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# Enhancing PROtection of Children – vicTims of crime

# E-PROTECT

## WP3: Research and Data Collection

# D3.13 pan-European Best Practices Report on individual assessment methodologies of child victims of crime

## WP3 Leader: VICESSE



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# Executive summary

Enhancing the right of protection of child victims of crime by examining the transposition of Directive 2012/29/EU (Victims' Directive) into national law within the jurisdiction of five Member States (Bulgaria, Austria, Romania, Greece and Italy) is one of the specific aims of the E-PROTECT project. Furthermore, the project investigates how one main legal provision of Victims' Directive: *Article 22*: *Individual assessment of victims to identify specific protection needs* works out in practice and thereby, aims to inspire and boost a multidisciplinary network of professionals by conducting workshops in each of the partner countries for target professionals in the further course of the project, as well as implementing an online collaborative platform, where information can be obtained and exchanged among professionals.

This *pan-European* report on *"best working practices in individual assessment methodologies of child victims of crime"* aims to broaden the geographical and cultural range of the project in order to produce a broader picture of the application of individual assessments across the EU Member States. It analyses the practical application of individual assessment methodologies in the following Member States: ***Germany, Portugal, Spain, UK (focus: England and Wales),*** **and** ***Finland***. Additionally, the findings of the previous individual country reports on: ***Bulgaria, Austria, Romania, Greece and Italy*** are also summarised and included in this report.

The sample of Member States for this Pan-European study is highly relevant in a double way: *first*, in geographical and cultural terms, considering their national legislative specificities and different transposition of Victims' Directive and how these are working out in practice. *Second*, bearing in mind the project's core aim of improving the application of protection rights of child victims of crime among the diverse countries in the EU, they seem to be worthy exemplars, as they have either employed respectable victim support infrastructures over a longer period of time (in case of England and Wales, Germany and Finland) or developed specific procedures for handling child victims in consequence of implementing Victims' Directive (in case of Spain and Portugal).

In the perspective of *comparative problematization* (see Jasanoff/Metzler, 2018), it has become visible that each country construes and operates in its own context of victim support infrastructures and thus, inevitably produces divergent answers to the intricate task of reacting towards implementing the Directive. This study utilises qualitative comparison, aim of which is to understand a case, or rather cases (in this



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report the diverse EU Member States approach towards the individual assessments and child victim assistance) in their specificity, and generality by producing dense description of these cases. Furthermore, it reveals distinct national legislative and socio-practical environments in which practitioners and legislators have to act and thus exposes different understandings of each state's responsibilities towards protecting victims of crime at a domestic level. Therefore, the report aims to view the different frameworks and practices of child victim support in each of the Member States through the lenses of precisely the other's frameworks of victim support (see Akrich/Rabeharisoa, 2016).

At a pan-European level, the picture of victim assistance concerning the transposition of the Directive turns out to be very diverse among different countries in the EU area. **Finland** for instance, seems to have a more systematic approach towards individual assessments since transposing the Directive (see EPRS 2017: 82). The UK (especially **England and Wales**) have developed some practical guidelines (*The code of practice for victims of crime*), a large amount of public information materials and special trainings for practitioners involved in victim support. Furthermore, **England and Wales**, as well as **Germany** can refer to a long lasting victim support tradition. **Portugal** and **Spain** are noteworthy since both countries have transposed the full text of Victims' Directive in verbatim.

However, a possibly common problematic fact in victim support is its sometimes complicate architecture, in terms of coordinating and cooperating victim support. This exactly points to the significant factor for successful victim support: *multi-agency cooperation* between concerned stakeholders at both national and international level (considering cross-border crime).

Including and understanding the *role of context* in EU policy making is another crucial aspect. The patchwork of countries among the EU requires a different approach to policy making and implementation, thus EU policy makers should consider exactly these different contextual factors at both levels, socio-political and legal, all of which determine country specific victim support systems.

In conclusion, this study has shown next to others that it is essential to include *each country's individual context* in which victim support develops, especially concerning such mega projects as the Victims' Directive and its implementation across 28 Member States (see IVOR report 2016). Victims support varies inevitably in nature from one area of the European Union to the next and therefore, EU policy makers have to take these contexts and different environments into account to develop more flexible means to influence policy and practices among Member States.



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# List of abbreviations and acronyms

| | |
|---|---|
| CAC | Children Advocacy Centres (US model) |
| CILEX | Chartered Institute of Legal Executives (UK) |
| CRAE | Children Rights Alliance for England |
| CSEW | Crime Survey of England and Wales |
| EKKA | National Centre for Social Solidarity (Greece) |
| E-PROTECT | Enhancing Protection of Children – victims of crime |
| EPRS | European Parliamentary Research Service |
| EU | European Union |
| EVVI | Evaluation of Victims project |
| FRA | Fundamental Rights Agency |
| FAPMI | Federation of Associations for the Prevention of Child Maltreatment |
| IAM | Individual Assessment Methodologies |
| IVOR | Implementing Victim-Oriented Reform of the criminal justice system in the European Union |
| IJJO | International Juvenile Justice Observatory |
| LSCB | Local Safeguarding Children Boards (UK) |
| MS | Member States |
| NGO | Non-governmental Organisation |
| ONS | Office for National Statistics (UK) |
| SotC | Smile of the Child (Greece) |
| RIKU | Rikosuhripäivystys (Victim Support Finland) |
| RUMI | Unified Registry of Cases of Suspected Child Maltreatment (Spain) |
| Victims´ Directive (VD) | Directive 2012/29/EU |
| VPS | Victim Personal Statement (UK) |
| UK | United Kingdom |
| UNCRC | United Nations of Convention on the Rights of the Child |



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# 1. Introduction

Enhancing the right of protection of child victims of crime by examining the transposition of Directive 2012/29/EU (Victims' Directive)[1] into national law within the jurisdiction of five Member States (Bulgaria, Austria, Romania, Greece and Italy) is one the specific aims of the E-PROTECT project. In the project's earlier produced country reports[2], every project partner has elaborated more closely on the practical application of the individual assessment methodologies (Article 22 of Victims' Directive, and in the following mostly referred to as IAM) and the respective special measures for particular vulnerable victim groups, such as child victims, in each partner country (Bulgaria, Romania, Greece, Italy, and Austria).

This paper aims to broaden the geographical and cultural range in order to produce a broader picture of the application of individual assessments regarding adequate protection of child victims of crime and their rights respectively across the EU MS. It is dedicated to the analysis of the practical application of individual assessment methodologies, which refers to one main legal provision of Victims' Directive, *Article 22*: *Individual assessment of victims to identify specific protection needs*, in the subsequent Member States: ***Germany, Portugal, Spain, UK (with limited focus on England and Wales),* and *Finland***.

*Article 23* (*Right to protection of victims with specific protection needs during criminal proceedings* - these include criminal investigations, as well as court proceedings) and *Article 24* (*Right to protection of child victims during criminal proceedings*) will be scrutinized in the case of these MS. Article 22 aims at assessing specific protections needs of victims of crime and determining whether and to what extent they would benefit from special measures. These are provided and specified under Article 22, 23 and 24 concerning their particular vulnerability (which refers to secondary and repeat victimisation, to intimidation and retaliation during criminal proceedings).[3]

[1] Directive 2012/29/EU aims to establish minimum standards on the rights, support and protection of victims of crime and replaces its forerunner Council Framework Decision 2001/220/JHA (CFD:2001/220). In the following referred to as Victims' Directive" or VD. https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029 (accessed on 15th March 2018).

[2] See: E-PROTECT Deliverables D3.8-12 (country reports on individual assessment methodologies in **BG** D3.8, **AT** D3.9, **RO** D3.10, **IT** D3.11, **EL** D3.12).

[3] See the relevant Articles in the Directive 2012/29/EU; https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029 (accessed on 15th March 2018); see also the country reports D3.8-12



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The individual assessment considers the development and implementation of a *case-by-case approach* regarding the victim's needs (see INASC report 2016: 20). An assessment on a case-by-case approach is based on three main aspects: a) the personal characteristics of a victim, b) the type and nature of the crime and c) the circumstances of the crime.

In order to assess best practices and the suitable application of the VD, *Chapter 5*: "*other provisions"* of the Directive is relevant as well, since it refers to: *Article 25:* Training of practitioners and *Article 26:* Cooperation and coordination of services (see Directive 2012/29/EU). These articles are also partly considered in this report.

## 1.1. Best practices

The identification of best working practices stands at the core of this report. Such practices describe procedures that ensure adequate protection of children rights and well-being in a careful and responsible manner.[4] For instance, the development of guidelines that aim to harmonise and develop operational procedures for all involved actors in the field of victim support (such as victim support providers, police staff, lawyers).

A common problem in victim support is its often complicate architecture, in terms of its coordinating and cooperating: victims of crime have to orient themselves within an intricate web of institutions with different responsibilities, which often is experienced as excessive demands by victims. This points to the crucial factor for successful victim support: *multi-agency cooperation* between concerned stakeholders at both national and international level. This aims at establishing better and manageable access to victim support measures for persons in need and at creating better working conditions for professionals.

Comparing different national approaches towards the conduct of individual assessments is important because:

> "Domestic national experience shows that improving the plight of victims of crime can only to a limited degree be entrusted upon changes in the 'letter of the law'. Instead success is in large part contingent upon the practice at street-level: the extent to which rights are supported by sufficient services" (IVOR report

produced under the framework of E-PROTECT, which explaining more specifically the underlying stipulations of VD.

[4] For instance, the "Blue rooms" in Bulgaria, which are specific premises (designed in a child-friendly environment in contrast to e.g. the barer police station) established for child-friendly interrogations/interviews (see D3.8/2017, country report Bulgaria).



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2016: 9).[5]

The IVOR report points to the practical implementation of regulations on a ground-level, which depends mainly on how legal stipulations turn out in practice, as the most important factor in effective victim support. Or to put it differently:

> "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" (INASC 2016: 43).

Therefore, the report examines the IAMs at a pan-European level, focussing on how they are practiced in each context in order to achieve better applications of individual needs assessments among EU MS.

## 1.2. Structure of the report

The report is structured into four main sections: first of all, the *methodological approach* of *comparison* is outlined **(2)** and is followed by a chapter that gives an overview of the *"Key learnings from transposing Article 22, 23, 24 of Victim' Directive in Bulgaria, Romania, Greece, Italy, and Austria"* **(3).**

The results of the previous country reports will be compared with those of this report in order to better understand the common challenges regarding implementing the individual assessment stipulated by Victims' Directive.

Subsequently, the report gives an overview on current child victim support infrastructures of the five selected MS (Germany, Portugal, Spain, England and Wales, Finland) **(4)** and proceeds with scrutinizing the *organisational implementations of individual needs assessments and special measures for child victims of crime* **(5).**

Lastly, the report provides a synthesizing section, which aims to compare the practices in these MS to each other, including also the results from the partner countries, in order to identify best working practices **(6).**

[5] See the report produced by IVOR – "Implementing victim-oriented reform of the criminal justice system in the European Union (2014-2016), https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf (accessed on 25th April 2018).



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## 2. Methodological approach

From a methodological point of view, this study on IAMs is oriented towards qualitative comparison, aiming to achieve description, concept formation, and analytical explanation, rather than statistical significance (see Krause 2016). The specific objective of qualitative comparison in the social sciences is to understand a case, or rather cases in their specificity, and generality by producing dense description of these cases. Comparison stimulates a serious understanding of a phenomenon because it is permanently contrasting the one with the other.

Consequently, the sample of MS in this report needs to be justified, in particular concerning the question: why exactly these MS? In a study that aims to represent a pan-European level it is necessary to reach a broader geographical and cultural range, particularly in terms of different legal approaches towards the rights of victims and application of the VD. Incidentally, it can just be a selective representation of EU MS, simply in terms of feasibility, because looking at every of the 28 MS in Europe would simply surpass the available resources of this report. Member States were selected on the basis of a first screening according to their legal and practical particularities to include a most diverse sample

**Finland** for instance, appears to have a more systematic approach towards individual assessments since transposing the Directive (see EPRS 2017: 82)[6]. The UK (especially **England and Wales**) is a relevant case, as they have developed some practical guidelines (*The code of practice for victims of crime*)[7], a large amount of public information materials and special trainings for practitioners involved in victim support. Furthermore, **England and Wales**, as well as **Germany** can refer to a long lasting victim support tradition. **Portugal** and **Spain** are noteworthy since both have transposed the full text of Victims' Directive literally.

[6] The Victims' Rights Directive 2012/29/EU, European Implementation Assessment Study conducted by European Parliamentary Research Service (EPRS), December 2017. This is a current assessment report on the transposition into national law, with specific focus on the practical application of the Victims´ Directive but assessed in more depth in a sample of 12 MS, which also tries to represent a balance in terms of geography, size, different legal traditions and approaches (ibid.: 4).

[7] See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (accessed on 20th March 2018).



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Therefore, the report aims to view the different practical, rather than regulatory, frameworks of victim support[8] in each MS through the lenses of the other's frameworks of victim support (see Akrich/Rabeharisoa 2016).

Following this approach implies to centre stage the practices at stake, to explore how the transposition of the IAMs works out differently in practice through the lenses of different culturally rooted victim support systems. The report attempts to provide insights into the different handlings of the individual assessments and victim support services by highlighting common and promising practices. Insights into these practices should encourage mutual understanding and learning by taking into account cultural particularities.

The paper focuses primarily on desk research and considers already existing information and knowledge that have been produced so far.[9] It tries to condense the already existing research on the VD transposition and includes national available documents, such as those provided by victim support organisations (e.g. guidelines, recommendations, quality standards), or other national (legal) relevant documents and academic literature, all of which allow for a better understanding of applying an individual needs assessment and child victim support in each of these countries.

# 3. Key Learnings from transposing Article 22, 23 & 24 of Victims' Directive in practice in Bulgaria, Romania, Greece, Italy and Austria

This chapter highlights different national practices of child victim support and in particular regarding the individual needs assessment that the project explored and carved out in the previous produced country

[8] There is a complementary pan-European study particularly on the legal transposition of VD (D3.6) with the same sample of Member States. Therefore, this report does not take into account so much of the legislative transposition processes, but it has to be clear that it is impossible to investigate the practical dimensions and applications independently of the black-letter law. Since it is exactly this "translation" process that constitutes the main challenge and makes the diverse challenges of translating laws/regulations into practice visible. To scrutinize slightly this process could be also seen as a test whether a law is well conceptualized. However, the practical application of Art.22, 23, 24 are at the core of this study.

[9] For instance, see https://victimsupport.eu/about-us/our-projects/ivor/; access the report here: https://www.apav.pt/publiproj/images/yootheme/PDF/IVOR-Repot-WebVersion.pdf; Or, http://www.victimsandcorporations.eu/wp-content/uploads/2017/01/Vict-and-Corp_First-Findings.pdf (accessed on 19th March 2018).



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reports, including *Bulgaria*, *Romania*, *Greece*, *Italy* and *Austria*. These practices could be regarded as good practices in the context of child victims support.[10]

## 3.1. Austria

In Austria, the individual assessment is carried out by the police since it is in most of the cases the first point of contact for both, the victim but also the suspected offender. The main official place for conducting the individual assessment in a timely manner, i.e. as soon as possible, is the ***criminal prevention of the police***, which is responsible for carrying out all prevention work. Prevention includes both, conducting conversation with the victim, as well as with the suspected offender.

A good practice implemented in Austria is the so-called ***court assistance***, which includes psychosocial and legal court assistance (*Psychosoziale Prozessbegleitung*)[11], – that constitutes one major achievement of the Austrian victim support system to ensure the protection of their rights, with specific focus on ensuring court assistance for children and young people. The court assistance, as special victim support service, has been developed during the last 20 years in Austria and frequently updated until now. Court assistance means to support (child) victims (mainly in the cases of sexual, bodily and domestic violence crimes) during the whole criminal proceeding. It contains not merely support during the court proceeding, but rather already starts – in the optimal case – before reporting a crime at the police and ends after the court trial. It includes both, psychosocial and legal court assistance. Additionally, it is worth mentioning that in 2014 Austria has received the international *"future policy award"* for the legal implementation of that eminent victim support service of psychosocial court assistance.[12]

## 3.2 Bulgaria

In Bulgaria there is no single unified individual assessment methodology applied to child victims of crime. However, there are some good practices implemented in case of child victim support that need to be further developed and improved.

[10] For detailed information on the different victim support systems and a quantitative overview of child victims in each country, see the E-PROTECT Deliverables D3.8-12 (country reports on individual assessment methodologies in **BG** D3.8, **AT** D3.9, **RO** D3.10, **IT** D3.11, **EL** D3.12).

[11] See: http://www.pb-fachstelle.at/fuer-fachleute/in- formation-was-ist-prozessbegleitung/ (accessed on 11th December 2017).

[12] E-PROTECT Deliverable D3.9 Study on the individual assessment methodologies of child victims of crime in Austria, EN, pp.15-22.



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One of these special measures is the ***Coordination Mechanism for Interaction in Cases of Child Victims or at Risk of Abuse, and for Interaction in Crisis Intervention***, which is a formal agreement among the Ministry of Labour and Social Policy, Ministry of Interior, Ministry of Justice, Ministry of Education and Science, Ministry of Health, Ministry of Culture, Social Assistance Agency, National Association of Municipalities and the Ombudsman. The implementation of the Coordination Mechanism is an instrument for bringing together the efforts of the protection system, police, and justice in order to guarantee the best interest of the child in cases of child victims or at risk of abuse.

In accordance with the ***Coordination Mechanism for Interaction in Cases of Child Victims or at Risk of Abuse, and for Interaction in Crisis Intervention***, in 2016 the Social Activities and Practices Institute, in partnership with UNICEF, Bulgaria piloted the first ***Child Advocacy and Support Centres***. The integrated advocacy and support service is called ***Protection Zone*** and it is aimed at child victims of all types of abuse or crime, regardless of whether committed in the past or recently. The Protection Zone service has introduced a specialised approach towards child victims, including services for child victims of abuse, bringing together legal, medical, psychological and social support practices in a child-friendly environment.

Another good practice in case of child victims of crime are the established specialised rooms for child hearings, the so-called ***"Blue rooms"***, which allow hearing an interrogation by a trained specialist in a child-friendly atmosphere, and in the presence of all relevant participants depending on the corresponding phase of the criminal justice process. At the end of 2017, around 70% of the district towns in Bulgaria had special premises for interrogation of children involved in criminal proceedings.

However, there are still no national standards for interviewing children in civil proceedings, which would ensure that procedural activities with respect to the child will be carried out in an appropriate environment under favourable conditions and with using appropriate language for communication with the child.[13]

## 3.3 Greece

Conducting individual assessments of child victims in criminal cases entails, first, the report of a case of child victimisation to the competent authorities or institutions. In the "front line" of receiving such reports,

[13] E-PROTECT Deliverable D3.8 Study on the individual assessment methodologies of child victims of crime in Bulgaria, EN, pp.22-31.



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which also falls within the remit of police authorities, ***two national helplines specialised in intervention in child victim cases*** are active at the moment.

Following the registration of a report of child victimisation, a ***social inquiry is conducted by public agencies***, namely the Child Protection Group of the competent Municipality or EKKA – in cases of severe offences against children – or by private organisations specialised in child protection (e.g. ARSIS or SotC).

The findings are submitted in written form to the Public Prosecutor for Minors. This report also encompasses suggestions regarding the treatment of the child (for instance, the removal from the family environment, supervision of the child and the parents through monthly meetings etc.), as well as conclusive comments on the commission of the reported crime. When there is empirical evidence, the state mechanism of criminal prosecution is activated. During these proceedings, the role of social workers involved in the social inquiry remains active, both in the sense of providing psychological support to the child victim, and of testifying as witnesses on the date of the hearing procedure.

Although not immediately linked to the examination of a child victim dictated by the criminal legislative system, individual assessments are also carried out by several NGOs. This is usually a two-tier evaluation of the child's special features and needs, both in a psychological and educational level, which is frequently updated. During this procedure, the individual conducting the assessment takes into consideration the severity and conditions of the crime committed and, to some extent, the victim's desire, always defending the best interest of the child and aiming at the prevention of a secondary victimisation. However, the lack of a uniform child protection policy renders it challenging to scrutinise the practices of each NGO individually.[14]

## 3.4 Italy

According to the Italian law, children are presumed to be particularly vulnerable and therefore different measures must be applied. The Italian criminal code states that in the case of certain offences (all those against the "person", such as abuse, mistreatment, slavery, child prostitution and pornography, sexual abuse or human trafficking) committed against minors or by one of the parents against the other (in the case of the so called "witnessing violence"), the prosecutor has the obligation to inform the ***Juvenile***

[14] E-PROTECT Deliverable D3.12 Study on the individual assessment methodologies of child victims of crime in Greece, EN, pp.18-26.



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***Court***. However, only in the case of particular circumstances – if the offender is one of the parents or there is a suspect, and they are not able to care for their child[15] – a civil proceeding case is initiated before the Juvenile Court.

The Italian legislation does not explicitly foresee particular provisions and rules for the individual assessment procedure. However, every subject who enters into contact with the child victim, and who as soon as becomes aware of the nature of the offence, has the duty to carry out an individual assessment procedure in order to support the child and satisfy his/her protection needs. The ***individual assessment,*** therefore, ***takes place*** at both stages: ***at the beginning of the proceedings*** in the pre-trial phase as well as ***during the proceedings***, whenever the Judicial Authority requires to do so.

The ratio of all measures is therefore to protect vulnerable victims and reduce the risk of unnecessary emotional and psychological pain as a consequence of repeated interviews and hearings without an effective investigation need. Thus, the Victims' Directive, or at least its principles regarding the assessment of children and vulnerable victims and their protection measures, have been transposed and implemented by the Italian national legislator.[16]

## 3.5 Romania

According to the national frameworks, an ***initial assessment*** is carried out promptly as soon as the local child protection authorities are informed or receive information regarding a child being abused or a particular domestic violence situation. According to the provisions of the national frameworks, the initial evaluation is carried out by a social worker. Once the case has been registered and the initial assessment was concluded, a detailed, comprehensive and multidimensional assessment of the situation of the child victim of abuse or violence is performed.

Pursuant to the national legislation, the ***detailed, comprehensive and multidimensional individual assessment*** can be of several types, such as: ***(a) Medical evaluation; (b) Psychological evaluation; (c) Social evaluation; (d) Legal evaluation; (e) Risk assessment evaluation***.

The *medical evaluation* is performed at the request of the physician or any other member of the intervention network in accordance with the legislation. In order to establish a relationship of possible

[15] This happens when the parents are not able to exercise, fully or partially their parental responsibility.
[16] E-PROTECT Deliverable D3.11 Study on the individual assessment methodologies of child victims of crime in Italy, EN, pp.13-22.



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causality between the reported situation and the medical signs observed, medical and legal certificates will be required. The *social evaluation* is performed with the purpose of analysing in particular the quality of the child's environment (housing, food, clothing, hygiene, physical and mental security, etc.). The *legal assessment* concerns the identification of relevant legal issues related to the case and also seeks to identify the rights and obligations of the child and modalities to exercise those rights.

Once the detailed assessment of the overall situation is completed, the multidisciplinary team makes a clear diagnosis with regards to the form of violence against the child (in case of domestic violence), the needs of the child victim and the priorities for intervention when needed. All this information is outlined by the case manager[17] in the detailed assessment report, which is to be drawn up within 30 days from the registration of the case at the responsible authority.[18]

# 4. Child victim support infrastructure(s) in five EU Member States

This chapter explores the different child victim support infrastructures in five Member States: *Germany, Spain, Portugal, UK (England and Wales)* and *Finland*, along the following dimensions:[19]

- Overview of statistics on child victims of crime;
- Institutional practices: status of child victims, including a brief legal background analysis, protection level of their rights, general victim protection services, child protection services and specific facilities for child victims;
- Relevant institutions and authorities working with (child) victims of crime.

[17] The person who is responsible for the specific case of child victim of crime.
[18] E-PROTECT Deliverable D3.10 Study on the individual assessment methodologies of child victims of crime in Romania, EN, pp.10-14.
[19] Sometimes more in-depth and sometimes lesser, depending in each case on the availability of accessible information, resources and materials.



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## 4.1. Germany

### 4.1.1. Overview of child victims of crime in Germany

In 2015 there had been 13.760 child victims of sexual assault, according to the German criminal statistic report[20]. In the case of personal injury, robbery, crimes against personal freedom and offenses against sexual self-determination, children and adolescents are a disproportionately overrepresented victim group. Conversely, they also represent the statistically most chronically burdened age groups (see PKS 2015: 30)[21]. The German non-profit organisation for child protection: *aktionkinderschutz* estimates a very high number of unreported cases of child maltreatment in Germany. However, this points simply to the significant problem of non-reporting and identification as a challenge for multiple stakeholders to be addressed and as an important indication for advancing child protection further.

Obviously, these unreported cases are not a German specificity, but rather a general problem that has to be faced by both governmental and non-governmental authorities, at national and international level.

Between 2009 and 2012 the reported cases of sexual assault in children **(§§ 176, 176a, 176b StGB)**[22] had been continuously increasing and has been since 2013 slightly declining (-2,7 % to 11.808 cases). But sexual assault constitutes in general an offence type which is known as an area with high rates of unreported cases. As mentioned above, there are multiple factors involved, such as increased sensitivity, change of pedagogic methods and institutions, "new" offence types included in the criminal code, all of which influence reporting rates.

Therefore, the numbers collected by the criminal statistic have to be considered with reservation, because they have inevitably just limited significance regarding the real extent of child maltreatment and especially with regard to sexual assault against children.

A further challenge in this area or rather what counts particular crucial here is that child victims have frequently a close relationship to the offender and thus they have lesser opportunities to raise awareness or to escape from maltreatment.

[20] See: http://www.aktionkinderschutz.de/statistiken/; http://www.aktionkinderschutz.de/WP/wp-content/uploads/2016/12/pks2015ImkBericht.pdf (accessed on 21st March 2018).
[21] PKS is the German criminal statistic report (*polizeiliche Kriminalstatistik 2015*).
[22] StGB is the German criminal code, see: https://dejure.org/gesetze/StGB/176b.html (accessed on 21st March 2018).



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### 4.1.2. Protection of child victims of crime in Germany

Since the 1970s, Germany has a victim support infrastructure established and improved it continually. It is one of the countries with a central body (Weisser Ring) for coordinating victim support at national level. However, despite the strong support structures that already existed, generalised support was often less developed than specialised support (see EPRS 2017: 65).

#### *Legal Background*

In the last few years, the efforts have been dedicated to strengthen some laws regarding child protection, in particular the so called "Child Protection Law" (*Bundeskinderschutzgesetz – BkiSchG*)[23], which entered into force in 2012. The latter constitutes an omnibus act (*Artikelgesetz*) that basically combines and transforms more laws with different contents (an amendment law which changes a subject in a range of different areas of law). The main aim was to improve and protect the bodily, mental, and intellectual well-being of children and adolescents. One focus is on the improvement of "early assistance" (*Frühe Hilfe*), which aims at child-friendly upbringing in problematic family situations that start at the earliest stage, namely with the counselling of expectant mothers and fathers, and during the first years of the child´s life. Thus, it focuses essentially on the cooperation between relevant actors, in particular between professionals from the health care system and the youth welfare office. Now the law regulates at national level that professionals within the health care system are allowed to inform the youth welfare office in case of severe endangerment of the child´s welfare. This was previously not clearly regulated at national level in Germany. The law also includes other important improvements, such as establishing networks of child protection at a local level, or extending the quality standards for youth welfare offices or also the obligation for providing extended certifications of good conduct for all persons employed in the youth welfare sector, as well as the personnel in the institutions subject to authorisation (see *Bundeskinderschutzgesetz* 2012)[24].

[23] See: http://dip21.bundestag.de/dip21/btd/17/062/1706256.pdf; and: https://www.gesetze-im-internet.de/kkg/KKG.pdf (accessed on 3rd April 2018).
[24] See: http://dip21.bundestag.de/dip21/btd/17/062/1706256.pdf (accessed on 3rd April 2018).



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A further amendment law entered into force in 2013 for strengthening the rights of victims of sexual crimes (*Gesetz zur Stärkung der Rechte von Opfern sexuellen Missbrauchs – StORMG*)[25] that puts also a specific focus on the protection of children and adolescents and the avoidance of secondary victimisation.

However, the key regulatory improvement for victims of crime entered into force with the third "victim amendment law" (*3. Opferrechtsreformgesetz*)[26] in 2015. One main landmark constitutes Article 4 of the amended law, regulating *psychosocial court assistance* in the criminal proceeding for particular vulnerable victims (*Art.4 Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren – PsychPbG*), which entered into force in 2017.[27]

### *General victim protection services*

In Germany victim protection is generally up to the competence of federal states due to the principle of federal system and is not comprehensively regulated through federal law. That means, there is a wide range of different services and measures in place to improve the situation of victims and child victims of crime.

Nevertheless, there are some exceptions (see the above-mentioned laws) which signal the efforts to establish some nationwide standards and services (in Germany there is already a quite respectable and acceptable standard of victim protection in place). However, their implementation is the responsibility of the federal states, which means that differences are to be found on local level in respect to implementing the legal stipulations.

However, Germany is yet one of the few EU Member states that have implemented a nationwide network for coordinating victim protection and in particular protection of child victims. Regarding general victim support there are existing two nationwide organisations: the first one is called "White Ring" (*Weisser Ring*), which is basically a nationwide point of contact, including a cost-free first counselling session with

[25] See: http://www.bundesgerichtshof.de/SharedDocs/Downloads/DE/Bibliothek/Gesetzesmaterialien/17_wp/Stormg/bgbl.pdf?__blob=publicationFile (accessed on 3rd April 2018).
[26] See: https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf;jsessionid=E6B66F638270FA2F059EA60081263A5B.2_cid289?__blob=publicationFile&v=3(accessed on 3rd April 2018).
[27] More details under chapter 5.1 in this report.



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a freely chosen lawyer and providing a hotline[28] that operates day and night. The second nationwide organisation is the "working group of victim protection in Germany" (*Arbeitskreis der Opferhilfe in Deutschland e.V.*) that constitutes an umbrella organisation of different professional institutions in this field.

Additionally, there exists a large number of local specialised protection centres in the 16 federal states of Germany, which are in charge of offering protection services. Some of them are oriented towards specific victims of crime: for instance, protection centres for children, women, or boys and men, and some others are oriented towards kinds of crimes for instance, protection centres for hate crime, sexual crime, or domestic violence.

### *Child victim protection services*

As already mentioned above, at a first glance victim support seems quite fragmented in Germany. However, there exists also a nationwide umbrella association for child protection, called "child protection centres" (*Die Kinderschutz-Zentren*)[29], which pursues the main goal of establishing and maintaining a national competent composition of child protection infrastructure in Germany.

The association "child protection centres" (exists since 1986) and its efforts to harmonize child victim support at national level seems promising. Nowadays, it consists of 28 child protection centres from different regions in Germany.[30] It is a nationwide working community and non-profit organisation which aims to support child protection on a macrosocial level through combining their practical knowledge and experience. Primarily, they are regularly developing professional standards, offering education and training opportunities for professionals in the field, producing professional publications and congresses, strengthening press and public relations and offering policy consulting.[31] The close interlocking of the daily practices of the child protection centres at local levels and the supra-regional tasks of the network constitutes the basis for producing high quality knowledge that is to be offered to professionals (ibid.). This is to say, professionals working directly with child victims but also researchers, politicians,

[28] Under number 116006, which applies throughout Europe for victim assistance, victims can receive help and support free of charge at any time; see: http://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (accessed on 22nd March 2018).
[29] See: http://www.kinderschutz-zentren.org/index.php (accessed on 3rd April 2018).
[30] See: http://www.kinderschutz-zentren.org/der-verein (accessed on 3rd April 2018).
[31] See: http://www.kinderschutz-zentren.org/selbstverstaendnis (accessed on 4th April 2018).



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journalists and representatives of specialised politics. Their self-commitment is always owed to consider the latest research as well as political state of the art in child protection issues to ensure the highest quality as possible and organisational good conduct at local and national level as well. Legally, the child protection association is based on the previous mentioned nationwide "Child Protection Law" (Bundeskinderschutzgesetz) and different state laws as well as on the international agreements of the UN Human Rights Charter, the UN Convention on the Rights of the Child, the UN Convention on the elimination of all forms of discrimination against women and the UN Convention on the rights of persons with disabilities.[32]

For each of the 28 child protection centres and for those which will become one, the following six main principles and services apply: counselling and therapy for parents, caregivers, children and adolescents; acute crisis and conflict intervention; counselling for professionals pursuant to §8a SGB VIII, especially regarding hazard assessment (*Gefahreneinschätzung*)[33]; mentoring and supervision for other professional institutions; education and training opportunities in the respective region; and information events and workshops.

## 4.2. Portugal

### 4.2.1. Overview of child victims of crime in Portugal

In 2017, most of the arrests involving child victims registered by police forces were based on the crime of child sexual abuse, followed by child rape and pornography. 98 men were arrested for the crime of sexual abuse against 3 females; 53 men were arrested for the crime of rape (0 females); and 34 men and 3 women were arrested for having involved children in pornography. In relation to the crime of sexual abuse of children, adolescents and dependent minors, the predominant age group of victims is 8-13 (68.5%), followed by 7-4 years of age (19.1%) and 0-3 years of age (6.7%). As in the previous year, the context of the family prevails as the main social environment between perpetrator and victim, involving 44.5% of the cases. In relation to other crimes, 3,912 children under the age of 16 were victims of domestic violence.

[32] See the whole report on their website about their multi-level (i.e. legally, socially, professionally etc.) quality standards and huge range of services, which they provide on the one hand for professionals but also for those seeking support (children and their caregivers): http://www.kinderschutz-zentren.org/qualitaetsstandards (accessed on 4th April 2018).
[33] See §8a SGB VIII, http://www.sozialgesetzbuch-sgb.de/sgbviii/8a.html (accessed on 4th April 2018).



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Additionally, in 34% of domestic violence offences minors occurred as witnesses. 45 minors were identified as (presumed) victims of human trafficking in Portugal; the competent authorities classified 24 as pending/under investigation and 4 as unconfirmed. The Foreigners and Borders Service cooperated with the Permanent Reception Centres, guaranteeing permanent monitoring of trafficked victims in all situations in which it was necessary to protect and welcome them, as well as their follow-up in various procedural steps.[34]

The latest report by the Portuguese Association for Victim Support (APAV), the main non-governmental organisation providing social, legal and psychological support to victims, shows that its de-centralised offices provided support to 810 child victims in 2017. 62.6% were female victims and the average age was 11 years. In relation to the victims of sexual crimes, out of the total of 488, 54.9% were children, whereas 32.6% adults.[35]

### 4.2.2. Protection of child victims of crime in Portugal

*Legal Background*

In Portugal, Law No. 130/2015 of September 4 amended the Code of Procedure/Criminal Code and approved the Victims Statute by transposing Directive 2012/29/EU of the European Parliament and the Council of October 2012, which lays down rules on the rights, support for and protection of victims of crime and replaces Council Framework Decision 2001/220/JHA of 15 December March 2001.[36] Articles 17, 20 and 21 transpose the text of articles 22-24 of the EU Directive, but they do not go beyond the original content. Article 21(1) of Victims' Directive stipulates that "Member States shall ensure that victims who are particularly vulnerable receive an individual assessment to identify specific protection needs." In Portuguese legislation, the text of article 21(1) has lost the word *timely* enshrined in the EU Directive and does not specify through which means or procedures the individual assessment shall be carried out. Law No. 130/2015 of September 4 does not clarify who is the main authority responsible for carrying out the individual assessment; although article 21(2-b) provides that "The inquiry of victims of sexual violence, violence based on gender or violence in intimate relationships, unless it is done by a

[34] Relatório de Segurança Interna 2017. Sistema de Segurança Interna. Gabinete do Secretário-Geral.
[35] Portuguese Association for Victim Support (APAV). Estatísticas APAV. Relatório Anual 2017.
[36] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.



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public prosecutor or by a judge, must be performed by a person of the same sex if the victim so desires and provided that the procedure is not impaired."[37]

In practice, the Public Prosecutor or responsible judge usually resort to the support of technical staff of different institutions for carrying out the measures identified in article 23 of the Directive, taking into account who is the child's "person of reference". The person of reference is the technical staff who is managing the assistance of the child victim. This person could be a technical staff of the local Commissions for the Promotion of Rights and the Protection of Children and Young People, or the units for the Protection of Children and Young People established in local health centres or hospitals, or other. This means that there is no single team or unit responsible for carrying out the individual assessment and protection measures during criminal investigations. In the national legal framework, the hearing and participation of the child in the context of promotion and protection of his/her rights is provided in Articles 4, (j) and 84.[38]

Additionally, there is not a specific protocol or official guidance to be followed by the technical staff of the different entities. However, some initiatives have been promoted towards improving the implementation of measures such as, interviews, statements for future memory, adaptation of court rooms, among others. [39]

Furthermore, Portugal's legal framework already included many aspects covered in the Directive, especially as a consequence of its international commitments under the Convention on the Rights of the Child and some Conventions of the Council of Europe.

### *General victim support services*

APAV has contributed to an instrument for the evaluation of specific needs for the protection of victims of crime has been produced, as well as the *Guide for individual evaluation of victims (EVVI)*[40] under the framework of a co-funded project by the European Commission. This handbook states that in Spain and Portugal individual assessments or evaluations were not systematically carried out at the time of drafting

[37] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.
[38] Aproved by Law n.º 147/99, of 1st of September, with changes introduced by Law n.º 31/2003, of 22nd of August and by Law n.º 142/2015, of 8 of September.
[39] Some of these initiatives are described below in more detail.
[40] The Guide is available here: https://victimsupport.eu/news/a-guide-for-individual-evaluation-of-victims-evvi-now-available/ (accessed on 23th April 2018).



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the handbook.[41] APAV shared this document with the Directorate General of Justice Policy of the Ministry of Justice, the Attorney General's Office, the Judiciary Police, the Public Security Police, the Republican National Guard and the Service for Foreigners and Borders of Portugal and received positive feedback.[42]

According to EVVI:

> "In 2017, the revision of the Criminal Procedure Code of 2007 (Law no. 48/2007 of 29-08) changed the regime of statements for future memory, following international obligations assumed by the Portuguese State. With respect to minor victims, the legal system will have a duty for the State to collect statements for future memory and to ensure the conditions for their realisation pursuant to article 271, paragraph 4. In particular, the statements of crimes against the freedom and sexual self-determination of children will have to be carried out in a place and in such a way as to guarantee an informal and reserved environment, and attended and accompanied by a specially qualified technician."[43]

Despite there now being a comprehensive legal framework, Sottomayor argues that "the rights of children are dispersed in different laws and codes, which makes it difficult to systematise and consult them. A compilation of the rights of child victims of violent crimes would be more useful in a single legal act to facilitate the process of interpretation and enforcement."[44]

Article 18 of Law No. 130/2015 of September 4, provides for the setting of **victim service rooms** for assistance and information of victims in each police unit and security force. Article 1 provides specifically that "each security force and service shall constitute its network of service offices, equipped with appropriate measures, such as privacy, of victims."[45] The 2017 Minister of Interior report on internal security stated that:

> "The care of victims of domestic violence in security forces' facilities tends to take place in their own spaces in order to guarantee privacy and comfort. The new squads have rooms for serving the victim. Adaptations were made in the older facilities. 447 stations, squads, units and sub-units of the security forces have meeting rooms. In the remaining units, the gathering of information takes place in rooms that meet conditions of comfort and privacy."[46]

[41] Victim Support Europe (2015) EVVI (Evaluation of Victims) - Guide for individual evaluation of victims. Co-funded by the Criminal Justice Programme of the European Union.
[42] APAV. Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001.
[43] *Ibid.*
[44] *Ibid.*
[45] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.
[46] Relatório de Segurança Interna 2017. Sistema de Segurança Interna. Gabinete do Secretário-Geral, Page 38.



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The national network of support for victims of domestic violence includes partners from public and private organisations and provides a set of structures and responses for victims of domestic violence such as shelters, care structures, emergency shelter responses, specific responses from public administration bodies, the free telephone service with national coverage of information to victims of domestic violence and also, whenever they so request, community-based mutual aid groups to promote self-help and the empowerment of victims with a view to their autonomy.

A new decree law from 2018 clarifies and introduces a set of rules and procedures for the improvement and effectiveness of the functioning of care structures, emergency shelter responses and shelters, allowing a self-assessment process and systematic review of their performance, identifying opportunities for improvement and assessing the link between what is done and the results achieved. First-response structures, emergency shelter responses and shelters are managed by non-governmental organisations, which have celebrated partnerships with public authorities responsible for the prevention of domestic violence, as well as, protection and assistance of victims. Article 4 provides that institutions responsible for implementing the Law must act so, *inter alia*, taking into account the system for the protection of children and the advancement of their rights. All structures covered by the Law apply to all victims of domestic violence, including underage children and disabled children and their carer.[47]

### *Child victim support services*

The recently re-named *National Commission for the Promotion of Rights and the Protection of Children and Young People* is the main public body in Portugal working in "(…) the planning of State intervention and the coordination, monitoring and evaluation of the initiatives taken by public entities and the community to promote the rights and protect children and young people, namely through the 309 *Local Commissions of Protection of Children and Young People*, distributed throughout the country."[48] The local commissions work in two forms, the so-called "restricted" and "extended" forms. The first one is a technical, "specialised" group who acts with the aim of repairment/protection in individual cases, whilst the second working group works as a plenary, with the aim of proactively protecting children as a group in the community.

[47] Decreto Regulamentar n.º 2/2018 Regula as condições de organização e funcionamento das estruturas de atendimento, das respostas de acolhimento de emergência e das casas de abrigo que integram a rede nacional de apoio às vítimas de violência doméstica. Diário da República n.º 17/2018, Série I de 2018-01-24

[48] Information available on the website of the Commission, at: https://www.cnpdpcj.gov.pt/relacoes-internacionais/international-relations.aspx (accessed on 9th April 2018).



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This second group is multidisciplinary, and consists mainly of representatives of the municipality, a representative of the Social Security Institute, representatives of the Ministries of Education and Health, representatives of Non-Governmental Organisations, Parents' Associations, representatives of the police forces, which carry out activities for children and young people.

The "restricted" commissions are responsible for intervening in situations identified as an acute danger to the child or young person. Therefore, they carry out the diagnosis and instruction of the process, decision, monitoring and review of the protection measures, including accompanying children in court proceedings and providing support to the Public Prosecutor or judge in relation to special protection measures. The Commission has a set of general guides for practitioners of social work, education and police forces.[49] There is also a guideline on intervention work on behalf of children who have suffered abuse. It has been prepared by the Directorate-General for Health which includes some protocols and a section on good interview practices with children.[50] These manuals and specialised trainings take place, however, there is no evidence how these are effectively implemented in practice.

The Child Support Institute (*Instituto de Apoio à Criança*) is the leading non-governmental organisation working for the protection and promotion of child rights since 1983. Some of its main activities include legal support; the SOS Children helpline which provides specialised social, psychological and legal support and appropriate referral of children in need; and humanisation of care for children (i.e. child-friendly healthcare and ensuring the right to play). In 2013, the legal support office provided assistance to 680 cases, where 284 cases were related to regulation of parental responsibilities, followed by cases of children in danger (117 cases) and clarifications of legislation (75 requests).[51]

APAV, established in 2016 through its CARE Network, provides technical support to children and young people up to the age of 23, who have been a victim of sexual abuse. Assistance is provided upon referral by the Judiciary Police and may include assistance and follow-up to legal proceedings, medical-legal advice, statements for future memory, follow-up at trial hearings and other procedural acts. 446 child victims have been received assistance in the years 2016-2018. This specialised unit has nine permanent

[49] The guides for professional are available here: https://www.cnpdpcj.gov.pt/direito-das-criancas/guias-para-profissionais.aspx (accessed on 23th April 2018).
[50] The manual is available here: https://www.cnpdpcj.gov.pt/direito-das-criancas/guias-para-profissionais/maus-tratos-em-criancas-e-jovens.aspx (accessed on 23th April 2018).
[51] For more information, visit the institute's website at: http://www.iacrianca.pt (accessed on 23th April 2018).



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employees, including jurists and psychologists, who can go to any point of the country to provide support to urgent cases that are referred to the Network.[52]

## 4.3. Spain

### 4.3.1. Overview of child victims of crime in Spain

In 2016, a total of 80 children aged between 0-13 were victims of sexual assault with penetration, 20 of them were male and 60 were female; a total of 193 children aged between 14-17 were victims of sexual assault with penetration, 18 of them were male and 175 were female; a total of 29 children aged between 0-13 were victims of child pornography, whereas 12 of them were male and 17 were female; and a total of 35 children aged between 14-17 were victims of child pornography, 8 of them were male and 27 were female.

In relation to other crimes against sexual freedom and determination, a total of 1.932 children aged between 0-13 were victims, 460 were male and 1.470 were female; and in the 14-17age group there were a total of 1.716 victims with 328 males and 1.387 females.

According to this data, girls are disproportionately affected. There are most significant variations in the number of victims in relation to the previous year: the cases of child pornography in the age group 0-13 had a reduction of 40,8% in comparison to 2015; and in the age group 14-17, the decrease was slightly higher with 54,5%. The most significant variation was registered in case of crimes against sexual freedom and determination in the age group of 14-17, with an increase of 50,5% in relation to 2015.[53]

In Spain, a number of prevalence studies, aim of which is to establish the dimensions of sexual abuse among children and adolescents, have been carried out throughout the last years using different methodologies. Among them are so-called retrospective studies in which adults are asked, if they have suffered sexual abuse during their childhood.

> "The most significant and cited of these investigations is a macro-survey carried out in 1994, in which 2,000 people were asked if they remembered having been abused before the age of 16. The result was that 18.9% of the population had been a victim of sexual abuse, a high prevalence that is distributed as follows by gender: 15.2% of men and 22.5% of women had suffered sexual abuse. (…) The most recent prevalence study to date concludes that 9.5% of the total of their sample, 6.5% of men and 10% of

[52] Diário de Notícias. *Rede Care acompanha 446 crianças e jovens vítimas de violência sexual.* 21 de Fevereiro de 2018.

[53] Anuario Estadístico del Ministerio del Interior - 2016. España



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> women, had been victims of sexual abuse."[54]

In relation to child trafficking, a recent study published by the National Committee for UNICEF in Spain shows the difficulty to access accurate data. According to the data produced by the Ministry of the Interior, victims of trafficking for sexual exploitation accounted for 50% of the total in 2015 (133 victims identified), and the other 50% of victims of trafficking for exploitation of labour (134). This distribution changes in the information published by the State Attorney General, namely of the 96 measures to monitor the crime of trafficking opened in 2015: there are 978 presumed victims of trafficking for the purpose of sexual exploitation, at least 92 alleged victims of labour exploitation, 22 cases of exploitation for begging and 3 for forced marriages, being that all alleged victims of forced marriage trafficking are underage women. The report further argues:

> "These figures are very far from those estimated by the organisations that work directly in the field, which for example calculate that between 40,000 and 50,000 women are victims of trafficking for sexual exploitation in Spain. On the other hand, not all organisations that work with victims of crime systematically collect data, and even less so in the case of girls and boys. In view of the data it can be concluded that in Spain the offence with the most victims is trafficking in human beings for the purpose of sexual exploitation, with women and girls being the main victims."[55]

### 4.3.2. Protection of child victims of crime in Spain

#### *Legal Background and General victim support services*

In Spain, Law 4/2015, of April 27 approved the Statute for Victims of Crime.[56] Title III of the Organic Law draft transposes Articles 22-24 of the Directive in detail. Article 19 provides that "in the case of underage victims, the Office of the Public Prosecutor will especially ensure compliance with this right of protection, adopting the appropriate measures in their best interest when necessary to prevent or reduce the damages that may arise for them from the development of the process." It is important to highlight the importance of the Office of the Public Prosecutor in the protection of child victims and the priority of the guiding principles of the Convention on the Rights of the Child.

[54] Save the Children (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema, Page 46.

[55] Castaño, M., Pérez, A. (2017) Son niños y niñas, son víctimas. Situación de los menores de edad víctimas de trata en España. Cuadernos para el Debate no 5, UNICEF Comité Español, Huygens Editorial. Page 12.

[56] Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito. Boletín Oficial de lo Estado núm. 101, de 28/04/2015



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Articles 23 of Spanish legislation on the "individual evaluation of the victims in order to determine their special protection needs" and 24 on "competence and evaluation procedures" transpose the details of the text of Articles 22-23 of the Directive.

The Law proceeds to explain the functions of the Victims of Crime Support Offices in Title IV, Chapter I, Articles 27-29. The **Victims of Crime Support Offices** are a network of public and free of charge services set up by the Spanish Ministry of Justice in 1996, which was further regulated with the adoption of Royal Decree 1109/2015, of December 11. These Offices are responsible for the **individual assessment of victims**, by identifying who is particularly vulnerable and by putting in place protective measures to avoid further victimisation. After the individual evaluation, the Offices can make a report, in line with the aforementioned legislation, with the prior and informed consent of the victim that will be sent to the competent authority to adopt the measures of protection.

The Victims of Crime Support Offices may propose the measures deemed appropriate for the assistance and protection of the victim during the investigation phase, especially when dealing with vulnerable victims. Assistance to victims will be carried out in four phases: reception-orientation[57], information, intervention and follow-up.[58, 59]

Finally, the **Advisory Council for Assistance to Victims**, which according to Article 10 of the Royal Decree, aims to:

a) "Advise on the functioning of the Victims of Crime Support Offices;
b) Examine the statistical data;
c) Support technical studies on the actions of the offices and on the coordination network;
d) Compare the different psychological support plans applied by the Offices, in order to propose improvements in assistance to victims;
e) Promote the development of action protocols, and update them with respect to national and international regulations;
f) Advise the Ministry of Justice in the preparation of the annual report on the periodic evaluation of the system of protection to victims of crime;

[57] Reception-orientation is when victims are first received, their needs assessed and they are 'directed' to different services.
[58] Real Decreto 1109/2015, de 11 de diciembre, por el que se desarrolla la Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito, y se regulan las Oficinas de Asistencia a las Víctimas del Delito. Boletín Oficial de lo Estado núm. 312, de 30 de diciembre de 2015, páginas 123162 a 123181.
[59] Summary information about the Offices may be found on the Ministry of Justice website, available here: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-14263 (accessed on 23th April 2018).



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g) Any other function that, within the scope of its powers, is attributed to it by some legal or regulatory provision."[60]

The Advisory Council was established in June 2017 and one of its four priority areas comprises the protection of children, which should be provided to them from the moment that they come into contact with the Justice system.

Other relevant legal provisions in the country include Royal Decree-Law 3/2013, of February 22, which modifies the system of **free legal assistance** and recognises all children who are victims of situations of abuse or mistreatment, regardless of the existence of resources to litigate, the right to free legal assistance, which will be provided immediately. This norm, in force since February 2013, grants the Judge or Court the power to attribute free specialised expert assistance that may be provided immediately, according to the circumstances of the specific case and the best interests of the child.[61]

In the Law of Criminal Procedure, Article 433 provides that:

> "In the case of child witnesses or persons with judicially modified capacity, the examining judge may decide, when, in view of the lack of maturity of the victim, it is necessary to avoid causing serious harm to him/her, that a declaration be taken by the intervention of experts and with the intervention of the Public Prosecutor's Office. To this end, it may also be agreed that the questions be transferred directly to the victim by the experts, or even exclude or limit the presence of the parties in the place of the victim's exploration. In these cases, the judge will arrange what is necessary to facilitate the parties the possibility of transferring questions or requesting clarifications from the victim, whenever this is possible. The judge will order the recording of the statement through audio-visual means."

Article 449 of the same law provides that "The declaration of the child witnesses and of the persons with judicially modified capacity can be carried out **avoiding the visual confrontation** of the same with the accused, using for it any technical means that make possible the practice of this test."[62]

In addition to the national regulatory framework, in each autonomous community, specific legislations, action plans, framework programs or even specific protocols have been developed to address the problem of child abuse and violence against women.[63]

[60] Article 10, *Ibid.*
[61] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014.
[62] Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal. Boletín Oficial de lo Estado n úm. 260, de 17/09/1882.
[63] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014.



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### *Child victim support services*

The public response to situations of neglect or abuse against children in Spain is distributed between social services at municipal level and specialised child protection services. These two services are available in all regions of Spain. The responsibilities between the two levels are distributed according to the categorisation and severity of the abuse. All regional authorities in Spain have central and so-called territorial specialised services for child protection (protection measures are provided in the Organic Law 1/1996, of January 15, on the Legal Protection of Minors)[64]. The Ministry of Health, Social Services and Equality published a *Basic protocol of intervention against child maltreatment in the family* in 2014. Although the protocol does indeed provide *basic* information, it is a comprehensive and useful source of information for all actors involved in child protection, from prevention, early detection and protection to judicial services. The document provides a summary of the international and national regulatory framework, recommendations towards improvement (including setting up additional structures) and guidance towards good practices in child protection, which includes for instance, aspects of protection of child victims in judicial procedures.[65] Seemingly, there exists a variety of additional manuals for procedures for the protection of children in different regions, targeting different services available.[66]

The Units for Children of the National Police Force (*Unidades de Menores del Cuerpo Nacional de Policía*) are integrated in the Provincial Brigades of the Judicial Police. These units have two main functions: Protection of children who are victims of any type of mistreatment, whether physical (including sexual abuse) or psychological, as well as protection of juvenile offenders (Instruction No 11/2007, of September 12, of the Secretary of State for Security, which approves the Protocol of Police Action with Minors).[67] These units work in collaboration with public and private institutions, working with and for

[64] Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil. Boletín Oficial de lo Estado núm. 15, de 17 de enero de 1996

[65] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014

[66] See for example the Manual of Intervention of Social Services of Madrid Municipality for Child Protection, available here: http://www.madrid.es/UnidadesDescentralizadas/ServALaCiudadania/SSociales/EspInformativos/EspecialInfancia/Publicaciones/manual.pdf; and the Instrument for the Assessment of the Gravity of Child Protection Situations in Aragón, available here: https://www.aragon.es/estaticos/GobiernoAragon/Organismos/InstitutoAragonesServiciosSociales/IASS_new/Documentos/infancia/MALTRATO-2014-valoracion-gravedad-menores.pdf (accessed on 23th April 2018).

[67] InstrucciÓN N° 11/2007, de 12 De Septiembre, de la Secretaria de EsTado de Seguridad, por la que se aprueba el "Protocolo de Atuacion Policial con Menores".



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children, both in terms of their protection and education and in relation to juvenile offenders. Units for Children of the National Police Force should follow the *Action Protocol of the Security Forces and Coordination with the judicial organs for the protection of victims of domestic and gender violence*.[68]

While they may not be the main direct intervention actors, it is important to highlight the role of the National Committee for UNICEF and offices of Save the Children and Defence for Children in advocacy, training and awareness raising on violence against children, child rights and juvenile justice in Spain.

## 4.4. UK – England and Wales

### 4.4.1. Overview of child victims of crime in England and Wales

The largest independent producer of official statistics and recognised national statistical institute of the UK is the Office for National Statistics (ONS) that produces annually the Crime Survey of England and Wales (CSEW).[69] They estimated in their annual report[70] that in the year ending September 2016, around 12 in 100 children aged 10 to 15 were victims of at least one crime. In the year ending September 2017, around 10 in 100 children of the same age group were victims of crime. A total of 652,000 crimes were estimated to have been experienced by children of this age group in the year ending September 2017.

However, the main problem of this survey is that it does not include children under the age of 10 or those aged older than 15 (i.e. between 15 to 17)[71] and also does not include questions relating to sexual abuse, sexual violence, or sexual exploitation of children (see Victim's commissioner report 2017: 10)[72]. As a

[68] Protocolo de Actuación de las Fuerzas y Cuerpos de Seguridad y de CoordinacióN con los Órganos Judiciales para la ProtecciÓN de las Víctimas de Violencia Doméstica y de Género, Aprobado por la Comisión Técnica de la Comisión Nacional de Coordinación de la Policía Judicial el 28 de junio de 2005, tras haberse adaptado el anterior Protocolo a las modificaciones de la LO 1/2004, de Medidas de Protección Integral contra la Violencia de Género, available here: (accessed on 23th April 2018).

[69] See: https://www.ons.gov.uk (accessed on 9th April 2018).

[70] Regarding "crime against households and adults, also including data on crime experienced by children, and crimes against businesses and society"; see: https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingseptember2017 (accessed on 9th April 2018).

[71] See the report "Are we getting it right for young victims of crime? A review of children's entitlements in the victims' code" produced by the Victims' commissioner, in February 2017; see: http://victimscommissioner.org.uk/app/uploads/2014/10/Are-we-getting-it-right-for-young-victims-of-crime.pdf (accessed on 9th April 2018).

[72] The commissioner for Victims and Witnesses (Victims' Commissioner) has a statutory duty to keep the Victims' Code under regular review, to listen to the views of victims and to understand the criminal justice system for the



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result, the numbers assessed by CSEW have just limited significance as far as crimes in children are concerned because it represents just a very limited picture on child victims.

Therefore, the Victims' Commissioner (Baroness Newlove of Warrington) has also included in their report on *"Are we getting it right for young victims of crime? A review of children's entitlements in the victims' code"* (2017) additional statistics to generate a broader picture about the real extent and form of child victims of crime. For instance, crime figures reported by the *police* of England and Wales, as well as figures produced by the charity *Victim Support*, in conjunction with Bedfordshire University in 2014 called as *"Suffering in Silence" report* about hidden victimisation of children and young people on behalf of the *All Party Parliamentary Group for Victims and Witnesses* (see Victims' Commissioner report 2017: 13). Data of violent and sexual offence in the year 2015 recorded by the police showed that children aged under 16 accounts for a large proportion of all of the rape offences recorded by the police. "Just under a third (30%) of female rape victims were aged under 16, with the majority (60%) of male rape victims being aged under 16" (ibid.: 10). According to the report of Victims' Commissioner, rape victims were most likely to be aged between 15 and 19 years and accounted for nearly a quarter (23%) of all rape offences recorded by the police. Furthermore, the police crime figures of the UK further showed that children aged under 16 accounted for a large proportion of other sexual offences. 50% of female victims and 62% of male victims were aged under 16. And 28% of victims of other sexual offences recorded by the police were aged between 10 and 14 (ibid.; ONS 2016 as cited by Victims' Commissioner 2017).

Most strikingly, as already determined in case of Germany, the biggest challenge regarding child victims are the unreported crimes against them. As the Victims' Commissioner has stated:

> "Despite the large proportion of recorded crime against children, there is evidence to suggest that much of the crime committed against children and young people goes unreported, and therefore unrecorded, indicating that children and young people experience much higher rates of crime than police data suggests" ibid.: 13).

The report has further asked what the reasons could be for that underrepresentation of crime in children and young people and has come to the conclusion with reference to the "Suffering Silence report"[73] that children do not always know what constitutes a crime, especially when criminal behaviour has been

purposes of improving services and support for victims of crime (see Ministry of Justice, Code of Practice for Victims of Crime, October 2015).

[73] A study conducted by Beckett and Warrington 2014 that has compiled existing data to show that the majority of crimes against children and young people were not reported, just e.g. 13 % of violent crimes (see Becket et al 2014).



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normalised in a peer group or when they have been prepared for abuse or exploitation (see Beckett et al 2014 as cited by Victims' Commissioner 2017). They further found out that children very often do not know how and where to report a crime, or when a child knows the offender (means when the crime takes place in a familiar context, as e.g. in school, or at their home etc.) they are less likely to report the crime (ibid.). Sometimes children have also a fear and mistrust of the police. Therefore, the report has recommended that "The Home Office and Ministry of Justice" should "(…) coordinate and oversee the collection of comparable police data and self-reports on experiences of crime. They recommend that this data should differentiate children and young people from adults, and cover all types of crime" (ibid.: 14). That means, just reporting on children aged 10 to 15 and just on some crime offences, as in the case of the CSEW, runs into danger to leave major crime offences (such as sexual abuse etc.) and other age groups unrecorded and thus, risking a gap in the evidence to the exact extent of crime experienced by children and young people in England and Wales.

### 4.4.2. Protection of child victims of crime in England and Wales

In the UK, alongside the *police* and the *Crown Prosecution Service*, there are a number of different kinds of organisations in place. These different bodies holding main responsibility in supporting children and young people who became victims of crime and responding to their needs, including different statutory and non-statutory organisations (NGOs) (see Codd et al. 2016: 23). Additionally, every local authority is responsible to protect and promote the welfare of children and young people in need.

#### *Legal Background*

It is worthwhile to mention the difference of UK's legal system in the selection of MS in this report. Most of the UK together with Ireland have **common law systems** where case law and previous judicial decision determine the application of law, whereas most of EU MS (and especially these of this selection) have **civil law systems**. But there are existing also mixed law system as in the case of Scotland for instance (see EPRS 2017: 47). Importantly, this difference has effects on the kind of transposing VD. In a common law country as the UK, the Directive has been transposed by adopting a new piece of legislation (instead of amending already existing laws, such as the amendment of criminal procedure law in case of Germany among others). In the case of England and Wales VD has been transposed mainly through the "**Code of**



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**Practice for Victims of Crime**"[74]. It was established in 2006 by the Domestic Violence, Crime and Victims Act 2004 for the first time and has been revised twice: in December 2013 for the first time to clarify victims' entitlements and the obligations of criminal justice agencies and in 2015 for a second time, in particular for the purposes of transposing VD and its standards regarding victim rights (see Victim Support) [75], which means to comply with the stipulations set in VD, and thereby to improve the rights of victims. Two further important sources of UK law are the European Union law and the European Convention on Human Rights (see Cilex).[76]

Currently in the UK, children's rights are mainly protected in the Human Rights Act 1998.[77] What is further important to note is that Wales became the first part and so far, the only one, of the UK to implement the UNCRC (United Nations of Convention on the Rights of the Child[78]) in its domestic law (see Codd et al. 2016: 10).

### *General victim support services*

In England and Wales, the leading independent victims' charity is *Victim Support*, which exists for almost 40 years. They were founded in 1974 in Bristol and since 1986 every county in England and Wales had at least one Victim support scheme. In 1998 they have set up their free national telephone helpline called *Supportline* (see Victim support).[79] It is an independent charity for people affected by crime and traumatic events. They offer a huge range of services free of charge and available to everyone, whether the crime has been reported or not, on an individual, independent, emotional and practical level to enable people to cope and recover from the effects caused by criminal offences (see ibid.). They also offer specialised services to particular groups of victims, such as children and young people or for people who are affected by domestic abuse. *Victim Support* is not part of the police, the courts or any other criminal justice agency.

[74] See: Ministry of Justice, October 2015 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (accessed on 9th April 2018).
[75] See: https://www.victimsupport.org.uk/help-and-support/your-rights/victims-code (accessed on 9th April 2018).
[76] See: Cilex, Chartered institute of legal executives, https://www.cilex.org.uk/about_cilex/about-cilex-lawyers/what-cilex-lawyers-do/the-uk-legal-system (accessed on 9th April 2018).
[77] See: Children Rights Alliance for England (CRAE), http://www.crae.org.uk/our-work/protection-of-childrens-rights-in-domestic-law/ (accessed on 9th April 2018).
[78] See: https://www.unicef.org.uk/what-we-do/un-convention-child-rights/ (accessed on 9th April 2018).
[79] For more details on their history see their Website: https://www.victimsupport.org.uk/more-us/about-us/history (accessed on 9th April 2018).



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Last year they offered support to 814,000 people, according to their website (see ibid.). The main aim of *Victim Support* is to support people on a local level and to campaign nationwide to put victims' needs in the central focus.

*Victim Support* specifies four main areas concerning their support services for children and young people. These areas are: firstly, *support for children and young people*. They maintain for instance, an own website called *You and Co* [80] with a huge range of information material in a child-appropriate language where children and young people can orient themselves towards crimes (what is a crime etc.), its effects and what kind of help and support they may asking and looking for. Since 2014 *You & Co* is Victim Support's children and young people's programme. A second area constitutes *support and counselling for parents or carers*, a third area addresses professionals and teachers and provides information for them, in particular they provide a link to important resources.[81] Lastly, they also mention the importance of cooperating with professionals and parents when working and supporting children and young people. For instance, they developed also "support toolkits for children and young people" which constitute a series of age-appropriate workbooks, with guidance booklets for staff and volunteers, containing practical interventions to support children and young people.[82]

### *Child victim support services*

Additionally, there are local safeguarding children boards (LSCB) which care for children rights and which are enacted in section 13 of the Children Act 2004[83] (see Codd et al. 2016: 23).

> "The LSCB possesses a range of roles and statutory functions including developing local safeguarding policy and procedures, and scrutinising local arrangements" (ibid.: 23).

Furthermore:

> "They are governed by the Local Safeguarding Children Boards Regulations 2006, and their core principle is of aiming for effective inter-agency collaboration to safeguard children" (ibid.: 23).

[80] See: https://www.youandco.org.uk (accessed on 9th April 2018).
[81] For instance see this report conducted by Victim support: https://www.victimsupport.org.uk/sites/default/files/You%20%26%20Co%20-%20Getting%20it%20right%20for%20young%20victims%20and%20witnesses.pdf (accessed on 9th April 2018).
[82] See on their website: https://www.victimsupport.org.uk/help-and-support/young-victims-crime/teachers-and-professionals/useful-resources (accessed on 9th April 2018).
[83] Children Act 2004, https://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga_20040031_en.pdf (accessed on 9th April 2018).


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They are mainly responsible for co-ordinating activities for each person or body represented on the Board to ensure the effectiveness of what is done and to promote and safeguard the welfare of children.

The third sector, this is to say charities and NGOs (voluntary organisations) are the third area where children rights are protected and services are provided to children. These types of organisations carry out potentially the most significant work with children and young people because they are specialised in the provision of specific programmes and services to children, for instance such as focusing specifically on child sexual abuse (maybe even solely in families) or on harmful sexual behaviours. For instance, the national children charity *Barnados*[84], which is one of UK's leading charity for children, provides services like: counselling for children who have been abused, fostering and adoption services, vocational training and disability inclusion groups. Another promising example could be derived from local projects such as, *Howgill Family Centres (HFC)*[85] that also run a range of child and family-focused services in West Cumbria (ibid.: 23).

## 4.5. Finland

### 4.5.1. Overview of child victims of crime in Finland

In Finland, the national crime survey is conducted on an annual basis (see Savonen 2017). However, it includes just a small part on the number of child victims and offence types where children are particularly affected. In Finland, a total of 823,5000 crime offences was recorded in 2016 by the police, customs and border guard, according to Statistics Finland (see Statistic Finland 2017)[86]. This constitutes 4,400 offences (0,5%) more than the year before. 37,600 persons were recorded as victims of violent offences.

The number of victims of assault offences aged between 18 and 20 were 3,000 (9%). 4,600 (13,8%) were victims aged over 50 and assault offences directed towards children aged under 18 were 6,450. The last number on child victims constitutes an increase of 9,2% in comparison to the previous year 2015. In total, they recorded 19,6% victims from assault offences. Regarding child victims of assault offences, the survey counted 4,100 (64.1%) boys and 2,300 (35.9%) girls. 33,3% were aged under ten years, 34,9% were aged between 10 and 14 years and 31,8% were aged between 15 and 17 years.

[84] For detailed information on the areas of work and services provided to children and young people of Bernado, see their Website: http://www.barnardos.org.uk/what_we_do/our_work.htm (accessed on 9th April 2018).
[85] See: http://www.howgill-centre.co.uk (accessed on 9th April 2018).
[86] See: http://www.stat.fi/til/rpk/2016/13/rpk_2016_13_2017-03-23_en.pdf (accessed on 16th April 2018).



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The survey further recorded 1,100 victims of sexual abuse, therefrom 87.4% were girls and 12,6% were boys (ibid.). Statistic Finland further notes that the legislative amendment from 2011 considerably has increased the number of recorded assault offences. Since the amendment, crimes such as, petty assaults on minors or close relatives has become officially prosecutable (ibid.). Furthermore, the amendment to the Child Welfare Act (1302/2014)[87], which came into force in April 2015, has resulted in an extension of a reporting obligation in cases of criminal offences against children (ibid.).

According to another report on *"Developing Directive-compatible practices for the identification, assessment and referral of victims"* in Finland (2017), young people were more likely to become victims of violence than adults, including 13,9% of people aged 15 to 24 who became victims of violent offences, whereas only 2,3% of people aged 55 to 74 reported likewise (see Savonen 2017: 13)[88]. Violent offences against young people were primarily conducted by other young people: by a sibling (23 %), a friend (17%) or another young person acquainted by the victim (15%) (ibid.). The report further states that adults were rarely violent towards young people, e.g. parents were offenders in 8% of the cases reported (ibid.):

### 4.5.2. Protection of child victims of crime in Finland

Since the 1990s Finland has been promoting the rights of victims of crime and this is also reflected by pre-existing legislation, such as ensuring that victims are heard in court (see EPRS 2017: 66). Protection of victims of crime is foremost delivered by Finnish NGOs. Despite limited national funding these support networks were already very strong established even before the transposition of Victims' Directive. In addition, in each Finnish municipality local authorities are responsible for organising child welfare services. Furthermore, they are providing services either themselves or purchasing these services from external providers; when they purchase the services, they are responsible to supervise these activities of the service providers.[89] Many concerns about domestic violence and violence against women as well has led to new victim support frameworks in the country (ibid.).

[87] See: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=101110&p_classification=04 (accessed on 16th April 2018).
[88] See the report on national practices in Finland, http://victimspractices.eu/?page_id=119 (accessed on 16th April 2018).
[89] See: Ministry of Social Affairs and Health Finland, http://stm.fi/en/social-services/child-welfare (accessed on 17th April 2018).



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*Legal Background*

The Ministry of Social Affairs and Health is mainly responsible for the preparation of legislation on child welfare as well as for the general steering of child welfare services. Additionally, for governing and coordinating assistance for victims of crime are the following ministries responsible: The Ministry of Justice, the Ministry of Social Affairs and Health and the Ministry of the Interior together with the Police of Finland.[90] The police are investigating criminal cases and the general district courts, courts of appeal and the Supreme Court are adjudicating these cases.

The legislation of criminal cases is generally the same for both adults and children, but there are some specific provisions for children in place, starting with the **Section 6 of the Finnish Constitution[91]** which regulates that "children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development".[92] Furthermore, specific provisions on child welfare are laid down in the Child Welfare Act (see above) and the European Convention on Human Rights[93] and the UN Convention on the Rights of the Child[94] are also binding in case of Finland, similar to the UK. With these conventions the states are obliged to give priority to the best interests of the child as well as to its wellbeing in all actions by state authorities.

Victims' Directive was partly transposed into Finnish law, because many of the measures prescribed by the VD were already existent in Finnish legislation. In particular, the provision of Article 24 of the Directive (*"Right to protection of child victims during criminal proceedings"*), which lays down special measures for child victims, was already in place in Finland.[95] However, the required changes were

[90] See the report „Managing Victims and Witnesses of crime in Finland, 2014-16, produced by the International Juvenile Justice Observatory", in cooperation with SAPI (the Social activities and practice institute Bulgaria). See further Ministry of Social Affairs and Health, http://stm.fi/en/social-services/child-welfare (accessed on 17th April 2018).

[91] See: The Constitution of Finland, 11 June 1999, (731/1999, amendments up to 1112/2011 included), https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf (accessed on 17th April 2018).

[92] Ibid.

[93] See Finlex: https://www.finlex.fi/fi/sopimukset/sopsteksti/1999/19990063; see further ECHR: https://www.echr.coe.int/Documents/Convention_ENG.pdf; https://www.echr.coe.int/Pages/home.aspx?p=home (accessed on 17th April 2018).

[94] http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx (accessed on 17th April 2018).

[95] For more detailed information, which articles of the Victims´ Directive were already in place and which articles the Finnish legislator had to implement, see the complementary E-PROTECT report on: „Pan-European study on the legal transposition of Directive 2012/29/EU in other MS".



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implemented by the government bill number 66/2015[96] which has resulted into various changes in some acts relevant to criminal proceedings. In March and December 2016 these amendments entered into force.[97]

As a consequence, relating to Victims' Directive transposition, probably the most important change in the Finnish law is the introduction of the provision concerning the obligations to inform victims of their rights, the provisions that regulate the personal assessment (although the practice of individual assessments already existed before transposing Victims' Directive (see EPRS 2017: 60) in Finland), and the referral to victim support services. Moreover, the Finnish legislator passed a Law on the "Victim Surcharge (2015/669), which coordinates a fund paid for by offender which directly benefits victims" (EPRS 2017: 58).

### *General victim support services*

Finland is one of the few countries in the EU[98] which has a central body responsible for coordinating victims support all around the country and thus the quality of service provision seems to be more consistent within the country compared to the rest of the states which are investigated in the current report (see EPRS 2017). This central body and nationwide victim support organisation is called **RIKU** (Rikosuhripäivystys) **Victim Support Finland**[99]and provides general support to victims of crime, their families, close friends and witnesses. Furthermore, they provide a nationwide *Helpline*[100] which operates at specific times, from Monday to Friday and is chargeable. However, RIKU is stating on its website that there is a possibility of a free-call-back service (see ibid.). People can also call anonymously and in case of help and advice needed, leave contact details. It should be ensured that the caller receives an answer at least within five business-days and gets the contact details of the closest Victim Support Finland.

RIKU is a member of the European umbrella organisation Victim Support Europe (VSE), with its central office in Brussels and championing on behalf of all victims of crime.[101] In addition to its central office, it

[96] See: FINLEX, HE 66/2015 for the Finnish Version, https://finlex.fi/fi/esitykset/he/2015/20150066 (accessed on 17th April 2018).
[97] See: EUR-LEX, http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029 (accessed on 17th April 2018).
[98] In addition to Austria, Germany and the Czech Republic (see EPRS 2017: 74).
[99] https://www.riku.fi/en/home/ (accessed on 17th April 2018).
[100] See: https://www.riku.fi/en/services/helpline+116+006/ (accessed on 17th April 2018).
[101] See https://www.riku.fi/en/victim+support+finland/ (accessed on 18th April 2018).



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has seven regional offices and 30 service points around Finland, all of which include services such as nationwide phone service, online assistance services as well as personal services. Furthermore, they are also working in close collaboration with state authorities, such as the police and other bodies interacting with victims. In 2013 they had approximately 38,000 customer contacts, and its management board has agents from all implementing organisations and the National Church Council (see ibid.).

In 2017, the Ministry of Justice decided to issue a public service obligation to RIKU for providing general victim services around Finland during the years 2017-2018. As a result, all services should be made available free of charge as well as before, during and for an appropriate time after the criminal proceeding for all victims of crime.

### *Child victim support services*

In Finland, there are other civic organisations for supporting children and young victims of crime. Nevertheless, the main victim support organisation for children, remains RIKU. Although they have not a specific focus on child victims but they offer free of charge services (except the telephone Helpline) to all kinds of crime victims. One main service they provide constitutes the designation of a support person for victims, their close relatives, and witnesses who need one (it is similar to the psychosocial court assistance available in Germany and Austria). The support persons are carefully chosen and trained specifically for this purpose on a voluntary basis, in i.e. to accompany the victim to police hearings or court sessions as well as to assist in the application for issuing a restraining order or compensation. With these support persons the victims or witnesses of crime may also discuss their experiences and feelings and consider further actions.[102]

Other facilities which are responsible for child protection, include for instance **the Federation of Mother and Child Homes and Shelters**[103] also cooperating with Victim Support Finland which upholds 14 shelters around the country. Additionally, there are 20 other shelters operating in Finland. All of them are service centres where persons in need, who either are suffering directly from or are threatened with family violence, can obtain help in overcoming a crisis or difficult situation. Furthermore, in Finland there is a

[102] See the report „Managing Victims and Witnesses of crime in Finland, 2014-16, produced by the International Juvenile Justice Observatory, in cooperation with SAPI (the Social activities and practice institute Bulgaria), p.16. In the following this paper refers to the report as follows: IJJO 2014-16.
[103] See: https://ensijaturvakotienliitto.fi/en/ (accessed on 18th April 2018).



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range of women-specific service centres, for instance **Tukinainen**[104] or for immigrant women and children, for instance **Monika – Multicultural Women's Association in Finland**[105].

Lastly, one main authority which supervises children rights is **the Parliamentary Ombudsman Finland**.[106] The Ombudsman holds the main responsibility to oversee that state authorities comply with the law and that the rights of children are respected. It is the highest overseer of legality in the country and is selected by the Parliament.

# 5. Organisational implementation(s) of individual needs assessment in five EU Member States

This chapter focuses on the practical implementation of the transposition legislation of Article 22, 23 and 24 of the Victims' Directive. It shows how the individual assessments are carried out in each of the five EU Member States: *Germany, Portugal, Spain, UK (England and Wales),* and *Finland.* A particular focus lies on country-specific practices in particular considering both, obstacles and successful strategies regarding child victim protection, and thereby trying to highlight good and promising practices.

## 5.1. Germany

In Germany, the Victims' Directive was transposed through the "3rd Victims' rights reform act" (*3. Opferrechtsreformgesetz*[107]) in 2015. The law takes further important steps to raise standards for victim protection and also strengthens the standing of victims in criminal trials.[108] While Germany has already achieved a high standard in victim support previous to VD implementation, the latter triggered some improvements, particularly regarding the procedural and information rights of victims. Additionally,

[104] See: https://www.tukinainen.fi/english/ (accessed on 18th April 2018).
[105] See: https://monikanaiset.fi/en/ (accessed on 18th April 2018).
[106] See: https://www.oikeusasiamies.fi/en/web/lasten-ja-nuorten-sivut/home (accessed on 18th April 2018).
[107] See: http://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html; and: http://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (accessed on 22nd March 2018).
[108] In criminal trials victims could assume the role as witness, plaintiff or injured person (*Zeuge, Nebenkläger, Verletzter*), which means that Germany does not employ the term of victim in its black-letter law. For detailed information see the E-PROTECT Pan-European study on the legal transposition of Victims' Directive D3.6


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German lawmakers have introduced two important new paragraphs concerning the individual assessments of victims: §48, section 3: Obligation of the witness and summon (*Zeugenpflichten; Ladung*)[109] in the German Code of Criminal Procedure (*Strafprozessordung, StPO*) as well as the new paragraph §406g Psychosocial court assistance (*psychosoziale Prozessbegleitung*), which constitutes a milestone in victim protection and is mainly based on the Austrian model.[110]

All special measures set out in the VD are met by the German legislation, while various measures already existed previous to VD transposition.[111] Nevertheless, these rights are in the most cases guaranteed by the fulfilment of Article 22 (see EPRS study 2017: 61). However, at this stage the **individual assessment** and its exact procedures are not clearly resolved in the German legal text (see ibid.: 61). Therefore, it is quite incomprehensible how the individual assessment is conducted and by whom.

Likewise, a previous EU project called IVOR (Implementing victim-oriented reform of the criminal justice system in the European Union 2014-2016) concluded that before the third victim reforms act was implemented in 2015, the German legislator had planned a special provision "(…) in the general part of the Code of Criminal Procedure that states that the first authority that deals with a case has to conduct the individual needs assessment and to put it into a filing system".[112] Now, after the implementation of this act (including the new paragraphs: §48, section 3, and §406g), the German legislator does not explicitly stipulate who and how the individual assessment should be conducted.

However, the primary aim of Art. 22 to ensure an assessment for all victims' individual protection needs is bypassed in Germany - to conclude with the IVOR authors:

> „Although few countries have (fully) implemented article 22 into their national legislation, it is clear that the absence of a law relating to the individual needs assessment does not imply that certain vulnerable groups are not identified and granted specific (protection) rights. **However, the aim of the individual assessment, that is that it should be made available for *all* victims, has been achieved in almost none of the Member States**" (IVOR report 2016: 163, emphasis added, bold lettering).

[109] See: https://www.jurion.de/gesetze/stpo/48/ (accessed on 5th April 2018).
[110] In Portugal and Finland psychosocial court assistance are also existent.
[111] e.g. the interrogations in appropriate premises to avoid visual contact between victim and alleged offender; the conduction of these interrogations by specially trained persons, the possibility of hearings without the public; for detailed information on the specific laws and provisions, which are regulating these measures (under which conditions and circumstances those become applied) see the other E-PROTECT Pan-European study on the legal transposition of Victims' Directive (D3.6/2018).
[112] See: http://www.apav.pt/ivor/images/ivor/PDFs/Fact_sheet_germany.pdf (accessed on 5th April 2018).



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IVOR also conducted interviews with many experts from different EU Member States, one of the German experts has stated that a more flexible approach towards individual assessments is more preferable. The respondent wondered if an assessment will be as concrete as a checklist. It depends on various circumstances, such as quality of information that the police have to a specific point in time (ibid.).

Germany seemingly follows an approach where an assessment is carried out at any stage of the legal proceedings by different competent authorities. This includes a first assessment but also various re-assessments in the further proceedings if necessary.

### 5.1.1. Good practices in Germany

*Psychosocial court assistance*

In the German context, psychosocial court assistance means a specific form of companionship before, during and after the criminal proceeding (excluding legal support) for particular vulnerable victims (in accordance with VD and Art. 22 and Art. 23). In particular, children and adolescents who have been victims of serious sexual or violent offenses have the right to free of charge psychosocial court assistance. For other victims of serious violent and sexual offenses, the court should decide on the basis of the individual case, whether psychosocial court assistance should be carried out.

The activities include the provision of adequate information as well as qualified support during the whole criminal proceeding, with the aim to reduce individual burdens that are inevitably combined with these proceedings and to avoid secondary victimisation (see Riekenbrauk 2016: 7). This right to free access is of particular importance for child victims, disabled persons and persons who are specially traumatised by a crime, involving hate crimes, sexual crimes, or violent crimes. Anchoring such an important protection measure in the black-letter law is a milestone in (child) victim support. The most important aspect in the context of quality standards is the significance of the "clarity of roles" (*Rollenklarheit*), which means that psychosocial court assistance neither constitutes a legal counselling, nor a fact-finding, or psychotherapy (ibid.). It has rather the obligation to provide the victim with adequate support and information at the following stages: first interview (often before a criminal charge), preparation for the criminal proceeding, support during the main trial and follow-up processing. It includes a huge range of support tasks:

- *Before the court trial*: be present at all interrogations (at the police and at the court), advise the victim regarding the criminal proceeding (the companion is present in the court room for instance,



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explaining who the different actors are etc.), provide information regarding consequences and risks of a court proceeding or criminal charge, information concerning different forms of psychotherapy.

- *During the proceeding*: organisation of safe access to the court premises, support during the waiting time, cooperation with other authorities who are present, age-friendly translation of legal vocabulary, explanation of the procedures.
- *After the criminal proceeding*: information concerning further support offerings or support in handling emotionally the court judgment etc. (ibid.: 9).

### *Trainings for police officers and judiciary*

In Germany special trainings are offered to police officers and judicial staff, which are largely organised at regional level and go beyond the Directive's requirements (see EPRS study 2017: 72).

> "In the training courses for established police officers, victim protection forms an elementary part in all 16 states (Länder). The training is designed in line with Article 25(1) of the directive" (ibid.: 72).

Within the training for new **police** staff, victim protection represents a central component of the three-years Bachelor studies at police academies. The subject is studied from different perspectives, such as criminology, ethics, examination procedures, victimisation and psychology (ibid.), though special emphasis lies on teaching them empathy and sensitivity regarding communication with different types of victims, as well as appropriate assessment of the situation. The trainings include both theoretical and practical sessions. Further special emphasis lies on legal and psychological-tactical aspects of police intervention in cases of domestic violence and stalking cases (ibid.).

> "Moreover, certain police headquarters already have officers specifically responsible for victim protection who are tasked with raising awareness among their colleagues of the need for professional handling of victims. This is done through information sessions, events, workshops and meetings. These coordinators also inform their colleagues on recent legal changes strengthening victims´ rights" (ibid.: 72).

The **judiciary (both judges and public prosecutors)** intensified victim-related trainings as well, especially concerning communicative abilities of judges and public prosecutors, including also psychological elements of victim protection. Their training sessions cover e.g. the following topics:



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"examination of victim witnesses", "fact-finding in the courtroom" and "statement psychology when dealing with witnesses" and "offender-victim compensation" (see ibid.: 73; see Clemm 2015). [113]

However, the lack of nationally harmonised standards regarding qualifications of e.g. psychosocial workers is criticised by some legal experts (see Fastie 2015).[114]

## *5.2. Portugal*

In Portugal there are many obstacles that children face in the judicial system, such as repeated interrogations, intimidating environments and procedures, lack of training of professionals who conduct interviews and the complex and slow proceedings. Some experts argue that there is a mismatch between the law and its application.

Empirical studies have shown that:

> "Children who are victims of intra-family sexual abuse are heard on average eight times.[115] This repetition is the aspect of the judicial process that children consider painful. Even in processes where there are physical and biological signs of sexual abuse, children are heard 4-9 times. (...) The testimony of children, when they are young, is neither collected nor valued, which gives rise to a filing rate of more than 60%, according to a study already cited, based on data provided by the Institute of Legal Medicine of Porto."[116]

A recent survey with 49 Public Prosecutors and Magistrates showed that both categories of professionals

> "(…) report the lack of preparation for the hearing of children and adolescents and the difficulty in understanding their developmental characteristics (related to age and maturity). They consider that younger children may have difficulties in understanding and attention, while adolescents manifest oppositional behaviour. The Magistrates also reported feeling the need to deepen techniques to facilitate communication with children and adolescents and to know interview techniques, with the possibility of access guides or other relevant instruments."[117]

[113] See: https://www.bundestag.de/blob/379102/fee53d33062a29c73b8e580e7aa788cc/clemm-data.pdf (accessed on 5th April 2018).
[114] See: https://www.bundestag.de/blob/378818/1151a3374a4dcfd93ff726f45abaca48/fastie-data.pdf (accessed on 5th April 2018).
[115] Ribeiro, 2009 *in Ibid.* Page 287.
[116] Jardim, 2011 *in Ibid.* Page 288.
[117] Rodrigues, Alexandre, & Agulhas (2016). A audição da criança: Desenho, implementação e avaliação de uma formação para Magistrados Portugueses. Dissertação de mestrado do Mestrado de Psicologia Comunitária, Proteção de Crianças e Jovens em Risco. Lisboa. ISCTE-IUL. Page 13.



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### 5.2.1. Good practices in Portugal

The Academy of Lawyers (Lisbon Region) published a **Good Practice Guide on Listening to Children** in court proceedings in 2017. This Guide is in line with the Council of Europe Guidelines on Child-Friendly Justice[118] and informed by international evidence. The handbook starts with a description of the legal framework, followed by theoretical and practical considerations for listening to children in court proceedings, including matters related to the environment, interview techniques, aspects to consider from the perspective of the child and the interviewer. The guide ends with a post-interview checklist to allow the interviewer to monitor procedures and identify possible future aspects of his/her own practice.[119] This manual is a follow-up of two books prepared for and adapted to children on what to expect during court proceedings, including the child-friendly book "João goes to court"[120] and the book "the day Mariana did not want"[121]. These books and guidelines are part of a more comprehensive approach to implement child-friendly justice in the country. The Portuguese Centre for Judicial Studies on Child Hearings has promoted training and research, including innovative aspects such as the pilot study on "***The use of intervention dogs to facilitate the hearing process in child courts***."

In Portugal, APAV has a long-standing experience of victim support and is strongly engaged in partnerships at European level to enhance the protection of victims in Portugal and contribute to the exchange of good practices at international level. Currently, APAV is partner of the project POISE[122], co-funded by the European Social Fund, with the aim to provide support to children and young people victims of sexual violence, aiming the recovery from the traumatic experience and their healthy growth and development. This project entails the development of risk assessment and needs' assessment tools as well as protocols for children and young people victims of sexual violence, aiming to deepen and improve the procedures of support and the intervention of the CARE Network. This project is a continuation of their previous work, aim of which is to highlight the **Manual for supporting child victims of sexual**

[118] Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).
[119] Rute Agulhas e Joana Alexandre (2017) *Audição da Criança. Guia de Boas Práticas*. Conselho Regional de Lisboa da Ordem dos Advogados.
[120] Rute Agulhas e Joana Alexandre (2016) *O João vai ao Tribunal.*
[121] Rute Agulhas e Joana Alexandre (2016) *O dia que a Mariana não queria.*
[122] With the Project No.: 03-4639-FSE-000013


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**abuse** that includes detailed technical information for professionals, including also guidelines on how to interview and assist children who have suffered abuse.[123]

In the future it will be important for Portugal to carry out impact assessments on its own victim support structures for child victims in order to identify gaps towards improvement. There exists also an opportunity to build on existing efforts to advance child-friendly justice and to apply specific measures of the Victims' Directive, such as the individual assessment procedures.

## 5.3. Spain

In Spain, little time has elapsed since the national transposition of Victims' Directive. However, there exists available evidence that highlights current practices and assess how the adopted legislation was implemented as well as to provide suggestions and recommendations for future actions.

Organic Law 1/1996, of January 15, on the Legal Protection of Minors, Partial Modification of the Civil Code and the Law on Civil Procedure, includes the regulatory framework for the different autonomous communities that have competencies in matters of protection of the minor, when declaring protective measures (risk or abandonment) in cases of child abuse. One arising challenge of this organisation may be the different performance of regional authorities, which could lead to different levels of protection and resources offered to child victims in different parts of the country.

Save the Children Spain carried out an analysis of 203 judicial decisions dated between October 1, 2012 and December 31, 2016. The study has shown that on average, children must share information about abuses, once reported, up to 4 times. In 86% of the cases the minor has testified in plenary. Only in 13% of the sentences analysed the child's recorded testimony was accepted. Furthermore, legal processes are lengthy (3 years on average). In 38% of the cases, "undue delay" is used as an attenuating circumstance that the court itself recognises, which means that there have been delays that could have been avoided and reduced the sentence to the defendant for having suffered from this unnecessary wait.[124]

[123] APAV (2017) Manual CARE. Apoio a crianças e jovens vítimas de violência sexual.
[124] Save the Children (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema.



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In a study on child-friendly justice, carried out by the European Agency on Fundamental Rights, more than half of the children surveyed in Spain,

> "(…) evaluated professionals' communication skills negatively, criticising them for lacking sensitivity and asking questions that are irrelevant and unsuitable for their age. (…) Several children mentioned their interactions with forensic doctors during hearings – for example, when a doctor is present as an expert witness. Most of these children assess these professionals negatively because of their behaviour, as well as the inadequacy of the hearing rooms and the number of professionals' present. (In the same study) several interviewees between the ages of 14 and 18 who were victims of sexual abuse talked about feeling uncomfortable at the police station because they had to speak in front of either their mother, father or both parents."[125]

### 5.3.1. Good practices in Spain

The intervention by some stakeholders, including Victims Support Offices in Spain, seems to be progressive in the way towards the implementation of the provisions of the Victims´ Directive and good practices on child-friendly justice.

> "In Spain, **child-friendly rooms** are sometimes used during the pre-trial phase at both victim support services and court-based locations. Specifically, interviewees (children who have undergone proceedings) mentioned *Fundación Márgenes y Vínculos* in different Andalusian cities; the Andalusia victim support service (*Servicio de Apoyo a las Víctimas de Andalucía, SAVA*); and the family support service (*Servei d'Assesorament Tècnic en l'Àmbit de Família, SATAF*) provided by the Catalan administration via family courts. Children generally assessed these premises positively, as they are outside the court environment and have **child-friendly waiting and hearing rooms**. Children also appreciated the pleasant, calm atmosphere and **having only one professional (the psychologist) present for the conversation**."[126]

In 2009, the Federation of Associations for the Prevention of Child Maltreatment (FAPMI) has begun a **programme on childhood and justice**, with the support and financing of the then Ministry of Labour and Social Affairs, with the aim to improve the care for children and adolescents in contact with the justice system. This programme has tackled aspects of the national regulatory framework, awareness raising activities such as thematic conferences of different aspects of child-friendly justice and other activities. This work is complementary to the participation of FAPMI in the National Commission of Assistance to Victims of Violent Crimes and against Sexual Freedom of the Ministry of Justice.[127]

[125] FRA (2017) *Child-friendly justice Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States. Page 26*
[126] *Ibid.* Page 30
[127] FAPMI (2011): Programa Justicia e Infancia. Marco de referencia. Madrid, Federación de Asociaciones para la Prevención del Maltrato Infantil.



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Different authorities in Spain have published **child-friendly materials related to justice**.[128]

"Technical advice to Catalan courts is organised through territorially distributed offices where psychologists and social workers specialising in justice work and answer the demands for technical assistance from prosecutors, magistrates, investigative and criminal judges. The specialisation of these workers not only implies that they work exclusively on criminal cases, but also that they are organised according to differentiated programs, such as, advice on criminal responsibility and socio-personal characteristics of those accused of a crime; advice on alternative forms of deprivation; assessment of the social and personal rights of the accused; technical advice on the victims (sequelae, adaptation of protection measures, etc.); on witnesses (credibility, cognitive affections); and, finally, the program to support interviews of children in judicial proceedings and other vulnerable witnesses who require specialised support to make statements. In the case latter, children who have been victims of sexual abuse, have their statements recorded in order to avoid going through an oral trial.

(…)

Although the Catalan case is, without a doubt, a good practice in Spain, it continues to face a series of challenges. On the one hand, resources are sometimes lacking, and on the other, even if a recording is made, it depends on the judges and magistrates whether it is accepted by the Court and that the child does not have to provide a further statement. As it is a legal recommendation and not an obligation, there are still cases in which the child's testimony is recorded and, years later, he/she is requested to attend the trial."[129]

Table 1. Psychologists and Forensic Social Workers of the 'Criminal Technical Assistance Teams', Department of Justice of the Generalitat of Catalonia

[128] For example, the Ombudsman for Children of the Community of Madrid has published a dictionary on justice adapted to children, which is available here: http://www.madrid.org/bvirtual/BVCM013875.pdf; and the Council of Labour and Social Policy, Secretariat of Social Services for Children and Family of the Region of Múrcia has prepared a publication on the workings of courts, which is available here: http://www.bienestaryproteccioninfantil.es/imagenes/tablaContenidos03SubSec/juzgado_Gu%C3%ADa%20_niño.pdf (accessed on 23rd April 2018).

[129] Save the Children (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema, Page 111.



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The case-study highlighted in Table 1 was also included in the report on child-friendly justice by FRA, which concludes that

> "[i]n Spain, children prefer interviews conducted by specially trained psychologists at victim support offices and court-based child-friendly facilities to hearings conducted by judges in court."[130] The same study has shown that "in Spain, children indicated that the same psychologists who conducted their pre-trial assessments supported them during trial hearings, and commented positively on how psychologists mediated between them and the court."[131]

The legislation adopted in Spain to transpose Victims' Directive identifies the Victim Support Offices as the main authorities responsible for carrying out an individual assessment procedure. Some regions have gone a step further and established specialised teams to support child victims, such as in the case of Catalonia and its *Criminal Technical Assistance Teams.* In addition to Law 4/2015 of April 27 on the Statute of Victims of Crime, the Spanish state further adopted in the same year the Royal Decree 1109/2015 of December 11, which regulates the work of the Victim Support Offices. In this decree, the establishment of the Advisory Council for Assistance to Victims is of particular relevance, because it may play a fundamental role in overseeing, assessing and improving the work of the Victim Support Offices.

## 5.4. UK – England and Wales

In England and Wales, the individual assessments and special measures (for child victims of crime) was introduced into the criminal justice system through the **"*Code of Practice for Victims of Crime*".**

According to this Code, an **individual assessment** should be carried out by service providers[132] to determine the kind of support that a victim may need after experiencing a crime. The first assessment often takes place at the police, however, its conduct is dependent upon the individual victims and their first-point of contact. While in most cases it is conducted by the police, it could be also performed by the so-called service providers, or a non-statutory support organisation. The assessment entails the

[130] FRA (2017) Child-friendly justice. Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States.
[131] Ibid.
[132] For the full list of service providers see: Code of Practice for Victims of Crime, p.2, it includes 14 service providers in total, inter alia: The Crown Prosecution service, Police and Crime commissioners, Youth Offending Teams, or the Witness Care Unit, just to mention a few.



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identification of the needs of a victim and the status of vulnerability. These needs might be reassessed in the further investigation by the police ("updates on the investigation tailored to victims' needs") (see Victims' Code 2015: 8).

Through this process special measures are identified considering the individual needs of a victim (characteristics of the crime offence, age of the victim). These measures include: live video links, video-recorded statements, screens around the witness box and assistance with communication, including the use of an Intermediary (see ibid.).[133]

Victim support services (such as social services) are not included in the list of service providers since they are non-statutory organisations and thus primarily responsible to provide emotional and practical support services to victims of crime, such as how to cope with the effects of a crime. This means they are not covered by the Victims' Code and its stipulations, which is also seen critically by some experts.

The Code of Practice constitutes a practice-oriented guide for all statutory actors that are involved in protecting victims of crime. It gives helpful instructions how to carry out an individual assessment and how to communicate with victims appropriately, including how fast victims should get information on different procedures, or which organisations can help them to cope with a crime.

Furthermore, the Code encompasses a chapter on children and young people victims of crime, with two separate sections: one provides detailed and well understandable information for victims themselves (about their entitlements, description of procedures, duties of service providers), the second section - in contrast, provides information and guidelines for practitioners, the service providers.

### 5.4.1. Good practices in England and Wales

How successful this statutory guideline is in practice can be best assessed by the victims themselves. Do they really get access to all measures to which they are entitled? Is the assessment carried out appropriately, embracing both taking place within an appropriate timeframe and on an individual basis? Do they receive information in an appropriate manner?

[133] For the full list of special measures with explanations see the following paragraphs in the Code of Practice for Victims of Crime (1.13-1.15 of Chapter 1, pp. 15-16).



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The Victims' Commissioner has done this in the study *"A review of children's entitlements in the Victims' Code"* from 2017[134]. The report takes into account findings from another report: *The Measuring Up report* from 2009 (see ibid.: 17).[135] The Code states that children should be informed about special measures during the police investigation. Most of the participants of the Victims´ Commissioner report, in contrast, said that they were just informed about some measures, not all of them, or that the measures were not applied in an appropriate manner and some participants were not told anything about special measures. The amount of information was also dependent of the point of police investigation (see ibid.: 23). To give a practice example from one participant´s experience during the court trial:

> "The way in which special measures are applied is important in ensuring that they protect the young victim as intended. For example, Jenny (aged 17) was granted the use of a screen to give evidence so she wouldn´t have to look at the defendant or be seen by him. However, she reported that: *When I left the court from behind the screen he was still there. They should have taken him out so I didn´t have to see him. What´s the point of the screen when I still have to see him on my way out anyway* (Jenny, aged 17)" (ibid.: 24).

Another example regarding the entitlement of making a Victim Personal Statement (VPS) shows that this opportunity was also just given to three children from 12 in this report. The same finding turns out in the Crime Survey for England and Wales - just 15% of the victims got the opportunity to make a VPS in 2015/16 (see ibid.: 24). The review also found out that not all children and young people receive adequate information on counselling and support opportunities and organisations, some of them had either self-referred to support services or were referred to them by their social worker.

