing law. This article allows for the possibility of a hearing to take place without the presence of the public as provided by Article 87 of the Portuguese Code of Criminal Procedure.

Article 24 of the Directive

The right to protection of child victims during criminal proceedings as set out by Article 23 of the Directive has been transposed in Portuguese legislation by Article 22 of the implementing law.

- *Paragraph 1(a)*

Paragraph 1(a) of Article 24 of the Directive establishes that all interviews with the child victim may be audiovisually recorded and such recording may be used as evidence in criminal proceedings. The implementing law does not contain such a provision but a similar content can be found in Article 23(1) of the implementing law. The latter provides for interviews with victims with specific protection needs to be audiovisually recorded with a view to their use as evidence in criminal proceedings. It could be argued that this article, as implemented by the Portuguese law, applies to child victims since it aims at protecting victims with specific protection needs and children are often within this category.

- *Paragraphs 1(b) and (c)*

Paragraph 1(a) of Article 24 of the Directive foresees that a legal representative can be appointed by the competent authorities in order to ensure that the child victim is represented during criminal proceedings. This provision is captured in Article 22, paragraphs 3 and 4 of the implementing law. Paragraph 3 envisages the obligation for the child victim to be legally represented, whether by its

guardian or a legal representative, where there is a conflict of interest between the child victim and his or her parents. Paragraph 4 refers to the conditions of the nomination of a legal representative.

- *Paragraph 2*

Paragraph 2 of Article 24 of the Directive is transposed into Article 22(6) of the implementing law. Adopting the same wording as Article 24 of the Directive, the implementing law foresees that, where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall be presumed to be a child.

Article 25 of the Directive

- *Paragraphs 1 and 5*

The provisions set out in paragraphs 1 and 5 of Article 25 of the Directive have been transposed by Article 28, paragraph 1, of the implementing law. The latter provides for police officers and court staff that are likely to come into contact with victims to receive both general and specialist training. This training should be at an appropriate level to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, non-discriminatory, respectful and professional manner. This provision adopted the same wording as Article 25(1) of the Directive and goes beyond including “non-discriminatory manner”, so that it also includes the provision of Article 25(5) of the Directive.

- *Paragraph 2*

Paragraph 2 of Article 25 of the Directive has been implemented in Article 28(2) of the implementing law. It foresees that, the content of the activities carried out by the Judiciary Studies Center (Centro de Estudos Judiciários) should focus on victimization, in order to increase the awareness of judges and prosecutors of the needs of the victim.

2.2. Existing Portuguese Provisions in compliance with the Directive

Before the implementation of the Directive into national law, several Portuguese provisions were already in line with Chapter 4 of the Directive on the protection of victims and recognition of victims with specific protection needs.

Article 19 of the Directive

In addition to the article introduced by the implementing law, several provisions scattered within the Portuguese legal system covered partially the right to avoid contact between victim and offender. These provisions are specific to certain kind of victims, therefore, before the adoption of the implementing law, there was no general provision that applied to victims in general.

First, Article 352 of the Portuguese Code of Criminal Procedure envisages the possibility for the judge to remove the offender from the court room in three scenarios: (i) if there is any reason to believe that the presence of the offender would inhibit the victim’s ability to tell the truth, (ii) when the victim is aged under sixteen and there are reasons to believe that being heard in the presence of the offender during the hearing would be harmful, or (iii) when an expert needs to appear at the hearing and it is believed that the offender’s presence could be a serious threat to the physical or mental integrity of the expert.

Second, Article 29, paragraph (a), of Law No. 93/99¹⁵⁴ regarding the measures for protecting witnesses during criminal proceedings sets out that, during the hearing of a victim with specific protection needs, the judge has the possibility to ensure that such victim has no contact with other persons participating in the hearing.

Third, Article 20, paragraph 2, of Law 112/2009¹⁵⁵ for victims of gender-based violence foresees that any contact between victim and offender must be avoided, in situations such as where the presence of both during a specific stage in the proceeding is expected.

Article 20 of the Directive

Paragraph (c) of Article 20 of the Directive provides the possibility for victims to be accompanied by their legal representative and a person of their choice. This was already captured in several provisions of the Portuguese Code of Criminal Procedure, namely Article 70, paragraph 3, and Article 132 in its paragraph 4.

First, Article 70 foresees in its paragraph 3 the possibility for the victim to be accompanied by a lawyer at all stages of the proceedings.

Second, paragraph 4 of Article 132 provides the right for the witness to be accompanied by its lawyer or legal representative during the interview, with a view to assisting the witness and informing him or her of the rights he or she is entitled to. This article also establishes that the legal representative cannot intervene in the interview.

Article 21 of the Directive

The right to protection of privacy for minor victims was already covered by Article 90, paragraph 1 of Law No. 147/99¹⁵⁶ regarding the protection of children and young people at risk. This article envisages that, when victims are minors or individuals with specific protection needs, the media need to prevent public dissemination of any information that could lead to the identification of a child or young victim. The person failing to comply with this rule will be guilty of a crime of disobedience.

In addition, this article specifies that, taking into account the provision of paragraph 1, media can describe the facts that are public and narrate its content.

Article 23 of the Directive

Paragraph 3(d) of Article 23 of the Directive regarding the possibility of a closed-door hearing was foreseen in Article 87, paragraph 1, of the Portuguese Code of Criminal Procedure. It establishes that anyone is allowed to assist to a public hearing but exceptionally the judge can restrict the presence of the public in a hearing or during part of it.

¹⁵⁴ Lei n.º93/99, de 14 de Julho, Lei de protecção de testemunhas, Artigo 19, available in Portuguese at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=234A0029&nid=234&tabela=leis&pagina=1&ficha=1&so_mio-lo=&nversao=#artigo

¹⁵⁵ Lei n.º112/2009, de 16 de Setembro, Regime jurídico aplicável à prevenção da violência doméstica e à protecção e assistência suas vi, Artigo 20, available in Portuguese at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1138&tabela=leis

¹⁵⁶ Lei n.º147/99, de 1 de Setembro, Lei de protecção de crianças e jovens em perigo, Artigo 90, available in Portuguese at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1138&tabela=leis

2.3. Description of other measures

In Portugal, a vast network of institutions and victim support centres is in place throughout the territory. Most of them focus on gender-based violence or child victims and aim at supporting victims but also at preventing risks whenever possible.

i. The National Commission for Protection of Children and Youngsters at Risk

The National Commission for Protection of Children and Youngsters at Risk¹⁵⁷ (Comissão Nacional de Protecção de Crianças e Jovens em Risco) is a Portuguese institution that supervises and coordinates several organizations specialized in assisting children and youngsters at risk and constructs safe houses to protect them. In addition to the above, the Commission aims at promoting the rights of children and youngsters at risk.

ii. General Directorate for Social Affairs

The General Directorate for Social Affairs¹⁵⁸ (Direcção Geral dos Assuntos Sociais) provides counselling to children participating in criminal proceedings and is responsible for the assistance and protection of children victims of crime. In particular, it contributes to defining criminal legislation, supports technically the courts when adopting decisions relating to criminal proceedings, ensures the execution of educational measures and contributes to the elaboration of instruments to enhance international judicial cooperation.

iii. The Portuguese Association for Victim Support (APAV)

The Portuguese Association for Victim Support¹⁵⁹ is a private charitable organization that aims at informing, protecting and supporting victims of crime. In particular, the association promotes the protection and support available to victims of crime, liaises with all relevant entities and stakeholders (police, health care centres, etc.) as well as with international organizations and carries out and sponsors research on the victims field. In addition, it contributes to the adoption of laws, regulations and administrative measures to increase the protection and support of victims and gives personalized counselling as well as moral, legal and psychological assistance to victims.

iv. Project CARE

Project CARE¹⁶⁰ is a network of specialized support to children and youngsters victims of sexual violence. The project is promoted by the Portuguese Association for Victim Support and co-financed by the Calouste Gulbenkian Foundation. Its core objective is to develop a model of implementation, functioning and supervision of a network of support and referral of children and youngsters victims of sexual violence.

Specifically, it aims at deepening the knowledge on the impact of sexual violence, at systematizing best practices for intervention in cases involving children and youngsters victims of sexual violence and at developing an external assessment of the intervention methodologies used in

¹⁵⁷ Comissão Nacional de Protecção de Crianças e Jovens em Risco, official web site: <http://www.cnpcjr.pt/>

¹⁵⁸ Ministério da Justiça, Direcção Geral dos Assuntos Sociais, official web site: <http://www.dgrs.mj.pt/web/rs/index>

¹⁵⁹ Associação portuguesa de Apoio à Vítima, official web site: http://www.apav.pt/apav_v3/index.php/pt/

¹⁶⁰ Projeto CARE – Rede de apoio especializado a crianças e jovens vítimas de violência sexual, official web site: <http://www.apav.pt/publiproj/index.php/67-projeto-care-rede-de-apoio-especializado-a-criancas-ejovens-vitimas-de-violencia-sexual>

these cases. It gives specialised training to personnel of its partner organizations to intervene in cases involving children and youngsters victims of sexual violence.

v. *Instituto de Apoio à Criança (IAC)*

Instituto de Apoio à Criança¹⁶¹ seeks the defence and promotion of children's rights since 1983. It provides legal aid through its legal service, which participates actively in initiatives and meetings about children's rights. In addition, its legal service informs of the existing legal mechanisms in order to better enforce laws pertaining to children.

Interestingly, the legal service of the Institute is involved in the implementation of the European project T.A.L.E.¹⁶²(Training Activities for Legal Experts), which aims at training and increasing the know-how on children's rights and related issues for lawyers representing children in judicial proceedings.

