

## 24 VICTIMS' RIGHTS DEVELOPMENTS IN THE EU

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Based on the authorisation offered by the Lisbon Treaty a new victims' rights instrument was adopted by the European Union lawmaker to be complied with until November 2015. Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime<sup>1</sup> (hereinafter: 'victims' rights directive') replaced Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.<sup>2</sup> In the present paper we will explore the rights of individuals falling victim to crimes in any of the member states, with a special focus to the importance of the victims' rights directive for future criminal procedures and crime victims, reviewing at the same time the relevant case law of the Court of Justice.

In the first introductory chapter we will offer the theoretical and philosophical background for the victims' rights paradigm and see how corresponding EU laws followed the international trend. The second chapter describes the legal basis and the drafting procedure of the victims' rights directive, along the specificities of the EU's victims' rights regime currently in force. The third chapter offers a step-by-step analysis of the three key elements of victims' rights. These are: i) provision of information and support, ii) participation in criminal proceedings and compensation, and iii) protection of victims and recognition of victims with specific protection needs. The content of these elements will be illustrated by regional good practices from European jurisdictions. Our conclusions on the current state of EU victims' rights are summarised in the final chapter.

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1 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Dec. 2001/220/JHA.

2 Council Framework Dec. 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

## 24.1 INTRODUCTION

It was not less than 250 years ago when Cesare Beccaria laid down the foundations of European criminal justice.<sup>3</sup> Lessons learned from past injustices and the irreconcilability of the middle age cruelty of criminal justice with enlightenment led to the formulation of principles that still govern European criminal law. Arbitrary processes, abuse of power, cruelty of sanctions, corporal punishment and the death penalty vanished from European criminal justice. Instead, legal certainty, foreseeability, written laws, and abstract legal principles, proportionate and humane punishments gave the basis of the new criminal justice system. With the emergence of international and corresponding domestic rules including enforcement mechanisms, criminal law fulfilled the demands of enlightenment and became the Magna Charta of the perpetrator. At the same time the classical school of criminology propagated a new allocation of criminal powers granting exclusivity to the state within the corresponding boundaries. The state monopoly over criminal justice however had some unintended consequences: it led to the marginalisation of the victim's position in the criminal justice process. Not only victims' rights, but also the role of the public has been minimised or invoked only in the rhetoric sense.

The broader context for victim's rights can be traced back to the turn of the millennium, when, moving away from welfare models of crime prevention that focused on the perpetrator, policies started targeting all aspects of crime. Tools of situational crime prevention controlling the opportunities for crime, the direct environment and possibilities for perpetration complemented previous methods of intervention affecting the (potential) perpetrators alone.<sup>4</sup> Most importantly from the point of view of the present analysis, the victim's abandoned position became more and more untenable and irreconcilable with the rule of law and human rights. The focus thus shifted to the victim. Upgrading the role and position of the victim in criminal policy had groundbreaking effects. The notion of victimisation and multiple victimisation<sup>5</sup> came to the forefront of academic research, and the criminal procedural role of the victim was also upgraded. The new rules explored not only the rules on becoming a victim of crime, but also added new dimensions to the fight against criminality.

3 Cesare Beccaria 'Of Crimes and Punishments' originally published in Italian in 1764 inviting and even obliging states to exercise their criminal power, while also delineating the limits of that power. Cesare Beccaria, *On crimes and punishments*, translated with an introduction by Henry Paolucci, Indianapolis: Bobbs-Merrill, 1963.

4 See the Council Decision of 28 May 2001 setting up a European crime prevention network, 2001/427/JHA, which states the following: 'Crime prevention covers all measures that are intended to reduce or otherwise contribute to reducing crime and citizens' feeling of insecurity, both quantitatively and qualitatively, either through directly deterring criminal activities or through policies and interventions designed to reduce the potential for crime and the causes of crime.'

5 Richard Sparks, 'Multiple Victimisation: Evidence, Theory and Future Research', *Journal of Criminal Law and Criminology*, Vol. 72, No. 2, 1981, 762-768.

The EU also followed the new paradigm of reinforcing victims' rights in- and outside the criminal justice processes. Over the past decade and longer, several pieces of European laws have been adopted in the field, the most important being Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings and Council Directive 2004/80/EC relating to compensation for crime victims of 29 April 2004.<sup>6</sup>

The first two multi-annual policy programmes on the European Union (EU) Area of Freedom, Security and Justice (AFSJ) concluded in Tampere (1999) and the Hague (2004) did not pay direct attention to crime victims. This corresponded to the general worldwide trend in criminal policy, which was rooted in state monopoly of both use of violence and criminal power. The AFSJ multiannual plan for the period 2010-2014, the Stockholm Programme<sup>7</sup> however already promoted an open and secure Europe serving and protecting citizens, containing an important paragraph on crime victims.<sup>8</sup> They were addressed within Point 2.3 of the Programme, entitled 'Living together in an area that respects diversity and protects the most vulnerable.' The text follows the legal definition of vulnerable victims and singles out four types of victims: 'persons subjected to repeated violence in close relationships, victims of gender based violence, or persons who fall victim to other types of crimes in a Member State of which they are not nationals or residents, [and v]ictims of terrorism.'<sup>9</sup> The list is not exhaustive. The following main considerations for vulnerability emerge from the wording. Victims to be covered are victims of crimes with a cross-border element – like drivers and travellers suffering road traffic accidents – or crimes which are considered to be so heinous that there is an undisputed joint agreement among the member states on their persecution: domestic and gender based violence victims, and victims of terrorism are mentioned explicitly in the Stockholm Programme, but there are other examples where the need to persecute the crime is undisputed, such as for example the sexual exploitation of children.<sup>10</sup>

6 Legislation covering victims belonging to specific vulnerable groups and the victims of certain types of crimes has also been adopted. See Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Dec. 2002/629/JHA; see also the Proposal for a Directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Dec. 2004/68/JHA, Brussels, 29 March 2010; and Council of the European Union, Framework Dec. 2002/475/JHA on combating terrorism as modified by Council Framework Dec. 2008/919/JHA.

7 Official Journal C 115 of 4.5.2010.

8 The role played by umbrella organisations advocating for its inclusion was of special relevance. See the speech by Mr. Jaap Smit, President Victim Support Europe, [www.victimsupporteurope.eu/files/uploads/Victim%20support%20on%20a%20European%20level.pdf](http://www.victimsupporteurope.eu/files/uploads/Victim%20support%20on%20a%20European%20level.pdf).

9 See Point 2.3.4 of the Programme.

10 See for example Art. 2 (2) of the Council Framework Dec. 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between member states the 32 crime groups in for which double criminality has been abolished.

There are two theoretically viable approaches for crime victims' EU coverage: First, victims might be considered as vulnerable due to the fact that they have suffered a crime in a member state other than their own, with an official language that is typically not the victims' mother tongue, and with a legal system and victim support mechanism that they are in most cases unfamiliar with. In other words because they are 'foreign' in all aspects,<sup>11</sup> they are vulnerable even among crime victims. That would however only justify the coverage of victims of crimes with a cross-border element. Second, one might rely on the European citizenship doctrine, requiring that victims be guaranteed the same rights across the Union without discrimination on the basis of nationality.<sup>12</sup> The latter justification would justify a broader scope of harmonisation in the field of victims' rights. In any case it would be impractical to have two separate bundles of rights for domestic and cross-border victims; therefore European standardisation seems to be a rational choice.

The Lisbon Treaty made harmonisation possible, but only to a limited extent. With the entry into force of the Treaty on the Functioning of the EU (hereinafter: 'TFEU'), new provisions have been incorporated in the primary sources of EU law that provide a clear and more flexible legal base for the EU to establish minimum rules on victims' rights, but only to the extent necessary to facilitate mutual recognition of judgments and cross-border criminal cooperation.

