

**EUROPEAN COMMISSION VICTIMS' PACKAGE  
CONSULTATION DOCUMENT:**

**TAKING ACTION ON RIGHTS, SUPPORT AND PROTECTION OF VICTIMS OF CRIME AND  
VIOLENCE**

*Associação Portuguesa de Apoio à Vítima's ID number is 16971874271-43*

The Portuguese Association for Victim Support (APAV) wishes to congratulate this initiative and the opportunity given to participate in the public consultation on rights, support and protection of victims of crime and violence. We are confident that this process is one more step in pushing forward the victims' rights, support and protection in the 27 Member States of the European Union.

Throughout the years APAV has been working actively in the improvements for the rights, support and protection of the victims of crime not only in Portugal, but also at the European level. The European Commission cofinanced Projects promoted by APAV and its active role in Victim Support Europe (and other Forums, Platforms, Networks) are a clear example of this.

One of these Projects was Project Victims in Europe, promoted by APAV, on behalf of Victim Support Europe, which allowed us to provide the European Commission and other interested parties with a richer and more comparative picture of the results of the 2001 Framework decision on the Standing of Victims in the Criminal Proceedings.

For this public consultation, APAV organised a national and internal consultation in order to promote the participation of different stakeholders involved in the victims' area. Therefore, in the past 7<sup>th</sup> September we had the pleasure to host a meeting from which we wish to express its important contributions.

Besides APAV large experience as a Victim Support Organisation, some of the answers and conclusions given bellow will be based on the Project Victims in Europe findings.

Last, but not least, APAV supports entirely the position of Victim Support Europe in this public consultation and therefore we take this opportunity and liberty to include its answers to the public consultation in the present document.

**I. GENERAL QUESTIONS:**

- 1. What are the main obstacles and problems faced by victims of crime or violence in relation to the five categories of needs (Recognition, Protection, Support, Access to Justice, Compensation and Restoration)?**

**2. What concrete initiatives would you suggest to ensure the five categories of victims' needs are met? Do you think the EU can contribute to these initiatives and if so how?**

Victims today face many challenges and obstacles during their journey through the criminal justice system. Some are behavioural and some are procedural challenges. Regarding the procedural obstacles, it is easier to pinpoint certain measure that can be taken to alleviate current injustices. Victims should be given a clearer and more dominant role throughout the entire justice process; “justice” from a victim perspective is about being allowed to be a part of the process that deals with their particular case. Below, we have given comments and suggestions for improvements in the victim’s procedural rights. The other part of the victim’s experience is how they are treated and perceived by the agencies involved. This area is more difficult to pinpoint. Legislation cannot change mindsets and behaviours unless they force real changes in the way victims are treated and the services to which they are entitled. The justice process should not only be focusing on the accused; we must begin to recognise the victim’s right to a “fair trial” and an “effective remedy”.

Besides this, it is important to note that, in addition to the categories presented for discussion we should not forget the social rights of the victims, bearing in mind the importance of the human factor in the victims’ standings. Remembering the guiding principles of the social rights of victims of crime set by Victim Support Europe, democratic societies have an obligation to alleviate the effects of crime, including the adverse consequences that victimisation has on all aspects of life; victims must be supported in a way which shows an understanding of the whole range of their problems; all victims of crime have the right to ask for their privacy, their physical safety and their psychological well-being to be protected.

**Recognition**

Victim’s right to recognition includes respectful treatments from all criminal justice agencies involved in the process. This incorporates an acknowledgment of the suffering of the victim, and a validation that what the victim says is true. This in itself creates a challenge in a criminal justice setting, in particular the trial process, where the accused is seen as innocent until proven guilty. We often meet victims who feel that the agencies such as the police, prosecutor or defence agent did not take their statements seriously or questioned the validity of the victim’s story.

In many countries, the victim is not a party to the proceeding and as such he/she will have limited rights during the trial process. In common law system, the victim is first and foremost seen as a witness for the State and does therefore not have their own legal representative. One of the most common misconceptions amongst victims of crime in common law countries is that the prosecutor is appointed to represent the victim’s interest,<sup>1</sup> in the same way as the defence agent represents and protects the interest of the accused. The prosecutor is first and foremost a representative for the State. The

interests of the State are often aligned with the interest of the victim; both want the person responsible for the offence to be convicted and given a suitable punishment. However, at times, the interest of the State may differ from that of the victim. The prosecutor will for instance always conduct a public interest assessment before formally charging an alleged offender;<sup>ii</sup> if it is not seen to be in the public interest the prosecutor will not pursue the case. We acknowledge that the accused should be seen as innocent until proven guilty and as such he/she is entitled to independent representation by a defence agent. However, as the injured party against whom a crime has been committed, it is often very burdensome for the victim to cope with the effects of the crime and at the same time deal with the formal requirements of the criminal justice system.

According to the Report of Project Victims in Europe, the answers of the experts across Europe to the organisational questionnaire suggest that the amount of respect afforded to victims and recognition of the harm they suffered still leaves much to be desired. In fact, For a general overview concerning the status of the victims' rights in the criminal proceedings we asked the respondents if, in their country, most victims consider that the role they have in the Criminal Justice System is appropriate and if they feel adequately recognized by the criminal justice professionals. Answers were measured on a five-point scale (1 = completely disagree, 5 = completely agree) and to ease the analysis, were afterwards recoded on a three-point scale (1 = Low; 2 = Medium; 3 = High). More than 50% of the respondents share the opinion that the victims' role is inappropriate (53,3%) and that they are not adequately recognized by the criminal justice professionals (58,1%).

As a result, Victim Support Europe recommended that:

- Victim Support Europe agrees that only when all articles are fully implemented are victims' rights to respect and recognition fulfilled within each Member State
- The role of the victim throughout the criminal justice process should be respected and recognised as equal to that of the accused. The Framework Decision is legally binding and it is the responsibility of each Member State to ensure that all articles are implemented
- Special measures should be made available to all victims and witnesses who, having been offered the measures, have expressed a will to receive them
- Children should automatically receive special measures, without having to express an opinion to this effect
- Adequate and concise information should be made available to ensure that the victim/witnesses can make an informed decision on any participation in the case, for instance whether or not to accept special measures while giving evidence

In practical terms, Victim Support Europe also suggested to ensure that the victim is able to present their case as comprehensibly and accurately as possible and that their full interests are taken into account at all stages of the criminal justice process, it would be beneficial for victims to have a right to free legal representation. In some civil law countries, where the victim is seen as a party to the proceedings, this is already the case. In these cases, the legal representative for the victim will sit alongside the prosecutor in the trial proceedings and add questions to a witness or any other useful comments to the court that the State representative has not raised.