3. Case Law and Reported Data

The legislation implementing the Directive, i.e. Law No. 130/2015, entered into force on October 4, 2015. Since its entry into force, there is no case law or reported data available that would show how the legislative amendments are interpreted or applied in practice.

England and Wales

1. Summary of applicable legislation and regulations

In England and Wales, the Secretary of State for Justice must issue a code of practice for the services to be provided to a victim of criminal conduct (s.32(1) Domestic Violence, Crime and Victims Act 2004 ("DVCVA")). This can be revised by the Secretary of State for Justice from time to time (s.33(8) DVCVA).

For the implementation of EU Directive 2012/0029/EU (the "Directive"), the Secretary of State issued a revised code of practice entitled "Code of Practice for Victims of Crime" (the "Code of Practice (2015)") (paragraph 2, The Domestic Violence, Crime and Victims Act 2004 (Victims' Code of Practice) Order 2015).

England & Wales has not adopted the exact language of the Directive in the Code of Practice (2015). Under the Code of Practice (2015), there are 3 categories of victims with specific protection needs that might be entitled to specific measures, namely (1) victims of the most serious crimes, (2) persistently targeted victims, and (3) vulnerable or intimidated victims. The specific measures that these victims might be entitled to generally are known as Enhanced Entitlements (e.g. interviews in premises designed or adapted for that purpose) and the specific measures subject to the court's discretion are known as Special Measures (e.g. screens or curtains in the court room). Overall, the Code of Practice (2015) generally provides these categories of victims with the protections required under the Directive.

¹⁶¹ Instituto de Apoio à Criança, official web site: <http://www.iacrianca.pt/index.php/en/>

¹⁶² European Commission, Directorate General for Justice, Project T.A.L.E., more information at:

http://ec.europa.eu/justice/fundamental-rights/files/rights_child/compilation_previously_funded_projects_rights_of_the_child_and_violence_against_children.pdf

2. Specific measures and procedures

2.1. *Domestic Violence, Crime and Victims Act 2004 ("DVCVA")*

The Secretary of State must issue a code of practice as to the services to be provided to a victim of criminal conduct (s.32(1) DVCVA).

The general rule is that the code cannot require anything to be done by a person acting in a judicial capacity and a person acting as a member of the Crown Prosecution Service which involves the exercise of a discretion (s.32(5) DVCVA). However, the Supreme Court must apply the Code of Practice when dealing with criminal appeals (Rule 44 in Part 4A, Section 4, Volume 2 of the White Book 2016; para 12.15.1 in Practice Direction 12, Part 4A, Section 4, Volume 2 of the White Book 2016). In practice, this probably means that the courts in England & Wales would apply the Code of Practice for criminal proceedings.

If a person fails to perform a duty imposed on him by the Code of Practice, the failure does not, of itself, make him liable to criminal and civil proceedings (s.34(1) DVCVA). However, the code is admissible in evidence and a court may take into account a failure to comply with the code in determining a question in the proceedings (s.34(2) DVCVA). In practice, the victim can submit a complaint to the service provider at the first instance. If the complainant remains unsatisfied, the complainant can make a complaint to the Parliamentary and Health Service Ombudsman. The Ombudsman will assess the complaint and might investigate further.

2.2. *Comparison between EU Directive 2012/0029/EU and Code of Practice*

Unless otherwise specified, the organisations that must comply with this Code of Practice are:

- (a) The Criminal Cases Review Commission;
- (b) The Criminal Injuries Compensation Authority;
- (c) The Crown Prosecution Service (the "CPS");
- (d) The First-Tier Tribunal (Criminal Injuries Compensation);
- (e) Her Majesty's Courts and Tribunals Service;
- (f) Her Majesty's Prison Service;
- (g) National Offender Management System;
- (h) The Parole Board;
- (i) Police and Crime Commissioners;
- (j) All police forces in England and Wales, the British Transport Police and the Ministry of Defence Police;
- (k) The National Probation Service;
- (l) The UK Supreme Court;
- (m) Witness Care Units; and
- (n) Youth Offending Teams.

EU Directive 2012/0029/EU	Code of Practice	Comments
Article 22		
<p>Timely and individual assessment to identify specific protection needs (Article 22(1))</p>	<ul style="list-style-type: none"> All victims of a criminal offence are entitled to an assessment by the police at an early stage to determine the needs or support required ([1.4] Chapter 1; [1.1] Chapter 2A; [1.1] Chapter 2B). 	
<p>Individual assessment shall take into account:</p> <ul style="list-style-type: none"> personal characteristics of the victim; type or nature of the crime; and circumstances of the crime (Article 22(2)) 	<ul style="list-style-type: none"> The assessment will take into account the personal characteristics of the victim, the nature and circumstances of the crime and the views of the victim ([1.4] Chapter 1). A victim is eligible for enhanced entitlements as a victim of the most serious crime if he is a close relative bereaved by a criminal offence, a victim of domestic violence, hate crime, terrorism, sexual offences, human trafficking, attempted murder, kidnap, false imprisonment, arson with intent to endanger life and wounding or causing grievous bodily harm with intent ([1.8] Chapter 1). A victim is eligible for enhanced entitlements as a persistently targeted victim if he has been targeted repeatedly as a direct victim of crime over a period of time ([1.9] Chapter 1). A victim is eligible for enhanced entitlements as a vulnerable victim if he is under 18 years old at the time of the offence, or if his quality of evidence is likely to be affected by mental disorders, significant impairment of intelligence and social functioning or a physical disability ([1.10] Chapter 1). A victim is eligible for enhanced entitlements as an intimidated victim if the service provider considers that the quality of evidence will be affected because of fear or distress about testifying in court. The service provider will consider the behavior towards the victim on the part of the accused, the nature of the offence, and the victim's age, background and circumstances ([1.11-1.12] Chapter 1). 	<p>England & Wales has 3 categories of victims with specific protection needs, namely:</p> <ul style="list-style-type: none"> Victims of most serious crimes; Persistently targeted victims; and Vulnerable or intimidated victims.

<p>For the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime (Article 22(3))</p>	<ul style="list-style-type: none"> • The length and the content of the assessment depends on the severity of the crime and the individual needs ([1.4] Chapter 1). 	
<p>Child victims shall be presumed to have specific protection needs (Article 22(4))</p>	<ul style="list-style-type: none"> • If a victim is under 18 years old, he is automatically eligible for enhanced services ([1.2] Chapter 1; Introduction to Chapter 3B; [1.47] Chapter 5). 	<p>All the organisations listed above and the organisations listed below must comply with this obligation.</p> <ul style="list-style-type: none"> • The Competition and Markets Authority; • The Department for Business, Innovation and Skills (Criminal Enforcement); • The Environment Agency; • The Financial Conduct Authority; • The Gambling Commission; • The Health and Safety Executive; • Her Majesty's Revenue and Customs; • Home Office (Immigration Enforcement); • The Information Commissioner's Office; • The Independent Police Complaints Commission; • The National Crime Agency; • Natural Resources Wales; • The Office of Rail and Road; and • The Serious Fraud Office.
<p>The extent of the individual assessment may be adapted according to the severity of the crime and degree of apparent harm (Article 22(5))</p>	<ul style="list-style-type: none"> • The length and the content of the assessment depends on the severity of the crime and the individual needs ([1.4] Chapter 1). 	

<p>Individual assessments shall be carried out with the close involvement of the victim (Article 22(6))</p>	<ul style="list-style-type: none"> • The victims of a criminal offence are entitled to an assessment by the police to identify any needs or support required. The more information that the victim provides during the assessment, the more tailored the level of support will be to your individual needs ([1.4] Chapter 1). • The police must explain the Special Measures to the victim and establish what measures the victims feel they need to best help them give their evidence ([1.1] Chapter 2B). 	
<p>If there is a significant change of the facts that formed the basis of the individual assessment, the facts must be updated throughout the criminal proceedings (Article 22(7))</p>	<ul style="list-style-type: none"> • If the needs change while the criminal offence is being investigated, service providers must give the victims the opportunity to be re-assessed if the change of circumstances are brought to their attention ([1.5] Chapter 1; [1.31] Chapter 5). 	<p>All the organisations listed above and the organisations listed below must comply with this obligation.</p> <ul style="list-style-type: none"> • The Competition and Markets Authority; • The Department for Business, Innovation and Skills (Criminal Enforcement); • The Environment Agency; • The Financial Conduct Authority; • The Gambling Commission; • The Health and Safety Executive; • Her Majesty's Revenue and Customs; • Home Office (Immigration Enforcement); • The Information Commissioner's Office; • The Independent Police Complaints Commission; • The National Crime Agency; • Natural Resources Wales; • The Office of Rail and Road; and • The Serious Fraud Office.