#### 24.2 LEGAL BASIS AND ADOPTION OF THE VICTIMS' RIGHTS DIRECTIVE

The EU was long preoccupied with member states cautiously guarding the core of their national sovereignty, and therefore unwilling to engage in any kind of even minimum harmonisation in the field of criminal law. It therefore – as a politically viable substitute – introduced the principle of mutual recognition based on mutual trust. Even though at the Tampere summit back in 1999 the principle was named as the cornerstone of judicial cooperation on which European criminal justice should have been based, mutual trust is still not fully realised among member states. As long as the practical enforcement of human rights standards implies enormous differences across the EU, mutual trust does not exist and cannot exist either. As long as certain member states are worried about their citizens' basic rights and respect for their procedural guarantees due to differing fundamental rights

11 This explanation has been offered by Swedish Euro-commissioner Anita Gradin. P. Rock, *Constructing victims' rights*; the Home Office, New Labour, and victims Oxford, Oxford University Press, 2004, 513. Cited in the Project Victims in Europe, *Implementation of the EU Framework Decision on the standing of victims in the criminal proceedings in the Member States of the European Union*, Portuguese Association for Victim Support (APAV), Lisbon, 2009, 7-8.

12 This principle was declared by the European Court. See also European Commission, *EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights*, COM(2010) 603 final, Brussels, 27 October 2010, Paul Craig and Gráinne de Búrca, *EU law: texts, cases and materials*, Oxford: Oxford University Press, 2011, 819-853.

standards, they leave short-cuts in their legislation not to enforce EU law and at the same time they interpret EU law in a restrictive way.<sup>13</sup> Still, the lack of trust does not need to jeopardize EU criminal cooperation, instead it may serve as a drive towards harmonisation of procedural guarantees, which may create trust for the future – trust which should have been there on the first place.<sup>14</sup> The heads of states and governments reached the same conclusion in the Stockholm program that offers a surprisingly honest regarding of the principle of mutual recognition. The Stockholm program expresses a straightforward criticism and intends to establish that mutual trust, which was the alleged cornerstone of several EU documents adopted after 11 September 2001, was in reality not there. In order to remedy the problem and create trust, the multi-annual program propagates legal harmonisation. 'The approximation, where necessary, of substantive and procedural law should facilitate mutual recognition.'<sup>15</sup>

Along these lines, the Lisbon Treaty, or more specifically Article 82 Section (1) TFEU acknowledges that judicial cooperation in criminal matters is still based primarily on the principle of mutual recognition of judgments, and allows the approximation of the laws and regulations of the member states in a limited number of predefined areas. However for our purposes there is an important extension of the EU powers foreseen in Article 82 Section (2) TFEU: to the extent necessary to facilitate mutual recognition of judgments and police and judicial cooperation in criminal matters with a cross-border dimension, the European Parliament and the Council may adopt directives to establish minimum rules in a number of specified areas: including the rights of individuals in a criminal procedure (Point (b)) and the rights of victims of crime (Point (c)).

Reference in Point (b) to the rights of individuals in criminal procedures, most importantly suspects or accused persons is rather obvious: in the lack of adequate, communitarised, enforceable minimum procedural guarantees and human rights mechanism, mutual recognition-based provisions are not able to operate effectively. Currently, we are witnessing how due process guarantees complement existing provisions and how an EU criminal procedural law system evolves, in order to maintain and promote an effective criminal cooperation. In other words, minimum harmonisation of due process guarantees permits mutual recognition-based laws to survive. Various instruments have been adopted that are all supposed to create the foundation of mutual trust. They include a 2010 directive on the right to interpretation and translation in criminal proceedings,<sup>16</sup> a 2012 directive

13 Gert Vermeulen – Wendy De Bondt – Charlotte Ryckman (eds), *Rethinking international cooperation in criminal matters in the EU. Moving beyond actors, bringing logic back, footed in reality*, Antwerpen, Apeldoorn, Portland: Maklu, 2012, 269-270.

14 Károly Bárd, *Az igazságszolgáltatási rendszerek összehasonlító vizsgálata – jogközelítés – vádlotti jogok*, in: Balázs Gellér (ed.), *Békés Imre emlékkötet*, Budapest: Tullius Kiadó, 2013, 16-34, 29.

15 Stockholm Programme, Section 3.1.1.

16 Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.

on the right to information in criminal proceedings,<sup>17</sup> and a 2013 directive on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.<sup>18,19</sup>

The legitimacy of the authorization by the Lisbon Treaty to harmonise victims' rights whenever necessary for the mutual recognition of judgments and cross-border criminal cooperation is less obvious. Can one imagine a scenario where the lack of common standards in victims' rights would hamper the efficiency of mutual recognition based instruments, and therefore harmonization was needed in line with Article 82 Section (2) TFEU? Would it be possible for an executing state to deny surrender or recognition of a judgment with regard to the lack of victims' rights in the issuing member state? For the sake of conducting a criminal procedure or for the sake of sentencing it would be absurd not to cooperate with reference to the lack of victims' rights, since thereby the executing state would jeopardize the rendering of justice and compensation to the victim, i.e. the person it wanted to protect in the first place.

There are however scenarios imaginable, where cooperation could be reasonably denied on the basis of victims' rights. First, non-acknowledgment of a foreign decision may be a logical step if it was a decision acquitting the suspect or discontinuing the case and the victim was denied some of her rights, for example the rights in the event of a decision not to prosecute. Second, the executing state may wish to litigate the case itself instead of cooperating with the issuing state denying victims' rights. Thereby the principle of *ne bis in idem* would of course be suspended, since the suspect would be tried twice of the same crime. Should the executing state not recognize a previous judgment, it may not only try, but also sanction a suspect for a second time for the same crime. It was in the seminal case *Gözütok and Brügge*,<sup>20</sup> that the European Court of Justice was given a chance to discuss the interpretation of the double jeopardy principle in relation to the Convention imple-

17 Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

18 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

19 *Justizmorde* in relation to the European Arrest Warrant led to considerable modifications and introduction of safeguards for in absentia trials even before the entry into force of the Lisbon Treaty. See Council Framework Dec. 2009/299/JHA of 26 February 2009 amending Framework Decs. 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

20 Joined Cases C-187/01 and C-385/01 of 11 February 2003, Hüseyin Gözütok and Klaus Brügge (hereinafter: '*Gözütok and Brügge*'). For a detailed analysis see John A.E. Varvaele, 'The transnational *ne bis in idem* principle in the EU. Mutual Recognition and Equivalent Protection of Human Rights', 1 *Utrecht Law Review* (2005) 110-118, 114.

menting the Schengen Agreement (hereinafter: 'CISA').<sup>21</sup> According to the European Court of Justice (hereinafter: 'ECJ') cases that were discontinued through a financial settlement upon the public prosecutor's offer, were falling under Article 54 CISA regarding the *ne bis in idem* principle. The Court rejected the Belgian Government's argument that applying Article 54 CISA to settlements in criminal proceedings is likely to jeopardize victims' rights, and underlined that the sole effect of the *ne bis in idem* principle was to ensure that a person whose case has been finally disposed of in one state is not prosecuted on the same facts in another one. Victims' rights were not at stake in the ECJ's view, as the *ne bis in idem* principle does not preclude the victim from bringing a civil action to seek compensation for the damage suffered.<sup>22</sup> The case is still vividly illustrating how victims' rights might potentially clash with criminal cooperation between the member states and the principle of mutual recognition. Since member states may be uncomfortable with acknowledging decisions that potentially hamper victims' rights, and it could come to a clash between the principle of *ne bis in idem* and victims' rights, some form of harmonization of the latter was needed, and this is what Article 82 Section (2) Point (c) TFEU made possible.

The drafters of the Lisbon Treaty took all pains to enable victims' rights harmonisation. In theory Article 82 Section (2) Point (b) TFEU inviting the European Parliament and the Council to adopt directives to establish minimum rules on the rights of individuals in criminal procedures would have been a sufficient legal ground for a new victims' rights instrument. That provision might be understood as including all victims who might or might not be parties to a case, since they – even if not parties – they certainly fall under the category *individuals* in a criminal procedure. Nevertheless the drafters decided to insert an additional Point (c) explicitly on victims and call upon the EU lawmakers to adopt directives on their rights, to the extent necessary to facilitate mutual recognition and cross-border criminal cooperation. Singling out victims might suggest that the drafters of the Lisbon Treaty invited EU lawmakers to cover a broader scope of victims beyond those participating in one form or another in a criminal procedure. This reading is underpinned by the language use of the victims' rights directive in Hungarian language. Hungarian criminal theory distinguishes between and uses different terminology for injured parties in criminal proceedings (*sértett*) and the broader notion of victims (*áldozat*) taken from victimology,<sup>23</sup> and it is the latter, broader term the victims' rights directive uses.<sup>24</sup>

21 Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed on 19 June 1990 at Schengen, Luxembourg.

22 *Gözütök and Brügge*, § 47.