## **Protection**

Preventative actions include ensuring that every person knows where and how to report any incidents and threats directed towards the (potential) victim. To increase the safety of a person before a crime has taken place, there should be protection orders available when certain threatening behaviour arises. In the UK for instance, threatening and alarming behaviour can be dealt with through civil protection orders, which stipulate that the perpetrator must stop certain behaviour towards the victim. The purpose of the civil order is to protect the victim from any future abuse, so does not per se punish the offender for past behaviours. The problem is that many civil orders are weak, a breach of the order is often not a criminal offence and the police cannot do anything to protect the victim. The only option for many victims to address a breach is to bring an action of breach of the order back to the civil court, and bear the full legal costs. Better preventative measures must be developed to ensure a crime does not take place.

Once a crime has been committed and the case goes to trial, the victim should benefit from protective measures. Today, many victims face intimidation and threats when having to wait for the trial to take place.

Many victims also need protection of their privacy and family life, as the media often report on high profile cases and publish picture of the victim or explicit details of the crime without their consent.

In what concerns the results from the Project Victims in Europe, compliance with Article 8 was measured on seven criteria. Three of them related to protection of the victim against publicity, the other four related to protection of the victim against intimidation or threat by the offender. Although all the member states have the possibility to hold hearings in camera, it is usually left up to the discretion of the courts (14 member states), which is the weakest form of protection. The highest level of protection – to make hearings in camera obligatory if the victim so requests – was reported in 8 member states. Furthermore, even though most member states (23) reported some form of restrictions on press coverage of cases, many of them (17 member states) relied on a media code of ethics. Finally most member states place limits on the disclosure of the victim's personal information.

The measure that was favoured the most was the pre-trial principle of secrecy (17 member states). As to the protection of the victim against threat and intimidation by the offender, 14 member states had 5 or more protection measures in place. The measures that were most favoured were police protection, preventive custody and relocation of the victim. Striking is that the right to complete anonymity was implemented by no less than 14 member states. All in all, all member states seem to endorse the importance of protection measures and they often apply more than one measure to make sure that the victim is protected against the offender.

Separate waiting areas however are not available to victims in most member states. 24 member states reported no obligation to provide for separate waiting areas in court premises. This is a particularly striking finding, considering the straightforward phrasing of the relevant Framework article.

All of the states have one or more options for the victims to obtain protection orders, but the legal status differs. The strongest legal protection against threatening behaviour against victims/witnesses is to regard it as a specific offence. Fifteen member states perceive threatening behaviour in this fashion, sometimes in combination with a general offence, an aggravating circumstance or both.

Overall, the member states appear to be aware of the significance of protection of victims against publicity and the offender. This appears from the fact that a large majority has possibilities to hold hearings in camera, to restrict press coverage of cases, to limit disclosure of victims' personal information and to protect the victim through various practical and legal protection measures.

However member states regularly opt for weaker mechanisms (hearings in camera at the discretion of the judge, restrictions on press coverage through a media code of ethics) or they do not provide the optimal combination of measures (restrictions on disclosure of victim's information, protection orders, threatening behaviour). Finally it is clear that a large majority of the member states do not comply to the requirement concerning separate waiting areas.

The fact that member states do not always opt for the strongest mechanism for the protection of victims and that hardly none of them complies with the provision to provide to the requirement concerning separate waiting areas may well contribute to the negative assessment of the majority of the respondents in the survey. On all counts - protection from the offender, of the victim's privacy, from the media - a majority found current protection measures to be inadequate.

In fact, the results of the organisational questionnaire, show that in all aspects the number of negative responses outweighed the positive. Over 60% of respondents disagreed or completely disagreed that protection from the media is adequate. 59,5% gave negative responses to whether privacy is assured. 49,5% gave negative responses to whether contact with the offender is minimised. The same figures for protection when reporting a crime and when testifying in court were 47,9% and 47,6% respectively.

Given the above mentioned Victim Support Europe recommended:

- European Court Room specifications should be developed, specifying minimum standards and conditions for new court buildings. The layout of the court should ensure that the victim/witness can move freely to and from the witness room into the court room and back out without any risk of intimidation. Victims should be given separate waiting rooms, separate entrances, toilets, eating facilities etc.
- The increase of special protective measures and different ways to communicate e.g. webcams and CCTV should be used, if appropriate, to protect the privacy of the victim
- Victims have a right to privacy and protection of the family and personal life. To fulfil this right, only information that is relevant to the case at hand should be disclosed to the court and to the defence. Medical records and previous events, unrelated to the crime, should therefore never be disclosed. Any breach of this should be dealt with by statutory regulations
- In line with the victim's right to privacy, the victim should be able to determine what information should be disclosed to the media. As such, the media should not be allowed to print images of the victim without his/her consent. Victims may be in a very

vulnerable situation after the crime and it may be difficult to take a decision with such big repercussions, but they should be given support and assistance to be able to make an informed decision about what information they want publicised

- The media should be restricted in their reporting on the crime and should not be allowed to give intrusive personal details about the crime or about the victim or their family. For instance, ‘victims’ last words’ should not be printed without consent from the victim’s family. Victim Support Europe acknowledges that this may be seen to limit the media’s freedom of speech, but these regulations are vital to ensure that the victim’s right to privacy and protection are not infringed. Intrusive media coverage is also likely to deter other victims from reporting a crime and engage with the criminal justice authorities, which will have a negative impact on the criminal justice system as a whole

In concrete terms, VSE shares the opinion that it should be a criminal offence to breach a (civil) protection order. This would present a deterring factor for the offender, which would hopefully prevent any further incidents. It would also enable the police to arrest the perpetrator and conduct a more thorough investigation into the case. We support the suggestion brought in by the Spanish Presidency to extend protection measures given in one country to another Member State.

