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STANDING OF VICTIMS IN CRIMINAL PROCEEDINGS

Towards a practical judicial protocol in the EU?

FINAL SCIENTIFIC REPORT

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Introduction: Standing of the victim in criminal proceedings

by Jacques CALMETTES, scientific coordinator of the project

Recent decades have seen an exceptional rise in the number of measures in favour of victims of criminal offences, whether it be to provide support or to reinforce their rights. This emphasis placed on victims, both with their recognition by positive law and their inclusion in associative systems, can be explained by the fact that victims have all too often been forgotten in criminal proceedings.

The aim of this brief presentation is not to review all those measures exhaustively but to outline how the improvement of the place of victims was necessary and to point to the issues that are still topical.

A victim all too long ignored

Whilst for a long time the victim was left alone to avenge and remedy the prejudice suffered, in the course of our history he or she has progressively been dispossessed of his or her prerogatives to the benefit of the prosecutors of the king and subsequently of the republic.

It was not until the early 19th century, with the creation of the Code of Criminal Justice, that the status of the victim was asserted with the creation of the notion of “civil party”, a place reinforced by the Code of Criminal Procedure in 1956.

As a result, by instituting a civil action the victim became part of the criminal trial and the judge was entrusted, in one and the same suit, with handing down the repressive response with respect to the perpetrator and providing redress of the prejudice to the benefit of the victim.

This procedural architecture, which is still in force, gave the victim a real status in the process of a criminal trial but over the years it has proved to be too narrow a framework in the face of the increasingly asserted demands from victims in the form of either individual demands or collective demands of victims grouping together to defend their common interests.

Rapid developments in favour of victims

The Ministry of Justice became aware of the need for further changes and in 1982 created a “victims office” which was to become an instrument for analysis and proposals designed to enrich the legislation in order to improve the rights of victims and also a place providing support for the associative structures that were coming to the fore at the same time.

Reinforcement of the rights of victims in a criminal trial

The Law of June 15, 2000 introduced a preliminary article in the Code of Criminal Procedure, stipulating that proceedings must be fair with due hearing of all parties and keep the balance of the rights of the parties. This article added that the judicial authority had to ensure that in any criminal proceedings the victims were given proper information and that their rights were guaranteed.

The assertion of those principles will therefore be seen at the various stages of the judicial proceedings as applied to victims with, in particular:

- **the right to be a party in the criminal trial**

This right is illustrated by the possibility of instituting a civil action and is available exclusively to “all those who have personally suffered from the harm directly caused by the offence”.

This right enables such persons to join the public prosecution instituted by the Public Prosecutor and also enables any person declaring to have suffered harm from a criminal offence to instigate public prosecution, under certain reservations of form designed to restrict any abusive use of that right.

This key particularity of French law is accompanied by a series of prerogatives available to the victim having instituted a civil action.

During the investigation prior to the trial, the victim will benefit from rights that are practically identical to those of the person accused. Having total access to the whole case file, the victim can request any and all such documents as he or she may consider useful, the pertinence of which will be appreciated by the judge. Similarly, the victim must be kept informed of all the stages of the proceedings, including the progress made, every six months.

Similarly, in the course of the trial itself, this equality of arms is given concrete form by the possibility for the victim to question any witnesses or experts, with full participation in the very principle of adversarial litigation, and of course the right to voice his or her suffering through counsel who benefits from a right to address the court equal to that of the other parties.

These rights are limited, however, as far as the sentence is concerned. The civil party has no entitlement to appeal the sentence, that right falling solely to the prosecution and to the accused. The civil party only has a right of appeal for the amount of any damages awarded by the criminal court.

- **the right to be informed**

The right to be informed of the progress of the criminal proceedings has already been mentioned. Further upstream and immediately after the offence suffered, the victim must be informed of the possibilities that he or she can use within the framework of the various procedures.

As from the time of filing a complaint, which can be recorded by any police station or by the gendarmerie irrespective of the place of the offence, this informational obligation is binding upon the judicial police officers who receive the complaint. They must immediately inform the victim of the right to institute a civil action, and also of the right to be assisted by counsel and to be helped in the proceedings by an association providing help for victims by giving the victim the address and telephone number of the association.

Finally, at the end of the criminal trial, once the offender has been found guilty, the victim must also be informed of the possibilities for the implementation of redress of the prejudice suffered as recognised by the court. The criminal court must indicate, orally at the end of the hearing and in its written judgement or ruling, the possibilities available to the victim for obtaining compensation.

- **the right to redress**

According to the principles of civil procedure, the obligation of redress is incumbent upon the perpetrator of the offence and following the principle of full redress the perpetrator must remedy all the prejudice but nothing but the prejudice. The amount of the prejudice, within the framework of the criminal trial, will therefore be assessed initially by the judge, with the demand being set before him.

Faced with this principle of redress and with the finding that the mere issuance of a claim in no way guaranteed the effective settlement thereof, mainly due to the insolvency of the perpetrator, law has progressively and in part transferred the burden of compensation to the community.

The principle of solidarity underpinning this system came into law in 1977 but with extremely restrictive conditions. Based on the principle of State aid for the most underprivileged victims in the event of default of the offender, this provision only authorised financial aid that was capped, and provided on the one hand that the plaintiff had exhausted all other avenues in an attempt to obtain compensation and on the other hand that the plaintiff was in a serious material situation. These conditions of subsidiarity and means were criticised and finally disappeared, initially in 1986 for the victims of terrorist attacks and finally in 1990 for the victims of the most serious offences.

A guarantee fund was set up at the same date with commissions for the compensation of victims in all the Courts of First Instance, in charge of setting the compensation claimed according to a transactional procedure upon agreement between the victim and the guarantee fund.

The application of this system proved to be sufficient to meet the compensation paid to the victims of acts of delinquency, but limited in its reach to deal with the consequences of serious acts claiming a very large number of victims.

In response to such events, a compensation fund was created for the victims of transfusions, haemophiliacs, for people contaminated by HIV and later a compensation fund for the victims of asbestos.

It should not be thought from this brief review of some of the provisions in place for the benefit of victims that all the answers have been found for victims. It does, however, illustrate the drive of the public authorities to take account of the demands of victims which are increasingly pressing and better structured. Victims are often grouped together in victims' rights associations which bring pressure to bear on the public decision-makers to have their demands heard.

- **<u>support for victims</u>**

In the early 1980s, several professionals concerned by the fate of victims – lawyers, judges, doctors, academics – were behind the creation of associations the purpose of which is to provide information and support for victims, given the absence of any public response for people who were particularly sorely affected or even traumatised.

These responses of solidarity, which must not be confused with the role of the victim's lawyer, aim at providing overall support for the victim faced with an array of difficulties, social or legal, physical or even psychological.

With the backing of the public authorities, at the level of central government or of local authorities, these initiatives became progressively more structured, coming together to constitute an extremely professional network covering the whole of the country.

This network was also copied in other European countries. Above and beyond the specifics of the different legal systems, one and the same drive came to the fore to create instruments of solidarity for the benefit of victims.

In addition to these associative initiatives focused on the help to be provided to direct or indirect victims, other associations came into being from time to time to defend the interests of victims, taking their cases to the relevant civil or criminal courts.

These associations for the defence of victims were created mainly following the occurrence of a collective accident (plane or train crash, etc.). Over and beyond the individual interests of each of the victims, these associations presented a joint demand formulated around a single class action defence with means often greater and more effective than those of any individual defence.

The capacity of such associations to file suit was, subject to certain conditions of form, progressively recognised by the code of criminal procedure.

The place of the victim in criminal proceedings is still open to discussion

It should not be thought after this brief review of recent public or private responses to the demands of victims that all the questions have been solved in the eyes of certain commentators.

Whilst there are those who consider that the place of the victim as a party in a criminal trial weakens the prosecution role historically entrusted to the public prosecutors, there are others who conversely plead for the assertion of additional prerogatives of the victim in such a trial.

Thus, often following events that have stirred up emotion in the public opinion, the discussion comes back to issues such as the right of appeal of victims, the extension of the time periods of limitation of actions or greater account being taken of the victim in the sentencing modes.

The very architecture of our criminal trial, contrary to other judicial systems which only grant the victim the status of witness in the course of the suit, cannot be seen to be distorted by any imbalance in the means available to the victim. The criminal trial must remain the place and the time for the social response to the perpetrators of offences.

That principle, as illustrated by recent developments in the rights of victims, is not in contradiction with the recognition of the rights of victims. The judicial institution must remain attentive to their full implementation and to that end adopt the necessary financial and human means.

Final conference - Restitutions & conclusions

Overview of the question by Antoine GARAPON

Antoine GARAPON, Senior judge, Secretary General of the IHEJ, Institut des Hautes Etudes sur la Justice (Institute for advanced studies on Justice),

The ascendancy of the victim constitutes a major phenomenon which has caused an upheaval both in political life and in civil and criminal proceedings and which is common to all the European justice systems. How can it be interpreted? I propose to look for the answer, after a brief historical comment, in the thinking expounded by Hannah Arendt in her book *Eichmann in Jerusalem.*

It can be said that there only two ways of controlling violence: either mastering it by a common law guaranteed by the sovereign, or by having it controlled horizontally by the victims who will be claiming their share. The ascendancy of victims can be interpreted as the sign that we are moving from one mode of regulation to another. Everything points to the fact that we have come to the end of a great historic cycle which dates back to the constitution of the modern state. Ernst Kantorowicz[1] explains that the genius of Frederic II was that he understood that the State had to be founded on something much greater than the simple monopoly of force, namely justice. That means that the Prince holds a monopoly over vengeance and excludes any forgiveness. The king becomes the “eminent victim”, meaning that he is afflicted by all the crimes in the kingdom. It was then, at a time when the Middles Ages had an accusatory procedure where the victim organised the criminal proceedings, that the Western monarchies with the exception of England became organised around the power of proceedings exercised by the public prosecutor. Through the prosecutors, the king exercised the monopoly of legitimate violence, and therefore the monopoly of vengeance and of the representation of the victims. We are coming to the end of that cycle. It is easy to understand that when the symbolic force of the State weakens, the victims recover some kind of natural right to wreak vengeance. This ascendancy of the victims is therefore proportional to the weakening of the symbolic power of the States – of practically all States – which means that we see the reappearance of vengeance and forgiveness which were monopolised or excluded from the

[1] Ernst Kantorowicz, *Frédéric II*, Gallimard, Paris, 1987.

public sphere by the constitution of royal power. I said "practically all States", because in reality the common law countries are in part unaffected by this phenomenon, for two main reasons: on the one hand, there is a much stronger legal and judicial consensus than in the majority of European countries, and on the other hand it is difficult to fit the victim into the structure of the trial because it is organised like a rhetorical, eventful test of the accused.

Participation of the victim in the criminal process, and even in the decision on the sentence, must convey to the victim the notion that he or she has in turn some power over the perpetrator who caused the suffering. The very meaning of crime has changed. It is no longer defiance of public order, an insult to the sovereign through common law. Crime is now assimilated with what caused suffering to the victim. Crime is being redefined in the diminishment of the power to act imposed upon the victim. This return of the victim is to be seen in very different terms from those in the 13th century.

In fact, the States in Europe were very late in their actual acquisition of the monopoly of violence (around the 17th century), close on a thousand years after China. The characteristic of the Chinese empire, and this is still true today, is that there is no problem of homeland security because it acquired that monopoly of legitimate violence very early on. That is why the Son of the sky has a debt of law and order with respect to his people but also a debt of justice. That is the opposite of the sacred Western monarchy where the king is the king of justice, and where he has a debt of justice with respect to his subjects, but not necessarily of law and order.

There is nevertheless a danger that the new part played by the victims will upset the balance of the criminal trial. Hannah Arendt, who attended the Eichmann trial in Jerusalem in 1961, was struck by the *theatrical* aspect of the trial and by the importance given to the victims. The hearings were as if obsessed by the extraordinary cruelty of the fate of the victims and by their terrible plight. "It was precisely that theatrical aspect of the trial which gave way under the weight of hair-raising atrocities. A trial is like a play, insofar as they both start and end with the active character and not the passive victim (…) A theatrical trial much more than an ordinary trial presupposes that a brief summary and a clear definition be given of what was done and the way in which it was done with the perpetrator in the right place at the centre of the trial. In that respect there is a resemblance with the hero of the play, and if he suffers, he must suffer for what he did and not for the suffering he inflicted on others."[2]

It is meaningful that this shift of the centre of gravity in the trial from the accused to the victims is related to crimes against humanity. Our continent of Europe is deeply marked by the wars of the 20th century which have changed two things directly related to our subject. Those wars have weakened the symbolic power of the States by revealing the possibility of a murderous sovereignty. In the course of this century, 186 million people have died from political violence, the majority of them civilians killed by their own State. The horror of the Shoah and the all-but metaphysical enigma that it addresses to humanity as a whole bears the image of a victim which expresses much more than an ordinary victim, a victim which is the

[2] Hannah Arendt. *Eichmann à Jérusalem. Rapport sur la banalité du mal*, trad. A. Guérin, Paris, Gallimard, 1966

reincarnation of the victim of history, the victim of the State. Those horrors create the feeling, which is something totally new in European history, that we are indebted to those past victims, indebted to our dead.

Hannah Arendt starts from a pair of oppositions which enable us to think in philosophic terms about what a criminal trial really is. She opposes activity with passivity. The trial must revolve around the person who acted and not around those who suffered: that is the very essence of the trial. "The trial can only be meaningful if it judges an action."[3] The victim is not a combatant who lost, the victim is not "the vanquished party" but an inoffensive person who did not present any danger, a person outside of the combat and who had lost the capacity to act. The distinction between combatant and non-combatant is crucial in humanitarian law.

Hannah Arendt goes on to assert that the trial is an action on that action. It is a nesting of actions. That is what differentiates it from the simple spectacle which is a picture, a staging or even a liturgy. If the victims play too great or even a leading role, there is a risk of altering the very nature of the trial which is no longer a genuine action but becomes a staging of the recognition of the victims and a publication of their suffering. The staging of that recognition is necessary, but should it be placed at the heart of a trial? The criminal trial can never become, other than by its own disavowal, a reproduction of the asymmetrical relationship suffered by the victims by reversing the positions. That is why, according to Hannah Arendt, the trial can focus only on the punishable action because that is the only action on which people can act through the trial. The function of the trial is to *close* an action which otherwise remains open, a gaping wound, with the danger of being made legitimate by time. The real meaning of the trial is to bring closure to the period of resentment where passions continue to run high, in order to open up a period of appeasement which is the time for memory, which makes it possible to "become ready for something new", in other words ready to start a new action and to show initiative. That is how Hannah Arendt understands a trial in relation to action. If people did not have the tools to provide an epilogue for actions, they would be condemned to living in an oppressive and unbearable condition of debt. That is why they invented tools such as the trial or payment (of which surprisingly she makes no mention).

The victim, as she adds in her *Condition de l'homme moderne*,[4] has an intrinsic way of closing the action, and that is forgiveness. There are two ways in which to end an action – the sentence or forgiveness. Forgiveness is another way of ending an action inasmuch as it is in itself a totally free action of the victim. The force of forgiveness (and which today will come to the fore) is precisely that it shares with the action of the crime the very characteristic which determines an action in general: it stems from *initiative*.

[3] *Ibidem*, P.

[4] Hannah Arendt, *Condition de l'homme moderne*, trad. G. Fradier, Paris, Calmann-Lévy, 1961 ; réédition : Paris, Calmann-Lévy, 1983, préface Paul Ricœur, p.

Summary of the Final conference conclusions

Addressing the place of the victim in criminal proceedings at European level may well appear to be overly ambitious given the diversity of the legislative systems and regulations in force in the various countries concerned. However, from the quantity of experience brought together thanks to this study project, it can be said that such differences pale before a common determination to provide, irrespective of the characteristics of each of the countries, responses of solidarity to those who have seen their existence violated and upset, breaching their property, their flesh or their mind, by the criminal act of which they are the victims.

On the basis of the reports of the study trips, a few common threads can be listed:

- first of all, there is the observation that the systems to help and to support victims have only been created recently and that their development is ongoing;

- there is also the observation that in the majority of countries the emergence of private and mainly associative initiative stems from the shortcomings of central government;

- while the governments have generally picked up on these initiatives, they considered that the voluntary sector remains the most pertinent for providing this type of management and care and without doubt remains the cheapest for central government, although it does contribute to the running of such systems;

- that the voluntary sector is thus given public service missions is not sufficient to ensure the necessary funding for the smooth operation of the range of initiatives. Consequently, the responses given to the benefit of victims remain uncertain both qualitatively and quantitatively given the uncertainty of the financing;

- the fragility observed in several countries is all the more worrisome given that although the commitment of the countries is not guaranteed, their requirements as to the responses to be given will increase, the directive of October 25, 2012 being the illustration of the increase in constraints, without any guarantee as to the availability of the means that must be mobilised.

Over and beyond those fundamental issues faced by all the governments concerned, there is the overriding fact that the requirements of the European directive of October 25, 2012 appear to be accessible to all the countries within the constraints of the timetable adopted.

This positive approach from the Member States can be illustrated mainly in the measures to be formalised for victims considered as being the most

vulnerable. This shows a common approach concerning the means to be implemented for victims who are minors, whether in the precautions to be taken in noting their testimony, or in the necessity of protecting them from those designated as their attackers, and for the maintenance of these measures throughout the criminal process concerning them.

Similarly, whether or not in concert, a whole series of measures have been developed for women who are victims of violence, and in particular within the domestic context. Whilst the implementation of these measures has not reached the same stage in all countries, such differences as there are stem from the availability of the necessary means and not from discrepancies over the content of what needs to be done. There is a consensus which considers that the measures aimed at protecting female victims of violence must be included in an procedure aimed at putting an end to the cultural submission of women in their relationship with their companion or spouse.

The criminological approaches of the last few decades have tended to individualise the responses for the management of offenders. The European directive of October 25, 2012 applies the same philosophy as far as the suitability of the responses to be given is concerned for the victims. The project is ambitious with respect to the means available and in that it must rely in particular on the participation of the victims themselves.

Workshop n°1: Legal status of the victim in criminal proceedings

The European Union countries that took part in this research do not all have the same judicial system. Numerous differences were observed in terms of the victim's place in the conduct of criminal proceedings. One of the main distinctions between the Anglo-Saxon-inspired systems and the French-inspired systems is the victim's status as a party in the proceedings bringing action for damages.
This status gives the victim a series of rights both in the preparatory phase and in the trial itself, rights which do not take the same form in the Common Law system.

These differences having been noted, it should be observed that these State-specific judicial regimes are not an obstacle to the requirements of the European directive of 25 October 2012 on the rights of, support for and protection of crime victims. Indeed, as has previously been shown, the Member States have integrated the requirements of this directive into their judicial processes, or are currently doing so.

Odionne Lavrijssen's restitution

Judge, Court of Appeal, the Netherlands

In the introduction Rein Peters, the convener, gave his definition of ``legal standing''. Legal means that rights are laid down in formal laws or regulations. He asked us to consider the possibilities we as judges and prosecutors have where these laws are vague or even absent. The directive is not directly applicable, but that does not mean that we can sit still. There is room and even an obligation for us to act in the spirit of the directive. As long as it is not contrary to our national law.

We must realize the following point: if the higher level stays vague, professionals on the basic level should have discretion in shaping the policy, in transposing the directive.

That leaves room for a practical way of dealing with the position of victims in criminal proceedings. And it leaves room for best practices. That means that looking at the neighbors can be very stimulating.

So we listened with great attention to mrs Boland, who introduced us to the legal standing of victims in the British system of common law. Really, as she put it with some exaggeration, the non-standing. But she showed us how in practice, with rules and guidelines, the system in England and Wales is up to the standards of the EU directive. A good example of an addition to formal law.

So also did mr Gelli, our colleague from France. The position of the victim in French proceedings is very well established in law, and in practice. It was stimulating to hear from him how the text and the spirit of the directive rules the work of the professionals in the criminal proceedings.

In the discussion then, we tried to follow a distinction between proceedings before trial, including the decision not to prosecute, and during trial, or as we call it, the hearing in court. The distinction is not always clear or even helpful, as many rights of victims, named in the directive, exist in both phases of the process. And some rights we did not discuss, because they were subject of discussion in other workshops, I name support and compensation, and alternative dispute resolving. We did not try to formulate a common guideline regarding the practices we discussed.

Interesting was the following point.

On some rights, the directive says that it should be laid down in formal laws. For instance:

The right to be heard, with attention to child victims

The rights in an event of not-prosecution

Conditions and procedures for legal aid, for re-imbursement of expenses, for return of property

Right to necessary protection.

On other rights the directive asks our states to ``ensure'' this, ``promote'' that, ``establish conditions''.

In the system of the Union directives, this does mean that the states should lay down those rights in recognizable and effective regulations.

This may lead to differences in legal standing in our countries. But those differences in formulating the legal standing should not be too important for us. We are not the controllers of the law-makers of our states. We are the protectors of the rights of the participants of the legal process: the accused and the victims. And we will do so according to our laws, and if they are vague, in the spirit of the Directive.

This conference is an occasion to compare our practices. It may not result in a common protocol holding conformity in best practices. That would be fantastic. But if we do not reach that goal, we will know of the good things our neighbors have developed. We may try them, copy them, use them. But we will not sit still.

Workshop n°2: Assistance and compensation for victims

While current responses to these issues have distinct characteristics in the different Member States, they do share certain features.

- Due to the lack of a satisfactory public response, in recent decades it has been private initiatives that have offered solidarity to victims. These responses are generally structured in associative form, alongside the insurance cover which does not benefit all the people concerned.

- It is under the impetus of the voluntary sector that in certain cases the public authorities have been persuaded to improve the support schemes that need to be implemented in general government, principally the police and the justice system.

- One noteworthy observation is that in all the countries represented, victim support measures were first developed in aid of those victims who are considered the most vulnerable. For example, the most significantly similar responses have historically been those that benefit children and women who are victims of domestic violence. Modes of assistance that are today considered as “classical” have been established, both before and during the criminal trial, such as information about rights, and social, legal and psychological support. The people considered as most vulnerable are also those that have been targeted by experimental assistance measures, such as the “danger hotline” designed to prevent domestic violence.

- The difficulty of making these measures work effectively lies in the access that these vulnerable people have to the means dedicated to them. Those of them that get as far as filing a complaint are still in the minority.

Responses in terms of compensation do not show the same level of homogeneity. The procedures for access to full compensation for a prejudice are still of varying complexity and hence accessibility from one State to the next. Not all States have a solidarity fund to compensate victims when the perpetrator remains unknown or is insolvent.

It should be remembered that remedy can also be symbolic. This is what is frequently proposed in the framework of restorative justice, with the aim of recreating a social bond between the offender and the victim or society.

Workshop n°3: Vulnerable victims

This workshop illustrated the need to view the proposals of the European directive in light of the specific needs of certain victims considered as particularly vulnerable, in light of their status (minors, for example) or in light of the power behind the crime of which they are a victim (victims of mafia crimes in Italy, for example).

As stated elsewhere, it was noted that the fragility of certain victims was behind the most effective assistance and support schemes. The European directive confirms this observation in that while it requires certain responses to benefit all victims, it recommends that each victim requiring assistance should undergo a needs assessment in order to receive the most suitable response. We are thus seeing an individualisation of responses to victims, and from this individualisation will emerge the best structured responses for victims that turn out to be the most vulnerable.

Sam Thompson's restitution
Senior Policy Advisor, Crown Prosecution Service, United Kingdom

There are limitations with that directive: we're not necessarily doing that for all victims, maybe there are victims of certain types of crime here not included within the directive and she mentioned economic crime, and environmental crime is banned too. Maybe the protection is not completely comprehensive yet.

