

INASC

*Improving Needs Assessment and Victims Support
in Domestic Violence Related Criminal Proceedings*

**Make it
happen!**

European toolkit to improve needs
assessment and victims support in
domestic violence related criminal
proceedings

The background of the page is white with several overlapping, semi-transparent purple geometric shapes, including rectangles and triangles, scattered across the lower and left portions of the page. The shapes vary in shades of purple, from light lavender to a darker, muted purple.

Make it happen!

European toolkit to improve needs assessment and victims support in domestic violence related criminal proceedings

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Make it happen! European toolkit to improve needs assessment and victims support in domestic violence related criminal proceedings

Introduction

The study reveals that there is a world to win in this respect. Victims feel misunderstood, and when they come to report a crime, they are being told to think again. There is very little understanding of the consequences of repeated violence on women's mental resilience.

Lünnemann et al. 2015: 64

Women going through the legal system to seek for protection, safety and support in order to put an end to the intimate violence they were experiencing and to seek for justice for their own life, experience similar expectations, achievements, disappointments and frustrations across the five EU countries involved in this project.

The role of the criminal justice system is of the utmost importance and relevance regarding the protection needs and rights of victims of Domestic Violence (DV) and more specifically of victims of intimate partner violence (IPV).

This toolkit was developed within the frame of the project INASC – Improving needs assessment and victim's support in domestic violence related criminal proceedings, co-financed by the Criminal Justice Programme of the European Commission. The Project aimed to improve existing understanding about intimate partner violence victim's trajectories and experiences in the course of criminal proceedings and to explore how these experiences relate to individual assessment mechanisms and outcomes. The project involves five countries – Austria, Germany, Ireland, Portugal and the Netherlands – and has been jointly developed by six organisations.¹

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About the toolkit

INASC specific goal was to develop practice-oriented research aimed at identifying crucial aspects of supporting mechanisms available to IPV victims within the criminal justice system and of elements that influence the way victims are being supported and protected at three different levels: i) at the entrance door (law enforcement agencies receiving the complaints and follow up procedures towards public prosecution offices); ii) at the enquiry stage (public prosecutors initiatives and decisions taken); iii) in court (court procedures and final decisions by judges).

Combating violence against women “requires coordinated policies at national and at all other relevant levels and a comprehensive approach targeting the key issues of prevention, protection, victim support, and prosecution of perpetrators”.²

1 CESIS (coordination, PT), Dhpol (DE), IKF (AT), Safe Ireland (IE), Verwey-Jonker Institute (NL) and ZOOM (DE).

2 Source: draft conclusions of the Council of the European Union on ‘combating violence against women, and the provision of support services for victims of DV’ (16382/12).

The *Make it happen! European toolkit to improve needs assessment and victims support in domestic violence related criminal proceedings* is based on the results of the research work undertaken within the INASC Project, and was completed with suggestions and comments put forward by the 5 national advisory committees which were in operation during the whole project. Overall, this toolkit aims to contribute to the national implementation of the Directive 2012/29/EU on victims' rights, namely as regards intimate partner violence victims' needs of support and protection.

What is this toolkit?

Make it happen! contains a set of tools that are intended to facilitate the integration of women's expectations, needs and rights into the responses given by the Justice Professionals to criminal reports and cases of IPV.

The toolkit comprises a first part which reflects a European perspective clustered around three main axes: presentation of the main outcomes driven by our research, setting our minds and views over victims of IPV in criminal proceedings and an explanatory list of the most relevant articles of the EU Directive 29/2012 in relation to intimate partners' violence context.

Part 2 of the toolkit is composed of five national booklets. These booklets include a set of tools for the Justice Professionals as contributions to the implementation of the EU Directive 2012/29, clustered around its main rights. Following a sort of a path, these tools go from practical and training tips on how to better implement victims' rights to practical examples collected across the five project countries.

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For whom is this toolkit?

Make it happen! is a toolkit for the different practitioners of the criminal justice system: judges, public prosecutors, court assistants, law enforcement agencies, and police, among others.

Why is this toolkit needed?

Domestic violence perseveres across Europe, affecting in particular women and children, as "*an extreme expression of inequality on the ground of sex*" (FRA, 2014: 7). Intimate partner violence is one of the most frequent forms of violence directed against women. Although the EU has recognised the problem and made efforts to tackle it, violence against women remains a challenge for criminal justice systems.

What lessons can be learnt from the comparative research?

The outcomes of the INASC research component will hopefully contribute to a deeper understanding of common features characterising the criminal justice systems of the participating countries (AT, DE, IE, NL, and PT) and thus, provide evidence-based recommendations for possible improvements, in particular taking into consideration the implementation of the EU Directive 2012/29.

First and foremost, it is possible to observe a common trend towards the increased criminalisation of different forms of violent acts pertaining to IPV/DV across the five participating countries. In all these countries' legislative frameworks, IPV is no longer perceived "as a private conflict" and IPV cases can be investigated and brought to court without the obligation of the victim to file a complaint. However, and in spite of the political and legal acknowledgement of the public nature of the crime, only one country (PT) officially recognises DV crimes as public crimes to which correspond a specific criminal offence in the Criminal Code.

Nevertheless, a common feature of the legal framework of the five countries under analysis is the adoption of dedicated DV/IPV laws which are particularly relevant from the perspective of victims' protection rights. In all countries, these legal acts were important milestones in defining remedies to protect victims of intimate partner violence.³

The following paragraphs will critically highlight some of the main findings of the comparative research which are relevant for the building up of the common part of the toolkit, structured around the Victim's Directive's main Articles.

Whereas Article 3 of the Directive emphasises the right to understand and be understood, the research showed obstacles in realising this right which include: lack of consideration regarding the actual context of violence (e.g. duration of the violent relationship, former protection orders); excessive focus on the single incident triggering the criminal process; lack of knowledge about the dynamics of violence and consequences of traumatisation among justice professionals. Although judges and public prosecutors may be aware of existing challenges, evidence from all countries shows that such awareness is often not translated into the necessary empathy and understanding of the heavy personal cost to victims of giving evidence in court. Being heard is important for victims (e.g. to name the wrong; to terminate the violent relationship) and it is also an essential criterion for the "good conduct" of a trial.

Information rights of IPV victims are widely acknowledged by criminal justice professionals, namely by police professionals across the different countries. In all countries it is the police obligation to deliver information about support, victim rights and most important about aspects of criminal proceedings during the first and following contacts. However, the research showed that there is room for

³ For further details, please refer to Baptista, Isabel (coord.) (2015) *IPV victims' needs and rights: a brief overview across five EU countries' justice systems*. INASC report available at: www.inasc.org

improvement in ensuring that information rights are closely linked to the specific needs, personal circumstances and stages of the proceedings, as referred to by article 4 of the Directive. The outcomes of both the quantitative and the qualitative research showed that challenges still persist, namely as regards: selectivity and inaccuracy of the information given; inadequacy of the moment and type of information provided; excessive focus on initial stages of the proceedings and on law enforcement agents in channelling such information to victims; existing written information lacking simple and accessible language; and the persistence of a “stereotyped image” of IPV victims among professionals which influences the amount and the kind of information provided.

Article 6 of the Directive addresses the right of victims to receive information about their case. The research showed that in all countries victims have the right to be informed about the release of the perpetrator from arrest, custody or prison or about protection orders. In some countries (e.g. DE, AT) there are procedures through which victims may be informed proactively. However, communication problems persist, clear responsibility on who should inform the victim is often lacking and in some cases victims are expected to be proactive in seeking information. Overall, it is fair to say that across all countries victims expressed the feeling that they were not well informed about their cases, respective stages, proceedings and decisions affecting their lives.

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Communication between justice systems and victims who do not understand or speak the national language presents specific challenges. The research showed that in almost all countries (AT, DE, IE and PT) concerns were raised as regards the provision and quality of interpretation services available to victims. The lack of interpreters for certain languages, the non-availability of interpreters outside “regular” working times or in more rural areas and the lack of translation of crucial documents (summons and verdicts) are some of the difficulties reported.

Victims’ right to access support services is an important aspect covered by Article 8 of the EU Directive. In all countries, it became clear that it is crucial to provide such support to IPV victims. In some countries (e.g. Austria, DE), the adoption of the psycho-social (and in Austria also legal) assistance related to criminal proceedings assistance has proved an important tool. The wide scope of needs often involved in IPV cases frequently require pooling different specialized skills and a wide range of agencies. Inter-agency cooperation is therefore needed in order to integrate different skills into an effective inter-agency approach. In the five participating countries different intensities and grades of formalisation of such interagency cooperation were described as well as different issues on which cooperation takes place. In nearly all countries (DE, IE, NL and PT) there is an outstanding problem: involving justice agencies in networking and cooperation mechanisms is often missing or not well established. A “neutrality culture” among the criminal justice professionals is often presented as the main reason for such reluctance. Nevertheless, cooperation networks and/or initiatives are deemed to be improving. One final aspect regarding supporting IPV victims’ needs should be highlighted from the research: the financial costs related to the long-term effects of violence as well as separation. The research revealed that in none of the countries is such a perspective on the importance of support apparent.

The right of victims to participate actively in criminal proceedings varies across the five countries. However, the research showed some common patterns regarding procedural aspects related to the hearing of victims and the collection of evidence during criminal proceedings. A majority of victims in all the countries were interviewed at different stages of the proceedings, i.e. criminal proceedings are to a large extent in line with the ‘right to be heard’. Nevertheless, from the perspective of victims this does not necessarily mean that they were heard indeed and understood, too. The interviews and focus groups revealed that showing understanding for the victim’s situation is essential: it influences the way the police and the criminal justice professionals are perceived and has a clear impact on victims’ stance towards criminal proceedings.

Another relevant aspect regards the supposed “unwillingness” of victims to testify which was raised by the police and the criminal justice professionals in all the countries involved in the study. In fact, both the case file analysis and the interviews conducted with the victims showed that most victims were indeed interviewed and provided evidence both during the inquiry phase and at court. In all countries, evidence gathering on IPV cases – and the burden of obtaining a successful or unsuccessful investigation – rests primarily on the “victims’ shoulders”, and to a lesser extent on the perpetrator side (e.g. unbalanced efforts regarding the questioning of victims and perpetrators, limited gathering and preserving of evidence other than the victim’s testimony). The argument of the “unwillingness of the victim” to cooperate is often used to explain why, in all countries, the majority of IPV cases is dismissed before it reaches the court. The file analyses in all countries do not support this justification. Justifying the outcomes of the investigation by the lack of victim’s involvement is only part of the story and the research showed that practitioners within the criminal justice system in all countries, tend to downplay the importance of outcomes for the victims, whereas victims themselves deem the conviction, the kind of conviction and the sentence as a crucial stage in their emotional and mental processing of the violence they experienced as well as with coping with the consequences of that experience.

All the countries included in the research provide procedures through which IPV victims may receive compensation for damages which is in accordance with article 16 of the Directive. However, the research showed that in many countries being awarded compensation does not necessarily mean that the victim actually receives such compensation. Non-compliance by the perpetrator and his financial situation are the two main reasons for such failure. Some countries (PT and NL) have introduced pre-payments by the State which allows victims to receive such compensation in advance. Additionally, the compensation payments in all countries are in general very low and not covering the financial losses which often result from violence.

Chapter 4 of the Directive deals, among others, with the right to avoid contact between victim and offender. One way to avoid contact with the perpetrator is to provide separate waiting rooms for victims and suspect during court proceedings and to enable avoidance of contact between victims and the offender within premises where criminal proceedings are conducted. The research showed that questioning at court when the suspect is present is often a huge challenge for victims. In all five

countries courts provide separate waiting rooms and victims may request to be heard without the presence of the offender. However, as the interviews with victims and professionals suggested, there is room for improvement regarding the nationwide implementation, the organisational application and the information to victims about these protection measures.

In all the five countries it is the task of the police to perform an individual assessment of risk and to manage such risk in order to avoid further and repeated violence. Procedures involved in such risk assessment mechanisms are widely variable among countries ranging from the use of highly developed standardized risk assessment tools (in some countries directly linked to the enforcement of protection measures) to non-standardised procedures and tools. The strongest message coming out of the research relates to the existence of implementation problems (e.g. lack of preparation for implementing risk assessment procedures, uneven procedures across the country, non-utilisation of risk assessment outcomes for protection purposes) in all countries irrespective of the degree of sophistication in the procedures and tools used. Thus, it is fair to say that particular attention should be given to existing successful practices regarding individual risk assessment in IPV cases and respective dissemination, rather than investing huge efforts and resources in developing sophisticated mechanisms and tools without the corresponding investment in ensuring their adequate and continued implementation. Finally, it is important to point out that there is evidence across all countries, that risk assessment practices are common among victims' support organisations. Yet, there is much variety in the types and forms of procedures used, and the ways in which the outcomes are (or not) being used by different professionals within the criminal justice system.

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The Victims' Directive explicitly recognises the seriousness of violence in close relationships which may cause systematic psychological and physical trauma with severe consequences and considers that IPV victims may be in need of special protection measures. The EU-wide trend to strengthen victims' rights and ensure adequate protection during criminal proceedings strongly depends on the existence of different protection measures and other protection procedures, which have been established across the five member states often independently from the criminal justice system.⁴ These measures which aim to avoid secondary and repeat victimisation may play a crucial role in reducing the victim's feelings of fear and uncertainty and as a consequence ensure better cooperation during criminal procedures. The research showed that in all countries barring/ restraining orders have in general or in many cases positive effects for the protection of victims, both as an effective sign for the perpetrator to change his behaviour and as "something victims have in their hand" in case of further harassment. In some countries (IE, PT), it turned out to be a problem that orders which can be implemented during a police intervention are not existent or only used in very few cases. However, in all countries there is evidence that protection orders partly lack effective enforcement to ensure protection and prevent repeated victimisation since there are no serious or immediate consequences following breach of an order. Stalking and harassment are

⁴ An overview of existing protection measures across the five countries is available in Baptista et al (2015) *IPV victims' needs and rights: a brief overview across five EU countries' justice systems*. INASC research report.

also reported as triggering minor reactions as regards protection needs of victims. Further improvements in these areas are deemed necessary across the five countries. The research also showed that the specialisation of the police and a proactive role in controlling and monitoring protection orders enforcement is particularly valuable for the effective protection of IPV victims. In some countries (AT and DE), procedures like officially and formalised forms of cautioning the offender prove to be helpful for strengthening the victim's position. Finally, in some of the participating countries (AT, DE and PT) the research showed the existence of major conflicts between the DV protection system and the system regulating parental rights. Again, the lack of understanding by criminal justice professionals regarding the effects and dynamics of IPV on both victims and their children (either directly or indirectly affected by violence) and communication problems between different justice systems seem to be the cornerstone for the rise of protection flaws in such situations.

Mind-sets: framing our views over victims of IPV in criminal proceedings

This toolkit focuses mainly on IPV and on women as victims (not as perpetrators). World wide data on reported and under-reported IPV reveals that most victims are women and that violence against women is predominantly perpetrated by men.

Intimate partner violence (IPV) is the self-reported experience of one or more acts of violence - physical, sexual, emotional / verbal / psychological violence, economic abuse, false imprisonment / confinement, harassment / stalking or forms of coercive control - by a current or former partner. It includes formal partnership, such as marriage, as well as informal partnerships, such as dating and unmarried sexual relationships. Below, we will present the framework underlying the contents of the toolkit.

Why shouldn't IPV victims be framed as a homogeneous group of women?

Even as a social category, women are not a homogenous group. Other categories intersect with those based on life-experience and violence against women in intimate partner relationships. Such categories are connected with age, ethnic-cultural backgrounds, sexual orientation, gender identity, social class, migratory status, country/place of origin, disabilities, etc. It is in the intersection of these various categories that women form their personalities and behaviours, whether actively or not, and that come to light in the inquiry stage and during the criminal proceedings. It is not only the individual characteristics of each woman herself that leads her to take a more, or less, active role in the proceedings. It is important to bear in mind the stereotyped profile of the victim that justice system practitioners make and the way in which this profile impacts on professional discourses and practices: it is often perceived that women victims of intimate partner violence are frightened, powerless, poor, weak and helpless.

As an example, research showed that “*an angry woman is simply not a ‘good victim’*” (Goodmark, 2014: 77). Professional practitioners tend to expect women victims to have certain stereotyped behaviours; when their behaviour does not live up to (social and institutional) expectations, professional interaction is affected: “*women subjected to abuse who fail to conform to victim stereotypes face a cruel choice: tell your authentic story and face the consequences of failing to conform, or tailor your story to the prevailing narrative and deny the reality of your experience*” (Goodmark, 2014: 77).

Why some victims do not always want to proceed with the criminal investigation?

One of the strategies that survivors use is self-silencing. Self-silencing is described, in psychology, as “*set of distorted cognitive schemas*” (Neves and Nogueira, 2011: 246) based on women’s attempt to build and sustain relationships of intimacy. Women may “*form their concept of the self-based on their participation in close, intimate, and genuine relationships with significant people and that whenever the maintenance of those relationships is in some way at risk, women’s self-esteem and their sense of personal identity are seriously compromised.*” (Ibid). The self-silencing is frequently a “*compulsory choice that women have to make as a means to preserve their own safety and identity*” (Neves and Nogueira, 2011: 253) and therefore a reflection of the absence of women’s power. Several studies have repeatedly shown that “*love and the desire to maintain relationships with their partners lead women subjected to abuse to remain with their partners and to opt out of legal remedies – to refuse to cooperate with prosecutors, to dismiss petitions for protective orders or ignore their terms.*” (Goodmark, 2014: 96-97). Therefore, some victims choose not to proceed with the criminal investigation in order to preserve their own survival.

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Equally, many women feel that the justice system does not believe them. They feel they are questioned over and over again on the same facts as if the system doubts them, trying to confirm, at every step, that what IPV victims are saying are the true stories. This feeling of distrust is voiced by many women in their contacts with different professionals and organisations.

All the cases... going from the social workers, child protection services, the courts ... everywhere is a door. These doors are closed to us right from the start. And so we have a mental block because there’s not one door open (...) at the entrance of the door is a wolf. A very powerful wolf. This wolf protects the doors which, even so, don’t open.

Survivor of intimate partner violence, Portugal

Furthermore, there are several reasons that are not directly related to women but to the whole criminal and legal system. It is a fact that legal and procedural barriers to equal access to justice for women victims of intimate partner violence lead to victims’ reduced or complete lack of trust in the justice system. Lengthy criminal proceedings,

high attrition, and low conviction rates and discriminatory practices constitute serious barriers to efforts to get justice for women victims of intimate partner violence.

Since 2010-2012, the Council of Europe and the United Nations have been highlighting key challenges and obstacles on women's access to justice. In 2013, the Council of Europe published a feasibility study on equal access of women to justice; the study identified several barriers (GEC, 2013: 4) such as:

- ▶ Lack of awareness of procedures;
- ▶ Lack of financial resources - "Costs are not only linked to legal fees and judicial taxes, but may be incurred as a result of ensuring transportation to courts, finding accommodation or for instance seeking childcare." (GEC, 2013: 11) and restrictions on the availability of legal aid;
- ▶ Emphasis placed on using out of court settlement procedures to ensure a swift end to the legal dispute, often leaving women at a disadvantage;
- ▶ Gender neutral legislation which may lead to systemic inequalities, often unintended;
- ▶ Gender bias in courts and among law enforcement officials, in particular regarding specific groups of women (such as, for example, minority, disabled or rural women);
- ▶ And fear, shame and cultural and/or religious barriers.

Moreover, in 2015, the Committee on the Elimination of Discrimination Against Women approved the 33rd General Recommendation to CEDAW focussing on women's access to justice. This recommendation draws attention to the fact that access to justice is multidimensional. It encompasses effective access to court, accessibility, good quality and accountability of justice systems, and provision of remedies for victims. This recommendation also acknowledges that effective access to justice optimises the emancipatory and transformative potential of law.

Still according to the above mentioned recommendation it is possible to identify several obstacles and challenges women have to face as regards access to justice. These include: the centralisation of courts in the main cities and their non-availability in rural regions; the resources (time and money) needed to access them; the complexity of criminal proceedings and investigation; the physical barriers for women with disabilities; the lack of access to quality, gender-competent legal aid, as well as the deficiencies often observed in the quality of justice systems (e.g. gender-insensitive decisions due to lack of training, delays and excessive length of proceedings).

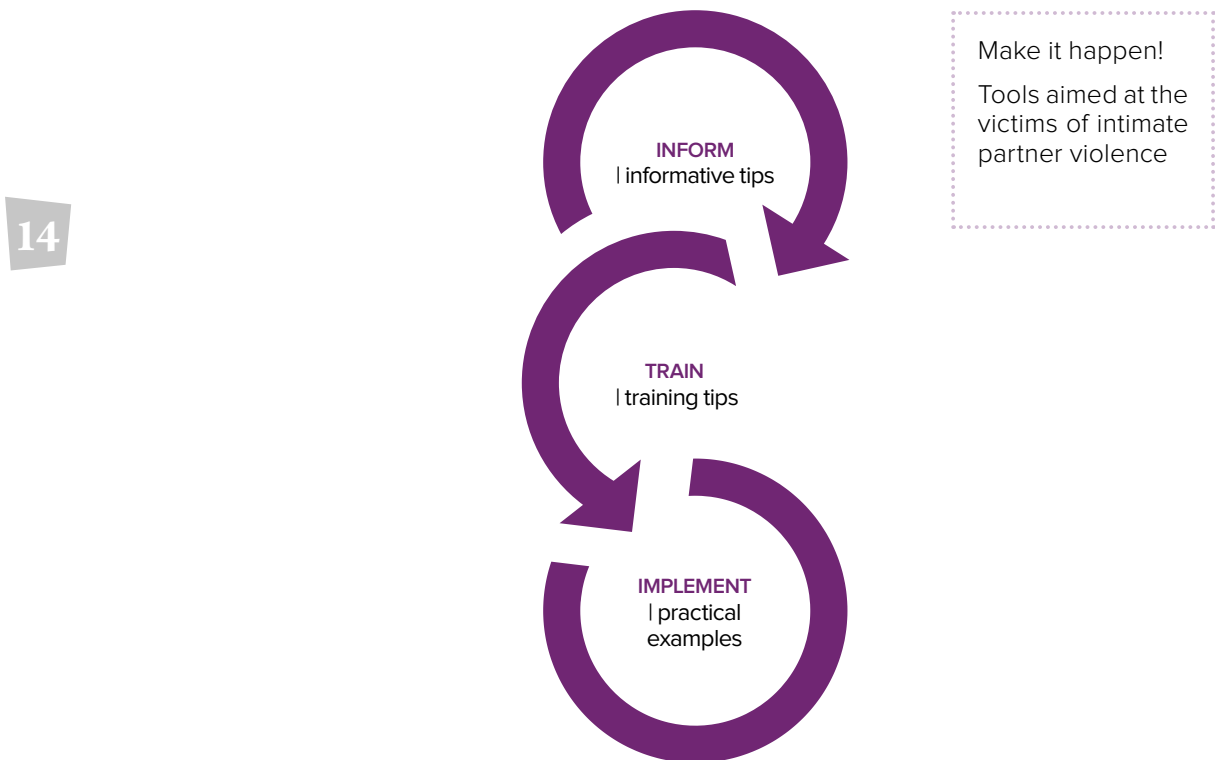
Main goals for the criminal justice system intervention within IPV cases

The basic common standard references for taking action in proceedings involving intimate partner violence are founded on the following set of guiding principles steering the criminal justice system's intervention: safety and protection, autonomy, decision, participation, support, quality follow-up and spotlighting the women. The development of the *Make it happen! Toolkit* took into account these goals.

Make it happen: Tools for the Criminal Justice Professionals

The logic behind the set of tools for the criminal justice professionals is to pursue a path: starting from informative tips structured around the EU Directive 2012/29 and integrating both workers and women's perceptions and experiences collected throughout our research; continuing along, we will present some major topics to be covered in the criminal justice practitioners' training gathered as relevant IPV features and respective explanation and implications for the criminal justice systems; and, lastly, picking up some of the tips mentioned in the previous section, we will present some practical examples collected across the 5 countries.

Make it happen! The rationale behind the toolkit



The contents of the above figure will be further developed in each national toolkit.

The EU Directive 2012/29: list of the most relevant articles related to the protection of IPV victims

About the provision of information and support

None of the police officers said: “Can we get someone for you? Or can we do anything for you?” I would also have appreciated having someone at my side that supported me etc., because I was not even able to do anything for the children. I cried bitterly. I was completely strung out. I sat there for hours and cried. Huddled up in the corner. The children constantly came and went and took me into their arms, but I was completely in shock. Well, here I would have wished that the police had said: “We have an emergency facility for you; let us call there and have someone come to you who can hold you up, or so.” I mean, they just left.

Survivor of intimate partner violence, Germany

The EU Directive establishes that victims must receive information about their rights and their case in a way they understand. Particular emphasis is given to victims' right to be accompanied by a person of their choice in their first contact with the authorities due to the impact of the crime or if the victim has difficulties understanding proceedings or to be understood (reinforced later on by article 20); the exclusion of the person of choice is possible in cases of conflict of interests (i.e., if the person of choice is the suspect of domestic violence).

It also mentions a personalised needs-based evaluation assessing the extent or detail of information linked to a specific stage of proceedings. And the need to keep the victim informed continuously.

Information also means victims having access to all applicable protection measures via information provided by the criminal justice practitioners. For instance, States should provide the opportunity to all victims to be notified of the offender's release or escape from detention and of any protection measures available.

The right to understand and to be understood (Article 3)

I have to admit, I was so excited that I could not capture the information given. I had to read a lot, because before the interrogation one has to sign a declaration, but I could not remember most of it. (...) But one cannot recall everything. One is overburdened with the situation or at least I was. (...) First of all, the information was printed in very small letters, mind-boggling information on a very small space. One cannot capture it. Secondly, as far as I can remember, many paragraphs have been listed, which one does not know their content. In exceptional circumstances this is really, really hard to capture. According to my opinion, this information should be short and precise, summarised in a few key words one can recall.

Survivor of intimate partner violence, Austria

All communication between criminal justice professionals and victims of IPV must be given in simple and accessible language. The form of communication must be adapted to the specific needs of every victim (namely age, language and disability).

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The right to receive information from the first contact with a competent authority (Article 4) and the right to receive information about their cases (Article 6)

I was still at the hospital and I said: 'I would like to go home now and I would like to know whether he still is at home.' It was impossible for them to find out. The police argued that they are not allowed to give this information. It was scary for me that I did not know. (...)

I thought, they have to release him after twelve hours and I panicked. Total panic, because they did not find out immediately, and it was weekend. This day was horror.

Survivor of intimate partner violence, Austria

Victims must receive information regarding their rights and their cases, soon as their first contact with criminal justice professionals. Information should include the type of support available to them, the procedure on how to make a complaint and the following steps, and about the results of their complaint.

The right to interpretation and translation (Article 7)

Then I have to reschedule, and when I criticize police, they say "things often need to happen very quickly" or "that's so expensive".

Judge, Austria

Whenever a victim does not speak the national language or has a poor understanding of the national language, member states must provide interpretation and translation.

The right to access victim support services (Article 8)

If a victim has been assisted it could make a difference to her life's project. Not only in being a witness but in the whole process leading to her independence. First freeing herself from the offender and afterwards becoming independent and remaking her life (...) they are the enlightened victims who have a clear notion of their rights, what they are able to do.

Lawyer, Portugal

Victims must receive information regarding the support services available, including contacts and operating hours. Getting support from specialised victim support agencies improves victims' resilience to endure all criminal proceedings, giving them information and competencies on legal matters.

About participation in criminal proceedings

Particularly hard was the fact that the courtroom was full of his friends and family. In my case, I was lucky that the woman from the counselling office was there. She always said: "You can do it", and she always held my hand and was also there before the hearing commenced.

Survivor of intimate partner violence, Germany

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Victims can participate in the criminal proceedings if they want and they should be helped to attend the court trial. The participation of victims in criminal proceedings comprehends the right to be heard, the right to legal aid, the right to reimbursement of expenses and the right to compensation from the offender during the proceedings.

I was there to tell my story. I wanted to tell everything, but I couldn't. I was afraid. So I told them a weak story because I wasn't sure I wanted to leave him and a report would only worsen the situation. I was partly to blame, but the police did not persist in asking questions about the violence, so I didn't tell.

Survivor of intimate partner violence, The Netherlands

The right to be heard (Article 10)

This right means that criminal justice professionals must listen to victims. The right to be heard enables victims to give their statements about incidents and aspects that may be pertinent to the investigation and where presenting evidence is concerned.

The right to legal aid (Article 13)

Victims are hardly ever assisted by a lawyer. The legal support by Victim Support The Netherlands is not always adequate. Counselling by a lawyer would be a huge improvement

Judge, The Netherlands

The right to legal aid is by now making a difference on victims' stance regarding criminal proceedings. It impacts on the victims' better knowledge of their rights, on the procedures and stages of the criminal proceedings; it improves the victim's responses and/or enables more comprehensive testimonies, thus reducing the victims' stress levels.

The right to decision on compensation from the offender in the course of criminal proceedings (Article 16)

The introduction of a compulsory compensation to the victim - is already provided for by law but the judges still believe that it should be upon a request made by the victim. (...) But I think it should be made compulsory regardless the need to be claimed or not. It should be sufficient to prove the facts, and then the court would decide on the compensation.

Public Prosecutor, Portugal

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The right to decision on compensation is a way to reimburse victims of the losses they may have incurred during their intimate partnership.