Separate facilities should be established in the courts to keep the victim separated from the accused and any associated witnesses at all times. European Court Room specifications should be developed specifying minimum standards and conditions to ensure that all new court buildings are designed in a “victim-friendly” manner. The layout of the court should ensure that the victim/witness can move freely to and from the witness room into the court room and back without any risk of intimidation. For instance, the witness box should be equipped with a seat and placed close to a door so that the victim and associated witnesses do not have to cross the court room in front of the offender or his/her family. Victims should be given separate waiting rooms, separate entrances, toilets, eating facilities etc. Separate seating facilities in the court room should be offered to the victim’s family in serious cases.

Victims have a right to privacy and protection of the family and personal life. To fulfil this right, only information that is relevant to the case at hand should be disclosed to the court and to the defence. Medical records and previous events, unrelated to the crime, should therefore never be disclosed. Any breach of this should be dealt with by statutory regulations.

The media should be restricted in their reporting on the crime and should not be allowed to give intrusive personal details about the crime or about the victim of their family. For instance, victims’ picture, ‘last words’ or intrusive details about the case should not be published without consent from the victim, or in the murder cases the victim’s family. Victim Support Europe acknowledges that this may be seen to limit the media’s freedom of speech, but these regulations are vital to ensure that the victim’s right to privacy and protection are not infringed. Intrusive media coverage is also likely to deter other victims from reporting a crime and engage with the criminal justice authorities, which will be detrimental to the criminal justice system as a whole.

## **Support**

The Victim Support movement has been supporting victims of crime in Europe for more than 20 years. However, the availability and quality of victim support services vary across the EU Member States. While some States have long established national victim support organisations, others have not yet organised their support to victims of crime. One common factor is that victim support services are generally poorly funded, especially when compared to the services offered to offenders. This needs to be addressed to ensure that every person who fall victim to crime in the EU can access timely and appropriate support in accordance with their needs.

Following Project Victims in Europe report, Member states can be said to comply with article 13 whether they have victim support organisations or not. The article specifically stresses that the services rendered by victim support may also be the responsibility of governmental agencies. Where victim support organisations do exist two criteria should be applied: national coverage and general services for all types of victims. If countries do not meet these criteria, victims in certain regions or certain types of victims will not be able to access the services provided by victim support. According to the opinion of the experts consulted in this survey Austria, Belgium, Estonia, Finland, Germany, the Netherlands, Portugal and the United Kingdom meet both criteria. However, like other articles in the Framework Decision, the phrasing is vague. Member states only have to 'promote' or 'encourage'. This means that the member states who fall short on one or both criteria can still comply with the literal text of the Framework article. The work of victim support organisations is appreciated by the experts in the survey, with both a majority finding the level of services and access to be adequate. They however consider the funding of victim support across Europe to leave room for improvement.

As a result, Victim Support Europe recommends:

- Each Member State must provide funding to establish a national nongovernmental organisation for the support of victims
- The exact role and responsibility of victim support organisations should be confirmed, to ensure expectations are met
- Quality measures should be set to ensure that national victim support organisations offer all citizens affected by crime in Europe the highest level of practical and emotional support
- Cooperation agreements should be developed between victim support organisations and criminal justice agencies, to ensure victim support plays a tangible role in the criminal justice system.

In practice, VSE states that each Member State must provide funding to establish an independent national organisation for the support of victims. The exact role and responsibility of victim support organisations should be confirmed, to ensure expectations are met. Quality measures should be set to ensure that national victim support organisations offer all citizens affected by crime in Europe the highest level of practical and emotional support in accordance with their needs. Cooperation

agreements should be developed between victim support organisations and criminal justice agencies, to ensure victim support plays a tangible role in the criminal justice system

### **Access to Justice**

Access to justice is about acknowledging that the victim has a legitimate interest in the case and therefore has an important role to play. The victim must feel involved in the case. Today, many victims feel completely excluded from the proceedings, which instead focus on the offender. The criminal justice system is not designed nor equipped to “heal” the victim from the trauma caused by the crime, it is set up to prove the guilt of the accused and protect the public. Victims should be given a right to be more involved in the process and to access timely and appropriate information regarding their case. “Justice” from a victim’s perspective is not only determined by the sentence given to the offender; it is also based on the manner in which the victim is treated throughout the entire criminal justice process. Factors such as access to accurate and timely information, support, compensation and behaviours from all people involved in the process all impact on the victim’s sense of justice.

Regarding Project Victims in Europe Report, most jurisdictions appear to comply with the requirement to ensure information provision to victims from their first contact with law enforcement agencies. Eighteen member states have a general obligation to provide information to victims, which is also assigned to a responsible agency. Similarly in most jurisdictions the victim is informed of the progress of the case, with a majority of member states having systems in place that inform victims of the outcome of the police investigation and similarly of the decision to prosecute, the date and place of the court hearing and the outcome of the court case. Less attention is paid to the possibility that victims do not want to be informed. Finally information concerning the offender’s release is not disseminated to victims in many jurisdictions.

The results of the organisational implementation survey show that the success of dissemination of information depends on the topic under observation. The respondents are more often than not negative concerning the access to information about the victim’s role in criminal proceedings, conditions to obtain protection, the outcome of the report and to a lesser extent concerning the possibilities for compensation. As these are all main topics of the Framework Decision this finding is not only noteworthy, but indeed somewhat troubling. Access to information is a prerequisite for subsequent action and a basic need of many victims. The fact that our respondents across Europe on average find this access to be assured, is an indication of a deficit in the assistance provided to victims. In addition the timeliness of information is called into question, with most respondents expressing the opinion that information does not reach victims on time.

Here the organisational survey suggests that the promising results of the legal implementation survey need to be qualified. The systems for information dissemination may be there on paper, but according to most respondents they do not provide victims sufficient access to information in practice.

In a practical context, victims should be given a right to be more involved in the process and to access timely and appropriate information regarding their case. They must be recognised as having a legitimate interest in the case, and as such given the ability and right to engage and participate in all stages of the case. They should for instance be consulted regarding any decision to stop an investigation or prosecution. They should also be given the right, if they so choose, to provide the court with information regarding the impact the crime has had on them. This information should be taken into account by the court.