- *Florent Gathérias is a clinical psychologist who looked at it from a slightly different perspective and spoke about the risk in singling out for vulnerable victims. Although vulnerable victims need protection that maybe should be systematic, there are some that we presumed to be vulnerable such as those who are young, those who are very old perhaps, certain victims with mental impairment or health issues, repeat victims, circumstances as single victims, or victims by their gender (for example some crimes against women). He also spoke about the fact that vulnerability is an important factor important aspect of some crime types, certainly aggresses may use the fact that they have the advantage to the balance of power to seek or get pleasure or enjoyment from overcoming a vulnerable victim. That vulnerable victim may has less capacity to defend themselves and also they may from the part of the defender be assumed of an illusion that there is being consent to the offense taking place. So Florent talked about the personal devaluation of the victim looking at specific needs being portent. Because vulnerability isn't illegal or a social status: it's a evaluation of the characteristics of the individual, looking at their situation, the type of crime, the nature of the relationship they have with the offender and some circumstances and their needs. And depending on that assessment it may lead to different measures, they may be for example their needs for a same sex interview, they may be need avoid contacting caught, they may be need for a video interview, access to medical staff, or a separating room if someone is attending caught. He attends his discussion back onto the directive, and said importantly that the directive set sat a minimum, it is not the maximum it's the minimum what we should be doing and it's ultimately we don't want to be in false fact of a victim is a victim.*

- *Jean-Pierre Deschamps who is a judge, spoke about vulnerability in a different way, looking vulnerability as an issue which potentially could aggravate the severity of a crime so might impact on the level of sentence that would be imposed. He also spoke about his experiences as a judge, dealing with minors and spoke about the difficulty, specifically dealing with vulnerability of isolated foreign minors both in the 99's until today. He gave us an interesting highlight or insight into his work in the 1999s with minors that come from a number of countries, living on the streets in those countries and then came to the EU and also then lived there on the streets and highlighted the difference between the situation then and the situation now where we have a number of teenagers or children's who are running away from conflicts in their countries hoping to find security or safety in the EU. Those numbers could be increasing in large numbers; we don't know; particularly issues with those individuals who have no parents in most cases to provide support or protection. The*

vulnerable minors have also stories which have been fabricated for them and it's difficult to assess them for all sorts of reasons: some of them have health needs because they have had a difficult journey to get ti the EU. They can be depressed; can have mental health issues due to what they have experienced and what they've seen.
They want to integrate into society but it's very difficult for them to do so without the assistance of parents or any form of parental role. He also spoke about the fact that some of the individuals might not be minors at all and somewhere they has to be an assessment of the age of the individual, to determine if they are a minor, and if they are not minors , what happens to them then?
In addition, once they are here, if they are placed in some sort of institution, or dispatched across the country, what happens to them once they become an adult?
His final thought was that we need to ensure they are protected whatever the situation and to determine how we best archive that.

- *Simona Di Monte, who is deputy prosecutor in Naples spoke about the specific kind of protections, which are under Italian law for victims of anti-mafia terrorism crimes. And she spoke firstly about victims of terrorism who are often chosen because of their role in society: they might be a party but they might have different kind of restoration, available in law even if the individual responsible for their crimes isn't identified.*
She then focused on two distinct types of individual who might assist the prosecution case: inform of witness, or "bandito" witness, all the witness of justice. And she highlighted the fact that the bandito witness most helps the prosecution, or they don't secure any protection under Italian law. But the witness of justice can secure protection because they're not involved in the crime but only if they give you information against that the organized crime individuals. So the assistance is there and can be obtained.
For the witnesses of justice, they puts themselves in a dangerous position; if there agree, they can be protected under Italian law, moved to a safe place, provided with financial support, let them pay their rent, for legal assistance, for health insurance, and they will also be provided with a change of identity. So it's a significant step for witness. And it will only take place with their consent.
They most tell everything they know, and some witnesses will be frightened to repeat what they know in court, but if they don't do that, maybe the financial support, the protection will be withdrawn. The prosecution has the power to ask the government's office for protection for the witness but it's a decision for the government's office not for the prosecution and the duration of the protection can be anything for 6 month to 5 years but it can be extended if the same conditions of dangerousness or issues of security remain for the witness. Again, it will be for the government's office to apply that or extend it in that way.
She also spoke about the fact that financial support was able for extortion victims who would usually be a witness and if they remain silent again the financial support is there to help them start again, if they provide evidence. The process for that is different: the victim would personally ask for that support and it would be the government's office again that would make the decision.
She finalized her presentation by talking about special measures for victims of human trafficking who can get permission to live in Italy if they can assist a prosecutor to get the evidence to identify the criminal fraternity involved but that, in terms of the number of cases, where that actually happens, is very very small and that's because the issue with the language, often the victims don't know about the process or how to access it, or they're not in an informed position to be able to make the necessary connections about the criminal gangs involved.

I think what I would say is that we talked about the EU directives and the various types of protections that are available for different types of victims, certainly the directive is heading in a way so has to focus much more on the individual then the type of crime and from my prospective I would suggest that is the way to move forward. To look at the individual needs of the victim rather the nature of the crime itself. The nature of the crime itself is relevant but it is one factor among many, in relation to what victim may need, in terms of protection, during the course of the criminal trial, and it's relevant in it, cannot be overlooked. And we need to look at the all rather than the past and focusing on that as we move forward.

Workshop n° 4: Restorative justice:

This is a recent concept imported from Canada, and is mainly seen in experimental programmes in several European States, although it has not yet been generalised.

Distinct from classical criminal justice, the purpose of which is to punish and seek remedy, restorative justice takes account of the repercussions of the criminal act on both the victim and the offender.

The primary ambition is to create a space for dialogue between their two protagonists of the offence.

The principal method of restorative justice used in several States is the recognition of mediation as an alternative response in criminal matters.

It was pointed out that this alternative response requires some fairly exacting values: intelligence/energy/ambition.

Similarly, the success of the project is conditional upon the criteria for implementing restorative justice: voluntary participation/agreement from the parties/confidentiality.

Acknowledged as a relevant conflict resolution method, it nonetheless has certain limits in respect of the seriousness of the offence (it seems to be used for the less serious offences only) and of its submission to the final judicial decision (with the success or failure of penal mediation conditioning this decision). Furthermore, certain victims (particularly female victims of violence) consider that this method for treating or even resolving the offences against them actually downplays the seriousness of these offences.

Also inspired by the Canadian (or more accurately, Quebecois) system, experimental meetings between inmates and victims at a French prison were presented to us.

Implementing the same requirements as mediation, this form of dialogue, supervised by a mediator, was reported as having a profound impact on the way victims feel (avoiding the risk of further victimisation) and the way perpetrators feel. Such confrontations modify the plaintive behaviour of the inmate and contribute to preventing repeat offences.

Sabrina BELLUCCI's restitution

Director of INAVEM (Institut National d'Aide aux Victimes et de Médiation)

"It is my job to report on the workshop on restorative justice: this workshop had two sub-themes.

- *The interest of mediation between defendants and victims*
- *What are the good practices in Europe?*

I am not going to report on each presentation, but instead give a global overview of the discussions and take from each presentation what I think has emerged from the workshop.

Mr Georgiev presented penal mediation and the processes it involves.
Ms Van Fessem talked about the initial experiences with mediation in criminal cases and about 6 experimental sites in the Netherlands.
Mr Goetz and myself reported on an innovative practice in France called "inmate-victim meetings".

Today, restorative justice can be considered as encompassing penal mediation and other measures and forms of meetings between inmates and victims. You can see that the spectrum is broad, encouraging us to consider more particularly the values that have to be brought into play. Most notably, this form of restorative justice requires intelligence, energy, ambition, dialogue between the parties and a necessary journey that both the defendant and the victim have to make in order to be integrated into the mediation processes. But above all it involves values and guarantees such as confidentiality, willingness, and agreement between the parties. Therefore, each of us (and I include myself, as I also gave a presentation) spoke about these values and these conditions of intervention in the framework of restorative justice or mediation in criminal cases.
Resources are necessary in terms of training – everyone mentioned this – and so is a precise framework, as well as a validated protocol: our colleague from the Netherlands informed us that everything was written down, and we emphasised the need for experimentation with meetings between inmates and victims, and the secure and professional environment that has to be created before mediation or restorative justice can take place.
What effects can we expect from mediation and other restorative justice measures? Both positive and negative effects:

- *The positive effects of mediation and inmate-victim meetings are more or less the same: avoid further victimisation of victims, prevent repeat offences, avoid the de-socialisation of offenders, and allow the victim and the offender to take control over their shared history, their conflict, their suffering. Full acknowledgement of the victim, awareness of the repercussions of the offence on a person's life by the offender, an explanation of what has been understood, and a reactivation of the dialogue (the meeting allows dialogue to be reinitiated) that is sometimes denied in a classical criminal justice system. And as a secondary effect, behaviours and attitudes change: Mr Goethe told us that inmates who have taken part in these meetings went on to adopt a behaviour that was no longer plaintive but measured, and were less likely to adopt a self-pitying discourse after they had met the victims.*
Our colleague from the Netherlands, Ms van Fessem, told us that in the first meetings, one of the aims was to look into a different way of behaving in the case of a neighbourhood conflict. The parties come to an agreement and inform each other of what they are going to do later. So you can see that in certain ways the behaviour of both the offender and the victim changes.

- *The negative effects may include secondary victimisation or a rekindling of the suffering of those present, particularly the victims when penal mediation is implemented or when inmate-victim meetings are put in place. Also, for victims (and here I use the words of Mr Calmettes), penal mediation in particular can be perceived as a "justice of the poor", a cut-price justice, particularly for domestic violence. It can also be seen as an alternative that is insufficiently serious, prestigious or repressive to deal with the issue of domestic violence.*

The interest of all this is that it allowed us to take note of these positive effects, be aware of the negative effects, and also ask questions of ourselves. There were numerous comments, including this one from a judge: "our role as judge is unique and goes further than the role of compensation". It is true that compensation cannot remedy everything. We therefore need to think about how else to right the wrongs inflicted on victims and to offer complementary solutions.

The question of European texts was raised. You know that the European directive also mentions restorative justice. It actually addresses the topic fairly oddly, saying "yes, restorative justice can exist as long as it does not hurt the victim". This is a very particular approach which brings up the question of willingness and confidentiality. So the text upon which we can base our thinking on the right of victims in criminal matters is the directive – and this is not insignificant. It is quite interesting that the notion of restorative justice features in this directive (even though it is addressing the aspect of victim protection in a way that could be detrimental to them).

There is the question of when this restorative justice is to be implemented – before the trial, during the trial, after the trial – and also whether classical criminal justice and restorative justice can coexist: this is an important question. At all events, inmate-victim meetings and penal mediation illustrate that classical criminal justice as we understand it can coexist with restorative justice because, as you all noted, they do not have the same objectives: the purpose of classical criminal justice is to punish and seek remedy, while that of restorative justice is to address the repercussions of the offence.

The workshop was rich in illustrations. At the same time, when we spoke of restorative justice we were talking about two specific forms of it.

I also heard a question about the measure of penal mediation: is it really restorative justice in the full sense of the term, as a report is submitted to the judicial authorities; are inmate-victim meetings not after all a measure of restorative justice integrated into the criminal proceedings?

So those are the things that were said and the questions raised. I think that what is important to remember from the workshop is that it aroused interest, questions, and above all a question for you in your role as a judge: what is the place of restorative justice in classical criminal justice?"

Victims of catastrophic events: the role of the judiciary in taking victims into account

Benjamin DE PARIS, President of the Regional Court of Thonon-les-Bains, France

Ruling on the Allinges disaster – Thonon-les-Bains Criminal Court, 26 June 2013

I am very glad and honoured to speak in the company of Professor Claude Lienhard, who has been a specialist and pioneer in this field for many years. I hope he is not bored of my presence with him for the third time this year. I am personally very pleased and very interested to hear him again. I am also very pleased of Mr Boyd's presence that might have a contradictory vision due to the British system which is different.

I am not a theoretician, but above all a practitioner, as a judge and president of court even if the experience I am about to tell you might be rich in theoretical teaching and bring a modest contribution to the theoretical construction of exceptional cases.

The French National School for the Judiciary (ENM) asked me to present my experience as president of court and president of judgment formation in the case of a collective accident in order to understand the role of the judge in taking victims into account in the frame of a mass casualty incident or a catastrophic event. In order to do so, I will get back to the Thonon-les-Bains ruling of the 26th of June 2013 regarding the Allinges disaster.

On 2 June 2008, a collision in Allinges (Haute-Savoie) between a local train (TER) and a coach carrying school pupils left 7 school children dead and 43 others injured. 5 of their teachers were also injured, one of whom committed suicide 45 days after the accident. The trial was held at Thonon-les-Bains Criminal Court from 3 to 12 April 2013 and was attended by the Société Nationale des Chemins de Fer (France's State-owned railway company), the Réseau Ferré de France (the company that owns and maintains France's national railway network), the coach driver and the 235 claimants. It resulted in a final and definitive ruling delivered on 26 June 2013 that helped to define the specific damage of anxiety caused to direct victims, as well as a new definition of the specific damage of waiting and anxiety caused to indirect victims (with regard to compensating victims of mass casualty incidents).

Although I wholeheartedly agreed with and approved the title of this presentation, it nonetheless seems to me impossible to attempt to cover five months of work and a ruling that – as you have seen – is over 200 pages long, in just thirty minutes. I could therefore content myself with a very brief reflection by simply saying that the role or viewpoint of the judge is to be found in their ruling! I could refer you to this ruling, which covers the viewpoints of the judges who delivered it and where there are many developments, particularly on pages 138 to 148, that deal precisely with the notions of mass casualty incidents and the specific damages that result from them, where each word counts and is important.

However, you can rest assured that I will not limit myself to this truism as, in reality, the role of judges is not only the ruling they hand down. It is a bit more than the ruling and, in its broadest sense, is the role of the judge, which should be understood as covering not only the final result of the ruling as the end product, but also the responsibilities and the method implemented by the court in this kind of trial.

Indeed, in an extraordinary trial, the role of the judge must be understood as also meaning that of the President of the Regional Court.

Three initial remarks on this subject:

- the role of the judge should not be confused with that of the President of the Court for the entire preparatory and logistical phase of the trial;

- the role of the President overlaps with that of the judge when the President of the Regional Court (whom we shall call simply 'the President') hears the case submitted to the Criminal Court (as President of the panel of judges);

- finally, in an extraordinary trial or one that pertains to a mass casualty incident, the role of the judge is both traditional – to dispense justice in accordance with the rules of law and procedure – and very specific in that this role must be adapted to specific circumstances (the number of parties and lawyers, the specific nature and number of the claims, their individual features, not described collectively), to the distinctive emotional features of the trial and to the legitimate search for explanations and responses for all involved. In this regard, rulings on mass casualty incidents are therefore by their very nature always the sum of individual decisions, but they are also collective rulings in many respects.

The role of the President is firstly to oversee, before and during the trial and in consultation with the Public Prosecutor and the Head Clerk of the Court, the logistical arrangements and equipment needed for an extraordinary trial. In this case, the Thonon-les-Bains court had to accommodate twenty lawyers, 235 claimants (where it was not known how many would attend beforehand), witnesses, court-appointed experts, consultant experts and technicians, as well as an unknown number of members of the public, for a two-week period.

The first challenge was therefore to assess the likely numbers who would be attending the trial, with the only indications being the fifty or so claimants named during the pre-trial investigation and a committal for trial received at the end of November 2012. It was then necessary to set a date for the trial, taking into account the needs of the different parties, and above all to choose a venue where it would be held. In this regard, given that the trial pertained to the deaths of 7 young children, I was keen that it be held in a court of law and not in a theatre or some other such venue that, in my view, would not be suitable for discussing such matters. The Thonon-les-Bains law court, a 17th century former convent built around a cloister, offered solemnity and serenity, but had been completely renovated to meet current standards and could show films and photographs in the main room, as well as having facilities to broadcast the proceedings in two adjoining rooms –

one for the media and the other for the second half of the claimants, who remained in direct contact with the main room thanks to the presence of a second court usher. A third room located further away was reserved for members of the public, who could come and watch the proceedings being broadcast.

The role of the President is also to arrange, in consultation with each of the parties involved, security measures inside the court. This involved working with specialist police staff and arranging a designated press room with an interview room, a team from the emergency services, a victim support organisation that was available throughout the trial, a cloakroom and parking for the many claimants. We also had to adapt the layout of the courtrooms to accommodate all of the lawyers (who needed to be able to consult their case files and communicate with their clients), experts and technicians and set up rooms with designated seats for each of the claimants' families, which involved drawing up and issuing separate notifications to attend for each room prior to the trial commencing. Rooms were also set up where the defence teams and families of the victims could take a break, with snacks provided. In short, all of this involved a great deal of logistical organisation that would never normally be required but that was vital to the success of a trial such as this, as no one would understand why such measures had not been put in place in these kinds of circumstances, given the court's responsibility to rule on exceptional cases of this kind.

The President of the Court must then decide whether or not to preside over the trial him or herself. In this case, I followed the example of what had been done in extraordinary trials held in similar jurisdictions, where the roles of President of the Court and of the panel of judges were interdependent (as in the cases of Saint-Nazaire court, which ruled on the accident involving the gangway of the Queen Mary II; Bonneville court, which ruled on the Mont-Blanc tunnel accident; the Pic de Bure cable-car accident; and shortly the court of the Sables d'Olonnes for ruling of the Xynthia storm). I set up a court with four judges, including a replacement judge to avoid any difficulties during the trial, and submitted these matters of principle to a meeting of all the judges on the bench to back the composition of the court. I then held preparatory meetings, one with the lawyers two months before the trial and the others with those involved in organising the logistical arrangements both internally (the Public Prosecutor's department and the clerk's office) and externally (police superintendent, sub-prefect, emergency services, the local police force, bailiffs, etc.), arranged a provisional schedule for the hearing in consultation with the different parties and distributed this schedule to the parties and the media. In short, it required making preparations to rule on a highly complex case in just under five months, following a pre-trial investigation that had lasted nearly five years. For the President, it also involved studying the case file for four weeks to make the necessary intellectual, legal and technical preparations for the trial.

During the trial, it was also necessary to organise transport for the parties between the court and local connection points. This involved stopping trains from running for nearly two hours and organising a police escort, traffic management plan and car park. We had to make arrangements to hear all of the victims speak in court and ensure that schedules were as fixed as possible, given the difficult nature of certain sections and the complexity of some of the questions addressed.

For the end of the trial, we had to plan a schedule and appoint someone to lead the deliberation, which in this case included 51 questions on points of law or facts, many of which covered a range of different issues, such as one that included 235 separate claims for compensation. It also involved scheduling regular meetings of the panel of judges, responding to more than 500 civil claims and planning how to announce the ruling to the parties and the media, while at the same time continuing to manage the various other services provided by the court (which did not stop operating and continued to rule on current cases) and maintaining contact with the Court of Appeal, the lawyers and the media following the ruling in such a way as to provide follow-up on the decision.

After the role of President, the role of the judge is therefore first and foremost the traditional one of applying the rules of law and procedure. A committal for trial was submitted to the court by an Examining Judge, whose investigations had previously been checked by the Pre-Trial Investigation Division at Chambery Court of Appeal. In criminal cases, the court must respond precisely and only to the facts of the case submitted, but it must respond to each of them and, for each of the accused, decide on any that are invalid, deliver any acquittals (even those that are partial), where there is any doubt describe *in concreto* the criminal offences and their causal link to the damage caused, examine each of the means of defence, respond to them and adapt the sentences delivered to the individual circumstances.

In civil cases, the court must respond to every claim within the limits of *infra petita* and *ultra petita* and of the alleged facts and means in question and check against which of the accused each claim is made. It must also award individual compensation to each of the victims in line with the damages proved and the relevant principles of redress, while avoiding any duplication of compensation for the same head of damage and without excluding exceptional damages as recognised by the fundamental supreme role of the judges, but within the commonly accepted framework of the nomenclature, broad categories of damages and legal concepts found in this area of the law.

This traditional and classic role of the court reaches its limit in trials pertaining to mass casualty incidents, where victims and their multiple claims must be treated equally, but where the various parties involved and representatives of the law have not necessarily consulted one another beforehand. In this case, for example, certain claims had to be reworded, amended, aligned or sometimes removed in the case of victims who had reached at least partial settlements.

We also departed from a certain orthodoxy at times by awarding certain victims the same sum of €1,500 for the moral damage resulting from the loss of their school friends and €1 for the moral damage resulting from the loss of their teacher, where a traditional *in concreto* analysis could have led to this compensation being adjusted to reflect varying degrees of friendship or relationships. However, it is also the role of the judge to deliver some form of relief.

This specific role also involves upholding the real rights of victims as provided for in the preliminary article of the Criminal Code, which entrusts this responsibility to the legal authority in order to justify the rejection of declinatory pleas against the Criminal Court that ruled on the civil damages (pages 132-133) or to order the reopening of proceedings for the few victims aged under 18 who were clearly misinformed, did not have a lawyer or whose parents were possibly mistaken as to the extent of their rights (pages 206-209).

This specific role of the court also involves explaining matters clearly by distinguishing and clarifying (pages 76-78) certain notions that are very similar. In the case in point, those in court were advised what is meant by the origins of an accident (the circumstances that caused it to happen – what would commonly be called a 'combination of circumstances', in other words, the background prior to the accident or the pre-existing circumstances), the causes of an accident (the immediate reasons for and direct factual causes of it) and the causes of any damages, which, according to the law, are the causal links that connect the fact of which the defendant stands accused to the damages actually occurring.

Finally, this specific role involves demonstrating praetorian creativity in a field where each jurisdiction has made its own contribution to establishing positive law through the various legal rulings that have been made on this matter for more than a decade and where the assessment of heads of damage comes under the court's jurisdiction in line with commonly accepted nomenclatures. In this case, the notion of exceptional damages allowed the court to review the current state of positive law and the alleged damages and to define a specific damage of waiting and anxiety[5] (cf. pp. 142-145 for further details on this point) in lieu of the specific damage of anxiety, which the court found did not apply to indirect victims.

In the case in point, the court applied the so-called 'Dintilhac nomenclature' for the compensation of pecuniary and non-pecuniary damages, but wanted to reserve the specific damage of anxiety, which incidentally was more extensive for victims who were injured than for those who died, for the direct victims alone. It did this by distinguishing it from the damage to indirect victims caused by the anxiety of having to wait for news immediately after the accident, being uncertain as to the fate of their child and subsequently having to care for the injured victims. This involved rewording claims for care-related damages that the court deemed, in accordance with accepted jurisprudence, had to remain reserved for the compensation of only those indirect victims who were the close relations of deceased victims who required constant care until the end of their lives as a result of suffering an exceptional and paralysing disability.

The court ruled that "*in order to remain specific and exceptional, the specific damage of anxiety can only apply to direct victims, that is, those who died and knew that their imminent death was very likely or certain for a period of between one and three seconds and for whom this specific damage, which is inherent to anxiety of an existential nature, is considered an asset and as such is deemed to be transmissible, that is, for the injured victims who survived, specific to the same existential anxiety before the impact as those of the victims who died, in addition to the anxiety caused*

[5]Recueil Dalloz, 9 January 2014, n° 1, overview of civil liability by Professor Philippe Brun

immediately after the collision, which again was existential in nature, then the anguish and anxiety that arose as they were rescued and treated and subsequently more anguish and anxiety in the period leading up to the funerals and even afterwards for those who were unaware of the outcome of the accident before that time".

Although their parents, the so-called "indirect" victims, could observe or be affected by this specific damage suffered by their children, they could not themselves directly suffer a damage that must remain both specific and related to anxiety, understood as the psychological and physiological manifestation of an existential anxiety that can therefore only affect direct victims insofar as, without rendering the very notion of the specific damage of anxiety meaningless, the fate and lives of the indirect victims were not in question.

However, they are victims in their own right, on the one hand, of the moral damage of being affected by the physical and psychological suffering caused to their children and as such are said to be "indirect" (or "collateral") victims. They are also the intermediate victims of a damage that is specific to them (an "oblique" damage) in that, although they are indirect victims, they suffered a damage that is directly linked to the circumstances that arose after the accident, which certainly falls into the category of moral damages, but which, without being confused with the moral damage of being affected by the physical and psychological suffering caused to their children, is evidently distinct and specific to the classifications for mass casualty incidents.

Notwithstanding its wording by the parties, this head of damage was reclassified, in the case of indirect victims, as the specific damage of waiting and anxiety. The "waiting" aspect of this damage refers to the period during which the indirect victims had to wait for the emergency services to arrive and start the rescue operation, the conditions in which they were notified or learned about the accident, the fact that it was impossible for them to access the area where their children were or even get access to their children themselves, the uncertainty over their children's medical conditions or treatment and the information that was given to them on an ongoing basis about the fate of their children and their school friends. The "anxiety" aspect of the damage is already accounted for by the notion of anxiety caused by waiting, but also covers the lack of peace of mind inherent to the disruption caused to the indirect victims' lives and by having to temporarily care for their children until their physical and mental state stabilised. The care claimed by certain claimants should therefore only apply to and remain reserved for the close relations of those victims who died but had to be cared for permanently until the end of their lives as a result of suffering an exceptional and paralysing disability.'

The specific role of the judge is to assess *in concreto* each of the heads of damage for each of the victims, taking into consideration their individual circumstances and the classification of physical and psychological manifestations specific to mass casualty incidents (pages 140-210).

The court ruled that "*certain claimants, given the relations between them, are both direct and indirect victims of the damage suffered by other direct victims (the pupils and teachers as a result of the deaths of their school friends or pupils and the pupils or teachers as a result of the death of their*

teacher or colleague). The Allinges accident is unique in the classification of mass casualty incidents in that it involved a school community made up of the children, parents of pupils and teachers from two classes of one school, that all the direct victims knew one another (pupils and teachers), that the direct victims knew many of the indirect victims to whom they were not related (injured teachers and children who knew the parents of deceased or injured children), that the indirect victims knew many of the direct victims to whom they were not related (parents who knew the children of other parents and teachers), that the indirect victims knew many of the other indirect victims (parents who knew other parents) and that many of the direct victims knew, and indeed were fond of, the individual directly responsible for the facts that were the direct cause of the accident (certain pupils who knew Jean-Jacques Prost). Mr Prost looked upon some of the children as his favourites, calling them "his children" or "his kids", while they called him "J-J" and would give him cuddly toys. This final circumstance is unique to this kind of incident and was evident at the hearing, where at least eight direct victims described J-J. X. as a "victim" of the accident".