About the protection of victims and recognition of victims with specific protection needs

The EU Directive affirms that victims must be protected from secondary and repeat victimization, intimidation and retaliation (including physical, emotional and psychological violence) during all stages of police investigation and criminal justice proceedings. This must include the determination of necessary conditions to avoid contacts between victims and offenders where the proceedings are taking place (for instance, separate waiting rooms for victims within court premises), and comprehends interim injunctions or protection / restraining orders.

Well I couldn't understand ... why he was never charged for breaking the Safety Order because I thought that that piece of paper, to be honest with you, is shite because I feel it's doing me no justice. ... I don't even know what that piece of paper actually means because he broke a Safety Order and he was never arrested.

Survivor of intimate partner violence, Ireland

It is important to refer that the protection of victims from secondary and repeat victimization is reinforced by ensuring that disclosure procedures are limited to disclosing only information relevant to the case, limiting intrusive questions and limiting the number of times a victim can be questioned; it also calls for particular attention to the manner questions are made to victims.

The right to protection (Article 18)

I still don't feel safe and also not taken seriously. Does something really have to happen before anyone takes action? I am still afraid and always on the lookout when I am walking my dog. Because I am sure that my ex would grab me if he knew I was alone at a certain time.

Survivor of intimate partner violence, The Netherlands

The right to protection is a central right when we speak about intimate partner violence. This right has wide scope and should be understood holistically as concerns the range of protection measures needed to protect IPV victims and their family members. It also entails the eventual risk of further violence incurred by the justice system practitioners in contact with victims in order to protect the latter from secondary and repeat victimisation.

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The right to avoid contact between victim and offender (Article 19)

In any case I wanted him not to be there. That was my appeal to my lawyer from the start. The judge said like, "When did you last see him?" We had seen each other a week before, and before that one more time. But very shortly, like. Then she said: "Well, if you have already seen him anyway, then you aren't afraid of him anymore. Then he can stay here, that is my decision, so this will be dismissed." Still, at that moment, I didn't want him to be there, when I made my statement. She simply didn't listen to me. That's the way it was.

Survivor of intimate partner violence, Austria

Victims must be protected from their offenders particularly during criminal proceedings. This includes avoidance of contact between the victim and her offender within premises where criminal proceedings are conducted, being the police station or at the court hearing. Those premises should also foresee separated waiting rooms.

The right to protection of victims during criminal investigations (Article 20)

[T]he way I feel is that if [the abuser] was arrested even once at my place, he wouldn't have returned again. Because when I look at what happened in the family court when he was so disrespectful to the judge and the judge put him into jail for some time for contempt of court; since then when we go to the family court and he stands up and the judge tells him to sit down, he sits down! Because he remembers. It's just very simple when people know what's coming next they behave.

Survivor of intimate partner violence, Ireland

The European Directive recommends Member States to make sure that interviews with the victims are conducted without delay after the complaint has been made or a report filed. Furthermore the number of interviews should be kept to a minimum and only carried out when necessary; the victims may also be accompanied by people of their choice and medical examinations also kept to a minimum and only performed where strictly necessary.

Individual assessment of victims to identify specific protection needs (Article 22)

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Well, that they have the impression: 'What I say, what is important to me, receives its due space and is also accepted at an authority and that I do not fall between the cracks; I am not one of many numbers. But rather in the manner: I have fears, I have needs, and they are worth something!'

Court assistant, Germany

The needs of every victim are assessed and victims identified as particularly vulnerable (namely victims of intimate partner violence) are offered specific protection measures.

It considers the development and implementation of a case-by-case approach regarding the assessment of victims' needs within the frame of their protection. It considers the victim's assessment of her vulnerability to secondary and repeat victimisation, to intimidation and retaliation during criminal proceedings; that assessment is based on i) the personal characteristics of the victim; ii) the type and nature of the crime, and iii) the circumstances of the crime.

The individual assessment should also contribute to identify the victim's communication needs, support needs, protection needs and any other type of assistance needed. In annex two (PT booklet) there is a possible categorisation of IPV victims' needs related to the criminal proceedings.

About other provisions

Training of practitioners (Article 25)

Constant dripping wears away the stone, and here it is possible that some women need five to seven attempts and then even make it, but many don't. However, one only realises this after having worked in the sector for a few years. Initially, one takes it quite personally when the woman returns home again. One thinks: I have talked to her for the past five hours and finally got her into a women's shelter; why is she now going back? One should not do that. The more one knows about the subject, the better one can handle it.

Policewoman, Germany,

The EU Directive 2012/29 clearly recognises the need for the training of practitioners. Police, prosecutors, judges and other criminal justice professionals should receive training on how to deal with victims in a sensitive and appropriate manner, including specifically their awareness raising on victims' needs.

Furthermore, our research clearly showed that both victims and practitioners consider that specialisation and enhanced skills in DV leads to better interactions with victims, to improved inquiries and evidence collection and to significant improvements in recognizing victims' protection needs and in promoting their protection. The non-specialisation at the criminal justice professionals level cross-cuts the five countries of the INASC project. Even though in some countries there are specialized PP departments for Domestic or Intimate Partner Violence, this does not ensure that public prosecutors working in such units are given any specific training or that such skills represent any kind of pre-condition or criterion for entering such teams. Overall, training and increased competences in the specific field of Domestic Violence (comprising areas going well beyond legal aspects) are seen as a key aspect for improving the assessment of victims' needs for support and protection but also for improving the course and outcomes of criminal proceedings as regards IPV cases.

Legally, violence against an intimate partner is a crime just as theft, robbery, or physical assault on the street. However, intimate partner violence (IPV) also has features differentiating it from "ordinary crime". This specificity has implications for the situation of victims after violent incidents and for their needs and behaviour in the process of law enforcement in IPV cases. Raising awareness of such specificities should be a crucial component of training programmes addressing criminal justice practitioners.

The table below provides an overview of some specific features and dynamics of intimate partner violence and the situation of victims in these cases and points at their consequences for criminal justice institutions and professionals dealing with IPV.

Of course, cases of IPV are diverse. Therefore, this table represents a clarification of general trends and does not speak for individual cases. This table can be adapted and developed in order to respond to national contexts and training needs of criminal justice practitioners.

Features of IPV / of IPV victims' situation	Explanation / Implication for Criminal Justice System (CJS)
Risk of repeat victimization, intimidation, retaliatory responses	<p>Unlike many cases of “ordinary crime” / street crime, intimate partner violence refers to incidents where the possible influence of the offender upon the victim is not limited to a single point in time. Unless effectively banned from approaching the victim, the offender may use violence again, intimidate the victim, or retaliate against her (or against persons close to the victim). This risk of ongoing or repeated victimization can severely affect victims' sense of security.</p> <p>Implication for CJS: Victims of IPV need an assessment of their risk of repeat victimization and protective measures to reduce this risk in the time after the incident (e.g. through protection orders and a close scrutiny as to compliance to these orders).</p>
History of violence in IPV cases	<p>In many cases, incidents of intimate partner violence that become known to police / law enforcement do not come “out of the blue”. They are often indicators of continued or repeated violence, sometimes over very long periods of time. Violence may have escalated in severity or frequency over time.</p> <p>The possibility of an extended history of violence implies that victims may have been traumatized again and again, may have had thoughts or unsuccessful attempts of leaving the relationship or may have got used to being victimized.</p> <p>Implication for CJS: Criminal justice practitioners need to be aware of the possibility of a prolonged history of violence beyond the incident that finally spurred legal action.</p>
Embeddedness of physical violence in an overall pattern of power and control	<p>In most cases, prosecution of IPV cases is set in motion by a severe incident of physical violence. However, often physical violence is but one facet in a complex pattern of tactics used to exert power and to control the victim. These behaviours include coercion, threats, intimidation, verbal abuse, emotional abuse, economic pressure, but also sexual coercion / sexual violence. Apart from the traumatizing effects of experiencing physical violence, such patterns of control and humiliation may leave victims in an ongoing state of insecurity and powerlessness.</p> <p>Implication for CJS: In IPV cases, criminal justice practitioners need to be aware of the possibility of legally processing an apparently clearly delineated phenomenon of physical assault which in reality is embedded in a broader pattern of power, control, and humiliation.</p>

Secluded character of the violent incident	<p>As implied in the term “domestic violence”, intimate partner violence usually happens in the privacy of the home. This implies that the chance of detection is lower than with regard to “crime in the streets”. The perpetrator does not need much precaution in order to hide his deeds. Persons witnessing possible indicators of IPV (such as neighbours overhearing an assault or a physician treating an injury possibly stemming from an IPV incident) will sometimes be hesitant to intervene.</p> <p>Implication for CJS: Criminal justice practitioners should be aware of the fact that IPV’s chances of going officially unnoticed are better than in most other fields of crime and violence.</p>
Lack of witnesses in IPV cases	<p>The private character of the crime scene does not only affect chances of detection but also has an impact on investigation of IPV cases. Usually, there will either be no eyewitnesses at all (except the victim) or victims will be persons who are in a close relationship often with both perpetrator and victim. Mostly these eyewitnesses are children who may themselves be directly affected by violence / threat of violence and will probably be traumatized by witnessing violence against a parent.</p> <p>Implication for CJS: When witnesses are non-existent or in a difficult situation (as are children witnessing against mother’s partner), securing physical / medical evidence as soon as possible after an incident becomes paramount.</p>
Persons beyond the victim-perpetrator dyad affected by IPV	<p>In many cases, persons living with victim / perpetrator in an abusive household are affected as well. This applies especially to children. IPV and child abuse may go hand in hand. Even if children are not assaulted themselves they may be mistreated by being forced to witness violence and by experiencing the chronic stress from living in a violent home. This stress may affect children’s physical and mental health and development and may raise the risk of behavioural and school problems.</p> <p>Implication for CJS: Criminal justice practitioners need to be aware of the fact that the consequences of IPV are often not limited to the immediate victim. This refers especially to children who may be traumatized by their exposure to parental IPV.</p>

Possible ambivalence of victim's attitudes toward the perpetrator

Since victim and perpetrator have been or are still in an intimate relationship, a victim's attitude toward the violent partner is sometimes less clear-cut than it is supposed to be in typical cases of stranger violence / "street crime" etc. Women in abusive relationships may be ambivalent towards the perpetrator for a number of reasons including emotional attachment, hope for change, being manipulated and scared.

Implication for CJS: Criminal justice practitioners should be aware of the complexity of victims' attitudes towards perpetrators. This complexity is not to be equated with irrationality; rather, it reflects the specific nature of the victim-offender-relationship and of its pre-offence history.

Possible ambivalence of victims' attitudes to criminal prosecution

The ambivalence toward the perpetrator may also have an impact on victims' attitudes to criminal prosecution and their behaviour in the judicial handling of IPV cases. This refers to filing and maintaining complaints, providing evidence in court, reporting violations of protection orders, etc.

Implication for CJS: Criminal justice practitioners should be aware of the possible driving factors behind victims' lack of continuous support for measures of criminal prosecution. While this may be an indicator of threat or intimidation, such behaviour may also emerge from conflicts or ambivalences regarding victims' primary aims (putting an end to violence, maintaining the relationship, sanctioning the offender, etc.).

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Complexity of legal regulations connected to cases of IPV

Legal responses to cases of IPV are not limited to criminal law. Protective measures may be based on regulations in police law and civil law. Family law is relevant for questions of custody, alimony, etc. For legal laypersons, this mesh of relevant legal regulations is almost impenetrable – especially given the situation of trauma and emotional turmoil after a severe incident of intimate partner violence.

Implication for CJS: Victims of IPV require professional support in understanding legal regulations and legal procedures relevant to their case. Since usually many victims will not be supported by lawyers, the police and the justice system as well as specialized counselling institutions are indispensable sources of information and orientation for persons affected by IPV.

Need for support during proceedings

Intimate partner violence often leaves victims traumatized and vulnerable. Multiple types of need for support emerge from this. Victims may have the need to be protected from the perpetrator during court proceedings, to avoid contact with the perpetrator as far as possible, to be questioned separately. They may experience the need to be accompanied by a trusted person. Victims want to understand the proceedings they are involved in and they want to make themselves adequately understood.

Implication for CJS: IPV victims' needs during proceedings present multiple challenges for the criminal justice system. Conditions which enhance chances of victims feeling safe, informed, and fully understood include thorough information on procedural questions, provision of translation services (for documents and interviews), separate waiting rooms and other measures to avoid unwanted contact with the perpetrator, possibility of support and accompaniment from a trusted person. To the extent that the respective legal system allows for this, opportunities for separate victim and perpetrator hearings should be implemented.

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The toolkit in a national perspective: Austria, Germany, Ireland, Portugal and The Netherlands

AUSTRIA

1. What is this toolkit?

Having given an overview of the EU Victims Directive and its implementation in the five partner countries, *Make it happen!* highlights the specific situation of women who have become victims of intimate partner violence and how these circumstances influence criminal prosecution.

Afterwards, some results of the Austrian research are presented and problematized with regard to victim protection. Quotations of victims and judges illustrate the findings.

The annex contains a checklist which is supposed to support the risk assessment done by public prosecutors and judges.

2. For whom is this toolkit?

Make it happen! is a toolkit for the different practitioners of the criminal justice system: judges, public prosecutors, court assistants, law enforcement agencies, and police, among others.

3. The situation of victims of intimate partner violence – backgrounds and consequences for criminal justice

Family/ intimate partner violence is distinct from violence by strangers. Below, we will address resulting specifics and their consequences for police work and criminal justice.

- **In most cases, intimate partner violence is not limited to one single event** – which distinguishes it from violence committed by an unknown party. As long as the endangerer cannot successfully be prevented from contact with the victim, there is a risk of renewed violence, of intimidation and retribution, which negatively affects the victim's sense of security.

Consequences for criminal prosecution: It is necessary to assess the risk of further aggression, and, if necessary, to take preventive action (e.g. barring order), as well as to check compliance repeatedly.

- **History of violence in the relationship:** In nearly 80 per cent of analysed cases, there are clues of repeated previous assaults. Women affected by violence rarely report the first act of violence; only when assaults escalate and become more frequent, they turn to the police.

Consequences for criminal prosecution: It is important to raise awareness of the possibility that victims have experienced violence over a longer period of time. Indicators are e.g. (aborted) attempts at separation, trivialising incidents and excusing the perpetrator's behaviour. A possible traumatising from (repeated) violence may impact the victim's attitude towards criminal prosecution (e.g. willingness to report and to testify), which has to be taken into account.

- **Physical violence goes with other forms of violence.** In three quarters of analysed cases, there were dangerous threats and psychological violence as well as physical assaults. Physical violence is only one aspect of exercising power and control, besides humiliation, verbal abuse, threats, economic and sexual violence. The consequences for the victim are traumatising and a feeling of powerlessness and entrapment as well as insecurity and fear.

Consequences for criminal prosecution: In assessing offences, therefore, the complexity of violent relationships, and thus also forms of violence that are not open to criminal charges, should be taken into account, in terms of victim protection as well as of clarification of norms.

- **'Privacy' of violent acts.** The term domestic violence already indicates that it primarily does not take place in the public space but within the residence. The lack of possible witnesses protects the perpetrator. Neighbours and family members who witness violence often hesitate to intervene.

Consequences for criminal prosecution: Compared to many other crimes, intimate partner violence remains "undetected" particularly often. It is necessary to raise awareness of indications of intimate partner violence.

- **Lack of witnesses:** Because of the private nature of the crime scene, there are rarely witnesses, which not only hampers the detection of a crime, but also the gathering of evidence and thus prosecution. If there are witnesses, they are often closely related to the victim and the endangerer (e.g. children, other family members), what engenders conflicts of loyalty.

Consequences for criminal prosecution: When witnesses are unavailable or unwilling to testify, immediately conserving further physical, medical and forensic evidence is decisive for criminal prosecution.

- **Children are always affected by intimate partner violence.** Even when they did not suffer immediate (physical) violence, witnessing violence and a chronically tense atmosphere may lead to mental and health problems and possibly traumatising.

Consequences for criminal prosecution: As intimate partner violence is not limited to the immediate victim, measures of victim protection also have to be taken for indirect victims of violence.

- **Ambivalent victim behaviour towards endangerer.** Because of the close relationship between them, the victim's attitude towards the violent partner is not as clear as in other cases of violence committed by strangers. Emotional attachment, hope for change, fear and/or manipulation may be reasons for this ambivalence.

Consequences for criminal prosecution: Police and judiciary should be aware of the causes of the victim's lack of support for the criminal proceedings. This may be attributable to intimidation and threats, but the victim may also primarily have other goals, for instance maintaining the relationship. This causes ambivalence.

- **Complexity of legal provisions.** In the case of domestic/ intimate partner violence, criminal and civil law (e.g. interim injunction, custody, alimony) and police measures (e.g. barring order) may be applicable. In addition, few victims have legal experience. For legal laypersons, who are also in a stressful situation following an escalation of violence, the legal jungle is nearly impenetrable.

Consequences for criminal prosecution: Victims need professional support to understand relevant legal provisions and the legal proceedings. As few victims have legal representation, police, the judiciary and specialized institutions of victim protection are an indispensable source of information, orientation and support.

- **Need for support during criminal proceedings.** Intimate partner violence often leaves victims vulnerable. This results in various needs for support: Victims may not want to meet perpetrators at court, refuse to testify in his presence, or want the company of a trusted person at the police and at court. Victims want to understand the proceedings, to be heard and understood.

Consequences for criminal prosecution: Psychosocial court support is an important offer to support victims, in order to keep them informed, to increase their sense of security and to ensure that they will be understood. Questioning the victim witness at court should be made possible without the perpetrator being present if the victim wishes it.

4. Make it happen! Victim protection and victim needs

We will now present the main results of the research project – first regarding police and prosecution in preliminary proceedings, and then for the court – and address needs of victim protection and awareness for victim needs following the main provisions of the Victim Protection Directive 2012/29/EU. Our information is based on the analysis of diaries of the Vienna prosecution as well as on interviews and discussions within the framework of the project advisory board with experts from the police, judiciary and victim protection institutions, as well as on interviews with victims of violence.

Police and Prosecution

(i) To Understand and to Be Understood – Victim Protection Directive, articles 3, 5 and 7

Research results

- For those victims whose mother tongue is not German and who depend on interpreters' services, it is often hard to understand and to be understood. Interviews with migrant victims show that alarm and stress are added negative influences on linguistic competence.
- In particular, problems arise regarding access to interpreters' services at night and also in rural areas. There is a general difficulty in finding court interpreters for smaller linguistic communities.

- Judges and other experts criticise that the police often dispensed with calling on interpreters, or that insufficient linguistic skills do not seem to be noticed⁵ - an allegation that is corroborated by file analysis.
- There is a lack of qualified interpreters with knowledge of domestic violence and traumatisation.
- Although the wishes of victims to be interviewed by a female police officer seem to be largely respected, this is hardly the case with appointed interpreters.
- In the court files (prosecution diaries and individual court files), we only found one single indication that a document, in this case criminal charges, were translated.

Victims' needs are respected when:

- Starting with the filing of charges, possible problems with language/ communication are taken into account and, when in doubt, interpreters' services are requested.
- In addition, conversations/ interviews have to be recorded in the form in which they are held, without cuts or linguistic smoothing.
- The police protocol of the complaint has to be translated if necessary.
- By establishing an Austria-wide interpreters' hotline operating around the clock, access to interpreters' services might be facilitated considerably.
- In particular children or other relatives should not be used as interpreters in the police interview, especially because of connected conflicts of loyalty and psychological stress. Objectivity of interpreters has to be ensured.
- Confirmation of reporting the offence, criminal charges, court summons, decisions etc. have to be translated into the victims'/ the accused's mother tongues if need be.
- Further trainings of police officers and prosecutors regarding communication, interview techniques and the recording of interviews would improve their quality.

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(ii) Information – Victim Protection Directive, articles 4 and 6

Research results

- Victims usually receive oral and written information regarding their rights as well as regarding legal and psychosocial support offers (court support) during their first contact with police or, at the latest, during the police interview.
- However, the quality of this information in terms of its extent and intelligibility varies. According to victims and counselling institutions, specialised officers are better at passing on information.
- The police protocol of the complaint is not delivered to the victim by default.

⁵ This allegation from the ranks of judges is based on the fact that hearings have to be adjourned because of insufficient German skills of the accused or the victim and a lack of information. According to judges, the police often passes on optimistic self-assessments of interviewees regarding their language competence ("Do you understand sufficient German?").

- Police information material⁶ is available in different languages, but not in an easy reader version.

I have to admit I was so agitated that I could not take in the information that was provided. I had to read a lot, because before the interview one has to sign a statement, but I was unable to remember most of it. (...) But it's impossible to remember it all. One is overwhelmed with the situation, or at least I was. The police officer was very nice and he explained the most important issues to me.

First of all, the information was printed in tiny letters, mind-boggling information in a very small space. One cannot take it in. Secondly, as far as I can remember, many paragraphs were listed, and I didn't know what they say. In an exceptional situation, this is really, really hard to take in. I think this information should be short and precise, summarised in a few key words one can remember.

Clara, Austrian, 41 years old

- According to victims' and counselling agencies' experiences, information that is essential for the victim's safety, for instance regarding the imposition of a barring order or the endangerer's release from custody, is often hard to come by. This represents a gap in security and an increased liability for the victims.

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I was still at the hospital and I said: 'I would like to go home now and I would like to know whether he still is at home.' It was impossible for them to find out. The police argued that they are not allowed to pass on this information. Not knowing was scary.

I thought they had to release him after twelve hours and I panicked. Total panic, because they did not find out immediately, and it was a weekend. That day was terrifying.

Dora, Austrian, 40 years old

Victims' needs are respected when:

- Information is passed on in an intelligible and situation-adjusted manner. The majority of victims are legal laypersons and do not have any experience with the law, and in a stressful situation (e.g. immediately after the assault or during the police interview), their receptivity is additionally limited.

⁶ Intervention centres and protection against violence centres offer divers information in several languages, too. Easy reader texts, however, were not available at the time of the survey; however, they were planned for 2016.

- It is necessary to stress the importance of medical care and the securing of medical evidence.
- Information should, on the one hand, be repeated, and, if necessary, supplemented as the situation requires, and, on the other hand, be presented in plain and simple language (oral and written).
- In order to comply with these requirements, communication with specific groups of victims needs to be addressed in police training/ further training.
- Case-related information should be a special focus, as it is essential for the victims' safety and sense of security. Where there is no specialised officer in a police station, naming a contact with the police who the victim can turn to (at all hours) would be helpful.

(iii) Right to Be Heard – Victim Protection Directive, article 10

Research results

- In the case of intimate partner violence, the testimonies of the victim and of the endangerer/ perpetrator are the main evidence. Photographic evidence (e.g. of injuries, crime scene) that support the victim's testimony are usually collected by the police in addition; in spite of this fact, proceedings are regularly dismissed due to lack of evidence.
- A majority of victims is not only interviewed in detail directly at the crime scene, but, within hours of the crime, also at the police station. In the analysed files, only twelve per cent of the victims refused to give evidence (eight women); this shows that the victims feel a strong need to be heard, in particular right after the assault.⁷ In this context, we should like to note that a majority of the victims of violence we interviewed testified to a sensitive approach of the police officers, they felt understood; however, in individual cases the manner of questioning suggested they were interviewed as the accused.
- The quality of the interview of the victim witness (as well as other witnesses) and its recording are essential. Judges and counselling agencies criticise that interview records often are incomplete, ambivalent due to bureaucratic expressions, and inauthentic. Interviews through interpreters are said to be particularly problematic in this regard. Judges at District Courts are sometimes confronted with the fact that the police did not interview the victim witness in detail, arguing that she would be able to give a detailed statement at court.
- Prosecution only interviews victims in exceptional cases, and usually deems police charges/ records sufficient.
- Evidence by indirect witnesses, offered by the victim, is often ignored.
- Only one of the analysed files contained a motion for a continuation of court proceedings; according to experts, they are hardly ever allowed.

⁷ At court, 50 per cent invoked their right to refuse to give evidence.

Victims' needs are respected when:

- A stronger emphasis is on securing evidence and recording it in order to make criminal prosecution more independent of the victim's statement.
- It is necessary to establish verbatim transcripts without linguistic editing.
- Prosecution should more often get its own impression of the victim and verify evidence offered by the victim.

(iv) Support – Victim Protection Directive, articles 8 and 9

Research results

- File analysis shows that the Intervention Centre reached out to nearly all victims of intimate partner violence and counselled them in an initial consultation. The proactive approach of the Intervention Centre as well as Child and Youth Welfare – the interviewed victims were promptly contacted by these institutions – is very welcome and seen as supportive.

In any case, support is necessary. It is important to have someone to talk to, who explains what has to be done next. Otherwise one would be lost, all alone with police and judiciary.

Clara, Austrian, 41 years old

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- According to the analysed files, only a small percentage of victims – i.e. roughly ten per cent – had psychosocial (and legal) court support; this, however, from the preliminary proceedings onwards.
- Victim support institutions criticise that the Austrian regulation is more restrictive than the EU Victim Protection Directive which recognises the right to support of all victims of crimes.
- According to victim support institutions, funds for court support are insufficient, and therefore sufficient support cannot always be offered.
- In addition, most representatives of the judiciary did not recognise the effects of psychosocial court support.

Victims' needs are respected when:

- Information on court support is provided to all eligible victims of violence at an early point in time and in an intelligible form, and if the important role of court support is explained to them.
- Minors who have witnessed the offence but who were not immediate victims are not eligible for court support. In particular in cases of serious violence against close relatives, they need it, because of the special need for protection of minors, but also to ease the burden of the relatives affected by violence.

(v) Protection – Victim Protection Directive, chapter 4, articles 18–24

This issue not only refers to protective measures during court proceedings that result from the EU Victim Protection Directive, but over and above also to Austria-specific measures within the scope of police.

Research results

- In the vast majority of the incidents examined in file analysis, a barring order was issued.
- The transfer of information regarding the issuing of a barring order to the Intervention Centre and, where applicable, to Child and Youth Welfare works; however, the notification of Child and Youth Welfare is not always recorded.
- Four out of ten interviewed victims had the experience that police only issued a barring order after repeated calls for help. In particular, this affected women who did not live in one household with the perpetrator, or who had taken refuge in a women's shelter.
- Initially, police officers refused to notify reports which victims wanted to bring in only the day after the violent incident.
- When the endangerer picked up personal belongings after the barring order was issued accompanied by police, there was no further danger, but objects were also taken that are not part of the personal sphere without the officers reacting to this fact.
- Because of the restrictive definition of stalking, it is difficult to find protection from such prosecution. In some cases, measures were suggested to the interviewees that would have led to serious constraints in their own everyday lives.
- Police and victim protection institutions criticise that remand custody is only rarely imposed, and the justification regularly used by the prosecutor and the court is that as a protective measure the “less severe means” of a barring order was already in place.
- According to victim protection institutions risk assessment by the police and the prosecutor often is wrong. While the police have a standardised tool of risk assessment, the documentation sheet for barring orders, the prosecutor's office uses no comparable approach.
- The conversations with endangerers and victims following a barring order are rated as highly effective by the police. Hardly an endangerer did not take up the offer, and repeat offences in this group are rare; victim conversations are used to give security tips and legal information etc. The conversations require sufficient German skills, however.
- There are diverging opinions regarding contradictory hearings, amongst victims and victim protection institutions as well as in the judiciary. Some regard separate hearings as more effective.⁸

⁸ One important counterargument is that the victim is not perceived as an individual at court – while personal impression played an important role in the consideration of evidence. Victim protection institutions also said that some clients felt uncomfortable with contradictory hearings: They felt trapped, did not feel they were on top of things, they were unable to see the accused while he could see them.

- The technical requirements for contradictory hearings are usually met; in particular, but not only in rural areas, there are sometimes long waiting periods.
- One of the main tasks of psychosocial court support is to make sure protective measures like avoiding meetings between the victim and the perpetrator are observed. This is one of the reasons why the low percentage of court support is problematic.

Victims' needs are respected when:

- In the context of trainings for the executive forces, the subject of requirements for barring orders is allowed more space (e.g. that a common household is not a necessary precondition).
- The police must not use a time delay between the act of violence and its reporting by the victim as an argument for not notifying the report.
- In the police force as well as the prosecutor's office, a strong focus of trainings should be on recognising risk factors for (repeated) use of violence.
- Risk assessments of victim protection institutions should be given more consideration in the prosecutor's decision on imposing investigative custody.
- "Less severe means" like barring orders or interim injunctions do not offer equal protection as investigative custody.

Court

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(i) To Understand and to Be Understood –Victim Protection Directive, articles 3, 5 and 7

Research results

- In court proceedings, interpreters are regularly used when necessary. However, adjournments are often required because the final police report does not point out insufficient linguistic skills.

Then I have to reschedule, and when I criticize police, they say "things often need to happen very quickly" or "that's so expensive".

Judge

- The lack of qualified interpreters who have some knowledge of domestic violence and traumatisation is a problem at court, too.

Victims' needs are respected when:

- Legal information, court summons amongst others, are translated into the victim's mother tongue when there is an evident language problem.

(ii) Information –Victim Protection Directive, articles 4 and 6

Research results

- Written information on the state of proceedings, whether by the court or the prosecutor, is often not understood by the victim, partly because of a lack of knowledge regarding the legal system. This might be counteracted by granting court support more frequently and sooner.
- However, in the files as well as in the interviews, there were indications of a lack of information or flawed information. Thus, for instance, the legal representative of one victim was not informed of the perpetrator’s appeal against the decision.⁹
- Victims without court support receive information on victims’ rights with the written court summons. It remains unclear whether and how far these instructions are understood – and the interviews with victims show that inquiries with the court are very unusual indeed.
- The justification and wording of court decisions has an important role insofar as the victims (also) want to be valued and to be taken seriously. Some of the interviewed judges are aware of this fact and consequently explain their decisions in detail. For example, when they have to acquit the accused for lack of evidence, they emphasise their doubts.

