



Pro.Vi – Protecting Victims' Rights

EU Policy Guidelines



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Table of Contents

Preface	4
Introduction	5
Establish a National Coordinating Body	6
Focus on All Crimes	7
Practitioner Training	9
Information Provision	10
Special considerations.....	11
Victim Participation in Criminal Proceedings	11
Adult Victims of Juvenile Offending	12



Preface

These guidelines were developed in the context of the project “Pro.VI – Protecting Victims’ Rights”, financed by the European Commission – Directorate General Justice and Consumers (JUST-AG2017/JUST-JACC-AG-2017). Pro.Vi is coordinated by the Psychoanalytic Institute for Social Research (IPRS) in cooperation with Asociación Consensus (Spain), Universidade Católica Portuguesa (Portugal), CJD (Germany) and West Timosoara University (Romania). The project aims to integrate European Union’s efforts to promote the development of an efficient victim protection system, improving the competencies of justice system and restorative justice practitioners in order to support victims of crime, enabling victims to understand and access their rights.

The project’s actions involve key professionals within the judicial process and victim support services with the conviction that all justice system actors and professional services that work with victims of crime should share the same vision, strategies and objectives in order to work together in an effective and coherent manner. The project aims to promote continuous dialogue between practice and academic research, contributing to a process of reflection capable of improving the quality and adequacy of services and identify areas in need of further study.

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Introduction

EU Directive 2012/29/EU (Victims' Directive), which established minimum requirements in regards to rights, assistance and protection for victims of crime, has been transposed in the majority of EU Member States¹, full implementation, however, has not taken place and represents an ongoing challenge across the EU. Despite an array of structural changes within Member States as well as a re-thinking of the systems' underlying principles, the work carried out within *Pro.Vi – Protecting Victims' Rights* demonstrates that some general concerns remain as Member States face ongoing and similar challenges related to the transition from one legal and cultural system, with a series of well-established practices and attitudes, to another. These challenges fall in four categories: (1) the need to establish a national coordinating body to stimulate and ensure implementation; (2) difficulties in switching from a crime-specific view of vulnerability to a recognition that *all* victims have rights and needs; (3) the need for extensive practitioner training targeting staff from different services/organizations; and (4) the need to provide comprehensive information in order to ensure that victims are aware of and understand their rights; and

In addition to the aforementioned general issues, two specific issues are in need of further guidance: (1) the protection of the rights of adult victims of juvenile offending (which is not addressed in the Directive); and (2) the need to support victim participation in criminal proceedings.

¹ According to the 2018 *Report on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2323(II))*, 23 out of 27 Member States had transposed the Directive. The 11.5.2020 *Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 15 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHS* affirms that "As of the date of the publication of this Report, most of the Member States have not completely transposed the Victims' Rights Directive." <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0188&from=EN>



Establish a National Coordinating Body

EU Directive 2012/29/EU calls on each Member State to establish a national coordinating body or network to coordinate full implementation of the Directive and ensure the comprehensive provision of services and protection of rights to all victims of crime regardless of age, gender, crime type, or other relevant categorization. The work of the coordinating body is essential to ensuring full implementation of the Directive given its complexity, the number of rights and protections to be assured, and need for nationwide application. The changes needed include what is often a shift from category specific services and protections to the provision of services and protections to all victims throughout the country with comparable quality standards nationwide. The establishment of these standards should be followed by an extensive training programme capable of assuring that all relevant professionals are fully aware of the standards and their role in protecting and support victims of crime.

Such a body can fulfill a number of functions including but not limited to:

- Map and assess existing services, identify gaps in service provision and protections
- Develop a coordinated strategy for full implementation and protections for all victims involving all other relevant institutions who govern service provision:
 - o Health services (medical and psychological)
 - o Social and protective services
 - o Law enforcement
 - o Judiciary
 - o Attorneys (prosecutors and defense attorneys)
 - o Institutions responsible for the reparation of harm to the victims including monetary compensation
 - o Victim support services
- Create core curricula for training and development involving academics with research and training expertise in the relevant topic areas that establishes minimum standards
- Facilitate national communication strategies and support local efforts
- Establish national networks that support training, data collection and analysis
- Support local training initiatives
- Support and coordinate national training initiatives
- Support the establishment of local networks
- Take other measures deemed necessary to ensure national implementation
- Establish a minimum set of communication channels for informing all victims and referring them to appropriate resources



- Engaging in cooperation and exchange at the EU level including the establishment of mechanisms for transnational victim referral and cooperation within the EU

As Member States have the obligation to monitor and report on Directive implementation, the specification of a public entity as the governing body (e.g., Ministry of Justice) may be necessary to ensure full implementation and national homogeneity in service provision in cooperation with civil society.

To ensure continuity the national coordinating body should be assured secure funding and a solid legal base, safeguarding it from politics.

The work of the coordinating body will help address the issues that follow via combination of national actions, networking and support for local actions by public and private bodies.