Finally, the specific role of the court is, in line with the cathartic function that modern-day trials provide, to remember the seven children who died and the physical and psychological suffering of the victims who were injured or the close relations of the victims who died. This offers each a kind of legal memorial[6] as a preliminary condition of helping victims to cope, which, although not necessarily expected, is also part of the role of today's judge in criminal affairs. In this respect, we have seen that unintentional crimes have this distinctive feature in the case of civil damages of allowing victims to be compensated even in the case of acquittal, in accordance with article 470-1 of the Criminal Code, and of being able to do this regardless of the court's ruling on the public prosecution.

To summarize, it appears to me that the ruling - in front of a criminal jurisdiction – of a catastrophic mass accident trial or an exceptional procedure related to an important number of victims allows to implement, to develop and to combine specificities, which in the French judicial system, are linked to the criminal jurisdiction and the criminal process, as for the proceeding of the trial itself and the ruling that concludes.

The specificities of the trial:

- Logistical and organizational specificities: The specific role of the court president (described above) for the organization before the trial
- Functional specificities: in addition to the regular act of judging, there are 7 purposes of such a trial: the purpose of truth, the educational purpose, the cathartic purpose, the restorative purpose, the media purpose, the purpose of the memory, the praetorian purpose.

[6] Journal des accidents collectifs n°136, Professor Marie-France Steinlé-Feuerbach, Director of the Centre Européen de recherche sur le Risque, le Droit des Accidents Collectifs et des Catastrophes (CERDACC) and Professor Claude Lienhard, Director of the Journal des Accidents et des Catastrophes (JAC), July 2013

The specificities of the judgment:

- The specificities of the role of the judge: the judicial role related to the collective dimension of the judgment and the specific role to guarantee the rights of victims, in particular the juveniles or vulnerable adults.
- The specificities of recognized and compensated damages: the theoretical definition and the contour of extraordinary damages as the anxiety specific damages (PSA in French) and the new waiting and worry specific damages (PSAI in French)

Those are some of the few specific roles of the judge and of the court during the case that we were in charge of. And if the judgment of mass casualty incident is somehow a “collective” judgment by many aspects, it is also necessarily, if it wants to be successful, a collective production of every person, taking into account their number, their expectations and their involvement into the trial.

The study visits reports

Study visit in France

26 - 29 March 2013

This first research trip involved five European magistrates, one each from Italy, the Netherlands, Portugal, Bulgaria and Poland. The purpose of this visit was partly to learn more about certain aspects of the French legal system, and partly to ensure that the arrangements put in place to support victims of crime are in compliance with the terms of the European directive of 25th October 2012, which sets out the minimum requirements regarding rights, support and protection for victims of criminal behaviour.

The division of time which was agreed upon, splitting the days into seven half-day sessions, allowed the group to achieve a balance between theoretical discussions and field trips.

The first half-day was given over to a recap of the key elements of the French penal process and, within this system, the gradual evolution of the importance attached to the treatment of victims.

In this presentation particular attention was devoted to the concept of the 'partie civile' (civil plaintiff), a status which can be sought by victims and which establishes them as interested parties in the legal procedure, granting them certain rights before, during and, to a certain extent, after the trial (during the execution of the sentence).

The afternoon of this first day was devoted to a field trip to the headquarters of the Brigade de Protection des Mineurs (Brigade for the Protection of Minors), a division of the Préfecture de Police de Paris, where we were welcomed by Mr Thierry Boulouque, the Commissioner responsible for this unit.

Mr Boulouque began by explaining that the brigade is mobilised, within the territorial confines of the City of Paris, whenever a minor is victim of a crime, irrespective of the nature of the infraction or the damages incurred. With 1200 cases referred to the brigade every year, they deal with an average of 50 rapes and 70 sexual assaults committed within the family home, and almost 300 complaints of a similar nature not involving family members.

The specialist skills represented in such an investigative unit enables the brigade to respond rapidly and detain offenders immediately, helping to ensure that children are not exposed to repeated abuse.

Around 90 police officers and employees – all with specialised training – are based in a facility specifically designed for dealing with minors, including very young children. Resources include a video recording system, compliant with all legal requirements, primarily used to record initial statements from children for use later on in the process, helping to avoid the need for fragile or traumatised victims to repeat their harrowing narratives multiple times.

In addition to crimes of a sexual nature, the brigade is also called upon to deal with all crimes and misdemeanours where the victim is a minor, from abuse to exploitation in the workplace and even murder. More recently the brigade has started focusing on internet crime, a phenomenon which often explicitly targets young people.

Our group was particularly impressed by the fact that the brigade has a dedicated psychologist to listen to and reassure young victims, a professional who does not play any role in the legal procedural side of the investigation and takes no part in the official interviews of those involved, victims or perpetrators.

A debate arose concerning the techniques used by the brigade, particularly with respect to the preference for, wherever possible, making a direct confrontation between the suspected offender and the child victim a crucial part of the investigation. This method of inquiry is not common practice, and is even viewed with suspicion or forbidden, in several of the countries represented in our group. The group's reservations about such matters stem from the crucial importance of protecting young victims, and producing conclusive evidence from investigative sources other than direct confrontation.

This trip and discussion session did serve to confirm that the measures put in place to support victims of crime are more far-reaching when the victims are deemed particularly vulnerable, as is notably the case with minors.

Our second day began with a visit to the Tribunal de Grande Instance de Paris. Here we were welcomed by a representative of the public prosecutor, a Juge d'Instruction (investigating magistrate) and the President of one of the Chambres Correctionnelles (Criminal Courts), each of whom spoke to us about the resources available to victims within the context of the criminal justice system. After this meeting we had the opportunity to observe part of a hearing in a criminal case, a 'comparution immédiate' fast-track hearing, used in cases where sufficient evidence has been compiled by the investigators during the time that the suspect has been held in custody. We observed first-hand the difficulties which can arise from this commitment to rapid judicial processing of defendants, particularly in terms of respect for the rights of victims, who are not necessarily present at the hearing and may not, within such a short deadline, have time to fully establish the nature of the harm they have suffered with a view to seeking reparations.

This visit served as an invaluable practical demonstration of some of the theoretical points raised in our discussions of the French penal process during the previous day's opening session.

The second day continued with a presentation on the conditions of sentence execution in the French penal system, delivered by a magistrate specialising in sentence application. The magistrate described the resources at his disposal to ensure that, during the application of a criminal sentence, custodial or otherwise, the rights of victims are respected.

Without going into too much detail regarding the complex, ever-evolving legislative context, he explained that guilty parties can be ordered to make financial reparation for the harm caused. The judge can order a certain portion of the guilty party's revenues to be diverted to paying these damages, whether the sentence is custodial or not.

Moreover, if guilty parties do not receive custodial sentences, or are released after a period of detention, they may still be subject to various restrictions including orders not to frequent certain places or attempt to contact their victim(s). Victims are informed of any such orders, and the magistrate may seek out a victim's geographical location, even if the victim has not come forward on his own initiative, in order to ensure the effective application of the restrictions. This commitment to keeping victims informed, long after the initial sentencing, is not found in the different legal systems represented by the members of our group.

We then had the opportunity to discover an original, experimental scheme currently being tested in a penitentiary establishment which houses criminals serving long sentences, the Maison Centrale in Poissy. The director of this prison explained to us how, following a field trip to Québec, he transferred the lessons he learned there to his own establishment in the form of this programme, which aims to bring together people found guilty of specific crimes with people who have been victims of similar offences. An overview of this project was provided by a short film incorporating testimony from participants, and the director expressed his conviction that such meetings, when properly supervised and undertaken with the right attitude, can allow participants to obtain a new perspective and understanding. Our delegates expressed certain doubts as to the sincerity of prisoners taking part in this scheme, which seems to challenge some familiar certainties. The programme does, however, highlight the potential for involving victims in efforts to make offenders take responsibility for their crimes and appreciate their consequences. This scheme thus corresponds to a reparational approach to justice, an approach currently only championed by a select group of determined professionals.

The third day saw us visit the offices of the Institut National d'Aide aux Victimes et de Médiation (National Institute for Victim Support and Mediation, INAVEM), where we were welcomed by the Director and the person responsible for coordinating support for victims of major accidents and public health disasters.

These presentations served as a reminder that, in addition to the legislative advances made in favour of victims' rights, since 1982 France has a network of associations working across the country to inform, support and help victims of crime, from the aftermath of the incident itself right through the various stages of the legal process. This social, legal and even psychological support system is not intended to usurp the place of legal or medical professionals, least of all lawyers, but rather to help ensure that all

victims have full access to their legal rights and to provide free assistance when the situation calls for it. With around 150 such associations spread across France, the network provides help and support to almost 300,000 victims very year, the vast majority of whom are victims of criminal offences.

We were reminded that the INAVEM also has specific expertise in the field of major accidents, events with multiple victims such as train crashes, large-scale car crashes or air disasters. The INAVEM's status as a federation means it has at its disposal a wealth of resources for dealing with such events. Local INAVEM-affiliated associations may also be called upon by the public prosecutor in their region, and charged with implementing response plans to disaster situations, with support from the national federation. Furthermore, on account of the federation's experience in this field, the INAVEM has on several occasions played a crucial role in setting up advance compensation schemes for events of this nature, acting before any legal resolution has been passed, as judicial responses can often be a long time coming on account of the complexity of the circumstances involved.

This role in handling the aftermath of accidents and disasters was illustrated by a recent example, with victim support agencies playing a major role in an on-going criminal trial concerning instances of medical malpractice, with no fewer than five thousand victims joining forces to bring a class action. These victims are spread all over the world, and as such the numerous support and information resources put at their disposal have proven to be indispensable.

This visit was an opportunity for us to expand our discussions to consider a different category of victims, those who have suffered the consequences of major accidents and disasters.

The afternoon of this third day focused on a different category of victims, a group acknowledged as particularly vulnerable on account of the context in which the crimes take place – women who have been victims of domestic violence. For this session we visited the Tribunal de Grande Instance de Bobigny in the suburbs of Paris, where various measures have been put in place to deal with such devastating, and all too common, events.

Our hosts placed particular emphasis on a new legal tool recently placed at the disposal of family court judges. Since 2010 family courts have been able to issue emergency protection orders in response to cases of domestic violence, with the main priority being to order the violent partner to leave the family home. These orders can be sought by the public prosecutor or by the victim, and are issued for a period of four months. They are intended to provide a more rapid response than would otherwise be possible via the traditional legal procedure. Failure to obey the terms of these court orders is punishable by penal sanctions, and they in no way impede upon the execution of other judicial processes, such as standard, full prosecutions for violent assault. 234 orders of this type were issued in 2012, a clear indication of the utility of this judicial tool.

The Bobigny civil court is also involved in an experimental scheme which provides victims of domestic violence with mobile telephones, allowing them to call the police immediately when they find themselves in imminent danger.

This visit also served to illustrate how important it is for each Tribunal de Grande Instance to have a Victim Support Service, partly financed by public funds even if its actual operations are handled by independent associations. Responsible for providing victims with information and guidance, this Service must work in partnership with other parties involved in the legal process, including court bailiffs and lawyers. Lawyers should provide a permanent service for those accused of such offences, while also offering legal and judicial support for victims.

Moreover, within each jurisdiction a magistrate is designated as the 'judge assigned to victims' affairs' (JUDEVI), charged with ensuring the efficiency of the measures in place to ensure that victims falling within the geographical remit of the court have access to legal and personal support. This magistrate is also president of the Compensation Commission for Victims of Criminal Offences (CIVIP), a body which exists in each Tribunal de Grande Instance and oversees an independent process for allocating compensation to victims of serious offences, direct and indirect victims of misdemeanours and crimes against the person or property. Financial compensation awarded by these commissions is partially supplied by a national solidarity fund.

Our final half-day was given over partly to a presentation regarding the terms of the European Directive whose implementation is currently being studied, and partly to a 'debriefing' session allowing us to discuss some of the many issues raised over the course of our visit.

The representative of the Ministry of Justice responsible for the implementation of the European directive reminded us that the deadline for incorporating the conditions of this directive into French law (and indeed other European legislations) is November 16th 2015. While the majority of the points covered by the new directive are already enshrined in French law, or could be integrated without any real difficulty, certain issues are likely to cause problems. One such sticking point will be the obligation to translate certain procedural documents into the native language of the victim, as well as further recommendations regarding the protection of specific victims and particularly their right to sheltered accommodation. Moreover, an increased focus on the notion of reparational justice will require an evolution of the practices currently in place in the French judiciary and law enforcement agencies, even if professionals are already aware of the processes involved in securing compensation for victims.

During the course of this final discussion, it was pointed out that the most advanced systems in place – and certainly the most efficient – are those dedicated to victims identified as particularly vulnerable: children, women who have been victims of sexual assaults, and particularly women who have been victims of domestic violence.

Over the course of these few days we were reminded that, in an approach to criminal justice which breaks with convention to a certain extent, initiatives described as ‘reparational’ can have certain benefits for victims of crime. It must be recognised that such initiatives are still in the experimental phase, and currently depend heavily on the individual commitment of the different parties, as they are only partly integrated into institutional processes.

A full comparison of the various initiatives in place or under construction in the different jurisdictions represented in our working group will only be possible after completion of all the scheduled field visits.

However, some of the points raised during our time in France have already allowed us to identify major areas of convergence or disparity.

By way of an example, in cases where the victims are minors, in Bulgaria it is compulsory for a psychologist to be present throughout proceedings if the victim is aged 14 or under. Italy was recently reprimanded for continuing to permit repeated questioning of minors, criticised as a form of secondary victimization. In Poland, only a single interview is permitted for victims below the age of 15, and any confrontation with the perpetrator of the crime is prohibited.

On this subject, comparing the different practices in place in our respective countries will surely be a very fruitful exercise. On the other hand, it seems that when it comes to domestic violence, even in different concrete forms, the same objectives and resources are shared by professionals, police forces and the judiciary.

It also remains for us to examine the resources allocated to providing support for victims, a task largely entrusted to associations, with variable and often uncertain capacities for action as a result of the vagaries of public funding.

Summary

The limited duration of this study trip required certain choices to be made regarding both the theoretical contributions and the visits proposed.

Thus in order to stick as closely as possible to the themes of the training activity, we focused on the legal standing of victims and victim support measures. Emphasis has also been placed on the systems in place to serve the most vulnerable victims, namely minors and female victims of domestic abuse, and the protective measures implemented.

Victims' legal standing:

After a theoretical examination, the legal standing of victims was illustrated by a meeting with the judges at the Paris Court of First Instance, and attendance at a correctional hearing.

The place of crime victims in French criminal procedure is dependent on the victims' choice of whether or not to bring a civil case and assert their rights.

If victims choose not to bring a civil case, they will nevertheless retain their standing as witnesses.

If they do opt to exercise that capacity, they then become part of the criminal proceedings and may be assisted by an attorney, to petition the judge to perform the relevant investigations, and to be heard at the hearing.

Their capacity as parties to a civil case then merges with their capacity as witnesses, except that victims do not take an oath during their hearings, and above all they have the possibility open to them to petition the judge in the criminal court to sentence the perpetrator of the crime, if found guilty, to pay damages to them.

This is the choice made in the vast majority of criminal cases, and in a good number of correctional proceedings.

Support measures:

As soon as victims enter their complaint, they are informed of the possibilities available to them to contact a victims' aid association. They will then be given the contact information for the association nearest them.

France is covered by a network of 150 victims' aid associations. Financed by state or local government subsidies, their employees provide assistance to more than 300,000 persons annually who are victims of criminal infractions.

They provide such persons with information regarding their rights in the context of legal proceedings, and offer to provide social and psychological support as needed.

These associations are gathered into a national federation, known as the INAVEM (National Victims' Aid and Mediation Institute), which is subject to a code of ethics and performs its work confidentially and free of charge.

They have a national telephone number, and any victim that dials it can be provided with information and guided as quickly as possible to one of these associations, or to another competent department.

Furthermore, each court of first instance now also has an attached victims' aid office. Generally managed by an employee from the local association, it is these offices' job to receive all persons who assert that they have been victims of a crime, and to provide them with all relevant information or guide them into the appropriate systems.

Vulnerable victims and protective measures:

The group of European judges was received by the chief of police in charge of the Minors' Protection Brigade at the Police Headquarters in Paris.

A visit to the premises and a meeting with the agents in charge of that section allowed the attendees to appreciate the measures implemented in all proceedings involving minor victims. The police officers assigned to the unit have all been trained in collecting testimony from children. Minors' depositions can thus be recorded and be made available to later participants in the proceedings, primarily in order to avoid having minors repeat their description of the events they experienced.

The police can also employ the services of a psychologist attached to the unit, whose role is to listen to the minors and reassure them, though their intervention has no impact on the ongoing development of the investigative procedure.

When the police indicated that one purpose of their work was to be able to confront the presumed author of the acts with the minor victim, interesting discussions arose among the foreign attendees, some of whom pointed out that such a face to face confrontation would be prohibited by the legal code in their nations.

Our study group also visited the Court of First Instance of Bobigny, a court that is particularly attentive to the response to be provided to women who are victims of domestic violence.

The judges walked us through certain legal provisions that have been tried out in that jurisdiction, particularly the possibility for the judge to pronounce a judgment in serious and urgent situations ordering the violent spouse to leave the conjugal home for a four month period, which period would in principle permit an exploration and determination of the definitive measures to be taken in the interest of the family.

The same court was also the host of another legal experiment, whereby in situations involving a serious risk of violence women could be provided with a cell phone connecting them immediately to the appropriate police department in case of danger. This experiment is currently being generalized throughout France.

By way of conclusion:

France has a legislative system that is becoming more and more attentive to the needs of victimized persons. The desire to respond to these needs as best possible is growing over time, and appropriate means have been gradually implemented. This public response is accompanied by significant work among associations. As always, there are financial difficulties involved in making this progress happen and in the necessary permanent training of all personnel engaged in these arrangements, whether public or private personnel.

The group of judges was also made aware of the specific responses provided by public bodies and associations in the occurrence of health disasters or mass accidents, whether the emergency measures to be implemented or specific aspects of the judicial responses in these exceptional situations.

Lastly, an illustration of a response in the context of restorative justice was provided via the testimony of a prison director who organizes meetings between victims and convicted perpetrators at his institution.

Study visit in Poland

10-13 June 2013

In the study visit were involved the experts representing Bulgaria (Emil DECHEV, Judge), France (Marie-Françoise VERDUN, Judge), Italy (Sandra RECCHIONE, Judge), the Netherlands (Fred BIJLSMA, Prosecutor) and Portugal (Paulo José FIGUEIREDO LONA, Prosecutor).

The aim of the visit of the experts was to present the existing legal solutions as well as practical aspects of victims' protection in Poland. The visit served also to make an overview of the legal system and practical arrangements in order to fulfil the obligations imposed on the Member States by the Directive 2012/29/EU of the European Parliament and the Council

of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (hereinafter referred to Directive 2012/29/EU)[7].

I. Standing of victims in criminal proceedings - program

The experts started and finished the programme in Poland by paying visits to courts, including attending a trial session.

The first one was arranged in the Supreme Court where its President presented basic rules applying to victims during the criminal proceedings and the role of the Supreme Court in relation to judgments rendered by courts of the second instance. The above mentioned information has been supplemented by determination of the impact of the Supreme Court's jurisprudence on the practice of ordinary courts. The role of the Supreme Court in this respect aims at setting the standards.

The last visit to the ordinary court of Warsaw (*Regional Court in Warsaw (EN) - Sąd Okręgowy w Warszawie (PL)*) was also dedicated to the presentation of the most important rules granted to victims in relation to the criminal proceedings, in particular applicable during the trial. The presentation made by the Katarzyna CAPAŁOWSKA, judge of Regional Court has been contributed by the experts who presented legal grounds regarding victims actively participating during the trial in their countries and exchanged their experience in this respect.

[7] OJ 315/57, 14.11.2012.

However, the presence in the court was also combined with a participation in the main trial during an ongoing criminal proceedings. During the trial the experts had noticed the way the parties exercised their rights. The advantage of the said case was to observe an involvement of the accused and the injured acting as the parties.

Although the trial seemed to be the best performance to present all actors playing an important role in criminal proceedings, the programme aimed also to shed a light on the involvement of all stakeholders, such as those participating in the trial, investigating offences or acting in favour of victims.

The reason for involvement of such a variety of stakeholders was also to present to the experts the experience relating to support provided for victims from different perspectives. Therefore, the police, prosecutor service, bar association and NGOs had the possibility to explain their role in the system and their expectations resulting from implementation of the Directive 2012/29/EU.

I.1. Basic rights applicable to victims

Almost each visit was started with a presentation of basic rights applicable to victims of crime. However, that was not a simple repetition of what had been said previously but each institution tried to present the application of each rule from a different perspective taking into account the particular stage of the criminal proceedings and profits for victims in case they were used.

The most important rules applicable to victims of crime[8] are as following:

1) Status of a party

Victims have in principle a status of party in the pre-trial stage of criminal proceedings whereas in the judicial part of criminal proceedings their position is dependant on a wish of a victim. However, she\he is legally entitled to do so, if they bring a motion in this regard before the commencement of the judicial examination at the main trial (Articles 54 and 299 of CCP).

2) Right to compensation[9]

There are at stake different options for victims to receive either redress or compensation. Article 49a of CPP entitles the injured person to file a motion for compensation if no civil action has been filed. The same right is enjoyed by the public prosecutor. According to Article 62 of CCP, the injured person may, until the commencement of the judicial examination at the main trial, file a civil complaint against the accused in order to litigate, within the framework of the criminal proceedings, his property claims directly resulting from the offence. The third option is left to a court decision in case no legal actions has been undertaken by the injured party nor by the public

[8]The term 'injured' is much more appropriate in relation to the Polish criminal terminology.
[9]See Articles 49a, 66- 70, 415 of CCP.

prosecutor. Then the court, acting *ex officio*, may adjudicate the damages for the injured person in the event that the accused is convicted (Article 415 para of CCP).

The Act on State compensation of 2005 provides also for right to compensation in cases a perpetrator has not been found or can not be prosecuted or convicted.

The final option out of criminal proceedings would be to file a complaint to a civil court, if he/she has not undertaken any actions within criminal proceedings or his/her motions have been rejected or left in unheard.

3) Rights of family members of a victim[10]

In the event of death of the injured person, his/her rights may be exercised by his/her closest relatives or, when they either are absent or not discovered, by the state prosecutor, acting *ex officio*. In the event when the competent authority conducting the proceedings is in possession of information about the injured person's closest relatives, they should instruct at least one of such persons about the rights they are entitled to. The same rights are enjoyed by the family members of the subsidiary prosecutor, of the private prosecutor and of the civil plaintiff in case of their death.

The family members are also entitled to be physically protected in case a perpetrator poses a threat to their life , health, freedom or loss of property of considerable dimension. The court, and in the preparatory proceedings the state prosecutor, may issue an order classifying as secret the circumstances permitting the disclosure of the identity, including his personal data or the place the person lives.

4) Right to legal representation[11]

According to Article 88 in conjunction with Article 78 para 1 of CCP, a barrister or a legal counsel may be the attorney of the injured person. The injured party may demand that the defence counsel be appointed to him/her *ex officio*, if he/she can duly prove that he/she is unable to pay the defence costs without prejudice to his/her and his/her family's necessary support and maintenance.

5) Right to review a decision in criminal proceedings

The injured party acting as a party is always entitled to bring a review and/or an appeal to the competent authority unless a decision as such is not reviewable which happens only in exceptional cases which does not relate to the decisions as to whether or not to prosecute.

In other cases, it is feasible only if CCP provides for such a right in relation to a specific legal action.[12]

[10]See Articles 51, 52, 58, 61, 63 of CCP.
[11]See Articles of CCP.
[12]See Articles 306, 422, 425 and 459 of CCP.

I.2. Specific rights of victims

It was noted that amendments to the Law on prosecution service introduced in 2009 provided a large scope of independence to the prosecution service. As a consequence, there is no more personal union between the post of Minister of Justice and that of a Prosecutor General. In effect, the prosecution services enjoys now a broad autonomy but also is able to set up the policy related to pre-trial stage of criminal proceedings in particular regarding treatment of victims of crime.

Therefore, the prosecutor may submit the following motions to which however require consent of the injured party:

The state prosecutor may include in the indictment a motion to issue judgement, imposing a penalty of a penal measure with consent of the accused for a misdemeanour subject to a penalty not exceeding 10 years deprivation of liberty, without conducting a trial if circumstances surrounding the commission of the misdemeanour do not raise doubts, and the attitude of the accused indicates that the objectives of the proceedings will be achieved (Article 335 of CCP);

If the premise is met which justify a conditional discontinuance of proceedings, the state prosecutor may prepare and file with the court with a motion to this effect, instead of an indictment (Article 336 of CCP);

Until the conclusion of the first examination of all accused persons at the first-instance hearing, the accused who is charged with a misdemeanour may submit a motion for a decision convicting him and sentencing him to a specified penalty or penal measure without evidentiary proceedings; if the accused has no defence counsel of his choice, the court may, on his motion, appoint a counsel ex officio (Article 387 of CCP).