Article 23		
Victims with specific protection needs may benefit from the measures in Article 23(2) and 23(3) (Article 23(1))	<ul style="list-style-type: none"> See below for more details 	
Interviews at premises designed or adapted for that purpose (Article 23(2)(a))	<ul style="list-style-type: none"> All victims are entitled to have the interview, where necessary, conducted in premises designed or adapted for that purpose ([1.8] Chapter 2A; [1.6] Chapter 2B). 	The Directive provides that this measure should be provided to victims with specific protection needs. The Code of Practice extends this entitlement to all victims of crime.
Interviews to be carried out by professionals (Article 23(2)(b))	<ul style="list-style-type: none"> If the police need to interview a victim, they must ensure that a suitably trained professional conducts the investigative interview in a way that considers the needs and views of the victim in order to minimize the victim's stress ([1.5] Chapter 2B). 	The Directive provides that this measure should be provided to victims with specific protection needs. The Code of Practice extends this entitlement to all victims of crime.
Interviews to be conducted by the same persons generally (Article 23(2)(c))	<ul style="list-style-type: none"> All victims are entitled to have the interview, where possible, conducted by the same person unless doing so would prejudice the proper handling of the investigation ([1.8] Chapter 2A; [1.6] Chapter 2B). 	The Directive provides that this measure should be provided to victims with specific protection needs. The Code of Practice extends this entitlement to all victims of crime.
Interviews being conducted by a person of the same sex if there is sexual violence, gender-based violence or violence in close relationships (Article 23(2)(d))	<ul style="list-style-type: none"> All victims of sexual violence, gender-based violence or domestic violence are entitled to have the interview conducted by a person of the same sex ([1.8] Chapter 2A; [1.6] Chapter 2B). 	
Measures to avoid visual contact between victims and offenders (Article 23(3)(a))	<ul style="list-style-type: none"> If a victim is a vulnerable or intimidated victim, it may be possible to have screens or curtains in the courtroom so that the witness does not have to see the defendant ([1.13] Chapter 1). The victim can ask the service provider for this measure (e.g. police or Witness Care Unit) but the court decides whether this measure should be implemented ([1.13] Chapter 1). 	

<p>Measures to ensure that victim can be heard in courtroom without being present (Article 23(3)(b))</p>	<ul style="list-style-type: none"> • If a victim is a vulnerable or intimidated victim, it may be possible to have a live video link allowing a witness to give evidence outside the court room ([1.13] Chapter 1). • The victim can ask the service provider for this measure (e.g. police or Witness Care Unit) but the court decides whether this measure should be implemented ([1.13] Chapter 1). • A child victim might be able to go through cross-examination from an different room using a video link ([3.1] Chapter 3A). 	
<p>Measures to avoid unnecessary questioning concerning the victim's private life (Article 23(3)(c))</p>	<ul style="list-style-type: none"> • The Crown Prosecution Service ('CPS') will treat victims who are witnesses in court respectfully. If appropriate, the CPS will seek the court's intervention when cross-examination is considered to be inappropriate or too aggressive ([3.3] Chapter 2A). 	
<p>Measures allowing a hearing to take place without the presence of the public (Article 23(3)(d))</p>	<ul style="list-style-type: none"> • If a victim is a vulnerable or intimidated victim, it may be possible for the victim to give evidence in private ([1.13] Chapter 1). • The victim can ask the service provider for this measure (e.g. police or Witness Care Unit) but the court decides whether this measure should be implemented ([1.13] Chapter 1). 	

Article 24		
<p>All interviews with the child victim may be audiovisually recorded and such interviews may be used as evidence (Article 24(1) (a))</p>	<ul style="list-style-type: none"> • If a victim is a vulnerable or intimidated victim, it may be possible to allow a witness to use a pre-recorded video statement as their main prosecution evidence ([1.13] Chapter 1). • The victim can ask the service provider for this measure (e.g. police or Witness Care Unit) but the court decides whether this measure should be implemented ([1.13] Chapter 1). • A child victim can have his statement video recorded to make it easier for him to tell the police what happened. This might mean that he does not have to repeat this in court ([1.3] Chapter 3A; [1.48] Chapter 5). 	<p>The Directive provides that this measure should be available to child victims. The Code of Practice extends the availability of this measure to all vulnerable and intimidated victims.</p> <p>All the organisations listed above and the organisations listed below must comply with the obligation to allow a child victim to have his statement video recorded.</p> <ul style="list-style-type: none"> • The Competition and Markets Authority; • The Department for Business, Innovation and Skills (Criminal Enforcement); • The Environment Agency; • The Financial Conduct Authority; • The Gambling Commission; • The Health and Safety Executive; • Her Majesty's Revenue and Customs; • Home Office (Immigration Enforcement); • The Information Commissioner's Office; • The Independent Police Complaints Commission; • The National Crime Agency; • Natural Resources Wales; • The Office of Rail and Road; and • The Serious Fraud Office.

<p>If there is conflict of interest between the holders of parental responsibility and the children or where the child is separated from the family, a special representative should be appointed for child victims (Article 24(1)(b))</p>		<p>There are no provisions relating to this in the Code of Practice (2015).</p>
<p>If the child victim has a right to a lawyer, he should have the right to legal advice and representation in his own name where there is a real or potential conflict of interest between the child and the holders of parental responsibility (Article 24(1)(c))</p>		<p>There are no provisions relating to this in the Code of Practice (2015).</p>
<p>If the age of the victim is uncertain and there are reasons to believe that the victim is a child, the victim should be presumed to be a child (Article 24(2))</p>	<ul style="list-style-type: none"> • If the age of a victim is uncertain and there are reasons to believe that the person is under 18 years old, service providers must presume that the victim is under 18 years old ([1.46] Chapter 5). 	<p>This obligation is limited to the following organisations:</p> <ul style="list-style-type: none"> • The Competition and Markets Authority; • The Department for Business, Innovation and Skills (Criminal Enforcement); • The Environment Agency; • The Financial Conduct Authority; • The Gambling Commission; • The Health and Safety Executive; • Her Majesty's Revenue and Customs; • Home Office (Immigration Enforcement); • The Information Commissioner's Office; • The Independent Police Complaints Commission; • The National Crime Agency; • Natural Resources Wales; • The Office of Rail and Road; and • The Serious Fraud Office.

Additional Provisions in Code of Practice		
	<ul style="list-style-type: none"> If there is a vulnerable or intimidated victim, the court may order the removal of wigs and gowns by the judges, defence and prosecution advocates ([1.13] Chapter 1). 	
	<ul style="list-style-type: none"> If a victim is a vulnerable victim, he might be entitled to additional measures (e.g. communication aids or assistance from Registered Intermediaries) ([1.14] Chapter 1). A Registered Intermediary is a specialist who helps vulnerable witnesses with a communication difficulty to give their best evidence in court ([1.15] Chapter 1). 	
	<ul style="list-style-type: none"> Victims of the most serious crimes, persistently targeted victims, vulnerable victims and intimidated victims are entitled to receive the following information within 1 working day: <ul style="list-style-type: none"> Information that a suspect is arrested, interviewed under caution, released without charge or released on police bail ([1.6] Chapter 2A); Information whether to prosecute the suspect and the reasons for this decision ([2.4] Chapter 2A; [2.4] Chapter 2B); Information of the date, time and location of the first court hearing, and the bail conditions of the suspect ([2.4] Chapter 2A; [2.5] Chapter 2B); Information and the reasons for the CPS's decision to discontinue a charge, alter a charge, discontinue all proceedings or offer no evidence in all proceedings ([2.8] Chapter 2A; [2.14] Chapter 2B); Information from the Witness Care Unit if an arrest warrant is issued for the suspect and the outcome of the hearing if the suspect is rearrested ([2.15] Chapter 2A); Information that the CPS has decided not to prosecute the suspect and information about how victims can seek a review of the decision ([2.8] Chapter 2B); Information about the court dates for all the hearings, the outcome of bail hearings, change in remand status hearings and Special Measures applications, and adjournments hearings and postponements of scheduled hearings ([2.18] Chapter 2B); and Information on leave of appeal, a contact point for the victim during the hearing and the outcome of the appeal, if an application is made to appeal against a conviction or a sentence ([5.10] Chapter 2B). 	<p>In England & Wales, this entitlement to information within 1 working day is one of the Enhanced Entitlements afforded to victims with specific protection needs.</p>

	<ul style="list-style-type: none"> • Victims of the most serious crimes, persistently targeted victims, vulnerable victims and intimidated victims are entitled to: <ul style="list-style-type: none"> ○ Have information on Special Measures explained to them ([1.10] Chapter 2A); ○ Be referred to a specialist organization when appropriate and available ([1.10] Chapter 2A); ○ Receive information on pre-trial therapy and counselling when appropriate ([1.10] Chapter 2A); ○ Be asked to be informed if the investigation is to be reopened ([1.10] Chapter 2A); and ○ Make a Victim Personal Statement (i.e. a statement explaining how the crime as affected the victim) to the police any time prior to the sentencing ([1.16] Chapter 2A). 	
	<ul style="list-style-type: none"> • Vulnerable victims and intimidated victims are entitled to: <ul style="list-style-type: none"> ○ Assistance from the Criminal Injuries Compensation Authority in obtaining information in support of the application for compensation (e.g. medical evidence) ([8.6] Chapter 2A); ○ Assistance from the Criminal Injuries Compensation Authority completing an application for compensation over the telephone ([8.6] Chapter 2A); ○ Assistance from a support service organization in completing an application for compensation telephone ([8.6] Chapter 2A); and ○ Information from the Criminal Injuries Compensation Authority on compensation that is suitable for the needs of the victim (e.g. Braille, large print) ([8.6] Chapter 2A). 	

3. Summary of case law and reported data

3.1. Case law

There is only one reported case on the Directive and the case deals with the definition of victims under Article 2 of the Directive:

In *R (on the application of Privacy International) v HMRC* [2014] EWHC 1475 (Admin), Privacy International alleged that Gamma International had sold surveillance software to Ethiopia and Bahrain in breach of UK export regulations. Moreover, it alleged that this software was being used by the Governments in those countries to conduct criminal surveillance on political activists. The question arose about whether these political activists could be classified as victims under the Directive and whether HMRC had the obligation to apply the Code of Practice in relation to these activists. Green J opined in obiter that these political activists could not be classified as victims under the Directive because the harm suffered by these activists was not caused directly by the breach of export regulations.