The children of the review felt sometimes frustrated about delays in their cases and that they were not informed about delays in the investigation (see Victims' Commissioner 2017).

Since much of the entitlements of the Victims' Code refer to the victim's right to receive adequate information about their cases in a timely and accurate way, the Code is very promising when adhered to it correctly. The quality of communication between victims and service providers is seen as one of the most important aspects by victims themselves to cope successfully with the impact of victimisation.

[134] The study conclusions have to be considered carefully as it has some limitations in terms of representativeness. It is a qualitative study, including interviews with 12 girls (or their parents) between the ages of 9 and 17 who were affected by violent crimes, sexual abuse or sexual assault.

[135] For more detailed information about the methodology see Victims´ Commissioner 2017: p. 19, and for more information on the limitations of the review see p. 21, http://victimscommissioner.org.uk/app/uploads/2014/10/Are-we-getting-it-right-for-young-victims-of-crime.pdf (accessed on 12th April 2018).



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## 5.5. Finland

In Finland, the transposition of VD's provision on **individual needs assessment** (Art. 22) was redundant because instructions that fulfil the requirements of Article 22 had already been in place (see IVOR 2016)[136].

There are several instructions for the individual assessment to be found in national law, especially under the Finnish Criminal Investigation Act (FCIA)[137] for specific groups of (vulnerable) victims, similar as in the case of Germany and Austria. These instructions definitely fulfil the purpose of an individual needs assessment according to VD. FCIA states that the investigation authorities are responsible and must always assess the victims need for special protection (see Savonen 2017:8). According to Savonen, the Ministry of Internal Affairs has been also set up a working committee to further develop the process of IAM in Finland. Children or underage victims are considered as particular vulnerable and therefore they have specific rights and access to special measures, which were already in place under national law in Finland.

Police officers have a particularly important role in the identification of the victim's specific needs because they are primarily the first figures that come in contact with victims. Therefore, it is important that professionals, such as the Finnish police, receive adequate training when conducting such an assessment.[138] According to the authors of the IVOR study, Finnish professionals agreed with the plan to develop an application, with a more standardised set of questions to assess the victims' individual needs but this remains unclear if actually implemented.

### 5.5.1. Good practices in Finland

After reporting a crime, children immediately go through a risk assessment and are provided with special measures to help them participating in proceedings whilst reducing secondary victimisation (see IJJO 2014/16). In Finland, some police officers are specialised in investigations of offences that involve child

[136] See also the explanations under section 4.5.2. of this report, where the legal background of VD transposition in Finland is briefly outlined.
[137] Pre-trial Investigation Act 22.7.2011/805, see also: https://www.poliisi.fi/crimes/pretrial_investigation_of_an_offence (accessed on 18th April 2018).
[138] The authors of report IVOR (2016) conducted some interviews with different professionals. They concluded that it was affirmed that police officers who are responsible for the individual assessments, or professionals from specialised services receive adequate trainings in Finland.



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victims. For this reason, Finland has started a **project** called ***Senja: Sensitiveness model for professionals of Jurisprudence.*** Under its framework all professionals working with victims or witnesses of crime receive appropriate training.[139] The victim sensitive approach of *Senja* is taught to the police, the prosecutors and the court personnel. Its primary goal is to provide relevant and adequate information about the consequences of being subjected to domestic violence and sexual crime and to offer advice for those working with vulnerable victims at various stages of the legal process (see ibid.: 28). The website of *Senja* provides six main areas with information for professionals, involved in the legal process of victims of crimes: *"Traumatisation", "Victims of sexual crime", "Victims of domestic violence", "Disabled victims", "Young victims", "Victims of foreign background"* and one further tab aiming at *"Advice for victims"*, which provides information to particularly vulnerable victims and their right to get a free counsel and a free support assistant. The information is provided in three languages: Finnish, Swedish and English and the "(…) instruction folders have been distributed to all police stations, local prosecution offices, public legal aid offices and courts in Finland" (IJJO 2014/16: 28). Importantly, police officers receive every year special trainings concerning child victims.

Another project that has been implemented in Finland is called ***The Children's House - The Barnahuset Model*** and constitutes a pilot, introduced in 2014, that is based on the US Child Advocacy Centre Model (CAC). This approach is already increasingly used across Nordic countries and originated in Iceland where it is applied since 1985. The approach was developed as a response to child sexual abuse. The idea of Barnahus model, which translates as "Children's House" in English, and the US CAC model likewise, follows in its core a multi-professional and integrated approach in child victim protection (see Johansson et al. 2017: 5)[140]. "Both models build on the understanding that child abuse is a complex phenomenon, demanding highly specialised expertise and coordinated services" (ibid.: 5).

The main idea of the project in Finland is to provide a mutual framework for official state cooperation as well as a common physical space (the "one door principle", or "under one roof principle") (ibid.), where all involved professionals are working together in a single team, such as health professionals, social workers, police officers and prosecutors. According to the paper by Johansson et al, the characteristics of

[139] http://senjanetti.fi/en (accessed on 19th April 2018).
[140] For a detailed description of this specific child care protection model, see the first chapter In. Johansson et al. 2017, Implementing the Nordic Barnahus Model: Characteristics and Local Adaptions, pp. 1-31, https://link.springer.com/content/pdf/10.1007%2F978-3-319-58388-4_1.pdf (accessed on 19th April 2018).



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the Barnahus model are varying across different Nordic countries: in Finland, there is a strong focus on intensive forensic interviewing conducted by forensic psychologists, although on request by the police. The developing model in Finland is strongly connected with the pre-existing collaborative structures, such as the Forensic Child and Adolescent Psychiatry Units at the five university hospitals, as well as strong relationships to the healthcare sector (ibid.: 22).[141]

Generally, the availability of one-year-long interdisciplinary interview **training programmes** for police and healthcare professionals who perform child hearings shall be stressed as a further promising practice in Finland. The trainings are organised by the National Police Board and the Forensic Psychiatry Centre. "Most police officers and psychologists who work in criminal proceedings have attended the course and generally agree that is has contributed to child-friendliness in the preliminary hearing process" (FRA 2015:100).[142]

## 6. Conclusions and discussion

Implementing EU Victims' Directive, which sets minimum standards for victim assistance, into national jurisdictions has caused some difficulties among EU Member States. At a pan-European level, the picture of victim assistance concerning the transposition of the Directive turns out to be very diverse.

In the perspective of *comparative problematization* (see Jasanoff/Metzler 2018), it has become visible that each country construes and operates in its own context of victim support infrastructures and thus, inevitably produces divergent answers to the intricate task of reacting towards implementing the Directive. Comparison reveals distinct national legislative and socio-practical environments in which practitioners and legislators have to act and thus exposes different understandings of each state's responsibilities towards protecting victims of crime at domestic level. However, there is a principle problem with comparing Member States concerning the implementation of Victims' Directive on the ground:

> "The desire to use victim support, an overall understanding of the experience with criminal justice agencies

[141] For more details on the exact procedure of such forensic interview methods, see the already above mentioned study, IJJO 2014/16, pp. 20-22.
[142] http://fra.europa.eu/en/publication/2015/child-friendly-justice-perspectives-and-experiences-professionals-childrens (accessed on 19th April 2018).



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in the aftermath of victimization, the impact of interaction with the criminal justice process on victims' emotional well-being, the importance of different aspects of victim assistance, there is no good grounds for comparison across EU Member States, given that for most of the European Union there is no empirical research available that would offer an answer" (IVOR report 2016: 197).

The transposal of implementing minimum standards in victim assistance across European Union turns out to be very divergent, starting by different interpretations of key terms and concepts of the Directive[143] by national legislators, the differences are further owed to different legal traditions in victim support.

Furthermore, the project's results validated some of the research findings from the IVOR project, underlining that there is a lack of victimological evidence based research in most of European countries, which would actually be an ideal basis for comparing the standards implemented in EU Member States. Nevertheless, what comparison makes visible here, is the development of each country's victim support system and in addition, the experience that national legislators and practitioners have with victim policy, which allows in reverse terms, also to draw some conclusions about the EU as a policy actor (see ibid.). This is to say, understanding the extent of Victims' Directive impact on domestic legislations and practices is difficult to ascertain without evidence of the impact of most victim assistance measures on victim experience and a lack of research in this regard.

**England and Wales** is worth mentioning in this context because statutory and non-statutory agencies have conducted some empirical research in victimology by including the experiences and perspectives of child victims to assess how effective the different victim support services and programmes in the UK (in particular in England and Wales) function.[144] It seems to be very promising to determine and monitor the effects and functions of victim support by the feedback of victims themselves. In **Austria** and **Finland** there is also – although not in the biggest extent – a tradition in such victim satisfaction research (in Austria with particular focus on domestic violence). However, any evaluation of the impact of policy-efforts has to address the lived experience of victims, their satisfaction with the justice system and the offered measures respectively, therefore, it is necessary to conduct comprehensive research that include

[143] See the complementary E-PROTECT report on the legislative transposition of Victims´ Directive, which maps in more detail the different interpretations of those legal concepts set in the Directive.

[144] Such as the report of the Victims´ Commissioner for instance, but also reports produced by non-statutory agencies, such as the report by Victim Support "Getting it right for young victims and witnesses", https://www.victimsupport.org.uk/sites/default/files/You%20%26%20Co%20-%20Getting%20it%20right%20for%20young%20victims%20and%20witnesses.pdf (accessed on 9th April 2018).



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the experiences of end users. In this respect, the **UK** can be definitely cited as a good practice example.

Therefore, another related key aspect lies in including and understanding the *role of context* in EU policy making, the patchwork of countries among the EU requires a different approach to policy making and implementation. EU policy makers have to consider exactly these different contextual factors, including also different legal systems – civil law versus common law system (in the UK) - that determine country specific victim support systems, especially when the goal is to achieve minimum standards (see ibid.).

> "In victim assistance this necessity is felt more keenly, given that **context** is also an important factor with victim experience itself, in the interaction between victims and victim assistance providers, in the manner in which victim assistance is situated within its network and the nature of victim assistance as government enhanced empowerment of individual citizens. The experience with improving the position of victims at the national level in a variety of nations speaks to the complexities and difficulty of doing so in one country: these issues are only compounded by the fact that the EU contains 28 Member States" (ibid.: 200).

Some conclusions, however, on good or even best practices as well as difficulties can be drawn from this study, including the results from the previously produced country reports of the E-PROTECT project. Furthermore, the above outlined difficulties concerning EU policies in general and Victims' Directive in particular should be underpinned by some empirical findings of this research.

The high-quality information provided by the **UK** government and different victim support organisations for victims of crime is promising. The last update of the Victims' Code in 2015 has probably some significant impact on victim protection. As a result, victims are provided with detailed and relevant information on their rights and entitlements, on the duties of statutory service providers, such as in which timeframe the police have to send the acknowledgement of reporting a crime to the victim, or in which timeframe they have to update the victims with information on decisions made by authorities, in appropriate language. In other Member States, such as **Germany,** there is a lack of adequate, relevant and linguistically accessible information material for victims (see EPRS 2017). Particularly, considering the complexity of German law this would be a necessary step towards an even more victim-oriented approach, at least to release victims slightly from the dependency of state authorities. England and Wales, in contrast, produced this uniform legal text (Code of Practice for Victims of Crime) which constitutes equally the legal basis for all parties involved in criminal procedures, for victims and professionals as



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well. This kind of practice establishes a different kind of political maturity for people who are affected by crimes.

However, the Code does not include an obligatory requirement for agencies to work together in a coordinated way to support victims comprehensively in their journey through the criminal justice system in the UK. Since victims of crime encounter a large number of different professionals from different agencies, multi-agency working forms an important aspect to ensure that child victims are supported in an adequate manner by all involved actors. Nevertheless, the Victim' Commissioner recognized some lacks concerning multi-agency cooperation.

One potentially blatant finding is that social services are not covered by the Victims' Code and thus there are some problems occurring in the provision of adequate and comprehensive child protection, which continuously results in a lack of information on their cases. Victims' Commissioner has perceived a lack of co-ordinated response between the Crown Court and the Family Court, or between the police and other social service providers as well (ibid.). This lack could be solved by providing a single professional advocacy with a coordination role to each individual, who provides the victim with all relevant information, such as referring the victim to appropriate support services as well as monitoring their progress in case their needs change (ibid.: 35).

The little evidence available in **Portugal,** related to child protection practices, both in relation to intervention measures and to the experiences of children who have been victims of crime who have undergone hearings and court proceedings, demonstrates that there are serious organisational, resource-related and training deficiencies to overcome[145]. Child-friendly-justice related legislation has also progressed slowly in the country, but the international commitments by Portugal have contributed to advance the national regulatory framework and there is now a comprehensive framework towards protection of child victims.

In **Spain**, legislation and structures are in place which have the potential, when effectively carried out, such as the individual assessments, to support child victims comprehensively. In the coming years, it will be important to monitor the implementation of the two pieces of legislation highlighted in this report, to understand whether they are contributing to overcome some of the barriers and challenges faced by

[145] A study carried out to assess the work of Child Protection Commissions is available here: http://www.analiatorres.com/pdf/SINOPSEfinalcriancasconclrecomendacoes.pdf (accessed on 30th April 2018).



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children in contact with the justice system. Similar to Portugal, available evidence and existing programmes may provide the basis for the advancement of child-friendly justice in Spain and specifically, to implement the measures provided in Victims´ Directive. It will be crucial that stakeholders make this commitment and focus their attention to harmonise procedures and practices throughout the country, ensuring that there is no disparity between different regions or urban-rural gaps, as in the case of Austria for instance.

**Germany**, **Finland**, and **Austria** are the only three countries in this selection of MS that have a national central body for coordinating victim support and the quality of provisions appears here to be more consistent than in other countries. (see EPRS 2017).

In **Austria** and **Germany** there are some multi-agency cooperation activities, such as "Round tables" in place, including different stakeholders involved in victim assistance. These activities seem extraordinarily promising, since it is one of the most important aspects in harmonising procedures among different involved actors (police, lawyers, prosecutors, health care professionals, psychologists, social workers), which improves both, most importantly the situation for (child) victims of crime that facilitates to avoid secondary victimisation and the working situation for these professionals themselves. **The Finnish** Barnahus Model, can also be seen as such a promising multi-professional approach. It is already progressively used across Nordic countries and shares the idea of an integrated approach in child victim protection.

Both **Germany** and **Austria** are providing free of charge psychosocial support for particular vulnerable victims, which is especially for child victims an important measure that establishes an integrated, child-adequate and comprehensive approach of protection. Finland has a similar measure legally enshrined, the right to have a legal counsel, however, there is a lack of funding. It is just provided free of charge under specific circumstances and regarding specific crimes, such as domestic violence cases, sex offences or serious offences against the life, health or liberty.

Coming full circle, this study has shown next to others that it is essential to include each country's individual context in which victim support develops, especially concerning such mega projects as the Victims' Directive and its implementation across 28 Member States (see IVOR report 2016). Victim support varies inevitably in nature from one area of the European Union to the next and therefore, EU policy makers have to take these contexts and different environments into account to develop more



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flexible means to influence policy and practices among Member States. Comparison is possible, but evaluating and assessing the impact of the Directive means to take the domestic particularities at both levels, legal and social, into consideration and start from this end. This might be also the ideal basis for developing such a Directive, only then it is possible to reach better lived experience for victims of crime across Europe.



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E-PROTECT Deliverable D3.11 Study on the individual assessment methodologies of child victims of crime in Italy, EN, (pp.13-22).

E-PROTECT Deliverable D3.12 Study on the individual assessment methodologies of child victims of crime in Greece, EN, (pp.18-26).



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JUST-JACC-VICT-AG-2016

Action grants to support transnational projects to enhance the rights of victims of crime

JUSTICE PROGRAMME

GA No. 760270

# Enhancing PROtection of Children – vicTims of crime

# E-PROTECT

## WP3: Research and Data Collection

# D3.13 pan-European Best Practices Report on individual assessment methodologies of child victims of crime

## WP3 Leader: VICESSE



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# Kurzfassung

Ziel des Projekts E-PROTECT ist es die Rechte von minderjährigen Opfern von Straftaten in der Europäischen Union (EU) zu untersuchen und damit zu einer Verbesserung dieser Rechte beizutragen. Daher wird die Umsetzung der EU-Direktive 2012/29/EU (kurz: Opferschutzrichtlinie) in nationales Recht untersucht, mit besonderem Fokus auf jene der fünf Mitgliedstaaten der involvierten Projektpartner: Bulgarien, Österreich, Rumänien, Griechenland und Italien. Darüber hinaus liegt der Schwerpunkt der Analyse auf einer der zentralen Bestimmungen der Opferschutzrichtlinie: Artikel 22, *Individuelle Begutachtung der Opfer zur Ermittlung besonderer Schutzbedürfnisse* (Individual assessment of victims to identify specific protection needs) und im Speziellen wie jene Begutachtungen in die Praxis umgesetzt werden. In weiterer Folge des Projekts sollen aufbauend auf den Forschungsergebnissen sowohl Workshops in allen Partnerländern mit multidisziplinären Fachleuten abgehalten, als auch eine Internetplattform implementiert werden. Dadurch soll einerseits die Möglichkeit geschaffen werden umfassende Informationen für ExpertInnen zur Richtlinienumsetzung zur Verfügung zu stellen und andererseits soll die Plattform zugleich als internationales Forum des Austausches dienen.

Die vorliegende gesamteuropäische Studie fokussiert auf *best practices* der individuellen Begutachtungen für minderjährige Opfer (*Best working practices in individual assessment methodologies of child victims of crime*) und zielt darauf ab, das geografische und kulturelle Spektrum des Projekts zu erweitern, um ein umfassenderes Bild der Anwendung des Artikels 22 innerhalb der EU zu erhalten. Deshalb werden die praktischen Anwendungen des Artikels 22 in den folgenden Mitgliedstaaten analysiert: ***Deutschland, Portugal, Spanien, Vereinigtes Königreich (Fokus: England und Wales) und Finnland***. Darüber hinaus werden die Ergebnisse der vorangegangenen Länderberichte zu ***Bulgarien, Österreich, Rumänien, Griechenland und Italien*** zusammengefasst und in diesem Bericht zu Vergleichszwecken mitaufgenommen.

Die Auswahl der Mitgliedstaaten ist in doppelter Hinsicht relevant: erstens in geografischer und kultureller Hinsicht, unter Berücksichtigung der Charakteristika der nationalen Gesetzgebungen und damit auch der unterschiedlichen praktischen Umsetzungen der Opferschutzrichtlinie. Zweitens scheinen diese MS aufschlussreich zu sein, da sie entweder bereits über einen langen Zeitraum respektable Opferschutzsysteme etabliert haben, wie bspw. England und Wales, Deutschland und Finnland, oder aber im Zuge der



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Richtlinienumsetzung spezifische Maßnahmen für (minderjährige) Opfer von Straftaten entwickelt haben, wie es bspw. in Spanien und Portugal der Fall ist.

In der Perspektive der vergleichenden Problematisierung (***comparative problematization***) (vgl. Jasanoff/Metzler 2018) wird deutlich, dass jedes Land in seinem eigenen Kontext von Opferschutz operiert und daher notwendigerweise divergierende Reaktionen auf die Richtlinienumsetzung produziert hat. Indem die vorliegende Studie die einzelnen Opferschutzsysteme im Modus des qualitativen Vergleichs (vgl. Akrich/Rabeharisoa 2016) eingehend untersucht, zielt sie darauf ab, die verschiedenen Handhabungen des Artikels 22 (der individuellen Begutachtungen zur Ermittlung besonderer Schutzbedürfnisse) herauszustreichen. Darüber hinaus werden dadurch unterschiedliche nationale legislative und sozial-praktische Spezifika, in denen PraktikerInnen und Gesetzgeber handeln müssen, als auch die Verantwortung die Staaten für den Schutz von Opfern von Straftaten und ihren Rechten übernehmen, aufgezeigt. Dabei sollen die jeweiligen Rahmenbedingungen und Praktiken des Schutzes minderjähriger Opfer der Mitgliedstaaten für sich und in der vergleichenden Perspektive betrachtet werden.

Auf paneuropäischer Ebene erweist sich das Bild der Richtlinienumsetzung als sehr differenziert. Finnland scheint seit der Richtlinienumsetzung einen systematischeren Ansatz der individuellen Begutachtungen zu verfolgen (vgl. EPRS 2017: 82). England und Wales hat eine praktische Richtlinie, den sogenannten *„The code of practice for victims of crime" (2015),* eine Fülle an öffentlichem Informationsmaterialien und spezielle Schulungen für involvierte Fachkräfte im Zuge der Richtlinienumsetzung entwickelt. Darüber hinaus können sowohl England und Wales sowie Deutschland auf eine langjährige Opferschutztradition verweisen. Portugal und Spanien sind bemerkenswerte Beispiele, da beide Länder den vollständigen Wortlaut der Opferschutzrichtlinie in nationales Gesetz transferiert haben.

Eine häufig problematische Tatsache im Opferschutz ist seine oftmals komplizierte Architektur, besonders im Hinblick auf die Koordinierung und Zusammenarbeit der verschiedenen beteiligten institutionellen Akteure. Dies verweist auf einen wesentlichen Faktor für einen erfolgreichen Opferschutz: die Zusammenarbeit zwischen den betroffenen Akteuren auf nationaler als auch internationaler Ebene – *„multi-agency cooperation"* (insbesondere hinsichtlich grenzüberschreitender Kriminalität im EU-Raum).

Die Einbeziehung des *jeweiligen Kontextes*, indem nationaler Opferschutz operiert, stellt einen entscheidenden Aspekt zur Verbesserung von Opferschutzrechten dar. In Anbetracht der Vielzahl an Ländern mit verschiedenen Rechtssystemen und -praktiken kommt die Studie daher zu dem Schluss, dass



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es innerhalb der Europäischen Union einen anderen, will heißen: flexibleren Ansatz für effektive Politikgestaltung erfordert. Die unterschiedlichen Kontextfaktoren müssen von politischen EntscheidungsträgerInnen auf beiden Ebenen, sozialpolitischer als auch rechtlicher, berücksichtigt werden, insbesondere in Bezug auf politisch-rechtliche Großprojekte wie das der Opferschutzrichtlinie und ihrer Umsetzung in 28 Mitgliedstaaten (siehe IVOR-Bericht 2016). Opferschutz variiert zwangsläufig von einem Bereich der Europäischen Union zum Nächsten, daher müssen jene politischen Verantwortlichen diese unterschiedlichen Rahmenbedingungen berücksichtigen, um flexiblere Mittel zur Beeinflussung von Politik und Praxis in den Mitgliedstaaten entwickeln zu können.



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# Abkürzungsverzeichnis

| | |
|---|---|
| CAC | Children Advocacy Centres (US model) |
| CILEX | Chartered Institute of Legal Executives (UK) |
| CRAE | Children Rights Alliance for England |
| CSEW | Crime Survey of England and Wales |
| EKKA | National Centre for Social Solidarity (Greece) |
| E-PROTECT | Enhancing Protection of Children – victims of crime |
| EPRS | European Parliamentary Research Service |
| EU | European Union |
| EVVI | Evaluation of Victims project |
| FRA | Fundamental Rights Agency |
| FAPMI | Federation of Associations for the Prevention of Child Maltreatment |
| IAM | Individual Assessment Methodologies |
| IVOR | Implementing Victim-Oriented Reform of the criminal justice system in the European Union |
| IJJO | International Juvenile Justice Observatory |
| LSCB | Local Safeguarding Children Boards (UK) |
| MS | Member States |
| NGO | Non-governmental Organisation |
| ONS | Office for National Statistics (UK) |
| SotC | Smile of the Child (Greece) |
| RIKU | Rikosuhripäivystys (Victim Support Finland) |
| RUMI | Unified Registry of Cases of Suspected Child Maltreatment (Spain) |
| Victims' Directive (VD) | Directive 2012/29/EU |
| VPS | Victim Personal Statement (UK) |
| UK | United Kingdom |
| UNCRC | United Nations of Convention on the Rights of the Child |



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# 1. Einleitung

Ziel von E-PROTECT ist es die Rechte von minderjährigen Opfern von Straftaten in der Europäischen Union (EU) zu untersuchen und damit zu einer Verbesserung dieser Rechte beizutragen. Daher wird die Umsetzung der EU-Direktive 2012/29/EU[1] (kurz: Opferschutzrichtlinie) in nationales Recht untersucht, mit besonderem Fokus auf jene der fünf Mitgliedstaaten der involvierten Projektpartner: Bulgarien, Österreich, Rumänien, Griechenland und Italien. Alle beteiligten Projektpartner haben Länderstudien zur praktischen Umsetzung des Artikels 22: Individuelle Begutachtung der Opfer zur Ermittlung besonderer Schutzbedürfnisse[2] (*Individual assessment of victims to identify specific protection needs)*[3] der Opferschutzrichtlinie durchgeführt, unter spezieller Berücksichtigung von Maßnahmen zu Gunsten von besonders vulnerablern Opfergruppen, wie bspw. Opfer im Kindesalter.

Die vorliegende gesamteuropäische Studie fokussiert auf sogenannte *best practices* der Umsetzung der individuellen Begutachtungen von Opfern im Kindesalter (*Best working practices on individual assessment methodologies of child victims of crime*) und zielt darauf ab, das geografische und kulturelle Spektrum der Studie zu erweitern, um ein umfassenderes Bild der Anwendung des Artikels 22 innerhalb der EU zu erhalten. Deshalb werden die praktischen Anwendungen des Artikels 22 in den folgenden Mitgliedstaaten analysiert: Deutschland, Portugal, Spanien, Vereinigtes Königreich (hier mit besonderem Fokus auf England und Wales) und Finnland. Darüber hinaus werden die Forschungsergebnisse der vorangegangenen Länderberichte zu Bulgarien, Österreich, Rumänien, Griechenland und Italien zusammengefasst und in diesem Bericht zu Vergleichszwecken herangezogen.

Zudem werden Artikel 23 der Opferschutz-RL (Schutzanspruch der Opfer mit besonderen Schutzbedürfnissen während des Strafverfahrens) und Artikel 24 (Schutzanspruch von Opfern im Kindesalter während des Strafverfahrens) im Kontext dieser fünf EU-Mitgliedstaaten auch teilweise mitberücksichtigt. Artikel 22 zielt darauf ab, die besonderen Schutzbedürfnisse von Opfern zu ermitteln,

[1] Ziel der Direktive 2012/29/EU ist es Minimumstandards für die Rechte, die Unterstützung und den Schutz von Opfern von Straftaten zu etablieren und ersetzt den Rahmenbeschluss 2001/220/JHA (CFD:2001/220). Im Folgenden wird die Variante "Opferschutzrichtlinie" verwendet.
https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029 (letzter Abruf: 15. März 2018).

[2] Teilweise bezieht sich der folgende Bericht auf die Abkürzung des englischen Originalberichts: IAM (individual assessment methodologies).

[3] Im Folgenden in Anlehnung an den englischen Originalbericht abgekürzt als IAM (individual assessment methodologies) oder vereinfacht als individuelle Begutachtungen bezeichnet.



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um in einem zweiten Schritt zu bestimmen, ob und in welchem Umfang die Opfer von Sondermaßnahmen profitieren sollen. Jene Sondermaßnahmen werden gemäß Artikel 22, 23 und 24 spezifiziert. Die individuelle Begutachtung soll feststellen, ob und inwieweit den Opfern Sondermaßnahmen im Rahmen des Strafverfahrens gemäß Artikel 23 und 24 infolge ihrer besonderen Gefährdung sekundärer und wiederholter Viktimisierung, Einschüchterung und Vergeltung zugutekommen soll.[4]

Die individuellen Begutachtungen basieren auf der Idee einer Einzelfallanalyse in Bezug auf die individuellen Bedürfnisse des Opfers (siehe INASC-Bericht 2016: 20). Eine Einzelfallprüfung basiert im Wesentlichen auf drei Hauptaspekten: a) den persönlichen Merkmalen eines Opfers, b) der Art und Weise der Straftat und c) den Umständen der Straftat.

Um beste Arbeitsmethoden, sogenannte *best practices* im Bereich der praktischen Anwendung des Artikels 22, der individuellen Begutachtungen adäquat herausarbeiten zu können, werden ebenso Artikel 25 (Schulung der betroffenen Berufsgruppen) und Artikel 26 (Zusammenarbeit und Koordinierung von Diensten) in die Betrachtung miteinbezogen (siehe Richtlinie 2012/29/EU).

## 1.1. Best practices

Die Identifizierung von besten Arbeitsmethoden steht im Mittelpunkt dieses Berichts. Solche Praktiken bezeichnen Verfahren und Maßnahmen, die einen sorgsamen und verantwortungsvollen Opferschutz, unter besonderer Berücksichtigung des Wohlergehens von Kindern, gewährleisten.[5] Beispielsweise die Entwicklung von Leitlinien und Qualitätsstandards, die darauf abzielen, operative Verfahren für alle beteiligten Akteuren (PolizeibeamtInnen, RechtsanwältInnen, SozialarbeiterInnen, etc.) im Bereich des Opferschutzes zu bewerkstelligen und zu harmonisieren.

Ein häufig problematischer Umstand im Opferschutz ist seine meistens komplizierte Architektur, besonders im Hinblick auf die Koordinierung und Zusammenarbeit der verschiedenen beteiligten institutionellen Akteure. Dies verweist auf einen wesentlichen Faktor für einen erfolgreichen Opferschutz: die Zusammenarbeit zwischen den betroffenen Akteuren auf nationaler als auch internationaler Ebene – *„multi-*

[4] Siehe dazu die relevanten Artikel in der Direktive 2012/29/EU; https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029 (letzter Abruf: 15. März 2018); siehe hierzu auch die einzelnen Länderstudien D3.8-12, die im Zuge von E-PROTECT produziert wurden, welche zudem genauer auf die einzelnen zugrundeliegenden Rechtsvorschriften der Richtlinie eingehen.

[5] Zum Beispiel die sogenannten “Blue rooms” in Bulgarien, die spezielle Räumlichkeiten darstellen (die kinderfreundlich gestaltet und eingerichtet werden, im Gegensatz zu beispielsweise der Polizeiwache) und speziell für kinderfreundliche Befragungen genutzt werden (siehe D3.8 2017, Länderbericht Bulgarien).



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*agency cooperation"* (mit besonderen Augenmerk auf grenzüberschreitende Kriminalität). Ziel ist es, einen besseren und leichteren Zugang zu Opferhilfemaßnahmen für schutzsuchende Menschen, als auch bessere Arbeitsbedingungen für Fachkräfte zu schaffen.

Daher ist der pan-europäische Vergleich der verschiedenen Anwendungen der individuellen Begutachtungen von Opfern zur Ermittlung besonderer Schutzbedürfnisse essentiell:

> "Domestic national experience shows that improving the plight of victims of crime can only to a limited degree be entrusted upon changes in the 'letter of the law'. Instead success is in large part contingent upon the practice at street-level: the extent to which rights are supported by sufficient services" (IVOR report 2016: 9).[6]

Der IVOR-Bericht verweist des weiterem auf die Wichtigkeit der praktischen Umsetzung solcher Richtlinien, die vor allem davon abhängen wie sich gesetzliche Vorgaben in der Praxis entwickeln. Anders formuliert:

> "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" (INASC 2016: 43).

Daher untersucht der vorliegende Bericht die individuellen Begutachtungen im gesamteuropäischen Kontext, wobei der Schwerpunkt auf deren praktischen Verfahren liegt, um adäquate Anwendungen in den EU-Mitgliedstaaten zu fördern.

## 1.2. Struktur des Berichts

Der folgende Bericht ist in vier Bereiche gegliedert: als erstes wird der methodologische Ansatz des qualitativen Vergleichs beschrieben **(2)**, gefolgt von einem Kapitel zu den "Schlüsselerfahrungen zur Umsetzung von Artikel 22, 23, 24 der Opferschutzrichtlinie in Bulgarien, Rumänien, Griechenland, Italien und Österreich" **(3).** Die Resultate der vorangegangenen Länderberichte werden in diese Betrachtung miteinbezogen und gleichsam mit jenen Mitgliedstaaten dieser Studie verglichen, um ein adäquates Verständnis der praktischen Umsetzung der Richtlinie und besonders der Bestimmung der individuellen Begutachtung zu erlangen. Anschließend geht der Bericht auf die einzelnen Opferschutzsysteme für

[6] Siehe IVOR-Bericht – "Implementing victim-oriented reform of the criminal justice system in the European Union (2014-2016), https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf (letzter Abruf: 25. April 2018).



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Minderjährige in Deutschland, Portugal, Spanien, England und Wales und Finnland ein **(4)**, um die organisationsspezifische Umsetzung des Artikels 22 und die Umsetzung von Sonderschutzmaßnahmen für minderjährige Opfer hervorzuheben **(5)**. Abschließend werden die verschiedenen Praktiken und Umsetzungen der individuellen Begutachtung zur Ermittlung besonderer Schutzbedürfnisse, verschiedene Maßnahmen und Opferschutzmodelle miteinander kontrastiert, um eben vielversprechende Arbeitsmethoden herausstreichen zu können **(6)**.

## 2. Methodologischer Ansatz

Aus methodologischer Sicht macht sich diese Studie zu den IAM den qualitativen Vergleich nutzbar. Anstelle von statistischer Signifikanz, zielt dieser nämlich auf Beschreibung, Konzeptbildung und analytische Erklärung eines Falles oder mehrerer Fälle ab (siehe Krause 2016). Ziel des qualitativen Vergleichs in den Sozialwissenschaften besteht darin einen Fall oder mehrere Fälle in ihrer Spezifität und Allgemeinheit durch dichte Beschreibung zu verstehen. Der Vergleich regt zudem ein ernsthaftes Verständnis eines Phänomens an, weil er die Fälle permanent miteinander kontrastiert.

Folglich muss die Auswahl der EU-Mitgliedstaaten (MS) dieses Berichts begründet werden, insbesondere muss die Frage geklärt werden, warum genau diese Auswahl getroffen wurde. Eine Studie, die darauf abzielt eine gesamteuropäische Ebene zu repräsentieren muss notwendigerweise ein breites geografisches und kulturelles Spektrum abbilden, auch hinsichtlich unterschiedlicher rechtlicher Rahmenbedingungen und Gesetzgebungen im Kontext von Opferrechten. Selbstverständlich kann es sich hierbei nur um eine selektive Repräsentation handeln, denn die Betrachtung aller 28 Mitgliedstaaten der Europäischen Union würde schlichtweg die Ressourcen dieses Berichts übersteigen. Die Mitgliedstaaten sind auf der Grundlage einer ersten Überprüfung, entlang ihrer rechtlichen und praktischen Charakteristika, ausgewählt worden, um eine möglichst heterogene Stichprobe (auch im Sinne einer geografischen Streuung) abzubilden.

Finnland scheint beispielsweise seit der Umsetzung der Richtlinie einen systematischeren Ansatz der individuellen Begutachtung zu verfolgen (siehe EPRS 2017: 82)[7]. Das Vereinigte Königreich, insbesondere

[7] "The Victims' Rights Directive 2012/29/EU, European Implementation Assessment Study" wurde durch das "European Parliamentary Research Service" (EPRS) durchgeführt, Publikationszeitraum: Dezember 2017. Dieser Bericht geht auf den Status quo der Richtlinienumsetzung in den einzelnen Mitgliedstaaten ein, mit speziellem Fokus auf die praktische Umsetzung der RL und fokussiert auch auf ein Sample von 12 MS, um der Vielfältigkeit in



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England und Wales, ist relevant, da es einige praktische Leitlinien, den sogenannten *„The code of practice for victims of crime“* (Verhaltenskodex für den Umgang mit Opfern von Straftaten)[8], eine Fülle an öffentlichen Informationsmaterialien und spezielle Schulungen für PraktikerInnen des Opferschutzes entwickelt hat. Darüber hinaus können sowohl England und Wales sowie Deutschland auf eine langjährige Tradition im Opferschutz verweisen. Portugal und Spanien sind bemerkenswert, da beide Länder den vollständigen Wortlaut der Opferschutzrichtlinie in nationales Gesetz transferiert haben.

Daher zielt der Bericht eher auf die unterschiedlichen praktischen, als regulatorischen/gesetzlichen Rahmenbedingungen[9] des Opferschutzes der jeweiligen Mitgliedstaaten ab. Oder anders formuliert: er untersucht wie sich solche Regulierungen in der Praxis ausweisen. Es gilt also anhand der jeweiligen verschiedenen sozialpolitischen und praktischen Rahmenbedingungen der fünf Mitgliedsstaaten Opferschutz zu betrachten (siehe Akrich/Rabeharisoa 2016).

Diesem Ansatz folgend werden die Praktiken in den Mittelpunkt gestellt, um zu verstehen wie sich die Umsetzung der IAM in der Praxis und in der Perspektive verschiedener kulturell verwurzelter Opferschutzsysteme zeigt und unterscheidet. Der Bericht gibt Einblicke in die verschiedenen Handhabungen der einzelnen Begutachtungsverfahren in den ausgewählten Ländern, sowie der daraus resultierenden Sonderschutzmaßnahmen für Opfer, indem er gemeinsame und vielversprechende Praktiken hervorhebt. Diese Einblicke in verschiedene Praktiken sollten das gegenseitige Verständnis, unter Berücksichtigung jeweiliger kultureller Besonderheiten, fördern.

geographischer, größentechnischer, und rechtlicher Hinsicht der EU gerecht zu werden und ein ausgewogenes Bild davon wiederzugeben (ebd.: 4).

[8] Siehe: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (letzter Abruf: 20. März 2018).

[9] Ergänzend zu dieser Studie wurde eine zur rechtlichen Umsetzung der Richtlinie (D3.6) mit derselben Stichprobe von Mitgliedstaaten durchgeführt. Daher berücksichtigt dieser Bericht nicht so sehr die legislativen Umsetzungsprozesse selbst. Nichtsdestotrotz muss klar unterstrichen werden, dass es unmöglich ist die praktischen Dimensionen der Anwendungen unabhängig von der formalen Gesetzgebung zu untersuchen. Denn gerade dieser "Übersetzungsprozess" stellt in gewisser Weise die größte Herausforderung in der Umsetzung von Richtlinien dar und macht die vielfältigen Herausforderungen mit diesem Prozess in der Praxis sichtbar. Dieser Prozess könnte ebenso als Test dafür angesehen werden, ob und inwieweit ein Gesetz auf nationaler als auch internationaler (EU-) Ebene sinnvoll konzeptualisiert wurde. Dennoch stehen die praktischen Anwendungen der Artikel 22, 23 und 24 im Mittelpunkt dieser Studie.



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Der Bericht basiert hauptsächlich auf Sekundärforschung[10] und berücksichtigt dabei vorhandene Forschungsarbeiten, die bereits umfangreichen Kenntnisse zur Umsetzung der Opferschutzrichtlinie produziert haben. Ebenso werden national verfügbare Dokumente (wie z.B.: Qualitätsstandards, Empfehlungen, Kodizes etc.), als auch wissenschaftliche Literatur herangezogen, um ein besseres Verständnis der Anwendung der Opferschutzrichtlinie, insbesondere im Falle von minderjährigen Opfern zu elaborieren.

# 3. Schlüsselerfahrungen zur Umsetzung von Artikel 22, 23, 24 der EU-Opferschutzrichtlinie in Bulgarien, Rumänien, Griechenland, Italien und Österreich

In diesem Kapitel werden verschiedene nationale Praktiken des Opferschutzes und der individuellen Begutachtung bei Kindern und Jugendlichen beleuchtet, basierend auf den einzelnen E-PROTECT Länderstudien zu Bulgarien, Rumänien, Griechenland, Italien und Österreich. Diese Praktiken können im Bereich des Opferschutzes von Kindern durchaus als *best practices* angesehen werden oder aber zu solchen weiter ausgebaut werden.[11]

## 3.1. Österreich

In Österreich erfolgt die individuelle Begutachtung der Opfer zur Ermittlung besonderer Schutzbedürfnisse durch die Polizei, da diese in den meisten Fällen die erste Anlaufstelle für Opfer, als auch für die Beschuldigten darstellt. Der offizielle Ort für die rechtzeitige Durchführung der individuellen Begutachtung ist die *Kriminalprävention* der österreichischen Polizei, die für die Durchführung aller Präventionsarbeiten verantwortlich ist. Kriminalprävention umfasst sowohl Gespräche mit den Opfern als auch mit den

[10] Siehe zum Beispiel, https://victimsupport.eu/about-us/our-projects/ivor/; der Bericht ist hier zu finden: https://www.apav.pt/publiproj/images/yootheme/PDF/IVOR-Repot-WebVersion.pdf; Oder, http://www.victimsandcorporations.eu/wp-content/uploads/2017/01/Vict-and-Corp_First-Findings.pdf (letzter Abruf: 19. März 2018).

[11] Für genauere Information über die verschiedenen Opferschutzsysteme und einen quantitativen Überblick über minderjährige Opfer in den jeweiligen Ländern, siehe die E-PROTECT Länderstudien D3.8-12 (Länderstudien zu den individuellen Begutachtungsverfahren in **BG** D3.8, **AT** D3.9, **RO** D3.10, **IT** D3.11, **EL** D3.12).



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Beschuldigten, was sie wesentlich von Opferschutzeinrichtungen, die ausschließlich die Opfer und deren Rechte im Blick haben, unterscheidet.

Eine bewährte Praxis in Österreich ist die sogenannte Prozessbegleitung[12], die psychosoziale als auch juristische Prozessbegleitung umfasst. Das Hauptaugenmerk liegt dabei auf der Bewahrung und Sicherstellung der Gewährung von Opferrechten, also auch der psychosozialen Betreuung der Opfer (Umgang mit Traumata, die durch ein Gewaltverbrechen ausgelöst wurden, Anwesenheit und Unterstützung bei behördlichen Terminen etc.). Prozessbegleitung stellt eine wesentliche Errungenschaft des österreichischen Opferschutzes dar, insbesondere für minderjährige Opfer. Die psychosoziale und juristische Prozessbegleitung ist im Zeitraum der letzten 20 Jahre entwickelt und stetig verbessert worden. Vor allem in Fällen von sexuellen, körperlichen und häuslichen Gewaltverbrechen haben Opfer kostenfrei Anspruch auf Prozessbegleitung während des gesamten Strafverfahrens (neben dem Gerichtsverfahren umschließt dies im optimalen Fall auch die Zeitspanne vor der polizeilichen Anzeige und endet erst nach dem Gerichtsverfahren mit einer Nachbetreuung). Im Jahr 2014 hat Österreich zudem den internationalen *„Future Policy Award“* für die rechtliche Umsetzung und Verankerung in der Strafprozessordnung dieser Sonderschutzmaßnahme erhalten.[13]

## 3.2 Bulgarien

In Bulgarien gibt es keinen einheitlichen Ansatz für die individuellen Begutachtungen von minderjährigen Opfern von Straftaten. Es gibt jedoch einige bewährte Verfahren im Falle der Unterstützung von Kinderopfern, die weiterentwickelt und verbessert werden müssen.

Eine dieser Maßnahmen ist der sogenannte Koordinierungsmechanismus für die Interaktion mit minderjährigen Opfern (***Coordination Mechanism for Interaction in Cases of Child Victims or at Risk of Abuse, and for Interaction in Crisis Intervention***). Dieser stellt eine formale Vereinbarung zwischen den folgenden Ministerien dar: Ministerium für Arbeit und Sozialpolitik, Innenministerium, Justizministerium, Ministerium für Bildung und Wissenschaft, Gesundheitsministerium, Kulturministerium, der

[12] Siehe: http://www.pb-fachstelle.at/fuer-fachleute/in- formation-was-ist-prozessbegleitung/ (letzter Abruf: 11. Dezember 2017).
[13] E-PROTECT Bericht D3.9 “Study on the individual assessment methodologies of child victims of crime in Austria”, EN, pp.15-22.


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Sozialhilfeagentur, des Nationalverbands der Gemeinden und Bürgerbeauftragten. Der Koordinierungsmechanismus ist ein Instrument, das versucht alle Aspekte und AkteurInnen, von Polizei über Opferschutz bis zum Rechtssystem, des Opferschutzes in Bulgarien zu bündeln, um bestmöglich die Interessen des Kindes bei Kindesmissbrauch oder Missbrauchsgefahr zu gewährleisten.

In Übereinstimmung mit diesem ***Koordinationsmechanismus*** hat das Institut für soziale Aktivitäten und Praktiken (***Social Activities and Practices Institute***) in Zusammenarbeit mit UNICEF im Jahr 2016 in Bulgarien die ersten Kinderschutzzentren (***Child Advocacy and Support Centres***) ins Leben gerufen. Der integrierte Beratungs- und Unterstützungsdienst wird als Schutzzone (***Protection Zone***) bezeichnet und richtet sich an Kinderopfer jeglicher Art von Missbrauch oder Gewaltverbrechen und kommt unabhängig davon, ob dieser Missbrauch aktuell oder in der Vergangenheit stattgefunden hat, zum Tragen. Diese Schutzmaßnahme hat einen speziellen Ansatz für Kinderopfer entwickelt, der rechtliche, medizinische, psychologische und soziale Maßnahmen umfasst und darauf achtet, dass dies in einem kinderfreundlichen Umfeld stattfindet.

Als weitere gute Praxis sind die Spezialräume für die Einvernahmen von Kindern, die sogenannten ***„Blue Rooms“***, zu nennen. Diese erlauben es eine Einvernahme durch eine/n geschulten SpezialistIn in einer kinderfreundlichen Atmosphäre und in Anwesenheit aller relevanten Personen durchzuführen und zwar unabhängig von der Phase des Strafverfahrens. Mit Jahresende 2017 haben ca. 70% der bulgarischen Bezirke solche „Blue Rooms“ für die Einvernahmen und Interviews mit Kindern bewerkstelligt.

Es gibt jedoch noch immer keine nationalen Standards für die Befragung von Kindern im Zivilverfahren, die sicherstellen würden, dass Verfahrenshandlungen altersangemessen, sprich in einem angemessenen Umfeld unter günstigen Bedingungen und unter Verwendung einer kinderfreundlichen Sprache, durchgeführt werden.[14]

## 3.3 Griechenland

Die Durchführung individueller Begutachtungen bei minderjährigen Opfern in Griechenland beinhaltet als erstes die Meldung eines Missbrauchsfalls an die zuständigen Behörden oder Institutionen. Diese

[14] E-PROTECT Bericht D3.8 “Study on the individual assessment methodologies of child victims of crime in Bulgaria”, EN, pp.22-31.



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Meldungen fallen in die Zuständigkeit der Polizeibehörden, zudem sind derzeit zwei Interventionshotlines für Kinder aktiv.

Nach der Registrierung eines solche Falles bzw. einer Anzeige wird eine Begutachtung (***social inquiry is conducted by public agencies)*** durch öffentliche Stellen durchgeführt, entweder durch Kinderschutzorganisationen der zuständigen Gemeinden, im Falle von schweren Straftaten gegen Kinder der EKKA (National Centre for Social Solidarity), oder aber durch private Organisationen, die auf Kinderschutz spezialisiert sind (wie z.B.: ARSIS oder SotC).

Die Ergebnisse werden schriftlich an die Staatsanwaltschaft für minderjährige Opfer übermittelt. Diese umfassen sowohl Vorschläge zur Behandlung des Kindes (z. B. Entfernung aus dem familiären Umfeld, Betreuung des Kindes und der Eltern durch monatliche Treffen usw.) als auch Kommentare zum Tathergang der gemeldeten Straftat. Wenn es empirische Beweise dafür gibt, wird der staatliche Mechanismus der Strafverfolgung aktiviert. Während dieses Verfahrens bleibt die Rolle der an der Untersuchung beteiligten SozialarbeiterInnen aufrecht, sowohl im Sinne der psychologischen Unterstützung des minderjährigen Opfers als auch der Zeugenaussage zum Zeitpunkt des Anhörungsverfahrens.

Obwohl NGOs gesetzlich nicht unmittelbar in die Untersuchungen von minderjährigen Opfern involviert bzw. damit beauftragt sind, werden die individuellen Begutachtungen auch teilweise von diesen durchgeführt. Die individuellen Begutachtungen umfassen normalerweise ein zweistufiges Verfahren, das die besonderen Merkmale und Bedürfnisse des Kindes berücksichtigt, sowohl auf psychologischer als auch auf pädagogischer Ebene. Während dieses Verfahrens berücksichtigt die Person, die die Begutachtung durchführt, die Schwere und die Bedingungen der begangenen Straftat unter stetiger Berücksichtigung des Wunsches des Opfers. Dabei steht stets das Wohl des Kindes und die Vermeidung sekundärer Viktimisierung im Mittelpunkt. Das Fehlen einer einheitlichen Kinderschutzpolitik macht es jedoch schwierig die Praktiken der NGOs einzeln zu bewerten.[15]

[15] E-PROTECT Bericht D3.12 “Study on the individual assessment methodologies of child victims of crime in Greece”, EN, pp.18-26.



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## 3.4 Italien

Nach italienischem Gesetz sind Kinder a priori besonders schutzbedürftig und daher müssen bestimmte Schutzmaßnahmen ergriffen werden. Das italienische Strafgesetzbuch legt fest, dass bei bestimmten Straftaten (alle jene die gegen die „Person" gerichtet sind, wie bspw. Missbrauch, Misshandlung, Sklaverei, Kinderprostitution und Pornographie, sexueller Missbrauch oder Menschenhandel) die gegen Minderjährige oder innerhalb der Kernfamilie begangen werden (im Falle, dass der/die Minderjährig/e Zeuge einer solchen Gewalttat geworden ist) die Staatsanwaltschaft verpflichtet ist das Jugendgericht zu informieren. Nur unter besonderen Umständen, bspw., wenn einer der Elternteile mutmaßliche/r TäterIn ist oder verdächtig wird und diese nicht in der Lage sind sich um das Kind zu kümmern, wird vor dem Jugendgericht ein Zivilverfahren eingeleitet.[16]

Das italienische Gesetz sieht jedoch keine besonderen Bestimmungen und Regeln für das individuelle Begutachtungsverfahren vor. Dennoch ist jedes Subjekt, welches mit dem minderjährigen Opfer in Kontakt tritt und sich der Art der Straftat bewusst ist, verpflichtet ein solches Begutachtungsverfahren durchzuführen, um das Opfer adäquat zu unterstützen und seine Schutzbedürfnisse zu befriedigen. Die ***individuellen Begutachtungen*** finden daher in zwei Phasen statt: ***zu Beginn des Verfahrens*** in der vorgerichtlichen Phase sowie ***während des Verfahrens***, wenn die Justizbehörden dies verlangen.

Das Verhältnis dieser Maßnahmen besteht daher darin schutzbedürftige Opfer adäquat zu schützen und das Risiko überflüssiger emotionaler und psychischer Belastungen, die u.a. als Folge wiederholter Interviews und Einvernahmen auftreten können, zu verringern. So wurde die Opferschutzrichtlinie oder zumindest ihre Grundsätze hinsichtlich der Begutachtung von Kindern und anderen besonders schutzbedürftigen Opfern und ihrer Schutzmaßnahmen vom italienischen Gesetzgeber umgesetzt.[17]

## 3.5 Rumänien

Gemäß den nationalen Rahmenbedingungen erfolgt eine individuelle Begutachtung der Opfer zur Feststellung besonderer Schutzbedürfnisse in Rumänien umgehend, d.h. sobald die örtlichen

[16] Das passiert, wenn Eltern oder Erziehungsberechtigte nicht in der Lage sind ihrer elterlichen Verantwortung und Fürsorge nachzukommen.
[17] E-PROTECT Bericht D3.11 "Study on the individual assessment methodologies of child victims of crime in Italy", EN, pp.13-22.



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Kinderschutzbehörden Informationen hinsichtlich eines Missbrauchsfalls oder im Falle häuslicher Gewalt erhalten. Laut diesen gesetzlichen Bestimmungen sollen die individuelle Begutachtung von Sozialarbeitern durchgeführt werden. Nach der Registrierung eines Falles und dem Abschluss der Begutachtung wird eine detaillierte, umfassende und multidimensionale Einschätzung der Situation des Kindes, das Opfer von Gewalt oder Missbrauch geworden ist, durchgeführt.

Gemäß den nationalen Rechtsvorschriften kann eine ***detaillierte, umfassende und multidimensionale individuelle Begutachtung*** mehrere Gutachten umfassen, wie zum Beispiel eine: ***(a) medizinische Begutachtung***; ***(b) psychologische Begutachtung; (c) soziale Begutachtung; (d) rechtliche Begutachtung; und (e) eine Risikobewertung.***

Die *medizinische Untersuchung* erfolgt auf Antrag einer Ärztin/eines Arztes oder eines anderen Mitglieds des Interventionsnetzwerks in Übereinstimmung mit der Gesetzgebung. Um eine Beziehung der möglichen Kausalität zwischen der gemeldeten Situation und den beobachteten medizinischen Anzeichen herzustellen, werden medizinische und rechtliche Zertifikate benötigt. Die *soziale Begutachtung* wird mit dem Ziel durchgeführt, insbesondere die Qualität des Umfeldes des Kindes (Wohnung, Nahrung, Kleidung, Hygiene, körperliche und geistige Sicherheit usw.) zu analysieren. Die *rechtliche Beurteilung* betrifft die Ermittlung relevanter rechtlicher Fragen im Zusammenhang mit dem Fall und zielt darauf ab, die Rechte und Pflichten des Kindes und die Modalitäten für die Ausübung dieser Rechte zu ermitteln.

Sobald diese umfassende Begutachtung der Gesamtsituation abgeschlossen ist, stellt das multidisziplinäre Team eine klare Diagnose, sowohl hinsichtlich der Form der Gewaltausübung gegen das minderjährige Opfer (bei häuslicher Gewalt), als auch hinsichtlich der Bedürfnisse des Kindes und der Prioritäten für die Intervention, wenn sich eine solche als notwendig erweist. Alle Informationen werden vom Fallmanager (*case manager*)[18] in einem ausführlichen Gutachten dargelegt, das innerhalb von 30 Tagen nach Registrierung des Falles an die zuständige Behörde übermittelt werden muss.[19]

[18] Hierbei handelt es sich um die Person die für einen bestimmten Fall verantwortlich ist.
[19] E-PROTECT Bericht D3.10 “Study on the individual assessment methodologies of child victims of crime in Romania”, EN, pp.10-14.


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# 4. Opferschutz für minderjährige Personen in fünf EU-Mitgliedstaaten

In diesem Kapitel werden die verschiedenen Opferschutzstrukturen für minderjährige Opfer von Verbrechen in fünf EU-Mitgliedstaaten untersucht: Deutschland, Spanien, Portugal, Vereinigtes Königreich (Fokus: England und Wales) und Finnland, entlang folgender Dimensionen:[20]

- Statistischer Überblick der Verteilung minderjähriger Opfer in den jeweiligen Ländern.
- Institutionelle Praktiken: Status von minderjährigen Opfern, einschließlich einer kurzen Analyse des rechtlichen Hintergrundes, Schutz ihrer Rechte, und allgemeiner Opferschutz.
- Spezielle Einrichtungen des Kinderopferschutzes und respektive Maßnahmen.

## 4.1. Deutschland

### 4.1.1 Überblick minderjähriger Opfer von Straftaten in Deutschland

Im Jahr 2015 waren laut der deutschen Kriminalstatistik 13.760 Kinder Opfer sexueller Gewalt geworden.[21] Bei Körperverletzung, Raub, Freiheitsdelikten und Verstößen gegen die sexuelle Selbstbestimmung, sind Kinder und Jugendliche eine überproportional vertretene Opfergruppe. Umgekehrt stellen sie auch die statistisch am stärksten chronisch belasteten Altersgruppen dar (vgl. PKS 2015: 30).[22] Die deutsche gemeinnützige Organisation für Kinderschutz: *aktionkinderschutz* schätzt darüber hinaus eine sehr hohe Dunkelziffer von Kindesmisshandlungen in Deutschland. Dies deutet jedoch nur auf das erhebliche Problem der Nichtmeldung von Missbrauchsfällen und Straftaten, als auch auf die Herausforderung der Identifizierung solcher Fälle hin und kann als wichtiges Indiz für die Verbesserung des Schutzes von Kindern verstanden werden.

Offensichtlich handelt es sich bei diesen nicht gemeldeten Straftaten nicht etwa um eine deutsche Besonderheit, sondern um ein allgemeines Problem mit dem sowohl staatliche als auch nichtstaatliche Behörden auf nationaler und internationaler Ebene konfrontiert sind.

[20] Diese werden manchmal detaillierter und manchmal weniger detailliert behandelt, je nach Verfügbarkeit zugänglicher Informationen und Materialien in den zu untersuchenden MS.
[21] Siehe: http://www.aktionkinderschutz.de/statistiken/; http://www.aktionkinderschutz.de/WP/wp-content/uploads/2016/12/pks2015ImkBericht.pdf (letzter Abruf: 21. März 2018).
[22] Bei der PKS handelt es sich um die deutsche polizeiliche Kriminalstatistik (*2015*).



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Zwischen 2009 und 2012 haben die gemeldeten Fälle von sexuellen Übergriffen bei Kindern **(§§ 176, 176a, 176b dStGB)**[23] kontinuierlich zugenommen und sind seit 2013 leicht rückläufig (-2,7% auf 11.808 Fälle). Jedoch stellen sexuelle Übergriffe im Allgemeinen einen Straftatbestand dar, der als ein Gebiet mit hohen Dunkelziffern bekannt ist. Hierbei spielen mehrere Faktoren eine Rolle, wie bspw. erhöhte Sensibilität, Änderung pädagogischer Methoden und Institutionen, „neue" Straftatbestände, die im Strafgesetzbuch aufgenommen worden sind, die allesamt die Melderaten beeinflussen.

Daher müssen die durch die Kriminalstatistik erhobenen Zahlen mit Vorbehalt betrachtet werden, da sie zwangsläufig nur eine begrenzte Signifikanz gegenüber dem tatsächlichen Ausmaß von Kindesmissbrauch und sexueller Übergriffe dieser aufweisen.

Eine weitere Herausforderung in diesem Bereich stellt das häufige Nahverhältnis des minderjährigen Opfers zum Täter dar. Infolgedessen haben minderjährige Opfer weniger Möglichkeiten auf Misshandlung aufmerksam zu machen oder vor Misshandlungen zu flüchten.

### 4.1.2 Schutz von minderjährigen Opfern von Straftaten in Deutschland

Seit den 1970er Jahren hat Deutschland einen gut funktionierenden Opferschutz etabliert und kontinuierlich verbessert. Es ist eines der wenigen Länder mit einer bundesweiten Opferschutzeinrichtung (*Weisser Ring*), die umfassende Koordinierungsarbeit auf nationaler Ebene betreibt. Trotz der starken Opferschutzstrukturen, die bereits existieren, ist der allgemeine und bundesweite Opferschutz oft weniger entwickelt als die spezialisierten Opferschutzangebote in den Bundesländern (siehe EPRS 2017: 65).

#### *Rechtlicher Hintergrund*

In den letzten Jahren wurden einige Gesetze zur Stärkung des Kinderschutzes verabschiedet, insbesondere das 2012 in Kraft getretene *Bundeskinderschutzgesetz* (BkiSchG)[24], das ein sogenanntes Artikelgesetz darstellt. Dieses kombiniert im Grunde mehrere Gesetze mit verschiedenen Inhalten, also ein Änderungsgesetz, das ein Thema in einer Reihe von verschiedenen Rechtsgebieten ändert. Das Hauptziel besteht darin das körperliche, psychische und geistige Wohlbefinden von Kindern und Jugendlichen zu

[23] Hierbei (StGB) handelt es sich um das deutsche Strafgesetzbuch, siehe: https://dejure.org/gesetze/StGB/176b.html (letzter Abruf: 21. März 2018).
[24] Siehe: http://dip21.bundestag.de/dip21/btd/17/062/1706256.pdf; und: https://www.gesetze-im-internet.de/kkg/KKG.pdf (letzter Abruf: 3. April 2018).


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verbessern und zu schützen. Ein Schwerpunkt liegt besonders auf der Verbesserung der *"frühen Hilfe"*, die in problematischen familiären Situationen ansetzt. Diese beginnt frühestens bei der Beratung werdender Mütter und Väter oder aber in den ersten Lebensjahren des Kindes, um eine kinderfreundliche Erziehung des Kindes zu ermöglichen. Diese Maßnahme konzentriert sich daher im Wesentlichen auf die Kooperation zwischen Fachkräften aus dem Gesundheitssystem und den Jugendämtern. Das Gesetz regelt nun auch auf nationaler Ebene, dass Angehörige des Gesundheitswesens im Falle einer schweren Gefährdung des Kindeswohls das Jugendamt informieren dürfen. Dies war bisher in Deutschland auf nationaler Ebene nicht klar geregelt. Das Gesetz enthält auch andere wichtige Verbesserungen, wie bspw. den Aufbau von Netzwerken für den Kinderschutz auf lokaler Ebene, ebenso die Ausweitung der Qualitätsstandards für Jugendämter und die Verpflichtung für alle im Bereich der Jugendhilfe beschäftigten Personen erweiterte Führungszeugnisse vorzulegen (siehe Bundeskinderschutzgesetz 2012).[25]

Im Jahr 2013 trat ein weiteres Änderungsgesetz in Kraft, das die *Stärkung der Rechte von Opfern sexuellen Missbrauchs* (StORMG)[26] zum Gegenstand hat und sich insbesondere auf den Schutz von Kindern und Jugendlichen und die Vermeidung sekundärer Viktimisierung konzentriert.

Mit dem *3. Opferrechtsreformgesetz*[27] von 2015 ist jedoch die zentrale regulatorische Verbesserung für Opfer von Straftaten im Allgemeinen in Kraft getreten. Ein wesentliches Merkmal ist der Artikel 4 des geänderten Gesetzes, der insbesondere die psychosoziale Unterstützung besonders vulnerabler Opfer im Strafverfahren regelt (*Art. 4 Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren* - PsychPbG). Dieses ist mit 2017 in Kraft getreten.[28]

### *Allgemeiner Opferschutz*

In Deutschland fällt der Opferschutz in der Regel aufgrund des föderalen Systems in die Zuständigkeit der Bundesländer und wird nicht umfassend durch das Bundesgesetz geregelt. Das heißt, es gibt eine Bandbreite

[25] Siehe: http://dip21.bundestag.de/dip21/btd/17/062/1706256.pdf (letzter Abruf: 3. April 2018).
[26] Siehe: http://www.bundesgerichtshof.de/SharedDocs/Downloads/DE/Bibliothek/Gesetzesmaterialien/17_wp/Stormg/bgbl.pdf?__blob=publicationFile (letzter Abruf: 3. April 2018).
[27] Siehe: https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf;jsessionid=E6B66F638270FA2F059EA60081263A5B.2_cid289?__blob=publicationFile&v=3 (letzter Abruf: 3. April 2018).
[28] Für genauere Information siehe Kapitel 5.1 in diesem Bericht.


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verschiedener Dienste und Schutzmaßnahmen, um die Situation von Opfern und insbesondere Minderjähriger Opfer zu verbessern.

Es gibt zwar einige Ausnahmen (wie die oben genannten Gesetze), die die Bemühungen um die Etablierung landesweiter Standards und Dienstleistungen signalisieren. Es existiert zwar in Deutschland bereits ein respektabler Standard des Opferschutzes, da aber die Umsetzung der meisten Regulierungen in die Verantwortung der Bundesländer fällt, ergeben sich auf lokaler Ebene Unterschiede hinsichtlich der Umsetzung der gesetzlichen Vorgaben, die zu zunehmender Fragmentierung führen können.

Deutschland ist jedoch einer der wenigen EU-Mitgliedstaaten, der ein landesweites Netzwerk zur Koordinierung des Opferschutzes und insbesondere des Schutzes von Kinderopfern eingerichtet hat. Es gibt zwei bundesweite Opferschutzeinrichtungen: einerseits den *Weissen Ring,* der im Wesentlichen die bundesweite Anlaufstelle für Opfer darstellt und zudem eine kostenfreie Erstberatungssitzung mit einem frei gewählten Anwalt und eine 24 Stunden Hotline[29] zur Verfügung stellt. Die zweite bundesweite Organisation ist der *„Arbeitskreis der Opferhilfe in Deutschland e.V.“*, die eine Dachorganisation verschiedener Institutionen in diesem Bereich darstellt.

Darüber hinaus gibt es in den 16 Bundesländern eine Vielzahl von lokal spezialisierten Opferschutzzentren. Einige sind auf bestimmte Opfergruppen ausgerichtet, wie z.B.: Schutzzentren für Kinder, Frauen und Mädchen, aber auch für Jungen und Männer und einige andere sind auf Straftaten wie beispielsweise Hassverbrechen, Sexualverbrechen oder häusliche Gewalt spezialisiert.

### *Opferschutz für Minderjährige*

Wie bereits angedeutet scheint der Opferschutz in Deutschland auf erstem Blick recht fragmentiert zu sein. Es gibt jedoch auch einen bundesweiten Dachverband für Kinderschutz, die „Kinderschutz-Zentren“[30], der das Hauptziel verfolgt, eine nationale Struktur des Kinderschutzes in Deutschland aufzubauen und zu erhalten.

[29] Unter folgender europaweit geltender Telefonnummer für Opferhilfe *116006* können Personen kostenfrei und rund um die Uhr Unterstützung und Information erhalten, siehe: http://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (letzter Abruf: 22. März 2018).
[30] Siehe: http://www.kinderschutz-zentren.org/index.php (letzter Abruf: 3. April 2018).



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Der Verein Kinderschutz-Zentren besteht seit 1986 und konzentriert seine Bemühungen darauf den Opferschutz für Minderjährige auf nationaler Ebene zu harmonisieren. Er setzt sich aus 28 Kinderschutzzentren aus verschiedenen Regionen Deutschlands zusammen.[31] Er ist eine bundesweite Arbeitsgemeinschaft und gemeinnützige Organisation, deren Ziel es ist, den Kinderschutz auf umfassender Ebene durch die Kombination von Praxiswissen und Erfahrungen zu stützen. In erster Linie werden regelmäßig professionelle Qualitätsstandards entwickelt, darüber hinaus bietet dieser etwaige Aus- und Weiterbildungsmöglichkeiten für Fachkräfte an, produziert Fachpublikationen und Kongresse, betreibt Presse- und Öffentlichkeitsarbeit und bietet auch Politikberatung an.[32] Die enge Verzahnung der täglichen Praxis der Kinderschutz-Zentren auf lokaler Ebene und die überregionalen Aufgaben des Netzwerks bilden die Grundlage für die Erzeugung von qualitativ hochwertigem Wissen, das den Fachkräften angeboten werden soll (ebd.). Das heißt, Fachleute arbeiten direkt mit Kindern zusammen, aber auch mit ForscherInnen, PolitikerInnen, JournalistInnen und VertreterInnen der Fachpolitik. Ihre Selbstverpflichtung ist immer darauf ausgerichtet, die neuesten Forschungen sowie den aktuellen politischen als auch wissenschaftlichen Stand des Kinderschutzes zu berücksichtigen, um eine möglichst hohe Qualität auf beiden, lokaler und nationaler, organisatorischer Ebene zu gewährleisten. Rechtlich stützen sie sich auf das zuvor genannte bundesweit geltende „Kinderschutzgesetz“, verschiedene Landesgesetze sowie auf internationale Abkommen, wie das der UN-Menschenrechtscharta, der UN-Kinderrechtskonvention, der UN-Übereinkommen zur Beseitigung jeder Form von Diskriminierung von Frauen und der UN-Konvention über die Rechte von Menschen mit Behinderungen.[33]

Für jedes der 28 Kinderschutzzentren und für diejenigen, die eines werden wollen, gelten die folgenden sechs Hauptprinzipien: Beratung und Therapie für Eltern, Betreuer, Kinder und Jugendliche; akute Krisen- und Konfliktintervention; Berufsberatung nach § 8a SGB VIII, insbesondere zur *Gefahreneinschätzung*[34]; Mentoring und Supervision für andere professionelle Institutionen; Bildungs- und Ausbildungsmöglichkeiten in der jeweiligen Region; und Informationsveranstaltungen und Workshops.

[31] Siehe: http://www.kinderschutz-zentren.org/der-verein (letzter Abruf: 3. April 2018).
[32] Siehe: http://www.kinderschutz-zentren.org/selbstverstaendnis (letzter Abruf: 4. April 2018).
[33] Der gesamte Bericht über die mehrstufigen Qualitätsstandards (d.h. rechtliche, soziale, professionelle etc.) als auch deren breite Palette von Hilfsangeboten, die einerseits für Fachleute und andererseits für Schutzsuchende (Kinder und ihre Beziehungsberechtigten) angeboten werden, kann hier zugegriffen werden: http://www.kinderschutz-zentren.org/qualitaetsstandards (letzter Abruf: 4. April 2018).
[34] Siehe §8a SGB VIII, http://www.sozialgesetzbuch-sgb.de/sgbviii/8a.html (letzter Abruf: 4. April 2018).


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## 4.2. Portugal

### 4.2.1. Überblick minderjähriger Opfer von Straftaten in Portugal

Die meisten polizeilichen Festnahmen infolge von sexuellen Missbrauchs von Kindern in Portugal haben sich im Jahr 2017 ereignet, dicht gefolgt von Vergewaltigung und Kinderpornografie. 98 Männer und 3 Frauen wurden wegen sexuellen Missbrauchs festgenommen; 53 Männer wurden wegen Vergewaltigung festgenommen (0 Frauen); und 34 Männer und 3 Frauen wurden festgenommen, weil sie sich der Kinderpornographie straffällig gemacht haben. In Bezug auf sexuellen Missbrauchs von Kindern, Jugendlichen und minderjährigen Abhängigen liegt die vorherrschende Altersgruppe der Opfer bei den 8-13-Jährigen (68,5%), gefolgt von den 7-4-Jährigen (19,1%) und 0-3-Jährigen (6,7%). Wie schon im Vorjahr dominierte der familiäre Kontext als das auffälligste soziale Umfeld, indem Straftaten begangen werden, also ein Nahverhältnis zwischen Täter und Opfer besteht (44,5% der Fälle). In Bezug auf andere Straftaten waren 3.912 Kinder unter 16 Jahren Opfer häuslicher Gewalt geworden. Darüber hinaus sind in 34% der Fälle von häuslicher Gewalt Minderjährige als Zeugen aufgetreten. 45 Minderjährige wurden als (mutmaßliche) Opfer von Menschenhandel identifiziert; die zuständigen Behörden stuften 24 als offene Fälle (Status: bestehendes Ermittlungsverfahren) und 4 als unbestätigt ein. Die Grenzbehörden arbeiten mit den Aufnahmezentren stetig zusammen und garantieren eine ständige Überwachung und Unterstützung der Opfer von Menschenhandel in allen Situationen, in denen sie geschützt werden müssen sowie die Gewährleistung von Folgemaßnahmen in verschiedenen Verfahrensschritten.[35]

APAV (Portuguese Association for Victim Support) ist die Portugiesische Vereinigung für Opferschutz, die eine der wichtigsten Nichtregierungsorganisation in diesem Bereich darstellt und soziale, rechtliche und psychologische Unterstützung anbietet. Ihr jüngster Bericht zeigt, dass ihre dezentralisierten Büros im Jahr 2017, 810 minderjährige Opfer unterstützt hat. 62,6% davon sind weibliche Opfer gewesen und das Durchschnittsalter hat 11 Jahre betragen. Von den insgesamt 488 Sexualstrafopfern wurden 54,9% Kinder gezählt und 32,6% Erwachsene.[36]

### 4.2.2. Schutz von minderjährigen Opfern von Straftaten in Portugal

#### *Rechtlicher Hintergrund*

Mit dem Gesetz Nr. 130/2015 vom 4. September wurde die portugiesische Strafprozessordnung novelliert,

[35] Relatório de Segurança Interna 2017. Sistema de Segurança Interna. Gabinete do Secretário-Geral.
[36] Portuguese Association for Victim Support (APAV). Estatísticas APAV. Relatório Anual 2017.



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die die Verabschiedung des Opferschutzgesetzes beinhaltet und zugleich die Richtlinie 2012/29/EU des Europäischen Parlaments und des Rates vom Oktober 2012 umsetzt. Die RL legt die Rechte, Unterstützung und Schutz von Opfern von Straftaten fest und ersetzt den früheren Rahmenbeschluss 2001/220/JI des Europäischen Rates vom 15. Dezember 2001. Die Artikel 17, 20 und 21 der portugiesischen Strafprozessordnung setzen den Text der Artikel 22-24 der EU-Richtlinie wörtlich um, gehen jedoch nicht über den ursprünglichen Inhalt der Direktive hinaus. In Artikel 21 Absatz 1 der Opferschutzrichtlinie heißt es: "Die Mitgliedstaaten stellen sicher, dass die zuständigen Behörden während des Strafverfahrens geeignete Maßnahmen zum Schutz der Privatsphäre — einschließlich der bei der individuellen Begutachtung des Opfers gemäß Artikel 22 berücksichtigten persönlichen Merkmale — und des Rechts der Opfer und ihrer Familienangehörigen am eigenen Bild treffen können". (siehe Richtlinie 2012/29/EU). Das portugiesische Gesetz hat jedoch das Wort „frühzeitig" des Artikels 21 Absatz 1 der Direktive ausgelassen und lässt damit offen, mit welchen Mitteln oder Verfahren die individuelle Begutachtung wann durchgeführt werden soll. Das Gesetz Nr. 130/2015 regelt also nicht welche Hauptbehörde für die Durchführung der individuellen Begutachtung verantwortlich ist; obwohl Artikel 21 (2-b) vorsieht, dass „The inquiry of victims of sexual violence, violence based on gender or violence in intimate relationships, unless it is done by a public prosecutor or by a judge, must be performed by a person of the same sex if the victim so desires and provided that the procedure is not impaired."[37]

In der Praxis greifen die Staatsanwaltschaft oder die zuständigen RichterInnen in der Regel auf die Unterstützung von ExpertInnen verschiedener Einrichtungen zurück, um die in Artikel 23 der Richtlinie genannten Maßnahmen umzusetzen. In jedem Fall wird auch immer die Meinung der jeweiligen „Bezugsperson" des Kindes berücksichtigt. Bei jener Bezugsperson handelt es sich um eine speziell geschulte Person, die für die Verwaltung des Opferschutzes eines minderjährigen Opfers zuständig ist. Diese Person kann ein/e Mitarbeiter/in der lokalen Opferschutzkommission für Kinder und Jugendliche sein, oder aber auch von anderen Einrichtungen, die für den Schutz von Kindern und Jugendlichen zuständig sind, wie bspw. von örtlichen Gesundheitszentren oder Krankenhäusern. Dies bedeutet, dass kein einzelnes Team oder eine bestimmte Einheit die Verantwortung für die Durchführung der individuellen Begutachtung

[37] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.



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innehat. Im nationalen Rechtsrahmen sind die Anhörung und die Beteiligung des minderjährigen Opfers als auch der Schutz seiner Rechte in den Artikeln 4, (j) und 84 festgelegt.[38]

Zudem gibt es kein verbindliches Protokoll oder offizielle Leitlinie, die von den beteiligten Behörden und AkteurInnen befolgt werden müsste. Jedoch hat es bereits einige Initiativen zur Verbesserung der Umsetzung von bestimmten Maßnahmen wie bspw. adäquate Interviewführung oder Anpassung von Gerichtssälen (Kinderangemessenheit, Vermeidung der Begegnung zwischen Täter und Opfer etc.) gegeben.[39]

Darüber hinaus hat das portugiesische Gesetz bereits zahlreiche Aspekte der Richtlinie abgedeckt, insbesondere aufgrund seiner internationalen Verpflichtungen im Rahmen der Kinderrechtskonvention und einiger anderer Übereinkommen des Europäischen Rates.

### *Allgemeiner Opferschutz*

APAV hat im Rahmen eines von der Europäischen Kommission kofinanzierten Projekts dazu beigetragen ein Instrument für die Begutachtung der speziellen Bedürfnisse zum Schutze von Opfern von Straftaten, sowie einen Leitfaden für die individuelle Evaluierung von Opfern (*Guide for individual evaluation of victims – EVVI*)[40] zu erstellen. In diesem Handbuch[41] heißt es, dass in Spanien und Portugal zum Zeitpunkt der Erstellung des Handbuchs keine individuellen Begutachtungen durchgeführt wurden. APAV teilte dieses Dokument mit der Generaldirektion für Justizpolitik des Justizministeriums, der Generalstaatsanwaltschaft, der Justizpolizei, der Öffentlichen Sicherheitspolizei, der Republikanischen Nationalgarde und dem Dienst für Immigration und Grenzen von Portugal und erhielt darauf zusagende Reaktionen.[42]

[38] Geändert durch Gesetz Nr. 147/99, vom 1. September, inkl. Änderungen, die durch das Gesetz Nr. 31/2003 vom 22. August und das Gesetz Nr. 142/2015 vom 8. September eingeführt wurden.
[39] Manche dieser Initiativen werden weiter unten noch im Detail besprochen.
[40] Der Leitfaden ist hier abrufbar: https://victimsupport.eu/news/a-guide-for-individual-evaluation-of-victims-evvi-now-available/ (Letzter Abruf: 23. April 2018).
[41] Victim Support Europe (2015) EVVI (Evaluation of Victims) - Guide for individual evaluation of victims. Kofinanziert durch das *Criminal Justice Programme* der Europäischen Union.
[42] APAV. Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001.


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EVVI hat festgestellt:

> "In 2017, the revision of the Criminal Procedure Code of 2007 (Law no. 48/2007 of 29-08) changed the regime of statements for future memory, following international obligations assumed by the Portuguese State. With respect to minor victims, the legal system will have a duty for the State to collect **statements for future memory** and to ensure the conditions for their realisation pursuant to article 271, paragraph 4. In particular, the statements of crimes against the freedom and sexual self-determination of children will have to be carried out in a place and in such a way as to guarantee an informal and reserved environment, and attended and accompanied by a specially qualified technician."[43] Obwohl es jetzt einen umfassenden Rechtsrahmen gibt, argumentiert bspw. Sottomayor: "The rights of children are dispersed in different laws and codes, which makes it difficult to systematise and consult them. A compilation of the rights of child victims of violent crimes would be more useful in a single legal act to facilitate the process of interpretation and enforcement."[44]

Artikel 18 des Gesetzes Nr. 130/2015 vom 4. September sieht die Etablierung von ***speziellen Räumlichkeiten*** für Opfereinvernahmen in jeder Polizeieinheit und Sicherheitseinheit vor. Artikel 1 desselben Gesetzes spezifiziert: "each security force and service shall constitute its network of service offices, equipped with appropriate measures, such as privacy, of victims."[45] Im Jahr 2017 hat das Innenministerium zur Lage der inneren Sicherheit festgehalten:

> "The care of victims of domestic violence in security forces' facilities tends to take place in their own spaces in order to guarantee privacy and comfort. The new squads have rooms for serving the victim. Adaptations were made in the older facilities. 447 stations, squads, units and sub-units of the security forces have meeting rooms. In the remaining units, the gathering of information takes place in rooms that meet conditions of comfort and privacy."[46]

Das nationale Netzwerk zur Unterstützung von Opfern häuslicher Gewalt umfasst Kooperationspartner von öffentlichen und privaten Organisationen und bietet eine Reihe von Strukturen und Maßnahmen an, wie bspw. Unterkünfte, Pflegestrukturen, Notunterkünfte, spezifische Maßnahmen von öffentlichen Verwaltungsbehörden, oder den nationalen Freien Telefondienst, der Auskunft über existierende Maßnahmen gibt oder etwa auch gemeinschaftsbasierte Hilfsgruppen zur Förderung der Selbsthilfe und der Ermächtigung der Opfer im Hinblick auf ihre Autonomie.

Ein neues Gesetzesdekret aus dem Jahr 2018 präzisiert und führt eine Reihe von Regeln und Verfahren zur Verbesserung und Effektivität des Funktionierens der obigen Maßnahmen ein. Diese Verfahren sollen eine systematische Evaluierung der angebotenen Leistungen ermöglichen, als auch Möglichkeiten für Verbesserung eröffnen. First-Response-Strukturen, Notunterkünfte und andere Unterkünfte werden

[43] *Ebd.*
[44] *Ebd.*
[45] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.
[46] Relatório de Segurança Interna 2017. Sistema de Segurança Interna. Gabinete do Secretário-Geral, Page 38.



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hauptsächlich von Nichtregierungsorganisationen verwaltet, die jedoch Partnerschaften mit öffentlichen Behörden haben, die ebenso für die Prävention von häuslicher Gewalt sowie für den Schutz und die Unterstützung von Opfern zuständig sind. Artikel 4 sieht vor, dass die für die Umsetzung des Gesetzes zuständigen Organe dies immer unter Berücksichtigung des Opferschutzsystems für Minderjährige und des Prinzips der Förderung ihrer Rechte tun müssen. Alle vom Gesetz erfassten Strukturen gelten für alle Opfer häuslicher Gewalt, einschließlich minderjähriger Opfer als auch für Kinder mit besonderen Bedürfnissen und deren Betreuer.[47]

### *Opferschutz für Minderjährige*

Die vor kurzem unbenannte *Nationale Kommission zur Förderung der Rechte und des Schutzes von Kindern und Jugendlichen (National Commission for the Promotion of Rights and the Protection of Children and Young People)* ist die wichtigste öffentliche Einrichtung in Portugal, die sich mit folgenden Themenbereichen beschäftigt:

> "(…) the planning of State intervention and the coordination, monitoring and evaluation of the initiatives taken by public entities and the community to promote the rights and protect children and young people, namely through the 309 Local Commissions of Protection of Children and Young People, distributed throughout the country."[48]

Diese lokalen Kommissionen weisen zwei unterschiedliche Arbeitsmodalitäten auf: die sogenannte „eingeschränkte" („restricted") und „erweiterte" („extended") Form. Die erste beschreibt eine technische, sogenannte „spezialisierte" Gruppe, die sich mit dem Schutz des einzelnen Opfers beschäftigt, also auf einer Einzelfallbasis basiert. Die zweite Arbeitsgruppe fungiert als Plenum und verfolgt das Ziel Kinder proaktiv als Gruppe in einer Gemeinschaft zu schützen.

Die zweite Gruppe besteht aus multidisziplinären VertreterInnen der Gemeinden, einem Vertreter oder einer Vertreterin des Instituts für soziale Sicherheit, VertreterInnen des Ministeriums für Bildung und Gesundheit, VertreterInnen von Nichtregierungsorganisationen, Elternvereinigungen und VertreterInnen der Polizei, die zusammen für die Durchführung von Schutzmaßnahmen für Kinder und Jugendliche zuständig sind.

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[47] Decreto Regulamentar n.º 2/2018 Regula as condições de organização e funcionamento das estruturas de atendimento, das respostas de acolhimento de emergência e das casas de abrigo que integram a rede nacional de apoio às vítimas de violência doméstica. Diário da República n.º 17/2018, Série I de 2018-01-24

[48] Weitere Informationen sind auf der Website der Kommission direkt abrufbar: https://www.cnpdpcj.gov.pt/relacoes-internacionais/international-relations.aspx (letzter Abruf: 9. April 2018).



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Die erste Arbeitsgruppe zeichnet sich dadurch aus, dass die Kommissionen dafür verantwortlich sind in akuten Gefahrensituationen zu intervenieren. Daher führen sie die Diagnose und Anweisungen dieses Prozederes, die damit verbundenen Entscheidungen, sowie die Überwachung und Überprüfung der Schutzmaßnahmen durch. Darüber hinaus sind sie für die Begleitung von Kindern in Gerichtsverfahren zuständig und unterstützen die Staatsanwaltschaft oder die RichterInnen in der Realisierung besonderer Schutzmaßnahmen. Die Kommission verfügt über allgemeine Leitlinien für PraktikerInnen der Sozialarbeit, des Bildungssektors und der Polizei. Es gibt auch eine Leitlinie für die Interventionsarbeit mit missbrauchten Kindern. Diese wurde von der Generaldirektion für Gesundheit erstellt, die zudem einige Protokolle und einen Abschnitt über gute Interviewpraktiken mit Kindern enthält.[49] Diese Handbücher sind zwar vorhanden und es gibt zudem auch Fachschulungen, wie diese jedoch in die Praxis genau umgesetzt werden ist schwer nachvollziehbar.

Das Institut für Kinderschutz *(Instituto de Apoio à Criança)* ist seit 1983 die führende Nichtregierungsorganisation, die sich für den Schutz und die Förderung von Kinderrechten einsetzt. Zu ihren wichtigsten Aktivitäten gehört die rechtliche Unterstützung, sowie die SOS-Kinder-Hotline, die spezialisierte soziale, psychologische und rechtliche Unterstützung als auch angemessene Vermittlung von Kindern in Not, sowie Humanisierung der Betreuung von Kindern (d.h. kinderfreundliche Gesundheitsversorgung etc.) ermöglicht. Im Jahr 2013 leistete das Rechtshilfebüro Unterstützung in 680 Fällen, wobei 284 Fälle mit der Regelung der elterlichen Verantwortung und Obsorge zusammenhingen, gefolgt von Fällen gefährdeter Kinder (117 Fälle) und Klarstellungen der Rechtsvorschriften (75 Anträge).[50]

APAV wurde 2016 über sein CARE-Netzwerk gegründet und bietet spezialisierte Unterstützung für Kinder und Jugendliche bis zum Alter von 23 Jahren an, die Opfer sexuellen Missbrauchs geworden sind. Die Unterstützung erfolgt nach Überweisung durch die Justizpolizei und beinhaltet die Nachbereitung von Gerichtsverfahren, medizinisch-rechtliche Beratung als auch die Speicherung von Erklärungen für die Zukunft (*statements for future memory*), Folgemaßnahmen bei Gerichtsverhandlungen und anderen Verfahrenshandlungen. 446 Kinder wurden in den Jahren 2016-2018 durch dieses Netzwerk unterstützt. Diese spezialisierte Einheit hat 9 festangestellte MitarbeiterInnen, darunter JuristInnen und PsychologInnen,

[49] Das Manual kann hier abgerufen werden: https://www.cnpdpcj.gov.pt/direito-das-criancas/guias-para-profissionais/maus-tratos-em-criancas-e-jovens.aspx (letzter Abruf: 23. April 2018).
[50] Für mehr Information siehe hier: http://www.iacrianca.pt (letzter Abruf: 23. April 2018).


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die dafür verantwortlich sind in Akutsituationen in ganz Portugal zu unterstützen, wenn dies erforderlich ist und an das Netzwerk verwiesen worden ist.[51]

## 4.3. Spanien

### 4.3.1. Überblick minderjähriger Opfer von Straftaten in Spanien

Im Jahr 2016 sind insgesamt 80 Kinder im Alter zwischen 0-13 Jahren Opfer sexueller Gewalt mit Penetration geworden, 20 von ihnen waren männlich und 60 davon waren weiblich; 193 Kinder sind im Alter zwischen 14 und 17 Jahren Opfer sexueller Gewalt mit Penetration geworden, 18 von ihnen waren männlich und 175 waren weiblich; 29 Kinder zwischen 0 und 13 Jahren sind Opfer von Kinderpornographie geworden, 12 davon waren männlich und 17 waren weiblich; und 35 Kinder zwischen 14 und 17 Jahren sind Opfer von Kinderpornografie geworden, 8 davon waren männlich und 27 waren weiblich.

In Bezug auf andere Straftaten gegen sexuelle Freiheit und Selbstbestimmung sind insgesamt 1.932 Kinder zwischen 0 und 13 Jahren Opfer geworden, davon sind 460 männlichen Geschlechts und 1.470 weiblichen Geschlechts gezählt worden; in der Altersgruppe der 14-17-Jährigen hat es insgesamt 1.716 Opfer gegeben, davon 328 männlichen Geschlechts und 1.387 weiblichen Geschlechts.

Demnach sind Mädchen überproportional stark von solchen Gewaltverbrechen betroffen. Die Zahl der Opfer variiert signifikant im Vergleich zum Vorjahr: die Fälle von Kinderpornographie in der Altersgruppe der 0-13-Jährigen weist gegenüber dem Jahr 2015 einen Rückgang von 40,8% auf; in der Altersgruppe der 14-17-Jährigen war der Rückgang mit 54,5% etwas höher als in der jüngeren Alterskohorte. Die signifikanteste Abweichung ist jedoch bei Straftaten gegen sexuelle Freiheit und Selbstbestimmung in der Altersgruppe der 14-17-Jährigen zu verzeichnen, mit einem Anstieg von 50,5% gegenüber dem Jahr 2015.[52]

In Spanien sind in den letzten Jahren eine Reihe von Prävalenzstudien mit unterschiedlichen Methoden durchgeführt worden, deren Ziel es ist, die Dimensionen sexuellen Missbrauchs bei Kindern und Jugendlichen zu ermitteln. Dazu gehören sogenannte retrospektive Studien, in denen Erwachsene gefragt werden, ob sie in ihrer Kindheit sexuellen Missbrauch erlitten haben.

[51] Diário de Notícias. *Rede Care acompanha 446 crianças e jovens vítimas de violência sexual.* 21 de Fevereiro de 2018.

[52] Anuario Estadístico del Ministerio del Interior - 2016. España



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> "The most significant and cited of these investigations is a macro-survey carried out in 1994, in which 2,000 people were asked if they remembered having been abused before the age of 16. The result was that 18.9% of the population had been a victim of sexual abuse, a high prevalence that is distributed as follows by gender: 15.2% of men and 22.5% of women had suffered sexual abuse. (…) The most recent prevalence study to date concludes that 9.5% of the total of their sample, 6.5% of men and 10% of women, had been victims of sexual abuse."[53]

Eine aktuelle Studie vom Nationalen Komitee für UNICEF macht auf die generelle Schwierigkeit, auf genaue Daten im Bereich des Kinderhandels zuzugreifen, aufmerksam. Gemäß den vorgelegten Daten des Innenministeriums zählten im Jahr 2015, 50% zu den Opfern von Menschenhandel wegen sogenannter sexueller Ausbeutung (133 identifizierte Opfer) und die anderen 50% zählten zu den Opfern von Menschenhandel wegen sogenannter Ausbeutung von Arbeitskraft (134). Diese Verteilung zeigt sich in einem anderen Licht in den von der Generalstaatsanwaltschaft veröffentlichten Informationen über die 96 Maßnahmen zur Überwachung der Verbrechen des Menschenhandels: hier werden 978 mutmaßliche Opfer von Menschenhandel wegen sexueller Ausbeutung gezählt, mindestens 92 mutmaßliche Opfer von Arbeitsausbeutung, 22 Fälle von Ausbeutung wegen Bettelns und 3 wegen Zwangsheiratens. Bei Letzterem handelt es sich bei allen 3 Fällen um minderjährige Frauen. Der Bericht argumentiert weiter:

> "These figures are very far from those estimated by the organisations that work directly in the field, which for example calculate that between 40,000 and 50,000 women are victims of trafficking for sexual exploitation in Spain. On the other hand, not all organisations that work with victims of crime systematically collect data, and even less so in the case of girls and boys. In view of the data it can be concluded that in Spain the offence with the most victims is trafficking in human beings for the purpose of sexual exploitation, with women and girls being the main victims."[54]

### 4.3.2. Schutz von minderjährigen Opfern von Straftaten in Spanien

#### *Rechtlicher Hintergrund und Allgemeiner Opferschutz*

In Spanien verabschiedete das Gesetz 4/2015 vom 27. April 2015 das Statut für Opfer von Straftaten.[55] Titel III des Gesetzesentwurfs setzt die Artikel 22 bis 24 der Richtlinie im Detail um. Artikel 19 sieht vor, dass "in the case of underage victims, the Office of the Public Prosecutor will especially ensure compliance with this right of protection, adopting the appropriate measures in their best interest when necessary to prevent or reduce the damages that may arise for them from the development of the process." In dieser Hinsicht

[53] Save the Children (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema, S. 46.
[54] Castaño, M., Pérez, A. (2017) Son niños y niñas, son víctimas. Situación de los menores de edad víctimas de trata en España. Cuadernos para el Debate no 5, UNICEF Comité Español, Huygens Editorial. S. 12.
[55] Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito. Boletín Oficial de lo Estado núm. 101, de 28/04/2015


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muss die Bedeutung der Staatsanwaltschaft hinsichtlich des Schutzes minderjähriger Opfer und die Priorität der Leitprinzipien des Übereinkommens über die Rechte des Kindes *(Convention on the Rights of the Child)* betont werden.

Artikel 23 der spanischen Rechtsvorschriften über die „individuelle Begutachtung der Opfer zur Ermittlung ihrer besonderen Schutzbedürfnisse“ und Artikel 24 über „Zuständigkeits- und Begutachtungsverfahren“ setzen den Wortlaut der Artikel 22-23 der Opferschutzrichtlinie um.

In Titel IV Kapitel I, Artikel 27-29 erläutert das Gesetz die Aufgaben der „Opferschutzzentren“ (***Victims of Crime Support Offices***). Diese Zentren setzen sich aus öffentlichen und unentgeltlichen Dienstleistungen zusammen und sind 1996 vom spanischen Justizministerium eingerichtet worden. Dies wurde zudem durch die Verabschiedung des Königlichen Dekrets Nr. 1109/2015 vom 11. Dezember 2015, und durch das Gesetz 4 / 2015, vom 27. April 2015 des Statuts, geregelt. Diese Ämter sind für die ***individuelle Begutachtung*** der Opfer verantwortlich, indem sie ermitteln, wer besonders schutzbedürftig ist. Sie ergreifen adäquate Schutzmaßnahmen, um eine weitere Viktimisierung zu vermeiden. Nach der individuellen Begutachtung können diese Ämter gemäß den genannten Rechtsvorschriften und nach Aufklärung und der erteilten Zustimmung des Opfers einen Bericht anfertigen und an die zuständigen Behörden übermitteln, damit diese, im Anschluss daran, adäquate Maßnahmen zum Schutze des Opfers einleiten können.

Die Opferschutzorganisationen können die Maßnahmen vorschlagen, die für die Unterstützung und den Schutz des Opfers während der Untersuchungsphase als angemessen erachtet werden, insbesondere im Umgang mit besonders schutzbedürftigen Opfern. Die Hilfe für die Opfer wird in vier Phasen durchgeführt: Aufnahme (Reception-orientation)[56], Information, Intervention und Nachbetreuung. [57, 58]

Schließlich hat der Beirat für die Opferhilfe (*Advisory Council for Assistance to Victims*) gemäß Artikel 10 des Königlichen Dekrets folgende Ziele:

a) “Advise on the functioning of the Victims of Crime Support Offices;

[56] Dies bezeichnet die Erstaufnahme von Opfern, wo auch ihre Bedürfnisse bewertet werden und sie ggf. an Organisationen und Maßnahmen weiterverwiesen werden.
[57] Real Decreto 1109/2015, de 11 de diciembre, por el que se desarrolla la Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito, y se regulan las Oficinas de Asistencia a las Víctimas del Delito. Boletín Oficial de lo Estado núm. 312, de 30 de diciembre de 2015, páginas 123162 a 123181.
[58] Eine Zusammenfassung ist abrufbar auf der Website des Justizministeriums, hier: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-14263 (letzter Abruf: 23. April 2018).


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b) Examine the statistical data;
c) Support technical studies on the actions of the offices and on the coordination network;
d) Compare the different psychological support plans applied by the Offices, in order to propose improvements in assistance to victims;
e) Promote the development of action protocols, and update them with respect to national and international regulations;
f) Advise the Ministry of Justice in the preparation of the annual report on the periodic evaluation of the system of protection to victims of crime;
g) Any other function that, within the scope of its powers, is attributed to it by some legal or regulatory provision."[59]

Dieser Beirat (*Advisory Council*) wurde im Juni 2017 eingerichtet und einer seiner vier vorrangigen Bereiche umfasst den Schutz von minderjährigen Opfern. Dieser sollte ab dem Zeitpunkt der ersten Kontaktaufnahme mit dem Justizsystem greifen.

Eine andere relevante gesetzliche Bestimmung in Spanien stellt das Königliche Gesetzesdekret 3/2013 vom 22. Februar 2013 dar. Dieses modifiziert die **kostenlose Rechtshilfe** und inkludiert alle Kinder, die Opfer von Missbrauchs- oder Misshandlungssituationen geworden sind. Es gewährt - unabhängig eigener Ressourcen - das Recht auf sofortige unentgeltliche Rechtsberatung. Diese Rechtsnorm räumt dem Gericht (RichterIn) die Befugnis ein, kostenfreie fachspezifische Hilfe zu gewähren, die - entsprechend den Umständen des konkreten Falles und den Interessen des Kindes am besten folgeleistend - sofort erbracht werden kann.[60]

Artikel 433 des Strafprozessrechts sieht folgendes vor:

> "In the case of child witnesses or persons with judicially modified capacity, the examining judge may decide, when, in view of the lack of maturity of the victim, it is necessary to avoid causing serious harm to him/her, that a **declaration** may be taken by the intervention of experts and with the intervention of the Public Prosecutor's Office. To this end, it may also be agreed that the questions be transferred directly to the victim by the experts, or even exclude or limit the presence of the parties in the place of the victim's exploration. In these cases, the judge will arrange what is necessary to facilitate the parties the possibility of transferring questions or requesting clarifications from the victim, whenever this is possible. The judge will order the **recording of the statement through audio-visual means**."

[59] Artikel 10, *Ebd.*
[60] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014.