In more detail, Victim Support Europe recommends that:

- All victims should be kept fully informed of all activities in the case and be given at least the following information, both orally and in writing:
  - How and where to report a crime
  - How and where to access emotional support and practical assistance
  - How and where to access legal aid and advice
  - Whether or not the police has initiated an investigation into the crime
  - Whether or not the police has sent the case to the prosecutor
  - Whether or not the prosecutor has charged the alleged offender
  - If and when the court case will take place
  - Explanations of the role and rights of a victim during the court proceedings, for instance if it possible to get special measures when giving evidence, if victims can give an impact statement etc
  - Whether or not emotional support and assistance will be available to the victim in conjunction with the court proceedings, and if so how to access this support
  - Full explanation of the final verdict and the reasoning behind it
  - If applicable, information about when the offender has served the sentence and arrangements for his/her release into society
- All victims should be given the right to abstain from receiving information, either generally or by specifying what particular piece of information they do not wish to receive
- Cooperation between criminal justice agencies must improve to ensure that the agencies are aware of what information the victim has been given
- Since the responsibility of sharing information transfers between different criminal justice agencies during the victim's journey through the criminal justice system, working protocols should be put in place to ensure smooth links and that the victim is kept up-to-date
- Improvements must be made to ensure victims who are victimised in a country other than the one where they live can access clear and timely information
- Victims should be able to file a complaint if they are not kept adequately informed

### **Compensation**

Financial compensation will never undo the harm caused by the crime, no amount will compensate the intangible costs of victimisation. Subsequently, for victims, compensation following a crime is often not primarily about receiving a financial award. Of central importance is the formal acknowledgement and recognition of the

suffering of the victim, as well as a validation that what the victim says is true. As such, compensation may be an important part in the victim's recovery process. Today, victims are often not aware that they are entitled to compensation. If they apply, the process is often long, drawn out and complicated. The victim may have to pay for medical assessments, police reports etc. before their claim can be filed. This prevents many victims, who do not have adequate funds, to apply for compensation. This must be addressed to ensure that the victim can file a claim, free of charge, which will be processed speedily in order to assist in the victim's recovery process.

In many countries, the offender can be sentenced to pay compensation to the victim. Victim Support organisations across Europe regularly come across cases where the offender has not paid the compensation and problems occur in enforcement. Having been awarded the compensation by a representative of the State, victims should have the right to receive the award promptly to assist their recovery. It should not be the responsibility of the victim to pursue fulfilment of a compensation offer or a compensation order, as this is very aggravating and sometimes seen as further victimization for the victim.<sup>iii</sup> It also forces the victim to maintain contact with the offender, either directly or through the criminal justice process. This also further enables the offender to maintain their perceived power over the victim.

Reading the Project Victims in Europe Report we find that most member states have the possibility to stimulate the offender to pay compensation to the victim. This can be achieved by considering the question of payment of compensation in prosecution, by the possibility to attempt mediation between victim and offender relating to compensation or even the duty to do so. In this respect most member states appear to comply to article 9.

As to the main mechanisms to achieve compensation through the criminal justice system, the adhesion procedure and the compensation order, the results are sobering. The compensation awarded through the adhesion procedure is solely an additional measure, which, in most member states, has to be enforced by victims themselves. The compensation order is well implemented in the United Kingdom, where it has priority over paying a fine and paying costs. In seven countries the state plays a role in the enforcement of the offender's obligation to provide compensation. Except for the United Kingdom, this is the case in Sweden, Denmark, France, Hungary, Lithuania and the Netherlands.

According to the majority of the respondents the compensation procedures in their countries are inadequate and two thirds of them finds the timeliness of compensation much to be desired. As the latter is one of the main problems when the state offers no assistance in the enforcement of the offender's obligation to pay compensation it stands to reason that this may well improve when more states opt for an active role in this respect.

Following these results, Victim Support Europe recommends:

- Every Member State should have a body responsible for providing clear information about the way victims of crime can apply for compensation and who can support them in filling in their application

- Ideally, the same body should be responsible for processing such applications, and a time limit should be set within which the victim can expect to have a decision on the application
- The State should be responsible for paying compensation to the victim. If appropriate, the State could then reclaim this money from the offender, without the need to involve the victim in this process. The victim can request to be informed when the offender has reimbursed the full amount to the State

The offender's inability to pay compensation should not impact on the victim's right to receive it. Having been awarded compensation from a State agency, the victim should receive compensation payments directly from the State. It is then the responsibility of the State to seek reimbursement of the payments from the offender, without the need to involve the victim. This ensures that the victim receives the compensation immediately and the need to engage with the offender is eliminated.

The formal application process for applying for compensation should be simplified to ensure that all victims can understand the requirements and eligibility standards.

The victim should not be required to pay for the filing of a case or for getting any of the required documents; these costs should be covered by the compensation authority.

### **Restoration**

It is in the interest of the victim, the accused as well as the general public to maintain high standards of justice. Not only should justice be done, it should be seen to be done and communities should be more closely involved in the process.<sup>iv</sup> There can be many forms of restoration following a crime; for instance the offender could be sentenced to a community sentence to carry out unpaid work in the victimised community. For a community sentence to be seen as a just and fair punishment, the work undertaken by the offender must be prioritised and perceived as valuable to the victim and local community. Different communities will have different views on what is a valuable project; for instance projects suitable for community sentences in one local community may be unsuitable in another. The local community should therefore be consulted and invited to recommend activities to be undertaken within their area. Equally important, arrangements should be made to take the victim's views into account when choosing a suitable community disposal, to guarantee the safety and security of the victim. This would also ensure, as far as possible, that the activity of the community sentence benefits the victim and as such fulfils the requirements of reparation and punishment. This does not happen today. Instead, community sentences are often decided based on the projects available and the desires and needs of the victim are rarely, if ever, taken into consideration.