If, the injured party agrees on the motion of the suspects or the accused, the evidentiary proceedings are not conducted.

I.3. Right to actively participate in criminal proceedings

The injured party may undertake almost all actions if he/she acts as a party or only those specified in CPP in cases he/she has not brought a motion in this regard until the commencement of the judicial examination at the main trial.

The presentations provided to the experts showed the variety of rights which application allows victims to play an active role in the criminal proceedings. More tangible they seem to be during the trial where the injured party may orally present his opinions, file motions or complaints. However, during an investigation where a victim always enjoys a status of party he may comment on every issue coming up within this phase, submit evidence or review most of the decisions relating to execution of his/her rights.

The most often asked questions by the experts related to institution of subsidiary prosecutor once the public prosecutor denied to institute or continue the criminal proceedings. In this case, according to Article 55 para 1 in conjunction with Articles 306 para 1 and 330 para 2 of Code of

Criminal Procedure[13] the injured party may, within one month of the date of the service of notification about such decision, file an indictment in the court, supplying one copy thereof for each of the accused and for the state prosecutor. The situation occurs when the state prosecutor has twice issued an order on the discontinuance of proceedings or a refusal to institute them.

The experts showed their particular interest in practical aspects of how those provisions work and to what extent the indictment filed by the injured may result in conviction before the court. During the meeting in the Prosecution General Office it has been revealed that 52 cases in 2012 in which the indictments were brought before the court by the injured party had been finalised with a final conviction. The Prosecution General Office has started analysing those cases to find out the reasons behind not commencing nor continuing the criminal proceedings.

The experts found this institution practical in cases where the public prosecution is not interested in investigating some kind of criminality. This helps victims to find access to justice and fulfils the obligations set out in Article 10 (right to be heard) and in Article 11 (right in the event of a decision not to prosecute) of the Directive 2012/29/EU.

II. The set of rights provided to victims by NGOs

The experts visited two NGOs involved in providing victims at an early stage of the criminal proceedings and in some cases also beforehand with support and assistance.

Victims' Support Organisation *'Niebieska Linia'* is specialised in supporting victims of domestic violence whereas *'Dzieci Niczyje'* Foundation in assisting children - victims of sexual abuse or domestic violence.

[13] According to Article 55 para 1 of CCP in the event that the state prosecutor again decided on the refusal to institute proceedings, or on the discontinuation of the proceedings, in the case referred to in Article 330 § 2, the injured party may, within one month of the date of the service of notification about such decision, file an indictment in the court, supplying one copy thereof for each of the accused and for the state prosecutor. The provision of Article 488 § 2 shall apply accordingly. The provisions of Article 339 § 3 subsection 4 and Article 397 shall not apply.
According to Article 330 para 2 of CCP, if the state prosecutor still does not find grounds to bring an indictment, he again issues an order on the discontinuance of proceedings or a refusal to institute them. In such event, the injured person who invoked the rights provided for in Article 306 § 1, may bring an indictment set forth in Article 55 § 1 - and he should be so instructed of his right.
According to Article 306 para 1 of CCP, the injured person and the institution specified in Article 305 § 4, shall have the right to bring interlocutory appeals against an order refusing to institute an investigation, and the parties shall have such a right with respect to the order on discontinuance. Those having right to bring an interlocutory appeal shall have the right to inspect the files of the case.

Although the first one disposes of very limited financial resources it provides victims with immediate help via call lines, psychological and emotional support, legal advices and shelters granting them physical protection from the perpetrators.

The latter participates also in hearings before court providing psychologists to assist a child irrespective of its role (witness, injured party) and specialized rooms equipped with devices reducing stress which accompanies children during such hearings.

Not only NGOs as such but also the Ministry of Justice plays an important role in creating a system of support for victims. Although the Ministry is not involved in physical or financial assistance for victims it establishes general policy relating to protection of victims.

The Ministry of Justice provides NGOs with financial support. The financial resources transferred for this purpose to NGOs pose in any case a main source of their income. The Ministry controls the matter of how the resources are spent and their statutory tasks realised. This programme is called ‘Victims Support Centres' Network'.

The other example of the challenges the Ministry focused on is to make victims aware of their rights. To that aim, it has been commenced a few years ago an awareness campaign aimed at allowing victims to be provided in courts once a year with free of charge advice made by lawyers.

The cooperation between the Ministry of Justice and NGOs as well as tasks fulfilled by NGOs (those above mentioned and also other ones specialised in support for all or specific type of victims) may be a proper accommodation of the obligations set out in Articles 8 (right to access victims support services) and Article 9 (support from victim support services).

III. Rights granted to vulnerable victims (victims with special needs)

The Ministry of Justice sets up a policy towards combating domestic violence in cooperation with some other stakeholders. The experts were provided with general overview of the functions of the Ministry of Justice in supporting victims of crime, overall statistics related to crimes and sanctions applied by courts in order to fight and prevent reoffending pertaining to specific forms of crimes. The Ministry of Justice providing NGOs with financial support enables them to fulfil their statutory obligations which results in a possibility to offer victims of crime financial, emotional and legal support. However, the Ministry and the NGOs are not only stakeholders involved in supporting vulnerable victims.

The visit paid in the Police Headquarters shed a light on the main activities of law enforcement in relation to support victims of crime. It has been presented an overview of the existing policy as well as legal solutions related to combating of domestic violence and sexual abuse of women and children, in particular in close relationship. The other presentation has been dedicated to procedures in place pertaining to the fight against trafficking in human beings as well as the cooperation with NGOs in this respect.

Those presentations have been enriched by the statistics showing the level of detection of crimes and of efficiency in their investigation. The way how the victims of crime are treated has been also deeply elaborated.

IV. Abuse of rights provided for victims

The experts encountered a very interesting presentation made by a legal attorney Mr Mikolaj PIETRZAK held in Warsaw Bar Association focusing on abuse of victim status of the persons and entities acting in that capacity.

The starting point was presentation of rights provided to victims in terms of the judicial part of the criminal proceedings. The spirit of the Code of Criminal Procedure is to establish a balance between rights granted to the suspect/accused and on the other side to the injured/victim.

It has to be noted that a victim may be assisted by a legal representative appointed either by a victim him- or herself or the State. The latter situation occurs if upon demand of the injured party a legal representative be appointed to him/her *ex officio*, if he/she can duly prove that he is unable to pay the defence costs without prejudice to his/her and his/her family's necessary support and maintenance. This should satisfy an obligation imposed on the Member States in Article 13 of the Directive 2012/29/EU to provide victims with access to legal aid.

Since victims are entitled to be a party to judicial part of criminal proceedings and thus to undertake all the actions prescribed also to the accused there may arise a temptation to abuse those rights in order to prolong termination of the trial or to make a pressure on the judge to convince him to impose on the perpetrator more severe punishment or oblige him to compensate the damage in a higher amount.

In the procedure of plea bargaining the injured person has a significant role to be played since according to his/her consent the judge may agree on the motion for a decision convicting the perpetrator and sentencing him to a specified penalty or penal measure without evidentiary proceedings, submitted either by prosecutor or the accused. In lack of the consent the whole trial has to be conducted[14].

Besides, the injured party is also entitled to act via legal advisor whose absence may pose a handicap to continue specific dates of trial. In some cases this argument has been used to prolong the trial.

Therefore, access to legal aid as provided for in Article 13 of the Directive 2012/29/EU may pose also a threat of violation of trial if abused by a victim. However, it has to be mentioned that such cases as described above seem to be rather exceptional in practice.

[14]According to Article 387 para 2 of CCP the court may grant the motion of the accused to issue a judgment convicting him only when the circumstances surrounding the offence have not given rise to doubt, and the objectives of the proceedings are to be achieved, in spite of the hearing not being conducted in full; granting that motion is only possible when the state prosecutor does not object, nor does the injured party being properly served the notice of the date of the hearing and instructed on the possibility of such motion to be lodged by the accused.

V. Comments made by the experts

The experts welcome the way the visit had been structured including the meetings with the representatives of all stakeholders involved in victims' protection, such as judiciary, barristers, policemen and NGOs. The good approach was that one and the same topic was presented from the point of view of prosecutors, barristers and judges.

Thus it was possible to reach a well balanced approach covering problems which victims of crimes may encounter.

At the same time the experts realised how many common principles and values are shared amongst countries and lawyers. It had been stressed that the said visit was an unique opportunity to exchange professional experience with colleagues from France, Italy, Portugal and Holland and to see the good practices in their countries.

The experts expressed also their positive reaction on how the system of protection of victims works in Poland. The experts could learn also about the specific regulations addressed to victims of crimes as set out in the Polish Code of Criminal Procedure and accompanying acts, in particular about procedures which are not known in the countries of visitors.

In general view, the legal solutions seem to be well advanced although they need further consideration in terms of future implementation of the Directive 2012/29/EU. Some of them are not in existence in countries where the experts come from, e.g. the right to interpretation during the trial or range of varieties related to compensation within criminal proceedings. Also the legal possibilities to act as party or quasi party seem to pose to the experts well addressed form of granting victims presence in the criminal proceedings.

There are still certain issues to be improved, however the policy allowing victims to play an active role in criminal proceedings seems to fulfil obligations resulting from the Directive 2012/29/EU.

Summary

The aim of the visit was to present the existing legal solutions as well as practical aspects of victims' protection in Poland. The visit also gave an overview of the legal system and practical arrangements in order to fulfil the obligations imposed on the Member States by the Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (hereinafter referred to Directive 2012/29/EU)[15].

The first meeting was arranged in the Supreme Court where its President presented basic rules applying to victims during the criminal proceedings and the role of the Supreme Court in relation to judgments rendered by courts of the second instance. The information has been supplemented by determination of the impact of the Supreme Court's jurisprudence on the practice of ordinary courts. The role of the Supreme Court in this respect aims at setting the standards.

Later, participants visited the Victims' Support Organisation “Blue line” *(Niebieska Linia)* which is specialised in supporting victims of domestic violence Although this organisation disposes of very limited financial resources it provides victims with immediate help via call lines, psychological and emotional support, legal advices and shelters granting them physical protection from the perpetrators.

The last meeting that day took place in the Ministry of Justice where the following topics were discussed: prevention of domestic violence, legal tools to ensure the safety of the family”, state compensation to crime victims - Polish solutions, Network of Centres of Victims Support – practical aspects.

The morning session of the second day of the visit was held in Warsaw Bar Association. The participants encountered a very interesting presentation focusing on abuse of victim status of the persons and entities acting in that capacity. The rights provided to victims at the pre-trail and trial stage of the criminal proceedings were presented by attorneys.

During the meeting in the Prosecution General Office it has been revealed that 52 cases in 2012 in which the indictments were brought before the court by the injured party had been finalised with a final conviction. The Prosecution General Office has started analysing those cases to find out the reasons behind not commencing nor continuing the criminal proceedings. The experts found this institution practical in cases where the public prosecution is not interested in investigating some kind of criminality. This helps victims to find access to justice and fulfils the obligations set out in Article 10 (right to be heard) and in Article 11 (right in the event of a decision not to prosecute) of the Directive 2012/29/EU.

The visit organised on Wednesday morning in the Police Headquarters shed a light on the main activities of law enforcement in relation to support victims of crime. There has been presented an overview of the existing

[15]OJ 315/57, 14.11.2012.

policy as well as legal solutions related to combating of domestic violence and sexual abuse of women and children, in particular in close relationship. The other presentation has been dedicated to procedures in place pertaining to the fight against trafficking in human beings as well as the cooperation with NGOs in this respect.

In the afternoon the participants visited Foundation " Nobody's children" (*Dzieci Niczyje*) where they were familiarised with the aspects of protection of child victims and the scope of assistance provided for child victims in case of domestic violence.

The last visit on Thursday to the ordinary court of Warsaw (*Regional Court in Warsaw (EN) - Sąd Okręgowy w Warszawie (PL)*) was also dedicated to the presentation of the most important rules granted to victims in relation to the criminal proceedings, in particular applicable during the trial. The presentations have been contributed by the experts who presented legal grounds regarding victims actively participating at the trial in their countries and exchanged their experience in this respect. The presence in the court was also combined with a participation in the main trial during an ongoing criminal proceedings. During the trial the participants had noticed the way the parties exercised their rights. The advantage of the said case was to observe an involvement of the accused and the injured acting as the parties. Although the trial seemed to be the best performance to present all actors playing an important role in criminal proceedings, the programme aimed also to shed a light on the involvement of all stakeholders, such as those participating in the trial, investigating offences or acting in favour of victims. The participants welcomed the way the visit had been structured including the meetings with the representatives of all stakeholders involved in victims' protection, such as judiciary, barristers, policemen and NGOs. The good approach was that one and the same topic was presented from the point of view of prosecutors, barristers and judges.Thus it was possible to reach a well balanced approach covering problems which victims of crimes may encounter. At the same time the participants realised how many common principles and values are shared amongst countries and lawyers. It had been stressed that the said visit was an unique opportunity to exchange professional experience with colleagues from France, Italy, Portugal and Holland and to see the good practices in their countries.

Study visit in The Netherlands

10-13 September 2013

This report is drafted by the scientific referent, on the basis of notes taken and after consulting the participants. It follows the items in the *Directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime.*

Project coordinator: *Nathalie Glime (SSR, the Dutch Study Center for the Judiciary);* Scientific referent: *Rein Peters (former chief advocate-general, now honorary judge)*

Participants: France: *Marie-Francoise Guidolin, judge*; Poland: *Beata Klimczyk, prosecutor*; Portugal: *Joao Correia, judge*; Italy: *Beatrice Crosti, judge*; Bulgaria: *Ivan Georgiev, judge*.

The study visit: during the study visit there were meetings and discussions with the following functionaries, on the items listed after their name.

September 10, Utrecht.

1. *prosecutor Fred Bijlsma and judge Justus Candido: the Dutch judicial organisation; the legal possibilities concerning victims of crime (in investigation, prosecution, trial).*
2. *prosecutor Reinoud den Haan, also on behalf of the police, on the position of the victim in the new system of ``as soon as possible'' where the prosecutor meets stakeholders in the police station and decides on the case; visit on such a session.*
3. *Victim Support the Netherlands, Marianne Heuvelmans and Helene Steenhof, on the role of their organisation on behalf of victims before and during criminal proceedings.*

September 11, Amsterdam

4. *judge Chantal Meeuwisse and prosecutor Janette Kouwenhoven on the practise of victim support in court; explanation of the court procedure by the scientific referent*
5. *national coordinating prosecutor on human trafficking, Warner ten Kate, on trafficking in women*
6. *scientific referent, as former advisor on terrorism to the Council of Procurators-general, on victims of terrorism*
7. *judge Bastiaan van Merwijk, on the position of children in criminal cases.*

September 12, Amsterdam

8. *judge Anne Martien van der Does, mediation in criminal cases*
9. *chief prosecutor Jeroen Steenbrink, national coordinating prosecutor on Victim support, on behalf of the Council of Procurators-general, on the role of the public prosecution service on victim support*
10. *Helga Ezendam, senior policy officer, Ministry of Security and Justice, on existing and coming laws on the standing of victims in criminal proceedings, in relation to EU regulations.*

September 13, The Hague

11. *Ybo Buruma, judge in the Supreme Court, on recent developments in jurisprudence concerning the position of victims in criminal proceedings*
12. *Feedback by the participants to the scientific referent on the matters presented during the visit.*

The visit - contents and findings

Under A the *item* will be named, taken from the summary of the directive in
http://www.europarl.europa.eu/oeil/popups/summary.do?id=1234096&t=f&l=en

Under B is shortly named what was presented (and discussed) during the visit. In the text the number refers to the presentation mentioned on page 1.

Under C is how the participants in the study visit appreciate the Dutch approach to the item.

Introduction on the Dutch criminal system (1)

There is one national police organization, divided in 10 regional units and 1 national unit for supra-regional matters.

The prosecution service has public prosecutors on the level of district courts, and advocate generals with the Courts of Appeal. The central leading body is the Council of procurators-general. This council gives guidelines that are binding for the prosecutors and the police in investigating and prosecuting a crime. The procurator-general and advocate generals with the Supreme Court are not members of the public prosecution service but of the Supreme Court. The public prosecution service operates under the responsibility of the Minister of Security and Justice, who in practice does not intervene in individual cases. The public prosecutor can decide to or not to prosecute, based on evidence and on opportunity (mostly the importance of the case), within the framework of law and guidelines. He has some legal possibilities to settle the case himself (against which the suspect can make objection with the court). The prosecutor is accountable for how the police uses its authorities in crime investigation.

The Dutch judiciary system for criminal offences consists of 11 district courts, 4 supervisory courts (Courts of Appeal), 1 Supreme Court (reviewing the correct application of the law).The court investigates the case on the basis of a file, provided by the prosecutor; witnesses are not always necessary. They may be heard by the court itself or by an examining judge. This magistrate can, on request of the court, the prosecutor, the defence or on his own, prepare a complicated case for trial. Also he decides on the first phase of pre-trial detention.

In criminal cases the victim has no direct role (no ``action directe''), other than to receive information on the proceedings, to ask for prosecution, to claim damage, and to give written or oral information about the claim and about the impact of the crime (not about the evidence or the punishment). He cannot ask questions to the suspect, or ask the investigating judge to hear witnesses or to make any investigation.

General principle of the directive

A. victims of crime should be recognised and treated in a respectful, sensitive and professional manner

B. The treatment of the victim in Dutch criminal proceedings, in general.

In general, the Dutch law is in accordance with EU-regulations, especially meaning that the victim has his own place in the law on criminal proceedings. As mentioned before, the role is an accessory one. Within this limitation, the right to correct treatment is laid down in the law, along with many other rights, mentioned further on.

But some items regarding the interests of the victim are not yet in the law but in guidelines and procedures that regulate the work of the police and the prosecution service, who act accordingly. Judges conform themselves to procedures and standards that they have chosen on the basis of the existing EU regulations. Implementation of more of this in the law and in formal government regulations is in the making. In the meantime, what is already in the law and in the guidelines and procedures should be commonly applied. This is also an ongoing process for the police and the judiciary involving education and training. The victim is moving from the sideline of the process to the heart of it, which means also to the heart of the professionals in the judiciary system (10, 11).

For instance, in cases of capital offences a police family detective is appointed as a contact for the family from the start of the investigation till the end of the trial. He is not part of the investigating team, but is the intermediate to it.

Although the city mayor is no actor in the judicial process, it is customary in many cities and towns that he visits victims of high impact crime, e.g. in-house robberies.

As for the prosecution service, although its focus is on the offender, it also stands up for the victim, not as his lawyer or representative, but with an open eye for the needs of the victim. In practise, this means not psychological support (there is a national organisation for that), but information, attention for the claim, and good treatment. In general there are procedures for this, in high impact crimes special care is given. The victim is treated respectfully and without any form of discrimination. He is not treated as a pathetic person; if possible he has to take an active role, with help when needed.

In all this the prosecution service works together with the police, the Dutch victim support organisation, the probation service, the child protection agency (9).

C. The reaction of the participants in the study visit varied. To begin with, there is appreciation of the shifting of the attention in the judicial system in the direction of more attention for the victims. But in the view of some of the participants it stays to narrow a scope. Central in the discussions is :

a. the role and legal possibilities of the prosecution service in the countries,

b. the legal position of the victim in court (yes or no ``action directe''),

c. the Dutch law stays primarily suspect- or defendant-oriented in criminal proceedings, so giving more rights to the victim (e.g. in contacts with the prosecutor) can disturb the equilibrium of equality of arms between prosecutor and defence.

B. 2. The victim in Dutch criminal proceedings where the prosecutor decides on the punishment (``as-soon-as-possible''-procedure).

A recent aim of the public prosecution service is to handle 80 % of minor offences in a swift procedure, named ``as-soon-as-possible''. The prosecutor works in a police station, teaming up with police officers, the victim support organization, the probation service and the child protection agency. On the basis of information by the police, and after consulting the mentioned stakeholders, the prosecutor takes within 72 hours after the crime his decision. This can be: bringing the suspect to court; to drop the case; to drop the case under conditions, like paying damages or contact with the probation office; or a punishment order, like a penalty to a max of 20.000 euro, a working penalty, or a suspending of the drivers license. The decision of the prosecutor includes, when appropriate, paying of damages to the victim. The attending member of the national victim support organisation has then made contact with the victim. In case of a working penalty or a high fine the prosecutor will talk to the suspect via videoconference. If the offender does not agree with the decision of the prosecutor, he can make objections with the court (2).

*C. There was much discussion between the visitors about this practice. Some see it as a **best practice**, because this fast and efficient procedure is good for all interests involved. The system is based on trust in the different judicial actors, and promoting that is better than put more pressure on the existing slow and complicated trial system in this kind of light cases.*

Others wonder if there is enough distance between the prosecution service and the police. How can the prosecutor stay the magistrate when he works so close with the police? Indeed, the system can only work where and when there is a culture of trust between prosecutor and police, that is essential in such a system of fast decision on the basis of preliminary findings. Some wonder why there is no judge present to react on his proposal, this will not slow the procedure down. And where is the defence attorney? How to reconstruct later the reason for the decision? And how to prevent more heavy cases to be held away from the judge?

Common ground is, that parts of the procedure are named as ***best practices****: short-term consulting of stakeholders in the interest of a fast decision and if needed a fast trial. That is in the interest of the victim, as it can lead to speedy damage payment.*

A. **Definition of a "victim"** within the meaning of the Directive

B. In Dutch law the victim in criminal proceedings is defined as a person who, as a direct consequence of a criminal act, has suffered financial damage or any other kind of disadvantage. A relative of a deceased person who can make use of his right to address the court about the impact of the crime or who can claim damage within the criminal proceedings, has the same rights as a victim (1, 4).

C. A ***best practice*** *was seen in the definition of victims as ``interested parties" that can ask the Court of Appeal to oblige the public prosecutor to prosecute.*

Status of the victim

A. **Minors**

B. The interests of children as victims are in the care of the national Child protection agency. In investigations in crimes against children there are no special laws on their behalf. But there are rules and protocols for the police and the prosecutors. The police is to proceed in a professional, child-sensitive way. The investigation is done by trained and certified officers in special interrogation studio's, where the interrogation is recorded. The investigating judge hears minors in his office, after consulting the prosecutor and – if a suspect is identified - the attorney of the suspect. When this attorney supplies the judge with questions to be asked to the child, the judge is responsible for a good equilibrium between the rights of the suspect and of the child. The same goes for the court in deciding on a request to hear the child as witness in court; age and development of the minor are then taken into account. When a child wants to be heard in court about the impact of the crime, the parents or relatives have this right (7, 11). In abuse crimes against children the term of limitation starts at his 18. birthday. Of course the age of the victim is of importance for the verdict (7).

C. All considered this good practise, but it is similar to many other European countries.

A. **Persons with disabilities**

B. Not discussed: police and court buildings are accessible for disabled persons. Deaf/mute interpreters are available if necessary. For the mentally handicapped, instructions are as is mentioned above under ``children''.

A. Victims of terrorism

B. There are no rules or instructions on special attention to these victims, as they will be treated as good and with the same attention as victims of regular high-impact crimes or mass accidents (6). The national victim support organisation will give support to victims, including shocked bystanders, in case of large-scale incidents (3).

A. Women

B. The support of women as victims is a high priority within the police and the Dutch Victim Support organisation. There is a system of ``Leave me alone-''houses where harassed women can find shelter; stalking is a criminal offence for which preventive custody is possible and indeed applied.

In accordance with EU protocols and directives, trafficking in humans is a priority: there are special police teams, and in each prosecution office there is a special prosecutor, to combat this crime. The focus in this fight is on prevention, effective investigation and prosecution, protection and partnership (cooperation with stakeholders in a problem-oriented approach). Also the courts are working towards specialisation.

A former judge is national reporter to the government on human trafficking.

Victims are vulnerable. The approach to them is to diminish their many fears: of the organisation, of the police, of expulsion, and of prosecution in their own country. Of course good treatment is of importance also because they are valuable witnesses. There must be an eye for the problem of re-victimisation by repeated interrogations by the police, the investigating judge, the court, the Court of Appeal. It is important to notice that consent of the victim in the trafficking, and even their going back to the suspect after their complaint, is no excuse for the perpetrator; exploitation is the point. Nevertheless, the victims relation to the ``loverboy'' or pimp, and changing witness-accounts, can pose a problem in court (5).

C. *The way in which human trafficking is given priority within the police and prosecution organisation, and the cooperation between stakeholders, is considered a* ***best practise****.*

Information and support

A. <u>Right to understand and to be understood; and: Right to interpretation and translation</u>

B. On the right to understand what are the proceedings and the possibilities: police and prosecutors are instructed on this point, and in court hearings judge takes care that the victim can make use of his or her rights.
On translation: the written information that the victim is entitled to by police or prosecutor, but cannot understand because of the language, is to be translated (consent of the prosecutor is needed). The victim who wants to make a statement in court has the right to an interpretation, if he does not fully understands Dutch.