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Artikel 449 desselben Gesetzes regelt zudem: “The declaration of the child witnesses and of the persons with judicially modified capacity can be carried out **avoiding the visual confrontation** of the same with the accused, using for it any technical means that make possible the practice of this test.”[61]

Zusätzlich zum nationalen rechtlichen Rahmen wurden in jeder autonomen Gemeinschaft spezifische Rechtsvorschriften, Aktionspläne, Rahmenprogramme oder sogar spezifische Protokolle entwickelt, um dem Problem von Kindesmisshandlung und Gewalt gegen Frauen und Kindern entgegenzuwirken.[62]

### *Opferschutz für Minderjährige*

Die öffentliche Reaktion auf Situationen der Vernachlässigung oder des Missbrauchs von Kindern in Spanien verteilt sich zwischen den sozialen Diensten auf kommunaler Ebene und den spezialisierten Opferschutzzentren für Kinder und Jugendliche. Diese beiden Sektoren sind in allen Regionen Spaniens verfügbar. Die Zuständigkeiten zwischen den beiden Ebenen sind entsprechend der Kategorisierung und Schwere des Missbrauchsfalls verteilt. Alle regionalen Behörden in Spanien verfügen über zentrale und sogenannte territoriale Spezialdienste für den Schutz von Kindern (Schutzmaßnahmen sind im Organgesetz 1/1996 vom 15. Januar (*Organic Law*) über den Rechtsschutz für Minderjährige vorgesehen).[63] Das Ministerium für Gesundheit, Sozialdienste und Gleichstellung (Ministry of Health, Social Services and Equality) veröffentlichte 2014 ein Protokoll zur Intervention bei Kindesmisshandlung in der Familie (*Basic protocol of intervention against child maltreatment in the family*). Dieses Protokoll stellt eine grundlegende, umfassende und nützliche Informationsquelle für alle im Kinderschutz beteiligten Akteure dar: es reicht von Maßnahmen der Prävention, über Früherkennung bis hin zu Maßnahmen zur Unterstützung bei gerichtlichen Verfahren.[64] Das Dokument enthält weiters eine Zusammenfassung des internationalen und nationalen Rechtsrahmens, Empfehlungen zur Verbesserung (einschließlich der Einrichtung zusätzlicher Strukturen) und Leitlinien für bewährte Verfahren im Bereich des Kinderschutzes. Ebenso gibt es eine

[61] Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal. Boletín Oficial de lo Estado n úm. 260, de 17/09/1882.
[62] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014.
[63] Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil. Boletín Oficial de lo Estado núm. 15, de 17 de enero de 1996
[64] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014


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Vielzahl von zusätzlichen Handbüchern für Verfahren zum Schutz von Kindern in den verschiedenen Regionen Spaniens, die auf verschiedene Serviceleistungen und Schutzmaßnahmen abzielen.[65]

Die Einheiten für Kinder der Nationalpolizei (*Unidades de Menores del Cuerpo Nacional de Policía*) sind in die Provinzbrigaden der Kriminalpolizei integriert. Diese Einheiten haben im Wesentlichen zwei Hauptfunktionen zu erfüllen: einerseits den Schutz von Kindern, die Opfer jeglicher Art von Misshandlung geworden sind, sei es körperlicher (einschließlich sexueller Missbrauch) oder psychischer Art, zu gewähren, sowie den Schutz jugendlicher Straftäter (Anweisung Nr. 11/2007 vom 12. September des Staatssekretärs für Sicherheit, der das "Protokoll für Polizeiaktionen mit Minderjährigen" (*Protocol of Police Action with Minors*)[66] genehmigt hat). Diese Einheiten arbeiten zudem eng mit öffentlichen und privaten Einrichtungen, die im Kinderschutz oder aber auch im Bereich jugendlicher Straftäter tätig sind, zusammen. Diese Einheiten der Nationalpolizei sind an das folgende Protokoll gebunden: „*Action Protocol of the Security Forces and Coordination with the judicial organs for the protection of victims of domestic and gender violence*".[67]

Die Rolle des Nationalen Komitees von UNICEF und der Einrichtungen von „*Save the Children und Defense for Children*", in deren Beratungs-, Ausbildungs- und Sensibilisierungsfunktion gegen Gewalt bei Kindern und deren Forderung und Eintreten für die Rechte von Minderjährigen, ist hervorzuheben, auch wenn diese nicht jene AkteurInnen der direkten Intervention sind.

[65] Das Manual "Intervention of Social Services of Madrid Municipality for Child Protection" kann hier abgerufen werden: http://www.madrid.es/UnidadesDescentralizadas/ServALaCiudadania/SSociales/EspInformativos/EspecialInfancia/Publicaciones/manual.pdf; und die Instrumente für das "Assessment of the Gravity of Child Protection Situations in Aragón", sind hier einsehbar: https://www.aragon.es/estaticos/GobiernoAragon/Organismos/InstitutoAragonesServiciosSociales/IASS_new/Documentos/infancia/MALTRATO-2014-valoracion-gravedad-menores.pdf (letzter Abruf: 23. April 2018).

[66] InstrucciÓN N° 11/2007, de 12 De Septiembre, de la Secretaria de EsTado de Seguridad, por la que se aprueba el "Protocolo de Atuacion Policial con Menores".

[67] Protocolo de Actuación de las Fuerzas y Cuerpos de Seguridad y de CoordinaciÓN con los Órganos Judiciales para la ProtecciÓN de las Víctimas de Violencia Doméstica y de Género, Aprobado por la Comisión Técnica de la Comisión Nacional de Coordinación de la Policía Judicial el 28 de junio de 2005, tras haberse adaptado el anterior Protocolo a las modificaciones de la LO 1/2004, de Medidas de Protección Integral contra la Violencia de Género, abrufbar hier : http://www.violenciagenero.msssi.gob.es/profesionalesInvestigacion/juridico/protocolos/docs/Protocolo_Actuacion_Fuerzas_Cuerpos_Seguridad_Coordinacion_Organos_Judiciales.pdf (letzter Abruf: 23. April 2018).



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## 4.4. UK – England und Wales

### 4.4.1. Überblick minderjähriger Opfer von Straftaten in England und Wales

Der größte unabhängige Produzent amtlicher Statistiken und anerkanntes nationales statistisches Institut des Vereinigten Königreichs ist das Amt für nationale Statistiken (Office for National Statistics, ONS), das jährlich den Crime Survey of England und Wales (CSEW) erstellt.[68] Im Jahresbericht[69] wird geschätzt, dass mit Ende September 2016 rund 12 von 100 Kindern im Alter von 10 bis 15 Jahren Opfer mindestens eines Verbrechens geworden sind. Im Jahr 2017 sind rund 10 von 100 Kindern derselben Altersgruppe Opfer von Straftaten geworden. Darüber hinaus wurden im Jahr 2017 schätzungsweise 652.000 Straftaten an Kindern dieser Altersgruppe insgesamt begangen.

Das Hauptproblem dieser Umfrage besteht jedoch darin, dass sie weder Kinder unter 10 Jahren noch Personen über 15 Jahren (d.h. zwischen 15 und 17 Jahren)[70] umfasst und auch keine Fragen im Zusammenhang mit sexuellem Missbrauch, sexueller Gewalt und Ausbeutung enthält (siehe Victim's Commissioner Report 2017: 10).[71] Daher haben die von der CSEW ermittelten Zahlen nur eine begrenzte Aussagekraft hinsichtlich der Verbrechen gegen Minderjährige.

Deshalb hat die Kommission für Opfer *(„the Victim's Commissioner":* Baroness Newlove of Warrington) in ihrem Bericht, herausgegeben mit dem fragenden Titel *"Are we getting it right for young victims of crime? A review of children's entitlements in the victims' code" (2017)*, zusätzliche Statistiken und Berichte miteinbezogen um ein umfassenderes Bild des tatsächlichen Ausmaßes von minderjährigen Opfern zu ermitteln. Ergänzend zu den polizeilichen Kriminalstatistiken hat die Opferschutzorganisation *Victim Support* in Zusammenarbeit mit der Bedfordshire University im Jahr 2014 im *"Suffering in Silence report"*

[68] Siehe: https://www.ons.gov.uk (letzter Abruf: 9. April 2018).
[69] In Bezug auf "crime against households and adults, also including data on crime experienced by children, and crimes against businesses and society"; siehe folgende Website: https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingseptember2017 (letzter Abruf: 9. April 2018).
[70] Siehe den Bericht "Are we getting it right for young victims of crime? A review of children's entitlements in the victims' code" erstellt durch den Victims' commissioner von England und Wales, in Februar 2017; siehe: http://victimscommissioner.org.uk/app/uploads/2014/10/Are-we-getting-it-right-for-young-victims-of-crime.pdf (letzter Abruf: 9. April 2018).
[71] Die Kommission für Opfer und Zeugen (Victims' Commissioner) hat eine gesetzliche Pflicht den Victims' Code regelmäßig zu (über)prüfen und darüber hinaus die Perspektiven der Opfer zu berücksichtigen, um das Funktionieren des Justizsystems, zum Zwecke der stetigen Verbesserung des Opferschutzes, zu verstehen und adäquat bewerten zu können (siehe: Ministry of Justice, Code of Practice for Victims of Crime, October 2015).


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Zahlen ermittelt, die über versteckte Viktimisierung von Kindern und Jugendlichen berichten (siehe Bericht der Opferbeauftragten 2017: 13).

Die von der Polizei erfassten Daten über Gewalt- und Sexualstraftaten im Jahr 2015 zeigten, dass Kinder unter 16 Jahren einen Großteil aller von der Polizei erfassten Vergewaltigungsdelikte ausmachten. "Just under a third (30%) of female rape victims were aged under 16, with the majority (60%) of male rape victims being aged under 16" (ebd.: 10). Laut dem Bericht der Opferkommissarin waren Vergewaltigungsopfer am häufigsten in der Altersgruppe der 15-19-Jährigen zu finden und machten fast ein Viertel (23%) aller Vergewaltigungsdelikte aus, die von der Polizei registriert wurden. Darüber hinaus zeigte die polizeiliche Kriminalstatistik des Vereinigten Königreichs, dass Kinder unter 16 Jahren einen großen Anteil anderen Sexualdelikten aufweisen. 50% der weiblichen Opfer und 62% der männlichen Opfer waren unter 16 Jahre alt. 28% der Opfer anderer Sexualdelikte waren zwischen 10 und 14 Jahren (ebenda; ONS 2016 zitiert nach Victims' Commissioner 2017).

Wie bereits im Falle Deutschlands festgestellt, stellen jedoch die nicht verzeichneten Straftaten die größte Herausforderung bei minderjährigen Opfern dar. Der Victims' Commissioner erklärt hierzu:

> "Despite the large proportion of recorded crime against children, there is evidence to suggest that much of the crime committed against children and young people goes unreported, and therefore unrecorded, indicating that children and young people experience much higher rates of crime than police data suggests" ibid.: 13).

Der Bericht befasst sich also mit den Gründen für diese Unterrepräsentation von Straftaten bei Kindern und Jugendlichen und ist in Anlehnung an den *"Suffering Silence Report"*[72] zu dem Schluss gekommen, dass Kinder sehr häufig nicht beurteilen können was eine Straftat ausmacht, insbesondere dann, wenn kriminelles Verhalten innerhalb der Peergroup normalisiert wurde oder wenn sie auf Missbrauch und Ausbeutung vorbereitet wurden (siehe Beckett et al. 2014, zitiert nach Victims' Commissioner 2017). Weitere Gründe sind darin zu finden, dass Kinder sehr häufig auch nicht wissen, wie und wo sie eine Straftat melden sollen. Auch bei einem bestehenden Nahverhältnis zwischen minderjährigem Opfer und seinem/r TäterIn (d.h. wenn das Verbrechen in einem vertrauten Kontext stattfindet, wie etwa der Schule oder zu Hause etc.) ist es weniger wahrscheinlich, dass das Verbrechen zur Anzeige kommt (ebd.). Manchmal haben Kinder sogar Angst und Misstrauen gegenüber der Polizei, so der Victims' Commissioner. Daher spricht der Bericht die

[72] Die Studie von Beckett und Warrington (2014) hat Daten gesammelt und ausgewertet, die darauf hinweisen, dass die meisten Verbrechen gegen Kinder und Jugendliche nicht gemeldet werden, lediglich 13% z.B.: bei Gewaltverbrechen (siehe Becket et al. 2014).



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Empfehlung aus, dass: “The Home Office and Ministry of Justice” should “(…) coordinate and oversee the collection of comparable police data and self-reports on experiences of crime. (...) this data should differentiate children and young people from adults and cover all types of crime” (ibid.: 14). Das heißt die unvollständige Berichterstattung, die alleinige Erfassung der Kategorie „Kinder im Alter von 10 bis 15 Jahren“ und der Registrierung nur einzelner Straftaten, wie im Fall der CSEW, läuft Gefahr einen Großteil der Straftaten (wie sexuellen Missbrauch usw.) und andere Altersgruppen auszuklammern, was zu einer Verzerrung des wirklichen Ausmaßes der Kriminalität an Kindern und Jugendlichen führt.

### 4.4.2. Schutz von minderjährigen Opfern in England und Wales

Im Vereinigten Königreich gibt es neben der Polizei und der Staatsanwaltschaft (*Crown Prosecution Service*) eine Reihe verschiedener Organisationen die im Opferschutz tätig sind. Diese verschiedenen Organe tragen die Hauptverantwortung für die Unterstützung von Kindern und Jugendlichen, die Opfer von Straftaten geworden sind. Diese umfassen verschiedene staatliche als auch nichtstaatliche Organisationen (NGOs) (siehe Codd et al. 2016: 23). Darüber hinaus ist jede Gemeinde für den Schutz des Wohlergehens von Kindern und Jugendlichen verantwortlich.

#### *Rechtlicher Hintergrund*

Es lohnt sich den Unterschied des britischen Rechtssystems bei der Auswahl von Mitgliedstaaten dieses Berichts herauszustreichen. Der Großteil des Vereinigten Königreichs, zusammen mit Irland, hat ein **Common Law System**, in denen die Rechtsprechung und vorherige gerichtliche Entscheidungen die Anwendung des Rechts bestimmen, während die meisten Mitgliedstaaten der EU (und insbesondere jene dieser Auswahl) **zivilrechtliche juristische Systeme** haben. Es gibt jedoch auch gemischte Rechtssysteme, wie es beispielsweise in Schottland der Fall ist (siehe EPRS 2017: 47). Wichtig ist, dass dieser Unterschied Auswirkungen auf die Art und Weise der Umsetzung der Opferschutzrichtlinie hat. In einem Common Law System wie dem des Vereinigten Königreichs wurde die Richtlinie umgesetzt, indem eine neue Rechtsvorschrift verabschiedet wurde (anstatt bereits bestehende Gesetze zu ändern, wie etwa die Änderung der Strafprozessordnung im Fall von Deutschland, Österreich und anderen MS). Im Fall von England und


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Wales wurde die Richtlinie hauptsächlich durch den ***„Code of Practice for Victims of Crime „***[73] umgesetzt. Dieser wurde 2006 erstmals durch ein Gesetz zur häuslichen Gewalt (***„The Domestic Violence, Crime and Victims Act 2004"***) geschaffen und wurde zweimal infolge überarbeitet: Das erste Mal im Dezember 2013, hier wurden erstmals die Ansprüche der Opfer und die Verpflichtungen der Strafverfolgungsbehörden geklärt und im Jahr 2015 ein zweites Mal, insbesondere um die Standards in Bezug auf die Opferrechte der Richtlinie umzusetzen (siehe Victim Support)[74]. Zwei weitere wichtige Quellen des britischen Rechts konstituieren eben das EU-Recht und die Europäische Menschenrechtskonvention (siehe Cilex).[75]

Im Vereinigten Königreich werden Kinderrechte hauptsächlich durch den ***Human Rights Act*** von 1998 geschützt.[76] Zudem ist Wales die erste Region des Vereinigten Königreichs und bisher auch die einzige, die die UNCRC (***United Nations of Convention on the Rights of the Child***[77]) in sein innerstaatliches Recht verankert hat (siehe Codd et al. 2016: 10).

### *Allgemeiner Opferschutz*

***"Victim Support"*** ist die federführende Opferschutzeinrichtung in England und Wales und existiert seit fast 40 Jahren. Diese wurde 1974 in Bristol gegründet und seit 1986 gibt es in jedem Landkreis (County) zumindest eine *Victim Support* Anlaufstelle. 1998 haben sie ihre kostenlose nationale Telefon-Hotline namens ***"Supportline"*** eingerichtet (siehe Victim Support).[78] Es ist eine unabhängige Wohltätigkeitsorganisation/Opferschutzorganisation (Selbstbezeichnung: „*independent charity*") für Menschen, die von Verbrechen und traumatischen Ereignissen betroffen sind. Sie bieten für schutzbedürftige Personen, unabhängig davon, ob die Straftat gemeldet wurde, ein umfassendes Spektrum kostenloser Dienste und Schutzmaßnahmen auf individueller, unabhängiger, emotionaler und praktischer Ebene an. Ziel ist es, den betroffenen Menschen dabei zu helfen, sich von den Folgen der Straftat zu erholen

[73] Siehe: Ministry of Justice, October 2015 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (letzter Abruf: 9. April 2018).
[74] Siehe: https://www.victimsupport.org.uk/help-and-support/your-rights/victims-code (letzter Abruf: 9. April 2018).
[75] Siehe: Cilex, "Chartered institute of legal executives", https://www.cilex.org.uk/about_cilex/about-cilex-lawyers/what-cilex-lawyers-do/the-uk-legal-system (letzter Abruf: 9. April 2018).
[76] Siehe: "Children Rights Alliance for England" (CRAE), http://www.crae.org.uk/our-work/protection-of-childrens-rights-in-domestic-law/ (letzter Abruf: 9. April 2018).
[77] Siehe: https://www.unicef.org.uk/what-we-do/un-convention-child-rights/ (letzter Abruf: 9. April 2018).
[78] Für mehr Information zur Geschichte der Organisation, siehe hier: https://www.victimsupport.org.uk/more-us/about-us/history (letzter Abruf: 9. April 2018).


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(ebd.). Sie bieten ebenso spezielle Maßnahmen und Services für bestimmte Gruppen von Opfern an, wie bspw. für Kinder und Jugendliche oder für Menschen, die von häuslicher Gewalt betroffen sind. Das letzte Jahr haben sie laut ihrer Website 814.000 Menschen Unterstützung angeboten (ebd.). Das Hauptziel von *Victim Support* besteht darin, Menschen auf lokaler Ebene zu unterstützen und landesweit Kampagnen zu starten, um die Schutzbedürfnisse der Opfer in den Mittelpunkt zu stellen.

*Victim Support* spezifiziert vier Kernbereiche des Opferschutzes für Kinder und Jugendliche, der als ersten und zentralen Schwerpunkt die praktische Unterstützung von Kindern und Jugendlichen selbst umfasst. Beispielsweise hat *Victim Support* eine eigene Website namens ***„You and Co"***[79] erstellt**,** die mit einer großen Auswahl an Informationsmaterial in kindgerechten Sprache ausgestattet ist. Seit 2014 stellt *You & Co* das Kinder- und Jugendprogramm von *Victim Support* dar. Ein zweiter wichtiger Bereich ist die Unterstützung und Beratung von Eltern und BetreuerInnen; ein dritter Bereich richtet sich an Fachleute und LehrerInnen und stellt Informationen für diese Gruppe bereit, insbesondere bieten sie hierzu einige Links zu wichtigen Ressourcen[80] auf ihrer Website an. Viertens wird die Bedeutung der Kooperation mit Fachleuten und Eltern bei der Arbeit und Unterstützung von Kindern und Jugendlichen unterstrichen. *Victim Support* entwickelt zudem sogenannte *"Toolkits für Kinder und Jugendliche"*, wie bspw. eine Reihe von altersgerechten Arbeitsbüchern, mit Anleitungen für MitarbeiterInnen und Freiwillige, die zudem praktische Maßnahmen zur Unterstützung von Kindern und Jugendlichen enthalten.[81]

### *Opferschutz für Minderjährige*

Darüber hinaus gibt es die lokalen Kinderschutzvorstände, die *„local safeguarding children boards"* (LSCB), die sich für die Bewahrung von Kinderrechten einsetzen und in Paragraph 13 des Children Act 2004 festgelegt sind (siehe Codd et al. 2016: 23).[82]

> "The LSCB possesses a range of roles and statutory functions including developing local safeguarding policy and procedures, and scrutinising local arrangements" (ibid.: 23). (…) They are governed by the Local Safeguarding Children Boards Regulations 2006, and their core principle is of aiming for effective inter-

[79] Siehe: https://www.youandco.org.uk (letzter Abruf: 9. April 2018).
[80] Siehe zum Beispiel den folgenden Bericht von Victim Support: https://www.victimsupport.org.uk/sites/default/files/You%20%26%20Co%20-%20Getting%20it%20right%20for%20young%20victims%20and%20witnesses.pdf (letzter Abruf: 9. April 2018).
[81] Siehe hier: https://www.victimsupport.org.uk/help-and-support/young-victims-crime/teachers-and-professionals/useful-resources (letzter Abruf: 9. April 2018).
[82] Siehe: Children Act 2004, https://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga_20040031_en.pdf (letzter Abruf: 9. April 2018).


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agency collaboration to safeguard children" (ibid.: 23).

Diese sind hauptsächlich für die Koordination der Aktivitäten für jede im Vorstand vertretene Person oder Körperschaft verantwortlich, um die Wirksamkeit dessen, was getan wird, zu evaluieren, um das Wohlergehen von Kindern zu gewährleisten, fördern und sichern.

Der dritte Sektor im Bereich des Opferschutzes für Minderjährige sind Wohltätigkeitsorganisationen und NGOs (freiwillige Organisationen), die ganz wesentlich zum Opferschutz beitragen. Diese Organisationen betreiben potenziell die bedeutendste Arbeit im Opferschutz für Kinder und Jugendliche, da sie sich auf die Bereitstellung spezifischer Programme und Maßnahmen für Kinder spezialisiert haben, bspw. Organisationen mit Fokus auf sexuellen Kindesmissbrauch (manchmal sogar mit noch engerem Fokus auf Missbrauchsfälle in Familien). Die nationale Kinderhilfsorganisation ***Barnados***[83] ist eine der führenden Organisationen in Großbritannien in diesem Bereich und bietet zum Beispiel folgende Services an: Beratung für missbrauchte Kinder, Pflege- und Adoptionsdienste, Berufsausbildung und Inklusionsgruppen für Menschen mit besonderen Bedürfnissen. Ein anderes vielversprechendes Beispiel zudem sind die lokalen Projekte der ***Howgill Family Centres (HFC)*** [84], die in West Cumbria auch eine Reihe von Kinder- und Familienorientierten Dienstleistungen anbieten (ebd. 23).

## 4.5. Finnland

### 4.5.1. Überblick minderjähriger Opfer von Straftaten in Finnland

In Finnland wird die nationale Kriminalitätsstatistik jährlich durchgeführt (siehe Savonen 2017). Diese umfasst jedoch nur einen kleinen Anteil der Opfer und Deliktsformen von denen insbesondere Kinder betroffen sind. In Finnland wurden laut Statistik Finnland (*Statistic Finland*) 2016 insgesamt 823. 500 Straftaten von Polizei, Zoll und Grenzschutz registriert (siehe Statistic Finland 2017)[85]. Dies entspricht 4.400 Straftaten (0,5%) mehr als im Jahr zuvor. 37.600 Personen wurden als Opfer von Gewalttaten registriert.

[83] Für mehr Information zu den verschiedenen Bereichen und Services für Kinder und Jugendliche von Bernado, siehe Website: http://www.barnardos.org.uk/what_we_do/our_work.htm (letzter Abruf: 9. April 2018).
[84] Siehe: http://www.howgill-centre.co.uk (letzter Abruf: 9. April 2018).
[85] Siehe: http://www.stat.fi/til/rpk/2016/13/rpk_2016_13_2017-03-23_en.pdf (letzter Abruf: 16. April 2018).



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Die Zahl der Opfer von Angriffsdelikten in der Altersgruppe der 18-20-Jährigen betrug 3.000 (9%). In der Altersgruppe der über 50-Jährigen wurden 4.600 (13,8%) Opfer gezählt und bei den Angriffsdelikten gegen Kinder unter 18 Jahren 6.450. Die letzterfasste Zahl der Kinderopfer bedeutet einen Anstieg von 9,2% im Vergleich zum Vorjahr 2015. Insgesamt wurden 19,6% Opfer von Angriffsdelikten gemeldet. Bei Kindern, die Opfer von Angriffsdelikten wurden, zählte die Umfrage 4.100 (64,1%) Jungen und 2300 (35,9%) Mädchen. 33,3% waren jünger als 10 Jahre, 34,9% waren zwischen 10 und 14 Jahren alt und 31,8% waren zwischen 15 und 17 Jahre alt.

Laut Statistik Finnland wurden außerdem 1.100 Minderjährige Opfer sexuellen Missbrauchs, davon waren 87,4% Mädchen und 12,6% Jungen (ebd.). Ferner weist sie darauf hin, dass die Gesetzesänderung von 2011 die Anzahl der registrierten Angriffsdelikte erheblich erhöht hat. Seit der Novelle sind auch weniger schwerwiegende Straftaten an Minderjährigen ebenso strafrechtlich verfolgt worden (ebd.). Darüber hinaus hat die im April 2015 in Kraft getretene Novelle des Kinderschutzgesetzes (Child Welfare Act) (1302/2014)[86] zu einer Ausweitung der Meldepflicht bei Straftaten gegen Kinder geführt (ebd.).

Laut dem Bericht *"Developing Directive-compatible practices for the identification, assessment and referral of victims"* sind im Jahr 2017 in Finnland minderjährige Personen häufiger Opfer von Gewalt geworden als Erwachsene. 13,9% der Personen, die Opfer von Gewaltdelikten wurden, waren zwischen 15 und 24 Jahre alt, während nur 2,3% zwischen 55-74 Jahren waren (siehe Savonen 2017: 13).[87] Gewalttaten gegen Jugendliche wurden in erster Linie von anderen Jugendlichen ausgeübt: entweder durch Geschwister (23%), Freunde (17%) oder andere bekannte Jugendliche (15%) (ebd.). Der Bericht stellt weiters fest, dass Erwachsene gegenüber jungen Menschen seltener gewalttätig waren, z.B. waren nur in 8% der Fälle Eltern die Täter (ebd.).

### 4.5.2. Schutz von minderjährigen Opfern in Finnland

Finnland fördert seit den 1990er Jahren Opferrechte sehr intensiv, was sich in bereits bestehenden Rechtsvorschriften widerspiegelt, wie etwa durch das Recht und die Gewährleistung, dass Opfer vor Gericht auch gehört werden (siehe EPRS 2017: 66). Der Schutz der Opfer von Straftaten wird in erster Linie von

[86] Siehe: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=101110&p_classification=04 (letzter Abruf: 16. April 2018).
[87] Der Bericht zu den Praktiken in Finnland kann hier abgerufen werden: http://victimspractices.eu/?page_id=119 (letzter Abruf: 16. April 2018).


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finnischen NGOs geleistet. Trotz begrenzter nationaler Finanzierung sind diese Opferschutzstrukturen und -organisationen bereits vor der Umsetzung der Opferschutzrichtlinie sehr stark etabliert gewesen. Darüber hinaus sind die lokalen Behörden in jeder finnischen Gemeinde für die Organisation der Kinderfürsorge und Sozialdienste zuständig. Darüber hinaus erbringen sie Dienstleistungen entweder selbst oder erwerben diese Dienstleistungen von externen Anbietern. Wenn externe Dienste zum Einsatz kommen, sind sie jedoch dafür verantwortlich, diese Aktivitäten der Dienstanbieter zu überwachen.[88] Problembereiche wie häusliche Gewalt und Gewalt gegen Frauen im Allgemeinen haben auch zu neuen Opferschutzstrukturen in Finnland geführt (ebd.).

### *Rechtlicher Hintergrund*

Hauptverantwortung für die Ausarbeitung von Rechtsvorschriften zum Kindeswohl sowie für die allgemeine Steuerung der Kinderfürsorge liegt beim Ministerium für Soziales und Gesundheit. Für die Regelung und Koordinierung des Opferschutzes sind außerdem, neben dem erstgenannten, das Justizministerium und das Innenministerium zusammen mit der Polizei.[89] Die Polizei ermittelt gegen Strafsachen und die Bezirksgerichte, Berufungsgerichte und der Oberste Gerichtshof entscheiden über diese Fälle in weiterer Folge.

Die Strafgesetzgebung ist im Allgemeinen für Erwachsene und Kinder gleich, dennoch gibt es einige spezifische Bestimmungen für Kinder, beginnend mit dem Abschnitt 6 der finnischen Verfassung (**Section 6 of the Finnish Constitution**)[90], der folgendes regelt: "children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development".[91] Darüber hinaus sind im Kinderfürsorgegesetz (**Child Welfare Act, siehe oben)** spezielle Bestimmungen zum Kindeswohl festgelegt, zudem gelten die Europäische

[88] Siehe: Ministry of Social Affairs and Health Finland, http://stm.fi/en/social-services/child-welfare (letzter Abruf: 17. April 2018).
[89] Siehe foglenden Bericht: „Managing Victims and Witnesses of crime in Finland, 2014-16, erstellt durch das "International Juvenile Justice Observatory", in Kooperation mit SAPI (the Social activities and practice institute Bulgaria). Siehe weiters: Ministry of Social Affairs and Health, http://stm.fi/en/social-services/child-welfare (letzter Abruf: 17. April 2018).
[90] Siehe: The Constitution of Finland, 11 June 1999, (731/1999, amendments up to 1112/2011 included), https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf (letzter Abruf: 17. April 2018).
[91] Ebd.


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Menschenrechtskonvention[92] sowie die UN-Kinderrechtskonvention[93] auch für Finnland, wie im Fall des Vereinigten Königreichs. Mit diesen Konventionen sind die Staaten verpflichtet das Wohl des Kindes sowie sein Wohlergehen bei allen Handlungen staatlicher Behörden zu berücksichtigen und zu schützen.

Die Opferschutzrichtlinie wurde nur teilweise in finnisches Recht umgesetzt, da die meisten Bestimmungen und vorgesehenen Schutzmaßnahmen bereits gesetzlich vorhanden waren. Insbesondere die Bestimmungen des Artikels 24 der Richtlinie ("Schutzanspruch von Opfern im Kindesalter während des Strafverfahrens") waren in Finnland bereits geregelt.[94] Die restlichen erforderlichen Änderungen wurden jedoch durch den Gesetzesentwurf Nr. 66/201595 der finnischen Regierung umgesetzt, der zu verschiedenen Änderungen in einigen für das Strafverfahren relevanten Rechtsakten geführt hat. Im März und Dezember 2016 sind diese Änderungen dann in Kraft getreten.[96]

Die wichtigste Änderung des finnischen Rechts im Zusammenhang mit der Umsetzung der Richtlinie ist jedoch die Einführung der Bestimmung zur Verpflichtung die Opfer über ihre Rechte adäquat zu informieren und die Bestimmung der individuellen Begutachtung zur Ermittlung besonderer Schutzbedürftigkeit. Sowohl die Praxis der individuellen Begutachtungen, als auch die Verweisung an Opferschutzeinrichtungen existierte zwar bereits vor der Umsetzung der RL, wurde aber dadurch dennoch wesentlich systematisiert (siehe EPRS 2017: 60). Außerdem hat der finnische Gesetzgeber ein zusätzliches Gesetz verabschiedet, das einen Opferzuschlag (2015/669) („Victim Surcharge") gewährt. Finanziert wird dieser durch aufgewendete Geldmittel der Straftäter, die direkt den Opfern zugutekommen sollen (EPRS 2017: 58).

[92] Siehe Finlex: https://www.finlex.fi/fi/sopimukset/sopsteksti/1999/19990063; siehe weiters ECHR: https://www.echr.coe.int/Documents/Convention_ENG.pdf; https://www.echr.coe.int/Pages/home.aspx?p=home (letzter Abruf: 17. April 2018).
[93] http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx (letzter Abruf: 17. April 2018).
[94] Für genauere Information, welche Artikel der Opferschutzrichtlinie in irgendeiner Weise schon existierten und welche noch implementiert haben werden müssen, siehe den komplementären E-PROTECT Bericht D3.6: „Pan-European study on the legal transposition of Directive 2012/29/EU in other MS".
[95] Siehe: FINLEX, HE 66/2015, Finnische Version, https://finlex.fi/fi/esitykset/he/2015/20150066 (letzter Abruf: 17. April 2018).
[96] Siehe: EUR-LEX, http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029 (letzter Abruf: 17. April 2018).


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### *Allgemeiner Opferschutz*

Finnland ist eines der wenigen Länder in der EU[97] das über eine zentrale Stelle zur Koordinierung des Opferschutzes im ganzen Land verfügt. Daher scheint die Qualität der Opferschutzmaßnahmen hier im Vergleich zu anderen Mitgliedstaaten der EU einheitlicher zu sein (siehe EPRS 2017). Diese zentrale Stelle und landesweite Opferschutzorganisation heißt **RIKU** (Rikosuhripäivystys, oder auch **Victim Support Finland**[98] genannt), welche dafür verantwortlich ist den Opfern von Verbrechen, ihren Familien, engen Freunden und Zeugen allgemeine Unterstützung zu bieten. Darüber hinaus haben sie eine landesweite *Helpline*[99] implementiert, die jedoch nur zu bestimmten Zeiten, von Montag bis Freitag, angerufen werden kann und kostenpflichtig ist. RIKU gibt jedoch auf seiner Website an, dass es die Möglichkeit eines kostenlosen Rückrufdienstes gibt (siehe ebd.). Personen können auch anonym anrufen und sich informieren und im Falle des Erfordernisses von Hilfe und Beratung ihre Kontaktdaten hinterlassen. Es sollte sichergestellt werden, dass der/die Anrufer/in mindestens innerhalb von fünf Werktagen eine Antwort und die Kontaktdaten des nächstgelegenen Victim Support Finnland erhält.

RIKU ist Mitglied der europäischen Dachorganisation **Victim Support Europe (VSE)** mit Sitz in Brüssel, die sich für jegliche Opfer von Straftaten einsetzt.[100] Zusätzlich zu dieser Zentrale verfügt diese über sieben Regionalbüros und 30 Servicestellen in ganz Finnland, zu denen unter anderem das Angebot landesweiter Telefondienste, Online-Assistenzdienste sowie persönlicher Dienstleistungen gehören. Darüber hinaus arbeiten sie eng mit den staatlichen Behörden zusammen, etwa mit der Polizei und anderen Stellen, die mit Opfern interagieren. Im Jahr 2013 hatten sie rund 38.000 Kundenkontakte, und ihr Vorstand umfasst VertreterInnen aller relevanter und durchführender Organisationen und zudem des Nationalen Kirchenrates (siehe ebd.).

Im Jahr 2017 beschloss das Justizministerium der RIKU Organisation eine öffentliche Dienstleistungsverpflichtung zur Erbringung zentraler Schutzmaßnamen (die insbesondere solche *vor*, *während* und *nach dem Strafverfahren* umfassen) zu übertragen, um in den Jahren 2017-2018 allgemeine Opferdienste in ganz Finnland kostenlos anbieten zu können.

[97] Neben Österreich, Deutschland und Tschechien (siehe EPRS 2017: 74).
[98] https://www.riku.fi/en/home/ (letzter Abruf: 17. April 2018).
[99] Siehe: https://www.riku.fi/en/services/helpline+116+006/ (letzter Abruf: 17. April 2018).
[100] Siehe: https://www.riku.fi/en/victim+support+finland/ (letzter Abruf: 18. April 2018).



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### *Opferschutz für Minderjährige*

In Finnland gibt es weitere zivilgesellschaftliche Opferschutzorganisationen, die auf die Unterstützung von Opfern von Straftaten im Kindesalter spezialisiert sind. Dennoch bleibt auch in diesem Bereich RIKU die wichtigste Opferschutzorganisation. Obwohl sie nicht speziell auf den Schutz von Opfern im Kindesalter spezialisiert ist, bietet sie übergreifende kostenlose Schutzmaßnahmen für alle Betroffenen an (mit Ausnahme der Telefon-Hotline, die kostenpflichtig ist). Eine ihrer Hauptleistungen besteht darin den Opfern und ihren nahen Angehörigen und Zeugen eine persönliche Unterstützung, vergleichbar etwa mit der Prozessbegleitung in Deutschland und Österreich, zur Verfügung zu stellen. Jene Personen werden sorgfältig ausgewählt und speziell für diesen Zweck auf einer freiwilligen Basis geschult. Diese Maßnahme umfasst die Begleitung zu polizeilichen Anhörungen oder Gerichtssitzungen des Opfers, sowie Unterstützung bei der Antragstellung einer einstweiligen Verfügung oder Schadensersatzforderung. Mit diesen Personen können die Opfer oder Zeugen auch über ihre Erfahrungen und emotionalen Belange sprechen und ggf. werden weiterführende Maßnahmen in Betracht gezogen.[101]

Andere Einrichtungen, die für den Schutz von Kindern zuständig sind, wären beispielsweise die Vereinigung von Mutter-Kind-Heimen (**the Federation of Mother and Child Homes and Shelters**)[102] mit insgesamt 14 Unterkünften im Land, die auch eine enge Kooperation mit RIKU unterhält. Darüber hinaus gibt es in Finnland 20 weitere Notunterkünfte. Bei allen handelt es sich um Zentren, in denen schutzbedürftige Menschen, die direkt von Gewalt in der Familie betroffen sind oder davon bedroht werden, Hilfe bei der Bewältigung dieser krisenhaften Situationen erhalten können. Darüber hinaus gibt es in Finnland eine Reihe frauenspezifischen Opferschutzeinrichtungen, wie zum Beispiel **Tukinainen**[103], oder für Einwanderinnen und Kinder gibt es zum Beispiel Monika - Multikulturelle Frauenvereinigung in Finnland (**Monika – Multicultural Women's Associsation in Finland**).[104.]

[101] Siehe folgenden Bericht: „Managing Victims and Witnesses of crime in Finland, 2014-16, erstellt durch das "International Juvenile Justice Observatory", in Kooperation mit SAPI (the Social activities and practice institute Bulgaria), S.16. Im Folgenden abgekürzt als: IJJO 2014-16.
[102] Siehe: https://ensijaturvakotienliitto.fi/en/ (letzter Abruf: 18. April 2018).
[103] Siehe: https://www.tukinainen.fi/english/ (letzter Abruf: 18. April 2018).
[104] Siehe: https://monikanaiset.fi/en/ (letzter Abruf: 18. April 2018).



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Als eine der Hauptbehörden der Überwachung von Kinderrechten ist schließlich der parlamentarische Ombudsmann Finnland (**the Parliamentary Ombudsman Finland**)[105] zu nennen. Dieser trägt die Hauptverantwortung dafür, dass staatliche Behörden und Einrichtungen (z.B.: Krankenhäuser) sich an die Gesetze halten und die Rechte von minderjährigen Opfern respektiert werden. Er ist der höchste Aufseher der Rechtmäßigkeit im Land und wird vom Parlament ausgewählt.

# 5. Organisatorische Umsetzungen der individuellen Begutachtungen in fünf EU-Mitgliedstaaten

Dieses Kapitel konzentriert sich auf die praktische Umsetzung der Rechtsvorschriften der Artikel 22, 23 und 24 der Opferschutzrichtlinie. Es zeigt dabei auf wie die individuellen Begutachtungen in den fünf EU-Mitgliedstaaten dieses Berichts: *Deutschland, Portugal, Spanien, Vereinigtes Königreich (England und Wales) und Finnland* umgesetzt worden sind und durchgeführt werden. Ein besonderer Schwerpunkt liegt dabei auf den länderspezifischen Praktiken, insbesondere unter Berücksichtigung von Herausforderungen und insbesondere erfolgreicher Strategien (***best practices***) in der praktischen Umsetzung der individuellen Begutachtungen, besonders im Bereich des Kinderopferschutzes.

## 5.1. Deutschland

In Deutschland wurde die Opferschutzrichtlinie im Jahr 2015 durch das 3. Opferrechtsreformgesetz[106] umgesetzt. Mit jenem Gesetz sind weitere wichtige Schritte in Richtung Erhöhung und Stärkung der Opferschutzrechte, Schutzmaßnahmen und andere Standards unternommen worden[107]. Während Deutschland bereits vor der Umsetzung der Opferschutz-RL einen hohen Standard im Opferschutz aufweisen konnte, hat diese dennoch einige Verbesserungen insbesondere in Bezug auf die Verfahrens- und

[105] Siehe: https://www.oikeusasiamies.fi/en/web/lasten-ja-nuorten-sivut/home (letzter Abruf: 18. April 2018).
[106] Siehe: http://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html; und: http://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (letzter Abruf: 22. März 2018).
[107] Im deutschen Strafrechtsverfahren kann das Opfer entweder die Rolle als *Zeuge*, *Nebenkläger*, oder *Verletzter* einnehmen; d.h. der deutsche Gesetzgeber verwendet nicht direkt den Begriff des Opfers. Für genauere Informationen zu diesem Umstand, siehe E-PROTECT D3.6 "Pan-European study on the legal transposition of Victims' Directive".


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Informationsrechte der Opfer mit sich gebracht. Darüber hinaus hat der deutsche Gesetzgeber die Strafprozessordnung (StPO) um zwei wichtige neue Paragraphen, die hier erwähnenswert erscheinen, ergänzt (Art. 22 der RL): den §48, Abs. 3: Zeugenpflichten und Ladung[108], als auch §406g psychosoziale Prozessbegleitung, der einen besonderen Meilenstein im Opferschutz darstellt und hauptsächlich auf dem österreichischen Modell sich heraus entwickelte.[109]

Alle Schutzmaßnahmen die in der Opferschutz-RL vorgesehen sind werden durch die deutsche Gesetzgebung erfüllt, die meisten waren jedoch bereits vor der RL-Umsetzung vorhanden.[110] Da aber die Rechtsansprüche der verschiedenen Maßnahmen hauptsächlich von der Erfüllung des Artikels 22 (**der individuellen Begutachtung**) abhängig sind (siehe EPRS-Studie 2017: 61) und dieser im deutschen Rechtstext nicht eindeutig geregelt ist (vgl. ebd. 61), bleibt das Ausmaß und die genaue Verfahrensweise der Bereitstellung dieser Sonderschutzmaßnahmen unklar. Es ist daher auch nicht nachvollziehbar wie und wer genau für die individuellen Begutachtungen zur Ermittlung besonderer Schutzbedürfnisse in Deutschland verantwortlich ist.

Das EU-Projekt IVOR (Implementing victim-oriented reform of the criminal justice system in the European Union, Laufzeit: 2014-2016) kam zu dem Schluss, dass der deutsche Gesetzgeber bereits vor der Einführung des dritten Opferrechtsreformgesetzes im Jahr 2015 eine Sonderregelung geplant hatte, nämlich: "(…) in the general part of the Code of Criminal Procedure that states that the first authority that deals with a case has to conduct the individual needs assessment and to put it into a filing system".[111] Nun nach der Umsetzung des neuen Reformgesetzes (einschließlich der neuen §§ 48, Abs. 3 und 406g der StPO) hat sich herausgestellt, dass der deutsche Gesetzgeber dies - wer und wie die individuellen Begutachtungen genau durchgeführt werden sollen - nicht explizit festgelegt hat.

[108] Siehe: https://www.jurion.de/gesetze/stpo/48/ (letzter Abruf: 5. April 2018).
[109] Psychosoziale Prozessbegleitung gibt es auch in Portugal und Finnland,
[110] z.B.: Einvernahmen in geeigneten Räumlichkeiten, um den Kontakt zwischen Opfer und mutmaßlichem Täter zu vermeiden; diese Einvernahmen werden durch speziell ausgebildete Personen durchgeführt; darüber hinaus gibt es die Möglichkeit Anhörungen unter Ausschluss der Öffentlichkeit stattfinden zu lassen; für detailliertere Informationen zu den spezifischen Gesetzen und Bestimmungen, die diese Maßnahmen regeln, also unter welchen Bedingungen und Umständen diese angewendet werden können, siehe E-PROTECT Bericht D3.6 "Pan-European study on the legal transposition of Victims' Directive".
[111] Siehe: http://www.apav.pt/ivor/images/ivor/PDFs/Fact_sheet_germany.pdf (letzter Abruf: 5. April 2018).


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Das primäre Ziel des Artikels 22 der Opferschutz-RL, eine individuelle Begutachtung für alle Opfer sicherzustellen, wird also in gewisser Weise vom deutschen Gesetzgeber umgangen, die Autoren von IVOR stellen fest:

> „Although few countries have (fully) implemented article 22 into their national legislation, it is clear that the absence of a law relating to the individual needs assessment does not imply that certain vulnerable groups are not identified and granted specific (protection) rights. **However, the aim of the individual assessment, that is that it should be made available for *all* victims, has been achieved in almost none of the Member States**" (IVOR report 2016: 163, emphasis added, bold lettering).

Zudem führte IVOR Interviews mit einigen ExpertInnen aus verschiedenen EU-Mitgliedstaaten durch, einer davon aus Deutschland erklärte, dass ein flexiblerer Ansatz für die individuellen Begutachtungen vorzuziehen sei. Der Interviewte hat zudem die Frage aufgeworfen, ob eine solche Begutachtung überhaupt so konkret sein könnte wie eine Checkliste. Adäquater Opferschutz hängt von den spezifischen Umständen ab, wie bspw. von der Qualität der Informationen, die die Polizei zu einem bestimmten Zeitpunkt hat (ebd.).

Der deutsche Gesetzgeber verfolgt in dieser Hinsicht ganz offensichtlich jenen Ansatz die individuelle Begutachtung in jedem Stadium des Strafverfahrens von verschiedenen Instanzen durchführen zu lassen. Dies mag eine erste Begutachtung sehr wohl miteinschließen, zielt jedoch eher darauf ab – wenn erforderlich - verschiedene Neubegutachtungen im weiteren Verlauf des Strafverfahrens von den jeweilig Verantwortlichen durchzuführen zu lassen.

### 5.1.1. Vielversprechende Praktiken in Deutschland

#### *Psychosoziale Prozessbegleitung*

In Deutschland stellt die psychosoziale Prozessbegleitung eine spezifische Form der Betreuung dar, die jedoch keine rechtliche Beratung einschließt; sie inkludiert die Phasen vor, während und nach dem Strafverfahren für besonders schutzbedürftige Opfer (gemäß VD, Art. 22 und Art. 23). Insbesondere Kinder und Jugendliche, die Opfer schwerer sexueller oder gewalttätiger Straftaten geworden sind, haben Anspruch auf unentgeltliche psychosoziale Prozessbegleitung. Für andere Opfergruppen schwerer Gewalt- und Sexualstraftaten sollte das Gericht auf der Grundlage des Einzelfalles entscheiden, ob eine psychosoziale Prozessbegleitung zur Verfügung gestellt werden soll.

Die Aktivitäten umfassen die Bereitstellung adäquater Informationen sowie qualifizierte Unterstützung während des gesamten Strafverfahrens mit dem Ziel, die mit solchen Verfahren zwangsläufig verbundenen



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individuellen Belastungen zu reduzieren und eine sekundäre Viktimisierung zu vermeiden (vgl. Riekenbrauk 2016: 7). Das Recht auf freien und kostenlosen Zugang ist von besonderer Bedeutung für Opfer im Kindesalter, Menschen mit besonderen Bedürfnissen und Personen, die von Hassverbrechen, Sexualverbrechen oder Gewaltverbrechen betroffen sind und aufgrund dessen besonders traumatisiert sind. Eine solche wichtige Schutzmaßnahme gesetzlich zu verankern stellt einen Meilenstein im Opferschutz dar, insbesondere wenn es sich um betroffene Kinder handelt. Der wichtigste Aspekt im Zusammenhang mit Qualitätsstandards ist die Bedeutung der "Rollenklarheit": dies bedeutet, dass die psychosoziale Prozessbegleitung weder eine Rechtsberatung noch eine Faktenfindung oder Psychotherapie darstellt (ebd.). Sie verpflichtet sich vielmehr dazu die Opfer in den folgenden Phasen angemessen zu unterstützen und zu informieren: im Erstgespräch (dies kann die Zeit vor einer Strafanzeige miteinschließen, wenn sich das Opfer zuerst an eine Opferschutzeinrichtung wendet), Vorbereitung auf das Strafverfahren, Unterstützung während des Hauptverfahrens und einer Nachbearbeitung, also Folgegespräche. Sie beinhaltet folgende Aufgaben für psychosoziale ProzessbegleiterInnen:

- *Vor dem Gerichtsverfahren:* Anwesenheit bei allen Einvernahmen, inkl. bei der Polizei und am Gericht, das Opfer über das Strafverfahren informieren; die ProzessbegleiterInnen sind beispielsweise im Gerichtssaal anwesend und erklären die Rollen der Anwesenden; Informationen über Konsequenzen und Risiken eines Gerichtsverfahrens oder einer strafrechtlichen Anklage bieten und Informationen über verschiedene Formen der Psychotherapie diskutieren.
- *Während des Verfahrens:* Organisation eines sicheren Zugangs zu den Gerichtsgebäuden (bspw. um z.B.: den Kontakt mit dem/r Tatverdächtigen zu vermeiden); Unterstützung während der Wartezeit bei Gericht; Zusammenarbeit mit anderen Behörden; bei Kindern ist die altersgerechte Vermittlung des Rechtsvokabulars besonders wichtig, aber auch bei anderen Opfergruppen und bestimmten Bedingungen, Erläuterung der Verfahren.
- *Nach dem Strafverfahren:* Informationen zu weiteren Unterstützungsangeboten oder Unterstützung bei der emotionalen Behandlung des Gerichtsurteils. (ebd.: 9).


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### *Trainings für Angehörige der Polizei und Justiz*

In Deutschland werden speziell für das Polizei- und Justizpersonal spezielle Schulungen angeboten, die weitgehend auf regionaler Ebene organisiert werden und über die Anforderungen der Richtlinie hinausgehen (siehe EPRS-Studie 2017: 72).

> "In the training courses for established police officers, victim protection forms an elementary part in all 16 states (Länder). The training is designed in line with Article 25(1) of the directive" (ibid.: 72).

Im Rahmen der Ausbildung **neuer Polizeikräfte** bildet der Opferschutz einen zentralen Bestandteil des dreijährigen Bachelorstudiums an Polizeiakademien. Dieser wird aus verschiedenen Blickwinkeln wie bspw. der Kriminologie, Ethik, verschiedener Untersuchungsverfahren, Viktimisierung und Psychologie bearbeitet (ebd.). Wobei besonderes Gewicht auf Empathie und Sensibilität in der Kommunikation mit verschiedenen Opfergruppen, sowie auf eine angemessene Einschätzung/Begutachtung der situativen Umstände der Betroffenen, gelegt wird. Die Schulungen umfassen sowohl theoretische als auch praktische Übungen. Ein weiterer Schwerpunkt liegt auf den rechtlichen und psychologisch-taktischen Aspekten der polizeilichen Intervention in Fällen von häuslicher Gewalt und Stalking-Fällen (ebd.).

> "Moreover, certain police headquarters already have officers specifically responsible for victim protection who are tasked with raising awareness among their colleagues of the need for professional handling of victims. This is done through information sessions, events, workshops and meetings. These coordinators also inform their colleagues on recent legal changes strengthening victims' rights" (ibid.: 72).

Die **Judikative** hat ebenso opferbezogene Trainings entwickelt und intensiviert, mit besonderem Augenmerk auf die psychologischen Aspekte des Opferschutzes als auch der kommunikativen Fähigkeiten des Personals der Judikative. Ihre Trainingseinheiten umfassen z.B. folgende Themen: „Untersuchung von OpferzeugInnen", „Tatsachenfeststellung im Gerichtssaal", „Aussagepsychologie im Umgang mit ZeugInnen" und „Täter-Opfer-Entschädigung/Ausgleich" (vgl. ebd.: 73; vgl. Clemm 2015).[112]

Das Fehlen von national einheitlichen Standards bezüglich der Qualifikationen des z.B. psychosozialen Dienstes werden von einigen RechtsexpertInnen kritisiert (siehe Fastie 2015).[113]

[112] Siehe: https://www.bundestag.de/blob/379102/fee53d33062a29c73b8e580e7aa788cc/clemm-data.pdf (letzter Abruf: 5. April 2018).
[113] Siehe: https://www.bundestag.de/blob/378818/1151a3374a4dcfd93ff726f45abaca48/fastie-data.pdf (letzter Abruf: 5. April 2018).



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## 5.2. Portugal

In Portugal gibt es einige Hindernisse denen Kinder im Justizsystem gegenüberstehen oder Umstände von denen sie benachteiligt betroffen sind, wie z.B.: wiederholte Einvernahmen, einschüchternde Bedingungen im Strafverfahren, mangelndes Schulungsangebot für Fachleute, die Interviews führen und die oftmals komplexen und langsamen Verfahrensprozedere. Einige ExpertInnen argumentieren, dass es in der Tat ein Missverhältnis zwischen dem Gesetz und seiner Anwendung gibt.

Empirische Studien haben gezeigt:

> "Children who are victims of intra-family sexual abuse are heard on average eight times.[114] This repetition is the aspect of the judicial process that children consider painful. Even in processes where there are physical and biological signs of sexual abuse, children are heard 4-9 times. (...) The testimony of children, when they are young, is neither collected nor valued, which gives rise to a filing rate of more than 60%, according to a study already cited, based on data provided by the Institute of Legal Medicine of Porto."[115]

Eine kürzlich durchgeführte Umfrage mit 49 StaatsanwältInnen und MagistratsbeamtInnen hat ergeben, dass beide Gruppen von Fachleuten ein Fehlen entsprechender Interview- und Gesprächstechniken beklagen und damit einen Mangel an angemessener Vorbereitung von Kinderzeugen festgestellt haben:

> "(…) they report the lack of preparation for the hearing of children and adolescents and the difficulty in understanding their developmental characteristics (related to age and maturity). They consider that younger children may have difficulties in understanding and attention, while adolescents manifest oppositional behaviour. The Magistrates also reported feeling the need to deepen techniques to facilitate communication with children and adolescents and to know interview techniques, with the possibility of access guides or other relevant instruments."[116]

### 5.2.1. Vielversprechende Praktiken in Portugal

Die Rechtsanwaltsakademie (**the Academy of Lawyers**) (Region Lissabon) hat 2017 einen Leitfaden für bewährte Verfahren für das Anhören von Kindern in Gerichtsverfahren (**Good Practice Guide on Listening to Children**) veröffentlicht. Dieser Leitfaden steht im Einklang mit den Leitlinien des Europarats für kinderfreundliche Justiz.[117] Das Handbuch beginnt mit einer Beschreibung des rechtlichen Rahmenwerks, gefolgt von theoretischen und praktischen Überlegungen, Kindern in Gerichtsverfahren

[114] Ribeiro, 2009 *In Ebd.* S. 287.
[115] Jardim, 2011 *In Ebd.* S. 288.
[116] Rodrigues, Alexandre, & Agulhas (2016). A audição da criança: Desenho, implementação e avaliação de uma formação para Magistrados Portugueses. Dissertação de mestrado do Mestrado de Psicologia Comunitária, Proteção de Crianças e Jovens em Risco. Lisboa. ISCTE-IUL. S. 13.
[117] Leitlinien des "Committee of Ministers of the Council of Europe on child friendly justice" (Verabschiedet durch "the Committee of Ministers" am 17. November 2010, am 1098th Meeting, durch die "Ministers' Deputies").


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Gehör zu verschaffen, einschließlich Fragen zur Situation, Interviewtechniken, und weitere Aspekte, die aus der Perspektive des Kindes und des Interviewers zu berücksichtigen sind. Der Leitfaden endet mit einer Checkliste, die nach dem Gespräch zu Anwendung kommen soll, damit die InterviewerInnen die Verfahren evaluieren und mögliche zukünftige Aspekte zur Verbesserung ihrer eigenen Praxis ermitteln können.[118] Dieses Handbuch ist eine Fortsetzung zwei bereits entwickelter Bücher, die speziell für Kinder aufbereitet wurden um jene auf Gerichtsverfahren und was dort zu erwarten ist vorzubereiten; darunter findet sich das altersangemessene Buch "**João goes to court**"[119] und das Buch "**The day Mariana did not want**"[120]. Diese Bücher und Richtlinien sind Teil eines umfassenderen Ansatzes um eine kinderfreundliche Justiz im Portugal zu implementieren. Das portugiesische Zentrum für gerichtliche Studien (**the Portuguese Centre for Judicial Studies**) hat zu dem Thema: Einvernahmen mit Opfern im Kindesalter, diverse Ausbildungen und Forschung gefördert, einschließlich innovativer Projekte, wie das der Pilotstudie über den Einsatz von Interventionshunden im Fall von Einvernahmen von Kinderopfern **("The use of intervention dogs to facilitate the hearing process in child courts")** (ibid.).

APAV verfügt in Portugal über langjährige Erfahrungen im Opferschutz und engagiert sich stark in unterschiedlichen Kooperation auf europäischer Ebene, um den Schutz der Opfer in Portugal zu verbessern und zum Austausch bewährter Praktiken auf internationaler Ebene beizutragen.

Derzeit ist APAV Partner des vom Europäischen Sozialfonds kofinanzierten Projekts POISE[121], das das Ziel verfolgt Kindern und Jugendlichen, die Opfer sexueller Gewalt geworden sind, Unterstützung im Umgang mit traumatischen Erfahrungen und ihnen respektive ein gesundes Aufwachsen und eine adäquate Entwicklung zu ermöglichen. Dieses Projekt umfasst die Entwicklung von Risikobewertungen, Begutachtungsverfahren zur Ermittlung besonderer Schutzbedürfnisse, sowie diverser Protokolle mit dem Ziel, die Verfahren zur Unterstützung und Intervention des CARE-Netzwerks zu vertiefen und zu verbessern. Dieses Projekt ist eine Fortsetzung ihrer bisherigen Arbeit, deren primäres Ziel es ist die Wichtigkeit des Handbuchs zur Unterstützung von Kindern, denen sexueller Missbrauch widerfahren ist (**Manual for supporting child victims of sexual abuse**), aufzuzeigen. Zudem enthält dieses Manual

[118] Rute Agulhas e Joana Alexandre (2017) *Audição da Criança. Guia de Boas Práticas*. Conselho Regional de Lisboa da Ordem dos Advogados.
[119] Rute Agulhas e Joana Alexandre (2016) *O João vai ao Tribunal.*
[120] Rute Agulhas e Joana Alexandre (2016) *O dia que a Mariana não queria.*
[121] Unter folgender Projektnummer zu finden: 03-4639-FSE-000013


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detaillierte fachspezifische Informationen für ExpertInnen, einschließlich einiger Leitlinien zur Befragung und Unterstützung von misshandelten Kindern.[122]

In Zukunft wird es für Portugal wichtig sein, Folgenabschätzungen zu seinen eigenen Opferschutzinfrastrukturen durchzuführen, insbesondere im Bereich von Opfern im Kindesalter, um Lücken zu erkennen und Verbesserung erarbeiten zu können. Es besteht auch die Möglichkeit, auf den bestehenden Bemühungen zur Förderung einer kindgerechten Justiz aufzubauen und spezifische Maßnahmen der Opferschutzrichtlinie, wie die der individuellen Begutachtungen adäquat anzuwenden.

## 5.3. Spanien

In Spanien ist seit der nationalen Umsetzung der Opferschutzrichtlinie nur wenig Zeit vergangen. Nichtsdestotrotz gibt es verfügbare Nachweise und Anhaltspunkte, die aktuelle Praktiken des Opferschutzes im Zusammenhang mit der Richtlinienumsetzung aufzeigen und bewerten, sowie Vorschläge und Empfehlungen für künftige Maßnahmen geben.

Das Organgesetz Nr. 1/1996 vom 15. Januar über den rechtlichen Schutz von Minderjährigen, die teilweise Änderung des Zivilgesetzbuches und des Zivilprozessgesetzes enthält den Rechtsrahmen, der die Kompetenzen für die verschiedenen autonomen Gemeinschaften Spaniens hinsichtlich des Schutzes von minderjährigen Opfern festlegt, insbesondere mit Fokus auf Sonderschutzmaßnahmen bei Kindesmissbrauch. Eine wesentliche Herausforderung dieser Kompetenzfestlegung und -verteilung könnten die unterschiedlichen Leistungen/Auslegungen der regionalen Behörden sein, die höchstwahrscheinlich zu unterschiedlichen Schutzniveaus und -ressourcen für Minderjährige in den verschiedenen Teilen des Landes führen könnte.

*Save the Children* Spanien hat eine Analyse von 203 gerichtlichen Entscheidungen zwischen dem 1. Oktober 2012 und dem 31. Dezember 2016 durchgeführt. Die Studie hat ergeben, dass Kinder im Durchschnitt Informationen über Missbrauchsfälle, wenn sie einmal gemeldet wurden, bis zu vier Mal behördlich wiederholen müssen. In 86% der Fälle haben Minderjährige im Plenum ausgesagt. Nur in 13% der analysierten Verurteilungen wurde die protokollierten Aussagen der Kinder akzeptiert. Darüber hinaus

[122] APAV (2017) Manual CARE. Apoio a crianças e jovens vítimas de violência sexual.



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stellen sich die rechtlichen Prozesse als sehr langwierig dar (die Dauer beträgt durchschnittlich 3 Jahre). In 38% der Fälle wird „unangemessenes Verzögern“ („undue delay“) als mildernder Umstand vor und von Gerichten selbst anerkannt, was bedeutet, dass es Verzögerungen gegeben hat, die vermieden hätten werden können und daher die Strafe für die Angeklagten wegen dieses unnötigen Wartens reduziert.[123]

In einer Studie zu kindgerechter Justiz der *Agentur der Europäischen Union für Grundrechte (European Agency on Fundamental Rights*) sind mehr als die Hälfte der Kinder Spaniens befragt worden:

> “(…) evaluated professionals’ communication skills negatively, criticising them for lacking sensitivity and asking questions that are irrelevant and unsuitable for their age. (…) Several children mentioned their interactions with forensic doctors during hearings – for example, when a doctor is present as an expert witness. Most of these children assess these professionals negatively because of their behaviour, as well as the inadequacy of the hearing rooms and the number of professionals’ present. (In the same study) several interviewees between the ages of 14 and 18 who were victims of sexual abuse talked about feeling uncomfortable at the police station because they had to speak in front of either their mother, father or both parents.”[124]

### 5.3.1. Vielversprechende Praktiken in Spanien

Die ergriffenen Maßnahmen einiger Interessensgruppen, einschließlich der Opferschutzzentren Spaniens (Victims Support Offices) scheinen auf dem Weg zur Umsetzung der Bestimmungen der Opferschutzrichtlinie und der guten Praxis für kinderfreundliche Justiz fortschrittlich zu sein.

> “In Spain, **child-friendly rooms** are sometimes used during the pre-trial phase at both victim support services and court-based locations. Specifically, interviewees (children who have undergone proceedings) mentioned *Fundación Márgenes y Vínculos* in different Andalusian cities; the Andalusia victim support service (*Servicio de Apoyo a las Víctimas de Andalucía, SAVA*); and the family support service (*Servei d’Assesorament Tècnic en l’Àmbit de Família, SATAF*) provided by the Catalan administration via family courts. Children generally assessed these premises positively, as they are outside the court environment and have **child-friendly waiting and hearing rooms**. Children also appreciated the pleasant, calm atmosphere and **having only one professional (the psychologist) present for the conversation**.”[125]

Im Jahr 2009 hat der Verband der Vereinigungen zur Bekämpfung von Kindesmisshandlung (the Federation of Associations for the Prevention of Child Maltreatment: FAPMI) ein **Programm zu Kindheit und Gerechtigkeit** mit Unterstützung und Finanzierung des damaligen Ministeriums für Arbeit und Soziales (Ministry of Labour and Social Affairs) gestartet, um die Betreuung von Kindern und Jugendlichen zu

[123] Save the Children (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema.
[124] FRA (2017) *Child-friendly justice Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States. S. 26*
[125] *Ebd.* S. 30


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verbessern als auch den Kontakt zwischen Justizbehörden und Jugendlichen. In diesem Programm sind Aspekte des nationalen Regulierungsrahmens, Sensibilisierungsmaßnahmen wie thematische Konferenzen zu verschiedenen Aspekten der kindgerechten Justiz und andere Aktivitäten behandelt worden. Diese Arbeit ergänzt die Teilnahme von FAPMI an der Nationalen Kommission zur Unterstützung von Opfern von Gewalttaten (National Commission of Assistance to Victims of Violent Crimes) gegen sexuelle Freiheit, des Justizministeriums.[126]

Verschiedene spanische Behörden und Organisationen haben kinderadäquates Material (**child-friendly materials)** im justiziellem Bereich herausgegeben.[127]

> "Technical advice to Catalan courts is organised through territorially distributed offices where psychologists and social workers specialising in justice work and answer the demands for technical assistance from prosecutors, magistrates, investigative and criminal judges. The specialisation of these workers not only implies that they work exclusively on criminal cases, but also that they are organised according to differentiated programs, such as, advice on criminal responsibility and socio-personal characteristics of those accused of a crime; advice on alternative forms of deprivation; assessment of the social and personal rights of the accused; technical advice on the victims (sequelae, adaptation of protection measures, etc.); on witnesses (credibility, cognitive affections); and, finally, the program to support interviews of children in judicial proceedings and other vulnerable witnesses who require specialised support to make statements. In the case latter, children who have been victims of sexual abuse, have their statements recorded in order to avoid going through an oral trial.
>
> (…)

[126] FAPMI (2011): Programa Justicia e Infancia. Marco de referencia. Madrid, Federación de Asociaciones para la Prevención del Maltrato Infantil.

[127] Der "Ombudsman for Children of the Community of Madrid" hat zum Bespiel ein kindergerechtes rechtliches Wörterbuch entwickelt, siehe hier: http://www.madrid.org/bvirtual/BVCM013875.pdf; und "the Council of Labour and Social Policy", und das „Secretariat of Social Services for Children and Family of the Region of Múrcia" haben ein Buch zu den Funktionsweisen der Gerichte publiziert, siehe hier: http://www.bienestaryproteccioninfantil.es/imagenes/tablaContenidos03SubSec/juzgado_Gu%C3%ADa%20_niño.pdf (letzter Abruf: 23. April 2018).



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Although the Catalan case is, without a doubt, a good practice in Spain, it continues to face a series of challenges. On the one hand, resources are sometimes lacking, and on the other, even if a recording is made, it depends on the judges and magistrates whether it is accepted by the Court and that the child does not have to provide a further statement. As it is a legal recommendation and not an obligation, there are still cases in which the child's testimony is recorded and, years later, he/she is requested to attend the trial."[128]

Table 1. Psychologists and Forensic Social Workers of the 'Criminal Technical Assistance Teams', Department of Justice of the Generalitat of Catalonia

Die in Tabelle 1 hervorgehobene Fallstudie wurde auch in den Bericht über kinderfreundliche Justiz der FRA (Fundamental Rights Agency) aufgenommen, die ebenfalls zu den Schluss kommt, dass

> "[i]n Spain, children prefer interviews conducted by specially trained psychologists at victim support offices and court-based child-friendly facilities to hearings conducted by judges in court."[129] Zudem hat die Studie gezeigt, dass "in Spain, children indicated that the same psychologists who conducted their pre-trial assessments supported them during trial hearings, and commented positively on how psychologists mediated between them and the court."[130]

Die in Spanien zur Umsetzung der Opferschutzrichtlinie erlassene Rechtsvorschrift definiert die Opferschutzzentren (Victim Support Offices) als die Hauptbehörden, die für die Durchführung der individuellen Begutachtungen zuständig sind. Einige Regionen sind einen Schritt weitergegangen und haben spezielle Teams zur Unterstützung von minderjährigen Opfern eingerichtet, wie im Falle Kataloniens und seiner Teams für kriminalpolizeiliche Hilfe (*Criminal Technical Assistance Teams*).

Zusätzlich zum Gesetz 4/2015 vom 27. April, indem das Statut über Opfer von Straftaten festgelegt ist, hat der spanische Gesetzgeber im selben Jahr das Königliche Dekret 1109/2015 vom 11. Dezember, das die Arbeit der Opferschutzorganisationen (Victim Support Offices) regelt, verabschiedet. In diesem Dekret ist die Einrichtung des Beirats für die Opferhilfe (Advisory Council for Assistance to Victims) von besonderer

[128] Save the Children (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema, Page 111.
[129] FRA (2017) "Child-friendly justice. Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States".
[130] *Ebd.*


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Relevanz, da dieser bei der Überwachung, Bewertung und Verbesserung der Arbeit der Opferhilfestellen eine wesentliche Rolle spielen kann.

## 5.4. UK – England und Wales

In England und Wales sind die individuellen Begutachtungen und besonderen Schutzmaßnahmen (besonders für Kinder, die Opfer von Straftaten wurden) durch den „***Code of Practice for Victims of Crime***" in das Strafjustizsystem eingeführt worden.

Nach diesem Kodex sollte eine **individuelle Begutachtung** durch die Leistungserbringer (service providers)[131] erfolgen, um festzustellen welche Art von Unterstützung ein Opfer nach einer Straftat möglicherweise benötigt. Die erste Begutachtung findet in den meisten Fällen bei der Polizei statt, ist jedoch von den individuellen Opfern und deren Erstkontaktstelle abhängig. Während die Begutachtung jedoch in den meisten Fällen von der Polizei durchgeführt wird, könnte es auch von den sogenannten Dienstleistern oder einer nicht-gesetzlichen Opferschutzorganisationen (NGOs) durchgeführt werden. Solch eine Begutachtung beinhaltet die Identifizierung der Bedürfnisse des Opfers und seinen Status der Vulnerabilität. Diese Bedürfnisse könnten im Rahmen der weiteren polizeilichen Ermittlungen überprüft werden (sogenannte: *"updates on the investigation tailored to victims'needs")* (siehe Victims' Code 2015: 8).

Durch diesen Prozess werden spezielle Maßnahmen unter Berücksichtigung der individuellen Bedürfnisse eines Opfers (wie z.B.: Merkmale der Straftat, Alter des Opfers) identifiziert. Diese Maßnahmen umfassen: Live-Video-Links, Video-Aufzeichnungen, Bildschirme rund um den Zeugenstand als auch Unterstützung bei der Kommunikation, einschließlich der Verwendung eines Vermittlers (siehe ebd.).132

Opferschutzorganisationen oder andere ähnliche Einrichtungen (wie soziale Dienste) sind nicht in der Liste der Dienstleistungserbringer des Victims' Code angeführt, da sie NGOs sind und daher in erster Linie für die Bereitstellung emotionaler und praktischer Unterstützungsdienste für Opfer von Straftaten verantwortlich sind, wie z. B. das Erlernen von Bewältigungsstrategien im Umgang mit den Folgen eines

[131] Für die vollständige Liste der sogenannten „service providers", siehe: Code of Practice for Victims of Crime, S. 2. Diese Liste umfasst insgesamt 14 service providers, unter anderem: „The Crown Prosecution service", "Police and Crime commissioners", "Youth Offending Teams", oder auch die "Witness Care Unit", nur um ein paar an dieser Stelle zu nennen.

[132] Die gesamte Liste von Sondermaßnahmen, inclusive Erklärungen kann unter folgenden Unterkapiteln im "Code of Practice for Victims of Crime" nachgelesen werden: **1.13-1.15 des 1. Kapitels**, SS. 15-16.



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Verbrechens. D.h. diese sind nicht vom Victims' Code und dessen Vorgaben erfasst, da dieser nur für staatliche Behörden und Dienstleistender gilt, was jedoch von einigen ExpertInnen auch kritisch gesehen wird.

Der Code of Practice ist ein praxisorientierter Leitfaden, geltend für alle gesetzlichen Akteure, die mit Opfern von Straftaten in Kontakt kommen und für deren Schutz verantwortlich sind. Dieser enthält zahlreiche hilfreiche Anweisungen, wie eine individuelle Begutachtung durchgeführt werden kann und wie überhaupt mit Opfern angemessen zu kommunizieren ist, einschließlich in welchem Zeitraum Opfer Informationen über verschiedene Prozedere im Strafverfahren erhalten müssen und welche Organisationen ihnen dabei helfen können, mit den Konsequenzen jeglicher Art, die mit einem Verbrechen einhergehen, umzugehen.

Darüber hinaus umfasst der Victim' Code ein eigenes Kapitel über Kinder und Jugendliche, die Opfer von Straftaten geworden sind. Dieses Kapitel enthält zwei getrennte Abschnitte: der Erste umfasst detaillierte und gut verständliche Informationen für minderjährigen Opfer und deren Bezugspersonen selbst (Informationen über ihre Ansprüche, Verfahrensbeschreibungen, Pflichten der Dienstleister etc.), der zweite Abschnitt hingegen bietet eingehende Informationen und Richtlinien für PraktikerInnen, also die Dienstleister an.

### 5.4.1. Vielversprechende Praktiken in England und Wales

Wie erfolgreich diese gesetzliche Richtlinie in der Praxis ist, kann am besten durch das Einbeziehen der Perspektiven und Erfahrungen der Opfer selbst beurteilt werden. Entlang folgender Fragen beispielsweise: Erhalten Opfer wirklich Zugang zu allen Schutzmaßnahmen, auf die sie rechtlich, laut Victims' Code, Anspruch haben? Werden die individuellen Begutachtungen angemessen durchgeführt, d.h. sowohl innerhalb eines angemessenen Zeitrahmens, als auch auf individueller Basis? Darüber hinaus ob sie Informationen in angemessener Weise erhalten?

Der Victims' Commissioner von England und Wales hat genau dies in der Studie *"A review of children's entitlements in the Victims' Code"* aus dem Jahr 2017 getan.[133] Der Bericht berücksichtigt ebenso Ergebnisse

[133] Die Schlussfolgerungen der Studie müssen vorsichtig in Betracht gezogen werden, da sie einige Einschränkungen in Bezug auf die Repräsentativität aufweisen. Es handelt sich um eine qualitative Studie, die Interviews mit 12 Mädchen (oder deren Eltern) im Alter von 9 bis 17 Jahren umfasst, die von Gewaltverbrechen oder sexuellem Missbrauch betroffen waren.



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aus anderen Studien, insbesondere des folgenden Berichts: *„The Measuring Up Report"* von 2009 (siehe ebd.: 17).134 Der Kodex besagt, dass Kinder während der polizeilichen Ermittlungen über besondere Schutzmaßnahmen informiert werden sollten. Die meisten Befragten des Victims Commissioners haben hingegen berichtet, dass sie nur über einige solcher Maßnahmen informiert worden sind oder, dass die Maßnahmen nicht in angemessener Weise angewendet wurden und einige der befragten Minderjährigen haben berichtet, dass sie bspw. nicht über Sondermaßnahmen unterhalten worden sind. Das Ausmaß der Informationen war ebenso abhängig vom polizeilichen Ermittlungsstand zu diesem Zeitpunkt (siehe ebd.: 23). Eine/r der interviewten Personen hat z.B. folgende Erfahrung während des Gerichtsverfahrens berichtet:

> "The way in which special measures are applied is important in ensuring that they protect the young victim as intended. For example, Jenny (aged 17) was granted the use of a screen to give evidence so she wouldn´t have to look at the defendant or be seen by him. However, she reported that: *When I left the court from behind the screen he was still there. They should have taken him out so I didn´t have to see him. What´s the point of the screen when I still have to see him on my way out anyway* (Jenny, aged 17)" (ibid.: 24).

Ein weiteres Beispiel in Bezug auf den Anspruch ein sogenanntes „Victim Personal Statement" (VPS) abzugeben, zeigt, dass diese Gelegenheit auch nur drei minderjährigen Opfern von den insgesamt 12 Befragten in diesem Bericht eingeräumt worden ist. Dasselbe Ergebnis zeigt sich auch im „Crime Survey für England und Wales" – hier haben im Jahr 2015/16 nur 15% der Opfer die Möglichkeit bekommen ein solches VPS zu machen (siehe ebd.: 24). Der Bericht hat auch gezeigt, dass nicht alle Kinder und Jugendliche angemessene Informationen über Beratungs- und Unterstützungsmöglichkeiten und respektive solcher Organisationen erhalten haben. Einige der Befragten haben entweder selbst Kontakt zu Opferschutzorganisationen hergestellt oder sind erst später durch ihre/n Sozialarbeiter/in an diese verwiesen worden. Zudem sind die befragten Kinder und Jugendliche häufig über Verzögerungen in ihren Fällen frustriert gewesen, da sie eben nicht über mögliche oder tatsächliche Verzögerungen informiert worden sind (siehe Victim' Commissioner 2017).

In Anbetracht dessen, dass sich ein Großteil der Ansprüche des „Code of Practice for Victims of Crime" auf das Informationsrecht des Opfers bezieht, also angemessene Informationen über den eigenen Fall rechtzeitig

[134] Für genauere Informationen zur Methodologie, siehe: Victims´ Commissioner 2017, S. 19, und für mehr Details zu den Limitationen des Berichts, siehe S. 21, http://victimscommissioner.org.uk/app/uploads/2014/10/Are-we-getting-it-right-for-young-victims-of-crime.pdf (letzter Abruf: 12. April 2018).



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zu erhalten, ist der Kodex sehr vielversprechend, wenn er von allen involvierten Behörden und AkteurInnen korrekt eingehalten wird.

Die Qualität der Kommunikation zwischen Opfern und Dienstleistern stellt sich dabei als einer der zentralsten Aspekte heraus, um mit den Folgen von Viktimisierung erfolgreich umzugehen, als auch diesen adäquat von behördlicher Seite begegnen zu können.

## 5.5. Finnland

In Finnland war die Umsetzung der Richtlinienbestimmung der individuellen Begutachtung zur Ermittlung besonderer Schutzbedürfnisse (des Artikel 22) in gewisser Weise überflüssig, da bereits Bestimmungen vorhanden waren, die die Anforderungen von Artikel 22 der RL erfüllen (siehe IVOR 2016).[135]
Es gibt mehrere Anweisungen für die individuelle Begutachtung im finnischen Recht, insbesondere gemäß dem finnischen Gesetz zu strafrechtlichen Ermittlungen (Finnish Criminal Investigation Act: FICA)[136] für bestimmte Gruppen von (besonders schutzbedürftigen) Opfern, ähnlich wie in Deutschland und Österreich dies der Fall ist. Diese Anweisungen erfüllen eindeutig den Zweck einer individuellen Begutachtung im Sinne der Opferschutzrichtlinie. Laut dem FICA sind die Ermittlungsbehörden dafür verantwortlich diese Begutachtungen durchzuführen und zwar immer unter Berücksichtigung der besonderen Schutzbedürftigkeit des Opfers (siehe Savonen 2017: 8). Laut Savonen hat das Innenministerium auch einen Arbeitsausschuss zur Weiterentwicklung des individuellen Begutachtungsprozesses in Finnland eingesetzt. Kinder oder minderjährige Opfer gelten *a priori* als besonders schutzbedürftig und verfügen daher über besondere Rechte und Zugang zu Sonderschutzmaßnahmen, die in Finnland bereits vor der Richtlinienumsetzung im nationalem Recht verankert gewesen sind.

PolizeibeamtInnen spielen bei der Identifizierung der spezifischen Schutzbedürfnisse des Opfers eine besondere Rolle, da sie – wie in den meisten Ländern dieser Studie - die ersten Kontaktpersonen für die Opfer darstellen. Daher ist es wichtig, Fachkräfte, wie jene der finnischen Polizei, angemessen für solche Begutachtungsverfahren zu schulen.[137] Den Autoren der IVOR-Studie zufolge haben finnische ExpertInnen

[135] Siehe Unterkapitel 4.5.2. dieses Berichts, in welchem der rechtliche Hintergrund zur Umsetzung der Opferschutzrichtlinie überlicksmäßig dargestellt ist.
[136] Pre-trial Investigation Act 22.7.2011/805, siehe auch: https://www.poliisi.fi/crimes/pretrial_investigation_of_an_offence (letzter Abruf: 18. April 2018).
[137] Die Autoren des IVOR Berichts (2016) haben auch zahlreiche Interviews mit Fachleuten aus verschiedenen Bereichen geführt. Die Studie bestätigt, dass sowohl PolizeibeamtInnen, die für die individuellen Begutachtungen



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dem Plan zugestimmt, einen Antrag mit einem standardisierten Fragenkatalog zu diesem Zweck zu entwickeln, um eben die individuellen Bedürfnisse der Opfer angemessen beurteilen zu können. Wie dies jedoch in die finnische Praxis umgesetzt wird bleibt zunächst unklar und geht nicht eindeutig aus den bereits durchgeführten Studien als auch nationalen Dokumente zur Umsetzung der Opferschutzrichtlinie hervor.

### 5.5.1. Vielversprechende Praktiken in Finnland

Nach der Anzeige bzw. Meldung einer Straftat werden Kinder und Jugendliche sofort einer Risikobewertung unterzogen und erhalten spezielle Schutzmaßnahmen, die ihnen die Teilnahme an den Verfahren erleichtern und gleichzeitig sekundäre Viktimisierung verringern soll (siehe IJJO 2014/16). In Finnland sind einige PolizeibeamtInnen auf Ermittlungen von Straftaten an minderjährigen Opfern spezialisiert. Aus diesem Grund hat Finnland ein Projekt namens ***Senja*** gestartet: ein sogenanntes Sensitivitätsmodell für JuristInnen (***sensitiveness model for professionals of Jurisprudence***). In diesem Rahmen werden alle Fachleute, die mit Opfern oder Zeugen von Straftaten arbeiten, angemessen geschult.[138] Dieser opfersensible Ansatz von *Senja* wird der finnischen Polizei, der Staatsanwaltschaft und dem Gerichtspersonal vermittelt. Sein vorrangiges Ziel ist es, relevante und angemessene Informationen über die Folgen von häuslicher Gewalt und Sexualstraftaten bereitzustellen und Ratschläge denjenigen zu geben, die in verschiedenen Phasen des rechtlichen Prozesses mit schutzbedürftigen Opfern arbeiten und mit den entsprechenden Informationen betraut sind (siehe ebd.: 28).

Die Website von *Senja* bietet sechs Hauptbereiche mit Informationen für Fachleute, die am Prozess der Opfer von Straftaten beteiligt sind: *"Traumatisierung", "Opfer von Sexualverbrechen", "Opfer von häuslicher Gewalt", "Opfern mit besonderen Bedürfnissen", "minderjährige Opfer", "Opfern mit Migrationshintergrund"* und ein weiterer Bereich zielt auf die *"Beratung von Opfern"* ab. Letzteres bietet besonders schutzbedürftigen Opfern Informationen und soll zudem dafür sorgen, dass sie ihr Recht auf einen kostenlosen Rechtsbeistand und eine kostenlose Unterstützungsperson bekommen.

Die Informationen werden in drei Sprachen bereitgestellt: Finnisch, Schwedisch und Englisch, zusätzlich werden all jene Informationsmaterialien in allen relevanten Behörden bereitgestellt "(…) instruction folders have been distributed to all police stations, local prosecution offices, public legal aid offices and courts in

verantwortlich sind als auch andere Fachkräfte von spezialisierten Diensten in Finnland angemessene Fortbildungen erhalten.

[138] http://senjanetti.fi/en (letzter Abruf: 19. April 2018).



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Finland" (IJJO 2014/16: 28). Wichtig ist vor allem aber, dass PolizeibeamtInnen jedes Jahr spezielle Schulungen im Bereich des Opferschutzes bei Minderjährigen erhalten.

Ein weiteres Projekt in Finnland stellt das ***„The Children's House - Das Barnahuset-Modell"*** dar, welches 2014 als Pilotprojekt eingeführt worden ist und das auf dem US-amerikanischen Child Advocacy Centre Model (CAC) basiert. Dieses Modell wird bereits zunehmend in den nordischen Ländern implementiert und stammt ursprünglich aus Island, wo es schon seit 1985 angewendet wird. Der Ansatz wurde als Reaktion auf sexuellen Missbrauch von Kindern entwickelt. Die Idee des Barnahus-Modells, das ins Englische als „Children's House" übersetzt wird, folgt dem US-amerikanische CAC-Modell, einen *multiprofessionellen und integrierten Ansatzes des Opferschutzes von Kindern und Jugendlichen* zu entwickeln (vgl. Johansson et al. 2017: 5).[139] Beide Modelle bauen auf dem Verständnis auf, dass Kindesmissbrauch ein komplexes Phänomen ist, das hochspezialisiertes Fachwissen und koordinierte Dienste und Schutzmechanismen erfordert (ebd.: 5, übersetzt).

Die Hauptidee des Projekts besteht darin, einen gemeinsamen Rahmen für die offizielle staatliche Zusammenarbeit, sowie einen gemeinsamen physischen Raum indem Opferschutz stattfindet, zu schaffen. Das *„one door principle"* oder *„under one roof principle"* (ebd.) zielt darauf ab, dass alle beteiligten professionellen AkteurInnen gemeinsam in einem Team zusammenarbeiten, wie zum Beispiel Fachleute aus dem Gesundheitsbereich, Sozialdienst, Exekutive und Staatsanwaltschaft. Dem Bericht von Johansson et al. zufolge, unterscheiden sich die Merkmale des Barnahus-Modells in den verschiedenen nordischen Ländern: in Finnland liegt beispielsweise der Schwerpunkt auf intensiven forensischen Interviews, die auf Anfrage der Polizei, von forensischen PsychologInnen durchgeführt werden. Das sich entwickelnde Modell in Finnland ist sehr eng mit den bereits bestehenden Kooperationsstrukturen, wie z.B.: mit den *„Forensic Child and Adolescent Psychiatry Units"* an den fünf Universitätskliniken, sowie deren starken Beziehungen zum Gesundheitssektor verbunden (ebd.: 22). [140]

Generell sollte noch die Verfügbarkeit von einjährigen interdisziplinären **Interview-Trainingsprogrammen** für Polizei- und Gesundheitsfachkräfte, die Einvernahmen mit Kinder -und

[139] Für eine detaillierte Betrachtung dieses speziellen Kinderschutzprogramms, siehe das erste Kapitel In. Johansson et al. 2017, Implementing the Nordic Barnahus Model: Characteristics and Local Adaptions, SS. 1-31, https://link.springer.com/content/pdf/10.1007%2F978-3-319-58388-4_1.pdf (letzter Abruf: 19. April 2018).
[140] Details zu dem genauen Prozedere dieser forensischen Interviewmethoden, siehe IJJO 2014/16, SS. 20-22.


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Jugendlichen durchführen, als eine weitere vielversprechende Praxis in Finnland hervorgehoben werden. Die Schulungen werden vom Nationalen Polizeipräsidium (National Police Board) und dem Forensischen Psychiatriezentrum (Forensic Psychiatry Centre) organisiert. "Most police officers and psychologists who work in criminal proceedings have attended the course and generally agree that is has contributed to child-friendliness in the preliminary hearing process" (FRA 2015:100).[141]

## 6. Fazit und Diskussion

Die Umsetzung der EU-Opferschutzrichtlinie in nationale Gesetzgebungen hat zu einigen Schwierigkeiten in den verschiedenen EU-Mitgliedstaaten geführt. Auf paneuropäischer Ebene zeigt sich daher ein sehr diverses Bild in der Umsetzung der Richtlinie und des Opferschutzes im Allgemeinen.

In der Perspektive der vergleichenden Problematisierung – *comparative problematization* - (vgl. Jasanoff / Metzler 2018) ist deutlich geworden, dass jedes Land in seinem eigenen Kontext von Opferschutzinfrastrukturen operiert und diesen zugleich konstruiert. Somit produziert jedes Land unweigerlich divergierende Antworten auf die komplexe Aufgabe der Richtlinienumsetzung. Der Vergleich zeigt unterschiedliche nationale legislative und sozialpraktische Situationen auf, in denen PraktikerInnen und Gesetzgeber handeln müssen und entlarvt somit unterschiedliche Verständnisse über die Zuständigkeiten jedes Staates für den Schutz von Opfern von Straftaten auf nationaler Ebene.

Es besteht jedoch ein prinzipielles Problem, wenn man darauf abzielt unterschiedliche Mitgliedstaaten hinsichtlich der Umsetzung der Opferschutzrichtlinie zu vergleichen. Dies ist darin zu lokalisieren, dass jedes Land in nationale Spezifika eingebettet ist:

> "The desire to use victim support, an overall understanding of the experience with criminal justice agencies in the aftermath of victimization, the impact of interaction with the criminal justice process on victims' emotional well-being, the importance of different aspects of victim assistance, there is no good grounds for comparison across EU Member States, given that for most of the European Union there is no empirical research available that would offer an answer" (IVOR report 2016: 197).

Die Umsetzung von homogenen Mindeststandards im Opferschutz eines jeden Landes der Europäischen Union gestaltet sich daher sehr unterschiedlich. Dies liegt zunächst darin begründet, dass unterschiedliche

[141] http://fra.europa.eu/en/publication/2015/child-friendly-justice-perspectives-and-experiences-professionals-childrens (letzter Abruf: 19. April 2018).



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nationale Gesetzgeber verschiedene Interpretationen der wichtigsten Begriffe und Konzepte der Richtlinie[142] entwickeln. Zweitens bestehen wesentliche Unterschiede in den verschiedenen rechtlichen Traditionen, also darin mit Themen des Opferschutzes umzugehen, als auch verschiedene bereits bestehende Standards im Opferschutz. Darüber hinaus bestätigen die Projektergebnisse dieser Studie einige der Forschungsergebnisse des IVOR-Projekts und unterstreichen, dass es in den meisten Ländern der europäischen Union einen Mangel an evidenzbasierter Forschung gibt, die eigentlich die ideale Grundlage für einen solchen Vergleich der Handhabung der implementierten Standards in den EU-Mitgliedstaaten wäre. Was jedoch sichtbar wird, sind die Entwicklungen der jeweiligen Opferschutzsysteme eines jeden Landes und darüber hinaus die Erfahrungen der nationalen Gesetzgeber und PraktikerInnen mit der EU-Opferschutzpolitik, die im Umkehrschluss auch einige Schlussfolgerungen über die EU als politische Akteurin zulassen (siehe ebd.). Das heißt, das tatsächliche Ausmaß der Effekte der Opferschutzrichtlinie auf nationale Gesetzgebungen und die damit verbundenen Praktiken ist schwer zu ermitteln, ohne dass die Auswirkungen der Opferschutzmaßnahmen mit den Erfahrungen der Opfer rückgekoppelt werden und darüber hinaus ein Mangel an evidenzbasierter Forschung festzustellen ist.

Erwähnenswert in diesem Zusammenhang ist besonders **England und Wales**, da hier staatliche als auch nichtstaatliche AkteurInnen eine gewisse Tradition in empirisch-viktimologischer Forschung aufweisen, indem sie die Erfahrungen und Perspektiven von minderjährigen Opfern miteinbeziehen, um daran eben beurteilen zu können wie effektiv verschiedene Opferschutzmaßnahmen und -programme im Vereinigten Königreich (hier in diesem Bericht insbesondere in England und Wales) funktionieren.[143] Es scheint sehr vielversprechend zu sein, die Erfahrungen der Opfer als Maßstab heranzuziehen, anhand dessen, die Auswirkungen und Funktionen des Opferschutzes bewertet und bestimmt werden.

In **Österreich** und **Finnland** gibt es ebenso - wenn auch nicht im breitestem Ausmaß - eine solche Tradition in der Opferzufriedenheitsforschung (in Österreich besonders im Bereich der häuslichen Gewalt). Bei jeder Bewertung der Auswirkungen von politischen Bemühungen müssen immer die tatsächlichen Lebenserfahrungen der Menschen, hier der Opfer von Straftaten und ihrer Zufriedenheit mit dem

[142] Siehe dazu den ergänzenden E-PROTECT-Bericht D3.6 zur rechtlichen Umsetzung der Opferschutzrichtlinie, der die unterschiedlichen Auslegungen dieser in der Richtlinie festgelegten Rechtsbegriffe näher erläutert.

[143] Wie zum Beispiel der Bericht des Victims' Commissioner, aber auch andere Berichte von nicht-staatlichen Stellen, wie bspw. der Bericht von Victim Support "Getting it right for young victims and witnesses", https://www.victimsupport.org.uk/sites/default/files/You%20%26%20Co%20-%20Getting%20it%20right%20for%20young%20victims%20and%20witnesses.pdf (letzter Abruf: 9. April 2018).



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Justizsystem, der Exekutive als auch der Opferschutzorganisationen und deren angebotenen Maßnahmen berücksichtigt werden. Daher ist es notwendig umfassende Untersuchungen durchzuführen, die die Erfahrungen der sogenannten EndnutzerInnen miteinschließen. In dieser Hinsicht kann das **Vereinigte Königreich** definitiv als Beispiel für eine gute Praxis genannt werden.

Ein weiterer wichtiger Aspekt besteht darin, die *Bedeutung des Kontextes* innerhalb der EU-Politik miteinzubeziehen und zu verstehen. Das Konglomerat von Ländern innerhalb der EU erfordert einen anderen Ansatz der Politikgestaltung, insbesondere, wenn diese effektiv sein möchte in der Implementierung von Mindeststandards. Politische EntscheidungsträgerInnen auf EU-Ebene müssen genau jene verschiedenen kontextuellen Faktoren, wie bspw. unterschiedliche Rechtssysteme - Zivilrecht vs. Common-Law-Systeme (wie dasjenige des Vereinigten Königreichs) - berücksichtigen, weil genau solche kontextuellen Faktoren ganz wesentlich dazu beitragen wie sich länderspezifische Opferschutzsysteme entwickeln und ausgestalten (siehe ebd.).

> "In victim assistance this necessity is felt more keenly, given that **context** is also an important factor with victim experience itself, in the interaction between victims and victim assistance providers, in the manner in which victim assistance is situated within its network and the nature of victim assistance as government enhanced empowerment of individual citizens. The experience with improving the position of victims at the national level in a variety of nations speaks to the complexities and difficulty of doing so in one country: these issues are only compounded by the fact that the EU contains 28 Member States" (ibid.: 200).

Aus dieser Studie, einschließlich der zuvor erarbeiteten Länderberichte des E-PROTECT-Projekts, lassen sich jedoch einige Schlussfolgerungen zu sogenannten *best practices*, also bewährten Verfahren als auch Schwierigkeiten in der Richtlinienumsetzung ziehen und aufzeigen. Darüber hinaus sollten die oben skizzierten Schwierigkeiten in Bezug auf EU-Politik im Allgemeinen und die Opferschutzrichtlinie im Besonderen durch einige empirische Ergebnisse dieser Forschung untermauert werden.

Die hochwertigen Informationsmaterialien die durch die **britische** Regierung und verschiedener dort ansässiger Opferschutzorganisationen zur Unterstützung von Verbrechensopfern entwickelt und bereitgestellt werden sind vielversprechend. Die letzte Aktualisierung des Victims' Codes im Jahr 2015 hat wahrscheinlich erhebliche Auswirkungen auf den Opferschutz. Dadurch erhalten die Opfer detaillierte und sachdienliche Informationen über ihre Rechte und Ansprüche, als auch über die Pflichten der gesetzlichen Erbringer von Opferschutzmaßnahmen, wie z. B. in welchem Zeitraum die Polizei die Bestätigung der Anzeige eines Verbrechens an das Opfer schicken muss, oder in welchem Zeitrahmen die Opfer mit


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Informationen über behördliche Entscheidungen in angemessener Sprache informiert und aufgeklärt werden müssen.

In anderen Mitgliedstaaten wie z.B.: in **Deutschland** mangelt es an solchen angemessenen und sprachlich zugänglichen Informationsmaterialien für Betroffene von Verbrechen (siehe EPRS 2017). Insbesondere angesichts der Komplexität des deutschen Rechts wäre dies ein notwendiger Schritt in Richtung eines noch stärker opferorientierten Ansatzes, auch um die Opfer gewissermaßen von der Abhängigkeit staatlicher Behörden zu befreien. England und Wales hat hingegen diesen einheitlichen Rechtstext (*Code of Practice for Victims of Crime*) erstellt, der die Rechts- und Informationsgrundlage für alle am Strafverfahren beteiligten Parteien gleichermaßen darstellt, also für die betroffenen Opfer als auch staatlichen Institutionen. Diese Art von Praxis schafft eine andere Art von politischer Reife für Menschen, die von solchen Verbrechen betroffen sind und auf Schutzmaßnahmen im Allgemeinen und den Schutz ihrer Rechte im Besonderem angewiesen sind.

Der Kodex enthält jedoch keine verbindlichen Obligationen für behördliche Institutionen koordiniert zusammenzuarbeiten (multi-agency cooperation), um die Opfer auf ihrem Weg durch das Strafjustizsystem umfassend und sinnvoll zu unterstützen. Da die Opfer meist mit einer Vielzahl von unterschiedlichen Fachleuten aus verschiedenen Behörden in Kontakt kommen, ist die Kooperation jener AkteurInnen ein zentraler Aspekt, um sicherzustellen, dass vor allem minderjährige Verbrechensopfer in angemessener Weise von allen beteiligten AkteurInnen unterstützt werden. Der Victims' Commissioner von England und Wales hat hinsichtlich dieser behördenübergreifenden Kooperation einige Mängel festgestellt.

Eine möglicherweise eklatante Feststellung ist, dass Sozialdienstleistungen von Opferschutzorganisationen nicht durch den Victims' Code abgedeckt werden und es daher zu Problemen in der Bereitstellung eines angemessenen und umfassenden Kinderschutzes kommen kann, wie bspw. der zuvor erwähnte Mangel, adäquate Informationen in angemessener Zeitspanne den Opfern bereitzustellen. Der Victims' Commissioner hat insbesondere das Fehlen einer koordinierten Zusammenarbeit zwischen dem Crown Court (britischer Strafgerichtshof in England und Wales) und dem Family Court (Familiengericht in England und Wales), aber auch zwischen der Polizei und Opferschutzeinrichtungen festgestellt (ebd.). Dieser Mangel könnte jedoch durch die Bereitstellung einer professionellen Interessenvertretung mit Koordinationsrolle für jedes einzelne Individuum gelöst werden. Diese Person, deren Aufgabe darin bestünde Maßnahmen und ineinandergreifende Prozesse zu koordinieren, könnte dem Opfer alle relevanten Informationen zum eigenen Fall zur Verfügung stellen. Inklusive diese an geeignete



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Opferschutzeinrichtungen weiterzuleiten und den Fortgang des einzelnen Falles als auch die individuelle Entwicklung des Opfers zu überwachen, insbesondere, wenn sich dessen Bedürfnisse im Verlauf des Falles ändern sollten, darauf adäquat reagieren zu können (ebd.: 35).

Die wenigen in **Portugal** verfügbaren Einsichten in Bezug auf den Schutz von Kindern, sowohl in Bezug auf Interventionsmaßnahmen als auch deren Effekte, also bezogen auf die Erfahrungen von Kindern selbst, die Anhörungen und Gerichtsverfahren durchlaufen haben, zeigen, dass es schwerwiegende organisatorische, ressourcenbezogene und schulungsspezifische Probleme zu überwinden gibt.[144] Rechtsvorschriften im Bereich der kindergerechten Justiz sind in Portugal ebenfalls langsam vorangekommen. Nichtsdestotrotz haben die internationalen Verpflichtungen Portugals dazu beigetragen das nationale Regelwerk voranzutreiben, welches zu einem zumindest umfassenden rechtlichen Rahmen für den Schutz von minderjährigen Opfern geführt hat.

In **Spanien** gibt es Rechtsvorschriften und Strukturen, die, wenn sie effektiv ausgeführt werden, (wie z. B. die individuellen Begutachtungen), das Potenzial haben minderjährige Opfer umfassend zu unterstützen. In den kommenden Jahren wird es wichtig sein, die Umsetzung der beiden in diesem Bericht hervorgehobenen Rechtsvorschriften zu überwachen und beobachten, ob und inwieweit diese tatsächlich dazu beitragen einige der Hindernisse und Herausforderungen zu überwinden, mit denen Kinder im Zusammenhang mit dem Justizsystem konfrontiert sind. Ähnlich wie in Portugal können die bestehenden Programme und Maßnahmen die Grundlage für die Förderung einer kindgerechten Justiz in Spanien und insbesondere für die Umsetzung der in der Opferschutzrichtlinie vorgesehenen Maßnahmen bilden. Es wird von entscheidender Bedeutung sein, dass die InteressensvertreterInnen diese Verpflichtung eingehen und sich darauf konzentrieren, die Verfahren und Praktiken im ganzen Land zu harmonisieren, um eben sicherzustellen, dass bestehende Disparitäten zwischen den verschiedenen spanischen Regionen aufgelöst werden und keine weiteren entstehen, wie dies beispielsweise auch in Österreich teilweise der Fall ist (Land/Stadt-Gefälle).

**Deutschland, Finnland** und **Österreich** sind die einzigen drei Mitgliedstaaten dieser Studienauswahl, die über eine nationale zentrale Koordinierungsstelle des Opferschutzes verfügen; dieser Umstand hat ganz

[144] Eine Studie zur Bewertung der Arbeit von Kinderschutzkommissionen ist hier abrufbar: http://www.analiatorres.com/pdf/SINOPSEfinalcriancasconclrecomendacoes.pdf (letzter Abruf: 30. April 2018).