Mediation gives the offender a chance to apologise to the victim and explain why he/she committed the offence. The victim can also explain to the offender what impact the crime has had on the victim's life. Mediation serves a different role in Member States across Europe; in some countries it is seen as part of the "formal" criminal

justice setting, whereas some countries keep the mediation separate from the formal criminal justice system. It is absolutely vital that the interests of victims are given primary consideration in the mediation process. It is not a “right” for the offender to see the victim simply because it may be seen as favourable for the offender. As the injured party, the victim should have a right to decline any engagement with the offender without any repercussions to either the offender or victim. Otherwise the victim may feel pressured into accepting an offer, which may have a negative and counterproductive impact on the victim. Some victims find it very rewarding and beneficial in their recovery process to meet the offender, so mediation should be offered to victims who have expressed a free and informed wish to that effect. Today, some Member States develop mediation as a way to provide services to both offenders and victims simultaneously, but we find it absolutely vital that mediation is developed in addition to (and not instead of) all other forms of support to the victim. Victim support should also be offered to the victim before, during and after the mediation process.

Following Project Victims in Europe results, not all member states allow penal mediation in criminal cases. Penal mediation is not used in Bulgaria, Cyprus, Denmark, Lithuania, Malta, the Netherlands, Romania, Spain and the United Kingdom. This does not imply that these countries do not comply with the Framework decision in this respect, as this allows Member States the discretion to determine for which offences, if any, they find penal mediation to be appropriate. Although the phrasing of the article is vague, most mediation practices seem to be similar, with member states allowing mediation for less severe cases, not for grave offences.

The results of the mediation are not taken into account in Portugal, Slovakia and possibly Sweden, which suggests that the mediation procedures in these countries do not comply with Framework Decision requirements.

As a result, Victim Support Europe recommends:

- Member States can develop mediation measures in addition to (and not instead of) all other support measures for victims specified within the Framework Decision. Article 10 can not be implemented as an overarching measure, relieving the State from the duty to implement other victim measures
- Emotional and practical support should be offered to ensure that the victim can make a free and informed decision whether or not to engage in mediation
- Emotional support should also be offered before, during and after the mediation process.

To ensure that mediation is conducted in the interest of the victim and has a victim-centered approach, certain criteria must be met in order for mediation to take place. For instance, all personnel involved must have adequate training. Regarding the requirements for setting up the mediation, the offender must freely accept full responsibility for the crime and offer an apology and explanation to the victim. Otherwise, there is a risk that the victim will be revictimised and that the offender’s perceived power over the victim is maintained through the denial of guilt.

**The role of the EU:** The EU has a big role to contribute in the improvement of meeting victim's needs; mainly by setting up minimum standards on services that should be provided to all victims. We acknowledge that the status and role of the victim varies in different countries across the EU, but all people affected by crime should be entitled to certain services and the EU is the best placed agency to provide such standards on an EU-wide basis.

**3. How could existing EU legislation on victims be improved to meet the needs of victims?**

Current legislation is very vague and does not provide any form of sanctions for Member States who do not implement sufficient services and measures to protect victims. For instance, to prove their fulfilment of the 2001 Framework Decision, many countries relied on legislation in place before the Framework was adopted, and no country has implemented all the articles of the Framework in one document. Victim Support Europe does therefore not believe that the existing EU legislation is enough to ensure adequate services to victims. New, clear demands on all Member States with attached sanctions are required to ensure practical improvements for people who fall victim to crime in Europe. Information material and awareness raising campaigns are also needed to inform practitioners of victim's new and improved rights, to ensure that they are fully implemented across all EU Member States.

**4. Is sufficient information and data collected on victims' policies and needs? How do you think such information should be collected (e.g. specific studies and research, national or EU wide victim satisfaction surveys)?**

No, there is today insufficient information and data collected regarding victim's experiences and feelings. Some countries do not seem to record the total number of people who fall victim to crime each year, and many of the criminal justice agencies working with victims have their data systems set up to record "cases" rather than the people involved so they are unable to extract information regarding victims directly. The inability to extract this basic information makes it difficult for agencies to cross-reference and ensure that no victim has fallen through the net without being referred on. Lack of funding is believed to be a contributing factor to these inadequate IT systems and recording practices.

Victimology is a relatively new area of study. Despite the recent increased interest in this field, there is still a research gap regarding the manner in which people recover from the trauma of victimisation and how victims react to participating in the different stages of the criminal justice system. Volunteer organisations and other practitioner-based groups have extensive practical knowledge in working with victims that would be useful when advancing the theoretical knowledge of victimology research. Similarly, up-to-date academic research on victim's needs and reactions are essential in order for practitioners to develop the most appropriate

service delivery following victimisation. Closer partnerships between research institutes and the voluntary sector would assist in the advancement of victim issues and understanding of victims' needs and reactions in the aftermath of crime.

Specific studies looking at victims' experiences of particular parts of the criminal justice system, for instance giving evidence, victim's ability to access compensation etc. are the best way to get detailed information on particular areas of victim's rights. In addition to these specifically targeted studies, it would be beneficial if all agencies working with victims were able to store information about the people they meet. In addition to the overall number of victims, it would be helpful if agencies could store data such as crime type, age, ethnicity, native tongue, gender, sexuality etc. This would enable comparative studies to be conducted to for instance assess whether or not a certain social group is particularly targeted and if specialised support groups or additional preventative measures are needed to prevent any further victimisation.

## **II. SPECIFIC QUESTIONS BASED ON THE NEEDS OF VICTIMS**

### **RECOGNITION**

**5. Do you think victims related training should be compulsory for practitioners?  
How do you think the quality of training programmes can be improved?**

Yes, we strongly support making victim awareness training a compulsory part of the foundation training for all professionals working with victims and witnesses of crime. **This is one of the most important steps to promote and protect the rights of people who fall victim to crime in Europe.** Minimum standards should be set regarding the content and level of awareness that each professional should have reached. Many Victim Support organisations offer victim awareness training that can be adapted to the needs of the particular professional group in question, such as law-enforcement agencies, health, housing, social welfare services etc. For applicable categories of professionals, specialist training can be given regarding for instance:

- Victims of sexual offences
- Families bereaved by murder
- Young victims of crime
- Victims of cross-border crime

By including victim awareness training into standard foundation training, costs can be kept to a minimum while essential skills and knowledge are given to professionals at an early stage. This will also help to change the mindset and behaviours of professionals working with victims, who will start recognising the rights of victims as equally important to the rights of the accused. This will improve victim's access to justice and the fulfilment of victim's rights across Europe.