3.2. Victim support¹⁶³

Victim Support is an independent charity, which helps victims claim enhanced entitlement. On their webpage, they provide easy-to-read pamphlets informing victims of their rights under the Code of Practice.

3.3. Criminal Justice Inspectorates¹⁶⁴

In September 2014, criminal justice Ministers announced the intention of the four criminal justice inspectorates (of Constabulary, Probation and the Crown Prosecution Service) to procure an annual joint appraisal of the quality of services provided to victims, based on relevant findings from the year's inspections. It found that in relation to Enhanced Entitlements:

- Many police officers were unaware that disability hate crime entitles the victim to Enhanced Entitlements.
- Only one in six forces visited routinely sought children's consent to video recording of interviews, and too often, interviewers concentrated on issues that were too complex.
- There are good examples of counselling, psychological wellbeing services, support and advice, but availability of these options varied significantly.
- Inspectors examined 29 cases that had been flagged as involving a vulnerable or intimidated victim. Of these, 13 (44.8 percent) had been sent a letter within one working day of the decision as per the target. In eight cases (27.6 percent), the letters had been sent late and in the remaining eight (27.6 percent), no letter had been sent. In one instance where the letter was not sent, it was noted that the victim had been spoken to at court but in the other instances, there was no explanation of why a letter had not been sent.

¹⁶³ <https://www.victimsupport.org.uk/help-and-support/your-rights/victims-code>

¹⁶⁴ <https://www.justiceinspectorates.gov.uk/cji/wp-content/uploads/sites/2/2015/12/meeting-the-needs-of-victims-in-the-criminal-justice-system.pdf>

- Significant work has recently taken place in cases where a victim or witness has particular needs as a result of mental health issues. The Area has identified a number of intermediaries for such cases and provided training to prosecutors on things to be aware of – for example, certain medication can make witnesses lethargic and less coherent in the morning, so they can be called to give evidence in the afternoon instead.

3.4. *Victims' Commissioner*¹⁶⁵

In January 2015 and November 2015, the Victims' Commissioner published reports reviewing the services that criminal justice agencies provided under the previous edition of the Code of Practice (the "Code of Practice (2013)"). Overall, the reports suggest that there are gaps in compliance with the Code of Practice (2013). The findings include:

- In relation to complaints, there is some evidence suggesting that the Code of Practice (2013) was not always complied with.
 - Some victims reported that they were not informed about their entitlement to make a complaint under the Code of Practice (2013)
 - Some victims reported that they were not treated sensitively by the people who were handling their complaints.
 - Victims and criminal justice agencies reported that not all the timeframes prescribed under the Code of Practice (2013) for dealing with complaints were complied with.
 - Some victims reported that they were not aware that they were entitled to bring a complaint to the Parliamentary and Health Service Ombudsman if they were unsatisfied with the way that their complaint was being dealt with.
- In relation to making a Victim Personal Statement (VPS), the victims were not always given the opportunity to make a VPS even though they are generally entitled to do so. This suggests that the employees of the criminal justice agencies did not always have a good understanding of the Code of Practice (2013).
 - There is evidence that some police officers were not aware that victims were entitled to make a VPS.
 - Some other police officers also wrongly thought that they were entitled to exercise their discretion on whether the victims should make a VPS. This meant that some police officers did not ask the victims whether they would like to make a VPS because they did not think that the crime was sufficiently serious and/or they did not have time after recording the witness statement to record the VPS.
- There is a gap between the experiences of victims and the criminal justice agencies in the implementation of the Code of Practice (2013). Most criminal justice agencies feel that the right to complain and the reasons for refusing a VPS were clearly explained to the victims. On the other hand, most victims did not think that these issues were explained to them clearly.

¹⁶⁵ <http://victimscommissioner.org.uk/review/past-reviews/>

Spain

1. Legislation and regulations

1.1. Legislative Amendments

The Directive has been transposed into Spanish law by the adoption of *Law 4/2015, of April 27th, on Crime Victims' Legal Status*. Although several of the guarantees provided by the Directive already existed in different Spanish provisions, the implementing law allows for a modification of the Spanish Code of Criminal Procedure and adopts a general status for vulnerable victims.

First, the law amends the Spanish Code of Criminal Procedure, modifying several articles regulating the victim's participation in criminal proceedings.

Second, the law itself transposes the content of the Directive with a virtually identical structure. Thus, the scheme is as follows: the text is organized into five main areas, containing respectively general provisions on the victims' status (Preliminary Title), the main principles and basic rights applicable to the holders of this status (Title I), provisions regulating the victim's participation in the process (Title II), provisions regulating the victim's protection during the process (Title III), and the final provisions (IV). This section will particularly explore Title III of the implementing law, as it refers to the recognition of victims with specific protection needs as well as their specific protection measures.

1.2. Entry into Force

Law 4/2015, of April 27th, on Crime Victims' Legal Status, implementing the Directive in Spain, came into force six months after the publication of the law, that is on October 28th, 2015.

2. Specific Measures and Procedures Adopted

2.1. Detailed Description of Legislative Changes

As stated in its Explanatory Memorandum, this *Law 4/2015, of April 27th, on Crime Victims' Legal Status* has a calling—to be the general catalog of rights, both procedural and extraprocedural, for all victims of crime—and will confer visibility on groups of victims for whom there is no specific law but who are viewed as possibly having “special protection needs”, among whom are mentioned victims with disability.

Both its Preliminary Title and its Title I respectively match with Chapters I and II of the Directive, and their content is virtually identical. The same thing happens regarding to Title II of the Law 4/2015, which is perfectly in line with the provisions of Chapter III of the Directive.

In Title III, pertaining to “Protection of Victims” special attention is given to victims with disability. Article 23 of the law stipulates that, to determine the protection measures that should be adopted, each victim's circumstances shall be individually assessed, with the following, in particular, taken into consideration: a) “the victim's personal characteristics” and, among these, whether this victim is a person with disability or there is a dependent relationship between the victim and the alleged perpetrator of the crime, as well as whether this victim is a minor child or victim with special protection needs; b) the nature and severity of damages the victim has suffered, and the risk of the crime happening again, indicating that, for these purposes, an assessment will be made, in particular, of the victim's need for protection from certain crimes, including sexual assault and crimes

against sexual identity development and crimes committed for reasons related to the victim's disability; and c) the circumstances of the crime and, in particular, whether it was a violent crime.

It indicates that the one responsible for individualized assessment of the victim's needs is the pre-trial judge or the judge or court presiding at trial; it also instructs that the assessment shall be adopted by reasoned decision.

Article 24.2 of the law stipulates that assessment of the victim's needs shall always include "[assessment] of those that the victim may have stated for that purpose, as well as wishes he/she may have expressed"; it also stipulates that the victim has the option to refuse the measures agreed upon. However, in the case of minor children or persons with disability needing special protection, it simply states that their assessment shall take into consideration their opinions and interests.

This Title III provides for general protection measures that are applicable to all victims; specific measures that are applicable depending on the outcome of the individualized assessment of victims' needs and are applied in both the pre-trial phase and trial phase; and, in addition, some special measures conceived for child victims and victims who are "persons with disability in need of special protection". This concept is not defined in the law, which is extremely unfortunate and creates confusion; in any case, however, victims with intellectual disability could possibly fit into it, taking into account the definition given by the Spanish Penal Code (Article 25): "*for purposes of this Code, «persons with disability in need of special protection» shall be understood as persons with disability who, whether or not the court has modified their competence to act, require assistance or support to exercise their legal competence and to make decisions about their person, rights, or interests because of their permanent mental or intellectual deficits*".

Thus, victims with disability in need of special protection—because they are considered, as the Explanatory Memorandum indicates, highly vulnerable victims who may suffer further harm from the criminal proceedings—could benefit from the measures available for other victims. Additionally, however, the following specific measures (Article 26.1) "in particular" are considered applicable: "a) An audiovisual recording shall be made of statements taken during the pre-trial phase and may be reproduced in the trial in cases and under conditions determined by the Spanish Code of Criminal Procedure. b) The statement may be taken by experts". Article 26, Section 2, addresses a number of situations in which it is considered necessary that a guardian *ad litem* be named for minors and victims with disability in need of special protection. The main novelty of the Law 4/2015 in comparison with the Directive is that it includes victims with disability in need of special protection as beneficiaries of the provisions contained in Article 26 (not only children, as provided in the Directive).

On the other hand, Title IV of the law decrees a new regulation for Victims Assistance Offices, which are responsible for coordinating, in each specific case, the assistance provided by various organizations, institutions, and entities that are collaborating on victims' care. Article 28 decrees the "minimum" assistance that these Offices shall render to victims and stipulates also the individualized assessment of their needs—which, again, shall take the disability into account—to determine what specific support measures shall be provided for each victim, mentioning some of them that may acquire special relevance in relation to persons with intellectual disability.

Finally, in its Concluding Clauses, the draft law proposes that some precepts of the Spanish Code of Criminal Procedure be reformed so that its provisions are implemented—which, in the end, will

mean that Spanish procedural legislation takes into account the situation of persons with intellectual disability, even though not expressly mentioning these persons.