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wesentlich, im Vergleich zu den anderen Mitgliedstaaten, zu einer konsistenteren Qualität der Umsetzung der RL-Bestimmungen geführt (siehe EPRS 2017).

In **Österreich** und **Deutschland** gibt es einige multi-sektorenübergreifende Kooperationsaktivitäten, wie zum Beispiel die sogenannten *„Runden Tische"*, an denen all jene institutionellen Akteure die im Opferschutz involviert und aktiv sind teilnehmen (oder dies zumindest sollten). Diese institutionelle Praxis erscheint außerordentlich vielversprechend, da diese einen zentralen Aspekt in der Harmonisierung von Verfahren zwischen den verschiedenen beteiligten Akteuren (wie z.B.: Angehörige der Exekutive, RechtsanwältInnen, Staatsanwaltschaft, Angehörige der Gesundheitsberufe, PsychologInnen, SozialarbeiterInnen etc.) darstellt. Dies könnte sowohl die Situation der Opfer von Straftaten wesentlich verbessern, vor allem um eine sekundäre Viktimisierung zu vermeiden, als auch die Arbeitssituation der involvierten AkteurInnen selbst.

Das **finnische** *Barnahus-Modell* kann ebenfalls als ein solch vielversprechender multiprofessioneller Ansatz angesehen werden. Dieser wird bereits in den nordischen Ländern sukzessive praktiziert und teilt die Idee eines integrierten Ansatzes des Opferschutzes, insbesondere im Fall von minderjährigen Opfern.

Sowohl **Deutschland** als auch **Österreich** bieten kostenlose psychosoziale Prozessbegleitung für besonders schutzbedürftige Opfer an. Diese Schutzmaßnahme stellt insbesondere für Kinder und Jugendliche eine wichtige Sonderschutzmaßnahme dar, da sie ebenso einem integrierten, kindgerechten und umfassenden Zugang des Opferschutzes folgt und einen solchen etabliert.

**Finnland** hat eine ähnliche Maßnahme gesetzlich verankert; das Recht auf einen sogenannten Rechtsbeistand, diese wird jedoch nicht ausreichend staatlich finanziert. Die Maßnahme wird nur unter ganz besonderen Umständen und in Bezug auf bestimmte Straftaten, wie bspw. in Fällen von häuslicher Gewalt, Sexualdelikten oder schweren Straftaten die gegen das Leben, die Gesundheit oder die Freiheit einer Person gerichtet sind, kostenlos zur Verfügung gestellt.

Abschließend kann festgehalten werden, dass diese Studie neben anderen gezeigt hat, dass es von überaus zentraler Bedeutung ist den jeweiligen Kontext der unterschiedlichen Mitgliedstaaten miteinzubegreifen, insbesondere wenn es um solche Großprojekte wie die der Opferschutzrichtlinie und ihre Umsetzung in 28 Mitgliedstaaten geht (siehe IVOR-Bericht 2016). Opferschutz und dessen Strukturen unterscheiden sich zwangsläufig von einem Bereich der Europäischen Union zum nächsten, daher müssen politische EntscheidungsträgerInnen auf EU-Ebene notwendigerweise diese Kontexte und unterschiedlichen


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Bedingungen berücksichtigen, um flexiblere Mittel zur Beeinflussung von Politik und Praxis in den Mitgliedstaaten zu entwickeln. Ein qualitativer Vergleich ist möglich, bedeutet aber eben die nationalen Besonderheiten auf beiden Ebenen, rechtlicher als auch sozialer, zu berücksichtigen und von hieraus eine Untersuchung der Auswirkungen der Richtlinienumsetzung und deren Bewertung vorzunehmen. Dies würde ebenso die ideale Grundlage für die Entwicklung einer solchen Richtlinie überhaupt darstellen, weil nur so effektive Politikgestaltung geschehen kann, wenn diese einen tatsächlichen Einfluss auf die praktischen Lebenserfahrungen der Opfer haben möchte.


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JUST-JACC-VICT-AG-2016

Granturi de acțiune pentru susținerea proiectelor transnaționale cu scopul de a consolida drepturile victimelor infracționalității

Programul de Justiție

GA No. 760270

# Consolidarea protecției copiilor – victime ale infracțiunilor E-PROTECT

## WP3: <Cercetare și Colectare de date>

## < D3.13 – Studiu pan-european privind cele mai bune practici în metodologiile de evaluare individuală a copiilor victime ale infracțiunilor >

## Lider: <VICESSE>



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| **CO** | Confidențial, numai pentru membrii consorțiului (incluzând serviciile Comisiei) | |
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# Rezumat

Îmbunătățirea drepturilor de protecție ale copiilor victime ale infracțiunilor prin investigarea transpunerii în legislația națională a Directivei 2012/29 / UE (Directiva privind victimele) în cadrul jurisdicției a cinci state membre (Bulgaria, Austria, România, Grecia și Italia) este principalul scop al proiectului E-PROTECT. În plus, se investighează modul în care o dispoziție juridică principală a Directivei privind victimele: *Articolul 22: Evaluarea individuală a victimelor pentru a identifica nevoile specifice de protecție* funcționează la nivel practic și, prin urmare, urmărește să inspire și să stimuleze o rețea multidisciplinară de profesioniști prin furnizarea de ateliere de lucru în fiecare dintre țările partenere pentru profesioniștii vizați în continuarea proiectului, precum și implementarea unei platforme de colaborare online, în cadrul căreia pot fi obținute și schimbate informații.

Acest raport pan-european privind *"cele mai bune practici de lucru în metodologiile individuale de evaluare a copiilor victime ale infracțiunilor"* vizează extinderea gamei geografice și culturale, astfel încât să poată produce o imagine mai amplă a aplicării evaluărilor individuale în statele membre ale UE. Analizează aplicarea practică a metodologiilor individuale de evaluare în următoarele state membre: **Germania, Portugalia, Spania, Regatul Unit (Anglia și Țara Galilor) și Finlanda**. În plus, concluziile rapoartelor anterioare ale fiecărei țări privind următoarele state membre: **Bulgaria, Austria, România, Grecia și Italia** sunt, de asemenea, sintetizate și incluse în acest raport.

Eșantionul statelor membre pentru acest studiu paneuropean este foarte relevant dintr-o dublă perspectivă: *în primul rând,* din punct de vedere geografic și cultural, având în vedere particularitățile legislative naționale și transpunerea diferită a Directivei privind victimele și modul în care acestea se desfășoară în practică. *În al doilea rând*, ținând seama de obiectivul principal al proiectului, acela de a îmbunătăți drepturile de protecție ale copiilor deveniți victime ale infracțiunilor în rândul diferitelor țări din UE, ele par a fi exemple demne de studiat, deoarece au furnizat o infrastructură de sprijinire a victimelor pe o perioadă mai lungă de timp (în cazul Angliei și al Țării Galilor, Germaniei și Finlandei) sau au dezvoltat o gestionare specifică avictimelor-copii în urma aplicării directivei privind victimele (în cazul Spaniei și al Portugaliei).

În perspectiva *problematizării comparative* (a se vedea Jasanoff / Metzler 2018), a devenit vizibil faptul că fiecare țară construiește și operează în contextul propriu al procedurilor de sprijinire a victimelor și, prin urmare, produce în mod inevitabil răspunsuri divergente la sarcina complicată de a reacționa la punerea în aplicare a directivei. Acest studiu utilizează o comparație calitativă, al cărei scop este de a înțelege un caz



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sau, mai degrabă, cazurile (în acest raport: diversele state membre ale UE care se ocupă de evaluările individuale și asistența pentru copiii-victime) în specificitatea lor și în general descrierea densă a acestor cazuri. Comparația stimulează o înțelegere serioasă a unui fenomen, deoarece există un grad ridicat de constrat. Mai mult, dezvăluie medii juridice și socio-practice naționale distincte în care practicanții și legislatorii trebuie să acționeze și astfel expun diferite înțelegeri ale responsabilităților fiecărui stat față de protejarea victimelor infracțiunilor la nivel național. Prin urmare, raportul urmărește să vadă diferitele cadre și practici de sprijinire a victimelor pentru copii în fiecare dintre statele membre prin lentilele celorlalte cadre de acțiune în problema victimelor (a se vedea Akrich / Rabeharisoa 2016).

La nivel pan-european, imaginea asistenței acordate victimelor în ceea ce privește transpunerea directivei se dovedește a fi foarte diversă în diferitele țări din zona UE. **Finlanda**, de exemplu, pare să aibă o abordare mai sistematică față de evaluările individuale de la momentul transpunerii directivei (a se vedea EPRS 2017: 82). Regatul Unit (în special **Anglia și Țara Galilor**) au elaborat câteva ghiduri de orientare practică (Codul de practică pentru victimele infracțiunilor), o cantitate mare de materiale de informare publică și instruiri speciale pentru practicienii implicați în sprijinirea victimelor. În plus, **Anglia și Țara Galilor**, precum și **Germania**au o tradiție de lungă durată a sprijinului victimelor. **Portugalia** și **Spania** sunt demne de remarcat deoarece ambele au transpus textul integral al directivei victimelor la nivel practic, sau mai degrabă literalmente.

Cu toate acestea, un fapt problematic comun în sprijinul victimelor este arhitectura uneori complicată, în ceea ce privește coordonarea și cooperarea victimelor. Acest lucru indică exact factorul semnificativ pentru sprijinul reușit al victimelor: *cooperareaîntre părțile interesate implicate*, atât la nivel național, cât și internațional (având în vedere criminalitatea transfrontalieră).

Includerea și înțelegerea *rolului contextului* în elaborarea politicilor UE este un alt aspect crucial, mozaicul de țări din UE necesită o abordare diferită a elaborării și punerii în aplicare a politicilor, astfel încât factorii de decizie ai UE ar trebui să ia în considerare exact acești diferiți factori contextuali la ambele niveluri, politic și juridic, toate acestea determinând un sistem specific de sprijinire a victimelor în fiecare țară.

În concluzie, acest studiu a arătat că este esențial să se includă *contextul individual al fiecărei țări* în care se dezvoltă sprijinul victimelor, în special în ceea ce privește astfel de proiecte majore cum ar fi Directiva Victimelor și punerea lor în aplicare în 28 de state membre (a se vedea raportul IVOR 2016). Sprijinul victimelor variază în mod inevitabil în practică, de la o zonă a Uniunii Europene la alta și, prin urmare,


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factorii de decizie ai UE trebuie să ia în considerare aceste contexte și medii diferite pentru a dezvolta mijloace mai flexibile pentru a influența politicile și practicile între statele membre.



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Cuprins

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# Listă de acronime

| | |
|---|---|
| CAC | Children Advocacy Centres (US model) |
| CILEX | Chartered Institute of Legal Executives (UK) |
| CRAE | Children Rights Alliance for England |
| CSEW | Crime Survey of England and Wales |
| EKKA | National Centre for Social Solidarity (Greece) |
| E-PROTECT | Enhancing Protection of Children – victims of crime |
| EPRS | European Parliamentary Research Service |
| EU | European Union |
| EVVI | Evaluation of Victims project |
| FRA | Fundamental Rights Agency |
| FAPMI | Federation of Associations for the Prevention of Child Maltreatment |
| IAM | Individual Assessment Methodologies |
| IVOR | Implementing Victim-Oriented Reform of the criminal justice system in the European Union |
| LSCB | Local Safeguarding Children Boards (UK) |
| MS | Member States |
| NGO | Non-governmental Organisation |
| ONS | Office for National Statistics (UK) |
| SotC | Smile of the Child (Greece) |
| RIKU | Rikosuhripäivystys (Victim Support Finland) |
| RUMI | Unified Registry of Cases of Suspected Child Maltreatment (Spain) |
| Victims´ Directive (VD) | Directive 2012/29/EU |
| VPS | Victim Personal Statement (UK) |
| UK | United Kingdom |
| UNCRC | United Nations of Convention on the Rights of the Child |



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# 1 Introduction

Consolidarea drepturilor de protecție ale copiilor victime ale infracțiunilor prin investigarea transpunerii Directivei 2012/29 / UE[1] în legislația națională aflată sub jurisdicția a cinci state membre (Austria, Bulgaria, România, Grecia și Italia) este obiectivul specific al proiectul E-PROTECT. În rapoartele de țară[2] întocmite anterior, fiecare partener de proiect a elaborat îndeaproape aplicarea practică a metodologiilor individuale de evaluare (articolul 22 din Directiva privind Victimele și în continuare sub denumirea de IAM) și măsurile speciale pentru grupurile de victime vulnerabile în mod particular cum ar fi victimele-copii, în fiecare țară parteneră (Bulgaria, România, Grecia, Italia și Austria).

Lucrarea urmărește extinderea ariei geografice și culturale, astfel încât să poată produce o imagine mai largă a aplicării evaluărilor individuale privind protecția adecvată a victimelor infracțiunilor și a drepturilor acestoraîn statele membre ale UE. Este dedicată analizei aplicării practice a metodologiilor de evaluare individuală, care se referă mai exact la o dispoziție juridică principală a Directivei privind Victimele, *Articolul 22: Evaluarea individuală a victimelor pentru a identifica nevoile specifice de protecție* în următoarele state membre: **Germania, Portugalia, Spania, Marea Britanie (Anglia și Țara Galilor) și Finlanda.**

*Articolul 23* (Dreptul la protecție a victimelor care au nevoie de protecție specifică în cursul procedurilor penale - acestea includ anchete penale, precum și proceduri judiciare) și *Articolul 24* (Dreptul la protecția copiilor victime în timpul procedurilor penale) va fi examinat în cazul acestor state membre . Articolul 22 urmărește să evalueze nevoile specifice de protecție ale victimelor infracțiunilor și să stabilească dacă și în ce măsură ar beneficia de măsuri speciale. Acestea sunt furnizate și specificate la articolele 22, 23 și 24 privind vulnerabilitatea lor particulară (care se referă la victimizarea secundară și repetată, la intimidare și la represalii în timpul procedurilor penale).[3]

[1]Directiva 2012/29/UE urmărește să stabilească standarde minime privind drepturile, sprijinul și protecția victimelor infracțiunilor și înlocuiește decizia-cadru 2001/220 / JAI a Consiliului (CFD: 2001/220). În continuare, denumită "directiva privind victimele" sau VD. https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029 (accesat pe 15 martie 2018).

[2]Vezi: E-PROTECT Deliverables D3.8-12 (country reports on individual assessment methodologies in **BG** D3.8, **AT** D3.9, **RO** D3.10, **IT** D3.11, **EL** D3.12).

[3]Vezi articolele relevante din Directiva 2012/29/UE;https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029 (accesat pe 15 martie 2018); vezi și raportul statelor D3.8-12 produs în cadrul proiectului E-PROTECT, care explică mai exact prevederile fundamentale ale VD



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Evaluarea individuală ia în considerare dezvoltarea și implementarea unei *abordări de la caz la caz* a nevoilor victimei (a se vedea raportul INASC 2016: 20). Evaluarea unei abordări de la caz la caz se bazează pe trei aspecte principale: a) caracteristicile personale ale unei victime; b) tipul și natura infracțiunii; și c) circumstanțele infracțiunii.

Pentru a evalua cele mai bune practici și aplicarea adecvată a VD, *capitolul 5: "alte dispoziții"* ale directivei este relevant, deoarece se referă la: *Articolul 25*: Formarea practicanților și *Articolul 26:* Cooperarea și coordonarea serviciilor (a se vedea Directiva 2012/29 / UE). Aceste articole sunt, de asemenea, luate parțial în considerare în acest raport.

## Bune practici

Identificarea celor mai bune practici de lucru se află în centrul acestui raport. Astfel de practici descriu proceduri care asigură o protecție adecvată a drepturilor copilului și a bunăstării într-o manieră atentă și responsabilă.[4]De exemplu, elaborarea de orientări care vizează armonizarea și dezvoltarea procedurilor operaționale pentru toți actorii implicați în domeniul sprijinirii victimelor (cum ar fi furnizorii de sprijin pentru victime, personalul poliției, avocații).

O problemă comună în sprijinul victimelor este structura lor adesea complicată, în ceea ce privește coordonarea și cooperarea: victimele infracțiunilor trebuie să se orienteze într-o rețea complicată de instituții cu responsabilități diferite, victimele experimentând de obicei cereri excesive din partea acestora. Acest lucru evidențiază factorul crucial pentru acordarea sprijinului reușitvictimelor: *cooperarea între părțile interesate* implicate, atât la nivel național, cât și la nivel internațional. Aceasta vizează stabilirea unui acces mai bun și mai ușor de administrat la măsurile de sprijinire a victimelor pentru persoanele aflate în nevoie și la crearea unor condiții mai bune de lucru pentru profesioniști.Compararea diferitelor gestionări naționale ale evaluărilor individuale este importantă deoarece:

> "Experiența națională internă arată că îmbunătățirea situației victimelor infracțiunilor nu poate fi decât într-o măsură limitată încredințată schimbărilor din"litera legii". În schimb, succesul este în mare parte condiționat de practica la nivel practic: măsura în care drepturile sunt susținute de acordarea de servicii suficiente"(raportul IVOR 2016: 9).[5]

[4]De exemplu, *camerele albastre* din Bulgaria, care sunt spații specifice (proiectate într-un mediu prietenos cu copiii, spre deosebire de stația de poliție de exemplu) ce au fost stabilite pentru interogări / interviuri pentru copii (vezi D3.8 / 2017, raport de țară Bulgaria).

[5]Vezi raportul IVOR – "Implementing victim-oriented reform of the criminal justice system in the European Union (2014-2016), https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf (accesat pe 25 aprilie 2018).



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Raportul IVOR subliniază implementarea practică a reglementărilor la nivelul de bază, care depinde în principal de modul în care se stabilesc în practică prevederile legale, ca cel mai important factor în sprijinirea eficientă a victimelor. În alte cuvinte:

> "Punerea în aplicare a Directivei UE privind drepturile victimelor depinde în plus de faptul că persoanele responsabile de urmărirea penală pe teren pun sau nu în aplicare spiritul directivei în munca lor de zi cu zi de a susține victimele în procedurile penale și de a-și exercita drepturile" (INASC 2016: 43).

Prin urmare, raportul examinează IAM-urile la nivel pan-european, concentrându-se asupra modului în care acestea sunt puse în practică în fiecare context pentru a realiza o mai bună aplicare a evaluărilor nevoilor individuale în rândul statelor membre ale UE.

### Structura raportului

Raportul este structurat pe patru secțiuni principale: în primul rând, se subliniază utilizarea *comparației* ca *abordare metodologică***(2)**urmând un capitol care prezintă un rezumat al *"învățămintelor cheie din transpunerea articolelor 22, 23 și 24 din Directiva privind Victimele "în Bulgaria, România, Grecia, Italia și Austria"***(3)**.

Rezultatele rapoartelor de țară anterioare vor fi comparate cu cele din acest raport pentru a înțelege mai bine provocările comune privind punerea în aplicare a evaluării individuale prevăzute de Directiva privind Victimele.

Ulterior, raportul oferă o imagine de ansamblu asupra procedurilor actuale de sprijinire a victimelor copilului din cele cinci state membre selectate (Germania, Portugalia, Spania, Anglia și Țara Galilor, Finlanda) **(4)** și urmărește examinarea *implementării la nivel organizațional a evaluărilor nevoilor individuale și a măsurilor speciale pentru copiii deveniți victime ale infracțiunilor***(5)**.

În cele din urmă, raportul oferă o secțiune de sinteză, care urmărește să compare practicile din aceste state membre, inclusiv rezultatele țărilor partenere, pentru a identifica cele mai bune practici de lucru **(6)**.

## 2 Abordarea metodologică

Din punct de vedere metodologic, acest studiu privind IAM este orientat către o comparație calitativă, având ca scop obținerea unei descrieri, formarea unor concepte și a unei explicații analitice, mai degrabă decât oferirea unei semnificații statistice (vezi Krause 2016). Obiectivul specific al comparării calitative în științele sociale este de a înțelege un caz sau, mai degrabă, mai multe cazuri în specificitatea lor, și



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generalizarea prin elaborarea unei descrieri consistente a acestor cazuri. Comparația stimulează o înțelegere serioasă a unui fenomen, deoarece presupune un contrast constant. Prin urmare, comparația face ca propria noastră părtinire și bagajul normativ să fie vizibile, deoarece ceea ce poate apărea într-un caz ca fiind natural ar putea fi văzut într-un alt caz diferit sau nerezonabil (ibid.). Stöckelová este preocupată de natura politică a unor asemenea confruntări comparative. Prin indicarea multiplelor structuri hegemonice ale proiectelor de cercetare[6] ale UE, ea a ajuns la concluzia că nu există nicio ieșire din metoda comparației , nefiind inocent sau neutru din punct de vedere politic.

În consecință, eșantionul de SM din acest raport trebuie justificat, în special în ceea ce privește întrebarea: de ce aceste state membre? Într-un studiu care urmărește să reprezinte un nivel pan-european, este necesar să se ajungă la o gamă geografică și culturală mai largă, în special în ceea ce privește abordările juridice diferite față de drepturile victimelor și aplicarea VD. De altfel, poate fi o reprezentare selectivă a statelor membre ale UE, pur și simplu din considerente de fezabilitate, deoarece studiula 28 de state membre din Europa ar depăși resursele disponibile ale acestui raport. Statele membre au fost selectate pe baza unui prim screening, în funcție de particularitățile lor juridice și practice, pentru a i

**Finlanda**, de exemplu, pare să aibă o abordare mai sistematică față de evaluările individuale de la transpunerea directivei (a se vedea EPRS 2017: 82)[7]. Regatul Unit (în special **Anglia și Țara Galilor**) este un caz relevant, deoarece au elaborat câteva orientări de natură practică (Codul de practică pentru victimele infracțiunilor)[8],o cantitate mare de materiale de informare publică și instruiri speciale pentru specialiștii implicați în sprijinirea victimelor. În plus, **Anglia șiȚara Galilor**, precum și **Germania**au o tradiție de lungă durată în sprijinul victimelor. **Portugalia** și **Spania** sunt demne de remarcat deoarece ambele au transpus literal textul integral al directivei victimelor.

[6]De exemplu, poziția hegemonică a Regatului Unit este întotdeauna considerată drept un indicator de referință, în special în ceea ce privește excelența științifică.

[7] The Victims' Rights Directive 2012/29/EU, European Implementation Assessment Study conducted by European Parliamentary Research Service (EPRS), December 2017. This is a current assessment report on the transposition into national law, with specific focus on the practical application of the Victims´ Directive but assessed in more depth in a sample of 12 MS, which also tries to represent a balance in terms of geography, size, different legal traditions and approaches (ibid.: 4).

[8]Vezi: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (accesat pe 20 martie 2018).



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Prin urmare, raportul urmărește să vadă diferitele cadre de natură practică, mai degrabă decât cele de reglementare, ale sprijinului victimelor[9]în fiecare stat membru din perspectiva cadrului celuilalt de sprijinire a victimelor (a se vedea Akrich / Rabeharisoa 2016).

Această abordare implică în stadiul central practicile în cauză, pentru a explora modul în care transpunerea IAM-urilor funcționează diferit în practică prin intermediul unor sisteme de sprijinire a victimelor diferite din punct de vedere cultural. Raportul încearcă să ofere o perspectivă asupra gestionării diferite a evaluărilor individuale și a serviciilor de sprijinire a victimelor prin evidențierea practicilor comune. Perspectivele acestor practici ar trebui să încurajeze înțelegerea și învățarea reciprocă, ținând cont de particularitățile culturale.

Lucrarea se concentrează în principal pe cercetarea scrisă și ia în considerare informațiile deja existente și cunoștințele care au fost acumulate până în prezent.[10]Încercă să comprime cercetarea deja existentă privind transpunerea VD și include documente naționale disponibile, cum ar fi cele furnizate de organizațiile de sprijinire a victimelor (de exemplu, ghiduri, recomandări, standarde de calitate) sau alte documente relevante și literatură academică, care permit o mai bună înțelegere a aplicării unei evaluări a nevoilor individuale și a sprijinului pentru copiii-victime în fiecare dintre aceste țări.

[9]Există un studiu pan-european complementar, în special cu privire la transpunerea legală a VD (D3.6) cu același eșantion de state membre. Prin urmare, acest raport nu ia în considerare atât de multe procesele legislative de transpunere, dar trebuie să fie clar că este imposibil să se investigheze dimensiunile practice, independent de litera legii. Deoarece exact acest proces de transpunere reprezintă principala provocare și face vizibile diferitele provocări legate de transpunerea legilor / regulamentelor. Pentru a examina facil, acest proces ar putea fi văzut și ca un test dacă o lege este sau nu bine conceptualizată. Cu toate acestea, aplicarea practică a art. 22, 23, 24 se află în centrul acestui studiu.

[10]vezihttps://victimsupport.eu/about-us/our-projects/ivor/; accesează raportul aici: https://www.apav.pt/publiproj/images/yootheme/PDF/IVOR-Repot-WebVersion.pdf; Sau, http://www.victimsandcorporations.eu/wp-content/uploads/2017/01/Vict-and-Corp_First-Findings.pdf (accesat pe 19 martie 2018).



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# 3Concluzii cheie privind transpunerea în practică a articolelor 22, 23 și 24 din Directiva Victimelor în Bulgaria, România, Grecia, Italia și Austria

Acest capitol scoate în evidență diferite practici naționale în ceea ce privește sprijinirea copiilor, în special în ceea ce privește evaluarea nevoilor individuale pe care proiectul le-a explorat și elaborat în rapoartele de țară anterioare, incluzând*Bulgaria, România, Grecia, Italia și Austria*. Aceste practici ar putea fi considerate bune practici în contextul sprijinirii victimelor.[11]

## 3.1 Austria

În Austria, evaluarea individuală este efectuată de poliție, deoarece în majoritatea cazurilor este primul punct de contact atât pentru victimă, cât și pentru suspect. Principalul moment pentru efectuarea evaluării individuale în timp utileste **intervenția preventivă a poliției**, care este responsabilă de efectuarea tuturor activităților de prevenire. Prevenirea include atât desfășurarea convorbirilor cu victima, cât și cu suspectul.

O bună practică pusă în aplicare în Austria este așa-numita asistență judiciară, care include asistență judiciară psiho-socială și juridică (*Psychosoziale Prozessbegleitung*)[12], – care reprezintă o realizare majoră a sistemului austriac de sprijinire a victimelor pentru a asigura protecția drepturilor lor, acordând o atenție deosebită asigurării asistenței judiciare acordate copiilor și tinerilor. Asistența judiciară, ca serviciu special de sprijinire a victimelor, a fost dezvoltată în ultimii 20 de ani în Austria și actualizată frecvent până în prezent. Asistența judiciară înseamnă sprijinirea victimelor (copii), în special în cazurile de infracțiuni sexuale, corporale și de violență în familie, pe parcursul întregii proceduri penale. Acesta nu conține doar sprijin în timpul procedurii judiciare, ci începe deja – în cel mai bun caz – înainte de a raporta o infracțiune și se termină după proces. Aceasta include atât asistența judiciară psiho-socială, cât și cea juridică.În plus,

[11]Pentru informații detaliate privind diferitele sisteme de sprijinire a victimelor și o imagine de ansamblu la nivel cantitativ a victimelor infantile în fiecare țară, vezi E-PROTECT Deliverables D3.8-12 (rapoarte de țară privind metodologiile individuale de evaluare în**BG** D3.8, **AT** D3.9, **RO** D3.10, **IT** D3.11, **EL** D3.12).

[12]Vezi: http://www.pb-fachstelle.at/fuer-fachleute/in- formation-was-ist-prozessbegleitung/ (accesatpe 11 decembrie 2017).



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merită menționat faptul că, în 2014, Austria a primit premiul internațional *"future policy award"* pentru implementarea juridică a acestui serviciu de asistență judiciară și psiho-socială a victimelor.[13]

## 3.2 Bulgaria

În Bulgaria nu există o singură metodologie unică de evaluare aplicată copiilor victime ale infracțiunilor. Cu toate acestea, există câteva bune practici implementate în cazul sprijinului pentru aceștia, care trebuie dezvoltate și îmbunătățite în continuare.

Una dintre aceste măsuri speciale este ***Mecanismul de Coordonare a interacțiunii în cazurile victimelor-copii sau în situații de risc de abuz și de interacțiune în intervenția în situații de criză***, care este un acord formal între Ministerul Muncii și Politică Socială (MMPS), Ministerul de Interne (MI), Ministerul Justiției (MJ), Ministerul Educației și Științei (MES), Ministerul Sănătății (MS), Ministerul Culturii (MC), Agenția de Asistență Socială (ASA), Asociația Națională a Municipalităților și Avocatul Poporului. Implementarea Mecanismului de Coordonare este un instrument de reunire a eforturilor sistemului de protecție, a poliției și a justiției pentru a garanta interesul superior al copilului în cazul victimelor infantile sau în situații de risc de abuz.

În conformitate cu ***Mecanismul de Coordonare a interacțiunii în cazurile victimelor-copii sau în situații de risc de abuz și de interacțiune în intervenția în situații de criză***, în 2016 Institutul pentru Activități și Practici Sociale, în parteneriat cu UNICEF, Bulgaria a introdus primele ***centre de consiliere și sprijin pentru copii***. Serviciul integrat de advocacy și asistență se numește **Zona de Protecție** și se adresează copiilor victime ale tuturor tipurilor de abuz sau infracționalitate, indiferent dacă au fost comise în trecut sau recent. Serviciul Zonei de Protecție a introdus o abordare specializată față de copiii victime, inclusiv serviciile pentru copiii victime ale abuzului, reunind practici de asistență juridică, medicală, psihologică și socială într-un mediu favorabil copiilor.

Un alt exemplu de bună practică în cazul copiilor victime ale infracțiunilor sunt camerele specializate pentru audierile copilului, așa-numitele **"camere albastre"**, care permit interogarea de către un specialist instruit într-o atmosferă prietenoasă copiilor și în prezența tuturor participanților în funcție de faza corespunzătoare

[13] E-PROTECT Deliverable D3.9 Study on the individual assessment methodologies of child victims of crime in Austria, EN, pp.15-22.



Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

a procesului de justiție penală. La sfârșitul anului 2017, aproximativ 70% din orașele din Bulgaria dispuneau de spații speciale pentru interogarea copiilor implicați în proceduri penale.

Cu toate acestea, nu există încă standarde naționale de intervievare a copiilor în procedurile civile, care să asigure că actele procedurale care îl privesc pe copil vor fi desfășurate într-un mediu adecvat în condiții favorabile și cu utilizarea limbii adecvate pentru comunicarea cu copilul.[14]

## 3.3 Grecia

Efectuarea unor evaluări individuale ale victimelor-copii în cauze penale implică, în primul rând, raportul efectuat de către autoritățile sau instituțiile competente. În "prima linie" de primire a unor astfel de rapoarte, care, de asemenea, se încadrează în competența autorităților polițienești, în prezent sunt active ***două numere de asistență naționalespecializate în intervenția în aceste cazuri.***

În urma înregistrării unui astfel de raport, ***o anchetă socială este efectuată de către agențiile publice***, respectiv Grupul pentru Protecția Copilului al municipalității competente sau EKKA – în cazul infracțiunilor grave împotriva copiilor – sau de către organizații private specializate în protecția copilului (de ex. ARSIS sau SotC).

Constatările sunt transmise în scris Procurorului General pentru Minori. Acest raport cuprinde, de asemenea, sugestii privind tratamentul copilului (de exemplu, îndepărtarea din mediul familial, supravegherea copilului și a părinților prin întâlniri lunare etc.), precum și comentarii concludente privind comiterea infracțiunii raportate. Atunci când există dovezi empirice, mecanismul de stat al urmăririi penale este activat. În cursul acestei proceduri, rolul lucrătorilor sociali implicați în ancheta socială rămâne activ, atât în sensul acordării sprijinului psihologic victimei, cât și a martorilor la data procedurii de audiere.

Deși nu au legătură directă cu examinarea victimeidictată de sistemul legislativ penal, evaluările individuale sunt de asemenea efectuate de mai multe ONG-uri. Aceasta este, de obicei, o evaluare pe două niveluri a caracteristicilor și nevoilor speciale ale copilului, atât la nivel psihologic, cât și la nivel educațional, care este actualizat frecvent. În cadrul acestei proceduri, persoana care efectuează evaluarea ia în considerare severitatea și condițiile infracțiunii comise și, într-o oarecare măsură, dorința victimei, apărarea interesului

[14] E-PROTECT Deliverable D3.8 Study on the individual assessment methodologies of child victims of crimein Bulgaria, EN, pp.22-31.



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superior al copilului și urmărind prevenirea unei victime secundare. Cu toate acestea, lipsa unei politici uniforme de protecție a copilului face dificilă examinarea individuală a practicilor fiecărui ONG.[15]

## 3.4 Italia

Conform legii italiene, copiii sunt prezumați a fi deosebit de vulnerabili și, prin urmare, trebuie aplicate măsuri diferite. Codul penal italian prevede că, în cazul anumitor infracțiuni (cum ar fi abuzul, maltratarea, sclavia, prostituția infantilă și pornografia, abuzul sexual sau traficul de ființe umane) comise împotriva minorului sau comise de unul dintre părinți în detrimentul celuilalt (acesta devenind "martor la violență"), procurorul are obligația de a informa ***Curtea Juvenilă***. Cu toate acestea, numai în cazul unor circumstanțe particulare – în cazul în care infractorul este unul dintre părinți sau există un suspect și nu mai pot avea grijă de minor[16] – un proces este inițiat în fața Curții Juvenile.

Legislația italiană nu prevede în mod explicit dispoziții și reguli speciale pentru procedura individuală de evaluare. Cu toate acestea, fiecare subiect care intră în contact cu victima, de îndată ce are cunoștință de natura infracțiunii, are datoria de a efectua o procedură de evaluare individuală pentru a susține copilul și pentru a-i satisface nevoile de protecție. Prin urmare, ***evaluarea individuală*** are loc în ambele etape***: la începutul procedurilor***, în faza de dinainte de procesul de judecată, precum și în ***cursul procedurii***, ori de câte ori autoritatea judiciară solicită acest lucru.

Scopul tuturor măsurilor este, prin urmare, de a proteja victimele vulnerabile și de a reduce riscul traumei emoționale și psihologice inutile ca urmare a interviurilor și audierilor repetate, fără o nevoie de investigare efectivă. Astfel, Directiva privind Victimele, sau cel puțin principiile acesteia privind evaluarea copiilor și a victimelor vulnerabile și măsurile de protecție, au fost transpuse și puse în aplicare de legiuitorul național italian.[17]

## 3.5 România

Conform cadrelor naționale, o ***evaluare inițială*** se realizează cu promptitudine de îndată ce autoritățile locale pentru protecția copilului sunt informate sau primesc informații cu privire la un copil abuzat sau o situație specială de violență în familie. Conform prevederilor cadrelor naționale, evaluarea inițială este

[15] E-PROTECT Deliverable D3.12 Study on the individual assessment methodologies of child victims of crime in Greece, EN, pp.18-26.
[16] Acest lucru se întâmplă atunci când părinții nu își pot exercita, integral sau parțial, răspunderea părintească.
[17] E-PROTECT Deliverable D3.11 Study on the individual assessment methodologies of child victims of crime in Italy, EN, pp.13-22.


Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

efectuată de către asistentul social. Odată ce cazul a fost înregistrat și evaluarea inițială a fost încheiată, se efectuează o evaluare detaliată, cuprinzătoare și multidimensională a situației copiilor victime ale abuzului sau violenței.

În conformitate cu legislația națională, ***evaluarea individuală detaliată, cuprinzătoare și multidimensională*** poate fi de mai multe tipuri, cum ar fi: ***(a) evaluarea medicală; (b) evaluarea psihologică; (c) evaluarea socială; (d) evaluarea juridică; (e) evaluarea riscurilor.***

Evaluarea medicală se efectuează la cererea medicului sau a oricărui alt membru al rețelei de intervenție în conformitate cu legislația. Pentru a stabili o relație de cauzalitate posibilă între situația raportată și semnele medicale observate, vor fi cerute certificate medicale și legale. Evaluarea socială este efectuată în scopul analizării în special a calității mediului copilului (locuință, hrană, îmbrăcăminte, igienă, securitate fizică și mentalăetc.). Evaluarea juridică se referă la identificarea aspectelor juridice relevante legate de caz și urmărește, de asemenea, identificarea drepturilor și obligațiilor copilului și modalitățile de exercitare a acestor drepturi.

După finalizarea evaluării detaliate a situației generale, echipa multidisciplinară face un diagnostic clar în ceea ce privește forma violenței exercitate împotriva copilului (în cazul violenței domestice), nevoile victimei copilului și prioritățile de intervenție atunci când este necesar. Toate aceste informații sunt evidențiate de managerul de caz[18] în raportul detaliat de evaluare, care urmează a fi întocmit în termen de 30 de zile de la înregistrarea cazului la autoritatea responsabilă.[19]

# 4 Infrastructura sprijinului acordat copiilor-victime în cinci state membre ale UE

Acest capitol explorează diferitele proceduri de sprijinire a victimelor copilului în cinci state membre: *Germania, Spania, Portugalia, Regatul Unit (Anglia și Țara Galilor)* și *Finlanda*, axându-se pe următoarele dimensiuni:[20]

[18]Persoana responsabilă pentru cazurile specifice ale victimelor-copii
[19] E-PROTECT Deliverable D3.10 Study on the individual assessment methodologies of child victims of crime in Romania, EN, pp.10-14.
[20]Mai mult sau mai puțin în profunzime, în funcție de disponibilitatea informațiilor


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- Privire de ansamblu asupra situației victimelor-copii
- Practici instituționale: statutul copiilor victime, inclusiv o scurtă analiză a cadrului juridic, nivelul de protecție a drepturilor lor, serviciile generale de protecție a victimelor, serviciile de protecție a copilului și facilitățile specifice pentru copiii victime

  Instituțiile și autoritățile relevante care lucrează cu victime (copii) ale infracțiunilor

## 4.1 Germania

### 4.1.1 Privire de ansamblu asupra victimelor-copii din Germania

În 2015, au fost înregistrate 13.760 de victime ale hărțuirii sexuale, potrivit raportului german privind statisticile asupra infracțiunilor[21]. În caz de vătămare corporală, jaf, crimă împotriva libertății personale și infracțiuni împotriva autodeterminării sexuale, copiii și adolescenții reprezintă un grup de victime suprareprezentat în moddisproporționat. În schimb, ele reprezintă, de asemenea, grupurile de vârstă cele mai afectate din punct de vedere statistic (a se vedea PKS 2015: 30)[22]. Organizația germană non-profit pentru protecția copilului: *aktionkinderschutz* estimează un număr foarte mare de cazuri de abuzuri asupra copilului nedeclarate în Germania. Totuși, aceasta indică pur și simplu problema semnificativă a ne-raportării și identificării ca provocare pentru mai multe părți interesate care trebuie abordate și ca o indicație importantă pentru avansarea protecției copilului.

Evident, aceste cazuri nedeclarate nu reprezintă o specificitate germană, ci mai degrabă o problemă generală cu care trebuie să se confrunte atât autoritățile guvernamentale, cât și cele neguvernamentale, la nivel național și internațional.

În perioada 2009-2012, cazurile de agresiune sexuală împotriva copiilor raportate **(§§ 176, 176a, 176b StGB)**[23]au crescut continuu și au scăzut ușor din 2013 (-2,7%, până la 11808 de cazuri). Dar agresiunea sexuală constituie, în general, un tip de infracțiune cu rate mari de cazuri nedeclarate. După cum s-a menționat mai sus, sunt implicați mai mulți factori, cum ar fi creșterea sensibilității, schimbarea metodelor educaționale și a instituțiilor, "noi" tipuri de infracțiuni incluse în codul penal, toate acestea influențând ratele de raportare.

[21]Vezi: http://www.aktionkinderschutz.de/statistiken/; http://www.aktionkinderschutz.de/WP/wp-content/uploads/2016/12/pks2015ImkBericht.pdf (accesat pe 21 martie 2018).
[22] PKS este raportul statistic asupra infracționalității germane (*polizeiliche Kriminalstatistik 2015*).
[23] StGB este Codul Penal german, vezi: https://dejure.org/gesetze/StGB/176b.html (accesat pe 21 martie 2018).


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Prin urmare, statisticile trebuie să fie luate în considerare cu rezervă, deoarece au în mod inevitabil doar o semnificație limitată în ceea ce privește amploarea reală a abuzului copilului și mai ales în ceea ce privește hărțuirea sexuală împotriva copiilor.

O altă provocare în acest domeniu sau mai degrabă ceea ce este deosebit de important în acest caz este faptul că victimele-copii au în mod frecvent o relație strânsă cu infractorul și astfel au mai puține oportunități de a conștientiza situația sau de a scăpa de abuz.

### 4.1.2 Protecția copiilor-victime în Germania

Începând cu anii 1970, Germania a înființat o infrastructură de sprijinire a victimelor și a continuat să o îmbunătățească. Este una dintre țările cu un organism central (Weisser Ring) pentru coordonarea sprijinului victimelor la nivel național. Cu toate acestea, în ciuda structurilor puternice de sprijin care existau deja, sprijinul general a fost adesea mai puțin dezvoltat decât sprijinul specializat (a se vedea EPRS 2017: 65).

**Background juridic**

În ultimii ani, s-au făcut și unele eforturi de consolidare a unor legi privind protecția copilului, în special așa-numita "lege privind protecția copilului" (*Bundeskinderschutzgesetz - BkiSchGwhich)*[24],care a intrat în vigoare în 2012 și constituie un act antologic (*Artikelgesetz*) combină și transformă mai multe legi cu conținut diferit (o lege de modificare care schimbă un subiect într-o serie de domenii juridice diferite). Scopul principal a fost îmbunătățirea și protejarea bunăstării fizice, mentale și intelectuale a copiilor și adolescenților. O atenție deosebită este acordată îmbunătățirii asistenței timpurii (*Frühe Hilfe*), care are drept scop educarea prietenoasă a copiilor în situații familiale problematice care încep precoce, și anume prin consilierea viitorilor părinți și în primii ani de viața copilului. Astfel, ea se concentrează în principal pe cooperarea dintre actorii relevanți, în special între profesioniștii din sistemul de sănătate și biroul de asistență pentru tineri. În prezent, legea reglementează la nivel național că profesioniștilor din sistemul de sănătate li se permite să informeze biroul de asistență pentru tineri în caz de periclitare gravă a bunăstării copilului. Acest lucru nu a fost anterior reglementat în mod clar la nivel național în Germania. Legea include și alte îmbunătățiri importante, cum ar fi crearea rețelelor de protecție a copilului la nivel local sau extinderea standardelor de calitate pentru serviciile de asistență pentru tineri sau, de asemenea, obligația de a furniza

[24]Vezi: http://dip21.bundestag.de/dip21/btd/17/062/1706256.pdf; și: https://www.gesetze-im-internet.de/kkg/KKG.pdf (accesat pe 3 aprilie 2018).



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certificări extinse de conduită pentru toate persoanele angajate în sectorul bunăstării tinerilor, precum și pentru personalul din instituțiile care fac obiectul autorizării (a se vedea *Bundeskinderschutzgesetz* 2012)[25].

O nouă lege de modificare a intrat în vigoare în 2013 pentru consolidarea drepturilor victimelor infracțiunilor de natură sexuală (*Gesetz zur Stärkung der Rechte von Opfern sexuellen Missbrauchs - StORMG*)[26], care pune accentul în mod special pe protecția copiilor și adolescenților și pe evitarea victimizării secundare .

Cu toate acestea, îmbunătățirea reglementărilor esențiale pentru victimele infracțiunilor a intrat în vigoare prin a treia "modificare a legii victimelor" (*3. Opferrechtsreformgesetz*)[27]în 2015.Un reper principal este articolul 4 din legea modificată, care reglementează asistența judiciară psiho-socială în cadrul procedurii penale acordate victimelor vulnerabile (Art.4 *Gesetz über die Psychosocial Prozessbegleitung im Strafverfahren - PsychPbG*), care a intrat în vigoare în 2017.[28]

**Servicii generale de protecție a victimelor**

În Germania, protecția victimelor depinde în general de competența statelor federale datorită principiului sistemului federal și nu este reglementată în mod exhaustiv prin legea federală. Aceasta înseamnă că există o gamă largă de servicii și măsuri diferite pentru a îmbunătăți situația victimelor și a victimelor infracțiunilor.

Cu toate acestea, există câteva excepții (vezi legile menționate mai sus) care semnalează eforturile de stabilire a unor standarde și servicii la nivel național (în Germania există deja un nivel respectabil și acceptabil de protecție a victimelor). Cu toate acestea, punerea lor în aplicare este responsabilitatea statelor federale, ceea ce înseamnă că există diferențe la nivel local în ceea ce privește punerea în aplicare a prevederilor legislative.

[25]Vezi: http://dip21.bundestag.de/dip21/btd/17/062/1706256.pdf(accesat pe 3 aprilie 2018).
[26]Vezi: http://www.bundesgerichtshof.de/SharedDocs/Downloads/DE/Bibliothek/Gesetzesmaterialien/17_wp/Stormg/bgbl.pdf?__blob=publicationFile (accesat pe 3 aprilie 2018).
[27]Vezi: https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf;jsessionid=E6B66F638270FA2F059EA60081263A5B.2_cid289?__blob=publicationFile&v=3 (accesat pe 3 aprilie 2018).
[28]Mai multe detalii se regăsesc în capitolul 5.1.


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Cu toate acestea, Germania este încă una dintre puținele state membre ale UE care au implementat o rețea națională de coordonare a protecției victimelor și, în special, a protecției victimelor-copii. În ceea ce privește sprijinul general pentru victime, există două organizații naționale existente: prima se numește "WhiteRing" (*Weisser Ring*), care este în esență un punct de contact la nivel național, oferind o sesiune de consiliere gratuită cu un avocat liber ales și o linie telefonică[29]care funționează non-stop. Cea de-a doua organizație la nivel național este "Grupul de lucru pentru protecția victimelor din Germania" (*Arbeitskreis der Opferhilfe în Deutschland e.V.*) care constituie o organizație-umbrelă a diferitelor instituții profesionale în acest domeniu.

În plus, există un număr mare de centre locale de protecție specializată în cele 16 state federale din Germania, care sunt responsabile de oferirea de servicii de protecție. Unele dintre ele sunt orientate către victime specifice: de exemplu, centrele de protecție pentru copii, femei sau băieți și bărbați, iar altele sunt orientate către victimele altor tipuri de infracțiuni, de exemplu, centre de protecție pentru *hate crime*, infracțiuni de natură sexuală sau violență în familie.

**Servicii de protecție a victimelor-copii**

După cum s-a menționat deja, la prima vederesprijinul acordat victimelor pare destul de fragmentat în Germania. Cu toate acestea, există și o asociație-umbrelă de protecție a copilului, numită "centre de protecție a copilului" (*Die Kinderschutz-Zentren*)[30],care are ca obiectiv principal crearea și menținerea unei structuri competente în serviciile de protecție a copiilor-victime.

Asociația (existând încă din 1986) și eforturile sale de a armoniza sprijinul victimelor copiilor la nivel național par promițătoare. În prezent, ea cuprinde 28 de centre de protecție a copilului din diferite regiuni din Germania.[31]Este o comunitate de lucru la nivel național si o organizație non-profit care are ca scop sprijinirea protecției copilului la nivel macro-social prin combinarea cunoștințelor și experienței practice. În primul rând, easetează în mod regulat standarde profesionale, oferind oportunități de educație și formare pentru profesioniștii din domeniu, realizând publicații și congrese, consolidând relațiile cu presa și publicul

[29]Numărul 116006, care se aplică în întreaga Europă pentru asistența victimelor, victimele pot primi ajutor și sprijin gratuit în orice moment;
vezi:http://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (accesat pe 22 martie 2018).
[30]vezi: http://www.kinderschutz-zentren.org/index.php (accesat pe 3 aprilie 2018).
[31]vezi: http://www.kinderschutz-zentren.org/der-verein (accesat pe 3 aprilie 2018).


Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

și oferind consultanță în domeniul politicilor.[32]Interconectarea practicilor zilnice ale centrelor de protecție a copilului la nivel local și a sarcinilor supraregionale ale rețelei constituie baza pentru producerea de *know-how* de înaltă calitate care vor fi oferite profesioniștilor (ibid.). Astfel, sunt vizați profesioniștii care lucrează direct cu copiii-victime, dar și cercetători, politicieni, jurnaliști și reprezentanți ai politicilor specializate. Angajamentul lor de sine este întotdeauna datoria de a lua în considerare cele mai recente cercetări, precum și starea politică de actualitate domeniul protecției copilului, pentru a asigura cea mai înaltă calitate și un comportament organizațional eficient la nivel local și național. La nivel juridic, asociația pentru protecția copilului se bazează pe "legea privind protecția copilului" (Bundeskinderschutzgesetz) menționată anterior și pe diferitele legi ale statului, precum și pe acordurile internaționale ale Cartei ONU privind drepturile omului, Convenția ONU privind drepturile copilului, Convenția ONU privind eliminarea tuturor formelor de discriminare împotriva femeilor și Convenția ONU privind drepturile persoanelor cu handicap.[33]

Pentru fiecare din cele 28 de centre de protecție a copilului și pentru cele care urmează să se deschidă, se aplică următoarele șase principii: consiliere și terapie pentru părinți, îngrijitori, copii și adolescenți; intervenție în situații de criză și conflict; consiliere pentru profesioniști în temeiul articolului §8a din SGB VIII, în special în ceea ce privește evaluarea pericolelor (*Gefahreneinschätzung*)[34]; îndrumare și supraveghere pentru alte instituții; oportunități de educație și formare în regiunea respectivă; și evenimente de informare și ateliere.

## 4.2 Portugalia

### 4.2.1 Privire de ansamblu asupra victimelor-copii din Portugalia

În 2017, majoritatea arestărilor care au implicat victime-copii înregistrate de forțele de poliție au fost bazate pe infracțiunea de abuz sexual asupra copiilor, urmată de viol și pornografie infantilă. 98 de bărbați au fost arestați pentru infracțiunea de abuz sexual împotriva a 3 femei; 53 de bărbați au fost arestați pentru infracțiunea de viol (0 femei); și 34 de bărbați și 3 femei au fost arestați pentru că au implicat copiii în

[32]Vezi: http://www.kinderschutz-zentren.org/selbstverstaendnis (accesat pe 4 aprilie 2018).
[33]Vedeți întregul raport pe site-ul lor despre standardele lor de calitate pe mai multe niveluri (de exemplu, din punct de vedere legal, social, profesional etc.) și o gamă imensă de servicii pe care le oferă, pe de o parte, profesioniștilor, dar și celor care caută ajutor (copiii și îngrijitorii acestora):http://www.kinderschutz-zentren.org/qualitaetsstandards (accesat pe 4 aprilie 2018).
[34]Vezi §8a SGB VIII, http://www.sozialgesetzbuch-sgb.de/sgbviii/8a.html (accessed on 4th April 2018).


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pornografie. În ceea ce privește infracțiunea de abuz sexual asupra copiilor, adolescenților și minorilor, grupul de vârstă predominant al victimelor este de 8-13 (68,5%), urmat de vârsta de 7-4 ani (19,1%) și vârsta de 0-3 ani (6,7%). Ca și în anul precedent, contextul familial predomină ca principalul liant între făptuitor și victimă, implicând 44,5% din cazuri. În ceea ce privește alte infracțiuni, 3912 copii sub vârsta de 16 ani au fost victime ale violenței domestice. În plus, în 34% din infracțiunile de violență în familie au apărut minori ca martori. 45 de minori au fost identificați ca (presupuse) victime ale traficului de ființe umane în Portugalia; autoritățile competente au clasificat 24 ca fiind în curs de examinare / în curs de investigare și 4 ca fiind neconfirmate. Serviciul Străini și Frontiere a colaborat cu Centrele de Recepție Permanentă, garantând monitorizarea permanentă a victimelor acestor infracțiuni în toate situațiile în care era necesar să le protejeze, precum și sprijinirea acestora în diverse etape procedurale.[35]

Ultimul raport al Asociației Portugheze pentru Sprijinirea Victimelor (APAV), principala organizație neguvernamentală care oferă victimelor asistență socială, juridică și psihologică, arată că birourile saleau oferit asistență pentru 810 copii-victime în 2017. 62,6% erau femei și vârsta medie a fost de 11 ani. În ceea ce privește victimele infracțiunilor sexuale, din totalul de 488, 54,9% erau copii, în timp ce 32,6% adulți.[36]

### 4.2.2 Protecția copiilor-victime în Portugalia

**Background juridic**

În Portugalia, Legea nr. 130/2015 din 4 septembrie a modificat Codul de procedură penală și a aprobat Statutul victimelor prin transpunerea Directivei 2012/29 / UE a Parlamentului European și a Consiliului din octombrie 2012, care stabilește normele privind drepturile, sprijinul și protecția victimelor infracțiunilor și înlocuiește decizia-cadru 2001/220 / JAI a Consiliului din 15 decembrie 2001.[37]Articolele 17, 20 și 21 transpun textul articolelor 22-24 din directiva UE, dar nu depășesc conținutul original. Articolul 21 alineatul (1) din Directiva victimelor prevede că "statele membre se asigură ca victimelele care sunt deosebit de vulnerabile primească o evaluare individuală pentru a identifica nevoile specifice de protecție". În legislația portugheză, textul articolului 21 alineatul (1) a pierdut sintagma *în timp util* consacrat în Directiva UE și nu precizează prin ce mijloace sau proceduri se efectuează evaluarea individuală. Legea nr. 130/2015 din 4

[35] Relatório de Segurança Interna 2017. Sistema de Segurança Interna. Gabinete do Secretário-Geral.
[36] Portuguese Association for Victim Support (APAV). Estatísticas APAV. Relatório Anual 2017.
[37]Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.


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septembrie nu clarifică cine este autoritatea principală responsabilă de efectuarea evaluării individuale; deși articolul 21 (2-b) prevede că "Ancheta victimelor violenței sexuale, violenței pe bază de gen sau a violenței în relații intime, cu excepția cazului în care este făcută de un procuror sau de un judecător, trebuie să fie efectuată de o persoană din același sex dacă victima dorește acest lucru și cu condiția ca procedura să nu fie afectată. "[38]

În practică, procurorul sau judecătorul responsabili recurg, de obicei, la sprijinul personalului tehnic al diferitelor instituții pentru realizarea măsurilor identificate la articolul 23 din directivă, ținând cont de persoana care este "persoana de referință" a copilului. Persoana de referință este personalul tehnic care gestionează asistența victimei, Această persoană ar putea veni din partea comisiilor locale pentru promovarea drepturilor și protecției copiilor și tinerilor sau a unităților pentru protecția copiilor și tinerilor stabilite în centre locale de sănătate sau spitale sau altele. Aceasta înseamnă că nu există o singură echipă sau unitate responsabilă de realizarea măsurilor individuale de evaluare și protecție în cursul investigațiilor penale. În cadrul juridic național, audierea și participarea copilului în contextul promovării și protejării drepturilor sale sunt prevăzute la articolele 4, j) și 84.[39]

În plus, nu există un protocol specific sau o orientare oficială care să fie urmată de personalul tehnic al diferitelor entități. Cu toate acestea, s-au promovat unele inițiative în vederea îmbunătățirii implementării unor măsuri precum interviurile, *statements for future memory,* adaptarea camerelor de judecată, printre altele.[40]

În plus, cadrul juridic al Portugaliei a inclus deja multe aspecte vizate de directivă, în special ca urmare a angajamentelor sale internaționale asumate în temeiul Convenției privind drepturile copilului și a unor convenții ale Consiliului Europei.

**Servicii generale de protecție a victimelor**

APAV a fost partener într-un proiect cofinanțat de Comisia Europeană și promovat de Ministerul Justiției Francez, care a inclus și Ministerele de Justiție din Spania și Polonia și Serviciul de Combatere a Corupției din Anglia și Țara Galilor. În cadrul acestui proiect a fost elaborat un instrument de evaluare a nevoilor specifice de protecție a victimelor infracționalității, precum și *Ghidul pentru evaluarea individuală a*

[38]Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.
[39]Aprobat prin Legea nr. 147/99 din 1 septembrie, cu modificările introduse prin Legea nr. 31/2003, din 22 august și prin Legea nr. 142/2015, din 8 septembrie.
[40]Unele dintre aceste inițiative sunt descrise mai jos în detaliu.


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*victimelor (EVVI)*[41]. Acest manual afirmă că, în Spania și Portugalia, evaluările sau evaluările individuale nu au fost efectuate sistematic în momentul redactării manualului.[42]APAV a împărtășit acest document cu Direcția Generală a Politicii de Justiție a Ministerului Justiției, cu Procuratura Generală, Poliția Judiciară, Poliţiapentru Securitate Publică, Garda Națională Republicană și a Serviciului pentru Străini și Frontiere din Portugalia și a primit feedback pozitiv.[43]

"În 2017, revizuirea Codului de Procedură Penală din 2007 (Legea 48/2007 din 29-08) a schimbat regimul declarațiilor de tip *statements for future memory*, ca urmare a obligațiilor internaționale asumate de statul portughez. În ceea ce privește victimele minore, sistemul juridic va avea datoria statului să colecteze ***statements for future memory*** și să asigure condițiile de realizare a acestora în conformitate cu articolul 271 alineatul (4). În special, declarațiile privind infracțiunile împotriva libertății și sexului autodeterminarea copiilor vor trebui efectuate într-un loc și într-un mod care să garanteze un mediu informal și rezervat și să permită ca victima să fie însoțită de personal special calificat."[44]În ciuda faptului că există un cadru juridic cuprinzător, Sottomayor susține că "drepturile copiilor sunt dispersate în legi și coduri diferite, ceea ce face dificilă o sistematizare și consultare a acestora. O compilație a drepturilor copiilor victime ale infracțiunilor violente ar fi mai utilă într-un act juridic unic pentru a facilita procesul de interpretare și executare."[45]

Articolul 18 din Legea nr. 130/2015 din 4 septembrie prevede stabilirea de **săli speciale pentru victime** pentru asistență și informare în fiecare unitate de poliție și forță de securitate. Articolul 1 prevede în mod specific că "fiecare organ de securitate și serviciu de securitate constituie rețeaua birourilor de servicii, dotate cu măsuri adecvate, cum ar fi asigurarea intimității victimelor."[46]

Rețeaua națională de sprijin pentru victimele violenței în familie include parteneri din organizații publice și private și oferă **un set de structuri și răspunsuri pentru victimele violenței domestice, cum ar fi adăposturi, structuri de îngrijire, răspunsuri de urgență din partea adăposturilor, răspunsuri**

[41]Ghidul este valabil aici:https://victimsupport.eu/news/a-guide-for-individual-evaluation-of-victims-evvi-now-available/ (acesat pe 23 aprilie 2018)
[42] Victim Support Europe (2015) EVVI (Evaluation of Victims) - Guide for individual evaluation of victims. Co-funded by the Criminal Justice Programme of the European Union.
[43]APAV. Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001.
[44]*Ibid.*
[45]*Ibid.*
[46]Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.


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**specifice din partea organelor administrației publice, servicii de telefonie cu acoperire națională a informațiilor victimelor violenței domestice și, de fiecare dată când solicită acest lucru, grupuri de ajutor reciproc bazate pentru a promova *self-help-ul*și împuternicirea victimelor în vederea autonomiei lor.**

O nouă lege a decretelor din 2018 clarifică și introduce un set de reguli și proceduri pentru îmbunătățirea și eficientizarea funcționării structurilor de îngrijire, a răspunsurilor de urgență și a adăposturilor, permițând fie un proces de autoevaluare, fie o revizuire sistematică a performanței acestora, îmbunătățirea și evaluarea legăturii dintre ceea ce se face și rezultatele obținute. Structurile de prim-răspuns, răspunsurile de urgență și adăposturile sunt gestionate de organizații neguvernamentale care au încheiat parteneriate cu autoritățile publice responsabile cu prevenirea violenței domestice, precum și cu protecția și asistența victimelor. Articolul 4 prevede că instituțiile responsabile pentru punerea în aplicare a legii trebuie să acționeze, printre altele, ținând seama de sistemul de protecție a copiilor și de promovarea drepturilor acestora. Toate structurile reglementate de lege se aplică tuturor victimelor violenței domestice, inclusiv copiilor minori și copiilor cu handicap și îngrijitorilor lor.[47]

**Servicii de protecție a victimelor-copii**

Recenta reînnoită *Comisie Națională pentru Promovarea Drepturilor și Protecția Copiilor și Tinerilor* este principalul organism public din Portugalia care lucrează în "(...) planificarea intervenției statului și coordonarea, monitorizarea și evaluarea inițiativelor întreprinse de entitățile publice și comunitate în promovarea drepturilor și în protejarea copiilor și tinerilor, în special prin intermediul celor 309 de *Comisii Locale de Protecție a Copiilor și Tinerilor* distribuite în întreaga țară."[48]Comisiile locale funcționează în două forme, așa-numitele forme "restrânse" și "extinse". Primul este un grup tehnic, "specializat" care acționează în scopul protecției în cazuri individuale, în timp ce cel de-al doilea grup de lucru lucrează cu scopul protecției proactive a copiilor ca grup în comunitate.

[47] Decreto Regulamentar n.º 2/2018 Regula as condições de organização e funcionamento das estruturas de atendimento, das respostas de acolhimento de emergência e das casas de abrigo que integram a rede nacional de apoio às vítimas de violência doméstica. Diário da República n.º 17/2018, Série I de 2018-01-24

[48]Informații disponibile pe site-ul web al Comisiei, la adresa: https://www.cnpdpcj.gov.pt/relacoes-internacionais/international-relations.aspx (accesat pe 9 aprilie 2018)



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Acest al doilea grup este multidisciplinar și este format în principal din reprezentanți ai municipalității, reprezentanți ai Institutului de Securitate Socială, reprezentanți ai ministerelor educației și sănătății, reprezentanți ai organizațiilor neguvernamentale, asociațiilor părinților, reprezentanți ai forțelor de polițiecare să desfășoare activități pentru copii și tineri.

Comisiile "restrânse" sunt responsabile pentru intervenția în situațiile identificate ca fiind un pericol iminent pentru copil sau pentru o persoană tânără. Prin urmare, ei efectuează diagnosticarea și instrumentarea procesului, luarea deciziilor, monitorizarea și revizuirea măsurilor de protecție, inclusiv însoțirea copiilor în procedurile judiciare și acordarea de sprijin procurorului sau judecătorului în legătură cu măsurile de protecție specială. Comisia are un set de ghiduri generale pentru practicienii din domeniul asistenței sociale, educației și forțelor de poliție.[49]Există, de asemenea, un ghid de orientare privind munca de intervenție în numele copiilor care au suferit abuzuri. Ea a fost pregătită de Direcția Generală Sănătate care include câteva protocoale și o secțiune privind bune practici în interviurile cu copiii.[50]Aceste manuale există și instruirea specializată are loc, cu toate acestea, nu există dovezi privind modul în care acestea sunt puse efectiv în practică.

Institutul de Apărare a Copilului (*Instituto de Apoio à Criança*) este cea mai importantă organizație non-guvernamentală care activează pentru protecția și promovarea drepturilor copilului din 1983. Unele dintre principalele sale activități includ sprijin juridic; linia de asistență pentru copii SOS care oferă asistență socială, psihologică și juridică specializată și sesizare adecvată a copiilor aflați în situații de nevoie; și umanizarea îngrijirii pentru copii (adică îngrijirea medicală prietenoasă copiilor și asigurarea dreptului la joacă). În anul 2013, biroul de asistență juridică a acordat asistență pentru 680 de cazuri, în care 284 cazuri au vizat reglementarea responsabilităților părintești, urmate de cazurileîn care erau implicați copii (117 cazuri) și clarificări ale legislației (75 de cereri).[51]

APAV, înființată în 2016 prin rețeaua CARE, oferă asistență copiilor și tinerilor până la vârsta de 23 de ani, care au fost victime ale infracțiunilor de abuz sexual. Asistența se acordă în urma sesizării de către Poliția Judiciară și poate include asistență și supervizarea procedurilor judiciare, consultanță medico-legală,

[49]Ghidurile sunt valabile aici: https://www.cnpdpcj.gov.pt/direito-das-criancas/guias-para-profissionais.aspx (accesat pe 23 aprilie 2018)
[50]Manualul este valabil aici:https://www.cnpdpcj.gov.pt/direito-das-criancas/guias-para-profissionais/maus-tratos-em-criancas-e-jovens.aspx (accesat pe 23 aprilie 2018).
[51]Pentru mai multe informații, vizitați website-ul instituției: http://www.iacrianca.pt (accesat pe 23 aprilie 2018).


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*statements for future memory*, sprijin în cadrul audierilor și alte acte procedurale. 446 de copii victime au primit asistență în anii 2016-2018. Această unitate specializată are nouă angajați permanenți, inclusiv juriști și psihologi, care pot merge în orice punct al țării pentru a oferi asistență cazurilor urgente care sunt adresate rețelei.[52]

## 4.3 Spania

### 4.3.1 Privire de ansamblu asupra victimelor-copii din Spania

În 2016, un număr total de 80 de copii cu vârste cuprinse între 0-13 ani au fost victime ale hărțuirii sexuale cu penetrare, 20 dintre aceștia erau bărbați și 60 erau femei; un număr total de 193 de copii cu vârste între 14-17 ani au fost victime ale hărțuirii sexuale cu penetrare, 18 dintre aceștia fiind bărbați și 175 de femei; un total de 29 de copii cu vârste între 0-13 ani au fost victime ale pornografiei infantile, în timp ce 12 dintre aceștia erau bărbați și 17 erau femei; și un număr total de 35 de copii cu vârste între 14-17 ani au fost victime ale pornografiei infantile, dintre care 8 bărbați și 27 femei.

În ceea ce privește alte crime împotriva libertății și determinării sexuale, un număr de 1.932 copii cu vârste cuprinse între 0-13 ani au fost victime, 460 bărbați și 1.470 femei; iar în grupul de vârstă 14-17 au existat un total de 1.716 victime cu 328 bărbați și 1.387 de femei.

Conform acestor date, fetele sunt afectate în mod disproporționat. Există variații semnificative ale numărului de victime față de anul precedent: cazurile de pornografie infantilă în grupa de vârstă 0-13 au avut o reducere de 40,8% față de 2015; iar în grupa de vârstă 14-17 ani, scăderea a fost ușor mai mare, 54,5%. Cea mai semnificativă variație a fost înregistrată în cazul crimelor împotriva libertății și determinării sexuale în grupa de vârstă de 14-17 ani, cu o creștere de 50,5% față de 2015.[53]

În Spania, un număr de studii de prevalență, care au ca scop stabilirea dimensiunilor abuzului sexual în rândul copiilor și adolescenților, au fost efectuate pe parcursul ultimilor ani, utilizând diferite metodologii. Printre acestea se numără așa-numitele studii retrospective în care adulții sunt întrebați dacă au suferit abuzuri sexuale în copilărie. "Cea mai semnificativă și cea mai citată parte a acestor investigații este un macro-sondaj realizat în 1994, în care 2000 de persoane au fost întrebați dacă își amintesc că au fost abuzate

[52] Diário de Notícias. *Rede Care acompanha 446 crianças e jovens vítimas de violência sexual.* 21 de Fevereiro de 2018.
[53]Anuario Estadístico del Ministerio del Interior - 2016. España


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înainte de vârsta de 16 ani. Rezultatul a fost că 18,9% din populație fusese victimă a abuzului sexual, o prevalență ridicată care este distribuită după sexe: 15,2% dintre bărbați și 22,5% dintre femei au suferit abuzuri sexuale. (...) Cel mai recent studiu privind prevalența până în prezent a concluzionat că 9,5% din totalul eșantionului lor 6,5% din bărbați și 10% din femei au fost victime ale abuzului sexual. "[54]

În ceea ce privește traficul de copii, un studiu recent publicat de Comitetul Național pentru relația cu UNICEF în Spania arată dificultatea accesării datelor exacte. Potrivit datelor Ministerului de Interne, victimele traficului de persoane pentru exploatare sexuală au reprezentat 50% din total în 2015 (133 victime identificate), iar celelalte 50% dintre victimele traficului de persoane au fost exploatate pe piața muncii (134). Această distribuție se modifică în informațiile publicate de procurorul general – cele 96 de măsuri de monitorizare a infracțiunii de trafic de persoane din 2015: există 978 de presupuse victime ale traficului în scopul exploatării sexuale, cel puțin 92 de presupuse victime ale exploatării prin muncă , 22 de cazuri de exploatare pentru cerșit și 3 de căsătorii forțate, toate presupusele victime ale traficului de persoane cu scopul căsătoriei forțate sunt femei minore. Raportul susține, de asemenea, că "aceste cifre sunt foarte departe de cele estimate de organizațiile care lucrează direct în domeniu, care, spre exemplu, calculează că între 40 000 și 50 000 de femei sunt victime ale traficului de persoane cu scopul exploatării sexuale în Spania. Pe de altă parte, nu toate organizațiile care lucrează cu victimele infracțiunilor colectează sistematic date, și cu atât mai puțin în cazul fetelor și băieților. Având în vedere datele, se poate concluziona că în Spania infracțiunea cu cele mai multe victime este traficul de ființe umane în scopul exploatării sexuale, femeile și fetele fiind principalele victime."[55]

### 4.3.2 Protecția copiilor-victime în Spania

**Background juridic și servicii generale de protecție a victimelor**

În Spania, Legea 4/2015, din 27 aprilie, a aprobat Statutul Victimelor Infracțiunilor.[56]Titlul III din proiectul legii organice transpune în detaliu articolele 22-24 ale directivei. Articolul 19 prevede că "în cazul victimelor minore, Biroul Procurorului va asigura în mod special respectarea acestui drept de protecție, adoptarea

[54]Salvați Copiii (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema, Page 46.

[55] Castaño, M., Pérez, A. (2017) Son niños y niñas, son víctimas. Situación de los menores de edad víctimas de trata en España. Cuadernos para el Debate no 5, UNICEF Comité Español, Huygens Editorial. Page 12.

[56] Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito. Boletín Oficial de lo Estado núm. 101, de 28/04/2015



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măsurilor adecvate în interesul superior al acestora atunci când este necesar pentru a preveni sau a reduce posibilele daune cauzate de desfășurarea procesului ". Este important să se sublinieze importanța Oficiului Procurorului General pentru protecția victimelor copilului și prioritatea principiilor directoare ale Convenției privind Drepturile Copilului.

Articolele 23 din legislația spaniolă privind "evaluarea individuală a victimelor pentru a determina nevoile lor speciale de protecție" și 24 privind "competențele și procedurile de evaluare" transpun detaliile textului articolelor 22-23 din directivă.

Legea continuă să explice funcțiile birourilor de sprijinire a victimelor infracțiunilor din titlul IV, capitolul I, articolele 27-29. **Oficiile de Sprijinire a Victimelor Infracțiunilor** sunt o rețea de servicii publice și gratuite înființate de Ministerul Spaniol al Justiției în 1996, reglementată în continuare prin adoptarea Decretului regal 1109/2015 din 11 decembrie, prin care a fost posibilă Legea 4 / 2015 din 27 aprilie a Statutului Victimei Infracționalității. Aceste birouri sunt responsabile de **evaluarea individuală a victimelor**, prin identificarea persoanelor care sunt deosebit de vulnerabile și prin punerea în aplicare a unor măsuri de protecție pentru a evita victimele viitoare. După evaluarea individuală, Oficiile pot întocmi un raport, în conformitate cu legislația menționată mai sus, cu consimțământul prealabil și informat al victimei care va fi trimis autorității competente pentru a adopta măsurile de protecție.

Oficiile de sprijinire a victimelor infracțiunilor pot propune măsurile considerate adecvate pentru asistența și protecția victimei în timpul fazei de investigare, în special atunci când se ocupă cu victimele vulnerabile. Asistența acordată victimelor se va desfășura în patru etape: receptare și orientare, informare, intervenție și urmărire.[57, 58]

În sfârșit, **Consiliul Consultativ pentru Asistența Victimelor**, care, conform articolului 10 din decretul regal, urmărește:

a) consultarea cu privire la funcționalitatea oficiilor de sprijinire a victimelor;
b) examinarea datelor statistice;
c) sprijinirea studiilor specializate privind acțiunile birourilor și a rețelei de coordonare;
d) comparația diferitelor planuri de asistență psihologică aplicate de către oficii, pentru a propune îmbunătățiri în asistența acordată victimelor;

[57] Real Decreto 1109/2015, de 11 de diciembre, por el que se desarrolla la Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito, y se regulan las Oficinas de Asistencia a las Víctimas del Delito. Boletín Oficial de lo Estado núm. 312, de 30 de diciembre de 2015, páginas 123162 a 123181.
[58] Informații sumare despre birouri pot fi găsite pe site-ul Ministerului Justiției, disponibil aici:https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-14263 (accesat pe 23 aprilie 2018)


Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

e) promovarea elaborării protocoalelor de acțiune și actualizarea lor în raport cu reglementările naționale și internaționale;
f) să ofere expertiză Ministerului Justiției în pregătirea raportului anual privind evaluarea periodică a sistemului de protecție a victimelor infracțiunilor;
g) orice altă funcție care, în limitele competențelor sale, îi este atribuită prin anumite dispoziții legale sau reglementări."[59]

Consiliul consultativ a fost înființat în iunie 2017, iar unul dintre cele patru domenii prioritare ale acestuia este protecția copiilor, care ar trebui să li se ofere din momentul în care intră în contact cu sistemul justiției.

Alte dispoziții legale relevante din țară cuprind Decretul Regal 3/2013 din 22 februarie, care modifică sistemul de **asistență juridică gratuită** și recunoaște toți copiii care sunt victime ale situațiilor de abuz sau maltratare, indiferent de existența resurselor de judecată, dreptul la asistență juridică gratuită, care va fi acordat imediat. Această normă, în vigoare din februarie 2013, acordă judecătorului sau instanței competența de a acorda asistență gratuită de specialitate specializată care poate fi acordată imediat, în funcție de circumstanțele cazului specific și de interesul superior al copilului.[60]

În legea privind procedura penală, articolul 433 prevede că "În cazul martorilor sau al persoanelor cu capacitate judiciară limitată, judecătorul de instrucție poate decide când, din cauza lipsei de maturitate a victimei, fiind necesar să se evite provocarea vătămării a lui/ei, o **declarație** să fie luată prin intervenția experților și prin intervenția Procuraturii. În acest scop, se poate de asemenea cădea de acord ca întrebările să fie transferate direct victimei de către experți sau chiar să excludă sau să limiteze prezența părților în locul în care s-a consumat infracțiunea. În aceste cazuri, judecătorul va decide ceea ce este necesar pentru a facilita părților posibilitatea de a transfera întrebări sau de a solicita clarificări din partea victimei, ori de câte ori este posibil. Judecătorul va ordona **înregistrarea declarației prin mijloace audio-vizuale**. Articolul 449 din aceeași lege prevede că" Declarația copiilor martori și a persoanelor cu capacitate judiciară limitată poate fi efectuată **evitând confruntarea vizuală** a acestora cu acuzatul, folosind pentru el orice mijloace tehnice care fac posibilă aplicarea acestuia."[61]

[59] Articolul 10, *Ibid.*
[60] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014.
[61] Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal. Boletín Oficial de lo Estado n úm. 260, de 17/09/1882.


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Pe lângă cadrul național de reglementare, în fiecare comunitate autonomă au fost elaborate legislații specifice, planuri de acțiune, programe-cadru sau chiar protocoale specifice pentru a aborda problema abuzului asupra copiilor și a violenței împotriva femeilor.[62]

**Servicii de protecție a victimelor-copii**

Răspunsul public la situații de neglijare sau abuz în rândul copiilor din Spania este distribuit între serviciile sociale la nivel municipal și serviciile specializate de protecție a copilului. Aceste două servicii sunt disponibile în toate regiunile Spaniei. Responsabilitățile dintre cele două niveluri sunt distribuite în funcție de categoria și severitatea abuzului. Toate autoritățile regionale din Spania au servicii centrale și teritoriale specializate pentru protecția copilului (măsurile de protecție sunt prevăzute în Legea organică 1/1996 din 15 ianuarie privind protecția legală a minorilor)[63]. Ministerul Sănătății, Serviciilor Sociale și Egalității a publicat un *protocol de bază privind intervenția împotriva abuzului în familie împotriva copilului* în 2014. Deși protocolul oferă într-adevăr informații de bază, este o sursă cuprinzătoare și utilă de informare pentru toți actorii implicați în protecția copilului, de la prevenirea, depistarea precoce și protejarea serviciilor judiciare. Documentul oferă un rezumat al cadrului de reglementare internațional și național, recomandări de îmbunătățire (inclusiv crearea de structuri suplimentare) și îndrumări privind bunele practici în domeniul protecției copilului, care includ, de exemplu, aspecte legate de protecția copilului-victimă în procedurile judiciare.[64]Aparent, există o varietate de manuale suplimentare pentru procedurile de protecție a copiilor din diferite regiuni, care vizează diferite servicii disponibile.[65]

[62] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014.
[63] Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil. Boletín Oficial de lo Estado núm. 15, de 17 de enero de 1996
[64] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014
[65]A se vedea, de exemplu, Manualul de Intervenție a Serviciilor Sociale al Municipiului Madrid pentru Protecția Copilului, disponibilaici:http://www.madrid.es/UnidadesDescentralizadas/ServALaCiudadania/SSociales/EspInformativos/Especial Infancia/Publicaciones/manual.pdf;și instrumentul pentru evaluarea gravității situațiilor de protecție a copilului din Aragón, disponibil aici: https://www.aragon.es/estaticos/GobiernoAragon/Organismos/InstitutoAragonesServiciosSociales/IASS_new/Documentos/infancia/MALTRATO-2014-valoracion-gravedad-menores.pdf (accesat pe 23 aprilie 2018).


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Unitățile pentru copii ale Forțelor Naționale de Poliție (*Unidades de Menores del Cuerpo Nacional de Policiare*) sunt integrate în Brigăzile Provinciale ale Poliției Judiciare. Aceste unități au două funcții principale: protecția copiilor care sunt victime ale oricărui tip de abuz, fie fizic (inclusiv abuz sexual) sau psihologic, precum și protecția infractorilor juvenili (Instrucțiunea nr. 11/2007 din 12 septembrie a Secretarului de stat pentru securitate, care aprobă "Protocolul de acțiune polițienească cu minorii").[66]Aceste unități lucrează în colaborare cu instituțiile publice și private, care lucrează cu și pentru copii, atât din punctul de vedere al protecției și al educației, cât și al sprijinului infractorilor juvenili. Unitățile pentru copii ale Forței Naționale de Poliție ar trebui să urmeze *Protocolul de acțiune al forțelor de securitate și coordonare cu organele judiciare pentru protecția victimelor violenței domestice și de gen*.[67]

Deși este posibil să nu fie principalii actori în intervenția directă, este important să se sublinieze rolul Comitetului Național pentru relația cu UNICEF și al birourilor Salvați Copiii și Apărarea pentru Copii în advocacy, instruire și sensibilizare cu privire la violența împotriva copiilor, drepturile copilului și justiția juvenilă în Spania.

## 4.4 Marea Britanie - Anglia și Țara Galilor

### 4.4.1 Privire de ansamblu a copiilor victime ale infracțiunilor în Anglia și Țara Galilor

Cel mai mare producător independent de statistici oficiale și Institutul Național de Statistică recunoscut din Regatul Unit este Oficiul pentru Statistică Națională (ONS) care produce Anual Ancheta asupra Criminalității din Anglia și Țara Galilor (CSEW).[68]

[66] InstrucciÓN N° 11/2007, de 12 De Septiembre, de la Secretaria de EsTado de Seguridad, por la que se aprueba el "Protocolo de Atuacion Policial con Menores".
[67] Protocolo de Actuación de las Fuerzas y Cuerpos de Seguridad y de CoordinacióN con los Órganos Judiciales para la ProtecciÓN de las Víctimas de Violencia Doméstica y de Género, Aprobado por la Comisión Técnica de la Comisión Nacional de Coordinación de la Policía Judicial el 28 de junio de 2005, tras haberse adaptado el anterior Protocolo a las modificaciones de la LO 1/2004, de Medidas de Protección Integral contra la Violencia de Género, available here: http://www.violenciagenero.msssi.gob.es/profesionalesInvestigacion/juridico/protocolos/docs/Protocolo_Actuacion_Fuerzas_Cuerpos_Seguridad_Coordinacion_Organos_Judiciales.pdf (accesat pe 23 aprilie 2018)
[68] Vezi: https://www.ons.gov.uk (accesat pe 9 aprilie 2018).


Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

Ei au estimat în raportul anual[69] că, în anul care se încheie în septembrie 2016, aproximativ 12 din 100 de copii cu vârste cuprinse între 10 și 15 ani au fost victime a le cel puțin unei crime.

În septembrie 2017 aproximativ 10 din 100 de copii din același grup de vârstă au fost victime ale infracțiunii. Un total de 652 000 de infracțiuni au fost estimate privind copiii din această grupă de vârstă în septembrie 2017.

Cu toate acestea, principala problemă a acestui sondaj este că nu include copiii sub 10 ani sau cei cu vârsta mai mare de 15 ani (adică între 15 și 17 ani) și, de asemenea, nu include aspecte legate de abuzul sexual, violența sexuală sau exploatarea sexuală a copii (a se vedea raportul comisarului victimei 2017: 10)[70]. Ca urmare, cifrele evaluate de CSEW au doar o importanță limitată în ceea ce privește infracțiunile la copii, deoarece reprezintă doar o imagine foarte limitată asupra victimelor infantile.

Prin urmare, comisarul pentru victime (Newlove de Warrington) a inclus, de asemenea, în raportul lor intitulat: *"Are we getting it right for young victims of crime? A review of children's entitlements in the victims' code"* (2017) statistici suplimentare pentru a genera o imagine mai largă cu privire la amploarea și forma reală a victimelor infracțiunilor copilului. De exemplu, cifrele infracționalității raportate de poliția din Anglia și Țara Galilor, precum și cifrele produse de centrul caritabil Victim Support, în colaborare cu Universitatea Bedfordshire din 2014, au fost numite *"Suffering in Silence"*, un raport despre victimele copii și tineri realizat în numele al Grupului parlamentar pentru victime și martori (a se vedea raportul comisarului pentru victime 2017: 13). Datele despre infracțiunea violentă și sexuală înregistrată de poliție în anul 2015 au arătat că copiii sub 16 ani reprezintă o mare parte a tuturor infracțiunilor de violuri înregistrate de poliție. "Peste o treime (30%) dintre victimele violurilor de sex feminin au fost sub 16 ani, majoritatea (60%) dintre victimele violului masculin fiind sub 16 ani" (ibid .: 10). Potrivit raportului victimelor, victimele violurilor au fost cel mai probabil cu vârste cuprinse între 15 și 19 ani și au reprezentat aproape un sfert (23%) din toate infracțiunile de violuri înregistrate de poliție. Mai mult, cifrele privind criminalitatea

[69] În ceea ce privește "criminalitatea împotriva gospodăriilor și a adulților, incluzând, de asemenea, date privind criminalitatea cu care se confruntă copiii și crimele împotriva întreprinderilor și a societății" a se vedea: https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingseptember2017 (accesat pe 9 aprilie 2018).

[70] Comisarul pentru victime și martori (comisarul pentru victime) are o obligație legală de a menține revizuit Codul victimelor în mod periodic, pentru a asculta punctele de vedere ale victimelor și pentru a înțelege sistemul de justiție penală în scopul îmbunătățirii serviciilor și a sprijinului acordat victimelor (vezi Ministerul Justiției, Codul de Practici pentru Victimele Criminalității, octombrie 2015).



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poliţienească din Regatul Unit au arătat că copiii cu vârste sub 16 ani au reprezentat o mare parte a altor infracţiuni sexuale, 50 % dintre femeile victime si 62% dintre victimele masculine au avut varsta sub 16 ani. Si 28 % dintre victimele altor infractiuni sexuale inregistrate de politie au avut varsta cuprinsa intre 10 si 14 ani (ibid., ONS 2016 citat de Comisarul Victimelor 2017).

În mod dramatic, după cum s-a stabilit deja în cazul Germaniei, cea mai mare provocare în ceea ce priveşte victimele copii sunt crimele nedeclarate. După cum a declarat comisarul pentru victime:

"În pofida proporţiei mari a criminalităţii înregistrate împotriva copiilor, există dovezi care sugerează că o mare parte din infracţiunile comise împotriva copiilor şi tinerilor nu sunt raportate şi, prin urmare, nu sunt înregistrate, ceea ce indică faptul că copiii şi tinerii se confruntă cu rate mult mai ridicate de criminalitate decât sugerează datele poliţiei "Ibid .: 13).

De asemenea, raportul a analizat ce motive ar putea fi pentru această subreprezentare a criminalităţii la copii şi tineri şi s-a ajuns la concluzia cu referire la raportul "Silence Suffering" că aceşti copii nu ştiu întotdeauna ce constituie o infracţiune, mai ales atunci când comportamentul criminal a fost normalizat într-un grup de egali sau când au fost pregătiţi pentru abuz sau exploatare (a se vedea Beckett şi colab. 2014, citată de comisarul pentru victime 2017). Ei au aflat, de asemenea, că aceşti copii nu ştiu cum şi unde să raporteze o infracţiune sau când un copil cunoaşte infractorul (înseamnă atunci când infracţiunea are loc într-un context familiar, de exemplu în şcoală sau la domiciliu etc.) este mai puţin probabil ca aceştia să raporteze infracţiunea (ibid.). Uneori, copiii au, de asemenea, o teamă şi neîncredere faţă de poliţie. Prin urmare, raportul a recomandat ca "Ministerul de Interne şi Ministerul Justiţiei" (...) să coordoneze şi să supravegheze colectarea unor date de către poliţie comparabile şi rapoarte despre experienţele criminalităţii. Ei recomandă ca aceste date să diferenţieze copiii şi tinerii de adulţi şi să acopere toate tipurile de infracţiuni "(ibid .: 14). Asta inseamna ca raportarea la copiii cu varste cuprinse intre 10 si 15 ani si doar la unele infractiuni de criminalitate, ca in cazul CSEW, risca sa lase infractiuni grave (cum ar fi abuzul sexual etc.) si alte grupuri de varsta nerecunoscute, riscând un decalaj în ceea ce priveşte dovezile cu privire la măsura exactă a criminalităţii cu care se confruntă copiii şi tinerii din Anglia şi Ţara Galilor.


Acest proiect este finanţat de UE. Această publicaţie a fost elaborată cu sprijinul financiar al Programului Justiţie (2014-2020) al Uniunii Europene. Conţinutul acestei publicaţii este responsabilitatea exclusivă a autorilor şi nu reflectă în niciun fel poziţia Comisiei Europene.

### 4.4.2 Protecția copiilor victime ale criminalității în Anglia și Țara Galilor

În Regatul Unit, alături de poliție și de serviciul de urmărire penală al Coroanei, există o serie de organizații diferite. Aceste organisme diferite dețin principalele responsabilități în sprijinirea copiilor și tinerilor care au devenit victime ale infracțiunii și care răspund nevoilor lor, inclusiv organizațiile statutare și non-statutare (ONG) (a se vedea Codd et al., 2016: 23). În plus, fiecare autoritate locală este responsabilă pentru protejarea și promovarea bunăstării copiilor și a tinerilor aflați în dificultate.

Contextul juridic

Merită menționată diferența dintre sistemul juridic al Regatului Unit și SM din acest raport. Marea majoritate a Regatului Unit, împreună cu Irlanda, au sisteme de drept comun unde jurisprudența și hotărârile judecătorești anterioare determină aplicarea legii, în timp ce majoritatea statelor membre ale UE (și în special cele ale acestei selecții) au sisteme de drept civil. Există însă și un sistem mixt de drept, ca de exemplu în Scoția (vezi EPRS 2017: 47). Este important faptul că această diferență are efecte asupra tipului de transpunere a VD. Într-o țară cu drept comun ca Marea Britanie, directiva a fost transpusă prin adoptarea unei noi legislații (în locul modificării legilor deja existente, cum ar fi modificarea legii procedurii penale în cazul Germaniei, printre altele). În cazul Angliei și Țării Galilor VD a fost transpusă în principal prin "Codul de Practică al Victimelor Criminalității"[71]. Acesta a fost înființat în 2006 pentru prima dată de Legea privind violența în familie, crima și victimele din 2004 și a fost revizuit de două ori: în decembrie 2013, pentru prima dată, pentru a clarifica drepturile victimelor și obligațiile agențiilor de justiție penală, iar în 2015 pentru a doua oară , în special în scopul transpunerii VD și a normelor sale privind drepturile victimelor (a se vedea Victim Support)[72], ceea ce înseamnă respectarea prevederilor din VD și, astfel, îmbunătățirea

[71] Vezi: Ministry of Justice, October 2015 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (accesat 9th April 2018).

[72] Vezi: https://www.victimsupport.org.uk/help-and-support/your-rights/victims-code (accesat 9th April 2018).



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drepturilor victimelor. Alte două surse importante ale legislației britanice sunt legea Uniunii Europene și Convenția Europeană a Drepturilor Omului (a se vedea Cilex)[73].

În prezent, în Marea Britanie, drepturile copiilor sunt protejate în principal în Legea drepturilor omului din 1998[74]. Ceea ce este mai important de menționat este faptul că Țara Galilor a devenit în mare singura din Regatul Unit, care a pus în aplicare Convenția ONU cu privire la drepturile copilului) în legislația sa națională (a se vedea Codd et al., 2016: 10).

**Servicii generale de sprijinire a victimelor**

În Anglia și Țara Galilor, centrul de caritate pentru victime este Victim Support, care există de aproape 40 de ani. Acesta a fost înființat în 1974 în Bristol, iar din 1986 fiecare județ din Anglia și Țara Galilor avea cel puțin o schemă de sprijin pentru victime. În 1998, ei și-au înființat linia telefonică gratuită de asistență telefonică numită Supportline (a se vedea suportul victimelor)[75]. Există un centru de caritate independent pentru persoanele afectate de crimă și evenimente traumatice. Acestea oferă o gamă largă de servicii gratuite și disponibile pentru toată lumea, indiferent dacă infracțiunea a fost raportată sau nu, la nivel individual, independent, emoțional și practic pentru a permite oamenilor să se descurce și să se recupereze din efectele infracțiunilor (a se vedea ibid.). Acestea oferă, de asemenea, servicii specializate anumitor grupuri de victime, cum ar fi copiii și tinerii sau pentru persoanele care sunt afectate de abuzuri domestice. Suportul pentru victime nu face parte din poliție, din instanțe sau din orice altă agenție de justiție penală. Anul trecut au oferit sprijin celor 814.000 de persoane, în funcție de site-ul lor (a se vedea ibid.). Scopul principal al Victim Support este de a sprijini oamenii la nivel local și de a promova la nivel național drepturile lor de a pune nevoile lor în centrul atenției.

Victim Supports atrage atenția asupra a patru domenii principale referitoare la serviciile lor de sprijin pentru copii și tineri. Aceste domenii sunt: în primul rând, sprijin pentru copii și tineri. Acestea oferă, de exemplu,

[73] Vezi: Cilex, Chartered institute of legal executives, https://www.cilex.org.uk/about_cilex/about-cilex-lawyers/what-cilex-lawyers-do/the-uk-legal-system (accesat 9th April 2018).
[74] See: Children Rights Alliance for England (CRAE), http://www.crae.org.uk/our-work/protection-of-childrens-rights-in-domestic-law/ (accesat 9th April 2018).
[75] Vezi Website: https://www.victimsupport.org.uk/more-us/about-us/history (accesat 9th April 2018).


Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

un site web numit "*You and Co*"[76], cu o gamă largă de materiale informative într-un limbaj adecvat copiilor, unde copiii și tinerii se pot orienta spre infracțiuni (ceea ce reprezintă o infracțiune etc.), efectele acesteia și ce fel de ajutor și sprijin pot primi și căuta. Din 2014 încoace " *You and Co* ", este parte din programul de sprijin pentru victimele copii. A a doua zonă conține elemente de sprijin și consiliere pentru părinți sau îngrijitori, un al treilea domeniu se adresează profesioniștilor și profesorilor și oferă informații pentru ei, în special, oferă o legătură la resurse importante[77]. În cele din urmă, ei menționează, de asemenea, importanța cooperării cu profesioniști și părinți atunci când se lucrează la sprijinirea copiilor și tinerilor. For exemplu, ei au dezvoltat, de asemenea, „toolkit-uri de sprijin pentru copii și tineri“, care constituie o serie de registre de lucru adecvate vârstei, cu broșuri de orientare pentru personal și voluntari, care conțin intervenții practice pentru a sprijini copiii și tinerii[78].

**Serviciile de sprijin pentru victimele copilului**

În plus, există consilii locale pentru protecția copiilor (LSCB) care se ocupă de drepturile copiilor și care sunt enunțate în secțiunea 13 din Legea privind copiii din 2004 (a se vedea Codd et al., 2016: 23).

"LSCB posedă o serie de roluri și funcții statutare, inclusiv elaborarea politicii și procedurilor locale de salvgardare și controlul aranjamentelor locale" (ibid .: 23).

În plus:

"Acestea sunt guvernate de regulamentul 2006 privind protecția locală a copiilor, iar principiul lor este de a căuta o colaborare eficientă între agenții pentru a proteja copiii" (ibid .: 23).

[76] Vezi https://www.youandco.org.uk (accesat 9th April 2018)

[77] Vezi:https://www.victimsupport.org.uk/sites/default/files/You%20%26%20Co%20-%20Getting%20it%20right%20for%20young%20victims%20and%20witnesses.pdf (accesat 9th April 2018).

[78] Vezi Website: https://www.victimsupport.org.uk/help-and-support/young-victims-crime/teachers-and-professionals/useful-resources (accesat 9th April 2018).



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Acestea sunt responsabile, în principal, de coordonarea activităților pentru fiecare persoană sau organism reprezentat în consiliul de administrație pentru a asigura eficacitatea acțiunilor întreprinse și pentru a promova și proteja bunăstarea copiilor.

Cel de-al treilea sector, adică organizațiile de caritate și organizațiile nonguvernamentale (organizațiile voluntare), sunt a treia zonă în care drepturile copiilor sunt protejate și serviciile sunt oferite acestora.

Aceste tipuri de organizații desfășoară potențial cea mai importantă activitate cu copiii și tinerii, deoarece sunt specializați într-o măsură importantă pentru a oferi programe și servicii specifice copiilor, de exemplu, cum ar fi concentrându-se în special asupra abuzului sexual asupra copiilor (poate chiar numai în familii) sau pe comportamente sexuale dăunătoare. De exemplu, organizația națională de caritate pentru copii Barnados[79], care este una dintre cele mai importante organizații de caritate pentru copii din Regatul Unit, inclusiv servicii cum ar fi: consiliere pentru copiii care au fost abuzați, servicii de încurajare și adopție, formare profesională și grupuri de incluziune a persoanelor cu dizabilități. Centrele de Familie (HFC)[80] care conduc și o serie de servicii pentru copii și familii în West Cumbria (ibid .: 23).

## 4.5 Finlanda

### 4.5.1 Privire de ansamblu asupra copiilor victime ale infracțiunilor în Finlanda

În Finlanda, ancheta privind criminalitatea națională se efectuează anual (a se vedea Savonen 2017)[81]. Cu toate acestea, aceasta include doar o mică parte din numărul victimelor infantile și tipurile de infracțiuni din care copiii sunt afectați în mod deosebit. În Finlanda în anul 2016 polițiștii, polițiștii de frontieră au fost înregistrate 823,5000 de infracțiuni(se vedea Statistica Finlanda 2017)[82]. Aceasta reprezintă 4.400 de infracțiuni (cu 0,5%) mai mult decât în anul precedent. 37.600 persoane au fost înregistrate ca victime ale infracțiunilor violente.

[79] Vezi Website: http://www.barnardos.org.uk/what_we_do/our_work.htm

[80] Vezi: http://www.howgill-centre.co.uk

[81] Vezi: http://www.stat.fi/til/rpk/2016/13/rpk_2016_13_2017-03-23_en.pdf
[82] Vezi http://www.stat.fi/til/rpk/2016/13/rpk_2016_13_2017-03-23_en.pdf


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Numărul victimelor infracțiunilor de agresiune cu vârsta cuprinsă între 18 și 20 de ani a fost de 3000 (9%). 4.600 (13,8%) au fost victime în vârstă de peste 50 de ani, iar infracțiunile de asalt îndreptate împotriva copiilor sub 18 ani au fost de 6.450. Ultimul număr al victimelor infantile reprezintă o creștere de 9,2% față de anul precedent 2015. În total, au înregistrat 19,6% victime ale infracțiunilor de asalt. În ceea ce privește copiii victime ale infracțiunilor de asalt, sondajul a numărat 4.100 (64.1%) băieți și 2.300 (35.9%) fete. 33,3 la suta au avut o varsta sub 10 ani, 34,9 la suta au fost cu varsta intre 10 si 14 ani si 31,8 la suta au fost cu varsta intre 15 si 17 ani.

Sondajul a înregistrat și alte 1100 de victime ale abuzului sexual, din care 87,4% erau fete și 12,6% erau băieți (ibid.). Statistic Finlanda mai notează că modificarea legislativă din 2011 a crescut considerabil numărul infracțiunilor de agresiune înregistrate. De la amendament, crimele, cum ar fi atacurile minore asupra minorilor sau a rudelor apropiate au devenit obiectul unei urmăriri oficiale (ibid.). În plus, amendamentul la Legea privind protecția copilului (1302/2014)[83], care a intrat în vigoare în aprilie 2015, a dus la extinderea obligației de raportare în cazul infracțiunilor penale împotriva copiilor (ibid.).

Conform unui alt raport privind "Dezvoltarea practicilor compatibile cu directivele pentru identificarea, evaluarea și sesizarea victimelor" în Finlanda (2017), tinerii au fost mai predispuși la violență decât adulții, inclusiv 13,9% la 24 de persoane care au devenit victime ale infracțiunilor violente, în timp ce numai 2,3 la sută dintre persoanele cu vârste cuprinse între 55 și 74 au raportat același lucru (vezi Savonen 2017: 13)[84]. Infracțiunile violente împotriva tinerilor au fost conduse în principal de către alți tineri: de către un frate (23%), un prieten (17%) sau un alt tânăr familiarizat de victimă (15%) (ibid.). În raport se mai menționează că adulții erau rareori violenți față de tineri, de ex. părinții au fost infractori în 8% din cazurile raportate (ibid.):

### 4.5.2 Protecția copiilor victime ale criminalității în Finlanda

Începând cu anii 1990, Finlanda promovează drepturile victimelor infracțiunilor și acest lucru se reflectă și în legislația existentă, cum ar fi asigurarea că victimele sunt audiate în instanță (a se vedea EPRS 2017: 66). Protecția victimelor infracțiunilor este în primul rând acordată de ONG-urile finlandeze. În ciuda finanțării

[83] Vezi: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=101110&p_classification=04 (accesat 16th April 2018).
[84] Vezi, http://victimspractices.eu/?page_id=119 (accesat 16th April 2018).