**6. How should it be ensured that the individual needs of victims are properly assessed (e.g. individual needs assessment when reporting crime)?**

Each person reacts differently to crime. While some victims struggle to cope with the incident others are able to move on in life fairly unaffected. Factors such as personality, previous victimisation, social network and available support determine how the victim will react in the aftermath of crime. Some Victim Support organisations across Europe have developed Assessment Frameworks to assess the needs of each individual victim they work with, to ensure their service meets the need of the individual. Factors including the personal characteristics of the victim, ethnicity, age, where the victim lives, previous victimisation etc. are noted during the first conversation and together the victim support worker and the victim develop a plan for future contacts and support. Something similar should be developed for all criminal justice agencies, alternatively the agencies should share the assessment made. It should however be noted that the victim's support needs may change as the

victim moves throughout the criminal justice process, so an ongoing assessment is the most suitable method.

**7. How do you think vulnerable victims should be identified? What special measures should be available to them (e.g. provide testimony only once, legal assistance always available, specially trained professionals carry out questioning)?**

Victim Support Europe works for the establishment and development of generic support services to all victims of crime. As such, we are reluctant to isolate certain groups of victims as particularly vulnerable, since it may leave the large majority of victims neglected. We acknowledge that victims of more serious crimes are likely to need a higher degree of support, delivered in a professional manner and tailored to the individual victim. However, we would like to refrain from creating a hierarchy of victims or a hierarchy of grief. Instead, we would like support to be provided to all victims of crime following an assessment of that person's particular needs and circumstances. We would like to see the focus being put on bringing the quality of support to all victims up to the same level across all agencies and organisations, rather than focusing on particular services for particular groups of victims. Regarding special measures, Victim Support Europe believes all witnesses should be offered equal access to special measures when giving evidence. Each witness should, along with the offer, receive detailed information about what special measures are available so they can make an informed decision whether or not the measure would be in their interest.

In Project Victims in Europe report and, in what concerns vulnerability, the results show that most member states find mental disability or the type of crime suffered to constitute grounds for special treatment of victims. This concurs with the way the Council of Europe defines vulnerability. In a number of the member states the special treatment may not be accompanied by a definition of vulnerability as such. However it is not hard to argue that what matters most for victims is not the definition of vulnerability but the special treatment that should follow that definition.

## **PROTECTION**

**8. Do you think measures are needed to protect a victim's privacy and if so how (e.g. court orders, code of conduct)?**

Yes, there often is a need to protect victim's privacy. There should be a range of protective measures available, depending on the case at hand. As a preventative measure, Victim Support Europe believes that protection orders should be available for victims who experience threatening, alarming or distressing behaviour that does not yet constitute a crime. If we for instance look at the crime of stalking, it may comprise of behaviours that, by themselves, may not be criminal, for instance making phone calls, sending letters etc. Threats may be explicit or implicit or

conveyed without words. Acts that appear meaningless or non-threatening to other people may be terrifying to the victim. Flowers sent to the victim's work, a seemingly non-threatening and often appreciated gesture, may make the victim terrified to leave work out of fear that the stalker is waiting outside. These are the kind of situations where a protection order would be suitable, to demonstrate to the victim that they are right to react and that the behaviours they are forced to experience are not normal. A protection order will also show the perpetrator that their behaviour is unacceptable and that they must stop, or else their behaviour will have repercussions. Breach of a protection order should be seen as a criminal offence.

Regarding media coverage, Victim Support organisations across Europe regularly comes into contact with victims who say that the media has reported on their case and published their picture or explicit details of the crime without their consent. In many instances, the information is inaccurate, which causes an enormous amount of distress and frustration for the victim and in cases where the victim has passed away, the bereaved family. We fully support the concept of freedom of speech, contained in article 10 of the European Convention of Human Rights. However, as stated in article 10, section two, freedom of speech "carries with it duties and responsibilities...necessary in a democratic society for the protection of health and morals" or "for the protection of the reputation or the rights of others".<sup>v</sup> It is unfortunate that the media tend to focus their attention on the most serious crimes with the most distressing impact on the victim and victim's family. In addition to the objective information regarding the incident, reports often contain intimate details about the victim, such as family relations, private photos, last words, etc. which are added to create a particularly shocking or compelling story. The article may not only being published at the time the crime occurred; pictures and information from high profile cases are often reproduced long after the incident has taken place which continuously reminds the victim and the victim's family of the trauma suffered. This needs to be addressed by ensuring that victims have a legal remedy to protect their rights to "health and morals", "reputation" and their "right to privacy and family life". Currently, there is a clear gap in the legislative protection of victims and the bereaved family's right to privacy and family life. In some countries, defamation legislation does for instance not cover homicide victims. Victim Support Europe would therefore like to see stricter, enforceable guidelines for the media when reporting on criminal cases. Freedom of speech and the freedom of the press enable the media to write a general report on the case; however no intrusive details and no image of the victim should be published unless the victim has consented to such publication.

- 9. How do you think the victim should be protected from an offender/ potential offender in particular in relation to:**
- a) Intimidation/ further harm (e.g. separation of offender and victim in court/police station through protocols)?**

Separate facilities should be established in all places where the victim and accused will be forced to meet. For instance, police stations should have the facility to welcome victims and take reports in a separate and safe environment. Courts should keep the victim separated from the accused and any associated witnesses at all times. Europe-wide court room specifications should be developed for new court buildings to ensure their design is “victim-friendly”. For instance, the witness box should be placed close to a door so that the victim and associated witnesses do not have to cross the court room in front of the offender or his/her family.

Personal characteristics of the victim/witness should be taken into account when deciding the manner of questioning. Strict regulations must be introduced to not only limit the scope of questions asked, but also the manner and frequency with which they are asked.

**b) As regards protection orders, what do you think is the most feasible and effective option to achieve EU wide protection?**

Victim Support Europe supports the ability to enforce protection orders given in one Member State in another State to which the victim has moved. This would be in line with the EU’s aim of mutual recognition.

Looking at the available research regarding the implementation of the 2001 Framework Decision on the Standing of Victims in Criminal Proceedings, it is evident that the Framework, although “hard law”, has not been any more effective than previous “soft law” recommendations to protect victim’s rights. A stronger document is required, with the possibility of sanctions or other enforcement mechanisms to ensure that the Member States implement the set minimum standards. A Directive, with its direct effect in all Member States, would be one of the most suitable tools to use, supported with information material on the new minimum standards and what that would mean in practical terms for victims of crime.