23 See for example Ilona Görgényi, *Ötletek a készülő áldozatvédelmi törvényhez – az áldozat büntetőeljárásjogi helyzete de lege ferenda*, *Kriminológiai Közlemények* 61, Budapest: Magyar Kriminológiai Társaság, 2004.

24 In a somewhat confusing manner the Hungarian version of Art. 82 (2) Point (c) uses the narrower term *sértett*.

In any case, the authorisation for a new victims' rights instrument was there incorporated into Article 82 Section (2) Point (c) TFEU. Against this background, the European Commission has submitted a victims' package in 2011 consisting of a Communication on strengthening victims' rights,<sup>25</sup> a directive establishing minimum standards for victims' rights<sup>26</sup> and a proposed regulation on the mutual recognition of protection measures in civil matters,<sup>27</sup> which were to complement the European Protection Order.<sup>28</sup> It is the directive establishing minimum standards for victims' rights that will be discussed in the following in greater detail.

The above referenced legislative instruments all have a European touch, i.e. on the one hand respecting national sovereignty through the principles of proportionality and subsidiarity, and on the other emphasising the need for common European standards, which flows from the specificities of Europe's borderless area. The need for the harmonisation of victims' rights also flows from the concept of European citizenship, requiring that victims be guaranteed the same rights across the Union without discrimination on the basis of nationality.<sup>29</sup>

Laying down higher minimum standards for victims' rights corresponds to the institutionalised and codified framework for fundamental rights protection, the so-called 'fundamental rights culture'<sup>30</sup> that the EU has developed in recent years and which is still in the process of development.<sup>31</sup> This is all the more relevant since the European Court of Human Rights (hereinafter: 'ECtHR') has acknowledged the 'need to safeguard victims' rights and

25 European Commission, Communication on Strengthening victims' rights in the EU, COM(2011) 274 final, Brussels, 18 May 2011.

26 European Commission, Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, COM(2011) 275 final, Brussels, 18 May 2011.

27 European Commission, Proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters, COM(2011) 276 final, Brussels, 18 May 2011. See Reg. (EU) No. 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters.

28 Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Hungary, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Finland and the Kingdom of Sweden with a view to the adoption of a Directive of the European Parliament and of the Council on the European Protection Order. Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order.

29 This principle was declared by the European Court of Justice with regard to compensation in 1989. See Case 186/87, *Ian William Cowan v. Trésor public* [1989] ECR 195. See also European Commission, *EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights*, COM(2010) 603 final, Brussels, 27 October 2010.

30 European Commission, Communication on a Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, COM(2010) 573 final, Brussels, 19 October 2010.

31 The Lisbon Treaty made the Charter of Fundamental Rights enter into force and obliged the Union to accede to the European Convention on Human Rights and Fundamental Freedoms, with the latter procedure still underway (Art. 6, sections (1) and (2) TEU).



their proper place in criminal proceedings<sup>32</sup> and the need to protect vulnerable victims.<sup>33</sup> In the Council of Europe setting, Recommendations of the Committee of Ministers<sup>34</sup> may also be taken into account, especially as invoked by the ECtHR.

The strengthening of victims' rights and elevation of the level of minimum standards are consistent with the EU's multi-annual programme applicable at the time on the Area of Freedom, Security and Justice, in which fundamental rights protection became a priority.<sup>35</sup> They are also in line with the Commission's wish to make the Union exemplary when it comes to ensuring fundamental rights by making the rights provided for in the Charter of Fundamental Rights as effective as possible.<sup>36</sup> To facilitate the process guaranteeing that all EU laws are 'fundamental-rights proof',<sup>37</sup> the Commission drew up a so-called 'fundamental rights checklist' to ensure that all EU draft laws are put to a fundamental rights impact assessment.<sup>38</sup> This approach has been driven by the acknowledgment that fundamental rights may in most cases be subject to limitations. Rights restrictions must be provided for by law, respect the essence of the given rights, be proportionate, necessary and effectively meet objectives of general interest as recognised by the Union to protect the rights and freedoms of others.<sup>39</sup> This is especially pertinent when it comes to victims' rights, since they may potentially – though not necessarily – result in a limitation of suspects' rights.<sup>40</sup> More specifically, in the EU criminal justice area both the Commission and the

32 *Perez v. France* [GC], Appl. No. 47287/99, 12 February 2004, § 72.

33 'The Court appreciates that organising criminal proceedings in such a way as to protect the interests of very young witnesses, in particular in trial proceedings involving sexual offences, is a relevant consideration', *Bocos-Cuesta v. the Netherlands*, Appl. No. 54789/00, 10 November 2005.

34 Recommendation No. R(83) 7 on participation of the public in crime policy, adopted by the Committee of Ministers on 23 June 1983, advocating taking account of victims' interest; Recommendation No. R(85) 11 on the position of the victim in the framework of criminal law and procedure, adopted by the Committee of Ministers on 28 June 1985; Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system, adopted by the Committee of Ministers on 6 October 2000, providing that victims should be able to challenge the decisions of public prosecutors not to prosecute.

35 European Parliament, Resolution on the Communication from the Commission – An area of freedom, security and justice serving the citizen – Stockholm programme, P7\_TA(2009)0090, 25.11.2009; European Council, *The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens*, OJ C 115/01, 4.5.2010; European Commission, Communication on Delivering an area of freedom, security and justice for Europe's citizens Action Plan Implementing the Stockholm Programme, COM(2010) 171 final, Brussels, 20. April 2010.

36 European Commission, Communication on a Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, COM(2010) 573 final, Brussels, 19 October 2010, 3.

37 For a more recent summary see the Commission press release of 14 April 2014, Fundamental Rights: Importance of EU Charter grows as citizens stand to benefit, [http://europa.eu/rapid/press-release\\_IP-14-422\\_en.htm](http://europa.eu/rapid/press-release_IP-14-422_en.htm).

38 *Idem*.

39 European Commission, Communication on a Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, COM(2010) 573 final, Brussels, 19 October 2010, 5.

40 In the terminology of the European Convention on Human Rights, this often takes the form of a rights collision (e.g. Art. 8 on the right to privacy versus Art. 6 on fair trial rights). '[P]rinciples of fair trial...require

European Parliament have emphasised the implications in terms of fundamental rights and freedoms for both the victims of crime and the suspects and defendants.<sup>41,42</sup>

Based upon the authorization provided for by the Lisbon Treaty, the victims' rights directive was adopted on 25 October 2012. Unlike its predecessor, Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, the new instrument takes the form of a directive in line with the Lisbon Treaty's scrapping of the pillar system and getting rid of the legal instruments that used to be adopted in the former third pillar. Changing the legal nature of the instrument alone has multiple consequences for future victims, from the law's direct effect to its justiciability.

In order to gain a full picture, the leading case *Pupino*<sup>43</sup> shall be referenced here to prove that the limited legal effect of framework decisions was extended by the ECJ in relation to the 2001 victims' rights instrument. In the referenced judgment the ECJ – in a creative reading – admitted the same limits to the principle of interpretation in conformity in the third pillar as in EC law, where the only limit to such a confirming interpretation is that it cannot serve as the basis for an interpretation of national law *contra legem*.<sup>44</sup> This obligation was laid down by the Court in spite of the fact that framework decisions according to Article 34 Section (2) b) of the EU Treaty then in force had *per definitionem* no direct effect. In order to underpin its point, the Court also referred to 'loyal cooperation',<sup>45</sup> originally an EC law principle, which it extended to the third pillar. Retrospectively it seems that the Court setting aside the strict division of pillars foresaw what was coming years later, when the 2012 victims' rights instrument came into being in the form of a directive with all its legal consequences. Now member states need to comply with the victims' rights directive by 16 November 2015. By 16 November 2017 and every three years thereafter, member states are obliged to communicate to the Commission available data showing how victims have accessed their rights as provided for by the directive. By the same deadline the Commission will submit a report to the European Parliament and to the Council, assessing the success of implementation.

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that in appropriate cases the interests of the defence are balanced against those of witnesses or victims', *Doorson v. the Netherlands*, Appl. No. 20524/92, 26 March 1996.

41 'Fundamental rights of all individuals must be respected in all EU actions and by Member States when they implement EU law. EU action in this field should thus at the same time raise standards in relation to the fundamental rights of victims of crime whilst ensuring that any limitation of the rights of the defence or to other fundamental rights is formulated in a clear and predictable manner and is necessary and proportionate to protect the rights and freedoms of the victim.' See European Commission, *Impact Assessment*, Commission Staff Working Paper accompanying the Communication and the draft Directive and Regulation mentioned above, SEC(2011) 580 final, Brussels, 18 May 2011, 22.