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naționale limitate, aceste rețele de sprijin au fost deja foarte puternice stabilite chiar înainte de transpunerea directivei victimelor. În plus, în fiecare municipalitate finlandeză autoritățile locale sunt responsabile pentru organizarea serviciilor de protecție a copilului. În plus, aceștia furnizează servicii fie ei înșiși, fie achiziționează aceste servicii de la furnizori externi; atunci când achiziționează serviciile, acestea sunt responsabile pentru supravegherea acestor activități ale furnizorilor de servicii[85]. Multe preocupări legate de violența domestică și violența împotriva femeilor au dus la crearea unor noi cadre de sprijinire a victimelor în țară (ibid.).

**Contextul juridic**

Ministerul Afacerilor Sociale și Sănătății este responsabil în principal pentru elaborarea legislației privind bunăstarea copilului, precum și pentru coordonarea generală a serviciilor de protecție a copilului. În plus, pentru administrarea și coordonarea asistenței victimelor infracțiunilor se află următoarele ministere responsabile: Ministerul Justiției, Ministerul Afacerilor Sociale și Sănătății și Ministerul de Interne împreună cu Poliția Finlandei[86]. Poliția investighează cauzele penale, iar tribunalele generale, curțile de apel și Curtea Supremă de Justiție judecă aceste cazuri.

Legislația cazurilor penale este, în general, aceeași pentru adulți și pentru copii, dar există anumite prevederi specifice pentru copii, începând cu secțiunea 6 din Constituția finlandeză[87] care reglementează că "copiii trebuie tratați în mod egal și ca indivizi, au permis să influențeze aspectele legate de ele însele într-o măsură corespunzătoare nivelului lor de dezvoltare"[88]. În plus, dispozițiile specifice privind bunăstarea copilului sunt prevăzute în Legea privind protecția copilului (a se vedea mai sus), iar Convenția europeană a

[85] Vezi și : Ministry of Social Affairs and Health Finland, http://stm.fi/en/social-services/child-welfare (accesat 17th April 2018).
[86] Vezi și „Managing Victims and Witnesses of crime in Finland, 2014-16, produced by the International Juvenile Justice Observatory", in cooperation with SAPI (the Social activities and practice institute Bulgaria). See further Ministry of Social Affairs and Health, http://stm.fi/en/social-services/child-welfare (accesat 17th April 2018).
[87] Vezi și: The Constitution of Finland, 11 June 1999, (731/1999, amendments up to 1112/2011 included), https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf (accesat 17th April 2018).
[88] Ibid.


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drepturilor omului[89] și Convenția ONU privind drepturile copilului[90] sunt obligatorii și în cazul Finlandei, similar cu Marea Britanie. Prin aceste convenții, statele sunt obligate să acorde prioritate intereselor copilului, precum și bunăstării sale în toate acțiunile autorităților de stat.

Directiva privind victimele a devenit parțial transpusă în legislația finlandeză, deoarece multe dintre articolele din VD erau deja existente în legislația finlandeză. În special, în Finlanda există deja articolul 24 din directivă ("Dreptul la protecția victimelor infantile în cursul procedurilor penale"), care stabilește măsurile speciale pentru victimele copii[91]. Cu toate acestea, modificările necesare au fost puse în aplicare prin proiectul de lege al guvernului nr. 66/2015, care a dus la diverse modificări ale unor acte relevante pentru procedurile penale[92]. În martie și decembrie 2016, aceste modificări au intrat în vigoare[93].

În consecință, în ceea ce privește transpunerea Directivei privind victimele, probabil cele mai importante modificări ale legislației finlandeze au vizat obligațiile de informare a victimelor cu privire la drepturile lor, dispozițiile care reglementează evaluarea personală, deși practica evaluărilor individuale a existat deja înainte de transpunerea Directivei victimelor a se vedea EPRS 2017: 60 în Finlanda, precum și referirea la serviciile de sprijinire a victimelor. În plus, legiuitorul finlandez a adoptat o lege privind "Victima suplimentară (2015/669), care coordonează un fond plătit de către infractor, 2017: 58.

**Servicii generale de sprijinire a victimelor**

Finlanda este una dintre cele mai puține țări din UE[94] care au un organism central responsabil cu coordonarea victimelor în întreaga țară și, prin urmare, calitatea prestării pare să fie mai consistentă în țară (a se vedea

[89] Vezi Finlex: https://www.finlex.fi/fi/sopimukset/sopsteksti/1999/19990063; see further ECHR: https://www.echr.coe.int/Documents/Convention_ENG.pdf; https://www.echr.coe.int/Pages/home.aspx?p=home (accesat 17th April 2018).

[90] http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx (accesat 17th April 2018).

[91] For more detailed information, which articles of the Victims´ Directive were already in place and which articles the Finnish legislator had to implement, see the complementary E-Protect report on: „Pan-European study on the legal transposition of Directive 2012/29/EU in other MS".

[92] See: FINLEX, HE 66/2015 for the Finnish Version, https://finlex.fi/fi/esitykset/he/2015/20150066 (accesat 17th April 2018).

[93] See: EUR-LEX, http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029 (accesat 17th April 2018).

[94] In addition to Austria, Germany and the Czech Republic (see EPRS 2017: 74).



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EPRS 2017). Acest organism central și organizația națională de sprijinire a victimelor se numește RIKU (Rikosuhripäivystys) **Victim Support Finland**[95] și oferă sprijin general victimelor infracțiunilor, familiilor lor, prietenilor apropiați și martorilor. În plus, ele oferă o linie de asistență[96] la nivel național care operează în anumite momente, de luni până vineri și este taxabilă. Cu toate acestea, RIKU afirmă pe site-ul său că există posibilitatea unui serviciu de apel gratuit (a se vedea ibid.). Oamenii pot apela, de asemenea, în mod anonim și, în cazul în care au nevoie de ajutor și sfătuiesc, este posibil să lase detalii de contact și trebuie să se asigure că apelantul primește un răspuns cel puțin în termen de cinci zile lucrătoare și să contacteze cel mai apropiat Victimă Sprijin Finlanda.

RIKU este membru al organizației umbrelă europeană, Victim Support Europe (VSE), cu sediul central în Bruxelles și cea mai importantă organizație ce vizează victimele infracțiunilor[97]. În plus, față de sediul său central, aceasta dispune de șapte birouri regionale și 30 de puncte de service în jurul Finlandei, dintre care toate serviciile precum serviciul de telefonie la nivel național, serviciile de asistență online și serviciile personale. În plus, aceștia lucrează, de asemenea, în strânsă colaborare cu autoritățile statului, cum ar fi poliția și alte organisme care interacționează cu victimele. În 2013 au avut aproximativ 38.000 de contacte cu clienții, iar consiliul de administrație are agenți ai tuturor organizațiilor de implementare și Consiliului Național al Bisericii (vezi ibid.).

În 2017, Ministerul Justiției a decis să emită o obligație de serviciu public către RIKU pentru furnizarea serviciilor generale de victimă în jurul Finlandei în perioada 2017-2018. În consecință, toate serviciile ar trebui să fie puse la dispoziție gratuit, precum și înainte, în timpul și pentru o perioadă adecvată după procesul penal pentru toate victimele infracțiunilor.

**Serviciile de sprijin pentru victimele copiii**

În Finlanda există și alte organizații civice care sprijină copiii și tinerii victime ale criminalității. Principala organizație de sprijinire a organizațiilor, dar și pentru copii, rămâne totuși RIKU, cu toate că nu se axează în special pe copiii victime, ci oferă serviciile lor gratuite (cu excepția liniei telefonice de asistență

[95] https://www.riku.fi/en/home/ (accesat 17th April 2018).

[96] See: https://www.riku.fi/en/services/helpline+116+006/ (accesat 17th April 2018).

[97] See. https://www.riku.fi/en/victim+support+finland/ (accesat 18th April 2018).



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telefonică) tuturor victimelor infracțiunilor. Un serviciu principal constă în faptul că aceștia oferă, de asemenea, o persoană de sprijin victimelor, precum și rudelor apropiate și martorilor care au nevoie de una (este similar cu asistența judiciară psihosocială din Germania și Austria).

Persoanele de sprijin sunt alese cu atenție și instruite în mod special în acest scop pe bază de voluntariat, care trebuie să însoțească victima la audierile de poliție sau ședințele de judecată, precum și să asiste la solicitarea ordinului de restricționare sau compensare. Cu ajutorul acestor persoane, victimele sau martorii infracțiunii pot discuta despre experiențele și sentimentele ei și pot lua în considerare și alte acțiuni[98].

Alte centre responsabile de protecția copilului includ, de exemplu, Federația Patrimoniului Mamei și Copilului și Adăposturile[99] care cooperează, de asemenea, cu Victim Support Finland și susțin 14 adăposturi în toată țara. În plus, există alte 20 de adăposturi care operează în Finlanda. Toate acestea sunt centre de servicii în care persoanele în nevoie, care fie suferă direct, fie sunt amenințate de posibila violență violență în familie, pot obține ajutor în depășirea unei crize sau a unei situații dificile.

Mai mult, în Finlanda există o serie de centre de servicii specifice femeilor, de exemplu Tukinainen[100] sau pentru femei și copii imigranți, de exemplu Monika - Asociația femeilor multiculturale în Finlanda[101].

În sfârșit, o autoritate principală care supraveghează drepturile copiilor este Ombudsmanul parlamentar din Finlanda[102]. Ombudsmanul deține principala responsabilitate de a supraveghea autoritățile de stat că respectă legea și că drepturile copiilor sunt respectate. Este cel mai înalt supraveghetor al legalității din țară și este selectat de Parlament.

[98] See the report „Managing Victims and Witnesses of crime in Finland, 2014-16, produced by the International Juvenile Justice Observatory, in cooperation with SAPI (the Social activities and practice institute Bulgaria), p.16. In the following this paper refers to the report as follows: IJJO 2014-16.

[99] See: https://ensijaturvakotienliitto.fi/en/ (accesat 18th April 2018).

[100] See: https://www.tukinainen.fi/english/ (accesat 18th April 2018).

[101] See: https://monikanaiset.fi/en/ (accesat 18th April 2018).

[102] See: https://www.oikeusasiamies.fi/en/web/lasten-ja-nuorten-sivut/home (accesat 18th April 2018).



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# 5 Implementarea organizațională a evaluării nevoilor individuale în cinci state membre ale UE

Acest capitol se concentrează asupra implementării la nivel practic a transpunerii articolelor 22, 23 și 24 din VD. Afișează modul în care sunt efectuate evaluările individuale în fiecare dintre cele cinci state membre ale UE: *Germania, Portugalia, Spania, Marea Britanie (Anglia și Țara Galilor)* și *Finlanda*. O atenție specială la practicile specifice fiecărei țări, în special în ceea ce privește obstacolele și strategiile de succes în ceea ce privește protecția victimelor-copii, încercând astfel să evidențieze cele mai bune și promițătoare practici.

## 5.1 Germania

În Germania, VD a fost transpusă prin "al treilea act de reformă a drepturilor victimelor" (3. *Opferrechtsreformgesetz*[103]) în 2015. Legea ia măsuri suplimentare importante pentru a ridica standardele de protecție a victimelor și, de asemenea, consolidează statutul victimelor în procesele penale.[104]În timp ce Germania a atins deja un standard înalt în ceea ce privește sprijinul acordat victimelor înainte de punerea în aplicare a VD, acestea din urmă au generat unele îmbunătățiri, în special în ceea ce privește drepturile procedurale și de informare ale victimelor. În plus, parlamentarii germani au introdus două noi alineate importante privind evaluările individuale ale victimelor: §48, secțiunea 3: obligația martorului și citarea (*Zeugenpflichten; Ladung*)[105]în Codul german de Procedură Penală (*Strafprozessordung, StPO*), precum și noul paragraf §406g asistență judiciară psihosocială (*psychosoziale Prozessbegleitung*), care constituie o piatră de hotar în protecția victimelor și se bazează în principal pe modelul austriac.[106]

[103]Vezi:http://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html; și http://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (accesat la 22 martie 2018).

[104]În procesele penale, victimele pot juca rolul de martor, reclamant sau persoană vătămată (*Zeuge, Nebenkläger, Verletzter*), ceea ce înseamnă că Germania nu folosește termenul de victimă în litera legii. Pentru informații detaliate, a se vedea studiul paneuropean E-PROTECT privind transpunerea legală a Directivei privind Victimele D3.6

[105] See: https://www.jurion.de/gesetze/stpo/48/ (accesat pe 5 aprilie 2018).

[106]În Portugalia și Finlanda există și asistență judiciară psiho-socială.



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Toate măsurile speciale stabilite în VD sunt îndeplinite de legislația germană, în timp ce altele au existat anterior transpunerii VD.[107]Cu toate acestea, aceste drepturi sunt, în majoritatea cazurilor, garantate prin punerea în practică a articolului 22 (a se vedea studiul EPRS 2017: 61). Cu toate acestea, în această etapă, **evaluările individuale** și procedurile sale precise nu sunt clar stabiliteîn textul juridic german (a se vedea ibid.: 61). Prin urmare, este neclar modul în care este efectuată evaluarea individuală și de către cine.

De asemenea, un precedent UE numit IVOR (Implementarea reformei orientate spre victime a sistemului justiției penale în Uniunea Europeană 2014-2016) s-a încheiat înainte ca cel de-al treilea act de reformă a victimelor să fi fost pus în aplicare în 2015, conform căruia legiuitorul german a planificat o dispoziție specială ”(…) în partea generală a Codului de Procedură Penală care prevede că prima autoritate care se ocupă de un caz trebuie să conducă evaluarea nevoilor individuale și să o pună într-un sistem de depunere”. Acum, după punerea în aplicare a acestui act (inclusiv noile paragrafe: §48, secțiunea 3 și §406g), legiuitorul german nu stipulează în mod explicit cine și cum trebuie efectuată evaluarea individuală.

Cu toate acestea, scopul principal al art. 22 pentru a asigura o evaluare a nevoilor individuale de protecție a victimelor este ocolit în Germania – pentru a concluzionaalături de autorii IVOR:

> "Deși puține țări au (pe deplin) implementat articolul 22 în legislația lor națională, este clar că absența unei legi referitoare la evaluarea nevoilor individuale nu implică faptul că anumite grupuri vulnerabile nu sunt identificate și li se acordă drepturi specifice de protecție. **Cu toate acestea, obiectivul evaluării individuale, și anume că ar trebui să fie pus la dispoziția tuturor victimelor, nu a fost realizat în aproape niciunul dintre statele membre**"(raportul IVOR 2016: 163, emfază adăugată, utilizarea literelor îngroșate)

[107]De exemplu. interogările în locurile corespunzătoare pentru a evita contactul vizual între victimă și presupusul infractor; desfășurarea acestor interogări de către persoane special pregătite, posibilitatea audierii fără public; pentru informații detaliate cu privire la legile și dispozițiile specifice care reglementează aceste măsuri (în ce condiții și în ce circumstanțe au fost aplicate) vezi celălalt studiu E-Protect privind transpunerea legală a Directivei privind Victimele (D3.6 / 2018) .



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IVOR a efectuat, de asemenea, interviuri cu mulți experți din diferite state membre ale UE, unul dintre experții germani a declarat că o abordare mai flexibilă față de evaluările individuale este mai preferabilă. Respondentul a fost întrebat dacă o evaluare va fi la fel de concretă ca o listă de verificare. Depinde de diferite circumstanțe, cum ar fi calitatea informațiilor pe care poliția o are la un moment dat în timp (ibid.).

Germaniaurmărește oarecum abordarea unei evaluări care să se realizeze în orice etapă a procedurii juridice de către diferite autorități competente, inclusiv o primă evaluare, dar și diverse re-evaluări ulterioare, dacă este necesar.

### 5.1.1 Bune practici în Germania

**Asistență judiciară psiho-socială**

Asistența judiciară psiho-socială înseamnă în contextul german o formă specifică de însoțire, în timpul și după procesul penal (excluzând asistența juridică) pentru victimele vulnerabile (în conformitate cu VD și articolul 22 și articolul 23). În special, copiii și adolescenții care au fost victime ale infracțiunilor grave sexuale sau violente au dreptul să beneficieze gratuit de asistență judiciară psiho-socială. Pentru alte victime ale infracțiunilor grave violente și sexuale, instanța ar trebui să decidă, pe baza cazului individual, dacă ar trebui să se acorde asistență judiciară psiho-socială.

Activitățile includ furnizarea de informații adecvate, precum și sprijin calificat pe parcursul întregii proceduri penale, cu scopul de a reduce sarcinile individuale care sunt inevitabil combinate cu aceste proceduri și de a evita victimizarea secundară (a se vedea Riekenbrauk 2016: 7). Acest drept la acces liber este de o importanță deosebită pentru copiii-victime, persoanele cu handicap și persoanele care sunt traumatizate în mod special în urma unei infracțiuni, care implică crime din ură , crime sexuale sau crime violente. Ancorarea unei astfel de măsuri importante de protecție în litera legii reprezintă un punct de referință. Cel mai important aspect în contextul standardelor de calitate este semnificația "clarității rolurilor" (*Rollenklarheit*), ceea ce înseamnă că asistența judiciară psiho-socială nu constituie nici consiliere juridică, nici constatare în fapt sau psiho-terapie (ibid .). El are mai degrabă obligația de a oferi victimei sprijin și informații adecvate în următoarele


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etape: primul interogatoriu (adesea înaintea unei acuzații penale), pregătirea pentru procesul penal, sprijinul în timpul procesului principal și procesarea ulterioară. Aceasta include o gamă largă de sarcini de sprijin:

*Înainte de proces:* să fie prezent la toate interogările (la poliție și la tribunal), să informeze victima cu privire la procesul penal (prin prezența în instanța de judecată, de exemplu, explicând cine sunt diferiții actori etc.), să furnizeze informații cu privire la consecințele și riscurile unei proceduri judiciare sau unei acuzații penale, informații privind diferite forme de psiho-terapie.

*În timpul procesului*: organizarea accesului sigur la sediul instanței, sprijin în timpul de așteptare, cooperarea cu alte autorități care sunt prezente, traducerea vocabularului juridic, explicarea procedurilor.

*În urma procesului*: informații privind posibilități suplimentare de sprijin sau sprijin în gestionarea emoțională a hotărârii judecătorești etc. (ibid .: 9).

**Formarea profesională a ofițerilor de poliție și a sistemului judiciar**

În Germania sunt oferite instruiri speciale ofițerilor de poliție și personalului judiciar, care sunt în mare parte organizate la nivel regional și depășesc cerințele directivelor (a se vedea studiul EPRS 2017: 72).

> "În cadrul cursurilor de pregătire a ofițerilor de poliție stabiliți, protecția victimelor constituie un element fundamental în toate cele 16 landuri (*Länder*). Formarea este concepută în conformitate cu articolul 25 alineatul (1) din directivă "(ibid .: 72).

În cadrul formării pentru personalul de **poliție** nou, protecția victimelor reprezintă o componentă centrală a studiilor de licență de trei ani de la academiile de poliție. Subiectul este studiat din perspective diferite, cum ar fi criminologia, etica, procedurile de examinare, victimizarea și psihologia (ibid.), Deși accentul se pune pe a le învăța empatia și sensibilitatea în legătură cu comunicarea cu diferite tipuri de victime, precum și evaluarea corespunzătoare a situatie.



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Instruirile includ atât sesiuni teoretice cât și practice. Un accent deosebit se pune pe aspectele juridice și pe tacticile psihologice ale intervenției poliției în cazuri de violență în familie și cazuri de urmărire (ibid.).

"Mai mult decât atât, anumite sedii ale poliției au deja ofițeri responsabili în mod special cu protecția victimelor care sunt însărcinați să sensibilizeze colegii cu privire la necesitatea manipulării profesionale a victimelor. Acest lucru se face prin sesiuni de informare, evenimente, ateliere și întâlniri. Acești coordonatori își informează, de asemenea, colegii cu privire la schimbările legislative recente care consolidează drepturile victimelor "(ibid .: 72).

**Sistemul judiciar**(atât judecătorii, cât și procurorii) a intensificat și instruirile legate de victime, în special în ceea ce privește abilitățile de comunicare ale judecătorilor și procurorilor, inclusiv elementele psihologice ale protecției victimelor. Sesiunile lor de instruire cuprind de ex. următoarele subiecte: "examinarea martorilor victimei", "constatarea faptelor în sala de judecată" și "psihologia declarațiilor în cazul martorilor" și "compensarea victimă-suspect" (a se vedea ibid .: 73, vezi Clemm 2015). [108]

Cu toate acestea, lipsa unor standarde armonizate la nivel național privind calificările, de ex. lucrătorii psihosociali sunt criticați de unii experți juridici (vezi Fastie 2015).[109]

## 5.2 Portugalia

În Portugalia există numeroase obstacole cu care se confruntă copiii în sistemul judiciar, cum ar fi interogările repetate, mediile și procedurile intimidante, lipsa formării profesioniștilor care desfășoară interviuri și procedurile complexe și lente. Unii experți susțin că există o neconcordanță între lege și aplicarea acesteia.

[108]Vezi: https://www.bundestag.de/blob/379102/fee53d33062a29c73b8e580e7aa788cc/clemm-data.pdf (accesat pe 5 aprilie 2018).
[109]Vezi: https://www.bundestag.de/blob/378818/1151a3374a4dcfd93ff726f45abaca48/fastie-data.pdf (accesat pe 5 aprilie 2018).


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Studiile empirice au arătat că "copiii care sunt victime ale abuzului sexual în interiorul familiei sunt audiați în medie de opt ori..[110]Această repetare este aspectul procesului judiciar pe care copiii îl consideră obositor. Chiar și în procesele în care există semne fizice și biologice de abuz sexual, copiii sunt audiați de 4-9 ori. (...) Mărturia copiilor, atunci când sunt tineri, nu este nici colectată, nici evaluată, ceea ce dă naștere unei rate de depunere mai mare de 60%, potrivit unui studiu deja citat, pe baza datelor furnizate de Institutul de Medicină Juridică din Porto."[111]

Un sondaj recent cu 49 de procurori și magistrați a arătat că ambele categorii de profesioniști "(...) raportează lipsa de pregătire pentru audierea copiilor și adolescenților și dificultatea de a înțelege caracteristicile lor de dezvoltare (legate de vârstă și maturitate). Ei consideră că copiii mai mici pot avea dificultăți în înțelegere și atenție, în timp ce adolescenții manifestă un comportament ofensiv. Magistrații au raportat de asemenea că simt nevoia de aprofundare a tehnicilor pentru a facilita comunicarea cu copiii și adolescenții și de a cunoaște tehnicile de interviu, cu posibilitatea de a avea ghiduri de acces sau alte instrumente relevante."[112]Ribeiro (2009) explică faptul că în Portugalia în cursul urmăririi penale "(...) copiii sunt supuși unor interogări repetate și lungi de către profesioniști fără pregătire specializată și evaluări psihologice, precum și evaluări pentru a stabili capacitatea acestora de a depune mărturie, mai ales când vine vorba de a suspecta o infracțiune sexuală, care este contextul în care credibilitatea mărturiei copilului este cel mai adesea pusă la îndoială."[113]

### 5.2.1 Bune practici în Portugalia

Academia de avocați (Regiunea Lisabona) a publicat un **Ghid de bune practici privind audierea copiilor în cadrul procedurilor judiciare** în 2017. Acest ghid este în conformitate cu Orientările Consiliului Europei privind justiția *child-friendly* și bazat pe dovezi internaționale. Manualul

[110]Ribeiro, 2009 *in Ibid.* Pagina 287.
[111]Jardim, 2011 *in Ibid.* Pagina 288.
[112]Rodrigues, Alexandre, & Agulhas (2016). A audição da criança: Desenho, implementação e avaliação de uma formação para Magistrados Portugueses. Dissertação de mestrado do Mestrado de Psicologia Comunitária, Proteção de Crianças e Jovens em Risco. Lisboa. ISCTE-IUL. Page 13.
[113]Ribeiro, 2009 *in* Clara Sottomayor (2014) *Temas de Direito das Crianças*. Publicações Almedina, Page 298.


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începe cu o descriere a cadrului legal, urmată de considerații teoretice și practice pentru a audiere a copiilor în procedurile judiciare, inclusiv aspecte legate de mediu, tehnici de interviu, aspecte de luat în considerare din perspectiva copilului și a intervievatorului. Ghidul se termină cu o listă de verificare după interviu pentru a permite intervievatorului să monitorizeze procedurile și să identifice eventualele aspecte viitoare ale practicii sale.[114]Acest manual reprezintă o continuare a a două cărți pregătite și adaptate copiilor cu privire la ceea ce se pot aștepta în timpul procedurilor judiciare, inclusiv cartea "João merge în instanță"[115]și cartea ” Ziua pe care Mariana nu a dorit-o”[116]. Aceste cărți și îndrumări fac parte dintr-o abordare mai cuprinzătoare a punerii în aplicare a justiției favorabile copiilor în țară. Centrul portughez de studii judiciare privind audierile pentru copii a promovat formarea și cercetarea, inclusiv aspecte inovatoare, cum ar fi studiul pilot privind *utilizarea câinilor de intervenție pentru a facilita procesul audierii în instanțele de judecată pentru copii.*

În Portugalia, APAV are o experiență îndelungată în ceea ce privește sprijinul acordat victimelor și se implică puternic în parteneriate la nivel european pentru a spori protecția victimelor în Portugalia și pentru a contribui la schimbul de bune practici la nivel internațional. În prezent, APAV este partenerul proiectului POISE[117],co-finanțată de Fondul Social European, cu scopul de a oferi sprijin copiilor și tinerilor victime ale violenței sexuale, care vizează recuperarea din experiența traumatică și creșterea și dezvoltarea sănătoasă a acestora. Acest proiect implică dezvoltarea instrumentelor de evaluare a riscurilor și a instrumentelor de evaluare a nevoilor, precum și a protocoalelor pentru copiii și tinerii victime ale violenței sexuale, care vizează aprofundarea și îmbunătățirea procedurilor de susținere și intervenția rețelei CARE. Acest proiect este o continuare a activității anterioare, care are drept scop evidențierea **Manualului pentru sprijinirea victimelor infantile ale infracțiunilor sexuale**, care include informații tehnice

[114]Rute Agulhas e Joana Alexandre (2017) *Audição da Criança. Guia de Boas Práticas*. Conselho Regional de Lisboa da Ordem dos Advogados.
[115]Rute Agulhas e Joana Alexandre (2016) *O João vai ao Tribunal.*
[116]Rute Agulhas e Joana Alexandre (2016) *O dia que a Mariana não queria.*
[117] With the Project No.: 03-4639-FSE-000013


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detaliate pentru profesioniști, inclusiv ghiduri privind interviul și asistența copiilor care au suferit abuzuri.[118]

### 5.3 Spania

În Spania, puțin timp a trecut de la transpunerea la nivel național a Directivei privind Victimele. Cu toate acestea, există dovezi disponibile care ajută la evidențierea practicilor actuale și evaluarea modului în care legislația adoptată a fost pusă în aplicare, precum și pentru a oferi sugestii și recomandări pentru acțiunile viitoare.

După cum sa explicat mai sus, fiecare comunitate autonomă își aprobă cadrul de reglementare propriu și suplimentar și măsurile conexe de implementare. Legea organică nr. 1/1996 din 15 ianuarie privind protecția juridică a minorilor, modificarea parțială a Codului civil și Legea privind procedura civilă include cadrul de reglementare pentru diferitele comunități autonome care au competențe în materie de protecție a minorului, atunci când declară măsuri de protecție (risc sau abandon) în cazurile de abuz asupra copilului. O provocare poate fi performanța diferită a autorităților regionale, care ar putea conduce la diferite niveluri de protecție și resurse oferite victimelor infantile în diferite părți ale țării.

Salvați Copiii Spania a efectuat o analiză a 203 de hotărâri judecătorești din perioada 1 octombrie 2012 și 31 decembrie 2016. Studiul a arătat că, în medie, copiii trebuie să împărtășească informații despre abuzuri, odată raportate, de până la 4 ori. În 86% din cazuri, minorul a depus mărturie în plen. Numai în 13% din sentințele analizate a fost acceptată mărturia înregistrată a copilului. Mai mult, procesele juridice sunt lungi, în medie durează trei ani de la începutul procesului până la sfârșitul acestuia. În 38% din cazuri, "întârzierea nejustificată" este folosită ca circumstanță atenuantă pe care instanța o recunoaște, ceea ce înseamnă că au existat întârzieri care ar fi putut fi evitate și a fost redusă pedeapsa inculpatului pentru că a suferit din cauza acestei așteptări inutile.[119]

[118] APAV (2017) Manual CARE. Apoio a crianças e jovens vítimas de violência sexual.
[119]Salvați Copiii (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema.


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Într-un studiu privind justiția favorabilă copiilor, desfășurat de Agenția Europeană pentru Drepturi Fundamentale, mai mult de jumătate dintre copiii chestionați în Spania "(...) au evaluat negativ abilitățile de comunicare ale profesioniștilor, criticându-le pentru lipsa de sensibilitate și adresând întrebări care sunt irelevante și nepotrivite pentru vârsta lor. (...) Câțiva copii au menționat interacțiunile lor cu medicii legiști în timpul audierilor – de exemplu, atunci când medicul este prezent în calitate de martor expert. Cei mai mulți dintre acești copii evaluează negativ acești profesioniști pe baza comportamentului lor, precum și a inadecvării sălilor și a numărului de cadre. (În același studiu), câțiva dintre cei intervievați. cu vârste cuprinse între 14 și 18 ani care au fost victime ale abuzului sexual au vorbit despre starea de inconfort de la secția de poliție, deoarece au fost nevoiți să vorbească în fața mamei, tatălui sau a ambilor părinți."[120]

### 5.3.1 Bune practici în Spania

Intervenția unor părți interesate, inclusiv a oficiilor de sprijinire a victimelor din Spania, pare a fi progresivă în punerea în aplicare a dispozițiilor VD și a bunelor practici în domeniul justiției favorabile copiilor. "În Spania, camerele ***child-friendly***sunt uneori utilizate în faza de dinaintea procesului atât în cadrul serviciilor de asistență a victimelor, cât și în locațiile în care se află instanțele. În mod specific, intervievații (copiii care au suferit proceduri) au menționat *Fundación Márgenes y Vínculos* în diferite orașe andalueze; serviciul de sprijinire a victimelor din Andaluzia (*Servicio de Apoyo a las Víctimas de Andalucía, SAVA*); și serviciul de sprijin familial (*Servei d'Assesorament Tecnic en l'Àmbit de Família, SATAF*) furnizat de administrația catalană prin tribunalele familiale. Copiii au evaluat, în general, aceste locații în mod pozitiv, deoarece acestea se află în afara mediilor de judecată și au **camere de așteptare și audiere pentru copii**. De asemenea, copiii au apreciat atmosfera plăcută și calmă și prezența unui singur profesionist (psihologul) în conversație."[121]

[120]FRA (2017) *Child-friendly justice Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States. Pagina 26*
[121]*Ibid.* Pagina 30


Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

În 2009, Federația Asociațiilor de Prevenire a Abuzului Copilului (FAPMI) a inițiat un program privind copilăria și justiția, cu sprijinul și finanțarea Ministerului Muncii și Afacerilor Sociale, cu scopul de a îmbunătăți îngrijirea copiilor și adolescenților aflați în contact cu sistemul judiciar. Acest program a abordat aspecte ale cadrului național de reglementare, activități de sensibilizare, cum ar fi conferințele tematice care abordează diferite aspecte ale justiției favorabile copiilor și alte activități. Această activitate este complementară participării FAPMI la Comisia Națională de Asistență pentru Victimele Crimelor Violente și împotriva Libertății Sexuale ale Ministerului Justiției.[122]

Diferite autorități din Spania au publicat **materiale legate de justiția pentru copii**.[123]

Caseta 1. Psihologi și asistenți sociali legali din "echipele de asistență tehnică penală", Departamentul de Justiție al Guvernului Cataloniei

"Consultările tehnice adresate tribunalelor catalane sunt organizate prin birouri distribuite teritorial, în care psihologii și asistenții sociali specializați în justiție lucrează și răspund cerințelor de asistență tehnică din partea procurorilor, magistraților, judecătorilor. Specializarea acestor birouri nu numai că implică acțiunea lor în cauze penale, dar și că sunt organizate în funcție de programe diferențiate, cum ar fi sfaturile privind răspunderea penală și caracteristicile socio-personale ale celor acuzați de o infracțiune; consiliere cu privire la formele alternative de deprivare; evaluarea drepturilor sociale și personale ale acuzatului; consultanță tehnică privind victimele (sechele, adaptarea măsurilor de protecție etc.); pe martori (credibilitate, afectiuni cognitive); și, în final, programul de susținere a copiilor intervievați în cadrul procedurilor judiciare și a altor martori vulnerabili care necesită sprijin specializat

[122]FAPMI (2011): Programa Justicia e Infancia. Marco de referencia. Madrid, Federación de Asociaciones para la Prevención del Maltrato Infantil.

[123]De exemplu, reprezentantul copiilor din comunitate din Madrid a publicat un dicționar despre justiție adaptat copiilor, disponibil aici: http://www.madrid.org/bvirtual/BVCM013875.pdf; și al Consiliului pentru Muncă și PoliticiSociale, Secretariatul Serviciilor Sociale pentru Copii și Familie din regiunea Múrcia a pregătit o publicație privind funcționarea instanțelor, care este disponibilă aici:http://www.bienestaryproteccioninfantil.es/imagenes/tablaContenidos03SubSec/juzgado_Gu%C3%ADa%20_niño.pdf (accesat pe 23 aprilie 2018).



Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

pentru a face declarații. Declarațiilor copiior care au fost victimele abuzului sexual sunt înregistrate pentru a deveni o probă preconstituită și pentru a-i scuti de interviuri.

Deși cazul catalan este, fără îndoială, o bună practică în Spania, acesta continuă să se confrunte cu o serie de provocări. Pe de o parte, resursele lipsesc uneori și, pe de altă parte, chiar dacă se înregistrează probele preconstituite, depinde de judecători și magistrați dacă aceasta sunt acceptate de către Curte și dacă nu sunt necesare declarații suplimentare. Întrucât este o recomandare juridică și nu o obligație, există cazuri în care mărturia copilului este înregistrată și, după ani de zile, el este invitat să participe la proces "[124]

Studiul de caz evidențiat în caseta 1 a fost, de asemenea, inclus în raportul privind justiția favorabilă copiilor de către Agenția Europeană pentru Drepturi Fundamentale, care concluzionează că "În Spania, copiii preferă interviuri realizate de psihologi special instruiți la birourile de sprijinire a victimelor și un mediu adaptat nevoilor lor la interviurile din instanțe.."[125]Același studiu a arătat că în Spania, copiii au indicat că aceiași psihologi care au efectuat evaluările înainte de proces i-au sprijinit pe parcursul audierilor și s-au simțit ajutați de felul în care psihologii au mediat relația dintre ei și instanță."[126]

Legislația adoptată în Spania în vederea transpunerii Directivei Privind Victimele identifică birourile de sprijinire a victimei ca principale autorități responsabile de realizarea procedurii individuale de evaluare. Unele regiuni au făcut un pas înainte și au creat echipe specializate pentru a sprijini victimele, cum ar fi cazul Cataloniei și al *echipelor sale de asistență tehnică* penală. În plus față de Legea 4/2015 din 27 aprilie privind Statutul Victimelor Criminalității statul spaniol a mai adoptat în același an Decretul regal 1109/2015 din 11 decembrie, care reglementează activitatea Birourilor de Suport pentru Victime. În acest decret, înființarea Consiliului Consultativ

[124]Salvați Copiii (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema, Page 111.
[125] FRA (2017) Child-friendly justice. Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States.
[126] Ibid.


Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

Pentru Asistența Victimelor este de o importanță deosebită, deoarece poate juca un rol fundamental în supravegherea, evaluarea și îmbunătățirea activității Birourilor de Asistență a Victimelor.

### 5.4 Marea Britanie – Anglia și Țara Galilor

În Anglia și Țara Galilor, evaluările individuale și măsurile speciale (pentru copiii victime ale infracțiunilor) au fost introduse în sistemul de justiție penală prin **"Codul de Practici pentru Victimele Criminalității"**. Codul este un cod legal și a fost revizuit de două ori, în 2013 pentru prima dată și în 2015 pentru a doua oară datorită implementării VD.

Prima actualizare a Codului le oferă victimelor dreptul de a citi o Declarație Personală a Victimei (VPS) în instanță și de a primi informații despre participarea la programele de justiție restaurativă. Un VPS dă victimei posibilitatea de a împărtăși informații despre efectele pe care le-a avut crima are asupra lor și familiilor lor și este diferită de o declarație de martor care descrie ce sa întâmplat în momentul unei infracțiuni. Acordarea unei VPS este opțională este disponibilătuturor victimele care reclamă o crimă la poliție (a se vedea Sprijinul acordat Victimelor).[127]

Cea de-a doua actualizare, în 2015, a fost rezultatul transpunerii VD și a cuprins următoarele schimbări principale: **în primul rând**, lărgirea definiției unei victime pentru a include victimele tuturor infracțiunilor[128](anterior, aceasta a inclus doar victimele unor infracțiuni, ca abuz sexual etc.); **în al doilea rând**, asigurarea faptului că victimele au dreptul de a primi sprijin și informații de la toate organismele relevante[129]; **în al treilea rând**, garantarea faptului că toate victimele care raportează o infracțiune primesc o confirmare scrisă din partea poliției (a se vedea ibid.).

[127] For more detailed information, how the VPS functions exactly see the following Website of Victims Support: https://www.victimsupport.org.uk/help-and-support/your-rights/victim-personal-statements (accesat pe 12 aprilie 2018).

[128]Trebuie menționat faptul că victima are un singur rol legal în procesul penal britanic, ca fiind martor (adică cu aceste două roluri, odată ca victimă și odată ca martor, are drepturi specifice, a se vedea Codul de Practică pentru Victimele criminalității 2015), dar nu au dreptul să aibă rolul de litigiu, ca de exemplu în cazul Germaniei, care este legată de drepturi diferite. Deși termenul victimă este definit în legislația britanică (spre deosebire de alte state membre), victima nu este parte la procedura penală și, prin urmare, nu are dreptul la reprezentare juridică în timpul procedurilor judiciare (pentru mai multe detalii privind cadrul juridic, consultați E-Protect Pan-European report D3.6).

[129]Consultați "furnizorii de servicii" din această secțiune.



Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

.[130]

Guvernul britanic furnizează pe site-ul său site-ul web un material informativ cuprinzător, în diferite formate și versiuni ale Codului, care include videoclipuri, pliante sau versiuni lingvistice adecvate copiilor (vezi versiunea ușor de citit).[131]

**Evaluările individuale** sunt, de asemenea, reglementate de prezentul cod și ar trebui să fie executate de către furnizorii de astfel de servicii[132]pentru a determina tipul de sprijin de care o victimă ar putea să aibă nevoie. Prima evaluare are adesea loc la poliție, totuși parcursul său depinde de victime.. În timp ce în cele mai multe cazuri este condusă de poliție, evaluarea ar putea fi efectuată și de așa-numiți furnizori de servicii sau de o organizație non-statutară de sprijin. Evaluarea implică identificarea nevoilor unei victime și a stării sale de vulnerabilitate. Aceste nevoi ar putea fi reevaluate în ancheta ulterioară din partea poliției ("actualizări ale investigației adaptate nevoilor victimelor") (vezi Codul victimelor 2015: 8).

Prin acest proces au fost identificate măsuri speciale, în funcție de nevoile individuale ale unei victime (caracteristicile infracțiunii, vârsta victimei). Aceste măsuri includ: legături video live, înregistrări video, ecrane în jurul casetei de martor și asistență în comunicare, inclusiv utilizarea unui intermediar (a se vedea ibid.).[133]

Serviciile de asistență a victimelor (cum ar fi serviciile sociale) nu sunt incluse în lista furnizorilor de servicii, deoarece sunt organizații non-statutare și, prin urmare, sunt responsabile în primul rând de oferirea de asistență emoțională și practică victimelor infracțiunilor (să le explice cum să facă față efectelor unei infracțiuni). Aceasta înseamnă că nu sunt acoperite de Codul Victimelor și de prevederile acestuia, lucru care este, de asemenea, văzut negativ de unii experți.

[130]https://www.victimsupport.org.uk/help-and-support/your-rights/victims-code (accesat pe 12 aprilie 2018).
[131]https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime (accesat pe 12 aprilie 2018).

[132]Pentru lista completă a furnizorilor de servicii, a se vedea: Codul de Practici pentru Victimele Crimei, p.2, cuprinde în total 14 furnizori de servicii, printre altele: Serviciul de Procuratură al Coroanei, Comisariatul pentru Poliție și Criminalitate, Unitatea pentru Protecția Martorilor, doar pentru a menționa câteva.
[133]Pentru lista completă a măsurilor speciale cu explicații, consultați următoarele paragrafe din Codul de Practici pentru Victimele Criminalității (1.13-1.15 din Capitolul 1, pp. 15-16).


Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

Codul de bune practici constituie un ghid orientat spre practică pentru toți actorii implicați în protejarea victimelor infracțiunilor. Acesta oferă instrucțiuni utile despre efectuarea unei evaluări individuale și modul de comunicare adecvat cu victimele, inclusiv despre cât de repede victimele ar trebui să obțină informații cu privire la diferite proceduri sau care organizații le pot ajuta să facă față unei infracțiuni.

Mai mult, acesta include un capitol despre copiii și tinerii care devin victime ale infracțiunii, cu două secțiuni separate: una oferă informații detaliate și ușor de înțeles de către victime (despre drepturile lor, descrierea procedurilor, obligațiile furnizorilor de servicii) și cealaltă oferă informații și recomandări pentru practicieni, furnizorii de servicii.

### 5.4.1 Bune practici în Anglia și Țara Galilor

Succesul la nivel practice al acestei orientări statuare poate fi evaluată cel mai bine prin *feedback-ul* victimelor. Au într-adevăr acces la toate măsurile la care au dreptul? Este evaluarea efectuată în mod corespunzător, cuprinzând ambele desfășurări într-un interval de timp adecvat și individual ?

Comisarul pentru Victime a evaluat succesul în studiul citat anterior "Revizuirea drepturilor copilului în Codul Victimelor" din 2017. Studiul a ajuns la câteva concluzii care trebuie luate în considerare, deoarece au anumite limitări în ceea ce privește reprezentativitatea. Este un studiu calitativ, care include interviuri cu 12 copii și tineri (sau părinții lor) cu vârste cuprinse între nouă și 17 ani și sunt doar femei victime ale crimelor violente, abuzurilor sexuale sau agresiunilor sexuale.[134]Prin urmare, raportul precizează:

> "Din această revizuire nu putem ști dacă experiența lor în sistemul juridic penal este specifică victimelor acestui tip de infracțiuni sau dacă toate victimele tinere au o experiență similară" (ibid.: 21).

În plus, raportul are unele limitări în termeni geografici, incluzând doar câteva părți ale Regatului

[134]Pentru mai multe informații detaliate despre metodologie vezi Victims` Commissioner 2017: p. 19 și pentru mai multe informații despre limitările revizuirii, a se vedea p. 21,http://victimscommissioner.org.uk/app/uploads/2014/10/Are-we-getting-it-right-for-young-victims-of-crime.pdf(accesat pe 12 aprilie 2018).



Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

Unit. Cu toate acestea, a fost conceput un alt raport mai cuprinzător: Raportul de măsurare din 2009, al cărui autor a efectuat 182 de interviuri cu martori tineri (a se vedea ibid .: 17). Pe această bază, au fost trase concluzii semnificative privind satisfacția victimelor copii, cum ar fi dacă acestea primesc măsurile și informațiile la care au dreptul. Codul prevede că victimele ar trebui să fie informate despre măsuri speciale în timpul anchetei poliției. Majoritatea participanților la raportul Comisarului pentru Victime, în schimb, au spus că au fost doar informați despre anumite măsuri, sau că măsurile nu au fost aplicate într-o manieră adecvată, iar unii participanți nu au fost informați despre măsuri speciale. Cantitatea de informații a fost, de asemenea, dependentă de punctul de anchetă al poliției (a se vedea ibid .: 23). Pentru a oferi un exemplu practic din experiența unui participant în timpul experienței de judecată:

> "Modul în care se aplică măsuri speciale este important pentru a se asigura că victima este protejată corespunzător. De exemplu, Jenny (în vârstă de 17 ani) a beneficiat de un ecran în timpul audierii, astfel încât nu ar fi trebuit să se uite la inculpat sau să fie văzută de el. Cu toate acestea, ea a raportat:*Când am părăsit zona din spatele ecranului, era încă acolo. Ar fi trebuit scos afară, n-ar fi trebuit să-l văd. Care mai este scopul ecranului dacă îl întâlnesc în drum spre ieşire?* (Jenny, 17)" (ibid.: 24).

Un alt exemplu referitor la dreptul de a face o declarație personală a victimei arată că această oportunitate a fost acordată doar celor trei copii de 12 ani. Aceeași constatare se dovedește și în Ancheta privind Criminalitatea pentru Anglia și Țara Galilor, doar 15% dintre victime au avut ocazia de a face un VPS în 2015/16 (a se vedea ibid .: 24). Reexaminarea a constatat, de asemenea, că nu toți copiii și tinerii primesc informații adecvate privind oportunitățile și organizațiile de consiliere și sprijin, unii dintre aceștia fie au făcut referire la serviciile de sprijin sau li s-au referit de către asistentul social.

Copiii chestionați s-au simțit uneori frustrați de întârzierile cauzelor lor și de lipsa de informare în ceea ce privește întârzierile în anchetă (a se vedea Comisarul pentru Victime 2017).


Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

Deoarece o mare parte din Codul Victimelor se referă la dreptul victimei de a primi informații adecvate despre cazurile lor în timp util și exact, Codul este foarte promițător atunci când se aderă corect la acesta. Calitatea comunicării dintre victime și furnizorii de servicii este văzută ca fiind unul dintre cele mai importante aspecte pentru a face față cu succes impactului.

### 5.5 Finlanda

În Finlanda, **evaluarea nevoilor individuale** (articolul 22 din VD) nu a fost transpusă în cadrul aplicării directivei privind victimele, deoarece existau deja instrucțiuni care îndeplinesc cerințele articolului 22 (a se vedea IVOR 2016)[135].

Există mai multe instrucțiuni pentru evaluarea individuală care se regăsesc în legislația națională, în special în cadrul *Legii Anchetei Preliminare* pentru anumite grupuri de victime (vulnerabile), similare celor din Germania și Austria. Aceste instrucțiuni îndeplinesc cu certitudine scopul evaluării nevoilor individuale conform VD. Actul de investigație provizorie arată că autoritățile de anchetă sunt responsabile și trebuie să evalueze întotdeauna nevoile victimelor pentru protecție specială (a se vedea Savonen 2017: 8). Potrivit lui Savonen, Ministerul Afacerilor Interne a înființat, de asemenea, un comitet de lucru pentru dezvoltarea în continuare a procesului IAM în Finlanda. Copiii sau victimele minore sunt considerate vulnerabile în mod special și, prin urmare, au drepturi specifice și acces la măsuri speciale, care erau deja în vigoare în temeiul legislației naționale din Finlanda.

De exemplu, în cazul în care se solicită, victimele trebuie să aibă dreptul de a fi audiate în spații / zone special amenajate, precum și dreptul de a fi intervievate de aceeași autoritate de același sex ca și victima, în conformitate cu legea finlandeză și, prin urmare, corespunde prevederilor directivei. În plus, legea finlandeză corespunde, de asemenea, solicitării în continuare a articolului 23 din VD ca toate interviurile cu victimele să fie efectuate de specialiști (a se vedea ibid.).

[135]A se vedea, de asemenea, explicațiile din secțiunea 4.5.2 din prezentul raport, în care este prezentat pe scurt cadrul juridic al transpunerii VD în Finlanda.



Acest proiect este finanțat de UE. Această publicație a fost elaborată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu reflectă în niciun fel poziția Comisiei Europene.

În plus, legea finlandeză este, de asemenea, în conformitate cu articolul 24 din VD; în cazul în care victimele sunt minori sau au nevoie de protecție specială, audierile și studiile ar putea fi înregistrate pe suport video. Ca urmare, caseta video este prezentată în proces, în locul victimei personal.

Ofițerii de poliție au un rol deosebit de important în identificarea nevoilor specifice ale victimei, deoarece sunt primele figuri care vin în contact cu victimele. De exemplu, poliția anunță despre victimele unor infracțiuni grave la serviciile specializate ale victimelor, pentru tratamente medicale și măsuri specifice de protecție. Prin urmare, este important ca profesioniștii din poliția finlandeză, să beneficieze de o formare adecvată atunci când efectuează o astfel de evaluare. Potrivit autorilor studiului IVOR, profesioniștii finlandezi au fost de acord cu planul de elaborare a unei cereri cu un set mai complex de întrebări pentru a evalua nevoile individuale ale victimelor, dar acest lucru rămâne neclar dacă este efectiv implementat.

### 5.5.1 Bune practici în Finlanda

În Finlanda, au fost inițiate două proiecte pentru o mai bună gestionare a victimelor infracțiunilor și pentru îmbunătățirea calității protecției victimelor vulnerabile, cum ar fi copiii și tinerii.

După ce au raportat o infracțiune, copiii primesc imediat o evaluare a riscurilor și li se oferă măsuri speciale pentru a-i ajuta să participe la proceduri (a se vedea IJJO 2014/16). În Finlanda, unii ofițeri de poliție sunt specializați în investigarea infracțiunilor ce implică copii victime. Din acest motiv, Finlanda a inițiat un proiect numit ***Senja*:*Ghid de empatie pentru profesioniștii din jurisprudență.***

În cadrul său, toți profesioniștii care lucrează cu victime sau martori ai criminalității beneficiază de o formare adecvată. Abordarea sensibilă a victimelor din Senja este adresată polițiștilor, procurorilor și personalului instanțelor. Obiectivul său principal este de a furniza informații relevante și adecvate cu privire la consecințele violenței domestice și ale criminalității sexuale și de a oferi consultanță celor care lucrează cu victimele vulnerabile în diverse etape ale procesului juridic (vezi ibid .: 28). Site-ul*Senja*cuprinde șase domenii principale cu informații pentru profesioniștii implicați în procesul legal al victimelor infracțiunilor:*"Traumatizarea", "Victimele infracțiunilor sexuale", "Victimele violenței domestice", "Victimele cu dizabilități", "Victimele tinere", "Victimele de origine străină"* și o altă filă vizează *"Sfaturi pentru victime",* care furnizează



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informații victimele deosebit de vulnerabile și dreptul lor de a obține un avocat gratuit și asistență gratuită. Informațiile sunt furnizate în trei limbi: finlandeză, suedeză și engleză și *"(...) dosarele de instrucțiuni au fost distribuite tuturor secțiilor de poliție, birourile publice de asistență juridică și instanțele din Finlanda "*(IJJO 2014/16: 28*).* Foarte important, ofițerii de poliție primesc în fiecare an cursuri speciale privind victimele copii.

Cel de-al doilea proiect pus în aplicare în Finlanda se numește Casa Copiilor – Modelul Barnahuset și constituie un program-pilot, introdus în 2014, care se bazează pe Modelul Centrului de Advocacy pentru Copii din SUA (CAC). Acest model este deja folosit din ce în ce mai mult în țările nordice și are originea în Islanda, unde se află în uz din 1985 și a fost dezvoltat ca răspuns la abuzul sexual asupra copiilor. Ideea modelului Barnahus, care se traduce în limba engleză drept "Casa Copiilor", și modelul american CAC urmărește, de asemenea, în centrul său o abordare multi-profesională și integrată în protecția victimelor copilului (vezi Johansson et al., 2017: 5)[136]. "Ambele modele se bazează pe înțelegerea faptului că abuzul asupra copilului este un fenomen complex, solicitând expertiză foarte specializată și servicii coordonate "(ibid .: 5). În prezent, SUA numără aproape 1000 de astfel de centre CAC[137].

Ideea principală a proiectului în Finlanda este de a oferi un cadru comun pentru cooperarea oficială de stat, precum și un spațiu fizic comun ("principiul" o singură ușă "sau" sub un singur acoperiș") (ibid.), Unde toți profesioniștii implicați lucrează împreună într-o singură echipă, cum ar fi profesioniști în domeniul sănătății, asistenți sociali, ofițeri de poliție și procurori. Potrivit lucrării lui Johansson și alții, caracteristicile modelului Barnahus variază în diferite țări nordice: în Finlanda există o puternică să se concentreze pe interviurile intensive de medicină legală efectuate de psihologi legiști, deși, la cererea poliției. Modelul în curs de dezvoltare din Finlanda este strâns legat de structurile colaborative preexistente, cum ar fi unitățile medico-legale de psihiatrie pentru copii și adolescenți din cele cinci spitale universitare, precum și relațiile puternice cu sectorul

[136]Pentru o descriere detaliată a acestui model specific de protecție a copilului, consultați primul capitol In. Johansson et al. 2017, Implementing the Nordic Barnahus Model: Characteristics and Local Adaptions, pp. 1-31, https://link.springer.com/content/pdf/10.1007%2F978-3-319-58388-4_1.pdf (accesat pe 19 aprilie 2018).
[137]Vezi: http://www.nationalcac.org (accesat pe 19 aprilie 2018).


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sănătății (ibid .: 22).[138]

În general, **programele de formare** a interviurilor interdisciplinare cu durata de un an pentru polițiști și profesioniștii din domeniul sănătății care efectuează audieri vor fi evidențiate ca o altă practică promițătoare în Finlanda. Cursurile sunt organizate de Consiliul Național al Poliției și de Centrul de Psihiatrie Criminalistică. "Cei mai mulți ofițeri de poliție și psihologi care lucrează în cadrul procedurilor penale au participat la curs și în general sunt de acord că a contribuit la facilitarea copilului în procesul de audiere preliminară" (FRA 2015: 100).[139]

# 6 Concluzii și discuții

Punerea în aplicare a directivei UE privind victimele, care stabilește standarde minime pentru asistența victimelor în jurisdicțiile naționale a provocat unele dificultăți între statele membre ale UE. La nivel pan-european, imaginea asistenței victimelor privind transpunerea directivei se dovedește a fi foarte diversă.

În perspectiva problemei comparative (a se vedea Jasanoff / Metzler 2018), a devenit vizibil faptul că fiecare țară construiește și operează în contextul propriu al infrastructurilor de sprijinire a victimelor și, prin urmare, produce în mod inevitabil răspunsuri divergente la sarcina complicată de a reacționa la punerea în aplicare a directivei. Comparația relevă medii legislative naționale și socio-practice distincte în care practicanții și legislatorii trebuie să acționeze și astfel expun înțelegeri diferite ale responsabilităților fiecărui stat față de protejarea victimelor infracțiunilor la nivel național. Cu toate acestea, există o problemă principală privind compararea statelor membre cu privire la punerea în aplicare a Directivei privind victimele pe teren:

> "Dorința de a utiliza sprijinul victimelor, o înțelegere globală a experienței cu agențiile de justiție

[138]Pentru mai multe detalii cu privire la procedura exactă a acestor metode de intervievare judiciară, consultați studiul deja menționat mai sus, IJJO 2014/16, pp. 20-22.
[139]http://fra.europa.eu/en/publication/2015/child-friendly-justice-perspectives-and-experiences-professionals-childrens (accesat pe 19 aprilie 2018).


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penală în urma victimizării, impactul interacțiunii cu procesul de justiție penală asupra bunăstării emoționale a victimelor, importanța diferitelor aspecte ale asistenței victimelor, nu există motive întemeiate de comparare între statele membre ale UE, având în vedere că pentru majoritatea Uniunii Europene nu există studii empirice disponibile care să ofere un răspuns "(raportul IVOR 2016: 197).

Transpunerea standardelor minime de punere în aplicare a asistenței victimelor în cadrul Uniunii Europene se dovedește a fi foarte diferită, pornind de la interpretarea diferită a termenilor-cheie și a noțiunilor principale ale directivei[140] de către legislatorii naționali, diferențele fiind îngrădite de diferitele tradiții juridice în sprijinul victimelor.

"Dincolo de aceasta, legislația similară nu are ca rezultat realități similare existente, deoarece structurile organizațiilor, prioritățile politice și sprijinul financiar pentru legislația victimelor diferă foarte mult. În politică și practică, diferențele vor fi adâncite "(raportul IVOR 2016: 196).

Raportul IVOR evidențiază lipsa de cercetări bazate pe dovezi victimice în majoritatea țărilor europene, ceea ce ar constitui baza ideală pentru compararea statelor membre ale UE și pentru elaborarea unei astfel de directive. Cu toate acestea, ceea ce face vizibilă aici, în ciuda lipsei cercetării empirice în domeniul victimologiei, este dezvoltarea sistemului de sprijinire a victimelor din fiecare țară și, în plus, experiența pe care legiuitorul național și practicienii o au cu politica victimelor în UE, , de asemenea, să tragem câteva concluzii cu privire la faptul că UE este actor politic (a se vedea ibid.) Înțelegerea dimensiunii impactului Directivei Victimelor asupra legislațiilor și practicilor interne este dificil de constatat fără dovezi ale impactului majorității asistenței victimelor măsurile privind experiența victimelor și lipsa cercetării în acest sens.

Anglia și Țara Galilor merită menționate în acest context deoarece agențiile statutare și non-statutare au efectuat unele cercetări empirice în domeniul victimologiei prin includerea experiențelor și a perspectivelor victimelor copilului pentru a evalua cât de eficiente sunt diferitele servicii și programe de sprijinire a victimelor din Regatul Unit Anglia și Țara Galilor[141]. Se pare că este foarte promițătoare să se determine și

[140]See the complementary E-PROTECT report on the legislative transposition of Victims´ Directive, which maps in more detail the different interpretations of those legal concepts set in the Directive.

[141]Such as the report of the Victims´ Commissioner for instance, but also reports produced by non-statutory agencies, such as the report by Victim Support "Getting it right for young victims and witnesses", https://www.victimsupport.org.uk/sites/default/files/You%20%26%20Co%20-%20Getting%20it%20right%20for%20young%20victims%20and%20witnesses.pdf (accessed on 9th April 2018).



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să se monitorizeze efectele și funcțiile sprijinului victimelor prin feedback-ul victimelor înseși. În Austria și Finlanda există, deși nu în cea mai mare măsură, o tradiție în cercetarea privind satisfacția victimelor (în Austria, cu un accent deosebit pe violența domestică). Cu toate acestea, orice evaluare a impactului eforturilor politice trebuie să abordeze experiența trăită a victimelor, satisfacția acestora față de sistemul de justiție și măsurile oferite, prin urmare, este necesar să se efectueze cercetări cuprinzătoare care să includă experiențele utilizatorilor finali. În acest sens, Regatul Unit poate fi citat în mod clar drept exemplu de bună practică.

Prin urmare, un alt aspect-cheie asociat constă în includerea și înțelegerea rolului contextului în elaborarea politicilor UE, mozaicul de țări între UE necesită o abordare diferită a elaborării și implementării politicilor. Factorii de decizie ai UE trebuie să ia în considerare exact acești diferiți factori contextuali, inclusiv sisteme juridice diferite - sistemul de drept civil versus sistemul de drept comun (în Regatul Unit) - care determină sistemele de sprijinire a victimelor specifice țării, mai ales atunci când obiectivul este de a atinge standardele minime .

"În asistența victimelor, această necesitate se simte mai acerbă, dat fiind că acest context este, de asemenea, un factor important în experiența victimei, în interacțiunea dintre victime și furnizorii de asistență pentru victime, în modul în care asistența victimelor este situată în rețeaua sa și natura asistenței victimelor ca guvern a sporit abilitarea cetățenilor. Experiența privind îmbunătățirea poziției victimelor la nivel național într-o varietate de națiuni vorbeste despre complexitatea și dificultatea de a face acest lucru într-o singură țară: aceste aspecte sunt complicate doar prin faptul că UE conține 28 de state membre "(ibid .: 200).

Cu toate acestea, se pot trage concluzii cu privire la bunele practici sau chiar cele mai bune practici, precum și dificultățile din acest studiu, inclusiv rezultatele rapoartelor de țară elaborate anterior privind proiectul E-PROTECT. În plus, dificultățile prezentate anterior privind politicile UE în general și Directiva privind victimele, în special, ar trebui să fie susținute de unele constatări empirice ale acestei cercetări.

Informațiile de înaltă calitate furnizate de guvernul britanic și diferite organizații de sprijinire a victimelor victimelor infracțiunilor sunt promițătoare. Actuala actualizare a Codului Victimelor în 2015 are probabil un impact semnificativ asupra protecției victimelor. În consecință, victimele beneficiază de informații detaliate și relevante cu privire la obligațiile și drepturile lor, la obligațiile prestatorilor statutari de servicii, cum ar fi perioada în care poliția trebuie să trimită victimei recunoașterea de a raporta o infracțiune sau în ce interval de timp ei trebuie să informeze victimele despre deciziile luate de autorități, în limba corespunzătoare. În alte state membre, cum ar fi Germania, există o lipsă de material informativ adecvat,


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relevant și accesibil din punct de vedere lingvistic pentru victime (a se vedea EPRS 2017). În mod special, având în vedere complexitatea legislației germane, acest lucru ar fi un pas necesar spre o abordare și mai orientată spre victime, cel puțin pentru a elibera victimele ușor de dependența autorităților de stat. În schimb, Regatul Unit a elaborat acest text legislativ uniform (Codul de Practici pentru Victimele Criminalității), care constituie în mod egal baza legală pentru toate părțile implicate în procedurile penale, atât pentru victime, cât și pentru profesioniști. Acest tip de practică stabilește un alt fel de maturitate politică pentru persoanele care sunt comise prin infracțiuni.

Cu toate acestea, Codul nu include o obligație ca agențiile să colaboreze într-un mod coordonat pentru a sprijini victimele în mod cuprinzător în experința lor prin sistemul de justiție penală din Regatul Unit. Având în vedere că victimele infracțiunilor se confruntă cu un număr mare de profesioniști diferiți din diferite agenții, munca multi-agenție constituie un aspect important pentru a se asigura că victimele minore sunt susținute în mod corespunzător de către toți actorii implicați. Cu toate acestea, comisarul victimelor a recunoscut unele lipsuri în ceea ce privește cooperarea multi-agenție.

O constatare care poate frapa este că serviciile sociale nu sunt acoperite de Codul Victimelor și astfel apar anumite probleme în protejarea copiilor în mod adecvat, ceea ce duce în mod constant la o lipsă de informații cu privire la cazurile lor. Comisarul pentru victime a perceput o lipsă de răspuns coordonat între Curtea de Coroană și Curtea de Familie sau între poliție și alți furnizori de servicii sociale (ibid.). Această lipsă ar putea fi rezolvată prin oferirea unui singur advocacy profesional, cu rolul de coordonare a fiecărui individ, care furnizează victimei toate informațiile relevante, cum ar fi trimiterea victimei la servicii de asistență corespunzătoare, precum și monitorizarea progresului acesteia în cazul în care nevoile lor se schimbă (ibid: 35).

Puținele dovezi disponibile în Portugalia referitoare la practicile de protecție a copilului, atât în ceea ce privește măsurile de intervenție, cât și experiența copiilor victime ale infracțiunilor care au fost supuse audierilor și procedurilor judiciare, demonstrează că există lacune grave legate de organizare, de resurse și traininguri pentru a le depăși[142]. Legislația legată de justiția copiilor a progresat încet și în țară, dar

[142] A study carried out to assess the work of Child Protection Commissions is available here: http://www.analiatorres.com/pdf/SINOPSEfinalcriancasconclrecomendacoes.pdf(accessed on 30th April 2018).



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angajamentele internaționale ale Portugaliei au contribuit la avansarea cadrului național de reglementare și există acum un cadru cuprinzător pentru protecția victimelor infantile.

În ceea ce privește punerea în aplicare a procedurilor individuale de evaluare, în cazul Portugaliei ar trebui luate în considerare următoarele aspecte: judecătorii și procurorii se bazează pe diferiți actori care desfășoară activități de lucru cu copii victime, cum ar fi Comisiile locale pentru protecția copilului. Criticii susțin, totuși, că acesti copii trebuie intervievați de cineva pe care ei îl cunosc deja și îi susține în alte domenii. Acesta ar fi interesul cel mai bun al copilului, deoarece s-ar putea simți mai bine să fie auzit de cineva pe care-l cunoaște și în care are încredere, decât să-i introducă la un alt adult ciudat pentru a discuta despre experiențele traumatice. În plus, nu există proceduri, protocoale sau îndrumări specializate uniforme pentru multitudinea de actori care efectuează procedurile individuale de evaluare. APAV subliniază, de asemenea, că există o reticență din partea autorităților publice de a urma un protocol specific pentru a efectua evaluări individuale, deoarece se tem de un volum de muncă suplimentar[143].

În viitor, va fi important ca Portugalia să efectueze evaluări de impact asupra propriilor sale structuri de sprijinire a victimelor pentru copiii victime, pentru a identifica lacunele în calea îmbunătățirii.

În **Spania**, există legislație și structuri care au potențialul, atunci când sunt efectiv realizate, cum ar fi evaluările individuale, de a sprijini pe deplin copiii victime. În anii următori, va fi important să monitorizăm punerea în aplicare a celor două acte legislative evidențiate în acest raport, pentru a înțelege dacă acestea

[143] APAV. Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001



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contribuie la depășirea unor bariere și provocări cu care se confruntă copiii care intră în contact cu sistemul judiciar. Similar cu Portugalia, dovezile disponibile și programele existente pot constitui baza pentru promovarea justiției favorabile copiilor în Spania și, în special, pentru punerea în aplicare a măsurilor prevăzute în Directiva privind victimele. Va fi esențial ca părțile interesate să facă acest angajament și să-și concentreze atenția asupra armonizării procedurilor și practicilor din întreaga țară, asigurându-se că nu există diferențe între diferitele regiuni sau lacune urban-rural, ca de exemplu în cazul Austriei.

**Germania, Finlanda** și **Austria**, singurele trei țări din această selecție a statelor membre care dețin un organism central național pentru coordonarea sprijinului victimelor și calitatea dispozițiilor apar în acest caz mai consistentă decât în alte țări. (vezi EPRS 2017).

În Austria și Germania există anumite activități de cooperare multi-agenție, cum ar fi "mesele rotunde", inclusiv diferitele părți interesate implicate în asistența victimelor. Aceste activități par extraordinar de promițătoare, deoarece reprezintă unul dintre cele mai importante aspecte în armonizarea procedurilor între diferiții actori implicați (poliție, avocați, procurori, profesioniști din domeniul sănătății, psihologi, asistenți sociali), ceea ce îmbunătățește situația copiilor victime ale criminalității care facilitează evitarea victimizării secundare și situația de lucru pentru acești profesioniști. Modelul finlandez Barnahus, care urmează modelul CAC (Centrul pentru Advocacy pentru Copii) al SUA și care constituie un pilot introdus în 2014, poate fi văzut, de asemenea, ca o bordare multi-profesională. Acesta este deja folosit progresiv în țările nordice și împărtășește ideea unei abordări integrate în protecția victimelor copilului.

Atât Germania, cât și Austria oferă gratuit sprijin psiho-social pentru victimele deosebit de vulnerabile, ceea ce este o măsură importantă pentru copiii victime, care stabilește o abordare integrată, adecvată și cuprinzătoare de protecție a copiilor. Finlanda are o măsură similară consacrată legal, dreptul de a avea un avocat legal, însă există o lipsă de finanțare. Este oferită gratuit în circumstanțe specifice și în ceea ce privește infracțiunile specifice, cum ar fi cazuri de violență în familie, infracțiuni sexuale sau infracțiuni grave împotriva vieții, sănătății sau libertății.

În plus, acest studiu a arătat, alături de altele, că este esențial să se includă contextul individual al fiecărei țări în care se dezvoltă sprijinul pentru victime, în special în ceea ce privește astfel de proiecte mega-direcționate în direcția victimelor și punerea lor în aplicare în 28 de state membre (a se vedea raportul IVOR 2016). Suportul victimelor variază în mod inevitabil în natură, de la o zonă a Uniunii Europene la alta și,


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prin urmare, factorii de decizie ai UE trebuie să ia în considerare aceste contexte și medii diferite pentru a dezvolta mijloace mai flexibile pentru a influența politicile și practicile din statele membre. evaluarea și evaluarea impactului directivei înseamnă luarea în considerație a particularităților interne la ambele niveluri, juridice și sociale, și începând din acest scop. Aceasta ar putea constitui, de asemenea, baza ideală pentru elaborarea unei astfel de directive, abia atunci este posibil să se ajungă la o experiență mai bună trăită pentru victimele criminalității din Europa.



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JUST-JACC-VICT-AG-2016

Action grants to support transnational projects to enhance the rights of victims of crime

JUSTICE PROGRAMME

GA No. 760270

# PROTETT@ - Rafforzare la protezione dei minorenni vittime di reato (Titolo originale: Enhancing PROtection of Children – vicTims of crime E-PROTECT)

## WP3: Ricerca e raccolta dati

# D3.13 Rapporto transnazionale sulle buone prassi relative alla valutazione individuale dei minorenni vittime di reato

## Leader WP3: VICESSE



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# Breve sintesi

L'obiettivo specifico del progetto E-PROTECT (PROTETT@) è rafforzare la protezione dei diritti dei minorenni vittima di reato mediante l'analisi del recepimento della Direttiva 2012/29/UE (c.d. Direttive Vittime) nella legislazione nazionale di cinque Paesi Membri (Bulgaria, Austria, Romania, Grecia e Italia). Inoltre, il progetto esamina l'applicazione pratica di una singola disposizione della Direttiva Vittime: *Articolo 22*: *Valutazione individuale delle vittime per individuarne le specifiche esigenze di protezione* al fine di ispirare e stimolare una rete multidisciplinare di professionisti mediante l'organizzazione, nel corso del progetto, di workshop, in ciascun Paese partner, che vedono il coinvolgimento di professionisti del settore, nonché mediante la realizzazione di una piattaforma online dove possono essere reperite e scambiate tra i professionisti informazioni utili.

Tale analisi transnazionale sulle *"migliori prassi relative alle metodologie di valutazione individuale dei minorenni vittime di reato"* è volta ad ampliare la portata geografica e culturale del progetto, al fine di fornire un quadro più ampio circa le valutazioni individuali all'interno dei Paesi Membri dell'UE. Verrà esaminata l'applicazione pratica delle metodologie relative alla valutazione individuale nei seguenti Paesi Membri: ***Germania, Portogallo, Spagna, Regno Unito (Ighilterra e Galles),*** e ***Finlandia***. Inoltre, nel presente rapporto sono sintetizzati e riportati anche i risultati emersi dalle precedenti analisi nazionali effettuate da: ***Bulgaria, Austria, Romania, Grecia e Italia.***

Il campione degli Stati Membri scelti per tale studio transnazionale è rilevante sotto un duplice profilo: *innanzitutto*, da un punto di vista geografico e culturale, in considerazione delle loro specificità legislative nazionali e del diverso recepimento della Direttiva Vittime e di come tutto ciò si ripercuota nella pratica.

*In secondo luogo*, considerando l'obiettivo principale del progetto – rafforzare i diritti di protezione dei minorenni vittime di reato nell'ambito dei diversi Paesi dell'UE – i Paesi Membri scelti rappresentano degli esempi significativi in quanto si avvalgono, da lunga data, di valide strutture di supporto alle vittime (è il caso dell'Inghilterra e del Galles, della Germania e della Finlandia), oppure perché hanno sviluppato trattamenti specifici dei minorenni vittime proprio in conseguenza dell'attuazione della Direttiva Vittime (come in Spagna e Portogallo).

Nella prospettiva di una analisi comparativa (c.d *comparative problematization*, secondo il termine usato da Jasanoff/Metzler, 2018), è chiaro che ogni paese costruisca ed operi nel proprio contesto di infrastrutture



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e quindi, inevitabilmente, produca risposte divergenti all'intricato compito di implementazione della Direttiva. Tale studio utilizza, pertanto, una comparazione qualitativa, il cui obiettivo è comprendere un caso, o meglio diversi casi (in questo rapporto vengono analizzati i diversi approcci degli Stati Membri UE alla valutazione individuale e all'assistenza ai minorenni vittime) nella loro specificità e generalità descrivendoli in maniera completa. Il confronto stimola una seria comprensione di un fenomeno, perché mostra continuamente le differenze di uno rispetto all'altro. Inoltre, fa emergere le diverse legislazioni nazionali e i diversi contesti socio-pratici in cui gli operatori e i legislatori devono agire. Essa mostra, pertanto, diverse interpretazioni circa la responsabilità di ciascuno stato nei confronti della protezione delle vittime di reato a livello nazionale. Questo rapporto mira quindi ad analizzare i diversi contesti e le prassi relative al supporto dei minorenni vittime in ogni Stato Membro, attraverso gli occhi degli altri contesti di supporto alla vittima (si veda Akrich/Rabeharisoa, 2016).

Il quadro relativo all'assistenza alla vittima, per effetto del recepimento della Direttiva, si rivela molto variegato nei diversi paesi dell'area UE. La **Finlandia** per esempio, sembra avere un approccio più sistematico rispetto alla valutazione individuale, in seguito al recepimento della Direttiva (si veda EPRS 2017: 82). Il Regno Unito (in particolare **Inghilterra e Galles**) ha sviluppato alcune linee guida pratiche (*Il codice di pratica per le vittime di reato*), un gran numero di materiali di pubblica informazione e formazioni specifiche per gli operatori coinvolti nel supporto alla vittima. Inoltre, **Inghilterra e Galles**, come anche la **Germania**, possono fare riferimento ad una tradizione di supporto alla vittima di lunga data. I casi di **Portogallo** e **Spagna** sono significativi in quanto entrambi i paesi hanno recepito l'intero testo della Direttiva Vittime testualmente.

Una problematica comune, relativa al supporto alle vittime, è rappresentata dalla sua struttura, a volte complicata, in termini di coordinamento e di collaborazione. Ci si riferiesce, in particolare, al fattore chiave di un supporto alla vittima efficace rappresentato da una *cooperazione multi-agenzia* tra tutti gli attori coinvolti a livello nazionale e internazionale (in considerazione dei reati trans-frontalieri).

Includere e comprendere il *ruolo del contesto* nelle politiche UE è un altro aspetto cruciale. Il mosaico di paesi all'interno dell'UE necessita un approccio diverso al processo decisionale ed attuativo. I decisori politici UE dovrebbero considerare proprio questi diversi fattori di contesto a livello socio-politico e legale, i quali determinano gli specifici sistemi di supporto alla vittima di ogni paese.



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In conclusione, questo studio mostra quanto sia fondamentale includere *il contesto di ogni singolo paese* nel quale il sistema di supporto alla vittima si sviluppa, specialmente nel caso di progetti ambiziosi aventi ad oggetto la Direttiva Vittime e la sua implementazione nei 28 Stati Membri (si veda il Rapporto IVOR 2016). Il supporto alle vittime varia inevitabilmente nella sua natura da un'area all'altra dell'Unione Europea e, quindi, i decisori politici UE devono tenere in considerazione questi contesti ed i diversi ambienti per poter sviluppare strumenti più flessibili per influenzare la politica e le pratiche tra gli Stati Membri.



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# Lista di Abbreviazioni e Acronimi

| | |
|---|---|
| CAC | Children Advocacy Centres (modello USA) |
| CILEX | Chartered Institute of Legal Executives (UK) |
| CRAE | Children Rights Alliance for England |
| CSEW | Crime Survey of England and Wales |
| EKKA | Centro Nazionale per la Solidarietà Sociale (Grecia) |
| E-PROTECT | Enhancing Protection of Children – victims of crime |
| EPRS | European Parliamentary Research Service |
| UE | Unione Europea |
| EVVI | Progetto per la Valutazione delle Vittime |
| FRA | Fundamental Rights Agency – Agenzia per i Diritti Fondamentali |
| FAPMI | Federation of Associations for the Prevention of Child Maltreatment |
| IVOR | Implementing Victim-Oriented Reform of the criminal justice system in the European Union |
| LSCB | Local Safeguarding Children Boards (UK) |
| SM | Stati Membri |
| ONG | Organizzazione Non Governativa |
| ONS | Office for National Statistics (Regno Unito) |
| RIKU | Rikosuhripäivystys (Victim Support Finland) |
| RUMI | Registro Unificato dei Casi di Sospetto Maltrattamento Infantile (Spagna) |
| Direttiva Vittime (DV) | Direttiva 2012/29/UE |
| VPS | Dichiarazione Personale della Vittima (Regno Unito) |
| CRC | Convenzione ONU sui Diritti del Fanciullo |



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# 1. Introduzione

Uno degli obiettivi specifici del progetto E-PROTECT consiste nel migliorare il diritto alla protezione dei minorenni vittime di reato esaminando il recepimento della Direttiva 2012/29/UE (Direttiva Vittima)[1] nella legislazione nazionale all'interno della giurisdizione di cinque Stati Membri (Bulgaria, Austria, Romania, Grecia e Italia). All'interno dei rapporti nazionali elaborati nell'ambito del progetto[2], ogni partner ha analizzato in maniera dettagliata l'applicazione pratica della metodologia di valutazione individuale (Articolo 22 della Direttiva Vittime) e le rispettive misure pratiche per gruppi di vittime particolarmente vulnerabili, come i minorenni.

Questo documento mira ad ampliare lo spettro geografico e culturale per fornire un quadro più ampio dell'applicazione della valutazione individuale, al fine di offrire una protezione adeguata dei minorenni vittime di reato e dei loro diritti negli Stati Membri UE. Esso si concentra sull'analisi dell'applicazione pratica delle metodologie di valutazione individuale, che fanno riferimento ad una delle principali disposizioni della Direttiva Vittime, l'*Articolo 22: Valutazione individuale delle vittime per individuarne le specifiche esigenze di protezione*, nei seguenti Stati Membri: ***Germania, Portogallo, Spagna, Regno Unito (Inghilterra e Galles),* e *Finlandia***.

L'*articolo 23* (*Diritto alla protezione delle vittime con esigenze specifiche di protezione nel corso del procedimento penale* – da intendersi sia la fase delle indagini preliminari, sia il procedimento in tribunale) e l'*Articolo 24* (*Diritto dei minori a beneficiare di protezione nel corso del procedimento penale*) saranno parimenti analizzati per quanto riguarda la loro applicazione negli Stati Membri. L'articolo 22 ha l'obiettivo di individuare specifici bisogni di protezione delle vittime di reato e determinare se e in quale misura essi possano beneficiare di determinate misure. Queste vengono stabilite e descritte dagli articoli 22, 23 e 24 relativamente alla loro particolare vulnerabilità (con riferimento alla vittimizzazione secondaria e ripetuta, all'intimidazione e alla ritorsione durante il procedimento penale).[3]

[1] La Direttiva 2012/29/UE ha lo scopo di stabilire standard minimi sui diritti, il supporto e la protezione delle vittime di reato e sostituisce la Decisione Quadro del Consiglio 2001/220/JHA (CFD:2001/220). Di seguito "Direttiva Vittime" o DV. https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029 (ultimo accesso 15 marzo 2018).

[2] Si veda: E-PROTECT Deliverables D3.8-12 (rapporti nazionali sulle metodologie di valutazione individuale in **BG** D3.8, **AT** D3.9, **RO** D3.10, **IT** D3.11, **EL** D3.12).

[3] Si vedano gli articoli rilevanti della Direttiva 2012/29/UE; https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029 (ultimo accesso 15 marzo 2018); si vedano anche i rapporti nazionali



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La valutazione individuale considera lo sviluppo e l'implementazione di un *approccio caso-per-caso* relativamente ai bisogni delle vittime (si veda il rapporto INASC 2016: 20). Una valutazione basata su tale approccio si basa su tre aspetti di fondo: a) le caratteristiche personali di una vittima, b) la tipologia e la natura del reato e c) le circostanze del reato.

Per valutare le buone prassi e l'adeguata applicazione della DV, il *Capitolo 5*: "*Altre disposizioni"* della Direttiva è rilevante, in quanto fa riferimento a: *Articolo 25: Formazione degli operatori* e *Articolo 26: Cooperazione e coordinamento dei servizi* (si veda la Direttiva 2012/29/UE). Questi articoli sono parzialmente oggetto di analisi nel resente rapporto.

## 1.1. Buone prassi

L'identificazione delle buone prassi in atto costituisce il fulcro di questo rapporto. Tali prassi descrivono procedure che assicurano un'adeguata protezione dei diritti e del benessere dell'infanzia in maniera accurata e responsabile.[4] Si consideri, per esempio, lo sviluppo di linee guida che mirano ad armonizzare e sviluppare procedure di orientamento per tutti gli attori coinvolti nel settore del supporto alla vittima (per esempio prestatori di servizi di supporto alla vittima, personale di polizia, avvocati).

Un problema comune nel supporto alla vittima risiede nella sua architettura spesso complicata in termini di coordinamento e cooperazione: le vittime di reato devono orientarsi all'interno di un'intricata rete di istituzioni aventi diverse responsabilità, spesso vissuta come eccessiva da parte delle vittime. Questo rappresenta un fattore cruciale per un proficuo supporto alle vittime: la *cooperazione multi-agenzia* tra gli attori chiave coinvolti, sia a livello nazionale che internazionale, diventa, pertanto, fondamentale. Il fine è quello di garantire ai soggetti in stato di bisogno un accesso migliore e più agevole alla misure di supporto alle vittime e creare migliori condizioni lavorative per i professionisti.

Confrontare le diverse modalità nazionali di svolgimento della valutazione individuale è importante perchè:

> "L'esperienza nazionale mostra che migliorare la difficile condizione delle vittime di reato può essere, solo in parte, garantita dalle modifiche del "dettato normativo". Al contrario il successo deriva in larga parte dalla pratica a livello "di strada": nella misura in cui i diritti sono supportati da servizi sufficienti" (Rapporto

D3.8-12 prodotti nel contesto del progetto E-PROTECT, che spiegano più specificatamente le motivazioni sottostanti alla DV.

[4] Per esempio, le "Stanze blu" in Bulgaria, che sono luoghi specifici (progettati in un ambiente a misura di minorenne, a differenza delle spoglie stanze delle stazioni di polizia) stabiliti per interrogatori/audizioni (si veda D3.8/2017, Rapporto Nazionale Bulgaria).



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IVOR 2016: 9).[5]

Il rapporto IVOR fa riferimento all'implementazione pratica della legislazione a livello base quale principale fattore per un effettivo supporto alla vittima. Implementazione che dipende principalmente da come le disposizioni legali vengono tradotte nella pratica. In altre parole:

> "L'implementazione della Direttiva UE sui Diritti della Vittima dipende, inoltre, dal fatto che coloro che sono responsabili dell'azione penale attuino lo spirito della Direttiva nel proprio lavoro quotidiano per offrire supporto alle vittime nei procedimenti penali e rafforzare i loro diritti" (INASC 2016: 43).

Quindi, il rapporto esamina le metodologie di valutazione individuale a livello pan-europeo, focalizzandosi su come esse siano messe in pratica in ogni contesto per raggiungere un'effettiva applicazione delle valutazioni dei bisogni individuali tra gli Stati Membri EU.

## 1.2. Struttura del rapporto

Il rapporto è strutturato in quattro sezioni principali: prima di tutto, viene definito l'*approccio metodologico* di *comparazione* **(2)** seguito da un capitolo che fornisce una panoramica dei *"Concetti chiave nel recepimento degli articoli 22, 23, 24 della Direttiva Vittime in Bulgaria, Romania, Grecia, Italia e Austria"* **(3).**

I risultati dei precedenti rapporti nazionali saranno comparati con quelli di questo rapporto per comprendere meglio quali siano le sfide comuni relative all'implementazione della valutazione individuale stabilita dalla Direttiva Vittime.

Successivamente, il rapporto fornisce una panoramica delle attuali strutture di supporto ai minorenni vittime nei 5 Stati Membri selezionati (Germania, Portogallo, Spagna, Inghilterra e Galles, Finlandia) **(4)** e procede con l'analisi delle *implementazioni pratiche delle valutazioni individuali e delle misure speciali per i minorenni vittime di reato* **(5).**

Infine, il rapporto si chiude con una sezione riassuntiva, che mira a comparare le prassi di questi Stati Membri, includendo anche i risultati dei paesi partner del progetto, per identificare quelle migliori in atto **(6).**

[5] Si veda il rapporto prodotto da IVOR – "Implementing victim-oriented reform of the criminal justice system in the European Union (2014-2016), https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf (ultimo accesso 25 aprile 2018).



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## 2. Approccio metodologico

Da un punto di vista metodologico, questo studio sulla metodologia di valutazione individuale è orientato ad una comparazione qualitativa, che mira ad ottenere una descrizione, la formazione di un concetto ed una spiegazione analitica piuttosto che un risultato statisticamente significativo (si veda Krause 2016). L'obiettivo specifico della comparazione qualitativa nelle scienze sociali è quello di comprendere un caso, o casi, nella loro specificità e generalità fornendo una descrizione dettagliata degli stessi. La comparazione stimola una seria comprensione del fenomeno perchè effettua costantemente confronti. Quindi, il confronto fa emergere i nostri pregiudizi ed il nostro bagaglio culturale poichè ciò che in un caso può apparire come naturale, potrebbe, in un altro caso, apparire diverso o irragionevole (ibid.).

Di conseguenza, il campione degli Stati Membri di questo rapporto deve essere motivato, in particolare con riferimento alla domanda: perchè proprio questi Stati Membri? In uno studio che mira a rappresentare un livello trans-Europeo è necessario raggiungere il più ampio ventaglio geografico e culturale possibile, in particolare con riferimento ai diversi approcci giuridici relativi ai diritti delle vittime e all'applicazione della DV.

Tra l'altro, semplicemente sulla base della fattibilità, si può trattare solo di una rappresentazione selettiva degli Stati Membri UE, poiché analizzare ciascuno dei 26 Stati Membri in Europa vorrebbe dire andare oltre le risorse disponibili per questo rapporto. Gli Stati Membri sono stati selezionati in base ad un primo esame delle loro peculiarità giuridiche e delle prassi per comprendere un campione che fosse il più diversificato possibile.

La **Finlandia,** per esempio, sembra avere un approccio più sistematico rispetto alle valutazioni individuali in seguito al recepimento della Direttiva (si veda EPRS 2017: 82)[6].

Il Regno Unito (in particolare **Inghilterra e Galles**) ha sviluppato alcune linee guida pratiche (*Il codice di pratica per le vittime di reato*)[7], un gran numero di materiali di pubblica informazione e formazioni

[6] The Victims' Rights Directive 2012/29/EU, European Implementation Assessment Study condotto dall'European Parliamentary Research Service (EPRS), Dicembre 2017. Si tratta di un rapporto di valutazione in corso sul recepimento della direttiva nella legislazione nazionale, con un focus specifico sull'applicazione pratica della Direttiva Vittime, valutata in maniera più dettagliata sulla base di un campione di 12 SM, che prova anche a rappresentare un equilibrio in termini geografici, dimensionali, di diverse tradizioni legali e approcci (ibid.: 4).

[7] Si veda: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (ultimo accesso 20 marzo 2018).



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specifiche per gli operatori coinvolti nel supporto alla vittima. Inoltre, **Inghilterra e Galles**, come anche la **Germania**, possono fare riferimento ad una tradizione di supporto alla vittima di lunga data. I casi di **Portogallo** e **Spagna** sono significativi in quanto entrambi i paesi hanno recepito l'intero testo della Direttiva Vittime testualmente.

Quindi, il rapporto mira a considerare i diversi contesti di supporto alla vittima[8] da un punto di vista pratico, piuttosto che normativo, analizzando ogni Stato Membro attraverso gli occhi degli altri contesti di supporto alla vittima (si veda Akrich/Rabeharisoa 2016).

Seguire questo approccio implica porre al centro le prassi in atto, esplorare come il recepimento delle metodologie di valutazione individuale operi in maniera diversa nella pratica attraverso l'analisi dei sistemi di supporto alla vittima radicati in contesti culturalmente diversi. Il rapporto mira a fornire spunti sulle diverse modalità di svolgimento delle valutazioni individuali e dei sistemi di supporto alla vittima, evidenziando prassi comuni e promettenti. Gli spunti emergenti da tali prassi dovrebbero incoraggiare una comprensione ed un apprendimento reciproci tenendo in considerazione le particolarità culturali.

Questo documento si focalizza principalmente su un'attività di ricerca prendendo in considerazione le informazioni e le conoscenze realizzate fino ad ora.[9] Esso prova a condensare la ricerca esistente sul recepimento della DV e a comprendere documenti disponibili a livello nazionale, come quelli forniti dalle organizzazioni di supporto alle vittime (per esempio linee guida, raccomandazioni, standard qualitativi) o altri documenti nazionali (giuridici) rilevanti e letteratura accademica, che permettono una migliore comprensione dell'applicazione della valutazione dei bisogni individuali e del supporto ai minorenni vittime, in ognuno di questi paesi.

[8] Esiste un altro studio trans-Europeo focalizzato sul recepimento legale della DV (D3.6) con lo stesso campione di Stati Membri. Pertanto, il presente rapporto non prende in grande considerazione i processi di recepimento legislativo, ma deve essere chiaro che è impossibile indagare le dimensioni e le applicazioni pratiche indipendentemente dalla legge scritta. E' proprio questo processo di "traduzione" a costituire la maggiore sfida e a rendere visibili nella pratica le diverse sfide del recepimento di leggi/regolamenti. Analizzare in parte questo processo può essere visto anche come un test per verificare se una legge sia ben concepita. In ogni caso, l'applicazione pratica degli articoli 22, 23, 24 è al centro della nostra analisi.

[9] Per esempio, si veda https://victimsupport.eu/about-us/our-projects/ivor/; accesso al rapporto qui: https://www.apav.pt/publiproj/images/yootheme/PDF/IVOR-Repot-WebVersion.pdf; o: http://www.victimsandcorporations.eu/wp-content/uploads/2017/01/Vict-and-Corp_First-Findings.pdf (ultimo accesso 19 marzo 2018).



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# 3. Concetti chiavi risultanti dal recepimento degli articoli 22, 23 e 24 della Direttiva Vittime in Bulgaria, Romania, Grecia, Italia e Austria

Questo capitolo evidenzia le diverse prassi nazionali di supporto al minorenne vittima e in particolare fa riferimento alla valutazione individuale dei bisogni che il progetto ha esplorato e definito nei rapporti nazionali in precedenza prodotti da *Bulgaria, Romania, Grecia, Italia* e *Austria*. Queste prassi possono essere concepite quali buone pratiche nel contesto del supporto ai minorenni vittime di violenza.[10]

## 3.1. Austria

In Austria, la valutazione individuale viene svolta dalla polizia in quanto,nella maggior parte dei casi, la stessa raprresenta il primo punto di contatto per entrambi, la vittima ma anche il presunto colpevole. Il principale contesto nel quale svolgere la valutazione individuale in maniera tempestiva, ossia il prima possibile, è raprresentato dalla ***prevenzione penale della polizia***, responsabile di svolgere tutto il lavoro di prevenzione. La prevenzione include il conversare sia con la vittima, sia con il presunto trasgressore.

Una buona pratica che si è sviluppata in Austria è la cosiddetta ***assistenza in tribunale***, che include assistenza psicosociale e legale in tribunale (*Psychosoziale Prozessbegleitung*)[11]. Si tratta di uno dei maggiori traguardi del sistema di supporto alle vittime in Austria, volto ad assicurare la protezione dei loro diritti, con un focus specifico che mira ad assicurare l'assistenza in tribunale per bambini e giovani. L'assistenza in tribunale, in quanto servizio speciale per il supporto alla vittima, si è sviluppata in Austria negli ultimi 20 anni ed è stata costantemente aggiornata, fino ad oggi. L'assistenza in tribunale si traduce nell'offrire supporto alle vittime (minorenni) – principalmente nei casi di reati di violenza sessuale, corporea o domestica – durante l'intero procedimento penale. Essa non implica un mero supporto durante il procedimento penale, ma inizia già – nel migliore dei casi – prima della denuncia di un reato alla polizia e si conclude con la sentenza del tribunale. Essa include assistenza psicosociale e legale. Inoltre, vale la pena menzionare che nel 2014 l'Austria ha ricevuto il premio internazionale *"politica del futuro"* per aver

[10] Per informazioni dettagliate sui diversi servizi di supporto alla vittima e una panoramica quantitativa dei minorenni vittime in ogni paese, si vedano i Deliverables D3.8-12 del progetto E-PROTECT (rapporti nazionali sulle metodologie di valutazione individuale in **BG** D3.8, **AT** D3.9, **RO** D3.10, **IT** D3.11, **EL** D3.12).

[11] Si veda: http://www.pb-fachstelle.at/fuer-fachleute/in- formation-was-ist-prozessbegleitung/ (ultimo accesso 11 dicembre 2017).



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implementato giurdicamente tale prezioso servizio di supporto alla vittima, costituito dall'assistenza psicosociale in tribunale.[12]

## 3.2 Bulgaria

In Bulgaria non esiste una singola metodologia per la valutazione individuale dei minorenni vittime di reato. Ciononostante, ci sono alcune buone prassi in atto, sviluppate per offrire supporto al minorenne vittima, che devono essere ulteriormente implementate e migliorate.

Una di queste misure speciali è costituita dal ***Meccanismo di Coordinamento per l'Interazione nei Casi di Minorenni Vittime o a Rischio di Abuso, e per l'Interazione nell'Intervento durante la Crisi,*** che è un accordo formale tra il Ministero del Lavoro e delle Politiche Sociali, il Ministero dell'Interno, il Ministero della Giustizia, il Ministero dell'Educazione e della Scienza, il Ministero della Salute, il Ministero della Cultura, l'Agenzia di Assistenza Sociale, l'Associazione Nazionale dei Comuni e l'Autorità Garante. L'implementazione del Meccanismo di Coordinamento è uno strumento per unire gli sforzi del sistema di protezione, della polizia e del settore giuridico per poter garantire il superiore interesse del minorenne nei casi di minorenni vittime o a rischio di abuso.

In accordo con il ***Meccanismo di Coordinamento per l'Interazione nei Casi di Minorenni Vittime o a Rischio di Abuso, e per l'Interazione nell'Intervento durante la Crisi***, nel 2016 il Social Activities and Practices Institute, in partnership con UNICEF-Bulgaria ha guidato il progetto pilota sui ***Centri di supporto e Advocacy per l'infanzia***. Il servizio integrato di advocacy e supporto si chiama ***Zona Protettiva*** ed è rivolto ai minorenni vittime di tutti i tipi di abuso o reato, a prescindere dal fatto che siano avvenuti in passato o piu di recente. Il servizio Zona Protettiva ha introdotto un approccio specializzato per i minorenni vittima, comprendendo servizi per i minorenni vittime di abuso, unendo pratiche di supporto legale, medico, psicologico e sociale in un ambiente a misura di minorenne.

Un'altra buona prassi nel caso dei minorenni vittime di reato consiste nell'avere creato stanze speciali per le audizioni dei minorenni, chiamate ***"Stanze Blu"***, che consentono a specialisti formati di effettuare interrogatori in un'atmosfera adatta all'infanzia ed alla presenza di tutti gli attori chiave rilevanti in base alla relativa fase del processo di giustizia penale. Alla fine del 2017, circa il 70% delle città-distretto bulgare si era dotata di luoghi speciali per l'interrogatorio di minorenni coinvolti in procedimenti penali. Tuttavia,

[12] E-PROTECT Deliverable D3.9 Studio sulle metodologie di valutazione individuale dei minorenni vittime in Austria, EN, pp.15-22.



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non esistono ancora standard nazionali uniformi per procedere all'interrogatorio dei minorenni nel corso dei procedimenti civili, circostanza che assicurerebbe che le attività procedurali legate all'infanzia siano svolte in un ambiente appropriato e utilizzino un linguaggio adeguato nella comunicazione con il minorenne.[13]

## 3.3 Grecia

Condurre valutazioni individuali dei minorenni vittime in casi penali implica, in primo luogo, denunciare un caso di vittimizzazione dell'infanzia alle autorità o istituzioni competenti. Al momento, in "prima linea" a ricevere tali denunce – ambito che rientra anche nei compiti delle autorità di polizia - ci sono ***due linee telefoniche nazionali di aiuto, specializzate nell'intervento con minorenni vittime.***

A seguito della registrazione di una denuncia di reato da parte di un minorenne, ***viene condotta un'indagine sociale da parte delle agenzie pubbliche***, ossia il Gruppo Protezione Infanzia o il Comune competente o EKKA – nei casi di gravi reati contro minorenni – o da parte di organizzazioni private specializzate nella protezione dell'infanzia (per esempio ARSIS o Smile of the Child ).

I risultati sono inviati in forma scritta al Pubblico Ministero per i Minorenni. Questo rapporto contiene anche suggerimenti relativi al trattamento del minorenne (per esempio, l'allontanamento dall'ambiente familiare, la supervisione di minorenni e genitori attraverso incontri mensili ecc.) e considerazioni conclusive sul perpetrarsi del reato denuciato. Quando ci sono prove empiriche, viene attivato il meccanismo statale di azione penale. Durante questi procedimenti, il ruolo degli assistenti sociali coinvolti nell'indagine sociale rimane attivo, sia per fornire supporto psicologico al minorenne vittima, sia per deporre come testimoni al momento dell'audizione.

Sebbene non immediatamente collegata all'esame di un minorenne vittima, prescritto dal sistema legislativo penale, diverse ONG svolgono la valutazione individuale. Si tratta solitamente di una valutazione in due passaggi delle specifiche caratteristiche ed esigenze del minorenne, a livello psicologico ed educativo, costantemente aggiornate. Durante questa procedura, la persona che conduce la valutazione considera la gravità e le circostanze del reato e, in una certa misura, il desiderio della vittima, sempre difendendo il superiore interesse del minorenne e con l'obiettivo di prevenire una vittimizzazione secondaria.

[13] E-PROTECT Deliverable D3.8 Studio sulle metodologie di valutazione individuale dei minorenni vittime in Bulgaria, EN, pp.22-31.



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Ciononostante, la mancanza di una politica di protezione dell'infanzia uniforme rende difficile analizzare le pratiche di ogni ONG in maniera individuale.[14]

## 3.4 Italia

In base alla legge italiana, si presume che i minorenni siano particolarmente vulnerabili e quindi debbano essere applicate misure specifiche. Il Codice Penale italiano indica che in caso di determinati reati (tutte quelli contro la "persona", come abuso, maltrattamento, schiavitù, prostituzione e pornografia minorile, abuso sessuale o tratta di esseri umani) commessi a danno di minorenni o da uno dei genitori nei confronti dell'altro ed alla presenza del figlio minorenne (nel caso della cosiddetta "violenza assistita"), il procuratore abbia l'obbligo di informare il ***Tribunale per i Minorenni***. Inoltre, in casi particolari – se ad esempio il trasgressore è uno dei genitori o vi sia il sospetto che gli stessi non siano in grado di prendersi cura dei figli[15] – viene anche avviato un procedimento civile dinanzi al Tribunale per i Minorenni volto ad accertare la capacità genitoriale degli stessi ed eventalmente adottare misure di limitazione o sospensione della stessa.