2.2. Existing Spanish Provisions in compliance with the Directive

A legal basis for support services for crime victims was not established in Spain until 1995 with the enactment of *Law 35/95, of 11 December, on aid and assistance for victims of violent crimes and sexual assault*¹⁶⁶, which acknowledged that victims were suffering “a certain amount of neglect” in the criminal justice system; established a framework for government aid to victims of violent crimes; and provided for assistance for all victims of crime through the creation of a network of government offices giving free assistance to victims. The aim of creating these Offices, maintained by the Ministry of Justice or the Autonomous Communities, was to expand legal, psychological, and social care for victims and prevent their secondary victimization by offering them the assistance necessary to overcome damages stemming from the crime¹⁶⁷. In practice, the number of offices available and the funding for them have clearly been inadequate—a situation made worse by the economic crisis, which has led to many of them closing. The regulatory framework for assistance to victims was completed with *Organic Law 1/1996, of 15 January, on Legal Protection of Minors*, *Organic Law 1/2004, of 28 December, on Comprehensive Protection Measures Against Gender-Based Violence*, and *Law 29/2011, of 22 September, on Recognition of and Comprehensive Protection for Victims of Terrorism*. This law does not address accessibility measures, adjustments, or supports for persons with disability or for victims with intellectual disability, specifically, nor does it make any general stipulations about specialized services in the victims’ assistance offices.

As for procedural law, Spanish legislation has been reformed on various occasions¹⁶⁸ since 1999 to include, progressively, measures aimed at protecting minor children from additional harm and secondary victimization in criminal proceedings—both the investigation phase and the trial phase¹⁶⁹, for example:

- Article 433 of Spanish Code of Criminal Procedure: *“Any declaration of a minor may be conducted with the intervention of experts and always in the presence of the Public Prosecutor. Those who exercise parental authority or guardianship of the child may be also present, unless they are under investigation or the judge –exceptionally– agree otherwise. The judge may decide to record the statement”.*
- Article 448 of Spanish Code of Criminal Procedure: *“The declaration of the under-age witnesses will be carried out avoiding the visual confrontation with the accused, using for it any technical means that makes possible the practice of this test”.*
- Article 455 of the Spanish Code of Criminal Procedure: *“There will be no confrontations with witnesses who are minors unless the judge considers it essential and not harmful to the interest of these witnesses, after an expert report”.*

166 Addressed in Royal Decree 738/1997, of 23 May

167 <http://www.mjusticia.gob.es/cs/Satellite/es/1288774766880/EstructuraOrganica.html>

168 Organic Law 14/1999 of 14 July; Law 27/2003 of 31 July, and Law 8/2006 of 4 December

169 Regarding these revisions, see VILLACAMPA ESTIARTE, C., “Víctima menor de edad y proceso penal: especialidades en las declaraciones testificales de menores víctimas,” *Revista de Derecho Penal y Criminología*, 2.a Época, 16, 2005, pp. 265-299; TAPIA PARREÑO, J., “Recientes reformas en materia de protección de menores víctimas en los procesos penales.” *Diario La Ley*, No. 6655, 2007, PP. 1770-1779)

2.3. Other measures

i. Programs and organizations for the care of under-age victims of abuse

In most of the regions of Spain there are at least one program or non-profit organization working with victims of child abuse. They usually offer psychotherapeutic assistance, accompaniment to police and judicial procedures, counseling and/or legal aid.

Some of those organizations are members of FAPMI¹⁷⁰ (Federation of Associations for the Prevention of Child Mistreatment in Spain), an organization focused on prevention, detection, attention and intervention of children victims of mistreatment or sexual abuse and their families and context.

Other programs are arranged or financed by the public administrations of some regions, such as CIASI (Specialized Center for Child Abuse Intervention) in Madrid, REVELAS-M in Castilla-La Mancha, or the Psychological Attention Service for Minors Victims of Sexual Abuse and Under-Age Aggressors.

ii. Programs and organizations for the care of disabled victims of abuse

- KEEP ME SAFE project¹⁷¹ in Spain: KEEP ME SAFE started in 2013 as a two-year European-wide initiative coordinated by IPPF EN and co-funded by the European Commission, and was introduced in Spain by FEAPS (Spanish Confederation for Persons with Intellectual Disabilities). The project aims to harness the best practice, expertise and proven strategies on the prevention of sexual abuse and violence against young people with learning disabilities from the most experienced Member Associations of the project. The project will disseminate the skills, tools and strategies among the partnership and beyond and will initiate a strategy calling on the intervention of young people with learning disabilities and their carers.
- Care Unit for Victims with Intellectual Disabilities¹⁷²: in 2010, the Carmen Pardo-Valcarce Foundation developed the first specialized support service for victims of crime who have intellectual disabilities in order to help end their vulnerability to abuse. Through this service, they accompany and support victims and witnesses with intellectual disabilities throughout the criminal process, they advocate for their ability to participate in the process on an equal basis with others, and they train professionals who are directly involved in these cases (i.e. police, judges, public prosecutors, forensic and clinical psychologists) to help them communicate and engage with these vulnerable victims/witnesses in the most appropriate way.

3. Summary of case law and reported data

Many of the adaptations contained in the Law 4/2015 had already been implemented with children in the Spanish penal system long before the entry into force. Perhaps for this reason it is worthwhile to focus this section on the analysis of the other vulnerable group: people with disabilities.

170 <http://www.fapmi.es/contenido1.asp?sec=50&pp=1>

171 <http://www.ippfen.org/keepmesafe>

172 <https://www.nomasabusos.com/familiares/que-es-la-uavdi/>

Traditionally, victims with disabilities have been virtually invisible in government statistics reports on this subject¹⁷³, and the scarcity of academic legal works on it¹⁷⁴ is also clearly symptomatic of the neglect this group has suffered in the procedural milieu in Spain.

Added to the lack of specific legal stipulations and statistics is the non-existence of official instructions or memos—which do exist in relation to minor children,¹⁷⁵ for example—to guide interventions on the part of the various criminal justice operators in cases involving victims with disability, in general, and victims with intellectual disability, in particular¹⁷⁶.

However, the experience of the Care Unit for Victims with Intellectual Disabilities¹⁷⁷, as well as the study of its statistics¹⁷⁸, can serve to give an idea of the performance that the law has in daily practice.

From the cases analyzed, a significant evidence base was compiled that the plaintiffs and/or injured parties had been victims of some type of violence or abuse, this evidence being both physical and psychological and including the direct testimony of those affected. In addition, as victims of abuse or mistreatment, they all sought or had sought therapy at public or private centers. These were persons with intellectual disability of every sort and to varying degrees, both minors and adults, who had found themselves participating in a judicial procedure where there was not always adherence to principles of equality and non-discrimination, or respect for their right of access to justice and effective protection under the law.

In the context of filing the complaint, one of the major barriers identified was the widespread lack of training given to law enforcement agencies in Spain on attending to and interviewing victims who are vulnerable and, more specifically, victims with intellectual disability. While it is true that much progress is being made in terms of training for police forces, the experience of the investigators who conducted this study has revealed that there is still much to do in this regard. A lack of training sometimes means that statements are taken in a setting that is hostile to the victim—without the presence and/or support of a professional or reference person who could assist the victim with his/her statement (with the dual objective of reducing the victim's anxiety and helping with communications)—and that questions are formulated inappropriately, that is, without adapting them to the victim's level of comprehension.

173 Various sectors have emphasized the need for this and its particular importance in relation to crimes committed against boys and girls with disability. See BALLESTEROS, M., Country Report on Spain for the Study on Member States' Policies for Children with Disabilities, Policy Department Citizens' Rights and Constitutional Affairs, European Union, Brussels, 2013, p 36. Worthy of note in this report is the Estudio sobre la Prevalencia de Personas con discapacidad involucradas en delitos, conducted by the Guardia Civil [national guard] and published in 2012; it covers the period 2008-2010 and was prepared using data from the Integrated Operational Management System (Spanish acronym SIGO), Citizen Security and Analysis. Regarding this report, see the work of GONZALEZ, J. L., CENDRA, J. and MANZANERO, A. L. "Prevalence of Disabled People Involved in Spanish Civil Guard's Police Activity" in Research in Developmental Disabilities, 34, 2013, pp. 3781-3788, available at <http://www.sciencedirect.com/science/article/pii/S0891422213003454#>

174 Yes, studies have been conducted (some cited in this report) on the psychology of testimony, about how victims with intellectual disability are treated in criminal proceedings

175 Memo 3/2009 should be mentioned, from the Prosecutor General's Office on protection of victims and witnesses who are minor children. http://www.coet.es/Legislacio/Instruccions/Coet_CIRCULAR_3_09_PROTECCION_MENORES_VICTIMAS_TESTIGOS.pdf.

176 One exception, even though not a mandatory text, is the Guide to Police Intervention With Victims With Intellectual Disability, produced by Fundación Carmen Pardo Valcarce

177 See 173

178 See Cendra, J., Recio, M., y Martorell, A. (2016). Victims with intellectual disabilities through Spanish criminal justice system. European Journal of Crime, Criminal Law and Criminal Justice, 7, 76-99

In the pre-trial phase, a number of other barriers were seen that the victim with disability had to confront, even prior to being summoned to make a statement. First, the results shows that victims are seldom given an adapted explanation of the procedure—not even after the procedure has been initiated—or of their rights and role in it. There are also constant and considerable delays, often unjustifiable, in the time frames for pre-trial and other proceedings associated with exercise of the victims' rights (assignment of a public defender, examinations by experts, resolution of the remedy of reconsideration). To be specific, the time elapsed between the complaint being filed and the first time the victim was summoned to make a statement at the courthouse was 2-3 months, typically, but periods of up to 14 months were documented and, in more than 40% of the cases analyzed, this interval exceeded 6 months. This means a direct and rather negative impact on the quality of the victim's testimony and the quantity of detail it contains, for the longer the interval between one procedural moment and another, the more impaired the individual's memory and recall ability will be. On the other hand, when victims appeared in court to make a statement regarding the events reported, quite often there were situations where the victim's disability was not taken into account as a factor making him/her more vulnerable to their intervention. Thus, it was not uncommon for the victim's statement to be taken without preconstituting the evidence, without the assistance or support of professionals or experts, without questions being adapted to his/her level of comprehension, and/or in a setting, such as a courtroom, that was inordinately solemn and hostile.