42 European Parliament, Recommendation to the Council on development of an EU criminal justice area, 2009/2012(INI), 7 May 2009.

43 Case C-105/03 of 16 June 2005, Criminal proceedings against Maria Pupino, 16 June 2005 (hereinafter: '*Pupino*').

44 *Pupino*, §§ 44-45, § 47.

45 See Art. 10 then EC Treaty, and *Pupino*, § 42.

### 24.3 KEY ELEMENTS

#### 24.3.1 Methodology

Throughout the present chapter, a comparative legal methodology was used, whereby we have relied on primary sources of laws, secondary literature and interviews with colleagues from partner research institutes and victims' rights organisations.<sup>46</sup> For internal purposes, the practices in the 28 member states have been reviewed. Although it has not been the objective of the research behind the present summary to embark upon a comprehensive overview of victims' rights in Europe, due regard has been given to existing work that brings together national reports by reliable sources. These included the Report of the Commission on the 2001 Council Framework Decision on the standing of victims in criminal proceedings and the Report from the Commission on the Application of the 2004 Council Directive relating to the compensation of crime victims and their accompanying documents.<sup>47</sup> The outcomes of the 'Victims in Europe' project with respect to implementation of the former piece of legislation<sup>48</sup> have also been taken into account, as well as a summary of European best practices on restorative justice.<sup>49,50</sup> The degree of implementation of former and current legal documents has been considered a valid point of departure, on

46 Research institutes and victims' rights organisations, including local and umbrella organisations, were approached and their documents consulted. We would like to express our gratitude to those organisations that provided input, most notably the Max Planck Institute for Foreign and International Criminal Law in Freiburg, Weisser Ring in Mainz and Victim Support Northern Ireland in Belfast.

47 European Commission, *Report from the Commission pursuant to Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)* [SEC(2009) 476], COM(2009) 166 final, Brussels, 20 April 2009; European Commission, *Commission Staff Working Document accompanying the Commission's Report based on Article 18 of the Council Framework Decision of 15 March 2001 on standing of victims in criminal proceedings* [COM(2009)166 final], SEC(2009) 476, Brussels, 20 April 2009; European Commission, *Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of Council Directive 2004/80/EC relating to compensation to crime victims* [SEC(2009) 495], COM(2009) 170 final, Brussels, 20 April 2009; European Commission, *Commission Staff Working Document accompanying the report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of Council Directive 2004/80/EC relating to compensation to crime victims* [COM(2009) 170 final], SEC (2009) 495, Brussels, 20 April 2009.

48 See Project Victims in Europe, *Implementation of the EU Framework Decision on the standing of victims in the criminal proceedings in the Member States of the European Union*, Portuguese Association for Victim Support (APAV), Lisbon, 2009.

49 Melinda Gyökös and Krisztina Lányi (eds), *European Best Practices of Restorative Justice in the Criminal Procedure*, Ministry of Justice and Law Enforcement, Budapest, 2010.

50 Some fundamental documents, such as the Fundamental Rights Agency's report on the extent and nature of support for victims came out after the completion of the present paper, and therefore their findings have not been included. See European Union Agency for Fundamental Rights, *Victims of crime in the EU: the extent and nature of support for victims*, Luxembourg: Publications Office of the European Union, 2014, [http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support\\_en\\_0.pdf](http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf).

the one hand for identifying problems that have either not been addressed or have not been sufficiently dealt with by the member states, and on the other hand in the quest for good practices.

Chronologically, the first step was to identify the legal issues to be discussed. The second one was to single out the jurisdictions meeting the level of European standards. The third was to narrow the pool of practices to those that go beyond what is absolutely required by the European instruments. The fourth was to select the most promising examples wherever similar legal solutions were identified as good or best practices, in order to avoid repetition in the limited space available. A balanced selection of member states' practices has been ensured in preparing the present paper and throughout the research.

It should be noted that the practical realisation, effectiveness and efficiency of the practices identified in this part of the paper have not been tested by the authors. The practices are relatively new and there is no methodology yet to assist the identification of best or even good practices, i.e. there are few impact assessments on how the programmes actually influence victims' positions after having suffered from a crime, during and after the criminal procedure. The point of departure here and the test used for identifying local and regional institutions, procedures, methods, programmes and practices as 'good' or 'best' is whether they are theoretically viable – from legal and criminological standpoints.

In the following, after having clarified the notion of victimhood, good practices are discussed under three headings along the lines of the victims' rights directive: information and support; participation and compensation; and victim protection. Throughout this part of the paper, special emphasis is placed on vulnerable victims.<sup>51</sup>

#### 24.3.2 *The Notion of Victimhood*

Whereas there was a large measure of discretion left to the member states in implementing the objectives of the victims' rights instruments,<sup>52</sup> there are agreements on certain basic

51 Our selection of good practices and related issues is mainly based on various collections, reports and databases in the field of victim support and crime prevention, such as the best practice database of the European Crime Prevention Network, the Annual Reports of the European Union Fundamental Rights Agency, the Victim Support Europe Reports, and the study by the Project Victims in Europe, *Implementation of the EU Framework Decision on the standing of victims in the criminal proceedings in the Member States of the European Union*, Portuguese Association for Victim Support (APAV), Lisbon, 2009. Other examples of good practices have been selected from academic literature. A third group of examples, particularly those concerning access to information and justice, is based on a review of the on-line information and services provided by national victim-support bodies.

52 See *Pupino*, § 54; Case C-404/07 of 9 October 2008, *György Katz v. István Roland Sós*, § 46; Cases C-483/09 and C-1/10 of 15 September 2010, *Gueye et Sameron Sanchez* (hereinafter: '*Gueye*'), § 57, § 72, §74; Case C-205/09 of 21 October 2010, *Criminal proceedings against Emil Eredics, Mária Vassné Sápi* (hereinafter: '*Eredics*'), §§ 37-38; Case C-507/10 of 21 December 2011, *Criminal proceedings against X* (hereinafter: '*Criminal proceedings against X*'), § 28, § 33.

issues, such as the concept of victimhood. For the purposes of the victims' rights directive a victim is a natural person who has suffered harm – be it physical, mental or emotional harm, economic or other loss – which was directly caused by a criminal offence. The wording is very similar to the victims' rights framework decision's definition, with some minor changes and an important extension of the notion of victims to family members of a deceased persons whose death was directly caused by a criminal offence, if they suffered harm as a result of the relative's death. Due to the similar wording of the directive and the previous law, the case law of the Court of Justice is still relevant and guiding. The Luxembourg court made clear in several cases including *Giovanni dell'Orto*, *Eredics and Sapi* and *Giovanardi et al.*<sup>53</sup> that the notion of victim covers only natural persons, and there is no room of maneuver for interpreting victims for the sake of the EU instruments to cover legal persons who suffered harm directly caused by acts or omissions in contravention of the domestic criminal laws.

#### 24.3.3 Provision of Information and Support

Victims' right to information is at the very heart of the right of access to justice.<sup>54</sup> Receiving all the necessary information on victims' rights and on the nature, scope and timing of procedures are pivotal to ensuring that victims can make use of their rights in any of the member states. Information needs to be given in a language and manner comprehensible for the victims, taking their special and vulnerable situation into account. In line with Chapter 2, Articles 3-7 of the directive, minimum standards shall ensure that victims receive sufficient information in a way they can comprehend to enable them to make informed decisions and to have full access to their rights. In particular, victims have a right to receive information on such issues as where and how they can make a complaint about a criminal offence; details of the support services to which they can turn; the type of support, protection, legal aid and compensation available; and any procedures for making complaints if their rights are not respected. Information should be available from the earliest time and on a regular basis throughout the criminal proceeding.

Chapter 2, Articles 8-9 declare the right to access victim support services and the right to support. Appropriate and timely access to emotional, practical, administrative and legal support is one of the critical elements of victims' rights in need of harmonisation across the EU.

53 See Case 467/05 of 28 June 2007, Criminal proceedings against Giovanni dell'Orto; *Eredics*; Case C-79/11 of 12 July 2012 Criminal proceedings against Maurizio Giovanardi and Others.