C. *The right to translation is considered a* ***best practise****.*

A. **<u>Right of victims when making a complaint; and: to receive information from the first contact with a competent authority; and: to receive information about the case</u>**

B. Everyone who considers himself a victim of a criminal act can *make a complaint* with the police. If necessary a translator/translation is provided. The police is obliged to write it down and to present a copy to the victim. The police brings the victim in contact with the national Victim Support Organisation.

Information about the rights of the victim and about the criminal proceedings are provided by the police during the investigation process, and by the prosecution office during the prosecution process. This includes information on the commencement and progression in the criminal case; decisions on dropping the investigation or the charges; commencement and continuation of the prosecution; date and time of the court hearing and of the judgement (1, 4). For the police and the prosecution office, the victim's right to receive information about the case (if wished) is a central issue. Both organisations have internal instructions and specialised personnel for this purpose. The prosecution office, police and victim support work together in ``victim-desks''. This multi-agency-cooperation is located at the prosecution offices, to provide information; a test is going on to do this online (by way of a service portal). The victim can look at the case file, unless the interests of the case prohibit this. In case an offender of a high-impact crime is released from jail, the victim will be informed. Often the release is under conditions of no contact and of not entering a street, a neighbourhood or even a city (1, 4, 7*).*

To victims of high impact crimes a *meeting with the prosecutor* is offered. The goal is, to ``manage expectations'' about what is to come: to inform the victim about the choices the prosecutor makes in the case and to give information on the proceedings to come. There is no written report of this meeting, only the fact that it has taken place is in the file. Mostly the victim is then accompanied by a relative or a member of the national victim support organisation. The contact between prosecutor and victim is explanatory to the victim; the only information that the prosecutor should receive is about the impact of the crime, not about the crime itself. For this,

the witness report of the victim is taken down by the police or the investigating judge. So what the victim tells the prosecutor should be the same as the later impact-statement that the witness can make in court; in this way, the contact means no infraction on the rights of the defendant. (4, 10).

There is *training* for the prosecutors for this kind of meetings (4).

C. *As* ***best practices*** *are considered: the efficiency of the protocols on informing the victim about the progress in the investigation and the prosecution; also the information on the release of the detained perpetrator; and the direct involvement of the national victim support organization.*

Doubts arose about the contacts between the prosecutor and the victim, before the trial: how about the equality of arms between the prosecutor and the defence, who has no such contacts? In countries with ``action directe", there is no procedure for victim-prosecutor meetings; a victim can ask for a meeting with the prosecutor, but has his own role in court. In other countries, the victim's conversation with the prosecutor before the trial may give the prosecutor an advantage over the defence, which may conflict with the equality of arms. Why has the victim in the phase before the verdict more rights than the defendant? Although formally a victim is regarded as such from the moment he reports to the police, the verdict defines if he really is the victim... In some cases it is not certain who is the victim and who the perpetrator (and think about domestic violence, where sometimes a complaint is made to achieve custody of the children or get the house).

Training of professionals for their contact with the victim is considered a ***best practise****.*

A. **<u>Right to access victim support services</u>**

B. The police brings the victim immediately after the issuing of the complaint in contact with the national victim support organisation, if the victim wishes so. This organisation provides practical, emotional and legal support to victims, witnesses, relatives and bystanders in criminal cases or accidents, from the first phase of the contact with the police until the end of the criminal proceedings (3).

C. *The work and professionalism of the national victim support organization was seen as a* ***best practice****.*

Participation in criminal proceedings

A. The right to be heard in court

B. This is a legal right in heavy cases (with a maximum penalty of 8 years or more, and some named violent crimes); but the victim can only speak about the impact of the crime. A further right, to speak about the evidence and about the punishment, is in discussion. In the Netherlands the role of the victim in court is not that of a co-prosecutor (he has an accessory role in the proceedings, no ``action directe'' (1, 4). The right to speak in court about the impact of the crime is laid down in the law; there is discussion on when and to whom this applies; the tendency is to let this to be decided by the judge and not to make his decision a point of validity or non-validity of the trial (11). The impact statement is not to be used as evidence, the statements with the police or with the investigating judge can be used for that purpose. The defendant should have the opportunity to ask questions to the victim in his role as witness; this can be denied in the interest of the victim, but then the challenged statement must be supported by other evidence, to be used (11). The victim can ask the prosecutor to add documents concerning the damage and the impact to the file (1).

C. *The participants differ in their opinion on the role of the victim during the trial; some (where action directe is the norm) think the Dutch system is next-best.*

A. The rights granted in the event of a decision not to prosecute

B. In case the victim does not agree with the police not investigating a case or with the prosecutor not prosecuting, the victim can ask the Court of Appeal to order the prosecutor to start a police investigation or a prosecution. As this is not only regarded as a victims right but also as a right of members of the society in a broader sense, this is a right of each interested party. This also applies to groups that have a common interest in prosecution. The order to prosecute does not mean that there is enough evidence or proof of guilt; just that there is reason to prosecute (1).

C. *Some participants consider the broader definition of victim in this procedure important, others think this obscures the clear definition and rights of the victim. And: it is strange that the Court of Appeal, and not the district court, should order the prosecutor to prosecute. Anyhow, the possibility of influence of the victim on the decision not to prosecute is a* ***best practise****.*

A. Restorative justice

B. In accordance with EU regulations, since 2011 the law provides the possibility of mediation in criminal cases. It asks from the prosecution service to promote this, when possible, and states that the result (that goes into the file) must be taken in consideration when the prosecutor asks and the court gives a conviction. In this there is much attention to the position of the victim (is it in his interest or is it merely the perpetrator who wants to make a good impression on the judge?). Also is taken in consideration that

not every case is suitable for alternative dispute resolving; in heavy cases the whole society wants to see justice to be done.

This was not new to Dutch practice. Already there was the possibility for victim and offender, before or during the trial, to agree on an organized meeting in the project ``victim in the picture''. Although this was not linked to the criminal procedure, the result could, if both agreed, be made part of the file. Aside from formal mediation, this possibility still exists.

In cooperation with the prosecution service, there is in the district court of Amsterdam an experiment (now expanded to five more courts) with mediation in criminal cases that can be organized on short notice during the trial. In every court there is already a mediation desk, to which judges in civil cases, when they consider mediation, can make a call during the trial and ask for arrangements for this. The experiment broadens the task of the desk to criminal cases. When called for, the desk makes arrangements with the parties to come to mediation. The desk hears both parties (perpetrator and victim, separately); if they agree, mediation follows (the mediator is chosen from a national list of certified mediators; in the experiment the state pays the mediator). The result is not binding for prosecutor or judge, but is of course taken into consideration. It can become part of the verdict, as conditions in a suspended penalty, like damage compensation or forbidden areas or actions (8).

Also there is an experiment with mediation in suitable cases where a victim asks the Court of Appeal to order a prosecutor who refused prosecution, to prosecute (8)

C. *There was much interest in and appreciation for this experiment, and it is considered a* ***best practice****. The participants in the study visit state that much attention should be given to the difference between cases where mediation can be an alternative and cases where justice should be seen to be done. Attention should be given to the possibility of mediation in the ongoing experiment with ``as-soon-as-possible'' justice, where the prosecutor chooses the penalty.*

A. <u>Legal aid</u>

B. The victim (or, if deceased, the descendants) of a violent or sexual crime has the right to free legal aid in the criminal proceedings, if a trial is started against the defendant.

A. **<u>Reimbursement of expenses and return of property</u>**

B. The prosecutor informs the victim about this possibility. The victim can, as ``injured party'', ask the court to order the convicted person to pay material or immaterial damages that are a direct result of the proven crime. The court can even order the convicted person to pay the damages to the state as intermediate to the victim. In cases of violent or sexual crime the state can pay the victim in advance. When the convicted does not pay he can then be detained in prison.

Only when the claim is to complicated (places a disproportional burden on the criminal process, for instance more research or witnesses are needed

for the relation crime - damage) the court can refuse this, in which case the victim can put his claim to the civil court. There is no right for the defendant to ask for this. In case no offender is found, the victim of violent offences can ask for compensation of damages from a special fund (1).

The possibility of preliminary measures for the victim (seizure of the assets of the suspect) is in the process of law-making (10).

Victims that testify as witness in court have their expenses paid for by the state.

Stolen items, found with the suspect, can speedily be given back to the victim by the prosecutor.

C. *There was much forcing the convicted to pay damages to the victim, and even to pay it beforehand. This, and the special fund, is considered a* ***best practice****.*

A. **Minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed**

B. In progress (10)

A. **Right to avoid contact between victim and offender**

B. The court takes measures that the victim, who wants to make a victim impact statement or wants to explain the damage-claim, is not confronted with the suspect outside the court room; there are separate waiting rooms for them. The victim can ask another person or the judge to read the statement for him in court. There is no opportunity for the defendant and the victim to ask questions to each other (4).

A. Right to protection of victims during criminal investigations, and: right to an individual assessment of victims to identify specific protection needs; and: right to protection of victims with specific protection needs

B. Care is taken that the number times a victim is interrogated as a witness is held to a minimum, but there is no law on it. In cases of domestic violence, safe housing can be provided. Also the offender can receive an order by the town mayor to stay out of the house (not an act within criminal proceedings) or he can be forbidden by the court to have contact with the victim or to come in the street/neighbourhood/city (as a condition to avoid preventive custody, or as part of the verdict that contains a suspended sentence). When children are victims, the child protection agency can take measures, even taking the child away from the parents (5, 7).
If necessary, there is a witness protection programme (4).

A. <u>Right to protection of privacy</u>

B. In exceptional cases the victim can be anonymous (1)

A. <u>Training of practitioners</u>

B. With the growing awareness of the interests of victims, there are trainings and working instructions for the police, the prosecutors, the judges and their staff, by the SSR (1, 4)

C. *There was much interest in this training, although the programme did not include a summary of the courses.*

A. Cooperation and coordination of services

B, C: See above under the ``as-soon-as-possible-procedure.

Interest in the role of the state as an intermediate in Summary

The **treatment of the victim** in Dutch criminal proceedings, in general: there is shifting of the attention in the judicial system in the direction of more attention for the victims. *Central in the discussions during the visit is a. the role and legal possibilities of the prosecution service in the countries, b. the legal position of the victim in court (yes or no ``action directe''), c. the Dutch law stays primarily suspect- or defendant-oriented in criminal proceedings, so giving more rights to the victim (e.g. in contacts with the prosecutor) can disturb the equilibrium of equality of arms between prosecutor and defendant.*

For the victim in Dutch criminal proceedings where the prosecutor decides on the punishment (``as-soon-as-possible''-procedure): see the full report for the pro's and contra's.

In investigations in crimes against **children** there are no special laws on their behalf. But there are rules and protocols for the police and the prosecutors. The police is to proceed in a professional, child-sensitive way. The investigation is done by trained and certified officers in special interrogation studio's, where the interrogation is recorded. The investigating judge and the court are responsible for a good equilibrium between the rights of the suspect and of the child. *All considered this good practise, but it is similar to many other European countries.*

There are no rules on special attention to victims of **terrorism**, as they will be treated as good and with the same attention as victims of regular high-impact crimes or mass accidents.

The support of **women** as victims is a priority within the police and the Dutch Victim Support organisation. There is a system of ``Leave me alone-''houses where harassed women can find shelter; stalking is a criminal offence for which preventive custody is possible and indeed applied. Trafficking in humans is a priority: there are special police teams, a national coordinating prosecutor and in each prosecution office a special prosecutor.

The way in which human trafficking is given priority within the police and prosecution organisation, and the cooperation between stakeholders, is considered a best practise.

On the **right to understand** what are the proceedings and the possibilities: police and prosecutors are instructed on this, and in court hearings the judge takes care that the victim can make use of his or her rights. The written information that the victim is entitled to by police or prosecutor, but cannot understand because of the language, is to be **translated.**

The right to translation is considered a best practise.

Everyone who considers himself a victim of a criminal act can **make a complaint** with the police. The police is obliged to write it down and to present a copy to the victim. The police brings the victim in contact with the national Victim Support Organisation.

Information about the rights of the victim and about the criminal proceedings are provided by the police during the investigation process, and by the prosecution office during the prosecution process. Often the release from custody is under conditions of no contact and of not entering a street, a neighbourhood or even a city.To victims of high impact crimes a meeting with the prosecutor is offered. *As best practices are considered: the efficiency of the protocols on informing the victim about the progress in the investigation and the prosecution; also the information on the release of the detained perpetrator; and the direct involvement of the national victim support organization. Doubts arose about the contacts between the prosecutor and the victim, before the trial: how about the equality of arms between the prosecutor and the defence, who has no such contacts.*

The police brings the victim immediately after the issuing of the complaint in contact with the **national victim support organisation**, if the victim wishes so. *The work and professionalism of the national victim support organization was seen as a best practice.*

The right to be heard in court is a legal right in heavy cases, but the victim can only speak about the impact of the crime. A further right, to speak about the evidence and about the punishment, is in discussion in the Netherlands. *Some think ``action directe'' is better.*

The victim can ask the Court of Appeal to **order the prosecutor to start a police investigation or a prosecution**. This is a right of each interested party. *Some participants consider the broader definition of victim in this procedure important, others think this obscures the clear definition and rights of the victim. This possibility of influence of the victim on the decision not to prosecute is a best practise.*

There is the possibility of **mediation** in criminal cases. *It is considered a best practice.*

The victim can, as ``injured party'', ask the court to order the convicted person to **pay material or immaterial damages**. The court can order the convicted person to pay the damages to the state as intermediate to the victim. In cases of violent or sexual crime the state can pay the victim in advance. When the convicted does not pay he can then be detained in prison. There is the possibility of seizure of the assets of the suspect. *The*

role of the state as an intermediate in forcing the convicted to pay damages to the victim, and even to pay it beforehand, is considered a best practice.

The court takes measures that the victim, who wants to make a victim impact statement or wants to explain the damage-claim, is **not confronted with the suspect** outside the court room. The victim can ask another person or the judge to read the statement for him in court. There is no opportunity for the defendant and the victim to ask questions to each other. In cases of domestic violence, safe housing can be provided. Also the offender can receive an order by the town mayor to stay out of the house. Or he can be forbidden by the court to have contact with the victim or to come in the street/neighbourhood/city (as a condition to avoid preventive custody, or as part of the verdict that contains a suspended sentence). When children are victims, the child protection agency can take measures, even taking the child away from the parents. If necessary, there is a witness protection programme. In exceptional cases the victim can be anonymous.

Training of practitioners: With the growing awareness of the interests of victims, there are trainings and working instructions for the police, the prosecutors, the judges and their staff. *There was much interest in this training.*

Study visit in Portugal

Lisbon 14-17 October 2013

The experts involved in the study visit represented: **Bulgaria** (Mrs. Svetlana Georgieva Shopova-Koleva, Prosecutor, Sofia Regional Prosecution Office), **France** (Mrs. Anne-Marie Volette, Judge, Vice President du TGI de Bordeaux), **Italy** (Mr. Antonio Balsamo, Judge, President of the Court of Assize and of the Court competent for patrimonial preventive measures against organize crime, Tribunale di Caaltanissetta), **The Netherlands** (Mrs. Marina Weel, Advocate-General in Leeuwarden) and **Poland** (Mrs. Klaudia Colette Tozyk, Judge in criminal law at the District Court of Stupsku).

The aim of the experts' visit was to observe existing legal solutions as well as practical aspects of victim protection in Portugal. The visit also enabled the experts to consider whether the arrangements put in place to support victims of crime are in compliance with the terms of Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crimes.

Standing of Victims in Criminal Proceedings - Programme

The study visit started in Centro de Estudos Judiciários with a necessary recap of the key elements of the Portuguese criminal procedure and, within this system, of the importance given to the concept of the assistant in criminal proceedings. This recap – "The Portuguese criminal system and the victim's standing in Portugal" – was by Mr. Francisco Mota Ribeiro, Coordinator of the Criminal Law Jurisdiction in CEJ.

Participants were thus able to recall some of the main rights of victims in the Portuguese criminal justice system, namely:

a) Right to provide information: The victim has the right to be heard within the proceedings and to submit evidence. In case the victim has to travel abroad, the judge can hear his or her statement in advance for future use as evidence at trial (the so-called statement for "future memory").

b) Right to receive information: The victim has the right to receive information on:

- The name of the police officer responsible for the investigation, as well as about the possibility of contacting such officer to obtain information on the evolution of the case;
- Types of assistance and services, as well as organizations the victim can contact;
- Steps after filing the complaint/report and role of the victim therein, namely the possibility of becoming assistant;
- Ways and means at the victim's disposal to obtain protection;

- To what extent and in what conditions the victim will have access to free legal counselling;
- Applicable requisites regarding a victim's right to compensation (both from the perpetrator and from the State).

***c) Right to file a complaint*:** The complaint can be submitted in person to any police authority or, also, by e-mail or on-line. The submission of a complaint is free of charge and no form requirements apply.

***d) Right to an interpreter*:** An interpreter shall be appointed to whoever must participate in the proceedings and does not speak Portuguese, whether victim, witness, assistant or civil party. This is totally free of charge.

e) Right to request to be heard for future memory.

***f) Right to become an assistant*:** By becoming an assistant, it is possible for the victim to participate more actively in the proceedings.

***g) Right to claim compensation from the aggressor within the proceedings*:** The victim has the right to be compensated by the perpetrator for the material and moral injuries sustained.

***h) Right to legal aid*:** The victim has the right to legal aid whenever he or she cannot afford the legal fees and/or the services of a lawyer.

***i) Compensation for participation in the proceedings*:** Victims who participate in proceedings should be compensated for their travel expenses, time spent and other expenses incurred as a result of such participation.

***J) Right to request a criminal court proceeding*:** The victim has the right to request a criminal court proceeding, that aims at the judicial confirmation of the prosecutor's decision to prosecute or to discontinue the proceeding. It is a voluntary stage conducted by an examining magistrate.

k) Right to request the ex officio appointment of a lawyer in cases of financial need.

l) Right to appeal: The victim, as an assistant or a civil party, has the right to appeal.

m) *Right of victims of violent crime to request the advance payment of compensation by the State:* In cases where these victims have sustained serious damages to their physic or mental integrity as a result of acts of violence, and the injury has caused a permanent, temporary and absolute incapacity for work of at least 30 days, or death, and the perpetrator is not found or does not have the financial capacity to pay due compensation.

The study visit continued at the Tourism Unit of the Lisbon Police Service, where experts were welcomed by Mr. António Marques, the Police Chief in charge of this Station. The delegation had the opportunity to check the way foreigners, who have been victims of crimes, are received and assisted. Police officers speak five languages, namely English, French, Spanish, German and Russian. The Tourism Unit of the Lisbon Police Service has a network of direct contacts with embassies, consulates, social support institutions, banking institutions, foreign police forces and the Lisbon Tourism Association. The Police officers aid foreigners in contacting their embassies, family, banks, hospitals, and they even borrow victims some amounts of money to enable them to get through the first hours after the crime was committed, until the arrival of other assistance.

The visit continued to the Domestic Violence Crime Investigation Unit of the Lisbon Police Service, where experts were welcomed by Mr. Silva Resende, the superintendent in charge of that Unit. The delegation had the opportunity to check the Police Service generic competences, such as public order and public security, crime prevention in general, terrorism and violent/organised criminality in particular, criminal investigation and traffic and road safety.

In Lisbon, the Criminal Investigation Department (CID) of the Public Security Police covers an area of 656 km2 and a population of 1,768,246 citizens. In 2012, the Public Security Police of Lisbon made 759 arrests. A total of 11,904 criminal investigations were initiated and 12.406 were completed.

The experts had the opportunity to listen to Mrs. Angelina Ribeiro, Commissioner of Police, talking about domestic violence investigations, explaining all the stages of the investigation, the evaluation of risks and the measures taken care in order to protect the victim.

The entire group also had the opportunity to see that, in the waiting room of the Police Station, there's a place where children can play, while they wait for their parents or wait to be heard, and there is also a placard listing the most important victim's rights. In the Criminal Investigation Department (CID) of the Public Security Police, children are heard in a room decorated especially for them.

On the second day, the experts visited two NGOs involved in supporting and assisting victims of crime: UMAR (Women's Association Alternative and Response) and APAV (Portuguese Association for Victim Support).

UMAR (Women's Association Alternative and Response) is a NGO specialized in supporting victims of domestic violence, providing victims with immediate help through call lines, psychological and emotional support, legal advice and shelters, granting them physical protection from the perpetrators. The experts were met by Mrs. Elizabete Brasil, Coordinator of the Unit, specialized in supporting victims of domestic violence and Mrs. Elsa Branco, Directress of a shelter home, who presented the work developed by UMAR, in the framework of protection of victims of domestic violence and human trafficking. The experts had the opportunity to listen to their hosts reporting the most remarkable experiences of the activity they have carried out. The experts also had the opportunity to question their hosts on the methodology followed in protecting victims.

APAV (Portuguese Association for Victim Support) is a private charitable organization, recognized by law with the statutory objective to inform, protect and support citizens who have been victims of crime. It is a non-profit organization assisted by volunteers, which supports victims of crime, in a personal, sensitive and professional way, through the provision of free and confidential services.

To succeed in its mission, APAV aims:

- To promote the protection and support available to victims of crime in particular those victims with fewer economic resources;
- To achieve this by means of the dissemination of information, personalized counselling and guidance, and all kinds of assistance (moral, social, legal, psychological and economic);
- To liaise with all relevant entities and stakeholders, the police, social security agencies, health centres, local authorities, autonomous regions, and any other private or public bodies dealing with crime and victims of crime;
- To foster and promote social solidarity, particularly through the creation of networks of voluntary collaborators and social sponsors, as well as through victim-offender mediation and other practices for restorative justice;
- To assist and sponsor research into the problems victims face, so that their interests can be satisfied in a more adequate manner;
- To promote and participate in programs and projects which raise public awareness of crime and of the victims of crime;
- To contribute to the adoption of laws, regulations and administrative measures which increase the protection and support available to victims of crime, with a view to reducing the risk of victimhood and its effects;
- To liaise with international organizations, and work closely with similar bodies in other countries.

APAV (Portuguese Association for Victim Support) provides victims with immediate help via call lines, psychological and emotional support, legal advice and shelters, granting them physical protection from the perpetrators. The experts were received by Mr. João Lázaro, Director of APAV, who presented the work developed in the framework of protection of victims of violence. Experts also had the opportunity to visit the offices where victims are heard in total privacy, as well as the office where children are also heard.

On the second day, experts had the opportunity to visit a shelter home for women and child victims of domestic violence, where they asked several questions about the support that is given to victims, while they stay in the shelter and afterwards, and what the rules applied there are.

On the third day, the experts began their journey with a meeting in the Department for Investigation and Criminal Action (DIAP), where they were received by Mrs. Maria José Morgado, Senior Public Prosecutor and Directress of DIAP, Mrs. Maria Fernanda Alves, Senior Public Prosecutor and Coordinator of the Domestic Violence Unit, and Mrs. Ana Cristina Vicente Santos, Senior Public Prosecutor and Coordinator of the Child Sexual Abuse Unit.

The experts had the opportunity to learn how victims are helped, from the moment they request help - first of all by the police, then by the Office for Information and Assistance to Victims, which works closely with victims and prosecutors. The experts listened to Mrs. Fernanda Alves' explanations about the methodology followed in DIAP in investigations of domestic violence crimes, the way the prosecutors, personally, listen to victims to evaluate the risks, and how, in a short period of less than twenty four hours, the perpetrator can be moved away from the victim.

In fact, after the work done by the police: checking for the existence of witnesses, of minors in residence, of firearms and their relevance in the reported crime, summary exams are made which show the danger of continued criminal activity, so that the decision to immediately subject the offender to coercive measures can be taken.

After that, in DIAP, another evaluation is carried out, with the aim to:

- Establish minimum conditions for the reception of victims;
- Refer the victim and children to legal, psychological and socio-professional help;
- Coordinate the work with the Family Court;
- Immediately direct the victim to Unity Hospital and National Forensic Medicine Institute (INML) for the timely collection of evidence;
- Immediately direct the victim to a shelter home, when necessary;
- Collect and evaluate evidence;
- Create psychological conditions for the provision of victims' testimony, if necessary, without the presence of the defendant.

The whole team visited the specified office where victims of crimes are heard, and saw how cases are distinguished by colours, to mark the urgency of those in which there is a direct and real danger for the life and the health of the victims.

In addition, the experts listened to Mrs. Ana Cristina Vicente Santos' explanations about the methodology followed in DIAP in the investigation of child sexual abuse crimes; the way prosecutors personally listen to victims to evaluate the risks and decide which measures can be taken to protect the child. We also had the opportunity to see the offices specifically used to hear children, decorated in a friendly way.

In the afternoon of the third day, the entire group went to the Criminal Court of Lisbon, where we were received by the President of the Court, and had the opportunity to attend a hearing.