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Even when I acquit someone, I sometimes say, “I have acquitted you on the basis of doubt, but this does not mean it will go the same way next time”. Maybe we can have some effect on their behaviour in this way, too.

Judge

Victims’ needs are respected when:

- It is guaranteed that court support is actually given to all eligible victims of violence who need such support, because court support ensures that information is actually understood.
- Information should not only be given in the victim’s main language, but also in general in plain and intelligible language.
- Judgements and other decisions have to be communicated in a form the victim can understand.
- It is important to the victims to understand the court’s decision, whichever way it goes.

⁹ The same interviewee also reported that in the information she received on the temporary prison leave of the detained perpetrator, the date given was wrong, and she was not informed of the correct date.

(iii) Right to Be Heard –Victim Protection Directive, article 10

Research results

- Some interviewed victims criticise that existing evidence (photos of injuries, medical findings or stalking text messages) had been ignored. Counselling agencies also say courts often disregard such evidence.
- Some interviewees had the impression that the judge doubted their credibility.
- The issue of impolite manners at court was also broached. Victims were not greeted by judges, not looked at, shouted at, ridiculed. Some also mentioned a lack of empathy and said they had been treated as though they were the accused.

Due to my appearance and look it was rather difficult. During the last trial, the judge's treatment of me was very, very humiliating.

Anna, Croatian, 30 years old

- Victim protection institutions and victims identify a lack of sensibility for the challenges victims face at court, in particular when it was “only” a case of physical violence. Cases of sexualised violence were treated in a more cautious manner.
- The interviewed judges have very diverse ways of handling victim witnesses. While some give the victim time to tell her story and allow individual emphases, others think that it is unavoidable that victims sometimes feel as though they were the accused.
- Victims complain about a lack of interest and commitment of prosecutors during court sessions.

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Victims' needs are respected when:

- They are treated politely and with respect, and they are given to understand that their statement is important evidence.
- Judges need to be competent to treat (sometimes traumatised) victims of partner violence with care and question them accordingly.
- A judge said that she listened to the recording when the victim herself had called in the emergency, in order to get a feel for the situation.

(iv) Support –Victim Protection Directive, articles 8 and 9

Research results

- In 16 out of 70 analysed cases, court proceedings took place, and in only six of them the victim had psychosocial (and legal) court support. In contrast, eight of ten interviewed victims were accompanied¹⁰ – and their assessment of this form of support was unreservedly positive.

¹⁰ This difference is due to the fact that contact with a majority of interviewed victim witnesses was made through violence protection agencies.

Ms. H. from the Gewaltschutzzentrum contacted us, we met and talked things through. She then set everything in motion. In the meantime, we kept in touch on the phone. When there were any questions I went back to her. A lawyer was also provided, but I only saw him for the first time at the court session. (...) I finally felt I had an institution where I can ask questions, that is there for me, that is responsible for me, where I can ask my questions.

Julia, Austrian, 46 years old

- The interviewed judges had the impression that in serious cases, most victims had psychosocial and legal court support. One judge, however, criticised that court support was too common and that the “real” victims were overlooked.
- The majority of judges highly value the instrument of court support; they did not think it resulted in a manipulation of statements, but rather that it provided “translation services” in both directions. In contrast, representatives of victim protection agencies criticise Austrian regulations as restrictive compared to the EU Directive.
- Psychosocial court supporters felt their services tended not to be sufficiently valued by the court.

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Victims’ needs are respected when:

- The important role of court support is explained to the victim of violence.
- Court files should document whether psychosocial court support is present; if not, the judge should clearly point out its importance to the victim.

(v) Protection - Victim Protection Directive, chapter 4, articles 18–24

Research results

- At court, risk assessments by the police are taken more seriously than those of violence protection agencies.
- From the victims’ point of view, the history of violence or the context of the prosecuted offence is not taken into account sufficiently.

Although my lawyer pointed out several times that my ex-partner is barred from the child care centre and that the accompanied visits of the children (visit-cafes) failed because of his aggressive behaviour, the judge kept saying: ‘We are focusing on the incident of dangerous threat. Everything else is irrelevant.’

Barbara, Slovakian, 38 years old

- The request of several interviewees to make their statement without the accused being present was ignored. This was justified for instance by the fact that the couple had seen each other only recently in the course of divorce proceedings, that they were already divorced anyway, or that the victim's fear was not credible.

I didn't want to meet him. You know, at the first court session I was so tense, I felt so sick, I even vomited.

Irena, Slovakian, 40 years old

- In the 70 analysed cases, there was a single referral to an anti-violence training (in the context of a diversion). Victim protection experts and police criticise that anti-violence trainings, alcohol withdrawal and probation assistance were not ordered in more cases of intimate partner violence.
- In contrast, one accused was issued with a fine, and two with a financial penalty. Victims and experts regard neither as adequate punishment, as payments are often made from the household budget, and, above all, do not result in a change of behaviour.
- Efficient victim protection substantially depends on the cooperation between different relevant stakeholders (police, judiciary, victim protection centres). Victim protection agencies suspect that the main obstacle to a more intensive collaboration is the prosecutors' and judges' fears that this contact might unduly influence them.

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Victims' needs are respected when:

- The wish of the victim witness to make her statement in the absence of the accused is respected.
- In particular when a victim refuses to testify, judges should increasingly refer to histories of violence and the context of the offence in their decision in order to assess the significance of the situation.
- More referrals to anti-violence trainings make sense, because such measures are most likely to achieve a change of behaviour, which results in avoiding further violence.
- Probation assistance is a measure of violence prevention, too.

5. Make it happen!

With regard to protecting victims of intimate partner violence and making sure their needs are respected, Austria is in a strong position, not least because of psychosocial and legal court support, which has been set down in law in 2006: several minimum standards for crime victims required by the Victim Protection Directive 2012/29/EU are guaranteed by the tool of court support. Besides, other essential guidelines of the Directive have already been implemented in Austrian criminal law for some time, or will be shortly.¹¹

The research project¹² in the framework of which this brochure was developed offers some interesting insights into the way the judiciary handles intimate partner violence against women.¹³ The **file analysis** conducted in Austria covers 70 diaries of the public prosecutor's office in Vienna, which answer to the following criteria: All files were classified as cases of domestic violence (FAM), the accused were male, (former) partners of the victim, and at least 18 years old at the time of the offence; the charges were (serious) bodily harm, dangerous threat, coercion, continued use of violence, rape and/or sexual assault.¹⁴ As all files date from the period of 1 to 28 January 2014 in continuous order, this full survey provides representative data for the Vienna prosecutor's office.

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51 out of 70 analysed proceedings, i.e. 73 per cent, were **dismissed** by the prosecution. In addition, there were three cases of deferment of charges after diversion,¹⁵ and two cases of partial dismissal regarding the suspicion of dangerous threat, while the suspicion of bodily harm was heard at the District Court.

Only 16 proceedings (23 per cent) **went to court**, in particular regarding the suspicion of bodily harm and/or dangerous threat.¹⁶ Nine cases were in the jurisdiction of the District Court, seven were heard at the Regional Court. In detail there were five diversions,¹⁷ three acquittals,¹⁸ and six sentences;¹⁹ two proceedings at the District Court were pending at the time of data collection.

One remarkable result from the perspective of victim protection is that only six women had access to psychosocial (and legal) **court support**, i.e. nine per cent – starting, however, with preliminary investigation. Prosecution dismissed three cases (bodily

11 The Member States were obliged to implement the Victim Protection Directive until 15 November 2015; in December 2015, the Austrian Federal Ministry of the Interior submitted a bill which, amongst others, provides for an amendment of the Code of Criminal Procedure taking into account the requirements of EU Directive 2012/29. The amendments have not been passed yet.

12 INASC – Improving Needs Assessment and Victim's Support in Domestic Violence-related Criminal Proceedings JUST/2013/JPEN/AG/4591, www.inasc.org.

13 For more detailed information, see project report on the website.

14 Occasionally, the charges included other offences, for instance criminal damage.

15 Two cases of offence resolution (because of mutual violence) and one fine.

16 Criminal complaints/ charges were brought three times for coercion, and once each for continued use of violence and criminal damage.

17 Three of them defining a probationary period (twice without any duties, once with mandatory anti-violence training) and two fines.

18 One accused was sentenced to a five months conditional prison term for aggressive behaviour and dangerous threat towards police officers, the charges of bodily harm and dangerous threat against his wife were dropped (the victim refused to testify). The other acquittals were in cases of suspicion of dangerous threat and continued use of violence.

19 At the Regional Court, four accused were sentenced to conditional prison terms: two of three months, one of two and one of five months (all of them with a probationary period of three years). At the District Court, one perpetrator was sentenced to six weeks of prison, another to a fine of 40 daily rates.

harm and/or dangerous threat), the others went to court (two after partial dismissals). In one of the proceedings at the Regional Court, the accused was sentenced to a conditional prison term for bodily harm, dangerous threat and coercion, the other was acquitted of the suspicion of dangerous threat (the suspicion of bodily harm and continued use of violence had been dismissed earlier). The third proceedings, this time for bodily harm at the District Court, also ended in a diversion after a partial dismissal (dangerous threat).

Apart from that, 60 of 70 accused had received a **barring order** along with the police charges. 44 connected criminal proceedings were dismissed by prosecution (73 per cent); this result reflects the attitude of most interviewed state prosecutors that the existence of a barring order did not have a role in their decision.²⁰

Finally, we would like to emphasise that only twelve per cent of the victims (eight women) made use of their **right to refuse to give evidence** before the police; at court, however, it was 50 per cent. Experts point out that the majority of forfeits result from fear, from stress, or because the victim does not want to confront herself with the act again. Only a few are based on the motive of maintaining the relationship; however, this wrong interpretation is common amongst prosecutors and judges, and is used as an argument for dismissal.

As the project plan is focused on the EU Directive, and therefore on criminal proceedings, this research lacks the aspect of the protection of victims from further violence, as well as protection measures that are not based in criminal law, i.e. **interim injunctions** that are meant to offer longer-term protection, and which are relatively important in Austria.²¹

The goal of this brochure is to support the implementation of the Victim Protection Directive and relevant regulations in the Austrian Code of Criminal Procedure. It emphasises the necessity of improvements by means of the interviews conducted during the research, which confirm in particular the importance of some knowledge of the characteristics and dynamics of domestic and interim partner violence for victim protection and dealing with victims. This is true for all concerned stakeholders, including police and judiciary. One “side effect” of strengthening victims by respecting their needs and conveying a feeling of security may also be more precise statements and thus an improvement in the quality of criminal prosecution.

The annex includes a checklist to support risk assessment by prosecutors and judges.

20 In the 16 court proceedings, 13 of the accused were subject to a barring order.

21 Experts estimate that one in three barring orders is extended by an interim injunction. In our file analysis, however, this ratio was only 1:14. One of the main problems in protection by interim injunction in Germany, and according to Austrian experts here, too, is that it is weakened by existing parental visiting rights.

Annex: Checklist²² HISTORY OF VIOLENCE

	yes	no	unknown	comments
Current case				
* (Serious) bodily harm				
* Dangerous threat				
* Sexualized violence				
* Stalking				
Violence against				
* Partner / wife, husband				
* Children				
* Other individuals sharing the household				
Former charges for				
* (Serious) bodily harm				
* Dangerous threat				
* Sexualized violence				
* Stalking				
Earlier prosecutions				
Domestic violence: dismissal (incl. diversion) conviction acquittal				
Other violent offences: dismissal (incl. diversion) conviction acquittal				
Barring order				
* first-time				
* repeated				
Interim injunction				
* filed				
* granted				
Violation of protective orders				
* repeated violation of barring order				
* repeated violation of preliminary injunction				
Specifics of violence				
* Choking, strangulation, suffocation				
* Violence during pregnancy				
* Gun possession				
Increased risk of violence because of				
* Perpetrator's alcohol or drug abuse				
* Perpetrator's claims of ownership, extreme jealousy, control behaviour				
* Perpetrator's mental instability, depression, threats or attempts of suicide				
* Unemployment				
* Separation (actual, planned)				
* Violence in the presence of children				
* Stepchildren in shared household				

22 Partly taken from: WAVE (2012). Protect II - Stärkung der Handlungskompetenz bei Gefährdungseinschätzung und Sicherheitsmanagement zum Schutz hochgefährdeter Gewaltbetroffener. Schulungsmaterial, pp 89-95.

GERMANY

1. Introduction

The EU Directive on Victims' Rights 2012/29/EU of the European Union dated 25. October 2012 establishes minimum standards for the rights, the support and the protection of victims of criminal offences to a new extent. Special regulations apply for victims who are particularly at risk due to their relationship with and dependence on the offender. Thus, they apply for a large number of women, men and children who become victims of domestic violence every year.

The guideline is valid since November 2015. Corresponding adjustments on Federal Legislation level particularly concern the incorporation of psycho-social accompaniment during the process. Further adaptations - such as the regulation regarding access to victim assistance facilities - are within the powers of the federal states. The implementation of the EU Directive on Victims' Rights furthermore depends on whether those responsible for criminal prosecution on site implement the spirit of the Directive in their everyday work to support victims in criminal proceedings and enforce their rights.

The project INASC took the opportunity of the new efforts being made for the empowerment of victims in criminal proceedings to examine the experiences of victims of domestic violence within the police and the justice system and their needs in this context.

This brochure introduces the EU Directive on Victims' Rights and the legal adaptations at the federal level, describes important findings from the study and provides information regarding the implementation.

2. An overview of the EU Directive on Victims' Rights

The regulations of the EU Directive on Victims' Rights concern the following aspects

- ▶ Victims' right to information
- ▶ Understanding and being understood
- ▶ Recognising the strain and needs of victims
- ▶ Respectful interaction with and recognition as the victim
- ▶ Involvement of victims in the proceedings
- ▶ Access of victims to the law and to justice
- ▶ Protection from intimidation, vengeance and further violence
- ▶ Protection from damages due to criminal investigations and legal proceedings
- ▶ Fast assistance after a criminal offence
- ▶ Long-term support and practical assistance for the proceedings
- ▶ Compensation and restoration of pecuniary losses, reimbursement of costs of the proceedings
- ▶ Training and cooperation of the experts
- ▶ Information regarding the guideline

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3. What has changed in the German legislation?

Many of the legal instruments included in the EU Directive on Victims' Rights are already known in the German procedural law. The innovations of the three Acts to reform the protection of victims' rights in part even exceed the new European minimum standard. Nevertheless, there was a need for legal adaptation on a federal level, which was implemented with the 3. Act to reform the protection of victims' rights effective as of 1.1.2016. The national introduction of psychosocial accompaniment during the process for victims of grave sexual and violent criminal offences is particularly important. The modifications in detail:

The consideration of the particular needs for protection of the aggrieved is placed pivotally at the beginning of the StPO (German Code of Criminal Procedure) and incorporated in § 48 StPO. Here it is elaborated that, if witnesses are simultaneously victims of a criminal offence, the proceedings, questioning and other investigative acts have to be executed under consideration of the "*special need for protection*". Specifically to be examined are the extent to which unnecessary questions regarding the personal background can be omitted, whether the exclusion of the public is appropriate, whether a separate hearing outside of the court room should be instigated with audio/video transmission or whether the removal of the defendant during the testimony of the witness is indicated. In the process, the personal conditions of the victim appearing as a witness as well as the type and circumstance of the criminal offence are to be considered.

When **lodging a complaint** (§ 158 StPO), victims will now be entitled to a written confirmation of their complaint (information regarding the location of the crime, time of the crime and the reported act) as well as language support, if required.

The victims' **rights to information** were newly structured and expanded, i.e. with respect to time and place of the main hearing, the accusations raised against the defendant and the outcome of the proceedings. Victims have to be informed of these rights. Upon application, the victim has to be informed if the offender is released or escapes custody; also about the protective measures initiated for the victim (§406d).

Some of the **obligations to provide information** regarding (participation) rights in the criminal proceedings and support options introduced in §§406i, 406j are new. Accordingly, victims have to be informed about the legal right for translations and interpretations, the option of indemnification in the course of victim-offender mediation and regarding the above mentioned procedural rights of witnesses in particular need of protection during the main hearing. It is also more specifically determined that information has to be provided regarding the options and accessibility of support and assistance through victim assistance facilities with respect to consultation, provision or facilitation of accommodation in a shelter or the referral to therapeutic and psychosocial services. In particular, information as to which authorities could be of assistance must also be provided (§406k).

The involvement of **interpreters** during police and prosecutor questioning of the victims is now explicitly specified in § 161a StPO and § 163 StPO. Added to this is the accessory prosecution's right for the translation of the documents necessary to exercise their rights (§ 397 StPO).

With the Act to reform the protection of victims' rights, the **psychosocial accompaniment during the proceedings** is now firmly integrated in the German Code of Criminal Procedure (§406g StPO). Psychosocial supporters may now accompany the victim during questioning - with exceptions which have to be documented - and principally during the main hearing. The principles of the psychosocial support during proceedings and the remuneration are regulated by the **Act Regarding the Psychosocial Support in Criminal Proceedings (PsychPbG)**. The requirements for the qualification are extensively at the discretion of the federal states. As well as the qualified counselling and support, psychosocial support staffs are to take on the transmission of information during the entire proceedings. It is the explicit objective to reduce the individual stress for victims and to avoid secondary victimisation; at the same time, the neutrality with respect to the criminal proceedings and the separation of consultation and counselling are essential basic principles. A right to refuse to give evidence does not exist.

Upon application, children and adolescents who are victims of a grave sexual or violent criminal act are legally entitled to gratuitous psychosocial support. Upon application, adult victims of grave sexual or violent criminal acts may be awarded psychosocial process support as well. Contrary to the demands of various associations, there is no legal claim in this aspect.

Grave sexual and violent criminal acts are the offences which also qualify for the awarding of an accessory prosecution representation, namely (grave) sexual abuse, sexual coercion, rape, abuse of wards, abandonment, human trafficking, kidnapping, abduction, grave bodily harm, stalking, hostage-taking, abduction of minors, mutilation of female genitalia, forced marriage, robbery, aggravated robbery, robbery and blackmail, robbery of motor vehicle drivers, murder, manslaughter.

In order to award psychosocial support to an adult victim, the court has to recognise a special need for support. It is therefore essential that judges who take these decisions are aware of the particular strains of criminal proceedings on the victim on one hand, and that they are aware of the option of psychosocial support during proceedings and understand why this is helpful and supportive for the victims on the other. In some federal states - e.g. Lower Saxony - psychosocial support staffs have already been trained for many years and are available, so far even without being appointed by the court. Victims can be put in contact through the victim counselling and expert counselling facilities for women and girls, which usually also offer psychosocial support during proceedings themselves.

4. Findings of the study and information regarding the implementation of the EU Directive on Victims' Rights

Interaction with victims during police questioning and in court and the public prosecutor's office (Article 18, 19, 20, 21, 23, 24)

The questioning of victims appearing as witnesses is generally very stressful for them as this is always connected with memories of the event. Victims generally accept the questioning by police as a necessity. Many victims report that they encountered experienced and compassionate police officers.

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The police officer (female) was very nice and I believe that she also understood the situation because she subsequently said: "Let's take a little break first, I'll get you something to drink and, yes, you can calm down a little." However, she still had to continue with her questions.

Survivor of intimate partner violence

I thought the questioning was all right, also the kind of questioning. Because the police officer (male) also said: "I'll also ask your ex-husband exactly the same question." And then, it was also o.k. for me.

Survivor of intimate partner violence

However, at times, victims also talk of inappropriate conduct by police officers during the initial questioning at the time of filing the report at the police station.

It is incomprehensible for many victims why they have to be questioned on several occasions. In addition, the willingness to report on the events diminishes the more time has passed. For victims, it is essential that the report is recorded in detail during the questioning. Thus, they can assume that all information relevant for the proceedings will be considered during the proceedings.

I really wished that he (police officer) would record as extensively as I have told him. So that also the judge, who subsequently reads it, really notices how horrendous all this was for me and the injuries I sustained.

Survivor of intimate partner violence

During questioning by police and justice system, it is pivotal for victims

- ▶ to precisely understand the procedural steps and to comprehend the character of a dialogue situation (questioning vs. conversation)
- ▶ to experience appreciation and to be understood
- ▶ to be taken seriously as a victim with the associated stresses
- ▶ to receive a response to the report
- ▶ that the report of the events is taken to the records in detail and
- ▶ that individual needs for protection are taken seriously and acted upon (e.g. no avoidable encounters with the suspect / defendant)

A female court assistant summarises what - according to her - is important to victims of domestic violence:

Well, that they have the impression: 'What I say, what is important to me, receives its due space and is also accepted at a government agency and that I do not fall between the cracks; I am not one of many numbers. But rather in the manner: I have fears, I have needs, and they are worth something.'

Court assistant

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It is generally a great problem when victims appearing as witnesses have the impression that it is implied that they are not telling the truth.

It was really also the way in which the police officer (female) questioned me. In a manner such as: "Are you really sure?"

Survivor of intimate partner violence

The direct confrontation with the defendant is very stressful during questioning by the judges. For some victims, making statements before the court is very important to process experiences of injustice, but also in order to be able to find closure to the violent relationship. The needs of victims in this context can vary; they could also be extremely ambivalent. It is important to realise that it is not generally in the interest of the victim to avoid a statement before the courts. **Plea agreements** and **dismissals** can be problematic for victims.

After the hearing, when we all came out, I was disappointed that I was not allowed to say anything, because I just wanted to tell my story once - maybe before the court and before him.

Survivor of intimate partner violence

Beyond the confrontation with the accused, further factors contribute to the stress of the legal proceedings for victims. The victim's willingness to make a statement is influenced by these pressures.

In most cases, there are bound to be some sort of comments which in fact intimidate the victim, resulting in the victim saying nothing at all.

Public prosecutor

Examples for the positive handling of strain are:

- ▶ Defamations and threats in courtroom are intervened against, even if they are not uttered in German. It is therefore important to instruct interpreters to also translate conversations on the side and interjections.
- ▶ Precautions are taken prior to a court hearing to prevent the unprotected confrontation with the accused in and in front of the courtroom. Respective precautions on spatial and/or personnel level have to be taken.
- ▶ Attempts by the defence to demoralise the victim are prohibited by court and prosecutor.
- ▶ Judges and public prosecutors show interest in the case and make it clear that they understand the extraordinary situation of the victim.
- ▶ Judge and prosecutor are well informed about the dynamics of domestic violence and do not hold the victim indirectly responsible for the violent experience ("Why did you not walk away?").

Appropriate handling by police and justice system of victims of domestic violence requires that the specialists have been sufficiently trained and know and are able to assess the dynamics of partner violence, stresses resulting for the victim as well as the consequences of traumatisation. While such training has been regularly designated for experts of the police since the introduction of the law for the protection against violence, there is no further education obligation for prosecutors and judges who handle such cases.

Constant dripping wears away the stone, and in these cases it is possible that some women need five to seven attempts and then even make it, but many don't. However, one only realises this after having worked in the sector for a few years. Initially, one takes it quite personally when the woman returns home again. One thinks: I have talked to her for the past five hours and finally got her into a women's shelter; why is she now going back? One should not do that. The more one knows about the subject, the better one can handle it.

Police officer (female) in the criminal and investigation service

Recognising and considering special needs for protection and the needs of the victim (Article 22)

The stipulation of the EU Directive on Victims' Rights that special needs for protection of the victim have to be recognised initially and need to be considered during the further proceedings is by no means trivial. According to experience, police do obtain such information and often also base the measures for the prevention of danger on this information. However, it is not systematically incorporated in the criminal proceedings because it is assumed this information is of no particular significance to criminal investigation. The prosecutor's office itself has contact to victims only in exceptional cases and is therefore only able to get an impression based on the files. This leaves the question as to how such an evaluation can occur regularly. The study shows that the cooperation of police and victim protection services could be improved particularly with respect to the risk assessment.

The psychosocial support during proceedings now establishes an instrument which is suitable in certain cases to recognise the protection needs and to claim them during the entire legal proceedings. Psychosocial support has already taken on this role in some federal states (e.g. Lower Saxony), but it was not incorporated in the course of the 3. Act to reform the protection of victims' rights. Its significance in terms of the criminal proceedings will still have to prove itself during the next few years. Still, there is no information requirement from victim support facilities to the justice system.

With respect to the criminal proceedings, the study showed that the justice system itself principally possesses suitable instruments to establish special needs of the victim. Thus, public prosecutors at different locations increasingly revert to information through court assistance in cases of domestic violence. Court assistance is employed for the establishment of the consequences of the criminal act and the background, offender and victim situation as well as for the better understanding of the victim's needs. For this purpose, court assistance contacts the victim (sometimes also the offender).

On one hand, positive effects are described for the victims, who are informed about the ongoing procedures in this context, who can take informed decisions based on this information and who can also find out about and be awarded possible assistance. On the other, the effects for the criminal proceedings are positive, because the victim's report provides information on the willingness to testify and the interests of the victim and allows their consideration in the determination of possible conditions in case of discontinuation and/or sentence. The contact with court assistance thus contributes to improved participation and potentially more successful criminal prosecution. It is essential for the success of this instrument that an internal judicial instance legally established in § 160 (3) StPO (German Code of Criminal Procedure) supplies the information. The victim's report of the court assistance forms part of the investigative file.

**Example for good practice I:
Court assistance Marburg**

Victim support and information for the prosecutor in cases of domestic violence at the earliest possible time

One peculiarity of the Marburg model is the fact that the police, on behalf of the prosecutor, inform court assistance by way of fax directly after a discovery of the domestic violence case. This way, court assistance can contact the affected family at the same or the following day in writing; the family is generally contacted again after four weeks. Court assistance visits the victim at home; appointments with the offender are conducted in the office of court assistance. Court assistance Marburg not only sees its function as social reporting of the background of victim and offender, the relationship constellation and the incident but, upon request, also as a supporting facility accompanying the victim throughout the investigation and criminal proceedings, referring support and networking closely with other relevant authorities (e.g. the police).

**Example for good practice II:
AJSD Bückeburg**

Standardised application of court assistance in cases of domestic violence - victim report as information and support tool

The model "Standardised victim report in proceedings of domestic violence (StOp HG)" was tested and evaluated by the public prosecutor's office Bückeburg in 2014. The prosecutor's office commissions a report in all cases of domestic violence, which is processed by court assistance. For this purpose, court assistance contacts the victim and visits him/her at home, if possible. The report is usually commissioned within 1-3 months following the filing of the report. The victims - according to experience - make their statement voluntarily and in detail. This procedure often causes that, despite the ambivalence of the victim or meanwhile lack of willingness to make a statement, it is possible to continue the investigation and lodge a complaint, because the victims are aware of alternatives to prison sentence and/or pecuniary fines, such as conditions for the offender.

Mundt, T. & Goldmann, T. (12.2.2015). Standardisierter Opferbericht in Verfahren Häuslicher Gewalt (StOp HG). Bückeburg

Understanding and being understood (Article 3, 5, 7)

Victims are entitled to understand which procedural steps to expect, what exactly will happen to them, which rights and which obligations they have and they have the right to be able to understand the questions posed to them and to be heard and understood. Also this requirement is by no means trivial and is not limited to issues of translation.

An analysis of procedural files revealed extreme need for improvement for police and courts in matters of translation services and the availability of information in the native language. Experts sometimes criticise the lack of female and neutral interpreters (without contact to the offender). Police officers as well as special consultancies sometimes revert to the multi-language offer of the national helpline, which has often proven to be very beneficial.

It is often the case that professional interpretation is not offered during the questioning by police. Instead, victims with a suspected need are asked to procure an interpreter.

Also the summonses to court and hearings are composed in German. This can lead to the victim not appearing, which can be interpreted as a refusal to make a statement. Interpreters before the court are usually summoned for the accused and subsequently translate also the statement of the victim, if required. This can have a significant impact on the neutrality of the interpretation.

Although leaflets for witness information are available in many languages, they are considered to be difficult to understand by the questioned experts, even in the German language. There is a lack of barrier-free leaflets and brochures, e.g. in simple language.

There was the contemplation: could we not write entirely different letters, not in this bureaucratic language, which nobody understands anyway?
Public prosecutor

It is also hardly considered that victims may not be able to read sufficiently to understand standardised letters from the police and the justice system. Experts, even from the justice system, assume that relevant information needs to be explained verbally.

Here, instruments such as court assistance or psychosocial support can offer significant assistance to victims by explaining procedural steps and letters in their context. Also the victim protection and counselling services can provide valuable support in this context.

The communication with the victim purely by post, as is the case at times when victims also fail to appear at police questioning, can lead to fatal misinterpretations because, from the viewpoint of police and prosecutor, the reasons for the absence of the victim are often not discernible. Although it is possible that the victim is not interested in criminal prosecution, it is just as likely that the offender intercepts the letters and/or places the victim under pressure to waive making a statement. This can only be clarified by way of personal contact (e.g. police, summons by prosecutor or court assistance).

Information (Article 4, 6)

Information regarding proceedings and victims' rights, protection and support options are essential for victims of criminal offenses. However, victims do not receive the necessary information reliably and can often only process it once it is explained and they have been simultaneously provided with assistance. It is particularly the function of the police as first contact point to convey the necessary information regarding further proceedings and support options in a suitable manner and to provide referrals to victim consultation and intervention facilities.

The passing on of information by the police is predominately considered to be positive and well established; however, when interviewing victims it became obvious that there was still room for improvement despite the established procedures at the police.