54 See Chapter 2 of the victims' rights directive on the provision of information and support. More specifically see Art. 3 on the right to understand and to be understood, Art. 4 on the right to receive information from the first contact with a competent authority, Art. 5 on the right of victims when making a complaint, Art. 6 on the right to receive information about their case and Art. 7 on the right to interpretation and translation.

PETRA BÁRD AND ANDREA BORBÍRÓ

To be effective, victim support should meet a number of fundamental criteria. It needs to be available before, during and after the criminal proceedings, and from the earliest possible time irrespective of whether the crime has been reported. Access to support should be easy, without involving excessive procedures and formalities. Finally, victims should be assisted by well-trained professionals capable of providing prompt and well-targeted assistance.

The directive sets the minimum standards for the right of access to victim support services. As a minimum, such services shall provide information, advice and support relevant to the rights of victims, information on or referral to specialist services, emotional and psychological support, advice relating to financial and practical issues following the crime, and as a main rule advice relating to secondary and repeat victimisation, intimidation and retaliation.

In the following good practices on various elements of information and support will be listed.

#### 24.3.3.1 Access to Information

Providing sufficient, detailed information is a practical issue that is best understood in terms of the needs of the victim. These include prompt, informal, easy and anonymous access to all the relevant information soon after the crime has been committed. One appropriate tool to satisfy this need is a proper and detailed website page. Although such sites operate in most of the member states, good practices go beyond the minimum expectations and meet some advanced criteria. From a victim's perspective, good website pages are easy to find, provide detailed and well-structured information on all relevant issues, use an easily understandable, everyday language (e.g. avoiding unnecessary legal terms), are available in the country's relevant languages and in English, and provide direct links to support services as well as to the documents and forms necessary to obtain assistance.

Downloadable and printable brochures on victims' rights and thematically grouped practical advice may also be of great help to victims. In Ireland, the Victims Charter and Guide to the Criminal Justice System<sup>55</sup> provides a detailed but easy-to-follow introduction to victims' rights, victim support and criminal proceedings. To facilitate access to justice for foreign victims, the Swedish Crime Victim Compensation and Support Authority (*Brottsoffermyndigheten*) issued a 38-page brochure in English, which provides a compre-

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55 See Victims Crime Office, Victims Charter and Guide to the Criminal Justice System, Department of Justice and Equality, Dublin, 2010, [www.justice.ie/en/JELR/Pages/Victims\\_Charter](http://www.justice.ie/en/JELR/Pages/Victims_Charter).

hensive overview of victims' procedural rights and duties, the support and protection available, methods of compensation and relevant organisations.<sup>56</sup>

Another good practice initiative by the Swedish *Brottsoffermyndigheten* is its 'Court Introduction' for victims, additionally available in English since 2010.<sup>57</sup> This highly informative and interactive online presentation provides a step-by-step introduction to the justice system from a victim's perspective, as well as important practical information on access to victims' rights.

The victim support service of Portugal (*Apoio à Vítima*, AVAP) launched its 'May I Help You?' campaign for tourists who become victims of crime. Recognising that foreign victims are in a more vulnerable position, AVAP's website page provides important information on and access to available support.<sup>58</sup>

AVAP has also issued the leaflet 'Victims of crime in another country?' containing practical information and a brief introduction to victims' rights. The leaflet was developed under the project 'CABVIS – Capacity Building for EU Crime Victim Support', whose goal is to improve victim support services and access to victims' rights across EU member states.<sup>59</sup>

### 24.3.3.2 Helplines

The most common way to provide prompt support and information to victims in the member states is through a helpline. Help over the telephone might be an essential tool of victim support. It functions not only as an important facilitator of access to justice, but also as the first opportunity for crisis intervention. To fulfil this expectation, however, helpline services should meet some basic requirements. After reviewing a large number of helpline services operating in the member states, we have concluded that the core elements of good practice could be summarised as follows:

- helplines should be available 24/7, with easy access and telephone numbers that are easy to remember;
- the helpline and the additional services (e.g. counselling) should be free of charge;
- support in the official language(s) of the given country should additionally be available in English and in the minority languages of the country;
- a high level of confidentiality should be ensured;
- those providing support should be well trained and capable of giving immediate legal and psychological assistance and information; and

56 See *Brottsoffermyndigheten* [Crime Victim and Support Authority], Information for crime victims, Umeå, 2009, [www.brottsoffermyndigheten.se/Filer/Broschyror/Andra%20språk/1020976\\_Till%20dig%20som%20utsatts%20for%20brott\\_ENGELSKA.pdf](http://www.brottsoffermyndigheten.se/Filer/Broschyror/Andra%20språk/1020976_Till%20dig%20som%20utsatts%20for%20brott_ENGELSKA.pdf).

57 See the *Brottsoffermyndigheten* website, 'Welcome to Court Introduction', [www.courtintroduction.se/](http://www.courtintroduction.se/).

58 See the website of the project 'May I Help You?', <http://helptouristvictims.org/en/>.

59 We would like to express our thanks to Victim Support Northern Ireland for calling our attention to this project.

PETRA BÁRD AND ANDREA BORBÍRÓ

- there should be a common, general helpline for all victims, and separate ones for vulnerable victims or victims of special crimes.

The legal form, the existence of state support and the fact of whether the helpline is operated by the state, a church or an NGO do not matter as long as it fulfils its functions and meets the above criteria.

As part of its ULRİK development project 2007–11, Victim Support Finland launched a new helpline specifically for victims with a foreign background. The Czech NGO *Bily kruh bezpeci* (BKB) has been providing free victim support in seven regions since 1991.<sup>60</sup> Services include a 24-hour general hotline for crime victims, as well as a specialised helpline (DONA helpline)<sup>61</sup> for victims of domestic violence. In Austria, a 24-hour helpline (*Frauenhelpline*) is available in German, Arabic, English, Bosnian-Croatian-Serbian, Romanian, Spanish and Turkish, as an integral part of the country's developed services addressing the problem of violence against women.<sup>62</sup> Besides the central hotline, help over the telephone is also available in a more limited operating time at a regional level, except in Vienna where the helpline operates 24 hours a day. Women's helplines are psychosocial facilities offering specifically targeted assistance, such as crisis intervention, psychosocial counselling, psychotherapy, traumatherapy, and psychosocial and legal assistance during court proceedings. In 2009, within the framework of the Government's National Multi-Annual Programme on Preventing and Combating Violence Against Women 2009–13, Greece also launched a 24-hour helpline for female victims of violence.<sup>63</sup>

#### 24.3.3.3 Victim Support for Vulnerable Groups

Victim support services should in particular take the special needs of vulnerable victims into account. These include individual counselling, crisis intervention, post-traumatic treatment and long-term therapies, and they require specialised professionals and facilities as well as services far beyond the general framework of victim support.

Poland took significant steps towards facilitating victim support at a local level. The Network of the Local Support Centres for Crime Victims focuses on vulnerable victims, especially children and victims of sexual or domestic violence. Covering 12 regions in Poland, the Network is based upon the strong cooperation of local bodies and organisations. Local Support Centres provide free legal, psychological and social assistance. Hungary has sought to provide psychological assistance for victims of any forms of sexual violence at

60 See the BKB website, [www.bkb.cz/](http://www.bkb.cz/).

61 See the DONA Linka website, [www.donalinka.cz/](http://www.donalinka.cz/).

62 See the Frauenhelpline website, [www.frauenhelpline.at/](http://www.frauenhelpline.at/).

63 Refer to the Ministry of Interior, Decentralisation and E-Government, General Secretariat for Gender Equality, *7th National Regular Report of Greece 2005-2008 to the United Nations Committee for the Elimination of Discrimination Against Women (CEDAW)*, Athens, 2010.



the Eszter (Rehabilitation of the Victims of Violent Sexual Attack) Foundation and Centre in Budapest.<sup>64</sup> Besides prompt crisis intervention over the telephone, the Centre also provides face-to-face counselling and long-term psychotherapy for children and adult victims. In Denmark, the Dialogue Against Domestic Violence (DADV) is a treatment programme of NGO *Askovgaarden* specifically designed for offenders and victims of domestic violence. DADV offices in Copenhagen, Århus and Odense provide cognitive behavioural therapies for offenders, as well as trauma counselling for women and children.<sup>65</sup>

#### 24.3.4 *Participation in Criminal Proceedings and Compensation*

Access to justice and participation in criminal proceedings as mentioned in Chapter 3 of the victims' rights directive are core elements of victims' rights. They are more than rights – they are the conditions *sine qua non* of the enforcement of other substantial rights and interests of the victim.