Focus on All Crimes

The perhaps most notable advancement made by the Victims' Directive is the shift from crime-specific rights and protections to protections and rights for all victims regardless of crime type or belonging to a specific category (e.g., children, victims of gender violence, human trafficking victims). This expansion of rights and recognition requires fundamental changes both in the operation of the criminal justice system – adult and juvenile – and victim support service provision. While several Member States have taken steps towards achieving this change, significant challenges remain with a continuing tendency to focus on specific groups that have traditionally been recognized as vulnerable. The targeted protection of vulnerable groups, while laudable in se, should not come at the expense of the expansion of rights and protections to all victims, most of which have been afforded little or no protections in the past. In fact, focusing on those deemed most vulnerable due to belonging to a given group or category, to the exclusion of other victims expressly goes against the stated objective of the Directive. Victim support and protections must effectively target all victims while providing additional protections and supports to those in need.

In fact, the Directive emphasizes the right that all victims should be treated in a manner that takes into consideration the pain and suffering they have experienced, the possible traumas and the impact of these experiences on their lives. The Directive also states that all victims have the right to an individual assessment designed to identify their unique needs and



vulnerabilities. The Directive recognizes that some aspects such as age, secondary victimization and interpersonal violence within the family, as well as foreign citizenship represent elements to be taken into consideration in an individual assessment. These aspects also help indicate some of the appropriate responses intended to reduce the risk of re-victimization. Furthermore, the Directive underscores the fact that re-victimization prevention and the professional practices that can reduce the risk of re-victimization needs to orient the interventions, with all victims, in relation to the various rights, protections and supports beginning the with the specific characteristics of that victim and the crime.

The lack of full rights recognition and lack of expansion of protections and services to all victims of crime can be attributed to multiple factors including practical issues such as funding and resource availability as well as culturally rooted concerns or barriers linked to past or current practice. While it is essential to continue providing necessary supports, services and protections to vulnerable victims (many of whom are served by private sector organizations and often protected by dedicated laws covering specific crimes), this should not come at the expense of other victims who, for cultural and other reasons, have not received the same protections (e.g., male victims of assault).

Member States must recognize the need to expand rights, protections and services to *all* victims and take appropriate steps at various levels including legal protections and policy, resource allocation, and the adoption of a victim-sensitive approach within relevant organizations and agencies both in terms of practical operation (e.g., provision of information to all victims) and interpersonal treatment (e.g., utilization of victim-sensitive communication with all victims). Information and training are discussed in more detail below.

Fundamentally, the Directive recognizes the potential for any crime to represent a difficult and traumatic experience making it necessary to assure that all victims are guaranteed a minimum set of services, rights and protections. Member States must continue assessing their actions to ensure the adoption of an inclusive approach that embodies all victims without prejudice.



Practitioner Training

Practitioners represent the primary contact point for crime victims who may interact with law enforcement, victim support providers, medical professionals, prosecutors, lawyers, judges, and other court personnel. Adequate training is therefore essential in order to ensure that practitioners have the skills and knowledge necessary to: provide victims with appropriate information; interact with victims in a victim sensitive manner that protects the victim's dignity and reduces the risk of secondary victimization; and provide victims with relevant support and other services.

At this stage of Directive implementation, training must address the relevance of the Directive on the criminal justice and service provision culture, guiding practitioners through a paradigm shift in regards to how many have and continue to approach victims in carrying out their duties. In addition to the constraints and framework imposed by laws and operating procedures, it must be recognized that many practitioners have well-established practices and attitudes that influence their work and interactions with victims. Effectively assuring victims' rights protection requires not only awareness of victims' rights and available services, but also a shift in these attitudes in which each practitioner can identify how their behaviour influences victims and what can be done to improve on existing practice (e.g., the means by which a judge addresses a victim in the courtroom; how a police officer reacts to the reporting of a crime).

Training for law enforcement and other first contact personnel (e.g., medical practitioners) is essential to ensuring that victims become aware of and access their rights. This plays a significant role both for the victims and for the criminal justice process, which is to a great extent dependent on the participation and cooperation of the victim in prosecuting the offender.

As a minimum, the core curriculum should include: national and EU laws; specification of the rights that apply to their work (e.g., police, prosecutors, judges, medical services providers); procedural changes in conducting their duties (e.g., must inform victim of rights, must avoid repeated interrogation/questioning and listen to vulnerable victims in a protected setting); relevant programs and services that may support the victim and how to make referrals; and techniques/methods to communicate and interact with victims in a victim-sensitive manner that protects the individual's dignity.



In addition to transitional training targeting current practitioners, many of which have a well-established mindset and working culture that needs to be changed, training should be comprehensive and ongoing with core elements built into the professional training for new practitioners (e.g., included as standard curricula for law enforcement, judicial training, medical school).

Needs for continuing education should be reassessed on a regular basis with the development of new training programmes on an as needed basis.

Information Provision

The general lack of awareness about victims' rights and victim support services within the general public as well as difficulties in understanding often complex and legalistic language used in official communication requires the implementation of extensive communication and information strategies that ensure the provision and comprehension of information to all victims of crime. This makes it necessary to adopt a varied and comprehensive communication strategy that utilizes multiple information points and formats including but not limited to: online, police stations, court houses, hospitals/clinics, social services offices, and victim support services.