With regard to the trial, first of all, perhaps one of the most significant findings to highlight would be the correlation between cases that reached this phase, when the supports for victims with intellectual disability had been implemented, and cases that were closed, when this factor had not been addressed or had not been handled properly. Another major barrier, already discussed in the previous paragraph but arising in this phase of the process, also, is the time elapsed before the trial date is set: in the context of this study, there was a mean of 18 months between the victim's statement, in the pre-trial phase, and the trial date, with the ensuing consequences, which have been explained above. Apart from that, virtually the same pattern as in the pre-trial phase is repeated here: it is not easy to provide supports as essential and reasonable for victims with intellectual disability as offering them a preliminary, adapted explanation of the trial and their role in it; reproducing the preconstituted evidence, when appropriate, instead of making the victim repeat the story; taking the victim's statement in the presence of and with the support of professionals or experts; and adapting the questions to the victim's level of comprehension. As novelty, and to finish with this phase, the highly recommended step of shielding the victim from eye contact with the accused should be mentioned; this is also seldom addressed—half of the time, according to our study—and when it is addressed, it is most often through the use of a folding screen instead of the technique of taking the victim's statement via videoconference from another courtroom or office.

Lastly, it would be fitting to comment on the verdicts that resulted from the procedures analyzed. First of all, it was interesting to notice the verdicts vis-à-vis the implementation of supports: every time that there were more or less similar points of departure, in terms of the evidence and indications of abuse/mistreatment, a higher number of convictions was seen in the cases in which procedures had been adapted to the victims' limitations. There was also one rather striking fact: that, in processes where the victim was a person with intellectual disability, not even one of the verdicts had been drafted in a manner adapted to his/her level of comprehension.

3. Conclusions

Belgium

As a general conclusion it can be stated that, even though Belgium has implemented over the years a series of rights and protections for victims in criminal proceedings, it stills falls short from the standards set by the Directive. The APAV report on the Implementation of the EU Framework Decision on the standing of victims in the criminal proceedings in the Member States of the European Union, drafted in 2009, already highlighted several shortcomings of the Belgian legislation and practice on the treatment of vulnerable victims with regards to the standards set out by the Framework Decision. The entry into force of the Directive, which has set even higher standards than the earlier Framework Decision, has not been accompanied by new rules, protocols or guidelines to reflect such increase in protection of vulnerable victims.

Among the better practices at the Belgian level, the excellent work performed by victims support organizations, often in situations of reduced subsidies from the federal and regional governments due to austerity measures, must be singled out. Belgium's treatment of vulnerable victims relies effectively on the work of social workers and practitioners, as the police's official guidelines explicitly acknowledge.

The Belgian legislator has also to be congratulated for the dispositions it enacted regarding the treatment of children in criminal procedures, as the videotaping of interviews and the respect of privacy during questionings and in the media are essential values protected by Belgian law. However, practitioners have commented that in practice the protections granted by the law are not always effectively carried out, especially due to the lack of administrative resources (the full transcription of video recorded hearings is very time consuming for instance).

On other aspects of vulnerable victim protection, the outlook is grimmer. First and foremost, of course, there is the lack of implementation of the Directive, as well as the lack of legislative proposals in that direction. The Belgian lawmaker apparently is of the opinion that the current legislative framework complies with the objectives of the Directive. The above analysis under point 1 shows that this not the case yet.

Belgium also needs to reconsider its reliance on the fact that victims will come forward in some kind of formal status during the investigation (aggrieved person) or proceedings (plaintiff). Victims are often not inclined to take affirmative steps that might mean reliving a situation they want to forget as much as possible, and this currently means that they are then deprived of information rights and of the right to be heard during the proceedings or the right to protection (which is limited to witnesses and their relatives, a very dangerous situation). As a result, vulnerable victims, who are especially at risk of not wanting/being able to take on a more formal role in the procedure, are deprived of some fundamental rights. However, in the latest legislative acts, the lawmaker seems to acknowledge that this must change, and victims that have not participated in the proceedings in any form, for instance because of specific vulnerabilities limiting their capacity to participate, can now ask to be informed about the modalities of the execution of the criminal sentence, and even intervene in the procedure of early release.

We can only hope that the Belgian legislator will promptly implement the Directive by complementing the existing legislation where it falls short of the objectives of the Directive. Otherwise,

plaintiffs could start invoking the rights offered by the Directive directly in front of the Belgian courts in order to be able to exercise the rights that the European legislator has bestowed upon them.

Finland

Less than half of the articles of the Directive required changes to the Finnish legislation as the Finnish legislation already met the requirements of the Directive for the most part. The articles that required legislative actions were Articles 4, 5, 6, 7, 12, 22 and 23, and the required changes and wordings were tailored into many different acts relevant for criminal processes.

In addition to having relevant legislation in place, pursuant to the Commission Final Report, training and communication are the key issues when improving the protection of victims. Improving communication and practices as well as providing training for authorities should be promoted extensively, continuously and by allocating enough resources to such activities. Attention should also be paid to the importance of international cooperation and collaboration of different authorities.

France

As good practices, although there is scope for improvement within the French system, France counts on a number of good practices that supplements its legal and regulatory framework. Indeed, the French system rely on an extensive network of institutions specialized on child victims. Since 2000, the Children's Ombudsman promotes and ensures the protection of minors. In 2004 the National Observatory for Children in Danger was set up and aims at preventing and identifying cases of child abandonment and abuse. Other types of measures have been taken, such as the publication of good practices guides. Within the field of criminal proceedings, the Ministry of Justice and the Ministry of Education have published a shared official guide containing good practices to apply in presence of child victims of criminal offences. The guide gives advice on how to act to improve the treatment of child victims and outlines the various stages of intervention if a child is a victim of crime.

On the other hand, as already seen, one of the weaknesses of the French system is the extensive number of provisions that are scattered within different pieces of legislation. In addition, the procedure in place is designed to mainly focus on offences with a sexual background. In this sense, the main weakness of French provisions is their limited scope of application, which prevents them for being enforced in all proceedings involving a child victim, irrespectively of the type of offence.

Germany

In conclusion, there was not much work to do for the German legislator in order to transpose the Directive. Most of the required measures for protection of victims during criminal proceedings were already in place. With regard to vulnerable victims, sec. 48 para 3 StPO plays a central role but serves mainly as a clarification. All rights for vulnerable victims as set out in the Directive already existed. The rights and measures are placed in different sections, even in different acts in German criminal law. In general, the changes brought in by the Directive are unlikely to have much of an effect in practice. The new rules regarding psychosocial support, however, are indeed a big step to support victims, in particular, children and disabled people - a step that goes beyond of what was required under the Directive.

In the light of the above, it is evident that many of the provisions in the Directive had already been implemented in German law. Only minor adjustments were required to existing legislation to bring them in line with any new requirements. As such, Germany's "patchwork" nature of the laws on this subject matter may not be the most straightforward example in a comparative study of the transposition of the Directive into national Member State law.

Italy

As good practices, although there is scope for improvement, the Italian legislation already complied with all of the articles of Chapter 4 of the Directive, at least partially (i.e. Articles 18, 19, 20, 21, 22, 23 and 24). In addition, the Italian system relies on an extensive network of institutions that specializes on child victims and gender-based violence throughout the national territory.

On the other hand, one of the weaknesses of the Italian system is the extensive number of provisions that are scattered within different pieces of legislation. In addition, some of the justifications set out in the explanatory memorandum of the Italian Government do not seem to validate the rights accorded by the Directive and the spirit of the Directive itself. In particular, some pieces of the Italian legislation already in place before the implementation of the Directive seems not to be specific enough to meet the Directive's criteria. It remains to be seen to what extent case-law will add precision to the implementing legislation and whether it will advocate for a more extensive respect of the rights of vulnerable victims as set out in the Directive.

Netherlands

Most of the guarantees that the Directive required were already implemented in Dutch law, such as the right of victims to receive information during the proceedings or the right to be assisted during the hearing. Of the provisions in Chapter 4 of the Directive, only Article 20(c) required a legislative amendment to the Dutch Code of Criminal Procedure. Articles 18, 19, 20(a), (b) and (d), 22, 23 and 24 of the Directive are partially covered by the existing legislation but, to the extent that further implementing measures may be required, the Dutch legislator intends to grant the Government the power to adopt governmental decrees.

In addition to the existing legislation, the Netherlands has in place an extensive network of victim support throughout the territory, in particular for minors and for domestic violence victims. Attention should be paid to the collaboration of the different authorities and trainings should be further promoted.

Portugal

Before the implementation of the Directive, the Portuguese legislation partially covered several articles of Chapter 4 of the Directive (i.e. Articles 19, 20, 21, and 23). The status of the victim was not recognized as such in the Portuguese legal system, therefore the legislator has rightly adopted this status in the implementing law. In particular, the implementing law has accurately transposed the provisions of Articles 22 and 23 of the Directive establishing the individual assessment and rights of the victims with specific protection needs. Due to the fact that, when transposing these articles the legislator decided to adopt the same wording as the Directive's, the implementing law assures a high degree of protection for victims in theory, especially for victims with specific protection needs. It remains to be seen to what extent these provisions will be implemented in practice. All in all, the

implementation of the Directive through Law 130/2015 has proven to be a good practice that ensures an adequate protection level for the victim in line with the spirit of the Directive.