Access to justice covers a wide range of requirements serving the same purpose, most notably that justice is done and victims obtain a remedy when their rights are violated. It ensures that the range of due process rights is guaranteed in a uniform manner. A preliminary requirement for their enforcement is non-discriminatory access to justice irrespective of nationality, among other characteristics. Rights of victims resident in another member state are discussed in Article 17.

Victims shall be heard as provided for by Article 10 and shall have the right to review decisions not to prosecute as determined by Article 11. Participatory rights also include Article 13 on the right to legal aid and Article 14 on the right to reimbursement of expenses.

The ECJ made an important addition to the interpretation of victims' participation in criminal processes. In *Gueye and Sanchez* it held that the victims' rights instrument then in force must be interpreted as not precluding the mandatory imposition of an injunction to stay away for a minimum period, provided for as an ancillary penalty by domestic criminal law, on perpetrators of domestic violence, even when the victims of those crimes oppose the application of such a penalty. Obligations to ensure that a victim can effectively and adequately participate in the criminal proceeding implies that he or she had a right to be heard including the possibility of objectively describing what happened and to express his or her opinion, but not implying that he or she could determine the form of penalties to be imposed.<sup>66</sup> More general interests of society may outweigh the victim's wishes.<sup>67</sup>

<sup>64</sup> See the Eszter website, [www.eszteralapitvany.hu/](http://www.eszteralapitvany.hu/).

<sup>65</sup> For a project summary, see e.g. European Crime Prevention Network, 'Good Practices', [www.eucpn.org/goodpractice/showdoc.asp?docid=210](http://www.eucpn.org/goodpractice/showdoc.asp?docid=210).

<sup>66</sup> *Gueye*, § 56.

<sup>67</sup> *Gueye*, §§ 61-62.

Along similar veins, the Court held in *X* that the framework decision on victims' rights did not preclude national law provisions allowing the public prosecutor not to apply to the competent court against the victim's wish so that the particularly vulnerable victim – in this case a minor who is likely to have suffered continuous sexual assault – is not heard and is not allowed to give evidence during the investigation phase of criminal proceedings.<sup>68</sup>

A separate provision is devoted to participation in alternative dispute settlement processes in the victims' rights directive: Article 12 provides for the right to safeguards in the context of restorative justice services, such as protection from secondary and repeat victimisation, from intimidation and from retaliation.

Compensation of victims is also discussed in this chapter under Article 15 on the right to the return of property and Article 16 on the right to decisions on compensation from the offender in the course of criminal proceedings.

In the following good practices on various elements of victims' participatory rights will be listed.

#### 24.3.4.1 Facilitating Applications

Efforts to facilitate access to justice strongly depend on the responsiveness of the judicial and administrative processes. The objective is minimising the inconvenience to victims, i.e. making a complaint and submitting an application should be as easy as possible, avoiding unnecessary formalities and bureaucracy. Preferably, one-stop access is provided and legal aid is granted to those requiring it.

Helping to provide non-discriminatory and more convenient access to justice is the idea behind the *maisons de justice et du droit* in France and Belgium. Located mostly in so-called 'sensitive areas', *maisons de justice* provide legal advice and information to the general public as well as direct support, including mediation, to the victims of crime.

Codes of practice may be helpful tools in harmonising and strengthening the activities of the relevant actors involved in victim support. While they are valuable sources of detailed information for victims, the primary aim of codes of practice is to set out the general minimum standards on how to treat victims and enforce the fullest protection of their rights. As an example, such codes of practice have been issued by the UK Home Office<sup>69</sup> and by the Department of Justice of Northern Ireland,<sup>70</sup> as well as by a number of local police authorities across the UK.

Developing a system of one-stop access to justice was one of priorities of the domestic-violence prevention programme in the Province of Limburg, Belgium. The project '*Intrafamiliaal geweld intersectoraal gevel*' [Domestic Violence Tackled Intersectorally]

<sup>68</sup> *Criminal proceedings against X*.

<sup>69</sup> Office for Criminal Justice Reform, *The Code of Practice for Victims of Crime*, Home Office, London, 2005.

<sup>70</sup> Victims Crime Office, *Victims Charter and Guide to the Criminal Justice System*, Department of Justice and Equality, Dublin, 2010.

addresses partnership and domestic violence in an integrated and complex approach, resulting in a wide range of interventions. Besides improving direct support and protection services for victims (e.g. through the so-called 'relief points'), the project introduced a number of initiatives regarding the right of access to justice and support. The programme element '1 PO Box for referring to assistance' was designed to avoid the fragmentation of victim support services and procedures, and to establish a transparent and easy-to-follow chain of actions with a single access point.<sup>71</sup>

#### 24.3.4.2 Restorative Justice

Restorative justice may have powerful potential in terms of both crime prevention and victim support. In a broader sense, restorative techniques cover a wide range of conflict resolution practices, many of which may contribute to preventing the escalation of the conflict and hence the occurrence of more serious harm and victimisation. Research also suggests that restorative justice in criminal matters can have a favourable impact on recidivism rates. Yet the most significant advantages of the restorative approach are those connected with the victims' interests. These may include financial compensation for the damage suffered by the crime, as well as an emotional need for the offender's apology and remorse, or the expression of personal feelings about being victimised and a need for a communicative process to overcome the trauma caused by the crime. Various forms of restorative practices – either as an alternative to or in combination with formal criminal justice – are becoming more and more popular in the member states. As Article 12 of the victims' rights directive suggests, however, safeguards are also essential for the effective protection of victims' rights and for preventing secondary victimisation. For that reason, the participation of the victim in restorative processes should always be voluntary, and all the necessary information about the risks and benefits of such processes should be accessible.<sup>72</sup>

An important addition to the interpretation of the provision on restorative justice and victims' protection is the *Gueye and Sanchez* case of the European Court of Justice. In relation to the framework decision previously in force, the Court made it clear that with regard to the particular category of offences committed within the family, it is in line with EU law for a domestic norm to exclude recourse to mediation in all criminal proceedings relating to such offences.<sup>73</sup>

71 For a project summary, see e.g. the website of the European Crime Prevention Network, 'Good Practice', [www.eucpn.org/goodpractice/showdoc.asp?docid=207](http://www.eucpn.org/goodpractice/showdoc.asp?docid=207).

72 See e.g. Theo Gavrielides, 'Restoring Relationships: Hate Crime and Restorative Justice', in Melinda Gyökös and Krisztina Lányi (eds), *European Best Practices of Restorative Justice in the Criminal Procedure*, Ministry of Justice and Law Enforcement, Budapest, 2010.

73 *Gueye*, § 76.

PETRA BÁRD AND ANDREA BORBÍRÓ

In the UK, the Southwark Mediation Centre in London is specialised in mediating various forms of conflict, including those associated with the workplace, family, youth, antisocial behaviour and hate crimes.<sup>74</sup> Owing to its highly emotional nature, this latter type of crime is particularly difficult to deal with in a restorative way. External evaluations have indicated favourable impacts of the programme, especially in terms of repeat victimisation.

Operating as an alternative to formal criminal justice, the Halt Programme<sup>75</sup> in the Netherlands is a special scheme designed for first or second-time young offenders. The programme is based upon the dual goals of providing special treatment and support for young offenders, and fulfilling victims' needs for reparation. The police can refer young offenders who have committed minor crimes to the Halt offices, where an interview takes place with the perpetrator and his or her parents to facilitate communication with the victim. During the meetings, the offender is gradually introduced to the programme, including information about the possible means of reparation, the victim's expectations, and as a core element of the programme, how to apologise to the victim. Apologies in general are expected to be offered in person; however, if the victim does not intend to participate in a face-to-face meeting, it should be expressed in a letter. The programme contains further elements of restoration, such as reparation of the damage caused by the crime. The parents of the young offender are fully involved in the programme from the beginning to its completion.