Also in the afternoon of the third day, the experts went to the Commission for Citizenship and Gender Equality, a department under the authority of the Presidency of the Council of Ministers and the Secretary of State for Parliamentary Affairs and Equality.

Domestic Violence is neither a new phenomenon nor an exclusively national problem. The growing visibility this issue has been acquiring, together with the redefinition of gender roles, the construction of a new social conscience and an awareness of citizenship – as well as the affirmation of human rights – has led to the definition of policies to fight a phenomenon that for many years remained silent.

Portugal has defined an integrated and systematic path in the fight against domestic violence, co-substantiated by the adoption and implementation of National Plans against Domestic Violence, which are developed by the Commission for Citizenship and Gender Equality.

The National Plans against Domestic Violence points clearly towards a consolidation of a policy of prevention and fighting against domestic violence, by promoting a culture for citizenship and equality, strengthening information and training campaigns, supporting and sheltering victims for their reintegration and autonomy.

Studies on the economic and social costs of domestic violence, that have been carried out by the Ministry of Health, give us, knowledge of situations of great vulnerability, to which women victims of violence are exposed.

Female victims of violence are three to eight times more likely, depending on the case, to have sick children, to not find a job and, if working, to not obtain job promotions, to resort to hospital services or psychiatric consultations for emotional disturbances, and to commit suicide.

For these reasons, the main objective of the Commission for Citizenship and Gender Equality is the intervention in the fight against violence exercised directly over women, in the context of relations of intimacy, whether they are conjugal or similar, present or past.

At the Commission for Citizenship and Gender Equality (CIG) the experts were received by the President, Mrs. Fátima Duarte, and by Mrs. Cláudia Mateus who is responsible for the telecare service for victims of domestic violence.

The telecare service for victims of domestic violence was created and developed by CIG, ensuring immediate and effective intervention in emergencies, on a permanent basis and free of charge.

The experts had the opportunity to learn how the Global Position Service (GPS) works, with the collaboration of the Red Cross, which ensures permanent care for victims who benefit from protective measures, and also with the collaboration of the Police, that ensure immediate protection.

The experts even saw one of the devices that are given to victims of domestic violence and learned that in 2011, twenty nine telecare measures were applied, a figure that grew in 2012 to seventy seven, and grew even more in 2013. Indeed, on 16 October 2013, 115 telecare measures were in action.

Mrs. Cláudia Mateus, from The Commission for Citizenship and Gender Equality also discussed the measures that are taken with regard to victims that need help to establish their return to active life, outside a shelter home: providing funds to rent a house, to buy food and pay for their children's studies. That support is given during the first six months after they leave the shelter home.

On the last day of the Lisbon study visit, the experts had a meeting with the Commission for the Protection of Crime Victims.

In 2009 a system to ensure compensation to victims of violent crime and domestic violence was created, through which all victims who have suffered serious damage to their physical or mental health, directly caused by acts of violence occurred in Portugal, have the right to request, from the State, an advance on the compensation owed to them by the offender, as long as they meet certain requirements.

The Commission for the Protection of Crime Victims is competent to grant and establish the value of the compensation in advance. Victims can request compensation by electronic mail (correio.cpvc@mail.sg.mj.pt), within one year from the date of the event. In the year 2011, the Commission for the Protection of Crime Victims has paid three hundred and thirty thousand Euros (330.000 €) in advance payments of compensation to one hundred and seven (107) victims of crimes.

This legal system also applies to facts that have taken place outside Portugal, against Portuguese or citizens of EU Member States living in Portugal, as long as they are not entitled to compensation paid by the Country where the violent act occurred. The Commission also assists victims in submitting applications to other countries.

Comments made by the experts

The experts were pleased with the way the visit had been structured, including the meetings with the representatives of all the stakeholders involved in victims' protection such as policemen, NGOs and judicial authorities, as they all had the opportunity to hear comprehensive presentations, ask questions and receive detailed answers about the problems that we are all facing in our countries.

The experts were unanimous in finding the principles and values that are common across the various countries, and emphasized that these visits allow an exchange of experience and knowledge with colleagues from different countries involved in the project.

The colleagues from France, Italy, Netherlands, Poland and Bulgaria expressed their positive reaction on how the system of protection of victims works in Portugal.

Our colleague from the Netherlands, Mrs. Marina Weel, was impressed by the way the people at UMAR (Women's Association Alternative and Response), APAV (Portuguese Association for Victim Support) and at the shelter home take care of victims.

Mrs. Marina Weel was also impressed with the electronic device for victims – telecare service – and expressed her opinion in favour of its use across Europe. The expert from Netherlands also thinks that the way Portuguese prosecutors take care of battered women and children, namely hearing the victims in person, should be followed all over Europe with all victims of serious crimes.

The least positive aspect that was pointed out by the Dutch expert is related to the need for the victim to be represented by a lawyer, when she or he wants to seek compensation exceeding € 5.000.

The expert from Poland, Mrs. Klaudia Colette Tozyk, was impressed with the fact that Portugal has a Portuguese Association for Victims Support, has a special department for tourists and foreigners, and has a Commission for the Protection of Victims of Violent Crime, within the Ministry of Justice.

Mrs. Klaudia Colette Tozyk was also very impressed with the electronic device for victims – telecare service – that was presented at CIG (Commission for Citizenship and Gender Equality). She admires the needs of organization of all official institutions like the Police, the Red Cross Unit and Ambulances, and she would like to implement that solution in Poland.

Our colleague from Poland would also like to see a separate Police Unit established in her country, for foreigners who are victims of a crime, like the Tourism Unit of the Lisbon Police Service.

The expert from Bulgaria, Mrs. Svetlana Georgieva, was impressed by the Tourism Unit of the Lisbon Police Service, especially for foreigners who are victims of a crime, and she would like to establish such a unit in her country, especially at the seaside, which is visited by a lot of tourists in the summertime. Mrs. Svetlana Georgieva thinks it is very helpful for tourists who usually don't speak the language and don't know the country they are visiting, to have someone to whom they may resort, in case of emergency, to get the support they need, in order to contact their respective embassies, receive new documents, cancel their credit cards etc.

Another thing that impressed Mrs. Svetlana Georgieva, the Bulgarian expert, was the waiting room for children in the Unit of the Public Security Police, and the inquiry office for children in DIAP (Department for Investigation and Criminal Action).

Mrs. Svetlana Georgieva also highlighted the fact that in DIAP, the processes are listed in different colors according to their urgency, and the fact that there is good cooperation between police, prosecutors and NGOs.

The Bulgarian expert was also very impressed by the shelter home she visited, not only by the living conditions of victims of domestic violence, and the treatment they receive, but also by the fact that the shelter home was built with state money but it is operated by APAV (Portuguese Association for Victim Support), which is paying the state a symbolic rent.

Finally, Mrs. Svetlana Georgieva was also very impressed by the electronic device for victims – telecare service – which was presented at CIG (Commission for Citizenship and Gender Equality) and the fact that victims of domestic violence may get compensation from the Commission for the Protection of Victims of Crimes, and the request may be sent online.

A less positive aspect, which was pointed out by the Bulgarian expert, is related to the need for the victim, to have to be represented by a lawyer, when she or he wants to seek compensation exceeding € 5.000 or be an assistant of the prosecutor.

Conclusive remarks of the Scientific Referent

At the end of this study visit, participants concluded that the majority of the systems involved in the study share many similarities, it being important to compare systems and choose the best practices to be followed in Europe.

In the matter of victims support in Portugal, the experts were unanimous in identifying as best practices:

- The Telecare service to victims of domestic violence, a service that should be extended to all victims of violent crime in Europe;
- The Tourism Unit of the Public Security Police, where foreign victims are helped.

Portugal has already put in place many protective measures to provide assistance to crime victims, but there is still a long way to go in order to improve the ones already taken and create others.

Initiatives like the one that was developed by the Ecole Nationale de la Magistrature should be applauded.

Summary

This study visit took place from 14 to 17 October 2013. The experts involved represented: **Bulgaria** (Mrs. Svetlana Georgieva Shopova-Koleva, Prosecutor, Sofia Regional Prosecution Office), **France** (Mrs. Anne-Marie Volette, Judge, Vice President du TGI de Bordeaux), **Italy** (Mr. Antonio Balsamo, Judge, President of the Court of Assize and of the Court competent for patrimonial preventive measures against organize crime, Tribunale di Caaltanissetta), **The Netherlands** (Mrs. Marina Weel, Advocate-General in Leeuwarden) and **Poland** (Mrs. Klaudia Colette Tozyk, Judge in criminal law at the District Court of Stupsku).

The study visit started in Centro de Estudos Judiciários with a necessary recap of the key elements of the Portuguese criminal procedure.

The study visit continued at the Tourism Unit of the Lisbon Police Service, where the delegation had the opportunity to check the way foreigners, who have been victims of crimes, are received and assisted.

The visit continued to the Domestic Violence Crime Investigation Unit of the Lisbon Police Service, where experts had the opportunity to listen to Mrs. Angelina Ribeiro, Commissioner of Police, talking about domestic violence investigations, explaining all the stages of the investigation, the evaluation of risks and the measures taken care in order to protect the victim.

On the second day, the experts visited two NGOs involved in supporting and assisting victims of crime: UMAR (Women's Association Alternative and Response) and APAV (Portuguese Association for Victim Support). UMAR (Women's Association Alternative and Response) is a NGO specialized in supporting victims of domestic violence, providing victims with immediate help through call lines, psychological and emotional support, legal advice and shelters, granting them physical protection from the perpetrators. APAV (Portuguese Association for Victim Support) is a private charitable organization, recognized by law with the statutory objective to inform, protect and support citizens who have been victims of crime. It is a non-profit organization assisted by volunteers, which supports victims of crime, in a personal, sensitive and professional way, through the provision of free and confidential services.

On the second day, experts had also the opportunity to visit a shelter home for women and child victims of domestic violence.

On the third day, the experts began their journey with a meeting in the Department for Investigation and Criminal Action (DIAP), where they learn how victims are helped, from the moment they request help - first of all by the police, then by the Office for Information and Assistance to Victims, which works closely with victims and prosecutors.

In the afternoon of the third day, the entire group went to the Criminal Court of Lisbon, where we were received by the President of the Court, and had the opportunity to attend a hearing.

Also in the afternoon of the third day, the experts went to the Commission for Citizenship and Gender Equality, whose main objective is the intervention in the fight against violence exercised directly over women, in the context of relations of intimacy, whether they are conjugal or similar, present or past. At the Commission for Citizenship and Gender Equality (CIG) the experts had the opportunity to learn how the Telecare Service works.

On the last day of the Lisbon study visit, the experts had a meeting with the Commission for the Protection of Crime Victims.

Conclusive remarks

In the matter of victims support in Portugal, the experts were unanimous in identifying as best practices:

The Telecare service to victims of domestic violence, a service that should be extended to all victims of violent crime in Europe;

The Tourism Unit of the Public Security Police, where foreign victims are helped;

Study visit in Italy

27-30 January 2014

1. Italian criminal system and victims of crime. The legislative texts of reference

The Italian criminal system is regulated by a Criminal Code (cc) issued in 1930 and a Criminal Procedure Code (cpc) adopted in 1988. Both codes have been amended several times in recent decades. The Criminal Code of 1930 is expression of an authoritarian regime focused only on the State interest in the punishment of the crime. Despite this approach, the conduct of the victim is taken in account at the time of sentencing and the implementation of some restorative measures grants to the offender certain benefits. Some recent provisions are built starting from the victim's point of view. The Criminal Procedure Code of 1988 reverses the perspective of its antecedent of 1930, pushes towards an adversarial system, is inspired by a major enhancement of the parties role and, as I will explain afterwards, discloses to the victim a participation in the criminal proceedings, ensuring some rights, even if limited, as never before.

Complying with the international obligations and according to a major social awareness of the need to protect crime victims, some laws have been recently enacted for protecting and supporting victims of specific crimes because of their vulnerability (victims of trafficking, sexual violence, domestic violence, organised crime, terrorism) and child victims. **On the wave of the latest international obligations, Italy, by two very important laws (L. 1.10.2012, n. 172 and L. 15 October 2013, n. 119), has extended support and rights for child victims and for victims of certain types of crimes (in particular, gender-based violence and offences against the person).**

With regard to the most important European and international instruments concerning the victim, the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings was not transposed into Italian law, as well as the three last three Directives on preventing and combating trafficking in human beings and protecting its victims (D. 2011/36); on combating sex abuse and sexual exploitation of children and child pornography (D. 2011/92); establishing minimum standards on the rights, support and protection of victims of crime (D. 2012/29). The Directive 2004/80/EC relating to compensation to crime victim was transposed in a partial and unsatisfactory way by legislative Decree No 204 of 9 November 2007.

Italy has ratified the CoE Convention on Action against Trafficking in Human Being (CETS No 197, Warsaw 2005), entered into force on 1.3.2011, as well as the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No 201, Lanzarote, 2007), entered into force on 1.5.2012, and **the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No 210, Istanbul, 2011), not yet entered into force at international level.**

On the contrary, Italy has not signed neither ratified the CoE Convention on the Compensation of Victims of Violent Crimes (Cets No 116, Strasbourg, 1983), while it as signed and not yet ratified the CoE Convention on the Prevention of Terrorism (CETS No 196, Warsaw 2005) and the CoE Convention on Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health (CETS No 211, Moscow, 2011).

Italy has signed and ratified the UN Convention against Transnational Organised Crime (Palermo, 12-15 December 2000) and its two Protocols, entered into force on 12.4.2006.

2. To understand the system: basic notions

Bearing in mind the European requirements on rights, support and protection to grant to the victims of crime and to the vulnerable victims, I would try to explain steps by steps what is the victim position in Italian criminal proceedings. Let me first give some preliminary indications on the system.

Italian codes never used the world “victim”, the expression was introduced for the first and only time in a provision added in 2009 to the Code of Criminal Procedure (art. 498.4ter cpc) dealing with child victim.

Instead of “victim”, the Codes speak of “offended person” and “damaged person”.

The “offended person” is the person whose interest is protected by the criminal provision infringed with the offence.

The “damaged person” is the person who suffered a patrimonial or not patrimonial damage because of the offence.

“Offended person” and “damaged person” are in most cases the same person (for instance the person who undergoes a sexual assault), but sometimes they are not. The close relatives of the offended person who died as result of the crime have the same rights of the offended (art. 90.3 cpc). Non-profit associations or entities recognised by the law as protecting the interests violated by the offence can exercise the same rights and faculties of the offended person, with his/her consent (arts 91-95 cpc).

The “offended person” has, independently from any economic purpose, a basic interest to ascertain the facts and the responsibilities, therefore, unlike the “damaged person”, he/she enjoys exclusive rights during the investigations.

During the trial, the offended person has, on the contrary, relevant rights only by becoming “civil party”.

The “civil party” is a party of the criminal proceedings who exercises a civil action before the criminal court in order to claim compensation for damages arising from the offence: that is why both “offended” and “damaged” persons can take on this role. It is possible to become “civil party” after the

conclusion of the preliminary investigations and until the official opening of the trial hearing[16].

The Prosecutor who becomes aware of the committing of a crime has the duty to initiate criminal proceedings *ex officio*, except in cases where the law provides that the offence may be prosecuted only on complaint and express request of the offended person. This happens in case of minor offences and in case of more serious offences, in order to let the victim decide whether or not the proceedings must begin[17].

In 2000 (D. Lgs. 274) a new act establishing the jurisdiction of the "Judge of the peace" on minor offences provided innovative measures concerning the offended person, who enjoys, *inter alia*, the right of summoning directly the offender before the Judge. This right can be exercised only in relation to offences prosecuted upon complaint and a subsequent intervention of the Prosecutor is needed for going on with the proceedings. Furthermore, the Judge of the peace can implement mediation proceedings also in penal matter (this is the first express codified disposition in Italian criminal law).

3. Immediately after the crime: what the system offers to the victim

No specific law provisions regulate the assistance to the victim immediately after the crime. Therefore, the support depends largely on the sensibility of public officers or medical staff who come first in contact with the victims. In this very patchy situation, the effective victim protection is random.

Normally, after the crime, the victim meets the police or the hospital services.

At the public hospital the victim, as well as persons of any nationality who need medical care, can receive first aid free of charge. No documents are needed. If the status of the person lets presume that a crime was committed, the doctor must report the facts to the police. There are no specific obligations to give other type of support or information to the victim, with an exception for the offences of stalking[18], as well as **family maltreatments, slavery, child prostitution, child pornography, sexual tourism, trafficking, slaves trade, sexual violence, sexual activity with children, corruption of minors, gang rape,** [19] **and beatings and injuries committed in a framework of domestic violence[20]. In these cases, when is the victim who reports the crime, the health centers, as well as the Police, and every public institution to which the victim reports the offence, shall give information about the available anti-violence**

[16] In case of special proceeding (abbreviated proceeding, negotiation of the sentence between offender and prosecutor, immediate trials, decree of conviction), the system discourages or doesn't allow (plea-bargaining) the participation of the civil party, also because the judge decides only on criminal aspects of the offence and the civil aspects shall be dealt before a civil court.
[17] Among such offences: insult; simple threats; beating; simple personal injury; harassment; certain sexual offences toward persons older than 14 years; stalking towards adults.
[18] Art. 11 d.l. 23 February 2009, n. 11, converted into law 23 April 2009 , n. 38
[19] Art. 1 .3.4bis d. l. 14 August 2013, n. 9, converted into law 15 October 2013, n.119, extended to these offences the provision of art. 11. 1 d.l. 23 February 2009, n. 11, converted into law 23 April 2009 , n. 38.
[20] Art. 3.5 law 15 October 2013, n.119

centers existing in the vicinity. Furthermore, on victims request, they shall put in touch the victim with such support centers. Also before these new provisions, the protection and care of the victims was sometimes guaranteed by good practices and services established in the hospitals. For instance in Milan the public hospital "Mangiagalli" has created a centre for supporting victims of sexual assaults and domestic violence.

As the contacts with police are concerned, in general the law neither indicates express provisions about the way to treat the victims nor establishes obligations to give them information and support, **except for the cases indicated above, where they have the same obligation provided for health center and public institutions[21].**

Anyway, despite the few and sectorial provisions concerning the pre-procedural phase, a growing bottom-up approach to the problem has led to interesting and effective solutions. I think for instance to the "Understanding Protocols" promoted by some Public Prosecutor's Offices. These Protocols set up rules of cooperation among different local instances (court, police, associations, entities, social services…) in order to support vulnerable victims and to apply standards of assistance and services depending on different situations.

In this legal vacuum, that the Italian legislator reduces only when forced by international obligations, the positive factors are the increasing civic awareness about the needs of vulnerable victims; the spontaneous territorial initiatives; the large number of associations or voluntaries; the many websites where the victim can find information; the telephone hotlines. The negative factors are the continued lack of a general statute for the victims; the absence of an established institutional coordination among public or voluntary services; the lack of general information available for all the victims; the non-uniform diffusion of supporting initiatives or services through the country and the large differences existing from region to region. Furthermore, with particular regard to vulnerable victims, it has been noted that private associations, who come first in touch with the victims, in some cases offer them protection but at the same time bypass or avoid or discourage the subsequent contact victim/public authority, with possible serious prejudice to justice administration. On the other side, since the criminal legislation considers the irregular immigration as an offence, the victim who is also an irregular migrant cannot – except very rare exceptions - report a crime because in this case he/she will be charged. The situation leads to a deeply increasing of the dark figure of crime, with regard for instance to offences as exploitation, racism or to situations of undeclared work. The eventual granting by the authorities of a "stay permit" in case of social or judicial needs[22] is perhaps too uncertain for balancing the victim's fear to run the risk of being charged. The same fear can induce the irregular migrant not to seek medical care or to hide the criminal nature of his/her injuries, also if the doctor shall neither ask for documents nor report the case to the police, if the report exposes the injured person to criminal proceedings (art. 365.2 cc).

[21] See previous footnote.
[22] Art. 18 D.lgs 25.7.98/286 on immigration

4. Reporting a crime

A person who becomes victim of a crime can report it to the Public Prosecutor or to the police forces. If the crime is prosecuted *ex officio*, it can be reported at any time by anyone and the report is not needed to proceed. If the crime shall be prosecuted on request, the offended person may submit a complaint within three months since the day he/she became aware of the offence (six months in case of some sexual offences). Legal entities are also entitled to submit a complaint. Without complaint, no prosecution can begin[23]. Except for specific cases, the offended person has the right to withdraw the complaint, a right that in some cases exposes vulnerable persons to unduly pressure[24]. The report or the complaint of a crime can be made orally (and the public officer will write it) or in writing. Also by writing, the victim usually receives assistance from the public officer. The police shall transmit without delay the act to the Prosecutor Office.

The offended person receive a copy of the report, in Italian. If the victim is a foreigner and, after the report, comes back to his/her country, the statements taken by the police couldn't be used afterwards as evidence. The victim shall be summoned and be present at the trial for repeating them before the court. In case of absolute impossibility to appear in the trial, the judge can decide, on request, to read during the trial the statements taken in this phase (art. 512 bis cpc).

If the offended person will obtain information about the following up of his/her report, an express request shall be made to the Prosecutor or to the police at the time of the report/complaint or afterwards during the investigations: only in this case, the offended person will be informed about the decision of the Prosecutor to close the case or to extend in time the investigations. **A different solution has been adopted for giving information to victims of particular offences (see § 5).**

Another source of further information is available to the offended person, who has the right of access to the Official Register of the Reported Offences (art. 335.2 cpc). In such Register the Prosecutor who receives the *notitia criminis* shall enrol and update the indications about the prosecuted offense, the proceeding number, and the identity of the alleged suspect (art. 335.2 cpc). The access can be denied only where the information is secreted[25].

The offended person has also the right to submit to the Prosecutor, the Judicial Police or to a consular officer abroad an application for proceeding in Italy (istanza) for offences committed abroad.

[23] The child victim under 14 and the mental ill can complain if represented by parents or by a caretaker, the child victim between 14 and 18 and the incapacitated can complain autonomously but not against the parents or representatives will (90.2 cpc).
[24] The alleged offender can refuse the withdrawing of the complaint.
[25] The information can be secreted temporarily (maximum 3 months) or also indefinitely (in case of very serious crimes like terrorism, mafia, etc.) for investigation reasons.

5. The preliminary investigations

The preliminary investigations are carried on by the Prosecutor and the police with the intent to provide evidence in order to decide whether initiate or not the criminal proceedings. The judge of this phase is the Judge for the Preliminary Investigations (JPI), who guarantees the acts lawfulness.

In this stage, to the offended persons are recognized some rights, because of their interest to the ascertainment of facts and responsibilities.

Therefore the offended person may appoint a counsel (art. 101 cpc). Free legal aid is assured by low income and, with exceptions to the income limits, **in case of family maltreatments, female genital mutilation, sexual violence, sexual activity with children, gang rape and stalking, and, if committed against children, slavery, child prostitution, child pornography, sexual tourism, trafficking, slaves trade, corruption of children, grooming[26].** The offended person can also perform "defensive investigation" to collect relevant evidence, but is the Prosecutor who decides on the admissibility of evidence.

The offended person has the right to make a statement to the police or to Prosecutor, also on own initiative. The law doesn't specify the way the Prosecutor or the police shall take such statements during the investigations, except for children. According to the law 172/2012, when the police shall assume information from a minor (victim or not) relating to particular offences (slavery, child prostitution, child pornography, sexual tourism, trafficking, slaves trade, sexual violence, sexual violence with children, corruption of minors, group rape, grooming), the assistance of a child psychologist or psychiatrist, appointed by the Prosecutor, is needed. For the above indicated offences the child shall be heard in the same way by the Prosecutor[27].

According to his/her role, the offended person enjoys some information rights, in order to be aware of some fundamental acts of the Prosecutor and to intervene to defend his/her own interest in going on with the proceedings[28]. This is why he/she has also the right to require the intervention of the Higher Prosecutor office, in case of Prosecutor inactivity (art. 413 cpc). **Under the most recent laws, in the case of violent offences against the person, the Prosecutor shall always inform the offended person where he/she intends submit a request for**

[26] Art. art. 76.4ter Presidential decree 30.5.2002, n. 115, consolidated rules and regulations on legal costs. Paragraph 4ter was introduced by the l. 23 April 2009, n. 38 and modified by the l. 1 October 2012, n. 172 and by the l. 15 October 2013, n. 119.

[27] In this sense arts 351.1*ter* (concerning the police) and 362.*1bis* cpc, (concerning the Prosecutor), both introduced by art. 5 L. 1.10.2012, n.172 implementing the Lanzarote Convention.