Thus, verbal information regarding support options often seem to be lacking and in some cases even depend on whether the victim displays signs of emotional stress. This can lead to misjudgements, particularly in cases of not immediately evident traumatisation. Another basic problem is the fact that psychosocial support is not known everywhere yet.

However, also accessory prosecution representation and/or solicitors sometimes provide incorrect information and references. At the same time, prosecuting offices assume that legally represented victims do not require further information from them. This still results in victims failing to receive complete information regarding support options in many cases. The study shows the need for improvement with respect to information regarding court protection orders and procedural rights in the further course of events.

Court assistance with their proactive approach as well as psychosocial support have proven to be sensible instruments for the assurance of information for victims with respect to procedures and support options.

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Support in criminal proceedings (Article 8, 9)

Particularly hard was the fact that the courtroom was full of his friends and family. In my case, I was lucky that the woman from the counselling office was there. She always said: "You can do it", and she always held my hand and was also there before the hearing commenced.

Survivor of intimate partner violence

In general, there is a well-established national network of decentralised confidential and legal advisory support services for victims of domestic violence and criminal offenses. Women's shelters, intervention, women counselling and emergency call facilities provide information and practical support in this context. Victim counselling facilities (e.g. Weißer Ring) are available for victims of all criminal offenses. The national helpline (www.hilfetelefon.de) provides initial information and phone counselling in 15 languages and can also be consulted by experts. However, existing help can only be utilised if it is known and referred to.

None of the police officers said: "Can we get someone for you? Or can we do anything for you?" I would also have appreciated having someone at my side who supported me etc., because I was not even able to do anything for the children. I cried bitterly. I was completely strung out. I sat there for hours and cried, huddled up in the corner. The children constantly came and went and took me into their arms, but I was completely in shock. Well, I would have wished that the police had said: "We have an emergency facility for you; let us call there and have someone come to you who can hold you up, or so." I mean, they just left.

Survivor of intimate partner violence

However, some of the services are not available comprehensively in rural areas. According to the Federal Act, the option of the appointment of psychosocial support free of charge is limited to victims of gravely violent and sexual crimes. However, some federal states have further options. In Lower Saxony, victims do not principally have to make a prior request at court, but can also be supported directly by the services.

The study demonstrated that psychosocial support in terms of comprehensive proceedings accompaniment and preparation as well as in terms of case management has the potential to meet the varied needs of victims appearing as witnesses. However, the structures in some federal states have not yet been established; thus, an analysis of procedural files of 70 cases of domestic violence in one federal state fails to document a single case where psychosocial support was involved.

The various support options are important with respect to managing the consequences of the crime, but also to the management of criminal proceedings. Positive effects are predominately not only described just for the victim, but also for the proceedings with respect to the willingness to participate and make a statement. Here, it is a problem that the support of victims (particularly psychosocial counselling) is sometimes regarded as a contradiction of the priority of finding the truth in criminal proceedings. Support facilities report that the credibility of psychosocially supported victims appearing as witnesses is sometimes questioned by judges and defence counsel.

The referral to intervention facilities is regulated in the police laws of the federal states. Following notification by the police, these proactively contact the victims and inform them of the various protection and support options, also of the legal kind, and - if required - refer them to specialised services. The transmission of information regarding cases from the police to intervention facilities occurs automatically in some federal states, in others only if the victim consents in writing to the transmission of the contact data. The police in these states are obligated to inform the victim of the options and request consent. Investigations show that these procedural steps are not always adhered to reliably.

At some locations, also court assistance - by order of the prosecutor - takes on a proactive consultation and/or information function with respect to the proceedings. This partially occurs only after the investigation phase, but sometimes also shortly after the first police intervention (See above).

Financial aspects (Article 14, 16)

Considered positive and a huge improvement for the protection of victims is the right to gratuitous awarding of representation for accessory prosecution in case of sexual violence and severe criminal offenses. Furthermore, there is principally the option to apply for legal aid at court if victims are not able to sufficiently utilise their interests, if they cannot be expected to do so and/or if they cannot carry the costs themselves.

At times, financing of solicitor support is extremely restrictively handled by legal aid, except in cases of sexual violence and, accordingly, there are hardly any options for victims without support to obtain a consultancy mandate. Consequently, the pending legal costs represent an obstacle for many victims.

Services can be requested for other consequential costs of separation (moving etc.) at the Weißer Ring, however, there is no legal claim to this form of assistance. It is also possible to apply for victim compensation at the federal states for consequential costs in the area of medical treatments or for compensation toward living expenses, which are generally only awarded to a small number of applicants and usually only if the offender was sentenced according to criminal law. Interviews with victims show that the assessment and evaluation represent severe stress for the victims, but that the compensations are perceived as important and essential support.

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The EU Directive on Victims' Rights includes the right to compensation payments by the perpetrator. As well as the payment of compensation for pain and suffering as an ordinance, it is also possible to negotiate compensation claims in the criminal proceedings in the context of the so-called adhesive procedure. However, interviewed criminal court judges consider this to be of little value as this may cause delays in proceedings and requires clarification of competencies according to civil law. Instead, they consider it desirable that the result of the criminal proceedings is binding for civil courts in case of sentencing. Currently, the collection of evidence and evaluation has to be once again executed in their entirety, as reported by several victims. This represents significant stress for the victims; sometimes, this also results in contradictory evaluation, presenting the victim with the risk of significant costs in the context of the civil proceedings. Further education of judges regarding adhesive procedures would be increasingly necessary in this case.

I was subsequently told that I would not receive any legal aid for the civil procedure. I actually consider this to be absurd because, as I said, he has been sentenced; so why do I have to use my money, even if I had a lot of money now, why would I have to use my money for something which has already been proven?

Survivor of intimate partner violence

The interviews with the victims revealed that not only the direct consequential costs of the offenses and the management of the consequences of the offense cause financial stress, but also due permanent loss of income based on the inability to work and the reduction of earning capacity as a result of damages to the health, as well as opportunity costs due to breaks in the income biography. These permanent financial consequential costs can also not be completely compensated in case of successfully awarded victim compensation payments.

I even became unemployed through the incident and am now receiving reduction of earning capacity pension.

Survivor of intimate partner violence

Protection by police, prosecutor's office and court (Article 18)

Protective measures against repeated victimisation are, on one hand, measures by the police to prevent danger, such as barring orders (for up to two weeks) in situations of imminent danger, cautioning the offender and taking him into custody. In addition, court protection orders can be applied for according to the Act for Protection Against Violence, which can include restraining orders and/or the relinquishment of the joint residence.

Currently, there is no standardised comprehensive risk evaluation by the police; however, experts state that the police are increasingly risk aware and act adequately. The applied preventive measures are often assessed as very positive by victims and experienced as effective protection in acute situations of danger. However, the compliance with barring orders as well as court protection orders is often not supervised, and violations are not effectively sanctioned.

Victims are often also not informed by police about the option of protection from violence according to civil law. Without respective information, victims are generally not able to utilise these options. In addition, there is a close connection between a subjective feeling of safety and protection from repeated victimisation on one hand and the willingness to participate in criminal proceedings on the other. Various needs for improvement become clear with respect to safety and protection measures:

- ▶ Sometimes, interviewed victims do not receive sufficient protection in cases of stalking and threats. Sometimes, the police refer to a lack of legal authority to intervene as long as the offender has not become acutely physically violent, even if severe physical violence has occurred in the past. However, also regardless of this fact, emergency calls in case of stalking and dangerous threat, even in high risk cases, are sometimes not taken seriously or the incident is even minimised, if it does not pertain to directly experienced physical violence.
- ▶ Many reports describe the problem that decisions regarding custody and access rights do not consider violence as jeopardising the wellbeing of the child on one hand, and that also injunctions according to the Act for Protection Against Violence can often be disabled if child visiting rights entail contact, and that accompanied access occurs only temporarily.

One could act correctly regarding the files and the entire procedure and yet, nothing is done. This is a kind of rethinking we now have to perform.

Public prosecutor

The judge then turned to me and that was more important to me than the entire sentence, because it was really great. He said that I had allowed questions which were not even necessary and that I should not tell myself that it is my fault and that I should never allow anyone to tell me that; he could completely understand how I had acted in the relationship. And then he said at the end: "You are not at fault."

Survivor of intimate partner violence

IRELAND

1. Overview of Ireland's National Toolkit

It was decided, after detailed consideration of INASC research findings both from Ireland and other partner countries, and after consultation with our National Advisory Committee, to construct our National Domestic Violence Toolkit for use in Criminal Proceedings, by producing a separate reference checklist of Domestic Violence victims' support and protection needs, to include recommendations to meet these needs, for use by each of the following:

- ▶ An Garda Síochána,
- ▶ Prosecuting authorities (whether Garda personnel or DPP staff or agents);
- ▶ Courts Service staff;
- ▶ Judges in domestic violence related criminal proceedings.

How to Use this Toolkit

Our aim is not to replace any needs and/or risk assessment processes already proposed or in use by the Gardaí or others, or to repeat statutory and administrative obligations under the EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime, but to provide each agency with additional evidence-based and practical tools in the form of checklists and recommendations tailored for each group of criminal justice professionals, to help them identify and address effectively the protection and support needs of domestic violence victims in their respective professional roles. These tools are victim-focussed, and incorporate recommendations to address needs identified by victims of intimate partner violence. They also take account of the needs of other criminal justice participants, as far as possible. They complement the common European part of this Toolkit, produced with our European partners, which explores the key findings of the research and relates them to relevant Articles in the Directive.

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Guiding Principles Common to Each Checklist:

These are taken from those agreed with the multi-agency National Steering Committee, and are based also on recommendations made in the Irish INASC National Report on Victims' Needs in the Irish Criminal Justice Process:

- The best possible physical protection for IPV victims should be provided throughout criminal justice process and beyond;
- There should be maximum protection of victims' privacy throughout criminal justice process and beyond;
- Needs and risk assessments should be done as soon as possible and updated regularly;
- Thorough legal history taking, including Domestic Violence Act orders, should be prioritised;
- There should be simple and effective referral protocols and mechanisms;

- Simple to understand, accurate information on criminal justice system, written in plain English/other languages, must be made readily available to victims;
- Future contact for victims with investigating officers should be facilitated;
- Trauma sensitivity should be understood and practiced at all times;
- All criminal justice professionals should treat DV victims positively, supportively and respectfully at all times;
- Access to specialist DV support services should always be facilitated;
- As far as possible in the interests of justice, victims' choices should be facilitated;
- Domestic Violence investigations should be conducted as thoroughly and expeditiously as possible;
- Best International Practice should be followed in all risk assessment instruments/needs assessment tools used;
- Only adequately skilled, independent and DV trained interpreters and translators should be used in DV cases, as far as possible;
- Garda and Court Accompaniment for DV victims should be promoted and facilitated, as far as possible;
- Special measures in court should be considered and put into effect whether or not recommended by Gardaí, in appropriate cases, provided this is in the interests of justice and that victim agrees;
- Adequate criminal justice system training should be provided to all DV specialist support services personnel supporting DV victims considering, or who have made, a complaint to An Garda Síochána, and this should be facilitated as far as possible;
- General and specialised training for all criminal justice professionals should include the perspective of DV specialist support services, and should be prioritised;
- There should be equality of access with regard to all information sheets, booklets, leaflets, website pages, policies, legislation, etc. concerned with victim needs assessment/support, for all sections of the community (e.g. Braille/foreign language versions, etc);
- There should be a thorough common understanding of the EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime, including Preamble and Guidance Handbook, among criminal justice professionals and Domestic Violence service providers, and of their national implementation (statute law, policy, standards, etc);
- There should be effective oversight and evaluation of how victim needs assessment and specialist supports are working in practice for DV victims, through structures which are as simple as possible;
- Best practice standards for information giving, contact with official agencies, appropriate referral, individual assessment of specific protection needs, privacy, protection measures, special measures during investigation and during court proceeding should be established, which are ideally, agreed across the various criminal justice agencies and specialist support services.

- *Note: the last two of these could be addressed together through the same mechanism. The model for this in Ireland is the inter-agency SATU (Sexual Assault Treatment Unit) Guidelines Committee, which has met regularly since 2006 to research, draft, discuss, edit, consult, and finally agree, three successive drafts of the Guidelines which cover every aspect of SATU procedure from the perspective of each agency involved.*

(i) Checklist of Domestic Violence Victims' Needs for Protection and Support – for An Garda Síochána

Protection and Support Needs on first response

Victims' fears for the safety of their children and themselves are at the forefront of their minds, not only immediately but over time. They are frightened not only of the perpetrator's potential to cause even more harm, but also of the legal process, both civil and criminal, and the practical implications of any such process, for their children and for themselves. Not the least of their worries is the fear of becoming homeless and/or dependent on the State or others. This means that they are often ambivalent about making a criminal complaint. The impact of the recent trauma makes it very difficult for them to process new information and to make decisions which may have far-reaching consequences. It also makes it hard for them to provide coherent and full information. There may also be additional difficulties, such as a language or cultural barriers to understanding their position, fears about immigration consequences of any legal action taken, and/or a disability. This means that any action to address any of these complex needs for protection and support, should be experienced by the victim as reassuring and sympathetic, as far as possible. It also means that the official response should be as straightforward as possible, by using simple language and giving complex information in outline first.

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► **Recommendations to Address Victims' Support and Protection Needs on first response:**

Risk Assessment - It is recommended that initial Risk Assessment by AGS should cover the following areas at a minimum:

- History of violence in the relationship and in other, domestic and non domestic, relationships – to include, threats of violence to victim(s) and any children;
- Perpetrator's history of serious non-violent offending and also, any history of suicide attempts and/or threats of suicide;
- History of DV against victims, to include any DVA orders, previous, existing, or pending;
- Recent or imminent separation (well known flashpoint for incidents of domestic violence);
- History of perpetrator's drug or alcohol abuse
- History of perpetrator's mental health
- History of perpetrator's access to weapons
- History of perpetrator's convictions for offences committed against the victim

Referral, Information, Communication

Once arrest & detention possibilities have been considered and acted upon, and any evidence which is immediately available, has been secured/gathered, **referral should be made if victim consents, to specialised DV services in local area**; if victim does not consent to be referred, information supplied about these services should be clear and comprehensive – see next point:

Information procedures re. support services: Should include helpline details (local and national) for DV services, website details for victim support information (An Garda Síochána and DV services local and national), Victim Support at Court, local Legal Aid Board contact details, information about GP services and local hospital (if relevant);

Victim should be given advice about what to do if perpetrator starts **to harass, threaten or injure her**, (e.g. should be informed that witness intimidation, persistent harassment, and breaches of barring etc orders, are each criminal offences;)

Advice should include advice in general terms, about **interim barring order possibilities as well as other DVA orders**;

Victim should be **reassured** as well as informed about **criminal justice procedures**, and about their own case, by reference to all possible supports available, such as their right to Garda accompaniment;

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Questions should be asked to find out if victim has **additional specific protection needs**, such as being an illegal migrant who is or may be a trafficking victim, or having poor language, literacy or comprehension skills, being a member of the Travelling community or other minority community, having physical disability/illness including mental illness, being dependent on the perpetrator for any reason, and

Additional information should be provided with information on any local and national groups who can offer real support, e.g. specialist agencies such as immigrant or Traveller support groups, where available,

Language and other barriers to effective communication should be addressed by using professional interpreters, ideally with DV training, and where necessary, phone interpreting services. Independent interpreters should always be used in DV situation, and face-to-face contact should be supplemented by information leaflets in victim's language;

If there is no immediate support available from a local DV service or other specialist agency, questions should be asked to find out where the victim could access **informal support through their own social network** and/or community links, and where consent is given, that person should be contacted on the victim's behalf;

Allowance should be made for the fact that the **experience of trauma** makes it hard to take in what will happen/could happen next, and that much information about procedures, etc. will have to be repeated on a future occasion when the impact of the instant trauma has diminished; and for this reason, information should be given in as simple a form as possible;

On no account should attempts be made to **dissuade victims from reporting the crime**, on the contrary they should be encouraged to continue with their complaint, and

the attitude of the investigating Garda should be **positive and supportive** throughout. Gardaí should expect that the victim may feel not only fearful of, but **ambivalent about**, the criminal justice process and its probable consequences for her and any children. A positive and supportive attitude from the investigators, full and accurate information and a simple contact process can go a long way to counteract this;

Contact details and ways in which the investigating Garda can be contacted, e.g. via Garda Victim Service Offices, should be given and fully explained; and

Follow up by investigating Garda should take place as soon as possible, if not immediately then within 24 hours of reported incident.

Protection and Support Needs at investigation and where applicable, prosecutorial stages(s)

This stage can take quite a long time. While the victim will now have time to give a full statement to the investigator, and an investigation will normally follow, the rest of the investigation and the prosecution decision making process, may each be quite complex. During this time, victims need the support of family, friends and DV specialist agencies, and also of the Gardaí. Regular, informed, and sympathetic contact with An Garda Síochána can do much to reassure victims that their case is important, that everything possible is being done to get the case into court, and that even if it does not, every effort has been made to do so. This is important to minimise the impact of the crime on its victim. Also during this time, many victims face numbers of practical problems, and many more are confronted by harassment and/or intimidation behaviours by the perpetrator. This can mean that victims have mixed feelings about the case continuing, and can raise anxiety levels, making it difficult for victims to stick with it. Finally, victims' anxieties about privacy come to the fore very often at this stage.

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► Recommendations to Address Victims' Support and Protection Needs at investigation and where applicable, prosecutorial stage(s):

Follow up for both investigatory and victim liaison purposes, should be as soon as possible, and should include reminders of all supports local and national (websites and/or helplines);

Investigators should expect that the formal statement of complaint taken soon after the incident will need to be updated as the trauma associated with the immediate aftermath recedes, and certainly before the file is completed. It is likely that when they are calmer, victims will be able to recall more significant details about the incident itself and the surrounding circumstances. It is recommended therefore, that victims are given an opportunity to **add to and/or correct**, their statement before the investigation is finalised. This process will help to reassure victims that their evidence is taken seriously by the Gardaí and therefore, will help to reduce attrition.

Garda accompaniment should be facilitated at victim statement taking stage, as far as possible, and where a reasoned decision is taken to exclude an individual accompanying person, this should be explained and where possible, a reasonable opportunity to find a replacement person should be given to the victim;

The individual needs assessment should be done very much in collaboration with the victim, who should be informed fully about any recommendations for special measures made as a result;

Victim should be provided with a **copy of her statement** as soon as possible, unless there is a reasoned decision not to supply it, and if so, that reason should be fully explained to her;

Effective means of contact with the investigating Garda, particularly if the investigation will take some time, is key here to preventing attrition and reducing trauma for the victim – this should be an area for a proactive approach, ideally one discussed with and agreed to by the victim; note that this contact may be vital to help prevent a further crime OR to enforce, any DVA order breached, and that following some contacts, it may be necessary to **revisit and update the Risk Assessment elements at least**, of the original individual needs assessment;

Repetition of important information about legal supports such as special measures, DVA orders, bail conditions, etc. as well as about the criminal justice system generally, is also key at this stage, bearing in mind that it is difficult for victims to take everything in at the first, most traumatic stage but that as time goes by, the same victims are likely to have more and more questions;

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Privacy concerns are very significant for most victims of domestic violence. They should be addressed by Gardai as far as possible, and where it is possible for proceedings to be held in camera and/or for reporting restrictions to be imposed, victims should be told about these possibilities. Gardai should also ensure that the prosecutor is well aware of both these possibilities where they exist, and what the victim's attitude is in relation to them;

Victims should be reminded regularly what steps they should take in the event of **intimidation and/or harassment behaviours** by the perpetrator and/or others acting on his behalf;

Gardaí must be prepared to explain as far as possible, **the reasons why** any person suggested by victim as a possible witness, might not be asked for a statement, or if one is given, that statement might not be used; this is important, as few victims will have access to legal advice about the rules of criminal evidence, and so might well assume that relevant evidence is being ignored when this is not the case;

When providing **regular, unprompted updates** on the case and explaining **Court procedures**, Gardaí should take care to project a **positive and supportive attitude** throughout;

Victims should be fully briefed about **dangers to the case** which might be caused e.g. by speaking to the media in advance of a conviction, discussing the facts of the case with another witness or potential witness, and so on;

If their case does not go to court, the victim's rights in relation to **reasons and/or a review of the decision not to prosecute**, should be explained in detail and website details/booklets provided;

Garda should ensure that prosecutors are in possession of **Individual Assessments** carried out by Gardaí and should ensure that **Garda recommendations re any special measures** in relation to same, are advocated for with prosecutors in advance of hearing;

Protection and Support Needs at court stage (if there is one)

Most people, including many lawyers, are nervous at the prospect of giving live evidence in open court and being cross-examined on it. For victims of domestic violence, telling an intimate, personal and harrowing story is extremely daunting. Much support is needed from criminal justice professionals and others at this stage. A DV volunteer can provide straightforward emotional support, but there is still much information about procedural matters which the victim must absorb from the investigating Garda. Victims should be briefed fully before the hearing, as on the day, the experience of being in court and facing a judge (and possibly, jury) as well as having to share space with the perpetrator, is so stressful that it is difficult to take in new information. Because in court so much may change very fast (e.g. plea), more new information may have to be absorbed. In these circumstances, communication should be as clear and brief as possible. Finally, the victim is likely to be very anxious about accidental meetings with the accused.

► Recommendations to Address Victims' Support and Protection Needs at court stage (if there is one):

Garda should **liaise effectively with DPP** re. pre-trial meetings, any preliminary hearings, and so on, not least to convey victims' wishes re. any special measures available;

Garda should check that victims know about all **court accompaniment services available**, including through Victim Support at Court, by providing details directly or by referring victims to DV/other court accompaniment service;

Garda with prosecutor and Courts Service, should make enquiries and arrangements (where possible) in advance of the hearing to **minimise the chances of an accidental encounter** with the accused, who is usually on bail;

Garda should ensure victims are fully briefed about **possible special measures** available in Court, and that they know what victims' attitude to each of these is, so that they can relay it accurately to the prosecutor;

Garda should check that victims understand **the order of proceedings in court** and in particular, what has happened at any **decision point** in court (jury verdict, sentence, bail hearing, etc);

Victims should be briefed in particular about what to expect in both **direct and cross-examination**, but without being coached on their evidence in any way;

Garda should check that victims are fully aware of all **practical arrangements for the court date(s)**, such as how early to come to court, where witness room is, where to get refreshments, how long case is likely to last, how to claim for expenses, and if person is convicted, how to request compensation, and/or get help to prepare victim impact statement [etc].

(ii) Checklist of Domestic Violence Victims' Needs for Protection and Support – for Prosecuting authorities (whether Garda personnel or DPP staff or agents)

Protection and Support Needs on first response

Note: Prosecutors in Ireland do not have direct contact with victims in the absence of the Gardaí, normally. Communication with victims as prosecution witnesses usually takes place via the investigating Garda. Victim requests to consider, review and/or give reasons for decisions by the Director of Public Prosecutions are handled through a single central office in Dublin. When cases come to court, any contacts between prosecutor and victim/witness will be mediated by the relevant Garda. This does not mean that there is nothing a prosecutor can or should do to ascertain and address victims' specific protection and support needs; there are several points in the criminal justice process when a prosecutor's input can be very beneficial for the welfare of DV (and other) victim/witnesses. For a prosecutor, ensuring that measures are in place to safeguard victims' welfare helps to reduce attrition and to increase the chances of the case reaching a satisfactory conclusion. While prosecutors are not often involved at the beginning of a criminal case, the following material is included to help them to understand and later on, address the protection and support needs of DV victims as effectively as possible.

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Victims' fears for the safety of their children and themselves are at the forefront of their minds, not only immediately but over time. They are frightened not only of the perpetrator's potential to cause even more harm, but also of the legal process, both civil and criminal, and the practical implications of any such process, for their children and for themselves. The fear of becoming homeless and/or dependent on the State or others worries many DV victims. This means that they are often ambivalent about making a criminal complaint. The impact of the recent trauma makes it very difficult for them to process new information and to make decisions which may have far-reaching consequences. It also makes it hard for them to provide coherent and full information. There may also be additional difficulties, such as a language or cultural barrier to understanding their position, fears about immigration consequences of any legal action taken, and/or a disability. This means that any action to address any of these complex needs for protection and support, should be experienced by the victim as reassuring and sympathetic, as far as possible. It also means that official responses should be as simple and straightforward as possible, by using simple language and giving complex information in outline only at first. Victims can and should be given references to access more information if they so wish.

Recommendations to Address Victims' Support and Protection Needs on first response:

Referral & information procedures re support services: Sometimes DV victims do approach prosecutors directly. When this happens, prosecutors should either refer them to An Garda Síochána and to the nearest DV specialist support service, where the victim consents, and if s/he does not, prosecutors should provide them with **comprehensive and easy to understand support information**, which should include helpline details (local and national) for **DV services**, contact details if necessary for

the relevant **Garda station** and **Garda Victim Service Office**, website details for victim support information (An Garda Síochána and DV services local and national), Victim Support at Court, local Legal Aid Board contact details, information about GP services and local hospital (if relevant), and also, details of **any additional specialist** service which may be relevant in their case, such as a local immigrant support group e.g.;

Language and other barriers to effective communication should be addressed by using professional and appropriately trained interpreters, written materials in the relevant language, where necessary in urgent situations using interpreting services available by phone;

Protection and Support Needs at prosecutorial stages(s):

During this often lengthy stage, victims need support from their own family and friends and from DV specialist agencies, and also from the State agencies. Regular, informed and sympathetic contact with An Garda Síochána, can do much to reassure victims that their case is important, that everything possible is being done to advance the case, and that even if does not get to court, every effort has been made on get it there. This is important to minimise the impact of the crime on its victim. Also during this time, many victims face numbers of practical problems, and many more are confronted by harassment and/or intimidation behaviours by the perpetrator. This can raise anxiety levels, and naturally will make it difficult for victims to stick with the criminal justice process. Finally, victims' anxieties about privacy come to the fore very often at this stage.

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► **Recommendations to Address Victims' Support and Protection Needs at prosecutorial stage(s):**

Follow up: Prosecutors, as well as investigators, should expect that the formal statement of complaint taken soon after the incident will need to be updated as the trauma associated with the immediate aftermath recedes, and certainly before a final decision is taken on prosecution. It is likely that when they are calmer, victims will be able to recall more details about the incident itself and the surrounding circumstances. Some of these details may be important for the prosecutorial decision. It is recommended therefore, that victims are given an opportunity to **add to and/or correct**, their statement before the prosecutorial decision is finalised. This process will help to reassure victims that their evidence is taken seriously by the prosecutor as well as by the Gardaí, and therefore, will help to reduce attrition.

The individual needs assessment should be done very much in collaboration with the victim, who should be informed fully about any recommendations for special measures made as a result;

Prosecutors should ensure that the victim is provided with a **copy of her statement** as soon as possible, unless there is a reasoned decision not to supply it;

Privacy concerns are very significant for most victims of domestic violence. They should be addressed by prosecutors as well as Gardaí as far as possible, and where it is possible for proceedings to be held **in camera and/or for reporting restrictions**

to be imposed, prosecutors should consider these possibilities; where necessary, they should find out the wishes of the victim in this regard via the investigating Garda, and advocate for any privacy measures as appropriate;

Where prosecutors become aware of any **intimidation and/or harassment behaviours** by the perpetrator and/or others acting on his behalf, if as often happens, it is impossible for the victim to avoid some incidental contact with the accused, they should take all possible steps to ensure that future intimidation and/or harassment behaviours are prevented, e.g. by advocating for a remand in custody OR stricter bail conditions;

Prosecutors should offer a **pre-trial meeting** with victim and Garda in every DV related case, in good time before the hearing. At this meeting, **Court procedures** should be explained in detail, and ad hoc questions about procedures should be answered as fully as possible as they arise;

Prosecutors should ensure that they have **Individual Assessments** carried out by Gardaí, well in advance of trial, and should also ensure that these assessments have been updated, before trial;

Prosecutors should ensure that they advocate at preliminary hearings, and make any necessary arrangements with the Gardaí and/or the Courts Service, for **Garda recommendations re. any special measures** in individual assessments, to be carried out, as far as they can in the interests of justice;

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Protection and Support Needs at court stage (if there is one)

Most people are nervous at the prospect of giving live evidence in open court. For domestic violence victims, to tell an intimate, personal and harrowing story about their intimate personal lives to strangers, possibly in public, is extremely daunting. This is the stage when perhaps the most support is needed from criminal justice professionals and others, and much of the support needed is in the form of straightforward emotional support from e.g. a DV service court accompaniment volunteer. That said, there is much information about procedural matters which the victim must absorb. It is important that victims have been briefed as fully as possible in advance of the hearing, as on the day, the experience of being in court and facing a judge (and possibly, jury also) as well as having to share space with the perpetrator, is stressful to the point where it is difficult to take in new information. Because the direction of any case in court may change very fast (e.g. on change of plea), new information is likely to present itself. In these circumstances, it is more important than ever that communication is clear, brief, and simple to understand, as far as possible. Finally, the victim is likely to be very anxious about accidental meetings with accused.