In 2006, a *Gemeinschaftskonferenz* (GMK) [Family Group Conferencing] project for young offenders was launched in Elmshorn, Germany. The aim of the project was to set up a local framework of restorative procedures, in which both the community and the victim are involved, and which also has a preventive objective in terms of recidivism. Unlike most restorative programmes in Germany, the Elmshorn GMK focuses on more serious offences, such as robbery, burglary and some forms of violent crimes. Conferences are run if the victim, the offender and at least one supporter of the offender are willing to participate in the procedure. The result of a successful conference is a protocol on the form of restoration agreed by all parties. According to preliminary evaluations, the project has been successful in terms of victims' satisfaction.<sup>76</sup>

74 For the website please visit [www.southwarkmediation.co.uk](http://www.southwarkmediation.co.uk).

75 See the Halt website, [www.halt.nl/](http://www.halt.nl/).

76 See e.g. Otmar Hagemann, "Gemeinschaftskonferenzen" in Elmshorn – The First German Family Group Conferencing Project in Criminal Matters', in Otmar Hagemann, Peter Schäfer and Stephanie Schmidt (eds), *Victimology, Victim Assistance and Criminal Justice: Perspectives shared by International Experts at the Inter-University Centre of Dubrovnik*, 2010.

#### 24.3.4.3 Compensation for Victims

Victims' needs for some kind of reparation for their financial and emotional losses may be met in the form of a restitution from the offender. Accordingly Article 16 of the victims' rights directive obliges member states to ensure that victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, and they also have to encourage offenders to provide such adequate compensation to victims.

Victim's need for reparation may alternatively take place through state compensation programmes. State compensation has a number of advantages, e.g. its relative quickness and its independence from the success of the criminal procedure. Obtaining restitution from the offender through the formal justice system (either through the criminal process or adhesive procedures) remains a major problem in victims' rights protection across the member states owing to such factors as the non-supportive attitudes of actors in the justice system,<sup>77</sup> procedural difficulties and the lack of permanent legal support for the victim. Still, some reparation-focused elements built into the criminal procedure can make the criminal justice system more responsive to victims' needs.<sup>78</sup>

Compared with other member states, in France victims have strong rights and legal support in the courts and therefore issues of reparation are dealt with as a routine part of the criminal process.<sup>79</sup>

A unique model of compensation is the Swedish crime victim fund, run by the Crime Victim Compensation and Support Authority. The main financial source of the fund – a total sum of approximately €3.5 million per year – is the money paid by convicted offenders as a part of their punishment. The crime victim fund finances victim support services and projects.

In the UK, compensation orders imposed by the criminal courts – instead of civil claims by the victims – serve as a form of reparation. The amount of compensation depends on the loss of the victim and the offender's ability to pay. The compensation order is an integral part of the punishment; thus in the case of non-compliance, it should be converted into other sanctions.

77 See e.g. 'Victim Rights and Compensation in an International Comparison: France, Austria, Germany', the research project of the Max Planck Institut für ausländisches und internationales Strafrecht, Project Head: Michael Würger, [www.mpicc.de/ww/en/pub/forschung/forschungsarbeit/kriminologie/archiv/victim\\_rights.htm](http://www.mpicc.de/ww/en/pub/forschung/forschungsarbeit/kriminologie/archiv/victim_rights.htm).

78 See e.g. Jo Goodey, *Compensating Victims of Violent Crime in the European Union with a Special Focus on Victims of Terrorism*, Discussion Paper, National Center for Victims of Crime, Washington, DC, 2003. See e.g. Irvin Waller, *Crime Victims: Doing justice to their support and protection*, Publication Series No. 39, HEUNI, Helsinki, 2003.

79 For a comprehensive overview on best practices of restorative justice, see e.g. Melinda Gyokos and Krisztina Lanyi (eds), *European Best Practices of Restorative Justice in the Criminal Procedure*, Ministry of Justice and Law Enforcement, Budapest, 2010.

PETRA BÁRD AND ANDREA BORBÍRÓ

#### 24.3.5 *Protection of Victims and Recognition of Victims with Specific Protection Needs*

Protection of the victim refers to the set of rights and guarantees that aim at preventing any further harm or intimidation on the victim's side either as a consequence of a subsequent crime (repeat victimisation) or inappropriate criminal proceedings (secondary victimisation), both of which are enshrined in Chapter 4, Article 18. Victims can suffer during criminal proceedings because of the way the system operates. To avoid harm caused by inadequate proceedings, such as repeated and insensitive interviewing, it is important to ensure the protection of victims throughout criminal investigations and court proceedings. Several provisions are supposed to ensure this, such as Article 19 on the right to avoid contact between victim and offender, Article 20 on the right to protection of victims during criminal investigations and Article 21 on the right to protection of privacy.

A key element of victim protection is the identification of vulnerable victims. Accordingly Article 22 of the victims' rights directive states that crime prevention goals and the expectation that victims are treated in an individual manner require that a consistent mechanism is established to identify vulnerable victims<sup>80</sup> and to assess the risk of further harm and intimidation. Article 23 deals with specific protection needs during criminal proceedings, whereas Article 24 singles out the protection needs of children victims as a particularly vulnerable group.

In the following good practices on victims' protection will be listed.

##### 24.3.5.1 **Prevention of Repeat Victimization**

The crime prevention goals of victim protection include preventing repeat victimisation. Criminological research has shown that the distribution of the risk of becoming a victim is uneven: persons with previous victimisation experiences have a higher risk. The risk of repeat victimisation is particularly high for certain types of crimes, e.g. domestic violence or situational crimes. Accordingly, protection of the victim requires effective preventive action, i.e. *ex ante* modification of the situation when the person is exposed to crime.

A programme running in Marseille, France for the immediate separation and monitoring of alleged perpetrators of domestic violence can serve as an example of good practice. The objective is prompt prevention of any further violence within the family, ensured by cooperation between the prosecution office and local probation and victim support

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80 The vulnerability of victims should be determined by the personal characteristics of the victim (e.g. children and persons with disabilities) and the nature of the crime (e.g. victims of sexual violence). In addition, a number of individual risk factors should be taken into account, such as age, gender, ethnicity, race, religion, sexual orientation, state of health, communication difficulties, relationship to the suspected person and previous experience of crime.

organisations. The actions taken are the immediate removal of the offender from the family residence and immediate rehabilitation counselling.<sup>81</sup>

Following the success of the 'Kirkholt Burglary Prevention' project (Rochdale, UK, 1987–90), a new burglary reduction programme was launched in Huddersfield, UK. The 'Biting Back' project (1994–96) consisted of a three-level structure of intervention, where the scope and intensity of responses changed after the first, second and third crimes. Responses to the first burglary included crime prevention advice for victims and several basic situational measures, such as property marking, target hardening, loan of temporary alarm equipment and the 'Cocoon Watch' scheme. After the second victimisation, more intense intervention took place, e.g. visits by a crime prevention officer, installation of a monitored, silent alarm system, and 'Police Watch' visits twice a week for six weeks. Finally, responses to a third burglary included installation of high-tech security equipment and a daily 'Police Watch' visit during high-risk periods. An evaluation of the outcomes suggests a remarkable decline in both first and repeat victimisation.

#### 24.3.5.2 Protection during the Criminal Justice Process

While risk assessment may be useful in identifying vulnerable victims, effective prevention of their secondary victimisation during the proceedings requires further guarantees. Articles 18–21 of the victims' rights directive establish a set of standards that seek to protect victims from the harm and intimidation caused by inadequate proceedings. These include the right of the victim to avoid contact with the offender, the right to protection during questioning in criminal investigations and the right of vulnerable victims to protection during criminal proceedings. National laws on criminal procedures have a great impact on the realisation of these standards. For example, they can ensure that the victim is interviewed as early as possible and the authorities question victims only insofar as necessary for the purpose of the proceedings, that victims sufficiently participate in the procedure, that legal assistance is always available and that victims have proper access to all the information related to their case. Good practice also shows that the actual environment set for interviews plays a crucial role in the protection of victims.

Establishing separate waiting areas and controlling the arrival of the accused and the victim on criminal justice premises might be an effective way of ensuring the victim's right to avoid contact with the offender. In Ireland, the Criminal Court Complex in Dublin opened in 2009 contains facilities for vulnerable victims and witnesses, such as a separate suite for victims and an evidence room specifically designed for children, as well as sufficient

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81 The programme is called 'Immediate Separation & Monitoring of Alleged Perpetrators of Domestic Violence'. For a project summary, see e.g. the website of the European Crime Prevention Network, 'Good Practice', [www.eucpn.org/goodpractice/showdoc.asp?docid=25](http://www.eucpn.org/goodpractice/showdoc.asp?docid=25).

space for the private entrance and exit of victims and witnesses. Victim support services have been located in a secure area within the building.