Information should:

- Be provided in print (utilizing various formats) and orally
- Made available in an easily understandable manner with special communication tools for children and other categories of individuals whose capacity to comprehend may be compromised
- Be provided in multiple languages including special provisions for individuals with disabilities

Information should be provided both in a non-targeted manner (e.g., information brochures to anyone interested, publicly available information on the web) and targeted to crime victims when they come into contact with relevant authorities/service providers.

It should not be assumed that victims fully understand their rights and have the capacity to exercise them following an initial communication. It is therefore necessary to follow-up and



ensure the provision of information throughout contact with the criminal justice system and victim support services, informing and double-checking with victims throughout the process to ensure that they are aware of the rights applicable at any given stage (e.g., right to appeal upon dismissal of the case or a decision to not prosecute; right to receive information upon release of the offender from prison) as these influence their participation in criminal proceedings and the experience of having received a fair/unfair treatment by the justice system.

Special considerations

In addition to the four transversal challenges outlined above, Member States' efforts to implement the Victims' Directive point to two key transversal areas of concern: (1) the need to support victims and ensure participation in criminal proceedings and (2) the need to take into consideration the unique position of adult victims of juvenile offending, an issue that is not addressed in the Victims' Directive.

Fundamentally, given the recognized prevalence of secondary victimization and potential for re-traumatization imbued in the criminal justice process itself, Member States need to take measures to ensure that victims are not only aware of their right to participate and the means by which they can do so (in accordance with national law), but also have the necessary support involving communication, preparation, participating, and follow-up to reduce the potential for harm.

Victim Participation in Criminal Proceedings

Victim participation in criminal proceedings represents one of the key areas of interest of the Victims' Directive both in relation to the right and potential to participate (right to be heard) and the need to assure that participation does not lead to secondary or repeat victimization. While procedural measures can be taken to support participation (e.g., giving victims the right to testify in court), encouraging victims to participate and protecting them when they choose



to do so represents a greater challenge. Some Member States (e.g., Germany² and Spain³) have taken steps to address this by developing innovative supports and services designed to promote participation and reduce the potential harm to the victim.

The focus is not only on reducing the risk of increased suffering by the victim and secondary victimization, but also in re-enforcing the victim's position from a legal perspective by enabling them to better exercise their rights and render the experience less frustrating. This requires actions that can help the victim understand what will happen and feel they are emotionally supported while participating in proceedings (during questioning and while testifying in court) that are potentially traumatic.

Victim participation in criminal proceedings, however, is not just about the rights of the victim, but about the provision of evidence and identification of the legal truth. As such victims play a role in the provision of evidence in relation to whether or not the crime took place and its severity (which may be measured in part by the impact on the victim). Any measures taken to support victim participation, must therefore be taken with full respect for the integrity and neutrality of the process, assuring the accused the right to be presumed innocent until proven guilty. This recognition, however, should not come at the expense of physical, psychological or emotional integrity of the victim.

The assurance of protections and support for participation in criminal proceedings does not preclude the provision of appropriate protections and supports for victims who do not file charges or decide to not participate⁴. It is, however, essential to recognize that different types of supports are necessary at various phases and that the receipt of appropriate support can aid and empower victims both in reporting the crime and participating in criminal proceedings.

Adult Victims of Juvenile Offending

All EU countries have separate justice systems for adults and minors that adhere to principles that are not always in alignment due to the special protections and rights afforded to minors

² Germany introduced psychosocial assistance in criminal proceedings as part of the 3rd Victims' Rights Reform Law. Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), December 21, 2015, https://www.bmju.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3

³ Spanish Law 4/2015, which transposed EU Directive 2012/29/EU, includes a provision that calls for the provision of victim support and psychological assistance throughout criminal proceedings.

⁴ The Spanish system provides an example of a comprehensive victim support services model that offers psychological support for all victims irrespective of their participation in criminal proceedings.



by national and international law in recognition of their status as children and the associated states of development. These legal protections impose specific legal responses capable of activating processes related to growth and the taking on of responsibility within the adolescents aimed at rehabilitation and adherence to social norms and laws.

As a consequence, the information provided to the adult victim of a crime committed by a minor and, more generally speaking, the relationship that one creates between the adult victim and the juvenile justice system, merits special attention not only in regards to the content of the information to be conveyed, but also in regards to the means of transmission. Communication tools need to provide the victim with a complete understanding of their role— in regards to the responsibility assigned to the entire adult community – in rehabilitating the minor, with all that this entails. This makes communication with the victim in regards to the victim’s rights and functioning within the juvenile justice system extremely delicate and complex given that ultimately the victim has quite limited space within the proceedings and risks feeling instrumentalized by the system.

Communication with adult victims of juvenile offending must therefore include information about their situation, the expectations of the juvenile justice system and how they can participate in a meaningful way. Information provided should, while reflecting the philosophy of the juvenile justice system, be designed to protect the victim’s dignity and choice in regards to participation in the system while explaining the significance of actions that support the offender.

Juvenile justice practitioners as well as law enforcement in contact with the victim should receive appropriate training and have access to specifically developed informational material to facilitate this communication process.