## **SUPPORT**

**10. How do you think victim support organisations can be assisted to provide effective services to victims?**

Victim Support Europe is a network of 26 non-governmental victim support organizations in 21 European countries, which provide assistance and information to victims of crime. Victim Support Europe promotes the establishment and development of victim rights and victim services throughout Europe. There are well established victim support practices throughout Europe, and the current organisations can offer both training and best practice guidance regarding service provision to less developed organisations and support services.

Victim Support organisations around Europe have been lobbying and campaigning for the protection and promotion of victim’s rights for a long time; decades in some

countries. Without official demands and requirements, it is easy for Member States to claim they are fulfilling victim's rights "to the best of their ability", or that no further services are required. By establishing clearer guidelines and strict minimum standards for Member States, it will be easier for victim support organisations to assist the State to set up services to meet victims' needs and provide practical improvements for victims.

Funding is one of the main issues for victim support organisations, since many of them are voluntary organisations. Europe is currently, along with many other parts of the world, going through a difficult financial period, with cuts being made in many of our public services as a result. This will have a negative impact on the funding, and subsequently the services victim support organisations will be able to deliver. Crime victim assistance is an essential public service and, as such, merits the State's commitment to adequate funding. Governments across Europe have acknowledged that "[p]eople who are victims of crime often need practical and emotional support to help them deal with the impact of the crime on their life."<sup>vi</sup> It is therefore very important that we maintain our commitment to people who fall victim to crime and continue our provision of support despite the threat of financial cuts. Victim support is not a luxury that can be given if and when there are any funds left from the "formal" justice system. Victim Support organisations are often very cost effective, providing high quality service to people affected by crime. Many use volunteers, which mean they provide excellent value for money. Funds for victim services are today only given a portion of the funds awarded to offender services. This should be addressed by increasing the funds to victim services rather than cutting their already limited resources. However, since many of the services to offenders are provided by statutory bodies, it is easier to cut voluntary organisation's funding in times of economic strains. Victimisation impacts on all parts of society. Victims may for instance need medical care following the incident. A subsequent long absence from work may have negative impact on productivity and an increased risk for dependence on social welfare schemes. Access to timely and appropriate victim support, developed in accordance with the individual's needs, may decrease the time of recovery and ensure that victims can return to work as soon as possible. Investing money in victim support services can therefore save the Member State funds in the long term in other areas such as social benefits and health care.

## **11. What services do you think they should provide?**

Support given to all victims of crime: People react differently to crime; while one person is able to move on in life fairly unaffected, another person may be very traumatised by the incident. Different members of a family bereaved by murder may for instance have completely different needs and ways of dealing with the bereavement. As such, Victim Support Europe believes that there is no fundamental difference in the needs of victims depending on the crime. Instead, the support given and the way in which it is delivered will depend on the individual circumstances and needs of the victim. Recent research, carried out by the Tilburg institute Intervict and supported by Victim Support Europe, led to the question of

whether or not any differences between victims of terrorism and victims of crime in general exist. If we discount the societal impact of terrorism, a victim of terrorism is, similar to other victims, a victim of crime. Victim Support Europe acknowledges that victims of more serious crimes are likely to need a higher degree of support, delivered in a professional manner and tailored to the individual victim. However, we do not wish to see a hierarchy of victims, whereby victims of some crime types are being seen as more important or more vulnerable than others. Vulnerability cannot be identified from the outside; individual circumstances can make any victim particularly vulnerable at a certain stage in their life. Victim Support Europe therefore believes that services should be developed to assist all victims of crime, delivered in a professional manner in a safe environment and tailored to the individual victim's needs and desires. There are still a number of Member States without a national victim support organisation, where victims are left to fend for themselves without any emotional support or practical assistance. To create a "Europe for citizens", we must ensure that victims across Europe have equal rights and abilities to access support regardless of crime type, where they live or in what country the crime took place. Below we have given an overview over the particular services we believe victim support organisations are suitable to provide:

Emotional support – helping the victim cope and recover from the trauma of victimisation

Information – giving general information about the criminal justice system, the agencies involved, role and rights of the victim, support services available etc.

Practical support – assisting in sorting out the practical impacts of the crime, such as installing alarms, changing locks etc.

Criminal injuries compensation – applying for compensation is often a very complex and time consuming exercise. For a victim, dealing with the emotional and practical strains from the victimisation, it may be additionally burdensome to also have to address the formal requirement of compensation forms. Victim support organisations can therefore often help to give general guidance and information on eligibility, provide assistance in filling in the forms etc.

Signpost – victim support organisations provide generic services to all types of crime victims. Following victimisation, some victims may have additional needs that require specialist services. For instance, a victim who is suffering from serious trauma and post-traumatic stress disorder may benefit from specialised psychological support. The victim support organisation should be able to serve as a signpost and refer the victim to an appropriate specialist services.

- 12. Do you think foreign and/or domestic victims should be provided immediate basic assistance (e.g. hotel accommodation, food vouchers, phone calls)? If so, who should provide such assistance (e.g. consular authorities, other government agencies, victim support organisations, tourist industry)?**

Yes, there are many situations where victims of crime will need immediate, emergency assistance. For instance, a victim of domestic abuse may need to leave a violent home environment with very short notice and may therefore be in need of temporary (hotel) accommodation, food vouchers, clothes etc. We have also come across situations where the family of a murder victim is unable to pay for the funeral costs, or the costs of cleaning up after the crime in situations where the murder took place in the victim's home. We believe it is vital that immediate assistance can be available in these situations, not necessarily to give money but to provide whatever assistance may be needed.

Regarding who should provide such assistance, it would ideally be an agency/organisation that the victim will get into contact with as a result of reporting the crime. This will ensure that the victim does not have to contact yet another agency in a stressful and traumatic situation following the crime. As an example, in Scotland, Victim Support Scotland administers a Victim's Fund to cover emergency costs. The Fund does not provide money directly to the victim, but will pay for services such as cleaning costs after homicide, funeral costs, emergency housing, food vouchers, emergency dental treatment etc.