#### 24.3.5.3 Vulnerable Victims' Protection

An assessment of the risks of further harm to victims is one of the core elements of the Women's Safety Unit (WSU) programme in Cardiff, UK. It was developed in 2002 and since then it has become the basis of the UK's Coordinated Community Response Model for tackling domestic violence. The programme was launched with the dual goal of reducing the risk of repeat victimisation in domestic abuse cases and of developing a systematic risk-based model to facilitate individual case management. The WSU is based on the cooperation of a wide range of relevant local bodies and organisations. The model comprises five elements:

- domestic violence cases are now dealt with by specialist courts operating within the Magistrate and Crown Courts;
- a risk-assessment checklist has been developed and is now used by all the relevant agencies to identify risk situations;
- the Multi-Agency Risk Assessment Conference (for sharing information) has been set up to deal with high-risk cases;
- advocacy is provided for all the women in contact with the Unit; and
- a multi-agency fast-track system was launched to follow up individual cases, based on a one-stop approach to ensure that the victim only has to be interviewed once.

The WSU has been extended by the project 'DyN', specifically targeting heterosexual and homosexual male and transgender victims of domestic violence.<sup>82</sup>

#### 24.3.5.4 Child-Friendly Justice

Improving conditions towards 'child-friendly justice', as prescribed by Article 24 of the victims' rights directive, is a major priority in several European countries. In 2007, the initiative of establishing a special hearing room was launched in the Czech Republic to ensure fuller protection for child victims and witnesses of sexual abuse and violence. The rooms are specially designed to create a proper environment for the careful treatment and hearing of children, while an audio visual recording system helps to avoid repeat questioning and provides the opportunity for a subsequent assessment of the records.<sup>83</sup> Similarly, the Coalition for Child-Friendly Interviewing, a cooperative project of the NGO Nobody's

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82 On evaluation, see Amanda L. Robinson, *The Cardiff Women Safety Unit: A Multi-Agency Approach to Domestic Violence*, Cardiff University, 2003.

83 For a project summary, see e.g. European Crime Prevention Network, 'Good Practices', [www.eucpn.org/goodpractice/showdoc.asp?docid=258](http://www.eucpn.org/goodpractice/showdoc.asp?docid=258).



Children Foundation in Poland<sup>84</sup> and the Social Activities and Practices Institute in Bulgaria<sup>85</sup> launched an initiative to improve child-friendly criminal justice. The goal of the child-friendly interview project is to strengthen the protection of child victims and witnesses of sexual and domestic violence. To fulfil this expectation, interview rooms are to meet a number of minimum criteria, such as maximum privacy, proper equipment and furniture serving the child's physical and mental safety and comfort, and an audiovisual recording system. The child is interviewed by a judge in the presence of a psychologist; other persons may participate from a separate room through a communication system. Suites meeting the list of requirements obtain a certification from the Ministry of Justice.

#### 24.4 CONCLUSIONS

Based upon the authorization provided for by the Treaty on the Functioning of the European Union, a new victims' rights directive was adopted back in 2012 replacing the previous council framework decision of 2001. Member states are obliged to comply with the victims' rights directive by 16 November 2015 the latest. As generally in case of directives, the instrument is binding, as to the result to be achieved, but the choice of form and methods is up to the national authorities.<sup>86</sup> In the present paper we have gathered a handful of measures that can be regarded as good practices and might serve as sources of inspiration for the member states when implementing the Union act.

As shown in part II of this paper, in accordance with the subsidiarity principle there is considerable room for manoeuvre left to the member states, as there are diverse legal solutions capable of creating sufficient guarantees for victims' rights. Nevertheless, common patterns can be traced in jurisdictions putting emphasis on the rights of victims and injured parties, especially with regard to some vulnerable victims singled out by the law or policy-makers. These include among others the problem of domestic violence, the victims of which are typically women and children, or the victims of terrorism. The spread of these good practices to as-yet-neglected victim groups and further jurisdictions would be desirable. In this part of the paper we would like to draw attention to some common characteristics of local and regional practices described in Part III, which would justifiably deserve common acknowledgment by all member states – and not only at the regional and local levels – by becoming European minimum requirements.

84 See the website of the Nobody's Children Foundation, 'Projects and Programmes', <http://fdn.pl/en/projects-and-programmes>.

85 See the website of the Social Activities and Practices Institute, 'Coalition for Child-Friendly Interviewing', [www.sapibg.org/index.php?lang=en&page=346](http://www.sapibg.org/index.php?lang=en&page=346).

86 See Art. 288 TFEU.

PETRA BÁRD AND ANDREA BORBÍRÓ

First, one of the prongs of the access-to-justice requirement shall be addressed: the provision of easy, informal and anonymous access to all the relevant information for the victim in sufficient detail and within the shortest possible time after the crime is committed. (An example of best practice in this regard is the one-stop access to justice facilitated by the framework of the domestic-violence prevention programme in the Province of Limburg, Belgium.) Preferably all the actors involved in starting a criminal procedure or reporting a crime shall be prepared to provide written and verbal information (e.g. as done by the Swedish *Brottsoffermyndigheten*), putting special emphasis on victims in vulnerable positions (e.g. like the project targeting foreign victims by the Portuguese victim support service, *Apoio à Vítima*).

Information and support should go beyond the access to justice requirement. Appropriate and timely access to emotional, practical, administrative and legal support is an essential element of victims' rights. Effective victim support involves meeting a number of fundamental criteria: it needs to be available before, during and after the criminal proceedings, and from the earliest possible time irrespective of whether the crime has been reported. Access to support needs to be easy, without involving excessive procedures and formalities. In addition, victims should be assisted by well-trained professionals capable of providing prompt and targeted assistance. The most common way to provide rapid support and information to victims in the member states is through helplines. We have identified a number of requirements that helplines need to satisfy in order to be effective. Preferably the special needs of vulnerable victims are taken into account and besides the general helplines for victim support, separate, specialised support services should be operated (e.g. as done by the Polish Network of Local Support Centres for Crime Victims or the Hungarian Eszter Foundation).

Second, the other prong of the access-to-justice requirement shall be considered: the ability of the victim to participate in the criminal justice system or to go on with their case even if the prosecution decides to discontinue. Legal aid, legal advice or legal counselling should be made available to those in need, preferably at the lowest possible level (e.g. as provided by the county offices of the Victim Support Service of the Office of Justice in Hungary). Victims should be entitled to be accompanied by support persons. Courts should have separate victim and witness support rooms, where individuals can wait for the hearing or the trial undisturbed.

Research on the legal frameworks and practices in compensation and reparation in or outside the criminal justice system across the member states suggests a strong need for development in this field. Obtaining reparation through formal justice might be particularly difficult, although some good practices indicate that with a more reparation-focused approach, it can be significantly facilitated (e.g. as can be seen in France, Sweden and the UK).

Third, we selected programmes ensuring or facilitating the protection of victims that count as good practices. Protecting the victim should entail preventing any further harm or intimidation on the victim's side either as a consequence of a subsequent crime (repeat victimisation) or owing to inappropriate criminal proceedings (secondary victimisation). From the point of view of the former, education and information for the public through formal and informal channels is a crucial, but not sufficient, element of protection. Proactive intervention (like the Kirkholt 'Burglary Prevention' and the 'Biting Back' projects in certain areas in the UK) is seen as good practice. Restorative justice practices can also help in adjusting the victims' perceptions of security to reality and in restoring community and individual safety. Good practices in restorative justice as an alternative to formal justice show great potential not only for victim protection, but also for crime prevention (as demonstrated by the Southwark Mediation Centre in London, the Dutch Halt programme, and the *Gemeinschaftskonferenz* initiative in Elmshorn). Fully implemented, protection orders issued quickly and without requiring many formalities on the side of the victim are a *sine qua non* of protection. Women's shelters should be operated throughout the country. Victims' privacy is vital not only in such cases, but crime victims' privacy and their right to personal data protection should be ensured more generally. Victims should be protected from unnecessary publicity. On this latter point, national laws on criminal procedures and the education of trained personnel having contact with the victims (e.g. interrogating them) have a great impact on the application of methods aimed at avoiding secondary victimisation. Notable examples are the new Criminal Court Complex in Dublin and the NGO project 'Coalition for Child-Friendly Interviewing' jointly led by Bulgarian and Polish organisations.