La legislazione italiana non prevede esplicitamente disposizioni relative alla procedura di valutazione individuale. Ogni soggetto che entra a contatto con il minorenne vittima e non appena riceve la notizia di reato ha il dovere di svolgere una valutazione individuale per supportare il minorenne e soddisfare le sue esigenze di protezione. La ***valutazione individuale,*** quindi ***avviene*** in entrambe le fasi: ***all'inizio*** nella fase pre-processuale e ***durante il procedimento***, in qualsiasi momento l'autorità giudiziaria richieda di svolgerla.

La ratio di tutte le misure adottate dal legislatore italiano è pertanto quella di proteggere le vittime vulnerabili e ridurre il rischio di sottoporre le stesse ad un' inutile sofferenza emotiva e psicologica frutto di colloqui ed audizioni ripetute senza una reale esigenza investigativa. Pertanto possiamo dire che la Direttiva Vittime, o per lo meno i suoi principi relativi alla valutazione individuale delle vittime ed alle misure di protezione, sono stati recepiti e resi effettivi dal legislatore italiano.[16]

[14] E-PROTECT Deliverable D3.12 Studio sulle metodologie di valutazione individuale dei minorenni vittime in Grecia, EN, pp.18-26.
[15] Questo avviene quando i genitori non sono in grado di esercitare, totalmente o in parte, la loro responsabilità genitoriale.
[16] E-PROTECT Deliverable D3.11 Studio sulle metodologie di valutazione individuale dei minorenni vittime in Italia, EN, pp.13-22.



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## 3.5 Romania

In base ai contesti nazionali, un'***iniziale valutazione*** viene tempestivamente svolta non appena le autorità locali per la protezione dell'infanzia vengono informate o ricevono informazioni relativamente a un minorenne abusato o ad una particolare situazione di violenza domestica. In base alle disposizioni dei contesti nazionali, la valutazione iniziale viene svolta da un assistente sociale. Una volta che il caso viene registrato e la valutazione iniziale conclusa, si svolge una valutazione dettagliata, comprensiva e multidimensionale della situazione del minorenne vittima di abuso o violenza.

Ai sensi della legislazione nazionale, la ***valutazione individuale dettagliata, comprensiva e multidimensionale*** può essere di diversi tipi, quali: ***(a) Valutazione medica; (b) Valutazione psicologica; (c) valutazione sociale; (d) valutazione legale; (e) valutazione dei rischi***.

La *valutazione medica* è condotta, su richiesta di un medico o di qualsiasi altro membro della rete di intervento, conformemente alla legge. Per poter stabilire una relazione di possibile causalità tra la situazione denunciata e i segnali medici osservati, saranno richiesti certificati medici e legali. La *valutazione sociale* è svolta allo scopo di analizzare in particolare la qualità dell'ambiente del minorenne (alloggio, cibo, abbigliamento, igiene, sicurezza mentale e fisica, ecc.). La *valutazione legale* riguarda l'identificazione di questioni legali rilevanti, relative al caso, e mira inoltre ad identificare i diritti e gli obblighi del minorenne e le modalità per esercitare tali diritti.

Una volta che la valutazione dettagliata della situazione complessiva è stata completata, il team multidisciplinare effettua una chiara diagnosi del tipo di violenza commessa ai danni del minorenne (nel caso di violenza domestica), dei bisogni del minorenne vittima e delle priorità di intervento, qualora necessario. Tutte queste informazioni vengono riportate, dal soggetto responsabile del caso[17], nel rapporto dettagliato di valutazione, che deve essere redatto entro 30 giorni dalla registrazione del caso all'autorità competente.[18]

[17] La persona che è responsabile e gestisce il caso spcecifico del minorenne vittima di reato.
[18] E-PROTECT Deliverable D3.10 Studio sulle metodologie di valutazione individuale dei minorenni vittime in Romania, EN, pp.10-14.



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# 4. Infrastrutture per il supporto ai minorenni vittime in cinque Stati Membri UE

Questo capitolo esplora le diverse infrastrutture di supporto per i minorenni vittima in cinque Stati membri: *Germania, Spagna, Portogallo, Regno Unito (Inghilterra e Galles)* e *Finlandia*, in base ai seguenti aspetti:[19]

- Panoramica sulle statistiche sui minorenni vittime di reato;
- Pratiche istituzionali: status del minorenne vittima, inclusa una breve analisi del contesto legale, livello di protezione dei loro diritti, servizi generali di protezione alle vittime, servizi di protezione per i minorenni e infrastrutture specifiche per i minorenni vittime;
- Istituzioni e autorità rilevanti che lavorano con (minorenni) vittime di reato.

## 4.1. Germania

### 4.1.1. Panoramica sui minorenni vittime di reato in Germania

Nel 2015 ci sono stati 13.760 minorenni vittime di violenza sessuale, in base al rapporto statistico penale tedesco[20]. Nel caso di lesioni personali, rapine, crimini contro la libertà personale e offese contro l'autodeterminazione sessuale, bambini e adolescenti sono un gruppo di vittime sproporzionatamente sovrarappresentato. Essi rappresentano anche il gruppo di età statisticamente più gravato (si veda PKS 2015: 30)[21]. L'organizzazione tedesca *aktionkinderschutz* che si occupa di protezione dell'infanzia stima che in Germania ci sia un numero molto alto di casi non denunciati di maltrattamento di minorenni. Questo è indice del significativo problema della mancanza di denunce e dell'identificazione come una sfida che diversi attori devono affrontare e come un'importante indicazione per migliorare la protezione dell'infanzia.

Ovviamente, i casi non denunciati non sono una specificità tedesca, ma piuttosto un problema generale che deve essere affrontato dalle autorità governative e non governative, a livello nazionale e internazionale.

Tra il 2009 e il 2012 le denuncie di violenza sessuale che coinvolgevano minorenni **(§§ 176, 176a, 176b StGB)**[22] sono costantemente aumentate ed hanno iniziato a diminuire leggermente dal 2013 (-2,7 % su

[19] A volte in maniera più approfondita e a volte meno, dipendendo in ogni caso dalla disponibilità di informazioni, risorse e materiali accessibili.

[20] Si veda: http://www.aktionkinderschutz.de/statistiken/; http://www.aktionkinderschutz.de/WP/wp-content/uploads/2016/12/pks2015ImkBericht.pdf (ultimo accesso 21 marzo 2018).

[21] PKS è il rapporto statistico penale tedesco (*polizeiliche Kriminalstatistik 2015*).

[22] StGB è il codice penale tedesco, si veda: https://dejure.org/gesetze/StGB/176b.html (ultimo accesso 21 marzo 2018).



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11.808 casi). Ma la violenza sessuale, generalmente, costituisce un tipo di reato noto per far parte di un contesto con alti tassi di casi non denunciati. Come citato sopra, sono diversi i fattori, quali una maggiore sensibilità, un cambiamento nei metodi e nelle istituzioni pedagogiche e "nuovi" tipi di reato inclusi nel codice penale, che influenzano il tasso di denuncia.

Quindi, i numeri raccolti nelle statistiche penali devono essere considerati con riserva, perchè hanno inevitabilmente una rilevanza limitata riguardo alla reale dimensione del maltrattamento dell'infanzia e in particolare relativamente alla violenza sessuale contro i minorenni.

Un'ulteriore sfida in quest'area o, piuttosto, ciò che è particolamente cruciale è il fatto che i minorenni vittime spesso abbiano una relazione stretta con l'autore del reato e quindi meno opportunità di diventarne consapevoli o di sfuggire al maltrattamento.

### 4.1.2. Protezione dei minorenni vittime di reato in Germania

Dagli anni Settanta, in Germania esistono infrastrutture per il supporto alle vittime che vengono continuamente migliorate. E' uno dei paesi nei quali un organo centrale (Weisser Ring) coordina il supporto alle vittime a livello nazionale. Ciononostante, sebbene esistessero già forti strutture di supporto, spesso il supporto generale era meno sviluppato di quello specializzato (si veda EPRS 2017: 65).

#### *Contesto legale*

Negli ultimi anni, sono stati dedicati molti sforzi a rafforzare alcune leggi sulla protezione dell'infanzia, in particolare la cosiddetta "Legge per la Protezione dell'Infanzia" (*Bundeskinderschutzgesetz – BkiSchG*)[23], entrata in vigore nel 2012. Si tratta di una legge "collettiva" (*Artikelgesetz*) che combina e trasforma più leggi con contenuti diversi. Lo scopo principale era quello di migliorare e proteggere il benessere fisico, mentale ed intellettuale di bambini e adolescenti. Uno degli obiettivi è il miglioramento dell'"assistenza tempestiva" (*Frühe Hilfe*), che mira ad una crescita/educazione a misura di ragazzo nelle situazioni familiari problematiche che inizia nelle primissime fasi, ossia con la consulenza dei genitori in attesa e durante i primi anni di vita del bambino. Quindi essa si focalizza essenzialmente sulla cooperazione tra attori rilevanti, in particolare tra operatori del sistema sanitario e l'ufficio per il welfare minorile. Adesso la legge ha stabilito, a livello nazionale, che agli operatori del sistema sanitario è permesso informare l'ufficio per il welfare minorile in caso rilevino un grave pericolo per il benessere di un minorenne. Questo in passato non era

[23] Si veda: http://dip21.bundestag.de/dip21/btd/17/062/1706256.pdf; e: https://www.gesetze-im-internet.de/kkg/KKG.pdf (ultimo accesso 3 aprile 2018).



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regolato chiaramente. La legge include anche altri importanti miglioramenti, come l'istituzione di reti per la protezione dell'infanzia a livello locale o l'estensione degli standard di qualità degli uffici per il welfare minorile, nonchè l'obbligo di fornire ampie certificazioni di buona condotta per tutte le persone impiegate nel settore del welfare minorile e per il personale delle istituzioni soggette ad autorizzazione (si veda *Bundeskinderschutzgesetz* 2012)[24].

Un'ulteriore legge è entrata in vigore nel 2013 per rafforzare i diritti delle vittime di reati sessuali (*Gesetz zur Stärkung der Rechte von Opfern sexuellen Missbrauchs – StORMG*)[25] che si pone inoltre come obiettivo specifico la protezione di bambini e adolescenti e l'elusione della vittimizzazione secondaria.

I miglioramenti legislativi chiave per le vittime di reato sono entrati in vigore con la terza "legge di emendamento sulla vittima" (*3. Opferrechtsreformgesetz*)[26] del 2015. Un importante punto di riferimento è costituito dall'Art. 4 di tale legge, che regola l'*assistenza psicosociale in tribunale* nei procedimenti penali per vittime particolarmente vulnerabili (*Art.4 Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren – PsychPbG*), entrata in vigore nel 2017.[27]

### *Servizi generali per la protezione della vittima*

La protezione della vittima in Germania è generalmente competenza degli stati federali, ma non è disciplinata in maniera completa dalla legislazione federale. Questo significa che esiste un'ampia gamma di servizi e misure diverse per migliorare la situazione delle vittime e dei minorenni vittime di reato.

Ciononostante, ci sono alcune eccezioni (si vedano le leggi sopra citate) che segnalano gli sforzi per stabilire alcuni standard e servizi a livello nazionale (in Germania esiste già uno standard di protezione della vittima abbastanza rispettabile e accettabile). La loro implementazione, comunque, è responsabilità degli stati federali, il che significa che ci sono differenze a livello locale rispetto all'applicazione pratica del dettato normativo.

[24] Si veda: http://dip21.bundestag.de/dip21/btd/17/062/1706256.pdf (ultimo accesso 3 aprile 2018).
[25] Si veda: http://www.bundesgerichtshof.de/SharedDocs/Downloads/DE/Bibliothek/Gesetzesmaterialien/17_wp/Stormg/bgbl.pdf?__blob=publicationFile (ultimo accesso 3 aprile 2018).
[26] Si veda: https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf;jsessionid=E6B66F638270FA2F059EA60081263A5B.2_cid289?__blob=publicationFile&v=3(ultimo accesso 3 aprile 2018).
[27] Maggiori dettagli si trovano nel capitolo 5.1 di questo rapporto.



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La Germania, in ogni caso, è ancora uno dei pochi Stati Membri UE che ha realizzato una rete nazionale per il coordinamento della protezione delle vittime ed in particolare per la protezione dei minorenni vittime. Per quanto riguarda il generale supporto alle vittime esistono due organizzazioni a livello nazionale: la prima si chiama "Anello Bianco" (*Weisser Ring*), e consiste principalmente in un punto di contatto a livello nazionale, che include una prima sessione di consulenza gratuita con un avvocato liberamente scelto e la messa a disposizione di un numero verde di assistenza attivo giorno e notte. La seconda organizzazione, a livello nazionale, è il "gruppo di lavoro per la protezione della vittima in Germania" (*Arbeitskreis der Opferhilfe in Deutschland e.V.*), un'organizzazione ombrello che coinvolge diverse istituzioni professionali del settore.

Inoltre, esiste un gran numero di centri locali specializzati nella protezione, nei 16 stati federali tedeschi, che offrono servizi di protezione. Alcuni di essi si rivolgono a specifiche vittime di reato: per esempio, centri per la protezione dell'infanzia, delle donne, di ragazzi e uomini, e altri si rivolgono a specifici tipi di reato come per esempio centri per la protezione da crimini d'odio, reati sessuali o violenza domestica.

### *Servizi di protezione per minorenni vittime*

Come menzionato sopra, ad un primo sguardo, il supporto alla vittima sembra essere abbastanza frammentato in Germania. Esiste, comunque, un'associazione ombrello per la protezione dell'infanzia, chiamata "centri per la protezione dell'infanzia" (*Die Kinderschutz-Zentren*)[28], che persegue l'obiettivo principale di stabilire e mantenere una composizione nazionale competente di infrastrutture per la protezione dell'infanzia in Germania.

L'associazione "centri di protezione dell'infanzia" (che esiste dal 1986) e gli sforzi dalla stessa compiuti per armonizzare il supporto ai minorenni vittime a livello nazionale sembrano promettenti. Al momento, essa si avvale di 28 centri per la protezione dell'infanzia in diverse regioni della Germania.[29] Si tratta di comunità operative e organizzazioni non governative che mirano a supportare la protezione dell'infanzia a livello macrosociale, combinando le loro conoscenze pratiche ed esperienze. Innanzitutto, essi sviluppano standard professionali, offrendo opportunità educative e di formazione per gli operatori del settore, producendo pubblicazioni specializzate, organizzando congressi, rafforzando le relazioni pubbliche e con la stampa e offrendo consulenza a livello di policy.[30] La stretta interconnessione delle pratiche quotidiane

[28] Si veda: http://www.kinderschutz-zentren.org/index.php (ultimo accesso 3 aprile 2018).
[29] Si veda: http://www.kinderschutz-zentren.org/der-verein (ultimo accesso 3 aprile 2018).
[30] Si veda: http://www.kinderschutz-zentren.org/selbstverstaendnis (ultimo accesso 4 aprile 2018).



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dei centri di protezione dell'infanzia a livello locale e i compiti sovra-regionali della rete costituiscono la base per produrre una conoscenza di alta qualità da offrire agli operatori (ibid.); vale a dire agli operatori che lavorano a diretto contatto con i minorenni vittime, ma anche ai ricercatori, ai politici, ai giornalisti ed ai rappresentanti di politiche specializzate. Il loro impegno è sempre teso a considerare l'ultima ricerca o l'attuale stato dell'arte nelle questioni relative alla protezione dell'infanzia per assicurare la qualità più alta possibile e una buona prassi a livello locale e nazionale. Giuridicamente, l'associazione per la protezione dell'infanzia si basa sulla già citata "Legge per la protezione dell'Infanzia" nazionale (Bundeskinderschutzgesetz), sulle diverse leggi statali ed accordi internazionali quali la Carta sui Diritti Umani dell'ONU, la Convenzione ONU sui Diritti del Fanciullo, la Convenzione ONU per l'eliminazione di tutte le forme di discriminazione contro le donne e la Convenzione ONU sui diritti delle persone con disabilità.[31]

Per ognuno dei 28 centri di protezione dell'infanzia e per quanti lo diventeranno, si applicano i seguenti sei principi fondamentali e servizi: consulenza e terapia per genitori, affidatari, bambini e adolescenti; intervento in caso di crisi acute e conflitti; consulenza per operatori ai sensi dell'articolo §8a SGB VIII, specialmente relativo alla valutazione di rischio (*Gefahreneinschätzung*)[32]; tutoraggio e supervisione per altre istituzioni professionali; opportunità educative e di formazione nella rispettiva regione, eventi e laboratori formativi.

## 4.2. Portogallo

### 4.2.1. Panoramica sui minorenni vittime di reato in Portogallo

Nel 2017, la maggior parte degli arresti che coinvolgevano minorenni vittime, registrati dalle forze di polizia, erano basati sul reato di abuso sessuale, seguito dallo stupro e dalla pornografia minorile. 98 uomini e 3 donne sono stati arrestati per il reato di abuso sessuale; 53 uomini sono stati arrestati per il reato di stupro (nessuna donna); e 34 uomini e 3 donne sono stati arrestati per il coinvolgimento di minorenni nella pornografia. In relazione all'abuso sessuale di bambini, adolescenti e minorenni a carico, l'età predominante

[31] Si veda l'intero rapporto sul loro sito web a proposito dei loro standard di qualità multilivello e molteplicità dei servizi (ad es. legali, sociali, professionali ecc.), che vengono forniti per gli operatori, ma anche per quanti richiedono supporto (minorenni e coloro che se ne prendono cura): http://www.kinderschutz-zentren.org/qualitaetsstandards (ultimo accesso 4 aprile 2018).
[32] Si veda l'articolo §8a SGB VIII, http://www.sozialgesetzbuch-sgb.de/sgbviii/8a.html (ultimo accesso 4 aprile 2018).


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del gruppo di vittime è 8-13 (68.5%), seguito dai 7-4 anni di età (19.1%) e 0-3 anni (6.7%). Come lo scorso anno, il contesto familiare prevale come ambiente sociale principale tra trasgressore e vittima, nel 44.5% dei casi. In relazione agli altri crimini, 3,912 minorenni sotto i 16 anni sono stati vittima di violenza domestica. Inoltre, i minorenni sono stati testimoni nel 34% dei reati di violenza domestica. 45 minorenni sono stati identificati come vittime di tratta di essere umani in Portogallo; le autorità competenti ne hanno classificato 24 come in corso/sotto indagine e 4 come non confermati. Il Servizio Stranieri e Frontiere ha collaborato con i centri di accoglienza permanente, garantendo il costante monitoraggio delle vittime di tratta in tutte le situazioni in cui è stato necessario proteggerle, accoglierle e seguirle nei diversi passaggi procedurali.[33]

L'ultimo rapporto dell'Associazione Portoghese per il Supporto alla Vittima (APAV), la principale organizzazione non governativa che fornisce supporto sociale, legale e psicologico alle vittime, mostra che i suoi uffici de-centralizzati hanno fornito supporto a 810 minorenni vittime nel 2017, delle quali il 62.6% femmine e con un'età media di 11 anni. In relazione alle vittime di reati sessuali, su un totale di 488 vittime, il 54,9% sono minorenni e il 32.6% adulti.[34]

### 4.2.2. Protezione dei minorenni vittime di reato in Portogallo

*Contesto legale*

In Portogallo, la Legge n. 130/2015 del 4 settembre ha modificato il Codice di Procedura/Codice Penale e ha approvato lo Statuto delle Vittime recependo la Direttiva 2012/29/UE del Parlamento Europeo e del Consiglio dell'ottobre 2012, che stabilisce regole sui diritti, il supporto e la protezione delle vittime e sostituisce la Decisione Quadro del Consiglio 2001/220/JHA del 15 marzo 2001.[35] Gli articoli 17, 20 e 21 recepiscono il testo degli articoli 22-24 della Direttiva UE, ma non vanno oltre al contenuto originale. L'articolo 22(1) della Direttiva Vittime prevede che "gli Stati Membri dovrebbero assicurare che le vittime particolarmente vulnerabili ricevano una valutazione individuale per identificare specifici bisogni di protezione." Nella legislazione portoghese, il testo dell'articolo 22(1) ha perso la parola *temoestivamente* contenuta nella Direttiva UE e non specifica attraverso quali strumenti o procedure si debba svolgere la valutazione individuale; sebbene l'articolo 21(2-b) preveda che "l'indagine sulle vittime di violenza sessuale, violenza di genere o violenza all'interno di relazioni intime, a meno che non sia svolta da un

[33] Relatório de Segurança Interna 2017. Sistema de Segurança Interna. Gabinete do Secretário-Geral.
[34] Associazione Portoghese per il Supporto alla Vittima (APAV). Estatísticas APAV. Relatório Anual 2017.
[35] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.


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pubblico ministero o da un giudice, deve essere svolta da una persona dello stesso sesso qualora la vittima lo desideri e a patto che la procedura non sia compromessa."[36]

Nella pratica, il pubblico ministero o il giudice responsabile solitamente ricorre al supporto di personale tecnico o di diverse istituzioni per implementare le misure identificate all'articolo 23 della Direttiva, tenendo in considerazione chi è la "persona di riferimento" del minorenne. La persona di riferimento appartiene al personale tecnico della locale Commissione per la Promozione dei Diritti e la Protezione di Bambini e Giovani Adulti istituita nei centri di salute o ospedali locali, o altro. Questo significa che non vi è un singolo gruppo o unità responsabile di svolgere la valutazione individuale e predisporre le misure di protezione durante l'indagine penale. Nel contesto legislativo nazionale, l'audizione e la partecipazione del minorenne nel contesto della promozione e protezione dei suoi diritti è sancita dagli articoli 4, (j) e 84.[37]

Inoltre, non esiste un protocollo, nè linee guida ufficiali da seguire da parte del personale dei diversi enti. Tuttavia, sono state promosse alcune iniziative per favorire l'implementazione di alcune misure quali interviste, dichiarazioni per future memoria e adattamenti delle aule di tribunale, tra le altre.[38]

Inoltre, il contesto legale portoghese ha già recepito diversi aspetti coperti dalla Direttiva, specialmente in conseguenza dei suoi impegni internazionali in base alla Convenzione dei Diritti dell'Infanzia e dell'Adolescenza e di alcune Convenzioni del Consiglio d'Europa.

### *Servizi generali per il supporto alla vittima*

APAV ha contributo alla produzione di uno strumento per la valutazione dei bisogni specifici per la protezione delle vittime di reato e della *Guide for individual evaluation of victims (EVVI)*[39] nel contesto di un progetto co-finanziato dalla Commissione Europea. Da tale manuale emerge che in Spagna e Portogallo le valutazioni individuali non erano implementate in maniera sistematica al momento della sua preparazione.[40] APAV ha condiviso questo documento con il Direttorato Generale della Politica di Giustizia del Ministero della Giustizia, l'Ufficio della Procura Generale, la Polizia Giudiziaria, la Polizia di Pubblica

[36] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.
[37] Aproved by Law n.º 147/99, of 1st of September, with changes introduced by Law n.º 31/2003, of 22nd of August and by Law n.º 142/2015, of 8 of September.
[38] Alcune di queste iniziative sono descritte sotto in maggiore dettaglio.
[39] La Guida è disponibile qui: https://victimsupport.eu/news/a-guide-for-individual-evaluation-of-victims-evvi-now-available/ (ultimo accesso 23 aprile 2018).
[40] Victim Support Europe (2015) EVVI (Evaluation of Victims) - Guide for individual evaluation of victims. Co-finanziato dal Programma Giustizia Penale dell'Unione Europea.



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Sicurezza, la Guardia Repubblicana Nazionale e il Servizio Stranieri e Frontiere del Portogallo dai quali ha ricevuto riscontri positivi.[41]

In base a EVVI "Nel 2017, la revisione del Codice di Procedura Penale del 2007 (Legge n. 48/2007 del 29-08) ha cambiato il regime delle dichiarazioni per memoria futura, seguendo gli obblighi internazionali sottoscritti dallo stato portoghese. Rispetto ai minorenni vittime, il sistema legale avrà l'obbligo statale di raccogliere le **dichiarazioni per memoria futura** ed assicurare le condizioni per la loro realizzazione in base all'articolo 271, paragrafo 4. In particolare, le dichiarazioni di reato contro la libertà e l'auto-determinazione sessuale dei minorenni dovranno essere svolte in un luogo e secondo modalità tali da garantire un ambiente informale e riservato, e con la presenza e l'accompagnamento di un tecnico specificatamente qualificato."[42] Sebbene esista un contesto legale comprensivo, Sottomayor afferma che "i diritti dell'infanzia sono dispersi in diverse leggi e codici e questo rende difficile sistematizzarli e consultarli. Una compilazione dei diritti dei minorenni vittime di reati violenti in un unico atto legale sarebbe più utile per facilitare il processo di interpretazione e applicazione."[43]

L'articolo 18 della Legge n. 130/2015 del 4 settembre dispone l'adozione di **stanze di servizio per la vittima** dove le vittime possono ricevere assistenza e informazioni presso ogni stazione di polizia e delle forze dell'ordine. L'articolo 1 stabilisce specificatamente che "ogni forza e servizio di sicurezza deve costituire la propria rete di uffici di servizio delle vittime, muniti di misure appropriate, come la privacy."[44] Il Rapporto del Ministro dell'Interno sulla sicurezza interna del 2017 dichiara che "la cura delle vittime di violenza domestica presso le strutture delle forze dell'ordine tende ad avvenire nei loro spazi per garantire privacy e comodità. Le nuove squadre hanno stanze al servizio della vittima. Sono stati effettuati degli adattamenti anche nelle vecchie strutture. 447 stazioni, squadre, unità e sotto-unità delle forze di sicurezza hanno sale per incontri. Nelle restanti unità, la raccolta delle informazioni avviene in stanze che rispettano le condizioni di comodità e privacy."[45]

[41] APAV. Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001.
[42] *Ibid.*
[43] *Ibid.*
[44] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.
[45] Relatório de Segurança Interna 2017. Sistema de Segurança Interna. Gabinete do Secretário-Geral, p. 38.



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La rete nazionale di supporto alle vittime di violenza domestica include partner di organizzazioni pubbliche e private e fornisce una **serie di strutture e risposte per le vittime di violenza, quali rifugi, strutture di cura, rifugi di emergenza, risposte specifiche da organi della pubblica amministrazione, servizio gratuito di telefonia con copertura nazionale per informazioni alle vittime di violenza domestica e, in qualsiasi momento venga richiesto, gruppi di mutuo-aiuto basati nella comunità per promuovere l'auto-aiuto e l'incoraggiamento delle vittime verso la loro autonomia**.

Un nuovo decreto legge del 2018 chiarisce e introduce una serie di norme e procedure per il miglioramento e l'efficacia del funzionamento delle strutture di cura, dei rifugi di emergenza, permettendo un processo di auto-valutazione e revisione sistematica della loro prestazione, identificando opportunità di miglioramento e valutando la connessione tra quanto è stato fatto e i risultati ottenuti. Le strutture di primo aiuto, i rifugi di emergenza e i rifugi sono gestiti da organizzazioni non governative, in partenariato con le autorità pubbliche responsabili della prevenzione della violenza domestica, della protezione e dell'assistenza alle vittime. L'articolo 4 stabilisce che le istituzioni responsabili di implementare la Legge debbano agire in maniera tale da, *inter alia*, tenere in considerazione il sistema per la protezione dei minorenni e l'avanzamento dei loro diritti. Tutte le strutture previste per legge devono essere rese disponibili a tutte le vittime di violenza domestica, inclusi minorenni, minorenni disabili e le persone che si prendono cura degli stessi.[46]

### *Servizi di supporto per i minorenni vittime*

La Commissione, recentemente rinominata *Commissione Nazionale per la Promozione dei Diritti e la Protezione di Bambini e Giovani Adulti*, è il principale organo pubblico portoghese che lavora nella "(…) pianificazione dell'intervento statale e nel coordinamento, monitoraggio e valutazione delle iniziative svolte dalle entità pubbliche e dalla comunità per promuovere i diritti e proteggere bambini e giovani, in particolare attraverso le 309 *Commissioni Locali per la Protezione di Bambini e Giovani Adulti*, distribuite nel paese."[47] Le commissioni locali lavorano in due forme, la forma "ristretta" e quella "estesa". La prima è un gruppo tecnico, "specializzato" che agisce allo scopo di tutelare i casi individuali, mentre il secondo gruppo di

[46] Decreto Regulamentar n.º 2/2018 Regula as condições de organização e funcionamento das estruturas de atendimento, das respostas de acolhimento de emergência e das casas de abrigo que integram a rede nacional de apoio às vítimas de violência doméstica. Diário da República n.º 17/2018, Série I de 2018-01-24

[47] Informazioni disponibili sul sito web della Commissione: https://www.cnpdpcj.gov.pt/relacoes-internacionais/international-relations.aspx (ultimo accesso 9 aprile 2018).



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lavoro agisce in plenaria, con lo scopo di proteggere i minorenni in maniera proattiva, come gruppo nella comunità.

Questo secondo gruppo è multidisciplinare ed è composto, principalmente, da rappresentanti del comune, un rappresentante dell'Istituto per la Sicurezza Sociale, rappresentanti dei Ministeri dell'Educazione e della Salute, rappresentanti delle organizzazioni non governative, delle associazioni di genitori e dai rappresentanti delle forze di polizia che svolgono attività per bambini e giovani.

Le commissioni "ristrette" sono responsabili dell'intervento in situazioni rappresentanti un serio pericolo per il bambino o giovane. Esse eseguono, pertanto, la diagnosi e le istruzioni del processo, della decisione, del monitoraggio e revisione delle misure di protezione, incluso l'accompagnamento dei minorenni e l'offrire supporto al Pubblico ministero o giudice in relazione alle speciali misure di protezione. La Commissione ha stabilito una serie di linee guida generali per i professionisti operanti nei servizi sociali, nell'istruzione e nelle forze di polizia.[48] Esiste anche una guida di riferimento sul lavoro di intervento nei confronti dei minorenni che hanno subito abuso, preparata dalla Direzione Generale per la Salute, che include alcuni protocolli e una sezione sulle buone prassi di intervento con i minorenni.[49] Sebbene esistano manuali e formazioni specializzate, non ci sono riscontri circa il modo in cui tali strumenti siano implementati efficacemente nella pratica.

L'Istituto per il Supporto dell'Infanzia (*Instituto de Apoio à Criança*) è l'organizzazione non governativa che guida il lavoro sulla protezione e la promozione dei diritti dell'infanzia dal 1983. Alcune delle sue attività principali includono il supporto legale, un numero verde di soccorso che fornisce supporto sociale, psicologico e legale specializzato e un indirizzamento appropriato ai minorenni in situazione di bisogno; e l'umanizzazione della cura dei minorenni (ad es. salute a misura di minorenne e assicurazione del diritto al gioco). Nel 2013, l'ufficio per il supporto legale ha assistito 680 casi, dei quali 284 relativi alla regolamentazione della responsabilità genitoriale, seguiti da casi di minorenni in situazione di pericolo (117 casi) e chiarimenti legislativi (75 richieste).[50]

[48] Le guide per operatori sono disponibili qui: https://www.cnpdpcj.gov.pt/direito-das-criancas/guias-para-profissionais.aspx (ultimo accesso 23 aprile 2018).
[49] Il manuale è disponibile qui: https://www.cnpdpcj.gov.pt/direito-das-criancas/guias-para-profissionais/maus-tratos-em-criancas-e-jovens.aspx (ultimo accesso 23 aprile 2018).
[50] Per maggiori informazioni, si può visitare il sito dell'istituto: http://www.iacrianca.pt (ultimo accesso 23 aprile 2018).



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APAV, stabilito nel 2016 attraverso il CARE Network, fornisce supporto tecnico a bambini e giovani fino all'età di 23 anni che sono stati vittime di abuso sessuale. L'assistenza viene fornita a seguito di un rinvio da parte della Polizia Giudiziaria e può includere assistenza durante e dopo il procedimento giuridico, consulenza medico-legale, dichiarazioni a memoria futura e altri atti procedurali. 446 minorenni vittime hanno ricevuto assistenza negli anni 2016-2018. Questa unità specializzata ha 9 impiegati fissi, tra i quali vi sono giuristi e psicologi, che possono raggiungere qualsiasi parte del paese per fornire supporto nei casi urgenti segnalati al Network.[51]

## 4.3. Spagna

### 4.3.1. 4.3.1 Panoramica sui minorenni vittime di reato in Spagna

Nel 2016, 80 minorenni tra gli 0 e i 13 anni sono stati vittime di violenza sessuale con penetrazione, di cui 20 maschi e 60 femmine; 193 minorenni tra i 14 e i 17 anni sono stati vittime di violenza sessuale con penetrazione, 18 dei quali maschi e 175 femmine; 29 minorenni tra gli 0 e i 13 anni sono stati vittime di pornografia minorile, di cui 12 maschi e 17 femmine; e 35 minorenni tra i 14 e i 17 anni sono stati vittime di pornografia minorile, 8 maschi e 27 femmine.

In relazione agli altri reati contro la libertà e la determinazione sessuale, si registrano 1.932 minorenni tra gli 0 e i 13 anni vittime, 460 maschi e 1.470 femmine; nella fascia di età 14-17 anni, i minorenni vittime sono 1.716 di cui 328 maschi e 1.387 femmine.

In base a questi dati, le ragazze sono colpite in maniera sproporzionata. Esistono variazioni significative nel numero di vittime rispetto all'anno precedente: i casi di pornografia minorile nella fascia di età 0-13 sono calati del 40,8% rispetto al 2015; e nella fascia di età 14-17, il calo è stato maggiore, del 54,5%. La variazione più significativa si registra nel caso dei reati contro la libertà e la determinazione sessuale nella fascia di età 14-17, con un aumento del 50,5% rispetto al 2015.[52]

Negli ultimi anni, in Spagna, sono stati condotti diversi studi, utilizzando diverse metodologie, allo scopo di stabilire le dimensioni dell'abuso sessuale tra bambini e adolescenti. Tra di essi troviamo i cosiddetti studi retrospettivi nei quali agli adulti viene richiesto se abbiano subito abuso sessuale durante l'infanzia.

[51] Diário de Notícias. *Rede Care acompanha 446 crianças e jovens vítimas de violência sexual.* 21 de Fevereiro de 2018.

[52] Anuario Estadístico del Ministerio del Interior - 2016. España



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"L'indagine più significativa e più citata è una macro-indagine svolta nel 1994, nella quale a 2000 persone è stato chiesto se ricordassero di essere state abusate prima dei 16 anni. E' emerso che il 18.9% della popolazione è stata vittima di abuso sessuale, un'alta prevalenza distribuita in base al genere: il 15.2% degli uomini e il 22.5% delle donne ha subito abuso sessuale. (…) Lo studio di prevalenza più recente conclude che il 9.5% del totale del campione esaminato, il 6.5% degli uomini e il 10% delle donne, sono stati vittime di violenza sessuale."[53]

In relazione alla tratta di minorenni, un recente studio pubblicato dal Comitato Nazionale UNICEF in Spagna mostra la difficoltà di accedere a dati accurati. In base ai dati prodotti dal Ministero dell'Interno, le vittime di tratta, allo scopo dello sfruttamento sessuale, sono il 50% del totale nel 2015 (133 vittime identificate), mentre l'altro 50% è stato vittima di sfruttamento lavorativo (134). Questa distribuzione cambia nelle informazioni pubblicate dalla Procura Generale dello Stato, ossia su 96 provvedimenti aperti nel 2015 per monitorare i reati di tratta: ci sono 978 presunte vittime di tratta allo scopo di sfruttamento sessuale, almeno 92 presunte vittime di tratta per sfruttamento lavorativo, 22 casi di sfruttamento per chiedere l'elemosina e 3 per matrimoni forzati, e tutte le vittime presunte di tratta per matrimonio forzato sono ragazze minorenni. Il rapporto inoltre afferma che "questi dati sono molto lontani da quelli stimati dalle organizzazioni che lavorano direttamente sul campo, che per esempio calcolano che in Spagna vi siano tra le 40,000 e le 50,000 vittime di tratta a scopo di sfruttamento sessuale. D'altra parte, non tutte le organizzazioni che lavorano con le vittime di reato raccolgono dati in maniera sistematica, e ancora meno nel caso di ragazze e ragazzi. Alla luce dei dati si può concludere che in Spagna il reato con il maggior numero di vittime è la tratta di esseri umani allo scopo dello sfruttamento sessuale, del quale donne e ragazze sono le principali vittime."[54]

[53] Save the Children (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema, Page 46.
[54] Castaño, M., Pérez, A. (2017) Son niños y niñas, son víctimas. Situación de los menores de edad víctimas de trata en España. Cuadernos para el Debate no 5, UNICEF Comité Español, Huygens Editorial. p.12.


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### 4.3.2. Protezione dei minorenni vittime di reato in Spagna

*Contesto legale e servizi di supporto generali per le vittime*

In Spagna, la Legge 4/2015, del 27 aprile ha approvato lo Statuto per le Vittime di Reato.[55] Il Titolo III della Legge Organica recepisce in dettaglio gli articoli 22-24 della Direttiva. L'articolo 19 stabilisce che "in caso di vittime minorenni, l'Ufficio del Pubblico ministero assicurerà il rispetto di questo diritto alla protezione, adottando tutte le misure ritenute opportune nel loro superiore interesse quando necessario a prevenire o ridurre i danni che possono derivare loro dal processo." E' importante sottolineare l'importanza dell'Ufficio del Pubblico ministero nella protezione dei minorenni vittime e la priorità dei principi guida contenuti nella Convenzione sui Diritti dell'Infanzia.

L'articolo 23 della legislazione spagnola sulla "valutazione individuale delle vittime per determinare i loro specifici bisogni di protezione" e l'art. 24 sulle "procedure di competenza e valutazione" recepiscono le disposizioni degli Articoli 22-23 della Direttiva.

La Legge spiega le funzioni degli Uffici di Supporto alle Vittime nel Titolo IV, Capitolo I, Articoli 27-29. Gli **Uffici di Supporto alle Vittime** sono una rete di servizi pubblici gratuiti stabiliti dal Ministero della Giustizia Spagnolo nel 1996, che sono stati maggiormente regolati con l'adozione del Decreto Reale 1109/2015, dell'11 dicembre, dal quale deriva la Legge 4/2015, del 27 aprile, dello Statuto sulla vittima di reato. Questi Uffici sono responsabili della **valutazione individuale delle vittime**, identificando chi è particolarmente vulnerabile e mettendo in atto misure protettive per evitare un ulteriore vittimizzazione. Successivamente alla valutazione individuale, gli Uffici possono redigere un rapporto, in linea con la legislazione sopracitata, previo consenso informato da parte della vittima, che sarà inviato all'autorità competente ad adottare le misure di protezione.

Gli Uffici di Supporto alle Vittime possono proporre le misure che considerano più appropriate ad assistere e proteggere la vittima durante la fase investigativa, in particolare quando hanno a che fare con vittime

[55] Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito. Boletín Oficial de lo Estado núm. 101, de 28/04/2015



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vulnerabili. L'assistenza alla vittima sarà svolta in quattro fasi: accoglienza-orientamento[56], informazione, intervento e follow-up.[57, 58]

Inoltre, il **Consiglio di Consulenza per l'Assistenza alle Vittime,** in base all'articolo 10 del Decreto Reale, ha lo scopo di:

a) "Fornire consulenza sul funzionamento degli Uffici di Supporto alle Vittime;
b) Esaminare i dati statistici;
c) Supportare gli studi tecnici sulle azioni degli uffici e sul network di coordinamento;
d) Comparare i diversi piani di supporto applicati dagli Uffici, per proporre miglioramenti nell'assistenza alle vittime;
e) Promuovere lo sviluppo di protocolli di azione e aggiornarli rispetto alle regolamentazioni nazionali e internazionali;
f) Consigliare il Ministero della Giustizia nella preparazione del rapporto annuale di valutazione periodica sul sistema di protezione delle vittime di reato;
g) Qualsiasi altra funzione che, nello scopo dei propri poteri, gli è attribuita da disposizioni legali o regolatorie."[59]

Il Consiglio Consultivo è stato istituito nel mese di giugno 2017 ed una delle sue quattro aree principali riguarda la protezione dei minorenni, che dovrebbe essere fornita loro dal momento in cui entrano a contatto con il sistema di giustizia.

Altre importanti disposizioni normative includono il Decreto Reale-Legge 3/2013 del 22 febbraio che modifica il sistema di **assistenza legale gratuita** e riconosce a tutti i minorenni vittime di abuso o maltrattamento, a prescindere dall'esistenza di redditi, il diritto all'assistenza legale gratuita che dovrebbe essere fornita tempestivamente. Tale disposizione, in vigore dal febbraio 2013, garantisce al giudice o alla corte il potere di fornire immediatamente al minorenne l'assistenza legale gratuita di un esperto specializzato, in base alle circostanze del caso specifico ed al superiore interesse del minorenne stesso.[60]

[56] L'accoglienza-orientamento avviene quando le vittime vengono ricevute per la prima volta, i loro bisogni valutati ed esse sono "dirette" ai diversi servizi.
[57] Real Decreto 1109/2015, de 11 de diciembre, por el que se desarrolla la Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito, y se regulan las Oficinas de Asistencia a las Víctimas del Delito. Boletín Oficial de lo Estado núm. 312, de 30 de diciembre de 2015, páginas 123162 a 123181.
[58] Il riassunto delle informazioni sugli Uffici possono essere reperite sul sito del Ministero della Giustizia, disponibile qui: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-14263 (ultimo accesso 23 aprile 2018).
[59] Articolo 10, *Ibid.*
[60] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014.


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La Legge di Procedura Penale, Articolo 433 stabilisce che "in caso di minorenni testimoni o persone con ridotte capacità giuridiche, il giudice procedente possa decidere quando, in considerazione della mancanza di maturità della vittima e qualora sia necessario evitare di causarle un danno grave, si possa raccogliere una **dichiarazione** tramite l'intervento di esperti e con l'intervento dell'Ufficio del Pubblico ministero. A tal fine, si può concordare che le domande siano recapitate direttamente alla vittima da parte degli esperti o addirittura escludere o limitare la presenza delle parti nel luogo di audizione della vittima. In questi casi, il giudice predisporrà quanto necessario ad aiutare le parti, per recapitare le domande alla vittima o richiedere chiarimenti dalla stessa, ogni qualvolta questo sia possibile. Il giudice ordinerà la registrazione della **dichiarazione tramite mezzi audio-visivi."** L'articolo 449 della stessa legge stabilisce che "La testimonianza dei minorenni vittime e delle persone con ridotte capacità giuridiche può essere raccolta **evitando il confronto visivo** della stessa con la persona accusata, utilizzando qualsiasi mezzo tecnico che renda possibile la pratica di questo esame."[61]

Oltre al contesto legislativo nazionale, in ogni comunità autonoma sono state sviluppate normative specifiche, piani di azione, programmi di contesto e anche specifici protocolli per affrontare il problema dell'abuso su minorenni e della violenza contro le donne.[62]

### *Servizi di supporto ai minorenni vittime*

La risposta pubblica spagnola a situazioni di negligenza o abuso di minorenni si distribuisce tra i servizi sociali a livello municipale e servizi specialistici per la protezione dell'infanzia. Questi due tipi di servizi sono disponibili in tutte le regioni della Spagna. Le responsabilità sono divise tra i due livelli in base alla categoria e gravità dell'abuso. Tutte le autorità regionali hanno servizi specializzati per la protezione dell'infanzia a livello centrale e territoriale (le misure di protezione sono stabilite nella Legge Organica 1/1996, del gennaio 2015, sulla Protezione Legale dei Minorenni)[63]. Il Ministero della Salute, dei Servizi Sociali e dell'Uguaglianza ha pubblicato il *Protocollo base per l'intervento contro il maltrattamento infantile all'interno della famiglia* nel 2014. Sebbene il protocollo fornisca informazioni *di base*, esso è una fonte di informazione comprensiva ed utile per tutti gli attori coinvolti nella protezione dell'infanzia, dalla

[61] Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal. Boletín Oficial de lo Estado n úm. 260, de 17/09/1882.
[62] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014.
[63] Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil. Boletín Oficial de lo Estado núm. 15, de 17 de enero de 1996


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prevenzione alla prima detenzione e protezione dai servizi giudiziari. Il documento fornisce un riassunto del contesto normativo nazionale, contine raccomandazioni per il miglioramento (che includono la creazione di strutture aggiuntive), orientamenti e buone prassi nella protezione dell'infanzia, che includono, per esempio, aspetti di protezione dei minorenni vittime nei procedimenti giudiziari.[64] In maniera simile, esiste una varietà di manuali aggiuntivi sulle procedure per la protezione dei minorenni in diverse regioni, che si rivolgono ai diversi servizi disponibili.[65]

Le Unità Minorenni del Corpo di Polizia Nazionale (*Unidades de Menores del Cuerpo Nacional de Policía*) sono integrate nelle Brigate Provinciali della Polizia Giudiziaria. Queste unità hanno due funzioni principali: protezione dei minorenni vittime di qualsiasi tipo di maltrattamento, sia fisico (incluso abuso sessuale) o psicologico, sia la protezione dei giovani trasgressori (Istruzione n. 11/2007, del 12 settembre, del Segretariato di Stato per la Sicurezza, che approva il "Protocollo dell'azione di polizia con minorenni").[66] Queste unità lavorano in collaborazione con le istituzioni pubbliche e private, che lavorano con e per l'infanzia, sia in termini di protezione ed educazione sia in relazione ai giovani autori di reato. Le Unità Minorenni del Corpo di Polizia Nazionale devono seguire il *Protocollo di Azione per le Forze di Sicurezza e Coordinamento con gli organi giudiziari per la protezione delle vittime di violenza domestica e di genere*.[67]

Anche se non risultano essere i principali attori per gli interventi diretti, è importante sottolineare il ruolo del Comitato Nazionale UNICEF e degli uffici di Save the Children e Defence for Children nelle attività di

[64] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014

[65] Si veda per esempio il Manuale di Intervento dei Servizi Sociali del Comune di Madrid per la protezione dell'infanzia, disponibile qui: http://www.madrid.es/UnidadesDescentralizadas/ServALaCiudadania/SSociales/EspInformativos/EspecialInfancia/Publicaciones/manual.pdf; e lo Strumento per la valutazione della gravità delle situazioni di protezione dell'infanzia in Aragón, qui disponibile: https://www.aragon.es/estaticos/GobiernoAragon/Organismos/InstitutoAragonesServiciosSociales/IASS_new/Documentos/infancia/MALTRATO-2014-valoracion-gravedad-menores.pdf (ultimo accesso 23 aprile 2018).

[66] Instrucción N° 11/2007, de 12 De Septiembre, de la Secretaria de EsTado de Seguridad, por la que se aprueba el "Protocolo de Atuacion Policial con Menores".

[67] Protocolo de Actuación de las Fuerzas y Cuerpos de Seguridad y de CoordinacióN con los Órganos Judiciales para la ProtecciÓN de las Víctimas de Violencia Doméstica y de Género, Aprobado por la Comisión Técnica de la Comisión Nacional de Coordinación de la Policía Judicial el 28 de junio de 2005, tras haberse adaptado el anterior Protocolo a las modificaciones de la LO 1/2004, de Medidas de Protección Integral contra la Violencia de Género, disponibile qui: (ultimo accesso 23 aprile 2018).



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advocacy, formazione e promozione della consapevolezza sulla violenza contro i minorenni, i diritti dell'infanzia e la giustizia minorile in Spagna.

## 4.4. Regno Unito – Inghilterra e Galles

### 4.4.1. Panoramica sui minorenni vittime di reato in Inghilterra e Galles

L'Ufficio per le Statistiche Nazionali (ONS) - il maggiore produttore di statistiche ufficiali, nonché istituto statistico nazionale maggiormente riconosciuto del Regno Unito – elabora ogni anno l'Indagine Penale di Inghilterra e Galles (CSEW).[68] Nel suo rapporto nazionale[69] ha stimato che nell'anno conclusosi a settembre 2016, circa 12 minorenni su 100 di un'età compresa tra i 10 e i 15 anni sono stati vittime di almeno un reato. Nell'anno conclusosi a settembre 2017, circa 10 minorenni su 100 dello stesso gruppo di età sono stati vittime di violenza, con un totale stimato di 652,000 reati vissuti dai minorenni di questo gruppo di età nel periodo in oggetto.

Comunque, il problema principale di questa indagine è che essa non include minorenni al di sotto dei 10 anni di età o maggiori di 15 anni (ad esempio tra i 15 e i 17)[70] ed anche che non include domande relative all'abuso sessuale, alla violenza sessuale o allo sfruttamento sessuale dei minorenni (si veda il rapporto del Commissario per le Vittime 2017: 10)[71]. Di conseguenza, i numeri valutati dal CSEW hanno una rilevanza limitata, per quanto riguarda il coinvolgimento di minorenni in reati, perchè rappresentano solo una piccola parte dei minorenni vittime.

Quindi, il Commissario per le Vittime (Baronessa Newlove of Warrington) ha incluso nel suo rapporto *"Stiamo comprendendo bene le giovani vittime di reato? Una revisione dei diritti dell'infanzia nel codice*

[68] Si veda https://www.ons.gov.uk (ultimo accesso 9 aprile 2018).
[69] Relativamente al "reato contro le famiglie e gli adulti, che includono dati sui reati vissuti dai minorenni e reati nel settore commerciale e nella società"; si veda: https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingseptember2017 (ultimo accesso 9 aprile 2018).
[70] Si veda il rapporto "Are we getting it right for young victims of crime? A review of children's entitlements in the victims' code" prodotto dal Commissario per le Vittime a febbraio 2017; si veda: http://victimscommissioner.org.uk/app/uploads/2014/10/Are-we-getting-it-right-for-young-victims-of-crime.pdf (ultimo accesso 9 aprile 2018).
[71] Il commissario per le vittime e i testimoni (Commissario per le Vittime) ha il dovere statutario di rivedere regolarmente il Codice Vittime, di ascoltare le opinioni delle vittime e di comprendere il sistema di giustizia allo scopo di migliorare i servizi e il supporto per le vittime di reato (si veda Ministry of Justice, Code of Practice for Victims of Crime, October 2015).


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*vittime"* (2017) statistiche aggiuntive per dare un'immagine più ampia del reale numero e delle caratteristiche dei minorenni vittime di reato: per esempio,sono stati inclusi i dati sui reati denunciati dalla *polizia* di Inghilterra e Galles, e i dati prodotti nel 2014 dall'ente non profit *Victim Support*, in connessione con l'Università di Bedfordshire, nel rapporto *"Soffrire in silenzio"* sulla vittimizzazione nascosta di bambini e giovani, prodotto per conto del *Gruppo Parlamentare interpartitico per le vittime e i testimoni* (si veda il rapporto del Commissario per le 2017: 13). I dati su reati violenti e sessuali registrati dalla polizia nel 2015 mostrano che i minorenni sotto i 16 anni di età rappresentano una larga parte di tutti i reati di stupro registrati dalla polizia. "Meno di un terzo (30%) delle ragazze vittime di strupro aveva meno di 16 anni, mentre la maggior parte delle vittime maschi (60%) aveva meno di 16 anni" (ibid.: 10). In base al rapporto del Commissario per le Vittime, è più probabile che le vittime di stupro abbiano tra i 15 e i 19 anni e ammontino a circa un quarto (23%) di tutti i reati di stupro registrati dalla polizia. Inoltre, i dati penali della polizia del Regno Unito hanno mostrato che i minorenni sotto i 16 anni di età rappresentano la maggior parte delle vittime degli altri reati sessuali. Il 50% delle vittime femminili e il 62% delle vittime maschili erano al di sotto dei 16 anni, mentre il 28% delle vittime di altri reati sessuali registrati dalla polizia avevano tra i 10 e i 14 anni di età (ibid.; ONS 2016 come riferito dalla Commissione Vittime nel 2017).

Sorprendentemente, come già riscontrato nel caso della Germania, l'aspetto più significativo, relativamente ai minorenni vittime, è la mancanza di denuncia dei reati dei quali sono vittime. Come ha dichiarato il Commissario per le Vittime:

> "Nonostante il gran numero di reati registrati nei confronti dei minorenni, vi sono elementi dai quali dedurre che molti dei reati commessi a danno di bambini e giovani non vengono denunciati, e quindi non registrati, e questo indica che bambini e giovani sono sottoposti a tassi di reato più elevati di quanto i dati della polizia suggeriscano" ibid.: 13).

Il rapporto ha inoltre indagato quali potrebbero essere le ragioni della sotto-rappresentazione dei reati che coinvolgono bambini e giovani ed è giunto alla conclusione, citando il rapporto "Soffrendo in Silenzio"[72], secondo la quale i minorenni non sempre sanno cosa costituisca un reato, specialmente nel caso in cui il comportamento criminale è stato normalizzato in un gruppo di pari o quando sono stati preparati ad abusi e sfruttamento (si veda Beckett et ali 2014 così come citato dal Commissario per le Vittime 2017). Essi hanno inoltre riscontrato che i minorenni spesso non sanno come e dove denunciare un reato e che nel caso in cui

[72] Uno studio condotto da Beckett e Warrington 2014 ha elaborato i dati esistenti per mostrare che la maggior parte dei reati contro bambini e giovani non erano stati denunciati, per esempio il 13 % dei reati violenti (si veda Beckett et ali 2014).



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conoscano il trasgressore (ossia quando il reato avviene in un contesto familiare, ad esempio a scuola, a casa ecc.) sono meno inclini a denunciare il reato (ibid.). A volte i minorenni hanno anche paura o mancanza di fiducia nella polizia. Di conseguenza, il rapporto ha raccomandato che "l'Ufficio Casa e il Ministero della Giustizia" "(…) coordinino e supervisionino la raccolta di dati comparabili e di rapporti individuali della polizia su esperienze di reato. Essi raccomandano che questi dati dovrebbero differenziare bambini e giovani dagli adulti e prendere in considerazione tutti i tipi di reato" (ibid.: 14). Questo significa che presentare i dati solo dei minorenni tra i 10 e i 15 anni e solo relativamente ad alcuni reati penali, come nel caso del CSEW, rischia di tralasciare altri importanti reati (come l'abuso sessuale) e gruppi di età non registrandoli e, quindi, rischiando di creare un divario nell'esatta portata del numero di reati subiti da bambini e giovani in Inghilterra e Galles.

### 4.4.2. Protezione dei minorenni vittime di reato in Inghilterra e Galles

Nel Regno Unito, oltre alla *polizia* e al *Servizio di Persecuzione della Corona*, ci sono diverse organizzazioni. Questi diversi organi, che hanno principalmente la responsabilità di supportare bambini e giovani vittime di reato e soddisfare i loro bisogni, comprendono diverse organizzazioni statutarie e non statutarie (ONG) (si veda Codd et ali. 2016: 23). Inoltre, ogni autorità locale è responsabile della protezione e promozione del benessere di bambini e giovani in situazione di bisogno.

#### *Contesto legale*

Vale la pena menzionare la peculiarità del sistema legale del Regno Unito, al fine di comprendere la ragione della sua selezione tra gli Stati Membri di questo rapporto. Nel Regno Unito e in Irlanda il sistema legale è basato sul principio di **common law** in cui la legge e le decisioni giuridiche precedenti determinano l'applicazione della legge, mentre la maggior parte degli Stati Membri UE (e in particolare quelli selezionati) ha un sistema di **civil law**. Esistono anche sistemi legislativi misti come, per esempio, nel caso della Scozia (si veda EPRS 2017: 47). Ciò che è importante sottolineare è che questa differenza si ripercuote sul modo in cui la DV viene recepita. In un paese che utilizza il sistema di common law, come il Regno Unito, la Direttiva è stata recepita adottando un nuovo atto legislativo (anzichè modificando le leggi esistenti, come ad esempio è avvenuto in Germania con la modifcia alla legge di procedura penale). Nel caso dell'Inghilterra e del Galles, la DV è stata principalmente recepita attraverso il "**Codice di pratica per**


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**le vittime di reato**"[73]. Esso è stato emanato nel 2006 dalla Legge 2004 sulla Violenza Domestica, il Reato e le Vittime ed è poi stato rivisto due volte: inizialmente nel dicembre 2013, per specificare i diritti delle vittime e gli obblighi delle agenzie di giustizia penale, e una seconda volta nel 2015, al fine di procedere al recepimento della DV e dei suoi principi base relativi ai diritti delle vittime (si veda Victim Support) [74], adeguandosi pertanto alle disposizioni della DV e migliorando i diritti delle vittime. La legislazione dell'Unione Europea e la Convenzione Europea sui Diritti Umani costituiscono altre due importanti fonti della legislazione del Regno Unito (si veda Cilex)[75]

Attualmente nel Regno Unito, i diritti dell'infanzia sono principalmente garantiti dalla Legge sui Diritti Umani del 1998.[76] E' importante, inoltre, sottolineare che il Galles è stata la prima regione del Regno Unito, e finora l'unica, ad aver implementato la CRC[77] nella legge nazionale (si veda Codd et al. 2016: 10).

### *Servizi generali di supporto alle vittime*

In Inghilterra e Galles, il maggiore ente no profit che si occupa delle vittime è il *Victim Support*, che esiste da quasi 40 anni. Esso è stato fondato a Bristol nel 1974 e dal 1986 in ogni contea esiste almeno un sistema di Victim Support. Nel 1998, Victim Support ha creato un numero di telefono nazionale gratuito chiamato *Supportline* (si veda Victim Support).[78] Si tratta di un ente no profit indipendente a favore delle vittime di reati e di eventi traumatici. Esso offre un'enorme gamma di servizi gratuiti e disponibili per tutti - sia che il reato sia stato denunciato o meno – su un piano individuale, indipendente, emotivo e pratico per permettere alle persone di affrontare e riprendersi dalle conseguenza causate dal reato (si veda ibid.). Tale servizio offre anche servizi specializzati a particolari gruppi di vittime, come bambini e giovani che subiscono abusi domestici. *Victim Support* non è parte del corpo di polizia, dei tribunali o di altre agenzie di giustizia penale.

[73] Si veda: Ministero della Giustizia, ottobre 2015 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (ultimo accesso 9 aprile 2018).
[74] Si veda: https://www.victimsupport.org.uk/help-and-support/your-rights/victims-code (ultimo accesso 9 aprile 2018).
[75] Si veda: Cilex, Chartered institute of legal executives, https://www.cilex.org.uk/about_cilex/about-cilex-lawyers/what-cilex-lawyers-do/the-uk-legal-system (ultimo accesso 9 aprile 2018).
[76] Si veda: Children Rights Alliance for England (CRAE), http://www.crae.org.uk/our-work/protection-of-childrens-rights-in-domestic-law/ (ultimo accesso 9 aprile 2018).
[77] Si veda: https://www.unicef.org.uk/what-we-do/un-convention-child-rights/ (ultimo accesso 9 aprile 2018).
[78] Per maggiori dettagli sulla loro storia, si veda il sito: https://www.victimsupport.org.uk/more-us/about-us/history (ultimo accesso 9 aprile 2018).


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Dal suo sito web risulta che l'anno scorso ha offerto supporto a 814,000 persone (si veda ibid.). L'obiettivo principale di *Victim Support* è supportare le persone a livello locale e effettuare campagne a livello nazionale per porre i bisogni delle vittime al centro dell'analisi.

*Victim Support* indica quattro settori prioritari nei quali presta servizio di supporto per bambini e giovani: innanzitutto, *supporto per bambini e giovani*. Fornisce, per esempio, un proprio sito web chiamato *You & Co* [79] con un'enorme quantità di materiali in un linguaggio appropriato ai minorenni dove bambini e giovani possono orientarsi rispetto ai reati (cosa è un reato ecc.), ai loro effetti e al tipo di aiuto e supporto che possono richiedere e cercare. Dal 2014 *You & Co* rappresenta il programma bambini e giovani di Victim Support. Una seconda area è costituita dal *supporto e consulenza per genitori o affidatari*, una terza area è rivolta ad operatori e insegnanti e fornisce loro informazioni, in particolare fornendo link a importanti risorse.[80] Infine, si menziona anche l'importanza di cooperare con operatori e genitori nel lavoro di supporto a bambini e giovani. Per esempio, Victim Support ha sviluppato un "toolkit per bambini e giovani" che si compone di una serie di manuali appropriati all'età, con opuscoli orientativi per operatori e volontari, contenenti interventi pratici per supportare bambini e giovani.[81]

### *Servizi di supporto per i minorenni vittime*

Inoltre, ci sono enti locali per la tutela dei minorenni (Local Safeguarding Children Boards - LSCB) che si prendono cura dei loro diritti e che sono rappresentati nella sezione 13 della Legge sull'Infanzia 2004[82] (si veda Codd et ali. 2016: 23).

> "I LSCB possiedono una varietà di ruoli e funzioni statutarie che includono lo sviluppo di politiche e procedure di tutela, nonché l'esame delle disposizioni locali" (ibid.: 23).

Inoltre:

> "Essi sono governati dal Regolamento 2006 sui Consigli Locali per la tutela dei minorenni al fine di sviluppare un' effettiva collaborazione multidisciplinare ed inter-agenzia per tutelare i minorenni (ibid.: 23).

[79] Si veda: https://www.youandco.org.uk (ultimo accesso 9 aprile 2018).
[80] Per esempio si veda il rapporto di ricerca condotto da Victim Support: https://www.victimsupport.org.uk/sites/default/files/You%20%26%20Co%20-%20Getting%20it%20right%20for%20young%20victims%20and%20witnesses.pdf (ultimo accesso 9 aprile 2018).
[81] Si veda il loro sito: https://www.victimsupport.org.uk/help-and-support/young-victims-crime/teachers-and-professionals/useful-resources (accessed on 9th April 2018).
[82] Children Act 2004, https://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga_20040031_en.pdf (ultimo accesso 9 Aprile 2018).


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Essi sono principalmente responsabili del coordinamento delle attività di ogni persona o organo rappresentato dal Consiglio per assicurare l'efficacia di quanto fatto e promuovere la tutela del benessere dei minorenni.

Il terzo settore, ossia enti no profit e ONG (organizzazioni di volontariato), rappresenta la terza area nell'ambito della quale vengono protetti i diritti dell'infanzia, nonché forniti servizi ai minorenni. Tali organizzazioni svolgono, potenzialmente, il lavoro più significativo con bambini e giovani perchè sono specializzate nel fornire programmi e servizi specifici per i minorenni, per esempio focalizzandosi specificatamente sull'abuso sessuale dei minorenni (probabilmente, ma non unicamente, all'interno della famiglia) o su comportamenti sessuali dannosi. Per esempio, l'ente no profit nazionale per l'infanzia *Barnados*[83], che è uno dei maggiori enti no profit per l'infanzia nel Regno Unito, fornisce servizi quali: consulenza per minorenni abusati, servizi di affidamento e adozione, formazione professionale e gruppi per l'inclusione delle disabilità. Un altro esempio promettente può essere tratto da progetti locali come gli *Howgill Family Centres (HFC)*[84] che gestiscono una serie di servizi per l'infanzia e la famiglia in West Cumbria (ibid.: 23).

## 4.5. Finlandia

### 4.5.1. Panoramica sui minorenni vittime di reato in Finlandia

In Finlandia, l'indagine nazionale sui reati viene condotta su base nazionale (si veda Savonen 2017). Essa, comunque, include solo una piccola parte del numero di minorenni vittime e dei tipi di reato che possono riguardare i minorenni. Secondo Statistics Finland, nel 2016 la polizia e la guardia doganale e di frontiera hanno registrato 823,5000 reati penali (see Statistic Finland 2017),[85] 4,400 reati (0,5%) in più rispetto all'anno precedente. 37,600 persone sono state registrate quali vittime di reati violenti.

3000 persone (9%) tra i 18 and 20 anni sono state vittime di reati di aggressione, 4,600 (13,8%) sono state le vittime sopra i 50 anni e i reati di aggressione contro minorenni sono stati 6,450. Questo ultimo dato sulle vittime costituisce un aumento del 9,2% rispetto al precedente anno 2015. In totale, si registra che il 19,6%

[83] Per informazioni dettagliate sul lavoro svolto ed i servizi offerti ai minorenni e adolescenti, si veda il sito: http://www.barnardos.org.uk/what_we_do/our_work.htm (ultimo accesso 9 aprile 2018).
[84] Si veda: http://www.howgill-centre.co.uk (ultimo accesso 9 aprile 2018).
[85] Si veda: http://www.stat.fi/til/rpk/2016/13/rpk_2016_13_2017-03-23_en.pdf (ultimo accesso 16 aprile 2018).


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delle vittime ha subito reati di aggressione. Con riferimento ai minorenni vittime di reati di aggressione, l'analisi ha registrato 4,100 (64.1%) ragazzi e 2,300 (35.9%) ragazze. Il 33,3% di essi aveva meno di 10 anni, il 34,9% aveva tra i 10 e i 14 anni e il 31,8% aveva tra i 15 e i 17 anni.

L'analisi statistica ha inoltre registrato 1,100 vittime di abuso sessuale, di cui 87.4% ragazze e 12,6% ragazzi (ibid.). Statistic Finland ha, inoltre, notato che la modifica legislativa del 2011 ha considerevolmente aumentato il numero di reati di aggressione denunciati. In seguito alla modifica, reati quali aggressioni minori su minorenni o parenti stretti sono diventati ufficialmente perseguibili (ibid.). Inoltre, l'emendamento alla Legge sul Welfare dell'Infanzia (1302/2014)[86], che è entrata in vigore ad aprile 2015, è risultata in un'estensione dell'obbligo di denuncia nei casi di reati penali contro i minorenni (ibid.).

In base ad un altro rapporto *"Sviluppare pratiche direttamente compatibili per l'identificazione, la valutazione e l'indirizzamento delle vittime"* è emerso che, in Finlandia (2017), i giovani sono più a rischio di divenire vittime di violenza degli adulti; si consideri che il 13,9% delle persone tra i 15 ed i 24 anni sono state vittime di reati violenti, mentre solo il 2,3% delle persone tra 55 e 74 anni ha presentato denunce simili (si veda Savonen 2017: 13)[87]. I reati violenti contro giovani sono stati principalmente perpetrati da altri giovani: da un fratello/sorella (23 %), amico (17%) o altro giovane conosciuto dalla vittima (15%) (ibid.). Il rapporto, inoltre, dichiara che gli adulti sono raramente violenti verso i giovani, ad esempio i genitori sono stati i trasgressori nell'8% dei casi denunciati (ibid.).

### 4.5.2. Protezione dei minorenni vittime di reato in Finlandia

La Finlandia promuove i diritti delle vittime di reato dagli anni 90 e questo emerge anche dalla legislazione pre-esistente, come ad esempio il diritto ad essere ascoltato in tribunale (si veda EPRS 2017: 66). La protezione delle vittime di reato è principalmente fornita dalla ONG finlandesi. Nonostante i fondi nazionali limitati, questi network di supporto erano già stati creati prima del recepimento della Direttiva Vittime. Inoltre, in ogni comune finlandese le autorità locali sono responsabili di organizzare i servizi per il welfare dell'infanzia. Inoltre, essi forniscono servizi direttamente o acquistando tali servizi da fornitori esterni;

[86] Si veda: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=101110&p_classification=04 (ultimo accesso 16 aprile 2018).
[87] Si veda il rapporto sulle pratiche nazionali in Finlandia, http://victimspractices.eu/?page_id=119 (ultimo accesso 16 aprile 2018).


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quando essi acquistano i servizi, essi sono responsabili di supervisionare le attività dei fornitori di servizi.[88] Le preoccupazioni derivanti dalla violenza domestica e dalla violenza contro le donne hanno portato ad un nuovo contesto di supporto alla vittima, all'interno del paese (ibid.).

### *Contesto legale*

Il Ministero degli Affari Sociali e della Salute è il principale responsabile dell'elaborazione della normativa in materia di welfare e di coordinamento dei servizi di supporto all'infanzia. Inoltre, i seguenti ministeri sono responsabili di governare e coordinare l'assistenza alle vittime di reato: il Ministero della Giustizia, il Ministero degli Affari Sociali e della Salute e il Ministero dell'Interno, unitamente alla Polizia.[89] La polizia indaga sui reati penali, mentre le corti distrettuali, le corti di appello e la Corte Suprema giudicano su questi casi.

La legislazione dei reati penali è generalmente la stessa per adulti e minorenni, ma esistono disposizioni specifiche per i minorenni, prime fra tutte quelle della **Sezione 6 della Costituzione Finlandese[90]** che stabilisce che "*i minorenni dovrebbero essere trattati equamente e come individui e dovrebbe essere loro concesso di influire sulle questioni che li riguardano compatibilmente con il loro livello di sviluppo*".[91] Inoltre, disposizioni specifiche sul benessere del minorenne sono contenute all'interno della Legge sul Welfare dell'Infanzia (si veda sopra), mentre la Convenzione Europea sui Diritti Umani[92] e la Convenzione ONU sui Diritti dell'Infanzia e dell'Adolescenza[93] hanno carattere vincolante anche nel caso della Finlandia, come del Regno Unito. Tramite queste convenzioni gli stati sono obbligati a dare priorità al superiore interesse del minorenne e al suo benessere in tutte le azioni intraprese dalle autorità statali.

[88] Si veda: Ministero degli Affari Sociali e della Salute finlandese, http://stm.fi/en/social-services/child-welfare (ultimo accesso 17 aprile 2018).
[89] Si veda il rapporto „Managing Victims and Witnesses of crime in Finland, 2014-16", prodotto da International Juvenile Justice Observatory", in collaborazione con SAPI (Social activities and practice institute Bulgaria). Si veda inoltre il Ministero degli Affari Sociali e della Salute http://stm.fi/en/social-services/child-welfare (ultimo accesso 17 aprile 2018).
[90] Si veda: Costituzione della Finlandia, 11 giugno 1999, (731/1999, emendamenti fino al 1112/2011 inclusi), https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf (ultimo accesso 17 aprile 2018).
[91] Ibid.
[92] Si veda Finlex: https://www.finlex.fi/fi/sopimukset/sopsteksti/1999/19990063; si veda inoltre CEDU: https://www.echr.coe.int/Documents/Convention_ENG.pdf; https://www.echr.coe.int/Pages/home.aspx?p=home (ultimo accesso 17 aprile 2018).
[93] http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx (ultimo accesso 17 aprile 2018).


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La Direttiva Vittime è stata parzialmente recepita all'interno della legislazione finlandese, perchè molte delle misure prescritte dalla DV esistevano già nel contesto normativo nazionale. In particolare, la disposizione dell'articolo 24 della Direttiva (*"Diritto alla protezione di tutti i minorenni vittime nel corso dei procedimenti penali"*), che stabilisce misure speciali per i minorenni vittime, era già esistente in Finlandia.[94] Ciononostante, i necessari cambiamenti sono stati recepiti dal progetto di legge governativo 66/2015[95] che ha comportato diverse modifiche in varie leggi relative ai procedimenti penali. Tali emendamenti sono entrati in vigore nei mesi di marzo e dicembre 2016.[96]

Di conseguenza, riguarda al recepimento della Direttiva Vittime, con tutta probabilità i cambiamenti più significativi nella legislazione finlandese sono rappresentati dall'introduzione della disposizione sull'obbligo di informare le vittime dei loro diritti, delle disposizioni che regolano la valutazione personale (sebbene la pratica delle valutazioni individuali esistesse già prima del recepimento della Direttiva Vittime in Finlandia, si veda EPRS 2017: 60), e dell'indirizzamento ai servizi di supporto alle vittime. Inoltre, il legislatore finlandese ha approvato una legge sul "Risarcimento alla Vittima (2015/669), che gestisce un fondo pagato dal trasgressore a beneficio diretto delle vittime" (EPRS 2017: 58).

### *Servizi generali di supporto alle vittime*

La Finlandia è uno dei pochi paesi UE[97] ad avere un organo centrale responsabile del coordinamento del supporto alle vittime in tutto il paese e, pertanto, la qualità del servizio offerto sembra essere più coerente all'interno del paese se paragonato agli altri stati oggetto dell'indagine di questo rapporto (si veda EPRS 2017). Questo organo centrale di supporto alle vittime a livello nazionale si chiama **RIKU** (Rikosuhripäivystys) **Victim Support Finland**[98] e fornisce supporto generale alle vittime di reato, alle loro famiglie, amici ristretti e testimoni. Inoltre, esso fornisce un *numero di telefono*[99], attivo in orari specifici da lunedi a venerdi, a pagamento, ma con la possibilità di essere richiamati gratuitamenti (si veda ibid.). Le

[94] Per informazioni piàù dettagliate su quali articoli della Direttiva Vittime fossero già esistenti e per quali articoli è dovuto intervenire il legislatore finlandese, si veda il rapporto complementare di E-PROTECT su: "Studio Pan-Europeo sul recepimento legale della Direttiva 2012/29/UE negli altri SM".
[95] Si veda: FINLEX, HE 66/2015 per la versione finlandese, https://finlex.fi/fi/esitykset/he/2015/20150066 (ultimo accesso 17 aprile 2018).
[96] Si veda: EUR-LEX, http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029 (ultimo accesso 17 aprile 2018).
[97] Oltre ad Austria, Germania e Repubblica Ceca (si veda EPRS 2017: 74).
[98] https://www.riku.fi/en/home/ (ultimo accesso 17 aprile 2018).
[99] Si veda: https://www.riku.fi/en/services/helpline+116+006/ (ultimo accesso 17 aprile 2018).


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persone possono chiamare anche in maniera anonima e lasciare i loro contatti in caso abbiano bisogno di aiuto e consulenza. Si assicura che la persona che telefona riceva una risposta al massimo entro cinque giorni lavorativi e ottenga i dati di contatto del Victim Support Finland più vicino.

RIKU è membro dell'organizzazione-ombrello a livello europeo Victim Support Europe (VSE), con sede centrale a Bruxelles, che opera nell'interesse di tutte le vittime di reato.[100] Oltre a questo ufficio centrale, esistono settte uffici regionali e trenta punti di servizio in tutta la Finlandia, ognuno dei quali include servizi quali una linea telefonica di servizio, servizi di assistenza online e servizi personali. Inoltre, essi lavorano in stretta collaborazione con le autorità statali, come la polizia e altri organi che interagiscono con le vittime. Nel 2013 essi hanno avuto circa 38,000 contatti e il suo consiglio di gestione è formato da operatori di tutte le organizzazioni parte e dal Consiglio della Chiesa Nazionale (si veda ibid.).

Nel 2017, il Ministero della Giustizia ha deciso di affidare a RIKU l'onere di offrire un servizio pubblico per fornire servizi generali di supporto alle vittime in tutto il paese nel periodo 2017-2018. Di conseguenza, tutti i servizi dovrebbero essere accessibili, gratuitamente, per tutte le vittime di reato prima, durante e per un periodo di tempo adeguato dopo il processo penale.

### *Servizi di supporto per i minorenni vittime*

In Finlandia, ci sono altre organizzazioni della società civile che supportano bambini e giovani vittime di reato. Ciononostante, la principale organizzazione per il supporto ai minorenni vittime rimane RIKU. Sebbene essa non abbia un focus specifico sui minorenni vittime, essa fornisce servizi gratuiti (fatta eccezione per la linea telefonica) a tutti i tipi di vittime di reato. Uno dei maggiori servizi offerti da RIKU è costituito dalla designazione di una persona di supporto per le vittime, i loro parenti stretti e i testimoni che ne abbiano bisogno (in maniera simile all'assistenza psicosociale in tribunale disponibile in Germania e Austria). Le persone di supporto vengono scelte in maniera accurata e specificatamente formate su base volontaria per, ad esempio, accompagnare la vittima agli interrogatori di polizia o alle udienze in tribunale o per assisterle nel richiedere un ordine restrittivo o un risarcimento. Con tali soggetti di supporto, le vittime o i testimoni di un reato possono anche discutere la loro esperienza, le loro sensazioni ed effettuare considerazioni sulle azioni future.[101]

[100] Si veda: https://www.riku.fi/en/victim+support+finland/ (ultimo accesso 18 aprile 2018).
[101] Si veda il rapporto "Managing Victims and Witnesses of crime in Finland, 2014-16", prodoto dall'International Juvenile Justice Observatory, in collaborazione con SAPI (the Social activities and practice institute Bulgaria), p.16. A seguire questo rapporto fa riferimento a questo documento come segue: IJJO 2014-16.


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Altre strutture responsabili della protezione dell'infanzia includono, per esempio, la **Federazione delle Case e Rifugi Madre-Bambino**[102] che coopera con Victim Support Finland il quale sostiene 14 centri accoglienza nel paese. Vi sono altri 20 alloggi attivi in Finlandia; sono tutti centri di servizio in cui le persone in stato di bisogno – che abbiano subito direttamente violenze intrafamiliari o che ne siano state minacciate - possono ottenere aiuto per superare una crisi o una situazione di difficoltà. Inoltre, in Finlandia esiste un'ampia gamma di centri con servizi specifici per le donne, per esempio **Tukinainen**[103] o per le donne e i minorenni migranti, per esempio **Monika – Multicultural Women's Association in Finland**[104].

Infine, l'autorità principale che supervisiona i diritti dell'infanzia è **Ombudsman del Parlamento**.[105] L'Ombudsman ha la responsabilità di vigilare a che le autorità statali rispettino la legge e che i diritti dei minorenni siano rispettati. E' il maggiore supervisore della legalità nel paese ed è scelto dal Parlamento.

# 5. Implementazione pratica della valutazione individuale nei cinque Stati Membri UE

Questo capitolo si focalizza sull'implementazione pratica della normativa che recepisce gli articoli 22, 23 e 24 della Direttiva Vittime. Esso analizza come vengono svolte le valutazioni individuali in ognuno dei cinque Stati Membri: *Germania, Portogallo, Spagna, Regno Unito (Inghilterra e Galles)* e *Finlandia.* Un'attenzione particolare è dedicata alle pratiche specifiche del paese, considerando in particolare gli ostacoli e le strategie di successo relative alla protezione dei minorenni vittime e quindi cercando di porre in evidenza buone prassi.

[102] Si veda: https://ensijaturvakotienliitto.fi/en/ (ultimo accesso 18 aprile 2018).
[103] Si veda: https://www.tukinainen.fi/english/ (ultimo accesso 18 aprile 2018).
[104] Si veda: https://monikanaiset.fi/en/ (ultimo accesso 18 aprile 2018).
[105] Si veda: https://www.oikeusasiamies.fi/en/web/lasten-ja-nuorten-sivut/home (ultimo accesso 18 aprile 2018).



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## 5.1. Germania

In Germania, la Direttiva Vittime è stata recepita nel 2015 attraverso la "Terza Riforma normativa sui Diritti delle Vittime" (*3. Opferrechtsreformgesetz*[106]). La legge incorpora misure importanti per innalzare gli standard sulla protezione delle vittime e ne rinforza la posizione all'interno del procedimento penale.[107] La Germania aveva già raggiunto standard elevati nel supporto alle vittime prima dell'implementazione della DV, ma la stessa ha dato origine ad alcuni miglioramenti, in particolare per quanto riguarda i diritti processuali e relativi all'informazione delle vittime. Inoltre, il legislatore tedesco ha introdotto due nuovi importanti paragrafi sul supporto individuale delle vittime nel Codice di Procedura Penale Tedesco (*Strafprozessordung, StPO*): §48, sezione 3: obblighi del testimone e citazione (*Zeugenpflichten; Ladung*)[108] e il nuovo paragrafo §406g sull'assistenza psicosociale in tribunale (*psychosoziale Prozessbegleitung*), che costituisce una pietra miliare nella protezione delle vittime e che si basa principamente sul modello austriaco.[109]

Sebbene tutte le misure speciali stabilite dalla DV risultino rispettate dalla legislazione tedesca e molte di queste preesistessero al recepimento della Direttiva,[110] nella maggioranza dei casi tali diritti risultano garantiti dall'adempimento dell'articolo 22 (si veda lo studio EPRS 2017: 61). Tuttavia, ci troviamo ancora in una fase in cui la **valutazione individuale** e le sue esatte procedure non sono definite chiaramente nel testo legislativo tedesco (si veda ibid.: 61). Di conseguenza, è abbastanza difficile comprendere come venga condotta la valutazione individuale e chi la esegua.

[106] Si veda: http://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html; e: http://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (ultimo accesso 22 marzo 2018).

[107] Nei processi penali le vittime possono avere il ruolo di testimone, attore o presunto colpevole (*Zeuge*, *Nebenkläger*, *Verletzter*), il che significa che la Germania non utilizza il termine vittima nel suo dettato normativo. Per informazioni dettagliate si veda il Rapporto Transnazionale di E-PROTECT sul recepimento legale della Direttiva Vittime D3.6

[108] Si veda: https://www.jurion.de/gesetze/stpo/48/ (ultimo accesso 5 aprile 2018).

[109] Anche in Portogallo e Finlandia esiste l'assistenza psicosociale in tribunale.

[110] Per esempio, gli interrogatori in luoghi idonei ad evitare il contatto visivo tra la vittima e il presunto colpevole; la conduzione di questi interrogatori da parte di persone specificatamente formate, la possibilità di udienze a porte chiuse; per informazioni dettagliate sulle leggi e disposizioni specifiche che regolano queste misure (a quali condizioni e in quali circostanze trovano applicazione) si veda l'altro Rapporto Transnazionale di E-PROTECT sul recepimento legale della Direttiva Vittime D3.6/2018.



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Analogamente, un precedente progetto europeo IVOR (Implementing victim-oriented reform of the criminal justice system in the European Union 2014-2016) conclusosi prima della Terza Legge di Riforma sui Diritti delle Vittime recepita nel 2015, ha evidenziato come il legislatore tedesco avesse previsto una specifica disposizione nella parte generale del Codice di Procedura Penale secondo la quale "(…) la prima autorità che entra in contatto con un caso deve condurre la valutazione dei bisogni individuali e registrarla nel sistema di raccolta dati".[111] Oggi, a seguito dell'implementazione di questa legge (inclusi i nuovi paragrafi: §48, sezione 3, e §406g) la legislazione tedesca non sancisce in maniera esplicita come e chi debba condurre la valutazione individuale.

Ciononostante, l'obiettivo principale dell'Art. 22 - assicurare una valutazione per tutti i bisogni di protezione individuale delle vittime - è superato in Germania, citando le parole degli autori IVOR:

> "Sebbene diversi paesi abbiano (pienamente) implementato l'articolo 22 nelle loro legislazioni nazionali, è chiaro che l'assenza di una legge relativa alla valutazione dei bisogni individuali non implica il fatto che certi gruppi vulnerabili non siano identificati e non abbiano specifici diritti (di protezione). **In ogni caso, lo scopo della valutazione individuale, ossia quello di essere disponibile per *tutte* le vittime, non è stato raggiunto in quasi nessuno tra gli Stati Membri"** (IVOR report 2016: 163, corsivo e grassetto aggiunti).

IVOR ha anche condotto una serie di interviste, con esperti di diversi Stati Membri UE, durante le quali uno degli esperti tedeschi ha dichiarato che sarebbe preferibile avere un approccio più flessibile alla valutazione individuale. L'intervistato si chiedeva se una valutazione potrà essere tangibile quanto una checklist. Questo dipende da varie circostanze, come la qualità dell'informazione che la polizia ha a disposizione in quel determinato momento (ibid.).

### 5.1.1. Buone prassi in Germania

#### *Assistenza psicosociale in tribunale*

Nel contesto tedesco, per assistenza psicosociale in tribunale si intende una forma specifica di accompagnamento prima, durante e dopo il procedimento penale (esclusa l'assistenza legale) per vittime particolarmente vulnerabili (in accordo con la DV e l'art. 22 e 23). In particolare, i bambini e gli adolescenti vittime di gravi reati sessuali o violenti hanno il diritto all'assistenza psicosociale gratuita in tribunale. Per le altre vittime di gravi reati violenti e sessuali, il tribunale decide caso per caso se debba essere fornita assistenza psicosociale.

[111] Si veda: http://www.apav.pt/ivor/images/ivor/PDFs/Fact_sheet_germany.pdf (ultimo accesso 5 aprile 2018).



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Le attività includono il fornire informazioni adeguate e supporto qualificato nel corso di tutto il procedimento penale, allo scopo di ridurre le barriere individuali, che sono inevitabilmente collegate a tali procedimenti, ed evitare forme di vittimizzazione secondaria (si veda Riekenbrauk 2016: 7). Questo diritto di accesso gratuito è particolarmente importante per i minorenni vittime, le persone disabili e le persone particolarmente traumatizzate da un reato, che include crimini legati all'odio, reati sessuali o violenti. Assicurare per iscritto nella normativa una misura di protezione così importante è una pietra miliare per il supporto alle vittime (minorenni). L'aspetto più importante per quanto riguarda gli standard di qualità è rappresentato dalla "chiarezza dei ruoli" (*Rollenklarheit*), in quanto l'assistenza psicosociale del tribunale non costituisce nè una consulenza legale, nè un accertamento dei fatti, nè una psicoterapia (ibid.). Essa piuttosto ha l'obbligo di fornire alla vittima supporto e informazioni adeguate nelle seguenti fasi: primo interrogatorio (spesso precedente ad una condanna penale), preparazione al procedimento penale, supporto durante il procedimento e processo di follow-up. Essa include una considerevole serie di compiti di supporto:

- *Prima del processo penale*: essere presenti a tutti gli interrogatori (presso la polizia e in tribunale), consigliare la vittima rispetto al procedimento penale (l'accompagnatore per esempio è presente nell'aula di tribunale spiegando chi sono i diversi attori, ecc.), fornire informazioni relative alle conseguenze e ai rischi di un procedimento penale o di una condanna penale, fornire informazioni relative alle diverse forme di psicoterapia.
- *Durante il procedimento*: organizzare un accesso sicuro al tribunale, supporto durante il tempo di attesa, cooperazione con le altre autorità presenti, traduzione del vocabolario legale in base all'età della vittima, spiegazione delle procedure.
- *Dopo il procedimento penale*: informazioni relative alle offerte di supporto aggiuntivo o supporto nel gestire la sentenza dal punto di vista emotivo ecc. (ibid.: 9).

### *Formazione per funzionari di polizia e dell'ambito giudiziario*

In Germania vengono offerte formazioni specialistiche ai funzionari di polizia e allo staff giudiziario, che sono organizzate per lo più a livello regionale e che vanno al di là delle prescrizioni della Direttiva (si veda lo studio EPRS 2017: 72).

> "Nei corsi di formazione per funzionari di polizia in servizio, la protezione della vittima ne costituisce la parte sostanziale in tutti i 16 stati (Länder). La formazione è strutturata confermemente all'articolo 25 (1)



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della direttiva" (ibid.: 72).

All'interno della formazione rivolta al nuovo staff di **polizia**, la protezione della vittima rappresenta una componente centrale dei tre anni di corso di laurea di primo livello, presso le accademie di polizia. La tematica è studiata prendendo in considerazione diversi aspetti quali la criminologia, l'etica, le procedure di esame, la vittimizzazione e la psicologia (ibid.), benchè vi sia un'enfasi particolare sul trasmettere empatia e sensibilità durante la comunicazione con i diversi tipi di vittime, e sull'effettuare una valutazione appropriata della situazione. La formazione include sessioni teoriche e pratiche, con un focus sugli aspetti psicologico-strategici dell'intervento di polizia nei casi di violenza domestica e di stalking (ibid.).

> "Inoltre, alcune stazioni di polizia hanno già funzionari specificatamente responsabili della protezione delle vittime a cui sono affidati attività volte ad incrementare la consapevolezza dei colleghi rispetto al bisogno di un trattamento professionale delle vittime. Questo viene fatto attraverso sessioni informative, eventi, laboratori e incontri. I coordinatori, inoltre, informano i loro colleghi rispetto ai cambiamenti normativi che rafforzano i diritti delle vittime" (ibid.: 72).

L'area **giudiziaria (giudici e procuratori pubblici)** ha anch'essa intensificato la formazione in materia di vittime, in particolare relativamente alle abilità comunicative di giudici e pubblici ministeri, includendo anche elementi psicologici sulla protezione delle vittime. Le sessioni formative affrontano i seguenti argomenti: "esame dei testimoni vittime", "accertamento dei fatti nell'aula di tribunale", "psicologia delle dichiarazioni nel trattare con i testimoni" e "compensazione trasgressore-vittima" (si veda ibid.: 73; si veda Clemm 2015)[112].

Si noti che la mancanza di standard uniformi a livello nazionale sulle qualifiche, per esempio, degli operatori psicosociali, viene criticata da alcuni esperti legali (si veda Fastie 2015).[113]

## 5.2. Portogallo

In Portogallo esistono diversi ostacoli nel sistema giudiziario che i minorenni devono affontare, come per esempio interrogatori ripetuti, contesti e procedure intimidatorie, mancanza di operatori che conducano gli

[112] Si veda: https://www.bundestag.de/blob/379102/fee53d33062a29c73b8e580e7aa788cc/clemm-data.pdf (ultimo accesso 5 aprile 2018).
[113] Si veda: https://www.bundestag.de/blob/378818/1151a3374a4dcfd93ff726f45abaca48/fastie-data.pdf (ultimo accesso 5 aprile 2018).


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interrogatori e procedimenti lenti. Alcuni esperti ritengono che vi sia uno scollamento tra la legge e la sua applicazione.

Studi empirici hanno dimostrato che "i minorenni vittime di abuso sessuale intrafamiliare vengono ascoltati in media 80 volte.[114] Questa ripetizione è considerata dolorosa dai minorenni. Anche nei processi in cui ci sono segni fisici e biologici di abuso sessuale, i minorenni vengono ascoltati tra le 4 e le 9 volte (...). In base ad uno studio già citato, basato sui dati forniti dall'Istituto di Medicina Legale di Porto, la testimonianza dei minorenni – se molto giovani - non viene raccolta nè valutata, fatto che genera un tasso di archiviazione superiore al 60%".[115]

Un recente sondaggio tra 49 Pubblici Ministeri e Magistrati ha mostrato che entrambe le categorie di professionisti "(…) segnalano una mancanza di preparazione nell'audizione di bambini e adolescenti e la difficoltà nel comprendere le loro caratteristiche di sviluppo (relative all'età e maturità). Essi ritengono che i bambini più piccoli potrebbero avere difficoltà a comprendere e a stare attenti, mentre gli adolescenti manifestano comportamenti oppositivi. I magistrati hanno, inoltre, dichiarato di sentire la necessità di approfondire e conoscere le tecniche per facilitare la comunicazione con bambini e adolescenti e le tecniche di intervista, accedendo a guide o altri strumenti rilevanti."[116] Ribeiro (2009) spiega che in Portogallo durante i procedimenti, "(…) i minorenni sono soggetti a interrogatori lunghi e ripetuti, da parte di operatori che non hanno una formazione specifica, nè compentenze psicologiche, nonché a valutazioni per accertare la loro capacità di testimoniare, specialmente se si sospettano reati sessuali, caso in cui la credibilità del minorenne viene maggiormente messa in dubbio."[117]

### 5.2.1. Buone prassi in Portogallo

Nel 2017, l'Accademia degli Avvocati (Regione di Lisbona) ha pubblicato una **Guida alle Buone Prassi sull'ascolto dei Minorenni** nel corso dei procedimenti in tribunale. Questa Guida è in linea con le Linee

[114] Ribeiro, 2009 *in Ibid.* p.287.
[115] Jardim, 2011 *in Ibid.* p.288.
[116] Rodrigues, Alexandre, & Agulhas (2016). A audição da criança: Desenho, implementação e avaliação de uma formação para Magistrados Portugueses. Dissertação de mestrado do Mestrado de Psicologia Comunitária, Proteção de Crianças e Jovens em Risco. Lisboa. ISCTE-IUL. p.13.
[117] Ribeiro, 2009 *in* Clara Sottomayor (2014) *Temas de Direito das Crianças*. Publicações Almedina, p. 298.


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Guida del Consiglio d'Europa su una Giustizia a misura di minorenne[118] e si basa su dati raccolti a livello internazionale. Il manuale si apre con una descrizione del contesto legale, seguita da considerazioni teoriche e pratiche sull'ascolto dei minorenni nei procedimenti in tribunale, che includono considerazioni relative all'ambiente, alle tecniche di intervista, agli aspetti da considerare in base alla prospettiva del minorenne e dell'intervistatore. La guida si conclude con una checklist da compilare dopo l'interrogatorio per permettere all'intervistatore di monitorare le procedure e identificare possibili miglioramenti nella propria pratica.[119] Il manuale è il seguito di due pubblicazioni preparate ed adattate all'infanzia: i libri "João va in tribunale"[120] e "Il giorno che Mariana non voleva" [121] su che cosa aspettarsi durante il procedimento in tribunale. Questi libri e linee guida sono parte di un approccio più comprensivo sull'implementazione di una giustizia a misura di minorenne nel paese. Il Centro Portoghese per gli Studi Giudiziari sulle audizioni di minorenni ha promosso formazioni e ricerche, tra le quali ci sono aspetti innovati come lo studio-pilota su "***L'uso di cani da intervento per facilitare il processo di ascolto nei tribunali minorili***."

In Portogallo, l'APAV ha una lunga esperienza nel supporto alle vittime ed è fortemente coinvolta in partenariati a livello europeo per migliorare la protezione delle vittime in Portogallo e contribuire allo scambio di buone pratiche a livello internazionale. Attualmente, APAV è partner del progetto POISE[122], co-finanziato dal Fondo Sociale Europeo, che ha lo scopo di fornire supporto a bambini e giovani vittime di violenza sessuale, allo scopo di superare l'esperienza traumatica e migliorare la propria salute e il proprio sviluppo. Questo progetto comprende lo sviluppo di strumenti per la valutazione dei rischi e dei bisogni e di protocolli per bambini e giovani vittime di violenza sessuale, allo scopo di approfondire e migliorare le procedure di supporto e l'intervento della rete CARE. Questo progetto è la continuazione del lavoro pregresso, il cui obiettivo era quello di sviluppare il **Manuale per il supporto dei minorenni vittime di abuso sessuale**, con informazioni tecniche per operatori e linee guida su come interrogare e assistere i minorenni che hanno subito abusi.[123]

[118] Linee Guida del Consiglio dei Ministri del Consiglio d'Europa per una giustizia a misura di minorenne (Adottate dal Consiglio dei Ministri il 17 novembre 2010 durante l'incontro 1098dei deputati del ministero).
[119] Rute Agulhas e Joana Alexandre (2017) *Audição da Criança. Guia de Boas Práticas*. Conselho Regional de Lisboa da Ordem dos Advogados.
[120] Rute Agulhas e Joana Alexandre (2016) *O João vai ao Tribunal.*
[121] Rute Agulhas e Joana Alexandre (2016) *O dia que a Mariana não queria.*
[122] Numero di progetto.: 03-4639-FSE-000013
[123] APAV (2017) Manuale CARE. Apoio a crianças e jovens vítimas de violência sexual.


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In futuro sarà importante per il Portogallo realizzare valutazioni sull'impatto delle proprie strutture di supporto alle vittime per identificare lacune e spazi di miglioramento. Esiste anche l'opportunità di capitalizzare gli sforzi in atto per migliorare la giustizia a misura di minorenne e per applicare specifiche misure della Direttiva Vittime, come ad esempio le procedure di valutazione individuale.

## 5.3. Spagna

In Spagna è passato poco tempo dal recepimento della Direttiva Vittime all'interno della normativa nazionale. Ciononostante, esistono dati che aiutano ad evidenziare le pratiche in atto e a valutare come la legislazione adottata sia stata implementata per fornire suggerimenti e raccomandazioni per azioni future.

La Legge organica 1/1996, del 15 gennaio, sulla Protezione Legale dei Minorenni, modifica parziale del Codice Civile, e la Legge sulla Procedura Civile costituiscono il contesto normativo per le diverse comunità autonome di competenza in materia di protezione del minorenne, nei casi di abuso. Una sfida emergente è rappresenta dalle diverse prestazioni delle autorità regionali, che potrebbero portare a differenti livelli di protezione e di risorse offerte ai minorenni vittime nel paese.

Save the Children Spagna ha realizzato un'analisi di 203 sentenze emanate tra il 1° ottobre 2012 e il 31 dicembre 2016. Lo studio ha mostrato che, in media, i minorenni devono condividere le informazioni sugli abusi, una volta denunciati, fino a 4 volte. Nell' 86% dei casi il minorenne ha prestato testimonianza in plenaria. Solo nel 13% delle sentenze analizzate è stata accettata la testimonianza registrata del minorenne. Inoltre, i processi legali sono lunghi (3 anni in media). Nel 38% dei casi, un "ritardo non dovuto" viene utilizzato quale circostanza attenuante, riconosciuta dallo stesso tribunale, il che significa che vi sono stati ritardi che potevano essere evitati e che hanno ridotto la pena dell'imputato a causa di una attesa non necessaria.[124]

In uno studio sulla giustizia a misura di minorenne, realizzato dalla FRA Agency, più della metà dei minorenni intervistati in Spagna "(…) ha valutato le capacità comunicative degli operatori negativamente, criticandoli per la mancanza di sensibilità e per il fatto di fare domande irrilevanti e inadatte alla loro età. (…) Diversi minorenni hanno menzionato le loro interazioni con medici forensi durante gli interrogatori –

[124] Save the Children (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema.