## **ACCESS TO JUSTICE**

### **13. How should we ensure that victims fully understand their rights and the information they are given (e.g. Translation and interpretation available to all victims who don't understand, legal assistance, simplification of forms and documents, information provided through different media)?**

Access to justice includes an acknowledgement that the victim has a legitimate interest in the case and therefore has a right to participate and be kept informed throughout the process.

General information about the criminal justice system, where to report a crime, available support services and rights for victims should be given to the general public in an easily assessable format in all official languages of the country. This information could be spread via advertising campaigns, leaflets, consultation events, training courses (including foundation training for professionals in contact with victims), through the ongoing engagement with the community by criminal justice agencies involved etc. Information can also be provided via websites, please find the information provided by the Scottish Government on <http://www.victimsofcrimeinscotland.org.uk/>

Regarding case specific information, it should be given to the victim as soon as it is available in a language spoken by the victim. The victim has a right to understand what is happening in their case, so all major decisions should be explained fully. Contact details should be provided to a person whom the victim can contact in case they wish to receive more information or have the decision explained further.

To ensure that the victim is able to present their case as comprehensibly and accurately as possible and that their full interests are taken into account at all stages of the criminal justice process, it would be beneficial for victims to have a right to free legal representation. This person will be able to explain the details of the case to the victim in more detail and be the first point of contact for the victim in all criminal queries regarding the case.

All victims should be entitled to an interpreter (paid for by the State), regardless of whether or not they are cited as a witness in the case.

Since the responsibility of providing information transfers between different criminal justice agencies during the victim's journey through the criminal justice system, cooperation between agencies should improve and working protocols set up to ensure the victim receives all needed information. Victims should be able to file a complaint if they have not been kept adequately informed.

**14. Should victims have a right to provide information before key decisions are made, such as decisions to stop an investigation or prosecution, and to seek the review of such decisions afterwards (e.g. through a senior official, ombudsman, court).**

We acknowledge that the decision to initiate or stop an investigation or prosecution are taken based on many factors, including the public interest. However, all victims should have the right to be consulted and provide information before any such decision is taken. To set realistic expectations, the victim should be informed that the information they provide will be taken into account, but that the final decision will be taken by the applicable criminal justice agency. Research regarding victim impact statements demonstrates that victims were often disappointed that their statements did not have a deciding impact on the sentence. It is therefore important that the victim understands that the decision to stop an investigation or prosecution will be taken based on many considerations, but that the victim's view should be one of the deciding factors.

If the victim does not agree with the decision to stop an investigation or prosecution, the victim should be able to have the decision reviewed by an independent body, for instance a public ombudsman or a Victim's Commissioner.

If a case goes to court, all victims should be given the opportunity, if they so wish, to provide the court with information on how the crime has affected them. This information should be taken into account by the court.

## **COMPENSATION AND RESTORATION**

### **15. How do you think victims should be assisted when making compensation claims and when seeking to enforce compensation orders (e.g. State assistance in recovery, State payment in advance, simplification of forms)?**

It is often very burdensome for the victim to deal with the emotional and practical implications of the crime and at the same time comply with the formal requirements of compensation claims. Victim Support organisations are in a good position to, in addition to emotional support, provide assistance with compensation claims, e.g. giving information on eligibility, filling in forms etc. If the victim so desires, the victim support organisation could also be the compensation authority's main point of contact, with all correspondence being sent to the organisation who will then liaise with the victim. This will take some of the burden of the victim, who can rely on the victim support organisation to remind them of important deadlines connected with their claim.

Having been awarded the compensation by a representative of the State (a court or another State agency such as a compensation authority or the prosecutor through direct measures), victims should have the right to receive the award promptly to assist their recovery. It should not be the responsibility of the victim to pursue fulfilment of a compensation order, as this is very aggravating and sometimes seen as further victimization for the victim.<sup>vii</sup> It also forces the victim to maintain contact with the offender, either directly or through the criminal justice process. This may serve to prolong the offender's perceived power over the victim. Victim Support Europe believes that the most effective way to ensure that the victim receives the awarded compensation in a promptly and effective manner is for the State to pay all awarded compensation upfront. It is then the responsibility of the State to, if applicable, pursue repayment of the compensation from the offender without the need to involve the victim. In several countries, for instance Austria<sup>viii</sup> and the Netherlands, this is already the case, which ensures that the victim receives the compensation immediately and the need to engage with the offender is eliminated.

### **16. Should restorative justice practices such as mediation be available to all victims? Should minimum standards be applied to organisations providing such services?**

Yes, restorative justice measures should be made available to all victims who have expressed a free and informed desire to take part. However, we find it absolutely vital that mediation is developed in addition to (and not instead of) all other forms of support to the victim. Victim support should also be offered to the victim before, during and after the mediation process.

To ensure that mediation is conducted in the interest of the victim and has a victim-centered approach, certain minimum standards must be met by organisations providing such services. For instance, all involved personnel must be fully trained in victim awareness and understand the implications crime may have on victims recovering from trauma. Another requirement should be that the offender must

accept full responsibility for the crime and offer an apology and explanation to the victim.

## ENDNOTES

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<sup>i</sup> *The Crown Prosecution Service: Gatekeeper of the Criminal Justice System*, Ninth Report of Session 2008-2009, House of Commons Justice Committee (2009), p. 35

<sup>ii</sup> Crown Office and Procurator Fiscal Service Prosecution Code, (2001) <http://www.copfs.gov.uk/Resource/Doc/13423/0000034.pdf>

<sup>iii</sup> M A Young, *The Role of Victim Compensation in Rebuilding Victims' Lives*, International Organisation for Victim Assistance

<sup>iv</sup> *Rebalancing the criminal justice system in favour of the law-abiding majority Cutting crime, reducing reoffending and protecting the public*, Home Office (2006), p. 21

<sup>v</sup> European Convention on Human Rights, article 10 (2) <http://www.hri.org/docs/ECHR50.html#C.Art10>

<sup>vi</sup> *Scottish Strategy for Victims - Progress Report 2004*, Scottish Government (2004).

<sup>vii</sup> M A Young, *The Role of Victim Compensation in Rebuilding Victims' Lives*, International Organisation for Victim Assistance

<sup>viii</sup> For more information, please see § 373a StPO and Victims of Crime Act