As a bad practice, it could be argued that, given that training and communication are one of the key issues when improving the protection of victims, the Portuguese system has room for more detailed legislation as regards the implementation of Article 25 of the Directive. In this sense, specific rules for the training of the different practitioners could be set in order to allow for a comprehensive promotion of the protection of victims in practice.

England and Wales

As a conclusion, the best measures adopted to intervene with victims in criminal proceedings are the following:

- If a victim does not fall into the three categories of victims with specific protection needs, although the service provider is not obliged to do so, the service provider may exercise its discretion and provide Enhanced Entitlements under one of the categories depending on the circumstances of the victim concerned and the impact that the crime has had on them ([1.7] Chapter 1).
- The Code of Practice (2015) assumes that the victim is entitled to Enhanced Entitlements if the victim under 18 years old when the crime happens ([1.2] Chapter 1).
- If the age of the victim is uncertain and there are reasons to believe that the person is under 18 years old, service providers must presume that the victim is under 18 years old ([1.46] Chapter 5).
- Ensuring that victims are entitled to receive support and information from all relevant public sector bodies. Organisations such as HMRC, the Serious Fraud Office and the National Crime Agency now have obligations to victims under the Code of Practice (2015).
- Victims are now entitled to choose to make a Victim Personal Statement (VPS) and to read it out in court if the offender is found guilty.

On the other hand, there is no apparent appeal process in place for victims which the CPS finds do not qualify for Special Measures. Also, as victims with specific protection needs might find the police intimidating, another party (such as a state psychologist) should be allowed to conduct the assessment instead, but this is not covered by the legislation. Finally, the Code of Practice (2015) does not explicitly state that if there is a conflict between the holders of parental responsibility and the children or where the child is separated from the family, a special representative should be appointed for child victims.

Spain

The Directive was adopted in Spain by Law 4/2015, of April 27th, on Crime Victims' Legal Status, which entered into force on October 28th, 2015. As in the case of Portugal, this Law practically transposes the full text of the Directive, establishing a series of measures and rights related to all victims whatever their status and the crime suffered, and adding a chapter on additional measures of protection for particularly vulnerable victims.

As favorable aspects of the legislation, the following should be highlighted: Law 4/2015 includes one and all of the rights and measures included in the Directive, and even extends some of them to cases not stipulated therein, such as pre-constitution of the victim's declaration in certain cases apart from being a child, or to appoint a legal defender when the interests of the minor victim or person with disabilities conflict with those of the legal representatives. Also the new legislation promotes the creation of Victim Assistance Offices, as well as the training of every professional (law enforcement agents, judges and judicial staff, prosecutors, lawyers, healthcare and social services professionals, etc.) that will come into contact with the victims. In addition, a Regulation developing the Law has also been adopted, which defines the procedure for carrying out the evaluation of victims in order to detect their special protection needs. Finally, the law enforcement agents have specific protocols for the policial intervention with vulnerable victims.

However, some areas should be improved, of which the following are notable examples: first, in contrast to the law enforcement agents, to date no protocols have been established for the assistance of vulnerable victims in courts; second, a program for the training of the police officers and the legal operators in order to provide the best treatment of victims, has not yet been specified; and third, as in Germany, the Spanish territorial organization and the system of competences attributed by the Autonomous Communities cause significant differences in certain areas covered by the Law 4/2015, such as the implementation of the Victim Assistance Offices.

Overall conclusion

In terms of transposition, most of the analysed Member States comply with the implementation of the Directive. Some of them, like Germany or England and Wales, because even before the publication of the Directive they already had legislation regulating the participation and protection of victims in criminal proceedings, and have only had to introduce minor modifications. Most of the Member States, however, have adopted one or more *ad hoc* laws, which contain, to a greater or lesser extent, the provisions of the Directive. Thus, countries like Finland, France, Italy, Portugal or Spain have approved –all of them between 2015– laws for the transposition of the Directive, which in almost all cases respect its content. On the other hand, there are some countries that have not completed yet their transposition period: in the Netherlands, although it has already made some specific legislative changes, the legislative changes implementing the Directive will not enter into force until they have been approved by the Senate (the legislative proposal is scheduled for first discussion in the relevant committee of the Senate on May 24, 2016); and in the case of Belgium, even though this country has implemented over the years a series of rights and protections for victims in criminal proceedings, it stills falls short from the standards set by the Directive, and its entry into force has not been accompanied by new rules, protocols or guidelines to reflect such increase in protection of vulnerable victims.

Furthermore, many of the countries whose have participated on this study have developed specific provisions and protocols to support victims with special protection needs in criminal proceedings. The majority of these regulations, however, focuses on minors, obviating the rest of vulnerable groups, such as people with intellectual disabilities.

Regarding to to the case law and data reported on this subject, most of the analysed Member States agree that it is still early to have a case law regarding the application of the Directive by courts, due to the short time in force of the obligation on EU Member States to adapt their inter-

nal law to the Directive. Just Italy, England and Wales, and Spain could report some cases about how the new provisions are operating since their entry into force.

However, almost all Member States have initiatives, both public and private, to meet the needs of victims of crime both during and after the criminal proceedings. Thus, organizations and programs such as Project LASTA or Children's Affairs House (in Finland); Antenne des mineurs, GIP Enfance en danger or the Victim Support Helpdesks (in France); Diritto in rosa, the Italian Bar Association in Defense of Family and Minor Victims or Project On the Road (in Italy); the Crime Victim Compensation Fund, Victim Support Netherlands, or CoMensha Foundation (in the Netherlands), the National Commission for Protection of Children and Youngsters at Risk, the General Directorate for Social Affairs, the Portuguese Association for Victim Support, Project CARE, or Instituto de Apoio à Criança (in Portugal); Victim support, the Criminal Justice Inspectorates, or the Victims' Commissioner (in England and Wales); and FAPMI-KEEP ME SAFE, or the Care Unit for Victims with Intellectual Disabilities (in Spain); are all of them good practices to support the provisions contain in the Directive.

Therefore, even with a fairly acceptable implementation of the Directive, still today victim assistance associations are a key element for guaranteeing the rights of all victims, since they play an essential role not only in detecting cases of abuse, but also in initiating interventions, guidance and support during criminal proceedings.

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Law to transpose Directive	
BELGIUM	Not a specific one.
FINLAND	GB 66/2015 measures which entered into force in March 2016 GB 293/2014; ended with the Act on Crime Victim Fee which enters into force on December 2016
FRANCE	Law 2015-993 by added a subtitle on victims' rights entered into force on the 17th August/15. Decree 2016-214: procedural regulations in regard to minor victims of sexual crimes and rules to identify specific protection needs for victims. entered into force on February 26/16
GERMANY	Act to strengthen the Rights of the Victims in Criminal Proceeding came into force on the 31st December 2015.
ITALY	Decree 12/2015 entered into force on January 20th 2016
NETHERLANDS	A draft legislation, to implement the Directive is in process.
PORTUGAL	Law No. 130/2015 entered into force on the 4th October 2015.
ENGLAND & WALES	Code of Practice for Victims of Crime, which updates the Law of Domestic Violence and Victims, entered into force on the 16th November 2015.
SPAIN	Law 4/2015 "Crime Victims' Legal Status" entered into force on 28th October 2015.
Main measures adopted	
BELGIUM	No new measures were adopted.
FINLAND	Victims receive a written confirmation of acknowledgment when filling the police report, with basic information. Victims must be provided with a translation of the document to protect its rights, when it requires it. Investigating authorities must inform the victim of its procedural rights. When the suspect is released during the pre-trial investigation the victim must be notified. New rules for : interrogation and conducting personal assessment of victims which allow to determine if a it needs "special protection" Victim with special needs can be heard behind screen, without the presence of a party Victim can ask to be informed when suspect is released (this request is confidential), can access information about the case, if it has special need of protection it can be held without public People whose information has been registered in the criminal records register is not longer allowed to access victim's information.
FRANCE	Measures to guarantee the right to receive information from the first contact with a competent authority were adopted. Including the right to be informed of the protection measures that it's entitle. Right to be assisted by interpreter and to have translation of the essential info to exercise its rights. Individual assessment of the victim, in order to identify specific protection needs, to prevent intimidation and reprisals among others. The police is in charge but also the victims' associations and Victims of Crime Support Office Victims' interview should be carried out in premises designed o adapted for that purpose.
GERMANY	The legislator restructured and rewrote the section to fulfill all the Directive provisions. Now, the victim has the right to receive information from the 1st contact with a competent authority. Measures which guarantee the right to receive written acknowledgment of the victims' presented complaint. It includes the translation and assistance to file the formal complaint in a language that he/she understands. Right to a translator includes examination by the police and public prosecutor. Finally, some measures to guarantee the right to receive information about the time and place of the trial, nature of the charges, of the due to inform if the offender escapes from detention.
ITALY	The Decree lists the information that the victim is entitled to receive. It provides that victims must be informed if the prisoner is released or escapes. If the victim doesn't speak Italian he/she is allowed to: speak its own language; hire a translator free of charge; and receive the essential documents to the exercise of its rights translated into his/her language. Before, only victims of certain offences were entitle to ask for specific protection measures during the hearings, now they apply to victims with specific protection needs in general irrespectively of the offence.
NETHERLANDS	Under the new proposal: Authorities will pay more attention to the victim minors. To that aim, they need to be trained An assessment will be carried in order to determine if the victim can be eligible for special protection measures Government is allowed to adopt governmental decrees to "protect the victims" The Damages Fund for Violent Crimes Act, will cover survivors of deceased victims of road traffic violations and crimes of negligence.
PORTUGAL	The Law transposes the Directive almost literally.
ENGLAND & WALES	The Code contains measures which are given to the victims according to their classification. Victims are classified into: victims of the most serious crimes; persistently target victims; vulnerable victims and intimidated victims
SPAIN	The Law transposes the Directive almost literally.