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per esempio, quando un medico è presente come testimone esperto. La maggior parte dei minorenni ha valutato negativamente questi operatori, a causa del loro comportamento, e reputato le aule per l'interrogatorio e il numero degli operatori presenti inadeguati. (Nello stesso studio) diversi giovani tra i 14 e i 18 anni, vittime di abuso sessuale, hanno raccontato di non essersi sentiti a loro agio presso la stazione di polizia perchè hanno dovuto parlare di fronte alla madre, al padre o ad entrambi i genitori."[125]

### 5.3.1. Buone prassi in Spagna

L'intervento di alcuni attori chiave, inclusi gli Uffici di Supporto alle Vittime in Spagna, sembra andare nella direzione dell'implementazione delle disposizioni della Direttiva Vittime e delle buone pratiche sulla giustizia a misura di minorenne. "In Spagna, **le aule a misura di minorenne** sono a volte utilizzate durante la fase pre-processuale, sia presso i servizi di supporto alle vittime sia nei locali del tribunale. Nello specifico, le persone intervistate (minorenni sottoposti a procedimento) hanno menzionato la *Fundación Márgenes y Vínculos* in diverse città dell'Andalusia; il servizio di supporto alle vittime dell'Andalusia (*Servicio de Apoyo a las Víctimas de Andalucía, SAVA*); e il servizio di supporto alle famiglie (*Servei d'Assesorament Tècnic en l'Àmbit de Família, SATAF*) fornito dall'amministrazione catalana attraverso i tribunali per la famiglia. I minorenni in generale hanno valutato positivamente questi luoghi, in quanto sono al di fuori dell'ambiente del tribunale e hanno **sale di attesa e aule per le audizioni a misura di minorenne**. I minorenni hanno anche apprezzato l'atmosfera piacevole e calma e il fatto di avere **un solo operatore (lo psicologo) presente durante la conversazione**."[126]

Nel 2009, la Federazione delle Associazioni per la Prevenzione del Maltrattamento dell'Infanzia (FAPMI) ha avviato un **programma su infanzia e giustizia**, con il suppporto e il finanziamento dell'allora Ministero del Lavoro e degli Affari Sociali, allo scopo di migliorare la cura di bambini e adolescenti a contatto con il sistema di giustizia. Il programma ha affrontato aspetti del contesto giuridico nazionale e implementato attività di advocacy e conferenze tematiche su diversi aspetti della giustizia a misura di minorenne e altre attività. Questo lavoro è complementare alla partecipazione del FAPMI alla Commissione Nazionale

[125] FRA (2017) *Child-friendly justice Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States. p. 26*
[126] *Ibid.* p. 30


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sull'Assistenza delle Vittime di Crimini Violenti e contro la Libertà Sessuale del Ministero della Giustizia.[127]

Diverse autorità spagnole hanno pubblicato **materiali a misura di minorenne relativi alla giustizia**.[128]

Tabella 1. Psicologi e operatori sociali forensi delle 'Squadre di assistenza tecnica criminale', dipartimento di giustizia del Governo della Catalogna

"La consulenza tecnica svolta per i tribunali catalani è organizzata attraverso uffici distribuiti sul territorio dove psicologi e assistenti sociali si specializzano nel lavoro della giustizia e rispondono alle esigenze di assistenza tecnica da parte di procuratori, magistrati, investigatori e giudici penali. La specializzazione di questi operatori non solo implica che essi lavorino esclusivamente su casi penali, ma anche che essi siano organizzati in base a programmi differenziati, come ad esempio consulenza sulla responsabilità penale e sulle caratteristiche socio-personali di coloro che sono accusati di un reato; consulenza su forme alternative di privazione; valutazione dei diritti sociali e personali della persona accusata; consulenza tecnica sulle vittime (conseguenze, adeguamento delle misure di protezione, ecc.); sui testimoni (credibilità, influenze affettive); e, infine, sul programma per supportare gli interrogatori dei minorenni, durante i procedimenti giudiziari, e di altri testimoni vulnerabili che richiedono supporto specializzato per poter rilasciare delle dichiarazioni. In questo ultimo caso, le dichiarazioni dei minorenni vittime di abuso sessuale vengono registrate per evitare che essi debbano passare attraverso un processo orale.

(…)

Sebbene il caso spagnolo rappresenti, senza dubbio, una buona prassi, esso continua ad affrontare una serie di sfide. Da una parte, a volte mancano le risorse e, dall'altra, anche se vengono effettuate le registrazioni, giudici e magistrati decidono se queste possano essere

[127] FAPMI (2011): Programa Justicia e Infancia. Marco de referencia. Madrid, Federación de Asociaciones para la Prevención del Maltrato Infantil.

[128] Per esempio, il Garante per l'Infanzia della Comunità di Madrid ha pubblicato un dizionario sulla giustizia adattato ai minorenni, disponibile qui: http://www.madrid.org/bvirtual/BVCM013875.pdf; e il Consiglio per il Lavoro e le Politiche Sociali, il Segretariato dei Servizi Sociali per minorenni e famiglie della Regione di Murcia ha preparato una pubblicazione sul lavoro dei tribunali, disponibile qui: http://www.bienestaryproteccioninfantil.es/imagenes/tablaContenidos03SubSec/juzgado_Gu%C3%ADa%20_niño.pdf (ultimo accesso 23 aprile 2018).



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accettate dal tribunale e se il minorenne debba o meno fornire una ulteriore dichiarazione. In quanto raccomandazione e non obbligo giuridico, vi sono ancora casi nei quali la testimonianza del minorenne viene registrata e, anni dopo, gli viene richiesto di partecipare al processo."[129]

Il caso di studio presentato nella Tabella 1 è stato anche incluso nel rapporto su una giustizia a misura di minorenne della FRA Agency, il quale conclude che "in Spagna, i minorenni preferiscono gli interrogatori condotti da psicologi specificatamente formati presso gli uffici di supporto alla vittima e nelle strutture a misura di minorenne del tribunale rispetto agli interrogatori condotti dai giudici in tribunale."[130] Lo stesso studio ha mostrato che "in Spagna, i minorenni hanno indicato che gli stessi psicologi che hanno condotto le valutazioni pre-processo li hanno supportati negli interrogatori durante il processo, e hanno commentato positivamente i casi in cui gli psicologi hanno mediato tra loro e il tribunale."[131]

In Spagna, la legislazione adottata per recepire la Direttiva Vittime ha identificato gli Uffici di Supporto alle Vittime come i principali soggetti responsabili di realizzare una valutazione individuale. Alcune regioni hanno effettuato un passaggio successivo e stabilito gruppi di lavoro specializzati per supportare i minorenni vittime, come nel caso della Catalogna e del suo *Team di assistenza tecnica penale*. Oltre alla Legge 4/2015 del 27 aprile sullo Statuto delle Vittime di Reato, la Spagna ha adottato nello stesso anno il Decreto Reale 1109/2015 dell'11 dicembre, che regola il lavoro degli Uffici di Supporto alle Vittime. In questo decreto, la creazione del Consiglio di Consulenza per l'Assistenza alle Vittime è particolarmente rilevante, in quanto potrebbe giocare un ruolo fondamentale nel supervisionare, valutare e migliorare il lavoro degli Uffici di Supporto alle Vittime.

## 5.4. UK – Inghilterra e Galles

In Inghilterra e Galles, le valutazioni individuali e le misure speciali (per minorenni vittime di reato) sono state introdotte nel sistema di giustizia penale attraverso il **"*Codice di Pratiche per le Vittime di Reato*".** Si

[129] Save the Children (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema, Page 111.
[130] FRA (2017) Child-friendly justice. Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States.
[131] Ibid.


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tratta di un codice che è stato modificato due volte, una prima volta nel 2013 ed una seconda volta nel 2015 in seguito al recepimento della DV.

Con la prima modifica il Codice ha introdotto il diritto per le vittime di leggere una *Dichiarazione Personale delle Vittima* (*Victim Personal Statement* o VPS) in tribunale e di ricevere informazioni sulla possibilità di prendere parte a programmi di giustizia riparativa. La VPS da alla vittima la possibilità di condividere le informazioni circa le conseguenze che il reato ha avuto sulla stessa e sulla propria famiglia. Si differenzia rispetto ad una *dichiarazione testimoniale* che descrive ciò che è successo al momento del reato. Rendere una VPS è facoltativo e spetta a tutte le vittime che denunciano un reato alla polizia (si veda Supporto alle Vittime).[132]

La seconda modifica, del 2015, è il frutto del recepimento della Direttiva Vittime ed ha abbracciato i seguenti emendamenti: ***innanzitutto***, l'ampliamento della definizine di vittima al fine di includere le vittime di tutti i reati[133] (precedentemente erano comprese solo le vittime di alcuni tipi di reato, in particolare reati gravi, come ad esempio l'abuso sessuale etc.); ***secondariamente,*** la garanzia che le vittime abbiano il diritto di ricevere supporto ed informazioni da parte di tutti gli organismi competenti[134]; e in ***terzo luogo***, l'assicurare che tutte le vittime che denunciano un reato ricevano un riconoscimento scritto dalla polizia (si veda ibid.).[135]

Il governo del Regno Unito fornisce sul suo sito internet materiale informativo in diversi formati e versioni del Codice, comprendente video, volantini o versioni in un linguaggio a misura di minorenne (si veda: versioni di facile lettura).[136]

[132] Per ulteriori informazioni più dettagliate su come funzioni esattamente la VPS si veda il seguente sito del Supporto alle Vittime: https://www.victimsupport.org.uk/help-and-support/your-rights/victim-personal-statements (accessed on 12th April 2018).
[133] Sebbene il termine vittima trovi una definizione nella legislazione Inglese (a differenza di quanto avviene in altri SM), la vittima non è parte del processo penale e, pertanto, non ha il diritto di essere raprresentata nel processo (per ulteriori dettagli sul quadro giuridico si veda l'altro Pan-European report del Progetto D3.6).
[134] Si veda "fonrnitori di servizi" in tale sezione.
[135] https://www.victimsupport.org.uk/help-and-support/your-rights/victims-code (ultimo accesso effettuato il 12 Aprile 2018).
[136] https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime (ultimo accesso effettuato il 12 Aprile 2018).



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In base a tale Codice, i fornitori di servizi dovrebbero realizzare una **valutazione individuale**[137] per determinare il tipo di supporto di cui una vittima potrebbe aver bisogno, dopo aver subito un reato. La prima valutazione spesso avviene presso la polizia. Ciononostante, il suo svolgimento dipende dalle singole vittime e dal loro primo punto di contatto. Mentre nella maggior parte dei casi è condotta dalla polizia, essa può anche essere svolta dai cosiddetti fornitori di servizi, o da una organizzazione di supporto non statutaria. La valutazione include l'identificazione dei bisogni di una vittima e dello status di vulnerabilità. Questi bisogni possono essere rivalutati durante le successive indagini svolte dalla polizia ("aggiornamenti sull'indagine adattate ai bisogni delle vittime") (si veda il Codice Vittime 2015: 8).

Attraverso questo processo, vengono identificate misure speciali che considerano i bisogni individuali di una vittima (tipo di reato, età della vittima). Queste misure includono: connessioni video in diretta, dichiarazioni video-registrate, schermi attorno allo spazio dei testimoni e assistenza nella comunicazione, incluso l'uso di intermediari (si veda ibid.).[138]

I servizi di supporto alle vittime (come i servizi sociali) non sono inclusi nella lista dei fornitori di servizi in quanto sono organizzazioni non-statutarie e sono quindi principalmente responsabili di fornire supporto emotivo e tecnico alle vittime di reato, come per esempio come convivere con gli effetti di un reato. Questo significa che essi non rientrano nel Codice Vittime, né nelle sue disposizioni; aspetto che è stato criticato da alcuni esperti.

Il Codice di Pratica costituisce una guida pratica per tutti gli attori istituzionali che sono coinvolti nella protezione delle vittime di reato. Esso fornisce istruzioni utili su come svolgere una valutazione individuale e su come comunicare con le vittime in maniera appropriata, spiegando altresì quanto velocemente le vittime dovrebbero ottenere informazioni sulle diverse procedure o quali organizzazioni possono aiutarle a convivere con gli effetti di un reato.

Inoltre, il Codice contiene un capitolo su bambini e giovani vittime di reato, con due sezioni distinte: una fornisce dettagli e informazioni ben comprensibili per le stesse vittime (sui loro diritti, descrizione delle

[137] Per la lista completa dei fornitori di servizi, si veda: Code of Practice for Victims of Crime, p.2, esso include 14 fornitori di servizio totali, tra i quali: The Crown Prosecution service, Police and Crime commissioners, Youth Offending Teams, o il Witness Care Unit, solo per citarne alcuni.

[138] Per una lista completa delle misure speciali si vedano i seguenti paragrafi del Codice di Pratica per le Vittime di Reato: 1.13-1.15 del Capitolo 1 1, pp. 15-16.



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procedure, obblighi dei fornitori di servizi), la seconda sezione, invece, fornisce informazioni e linee guida per operatori e fornitori di servizi.

### 5.4.1. Buone prassi in Inghilterra e Galles

Il successo di queste linee guida legali nella pratica può essere meglio stabilito dalle stesse vittime. Le vittime hanno davvero accesso a tutte le misure a cui hanno diritto? La valutazione viene realizzata in maniera appropriata, in un periodo di tempo adeguato e su base individuale? Le vittime ricevono informazioni in maniera appropriata?

La Commissione Vittime ha realizzato tale valutazione nello studio *"A review of children's entitlements in the Victims' Code"* del 2017. Lo studio ha raggiunto alcune conclusioni, che devono tuttavia essere considerate attentamente perché vi sono alcuni limiti in termini di rappresentatività. Si tratta di uno studio qualitativo, che ha preso in considerazione le interviste con 12 bambini e giovani (o i loro genitori) tra i nove e i 17 anni e solo vittime di sesso femminile che hanno subito reati violenti, abuso o violenza sessuale[139]. Di conseguenza, la relazione rileva:

> "Non possiamo sapere da tale analisi se la loro esperienza del sistema di giustizia penale sia specifico per le vittime di questo tipo di reato o se tutte le giovani vittime condividono un'esperienza simile" (ibid.: 21).

Inoltre, la relazione mostra alcuni pregiudizi in termini geografici, avendo incluso solo alcune parti del Regno Unito. Tuttavia sono stati inclusi anche i risultati di un altro rapporto: *The Measuring Up report* del 2009, le cui ricerche si sono basate su 182 interviste di giovani testimoni (si veda ibid.: 17).

Su questa base, sono stati raggiunti risultati significativi in termini di soddisfazione della vittima minorenne, come ad esempio, quando ricevono i provvedimenti e le informazioni a cui hanno diritto. Il codice prevede che i minorenni debbano essere informati delle misure speciali durante le indagini della polizia.

La maggior parte dei partecipanti al rapporto della Commissione Vittime, al contrario, ha riferito di essere stato informato solamente su alcune misure, non tutte, o che le misure non sono state applicate in maniera adeguata e che ad alcuni partecipanti non è stato detto nulla rispetto alle misure speciali. La quantità di

[139] Per informazini più dettagliate circa la metodologia si veda Victims´ Commissioner 2017: p. 19, e per ulteriori informazioni sui limiti della ricerca si veda p. 21, http://victimscommissioner.org.uk/app/uploads/2014/10/Are-we-getting-it-right-for-young-victims-of-crime.pdf (ultimo accesso effettuato il 12 Aprile 2018).



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informazioni dipendeva inoltre dallo stato dell'indagine di polizia (si veda ibid.: 23). Per fornire un esempio pratico dell'esperienza di un partecipante durante il processo:

> "Il modo in cui le misure speciali sono applicate è importante per assicurare che esse proteggano il minorenne vittima come dovrebbero. Per esempio, a Jenny (di anni17) era stato concesso l'utilizzo di uno schermo durante la sua testimonianza così da non vedere e non essere vista dall'imputato. Ciononostante, ha dichiarato: *Quando ho lasciato l'aula di tribunale, lui era ancora lì dietro allo schermo. Avrebbero dovuto portarlo fuori per non farmelo vedere. Che senso ha usare uno schermo quando devo comunque vederlo uscendo* (Jenny, 17 anni)" (ibid.: 24).

Un altro esempio sul diritto a rilasciare una Dichiarazione Personale da parte della Vittima (VPS) mostra che questa opportunità è stata concessa solo a tre minorenni sui 12 che hanno partecipato a tale studio. Lo stesso risultato emerge nell'Indagine Penale per Inghilterra e Galles – solo il 15% delle vittime ha avuto l'opportunità di rilasciare una Dichiarazione Personale nel 2015/16 (si veda ibid.: 24). L'esame ha, inoltre, riscontrato che non tutti i bambini e ragazzi hanno ricevuto informazioni adeguate sul servizio di consulenza o sulle opportunità di supporto e sulle organizzazioni esistenti. Alcuni di loro si sono recati autonomamente presso i servizi di supporto o vi sono stati indirizzati dal loro assistente sociale.

I minorenni che hanno partecipato all'esame a volte si sono sentiti frustrati per il ritardo nel trattare i loro casi e per il fatto di non essere stati informati di questi ritardi durante l'indagine (si veda Commissione Vittime 2017).

Poichè molti dei diritti citati nel Codice Vittime si riferiscono al diritto della vittima di ricevere informazioni adeguate sul proprio caso, in maniera tempestiva e accurata, il Codice è molto promettente quando tale diritto viene rispettato. La qualità della comunicazione tra vittime e prestatori di servizi viene vista dalle stesse vittime come uno degli aspetti più importanti per convivere in maniera positiva con l'impatto della vittimizzazione.

## 5.5. Finlandia



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In Finlandia, il recepimento delle disposizioni della DV sulla **valutazione dei bisogni individuali** (Art. 22) si è rivelato superfluo perchè già esistevano disposizioni che rispondevano ai requisiti fissati dall'articolo 22 (si veda IVOR 2016)[140].

Nella legislazione nazionale si trovano diverse istruzioni per la valutazione individuale, in particolare nella Legge sull'Indagine Penale Finlandese[141] con riferimento a specifici gruppi di vittime (vulnerabili), similmente a quanto avviene in Germania e Austria. Queste istruzioni raggiungono decisamente lo scopo di una valutazione dei bisogni individuali in base alla Direttiva Vittime. La Legge sull'Indagine Penale dichiara che le autorità investigative sono responsabili e devono sempre valutare il bisogno delle vittime ad una protezione speciale (si veda Savonen 2017:8). Secondo Savonen, il Ministero degli Affari Interni ha anche stabilito un comitato di lavoro per sviluppare ulteriormente il processo relativo alla valutazione individuale in Finlandia. I bambini o le vittime minorenni sono considerati particolarmente vulnerabili e hanno quindi specifici diritti e accesso a misure speciali, già esistenti in Finlandia in base alla normativa nazionale.

Gli agenti di polizia hanno un ruolo particolarmente rilevante nell'identificare i bisogni specifici delle vittime, in quanto sono in massima parte le prime figure che entrano in contatto con le vittime. Di conseguenza, è importante che gli operatori, come la polizia finlandese, ricevano una formazione adeguata a condurre tale valutazione.[142] Secondo gli autori dello studio IVOR, gli operatori finlandesi hanno aderito al piano di sviluppo di un modulo con una serie di domande standardizzare per valutare i bisogni individuali delle vittime, ma rimane poco chiaro se questo sia di fatto implementato nella pratica.

### 5.5.1. Buone prassi in Finlandia

In Finlandia, sono stati avviati due progetti per una migliore presa in carico delle vittime di reati, al fine di migliorare la qualità di protezione delle vittime vulnerabili, come bambini e giovani.

Successivamente alla denuncia di un reato, i minorenni sono immediatamenti sottoposti ad una valutazione dei rischi e cominciano a beneficiare di misure speciali per essere supportati nelle partecipazione al

[140] Si vedano anche le spiegazioni nella sezione 4.5.2. di questo rapporto, dove viene brevemente introdotto il contesto legale di recepimento della DV in Finlandia.
[141] Legge sulle Indagini precedenti al processo 22.7.2011/805, si veda anche: https://www.poliisi.fi/crimes/pretrial_investigation_of_an_offence (ultimo accesso 18 aprile 2018).
[142] Gli autori del rapporto IVOR (2016) hanno condotto alcune interviste con diversi operatori, confermando che in Finlandia gli agenti di polizia responsabili della valutazione individuale e gli operatori dei servizi specializzati ricevono una formazione adeguata.


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processo, al fine di ridurre i rischi di vittimizzazione secondaria (si veda IJJO 2014/16). In Finlandia, alcuni agenti di polizia sono specializzati in indagini sui reati che coinvolgono minorenni. Per questo motivo, la Finlandia ha iniziato un **progetto** chiamato ***Senja: Sensitiveness model for professionals of Jurisprudence (Modello di sensibilità per operatori della giurisprudenza).*** In questo contesto tutti gli operatori che lavorano con le vittime o con i testimoni ricevono una formazione appropriata.[143] L'approccio sensibile alla vittima di *Senja* viene insegnato a polizia, procuratori e personale del tribunale. Il suo obiettivo principale è quello di fornire informazioni rilevanti e adeguate sulle conseguenze dell'essere sottoposti a violenza domestica e a reati sessuali e di offrire consulenza per quanti lavorano con vittime vulnerabili nelle diverse fasi del processo penale (si veda ibid.: 28). Il sito web di *Senja* ha sei aree principali in cui vengono fornite informazioni per gli operatori coinvolti nel processo giuridico delle vittime di reato: *"Traumatizzazione", "Vittime di reati sessuali", "Vittime di violenza domestica", "Vittime disabili", "Giovani vittime", "Vittime di origine straniere"* e una scheda aggiuntiva allo scopo di fornire *"Consulenza per le vittime"*, che fornisce informazioni a vittime particolarmente vulnerabili sui loro diritti a ricevere consulenza e supporto gratuiti. L'informazione è fornita in tre lingue: finlandese, svedese e inglese e le "(…) cartelle con le istruzioni sono state distribuite in tutte le stazioni di polizia, uffici dei pubblici ministeri locali, uffici pubblici di assistenza legale gratuita e in tutti i tribunali in Finlandia" (IJJO 2014/16: 28). E' importante sottolineare che gli agenti di polizia ogni anno ricevono una formazione speciale sui minorenni vittime.

Un altro progetto implementato in Finlandia si chiama ***La casa dei bambini – Il modello Barnahus*** e costituisce un progetto pilota, introdotto nel 2014, basato sul modello statunitense del Child Advocacy Centre (CAC). Questo approccio è usato in maniera crescente nei paesi del nord Europa e nasce in Islanda, dove è applicato dal 1985. L'approccio è stato sviluppato come risposta all'abuso sessuale dei minorenni. L'idea del modello Barnahus e del modello CAC degli Stati Uniti, è incentrata su un approccio multi-professionale e integrato alla protezione del minorenne vittima (si veda Johansson et al. 2017: 5)[144]. "Entrambi i modelli si basano sulla comprensione del fatto che l'abuso di un minorenne è un fenomeno complesso, che richiede una competenza altamente specializzata e servizi coordinati" (ibid.: 5).

L'idea principale del progetto in Finlandia è quella di fornire un contesto di reciproca cooperazione e uno

[143] http://senjanetti.fi/en (ultimo accesso 19 aprile 2018).
[144] Per una descrizione dettagliata di questo specifico modello di protezione dell'infanzia, si veda il primo capitolo di: Johansson et al. 2017, Implementing the Nordic Barnahus Model: Characteristics and Local Adaptions, pp. 1-31, https://link.springer.com/content/pdf/10.1007%2F978-3-319-58388-4_1.pdf (ultimo accesso 19 aprile 2018).


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spazio fisico comune (il "principio di una porta", o "sotto lo stesso tetto ") (ibid.), dove tutti gli operatori coinvolti lavorano insieme in un' unica squadra, come ad esempio, gli operatori della salute, gli assistenti sociali, gli agenti di polizia e i pubblici ministeri. In base alla ricerca di Johansson et ali, le caratteristiche del modello Barnahus variano nei diversi paesi nordici: in Finlandia, c'è una particolare attenzione per l'interrogatorio forense intensivo condotto da psicologi forensi, sebbene su richiesta della polizia. Il modello di sviluppo in Finlandia è fortemente collegato a strutture collaborative pre-esistenti, come per esempio le Unità psichiatriche forensi per bambini e adolescenti esistenti nei cinque ospedali universitari, ed alle forti relazioni con il settore della salute (ibid.: 22).[145]

La disponibilità di **programmi formativi** annuali e interdisciplinari su come condurre gli interrogatori con i minorenni da parte di operatori di polizia e della salute, va evidenziata come un'ulteriore e promettente prassi in Finlandia. La formazione è organizzata dal Consiglio Nazionale della Polizia e dal Centro Psichiatrico Forense. "La maggior parte dei funzionari di polizia e degli psicologi che lavorano all'interno dei procedimenti penali ha frequentato il corso e in generale concorda sul fatto che esso abbia contribuito ad un'udienza preliminare più a misura di minorenne" (FRA 2015:100).[146]

## 6. Conclusioni e discussione

L'implementazione della Direttiva Vittime UE, che definisce standards minimi per l'assistenza alle vittime, ha causato alcune difficoltà tra gli Stati Membri UE nelle relative giurisdizioni nazionali. A livello pan-Europeo, il contesto di assistenza alle vittime legato al recepimento della Direttiva risulta molto diversificato.

Nella prospettiva di una analisi comparativa (*comparative problematization* - si veda Jasanoff/Metzler 2018), è chiaro che ciascun paese interpreti ed operi nel proprio ambito di infrastrutture di supporto alla vittima e quindi, inevitabilmente, questo produce risposte divergenti rispetto all'intricato compito di dare attuazione alla Direttiva. Il confronto rivela contesti legislativi e socio-pratici nazionali distinti nei quali operatori e legislatori devono agire e quindi emergone comprensioni diverse sulle responsabilità di ciascuno

[145] Per maggiori dettagli sull'esatta procedura di tali metodi di interrogatorio forense, si veda lo studio già citato: IJJO 2014/16, pp. 20-22.
[146] http://fra.europa.eu/en/publication/2015/child-friendly-justice-perspectives-and-experiences-professionals-childrens (ultimo accesso 19 aprile 2018).


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stato nel proteggere le vittime di reato a livello nazionale. Ciononostante, c'è un problema principale nel confrontare gli Stati Membri, in relazione all'implementazione pratica della Direttiva Vittime:

> "Il desiderio di avvalersi di servizi di supporto alla vittima, di avere una comprensione globale dell'esperienza delle agenzie di giustizia penale a seguito della vittimizzazione, di comprendere l'impatto del processo di giustizia penale sul benessere emotivo delle vittime, l'importanza dei diversi aspetti di assistenza alla vittima, nessuno di questi rappresenta un buon motivo per effettuare un confronto tra gli Stati Membri UE, dato che nella maggior parte dell'Unione Europea non vi è una ricerca empirica disponibile che offra una risposta" (Rapporto IVOR 2016: 197).

La trasposizione degli standard minimi di implementazione sull'assistenza alle vittime nell'Unione Europea si è rivelata essere molto divergente, a partire da interpretazioni diverse dei legislatori nazionali dei termini e concetti chiave della Direttiva[147]. Le differenze sono, inoltre, dovute a tradizioni legali diverse in materia di supporto alle vittime.

"Al di là di una legislazione anche simile non vi sono in realtà vissuti simili, poiché le strutture delle organizzazioni, le priorità politiche e i fondi finanziari differiscono ampiamente. Nella politica e nella pratica, le differenze di conseguenza accresceranno" (IVOR report 2016: 196).

Inoltre, il progetto IVOR ha mostrato la mancanza di una ricerca empirica, nella maggior parte dei paesi europei, che tenga in considerazione la vittima e che sarebbe una base ideale per confrontare gli standard in atto negli Stati Membri UE. Ciononostante, da questo confronto è emerso lo sviluppo, in ogni paese, di un sistema di supporto alla vittima, nonchè l'esperienza dei legislatori e degli operatori nazionali nelle politiche per le vittime, che permettono, al contrario, di trarre alcune conclusioni sull'Unione Europea quale attore politico (see ibid.). Questo per dire che comprendere la portata dell'impatto della Direttiva Vittime sulle legislazioni e pratiche nazionali è difficile da accertare, senza riscontro dell'effettivo impatto che la maggior parte delle misure di assistenza alle vittime ha sulle stesse e data la mancanza di un'adeguata ricerca in questo ambito.

Vale la pena di menzionare **l'Inghilterra e il Galles** in questo contesto perchè le agenzie statutarie e non hanno condotto alcune ricerche empiriche sulla vittimologia, includendo le esperienze e le prospettive di

[147] Si veda il rapporto complementare del progetto E-PROTECT sul recepimento legislativo della Direttiva Vittime, che definisce in maniera più dettagliata le diverse interpretazioni dei concetti legali definiti dalla Direttiva.



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minorenni vittime per valutare quanto siano efficaci i servizi e i programmi di supporto nel Regno Unito (in particolare Inghilterra e Galles).[148] Determinare e monitorare gli effetti del supporto alle vittime usando i resoconti delle stesse vittime sembra essere molto promettente. In **Austria** e **Finlandia** c'è una tradizione – non molto estesa - di ricerca sulla soddisfazione delle vittime (in Austria con particolare attenzione alla violenza domestica). Ciononostante, ogni valutazione circa la portata degli sforzi politici deve affrontare l'esperienza vissuta dalle vittime, la loro soddisfazione rispetto al sistema di giustizia e le misure offerte. Pertanto, è necessario condurre una ricerca comprensiva che includa le esperienze degli utenti finali. A questo proposito, il **Regno Unito** può definitivamente essere citato quale buona prassi.

Quindi, un altro aspetto chiave correlato consiste nell'includere e comprendere il *ruolo del contesto* nel processo decisionale UE, il mosaico di paesi UE richiede un approccio diverso rispetto al processo decisionale e alla sua implementazione. I decisori politici UE devono considerare tali diversi fattori contestuali, nonché i diversi sistemi giuridici (civil law vs common law nel Regno Unito) che determinano gli specifici sistemi di supporto alle vittime di ogni paese, specialmente quando l'obiettivo è quello di raggiungere standards minimi (si veda ibid.).

> "Nell'assistenza alle vittime questa necessità si sente ancora più fortemente, considerando che il **contesto** è anche un fattore importante nell'esperienza stessa della vittima, nell'interazione tra la vittime e coloro che gli prestano assistenza, nel modo in cui l'assistenza alle vittime si colloca nella propria rete, considerando che la natura dell'assistenza alle vittime rappresenta un fattore di *empowerment* per i singoli cittadini che deve essere rafforzato dalle istituzioni. Migliorare la posizione della vittima a livello nazionale fa emergere tutta la complessità e difficoltà nel farlo in un singolo paese: circostanza questa aggravata dal fatto che la UE comprende 28 Stati Membri" (ibid.: 200).

Da questo studio si possono trarre alcune conclusioni sulle buone pratiche e sulle difficoltà, includendo i risultati dei rapporti nazionali prodotti in precedenza nel contesto del progetto E-PROTECT. Inoltre, le difficoltà sopra delineate, relative alle politiche UE in generale e alla Direttiva Vittime in particolare, dovrebbero essere sorrette da alcuni dei risultati empirici di questa ricerca.

[148] Come per esempio il rapporto del Commissario per le Vittime, ma anche rapporti prodotti da agenzie non statutarie, come il rapporto del Victim Support "Getting it right for young victims and witnesses", https://www.victimsupport.org.uk/sites/default/files/You%20%26%20Co%20-%20Getting%20it%20right%20for%20young%20victims%20and%20witnesses.pdf (ultimo accesso 9 aprile 2018).



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L'informazione di alta qualità fornita dal Governo del **Regno Unito** e dalle diverse organizzazioni per il supporto alle vittime di reato lascia ben sperare. L'ultimo aggiornamento del Codice Vittime del 2015 ha probabilmente avuto un impatto significativo sulla protezione delle vittime. Ne risulta che alle vittime sono fornite informazioni dettagliate e rilevanti sui loro diritti, sui doveri di coloro che prestano supporto e sul periodo di tempo entro il quale la polizia deve inviare alla vittima il riscontro sulla denuncia di un reato, o in quale periodo di tempo le vittime devono essere aggiornate sulle decisioni prese dalle autorità in un linguaggio appropriato. In altri Stati Membri, come la **Germania,** mancano materiali informativi rilevanti e accessibili dal punto di vista linguistico per le vittime (si veda EPRS 2017). In particolare, considerando la complessità della legge tedesca, questo sarebbe un passaggio necessario verso un approccio ancora più orientato alla vittima, perlomeno per permettere alle stessa di essere meno dipendente dalle autorità statali. Il Regno Unito, al contrario, ha prodotto questo testo giuridico uniforme (Legge sulla Pratica per le Vittime di Reato) che costituisce la base legale per tutte le parti coinvolte nelle procedure penali, incluse vittime e operatori. Questo tipo di prassi rappresenta una maturità politica diversa per coloro che sono vittime di reato.

Tuttavia, il Codice non prevee l'obbligo per le agenzie di lavorare insieme ed in maniera coordinata, per supportare le vittime nel loro percorso attraverso il sistema di giustizia penale, nel Regno Unito. Dato che le vittime di reato incontrano un gran numero di operatori di agenzie diverse, il lavoro multi-agenzia costituisce un aspetto importante per assicurare che i minorenni vittime siano supportati in maniera adeguata da parte di tutti gli attori coinvolti. Ciononostante, il Commissario per le Vittime ha riconosciuto alcune lacune relative alla cooperazione multi-agenzia

I servizi sociali non rientrano nel Codice Vittime e vi sono quindi alcuni problemi che emergono rispetto al fatto di fornire una protezione dell'infanzia adeguata e comprensiva, che determina la continua mancanza di informazioni sui loro casi. Il Commissario per le Vittime ha percepito una mancanza di risposte coordinate tra il Tribunale Reale e il Tribunale della Famiglia, o tra la polizia e i servizi sociali (ibid.). Questa mancanza potrebbe essere risolta fornendo a ciascun individuo una difesa individuale con un ruolo di coordinamento, che fornisca alla vittima tutte le informazioni rilevanti, come per esempio l'indirizzamento ai servizi di supporto appropriati e il monitoraggio dei propri progressi nel caso in cui i bisogni cambino (ibid.: 35).

I pochi dati disponibili in **Portogallo,** relativi alle pratiche di protezione dell'infanzia, sia in relazione alle misure di intervento sia all'esperienza dei minorenni vittime di reato che sono stati sottoposti a interrogatori e procedimenti in tribunale, dimostrano che vi sono gravi mancanze organizzative, di risorse e di formazione


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che devono essere colmate[149]. La legislazione a misura di minorenne ha compiuto lenti progressi nel paese, ma gli impegni internazionali hanno permesso al Portogallo di far avanzare il contesto normativo nazionale e adesso esiste un contesto di protezione dei minorenni vittime comprensivo.

Per quanto riguarda l'attuazione delle procedure di valutazione individuale, nel caso del Portogallo dovrebbero essere considerati i seguenti problemi: giudici e pubblici ministeri si affidano a diversi soggetti che intervengono in prima linea con i minorenni vittime, come ad esempio le locali Commissioni di protezione dell'Infanzia. I critici sostengono, tuttavia, che i minorenni dovrebbereo continuare ad essere supportati da qualcuno che già conoscono e che li sostiene in altri settori. Questo sarebbe il miglior interesse del minore, dal momento che si sente maggiormente a proprio agio ad essere ascoltato da qualcuno che conosce e di cui ha fiducia, piuttosto che metterlo davanti ad un adulto che non conosce per discutere di esperienze traumatiche. Inoltre, non esistono procedure uniformi, protocolli o linee guida specializzate per la molteplicità degli attori che effettua la valutazione individuale. APAV ha inoltre sottolineato che sembra esserci una riluttanza da parte delle autorità pubbliche a seguire un protocollo specifico per svolgere le valutazioni individuali, perché temono un ulteriore carico di lavoro[150].

In futuro sarà importante per il Portogallo effettuare valutazioni d'impatto sulle proprie strutture di supporto alle vittime minorenni al fine di colmare le lacune.

In **Spagna**, la legislazione e le strutture esistenti - come ad esempio la valutazione individuale - hanno il potere, quando effettivamente implementate, di supportare i minorenni vittime in maniera adeguata. Nei prossimi anni, sarà importante monitorare l'implementazione delle due parti della legislazione sulle quali ci si è soffermati in questo rapporto, per comprendere se stiano contribuendo a superare alcune delle barriere e delle sfide incontrate dai minorenni a contatto con il sistema di giustizia. In modo simile al Portogallo, i dati a disposizione e i programmi esistenti potrebbero fornire la base per un avanzamento della giustizia a misura di minorenne in Spagna e, nello specifico, per implementare le misure definite dalla Direttiva Vittime. Sarà cruciale che gli attori chiave si impegnino e concentrino la loro attenzione per armonizzare le

[149] Qui è disponibile uno studio per valutare il lavoro delle Commissioni per la Protezione dell'Infanzia: http://www.analiatorres.com/pdf/SINOPSEfinalcriancasconclrecomendacoes.pdf (ultimo accesso 30 aprile 2018).
[150] APAV. Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001


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procedure e le prassi nel paese, assicurando che non vi siano disparità tra le diverse regioni o tra aree urbane e rurali, come nel caso dell'Austria per esempio.

**Germania**, **Finlandia** e **Austria** sono gli unici tre paesi in questa selezione di SM che hanno un organo nazionale centrale che coordina il supporto alle vittime. Pertanto, la qualità delle prestazioni appare in tali Paesi più coerente che in altri paesi (si veda EPRS 2017).

In **Austria** e **Germania** ci sono alcune attività di cooperazione multi-agenzia, come le "Tavole Rotonde", che includono diversi attori coinvolti nell'assistenza alle vittime. Queste attività sembrano straordinariamente promettenti, in quanto la cooperazione multi-agenzia costituisce uno degli aspetti più importanti per armonizzare le procedure tra i diversi attori coinvolti (polizia, avvocati, pubblici ministeri, operatori della salute, psicologi, operatori sociali) e migliorare sia la situazione delle vittime di reato (minorenni), contribuendo ad evitare la vittimizzazione secondaria, sia la situazione lavorativa degli stessi operatori. Anche il modello Barnahus in **Finlandia** può essere visto come un approccio multidisciplinare promettente. Esso è già usato in maniera crescente nei paesi del nord Europa e condivide l'idea di un approccio integrato nella protezione delle vittime minorenni.

**Germania** e **Austria** forniscono supporto psicosociale gratuito a vittime particolarmente vulnerabili. Si tratta di una misura importante, specialmente per i minorenni vittime, per stabilire un approccio di protezione integrato, adatto ai minorenni e comprensivo. La Finlandia ha una misura simile sancita dalla legge, ovvero il diritto ad un consulente legale, ma mancano le risorse economiche. Questo è fornito gratuitamente a determinate circostanze e relativamente a determinati reati, quali i casi di violenza domestica, abuso sessuale o gravi reati contro la vita, la salute o la libertà.

Chiudendo il cerchio, questo studio ha mostrato, tra le altre cose, che è essenziale considerare il contesto di ciascun paese nel quale il supporto alla vittima si sviluppa, in particolare relativamente a progetti molto ambiziosi quali la Direttiva Vittime e la sua implementazione nei 28 Stati Membri (si veda il rapporto IVOR 2016). Il supporto alla vittima varia inevitabilmente da un'area all'altra dell'Unione Europea e, quindi, i decisori politici europei dovrebbero tenere in considerazione tali contesti e i diversi ambienti per sviluppare mezzi più flessibili per influenzare la politica e le pratiche nei diversi Stati Membri. Il confronto è possibile, ma valutare l'impatto della Direttiva significa tenere in considerazione le particolarità nazionali a livello legale e sociale e partire da queste. Tale approccio potrebbe anche essere la base ideale per sviluppare la


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Direttiva, e solo a quel punto sarà possibile ottenere esperienze migliori vissute dalle vittime di reato in Europa.



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JUST-JACC-VICT-AG-2016

Action grants to support transnational projects to enhance the rights of victims of crime

JUSTICE PROGRAMME

GA No. 760270

# Enhancing PROtection of Children – vicTims of crime

# E-PROTECT

## WP3: Research and Data Collection

# D3.13 pan-European Best Practices Report on individual assessment methodologies of child victims of crime

## WP3 Leader: VICESSE



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# Περίληψη

Ένας από τους ειδικούς στόχους του ερευνητικού προγράμματος E-PROTECT είναι η ενίσχυση των δικαιωμάτων προστασίας των παιδιών-θυμάτων εγκληματικότητας μέσα από τη διερεύνηση της μεταφοράς της Οδηγίας 2012/29/ΕΕ (Οδηγία για τα θύματα) στο εθνικό δίκαιο, που εμπίπτει στη δικαιοδοσία πέντε κρατών μελών (Βουλγαρία, Αυστρία, Ρουμανία, Ελλάδα και Ιταλία). Επιπλέον, διερευνά πώς λειτουργεί στην πράξη μια βασική νομική διάταξη της Οδηγίας για τα θύματα: [*Άρθρο 22: Ατομική αξιολόγηση των θυμάτων για τον προσδιορισμό ειδικών αναγκών προστασίας*] και ως εκ τούτου, έχει ως στόχο να εμπνεύσει και να ενισχύσει ένα διεπιστημονικό δίκτυο επαγγελματιών με τη διεξαγωγή εργαστηρίων σε κάθε μία από τις χώρες εταίρους για στοχευμένους επαγγελματίες στην περαιτέρω πορεία του έργου, καθώς και την εφαρμογή μιας διαδικτυακής πλατφόρμας συνεργασίας, όπου μπορούν να αποκτώνται και να ανταλλάσσονται πληροφορίες μεταξύ των επαγγελματιών.

Αυτή η πανευρωπαϊκή έκθεση πάνω στις *«βέλτιστες πρακτικές σε μεθοδολογίες ατομικής αξιολόγησης των παιδιών-θυμάτων εγληματικότητας»* αποσκοπεί στη διεύρυνση της γεωγραφικής και πολιτιστικής εμβέλειας του προγράμματος ώστε αυτό να προσφέρει μια ευρύτερη εικόνα της εφαρμογής των ατομικών αξιολογήσεων σε όλα τα κράτη μέλη της ΕΕ. Αναλύει την πρακτική εφαρμογή των μεθοδολογιών ατομικής αξιολόγησης στα ακόλουθα κράτη μέλη: ***Γερμανία, Πορτογαλία, Ισπανία, Ηνωμένο Βασίλειο (Αγγλία και Ουαλία)*** **και** ***Φινλανδία.*** Επιπλέον, τα ευρήματα των προηγουμένων μεμονωμένων εκθέσεων για τις χώρες: ***Βουλγαρία, Αυστρία, Ρουμανία, Ελλάδα και Ιταλία*** συνοψίζονται και περιλαμβάνονται στην παρούσα έκθεση.

Το δείγμα των κρατών μελών για αυτή την πανευρωπαϊκή έρευνα είναι ιδιαίτερα συναφές από διπλής απόψεως: *πρώτον,* από γεωγραφική και πολιτιστική άποψη, λαμβάνοντας υπόψη τις εθνικές νομοθετικές τους ιδιαιτερότητες και τη διαφορετική μεταφορά της οδηγίας των θυμάτων και πώς αυτές εφαρμόζονται στην πράξη. *Δεύτερον,* δεδομένου του βασικού στόχου του έργου για τη βελτίωση της εφαρμογής των δικαιωμάτων προστασίας τα δικαιώματα προστασίας παιδιών-θυμάτων εγκληματικότητας σε ποικίλες χώρες της ΕΕ, φαίνεται ότι είναι αξιόλογα υποδείγματα, επειδή είτε έχουν χρησιμοποιήσει αξιόπιστες υποδομές υποστήριξης των θυμάτων για μεγαλύτερο χρονικό διάστημα (στην περίπτωση της Αγγλίας και της Ουαλίας, της Γερμανίας και της Φινλανδίας) είτε ανέπτυξαν ειδικούς χειρισμούς των παιδιών-



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θυμάτων ως απότελεσμα της εφαρμογής της οδηγίας για τα θύματα (στην περίπτωση της Ισπανίας και της Πορτογαλίας).

Από την σκοπιά της *συγκριτικής προβληματοποίησης* (βλέπε Jasanoff/Metzler, 2018), είναι εμφανές ότι κάθε χώρα ερμηνεύει και λειτουργεί στο δικό της πλαίσιο υποδομών υποστήριξης των θυμάτων και έτσι δίνει αναπόφευκτα αποκλίνουσες απαντήσεις στο περίπλοκο έργο της δράσης για την εφαρμογή της οδηγίας. Η μελέτη αυτή χρησιμοποιεί ποιοτική σύγκριση, σκοπός της οποίας είναι η κατανόηση μιας υπόθεσης ή μάλλον υποθέσεων (στην παρούσα έκθεση τους ποικίλους χειρισμούς των κρατών μελών της ΕΕ ως προς τις ατομικές αξιολογήσεις και την αρωγή των παιδιών θυμάτων) στην ιδιαιτερότητα και στη γενικότητα τους μέσω της περιεκτικής περιγραφής των υποθέσεων αυτών. Επιπλέον, αποκαλύπτει διακριτά εθνικά νομοθετικά και κοινωνικο-πρακτικά περιβάλλοντα στο πλαίσιο των οποίων οι επαγγελματίες και οι νομοθέτες πρέπει να δράσουν και με αυτόν τον τρόπο εκθέτει διαφορετικές ερμηνείες των ευθυνών κάθε κράτους μέλους για την προστασία των θυμάτων εγκληματικότητας σε εθνικό επίπεδο. Ως εκ τούτου, η έκθεση έχει ως στόχο να δει τα διαφορετικά πλαίσια και τις πρακτικές της υποστήριξης παιδιών θυμάτων σε κάθε ένα από τα κράτη μέλη μέσα από της ματιά των πλαισίων των άλλων για την υποστήριξη των θυμάτων (βλέπε Akrich/Rabeharisoa 2016).

Σε πανευρωπαϊκό επίπεδο, η εικόνα της αρωγής των θυμάτων σχετικά με τη μεταφορά της οδηγίας αποδεικνύεται πολύ διαφορετική μεταξύ των διαφόρων χωρών στο χώρο της ΕΕ. **Η Φινλανδία,** για παράδειγμα, φαίνεται να έχει μια πιο συστηματική προσέγγιση ως προς τις ατομικές αξιολογήσεις μετά τη μεταφορά της οδηγίας (βλέπε EPRS 2017: 82). Το Ηνωμένο Βασίλειο (ιδίως η **Αγγλία και η Ουαλία** ) έχουν αναπτύξει κάποιες πρακτικές κατευθυντήριες γραμμές (τον *κώδικα πρακτικής για τα θύματα εγκληματικότητας*), ένα μεγάλο όγκο ενημερωτικού υλικού προς το κοινό και ειδικές εκπαιδευτικές δραστηριότητες για τους επαγγελματίες που εμπλέκονται στην υποστήριξη των θυμάτων. Επιπλέον, η **Αγγλία και η Ουαλία**, καθώς και η **Γερμανία** μπορούν να ανατρέξουν σε μια μακρόχρονη παράδοση υποστήριξης των θυμάτων. Η **Πορτογαλία** και η **Ισπανία** είναι αξιοσημείωτες (περιπτώσεις), καθώς και οι δύο έχουν μεταφέρει το πλήρες κείμενο της οδηγίας για τα θύματα στην πράξη κατά λέξη. Εντούτοις, ένα πιθανώς κοινό προβληματικό γεγονός στην υποστήριξη των θυμάτων είναι ο ενίοτε περίπλοκος σχεδιασμός του, όσον αφορά τον συντονισμό και τη συνεργασία στην υποστήριξη των θυμάτων. Αυτό ακριβώς υποδηλώνει και τον σημαντικό παράγοντα για την επιτυχή υποστήριξη των θυμάτων: *διϋπηρεσιακή συνεργασία* μεταξύ των ενδιαφερόμενων φορέων τόσο σε εθνικό όσο και σε


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διεθνές επίπεδο (εξετάζοντας το διασυνοριακό έγκλημα).

Η συμπερίληψη και κατανόηση του *ρόλου του γενικού πλαισίου* στη χάραξη πολιτικής της ΕΕ αποτελεί μια άλλη κρίσιμη πτυχή. Το συνονθύλευμα των χωρών της ΕΕ απαιτεί μια διαφορετική προσέγγιση για τη χάραξη και εφαρμογή πολιτικής, συνεπώς οι υπεύθυνοι χάραξης πολιτικής της ΕΕ θα πρέπει να εξετάσουν ακριβώς αυτούς τους συγκυριακούς παράγοντες και στα δύο επίπεδα, κοινωνικοπολιτικό και νομικό, οι οποίοι όλοι μαζί καθορίζουν τα συγκεκριμένα συστήματα υποστήριξης θυμάτων ανά χώρα .

Συμπερασματικά, η μελέτη αυτή έδειξε, μεταξύ άλλων, ότι είναι σημαντικό να συμπεριληφθεί *το ατομικό πλαίσιο κάθε χώρας* στο οποίο αναπτύσσεται η στήριξη των θυμάτων, ιδίως όσον αφορά τόσο μεγάλα έργα, όπως η οδηγία για τα θύματα και η εφαρμογή της σε 28 κράτη μέλη (βλ. έκθεση IVOR 2016). Η υποστήριξη των θυμάτων ποικίλλει αναπόφευκτα όσον αφορά τη φύση της από μια περιοχή της Ευρωπαϊκής Ένωσης στην άλλη και, ως εκ τούτου, οι διαμορφωτές πολιτικής της ΕΕ πρέπει να λάβουν υπόψη αυτά τα πλαίσια και τα διαφορετικά περιβάλλοντα ώστε να αναπτύξουν πιο ευέλικτα μέσα για να επηρεάσουν την πολιτική και τις πρακτικές των κρατών μελών.


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# Λίστα με συντομεύσεις και ακρωνύμια

| | |
|---|---|
| CAC | Κέντα Υπεράσπισης Παιδιών (Αμερικανικό Μοντέλο) |
| CILEX | Αρμόδιες Αρχές Νομικών Εκπροσώπων (Ηνωμένο Βασίλειο) |
| CRAE | Ένωση για τα Δικαιώματα των Παιδιών για την Αγγλία |
| CSEW | Έρευνα για την Εγκληματικότητα στην Αγγλία και στην Ουαλία |
| EKKA | Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης (Ελλάδα) |
| E-PROTECT | Ενίσχυση Προστασίας των Παιδιών-Θυμάτων Εγκληματικότητας |
| EPRS | Ευρωπαϊκή Κοινοβουλευτική Υπηρεσία Ερευνών |
| EU | Ευρωπαϊκή Ένωση |
| EVVI | Έργο Αξιολόγησης Θυμάτων |
| FRA | Οργανισμός Θεμελιωδών Δικαιωμάτων |
| FAPMI | Διεθνής Ομοσπονδία για την Πρόληψη Παιδικής Κακοποίησης |
| IAM | Μεθοδολογίες Ατομικής Αξιολόγησης |
| IVOR | Εφαρμογή Προσανατολισμένης προς τα Θύματα Μεταρρύθμισης του Συστήματος Ποινικής Δικαιοσύνης στην Ευρωπαϊκή Ένωση |
| LSCB | Τοπικά Συμβούλια Προστασίας των Παιδιών (Ηνωμένο Βασίλειο) |
| MS | Κράτη Μέλη |
| NGO | Μη Κυβερνητική Οργάνωση |
| ONS | Γραφείο Εθνικής Στατιστικής Αρχής (Ηνωμένο Βασίλειο) |
| SotC | Χαμόγελο του Παιδιού (Ελλάδα) |
| RIKU | Rikosuhripäivystys (Υποστήριξη Θυμάτων στη Φινλανδία) |
| RUMI | Ενιαίο Αρχείο Ύποπτων Παιδικής Κακοποίησης (Ισπανία) |
| Victims´ Directive (VD) | Οδηγία για τα Θύματα 2012/29/EU |
| VPS | Προσωπική Κατάθεση Θύματος (Ηνωμένο Βασίλειο) |
| UK | Ηνωμένο Βασίλειο |
| UNCRC | Σύμβαση Ηνωμένων Εθνών για τα Δικαιώματα των Παιδιών |



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# 1. Εισαγωγή

Ο ειδικός στόχος του E-PROTECT είναι η ενίσχυση των δικαιωμάτων προστασίας των παιδιών θυμάτων εγκληματικότητας με τη διερεύνηση της μεταφοράς της Οδηγίας 2012/29/ΕΕ[1] στο εθνικό δίκαιο που εμπίπτει στη δικαιοδοσία των πέντε κρατών μελών (Αυστρία, Βουλγαρία, Ρουμανία, Ελλάδα και Ιταλία). Στις προηγούμενες εκθέσεις των χωρών του έργου[2], κάθε συνεργάτης του έργου έχει επεξεργαστεί περισσότερο την πρακτική εφαρμογή των μεθοδολογιών ατομικής αξιολόγησης (Άρθρο 22 της οδηγίας για τα θύματα, και στο εξής αναφερόμενη ως επί το πλείστον ως IAM) και τα αντίστοιχα ειδικά μέτρα για ιδιαίτερα ευάλωτες ομάδες θυμάτων, όπως τα παιδιά θύματα, σε κάθε χώρα εταίρο (Βουλγαρία, Ρουμανία, Ελλάδα, Ιταλία και Αυστρία).

Αυτή η εργασία έχει ως στόχο να διευρύνει τη γεωγραφικό και πολιτιστικό εύρος για να παράγει μια συνολική εικόνα της εφαρμογής των ατομικών αξιολογήσεων σχετικά με την επαρκή προστασία των παιδιών θυμάτων εγκληματικότητας και των δικαιωμάτων τους, αντίστοιχα, ανάμεσα στα κράτη μέλη της ΕΕ. Είναι αφιερωμένο στην ανάλυση της πρακτικής εφαρμογής των μεθοδολογιών ατομικής αξιολόγησης, η οποία αναφέρεται σε μια κύρια νομική διάταξη της οδηγίας των θυμάτων, *Άρθρο 22: Ατομική αξιολόγηση των θυμάτων για τον εντοπισμό συγκεκριμένων αναγκών προστασίας,* στα ακόλουθα κράτη μέλη: ***Γερμανία, Πορτογαλία, Ισπανία, Ηνωμένο Βασίλειο (Αγγλία και Ουαλία),*** **και** ***Φινλανδία.***

Το *Άρθρο 23* (*Δικαίωμα προστασίας των θυμάτων με ειδικές ανάγκες προστασίας κατά τη διάρκεια της ποινικής διαδικασίας* – σε αυτά περιλαμβάνονται η ποινική έρευνα, καθώς και η ακροαματική διαδικασία) και το *Άρθρο 24 (Δικαίωμα προστασίας των παιδιών-θυμάτων κατά την ποινική διαδικασία*) θα μελετηθούν εξονυχιστικά στην περίπτωση των συγκεκριμένων κρατών μελών. Το Άρθρο 22 αποσκοπεί στην εκτίμηση των ειδικών αναγκών προστασίας των θυμάτων εγκληματικότητας και στον καθορισμό του κατά πόσον και σε ποιο βαθμό θα επωφεληθούν αυτά από ειδικά μέτρα. Αυτά παρέχονται και προσδιορίζονται στα Άρθρα 22, 23 και 24 σχετικά με την ιδιαίτερη

[1] Η οδηγία 2012/29 / ΕΕ αποσκοπεί στη θέσπιση ελάχιστων προτύπων για τα δικαιώματα, την υποστήριξη και την προστασία των θυμάτων εγκληματικών πράξεων και αντικαθιστά την πρόωρη απόφαση 2001/220 / ΔΕΥ του Συμβουλίου (CFD: 2001/220). Στη συνέχεια αναφέρεται ως οδηγία για τα θύματα ή ΟΘ. https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029 (πρόσβαση 15 Μαρτίου 2018).

[2] Βλέπε: E-PROTECT D3.8-12 (εκθέσεις χωρών για μεμονωμένες μεθοδολογίες αξιολόγησης σε BG D3.8, AT D3.9, RO D3.10, IT D3.11, EL D3.12).



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ευαλωτότητα τους (η οποία αναφέρεται στη δευτερογενή και επαναλαμβανόμενη θυματοποίηση, τον εκφοβισμό και τα αντίποινα κατά τη διάρκεια των ποινικών διαδικασιών).[3]

Η ατομική αξιολόγηση λαμβάνει υπόψη την ανάπτυξη και την εφαρμογή της κατά περίπτωση προσέγγισης αναφορικά με τις ανάγκες του θύματος (βλ . Έκθεση INASC 2016: 20). Μια αξιολόγηση με κατά περίπτωση προσέγγιση βασίζεται σε τρεις κύριες πτυχές: α) τα προσωπικά χαρακτηριστικά ενός θύματος, β) τον τύπο και τη φύση του εγκλήματος και γ) τις περιστάσεις του εγκλήματος.

Προκειμένου να αξιολογηθούν οι βέλτιστες πρακτικές και η κατάλληλη εφαρμογή της ΟΘ, το *Κεφάλαιο 5: «άλλες διατάξεις»* της οδηγίας είναι επίσης σχετικό, δεδομένου ότι αναφέρεται στο *Άρθρο 25: Κατάρτιση των επαγγελματιών* και στο *Άρθρο 26 : Συνεργασία και συντονισμός των υπηρεσιών* (βλ. οδηγία 2012/29 / ΕΕ). Αυτά τα άρθρα εξετάζονται επίσης εν μέρει στην παρούσα έκθεση.

## 1.1. Βέλτιστες πρακτικές

Ο προσδιορισμός των βέλτιστων πρακτικών βρίσκεται στον πυρήνα αυτής της έκθεσης. Τέτοιες πρακτικές περιγράφουν διαδικασίες που διασφαλίζουν την επαρκή προστασία των δικαιωμάτων και της ευημερίας των παιδιών με προσεκτικό και υπεύθυνο τρόπο.[4] Για παράδειγμα, η ανάπτυξη κατευθυντήριων γραμμών που στοχεύουν στην εναρμόνιση και ανάπτυξη επιχειρησιακών διαδικασιών για όλους τους εμπλεκόμενους παράγοντες στον τομέα της υποστήριξης των θυμάτων (όπως πάροχοι στήριξης σε θύματα, προσωπικό της αστυνομίας, δικηγόροι).

Ένα σύνηθες πρόβλημα στην υποστήριξη των θυμάτων είναι συχνά ο περίπλοκος σχεδιασμός της, όσον αφορά τον συντονισμό και τη συνεργασία: τα θύματα εγκληματικότητας πρέπει να βρίσκουν τον προσανατολισμό τους μέσα σε ένα περίπλοκο δίκτυο ιδρυμάτων με διαφορετικές ευθύνες, κάτι το οποίο βιώνεται από τα θύματα ως υπερβολικά απαιτητικό. Αυτό δείχνει τον κρίσιμο παράγοντα για την επιτυχημένη υποστήριξη των θυμάτων: τη διϋπηρεσιακή συνεργασία μεταξύ των ενδιαφερομένων μερών τόσο σε εθνικό όσο και σε διεθνές επίπεδο. Αυτό αποσκοπεί στην καθιέρωση καλύτερης και πιο

[3] Βλέπε τα σχετικά άρθρα της οδηγίας 2012/29/ΕΕ· https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029 (πρόσβαση στις 15 Μαρτίου 2018). βλ. επίσης τις εκθέσεις χωρών D3.8-12 που παράγονται στο πλαίσιο του E-PROTECT, οι οποίες εξηγούν πιο συγκεκριμένα τις υποκείμενες διατάξεις της VD.

[4] Για παράδειγμα, τα "μπλε δωμάτια" στη Βουλγαρία, τα οποία είναι ειδικά κτίρια (σχεδιασμένα σε περιβάλλον φιλικό προς τα παιδιά, σε αντίθεση π.χ. με τον αστυνομικό σταθμό του Μπέρερ), δημιουργήθηκαν για εξέταση/συνεντεύξεις φιλικές προς τα παιδιά (βλ. D3.8 / 2017, έκθεση χώρας Βουλγαρία)



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εύχρηστης πρόσβασης στα μέτρα υποστήριξης των θυμάτων για τα άτομα που έχουν ανάγκη και στη δημιουργία καλύτερων συνθηκών εργασίας για τους επαγγελματίες.

Η σύγκριση των διαφορετικών εθνικών προσεγγίσεων σχετικά με τη διεξαγωγή των ατομικών αξιολογήσεων είναι σημαντική διότι:

> «Η εγχώρια εθνική εμπειρία δείχνει ότι η βελτίωση της δεινής κατάστασης των θυμάτων εγκληματικότητας μπορεί μόνο σε περιορισμένο βαθμό να βασιστεί σε αλλαγές στο «γράμμα του νόμου». Αντίθετα, η επιτυχία εξαρτάται σε μεγάλο βαθμό από την πρακτική σε επίπεδο «δρόμου»: στην έκταση στην οποία τα δικαιώματα υποστηρίζονται από επαρκείς υπηρεσίες.» (Έκθεση IVOR 2016: 9).[5]

Η έκθεση IVOR επισημαίνει την πρακτική εφαρμογή των κανονισμών από τη χαμηλότερη θέση ιεραρχείας, (η οποία εξαρτάται κυρίως από το πώς θα προκύψουν στη πράξη οι νομικές διατάξεις), ως ο πιο σημαντικός παράγοντας για την αποτελεσματική υποστήριξη των θυμάτων. Ή αλλιώς:

> «Η εφαρμογή της Οδηγίας της ΕΕ για τα Δικαιώματα των Θυμάτων εξαρτάται επίσης από το αν οι υπεύθυνοι για ποινική δίωξη εφαρμόζουν επί τόπου το πνεύμα της Οδηγίας στην καθημερινή τους εργασία για να στηρίξουν τα θύματα σε ποινικές διαδικασίες και να κατοχυρώσουν τα δικαιώματά τους.» (INASC 2016: 43)

Ως εκ τούτου, η έκθεση εξετάζει τις ΙΑΜ σε πανευρωπαϊκό επίπεδο, εστιάζοντας στο πώς εφαρμόζονται σε κάθε πλαίσιο προκειμένου να επιτευχθούν καλύτερες εφαρμογές αξιολόγησης των ατομικών αναγκών μεταξύ των κρατών μελών της ΕΕ.

## 1.2. Η δομή της έκθεσης

Η έκθεση είναι δομημένη σε τέσσερα κύρια τμήματα: πρώτα από όλα σκιαγραφείται η *μεθοδολογική προσέγγιση* της *σύγκρισης* **(2)** και ακολουθείται από ένα κεφάλαιο που παρέχει μια επισκόπηση από τις *«Κυριότερες διδαχές της μεταφοράς των Άρθρων 22, 23, 24 της οδηγίας για τα θύματα στη Βουλγαρία, στη Ρουμανία, στην Ελλάδα, στην Ιταλία και στην Αυστρία»* **(3).**

Τα αποτελέσματα των προηγούμενων εκθέσεων ανά χώρα θα συγκριθούν με τα αποτελέσματα της παρούσας έκθεσης προκειμένου να κατανοηθούν καλύτερα οι κοινές προκλήσεις όσον αφορά την εφαρμογή της ατομικής αξιολόγησης που προβλέπεται στην οδηγία για τα θύματα.

[5] Βλέπε την έκθεση που εκπόνησε ο IVOR - "Εφαρμογή μεταρρύθμισης του συστήματος ποινικής δικαιοσύνης στην Ευρωπαϊκή Ένωση (2014-2016), https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot- WebVersion.pdf (πρόσβαση στις 25 Απριλίου 2018).



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Στη συνέχεια, η έκθεση παρέχει μια επισκόπηση των τρεχουσών υποδομών υποστήριξης παιδιών θυμάτων στα πέντε επιλεγμένα κράτη μέλη (Γερμανία, Πορτογαλία, Ισπανία, Αγγλία και Ουαλία, Φινλανδία) **(4)** και προβαίνει σε μια λεπτομερή εξέταση *των οργανωτικών εφαρμογών των αξιολογήσεων ατομικών αναγκών και των ειδικών μέτρων για τα παιδιά θύματα εγκληματικότητας* **(5).**

Τέλος, η έκθεση παρουσιάζει μια συνδυαστική ενότητα, η οποία έχει ως στόχο να συγκρίνει τις πρακτικές αυτών των κρατών μελών μεταξύ τους, συμπεριλαμβανομένων των αποτελεσμάτων των χωρών εταίρων, προκειμένου να εντοπιστούν οι βέλτιστες πρακτικές **(6).**

## 2. Μεθοδολογική προσέγγιση

Από μεθοδολογική άποψη, αυτή η μελέτη για τις ΙΑΜ είναι προσανατολισμένη (περισσότερο) στην ποιοτική σύγκριση, ώστε να επιτύχει την περιγραφή, τον σχηματισμό ιδεών και την αναλυτική εξήγηση και λιγότερο στην στατιστική σημασία (βλ.Krause 2016). Ο ειδικός στόχος της ποιοτικής σύγκρισης στις κοινωνικές επιστήμες είναι η κατανόηση μία υπόθεσης, ή μάλλον υποθέσεων μέσα από την ιδιαιτερότητα τους και τη γενικότητα τους πραγματοποιώντας μια συμπυκνωμένη περιγραφή αυτών των υποθέσεων. Η σύγκριση προκαλεί τη βαθιά κατανόηση ενός φαινομένου, διότι μόνιμα αντιπαραβάλλει το ένα με το άλλο.

Συνεπώς, το δείγμα των κρατών μελών στην παρούσα έκθεση πρέπει να αιτιολογηθεί, ιδίως σχετικά με το ερώτημα: γιατί αυτά ακριβώς τα κράτη μέλη; Σε μια μελέτη που έχει ως στόχο να είναι αντιπροσωπευτική σε πανευρωπαϊκό επίπεδο, είναι απαραίτητο να επιτευχθεί ένα ευρύ γεωγραφικό και πολιτισμικό φάσμα, ιδίως όσον αφορά τις διαφορετικές νομικές προσεγγίσεις για τα δικαιώματα των θυμάτων και την εφαρμογή της ΟΘ. Παρεμπιπτόντως, μπορεί απλώς να είναι μια επιλεκτική εκπροσώπηση των κρατών μελών της ΕΕ, απλώς από άποψη σκοπιμότητας, διότι η εξέταση καθενός από τα 28 κράτη μέλη στην Ευρώπη απλά θα ξεπερνούσε τους διαθέσιμους πόρους αυτής της έκθεσης. Τα κράτη μέλη επελέγησαν βάσει ενός πρώτου διαγνωστικού ελέγχου, σύμφωνα με τις νομικές και πρακτικές ιδιαιτερότητές τους, προκειμένου να συμπεριλάβουν ένα πολύ ποικιλόμορφο δείγμα.


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**Η Φινλανδία,** για παράδειγμα, φαίνεται να έχει μια πιο συστηματική προσέγγιση ως προς ατομικές αξιολογήσεις μετά τη μεταφορά της οδηγίας (βλέπε EPRS 2017: 82).[6] Το Ηνωμένο Βασίλειο (ιδίως η **Αγγλία και η Ουαλία**) αποτελούν μια σχετική περίπτωση καθώς έχουν αναπτύξει ορισμένες πρακτικές κατευθυντήριες γραμμές (*Ο Κώδικας Πρακτικής για τα Θύματα Εγκληματικότητας*)[7], μεγάλο όγκο δημοσιευμένου ενημερωτικού υλικού και ειδική εκπαίδευση για τους επαγγελματίες που εμπλέκονται στην υποστήριξη των θυμάτων. Επιπλέον, η **Αγγλία και Ουαλία** καθώς και η **Γερμανία** μπορούν να ανατρέξουν σε μια μακροχρόνια παράδοση υποστήριξης των θυμάτων. **Η Πορτογαλία** και η **Ισπανία** είναι αξιοσημείωτες (περιπτώσεις), καθώς και οι δύο τους έχουν μεταφέρει κατά λέξη το πλήρες κείμενο της οδηγίας για τα θύματα.

Ως εκ τούτου, η έκθεση στοχεύει κυρίως στην προβολή των διαφορετικών πρακτικών, και όχι τόσο των κανονιστικών πλαισίων στήριξης των θυμάτων[8] σε κάθε κράτος μέλος, μέσα από τη ματιά των πλαισίων των άλλων κρατών μελών για την υποστήριξη των θυμάτων (βλ. Akrich / Rabeharisoa 2016).

Η υιοθέτηση αυτής της προσέγγισης υπονοεί ότι (πρέπει να) τεθούν στο επίκεντρο της προσοχής οι πρακτικές που διακυβεύονται, ότι (πρέπει να) διερευνηθεί ο τρόπος με τον οποίο η μεταφορά των ΙΑΜ λειτουργεί διαφορετικά στην πράξη μέσα από την οπτική διαφορετικών συστημάτων στήριξης των θυμάτων, συστήματα τα οποία έχουν πολιτιστικές ρίζες. Η έκθεση προσπαθεί να παράσχει βαθύτερη γνώση σχετικά με τους διαφορετικούς χειρισμούς των ατομικών αξιολογήσεων και των υπηρεσιών

[6] Η οδηγία για τα δικαιώματα των θυμάτων 2012/29 / ΕΕ, Ευρωπαϊκή μελέτη αξιολόγησης της εφαρμογής που διεξήχθη από την υπηρεσία έρευνας του Ευρωπαϊκού Κοινοβουλίου (EPRS), Δεκέμβριος 2017. Πρόκειται για μια τρέχουσα έκθεση αξιολόγησης σχετικά με τη μεταφορά στο εθνικό δίκαιο, με ιδιαίτερη έμφαση στην πρακτική εφαρμογή Αλλά εκτιμάται σε βάθος σε ένα δείγμα 12 κρατών μελών, το οποίο επίσης προσπαθεί να αντιπροσωπεύσει μια ισορροπία όσον αφορά τη γεωγραφία, το μέγεθος, τις διαφορετικές νομικές παραδόσεις και προσεγγίσεις (ibid .: 4)

[7] Βλέπε: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (πρόσβαση στις 20 Μαρτίου 2018).

[8] Υπάρχει μια συμπληρωματική πανευρωπαϊκή μελέτη, ιδίως σχετικά με τη νομική μεταφορά της VD (D3.6) με το ίδιο δείγμα των κρατών μελών. Ως εκ τούτου, στην παρούσα έκθεση δεν λαμβάνονται υπόψη τόσο οι διαδικασίες νομοθετικής μεταφοράς, αλλά πρέπει να είναι σαφές ότι είναι αδύνατο να διερευνηθούν οι πρακτικές διαστάσεις και εφαρμογές ανεξάρτητα από τον τυπικό νόμο. Δεδομένου μάλιστα ότι ακριβώς αυτή η διαδικασία "μετάφρασης" αποτελεί την κύρια πρόκληση και καθιστά εμφανείς τις διάφορες προκλήσεις της μετάφρασης των νόμων/ κανονισμών. Ο ακροθιγής έλεγχος αυτής της διαδικασίας θα μπορούσε επίσης να θεωρηθεί δοκιμασία του βαθμού στον οποίο ένας νόμος είναι καλά σχεδιασμένος. Ωστόσο, η πρακτική εφαρμογή των άρθρων 22, 23, 24 βρίσκεται στον πυρήνα αυτής της μελέτης.



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υποστήριξης των θυμάτων υπογραμμίζοντας κοινές και ελπιδοφόρες πρακτικές. Οι γνώσεις πάνω σε αυτές τις πρακτικές πρέπει να ενθαρρύνουν την αμοιβαία κατανόηση και μάθηση λαμβάνοντας υπόψη τις πολιτισμικές ιδιαιτερότητες.

Αυτή η εργασία επικεντρώνεται πρωτίστως σε δευτερογενή έρευνα και λαμβάνει υπόψη ήδη υπάρχουσες πληροφορίες και γνώση που έχουν παραχθεί μέχρι στιγμής.[9] Προσπαθεί να συμπυκνώσει την ήδη υπάρχουσα έρευνα σχετικά με τη μεταφορά της ΟΘ και περιλαμβάνει τις διαθέσιμα εθνικά έγγραφα, όπως αυτά που παρέχονται από τις οργανώσεις υποστήριξης των θυμάτων (π.χ. κατευθυντήριες γραμμές, συστάσεις, πρότυπα ποιότητας) ή άλλα εθνικά (νομικά) σχετικά έγγραφα και ακαδημαϊκή βιβλιογραφία, τα οποία επιτρέπουν την καλύτερη κατανόηση της εφαρμογής της αξιολόγησης ατομικών αναγκών και της υποστήριξης των παιδιών θυμάτων σε κάθε μια από αυτές τις χώρες.

# 3. Κύριες διδαχές από τη μεταφορά, στην πράξη, των Άρθρων 22, 23 & 24 της Οδηγίας για τα θύματα στη Βουλγαρία, στη Ρουμανία, στην Ελλάδα, στην Ιταλία κα στην Αυστρία

Το κεφάλαιο αυτό επισημαίνει διαφορετικές εθνικές πρακτικές υποστήριξης των παιδιών θυμάτων και ειδικότερα όσον αφορά την εκτίμηση των ατομικών αναγκών που διερευνήθηκε και αποτυπώθηκε στο πρόγραμμα στις προηγούμενες εκθέσεις των χωρών, συμπεριλαμβανομένων της *Βουλγαρίας, της Ρουμανίας, της Ελλάδας, της Ιταλίας* και της *Αυστρίας*. Αυτές οι πρακτικές θα μπορούσαν να θεωρηθούν ως καλές πρακτικές στο πλαίσιο της υποστήριξης παιδιών θυμάτων.[10]

## 3.1. Αυστρία

Στην Αυστρία, η ατομική αξιολόγηση πραγματοποιείται από την αστυνομία, δεδομένου ότι στις περισσότερες περιπτώσεις είναι το πρώτο σημείο επαφής τόσο για το θύμα, όσο και για τον ύποπτο

[9] Για παράδειγμα, βλέπε https://victimsupport.eu/about-us/our-projects/ivor/; Πρόσβαση στην έκθεση είναι δυνατή μέσω: https://www.apav.pt/publiproj/images/yootheme/PDF/IVOR-Repot-WebVersion.pdf; Ή, http://www.victimsandcorporations.eu/wp-content/uploads/2017/01/Vict-and-Corp_First-Findings.pdf (πρόσβαση στις 19 Μαρτίου 2018).

[10] Για λεπτομερείς πληροφορίες σχετικά με τα διαφορετικά συστήματα υποστήριξης των θυμάτων και μια ποσοτική επισκόπηση των παιδικών θυμάτων σε κάθε χώρα, δείτε τα E-PROTECT D3.8-12 (εκθέσεις χωρών για μεμονωμένες μεθοδολογίες αξιολόγησης στο BG D3.8, AT D3.9, RO D3.10, IT D3.11, EL D3.12).



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δράστη. Ο κύριος επίσημος τόπος για την έγκαιρη διεξαγωγή της ατομικής αξιολόγησης, δηλ. το συντομότερο δυνατόν, είναι η ***ποινική πρόληψη της αστυνομίας***, η οποία είναι υπεύθυνη για την εκτέλεση όλων των δράσεων πρόληψης. Η πρόληψη περιλαμβάνει τόσο τη διεξαγωγή συνομιλίας με το θύμα, όσο και με τον ύποπτο δράστη.

Μια καλή πρακτική η οποία εφαρμόζεται στην Αυστρία είναι η λεγόμενη ***δικαστική συνδρομή,*** που περιλαμβάνει ψυχοκοινωνική και νομική δικαστική βοήθεια *(Psychosoziale Prozessbegleitung)*[11], - αυτό αποτελεί ένα από τα σημαντικότερα επιτεύγματα του αυστριακού συστήματος στήριξης των θυμάτων, προκειμένου να διασφαλιστεί η προστασία των δικαιωμάτων τους, με ιδιαίτερη έμφαση στη διασφάλιση της συνδρομής για τα παιδιά και τους νέους. Η δικαστική συνδρομή, ως ειδική υπηρεσία υποστήριξης των θυμάτων, αναπτύχθηκε τα τελευταία 20 χρόνια στην Αυστρία και ενημερώνεται συχνά μέχρι και σήμερα. Δικαστική συνδρομή σημαίνει υποστήριξη (ανήλικων) θυμάτων (κυρίως σε περιπτώσεις εγκλημάτων σεξουαλικής, σωματικής και οικογενειακής βίας) κατά τη διάρκεια ολόκληρης της ποινικής διαδικασίας. Δεν συμπεριλαμβάνει μόνο υποστήριξη κατά τη διάρκεια της δικαστικής διαδικασίας, αλλά αρχίζει ήδη - στην καλύτερη περίπτωση – πριν την καταγγελία ενός εγκλήματος στην αστυνομία και τελειώνει μετά τη δίκη. Περιλαμβάνει τόσο ψυχοκοινωνική όσο και νομική δικαστική συνδρομή. Επιπροσθέτως, είναι αξιοσημείωτο ότι το 2014 η Αυστρία έλαβε το διεθνές *«βραβείο μελλοντικής πολιτικής»* για τη νομική εφαρμογή αυτής της εξέχουσας υπηρεσίας υποστήριξης των θυμάτων της ψυχοκοινωνικής δικαστικής συνδρομής.[12]

## 3.2 Βουλγαρία

Στη Βουλγαρία δεν υπάρχει μια ενιαία μεθοδολογία ατομικής αξιολόγησης για τα παιδιά θύματα εγκληματικότητας. Ωστόσο, υπάρχουν ορισμένες καλές πρακτικές που εφαρμόζονται στην περίπτωση υποστήριξης του παιδιού θύματος που χρειάζεται να εξελιχθούν και να βελτιωθούν περαιτέρω.

Ένα από αυτά τα ειδικά μέτρα είναι ο ***Μηχανισμός Συντονισμού για Αλληλεπίδραση σε Υποθέσεις Παιδιών Θυμάτων ή σε Κίνδυνο Κακοποίησης, και για Αλληλεπίδραση κατά την Παρέμβαση σε Κατάσταση Κρίσης***, που είναι μια επίσημη συμφωνία μεταξύ των: Υπουργείου Εργασίας και Κοινωνικής Πολιτικής (MLSP), Υπουργείου Εσωτερικών (ΥΠ.ΕΣ.), Υπουργείου Δικαιοσύνης (ΥΠ.ΔΙΚ.),

[11] See: http://www.pb-fachstelle.at/fuer-fachleute/in- formation-was-ist-prozessbegleitung/ (πρόσβαση 11 Δεκεμβρίου 2017).

[12] E-PROTECT D3.9 Μελέτη σχετικά με τις μεμονωμένες μεθοδολογίες αξιολόγησης παιδιών θυμάτων εγκληματικών πράξεων στην Αυστρία, EL, σελ. 15-22.



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Υπουργείου Παιδείας και Επιστημών (Υ.Π.Δ.Β.Μ.Θ), Υπουργείου Υγείας (Υ.Υ.Κ.Α), Υπουργείου Πολιτισμού (ΥΠ.ΠΟ.Τ), Οργανισμού Κοινωνικής Βοήθειας (Ο.Κ.Β), Εθνικής Ένωσης Δήμων και του Συνηγόρου του Πολίτη. Η εφαρμογή του Μηχανισμού Συντονισμού αποτελεί μέσο για την συγκέντρωση των προσπαθειών του συστήματος προστασίας, της αστυνομίας και της δικαιοσύνης προκειμένου να διασφαλιστεί το καλύτερο συμφέρον του παιδιού σε περιπτώσεις παιδιών θυμάτων ή σε κίνδυνο κακοποίησης.

Σύμφωνα με τον ***Μηχανισμό Συντονισμού για Αλληλεπίδραση σε Υποθέσεις Παιδιών Θυμάτων ή σε Κίνδυνο Κακοποίησης, και για Αλληλεπίδραση κατά τη Παρέμβαση σε Κατάσταση Κρίσης***, το 2016 το Ινστιτούτο Κοινωνικών Δραστηριοτήτων και Πρακτικών , σε συνεργασία με τη UNICEF, η Βουλγαρία διηύθυνε τα πρώτα ***Κέντρα Υπεράσπισης και Υποστήριξης Παιδιών***. Η ολοκληρωμένη υπηρεσία υπεράσπισης και υποστήριξης αποκαλείται ***Ζώνη Προστασίας*** και απευθύνεται σε παιδιά θύματα κάθε μορφής κακοποίησης ή εγκληματικότητας, ανεξάρτητα από το αν έχουν διαπραχθεί στο παρελθόν ή πρόσφατα. Η υπηρεσία Ζώνη Προστασίας έχει εισάγει μια εξειδικευμένη προσέγγιση για τα παιδιά θύματα, συμπεριλαμβανομένων υπηρεσιών για παιδιά θύματα κακοποίησης, συνδυάζοντας νομικές, ιατρικές, ψυχολογικές και κοινωνικές πρακτικές υποστήριξης σε ένα περιβάλλον φιλικό προς τα παιδιά.
Μια ακόμη καλή πρακτική στην περίπτωση παιδιών θυμάτων εγκληματικότητας είναι τα καθιερωμένα εξειδικευμένα δωμάτια για ακροάσεις παιδιών, τα λεγόμενα ***«Μπλε δωμάτια»***, τα οποία επιτρέπουν τη διεξαγωγή ανάκρισης από εκπαιδευμένο ειδικό σε μια φιλική προς τα παιδιά ατμόσφαιρα και με την παρουσία όλων των σχετικών συμμετεχόντων ανάλογα με την αντίστοιχη φάση της ποινικής διαδικασίας. Στα τέλη του 2017, περίπου το 70% των περιφερειακών πόλεων στη Βουλγαρία διέθεταν ειδικές εγκαταστάσεις για την ανάκριση των παιδιών που εμπλέκονται σε ποινικές διαδικασίες.

Ωστόσο, δεν υπάρχουν ακόμη εθνικά πρότυπα για τη διεξαγωγή συνεντεύξεων με παιδιά σε πολιτικές δίκες, γεγονός που θα εξασφάλιζε ότι οι διαδικαστικές πράξεις σε σχέση με το παιδί θα διεξάγονται σε κατάλληλο περιβάλλον υπό ευνοϊκές συνθήκες και με τη χρήση κατάλληλης γλώσσας για την επικοινωνία με το παιδί. [13]

[13] E-PROTECT D3.9 Μελέτη σχετικά με τις μεμονωμένες μεθοδολογίες αξιολόγησης παιδιών θυμάτων εγκληματικών πράξεων στην Βουλγαρία, EL, σελ. 15-22.



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## 3.3 Ελλάδα

Η διεξαγωγή ατομικών αξιολογήσεων παιδιών θυμάτων σε ποινικές υποθέσεις συνεπάγεται, αφενός, την αναφορά μιας υπόθεσης παιδικής θυματοποίησης στις αρμόδιες αρχές ή ιδρύματα. Στην «πρώτη γραμμή» της καταγραφής τέτοιων καταγγελιών, εργό που εμπίπτει επίσης στην αρμοδιότητα των αστυνομικών αρχών, λειτουργούν επί του παρόντος ***δύο εθνικές γραμμές βοήθειας που ειδικεύονται στην παρέμβαση σε υποθέσεις παιδιών θυμάτων***.

Μετά την καταχώριση μιας αναφοράς για θυματοποίηση παιδιών, διεξάγεται ***κοινωνική έρευνα από δημόσιους φορείς***, συγκεκριμένα από την Ομάδα Προστασίας του Παιδιού του αρμόδιου Δήμου ή την ΕΚΚΑ σε περιπτώσεις σοβαρών αδικημάτων εναντίον παιδιών – ή από ιδιωτικούς οργανισμούς ειδικευμένους στην προστασία των παιδιών (π.χ. ARSIS ή ΧτΠ).

Τα πορίσματα υποβάλλονται γραπτώς στον Εισαγγελέα Ανηλίκων. Η έκθεση περιλαμβάνει επίσης προτάσεις σχετικά με τη μεταχείριση του παιδιού (για παράδειγμα, η απομάκρυνση από το οικογενειακό περιβάλλον, η εποπτεία του παιδιού και των γονέων μέσω μηνιαίων συναντήσεων κ.λπ.), καθώς και τις καταληκτικές παρατηρήσεις σχετικά με τη διάπραξη του αναφερόμενου εγκλήματος. Όταν υπάρχουν εμπειρικά στοιχεία, ενεργοποιείται ο κρατικός μηχανισμός της ποινικής δίωξης. Κατά τη διάρκεια αυτής της διαδικασίας, ο ρόλος των κοινωνικών λειτουργών που εμπλέκονται στην κοινωνική έρευνα εξακολουθεί να είναι ενεργός, τόσο με την παροχή ψυχολογικής υποστήριξης στο παιδί θύμα όσο και με τη μαρτυρία κατά την ημερομηνία της ακροαματικής διαδικασίας.

Αν και δεν συνδέεται άμεσα με την εξέταση του παιδιού θύματος που υπαγορεύεται από το ποινικό νομοθετικό σύστημα, ατομικές αξιολογήσεις πραγματοποιούνται επίσης από διάφορες ΜΚΟ. Πρόκειται συνήθως για μια διττή αξιολόγηση των ιδιαίτερων χαρακτηριστικών και αναγκών του παιδιού, τόσο σε ψυχολογικό όσο και σε εκπαιδευτικό επίπεδο, η οποία επικαιροποιείται συχνά. Κατά τη διάρκεια αυτής της διαδικασίας, το άτομο που διενεργεί την αξιολόγηση λαμβάνει υπόψη τη σοβαρότητα και τις συνθήκες του εγκλήματος που έχει διαπραχθεί και, έως ένα βαθμό, την επιθυμία του θύματος, υπερασπίζοντας πάντα το συμφέρον του παιδιού και με στόχο την πρόληψη δεύτερης θυματοποίησης.


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Ωστόσο, η έλλειψη μιας ενιαίας πολιτικής για την προστασία των παιδιών καθιστά δύσκολο τον έλεγχο της πρακτικής κάθε ΜΚΟ ξεχωριστά.[14]

## 3.4 Ιταλία

Σύμφωνα με τον ιταλικό νόμο, τα παιδιά θεωρούνται ιδιαίτερα ευάλωτα και, ως εκ τούτου, πρέπει να εφαρμόζονται διαφορετικά μέτρα (σχετικά με αυτά). Ο ιταλικός ποινικός κώδικας αναφέρει ότι, σε περίπτωση ορισμένων αδικημάτων (όλων εκείνων κατά του "προσώπου", όπως κακοποίηση, κακομεταχείριση, δουλεία, παιδική πορνεία και πορνογραφία, σεξουαλική κακοποίηση ή εμπορία ανθρώπων) που έχουν διαπραχθεί εναντίον ανηλίκων ή από τον ένα γονέα εναντίον του άλλου (στην περίπτωση των λεγόμενων «μαρτύρων βίας»), ο εισαγγελέας έχει την υποχρέωση να ενημερώσει το ***Δικαστήριο Ανηλίκων***. Ωστόσο, μόνο στην περίπτωση ιδιαίτερων περιστάσεων – αν ο δράστης είναι ένας από τους γονείς ή ύποπτος και δεν είναι σε θέση (οι γονείς) να φροντίσουν το παιδί τους[15] – τότε κινείται μια αστική υπόθεση ενώπιον του δικαστηρίου ανηλίκων.

Η ιταλική νομοθεσία δεν προβλέπει ρητά συγκεκριμένες διατάξεις και κανόνες για τη διαδικασία ατομικής αξιολόγησης. Ωστόσο, κάθε πρόσωπο που έρχεται σε επαφή με το παιδί θύμα έχει καθήκον να προβεί σε διαδικασία ατομικής αξιολόγησης προκειμένου να στηρίξει το παιδί και να ικανοποιήσει τις ανάγκες προστασίας του, μόλις πληροφορηθεί τη φύση του αδικήματος,. Η ***ατομική αξιολόγηση,*** επομένως, ***πραγματοποιείται*** και στα δύο στάδια: ***κατά την έναρξη των διαδικασιών*** τόσο στην ***προδικαστική*** φάση όσο και ***κατά τη διάρκεια της διαδικασίας***, όποτε το απαιτεί η δικαστική αρχή.

Ο συλλογισμός (πίσω από τη λήψη) όλων αυτών των μέτρων είναι συνεπώς να προστατευθούν τα ευάλωτα θύματα και να μειωθεί ο κίνδυνος περιττού συναισθηματικού και ψυχολογικού πόνου ως συνέπεια συνεχών συνεντεύξεων και ακροάσεων χωρίς (να υπάρχει) πραγματική ανάγκη για τέτοια έρευνα. Επομένως, η οδηγία για τα θύματα, ή τουλάχιστον οι βασικές αρχές της σχετικά με την αξιολόγηση των παιδιών και των ευάλωτων θυμάτων και τα μέτρα προστασίας τους, έχουν μεταφερθεί και εφαρμοσθεί από τον Ιταλό εθνικό νομοθέτη[16].

[14] E-PROTECT D3.9 Μελέτη σχετικά με τις μεμονωμένες μεθοδολογίες αξιολόγησης παιδιών θυμάτων εγκληματικών πράξεων στην Ελλάδα, EL, σελ. 15-22., pp.18-26.
[15] Αυτό συμβαίνει όταν οι γονείς κωλύονται στην πλήρη ή μερική άσκηση της γονικής μέριμνας.
[16] E-PROTECT D3.11 Μελέτη σχετικά με τις μεμονωμένες μεθοδολογίες αξιολόγησης παιδιών θυμάτων εγκληματικών πράξεων στην Ιταλία, EN, σελ. 13-22.


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## 3.5 Ρουμανία

Σύμφωνα με τα εθνικά πλαίσια, πραγματοποιείται μια ***πρώτη αξιολόγηση*** αμέσως μόλις οι τοπικές αρχές προστασίας των παιδιών ενημερωθούν ή λάβουν πληροφορίες σχετικά με το παιδί που υφίσταται κακοποίηση ή μια συγκεκριμένη κατάσταση ενδοοικογενειακής βίας. Σύμφωνα με τις διατάξεις των εθνικών πλαισίων, η αρχική αξιολόγηση διεξάγεται από κοινωνικό λειτουργό. Μόλις καταχωρηθεί η υπόθεση και ολοκληρωθεί η αρχική αξιολόγηση, εκτελείται μια λεπτομερής, πλήρης και πολυδιάστατη αξιολόγηση της κατάστασης του παιδιού θύματος κακοποίησης ή βίας.

Σύμφωνα με την εθνική νομοθεσία, η ***λεπτομερής, πλήρης και πολυδιάστατη ατομική αξιολόγηση*** μπορεί να είναι διαφόρων ειδών, όπως: ***(α) Ιατρική αξιολόγηση,*** (***β) Ψυχολογική αξιολόγηση (γ) Κοινωνική αξιολόγηση (δ) Νομική αξιολόγηση (ε) Αξιολόγηση για την εκτίμηση επικινδυνότητας*** .

Η *ιατρική αξιολόγηση* πραγματοποιείται κατόπιν αιτήματος του ιατρού ή οποιουδήποτε άλλου μέλους του δικτύου παρέμβασης σύμφωνα με τη νομοθεσία. Προκειμένου να δημιουργηθεί μια σχέση πιθανού αιτιώδους συνδέσμου μεταξύ της αναφερόμενης κατάστασης και των ιατρικών συμπτωμάτων που παρατηρούνται, απαιτούνται ιατρικά και νομικά πιστοποιητικά. Η *κοινωνική αξιολόγηση* πραγματοποιείται με σκοπό την ανάλυση ιδίως της ποιότητας του περιβάλλοντος του παιδιού (στέγαση, διατροφή, ρουχισμός, υγιεινή, σωματική και πνευματική ασφάλεια κλπ.). Η *νομική εκτίμηση* αφορά στον προσδιορισμό των νομικών ζητημάτων που σχετίζονται με την υπόθεση και επιδιώκει επίσης να προσδιορίσει τα δικαιώματα και τις υποχρεώσεις του παιδιού και τον τρόπο άσκησης αυτών των δικαιωμάτων.

Μόλις ολοκληρωθεί η λεπτομερής αξιολόγηση της συνολικής κατάστασης, η διεπιστημονική ομάδα κάνει μια σαφή διάγνωση αναφορικά με τη μορφή της βίας έναντι του παιδιού (στην περίπτωση της ενδοοικογενειακής βίας), τις ανάγκες του παιδιού θύματος και τις προτεραιότητες για παρέμβαση, όταν αυτό απαιτείται. Όλες αυτές οι πληροφορίες περιγράφονται από τον διαχειριστή της κάθε υπόθεσης[17] στη λεπτομερή έκθεση αξιολόγησης, η οποία πρέπει να καταρτιστεί εντός 30 ημερών από την καταχώριση της υπόθεσης στην αρμόδια αρχή.[18]

[17] Το πρόσωπο που είναι υπεύθυνο για τη συγκεκριμένη περίπτωση παιδιού θύματος εγκλήματος.
[18] E-PROTECT D3.10 Μελέτη σχετικά με τις μεμονωμένες μεθοδολογίες αξιολόγησης των παιδιών θυμάτων εγκληματικών πράξεων στη Ρουμανία, EL, σελ. 10-14.



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# 4. Υποδομή (-ές) υποστήριξης παιδιών θυμάτων σε πέντε κράτη μέλη της ΕΕ

Το παρόν κεφάλαιο εξετάζει τις διάφορες υποδομές υποστήριξης παιδιών θυμάτων σε πέντε κράτη μέλη: *Γερμανία, Ισπανία, Πορτογαλία, Ηνωμένο Βασίλειο (Αγγλία και Ουαλία)* και *Φινλανδία*, με τις ακόλουθες διαστάσεις[19]:

- Επισκόπηση στατιστικών στοιχείων για τα παιδιά θύματα εγκληματικότητας
- Θεσμικές πρακτικές: κατάσταση των παιδιών θυμάτων, συμπεριλαμβανομένης μιας ανάλυσης του νομικού υποβάθρου, επίπεδο προστασίας των δικαιωμάτων τους, γενικές υπηρεσίες προστασίας των θυμάτων, υπηρεσίες προστασίας του παιδιού και ειδικές εγκαταστάσεις για παιδιά θύματα
- Σχετικές δομές και αρχές που ασχολούνται με τα (παιδιά) θύματα εγκληματικότητας

## 4.1. Γερμανία

### 4.1.1 Επισκόπηση των παιδιών θυμάτων εγκληματικότητας στην Γερμανία

Το 2015 υπήρξαν 13.760 παιδιά θύματα σεξουαλικής κακοποίησης, σύμφωνα με τη γερμανική στατιστική έκθεση εγκληματικότητας.[20] Στις περιπτώσεις προσωπικών τραυματισμών, ληστείας, εγκλημάτων κατά της προσωπικής ελευθερίας και εγκλημάτων κατά της σεξουαλικής αυτοδιάθεσης, τα παιδιά και οι έφηβοι αποτελούν μια δυσανάλογα υπερ-εκπροσωπευόμενη ομάδα θυμάτων. Αντιστρόφως, αποτελούν επίσης τις στατιστικά πιο χρονικά επιβαρυμένες ηλικιακές ομάδες (βλ. PKS 2015: 30).[21] Η γερμανική μη κερδοσκοπική οργάνωση για την προστασία των παιδιών: *aktionkinderschutz* υπολογίζει (ότι υπάρχει) ένας πολύ υψηλός αριθμός μη καταγεγραμμένων περιπτώσεων παιδικής κακοποίησης στη Γερμανία. Ωστόσο, αυτό καταδεικνύει απλώς το σημαντικό πρόβλημα της μη καταγραφής και της αναγνώρισης αυτού του προβλήματος ως πρόκλησης για πολλούς ενδιαφερόμενους, καθώς και ως σημαντική ένδειξη για περαιτέρω προώθηση της προστασίας των παιδιών.

[19] Κάποιες φορές περισσότερο και κάποιες λιγότερο ενδελεχείς, ανάλογα με την κατά περίπτωση διαθεσιμότητα των προσβάσιμων πληροφοριών, πόρων και υλικού.
[20] Βλέπε: http://www.aktionkinderschutz.de/statistiken/; http://www.aktionkinderschutz.de/WP/wp-content/uploads/2016/12/pks2015ImkBericht.pdf (πρόσβαση στις 21 Μαρτίου 2018).
[21] Η PKS είναι η γερμανική στατιστική έκθεση για την εγκληματικότητα (*polizeiliche Kriminalstatistik 2015*).


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Προφανώς, αυτές οι μη καταγγελθείσες περιπτώσεις δεν συνιστούν γερμανική ιδιαιτερότητα, αλλά ένα γενικό πρόβλημα που πρέπει να αντιμετωπιστεί τόσο από κυβερνητικές όσο και από μη κυβερνητικές αρχές σε εθνικό και διεθνές επίπεδο.

Μεταξύ του 2009 και του 2012 οι αναφερθείσες περιπτώσεις σεξουαλικής επίθεσης στα παιδιά (§§176, 176α, 176β StGB)[22] παρουσίαζαν συνεχή αύξηση και από το 2013 έχει υπάρξει μια ελαφρά μείωση (-2,7% σε 11.808 περιπτώσεις). Ωστόσο, η σεξουαλική επίθεση αποτελεί γενικά έναν τύπο αδικήματος ο οποίος είναι γνωστός ως χώρος με υψηλά ποσοστά μη καταγεγραμμένων περιπτώσεων. Όπως προαναφέρθηκε, υπάρχουν πολλοί παράγοντες που εμπλέκονται (σε αυτό), όπως η αυξημένη ευαισθησία, η αλλαγή παιδαγωγικών μεθόδων και θεσμών, οι "νέοι" τύποι αδικήματος που περιλαμβάνονται στον ποινικό κώδικα, που όλοι τους επηρεάζουν τα ποσοστά αναφοράς.

Επομένως, οι αριθμοί που συλλέγονται από την στατιστική (υπηρεσία) εγκληματικότητας πρέπει να εξετάζονται με επιφύλαξη, διότι έχουν αναπόφευκτα περιορισμένη σημασία όσον αφορά την πραγματική έκταση της παιδικής κακοποίησης και ειδικότερα όσον αφορά τη σεξουαλική επίθεση εναντίον παιδιών.

Μια ακόμη πρόκληση στον τομέα αυτό ή μάλλον αυτό που έχει ιδιαίτερη σημασία εδώ είναι ότι τα παιδιά θύματα έχουν συχνά στενή σχέση με τον δράστη και έτσι έχουν λιγότερες ευκαιρίες για να ενημερώσουν και να ευαισθητοποιήσουν (το περιβάλλον τους) ή να ξεφύγουν από την κακομεταχείριση.

### 4.1.2. Προστασία των παιδιών θυμάτων εγκληματικότητας στην Γερμανία

Από τη δεκαετία του 1970, η Γερμανία έχει καθιερώσει και βελτιώνει διαρκώς την υποδομή υποστήριξης των θυμάτων. Είναι μία από τις χώρες με κεντρικό φορέα (Weisser Ring) για τον συντονισμό της υποστήριξης των θυμάτων σε εθνικό επίπεδο. Ωστόσο, παρά τις ισχυρές δομές υποστήριξης που υπήρχαν ήδη, η γενικευμένη στήριξη ήταν συχνά λιγότερο αναπτυγμένη από την εξειδικευμένη υποστήριξη (βλ. EPRS 2017: 65).

#### *Νομικό υπόβαθρο*

Κατά τα λίγα τελευταία χρόνια, οι προσπάθειες έχουν αφιερωθεί στην ενίσχυση μερικών νόμων σχετικά με την προστασία των παιδιών, συγκεκριμένα του λεγόμενου «Νόμου για την Προστασία του Παιδιού»

[22] StGB είναι ο γερμανικός ποινικός κώδικας, βλ .: https://dejure.org/gesetze/StGB/176b.html (πρόσβαση στις 21 Μαρτίου 2018).



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(*Bundeskinderschutzgesetz – BkiSchG*)[23], ο οποίος τέθηκε σε ισχύ το 2012. Ο τελευταίος αποτελεί μια γενική πράξη (*Artikelgesetz*), η οποία βασικά συνδυάζει και μετασχηματίζει περισσότερους νόμους με διαφορετικά περιεχόμενα (ένα νόμο τροποποίησης που αλλάζει μια υπόθεση σε ένα φάσμα διαφορετικών πεδίων δικαίου). Ο κύριος στόχος ήταν η βελτίωση και η προστασία της σωματικής, ψυχικής και πνευματικής ευημερίας των παιδιών και των εφήβων. Το ενδιαφέρον επικεντρώνεται στη βελτίωση της «έγκαιρης παρέμβασης» (*Frühe Hilfe*), η οποία στοχεύει στην φιλική προς τα παιδιά ανατροφή σε προβληματικές οικογενειακές καταστάσεις που ξεκινούν σε πρώιμο στάδιο, δηλαδή με την παροχή συμβουλών σε μέλλουσες μητέρες και μέλλοντες πατέρες κατά τα πρώτα χρόνια της ζωής του παιδιού. Επομένως, επικεντρώνεται ουσιαστικά στη συνεργασία μεταξύ των σχετικών παραγόντων, ιδίως μεταξύ των επαγγελματιών του συστήματος υγειονομικής περίθαλψης και του γραφείου πρόνοιας των νέων. Επί του παρόντος ο νόμος ρυθμίζει σε εθνικό επίπεδο ότι οι επαγγελματίες του συστήματος υγείας επιτρέπεται να ενημερώνουν το γραφείο πρόνοιας των νέων σε περίπτωση σοβαρού κινδύνου για την ευημερία του παιδιού. Αυτό δεν είχε προηγουμένως ρυθμιστεί σαφώς σε εθνικό επίπεδο στη Γερμανία. Ο νόμος περιλαμβάνει επίσης άλλες σημαντικές βελτιώσεις, όπως τη δημιουργία δικτύων προστασίας παιδιών σε τοπικό επίπεδο, ή την επέκταση των ποιοτικών κανόνων για τα γραφεία πρόνοιας ανηλίκων ή επίσης την υποχρέωση για την παροχή πιστοποιητικών ποινικού μητρώου για όλα τα πρόσωπα που απασχολούνται στον τομέα της πρόνοιας για νέους, καθώς και το προσωπικό των ιδρυμάτων που υπόκεινται σε άδεια (βλ *Bundeskinderschutzgesetz* 2012)[24].