► Recommendations to Address Victims' Support and Protection Needs at court stage (if there is one)

Prosecutors should **liaise effectively with Garda in the case** re. pre-trial meetings, any preliminary hearings, etc. so that when prosecuting the case in court, they can give effect as far as possible in the interests of justice, to the wishes of the victim. In particular, prosecutors should ensure that they know what the attitude of the victim

is to any special measures available, whether or not these are recommended by AGS in the Individual Assessment;

Prosecutors should check via Gardaí that victims know about **court accompaniment services available**, including through Victim Support at Court, well in advance of the hearing;

Prosecutors in tandem with Gardaí and the Courts Service should make enquiries and arrangements (as far as possible) in advance of the hearing to **minimise the chances of an accidental encounter** between the victim and the accused, who is usually on bail;

Prosecutors should ensure that local Courts Service staff are made aware of all court dates in domestic violence related criminal proceedings, so that they can make any necessary arrangements to maximise support and protection of DV victims on those dates;

Prosecutors should check via Gardaí that victims understand **the order of proceedings in court** and that they are briefed in particular about what to expect in both **direct and cross-examination**, if any;

Prosecutors should check via Gardaí that victims are fully aware of all **practical arrangements for the court date(s)**, such as time of hearing, location of witness room, likely duration of the case, how to claim for expenses, how to request compensation, where to find assistance for preparation of any victim impact statement, etc;

Prosecutors should advocate at the full hearing for any **special measures** recommended by Gardaí in the Individual Assessment, unless there is good reason not to do so (accused pleading guilty e.g.). Where for any reason these are not advocated, prosecutors should do all they can to ensure that the victim is briefed fully on these reasons in advance;

If the prosecutor considers that there is **another special measure(s)** available which is not recommended, s/he should raise this issue with the Garda in the case and try to find out whether either Garda or victim have any objections thereto. If the prosecutor having consulted with Garda and victim, feels that a particular special measure although not recommended by Gardaí should be sought, s/he should apply for it unless in his/her view, it is not in the interests of justice to do so;

Prosecutors should do all they can to find out the views of victims on any proposed **acceptance of a plea to lesser charges**, and to take these into account as far as possible in the interests of justice; and

Prosecutors should check with the Garda in the case that the victim fully understands the implications of any order made at a **decision point**, such as: grant of bail/remand in custody, acquittal/conviction, sentence passed/deferred for any reason.

(iii) Checklist of Domestic Violence Victims' Needs for Protection and Support – for Courts Service staff

Protection and Support Needs on first response

Note: This section is intended to be used when Courts Service staff receives disclosures of domestic violence from court users whose words reveal a crime of domestic violence committed against them and/or any children and who may be or already are considering making a complaint to An Garda Síochána.

Victims' fears for the safety of their children and themselves are at the forefront of their minds, not only immediately but over time. They are frightened not only of the perpetrator's potential to cause even more harm, but also of the legal process, both civil and criminal, and the practical implications of any such process, for their children and for themselves. Not the least of their worries is the fear of becoming homeless and/or dependent on the State or others. This means that they are often ambivalent about making a criminal complaint. The impact of the recent trauma makes it very difficult for them to process new information and to make decisions which may have far-reaching consequences. It also makes it hard for them to provide coherent and full information. There may also be additional difficulties, such as a language or cultural barrier to understanding their position, fears about immigration consequences of any legal action taken, and/or a disability. This means that any action to address any of these complex needs for protection and support, should be experienced by the victim as reassuring and sympathetic, as far as possible. It also means that official responses should be as simple and straightforward as possible, by using simple language and giving complex information in outline only at first, with references so that the victim can find out more, if s/he so wishes in the future.

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► Recommendations to Address Victims' Support and Protection Needs on first response:

Disclosures of DV and Risk Assessment, as far as appropriate to the role of any first responder agency and/or professional to whom a DV incident is reported by a victim:

Courts Service staff do not have a formal RA role with regard to reports of domestic violence, apart from Children First responsibilities. However, there are some indicators that a court user's situation is one where they and/or their children are at risk of domestic violence. It is important to be aware of them, to record them, and within one's role, to act upon them, to help ensure that as far as possible, the protection and support needs of victims of domestic violence are addressed. These indicators include:

- Previous perpetrator violence in the relationship and in other, including non domestic, relationships – and violence here should be understood to include, threats of same to both victim and any children;
- perpetrator's non-violent (especially serious) criminal behaviour;
- perpetrator suicide attempts and/or threats of suicide;
- legal history of previous violence by perpetrator, including any DVA orders ever extant, now in force, or being sought; and
- Recent or imminent separation (well known flashpoint for incidents of domestic violence).

Where possible and appropriate, disclosures revealing any one or more of these indicators should be followed up with a few brief questions to elicit more information, if the court user consents to answer them. It should be explained that these questions are being asked only in order to help the professional to work out whether further referral and/or information should be made available. The responses should be noted briefly.

Referral & Information re support services: Where the victim consents, a referral should be made to local DV services and information provided on any other additional service which may be appropriate, such as a Traveller women's support group, insofar as this is practicable. Where consent is not given to refer, information should be offered, to include helpline details (local and national) for DV services, website details for victim support information (especially DV services local and national), Victim Support at Court, local Legal Aid Board contact details, information about GP services and local hospital (if relevant), and information about any additional local support services which may be appropriate, such as for example, a local immigrant support group, insofar as this is practicable;

Information re. An Garda Síochána: Victim should be given contact details for the local Garda Station and for the nearest Garda Victim Service Office, and told how to access additional and accurate information about the criminal justice process online, through the Garda Síochána and other relevant websites, where this is appropriate. The information provided should also reassure the victim that the Gardaí have a duty to provide information about the criminal justice process, protection options including DVA orders, and supportive measures such as Garda and Court accompaniment.

Language and other barriers to effective communication should be addressed by using professional and appropriately trained interpreters, as far as practicable, and written materials in the relevant language. Where professional interpreters are not available, other avenues to find an independent and competent interpreter should be explored as far as possible;

Where Courts Service staff discover that a victim has **additional specific protection needs**, such as being an illegal migrant who is or may be a trafficking victim, or having poor language, literacy or comprehension skills, being a member of the Travelling community or other minority community, having physical disability/illness including mental illness, they should provide information and offers of advice, referral, etc. as far as possible in ways that will be understood by, and acceptable to, that victim;

Courts Service staff should offer **general advice and information** about Domestic Violence Act orders (nb. of course this is not a substitute for detailed legal advice in a specific case) to victims of domestic violence;

Information should be available to DV victims from Courts Service staff about **Court Accompaniment services**, and should be offered whenever staff become aware that a court user must appear as a witness in a domestic violence related criminal case;

If there is no immediate support available from a local DV service or other specialist agency, questions should be asked to find out where the victim could access **informal support through their own social network** and/or community links, and where

consent is given, that person should be contacted on the victim's behalf, insofar as these measures are practicable at the time;

Allowance should be made for the fact that the **experience of trauma** makes it hard to take in what will happen/could happen next, and that much information about referrals to other organisations, An Garda Síochána, etc. may have to be repeated on a future occasion when the impact of the instant trauma has diminished; and for this reason, any information should be given in as simple a form as possible;

On no account should attempts be made to **dissuade victims from reporting the crime**, on the contrary they should be made fully aware that they have the right to report the crime to An Garda Síochána and assisted in so doing as far as possible.

Protection and Support Needs at court stage

Most people are nervous at the prospect of giving live evidence in open court. Domestic violence victims may find it extremely daunting to tell such an intimate, personal and harrowing story to strangers, possibly in public, and be cross-examined on it. This is the stage when perhaps the most support is needed from criminal justice professionals and others, and much of the support needed is in the form of straightforward emotional support from e.g. a DV service court accompaniment volunteer. That said, there is much information about procedural matters which the victim must take in which may have to be provided by professionals. It is important that victims have been briefed as fully as possible in advance of the hearing, as on the day, the experience of being in court and facing a judge (and possibly, jury) as well as having to share space with the perpetrator, is stressful to the point where it is difficult to take in new information. Because the direction of any case in court may change very fast (e.g. on change of plea), new information is likely to present itself. In these circumstances, it is more important than ever that communication is clear, brief, and simple to understand. Last but not least where the Courts Services are concerned, the victim is likely to be very anxious about accidental meetings with the accused person.

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► Recommendations to Address Victims' Support and Protection Needs at court stage:

Where Courts Service staff become aware that a domestic violence related criminal hearing is due to take place, they should ensure that any **court accompaniment** service based at court is put on notice of that hearing. If there is no court accompaniment service based at court, Courts Service staff should be able to provide information about any other court accompaniment services which may be able to help the DV victim on the relevant date.

Courts Service staff where they have advance notice from e.g. the prosecutor and/or the Garda in the case, should make arrangements in advance of the hearing to **minimise the chances of an accidental encounter** between the victim and the accused, who is usually on bail – in any domestic violence related criminal case, to the extent that this is practicable;

Where Courts Service staff become aware that **special measures** have been ordered to be provided in any domestic violence criminal case, all arrangements to provide them should be checked meticulously in advance to ensure as far as possible, that there is no delay on the day of the hearing and the trial goes ahead as planned.

(iv) Checklist of Domestic Violence Victims' Needs for Protection and Support – for Judges in Criminal Courts

Protection and Support Needs at both preliminary and full hearing court stages

(1) Preliminary Hearings – Bail Applications, Sending Forward for Trial, Pre-Trial Hearings, Mentions, etc

(2) Full Hearings: Plea, Trial, Sentence

Most people are nervous at the prospect of giving live evidence in open court. Domestic violence victims may find it extremely daunting to tell an intimate, personal and harrowing story to strangers, possibly in public, and be cross-examined on it. They may continue to have very mixed feelings about giving evidence against even a very abusive partner. This is the stage when perhaps the most support is needed from criminal justice professionals and others, and much of the support needed is in the form of straightforward emotional support from e.g. a DV service court accompaniment volunteer. That said, there is much information about procedural matters which the victim must take in, sometimes very quickly. The experience of being in court and facing a judge (and possibly, jury) as well as having to share space with the perpetrator, is stressful to the point where it is difficult to take in new information. It is as important as ever that communication is clear, brief, and simple to understand, as far as possible. Finally, the victim is likely to be very anxious about accidental meetings with accused.

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► Recommendations to Address Victims' Support and Protection Needs at all court stages, for judges:

Judges should consider at each stage the possibility that victim and/or any children, have been and are still at risk of ongoing intimidation and harassment. Even during trial, this may continue. S/he should be ready to ask questions of both lawyers and of the victim to find out if it is appropriate to impose or revisit **bail conditions, or even a remand in custody**, for the protection of the victim during criminal proceedings;

Judges should help support DV victims by encouraging **court accompaniment for them**, as far as it is within their powers to do so – whether this is by a friend/relative, or DV volunteer;

As far as possible within the courtroom itself, judges should ensure that arrangements are made by Courts Services staff to Garda to **keep the accused and his supporters at a distance from the victim**. This is important, because most defendants are on bail;

Judges when considering Individual Assessments of specific protection needs of DV victims, should bear in mind all **possible special measures** available to the Court, and should ensure they know what victims' attitude to each of these is, before they make a decision. Measures safeguarding **privacy** are likely to be at the forefront of most victims' minds;

Judges should be alert to prevent **oppressive**, irrelevant, unnecessarily prolonged and/or invasive **cross examination of the victim**, both to safeguard privacy rights and to prevent or reduce secondary victimisation.

Judges, as well as prosecutors and Gardaí, should ensure victims understand **the order of proceedings in court** and in particular, what has happened at any **decision point** in court (jury verdict, sentence, bail hearing, etc.) and if there is a conviction, what is expected of them in relation to any Victim Impact Statement and for any possible application for compensation. Here the language used must be as simple as possible, so that it is easy to understand and retain.

PORTUGAL

What is the Portuguese Toolkit?

The *Make it happen!* Toolkit contains a set of tools intended to facilitate the inclusion of women's expectations, needs and rights in the responses given by criminal justice practitioners in cases related to domestic violence / intimate partner violence (IPV).

In the first part – What we know – the main outcomes of research work carried out in Portugal within the sphere of the INASC Project are given. The results are respectively situated within the concept of the Toolkit.

In the second part – Tools for practice – tips are given for activities based on the provision of information, training and exemplification. These tips have been laid down in European Directive 2012/29, in particular in the Articles pertaining to victims of intimate partner violence. The second part is geared mostly towards practitioners working in the criminal justice system.

Lastly, the third part – Victim-centred tools – has the aim of providing tools that allow the victims themselves as well as the criminal justice practitioners to help towards the empowerment of women victims of intimate partner violence where assistance is needed by such women.

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Who will use the Toolkit?

The Toolkit is intended for the use of different practitioners in the justice system: judges, public prosecutors, practitioners, justice officials, law enforcement agencies (the Public Safety Police – PSP, and the Republican National Guard - GNR), among others.

Why is the Toolkit needed?

Marital abuse or intimate partner violence has been classed as a crime in Portugal since 1982. In 2000, it was deemed to be a crime of a public nature and since 2007, it has been classed as domestic violence crime. In 2011, 28,980 cases of domestic violence were reported, numbers that were fairly similar in 2014 when 27,318 complaints were made; most of the victims are women (2011: 81.6%; 2014: 80.8%).²³

At the same time in 2012, the Public Prosecutor's Office dismissed 4,911 cases of domestic violence while prosecuting 1,236 cases. In 2014, 5,172 cases were dismissed and 1,199 were prosecuted. Lack of evidence was given as the main reason for dismissing the cases. Moreover, in 2012, 621 offenders were convicted while in 2014, this number was 400: the conviction rate therefore stands between 56.4% and 59.6%.²⁴

23 Ministry for Home Affairs (2015) Annual Report on Internal Security 2014 (Ministério da Administração Interna I (2015), *Relatório anual de segurança interna 2014*). Lisbon: MAI. Pp. 54. Available at: http://www.parlamento.pt/Documents/XIILEG/Abril_2015/relatorioseginterna2014.pdf

24 Ministry for Home Affairs, Secretary General for Home Affairs (2015). *Domestic Violence – 2014. Annual Monitoring Report* (Ministério da Administração Interna, Secretaria-Geral do Ministério da Administração Interna (2015), *Violência Doméstica - 2014. Relatório anual de monitorização*). Lisbon: MAI. Pp. 50 & 54. Available at: https://www.cig.gov.pt/wp-content/uploads/2015/10/Rel-VI-2014_vfinal.pdf (retrieved on 25.01.2016).

The persistent phenomenon of violence directed against women, in particular intimate partner violence, is a reality where the seriousness of the situation is accentuated by the fact that complaints coming to the knowledge of the police authorities are only the tip of the iceberg. Nevertheless, the difference between the number of occurrences and the number of convictions leads us to query what should – and must – be done in order to lower or minimise this difference.

1. What we know...

1.1. What lessons may be learned from the research carried out in Portugal?

Crime involving domestic violence is not a crime like other crimes. The person committing the abuse is the one whom the victim loves or has once loved; they have built a life project and share or have once shared feelings, dreams, possessions, spaces.... So it often happens that the victims do not feel the need to make a complaint or file a report straightway; rather, they immediately feel perplexed and ambivalent when trying to make sense of their own predicament.

In laying down the minimum standards on the rights, support and protection of victims of crimes, European Directive 2012/29 underlines the need for practitioners in the justice system to foster cooperation that is both within the reach and the understanding of the victims. Article 3 in the Directive ensures the right to understand and be understood. However, most of the victims we heard felt that they failed to be understood and that they themselves did not understand the system. In being repeatedly asked about the same subject, they grew weary and mistrustful and their doubts mounted regarding the justice system; relations leading to cooperation were therefore held in check. In addition to this, what frequently made matters worse were the justice practitioners' characteristics, expectations and gender roles, their questions and the way in which they interacted with the women, all of which strengthened the stereotyped image of the victim. This attitude was particularly damaging in making the women feel 'guilty' for the violence targeted at them, making them feel as if they had failed somehow and the role attributed them (as partners, mothers) fell far short of what was expected of them.

Articles 4 and 6 in the Directive speak about the information that the crime victim should be given. The right to information has been widely recognised as being important by the justice system practitioners. Be that as it may, there is a lot of room for improving the information going to victims mainly as regards their specific needs, their personal circumstances and the stages of the proceedings. It has been seen that the victims note at one and the same time, that a lot of information is missing (what they need to do when bringing about criminal proceedings, what the victims are expected to do, how much time separates making a complaint / filing a report, from the inquiry stage to winding up the case, among other issues) and that they are given the wrong information (the victim has to vacate the home, if the victim leaves the home she abandons it, the children may be taken away from their mother, etc.). And in the middle of this quandary of doubts and her need for protection, she has to decide whether or not she will press criminal charges.

The victim support services that are made available to women who have been the victims of intimate partner violence (Article 8) raises questions that need to be addressed. Regardless of the policy making a wager on increased awareness in terms of this kind of violence, and irrespective of the fact that there has been a better dissemination of the support services, what is certain is that many of the victims come into touch with this world for the first time when they make their complaint or file a report. Making information available (also information about the support services offered) by referring to the aggrieved person's status as a victim is not enough: conferring upon and giving her the title of victim is done at a particularly awkward stage where victims often perceive this status as 'having been given a piece of paper with some contacts on it'. Nevertheless, there have been a number of very successful practices involving working in networks that operate between the justice system and the victim support organisations. They demonstrate the usefulness of having specialised services available, owing to the fact that specialisation depends upon the practitioners engaged in professional practices and establishing cooperation among specialised services. As such, they speed up procedures and cut down on the time they take.

As regards the right to be heard (Article 10), it has been seen when their statements are taken, that there is still the sensation that being interviewed is a sort of compulsory routine that has to be gone through where the police officer takes note 'of what is said, and doesn't hear what is being told to him'; in other words, the victims say that they tell their stories numerous of times but the person listening to them is not really paying any attention. If the uniqueness of the individual account is taken from them, there is little room for the victims to believe that they are being heard.

Victims in Portugal may apply for legal aid (Article 13) if they wish to become assistants in the court cases (Article 68 in the Code of Criminal Procedure). However, whereas if the perpetrator has financial difficulties, he automatically has the right to an appointed defence counsel, whereas if the victim wishes to assist her counsel in the court case and is under financial duress, she has to ask the social security services for legal aid and fill in a series of forms. Therefore, it may be said that the perpetrator's access to justice is facilitated although the victim's access to justice is not granted unreservedly.

On the other hand, even if certain laws have been guaranteed in Portuguese Law, such as the right to receive compensation – pursuant to Article 16 in the above-mentioned European Directive, the victim herself has to set things in motion to ensure this right. Indeed, this means that the victims have to have prior knowledge of their right, which does not always happen even if it is written into the rules on the victim's status. Moreover, it also means that even if there is supposed to be a short interval between the decision to ask for compensation and actually receiving it, it generally fails to happen, according to the victims who were interviewed.

The European Directive likewise focuses on the right to protection, in particular in cases involving secondary victimisation, intimidation and retaliation (Article 18). What usually happens in a good many cases involving intimate partner violence is that there is an increased risk of victims suffering abuse and violence after the first complaint or report has been made. Furthermore, there are cases where the family's mediation

is sought. This solution is put into practice particularly by the lawyers counselling the perpetrator. Doing this, impacts upon the victim's wish and willingness to pursue giving testimony because a bargain has been struck with them pertaining to the conditions for 'keeping the peace' in the intimate relationship. Indeed, the victims' safety is often placed at the mercy of the perpetrators, who if the truth be known, rob the victims of their capacity to take the initiative and decide to act; or rather, to empower themselves.

Ensuring that there is no contact to be made between the victim and the offender is also a right laid down in the European Directive (Article 19). Making a statement in court where the offender is not present is understood to be a sound practice by both the victims and the legal practitioners. What became clear in this study, was that not all the interviewees were aware that this was possible. Or rather, not all of them had been told that it was allowed. Furthermore, the interviewees told of their experiences involving judges who denied requests not to have the offenders present because they wanted to see how he behaved in the courtroom.

The victim's protection during the criminal investigation (Article 20) is therefore put into jeopardy by certain decisions made by the practitioners. Nevertheless, the study emphasises the importance of victim support services in protecting victims (mainly by drawing up protection strategies and safety plans), and in proceeding with criminal court cases. Needless to say, everything indicates that 'a victim who receives support makes a good witness' - in the way that her discourse is more articulate, she points out important facts, mentions details and rebuilds her life.

It should be added that the support provided by the victim support services is based on assessment and risk-management, focussing on an appraisal of individual needs (thus referring to Article 22 in the European Directive in terms of the individual assessment of specific needs). This needs-assessment and risk-management is also converted into building individual safety plans that should therefore involve several organisations and services.

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2. Make it happen: Tools for Criminal Justice Practitioners

The Toolkit is based on a non-linear rationale, i.e. it is more reflexive and designed for the reader to follow a path. It is set upon a rationale that opens up a pathway defining a route that should be trod and that is signposted with clues or tips about ways to inform, train and exemplify.

Tips about providing information are organised around the Articles written into European Directive 2012/29 and that are most pertinent in the field of intimate partner violence. In this way, we are seeking to make a contribution towards defining the minimum standards in terms of the victim's rights, assistance and protection. Tips aiming at training take into account the main features of intimate partner violence (IPV) and the circumstances surrounding the victims of IPV. Explanations and implications for the criminal justice system for both items will be raised. Lastly, tips will be given based on practical examples; this will be done by referring to some of the successful practices detected in the justice systems in the INASC-partner countries.

Finally, Part 3 of the Toolkit is based on a collection of tools and instruments directed at the women victims of intimate partner violence; its purpose seeks to empower such women.

2.1. Contributions towards needs assessment and support to victims of intimate partner violence in the justice system in Portugal | Informative tips

The main objective of this section is to inform criminal justice system practitioners so that we can help them to (better) implement the rights of victims of intimate partner violence in agreement with European Directive 2012/29.

About providing information and support

Information enables her [the victim] to understand the case and also to respond to it, as well as understand what response the case can give her.

Public Prosecutor

The European Directive lays down that victims are entitled to receive information about their rights and about their court cases in such a way that they understand it. In particular, this right stresses the victims' right to be accompanied by a person whom they trust right from the very first moment when getting into touch with the criminal justice system. This concern has been motivated by both the impact that this sort of crime has on the victims, as well as by the eventual difficulties experienced by the victims in understanding all the steps involved in the criminal proceedings or in making themselves understood by the legal practitioners.

Chapter 2 in the European Directive is called "Provision of Information and Support" and refers to a victim-needs assessment in terms of the availability of information or detailed information that is given as regards a certain stage in the procedure. The chapter stresses the need to keep the victim consistently informed.

The information which the victim should be receiving should likewise consider all the possible protection and coercive preventive measures as well as take into account any changes arising in their cases, namely in terms of notifying the victim when the offender comes out of prison (after completing his sentence) or his possible escape from prison and when a coercive preventive measure has been breached.

The right to understand and be understood (Article 3)

When we go to make a complaint, the first thing we should find is people who understand us. This doesn't always happen. Secondly, there should be more information because, really, this is for the good of the society. Because society ends up by suffering from the whole situation.

Survivor of intimate partner violence

This is a multifaceted right with particular pertinence to communication skills. It focuses more specifically on **the victim and her individual characteristics** (age, schooling, socio-economic status, ethnic-cultural background, disability, birth place); on **the dynamics of the violence** in intimate partner violence – a history of violence, the stage at which it is at the time the complaint/report was made, in the first and subsequent statements (the cycle of violence: the violent act, honeymoon phase, increasing tension); and in **learning what kind of perpetrator we are dealing with** when the victim is making her statement (the degree of interpersonal manipulation, reasons for wanting to continue the intimate relationship, social and personal skills, socio-economic status, physical and mental health problems, and age, among other traits).

Therefore, any kind of communication going on between the justice system practitioners and the victims should be founded on prior knowledge about the victim and/ or the perpetrator, and about the dynamics of the violence. The victim's failure to understand the workings of the justice system and its practitioners, or the failure of the justice system practitioners to understand the victim's stance, is mostly due to the kind of communication produced by the practitioners. What we found from the interviews we conducted, was revealing in that the victims said they very often did not understand what was being told them, or asked of them or requested; this happened mainly for the following reasons:

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- ▶ the precise moment the justice system practitioners ask their questions: very often the first moment of practitioner-victim interaction takes place when the victim is extremely upset; subsequent interaction happens when the veracity of the facts are being checked, which causes the victims to think that they are also being 'judged'.
- ▶ the way in which the questions are phrased:
 - by resorting to more technical terminology, it could be that most of the victims fail to understand particularly when they have just come through a traumatic experience: *"I have to speak, I have to tell them". That's it. But in the meantime, I get to a part where the authorities ask me if I want to press criminal charges. And I think that's where the court sends him jail. That's what I understood – that he was going to court and would be sent to jail. That's what I understood at the time because I was so muddled by all those questions and answers. So I said no, I didn't want [to press charges]"*. (A survivor of intimate partner violence).
 - in the way the victim is asked questions, neglecting to take into consideration any of the feelings the victim might be experiencing: *"I felt a little as if the judge seemed to be blaming me rather than him"* (A survivor of intimate partner violence).

Therefore, informative tips aimed at justice system practitioners recommend the following:

- ▶ Adjust the type of language and terminology used to take into account the victim's individual traits.
- ▶ Adjust the time for questioning to the moment the victim is going through, taking into consideration the cycles of violence for example.

- ▶ Try and aim for the type of verbal and non-verbal communication that leads to empathy and cooperation.
- ▶ Take due note of the setting in which the intimate partner violence happened, and the life experiences of the women who filed a complaint or report for domestic violence.
- ▶ Listen to the women regardless of whether you have the notion that the case will be dropped or that you've heard a particular victim dozens of times before.
- ▶ Try and get a person of the same sex to take down the victim's statement.
- ▶ During the criminal proceedings, the victims should be accompanied by a person of their choice and one whom they trust. Accompanying the victim helps to increase the victim's feeling of safety and confidence and may lessen the discomfort and attenuate the victim's nervousness.

The right to receive information from the first contact with a competent authority (Article 4)

If the victim is well informed, then she might decide to take the necessary steps: report the situation, carry on with the criminal procedure, persevere till the end and arrive in court and make her statement.

Police officer

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The right to receive information rests upon the assumption that, from the very first contact, the victims have received information about: the kind of assistance they are likely to receive; the proper procedures for making a complaint and all about the role of the victim when the criminal charges are pressed; protection measures (what, how and under which conditions); legal counselling and legal aid (in particular, the conditions for gaining access to it); compensation; interpretation and translation; procedures on how to make a complaint about the services rendered; contact details for notifications about their case.

The victim's status, which has been laid down in Portuguese Law 130/2015 of 4 September, embodies all the terms regarding the victim's rights which are found in European Directive 2012/29. Nevertheless, despite the fact that the status of being a victim has been awarded to victims of intimate partner violence, the survey we held has shown that the status of being a victim is only positive when the victims themselves are able to perceive this status. This does not always happen, however, owing to the hermetic definition contained in the law as well as the stressful moment in which this status is awarded. The timing and the way the status of being a victim is 'awarded' are important pieces in the puzzle of what the victim's understanding is. Indeed, what our study shows is that the timing often coincides with the victim's extremely upset state, making it difficult for her to perceive and absorb the information which is set down on the paper she has been handed.

It is therefore essential to take into account that:

- ▶ The timing for giving the victim information is crucial.
- ▶ When giving her the information, the victim's characteristics and the circumstances of her situation should be borne in mind.
- ▶ It is not enough that the police are the only agents to award the victim with the status of being a victim; other actors in the criminal justice system should likewise play an active part in terms of the victim's status (namely, in making it clear and explaining the rights that are attached to this status).
- ▶ All the information and contacts with the victim should be carried out in simple, easy to understand language.
- ▶ It is necessary to take the time to explain to each victim how important her role will be during all the stages of the proceedings which means that she has to make an investment in personal terms (finding the time and the financial means to make frequent trips to the various services – to the police station, the Public Prosecutor's Office, the forensic medical services, the Social Security services, the Court, etc.). They all figure in the several stages of her case, and so she also needs to know how long each of the stages takes on an average or in approximate terms. It may also be useful to give the information contained in the Toolkit's *Victim Resource Box*.
- ▶ Make information available to the victim about the nearest support services, briefly explaining the kind of support each service offers. Most of the victim support services have their own leaflets which may be given the victims.

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The right to receive information about their case (Article 6)

Very often we tend to underestimate correct and precise information which clearly identifies the road the person will need to go through; information which gives her an idea of how long the road will take, which stages she will encounter and what are the steps needed to reach a certain goal. And we tend to underestimate giving correct and specific information to the victim.

Judge

The right to receive information about her case includes: giving her information that will allow the victim to get to know how the criminal case is progressing; the date, time, locality and the arguments used by the prosecution for the trial; any decision not to continue or close an investigation, or not go ahead with prosecuting the perpetrator of the crime, as well as any final sentence passed in court, and the valid reasons for both; information about the release of the offender or his escape from custody as well as information about relevant protection measures in the event the offender has been released or has escaped from prison.

In the study we undertook, we concluded that the victims noted both the lack of information and information that was wrong, often given to them by someone who

was close to the victims. At the same time, the women victims of intimate partner violence whom we interviewed revealed that they did not really know everything about the court's decisions handed down in their cases and involving the offenders. The women we interviewed were able to tell us that the offenders had been convicted and had received prison sentences, although most of these sentences were suspended, but they were not able to say whether the main sentence had been supplemented by an extra sentence (namely, forbidding the offender any contact with the victim).

There is therefore a gap where supplying the victim in Portugal with information is concerned. Generally speaking, the victims are not duly informed about their cases and about the outcomes of their cases. Moreover, it has been noted that there is wide variation in the amount of knowledge which the victims have about their cases, mainly about whether or not the victim has been constituted an assistant in the court case.

Supplying the victims with information about how the proceedings are progressing also helps to ensure their safety.