Weaknesses	
BELGIUM	<p>Not all the victims have a systematic right to receive information. Only victims who have the status of private accusation.</p> <p>Victims who do not speak a national language do not have the right to a translated copy of the complaint or of the relevant procedural acts</p> <p>No tailored and victim oriented information is enforceable</p> <p>The guidelines which explain how the judiciary should relate to victims are very disarticulated.</p>
FRANCE	<p>The extensive provisions are located in different pieces of legislation. This makes it hard to find and implement them.</p> <p>Mainly focus on offences with sexual background, therefore its scope of application is limited.</p>
GERMANY	<p>Due to federalism some matters fall under the competence of federal States such as victims support services which already has a good network overall but in some states the institutions and/or their level it's not very high.</p>
ITALY	<p>The extensive provisions are located in different pieces of legislation. This makes it hard to find and implement them.</p> <p>Some of the justifications set out in the explanatory memorandum of the Italian Government do not seem to validate the rights accorded by the Directive and the spirit of the Directive itself.</p>
NETHERLANDS	<p>Under the new proposal:</p> <p>Protective measures will only be available to victims of certain crimes.</p> <p>Some of the Directive provisions are missing.</p>
PORTUGAL	<p>Even though there is a provision to avoid contact between the victim and the aggressor, it remains too general, it doesn't consider separate waiting areas.</p> <p>Even though most of the Directive provisions have been implemented, regarding article 25 specific rules for training different practitioners are too broad.</p>
ENGLAND & WALES	<p>There are no appeals for victims who the CPS determined are not qualified for special measures.</p> <p>The Code does not state that a special representative should be appointed for the children victims when there is a conflict between the holders of parental responsibility and children.</p> <p>As victims with specific protection needs might find the police intimidating, another party (such as a state psychologist) should be allowed to conduct the assessment instead</p>
SPAIN	<p>The judiciary has no protocol for vulnerable victims.</p> <p>The training that the police and the judiciary will receive to treat victims, specially those who have special needs, has not been specified yet.</p> <p>As in Germany, the Spanish territorial organization in addition to the powers that Autonomous Regions have, makes a high difference in some of the Directive provisions. For instance, when implementing the Victims Attention Offices.</p>
Strengths	
BELGIUM	<p>All victim support services are free of charge and confidential.</p> <p>Children treatment in criminal proceedings is well developed.</p> <p>Anyone can ask to be informed about the sentence execution and in this regard, discuss early release.</p>
FINLAND	<p>All the Directive provisions have been adopted in the national legislation.</p> <p>New rules for interrogation and victims assessment to find out if it has special needs have been implemented.</p> <p>There is a special training for police, doctors and other actors: law professionals, police, university hospitals and media.</p>
FRANCE	<p>France has implemented some measures which go beyond the Directive provisions: i) it is compulsory to record the questioning of a child; ii) the child can be accompanied by a person of his/her choice beside the legal representative if an ad hoc administrator has not been appointed; iii) minors are entitled to consult a lawyer without the need of its parents authorization; iv) a lawyer can be appointed in the first interview. Its role is to provide information, protect the child victim and assist it during the trial; v) special trainings for the police, gendarmerie national, medical practitioners and judicial officers.</p>
GERMANY	<p>In some cases the victim has the right to join as a private accessory prosecutor and in this regard, it can present evidence.</p> <p>The right to psychological support during the criminal proceedings is not required by the Directive, but since it was a pitfall in Germany (since not all the states had it) an Act in this regard will enter into force on January 2017.</p>
ITALY	<p>Italian system relies on an extensive network of institutions that specializes on child victims and gender-based violence throughout the national territory</p> <p>The Incidente Probatorio (request presented by the prosecution or the victim to admit evidence earlier to protect its genuineness) extended to the victim's testimony</p> <p>It is presumed that the victim is a child when its age is unknown. Hence it is compulsory to audio visually record its interview.</p>
PORTUGAL	<p>The new law goes beyond the Directive by establishing access to care facilities if the assessment of the victim showed it has specific protection needs which require them.</p>
ENGLAND & WALES	<p>Even when a victim does not fall into one of the three categories, the service provider may exercise its discretion and provide enhanced entitlement under certain circumstances.</p> <p>It is presumed that the victim is a child when its age is unknown.</p> <p>Certain public sector bodies must provide support and information to the victims.</p> <p>Victims are entitled to make a personal statement and read it in Court if the offender is found guilty.</p>
SPAIN	<p>The Law 4/2015 gathers each of the rights and measures provided in the Directive. It even goes further by contemplating rights which are not in the former. For example it is possible to pre-constitute the victim's declaration even in cases when it is not a child. Or the possibility to appoint a judicial defender in cases when the victim is a minor or a disable person and their interest are in conflict with its legal representative interests.</p> <p>The law states the creation of Victims Attention Offices, such as the tanning of all the personnel who has contact with victims (Security Forces, Judiciary, Lawyers, social and sanitary workers etc)</p> <p>A Regulation has been created to implement the Law. It contemplates the procedure that should be followed in order to assess the victims and determine if they need special measures of protection.</p> <p>Security Bodies and Forces have specific protocols when having contact vulnerable victims</p>

	Support Network
BELGIUM	Justice House: judicial assistant, informs on the procedure and victim's rights, emotional support Local Authorities provide psychological and medical assistance to victims Fund for victims support: created to indemnify victims whose perpetrators are unknown or insolvent.
FINLAND	MARAC (Multi Agency Risk Assessment Conference): helps victims of domestic violence LASTA: seeks for nationwide collaboration for the police, prosecutors, child welfare and psychiatric healthcare (from 2017) Children's Affairs House: calls the officials investigating act as a single expert group, in order to simplify, not re victimizes the victim and give it all what it needs.
FRANCE	Paris Bar Association: established a children's office to provide free and confidential legal advice. GIP: group for the children protection in France ONED (National Observatory for Children in Danger) prevents and identifies abandonment and abused children. SANTED: help line for children at risk Victims Support Helpdesks: located in French Justice Palace and managed by victims' associations in charged to inform, guide and accompany.
GERMANY	Germany already has a good network of victim support services (e.g., Weisser Ring e.V.) ¹ . Statistics show that there are at least 1.360 different institutions that deliver victim support services in the country ² .
ITALY	Association Diritto in Rosa: information point that provides legal and psychological assistance for women and minors. Focuses on gender-based violence victims, physical and psychological violence and sexual offences. Italian Bar Association in Defense of Family and Minor Victims: lawyers specialized in family law. Its main aim is to influence legislation but it also carries educational duties consisting of reaching and promoting children's rights. ONLUS (Project on the Road): financed by the Directorate General Home Affairs of the European Commission it seeks to better understand the identifications of minors, who risk of being victims of human trafficking and to enhance the capacity of vulnerable children whether there is a risk.
NETHERLANDS	Victim support Netherlands: practical, emotional and legal support and assistance. It seeks for the improvement of the victims' rights as well as the development of knowledge in this field. CoMensha Foundation: reception and assistance of human trafficking victims. Support Points for Domestic Violence: funded under the Daphne Funding Program of the European Commission provides a national support point for domestic violence victims and training municipalities, police and public prosecutors Byway Foundation: group of experts which assist women and children victims of domestic violence or stalked by ex-partners. Legal Assistance Counter: provides legal aid for those who seek it.
PORTUGAL	National Commission for Protection of the Children and Youngest at Risk: supervises and coordinates organizations specialized in assisting children and youngest at risk and constructs safe houses to protect them. It also promotes the rights for children at risk. General Directorate for Social Affairs: provides counseling to children participating in criminal proceedings and assist and protect children victims of crime. APAV (Portuguese Association for Victims Support): inform, protect and support victims of the crime. Project CARE: network specialized to support children and youngsters victims of sexual violence IAC (Instituto de Apoio a Crianca): defense and promote children's rights.
ENGLAND & WALES	Victim Support: helps victims claim enhanced entitlement Criminal Justice Inspectorates: it is an Observatory which seeks for the guarantee of victim's right during the criminal proceedings. Victims Commissioner: thei published in January and November 2015 reports reviewing the services that criminal justice agencies provide under the previous edition of the Code of Practice.
SPAIN	The State has offices which assist victims of violent crimes and sex offences. These offices can also be found in the Autonomous Regions with judiciary powers. There are also private entities for victims support in a regional level, such as CAVAS, FAVIDE o AMUVI. FAPMI (Federation of Associations for the Prevention of Child Mistreatment in Spain): focuses on prevention, detection, attention and intervention of children victims of mistreatment or sexual abuse and their families and context. CIASI (Specialized Center for Child Abuse Intervention) in Madrid. REVELAS-M for minor victims in Castilla La Mancha region. KEEP ME SAFE: prevention of sexual abuse and violence against young people with learning disabilities UADVI (Care Unit for Victims with Intellectual Disabilities): Carmen Pardo-Valcarce Foundation accompanies and supports victims and witnesses with intellectual disabilities throughout the criminal process.

¹ Cf. Müller-Piepenkötter, Die EU-Opferschutz-Richtlinie 2012/29/EU – Handlungsbedarf bei Unterstützungsdiensten in Deutschland, NK Neue Kriminalpolitik, Jahrgang 28 (206), Heft 1, p. 9-14.

² Cf. Müller-Piepenkötter, Die EU-Opferschutz-Richtlinie 2012/29/EU – Handlungsbedarf bei Unterstützungsdiensten in Deutschland, NK Neue Kriminalpolitik, Jahrgang 28 (206), Heft 1, p. 9-14.



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