[28] The information rights enjoyed by the offended persons are following: the right to be informed by the Prosecutor in case of a technical examination which cannot be repeated (art. 360.1 cpc); the right to take part in such examination; the right to receive the notice of investigation (art. 369 cpc); the right, on request, to be informed in case the Prosecutor requires to dismiss the case (art. 408.2cpc) or applies for extending in time the investigations (art. 406.3 cpc); the right to appeal before the Judge of the Preliminary Investigations against the request of closing the case and the right to examine within 10 days the acts (art. 408.3 cpc); the right to be informed if the JPI decides to accept the Prosecutor request (art. 409.1 cpc), or fixes a hearing in chamber (art. 409.2 cpc); the right to be informed, in case of indictment, of the day of the Preliminary hearing (art. 419 cpc); as civil party, the right to participate through a counsel in the Preliminary hearing (art. 421.2 cpc); the right to be informed of the decree of indictment issued by the Judge of Preliminary hearing (JPH) (art. 429.4 cpc).

dismissing the proceedings. The offended person can challenge the request within 20 days (art. 408.3bis cpc)[29]. In case of crimes as stalking and family maltreatments, the Prosecutor shall always inform the counsel of the offended persons, or, in absence of him/her, the offended person about the decision of closing the preliminary investigations (art. 415bis.1 cpc)[30].

The interest in participating to the proceedings in order to recover the damages is recognised by the right to present a request, signed by a counsel, to join the proceedings as civil party (art. 76 cpc).[31]

Probably the best way for the victim to be protected is appointing as soon as possible a counsel, because unfortunately the right to be informed doesn't include information about what the person can or shall do afterwards.

If the offence was prosecuted on request and the JPH establishes with sentence that there are no grounds to proceed, the offended person can be sentenced, in certain cases, to pay the proceedings fees and to pay also the costs incurred by the defendant (art. 427 cpc). The offended person who joined to proceedings as civil party has always the right to appeal before the Court of Cassation the sentence recognising no grounds to proceed; the offended person who is not civil party has the right to appeal only in case of nullity of acts introducing the Preliminary Hearing (art. 428.2 cpc).

The offended person has the right to recover property seized during the investigation or during the trial, when the seizure is no more required for the purpose of criminal proceedings.

The evidences collected during the investigation (or in the preliminary hearing) cannot be used in the trial. That is why in the cases indicated by the law (art. 392 cpc) the Prosecutor and the defence can ask the JPI (the JPH in the preliminary hearing) to take an evidence in a pre-trial hearing with a special proceeding (incidente probatorio). The statements taken in this way count as evidence afterwards. The offended person has the right to ask the Prosecutor to submit a request for a pre-trial hearing, but is the Prosecutor who decides. This way of collecting evidence has relevance in our perspective: it can be used also when the witness could be exposed to threats, violence, offers of money or other for failing to testify or for testifying or giving false testimony: in most cases the witness is just the victim of the offence. In particular, in case of child victims or victims being also offended persons, the proceeding can be used also beyond the law indications. By taking the testimony, vulnerable victims shall be protected: the child and the mental ill victims are asked by the Judge. If necessary, in respect of some serious offences indicated by the law (**maltreatments**, slavery, child prostitution, child pornography, sexual tourism, trafficking, slaves trade, sexual violence, sexual activity with minors, gang rape, grooming, stalking), the court decides when, how and where the minors shall be heard, depending on their protection needs. The minors can be heard not at the court premises, but in particular structures or even at home

[29] The paragraph 3bis of art. 408 cpc was introduced by art. 2.g) l. 15 October 2013, n.119
[30] The art. 415bis.1 cpc was modified by art. 2.h l. 15 October 2013 n. 119.
[31] The offended person can join the proceedings as civil party at the Preliminary hearing or at the latest before the trial (art. 79 cpc); he/she can be excluded by the judge *ex officio* or on reasoned request of the Prosecutor or of the defendant (arts 80-81 cpc)

and their deposition must be documented with sound or audio-visual reproduction. In lack of them, the court proceeds in the forms of expertise or technical advice (art. 398.5bis cpc)[32]. As sex crimes are concerned, the statements of a child victim or mental ill victim can be taken, on request, without showing face and voice. It must be noted that the improvement of the pre-trial hearing for vulnerable victims meets the need of reducing the number of interviews.

In order to protect children, **the law 119/2013 introduces as general provision the duty to support child victims at every stage and level of the proceedings. The child victim shall be emotionally and psychologically supported: a) by relatives and by persons indicated by the minor; b) by groups, foundations, associations, NGOs, if complying with the following conditions: particular experience in victim support; enrolment in a specific Register; consent of the minor and agreement of the judicial authority.**

The system identifies victims specific protection needs by a case by case decision, which is based more on the type of the suffered offence than on an individual assessment of victims.

As protection is concerned, in the phase of investigations, no specific protection measure is provided for all the victims. If necessary, the police can take care of them on its own. When applicable, the adoption of precautionary measures by the judge is a strong protection instrument for the victim.

In case of specific serious offences relating to organised crime, the Law 13.2.2001, n. 45 provides a special, very intensive and drastic programme of protection and support. It is applied to offended persons (the so-called "witness of justice") who by their intention of testifying expose themselves and their families to retaliation and intimidation. The enter in the programme is disposed on request of the Prosecutor and can start in the investigation or in judicial phase.

First in Europe, the Italian system contains a very relevant provision concerning protection and assistance to trafficked persons (art. 18 D.lgs 25.7.98/286 on immigration). For them a special "stay permit", involving a series of benefits and support measures, is delivered in case of danger by the local Chief of Police, also on request or with approval of the Prosecutor. The permit is issued not only by reasons of justice, i.e. for victims having active role in the investigations or proceedings, but also because of ascertained circumstances of exploitation or violence. Furthermore, for these offences, at each police office (questura) has been established a "unique referent", who maintains constant contacts with police officers and voluntary associations manning the telephone hotline established by the Minister of Equal Opportunity for victims of trafficking. This type of protection is extended in case of terrorism offences[33]. Temporarily assistance (board, lodging, healthcare) is guaranteed to victims of slavery[34]. **According to the article 18bis[35], introduced in 2013, with the**

[32]The paragraph 5bis of art. 398 was introduced by l. 15 February 1996, n. 66 and modified in 1998, 2003, 2006, 2009, 2012 and 2013.
[33] Art. 2 d.l. n. 144 del 2005 (L.155/2005) establishing urgent measures against international terrorism
[34] Art. 13, L. 228/2003
[35] Article 18bis was introduced in the D.lgs 25 July 1998 n. 286 on immigration by art. 4.1 d.l. 14 August 2013, n. 93, converted into law 15 October 2013 n. 119

favourable opinion of the judicial authority or on its request, the Questore issues a "stay permit" for a foreign person if, during police operations, investigations or proceedings, situations of violence or abuse against him/her are ascertained. The police or the judiciary shall discover these situations a) by investigating or proceeding for offences as family maltreatments, injuries, female genital mutilation, kidnapping, sexual violence, stalking, as well as for crimes where the arrest in flagrancy is established (art. 380 cpc: probably, among them, more frequently: offences as slavery, child prostitution, child pornography, sexual tourism, gang rape); b) these offences are committed on the national territory, within a framework of domestic violence; c) there is a concrete and present danger for the victim's safety, as a result of his/her choice to escape the violence or as a result of the statements he/she made to the police or to the judicial authority. The stay permit can be issued, with the authorization of the judicial authority, also when situations of violence or abuse are ascertained by support activities of anti-violence centers, territorial social services or social support services for victims of violence.

A further form of protection is the duty of the police, health centres, public institutions to give information about the centres anti-violence in case of stalking and other serious offences[36]. The Ministry for Equal Opportunity has instituted a hotline for victims of stalking in order to ensure psychological and legal aid and, with the victim's consent, to give notice of the offence to the police. Specific support services are organized with respect to specific offences, such as sex violence, mafia, terrorism, usury, extortion, but the law doesn't impose an obligation to inform about their availability. **The Ministry for Equal Opportunity has also set up, sometimes in cooperation with the police, a toll-free number for victims of female genital mutilation, trafficking, gender violence offences, racial discrimination.** As already noted, best practices are unevenly spread in the country.

Italian legislator has taken also other steps in order to protect victims of specific crimes by adopting measures concerning offenders: during the investigations or the proceedings, the judge can force the offender to move away from the family house. Furthermore, if there are needs to protect the safety of the offended person or of his/her relatives, the judge can order the offender not to approach places frequented by the offended persons or relatives; on Prosecutor request, can also order to pay a monthly allowance to the cohabitants (art. 282bis cpc). As general rule, such cautionary measures shall be applied in case of offences punishable by life imprisonment or by a maximum sentence of more than 3 years (art. 280 cpc): **these limits are not mandatory in case of offences as violation of obligations to family support; abuse of means of correction or discipline; injuries; slavery; child prostitution; child pornography; trafficking; slaves trade; sexual violence; sexual activity with children; corruption of minors; gang rape; threat to the detriment of close relatives and cohabitants. Moreover the control system can be also an**

[36] Family maltreatments, slavery, child prostitution, child pornography, sexual tourism, trafficking, slaves trade, sexual violence, sexual activity with children, corruption of minors, gang rape, beatings and injuries committed in a framework of domestic violence art. 11 d.l. 23 February 2009, n. 11, converted into law 23 April 2009 , n. 38, extended to other crimes by art. 1 .3.4bis d. l. 14 August 2013, n. 9, converted into law 15 October 2013, n.119.

electronic one (art.282bis.6 cpc.)[37]. The judge can also order the offender not to approach places frequented by the offended persons or by their relatives; to keep a certain distance with such places or from the offended person and their relatives or partners; not to communicate with them (art. 282ter cpc)[38].

A right of information about the adoption of such measures is established by the law (art. 282 quater cpc). The measures are taken on request of the Prosecutor. **As house arrest is concerned, the judge shall dispose such a measure ensuring in any case the priority needs for protecting the offended person (art. 284.1bis)[39]. In case such measures (arts 282bis; 282ter; 284, as well as other cautionary measures (prohibition or obligation to stay in a certain place (art. 283 cpc); remand in prison (art. 285 cpc); remand in psychiatric health center (art. 286 cpc)), taken in proceedings for offences against the person, are revoked or replaced, the police has the duty to inform the counsel of the offended person and, in his/her absence, the offended person about the revocation or the replacement (art. 299.2bis cpc)[40], as well as about the request in this sense of the Prosecutor or of the defendant. The counsel or the offended person may submit statements (299.3 cpc)[41]. After the closing of the preliminary investigations, if the defendant submit a request for revoking or replacing one of such measures, the counsel of the offended person or, in his/her absence, the offended person shall receive the notification, under penalty of inadmissibility (art. 299.4bis)[42].**

Another measure to protect the victim was taken in case of stalking. On request of the offended person, the offender can be warned by the Police Commissioner (Questore), who can take measures related to arms and ammunition[43]. **Besides the case of stalking, when beatings or injuries within domestic violence are reported to the police the Police Commissioner can proceed with the warning against the offender and can ask the Prefect to suspend his/her driving licence[44].**

In the same spirit, the law 1.10.2012 n° 172, implementing the Lanzarote Convention, provides that the judge can impose to child sex offenders preventive measures forbidding them to approach any place where they can meet children; that the Supervisory Magistrate can dispose a security measure in order to keep such offenders away from places where children could be met or to exclude them from working with children. Furthermore the possibility for sex offenders to participate in jail to a rehabilitation

[37] The paragraph 6 of art. 282 bis cpc was modified by art. 5.1.b L. 1.10.2012, n.172, implementing the Lanzarote Convention, and by art. 2.1a) d. l. 14 August 2013, n. 9, converted into law 15 October 2013, n.119.
[38] Introduced by d.l 23 Februar 2009 n. 11, converted into law 23 April 2009 , n. 38.
[39] Paragraph 1bis was introduced by art.1.1.a) dl 1 luglio 2013 n. 78, Urgent provisions for the enforcement of the punishment, converted, with modifications, into l. 29 August 2013 n. 94
[40] Paragraph 2bis of art. 299 was introduced by art. 2.1.b).1 d. l. 14 August 2013, n. 9, converted into law 15 October 2013, n.119.
[41] Paragraph 3 of art. 299 was modified by art. 2.1.b).2 d. l. 14 August 2013, n. 9, converted into law 15 October 2013, n.119.
[42] Paragraph 4bis of art. 299 was modified by art. 2.1.b).3 d. l. 14 August 2013, n. 9, converted into law 15 October 2013, n.119.
[43] Art. 8 d.l 23 Februar 2009 n. 11, converted into law 23 April 2009 , n. 38.
[44] Arts 3.1 and 3.2 2 d. l. 14 August 2013, n. 9, converted into law 15 October 2013, n.119.

treatment constitutes a strategy which helps to protect victims by working on the offenders[45].

The stay permit can be revoked and an expulsion can be disposed against a foreign persons, convicted also by a non-definitive sentence for offences as family maltreatments, injuries, female genital mutilation, kidnapping, sexual violence, stalking, as well as for crimes where the arrest in flagrancy is established (art. 380 cpc: probably, among them, more frequently: offences as slavery, child prostitution, child pornography, sexual tourism, gang rape)[46].

6. The victim in the trial

During the investigations, some rights are accorded only to the offended person, who has a "penal" interest to obtain the indictment of the offender. On the contrary, after the indictment, the offended person, who does not join the trial as civil party, has only the rights to make statements and to indicate evidences, but he/she cannot participate to the Preliminary hearing or to the trial.

In the trial phase the offended person and the damaged persons who decide to join to proceedings becoming "civil party" (art. 76 cpc)[47] enjoys a set of rights in force of his/her specific new role. In fact the civil party exercises before the criminal Court a civil action, that could be exercised also before a civil Court, in order to obtain the payment of the pecuniary or not pecuniary harm.[48]

The rights enjoyed by the civil party have both civil and penal aspects. For instance, in a logic of civil law, the civil party has the right to withdraw his/her request of participating to the trial (art. 82 cpc) and the right to obtain the assessment of harm, also within the limits of the reached evidence (art. 539 cpc); in a logic of penal law, the civil party has an autonomous right to collect and submit evidences as well as before a civil Court, but, taking part to a criminal proceedings, he/she can also completely rely to the Prosecutor's activity.

The trial for offences as slavery, child prostitution, child pornography, sexual tourism, sexual violence, gang rape takes place in open court, but, on request of the offended person it is held behind closed doors. If the victim is a child, the trial is always held behind closed doors (art. 472.3bis cpc). The court may order that the examination of a child takes place behind closed doors (art. 472.4 cpc).

[45] Such programs are at moment available only in the prison of Bollate (Milano).
[46] Rt. 18bis D.lgs 25.7.98/286 on immigration, introduced by art. 4.1 d.l. 14 August 2013, n. 9, converted into law 15 October 2013, n.119.
[47] In order to join to proceedings is needed a written statement signed by the counsel (art 78 cpc). The act shall be presented at the latest at the official opening of the trial hearing (art. 79 cpc). The offended person and the damaged must, inter alia, ask the judge to order to the offender the payment of damages, explaining why the offence provoked a pecuniary or not pecuniary damage. In this way the judge can evaluate whether or not the person is entitled to become "civil party" (arts 80-81 cpc).
[48] If the offender is a minor, the civil action cannot be exercised in a criminal proceeding (DPR. 22. 9.1988 n. 448 on criminal proceedings against minors, art. 10)

The offended persons and their relatives are obliged to testify (art. 199 cpc) and, as witnesses, they must tell the truth (art. 246 cpc). The civil party, when is not a witness, can ask or consent to be examined in the trial: no obligations of telling the truth or of answering a question are provided (art. 209 cpc). The President takes care that respect for the witness dignity is ensured. The law imposes that the questions shall concern specific facts and be pertinent.

Obviously testifying in criminal proceedings can represent for the civil party victim of crime a very delicate and dangerous situation, leading to a secondary victimization or endangering safety or life. Protective measures of high level have been introduced into Italian system, expressly to protect witnesses in criminal proceedings for mafia offences. Special protection programs for "witnesses of justice" were mentioned above. As other vulnerable witnesses/victims are concerned, the increasing use of pre-trial hearing should also lead to a better protection from the repeated victimization arising from an examination in a public trial.

When the witness is a child, specific protective measures are taken: the president of the court conducts the examination of the minor and can ask the assistance of a relative or of a child psychologist. The evidence can be given, on request, with the protected mode established for the pre-trial hearing. **For specific serious offences (family maltreatments, slavery, child prostitution, child pornography, sexual tourism, trafficking, slaves trade, sexual violence, sexual activity with minors, gang rape, stalking) the child victim – as well as the adult with mental illness - can give evidence behind a screen and through audio systems (art. 498.3 cpc)[49] , and behind closed doors. Protective special measures can be disposed, on request, also for adults victims of the above mentioned serious offences. In these cases, the judge evaluates the particular vulnerability of the offended person, also having regard to the type of offence for which the proceedings take place (art. 498.4 cpc)[50].**

The civil party is not obliged to be present at the trial, he/she may be represented by a counsel and may have legal aid by low income. Pursuing the aim of obtaining compensation, the civil party has a set of rights, as, for instance, the right to participate to the trial, to make proposal and request, to submit and challenge evidence, to present and to cross-examine witnesses through his/her counsel.

[49] Paragraph 3 of art. 498 was modified by art. 9.1.d),nn. 1-2, dl 23 April 2009, and by art. 2.1.i).n. 1 dl 14 August 2013, n.93, converted into law, and modified, by l. 15 October 2013, n, 119.
[50] Paragraph 4 of art. 498 was introduced by art. 2.1.i).n. 2 dl 14 August 2013, n.93, converted into law, and modified, by l. 15 October 2013, n, 119.

7. Compensation

a) From offender

In case of conviction, the judge decides on restitutions and compensation from the offender and, if possible, determines the costs; otherwise the judge condemns and remits the parties to a civil court. The civil party shall prove the damages and indicate the amount of the required compensation at the end of the trial. The offender can be convicted also to the reimbursement of procedural fees; in case of acquittal, the civil party can be condemned to reimburse the costs incurred by the defendant because of the civil action.

b) State compensation

As State compensation is concerned, there is no program to compensate victims of violent offences – the European Convention on this matter has not even be signed. Nevertheless specific laws were issued to provide compensation with respect to victims of specific offences (mafia, terrorism, usury, extortion) through particular Solidarity Funds[51]. No previous report to the police is required to apply for financial aid or support. According to the Directive 2004/80/EC, relating to compensation to crime victims, the victims of all intentional violent offences, wherever committed in the territory of the European Union, are eligible for State compensation. Italy implemented[52] only a part of the Directive, establishing, *inter alia*, that the EU citizens have access to the same national schemas of compensation available to Italian citizens. That means that only victims of mafia, terrorism, usury, extortion are eligible for State compensation, on the basis of very sectorial rules[53]. Nevertheless, since it was transposed without complying the requirements to extend compensation to all the victims of violent crimes, the Directive has direct legal force: National Court have therefore recently sentenced the Italian Government to indemnify a Romanian citizen[54], victim of sexual violence, on the ground that Italy shall restore damages to victims affected by the non-implementation of the European instrument.

[51] L. 20 October 1990 n.302, establishing rules for victims of terrorism and organized crime; l. 7 March 1996 n. 108, establishing rules regarding usury; l. 23 November 1998, n.407, establishing new rules for victim of terrorism and organized crime; l. 23 February 1999 n. 44, establishing rules on payments to victims of extortion; l. 22 December 1999 n. 512, establishing the creation of the rotation fund for solidarity with the victims of Mafia-style crimes.

[52] Lgs .d. 6 November 2007 n. 204 ("Implementation of Directive 2004/80/EC relating to compensation to crime victims"), enacted after the European Court of Justice condemned Italy for its failure to transpose the Directive into national law.

[53] Part of them are established by the acts mentioned in footnote 38.

[54] Court of Appeal Turin 23 January 2012, confirming the decision of the Tribunal of Turin, 3 May 2010. On 20 February 2013, the Court of Florence has referred this question to the European Court of Justice for a preliminary ruling.

8. Mediation

The possibility of entering in mediation is not ensured by express law provisions, except for minor offences before the Judge of the peace. In case of offences, prosecuted on complaint, the Judge of the peace shall promote reconciliation also through mediation services. If the reconciliation is successful and the offender has compensated the victim, the offence is declared not punishable. In case of offences committed by a minor, some Juvenile Courts allow mediation by a particular interpretation of some law provisions (e.g. when the judge can close the proceedings for the particular tenuousness of the fact; or when he/she can dispose probation). This judicial practice is not spread evenly in all the Italian Juvenile Courts, although very important results have been achieved in that way.

9. After the trial

The civil party may appeal the judgment only within the limits of the civil aspects. As criminal aspects are concerned, the civil party may only submit a request to the Prosecutor, who has no obligation to do so.

The civil party has access the Court of Cassation for violation of law.

Neither information nor access to Supervisory Court nor protection is allowed to the victim after the sentencing. Anyway the Supervisory Magistrate, in its discretionary power, has means to protect victim: for instance, he/she could decide to grants permissions or probation providing that the prisoner should keep far away from places where he/she could meet victims.

Victims can play a role also when the Supervisory Court applies a benefit to the offender provided that he/she implements a positive behavior in favor of the victim.

Summary

This debriefing has the purpose of evaluating the experiences we made together, in order to have your feedback; to reflect together on the “good practices” we found in Italy; to explore potential solutions or ideas we can submit in Paris for building a practical judicial Protocol in European Union.

The same sessions took place in France, Netherlands, Portugal, Poland and will take place in Bulgaria next months. By comparing data, impressions, information, observations we will try to get out the best from our respective approaches to the problems of the crime victims and to give suggestions for a common instrument.

In order to write my report on the visit in Italy building on a shared point of view, I invite Christine, Casia,, Jordan, Paulo and Ivan to send me a short evaluation of the most relevant issues they will bring to common attention. During these four days in Paris, we had the possibility to speak with very skilled professionals, who deal with victims from different perspectives.

We met: Police, Prosecutors, Judges, experts, psychologists, NGOs, social operators; we had the chance to visit the Supreme Court, the Department for Equal Opportunities, the Antimafia National Direction, the Tribunal of Rome, the Ministry of Justice.

We were searching for victim rights and supports, we found a very multi-faceted situation, which seems to be changing from day to day.

The Italian legislation made many progresses in the last two years, but it still suffers from the lack of a statute for crime victims.

We introduced changes in our system thanks to some international obligations: we complied with some at international level requested standards by ensuring more rights and more support to particular victims, but we didn’t organize a rational system to guarantee an equal access to justice and support to all the victims of the crime.

Furthermore, we were told that the victim protection is not ensured in the same way all over the country: to become victim in Milan is not the same than becoming victim in Naples or Reggio Calabria.

From a structural point of view, we noted that the Italian legislation has not an uniform discipline for all victims and has an uneven implementation of all the existing rules on its territory. We stressed also that the system created by the procedural criminal code offers an adversarial approach to proceedings: parties of them are the Judge, the Prosecutors, the Offender. The victim can only enjoy some rights during the proceeding as offended person or as civil party, but his/her role will be reinforced. We noted that last legislative acts, according to international instruments, gave more rights of information and participation to the victims of certain offences and we asked why it would be not possible to extend these rights as general rule.

We approach to the problem of legal assistance and free legal aid and we noted also in these cases the fragmentation of the legislation.

As compensation is concerned, we understood that although the Directive 2004/80 was not fully transposed, Italy spend a lot of money in order to finance Support Funds for victims of special offences, as terrorism, organized criminality, extortion, usury. We asked why it could not be created a more rational system, that can support all the victims, bearing in mind how much money the Italian State spends in this field.

I will not summarize the general standing of victims in the proceedings and the questions our group raised to deeply understand this aspect.

These items were developed in my up-dated written report and will be treated again in the final report.

It will now be more useful to indicate the best practices we gathered during our visit: first of all, I would say, the increasing attention of all the agencies for the victims of the crime.

Also in the Supreme Court, where only the problems of legitimacy are considered, the awareness about victim is widely spread.

We were also in the heart of the victims' protection: the Department of Equal Opportunities. The way the Department is organized, the successful attempts to create a central point of coordination for victim support, the cooperation with Police, support and services centers, the continuous operative actions in favor of victim of trafficking, gender based violence, female genital mutilation constitute excellent examples of how to organize interventions to ensure the victims needs and reinforce their rights. We could export this experience as good practice and we could suggest to extend this way of operating for all the victims, according to their specific needs.

We also had the chance to have contacts and to share opinions with operators of supporting centers. We saw how their support to the victim is fundamental, and we noted that it would impossible to set up a really assistance for victims of crime without their helps. That is why an EU instrument should stress the need to implement the cooperation among judiciary, administrative authorities and NGOS. Also in this case, the system cannot work without a wider diffusion of these centers and a stronger coordination with them all over the territory.

As victims protection is concerned, we learned a lot from the approach of the National Antimafia Direction: we saw as the idea to offer high standard of protection is not sufficient to assure a real protection to the victims: complete and efficient investigations are the only way to achieve this goal.

The Tribunal of Rome offered us a very important example of concrete implementation of the new rules introduced by Lanzarote Convention. We spoke "concretely" about the rights the victim enjoys, we saw in action the protection measures, we shared the experience of attending, behind a screen, a child statement, taken with the presence of a psychologist. Above all, we experienced the organization set up by the Prosecutors Office in the Tribunal of Rome: a centralized staff with operators (judges, prosecutors, psychologists, experts, police) available 24 hours a day to deal with vulnerable victims.