The following informative tips are aimed at the justice system personnel in this field:

- ▶ Information should be provided at regular intervals at different stages and when contact is made with the victims in order to ensure that they have the conditions needed to equip themselves.
- ▶ Giving the victim information about awarding her the status of being a victim does not necessarily mean that she knows enough about her role in the entire proceedings and neither does it mean that she understands what is entailed in reality when she goes ahead and presses criminal charges.
- ▶ Awarding and bestowing on the victim the status of being a victim merits an explanation about the rights and duties the status carries with it; the language and the terminology employed should be adjusted to the individual traits of the victims and to the stages at which their cases are. It may be useful give the victim the information contained in the Toolkit's *Victim Resource Box*.
- ▶ Keeping the victim up to date with information is also a way of getting her to keep in regular touch with the justice system, thus making her feel that the system is concerned about her and empowering her in terms of influencing the outcome of the case.
- ▶ It is crucial to train and specialise justice system practitioners and its services, as it means a way of providing them with the tools and instruments that help to develop professional practices centred on the victims of intimate partner violence.
- ▶ Making a wager on cooperation and working in a network with various other organisations has shown itself to be a good practice. Sharing information among services and organisations leads to the key people in each organisation being discerned; it allows for regular contacts, and as a result, it fills in any eventual gaps in the information that the victims share with the services.
- ▶ The outcomes of the research work undertaken, clearly showed the decisive roles that the victim support organisations and services have played in clarifying victims about the justice system – which they regard as a puzzling,

unknown quantity. The services also clarify the jargon used by the police and the justice system practitioners and explain the contents of the official documents themselves sent to the women by the justice services, etc. We noted that the victim support organisations and services often intervened in the way of filling in the gaps or short-comings when information is given by justice system practitioners. The victim support services are experts when it comes to transmitting information of a legal nature and making it easy to understand; therefore, distributing these services' leaflets on the spot should be taken into consideration as they are aimed at the victims of intimate partner violence and/or the referrals and referencing made to the victim support services.

- ▶ Information is also available on the internet on web pages that could help justice practitioners to leave off the professional jargon and start using legal language that is adjusted to the victims of intimate partner violence. For more about this, see the resources contained in the Toolkit's *Victim Resource Box* which could be of help to practitioners.
- ▶ As regards relations among the different branches of the justice system itself, it should be made compulsory to inform the Public Prosecutor heading an investigation, of the outcomes of a prosecuted case that has been judged in court. This measure would avoid situations whereby the Public Prosecutor who brought the indictment before court fails to be informed about the final decision reached in court about the case.

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The right to interpretation and translation (Article 7)

All the victims who neither speak nor understand Portuguese enjoy the right to have all the interaction going on between themselves and the justice system carried out in a language they speak and/or understand.

Therefore, the following should be done to:

- ▶ Ensure that the victims are provided with good quality interpretation or translation whenever it is necessary.
- ▶ Ensure that interpretation or translation is available throughout the country.
- ▶ Provide leaflets informing victims of intimate partner violence of their rights and duties in the language spoken by the victims and/or which they understand, mainly giving them information about what the crime of domestic violence means in Portugal. There are local examples where leaflets have been translated into the most common foreign languages in a particular municipality; The High Commissioner for Migration awards a grant to translators, who among other services, also do mediation translation through the call centre translation service (58 languages and dialects are possible at the moment)²⁵.

25 Available at: http://www.acm.govpt/-/servico-de-traducao-telefonica?doAsGroupId=10181&refererPlid=11423&controlPanelCategory=current_site.content

Right to access victim support services (Article 8)

If a victim has been supported it could make a difference to her life's project. Not only in being a witness but in the whole process leading to her independence. First freeing herself from the offender and afterwards becoming independent and remaking her life (...) they are enlightened victims who have a clear notion of their rights, what they are able to do.

Lawyer

This is a fundamental article in that it ensures that the victim support services exist and are available to all victims, regardless of whether or not they have filed a formal complaint. Our study identified a diverse set of needs experienced by both the justice system practitioners as much as the victims right from the very first contact with the system. Many of these needs lie outside the competence of the justice system itself, so that referrals and referencing of victims to the support services is an imperative. It should be mentioned that the victim support services are provided by non-governmental organisations that are often guided by interventionist principles so as to safeguard the human rights of women taken as a whole. Nevertheless, it also emerged that not all of the justice system practitioners put all the information needed by the victims at their disposal: *"The police have the tendency [to give information about the victim-support services] but it's very little information. It doesn't get to us that way."* (Survivor of intimate partner violence).

Therefore, some informative tips to follow here are listed below:

- ▶ Make a wager to foment a more proactive professional stance when providing information, making referrals and referencing victims to the local victim support services. For more about this, see the online domestic violence resource Guide giving up-to-date information about the services operating on a nationwide scale may be useful (see the Toolkit's *Victim Resource Box*).
- ▶ Making psychological counselling available to the victims of domestic violence in the courts; this may well ease the work of the Public Prosecutors when it comes to collecting evidence, as well as allow the victims themselves to speak about their own experiences. Providing psychological support may be effected in close liaison with the victim support services.
- ▶ Greater willingness /capability of the victim support services to provide more support, namely through financial aid: *"Inject capital into civil society. Fund victim support associations in the neighbourhood, in the building. And set up conditions."* (Public Prosecutor).
- ▶ Set up intermeshing networks based on cooperation among the various organisations and services. For more about this, see the Toolkit's *Tips based on practical examples*.

About participating in the criminal proceedings

(...) the first time I went to the Forensic Medical Institute I was very quiet, huddled in my corner. Hoping no one would ask me anything. Hoping no one messed me about. I also didn't want to speak about what had happened. What went on. It was a challenge in itself just going there. Another challenge was going to the police station to make a statement. I think it's a very painful thing to do. It's a huge challenge. (...) And afterwards having to go to the Public Prosecutor's Office, well, to have to explain the whys-and-wherefores. It was also a very big challenge. And finally, having to speak out in court was the greatest challenge of all.

Survivor of intimate partner violence

The victims may take part in the criminal proceedings and should be helped to play a more active role in them. The victim's participation in the criminal case entails the right to be heard, the right to legal aid, the right to be reimbursed for expenses accrued and the right to demand compensation during the criminal proceedings which is paid by the perpetrator of the crime.

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In order to ensure that all the victims have the full ability to take part in the criminal proceedings, the justice system should be geared to reducing the hurdles that the victim has to clear / that the system itself places. One of the ways of avoiding such obstacles is providing the victim with support throughout the entire court procedure. Not always, and not everywhere are their needs, concerns and rights well-received by the justice system or are they given the attention they deserve to have. This Chapter in the European Directive 2012/29 seeks to guarantee the victim with the basic conditions leading to her full participation in the criminal case and her inclusion in the decision-making.

Right to be heard (Article 10)

[the victims] need someone to listen to them and give them the importance they have, neither more nor less.

Public Prosecutor

It is more than obvious that all the victims have the right to be heard. This right enables the victims to give their statements about the cases that may be pertinent to the investigation and where presenting evidence is concerned. Giving their statements is still experienced as a sort of compulsory routine where a note is taken 'of what is said but not of what she is saying'. Similar to the right to understand and be understood, the right to be heard assumes that specialised practitioners in the justice system are involved and have experience in the field of dealing with instances of intimate partner violence, in particular when creating empathy and in knowing about the dynamics of domestic violence and in enabling streams of accessible, understandable communication to flow between themselves and the victims.

The right to be heard means defining and laying down:

- ▶ Basic patterns that are followed when:
 - Interviewing the victims. In our research, we were able to identify victims who related the way they felt about the manner in which the questions were asked them: they felt as if they had been accused, blamed or their words doubted. The way in which the interviews are conducted and the question asked are determining factors in gathering evidence and in believing what the victims might have in connection with the justice system. Communication is an essential part of the right of victims to a hearing. It is the victims' right to be treated respectfully but it also benefits the whole justice system. Therefore justice system practitioners should work towards an individualistic approach to the victims, thus enhancing their chances of obtaining positive results. For more about this, see Annex 1 – Techniques to active hearing. Look at the example below illustrating the way the questions asked by a practitioner are understood by the victim, as well as one of the ways it is possible to speak to the victim.

The usual way the practitioner asks the questions	The way the victim frequently perceives the questions	A possible approach that shows the practitioner's concern
<p>"Had you been drinking? Do you often drink? Do the children have a family doctor? What's the family doctor name? Do you have a family doctor?"</p>	<p><i>"I was asked several times; I understood but I didn't want [to answer]. They asked whether I drank, who my children's doctors were, who my own doctors were. I couldn't stand those kinds of questions any longer. Although we can be understanding about things, because they're like that, it was the end. I just couldn't stand it anymore."</i></p>	<p>"I'd like to get to know you a bit better. Is there anything you'd like to tell us about your health or about the children's health?"</p>

- Gathering evidence: It is essential to adopt a professional stance that regards collecting evidence about the perpetrator's criminal behaviour in cases of domestic violence in the same way as evidence is collected in other kinds of crimes. But the results of our study showed very clearly that collecting evidence falls basically and almost exclusively on the shoulders of the victims; the justice system practitioners hope that the victims are proactive in collecting the evidence because it falls to the victims themselves to prove that what they made a complaint about, really happened. However, in domestic violence settings, psychological violence emerges the most often. Collecting evidence that she has been the victim of psychological violence without resorting to the expertise of the doctors to testify that it has indeed been so, turns out to be a nightmare for these women. Therefore, in resorting to psychological counselling, in particular the counselling offered by the

victim support services, reveals itself to be beneficial to the case going through the justice system. The gains that may be reaped in getting through the criminal proceedings by referring to victim support service records are plentiful. Needless to say, this fact is stressed by the CEDAW Committee (Committee on the Elimination of Discrimination against Women) which recommends that the States improve the criminal justice system's response to domestic violence, for example, by paying more attention to doctors' or social workers' reports because: "they can show how violence, even when committed without the presence of [other] witnesses, has material effects on the victims' physical, psychological and social well-being" (CEDAW, 2015: 19). This perception is reiterated by the views held by the victim support services themselves when they give the Public Prosecutor's Office their reports during the investigation stage: in these reports *"we say that in our view, the situation deserves to be handled better and greater attention needs to be paid to 'n' factors, and that in all likelihood, so the woman told us, she wasn't even given the chance to explain things by filling in the risk-evaluation form, yes, that evaluation form. And therefore, owing to the numerous factors that we listed, the situation has to be looked at in a different way."* (Lawyer)

- Never-ending questioning: asking the same questions over and over during the different stages of the criminal proceedings should be avoided. Never-ending questioning about the same facts causes the victims to feel as if they are not believed by the justice system and/ or they are blamed /made to feel responsible for what happened to them. In the persistent search for the truth underpinning the facts, there is a need to be more creative in the way the questions are formulated. On the other hand, certain possibilities present themselves when collecting the evidence – such as the statements given for future reference – that may help to avoid the sensation of being re-victimised. They are, however, little used in cases involving domestic violence against adult victims.
- Giving testimony in the courtroom: giving their statements in court without the offender being present is a possibility that most victims are unaware of. It is important therefore to advise the victims that they have this facility available to them and at the same time, call the judges' attention to the importance of giving court testimony without the offender being present, as the experience of both the victims and the practitioners have testified.

Hearing the victims is also recognising that there are numerous reasons why the victims keep their silence during the investigation. Indeed, various conditioning factors influence the victims' behaviour. In our study, and opposite to what is frequently heard about the victims 'keeping quiet afterwards because they still love them', we concluded that there are a series of reasons explaining why the victims do not wish to testify against their abusers during the course of the investigation. Some victims refuse to testify because, although they want to tell the truth, they fail to act of their own free will because their will has been conditioned. A legal provision (Article 7) has been written into Law 112/2009, which demands that the principle based on the victim's free will, has to be respected, namely stipulating that "measures taken with respect to the victim have to fully respect her free will". Other victims end up by not

making any statement and remain silent for reasons of a different nature (economic, housing, etc.); furthermore, victims keep quiet after they have made agreements with their abusers' lawyers. This is why the next right is particularly important.

The right to legal aid (Article 13)

Very often, what happens is that in order to solve something, people have to go to the family court; to solve the division of goods/property, they go to a civil court; to solve a crime against them, they come here. They may get lost in the middle of so many cases and sometimes it's important to receive help, the legal aid of a lawyer who can set them straight. The person stranded in the middle of this... for us, it's intuitive, but for other people, it is one big mess.

Public Prosecutor

It is necessary to heed situations where the perpetrator has a lawyer who is thoroughly acquainted with the justice system and who, in the event of the victim's lack of knowledge and experience as regards the legal system, manages to manipulate the victim in favour of the perpetrator. Counselling the victims or giving them legal aid has been shown to be particularly relevant. Results from the study carried out whether about Portugal or about Europe, give ample proof that indicates greater benefits and possibilities arising from the simple fact that the victim has been followed-up by a lawyer. Such benefits include a better knowledge of her rights and the procedures and stages in the criminal proceedings, better preparation work so that the victim is willing to respond or give her court testimony, thus reducing the victims' stress levels.

Nevertheless, providing legal aid depends upon the victims' financial resources and their ability to pay the expenses involved. Legal aid foresees: fully or partially waiving the payment of justice rates; appointing and paying lawyer's fees; or paying the justice rates or the lawyer's fees in instalments.

Informative tips should be on the look-out for:

- ▶ The possibility of requesting legal aid for all the victims of domestic violence, mainly from services that trigger aid to victims.
- ▶ Showing victims of intimate partner violence how to deal with and reject eventual re-victimising in the courtroom. When taking down their statements and collecting the evidence, the victims often experience violent episodes which tend to make them re-live their victimisation; generally speaking and until the trial is held, this re-victimisation is experienced in private places with few people present. Nevertheless, in a courtroom, their experiences take on another dimension and become public. By seeking legal aid, the victims can train themselves to handle this abuse, mainly by trying to reduce re-victimisation in the courtroom and raise expectations whereby victims may give their testimonies safely and clearly using articulate discourse. For example it may be useful to review with the victim, what is expected of her as regards:

- Logistic questions: locating places in the court house where the victim and the offender might cross paths; where both of them will be waiting before being called to testify in the courtroom; where the offender and the victim will be sitting in the courtroom; where the washrooms are located; what intervals are usually made, etc.
- Procedural questions: who testifies first and who testifies next; the possibility of testifying without the offender being present in the courtroom, knowing that he will be told what the victim's testimony consisted of; the number of witnesses drummed up by the offender and his relationship with the victim; the details about his violent behaviour in intimate partner relations will certainly be asked about, the average duration of the court case, etc.
- Personal questions: it is very important if the victim manages to say who will accompany her to court; provide the victim with strategies and work on them so that she knows how to handle meeting up with the offender in court and she knows how to deal with having to relive the violence, etc.

The right to decision on compensation from the offender in the course of criminal proceedings (Article 16)

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Instituting compulsory compensation going to the victim – it has already been earmarked to go into the law but the judges still understand it as needing a requirement. I don't believe it should be need a requirement, this is not what the law intends it be. But I think it should be made compulsory regardless of whether it is alleged or not. It is enough to prove the facts; the court litigates and awards compensation.

Public Prosecutor

We know that compensation exists and that is often awarded, although it is too limited, takes too long and fails to help in really supporting the victims when they (re) build their lives. And despite having the right to receive compensation, the victims have to be informed of this right beforehand so that they can activate it, which does not happen very often.

According to our study, we might add that some of the reasons why the women we interviewed had not received compensation include: debts accrued before the separation (owing to criminal charges involving domestic violence), the suspect skipping the country and going abroad, unsolved issues about who gets what possessions after the divorce, the offender failing to declare his real income, etc. Indeed, the victims we interviewed often felt that the compensation awarded to them by the court would never come their way: *“There, it says he has to pay me compensation. But he'll never pay. Because he's a fisherman. He earns a lot in fishing. Yes he earns well. But he doesn't declare everything”*. (Survivor of intimate partner violence).

Informative tips in this case, indicate that:

- ▶ It should be borne in mind that compensation paid by the perpetrator of the crime should be compulsory, regardless of whether the victim knows about the existence of such possibility.
- ▶ A system or mechanism needs to be developed monitoring the time lapse between the court's decision about the amount of compensation to be paid and the actual payment of it received by the victim. It is hoped that the victims lodge an executive case against the offender for voluntarily failing to do his duty but once again, it is asking the victims to take a very proactive stand to win what is rightfully due to them.

About the protection of victims and recognition of victims with specific protection needs

If the electronic bracelet doesn't stop a person from being the victim of a crime and likely to be attacked, the teleassistance is even less [efficient]. So, then, the absence of measures ... don't offer any protection at all!

Victim Support worker

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European Directive 2012/29 states that the victims have to be protected from secondary and repeated victimisation, intimidation and retaliation (including physical, emotional and psychological violence) throughout the stages of the criminal investigation. This means putting in place the necessary conditions so as to avoid contact between the victims and the offenders in places where the investigation and/or the trial is being held (for example, separate waiting rooms for the victims in the court houses), and activating existing protection and coercive preventive measures.

It is important to mention that protecting the victim from secondary and repeated victimisation will become more effective by ensuring that the investigation stage is merely limited to obtaining information that is relevant to the case. Intrusive questions should be avoided and the number of times a victim may be called in for questioning should be limited. But once again, it assumes that special attention is paid to the way the victims are asked the questions.

The right to protection (Article 18)

If we manage implement what we already have and do a good job of it, I would say that we don't need any more legal instruments, or we don't need to invent, let's put it that way, any further legal instruments to protect the victim conveniently in a worthwhile way.

Judge

The right to protection is a central right when we speak about intimate partner violence. The European Directive states that “*measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation*” (Article 18). In Portugal there are 4 kinds of measures seeking to protect victims that are applied at different moments of the proceedings: police precautionary measures, coercive preventive measures, protection measures and safety measures. Our study concluded that in most cases, applying protection and coercive preventive measures exerts a positive impact on the victim’s safety, on prosecuting cases and in preventing the perpetrator to continue committing crimes.

Indeed, more than bringing in other protection and/or coercive preventive measures, what the victim support service workers query, is how often the existing measure are applied and at what moment they are applied; they also question the disparity witnessed when applying the measures in different areas of the country. If there are courts that often apply preventive measure to remove the offender and forbid him from making any contact with the victim, and even remand him in pre-trial custody for short periods, and where there is speedy liaising among the police, the Public Prosecutor’s Office and the court, there are other courts where the liaising is a lengthy process thus slowing down the speed of solving domestic violence court cases.

Another aspect to take into account when dealing with victim protection in cases of intimate partner violence is whether safety plans are in place. When the police carry out risk assessment as each case occurs, the need to work out a safety scheme or plan is also called for. However, it is noted that the safety plan that is applied is not shared by all the justice practitioners and in some instances they fail to include the victim support services. This could lead the victim to lose out on any psycho-social help that may be available to her and places legal aid in check.

Therefore, it seems pertinent to take into consideration the following informative tips:

- ▶ Specialised services and practitioners in the justice system. Specialisation in the police force together with the development and (sound) application of methods and instruments, such as standard risk assessment, has proved to impact positively on the protection of victims of intimate partner violence.
- ▶ Define criteria for setting up or improving mechanisms to monitor and assess the applicability of protection measures.
- ▶ Punish offenders who breach the coercive preventive measures applied to them.
- ▶ Do away with the need to obtain the offender’s prior consent when wanting to apply a coercive preventive measure, such as an electronic bracelet.
- ▶ More tangible proactivity on the part of the justice system when ensuring the enforcement of coercive preventive measures. At the moment, for example, when a court restraining order is breached, without the offender wearing an electronic bracelet, it is the victim’s ‘duty’ / need to inform the justice system of the breach. It is important for the justice system to take on a more active role in supervising /monitoring all coercive preventive measures.
- ▶ Forge a partnership with the victim support services in order to monitor the application and enforcement of coercive preventive measures.

- ▶ Draw up a list of contact meetings with the victims within the justice system itself. In Germany and in some cases, in Holland, there are contact people working in the Public Prosecutor's Office who, to a great extent, conduct victims of intimate partner violence through their court cases. For more about this, see the Toolkit's *practical examples tips*.
- ▶ Contrive effective networking among the criminal, civil and family courts. This is one of the aspects that has been most highly criticised by the victims of intimate partner violence. The liaison – or rather the lack of it - between the criminal investigation and the family court has impacted on the need to protect the victims, particularly when there are convictions for crimes of domestic violence. Indeed, a liaison enhances the *“mother's better protection, allowing the violent situation to be taken into consideration [by the Family Court]. And this hasn't been done so far. The coercive preventive measures applied in a criminal case are not taken into account; moreover, the judge presiding over the ruling on parental responsibilities is not interested in whether or not such measures have been applied.”* (Lawyer). As a result, this causes a feeling that justice is compartmentalised on the part of the person seeking court justice and trying to solve her problems; it has very negative consequences: *“what's included in the proceedings isn't used as evidence by the Family Court in the way that it should be. Because if someone abuses another in front of a child, it's natural that the child is afraid.”* (Public Prosecutor). Furthermore, the fact that things fail to coincide could mean that the victims are put at risk because *“in a criminal case, there is a whole victim protection scheme in place, which doesn't happen in a court case deciding upon parental responsibilities. So, in a court case, I can ask for the victim not to meet up with the offender. In a criminal case, I can ask her to give her testimony in another place. In a court case deciding upon parental responsibilities, the judges want everyone together to hear them”*. (Lawyer)

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The right to avoid contact between victim and offender (Article 19)

[Wasn't a separate waiting room ever suggested to you?] No. Never. We always used to wait all together. And now at the Juvenile Court, it's the same thing, all of us waiting together.”

Survivor of intimate partner violence

In Portugal, in Law 112/2009, Article 20 – Right to Protection, it says that there should be no contact made between the victim and the offender, namely stating that *“contact between victims and offenders in all localities that call for their presence in joint interviews, namely in court buildings, should be avoided”* (Article 20, No. 2). At the same time, the same Law 112/2009 may also be referred to as regards taking down statements for future reference, where it should be *“done in an informal private atmosphere with a view to ensuring that the answers are given spontaneously and sincerely”* (Article 33, No. 3). Nevertheless, our study has shown that contacts between victims and offenders happen fairly often specially when the criminal offence is taken to court (the court buildings have common entrances for

victims and offenders who are not held in custody; the victims were not told about common waiting rooms or reserved waiting rooms at court; even if there has been a request to hear the victim's testimony without the offender being present on the courtroom, judges deny the request on the basis that they want to see how the offender reacts to the victim's statements; even when statements have been taken down for future reference, there are judges who simply ignore them and wish to hear what the victims have to say orally in *viva voce*, etc.). It also happens when cases are heard simultaneously by other courts, such as ruling on parental responsibilities, divorce, dividing up possessions, etc.

As informative tips, and taking into account the layout of the court buildings in Portugal, it is important to adopt strategies and practices that seek to prevent contact being made between the victims and their abusers, mainly by:

- ▶ Putting up sign posts in the court building to help victims find their way, particularly so as to avoid getting themselves 'lost' in the maze of the building.
- ▶ Appointing a contact person at court who will facilitate the victim's arrival at court, settle her in, and conduct her to the waiting room and the courtroom.
- ▶ Differentiating the schedules, where the offender has to be present at court at one time and the victim at another, thus preventing contact between them at the court building entrance or in the waiting room.
- ▶ Adapting the physical space of the interview room and the courtroom to the needs of victims of intimate partner violence.
- ▶ Ensuring that the victims give their testimonies without the offender being present in the courtroom.
- ▶ Ensuring that the victims are accompanied by a person whom they trust, particularly staff from the victim support group. For more about this, see the Toolkit *Tips giving practical examples*, especially the guidelines dealing with law courts sensitive to the survivors of intimate partner violence/domestic violence.
- ▶ Informing the victims about what decisions the courts reached (case dismissed, a conviction, the main sentence and an extra sentences, the deadline for executing sentences).
- ▶ Following-up and monitoring the application of decisions, mainly as regards prompt, accurate compensation payments to the victim.
- ▶ Informing and training justice system practitioners, mainly justice officers and technicians, public prosecutors and judges as regards approaches to adopt when dealing with trauma victims. For more about this, see the *Training tips* in the Toolkit.

The right to protection of victims during criminal investigations (Article 20)

When the police arrived ... it still took a bit of time. The quarrelling went on until he perceived that the police had actually come and he locked himself in the bedroom. He was locked inside the bedroom sleeping, or pretending to sleep. So the police also thought it was best to leave him there as he was, quiet, and we filled in the questionnaire.

Survivor of intimate partner violence

The European Directive recommends Member States to make sure that interviews with the victims are made without delay after the complaint has been made or a report filed. Furthermore the number of interviews should be kept to a minimum and only carried out when necessary; the victims may also accompanied by people of their choice and medical examinations also kept to a minimum and only performed where strictly necessary.

In our study, it emerged very clearly that women victims of intimate partner violence whose cases went to trial, had to go through several interviews conducted by different practitioners – by the police, by the Public Prosecutor’s services and/or by the Public Prosecutor him/herself, by social assistants, by the forensic doctor, by the victim support services, by the judges (of the court of inquiry and again by the criminal court) at the different instances, etc. What we have here are women who have trod along intensive legal trails over a lengthy period of time. It is important to ensure that these interviews are conducted by professionals with the necessary skills to handle traumatised persons. Therefore, it is crucial that such practitioners have had specific training in subjects to do with the social sciences (for more about this, see the *Training Tips* in the Toolkit).

Moreover, during their journeys through the justice system, it frequently happens that the victims are threatened, harassed and stalked by their abusers and these facts are not always taken into due consideration.

Training tips are as follows:

- ▶ Reduce the number of interviews with the victims and limit the number and the diversity of people conducting the interviews.
- ▶ Ask the victims questions in such a way that they understand the warning about their being threatened, harassed and/or stalked by their abusers throughout the duration of the proceedings. Act so as to provide the victims with greater protection, taking into account that this kind of intimidation is a form of retaliation and the abuser’s way of forcing the victim to give up pressing charges against him.
- ▶ Adopt the practice of making official statements directed at the offenders. This practice is used in Austria by some judges: the justice system sends the offender official statements warning him that his behaviour is not acceptable but rather, constitutes a criminal act.

Individual assessment of victims to identify specific protection needs (Article 22)

If I have the victim sitting in front of me and I realise that she doesn't have the financial independence to see a criminal case through, this is what I do: I interrupt the interview, ask the victim's permission to include her in a network and refer her to agencies that can give her the support that I am unable to give. I go back to my office and contact the network and tell them, 'I'm sending you a victim because she needs this or that kind of support.' And the victim is referred through and the entire proceedings are carried in parallel, with all the agencies acting at the same time so that the victim may be a success story.

Public Prosecutor

Each victim should be assessed individually. In order to do so, it should be borne in mind that their highly vulnerable state could mean secondary and repeat victimisation, intimidation and retaliation happening throughout the duration of the legal proceedings. The assessment should therefore be based on i) the personal characteristics of the victim; ii) the type and nature of the crime; and iii) the circumstances surrounding the crime.

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Individual assessment should also help towards identifying the victim's needs as regards communication, her need for assistance, her need for protection and any other kind of requirement. In Portugal the police apply a standard risk assessment in order to identify extra risks. This helps the police to ensure the victim's protection and safety and manage risk more efficiently whether by putting forward suggestions on how to apply immediate protection measures and /or cohesive preventive measures, or by making regular planned check-ups. Moreover, the risk evaluation culminates in drawing up an individual safety scheme for the victim. Nevertheless, the scheme is not always shared by other agencies/services so that we are doubtful about whether such a scheme is successful in trying to answer her needs, just as its personalised nature may go unattended.

Be that as it may, our study has pointed out that the main needs referred to by the practitioners are: safety (the victim's/her children's); alternative housing; economic aid; social support, and liaising with the Family court – divorce, parental responsibilities, dividing possessions. Notwithstanding, the victims whom we interviewed refer insistently to their safety and protection. Indeed it is worth mentioning that that psycho-social counselling and in some cases, legal counselling offered by the victim support services is also vital in attaining the victims' emotional balance and in a better rendering of credible statements and testimonies.

The informative tips in the sphere of individual needs assessment indicate the following:

- ▶ Strengthening networking locally with the different organisations and services.
- ▶ Making such inter-agency work official by drawing up agreements that clearly define the responsibilities, skills and duties of each of the agencies in the

partnership. Speedy contacts among the services will help towards a more comprehensive approach to these women's several needs. See Annex 2 in the Toolkit, for the kind of needs apparent among the women victims of intimate partner violence as regards the paths they take through the justice system so that these needs may be categorised.

- ▶ Within the sphere of the networks, draw up a calendar of specific work meetings to discuss concrete cases, following a case-management rationale and giving priority to urgent or special needs. See more about working in a network in the Toolkit *Tips giving practical examples*.
- ▶ In the court building, draw a blueprint for locating multivalent victim support services along a rationale that sets up a single information desk to back up victims where they may be informed about their rights and duties in clear language and accessible terminology and where they may be referred to victim support services.

2.2. Contributions towards needs assessment and support to victims of intimate partner violence in the justice system in Portugal | Tips for training

It's not enough to create empathy with the victims, but above all recognise and ensure their rights. Therefore, our good will and our sympathy doesn't solve very much. What's needed is dealing with the victims in a professional way. We need to learn and build foundations, knowledge and instruments in order to deal with the victims.

Public Prosecutor

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The European Directive 2012/29 clearly recognises the need to place the wager on training practitioners in the justice system in terms of setting down the minimum rules pertaining to the rights, support and protection of victims of intimate partner violence. This subsection aims at contributing towards the training of justice system practitioners so as to materialise and implement what has been laid down in Article 25 of the European Directive 2012/29. We have therefore incorporated tips for the better implementation of the above-mentioned Article.

Our study has clearly shown that the victims as much as the practitioners consider that specialising and concrete training in intimate partner violence help to improve the interaction between the practitioners and the victims. It helps when collecting statements and proof that is structurally sounder and more coherent, thus significantly improving practitioners' recognition for the need to protect victims and promote their protection and acknowledge other kinds of needs, namely when psycho-social counselling is required or not.

There are no courts specialising in domestic violence in any of the countries taking part in this project. In Portugal, departments specialising in domestic violence operate in the police force as well as in the Public Prosecutor's Office. Nevertheless,

if the police have obtained specific training in the domain and if attention has been directed at developing methods, tools and standard instruments that allow for more a coherent, more consistent intervention throughout the country, the same has not happened in the Public Prosecutor's Office.

Where the public Prosecutor is concerned, it has been seen that much of the more specialised activity is due above all, to the initiative of people who view their work in the field of domestic violence as a priority and even as if it were some kind of mission. They strive to improve their own training (owing to the fact that training in domestic violence is not compulsory), and they work to set up networks of cooperation among various agencies and services at local level that are sometimes supported or encouraged by the district heads. It is worthwhile, now, learning from these experiences and giving them substance by means of making training and tools/instruments available. They will help practitioners to (better) obtain specific skills and competences (in order to know how to handle situations and victims of intimate partner violence).

In legal-judicial terms, violence in intimate partner relations, commonly called domestic violence, is a crime in the same way that stealing, robbery or physical assault in the street is a crime. In Portugal, it is a crime of a public nature which demands more responsibility on the part of the State, the justice system and all of us as citizens. Nevertheless, because it is treated as a crime that happens in the intimacy of the home involving a couple who are together officially or not, it bears certain characteristics that distinguish it from the so-called 'ordinary crimes'.

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The specific nature of the crime has a direct bearing on the victims as much after the occurrence of the violent incidents as during the course of their lives and the possible paths they will be taking through the justice system. It therefore gives rise to concrete needs and causes rather ambivalent behaviour as far as the victims' protection and safety are concerned and in applying justice and the law. The relational dynamics underpinning situations in which intimate partner violence happens are only known very sketchily by some of the practitioners working in the justice system. Added to this, are the prejudices and gender stereotypes which also predominate in practitioners' attitudes and discourses, as well as certain legal practices that make their presence felt when the victims take their cases to court. They are manifested in various ways, such as getting the victims to make numerous trips to the justice services, allowing them to come face-to-face with their abusers or with the offenders' lawyers, obliging them to undergo (forensic) medical examinations, be repeatedly questioned/interviewed, etc. All such practices represent secondary victimisation and may, in the last instance, jeopardise the progress of the criminal proceeding. Therefore acquiring more knowledge and nurturing an awareness about such specific topics should be viewed as fundamental components in a training programme addressing practitioners in the justice system.

In Annex 3, a possible training programme for justice system practitioners is suggested, giving an overall schedule containing material for 3 modules: 'Intimate partner violence from a comprehensive perspective'; 'The justice system's impact on domestic-violence proceedings', and 'Working in victim support networks'.

2.3. Contributions towards needs assessment and support to victims of intimate partner violence in the justice system in Portugal | Practical examples

In taking our inspiration from successful practices in the criminal justice systems of the countries taking part in the INASC Project, this section seeks to help implement more efficiently some of the informative tips mentioned above.

Court assistants' network aiming at acquiring information related to IPV victims' needs, Germany

Court assistants (Gerichtshelfer) are impartial assistants for the judicial process and thus not specifically assigned to the support of victims. But in fact their work may play an important role in meeting victims' needs in the criminal proceedings. The 16 Länder are responsible for the judiciary and therefore the work and organisation of court assistants differs widely throughout Germany. Court assistants are social workers and are in most of the German Länder public servants employed by the court (e.g. in the public prosecutor's office). One of their tasks as court assistants is to investigate the personal social and economic background of the victims, their relatives and the aggressors. Their task is adding information not directly connected to the incident subject to the trial to the judicial process; this information might be relevant for the decision of the judges and the public prosecutors. Court assistants play an important role for finding adequate judicial solutions in cases of intimate partner violence (Hering 2010, Die Justiz des Landes Nordrhein-Westfalen 2014, Standards der Gerichtshilfe Rheinland-Pfalz 2009). Court assistants are assigned to find out, whether the victim is willing to give testimony on trial. Additionally, their task is to find out about the current relation between victim and offender. Is there a possible reconciliation with a positive perspective? Is there any indication that the situation will improve in the future? Would criminal prosecution be in the interest of the child? Is there any indication that the woman withdraws the application for criminal prosecution on the basis of threats made by the offender? Thus, public prosecutors and judges may obtain information on the current state of affairs as regards the family system and may be able to better assess possible consequences of any of their decisions on the victim. Here information is collected, which would otherwise not be subject of investigation.

The INASC research conducted in Germany analysed two model court assistant projects in Marburg and Bueckeburg. In these two models, court assistants are included in cases of domestic violence regularly. In both models, the court assistants mandated to get in contact with victims (in one model also with the offender), try to arrange a meeting, and find out about the victim's social background, the situation of the relation and most importantly the victim's interest in and stance towards criminal prosecution; they, thereby, inform victims about the criminal process, their rights, duties and options, and give information about support options. The two models differ in terms of timing (model one: the police informs the court assistants immediately after they are informed about an incident; model two: after the criminal investigation of the police is finished, the public prosecutor involves the court assistants) and in the supportive parts. While in one model, the goal is clearly to support of the victim, in the other the aspect of support is less important.

These court assistants work within regional networks. They are connected to the police, the public prosecutor, victims' support organisations and perpetrator programs.

Multi-agency risk assessment conferences (MARACs) and multi-agency case conferences, Austria

Multi-Agency Risk Assessment Conferences (MARAC) and Multi Agency Case Conferences (MACC) developed in the UK have been implemented in Austria since 2011 as pilot projects. These multi-agencies conferences aim at high risk victims of domestic violence, their safety and the prevention of repeat violence. The purposes of such meetings are to share information about risks and developments, to assess the victim's needs, to improve her/his safety, provide appropriate and coordinated services, and to reduce repeat violence. Further objectives of both collaborative instruments are to share the responsibilities between the involved organisations and to become aware of specific endangerments as well as of how risks are evaluated.

Due to legal provisions regarding data protection, the MARAC have been implemented based on two levels: the case-related co-operation and the structural MARAC networking. The case-related co-operation deals with concrete cases of domestic violence, and includes the intervention centre, the office for youth and family, the legal supporters ('juristische ProzessbegleiterIn') and the police as a core team. The structural MARAC networking is a platform for professional exchange and networking, aiming at the prevention of domestic violence on the structural level; the platform meets once a year and involves a broad range of organisations such as the women's emergency hotline, children's protection centre, women's shelters, health organisations, counselling services (for women and men) and probation services. Although these are still pilot projects, the INASC research conducted in Austria reported a very positive perception especially by the intervention centre in Vienna, having an impact even on the prevention of new cases of repeat violence. Additionally, in Vienna a steering committee which meets three or four times per year has also been established.

The Multi-Agency Case Conferences (MACC) are non-formal structures coordinated by Violence Protection Centres, involving the same partners mentioned above, having meetings depending upon specific cases' needs (no regular meetings schedule). In some MACCS victims are also invited to participate allowing for a transparent decision-making case-related process. Nevertheless, its non-formal structure is deemed to create some weakness mainly regarding the different levels of organisation in place and the level of commitment from the various services. For instance, the involvement of the public prosecution offices and of the courts is less frequent than other organisations, therefore limiting the effectiveness of the MACC's intervention.

The ZSM structure, The Netherlands

In 2012 the police and the Public Prosecution Service initiated ZSM. The Dutch abbreviation 'ZSM' literally means 'As Soon As Possible'. In the Dutch criminal justice system, it stands for a response to a crime 'as speedy, smart, selective, simple,

supportive to society and victims as possible'. The goal of ZSM is to assure meaningful and fast interventions, based on quality and effectiveness for society, including suspects and victims. So the reaction should not only be as fast as possible after the incident but also meaningful. This means that perpetrators receive an adequate sanction and there is justice to the position of the victim. To reach this goal, the Public Prosecutor is situated at the start of the criminal justice chain and triages high volume crimes to determine the best procedure for a case. The PPS works together with police, the Dutch Probation Services, Victim Support Netherlands and the Child Care and Protection Board. (Bac & Vink, 2014). Actually in ZSM the decision is made whether the case should go to court, or the prosecutor takes a decision, or the case goes to a TOM session.

ZSM is successful because the sanction (intervention) is fast. A reaction to a case does not take half a year but a few days or weeks, which reduces the risk of recurrence. In addition, the intervention is meaningful. There is not only a juridical sanction, but there is also help and care around the relationship and family of perpetrator and victim. Improvement could be made by including care services in all cases, because nowadays this is not always the case. Furthermore, ZSM could cater even more the needs and wishes of victims instead of focusing only on the perpetrator.

Local intervention networks, Portugal

Local intervention networks aiming at combating domestic violence have been developing in recent years. In several localities this inter-agency work has been carried out in an exemplary way upon the initiative of the local municipal council. See, for example and among others, the Cascais Municipal Forum against Domestic Violence, and the Intervention Network Combatting Violence in Sintra (all in Greater Lisbon).

These local structures have different organisational shapes and ways of operating. However, one of the working strategies developed by these networks consists in developing guidelines, drawing up agreements about how to pursue activities in network and signing memoranda of understanding among the different organisations in the community.²⁶ These specialised local networks have produced materials aiming at, on the one hand, sensitising various local agents to the issue of domestic violence and, on the other hand, stressing the need for interagency work so as to more adequately respond to the needs and rights of victims of intimate partner violence.²⁷

Another relevant activity developed by these local networks relates to the forming of multi-agency domestic violence case conferences (namely in the districts of Cascais

26 With respect to this, see the Give Life Domestic Violence Project (GLDVP) (2007) - Multi-agency domestic violence information sharing protocol guidance, available at:

www.avaproject.org.uk/media/13100/multi-agency%20domestic%20violence%20information%20sharing%20protocol%20guidance.pdf

27 As an example, see the publications: in Cascais - "Rede Segura, Roteiro de intervenção em casos de violência doméstica" ("Safe Network, intervention handbook for cases of domestic violence"), in Sintra: "Guia para o atendimento e intervenção em rede" (Guidebook on attendance and intervention in network"), and in Évora: "Violência Doméstica, Manual de Recursos para a Rede de Intervenção Integrada do Distrito de Évora" ("Domestic Violence, Resource Book for the Integrated Intervention Network in the Évora District").

and Sintra), the working of which is similar to the one described above as MARACs. These local case conferences have been positively assessed by the participants. The aim of such meetings is to identify and discuss concrete cases among a restricted group of workers from local organisations. The group usually meets either every month or every two months. The discussion aims at identifying constraints, difficulties, and providing solutions and clarifying procedures. These groups include representatives from the Public Prosecution Office, police forces, victim support organisations, social security, local authority, child protection services, and probation office.

Information given to victims of intimate partner violence in different languages, Portugal

In Portugal, there is an interesting example of a joint initiative by the Ministry of Internal Affairs and the Ministry of Justice for the development of translated forms for the act of holding someone as a defendant. These templates produced in different languages contain information on the rights and duties of defendants and could be an inspiring example for the building up of information leaflets, in different languages, informing IPV victims on their rights and duties. The above mentioned translated forms were launched in 2004 and are available in different languages (6, 8, 9 and 16 different languages according to the implementing services which include the different police authorities in Portugal and the Public Prosecution Office). The templates are available across Portugal and have been integrated on the internal web platforms of the respective services (police forces, foreign and border control services and Public Prosecution Office). Any use of a translated form by the authorities is duly registered, which enables the monitoring of the frequency by which these translated forms are being handed over to the defendants.

The experience acquired by the different services in using this type of information with foreign defendants could provide interesting leads for the future development of the information leaflets addressing IPV victims. Issues like the use of an accessible language, the selection of the different languages, the detail of the information to be provided, the procedures for handing over the information and the monitoring procedures regarding its use would certainly benefit from lessons learnt in regard to the state initiative in developing the translated forms for foreign defendants.

3. Make it happen! Victim-centred tools

3.1. Victim Resource Box | Tools to empower victims of intimate partner violence

The Victim's Resource Box gives a selection of tools that are made with a view to empowering women victims of intimate partner violence. The tools are grouped into three areas – information; protection and support, and access to justice. They come from several organisations and are the outcome of a survey carried out by the research team and members of the Portuguese National Advisory Committee. Some of the tools were also developed within the sphere of the Project.

Information

Information leaflet / webpage 'Crime of domestic violence in intimate partner relationships – legal proceedings'

Description: The information contained in this webpage aims at enhancing the victims' understanding of the legal proceedings in domestic violence cases so that it is easier for them to decide what to do about the crime. It gives them information about some of the forms of protection and the ways in which to collect evidence proving that a crime was committed.

Available at: http://espacov.org/procedimento_judicial.php

Author: CooperActiva / Espaço V



Webpage 'Infovictims'

Description: This webpage gives information about the criminal court case, the victim's rights in all kinds of crimes and the victim support services. It has images and is written in easy-to-understand language and contains details about the victim's rights, criminal proceedings and the role of the different entities involved in the proceedings.

Available at: http://www.infovictimas.pt/pt/001_home/001_infovictms.html

Author: Associação Portuguesa de Apoio à Vítima, APAV (*Portuguese Association for Victim Support*)

Citizen

Description: The webpage is hosted by the Public Prosecutor-General of the Portuguese Republic. Citizens have the chance to obtain the basic information online about several questions which have been seen to come up very frequently when a public prosecutor is in attendance. Wherever needed, this information should be complemented by the indispensable counselling given personally by the Prosecutor located at court or by a duly qualified legal consultant.

Available at: <http://www.ministeriopublico.pt/perguntas-frequentes/queixa>

Author: Procuradoria-Geral da República, PGR (*Public Prosecutor-General*)

Glossary of the most usual terms used in criminal proceedings

Appeal: In the event that there is disagreement with the sentence/ verdict or judgement / judge's decision, the offender or the victim if she has been constituted assistant, the civil party - acting through the lawyer, and the Public Prosecutor may request an appeal. The appeal is presented in writing within a deadline of 30 days at the court in which the trial was held. The appeal has to contain all the reasons why there is a failure to agree about the sentence, taking into account an appraisal of the evidence presented and/or the application of legal rules.

Assistant: The victims who wish to become assistants in the court case may do so. An assistant is a person who has a specific vested interest in the criminal court case owing to the fact that some of her rights have been infringed upon. The victim should be represented by a lawyer (admitted or appointed in the sphere of legal aid sponsored by the Social Security Institute), pay a legal rate (which she may be exempt from paying, or which she may pay in instalments if she is able to present the respective arguments for doing so).

Case dismissed: At the end of the inquiry stage, the criminal police send all the evidence to the Public Prosecutor's Office which then decides if there is enough proof to show that the offender has committed a crime. If the victim fails to agree that the case be shelved or dropped, she may send in a request to a judge higher up in the Prosecutor's Office than the prosecutor who decided to drop the case, and ask him/her to charge the offender or to continue with the investigation. If it is the latter, the victim has to present new evidence that should be included in the case. A case that has been dismissed may be reopened if new relevant evidence comes to light.

Charge: At the end of the inquiry stage, the criminal police sends all the evidence collected to the Public Prosecutor's Office which will then decide if there is sufficient proof to charge the perpetrator of having committed a crime. If there is enough evidence, the offender is formally charged and will be given a trial. In the Charge Order which the Prosecutor issues, the name of the suspect is given, the facts of the crime that he was supposed to have committed are related, the crime that the offender has been accused of is stated, and the evidence that will be presented to the court is described.

Expert: This is a person who is called to help in the criminal proceedings so as to clarify facts or assess the evidence that needs to have specialised, technical or scientific knowledge. The expert may be called in by the judge or by the Prosecutor's Office upon their own initiative or because one of the parties taking part in the proceedings requested the expert. The expert is paid for giving his/her specialised opinion.

Injured party: This is another name for the victim.

Inquiry: After the complaint or report, the inquiry stage is opened. It means that the criminal investigation phase has started and it will include all the inspections that are needed to prove that a crime has been committed. This stage finds out who perpetrated the crime and who is responsible for it; it discovers and collects the evidence that is relevant to the case. This is the first step in the case; it is called the inquiry stage and is carried out by the criminal police under the direction of the Public Prosecutor's Office.

Judge: S/he is the practitioner at Court (and in the trial) has the power to judge and make decisions about the criminal court case.

Offender: the person, who during the investigation and before he goes to trial, is suspected of having committed the crime.

Police authorities: they are the Public Safety Police (PSP) and the Republican National Guard (GNR). They are the State-run authorities that inform the Public Prosecutor's Office after a complaint has been made or a file reported or if they have witnessed a crime being committed. They are the ones to ensure that the criminal evidence is duly preserved. They investigate and collect the evidence; inspect the scene of the crime; interview the victim, the offender and the witnesses; makes searches and tap telephone calls; send all the evidence to the Public Prosecutor's Office, and they may be called upon to give evidence at the trial.

Preliminary inquiry: This stage is optional as it only happens when the victim who has been constituted as an assistant in the case or the offender asks that it may be held because they did not agree with the decision made by the Public Prosecutor's Office at the end of the inquiry stage. The preliminary inquiry is therefore a stage in which the grounds backing up the decision are discussed, during which the victim and the offender may present proof that for one reason or another was not taken into account during the inquiry stage, as for instance, new witnesses or documentary proof.

Public Prosecutor's Office: This is a government agency that has been established by the Portuguese State and has the following duties; receive complaints and reports that have been filed at the police station in order to start criminal proceedings; it heads investigations and collects proof which is mainly done by the police during the inquiry stage; it appraises the evidence and decided if it is enough on which to charge the offender; at the trial it accuses the offender and presents the evidence that has been collected (witnesses, documents, other kinds of proof); if it fails to agree with the judge's verdict, the Prosecutor present an appeal against the decision. The Public Prosecutor's Office also has the duty to inform the victim of her rights. The Prosecutor's Office is usually housed in the court building.

Sentence: The sentence or the verdict is the decision that has been made regarding the court case: it includes all the facts that the judge has considered as proven and the respective evidence on which the judge has based his/her decision. If the offended has been convicted, the sentence includes the punishment to be applied and the elements that need to be taken into account for effectively applying the punishment. It may happen that the offender is convicted for any or some of the crimes of which he has been accused but he may be absolved for others, or even absolved of all the crimes he was accused of committing or that he was charged with.

Provisional suspension of the case: In the inquiry/investigation stage, the Public Prosecution may suggest that the proceedings are stopped for a while so that no charge is laid against the offender. During a set period of time that is stipulated by the judge, the case is stayed or suspended and the offender is required to comply with one or several compulsory acts (e.g. paying compensation to the victim, handing over to the State a sum of money that will go to certain private institutions engaged in doing social solidarity work, or doing community work, or not residing in certain places, not contacting certain people, etc.). If these duties are complied with during the period covered by the suspension, the case against him will be dismissed. A provisional suspension of the case may only be applied to crimes that are punishable with a prison sentence of not more than 5 years. Once the offender agrees, the victim may likewise agree if she has been constituted assistant in the legal proceedings.

Trial: If the offender is charged at the end of the inquiry stage, or if there has been a preliminary inquiry, the examining judge issues a verdict in the form of an accusation order; the case then goes to court to be tried in a trial. The trial takes place in a courtroom. The purpose of the trial is to see whether there is enough evidence on which to convict the offender of the crime he has been charged with. If there is, then he is sentenced. The trial also talks about and decides whether the victim and possibly other people who have been harmed in some way and who have requested compensation, have the right to receive it.

Victim: The person who suffered an attack against her life and /or against her physical integrity, was emotionally, psychologically or sexually abused and /or has suffered harm or material loss.

Witness: This is anyone who has been present when the crime was committed or who knows something relevant that can be used to find out the truth. In principle, anyone who has been cited as a witness is obliged to present his/her testimony with the exception of the offender's close family who may refuse to testify.

Source: Infovitimas; ABC da Justiça

Protection and Support

Guide to domestic violence resources

Description: This online resource guide aims at facilitating and speeding up the practitioners' work on a nationwide basis in their follow-up and referral of cases involving domestic violence. It brings together in a single tool all the contacts pertaining to agencies belonging to a national support network and dealing with domestic violence. The Guide contains resources available in the national support network where they are broken down into categories (Victim attendance facilities, Police stations, Health facilities, etc.) in the different districts of the country or in the Islands.

Available at: <http://www.igualdade.gov.pt/guiaderecursosvd/>

Author: Comissão para a Cidadania e a Igualdade de Género, CIG (*Portuguese Commission for Citizenship and Gender Equality*)

Domestic Violence – Protect yourself!

Description: This webpage give a set of key strategies that the victims themselves can put into practice. It seeks to help them protect their own safety in cases of domestic violence. By setting three scenarios – living with the abuser; living with the abuser and wanting to leave home; already living apart from the abuser – victims are able to confront various situations where measures are suggested that the victims themselves may trigger.

Available at: <https://queixaselectronicas.mai.gov.pt/SQE2013/micrositevd/default.aspx?cid=4>

Author: *The Ministry of Home Affairs*

Access to justice

Electronic complaint

Description: The purpose of this electronic form is to make it easier to lodge a complaint and file a report about domestic violence (among other crimes) and send it to the police (the Public Safety Police (PSP) and the Republican National Guard (GNR)).

Available at: https://queixaselectronicas.mai.gov.pt/SQE2013/default.aspx#tag=VIOL_DOMESTICA

Author: *The Ministry of Home Affairs*

Legal Aid

Description: The Social Security webpage displays information about legal protection for people who have economic difficulties. It contains information about what legal aid is, what is needed to apply for legal aid and where it may be asked for.

Available at: <http://www.seg-social.pt/protecao-juridica>

Author: *the Institute of Social Security - ISS*

Annexes

Annex 1 | Active listening techniques

Active listening techniques

Clarifying or paraphrasing

Reformulating what the person has said helps to retain the idea and concentrate attention. It also helps to focus on the most important questions which the victim is sharing with you.

“If I understand correctly, what you’re telling me is ...”

“I don’t know if I got that (understood that), but what happened was ...”

In this way the practitioner shows the person that s/he is interested in correctly understanding what the victim is telling her/him and allows for the victim to correct any misunderstandings or wrong interpretations. Although this technique should not be over-used, it is essential for giving the idea that you’re wanting to understand and it ensures the victim that the version s/he is telling, needs to be fully noted.

Going back over the content

Going back over what the person has been telling you, helps her to continue. When they seek help, many victims are in a state of confusion and disorientated because they are still under the stress of the violent episode. They may lose the thread of what they are saying, repeat themselves, start crying or relay contradictory accounts and emotions. The muddle is a part of the proceedings and it is one of the symptoms of intimate partner violence so that the practitioner needs to help the person put some order into her account.

“So you left home after the last time he abused you...”

“It seems that he gets more violent when he drinks...”

Go back to the point where the story has got lost. It is a way of redirecting the talk and helps the person to find her place once again, picking up the thread of the story and calming down.

Asking questions

Ask open-ended, closed or indirect questions to make the talk flow smoothly. Some victims may become laconic, reticent or when the topic is very painful, simply unable to continue talking. Asking question may be a good way to get rid of the block and steer the conversation back on course so that it flows again. **However, questions that ask ‘why’ should be avoided!**

Open-ended questions allow the person to give extended answers and it helps them to keep the conversation on course, for example: “How did you feel about that?”; “Can you tell me more about...”; “How did you deal with...”

Closed questions refer to specific information. In these cases, the practitioner has to set the limits. The questions usually require a single word answer of the yes/no type. They may be useful on certain occasions but they should not be over-used: “How many children do you have?”; “Have you ever left your husband before?”

Indirect questions are a way of asking without asking point blank, thus giving the person a chance to answer if she wants to or not. In this way she does not feel as if she’s being bombarded with questions: “I’m wondering to myself if you’re really safe by staying at X’s house...”; “I suppose that you don’t feel very comfortable talking about this right now, but...”; “It looks like you’re feeling stronger today...”

Mentioning feelings

It may be important to show for the victim to show her feelings (openly or in a veiled way) that are lurking behind the facts. Sometimes her feelings are obvious, at other times they are not, so that practice and technical know-how are needed for the victim to reflect upon her feelings. This helps to strengthen the victim's idea that she is being understood, as much from the point of view of the account she is telling as from the perspective of feelings triggered by the violent episode. What is needed is getting the victim to feel that she is not alone, isolated or in despair:

“I imagine these threats frighten you...”

“It seems that you feel safer when you're at work...”

“At times it's difficult to find a way out and you feel frustrated...”

In the victim recognising her own feelings, it could be sign to her that it is possible to restore some forms of communication and that it might be worthwhile going ahead and trusting the practitioner, even if she hasn't met her/him before.

Summing up

Summing up the most important blocks of information may be useful so that events are located in their correct order. This helps the practitioner retain the story in mind and avoid straying from it. It also endorses the practitioner's willingness to listen to the victim.

Annex 2 | A (possible) categorisation of needs

Boom and Kuijpers (2012) developed a categorisation of needs based on 6 main fields; the authors then linked those fields from which (institution) victims wanted to see specific needs to be fulfilled by. Here we opt to include only those fields connected to the police, the judiciary, and other agencies such as DV victims' support services. The clusters of needs per field are the following:

- ▶ Emotional: Initial response, care and support (police and other agencies); further or specific assistance (e.g. counselling) and characteristics of assistance (other agencies); acknowledgement of the person and of the incident (police and the judiciary).
- ▶ Criminal proceedings in a broad sense: initial police response; assistance with initial actions, such as reporting the crime (other agencies); legal aid (other agencies); opportunity to provide input in criminal proceedings (e.g. to be heard) (police, the judiciary); being treated as an interested party, being consulted (police, the judiciary); assent and power to make decisions (police, the judiciary); no role in legal procedure (police, the judiciary); procedure characteristics (e.g. quickness) (police, the judiciary); outcome (e.g. arrest, punishment) (police, the judiciary).
- ▶ Information: relating to role as concerned party in the case (police, the judiciary); explanation (about systems, etc.) (police, the judiciary); information about prevention (police, the judiciary); characteristics of the information (timely and in victim's own language) (other agencies).
- ▶ Practical: transport; assistance with personal care; assistance with paperwork / formalities; medical assistance and support; crisis management; work/school-related matters; with respect to language – translation/interpretation services, material in victim's own language (all the above expected to be fulfilled by other agencies); other (e.g. return of possessions, separate waiting rooms) (police, the judiciary).
- ▶ Financial: financial aid; assistance in requesting financial aid (other agencies).
- ▶ Primary: immediate safety ((police, the judiciary and other agencies); preventing revictimization/protection of self and others (police, the judiciary and other agencies); housing – temporary or permanent (other agencies); work/daily occupations and emergency requirements (food, clothing) (other agencies).
- ▶ Immediate safety, employment or education, temporary or permanent housing, repair of relationships with the offender, wish to not arrest or prosecute the perpetrator but instead, for instance, to remove him from their home for a while, information and financial needs were among the needs most expressed by IPV victims.

Annex 3 | Training programme for practitioners in the justice system

Module 'Intimate Partner violence from a comprehensive perspective'

- ▶ Beliefs, stereotypes and attitudes about intimate partner violence;
- ▶ Dynamics and processes associated with intimate partner violence:
 - Cycle of Violence;
 - Psycho-social characteristics of the victims.
- ▶ Specific nature of crimes involving domestic violence: main domains;
- ▶ Emotional condition of women victims of violence;
- ▶ Relapses: causes and impacts.

Module 'The justice system's impact on domestic-violence proceedings'

- ▶ The Justice System – the victim's view;
- ▶ The various legal dimensions involved in proceedings and situations connected with domestic violence;
- ▶ From Law to practice - applying the law in specific cases /case studies;
- ▶ Barriers and challenges confronting victims of domestic violence during the course of the legal proceedings – perception of safety, perception of the impact of (possible) outcomes;
- ▶ Strategies for carrying out objective communication: communication techniques, communication adjusted to concrete situations (using easy-to-understand language) and empathy-friendly communication rules;
- ▶ Providing support to the victim at court.

Module 'Working in a victim support network'

- ▶ The national network offering support to victims of domestic violence;
- ▶ The different agencies acting to intervene in situations involving domestic violence: Health, Justice, Housing, the Job; School;
- ▶ Local resources and local community work;
- ▶ Barriers and challenges facing institutional cooperation;
- ▶ Working in inter-agency teams;
- ▶ Inter-agency communication.

THE NETHERLANDS

Part I - The situation of victims of intimate partner violence – backgrounds and consequences for criminal justice

Family/ intimate partner violence is distinct from violence by strangers. Below, we will address resulting specifics and their consequences for police work and criminal justice.

- ▶ **In most cases, intimate partner violence is not limited to one single event** – which distinguishes it from violence committed by an unknown party. As long as the endangerer cannot successfully be prevented from contact with the victim, there is a risk of renewed violence, of intimidation and retribution, which negatively affects the victim's sense of security.
- ▶ **Consequences for criminal prosecution:** It is necessary to assess the risk of further aggression, and, if necessary, to take preventive action (e.g. barring order), as well as to check compliance repeatedly.
- ▶ **History of violence in the relationship:** In nearly all cases there are clues of repeated previous assaults. Women affected by violence rarely report the first act of violence; only when assaults escalate and become more frequent, they turn to the police.
- ▶ **Consequences for criminal prosecution:** It is important to raise awareness of the possibility that victims have experienced violence over a longer period of time. Indicators are e.g. (aborted) attempts at separation, trivialising incidents and excusing the perpetrator's behaviour. A possible traumatising from (repeated) violence may impact the victim's attitude towards criminal prosecution (e.g. willingness to report and to testify), which has to be taken into account.
- ▶ **Physical violence goes with other forms of violence.** In three quarters of analysed cases, there were dangerous threats and psychological violence as well as physical assaults. Physical violence is only one aspect of exercising power and control, besides humiliation, verbal abuse, threats, economic and sexual violence. The consequences for the victim are traumatising and a feeling of powerlessness and entrapment as well as insecurity and fear.
- ▶ **Consequences for criminal prosecution:** In assessing offences, therefore, the complexity of violent relationships, and thus also forms of violence that are not open to criminal charges, should be taken into account, in terms of victim protection as well as of clarification of norms.
- ▶ **'Privacy' of violent acts.** The term domestic violence already indicates that it primarily does not take place in the public space but within the residence. The lack of possible witnesses protects the perpetrator. Neighbours and family members who witness violence often hesitate to intervene.
- ▶ **Consequences for criminal prosecution:** Compared to many other crimes, intimate partner violence remains "undetected" particularly often. It is necessary to raise awareness of indications of intimate partner violence.