Of course not all the Prosecutor Offices can be equipped in this way, Rome has a specific….. size and specific needs, but the idea that judiciary should take special care for victims starting from its own organization is a good one.

Another idea with an excellent feedback was the attempt to coordinate information and proceeding before different instances: the lawyers told us about their work in this sense at the level of Lawyers Associations.

According to us, this bottom-up movement in favor of victims is very important and could constitute the best starting point to assure concrete support to the victims.

A change of mentality towards this problem, rational legislative choices, attention to the rights of the offenders as well as to the needs of victims are perhaps the best premises for a better organization of the justice. Because it is justice that shall be assured, because only through a more efficient and a more sensible justice the rights of victims, of offenders and of the whole community can be implemented, improved, and protected.

Study visit in Bulgaria

25-28 February 2014

1. General comments.

The aim of the Study Visit to Bulgaria was to get acquainted with the legal standing and rights of victims during criminal proceeding following the rules of Bulgarian legislation and its compliance with the terms of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

During the study visit the participants had the chance to meet both representatives of police and prosecution authorities, all court instances, lawyer's associations and NGO's engaged in protection of vulnerable victims' rights and of other stakeholders such as National Council for assistance and compensation to victims of crime and the National Commission for Combating Trafficking in Human Beings.

The study visit started in with a brief review of Bulgarian criminal procedure legislation and the arrangements to be put in place to support victims of crime in compliance with the terms of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

The overview was presented by the scientific referent of the Project for Bulgaria, Ms. Vladislava Doychinova, attorney-at-law practicing in criminal proceedings and protection of victims' rights.

2. Brief overview of Bulgarian legislation on legal standing of victims of crime.

The main legislative act regulating the standing and the right of the victims of crime in criminal proceedings in Bulgaria is the **Criminal Procedure Code** where it is set forth the legal standing and most of the significant rights of victims of crime. It defines that the victim of crime shall be the physical person who has suffered pecuniary or non-pecuniary damage as a result of a crime.

Unlike the Directive 2012/29/EU family members cannot be direct victims of crime but they can constitute and participate in criminal proceedings in case of death of the victim as private accusers and civil claimants in proceedings for crimes of general character and private complainants in crimes of private character.

The Criminal Code defines that for specific **crimes of private character** such as insult and libel, minor bodily injury, theft, committed by a spouse or certain categories of relatives and some other crimes, the victim of crime shall initiate independent private proceedings in the capacity of a private complainant and no prosecution investigation shall be held. For cases of general character, it is defined that the institution of proceedings shall be the monopoly of the Prosecutor's Office of the Republic of Bulgaria. In the latter the criminal proceeding comprise two stages – pre-trial stage performed before the bodies of police and prosecution and trial phase carried out before three court instances.

Save for couple of exceptions, the CPC rules that victims of crime may participate only during the pre-trial phase of the criminal proceedings. **At trial phase** victims of crime shall participate and constitute as **private accusers and/or civil claimants** in crimes of general character and as **private complainants** in crimes of private character.

Victims of crime can also constitute as witnesses in pre-trial and judicial phase for crimes of general character which are officially persecuted by the prosecution authorities. However, the latter does not refer to the private complainant in criminal proceedings as these two legal capacities are incompatible in crimes of private character.

Bulgarian legislation envisages also participation of "harmed legal person" equipped with some of the victims' rights to participate at the pre-trial phase and to constitute as civil claimant on the trial phase.

In conclusion, the victim of crime has restricted rights on pre-trial phase and participation of the victim is neither obligatory nor it can impede the development of the investigation. However, at court phase, the victim is party and can participate and exercise its rights fully. Still, it need be noted that victims' participation in pre-trial investigative actions is often necessary in terms of protecting its rights at court phase.

Feedback of the participants:

In general, the participants expressed positive attitude towards the legal standing of the victim of crime and of the organization of criminal proceedings.

During the study visit, the participants visited court hearing at the Regional Court of Sofia where they had the chance to attend the first court hearing of case of private character for libel. The private accuser was a former high standing police servant claiming he was labeled by a newspaper article implying that he was corrupted and "scandalous". The accused was a famous Bulgarian journalist who denied the accusations.

The participants estimated positively the legislative option of the physical person claiming to have suffered damages of petty crimes such as libel to file in directly court complaint against the perpetrator.

However, as negative feedback the participants pointed the relatively short term for the private complainant to file in its complaint at the court – a 6 months period following the crime commission.

3. Rights of victims in criminal proceeding

Right of complaint to the competent authorities for the crime

At the stage of bringing the criminal case to authorities' attention victims have **the right of complaint to the competent authorities for the crime, committed against them**, which is a legitimate justification for initiation of pre-trial proceedings. Victims of crime are obliged to notify the bodies of pre-trial proceedings and in turn authorities have the positive obligation to initiate proceedings.

Right to receive information

Victims of crime have **the right to be informed of their rights in criminal proceedings** which comprises to be informed for all positive rights which could be exercised during both the pre-trial and trial proceedings such as the right to authorize attorney-at-law, the right to secure and file in civil claim in criminal proceedings; to participate as private accuser and or/civil claimant in judicial phase, the right to obtain protection etc.

With the amendment of the procedure legislation in 2010 rights of victims occur only if they expressly wish to be part of pre-trial proceedings and provide an address in the country[55].

The victim has the right to be informed about the refusal of the investigating body to initiate pre-trial proceedings as well as on any other act issued by the Prosecution office or the court by virtue of which his/her rights are affected.

During the Study Visit, the participants visited the **Ministry of Interior** where the investigation authorities explained that in practice upon the first contact of the victim with the police, victims are informed on their rights in criminal proceedings followed by signing a protocol for the first investigative action that they fully understand their rights. This was considered as a positive attitude of the investigation authorities towards victims in pretrial proceedings.

However, the participants estimated negatively that the representatives of the **Ministry of Interior** did not provide any examples of the form that was given to victims. The participants gave negative feedback on the uncertain content of the protocol.

Moreover, the participants estimated positively the obligation of the court to inform the victim on all of its rights again at the first court hearing separately and independently of the police and prosecution authorities in order to guarantee the victims right to fair trial.

[55] Before the amendment in 2010 the CPC provided that **only the right to receive information** in criminal proceedings arose in the presence of these two preconditions.

Right to get introduced with the case file evidence and materials and right to make requests, remarks and objections

At pre-trial procedure the victim of crime has the **right to get introduced with the case file evidence and materials** after the completion of all investigation actions. Victims of crime and its counsel may take part in conducting the respective investigative actions only if pre-trial body allows them to attend, provided this shall not obstruct the investigation. Having studied the materials, the victims can **make requests, remarks and objections regarding collection of evidences**. Based on the remarks and requests further actions could be undertaken in the investigation process.

In court phase the victim has the same right and the court is obliged to inform him on his option to make requests, remarks and objections regarding collection of evidences.

Right of legal aid and right to empower legal counsel

Legal Aid is provided by the bar councils and organised by the Legal Aid Bureau pursuant to the Law on Legal Aid. At the **investigation stage** of the criminal proceedings the CPC rules also that victims of crime have the **right of legal aid as well as to empower attorney-at-law** to represent them during the criminal proceedings.

No free legal aid for victims of crime during pre-trial proceedings is envisaged. Free legal aid is assigned only to victim in trial proceedings where the lawyer is appointed by the court upon proving the inability to pay the attorney's fees and if the interests of justice requires it.

During the Study visit the participants met attorneys-at-law specializing in human rights (Foundation "Bulgarian lawyers for human rights") and criminal cases with whom they discussed legal defence of victims in criminal proceedings. Lawyers shared their experience that in some of the cases authorities are not collaborative and sensitive to victims' support and needs and do not undertake any actions for prevention of secondary victimization. That approach resulted in many decisions delivered by the European Court of Human Rights against Bulgaria for violated rights of victims over the years. They expressed regrets that at their first contact with police victims are rarely provided with information on NGO's working on victims of crime support.

Participants to the study visit estimated negatively these practices of the authorities and recommended further strengthening the role of NGO's in providing victims legal, psychological and material support.

Right to be heard during criminal proceedings and right to testify

Pursuant to the Bulgarian CPC **interrogation of witness** makes clear the obligation of the investigating body to hear a 'free account' of 'everything, known to the person on the case'. It is established for the witness, including the victim, that the person, leading the interrogation, may ask questions to the witness after his/her free account only for the purpose of 'supplementing his/her explanations or clarifying incomplete, unclear or contradicting information'.

Unfortunately the CPC did not implement the EU standard of the article 3 of the Framework Decision which rules that authorities question victims only insofar as necessary for the purpose of criminal proceedings.

On the contrary, **in the general case witnesses do not have the right to refuse to testify.** The CPC does not envisage differentiated regime for interrogation of victims of crime who are also participating as witnesses in criminal proceedings.

Moreover, if the witness fails to appear and to testify, he could be fined or brought in by compulsion for the purposes of interrogation. Refusal for testimony by witnesses could be performed only if answers to questions might incriminate witnesses who are also victims of crime, their relatives of ascending and descending line, brothers, sisters, spouses or individuals with whom they live together, in the commission of crime.

With amendment as of 2010, in cases of cross border crimes interrogation of a witness outside the country's territory can be carried out through a video conference or a telephone conference and it is no longer required international treaty to which Bulgaria must be party.

Underage victims are interrogated as witnesses in the presence of a pedagogue or a psychologist and, when necessary, in the presence of the parent or guardian. The same applies to minors, if the respective body finds it necessary.

During the meeting with the representatives of the Prosecution office, Supreme Prosecutors Ms. Masheva and Mr. Petrov focused on the **interrogation of children victims of crime** in pre-trial phase. Bulgaria is in process of reforming and replacing the repressive approach with a preventive one regarding interrogation of children victims of crime.

Interrogation of children is carried out in the so called **"Blue rooms"** where the children are interrogated in a separate room divided by mirror where they do not have eye contact with the perpetrator. They are interrogated in the presence of a pedagogue or a psychologist and, when necessary, in the presence of the parent or guardian and the accused can ask the child questions through the pedagogue or the psychologist without establishing direct contact with the child.

So far, 12 **"blue rooms"** function on the territory of the country and during the Study visit, the participants visited the "Blue room" in Sofia at the Centre for social support.

The Prosecutors stated that Prosecution office's objective is that interrogation of children victims of crime is carried out only in blue room in both stages of criminal proceedings and that the child does not face the need to go to court and see the perpetrator. Bulgarian judges tend to accept the carried out interrogation as fit proof in criminal proceedings.

Moreover, interrogation of children could be performed through video conference and video recording at all stages of criminal proceedings.

It need be noted that the lawyers from the Foundation "Bulgarian lawyers for human rights" stated that in practice the "blue rooms" do not function intensively and that actually few interrogations are carried out in the other

regional centers in Bulgaria than Sofia. The only functioning premises is the "Blue room" in Sofia.

The participants had specific interest on the types of questions which children are asked - direct or indirect. The Prosecution representatives explained that the investigation authorities cannot ask misleading or tricky questions. This was also confirmed by the psychologist of the Centre for social support who carries out interrogation of children victims of crime. The policy is to approach the child in effective manner that he/she could freely give an account of his/her story.

The participants expressed positive attitude towards the organization of the interrogation of children victims of crime in special premises where children are not directly interrogated by the perpetrator and his lawyers. However, the participants were skeptical about the presence of the parent, especially the mother, at the interrogation and cited relevant Supreme court's practice that the presence of the mother may influence negatively the interests of the accused as thus she cannot be witness herself anymore.

The participants estimated positively the option for interrogation of children in blue rooms as the protection of children must be put in first place. Video recording of children was considered as positive practice.

However, the participants gave negative feedback on the relatively small number of interrogations carried out annually in blue rooms - only 10. This raises questions about the disparity between the material means used and the reality of the procedure carried out.

Moreover, it was estimated as negative that children are interrogated in Blue rooms after they have already been interrogated before on several occasions. In the Netherlands the child is interrogated in the Blue Room as soon as possible to prevent the disclosure of the statement of the child.

Right of receiving protection of the personal safety of victims of crime and the safety of their kin

Criminal Procedure Code envisages **the right of receiving protection of the personal safety of victims of crime and the safety of their kin**. Subject to witness protection are victims and their relatives for whom has arisen or may arise real danger for their life or health. The latter is performed by virtue of temporary measures such as personal physical protection by the authorities of the Ministry of Interior or keeping his/her identity secret or by inclusion of the witness or its relatives in program for protection.

The participants estimated as negative the fact that during the meeting at the Ministry of Interior, the police authorities did nor provide any exact and precise figures indicating the types of offenses the victims received witness anonymous protection.

The Law on Protection of Persons with Regard to Criminal Procedure provides for protection only for victims of crime who have constituted as private accusers, civil claimants or persons, closely related to them.

Personal safety right of victims is also regulated with prohibition order issued by the respective court of first instance at pre trial or trial phases of criminal proceedings. However, this measure is considered to be senseless as no sanctions for violation are envisaged. That conclusion was shared also by the judges of the Regional court of Sofia.

Right to appeal against the suspension or termination of the criminal proceedings before the court

The victim has the right to be informed about the refusal of the investigating body to initiate pretrial proceedings and then that refusal could be appealed only within the prosecution office before the upper standing prosecutor.

In pre-trial proceedings the prosecutor has the prerogative to terminate or suspend criminal proceedings, make a proposal for exemption from criminal liability with the imposition of an administrative sanction or a proposal for agreement to dispose of the case, or press new charges with an indictment, provided grounds to this effect are present.

The prosecutor is obliged to send a copy of the decree, imposing the suspension or termination of the criminal proceedings to the victim or his/her heirs. **The victim or his/her heirs have the right of appeal against the suspension or termination of the criminal proceedings before the court of first instance within seven days of receipt of the copy.**

The proposal for an agreement is given by the prosecutor or of the defense counsel. An agreement can be concluded only for non severe crimes and only if pecuniary damages suffered by the victim have been compensated. The victim does not have the right to propose the conclusion of the agreement.

The victim is also empowered to appeal the all court instances acts in case the latter affect in some way the rights of the victim.

During the visit, the participants gave positive feedback on the envisaged option to terminate the criminal proceedings either on pre-trial or trial proceedings by agreement in case the victim is compensated for the suffered pecuniary damages. However, in this procedure the victim cannot claim higher amount of the estimated compensation.

Also, the participants estimated positively the right of the victim to provide its opinion on the course of the criminal proceedings at the last court hearing before the court pronounces its final act.

The participants in the Study visit united around one of the recommendations made by Mr. Emil Dechev, judge at the Sofia City Court, also participating in this project, that the victim should be awarded the option of " actio popularis", i.e. the victim should be able to initiate pre-trial proceedings for some of the crimes even if the prosecution office decides that there are no sufficient evidences for that. Similar legal instrument exists in Polish legislation where the victim can act as subsidiary accuser.

Right to compensation

Compensation for victims of crime may be divided into two main types: **public compensation by the state and private compensation by** the defendant and/or other parties who bear civil responsibility in criminal/civil proceedings.

Civil claim in criminal proceedings is legal instrument by virtue of which the victim of crime in its capacity of civil claimant may search for compensation for the suffered damages against the defendant and/or other parties who bear civil responsibility in criminal proceedings. The compensation is ruled upon by the criminal court ruling on the conviction and the civil claim made in criminal proceedings or by the civil court where the claim for compensation of damages resulting from the crime was submitted. The compensation claim could be made **within five years** of the time the crime was committed or the perpetrator was discovered, after which the claim is considered void due to expiry of statute of limitations. The civil claim should be made at the latest until the start of judicial inquiry before the court of first instance in criminal proceedings.

Bulgarian legislation provides an option to secure civil claim at pretrial or trial phase of criminal proceedings. However, in case the court allows the security of the claim in pre trial proceedings, the security measures last for 30 days before they expire. This rule does not apply for security of civil claim in trial phase.

The participants gave negative feedback on the short duration of the security measures of the civil claim in pre-trial stage and on the short prescription period of the civil claim to be filed in. On the contrary, in the Netherlands, the prescription period is much longer - 20 years.

Public compensation is awarded independently of the court **compensation of the civil claim through a** state system of financial compensation for specific categories of victims of crime. It is awarded by the National Council for assistance and compensation to victims of crime at the Ministry of Justice.

Victims of crimes (or a circle of people who are his/her relatives (children, parents, spouse or the person living with him/her in actual cohabitation) in the case of death of the direct victim caused by the crime) may receive financial compensation only if they have suffered **pecuniary damages** as a result of the crimes of terrorism, manslaughter, premeditated grave bodily injury, sexual harassment and rape that have caused serious health damages; human trafficking; crimes committed by order or in implementation of a decision of an organised criminal group, as well as other serious premeditated crimes, from which death or serious bodily injury arose as consequences may receive financial compensation.

Only pecuniary damages shall be compensated; lost income; court and judicial administration fees; lost support; funeral costs and other pecuniary damage in the amount between 250 and 5.000 BGN (appr. 125 to 2.500 Euro). For this purpose, a request form should be submitted together with the relevant documentation to the National Council.

The term for submission of request for compensation is two months following the last verdict of the last court instance or the prosecution act for termination or suspension of the criminal proceedings.

The participants in the study visit met representatives of the National Council who provided them with concrete information on the types of requests submitted by victims and the award of compensation. Most of the requests were submitted after the term has expired and were inadmissible as they did not meet the legislative requirements. For 2013 only 7 requests were favoured.

The representatives of the National Council stated that new legislative act is in process of elaboration which shall replace the now functioning act and whose aim shall be to widen the scope of crimes for which compensation could be awarded and to facilitate the procedure for award of compensation.

The participants in the study visit gave negative feedback on the minimal number awarded compensations and about the low amount of pecuniary damage the victim can receive, and discussed with the representatives of the National Council the distribution of information at police and prosecution authorities on the public compensation options. Also about the fact that there are no claims possible for non-pecuniary damages.

4. Vulnerable victims

Bulgarian legislation does not contain provisions to differentiate different types of vulnerable victims depending on the type of crime (sexual violence, domestic violence, human trafficking) or the specific characteristics of the victim (elderly people, people with physical and mental illnesses).

During the Study Visit the participants visited the National Commission for combating trafficking of human beings which aims at preventing trafficking in human beings and to protect, assist and reintegrate victims of trafficking. The Commission researches, analyses and reports statistical data on human trafficking and also manages and supervises the activities of the 8 Local Commissions for Combating Trafficking. It serves also as contact point for cross border mechanism to direct victims of crime. During the meeting the representatives of the Commission shared their experience and stated that one of the most severe problems with victims of human trafficking stays the second re victimization as sometimes the criminal proceedings last too long. The long duration of the criminal proceedings in fact affects also the collection of evidences as in 5 or 10 years following the crime commitment the victims usually have socially integrated and are unwilling to give testimony at the court.

The participants also had the chance to get acquainted with the rules regulating domestic violence under Law on the Protection against Domestic Violence. Bulgarian legislation does not incriminate domestic violence and it could be regarded as crime only if it falls under the provisions of Criminal Code. In this case criminal proceedings shall be initiated by the respective prosecution office and shall follow the general procedure. Otherwise, the violation under the Law on the Protection against Domestic Violence is developed in civil proceedings.

Domestic violence is defined as any act of physical, sexual, mental, emotional or economic violence, as well as attempts of such violence, coercive restriction of personal life, personal liberty and personal rights committed against individuals, who are related, who are or have been in a family relationship or in de-facto conjugal co-habitation. Protection under this Act may be sought by any person, who has become victim of domestic violence, perpetrated by spouse of former spouse; person, with whom he/she is or has been in a de-facto conjugal co-habitation; person, who has fathered her child; ascendant; descendant; person with whom he/she is in a collateral relationship up to the fourth degree included etc. Victims of domestic violence may search protection through various measures imposed by the court. The term for submission of application is one month following the attack.

The participants in the study visit estimated negatively the extremely short term for submission of court request as well as the fact that domestic violence is not defined as separate crime and is developed in civil proceedings. Unlike this practice, in Portugal domestic violence is considered to be a public crime and the perpetrator can receive a maximum of 8 years of prison. Likewise, in France domestic violence is also considered as crime. In the Netherlands domestic crime leads to aggravating circumstances in determining the sanction.

In conclusion, the participants gave general feedback and remark that during the meetings the different stakeholders did not provide statistical tools in order to assess

The number of victims of trafficking of human beings actually supported by the NGO's associations;

The length of criminal proceedings;

The reality of the protection of victims through the hearing as anonymous witness.

Summary

The aim of the Study Visit to Bulgaria was to get acquainted with the legal standing and rights of victims during criminal proceeding following the rules of Bulgarian legislation and its compliance with the terms of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

During the study visit the participants met both representatives of police and prosecution authorities, all court instances, lawyer's associations and NGO's engaged in protection of vulnerable victims' rights and of other stakeholders such as National Council for assistance and compensation to victims of crime and the National Commission for Combating Trafficking in Human Beings.

In general, the participants of the Project in the Study visit expressed positive attitude towards the legal standing of the victim of crime and of the organization of criminal proceedings in Bulgarian legislation. The participants also gave their feedback and comments on the rights of the victims in criminal proceedings within the meetings with the various stakeholders.

Concerning the right to receive information during pre trial and trial phases of criminal proceedings, the participants visited the Ministry of Interior where the investigation authorities explained that in practice upon the first contact of the victim with the police, victims are informed on their rights in criminal proceedings followed by signing a protocol for the first investigative action that they fully understand their rights. This was considered as a positive attitude of the investigation authorities towards victims in pretrial proceedings.

However, the participants estimated negatively that the representatives of the Ministry of Interior did not provide any examples of the form that was given to victims as well as on the uncertain content of the protocol.

On the other hand, the participants estimated positively the obligation of the court to inform the victim on all of its rights again at the first court hearing separately and independently of the police and prosecution authorities in order to guarantee the victims right to fair trial.

Concerning the right to be heard during criminal proceedings and right to testify the participants met representatives of the Prosecution office who focused on the interrogation of children victims of crime in pre-trial phase which is carried out in the so called "Blue rooms" where the children are interrogated in a separate room divided by mirror where they do not have eye contact with the perpetrator.

The participants had specific interest on the types of questions children are asked - direct or indirect. They expressed positive attitude towards the organization of the interrogation of children victims of crime in special premises where children are not directly interrogated by the perpetrator and

his lawyers. However, the participants were sceptical about the presence of the parent, especially the mother, at the interrogation and cited relevant Supreme Court's practice that the presence of the mother may influence negatively the interests of the accused as thus she cannot be witness herself anymore. Also, they gave negative feedback on the relatively small number of interrogations carried out annually in blue rooms - only 10.

With regard to the right of receiving protection of the personal safety of victims of crime and the safety of their kin the participants estimated as negative the fact that during the meeting at the Ministry of Interior, the police authorities did nor provide any exact and precise figures indicating the types of offenses the victims received witness anonymous protection.

Concerning the right to appeal against the suspension or termination of the criminal proceedings the participants gave positive feedback on the envisaged option to terminate the criminal proceedings either on pre-trial or trial proceedings by agreement in case the victim is compensated for the suffered pecuniary damages. Also, the participants estimated positively the right of the victim to provide its opinion on the course of the criminal proceedings at the last court hearing before the court pronounces its final act.

The participants gave negative feedback on the short duration of the security measures of the civil claim in pre-trial stage and on the short prescription period of the civil claim to be filed in concerning the right of the victim to receive private compensation.

With regard to the public compensation of victims, the participants in the study visit met representatives of the National Council who provided them with concrete information on the types of requests submitted by victims and the award of compensation. Most of the requests were submitted after the term has expired and were inadmissible as they did not meet the legislative requirements. For 2013 only 7 requests were favoured.

The participants in the study visit gave negative feedback on the minimal number awarded compensations and the low amount of pecuniary damage the victim can receive.

Regarding protection of vulnerable victims during the Study Visit the participants visited the National Commission for combating trafficking of human beings which aims at preventing trafficking in human beings and to protect, assist and reintegrate victims of trafficking where the representatives of the Commission shared their experience and stated that one of the most severe problems with victims of human trafficking stays the second re victimization as sometimes the criminal proceedings last too long and afterwards victims are unwilling to give testimony at the court.

The participants also had the chance to get acquainted with the rules regulating domestic violence under Law on the Protection against Domestic Violence. Bulgarian legislation does not incriminate domestic violence and it could be regarded as crime only if it falls under the provisions of Criminal Code. In this case criminal proceedings shall be initiated by the respective prosecution office and shall follow the general procedure. Otherwise, the violation under the Law on the Protection against Domestic Violence is developed in civil proceedings.

The participants in the study visit estimated negatively the extremely short term for submission of court request as well as the fact that domestic violence is not defined as separate crime and is developed in civil proceedings.

Unlike this practice, in Portugal domestic violence is considered to be a public crime and the perpetrator can receive a maximum of 8 years of prison. Likewise, in France domestic violence is also considered as crime. In the Netherlands domestic crime leads to aggravating circumstances in determining the sanction.