- ▶ **Lack of witnesses:** Because of the private nature of the crime scene, there are rarely witnesses, which not only hampers the detection of a crime, but also the gathering of evidence and thus prosecution. If there are witnesses, they are often closely related to the victim and the endangerer (e.g. children, other family members), which engenders conflicts of loyalty.
- ▶ **Consequences for criminal prosecution:** When witnesses are unavailable, or unwilling to testify, immediately conserving further physical, medical and forensic evidence is decisive for criminal prosecution.
- ▶ **Children are always affected by intimate partner violence.** Even when they did not suffer immediate (physical) violence, witnessing violence and a chronically tense atmosphere may lead to mental and health problems and possibly traumatisation.
- ▶ **Consequences for criminal prosecution:** As intimate partner violence is not limited to the immediate victim, measures of victim protection also have to be taken for indirect victims of violence.
- ▶ **Ambivalent victim behaviour towards endangerer.** Because of the close relationship between them, the victim's attitude towards the violent partner is not as clear as in other cases of violence committed by strangers. Emotional attachment, hope for change, fear and/or manipulation may be reasons for this ambivalence.
- ▶ **Consequences for criminal prosecution:** Police and judiciary should be aware of the causes of the victim's lack of support for the criminal proceedings. This may be attributable to intimidation and threats, but the victim may also primarily have other goals, for instance maintaining the relationship. This causes ambivalence.
- ▶ **Complexity of legal provisions.** In the case of domestic/ intimate partner violence, criminal and civil law (e.g. interim injunction, custody, alimony) and police measures (e.g. barring order) may be applicable. In addition, few victims have legal experience. For legal laypersons, who are also in a stressful situation following an escalation of violence, the legal jungle is nearly impenetrable.
- ▶ **Consequences for criminal prosecution:** Victims need professional support to understand relevant legal provisions and the legal proceedings. As few victims have legal representation, police, the judiciary and specialized institutions of victim protection are an indispensable source of information, orientation and support.
- ▶ **Need for support during criminal proceedings.** Intimate partner violence often leaves victims vulnerable. This results in various needs for support: victims may not want to meet perpetrators at court, refuse to testify in his presence, or want the company of a trusted person at the police and at court. Victims want to understand the proceedings, to be heard and understood.
- ▶ **Consequences for criminal prosecution:** Psychosocial court support is an important offer to support victims, in order to keep them informed, to increase their sense of security and to ensure that they will be understood. Questioning the victim witness at court should be made possible without the perpetrator being present if the victim wishes it.

Part II - Make it happen! Victim protection and victim needs

We will now present the main results of the Dutch research project – first regarding police and prosecution in preliminary proceedings, and then for the court – and address needs of victim protection and awareness for victim needs following the main provisions of the Victim Protection Directive 2012/29/EU. Our information is based on the analysis of diaries of the Dutch prosecution as well as on interviews and discussions within the framework of the project advisory board with experts from the police, judiciary and victim protection institutions, as well as on some interviews with victims of violence.

Introduction

In the European directive victims of partner violence have been indicated as vulnerable victims. For the implementation of the Directive in the Netherlands a programme has been established to increase the protection of vulnerable victims. This will have a positive effect on the future settlement of partner violence cases, because the police will have to make an individual assessment of the likelihood of recidivism and subsequently measures have to be taken to prevent repeated violence. This means that the whole criminal justice chain will have to pay more attention to the protection of victims of partner violence.

In addition, since 2015 the public prosecution has a separate programme for Youth, domestic violence and vice, in which the meaningful settlement of this kind of cases has priority. This will create more attention for the importance of contextual information and good cooperation and alignment with not just the criminal justice chain partners, but also the chain partners in care, in particular the Advice and Reporting Organization Domestic Violence and Child Abuse (Veilig Thuis).



Police and Prosecution

(i) To Understand and to Be Understood – Victim Protection Directive, articles 3, 5 and 7

Research results

- ▶ Domestic violence specialists usually have a good understanding of the various, sometimes contradictory, needs of victims of violence by partners or former partners. Professionals who support victims are best able to formulate these needs. Victims emphasize that they want protection, and ways to break through the spiral of violence. They want the violence to stop, but they do not always wish for a severe sentence: many especially wish for help.
- ▶ Most victims do not want compensation for the damage. It is possible to get compensation in the different phases of the criminal procedure.
- ▶ The interviews with victims and professionals who work with victims show that victims who go to the police often do not feel acknowledged, especially when police officers are not well trained. Victims do not feel they can relate their story

and are being taken seriously. There is a need for respectful police officers who continue to ask questions and through that make it easier for victims to tell the whole story. No proper assessment of the seriousness of the violence is made because the focus is on the incident, and the context within which the violence takes place is left out of the picture.

- ▶ For those victims whose mother tongue is not Dutch, and who depend on interpreters' services, it is hard to understand and to be understood. We did not find special information about this topic during the research. In the court files (prosecution diaries and individual court files), we did not find one single indication that documents were translated.
- ▶ There is a system of interpreters' services in which the interpreter is on the phone. They are available during 24 hours. In half of the cases (N=6) in which the victim or perpetrator did not speak Dutch at all, a phone interpreter was used. In the other cases a family member or interpreter joined the interview or it was unclear whether there was an interpreter or not.

Victims' needs are respected when:

- Police and prosecutors are well trained in domestic violence and understand the needs of the victim
- A proper assessment of the seriousness of the violence is made.
- Starting with the filing of charges, possible problems with language/ communication are taken into account and, when in doubt, interpreters' services are requested.
- The police protocol of the complaint has to be translated if necessary.
- In particular children or other relatives should not be used as interpreters in the police interview, especially because of connected conflicts of loyalty and psychological stress. Objectivity of interpreters has to be ensured.
- Confirmation of reporting the offence, criminal charges, court summons, decisions etc. have to be translated into the victims'/ the accused's mother tongues if needed.
- Further trainings of police officers and prosecutors regarding communication, interview techniques and the recording of interviews would improve their quality.

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(ii) Information – Victim Protection Directive, articles 4 and 6

Research results

- ▶ In general, victims usually receive oral and written information regarding their rights as well as regarding legal and psychosocial support during their first contact with police or, at the latest, during the police interview.
- ▶ However, the quality of this information in terms of its extent and intelligibility varies. According to victims and counselling institutions, specialised officers are better at passing on information.
- ▶ The complaint is not delivered to the victim, although the police is required to do so by indication.

- ▶ According to victims' and counselling agencies' experiences, information that is essential for the victim's safety, for instance regarding the imposition of a barring order or release from custody, is not always delivered. Since the special Victims Front Office 'Slachtoffer Loket' at the Public Prosecutors Service the information is better delivered, especially when victims have a lawyer.
- ▶ Since 2015 there is a special booklet for Victims of Domestic Violence about their rights in different languages. This booklet is developed after complaints of victims of domestic violence who were organized in the shelter movement. Police and victims worked on the booklet together.

I was there to tell my story. I wanted to tell everything, but I couldn't. I was afraid. So I told them a weak story because I wasn't sure I wanted to leave him and a report would only worsen the situation. I was partly to blame, but the police did not persist in asking questions about the violence, so I didn't tell.

Survivor of intimate partner violence

Victims' needs are respected when:

- Information is passed on in an intelligible and situation-adjusted manner. The majority of victims are legal laypersons and do not have any experience with the law, and in a stressful situation (e.g. immediately after the assault or during the police interview), their receptivity is additionally limited.
- Information should, on the one hand, be repeated, and, if necessary, supplemented as the situation requires, and, on the other hand, be presented in plain and simple language (oral and written).

You notice that victims are not able to grasp or fully understand the information during a crime reporting. Just giving them a phone call a few days later can be really helpful for a victim.

Police

- Victims have a fixed contact they can call or email when they have further questions.
- In order to comply with these requirements, communication with specific groups of victims needs to be addressed in police training/ further training.
- Case-related information should be a special focus, as it is essential for the victims' safety and sense of security. Where there is no specialised officer in a police station, naming a contact with the police who the victim can turn to (at all hours) would be helpful.
- It is necessary to stress the importance of medical care and the securing of medical evidence.

(iii) Right to Be Heard –Victim Protection Directive, article 10

Research results

- ▶ Since 2011 victims have the right to be heard and to bring in evidence during the criminal procedure. The victim can add evidence to the criminal file.
- ▶ In the case of intimate partner violence, the testimonies of the victim and of the suspect/ perpetrator are the main evidence. Photographic evidence (e.g. of injuries, crime scene) that support the victim's testimony are usually collected by the police in addition; also neighbours or other witnesses are questioned. In spite of this fact, proceedings are regularly dismissed due to lack of evidence.

In some cases everything tells you that it is not right, but there is nothing you can do because there is no evidence and then you have to dismiss the case.

Public Prosecutor

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A majority of victims is interviewed in detail directly at the crime scene, and/or at the police station when she is filing a complaint. Sometimes they are questioned three times, namely another time at judges office. In general the victims feel a strong need to be heard, in particular right after the assault.²⁸ In this context, we should like to note that more than half of the victims of intimate partner violence are questioned in a sensitive manner by the police officers; they feel understood. However, in individual cases the manner of questioning suggest they were interviewed as the accused.

The quality of the interview of the victim witness (as well as other witnesses) and its recording are essential. The interview records often are incomplete. There should be more information about the seriousness of the violence and not only evidence of the incident, but also about violence in the past, and the context in which the violence took place.

Prosecution only interviews victims in exceptional cases, and when they do, the prosecutor is more giving information about the criminal procedure than that victims are asked about the violence in their relationship and what they expect from the criminal procedure.

Police, prosecutors, legal employees and judges who are not trained in domestic violence issues have less understanding of the needs of the victims; they look at the crime primarily from a legal perspective. In this way the serious character of the violence cannot be explained and chances are high that the criminal settlement will not be adequate.

Victims' needs are respected when:

- The police is asking questions not only about the incident, but also about the history of the violence and the context of the violence in order to get an understanding of the nature and the pattern of domestic violence.

28 At court, victims are hardly present. They are not required to be present, unless they have been summoned to appear as a witness.

I was there to tell my story. I wanted to tell everything, but I couldn't. I was afraid. So I told them a weak story because I wasn't sure I wanted to leave him and a report would only worsen the situation. I was partly to blame, but the police did not persist in asking questions about the violence, so I didn't tell.

Survivor of intimate partner violence

- A stronger emphasis is on securing evidence and recording it. This means also including earlier reports of intimate partner violence or child abuse.
- Prosecution should more often get its own impression of the victim and the context of the violence.

(iv) Support –Victim Protection Directive, articles 8 and 9

Research results

The support of victims of intimate partner violence during the criminal proceedings in the Netherlands leaves a lot to be desired. Although the support is good organized on paper, in practice it's not functioning as it should. The most important organisation that the police refers victims of intimate partner violence to is Veilig Thuis (Advice and Reporting Organization Domestic Violence and Child Abuse). Though, Veilig Thuis is responsible for organising proper care and does not have any duties in legal support.

- ▶ File analysis shows that victims hardly get any legal support from Victim Support or lawyers during the criminal procedure. The few victims with legal support did have a lawyer because of divorce and child custody procedures.
- ▶ The collaboration and interaction between Victim Support and victim lawyers is not adequate, and as a result victims do not receive proper legal assistance.
- ▶ Most representatives of the judiciary did not recognise the need of psychosocial court support.

Victims' needs are respected when:

- Information on legal support is provided to all eligible victims of violence at an early point in time and in an intelligible form.
- There is also psychosocial support especially when going to court. One of the tasks of psychosocial court support is to make sure protective measures like avoiding meetings between the victim and the perpetrator are observed.
- Minors who have witnessed the offence but who were not immediate victims are not eligible for court support. In particular in cases of serious violence against close relatives, they need it, because of the special need for protection of minors, but also to ease the burden of the relatives affected by violence.

(v) Protection –Victim Protection Directive, chapter 4, articles 18–24

This issue not only refers to protective measures during criminal proceedings, but also to measures within the scope of police or administrative law.

Research results

- ▶ In one third of the incidents examined in file analysis, a temporary restraining order was issued for ten days up to four weeks. Hardly any use is made of the possibilities within criminal law to impose restraining orders or contact bans.
- ▶ The enforcement of restraining orders and criminal justice contact bans is a problem. After a violation the police does not always act or report the crime, which makes it possible to prosecute the violation.

Nothing was done when he violated the restraining order. It really didn't make me feel any safer. The restraining order might as well not have been given.

Survivor of intimate partner violence

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It is good that restraining orders can be imposed, but they're not followed by enforcement. It's easy for the perpetrator to ignore the order without any consequences. What then is the use of such a measure?

Professional working with victims

- ▶ Stalking is not always recognized as intimate partner violence. Victims do not feel supported, it is difficult to find protection from police and prosecution.
- ▶ A risk assessment by the police is only used to decide if a temporary restraining order will be issued. The documentation of the this risk assessment is not part of the criminal file, because a temporary restraining order is administrative law. Probation has the risk assessment B-Safer, but probation is hardly using it. The risk of repeated violence is therefore not always screened systematically, and creates a lack of insight in the level of risk involved. This may also explain why so few criminal justice measures are taken to protect victims.
- ▶ In addition to restraining orders the police can offer additional protection by more frequent surveillance or immediate response after a call, the so-called code alert. The police could also keep an eye out, for instance through the neighbourhood police officer, or stay in touch through contact persons in the victims' environment.
- ▶ Other possibilities are the use of the AWARE programme: Abused Women's Active Response Emergency. The victim and children have an electronic alarm system, and by pressing the button the police immediate response. The victim also receives psychosocial support.

- ▶ When the victim and children are seriously threatened additional guarding in the framework of the Guarding and Safeguarding system is possible, but this measure to protect is hard to get.
- ▶ The police sometimes has a regulating conversation with the perpetrator, in which it is made clear that violence is not only an offence in public but also in private settings. Also the prosecutor has this possibility, but hardly ever applies in practice.

Victims' needs are respected when:

- In the police force as well as the prosecutor's office, a strong focus of trainings should be on recognising risk factors for (repeated) use of violence.
- In the context of trainings for the executive forces, the subject of requirements for barring orders is allowed more space.
- Victims can reach out to a specific police officer in a threatening situation; then they feel more protected.

Court

In the Netherlands a lot of minor cases do not go to court. The Public Prosecutor can sanction in the so called minor cases, like simple abuse. The prosecutor can impose a community service (under conditions) after hearing the suspect and having information from Probation, Victim Support Netherlands and the Child Care and Protection Board in a so called TOM session (TOM means Community Service imposed by Public Prosecution).

Since 2012 the Public Prosecution Service works together in an interagency with the police, the Dutch Probation Services, Victim Support Netherlands and the Child Care and Protection Board in the so called ZSM. The Dutch abbreviation 'ZSM' literally means 'As Soon As Possible' and it stands for a response to a crime 'as speedy, smart, selective, simple, supportive to society and victims as possible'. The goal of ZSM is to assure meaningful and fast interventions, based on quality and effectiveness for society; meaningful for society, suspects and victims. So the reaction should not only be as fast as possible after the incident but also meaningful. This means that perpetrators receive an adequate sanction and there is justice to the position of the victim. To reach this goal, the Public Prosecutor is situated at the start of the criminal justice chain and triages high volume crimes to determine the best procedure for a case. Actually in ZSM the decision is made whether the case should go to court, or the prosecutor takes a decision directly, or the case goes to a TOM session and the prosecutor takes a decision.

ZSM is successful because the sanction (intervention) is fast. A reaction to a case does not take half a year but a few days or weeks, which reduces the risk of recurrence. In addition, the intervention is meaningful. There is not only a juridical sanction, but there is also help and care around the relationship and family of perpetrator and victim. But in practise ZSM is not always meaningful. If no expertise in domestic violence is involved, the chances are that the focus is on the incident and legal evidence. In 2016 pilots will start with ZSM to reach a more meaningful settlement of domestic violence cases.

ZSM works so well because the cooperation with the chain partners works well. We all work together in one room and know where to find each other. You can take care of things right away and that is a good way to work.

Public Prosecutor

(i) To Understand and to Be Understood – Victim Protection Directive, articles 3, 5 and 7

Research results

- ▶ From the interviews with both public prosecutors and judges it emerges that the probation report is of particular value for their judgement. Court sessions may be adjourned when the report fails. A proper probation report will include relevant context information and should be based on a conversation with the victim of intimate partner violence. Professionals in victim support services note that probation pays little or no attention to victims, and also judges indicate that probation is often strictly perpetrator-oriented.
- ▶ Judges hardly have a clue about the needs of victims. Often the victim is not present at the session. Victims are present together with her partner to support him, or when the victim has legal support. Probation and prosecutors have to inform the judge about the needs of the victim.
- ▶ Prosecutors who do not have expertise on domestic violence do not have knowledge about the needs of victims. They have a focus on the incident and legal evidence.
- ▶ There are prosecutors who focus on fast decisions in ZSM. Gathering context information about domestic violence takes too much time.

ZSM stands for fast and meaningful, but meaningful is often omitted at the moment. The question is whether ZSM is suitable for domestic violence cases, because it takes time to get a clear picture of the context. With ZSM that time is not available.

Public Prosecutor

- ▶ Written information on the state of proceedings, whether by the court or the prosecutor, is often not understood by the victim, partly because of a lack of knowledge regarding the legal system.

Victims' needs are respected when:

- It is guaranteed that court support is actually given to all eligible victims of violence who need such support, because court support ensures that information is actually understood.

- A Probation report includes relevant context information and is based on a conversation with the victim of intimate partner violence.
- Information should not only be given in the victim's main language, but also in general in plain and intelligible language.

(ii) Information – Victim Protection Directive, articles 4 and 6

Research results

- ▶ Written information on the state of proceedings, whether by the court or the prosecutor, is often not understood by the victim, partly because of a lack of knowledge regarding the legal system. Recently the Public Prosecutor Office is rewriting the default decision to dismiss in understandable language.

Victims' needs are respected when:

- It is guaranteed that court support is actually given to all eligible victims of violence who need such support, because court support ensures that information is actually understood.
- Information should not only be given in the victim's main language, but also in general in plain and intelligible language.
- Judgements and other decisions have to be communicated in a form the victim can understand.
- It is important to the victims to understand the court's decision, whichever way it goes.

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(iii) Right to Be Heard –Victim Protection Directive, article 10

Research results

- ▶ Victims often are not satisfied with the final result of the criminal proceedings. They feel the perpetrators have not been punished adequately, whether or not they have been summoned. The settlement by prosecutor or judge in their view is not in proportion to what the perpetrator has inflicted upon them (and the children if relevant).

I feel this punishment is way too low, especially when you consider all the things he did, even before he abused me. He called me up triumphantly to relate the verdict. I would have liked to see him go to a closed institution for treatment. So that he would realise what he is doing to other people.

Survivor of intimate partner violence

- ▶ Victim protection institutions acknowledge that the seriousness of intimate partner violence is far from being recognized because too much attention is being paid to legal evidence concerning the incident, and too little attention is

being paid to the backgrounds of the violence and the risk factors.

- ▶ Judges have very diverse ways of handling victim witnesses. Some give the victim time to tell her story and allow individual emphases, others do not.
- ▶ When the victim is just present at the session, but not as a witness, sometimes a judge gives her the floor by asking questions. Some victims feel obliged to answer, while they do not want to say anything, while others feel thankful for the possibility to speak out.

If a victim comes to court, I always try to have a conversation with her. Usually only victims come along to court when they are together with the perpetrator, but it is very rare that a victim comes to court when they are divorced.

Judge

Victims' needs are respected when:

- They are treated politely and with respect, and they are given to understand that their statement is important evidence.
- Judges need to be competent to treat (sometimes traumatised) victims of partner violence with care and question them accordingly.
- Judges have to ask the victim, not being heard as witness, if she wants to say something, but that she is not required to speak.

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(iv) Support –Victim Protection Directive, articles 8 and 9

Research results

- ▶ Victims of serious (violence) crime have a right of free legal aid. Most cases of intimate partner violence are legally a minor crime.
- ▶ Victims who are only involved in a criminal procedure, have hardly legal support. Sometimes they are supported by Victim Support to ask compensation or write an victim impact statement.
- ▶ When victims have legal support from a lawyer, often also family law is involved (related to child custody conflicts).

Victims are hardly ever assisted by a lawyer. The legal support by Victim support The Netherlands is not always adequate. Counselling by a lawyer would be a huge improvement.

Judge

- ▶ A good practice in the Netherlands is the possibility to ask for compensation of damage during the criminal procedure. At the same time, the judge can impose

a compensation measure. This means the perpetrator is obligated to pay the state on behalf of the victim. Since 2011 the position of the aggrieved party in the criminal justice procedure has been strengthened due to the introduction of a prepayment measure. In cases whereby the perpetrator fails to fully compensate the victim within 8 months after the compensation measure was imposed, an appeal may be made on a prepayment fund. The victim gets the money in advance, and the perpetrator still has to pay the state.

The advanced compensation is voor many victims a relief, because victims do not longer need to ask for the money by the perpetrator. Offenders will now clearly feel in their pockets what they have done to others.

Victim support services
(Jaarverslag Slachtofferhulp 2011)

Victims' needs are respected when:

- How to get relevant legal support is adequately explained to the victim of violence.
- Psychosocial court support is possible.



(v) Protection – Victim Protection Directive, chapter 4, articles 18–24

Research results

- ▶ At court, the judge has only knowledge about risk assessments if probation is using the B-Safer, or when the police used the risk assessment RIHG to impose a restraining order. In practise those risk assessments are not part of the file.
- ▶ The history of violence is not taken into account sufficiently.
- ▶ In the 70 analysed cases, there were a few referrals to a domestic violence perpetrator training by prosecution or court.
- ▶ The judge hardly imposes restraining orders. Not enough use is being made by prosecutors of the opportunities that criminal proceedings do offer to impose protective measures.

As a judge, I have no view on the compliance of a restraining order. That is only possible if also electronic surveillance is imposed, but that only happens in full-bench panel cases and not in single judge cases.

Judge

- ▶ Efficient victim protection substantially depends on the cooperation between different relevant stakeholders (police, judiciary, victim protection centres).

Although this interagency is developed in the Netherlands since the beginning of the century, it is very difficult to protect the victim and take adequate measures in practice.

- ▶ It is possible to avoid contact between victim and suspect during court session.

Victims' needs are respected when:

- Judges are trained in domestic violence.
- Judges get the right information about risks and context of the violence from probation and prosecutors.
- Judges should increasingly refer to histories of violence and the context of the offence in their decision in order to assess the significance of the situation.
- Judges and prosecutors use the opportunities that criminal proceedings do offer to impose protective measures.

Make it happen!

With regard to protecting victims of intimate partner violence and making sure their needs are respected, the Netherlands are in a new phase. In 2015 Veilig Thuis (Advice and Reporting Organization Domestic Violence and Child Abuse) started, the successor of the separated organisations Domestic Violence (SHG) and Child Abuse (AMK). Veilig Thuis is responsible for offering psychosocial support and, together with police and Public Prosecution, to create safety. Consultation between Veilig Thuis, police and prosecution on serious violent cases is required. Victim Support Netherlands and (victim) lawyers are responsible for legal support. Several minimum standards for crime victims required by the Victim Protection Directive 2012/29/EU are already been implemented in the Netherlands criminal law for some time, or will be shortly.

There is a special National program to increase the protection of vulnerable victims. This will have a positive effect on the future settlement of intimate partner violence cases, because the police will have to make an individual assessment of the likelihood of recidivism and subsequently measures have to be taken to prevent repeated violence. This means that the whole criminal justice chain will have to pay more attention to the protection of victims of intimate partner violence.

In addition, since 2015 the public prosecution has a separate programme for Youth, Domestic Violence and Vice, in which the meaningful settlement of this kind of cases has priority. This will create more attention for the importance of contextual information and good cooperation and alignment with not just the criminal justice chain partners, but also the chain partners in care, in particular Veilig Thuis.

The research project²⁹ in the framework of which this brochure was developed offers some interesting insights into the way the judiciary handles intimate partner violence against women³⁰ The file analysis conducted in the Netherlands covers 70 diaries of

29 INASC – Improving Needs Assessment and Victim's Support in Domestic Violence-related Criminal Proceedings JUST/2013/JPEN/AG/4591, www.inasc.org

30 For more detailed information, see project report on the website.

the public prosecutor's office in three different regions. The **file analysis** shows that, with regard to types of violence, the cases brought to the Public Prosecution Service mostly concern physical violence. Victims were hit, slapped, pushed and shoved with no or only minor injuries as a consequence. There is also a lot of psychological violence involved, but this is seen as not relevant from a legal perspective. Professionals, police officers, and prosecutors who are specialized in domestic violence have more knowledge of risk factors, the historical context of the violence and the impact of the violence on the victim. Without this knowledge of domestic violence prosecutors and judges see the incident as a minor crime committed by a first offender.

Most often it is the victim that gets in touch with the police, often during or just after the violence incident, but victims also visit the police office days or months after the last incident to report a crime. If both are still present, victim and perpetrator are usually separated by the police and talked to individually. It depends on the expertise of the police officers on duty whether adequate action is undertaken.

In approximately 30 per cent of the cases studied a restraining order was executed for a period of at least ten days and maximum 28 days. This means that the person removed from home is not allowed to contact the victim and possible children, and that both perpetrator and victim, including children, are offered support. When a temporary restraining order is imposed, a risk screening has to take place using the risk screening tool RIHG.

When an intimate partner violence case has been referred to the public prosecutor, there usually has been a crime report; the victim has pressed charges. However, pressing charges is not imperative for an official prosecution to take place. Compared to other abuse cases, official prosecution takes place more often according to the Public Prosecution. In practice however it (often) happens that the police does not refer the case to the Public Prosecution without the victim pressing charges, even if there have been several prior incidents. It emerges from the files analysis that the presence or absence of a crime report does not impact on whether a case is or is not settled out of court. If the Public Prosecution receives an intimate partner violence case, most cases go to ZSM because they are simple abuse cases.

In more than half of the cases not brought to court a sanction has been imposed, varying from a general condition of non-repetition (if repeated the case will still be brought to court) to special conditions such as placement under custody of probation, having to follow a domestic violence course or aid programme or pay damages. Hardly any restraining orders or contact bans have been imposed as conditions or measures of conduct. Approximately one quarter of the cases were dismissed on technical grounds (lack of evidence) and one fifth received an unconditional dismissal.

Of the 26 cases brought to court, over half ended in convictions, the others were acquitted. Usually community services were imposed and sometimes a (probationary) prison sentence and never a restraining order. With regard to imposing sentences one has to keep in mind that these figures are not representative, so the proportion of settlement by Public Prosecution (unconditional dismissal, conditional dismissal, punitive order) and settlement by the judge (sentence or acquittal) is only related to the study of these files. No national figures are available for the criminal proceedings

in intimate partner violence cases. We do know that in the districts we investigated there is a different proportion in relation to domestic violence cases (so not just intimate partner violence cases): there are more summons and fewer acquittals.

In respect of the Directive it is important to realise that most victims did not have any legal aid during the criminal procedure, nor from Victim Support, nor from a lawyer. Victims who are involved in a dispute on child custody or other family matters have already a lawyer, who will support them also in criminal matters. One of the bottlenecks in protecting victims of intimate partner violence and their children is separated systems of family law and criminal law. The violence is not taken serious in family matters and criminal law has no information about (the impact of) family issues. Lack of legal support contributes to the invisibility of the story of the victim and increases the chance of non-adequate sanctions. It is also important to realise that certain rights of victims, like the right to talk with the prosecutor or the right to speak at court, free legal aid, the right to get an advanced compensation, are only for victims of serious crimes (maximum prison sentence of 8 or more years), while most cases are classified as minor assault.

The goal of this brochure is to support the implementation of the Directive on minimum standards of rights, support and protection of victims of crime (2012/29/EU) and relevant regulations in the Dutch Code of Criminal Procedure concerning victims of violence in close relationships. In the Netherlands there is an infrastructure of interagency; criminal law stakeholders and stakeholders of care are working together. When victims of intimate partner violence seek protection, the police refers most cases to Veilig Thuis. The other cases are send to the Public Prosecution and one third of is given a temporary restraining order and is. The challenge for the next years is to improve psychosocial and legal support and increase the meaningful settlement of intimate partner violence.

Authors:

Isabel BAPTISTA (Coord.)

Alexandra SILVA

Barbara NÄGELE

Birgitt HALLER

Helga AMESBERGER

Katinka LÜNNEMANN

Milou LÜNNEMANN

Paula CARRILHO

Sabine NOWAK

SAFE IRELAND

Sandra KOTLENGA

Thomas GÖRGEN

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Diagonal, Lda

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Information regarding the project and all research reports is available at: www.inasc.org

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