Μια άλλη τροποποίηση του νόμου τέθηκε σε ισχύ το 2013 για την ενίσχυση των δικαιωμάτων των θυμάτων σεξουαλικών εγκλημάτων (*Gesetz zur Stärkung der Rechte von Opfern sexuellen Missbrauchs - StORMG*)[25] που δίνει επίσης ιδιαίτερη έμφαση στην προστασία των παιδιών και των εφήβων και την αποφυγή της δεύτερης θυματοποίησης.

[23] Βλέπε: http://dip21.bundestag.de/dip21/btd/17/062/1706256.pdf; and: https://www.gesetze-im-internet.de/kkg/KKG.pdf (πρόσβαση στις 3 Απριλίου 2018).
[24] Βλέπε: http://dip21.bundestag.de/dip21/btd/17/062/1706256.pdf (πρόσβαση στις 3 Απριλίου 2018).
[25] Βλέπε:http://www.bundesgerichtshof.de/SharedDocs/Downloads/DE/Bibliothek/Gesetzesmaterialien/17_wp/Storm g/bgbl.pdf?__blob=publicationFile ((πρόσβαση στις 3 Απριλίου 2018).


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Ωστόσο, η βασική βελτίωση των κανονιστικών ρυθμίσεων για τα θύματα εγκληματικότητας τέθηκε σε ισχύ με την τρίτη «τροποποιητική νομοθεσία περί θυμάτων» (*3. Opferrechtsreformgesetz* )[26] το 2015. Ορόσημο αποτελεί το Άρθρο 4 του τροποποιημένου νόμου, που ρυθμίζει την *ψυχοκοινωνική δικαστική συνδρομή* κατά την ποινική διαδικασία για ιδιαίτερα ευάλωτα θύματα (*Άρθρο 4 Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren - PsychPbG*), το οποίο τέθηκε σε ισχύ το 2017.[27]

### *Γενικές υπηρεσίες υποστήριξης των θυμάτων*

Στη Γερμανία, η προστασία των θυμάτων εξαρτάται γενικά από την αρμοδιότητα των ομοσπονδιακών κρατών λόγω της αρχής του ομοσπονδιακού συστήματος και δεν ρυθμίζεται πλήρως μέσω του ομοσπονδιακού νόμου. Αυτό σημαίνει ότι υπάρχει ευρύ φάσμα διαφορετικών υπηρεσιών και μέτρων για τη βελτίωση της κατάστασης των θυμάτων και των παιδιών θυμάτων εγκληματικότητας.

Εντούτοις, υπάρχουν κάποιες εξαιρέσεις (βλέπε τους προαναφερθέντες νόμους) που σηματοδοτούν τις προσπάθειες για τη θέσπιση εθνικών προτύπων και υπηρεσιών (στη Γερμανία υπάρχει ήδη ένα αρκετά αξιοσέβαστο και αποδεκτό πρότυπο προστασίας των θυμάτων). Ωστόσο, η εφαρμογή τους αποτελεί ευθύνη των ομοσπονδιακών κρατών, πράγμα που σημαίνει ότι μπορούν να βρεθούν διαφορές σε τοπικό επίπεδο σε σχέση με την εφαρμογή των νομικών προϋποθέσεων.

Ωστόσο, η Γερμανία είναι μέχρι σήμερα ένα από τα λίγα κράτη μέλη της ΕΕ που έχουν εφαρμόσει ένα εθνικό δίκτυο για το συντονισμό της προστασίας των θυμάτων και ειδικότερα για την προστασία των παιδιών θυμάτων. Όσον αφορά τη γενική υποστήριξη των θυμάτων, υπάρχουν δύο σε εθνικό επίπεδο οργανώσεις: η πρώτη ονομάζεται «White Ring» (*Weisser Ring*), η οποία είναι ουσιαστικά ένα εθνικό σημείο επαφής το οποίο περιλαμβάνει μία πρώτη δωρεάν συμβουλευτική συνεδρία με δικηγόρο της επιλογής του ατόμου και διαθέτει μια γραμμή βοηθείας[28] που λειτουργεί ημέρα και νύχτα. Η δεύτερη εθνική οργάνωση είναι η «ομάδα εργασίας για την προστασία των θυμάτων στη Γερμανία» (*Arbeitskreis*

[26] Βλέπε: https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf;jsessionid=E6B66F638270FA2F059EA60081263A5B.2_cid289?__blob=publicationFile&v=3 (πρόσβαση στις 3 Απριλίου 2018)..

[27] Περισσότερες πληροφορίες στο μέρος 5.1 αυτής της έκθεσης

[28] Υπό τον αριθμό 116006, που ισχύει σε όλη την Ευρώπη για την παροχή βοήθειας στα θύματα, τα θύματα μπορούν να λάβουν δωρεάν βοήθεια και υποστήριξη ανά πάσα στιγμή. βλέπε: http://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (πρόσβαση στις 22 Μαρτίου 2018).



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*der Opferhilfe στην Deutschland e.V.*), η οποία αποτελεί μια κεντρική οργάνωση διαφόρων επαγγελματικών ιδρυμάτων στον τομέα αυτό.

Επιπλέον, υπάρχει ένας μεγάλος αριθμός τοπικών εξειδικευμένων κέντρων προστασίας στα 16 ομοσπονδιακά κρατίδια της Γερμανίας, τα οποία είναι υπεύθυνα να προσφέρουν υπηρεσίες προστασίας. Μερικά από αυτά είναι προσανατολισμένα σε συγκεκριμένα θύματα εγκληματικότητας: για παράδειγμα, (υπάρχουν) κέντρα προστασίας για παιδιά, γυναίκες, ή αγόρια και άνδρες και κάποια άλλα προσανατολίζονται σε (ορισμένα) είδη εγκληματικών πράξεων, όπως για παράδειγμα τα κέντρα προστασίας για εγκλήματα μίσους, σεξουαλικά εγκλήματα ή εγκλήματα ενδοοικογενειακής βίας.

### *Υπηρεσίες υποστήριξης παιδιών θυμάτων*

Όπως προαναφέρθηκε, με μια πρώτη ματιά η υποστήριξη των θυμάτων φαίνεται αρκετά κατακερματισμένη στη Γερμανία. Ωστόσο, υπάρχει ταυτόχρονα μια πανεθνική κεντρική ένωση για την προστασία των παιδιών, που ονομάζεται «Κέντρα Παιδικής Προστασίας» (*Die Kinderschutz-Zentren*)[29], η οποία επιδιώκει πρωτίστως τη δημιουργία και τη διατήρηση ενός αρμόδιου εθνικού δικτύου για τις υποδομές προστασίας παιδιών στη Γερμανία.

Η ένωση «Κέντρα Προστασίας των Παιδιών» (υπάρχει ήδη από το 1986) και οι προσπάθειές της για εναρμόνιση της στήριξης των παιδιών θυμάτων σε εθνικό επίπεδο φαίνεται πολλά υποσχόμενη. Σήμερα αποτελείται από 28 κέντρα προστασίας παιδιών από διάφορες περιοχές της Γερμανίας.[30] Πρόκειται για μια εθνική εργατική κοινότητα και μη κερδοσκοπικό οργανισμό που στοχεύει στην υποστήριξη της προστασίας των παιδιών σε μακροοικονομικό επίπεδο, συνδυάζοντας τις πρακτικές γνώσεις και την εμπειρία. Κατά κύριο λόγο, τακτικά αναπτύσσουν επαγγελματικά πρότυπα, προσφέροντας ευκαιρίες εκπαίδευσης και κατάρτισης για τους επαγγελματίες στον τομέα, παράγοντας επαγγελματικές δημοσιεύσεις και συνέδρια, ενισχύοντας τον Τύπο και τις δημόσιες σχέσεις και προσφέροντας συμβουλές πολιτικής.[31] Η στενή σύνδεση των καθημερινών πρακτικών των κέντρων προστασίας των παιδιών σε τοπικό επίπεδο και των υπερ-περιφερειακών εργασιών του δικτύου αποτελεί τη βάση για την παραγωγή υψηλής ποιότητας γνώσης που πρέπει να προσφέρεται στους επαγγελματίες (ibid.). Τουτέστιν, στους επαγγελματίες που εργάζονται άμεσα με παιδιά θύματα, αλλά και σε ερευνητές,

[29] Βλέπε: http://www.kinderschutz-zentren.org/index.php (πρόσβαση στις 3 Απριλίου 2018).
[30] Βλέπε: http://www.kinderschutz-zentren.org/der-verein (πρόσβαση στις 3 Απριλίου 2018).
[31] Βλέπε: http://www.kinderschutz-zentren.org/selbstverstaendnis (πρόσβαση στις 4 Απριλίου 2018).



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πολιτικούς, δημοσιογράφους και εκπρόσωπους εξειδικευμένης πολιτικής. Η αυτοδέσμευση τους τους υποχρεώνει να υπολογίζουν πάντοτε τις πιο πρόσφατες έρευνες καθώς και την σύγχρονη πολιτική κατάσταση σε θέματα προστασίας των παιδιών για να εξασφαλίστει η όσο το δυνατόν υψηλότερη ποιότητα και καλή οργανωτική συμπεριφορά σε τοπικό και εθνικό επίπεδο. Από νομικής απόψεως, η ένωση παιδικής προστασίας βασίζεται στον προαναφερθέντα εθνικό νόμο περί προστασίας των παιδιών (Bundeskinderschutzgesetz) και σε διάφορους κρατικούς νόμους καθώς και στις διεθνείς συμφωνίες του Χάρτη των Ηνωμένων Εθνών για τα Ανθρώπινα Δικαιώματα, στη Σύμβαση των Ηνωμένων Εθνών για τα Δικαιώματα του Παιδιού, στη Σύμβαση των Ηνωμένων Εθνών για την εξάλειψη όλων των μορφών διακρίσεων κατά των γυναικών και στη Σύμβαση των Ηνωμένων Εθνών για τα δικαιώματα των ατόμων με αναπηρία.[32]

Για κάθε ένα από τα 28 κέντρα προστασίας των παιδιών και όσα από αυτά θα ενοποιηθούν, ισχύουν οι εξής έξι βασικές αρχές και υπηρεσίες: παροχή συμβουλών και θεραπεία γονέων, φροντιστών, παιδιών και εφήβων· οξεία κρίση και παρέμβαση στις συγκρούσεις· παροχή συμβουλών σε επαγγελματίες σύμφωνα με το Άρθρο 8α του SGB VIII, ιδίως όσον αφορά την εκτίμηση επικινδυνότητας (*Gefahrenei nschätzung*)[33]·καθοδήγηση και εποπτεία άλλων επαγγελματικών ιδρυμάτων· ευκαιρίες εκπαίδευσης και κατάρτισης στην αντίστοιχη περιοχή· και ενημερωτικές εκδηλώσεις και εργαστήρια.

## 4.2. Πορτογαλία

### 4.2.1. Επισκόπηση των παιδιών θυμάτων εγκληματικότητας στην Πορτογαλία

Το 2017, οι περισσότερες συλλήψεις παιδιών θυμάτων που καταγράφηκαν από τις αστυνομικές δυνάμεις βασίστηκαν στο έγκλημα της σεξουαλικής κακοποίησης παιδιών, ακολουθούμενο από βιασμό παιδιών και πορνογραφία. 98 άνδρες συνελήφθησαν για το έγκλημα σεξουαλικής κακοποίησης έναντι 3 γυναικών. 53 άνδρες συνελήφθησαν για το έγκλημα βιασμού (0 γυναίκες) και 34 άνδρες και 3 γυναίκες συνελήφθησαν για την εμπλοκή στην πορνογραφία. Σε σχέση με το έγκλημα σεξουαλικής κακοποίησης παιδιών, εφήβων και εξαρτώμενων ανηλίκων, η κυρίαρχη ηλικιακή ομάδα των θυμάτων είναι 8-13

[32] Δείτε ολόκληρη την έκθεση στον ιστότοπό τους σχετικά με τα ποιοτικά πρότυπα πολλαπλών επιπέδων (δηλ. Νόμιμα, κοινωνικά, επαγγελματικά κ.λπ.) και το τεράστιο φάσμα υπηρεσιών που παρέχουν, αφενός, για επαγγελματίες αλλά και για όσους ζητούν υποστήριξη (παιδιά και φροντιστές τους ): http://www.kinderschutz-zentren.org/qualitaetsstandards (πρόσβαση στις 4 Απριλίου 2018).

[33] Βλέπε. §8α SGB VIII, http://www.sozialgesetzbuch-sgb.de/sgbviii/8a.html (πρόσβαση στις 4 Απριλίου 2018).



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(68,5%), ακολουθούμενη από 7-4 ετών (19,1%) και 0-3 ετών (6,7%). Όπως και το προηγούμενο έτος, το πλαίσιο της οικογένειας επικρατεί ως το κύριο κοινωνικό περιβάλλον μεταξύ του δράστη και του θύματος, το οποίο αφορά το 44,5% των περιπτώσεων. Σε σχέση με άλλα εγκλήματα, 3.912 παιδιά ηλικίας κάτω των 16 ετών έπεσαν θύματα ενδοοικογενειακής βίας. Επιπλέον, στο 34% των αδικημάτων ενδοοικογενιακής βίας οι ανήλικοι εμφανίστηκαν ως μάρτυρες. 45 ανήλικοι εντοπίστηκαν ως (υποτιθέμενα) θύματα εμπορίας ανθρώπων στην Πορτογαλία. Οι αρμόδιες αρχές ταξινόμησαν 24 ως εκκρεμούσες/υπό έρευνα και 4 ως μη επιβεβαιωμένες περιπτώσεις. Η Υπηρεσία Αλλοδαπών και Συνόρων συνεργάστηκε με τα Κέντρα Μόνιμης Υποδοχής, διασφαλίζοντας τη μόνιμη παρακολούθηση των θυμάτων που υπέστησαν διακίνηση σε όλες τις περιπτώσεις όπου ήταν απαραίτητο να τα προστατεύσουν και να τα καλοσωρίσουν, καθώς και την παρακολούθηση τους σε διάφορα διαδικαστικά βήματα.[34]

Η τελευταία έκθεση από την Πορτογαλική Ένωση για την Υποστήριξη των Θυμάτων (ΠΕΥΘ), τον κύριο μη κυβερνητικό οργανισμό που παρέχει κοινωνική, νομική και ψυχολογική υποστήριξη στα θύματα, δείχνει ότι τα αποκεντρωμένα γραφεία της υποστήριξαν 810 παιδιά θύματα το 2017. Το 62,6% από αυτά ήταν γυναίκες και η μέση ηλικία ήταν 11 ετών. Σε σχέση με τα θύματα σεξουαλικών εγκλημάτων, από το σύνολο των 488, το 54,9% ήταν παιδιά, ενώ το 32,6% ήταν ενήλικες.[35]

### 4.2.2. Προστασία παιδιών θυμάτων εγκληματικότητας στην Πορτογαλία

#### *Νομικό υπόβαθρο*

Στην Πορτογαλία, ο Νόμος 130/2015 της 4ης Σεπτεμβρίου τροποποίησε τον Κώδικα Διαδικασίας/Ποινικό Κώδικα και ενέκρινε το Καταστατικό των Θυμάτων μεταφέροντας την Οδηγία 2012/29/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου του Οκτωβρίου 2012, η οποία θεσπίζει κανόνες για τα δικαιώματα, την υποστήριξη και την προστασία των θυμάτων εγκληματικότητας και αντικαθιστά την απόφαση πλαίσιο 2001/220/ΔΕΥ του Συμβουλίου της 15ης Δεκεμβρίου 2001.[36] Τα Άρθρα 17, 20 και 21 μεταφέρουν το κείμενο των Άρθρων 22-24 της οδηγίας της ΕΕ, αλλά δεν υπερβαίνουν το αρχικό περιεχόμενο. Το Άρθρο 21 παράγραφος 1 της οδηγίας για τα θύματα ορίζει ότι «τα κράτη μέλη μεριμνούν ώστε τα θύματα που είναι ιδιαίτερα ευάλωτα να λαμβάνουν ατομική αξιολόγηση για τον εντοπισμό ειδικών αναγκών προστασίας». Στην πορτογαλική νομοθεσία το κείμενο του Άρθρου 21 παράγραφος 1

[34] Relatório de Segurança Interna 2017. Sistema de Segurança Interna. Gabinete do Secretário-Geral.
[35]Πορτογαλική Ένωση Υποστήριξης Θυμάτων(APAV). Estatísticas APAV. Relatório Anual 2017.
[36] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.


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έχει αποβάλει τη λέξη *έγκαιρα* που κατοχυρώνεται στην οδηγία της ΕΕ και δεν διευκρινίζει με ποια μέσα ή διαδικασίες γίνεται η ατομική αξιολόγηση. Ο Νόμος υπ'αρ. 130/2015 της 4ης Σεπτεμβρίου δεν διευκρινίζει ποια είναι η κύρια αρχή που είναι αρμόδια για την πραγματοποίηση της ατομικής αξιολόγησης· αν και το Άρθρο 21 (2-β) προβλέπει ότι «Η διερεύνηση των θυμάτων σεξουαλικής βίας, βίας με βάση το φύλο ή της βίας σε στενές σχέσεις, εκτός εάν γίνεται από εισαγγελέα ή από δικαστή, πρέπει να διεξάγεται από πρόσωπο του ιδίου φύλου, εάν το θύμα το επιθυμεί και υπό τον όρο ότι η διαδικασία δεν θα υποστεί βλάβη». [37]

Στην πράξη, ο Εισαγγελέας ή ο αρμόδιος δικαστής συνήθως προσφεύγουν στην υποστήριξη από τεχνικό προσωπικό διαφόρων οργάνων για τη διεξαγωγή των μέτρων που προσδιορίζονται στο Άρθρο 23 της οδηγίας, λαμβάνοντας υπ όψη ποιος είναι το «πρόσωπο αναφοράς» του παιδιού. Το πρόσωπο αναφοράς είναι το τεχνικό προσωπικό που διαχειρίζεται τη συνδρομή του παιδιού θύματος. Αυτό το πρόσωπο θα μπορούσε να είναι τεχνικό προσωπικό των τοπικών Επιτροπών Προαγωγής Δικαιωμάτων και Προστασίας Παιδιών και Νέων ή των Μονάδων Προστασίας Παιδιών και Νέων που είναι εγκατεστημένα σε τοπικά κέντρα υγείας ή νοσοκομεία ή άλλα. Αυτό σημαίνει ότι δεν υπάρχει ενιαία ομάδα ή μονάδα υπεύθυνη για τη διεξαγωγή των ατομικών αξιολογήσεων και μέτρων προστασίας κατά τη διάρκεια ποινικών ερευνών. Στο εθνικό νομικό πλαίσιο, η ακρόαση και η συμμετοχή του παιδιού στο πλαίσιο της προαγωγής και προστασίας των δικαιωμάτων του παρέχονται στα Άρθρα 4, (ι) και 84.[38]

Επιπλέον, δεν υπάρχει ειδικό πρωτόκολλο ή επίσημες οδηγίες που πρέπει να ακολουθούνται από το τεχνικό προσωπικό των διαφόρων φορέων. Εντούτοις, έχουν προωθηθεί ορισμένες πρωτοβουλίες για τη βελτίωση της εφαρμογής μέτρων όπως μεταξύ άλλων συνεντεύξεις, δηλώσεις για μελλοντική αναφορά, προσαρμογή δικαστικών χώρων.[39]

Επιπρόσθετα, το νομικό πλαίσιο της Πορτογαλίας περιελάμβανε ήδη πολλές πτυχές που καλύπτονται από την οδηγία, ιδίως ως συνέπεια των διεθνών δεσμεύσεών της βάσει της Σύμβασης για τα Δικαιώματα του Παιδιού και ορισμένων Συμβάσεων του Συμβουλίου της Ευρώπης.

[37] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.
[38] Εγκρίθηκε με το νόμο αριθ. 147/99, της 1ης Σεπτεμβρίου, με αλλαγές που εισήχθησαν με το νόμο αριθ. 31/2003, της 22ας Αυγούστου και με το νόμο αριθ. 142/2015, της 8ης Σεπτεμβρίου
[39] Ορισμένες από αυτές τις πρωτοβουλίες περιγράφονται παρακάτω λεπτομερέστερα.



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*Γενικές υπηρεσίες υποστήριξης θυμάτων*

Η APAV συνέβαλε σε ένα εργαλείο για την αξιολόγηση των ειδικών αναγκών για την προστασία των θυμάτων εγκληματικότητας, καθώς και στον *Οδηγό για την ατομική αξιολόγηση των θυμάτων (EVVI)* [40] στο πλαίσιο ενός συγχρηματοδοτούμενου από την Ευρωπαϊκή Επιτροπή ερευνητικού έργου. Αυτό το εγχειρίδιο δηλώνει ότι στην Ισπανία και την Πορτογαλία δεν διενεργήθηκαν συστηματικές αξιολογήσεις ή εκτιμήσεις κατά τη σύνταξη του εγχειριδίου.[41] Η APAV μοιράστηκε αυτό το έγγραφο με τη Γενική Διεύθυνση Πολιτικής Δικαιοσύνης του Υπουργείου Δικαιοσύνης, το Γραφείο του Γενικού Εισαγγελέα, τη Δικαστική Αστυνομία, την Αστυνομία Δημόσιας Ασφάλειας, τη Ρεπουμπλικανική Εθνική Φρουρά και την Υπηρεσία Αλλοδαπών και Συνόρων της Πορτογαλίας και έλαβε θετικά σχόλια.[42]

Σύμφωνα με την EVVI

«Το 2017, η αναθεώρηση του Κώδικα Ποινικής Δικονομίας του 2007 (Νόμος 48/2007 της 29-08) άλλαξε το καθεστώς των δηλώσεων για μελλοντική αναφορά, σύμφωνα με τις διεθνείς υποχρεώσεις που ανέλαβε το πορτογαλικό κράτος. Όσον αφορά τα ανήλικα θύματα, το νομικό σύστημα θα έχει καθήκον για το κράτος να συλλέγει δηλώσεις για μελλοντική αναφορά και να διασφαλίζει τις προϋποθέσεις για την πραγματοποίησή τους σύμφωνα με το Άρθρο 271 παράγραφος 4. Συγκεκριμένα, οι δηλώσεις των εγκλημάτων κατά της ελευθερίας και της σεξουαλικής αυτοδιάθεσης των παιδιών θα πρέπει να διεξάγονται σε ένα μέρος και κατά τέτοιο τρόπο ώστε να εξασφαλίζεται ένα άτυπο και αποκλειστικό περιβάλλον και να παρακολουθείται και να συνοδεύεται από έναν εξειδικευμένο τεχνικό».[43]

Παρά το γεγονός ότι υπάρχει ένα ολοκληρωμένο νομικό πλαίσιο, ο Sottomayor υποστηρίζει ότι «τα δικαιώματα των παιδιών είναι διασκορπισμένα σε διαφορετικούς νόμους και κώδικες, γεγονός που καθιστά δύσκολο να τους συστηματοποιήσουμε και να τους συμβουλευόμαστε. Η συγκέντρωση των δικαιωμάτων των παιδιών θυμάτων βίαιων εγκλημάτων θα ήταν πιο χρήσιμη σε μια ενιαία νομική πράξη για τη διευκόλυνση της διαδικασίας ερμηνείας και επιβολής.»[44]

Παρά το γεγονός ότι υπάρχει ένα ολοκληρωμένο νομικό πλαίσιο, ο Sottomayor υποστηρίζει ότι «τα δικαιώματα των παιδιών είναι διασκορπισμένα σε διαφορετικούς νόμους και κώδικες, γεγονός που

[40] Ο οδηγός είναι διαθέσιμος εδώ: https://victimsupport.eu/news/a-guide-for-individual-evaluation-of-victims-evvi-now-available/ ( πρόσβαση στις 23 Απριλίου 2018).
[41] Υποστήριξη των θυμάτων της Ευρώπης (2015) EVVI (Αξιολόγηση των θυμάτων) - Οδηγός για την ατομική αξιολόγηση των θυμάτων. Χρηματοδοτείται από το Πρόγραμμα Ποινικής Δικαιοσύνης της Ευρωπαϊκής Ένωσης.
[42] APAV. Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001.
[43] *Ibid.*
[44] *Ibid.*



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καθιστά δύσκολο να τους συστηματοποιήσουμε και να τους συμβουλευόμαστε. Η συγκέντρωση των δικαιωμάτων των παιδιών θυμάτων βίαιων εγκλημάτων θα ήταν πιο χρήσιμη σε μια ενιαία νομική πράξη για τη διευκόλυνση της διαδικασίας ερμηνείας και επιβολής.»[45] Η έκθεση του Υπουργού Εσωτερικών του 2017 πάνω στην εσωτερική ασφάλεια ανέφερε ότι

> «η φροντίδα των θυμάτων ενδοοικογενειακής βίας στις εγκαταστάσεις των δυνάμεων ασφαλείας τείνει να πραγματοποιείται στους δικούς τους χώρους προκειμένου να διασφαλιστεί η ιδιωτικότητα και η άνεση. Οι νέες ομάδες διαθέτουν αίθουσες για την εξυπηρέτηση του θύματος. Προσαρμογές έγιναν στις παλαιότερες εγκαταστάσεις. 447 σταθμοί, ομάδες, μονάδες και υπομονάδες των δυνάμεων ασφαλείας έχουν αίθουσες συνεδριάσεων. Στις υπόλοιπες μονάδες, η συλλογή πληροφοριών λαμβάνει χώρα σε χώρους που ικανοποιούν τις συνθήκες άνεσης και ιδιωτικότητας».[46]

Το εθνικό δίκτυο υποστήριξης για τα θύματα ενδοοικογενειακής βίας περιλαμβάνει εταίρους από δημόσιους και ιδιωτικούς οργανισμούς και παρέχει ένα σύνολο δομών και ανταποκρίσεων για τα θύματα ενδοοικογενειακής βίας, όπως καταφύγια, δομές φροντίδας, ανταποκρίσεις σε καταφύγια έκτακτης ανάγκης, ειδικές ανταποκρίσεις από φορείς δημόσιας διοίκησης, τηλεφωνική υπηρεσία με εθνική κάλυψη πληροφοριών για τα θύματα ενδοοικογενειακής βίας και επίσης, όποτε το ζητήσουν, κοινοπραξίες αμοιβαίας βοήθειας για την προώθηση της αυτοβοήθειας και της χειραφέτησης των θυμάτων με σκοπό την αυτονομία τους.

Ένα νέο νομοθετικό διάταγμα του 2018 αποσαφηνίζει και εισάγει ένα σύνολο κανόνων και διαδικασιών για τη βελτίωση και την αποτελεσματικότητα της λειτουργίας των δομών φροντίδας, των ανταποκρίσεων σε καταφύγια έκτακτης ανάγκης και καταφυγίων, επιτρέποντας είτε μια διαδικασία αυτοαξιολόγησης και συστηματική ανασκόπηση των επιδόσεών τους, εντοπίζοντας ευκαιρίες για τη βελτίωση και αξιολογώντας την σχέση μεταξύ των πεπραγμένων και των επιτευχθέντων αποτελεσμάτων. Οι δομές πρώτης αντίδρασης, οι ανταποκρίσεις σε καταφύγια έκτακτης ανάγκης και τα καταφύγια διοικούνται από μη κυβερνητικές οργανώσεις, οι οποίες έχουν συνάψει συνεργασίες με τις δημόσιες αρχές που είναι υπεύθυνες για την πρόληψη της ενδοοικογενειακής βίας, καθώς και για την προστασία και τη συνδρομή των θυμάτων. Το Άρθρο 4 προβλέπει ότι οι φορείς που είναι υπεύθυνοι για την εφαρμογή του Νόμου πρέπει να ενεργούν *μεταξύ τους*, λαμβάνοντας υπόψη το σύστημα για την προστασία των παιδιών και την προώθηση των δικαιωμάτων τους. Όλες οι δομές που καλύπτονται από το Νόμο ισχύουν για όλα τα

[45] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.
[46] Relatório de Segurança Interna 2017. Sistema de Segurança Interna. Gabinete do Secretário-Geral, Page 38.



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θύματα της ενδοοικογενειακής βίας, συμπεριλαμβανομένων των ανήλικων παιδιών και των παιδιών με αναπηρία και του φροντιστή τους.[47]

### *Υπηρεσίες υποστήριξης παιδιών θυμάτων*

Η πρόσφατα μετονομασθείσα *Εθνική Επιτροπή για την Προαγωγή των Δικαιωμάτων και την Προστασία Παιδιών και Νέων* είναι ο κύριος δημόσιος φορέας στην Πορτογαλία που εργάζεται πάνω στον «(...) *σχεδιασμό κρατικής παρέμβασης και συντονισμού, παρακολούθησης και αξιολόγησης των πρωτοβουλιών που αναλαμβάνουν οι δημόσιοι φορείς και η κοινότητα για να προάγουν τα δικαιώματα των παιδιών και να προστατεύσουν τα παιδιά και τους νέους, μέσω των 309 Τοπικών Επιτροπών Προστασίας Παιδιών και Νέων που είναι κατανεμημένες σε ολόκληρη τη χώρα*».[48] Οι τοπικές επιτροπές λειτουργούν με δύο μορφές, τις λεγόμενες «περιορισμένες» και «εκτεταμένες» μορφές. Η πρώτη (μορφή) είναι μια τεχνική, «εξειδικευμένη» ομάδα που ενεργεί με σκοπό της την επανόρθωση/προστασία σε μεμονωμένες περιπτώσεις, ενώ η δεύτερη ομάδα εργασίας λειτουργεί ως ολομέλεια, με σκοπό την προληπτική προστασία των παιδιών ως ομάδα της κοινότητας.

Αυτή η δεύτερη ομάδα είναι διεπιστημονική και αποτελείται κυρίως από εκπροσώπους του Δήμου, έναν εκπρόσωπο του Ινστιτούτου Κοινωνικής Ασφάλισης, εκπροσώπους των Υπουργείων Παιδείας και Υγείας, εκπροσώπους Μη Κυβερνητικών Οργανώσεων, Συλλόγων Γονέων, εκπροσώπους των αστυνομικών δυνάμεων, οι οποίοι εκτελούν δραστηριότητες για παιδιά και νέους.

Οι «περιορισμένες» επιτροπές είναι υπεύθυνες για την παρέμβαση σε καταστάσεις που χαρακτηρίζονται ως οξεία απειλή για το παιδί ή τον/την νέο/α. Ως εκ τούτου, διεξάγουν τη διάγνωση και την καθοδήγηση σχετικά με τη διαδικασία, την απόφαση, την παρακολούθηση και την επανεξέταση των μέτρων προστασίας, συμπεριλαμβανομένης της συνοδείας των παιδιών σε δικαστικές διαδικασίες και της παροχής στήριξης στον εισαγγελέα ή τον δικαστή σχετικά με μέτρα ειδικής προστασίας. Η Επιτροπή διαθέτει ένα σύνολο γενικών οδηγιών για τους επαγγελματίες της κοινωνικής εργασίας, της εκπαίδευσης και των αστυνομικών δυνάμεων.[49] Υπάρχει επίσης μια κατευθυντήρια γραμμή για τις παρεμβάσεις για

[47] Decreto Regulamentar n.º 2/2018 Regula as condições de organização e funcionamento das estruturas de atendimento, das respostas de acolhimento de emergência e das casas de abrigo que integram a rede nacional de apoio às vítimas de violência doméstica. Diário da República n.º 17/2018, Série I de 2018-01-24

[48] Πληροφορίες διαθέσιμες στον ιστότοπο της Επιτροπής, στη διεύθυνση: https://www.cnpdpcj.gov.pt/relacoes-internacionais/international-relations.aspx (πρόσβαση στις 9 Απριλίου 2018).

[49] Οι οδηγοί για επαγγελματίες είναι διαθέσιμοι εδώ: https://www.cnpdpcj.gov.pt/direito-das-criancas/guias-para-profissionais.aspx (πρόσβαση στις 23 Απριλίου 2018).



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λογαριασμό παιδιών που έχουν υποστεί κακοποίηση. Έχει εκπονηθεί από τη Γενική Διεύθυνση Υγείας που περιλαμβάνει ορισμένα πρωτόκολλα και ένα τμήμα σχετικά με τις καλές πρακτικές συνέντευξης με παιδιά.[50] Αυτά τα εγχειρίδια και οι εξειδικευμένες εκπαιδεύσεις πραγματοποιούνται, αλλά δεν υπάρχουν στοιχεία για τον τρόπο με τον οποίο εφαρμόζονται στην πράξη.

Το Ινστιτούτο Παιδικής Υποστήριξης (*Instituto de Apoio à Criança*) είναι ο κορυφαίος μη κυβερνητικός οργανισμός που εργάζεται για την προστασία και την προαγωγή των δικαιωμάτων των παιδιών από το 1983. Ορισμένες από τις βασικές του δραστηριότητες περιλαμβάνουν τη νομική υποστήριξη, την υπηρεσία βοήθειας SOS για παιδιά, η οποία παρέχει εξειδικευμένη κοινωνική, ψυχολογική και νομική υποστήριξη και κατάλληλη παραπομπή σε παιδιά που το έχουν ανάγκη, καθώς και τον εξανθρωπισμό της φροντίδας των παιδιών (δηλαδή υγειονομική περίθαλψη φιλική προς τα παιδιά και εξασφάλιση του δικαιώματος του παιδιού στο παιχνίδι). Το 2013, το γραφείο νομικής υποστήριξης παρείχε βοήθεια σε 680 υποθέσεις, όπου 284 περιπτώσεις αφορούσαν τη ρύθμιση των γονικών ευθυνών, ακολουθούμενες από περιπτώσεις παιδιών σε κίνδυνο (117 περιπτώσεις) και διευκρινίσεις της νομοθεσίας (75 αιτήσεις).[51]

Η APAV, η οποία ιδρύθηκε το 2016 μέσω του Δικτύου CARE, παρέχει τεχνική υποστήριξη σε παιδιά και νέους ηλικίας έως 23 ετών, οι οποίοι έχουν πέσει θύματα σεξουαλικής κακοποίησης. Η βοήθεια παρέχεται κατόπιν παραπομπής από την αστυνομία δίωξης και μπορεί να περιλαμβάνει την παροχή βοήθειας και την παρακολούθηση δικαστικών διαδικασιών, ιατρικές-νομικές συμβουλές, δηλώσεις για μελλοντική μνήμη, παρακολούθηση ακροάσεων ενώπιον δικαστηρίου και άλλες διαδικαστικές πράξεις. 446 παιδιά θύματα έχουν λάβει βοήθεια κατά τα έτη 2016-2018. Αυτή η εξειδικευμένη μονάδα έχει εννέα μόνιμους υπαλλήλους, συμπεριλαμβανομένων νομικών και ψυχολόγων, οι οποίοι μπορούν να πάνε σε οποιοδήποτε σημείο της χώρας για να παράσχουν υποστήριξη σε επείγουσες περιπτώσεις που αναφέρονται στο Δίκτυο (CARE).[52]

[50] Το εγχειρίδιο διατίθεται εδώ: https://www.cnpdpcj.gov.pt/direito-das-criancas/guias-para-profissionais/maus-tratos-em-criancas-e-jovens.aspx (έχει πρόσβαση στις 23 Απριλίου 2018)
[51] Για περισσότερες πληροφορίες, επισκεφτείτε την ιστοσελίδα του ινστιτούτου στη διεύθυνση: http://www.iacrianca.pt (πρόσβαση στις 23 Απριλίου 2018).
[52] Diário de Notícias. *Rede Care acompanha 446 crianças e jovens vítimas de violência sexual.* 21 de Fevereiro de 2018.


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## 4.3. Ισπανία

### 4.3.1. Επισκόπηση των παιδιών θυμάτων εγκληματικότητας στην Ισπανία

Το 2016, 80 παιδιά ηλικίας 0-13 ετών στο σύνολο έπεσαν θύματα σεξουαλικής επίθεσης με διείσδυση, 20 εκ των οποίων ήταν αγόρια και 60 ήταν κορίτσια· συνολικά 193 παιδιά ηλικίας 14-17 ετών έπεσαν θύματα σεξουαλικής επίθεσης με διείσδυση, 18 εκ των οποίων ήταν αγόρια και 175 κορίτσια· συνολικά 29 παιδιά ηλικίας 0-13 ετών έπεσαν θύματα παιδικής πορνογραφίας, όπου 12 εκ των οποίων ήταν αγόρια και 17 κορίτσια· και (τέλος) ένα σύνολο 35 παιδιών ηλικίας 14-17 ετών έπεσαν θύματα παιδικής πορνογραφίας, 8 εκ των οποίων ήταν αγόρια και 27 κορίτσια.

Σε σχέση με άλλα εγκλήματα κατά της σεξουαλικής ελευθερίας και καθορισμού, συνολικά 1.932 παιδιά ηλικίας 0-13 ετών ήταν θύματα, 460 αγόρια και 1.470 κορίτσια. και στην ηλικιακή ομάδα των 14-17 ετών υπήρχαν συνολικά 1.716 θύματα με 328 αγόρια και 1.387 κορίτσια.

Σύμφωνα με αυτά τα δεδομένα, οι επιπτώσεις στα κορίτσια είναι δυσανάλογες. Υπάρχουν πιο σημαντικές αποκλίσεις στον αριθμό των θυμάτων σε σχέση με το προηγούμενο έτος: οι περιπτώσεις παιδικής πορνογραφίας στην ηλικιακή ομάδα 0-13 είχαν μείωση κατά 40,8% σε σύγκριση με το 2015, και στην ηλικιακή ομάδα 14-17 η μείωση ήταν ελαφρώς υψηλότερη με 54,5%. Η πιο σημαντική διακύμανση σημειώθηκε σε περιπτώσεις εγκλημάτων κατά της σεξουαλικής ελευθερίας και της καθορισμού στην ηλικιακή ομάδα 14-17, με αύξηση 50,5% σε σχέση με το 2015.[53]

Στην Ισπανία, πραγματοποιήθηκαν ορισμένες μελέτες εκτίμησης τα τελευταία χρόνια χρησιμοποιώντας διαφορετικές μεθοδολογίες, στόχος των οποίων είναι η διαπίστωση των διαστάσεων της σεξουαλικής κακοποίησης μεταξύ παιδιών και εφήβων. Ανάμεσά τους είναι οι επονομαζόμενες αναδρομικές μελέτες στις οποίες ερωτώνται οι ενήλικες εάν έχουν υποστεί σεξουαλική κακοποίηση κατά τη διάρκεια της παιδικής τους ηλικίας.

> «Η πιο σημαντική και συχνά αναφερόμενη από αυτές τις έρευνες είναι μια έρευνα ευρείας κλίμακας που διεξήχθη το 1994, στην οποία ερωτήθηκαν 2.000 άτομα αν θυμούνται ότι έχουν κακοποιηθεί πριν από την ηλικία των 16. Το αποτέλεσμα ήταν ότι το 18,9% του πληθυσμού είχε υπάρξει θύμα σεξουαλικής κακοποίησης, ένα υψηλό ποσοστό που κατανέμεται ως εξής ανάλογα με το φύλο: το 15,2% των ανδρών και το 22,5% των γυναικών είχαν υποστεί σεξουαλική κακοποίηση. (...) Η πιο πρόσφατη μελέτη συχνότητας μέχρι σήμερα καταλήγει στο συμπέρασμα ότι το 9,5% του συνόλου του δείγματός της, το

[53] Anuario Estadístico del Ministerio del Interior - 2016. España



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6,5% των ανδρών και το 10% των γυναικών, υπήρξαν θύματα σεξουαλικής κακοποίησης»[54]

Σε σχέση με την εμπορία παιδιών, πρόσφατη μελέτη που δημοσιεύθηκε από την Εθνική Επιτροπή για τη UNICEF στην Ισπανία δείχνει τη δυσκολία πρόσβασης σε ακριβή δεδομένα. Σύμφωνα με τα στοιχεία του Υπουργείου Εσωτερικών, τα θύματα εμπορίας για σεξουαλική εκμετάλλευση αντιπροσώπευαν το 20% το 2015 (εντοπίστηκαν 133 θύματα) και το άλλο 50% ήταν θύματα εμπορίας για εργασιακή εκμετάλλευση (134). Αυτή η κατανομή αλλάζει στις πληροφορίες που δημοσίευσε ο Γενικός Εισαγγελέας, δηλαδή στα 96 μέτρα για την παρακολούθηση του εγκλήματος της εμπορίας ανθρώπων που ξεκίνησε το 2015: (εκεί) υπάρχουν 978 φερόμενα θύματα εμπορίας ανθρώπων για σκοπούς σεξουαλικής εκμετάλλευσης, τουλάχιστον 92 φερόμενα θύματα εργασιακής εκμετάλλευσης, 22 περιπτώσεις εκμετάλλευσης για επαιτεία και 3 για εξαναγκασμό σε γάμο, δεδομένου ότι όλα τα φερόμενα θύματα διακίνησης αναγκαστικού γάμου είναι ανήλικες γυναίκες. Η έκθεση υποστηρίζει επίσης ότι:

> «τα στοιχεία αυτά είναι πολύ μακριά από αυτά που υπολογίζονται από τις οργανώσεις που εργάζονται άμεσα στον τομέα, που για παράδειγμα υπολογίζουν ότι μεταξύ 40.000 και 50.000 γυναίκες είναι θύματα εμπορίας για σεξουαλική εκμετάλλευση στην Ισπανία. Από την άλλη πλευρά, όχι όλες οι οργανώσεις, που συνεργάζονται με θύματα εγκληματικότητας, συλλέγουν συστηματικά δεδομένα, και ακόμη λιγότερο στην περίπτωση κοριτσιών και αγοριών. Λαμβάνοντας υπόψη τα δεδομένα, μπορεί να συναχθεί ότι στην Ισπανία το αδίκημα με τα περισσότερα θύματα είναι η εμπορία ανθρώπων με σκοπό τη σεξουαλική εκμετάλλευση, με τις γυναίκες και τα κορίτσια να είναι τα βασικά θύματα» .[55]

### 4.3.2. Προστασία παιδιών θυμάτων εγκληματικότητας στην Ισπανία

#### *Νομικό Υπόβαθρο και Γενικές υπηρεσίες υποστήριξης θυμάτων*

Στην Ισπανία, ο νόμος 4/2015, της 27ης Απριλίου, ενέκρινε το Καταστατικό για τα Θύματα Εγκληματικότητας.[56] Ο τίτλος ΙΙΙ του σχεδίου για το οργανικό δίκαιο μεταφέρει λεπτομερώς τα Άρθρα 22-24 της οδηγίας. Το Άρθρο 19 ορίζει ότι «στην περίπτωση των ανήλικων θυμάτων, το Γραφείο του Εισαγγελέα θα διασφαλίσει ιδιαίτερα την τήρηση αυτού του δικαιώματος προστασίας, υιοθετώντας τα κατάλληλα μέτρα προς το καλύτερο συμφέρον τους όταν είναι αναγκαίο για την πρόληψη ή τη μείωση των ζημιών που μπορεί να προκύψουν γι' αυτούς από την εξέλιξη της διαδικασίας». Είναι σημαντικό να

[54] Σώστε τα παιδιά (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema, Page 46.

[55] Castaño, M., Pérez, A. (2017) Son niños y niñas, son víctimas. Situación de los menores de edad víctimas de trata en España. Cuadernos para el Debate no 5, UNICEF Comité Español, Huygens Editorial. Page 12.

[56] Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito. Boletín Oficial de lo Estado núm. 101, de 28/04/2015



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τονιστεί η σημασία της Υπηρεσίας του Εισαγγελέα για την προστασία των παιδιών θυμάτων και η προτεραιότητα των κατευθυντήριων αρχών της Σύμβασης για τα Δικαιώματα του Παιδιού.

Τα Άρθρα 23 της ισπανικής νομοθεσίας σχετικά με την «ατομική αξιολόγηση των θυμάτων για τον προσδιορισμό των ειδικών αναγκών προστασίας τους» και 24 σχετικά με τις «διαδικασίες αρμοδιότητας και αξιολόγησης» μεταφέρουν τις λεπτομέρειες του κειμένου των Άρθρων 22-23 της οδηγίας.

Ο νόμος εξηγεί τις λειτουργίες των γραφείων υποστήριξης των θυμάτων εγκληματικότητας στον Τίτλο IV, Κεφάλαιο I, Άρθρα 27-29. Τα **Γραφεία Υποστήριξης των Θυμάτων Εγκληματικότητας** είναι ένα δίκτυο δημόσιων και δωρεάν υπηρεσιών που δημιουργήθηκε από το ισπανικό Υπουργείο Δικαιοσύνης το 1996, το οποίο ρυθμίστηκε περαιτέρω με την έκδοση του βασιλικού διατάγματος 1109/2015 της 11ης Δεκεμβρίου, με το οποίο (θεσπίστηκε) ο Νόμος 4/2015, της 27ης Απριλίου, του Καταστατικού του θύματος εγκληματικότητας. Αυτές οι υπηρεσίες είναι υπεύθυνες για την **ατομική αξιολόγηση των θυμάτων**, προσδιορίζοντας ποιος είναι ιδιαίτερα ευάλωτος και θεσπίζοντας προστατευτικά μέτρα για την αποφυγή περαιτέρω θυματοποίησης. Μετά την ατομική αξιολόγηση, οι αρχές μπορούν να συντάξουν έκθεση, σύμφωνα με την προαναφερθείσα νομοθεσία, με την προηγούμενη και ενημερωμένη συναίνεση του θύματος που θα αποσταλεί στην αρμόδια αρχή για να λάβει τα μέτρα προστασίας.

Τα γραφεία υποστήριξης των θυμάτων εγκληματικότητας μπορούν να προτείνουν τα μέτρα που θεωρούνται κατάλληλα για τη βοήθεια και την προστασία του θύματος κατά τη διάρκεια της ερευνητικής φάσης, ιδίως όταν πρόκειται για ευάλωτα θύματα. Η βοήθεια στα θύματα θα πραγματοποιηθεί σε τέσσερις φάσεις: υποδοχή-καθοδήγηση[57], πληροφορίες, παρέμβαση και συμπληρωματική έρευνα.[58, 59]

Τέλος, το **Γνωμοδοτικό Συμβούλιο για την Παροχή Βοήθειας στα Θύματα**, που σύμφωνα με το Άρθρο 10 του Βασιλικού Διατάγματος αποσκοπεί στο να:

1) «Παρέχει συμβουλές σχετικά με τη λειτουργία των Γραφείων Υποστήριξης των Θυμάτων Εγκληματικότητας»
2) Εξετάζει στατιστικά στοιχεία

[57] Ο προσανατολισμός κατά την υποδοχή είναι όταν τα θύματα λαμβάνουν για πρώτη φορά, οι ανάγκες τους αξιολογούνται και «κατευθύνονται» σε διάφορες υπηρεσίες.

[58] Real Decreto 1109/2015, de 11 de diciembre, por el que se desarrolla la Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito, y se regulan las Oficinas de Asistencia a las Víctimas del Delito. Boletín Oficial de lo Estado núm. 312, de 30 de diciembre de 2015, páginas 123162 a 123181.

[59] Συνοπτικές πληροφορίες σχετικά με τα Γραφεία μπορείτε να βρείτε στην ιστοσελίδα του Υπουργείου Δικαιοσύνης, η οποία διατίθεται εδώ: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-14263 (πρόσβαση στις 23 Απριλίου 2018) .



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3) Υποστηρίζει τεχνικές μελέτες σχετικά με τις δράσεις των γραφείων και του δικτύου συντονισμού
4) Συγκρίνει τα διάφορα σχέδια ψυχολογικής υποστήριξης που εφαρμόζουν τα Γραφεία, προκειμένου να προταθούν βελτιώσεις στην παροχή βοήθειας στα θύματα
5) Προωθήσει την ανάπτυξη πρωτοκόλλων δράσης και να τα επικαιροποιεί σύμφωνα με τους εθνικούς και διεθνείς κανονισμούς
6) Συμβουλεύει το Υπουργείο Δικαιοσύνης κατά την προετοιμασία της ετήσιας έκθεσης για την περιοδική αξιολόγηση του συστήματος προστασίας των θυμάτων εγκληματικότητας
7) Οποιαδήποτε άλλη λειτουργία που, στο πλαίσιο των αρμοδιοτήτων της, αποδίδεται σ 'αυτό (το Συμβούλιο) με κάποια νομοθετική ή κανονιστική διάταξη.» [60]

Το Γνωμοδοτικό Συμβούλιο ιδρύθηκε τον Ιούνιο του 2017 και ένας από τους τέσσερις τομείς προτεραιότητας του περιλαμβάνει την προστασία των παιδιών, η οποία πρέπει να παρέχεται από τη στιγμή που αυτά έρχονται σε επαφή με το δικαστικό σύστημα.

Άλλες σχετικές νομικές διατάξεις της χώρας περιλαμβάνουν το Βασιλικό Διάταγμα-Νόμο 3/2013, της 22ας Φεβρουαρίου, το οποίο τροποποιεί το σύστημα της δωρεάν νομικής συνδρομής και αναγνωρίζει σε όλα τα παιδιά που είναι θύματα καταστάσεων κακοποίησης ή κακομεταχείρισης, ανεξάρτητα από την ύπαρξη των πόρων για να ασκηθεί δίωξη, το δικαίωμα δωρεάν νομικής συνδρομής, η οποία θα παρέχεται αμέσως. Αυτός ο κανόνας, που ισχύει από τον Φεβρουάριο του 2013, χορηγεί στον δικαστή ή το δικαστήριο την εξουσία να απονέμει δωρεάν εξειδικευμένη βοήθεια η οποία μπορεί να παρέχεται άμεσα, ανάλογα με τις συνθήκες της συγκεκριμένης υπόθεσης και το συμφέρον του παιδιού.[61]

Σύμφωνα με το Νόμο της Ποινικής Δικονομίας, το Άρθρο 433 ορίζει ότι

> «Σε περίπτωση παιδιών μαρτύρων ή προσώπων με δικαστικώς τροποποιημένη ικανότητα, ο δικαστής που εξετάζει την υπόθεση μπορεί να αποφασίσει πότε, ενόψει της έλλειψης ωριμότητας του θύματος, είναι αναγκαίο να αποφευχθεί η πρόκληση σοβαρής βλάβης σε αυτό, και (πότε πρέπει να ληφθεί) κατάθεση από την παρέμβαση εμπειρογνωμόνων και την παρέμβαση του γραφείου του εισαγγελέα. Για το σκοπό αυτό, μπορεί επίσης να συμφωνηθεί ότι οι ερωτήσεις θα μεταφερθούν απευθείας στο θύμα από τους εμπειρογνώμονες, ή ακόμη και θα αποκλείουν ή θα περιορίζουν την παρουσία των μερών στην θέση της έρευνας του θύματος. Στις περιπτώσεις αυτές, ο δικαστής θα κανονίζει ό,τι είναι απαραίτητο για να διευκολύνει τη δυνατότητα των μερών να μεταφέρουν ερωτήσεις ή να ζητούν διευκρινίσεις από το θύμα, όποτε αυτό είναι δυνατό. Ο δικαστής θα διατάξει την καταγραφή της κατάθεσης μέσω οπτικοακουστικών μέσων.»

[60] Άρθρο 10, *Ibid.*
[61] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014.


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Το Άρθρο 449 του ίδιου νόμου ορίζει ότι *«Η δήλωση των παιδιών μαρτύρων και των ατόμων με δικαστικά τροποποιημένη ικανότητα μπορεί να πραγματοποιηθεί* ***με την αποφυγή της οπτικής αντιπαράθεσης*** *του ίδιου με τους κατηγορούμενους, χρησιμοποιώντας για αυτό κάθε τεχνικό μέσο που καθιστά δυνατή την πρακτική της εξέτασης αυτής.»* [62]

Εκτός από το εθνικό κανονιστικό πλαίσιο, σε κάθε αυτόνομη κοινότητα έχουν αναπτυχθεί ειδικές νομοθεσίες, σχέδια δράσης, προγράμματα-πλαίσια ή ειδικά πρωτόκολλα για την αντιμετώπιση του προβλήματος της κακοποίησης παιδιών και της βίας κατά των γυναικών.[63]

### *Υπηρεσίες υποστήριξης παιδιών θυμάτων*

Η δημόσια ανταπόκριση σε καταστάσεις παραμέλησης ή κακοποίησης κατά των παιδιών στην Ισπανία κατανέμεται μεταξύ κοινωνικών υπηρεσιών σε επίπεδο δήμων και εξειδικευμένων υπηρεσιών προστασίας των παιδιών. Αυτές οι δύο υπηρεσίες είναι διαθέσιμες σε όλες τις περιοχές της Ισπανίας. Οι ευθύνες μεταξύ των δύο επιπέδων κατανέμονται ανάλογα με την κατηγοριοποίηση και τη σοβαρότητα της κακοποίησης. Όλες οι περιφερειακές αρχές στην Ισπανία έχουν κεντρικές και επονομαζόμενες εδαφικές εξειδικευμένες υπηρεσίες για την προστασία των παιδιών (τα μέτρα προστασίας προβλέπονται στον Οργανικό Νόμο 1/1996, της 15ης Ιανουαρίου, για τη Νομική Προστασία των Ανηλίκων)[64]. Το Υπουργείο Υγείας, Κοινωνικών Υπηρεσιών και Ισότητας δημοσίευσε ένα *Βασικό πρωτόκολλο παρέμβασης κατά της παιδικής κακοποίησης στην οικογένεια* το 2014. Αν και το πρωτόκολλο παρέχει πράγματι *βασικές* πληροφορίες, αποτελεί μια ολοκληρωμένη και χρήσιμη πηγή πληροφόρησης για όλους τους εμπλεκόμενους στην προστασία των παιδιών, από την πρόληψη, την έγκαιρη διάγνωση και την προστασία στις δικαστικές υπηρεσίες. Το έγγραφο παρέχει μια σύνοψη του διεθνούς και εθνικού κανονιστικού πλαισίου, συστάσεις προς βελτίωση (συμπεριλαμβανομένης της δημιουργίας πρόσθετων δομών) και καθοδήγηση για καλές πρακτικές στην προστασία των παιδιών, η οποία περιλαμβάνει, για παράδειγμα, πτυχές προστασίας των παιδιών θυμάτων στις δικαστικές διαδικασίες.[65] Φαίνεται ότι

[62] Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal. Boletín Oficial de lo Estado n úm. 260, de 17/09/1882.
[63] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014.
[64] Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil. Boletín Oficial de lo Estado núm. 15, de 17 de enero de 1996
[65] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014


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υπάρχουν πολλά πρόσθετα εγχειρίδια για διαδικασίες για την προστασία των παιδιών σε διάφορες περιοχές, που απευθύνονται σε διάφορες διαθέσιμες υπηρεσίες.[66]

Οι Μονάδες για Παιδιά του Εθνικού Αστυνομικού Σώματος (Unidades de Menores del Cuerpo Nacional de Policía) ενσωματώνονται στις επαρχιακές ταξιαρχίες της Δικαστικής Αστυνομίας. Αυτές οι μονάδες έχουν δύο κύριες λειτουργίες: Προστασία των παιδιών που είναι θύματα κάθε μορφής κακομεταχείρισης, είτε σωματικής (συμπεριλαμβανομένης της σεξουαλικής κακοποίησης) είτε ψυχολογικής, καθώς και προστασία ανηλίκων παραβατών (Οδηγία αριθ. 11/2007, της 12ης Σεπτεμβρίου, του Τμήματος (Υφυπουργείου) Ασφαλείας, το οποίο εγκρίνει το «Πρωτόκολλο της Αστυνομικής Δράσης με τους Ανήλικους».[67] Αυτές οι μονάδες λειτουργούν σε συνεργασία με δημόσιους και ιδιωτικούς φορείς, που εργάζονται με και για παιδιά, τόσο όσον αφορά την προστασία και την εκπαίδευσή τους όσο και σε σχέση με τους ανήλικους παραβάτες. Οι Μονάδες για Παιδιά του Εθνικού Αστυνομικού Σώματος θα πρέπει να ακολουθούν το Πρωτόκολλο Δράσης των Δυνάμεων Ασφαλείας και το Συντονισμό με τα δικαστικά όργανα για την προστασία των θυμάτων ενδοοικογενειακής βίας και βίας λόγω φύλου.[68]

Παρότι ενδέχεται να μην είναι οι κύριοι παράγοντες άμεσης παρέμβασης, είναι σημαντικό να τονιστεί ο ρόλος της Εθνικής Επιτροπής για τη UNICEF και των γραφείων Σώστε τα Παιδιά και Υπεράσπιση των Παιδιών (Save the Children and Defence for Children) στην υπεράσπιση, εκπαίδευση και ευαισθητοποίηση σχετικά με τη βία κατά των παιδιών, τα δικαιώματα των παιδιών και τη δικαιοσύνη ανηλίκων στην Ισπανία.

[66] Βλέπε για παράδειγμα το Εγχειρίδιο Παρέμβασης Κοινωνικών Υπηρεσιών του Δήμου Μαδρίτης για την Προστασία του Παιδιού, το οποίο διατίθεται εδώ: http://www.madrid.es/UnidadesDescentralizadas/ServALaCiudadania/SSociales/EspInformativos/Especial Infancia/Publicaciones/manual.pdf; and the Instrument for the Assessment of the Gravity of Child Protection Situations in Aragón, available here: https://www.aragon.es/estaticos/GobiernoAragon/Organismos/InstitutoAragonesServiciosSociales/IASS_new/Documentos/infancia/MALTRATO-2014-valoracion-gravedad-menores.pdf (πρόσβαση στις 23 Απριλίου 2018)

[67] InstrucciÓN N° 11/2007, de 12 De Septiembre, de la Secretaria de EsTado de Seguridad, por la que se aprueba el "Protocolo de Atuacion Policial con Menores".

[68] Protocolo de Actuación de las Fuerzas y Cuerpos de Seguridad y de CoordinaciÓN con los Órganos Judiciales para la ProtecciÓN de las Víctimas de Violencia Doméstica y de Género, Aprobado por la Comisión Técnica de la Comisión Nacional de Coordinación de la Policía Judicial el 28 de junio de 2005, tras haberse adaptado el anterior Protocolo a las modificaciones de la LO 1/2004, de Medidas de Protección Integral contra la Violencia de Género, διαθέσιμο here: (πρόσβαση στις 23 Απριλίου 2018)



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## 4.4. Ηνωμένο Βασίλειο – Αγγλία και Ουαλία

### 4.4.1 Επισκόπηση των παιδιών θυμάτων εγκληματικότητας στην Αγγλία και την Ουαλία

Η μεγαλύτερη ανεξάρτητη παραγωγή επίσημων στατιστικών και αναγνωρισμένο εθνικό στατιστικό ινστιτούτο του Ηνωμένου Βασιλείου είναι το Γραφείο Εθνικών Στατιστικών (ONS), το οποίο παράγει ετησίως την έρευνα για την εγκληματικότητα της Αγγλίας και της Ουαλίας (CSEW).[69] (Το γραφείο αυτό) εκτίμησε στην ετήσια έκθεσή του[70] ότι κατά το έτος που έληξε το Σεπτέμβριο του 2016, περίπου 12 στα 100 παιδιά ηλικίας 10 έως 15 ετών υπήρξαν θύματα τουλάχιστον ενός εγκλήματος. Κατά το έτος που έληξε το Σεπτέμβριο του 2017, περίπου 10 στα 100 παιδιά της ίδιας ηλικιακής ομάδας ήταν θύματα εγκληματικότητας. Ένα σύνολο 652.000 εγκλημάτων εκτιμάται ότι βίωσαν τα παιδιά αυτής της ηλικιακής ομάδας κατά το έτος που έληξε Σεπτέμβριο του 2017.

Ωστόσο, το κύριο πρόβλημα αυτής της έρευνας είναι ότι δεν περιλαμβάνει παιδιά ηλικίας κάτω των 10 ετών ή άτομα ηλικίας άνω των 15 ετών (δηλαδή μεταξύ 15 και 17 ετών)[71] και δεν περιλαμβάνει ζητήματα σχετικά με τη σεξουαλική κακοποίηση, σεξουαλική βία, ή σεξουαλική εκμετάλλευση των παιδιών (βλ. Αναφορά Επιτρόπου για τα Θύματα 2017: 10)[72]. Ως αποτέλεσμα, οι αριθμοί που αξιολογούνται από το CSEW έχουν περιορισμένη σημασία όσον αφορά τα εγκλήματα στα παιδιά, διότι παρουσιάζουν μια πολύ περιορισμένη εικόνα των παιδιών θυμάτων.

Ως εκ τούτου, η Επίτροπος για τα θύματα (Βαρώνη Newlove του Warrington) έχει επίσης συμπεριλάβει στην έκθεση «*Πραττούμε σωστά σχετικά με τα νεαρά θύματα εγκληματικότητας; Μια ανασκόπηση των δικαιωμάτων των παιδιών στον κώδικα των θυμάτων*» (2017) πρόσθετα στατιστικά στοιχεία για να παράγει μια ευρύτερη εικόνα για την πραγματική έκταση και μορφή των παιδιών θυμάτων

[69] Βλέπε: https://www.ons.gov.uk (πρόσβαση στις 9 Απριλίου 2018)

[70] Όσον αφορα το έγκλημα κατά των νοικοκυριών και των ενηλίκων συμπεριλαμβανομένων επίσης των δεδομένων σχετικά με την εγκληματικότητα που βίωνουν τα παιδία και τα εγκλήματα κατά των επιχειρήσεων Βλέπε:https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingseptember2017 (πρόσβαση στις 9 Απριλίου 2018)

[71] Βλέπε την έκθεση "Πράττουμε σωστά σχετικά με τα νεαρά θύματα εγκληματικότητας; Μια ανασκόπηση των δικαιωμάτων των παιδιών στον κώδικα των θυμάτων "που εξέδωσε ο Επίτροπος των Θυμάτων, τον Φεβρουάριο του 2017. http://victimscommissioner.org.uk/app/uploads/2014/10/Are-we-getting-it-right-for-young-victims - of-crime.pdf (πρόσβαση στις 9 Απριλίου 2018)

[72] Ο Επίτροπος για τα θύματα και τους μάρτυρες (Επίτροπος Θυμάτων) έχει καθήκον να παρακολουθεί τακτικά τον Κώδικα Θυμάτων, να ακούει τις απόψεις των θυμάτων και να κατανοεί το σύστημα ποινικής δικαιοσύνης για τους σκοπούς της βελτίωσης των υπηρεσιών και της υποστήριξης των θυμάτων (βλέπε Υπουργείο Δικαιοσύνης, Κώδικας Πρακτικής για τα Θύματα του Εγκλήματος, Οκτώβριος 2015).



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εγκληματικότητας. Για παράδειγμα, τα αριθμητικά στοιχεία για την εγκληματικότητα που καταγράφηκαν από την αστυνομία της Αγγλίας και της Ουαλίας, καθώς και στοιχεία που παρήγαγε η φιλανθρωπική οργάνωση *Υποστήριξη Θυμάτων*, σε συνεργασία με το πανεπιστήμιο του Bedfordshire το 2014, γνωστή ως η έκθεση *«Υποφέροντας Σιωπηλά»* για την κρυφή θυματοποίηση των παιδιών και των νέων εξ ονόματος της *Κοινοβουλευτικής Ομάδας Όλων των Κομμάτων για τα Θύματα και τους Μάρτυρες* (βλέπε έκθεση του Επιτρόπου για τα θύματα 2017: 13). Τα στοιχεία βίαιου και σεξουαλικού εγκλήματος που καταγράφηκαν από την αστυνομία κατά το έτος 2015 έδειξαν ότι τα παιδιά ηλικίας κάτω των 16 ετών αντιπροσωπεύουν μεγάλο ποσοστό όλων των εγκλημάτων βιασμού που καταγράφηκαν από την αστυνομία. «Μόλις λιγότερο από το ένα τρίτο (30%) των θηλυκών θυμάτων βιασμού ήταν ηλικίας κάτω των 16 ετών, με την πλειοψηφία (60%) των αρσενικών θυμάτων βιασμού να είναι ηλικίας κάτω των 16 ετών» (ibid.: 10). Σύμφωνα με την έκθεση του Επιτρόπου για τα θύματα, το μεγαλύτερο ποσοστό των θυμάτων βιασμού ήταν ηλικίας μεταξύ 15 και 19 ετών το οποίο ανέρχεται σχεδόν στο ένα τέταρτο (23%) όλων των αδικημάτων βιασμού που καταγράφηκαν από την αστυνομία. Επιπλέον, τα στοιχεία της αστυνομίας για την εγκληματικότητα του Ηνωμένου Βασιλείου έδειξαν επίσης ότι τα παιδιά ηλικίας κάτω των 16 ετών αποτελούν ένα μεγάλο μέρος άλλων σεξουαλικών αδικημάτων. Το 50% των θηλυκών θυμάτων και το 62% των αρσενικών θυμάτων ήταν ηλικίας κάτω των 16 ετών. Το 28% των θυμάτων άλλων σεξουαλικών αδικημάτων που καταγράφηκαν από την αστυνομία ήταν ηλικίας μεταξύ 10 και 14 ετών (στο εξής: ONS 2016 όπως αναφέρθηκε από τον Επίτροπο Θυμάτων 2017).

Το πιο εντυπωσιακό, όπως έχει ήδη διαπιστωθεί στην περίπτωση της Γερμανίας, είναι ότι η μεγαλύτερη πρόκληση όσον αφορά τα παιδιά θύματα είναι τα μη καταγεγραμμένα εγκλήματα εναντίον τους. Όπως έχει δηλώσει και ο Επίτροπος των Θυμάτων:

> «Παρά το μεγάλο ποσοστό του καταγεγραμμένης εγκληματικής συμπεριφοράς κατά παιδιών, υπάρχουν στοιχεία που υποδηλώνουν ότι μεγάλο μέρος του εγκλήματος που διαπράττεται εναντίον παιδιών και νέων δεν αναφέρεται και επομένως δεν έχει καταγραφεί, υποδεικνύοντας ότι τα παιδιά και οι νέοι αντιμετωπίζουν πολύ υψηλότερα ποσοστά εγκληματικότητας από αυτά που δείχνουν τα στοιχεία της αστυνομίας.» (Ibid .: 13).

Η έκθεση διερωτά περαιτέρω ποιοι είναι οι λόγοι πίσω από την υποεκπροσώπηση των εγκλημάτων εναντίον των παιδιών και των νέων και έχει καταλήξει στο συμπέρασμα αναφορικά με την έκθεση


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«Υποφέροντας Σιωπηλά»[73] ότι τα παιδιά δεν ξέρουν πάντα τι συνιστά έγκλημα, ειδικά όταν η εγκληματική συμπεριφορά έχει κανονικοποιηθεί σε μια ομάδα συνομιλήκων ή όταν έχουν προετοιμαστεί για κακοποίηση ή εκμετάλλευση (βλέπε Beckett et al 2014, όπως αναφέρεται από τον Επίτροπο των Θυμάτων 2017). Ανακάλυψαν επίσης ότι τα παιδιά πολύ συχνά δεν γνωρίζουν πώς και πού να αναφέρουν ένα έγκλημα ή όταν το παιδί γνωρίζει τον θύτη (όταν δηλαδή το έγκλημα λαμβάνει χώρα σε γνωστό περιβάλλον, όπως π.χ. στο σχολείο ή στο σπίτι του κ.λπ.) είναι λιγότερο πιθανό να αναφερθεί το έγκλημα (ibid.). Μερικές φορές τα παιδιά τρέφουν επίσης φόβο και δυσπιστία προς την αστυνομία. Ως εκ τούτου, η έκθεση έχει συστήσει ότι «Το Υπουργείο Εσωτερικών και το Υπουργείο Δικαιοσύνης» θα πρέπει (...) να συντονίζει και να επιβλέπει τη συλλογή συγκρίσιμων στοιχείων της αστυνομίας και των αυτοαξιολογήσεων σχετικά με τις εμπειρίες εγκληματικότητας. Προτείνουν τα δεδομένα αυτά να διαφοροποιούν τα παιδιά και τους νέους από τους ενήλικες και να καλύπτουν όλα τα είδη εγκληματικών πράξεων» (ibid.:14). Αυτό σημαίνει ότι, μονάχα η αναφορά (εγκλημάτων) για παιδιά ηλικίας 10 έως 15 και μόνο σε ορισμένες εγκληματικές πράξεις, όπως στην περίπτωση της CSEW, θέτει τον κίνδυνο να παραμείνουν μεγάλες εγκληματικές πράξεις (όπως η σεξουαλική κακοποίηση κλπ) και άλλες ηλικιακές ομάδες εκτός αναφοράς, διακινδυνεύοντας, ως εκ τούτου, (τη δημιουργία) ενός κενού στην απόδειξη της ακριβούς έκτασης του εγκλήματος που βιώνουν τα παιδιά και οι νέοι στην Αγγλία και την Ουαλία.

### 4.4.2. Προστασία των παιδιών θυμάτων εγκληματικότητας στην Αγγλία και την Ουαλία

Στο Ηνωμένο Βασίλειο, μαζί με την αστυνομία και τη Βασιλική Εισαγγελική Αρχή, υπάρχουν πολλά διαφορετικά είδη οργάνων. Αυτά τα διαφορετικά όργανα έχουν την κύρια ευθύνη για την υποστήριξη των παιδιών και των νέων που έχουν πέσει θύματα εγκληματικότητας και ανταποκρίνονται στις ανάγκες τους, συμπεριλαμβανομένων των διαφορετικών κρατικών και μη κρατικών οργανώσεων (βλέπε Codd κ.ά. 2016: 23). Επιπλέον, κάθε τοπική αρχή είναι υπεύθυνη για την προστασία και την προώθηση της ευημερίας των παιδιών και των νέων που το έχουν ανάγκη.

73 Μια μελέτη που διεξήχθη από τους Beckett και Warrington 2014, η οποία συγκέντρωσε ήδη υπάρχοντα δεδομένα για να δείξει ότι η πλειονότητα των εγκλημάτων κατά παιδιών και νέων δεν αναφέρθηκαν, π.χ. 13% των βίαιων εγκλημάτων (βλ. Becket et al 2014).



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*Νομικό υπόβαθρο*

Αξιοσημείωτη είναι η διαφορά του βρετανικού νομικού συστήματος ως προς την επιλογή των κρατών μελών σε αυτήν την έκθεση. Το μεγαλύτερο μέρος του Ηνωμένου Βασιλείου με την Ιρλανδία διαθέτουν **συστήματα κοινής νομοθεσίας,** όπου η νομολογία και η προηγούμενη δικαστική απόφαση καθορίζουν την εφαρμογή του δικαίου, ενώ το μεγαλύτερο μέρος των κρατών μελών της ΕΕ (και ιδίως αυτών της παρούσας επιλογής) έχουν **συστήματα αστικού δικαίου**. Αλλά υπάρχει επίσης και το μικτό νομοθετικό σύστημα, όπως, για παράδειγμα, στην περίπτωση της Σκωτίας (βλέπε EPR, 2017: 47). Είναι σημαντικό ότι αυτή η διαφορά έχει επιπτώσεις στο είδος της μεταφοράς της ΟΘ. Σε μια χώρα με αγγλοσαξωνικό δίκαιο όπως το Ηνωμένο Βασίλειο, η μεταφορά της οδηγίας έγινε με την υιοθέτηση νέας νομοθετικής πράξης (αντί για την τροποποίηση ήδη ισχύοντων νόμων, όπως η τροποποίηση του κώδικα ποινικής δικονομίας όπως στην περίπτωση, μεταξύ άλλων, της Γερμανίας). Στην περίπτωση της Αγγλίας και της Ουαλίας η οδηγία μεταφέρθηκε κυρίως μέσω του «**Κώδικα Πρακτικής για τα Θύματα Εγκληματικότητας»**.[74] Ιδρύθηκε για πρώτη φορά το 2006 από τον Νόμο του 2004 για την Ενδοοικογενειακή Βία, την Εγκληματικότητα και τα Θύματα και έχει ήδη αναθεωρηθεί δύο φορές: τον Δεκέμβριο του 2013 για πρώτη φορά, προκειμένου να αποσαφηνιστούν τα δικαιώματα των θυμάτων και για δεύτερη φορά το 2015, προκειμένου να αποσαφηνιστούν οι υποχρεώσεις των φορέων της ποινικής δικαιοσύνης, ειδικότερα για τους σκοπούς της μεταφοράς της οδηγίας και τα πρότυπά της σχετικά με τα δικαιώματα των θυμάτων (βλ. Υποστήριξη Θυμάτων)[75], το οποίο σημαίνει συμμόρφωση με τις διατάξεις της ΟΘ, και ως εκ τούτου βελτίωση των δικαιωμάτων των θυμάτων. Δύο ακόμη σημαντικές πηγές βρετανικού δικαίου είναι το δίκαιο της Ευρωπαϊκής Ένωσης και η Ευρωπαϊκή Σύμβαση για τα Ανθρώπινα Δικαιώματα (βλέπε Cilex).[76]

Προς το παρόν, στο Ηνωμένο Βασίλειο τα δικαιώματα των παιδιών προστατεύονται κυρίως με τον Νόμο περί Ανθρωπίνων Δικαιωμάτων του 1998.[77] Είναι επίσης σημαντικό να σημειωθεί ότι η Ουαλία έγινε το

[74] Βλέπε: Υπουργείο Δικαιοσύνης, Οκτώβριος 2015 https://assets.publishing.service.gov.uk/government/uploads/system/ uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (πρόσβαση στις 9 Απριλίου 2018)

[75] Βλέπε: https://www.victimsupport.org.uk/help-and-support/your-rights/victims-code (πρόσβαση στις 9 Απριλίου 2018)

[76] Βλέπε: Cilex, Εγκεκριμένο ινστιτούτο νομικών στελεχών, https://www.cilex.org.uk/about_cilex/about-cilex-lawyers/what-cilex-lawyers-do/the-uk-legal-system (πρόσβαση στις 9 Απριλίου 2018)

[77] Βλέπε: Συμμαχία για τα δικαιώματα των παιδιών για την Αγγλία (CRAE), http://www.crae.org.uk/our-work/protection-of-childrens-rights-in-domestic-law/ (πρόσβαση στις 9 Απριλίου 2018)



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πρώτο μέρος, και μέχρι σήμερα το μόνο, του Ηνωμένου Βασιλείου που έχει θέσει σε εφαρμογή στην εσωτερική έννομη τάξη της την ΣΗΕΔΠ (Σύμβαση των Ηνωμένων Εθνών για τα Δικαιώματα του Παιδιού)[78] (βλ. Codd et al., 2016: 10).

### *Γενικές υπηρεσίες υποστήριξης θυμάτων*

Στην Αγγλία και την Ουαλία, η κορυφαία φιλανθρωπική οργάνωση των ανεξάρτητων θυμάτων είναι η *Υποστήριξη Θυμάτων*, το οποίο υπάρχει εδώ και σχεδόν 40 χρόνια. Ιδρύθηκε το 1974 στο Μπρίστολ και από το 1986 κάθε κομητεία στην Αγγλία και την Ουαλία είχε τουλάχιστον ένα σύστημα υποστήριξης των θυμάτων. Το 1998 εγκατέστησαν τη δική τους δωρεάν εθνική τηλεφωνική γραμμή που λεγόταν *Supportline* (βλ. υποστήριξη των θυμάτων).[79] Πρόκειται για μια ανεξάρτητη φιλανθρωπική οργάνωση για άτομα που έχουν πληγεί από εγκληματικές πράξεις και τραυματικά γεγονότα. Προσφέρουν ένα τεράστιο φάσμα δωρεάν υπηρεσιών και είναι διαθέσιμα σε όλους ανεξάρτητα από το αν το έγκλημα έχει καταγγελθεί ή όχι, σε ατομικό, ανεξάρτητο, συναισθηματικό και πρακτικό επίπεδο που επιτρέπει στους ανθρώπους να αντιμετωπίσουν και να επανέλθουν από τις επιπτώσεις των ποινικών αδικημάτων που έχουν υποστεί (βλ. ibid.). Προσφέρουν επίσης εξειδικευμένες υπηρεσίες σε συγκεκριμένες ομάδες θυμάτων, όπως τα παιδιά και οι νέοι ή για ανθρώπους που πλήττονται από ενδοοικογενειακή βία. *Η Υποστήριξη των Θυμάτων* δεν αποτελεί μέρος της αστυνομίας, των δικαστηρίων ή άλλης υπηρεσίας ποινικής δικαιοσύνης. Το προηγούμενο έτος προσέφερε υποστήριξη σε 814.000 άτομα, σύμφωνα με τα στοιχεία της ιστοσελίδας τους (βλέπε ibid.). Ο κύριος στόχος της *Υποστήριξης* των *Θυμάτων* είναι να υποστηρίξουν τους ανθρώπους σε τοπικό επίπεδο και να προωθήσουν σε εθνικό επίπεδο την κάλυψη των αναγκών των θυμάτων.

Η *Υποστήριξη των Θυμάτων* προσδιορίζει τέσσερις κύριους τομείς που αφορούν τις υπηρεσίες στήριξης για τα παιδιά και τους νέους. Οι τομείς αυτοί είναι: πρώτον, η *στήριξη των παιδιών και των νέων*. Διατηρούν για παράδειγμα, δική τους ιστοσελίδα με την ονομασία *You and Co* [80], η οποια περιέχει ένα τεράστιο φάσμα ενημερωτικού υλικού σε γλώσσα κατάλληλη για τα παιδιά, όπου τα παιδιά και οι

[78] Βλέπε: https://www.unicef.org.uk/what-we-do/un-convention-child-rights/ (πρόσβαση στις 9 Απριλίου 2018)
[79] Για περισσότερες λεπτομέρειες σχετικά με το ιστορικό τους, δείτε την Ιστοσελίδα τους: https://www.victimsupport.org.uk/more-us/about-us/history (πρόσβαση στις 9 Απριλίου 2018)
[80] Βλέπε: https://www.youandco.org.uk (πρόσβαση στις 9 Απριλίου 2018)


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νέοι μπορούν να προσανατολίζονται σε σχέση με τα εγκλήματα (τι είναι έγκλημα κλπ.), τις επιδράσεις τους και το είδος της βοήθειας και υποστήριξης που μπορούν να ζητήσουν και να χρειάζονται. Από το 2014, το *You & Co* είναι το πρόγραμμα των παιδιών και των νέων για τη στήριξη των θυμάτων. Δεύτερο τομέα συνιστά η *υποστήριξη και συμβουλευτική για τους γονείς ή τους φροντιστές*, ένας τρίτος τομέας απευθύνεται σε επαγγελματίες και εκπαιδευτικούς και παρέχει πληροφορίες γι 'αυτούς και συγκεκριμένα παρέχει μια σύνδεση με σημαντικές πληροφορίες.[81] Τέλος, αναφέρουν επίσης τη σημασία της συνεργασίας μεταξύ των επαγγελματιών και των γονέων κατά την εργασία και την υποστήριξη των παιδιών και των νέων. Για παράδειγμα, ανέπτυξαν επίσης «εργαλεία υποστήριξης για παιδιά και νέους», τα οποία αποτελούν μια σειρά βιβλίων εργασίας κατάλληλων για την ηλικία τους, με ενημερωτικά φυλλάδια για το προσωπικό και τους εθελοντές, τα οποία περιέχουν πρακτικές παρεμβάσεις για την υποστήριξη των παιδιών και των νέων.[82]

### *Υπηρεσίες υποστήριξης παιδιών θυμάτων*

Επιπρόσθετα, υπάρχουν τοπικές επιτροπές για την προστασία των παιδιών (LSCB), οι οποίες ενδιαφέρονται για τα δικαιώματα των παιδιών και θεσπίζονται με βάση το Άρθρο 13 του Νόμου για τα Παιδιά του 2004 [83] (βλέπε Codd et al., 2016:23).

> «Η LSCB διαθέτει μια σειρά ρόλων και θεσμοθετημένων καθηκόντων, συμπεριλαμβανομένης της ανάπτυξης τοπικής πολιτικής και διαδικασιών διασφάλισης και ελέγχου των τοπικών ρυθμίσεων» (ibid .: 23) .

Επιπλέον:

> «Διέπονται από τους Κανονισμούς Τοπικών Επιτροπών Προστασίας των Παιδιών του 2006 και η βασική τους αρχή είναι η επιδίωξη της αποτελεσματικής συνεργασίας μεταξύ των υπηρεσιών για την προστασία των παιδιών» (ibid .: 23).

Είναι κυρίως υπεύθυνοι για συντονιστικές δραστηριότητες για κάθε φυσικό πρόσωπο ή σώμα που εκπροσωπείται στο Συμβούλιο για να εξασφαλιστεί η αποτελεσματικότητα του τι γίνεται καθώς και να προωθηθεί και να διασφαλιστεί η ευημερία των παιδιών.

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[81] Για παράδειγμα, δείτε αυτή την αναφορά που πραγματοποιείται από την υποστήριξη θυμάτων: https://www.victimsupport.org.uk/sites/default/files/You%20%26%20Co%20%20Getting%20it%20right%20for%20young%20victims%20and%20witnesses.pdf (πρόσβαση στις 9 Απριλίου 2018)

[82] Δείτε στην ιστοσελίδα τους: https://www.victimsupport.org.uk/help-and-support/young-victims-crime/teachers-and-professionals/useful-resources (πρόσβαση στις 9 Απριλίου 2018)

[83] Νόμος για τα παιδιά του 2004, https://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga_20040031_en.pdf (πρόσβαση στις 9 Απριλίου 2018)



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Ο τρίτος τομέας, τουτέστιν φιλανθρωπικοί και μη κυβερνητικοί οργανισμοί (εθελοντικές οργανώσεις), αποτελεί τον τρίτο χώρο προστασίας των δικαιωμάτων των παιδιών, όπου παρέχονται υπηρεσίες στα παιδιά. Αυτού του είδους οργανώσεις πραγματοποιούν ενδεχομένως το πιο σημαντικό έργο με παιδιά και νέους, επειδή είναι ειδικευμένες στην παροχή συγκεκριμένων προγραμμάτων και υπηρεσιών για τα παιδιά, όπως για παράδειγμα δίνοντας ιδιαίτερη έμφαση στη σεξουαλική κακοποίηση των παιδιών (ίσως ακόμη και μόνο σε οικογένειες) ή σε επιβλαβείς σεξουαλικές συμπεριφορές. Για παράδειγμα, η εθνική παιδική φιλανθρωπία *Barnados*[84], η οποία είναι μία από τις κορυφαίες φιλανθρωπικές οργανώσεις για παιδιά στο Ηνωμένο Βασίλειο, παρέχει υπηρεσίες όπως: παροχή συμβουλών για τα παιδιά που έχουν κακοποιηθεί, υπηρεσίες αναδοχής και υιοθεσίας, επαγγελματική εκπαίδευση και ομάδες ένταξης ατόμων με αναπηρία. Ένα άλλο πολλά υποσχόμενο παράδειγμα θα μπορούσε να προέρχεται από τοπικά προγράμματα, όπως , *τα Οικογενειακά Κέντρα Howgill (HFC)* [85] που εκτελούν επίσης μια σειρά υπηρεσιών με επίκεντρο τα παιδιά και την οικογένεια στη Δυτική Cumbria (ib id .: 23).

## 4.5. Φινλανδία

### 4.5.1. Επισκόπηση των παιδιών θυμάτων εγκληματικότητας στη Φινλανδία

Στη Φινλανδία, η εθνική έρευνα για την εγκληματικότητα διεξάγεται σε ετήσια βάση (βλ. Savonen 2017). Ωστόσο, περιλαμβάνει μόνο ένα μικρό μέρος από τον αριθμό των παιδιών θυμάτων και των ειδών των ποινικών αδικημάτων από τα οποία πλήττονται ιδιαίτερα τα παιδιά. Στη Φινλανδία, καταγγέλθηκαν συνολικά 823,5000 αξιόποινες πράξεις το 2016 στην αστυνομία, στα τελωνεία και στη συνοριοφυλακή, σύμφωνα με την στατιστική υπηρεσία της Φινλανδίας (βλ. Στατιστική Υπηρεσία Φινλανδίας 2017).[86] Πρόκειται για 4.400 αδικήματα (0,5%) περισσότερα από το προηγούμενο έτος. 37.600 άτομα καταγράφηκαν ως θύματα βίαιων αδικημάτων.

Ο αριθμός των θυμάτων των αδικημάτων επίθεσης, ηλικίας μεταξύ 18 και 20 ετών, ανερχόταν στα 3.000 (9%). 4.600 άτομα (13,8%) ήταν θύματα ηλικίας άνω των 50 ετών και τα αδικήματα επίθεσης κατά των παιδιών ηλικίας κάτω των 18 ετών ήταν 6.450. Ο τελευταίος αριθμός παιδιών θυμάτων αποτελεί αύξηση

[84] Για λεπτομερείς πληροφορίες σχετικά με τους τομείς εργασίας και των υπηρεσιών που παρέχονται σε παιδιά και νέους Bernado, δείτε την ιστοσελίδα τους
: http://www.barnardos.org.uk/what_we_do/our_work.htm (πρόσβαση στις 9 Απριλίου 2018)
[85] Βλέπε: http://www.howgill-centre.co.uk (πρόσβαση στις 9 Απριλίου 2018)
[86] Βλέπε: http://www.stat.fi/til/rpk/2016/13/rpk_2016_13_2017-03-23_en.pdf (πρόσβαση στις 16 Απριλίου 2018)



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κατά 9,2% σε σχέση με το προηγούμενο έτος 2015. Συνολικά, καταγράφηκαν 19,6% θύματα από αδικήματα επίθεσης. Όσον αφορά τα παιδιά θύματα των αδικημάτων επίθεσης, η έρευνα αριθμούσε σε 4.100 (64.1%) αγόρια και 2.300 (35.9%) κορίτσια. Το 33,3% ήταν ηλικίας κάτω των δέκα ετών, 34,9% ήταν ηλικίας μεταξύ 10 και 14 ετών και 31,8% ηλικίας μεταξύ 15 και 17 ετών.

Η έρευνα κατέγραψε επίσης 1.100 θύματα σεξουαλικής κακοποίησης, από τα οποία 8,4% ήταν κορίτσια και 12,6% αγόρια (ibid.). Η Στατιστική Υπηρεσία της Φινλανδίας σημειώνει επίσης ότι η νομοθετική τροποποίηση από το 2011 έχει αυξήσει σημαντικά τον αριθμό των καταγεγραμμένων αδικημάτων επίθεσης. Μετά την τροποποίηση, εγκλήματα όπως μικροαδικήματα επιθέσεων σε ανηλίκους ή σε στενούς συγγενείς διώκονται επίσημα (ibid.). Επιπλέον, η τροποποίηση του Νόμου Πρόνοιας των Παιδιών (1302/2014)[87], η οποία τέθηκε σε ισχύ τον Απρίλιο του 2015, είχε ως αποτέλεσμα την επέκταση της υποχρέωσης υποβολής εκθέσεων σε περιπτώσεις ποινικών αδικημάτων εις βάρος παιδιών (ibid.).

Σύμφωνα με μια άλλη έκθεση σχετικά με την *«Ανάπτυξη συμβατών με την οδηγία πρακτικών για τον εντοπισμό, την αξιόλογηση και την παραπομπή των θυμάτων»* στη Φινλανδία (2017), οι νέοι είχαν περισσότερες πιθανότητες να πέσουν θύματα βίας από τους ενήλικες, μεταξύ των οποίων 13,9% άτομα ηλικίας 15 έως 24, τα οποία έπεσαν θύματα βίαιων αδικημάτων, ενώ μόνο το 2,3% των ατόμων ηλικίας 55 έως 74 έκαναν παρόμοιες αναφορές (βλ. Savonen 2017: 13)[88]. Τα βίαια αδικήματα κατά των νέων διεξήχθησαν κατά κύριο λόγο από άλλους νέους: από έναν/μια αδελφό/-ή (23%), έναν φίλο (17%) ή από ένα άλλο νεαρό άτομο που γνωρίζει το θύμα (15%) (ibid.). Η έκθεση αναφέρει επίσης ότι οι ενήλικες ήταν σπάνια βίαιοι προς τους νέους, π.χ. οι γονείς ήταν παραβάτες στο 8% των περιπτώσεων που καταγγέλθηκαν (ibid.).

### 4.5.2. Προστασία των παιδιών θυμάτων εγκληματικότητας στη Φινλανδία

Από τη δεκαετία του 1990, η Φινλανδία προωθεί τα δικαιώματα των θυμάτων εγκληματικότητας και αυτό αντικατοπτρίζεται επίσης από την προϋπάρχουσα νομοθεσία, όπως η διασφάλιση της ακρόασης των θυμάτων στο δικαστήριο (βλέπε EPRS 2017: 66). Η προστασία των θυμάτων εγκληματικότητας παρέχεται κυρίως από φινλανδικές ΜΚΟ. Παρά την περιορισμένη εθνική χρηματοδότηση, αυτά τα δίκτυα στήριξης ήταν ήδη πολύ ισχυρά, ακόμη και πριν από τη μεταφορά της οδηγίας για τα

[87] Βλέπε: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=101110&p_classification=04 (πρόσβαση στις 16 Απριλίου 2018)

[88] Βλέπε την έκθεση σχετικά με τις εθνικές πρακτικές στη Φινλανδία, http://victimspractices.eu/?page_id=119 (πρόσβαση στις 16 Απριλίου 2018).



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θύματα. Επιπλέον, σε κάθε δήμο της Φινλανδίας οι τοπικές αρχές είναι υπεύθυνες για την οργάνωση υπηρεσιών πρόνοιας παιδιών. Επιπλέον, παρέχουν υπηρεσίες είτε οι ίδιοι είτε αγοράζουν αυτές τις υπηρεσίες από εξωτερικούς παρόχους. Όταν αγοράζουν τις υπηρεσίες, είναι υπεύθυνοι να επιβλέπουν αυτές τις δραστηριότητες των παρόχων υπηρεσιών.[89] Οι πολλές ανησυχίες σχετικά με την ενδοοικογενειακή βία και τη βία κατά των γυναικών , οδήγησαν σε νέα πλαίσια στήριξης των θυμάτων στη χώρα (ibid.).

### *Νομικό υπόβαθρο*

Το Υπουργείο Κοινωνικών Υποθέσεων και Υγείας είναι κυρίως υπεύθυνο για την προετοιμασία της νομοθεσίας για την πρόνοια των παιδιών καθώς και για τη γενική καθοδήγηση των υπηρεσιών παιδικής μέριμνας. Επιπρόσθετα, για τη διοίκηση και τον συντονισμό της βοήθειας για τα θύματα εγκληματικότητας είναι υπεύθυνες οι ακόλουθες αρμόδιες αρχές: το Υπουργείο Δικαιοσύνης, το Υπουργείο Κοινωνικών Υποθέσεων και Υγείας και το Υπουργείο Εσωτερικών μαζί με την Αστυνομία της Φινλανδίας. [90] Η αστυνομία διερευνά τις ποινικές υποθέσεις και τα γενικά περιφερειακά δικαστήρια, τα εφετεία και το Ανώτατο Δικαστήριο εκδικάζουν αυτές τις υποθέσεις.

Η νομοθεσία των ποινικών υποθέσεων είναι γενικά η ίδια τόσο για τους ενήλικες όσο και για τα παιδιά, αλλά υπάρχουν ορισμένες ειδικές διατάξεις για τα παιδιά που ισχύουν, ξεκινώντας από το **Τμήμα 6 του Φινλανδικού Συντάγματος**[91] το οποίο ρυθμίζει ότι «τα παιδιά πρέπει να αντιμετωπίζονται ισότιμα και ως ανεξάρτητα άτομα και επιτρέπεται να επηρεάζουν τα θέματα που αφορούν τους εαυτούς τους σε βαθμό αντίστοιχο με το επίπεδο ανάπτυξής τους».[92] Επιπλέον, ορίζονται ειδικές διατάξεις σχετικά με την πρόνοια των παιδιών στον Νόμο για την Μέριμνα των Παιδιών (Child Welfare Act) (βλέπε παραπάνω) και η Ευρωπαϊκή Σύμβαση για τα Ανθρώπινα Δικαιώματα[93] καθώς και η Σύμβαση των Ηνωμένων Εθνών

[89] Βλέπε: Υπουργείο Κοινωνικών Υποθέσεων και Υγείας Φινλανδία, http://stm.fi/en/social-services/child-welfare (πρόσβαση στις 16 Απριλίου 2018)

[90] Βλέπε την έκθεση "Διαχείριση θυμάτων και μαρτύρων εγκληματικότητας στη Φινλανδία, 2014-16, που εκδόθηκε από το Διεθνές Παρατηρητήριο Δικαιοσύνης για τα Ανήλικα", σε συνεργασία με το SAPI (Ινστιτούτο κοινωνικών δραστηριοτήτων και πρακτικής Βουλγαρία). Βλέπε επίσης το Υπουργείο Κοινωνικών Υποθέσεων και Υγείας, http://stm.fi/en/social-services/child-welfare (πρόσβαση στις 17 Απριλίου 2018).

[91] Βλέπε: Το Σύνταγμα της Φινλανδίας, 11 Ιουνίου 1999, (731/1999, συμπεριλαμβανομένων τροποποιήσεων έως και 1112/2011), https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf (πρόσβαση στις 17 Απρίλιος 2018).

[92] Ibid.



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για τα Δικαιώματα του Παιδιού[93] καθώς και η Σύμβαση των Ηνωμένων Εθνών για τα Δικαιώματα του Παιδιού [94] είναι επίσης δεσμευτικά στην περίπτωση της Φινλανδίας, παρόμοια με το Ηνωμένο Βασίλειο. Με αυτές τις συμβάσεις τα κράτη υποχρεούνται να δίνουν προτεραιότητα στα συμφέροντα του παιδιού καθώς και στην ευημερία του σε όλες τις ενέργειες των κρατικών αρχών.

Η οδηγία για τα θύματα είχε εν μέρει μεταφερθεί στο φινλανδικό δίκαιο, διότι πολλά από τα μέτρα που προβλέπονται από το ΟΘ προϋπήρχαν στη φινλανδική νομοθεσία. Ειδικότερα, η διάταξη του Άρθρου 24 της οδηγίας ( *«Δικαίωμα στην προστασία των παιδιών θυμάτων κατά την ποινική διαδικασία»* ), η οποία προβλέπει ειδικά μέτρα για τα παιδιά θύματα, ήταν ήδη σε ισχύ στη Φινλανδία. [95] Ωστόσο, οι απαιτούμενες αλλαγές εφαρμόστηκαν με τον αριθμό του κυβερνητικού νομοσχεδίου 66/2015 [96] που οδήγησε σε διάφορες αλλαγές σε ορισμένες πράξεις σχετικές με την ποινική διαδικασία. Τον Μάρτιο και τον Δεκέμβριο του 2016 τέθηκαν σε ισχύ οι τροποποιήσεις αυτές. [97]

Ως αποτέλεσμα, σχετικά με τη μεταφορά της οδηγίας για τα θύματα, ίσως η πιο σημαντική αλλαγή στο φινλανδικό δίκαιο είναι η εισαγωγή της διάταξης που αφορά τις υποχρεώσεις ενημέρωσης των θυμάτων για τα δικαιώματά τους, οι διατάξεις που ρυθμίζουν την ατομική αξιολόγηση (αν και η πρακτική της ατομικής αξιολόγησης ήδη υπήρχε πριν από τη μεταφορά της οδηγίας για τα θύματα (βλ. EPR, 2017:60), στη Φινλανδία και την παραπομπή στις υπηρεσίες υποστήριξης των θυμάτων. Επιπλέον, ο νομοθέτης της Φινλανδίας ψήφισε νόμο για την «Πρόσθετη χρέωση υπέρ του θύματος (2015/669), η οποία συντονίζει ένα κονδύλιο που καταβάλλεται από τον παραβάτη και η οποία ωφελεί άμεσα τα θύματα» (EPRS 2017: 58).

[93] Βλέπε Finlex: https://www.finlex.fi/fi/sopimukset/sopsteksti/1999/19990063 Βλέπε περαιτέρω ECHR: https://www.echr.coe.int/Documents/Convention_ENG.pdf; https://www.echr.coe.int/Pages/home.aspx?p=home (πρόσβαση στις 17 Απριλίου 2018).

[94] http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx (πρόσβαση στις 17 Απριλίου 2018).

[95] Για περισσότερες πληροφορίες, ποια άρθρα της Οδηγίας για τα Θύματα ήταν ήδη διαθέσιμα και ποια άρθρα έπρεπε να εφαρμόσει ο φινλανδός νομοθέτης, βλέπε τη συμπληρωματική έκθεση E-PROTECT σχετικά με: "Πανευρωπαϊκή μελέτη σχετικά με τη νομική μεταφορά της οδηγίας 2012/29 / ΕΕ σε άλλα κράτη μέλη ".

[96] Βλέπε: FINLEX, HE 66/2015 για τη Φινλανδική έκδοση, https://finlex.fi/fi/esitykset/he/2015/20150066 (πρόσβαση στις 17 Απριλίου 2018).

[97] Βλέπε: EUR-LEX, http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029 (πρόσβαση στις 17 Απριλίου 2018).



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### *Γενικές υπηρεσίες υποστήριξης θυμάτων*

Η Φινλανδία είναι μία από τις λίγες χώρες της ΕΕ[98] η οποία διαθέτει ένα κεντρικό όργανο που είναι υπεύθυνο για τον συντονισμό της υποστήριξης θυμάτων σε όλη τη χώρα και έτσι η ποιότητα της παροχής υπηρεσιών φαίνεται να είναι πιο συνεπής στο εσωτερικό της χώρας σε σύγκριση με τα υπόλοιπα κράτη που έχουν ερευνηθεί στην παρούσα έκθεση (βλ. EPRS 2017). Αυτό το κεντρικό όργανο και εθνική οργάνωση υποστήριξης των θυμάτων ονομάζεται RIKU (Rikosuhripäivystys) **Victim Support Finland (Υποστήριξη Θυμάτων Φινλανδίας)**[99] και παρέχει γενική υποστήριξη στα θύματα εγκληματικότητας, στις οικογένειές τους, στους στενούς φίλους και στους μάρτυρες. Επιπλέον, παρέχουν μια εθνική *Γραμμή Βοήθειας*[100] που λειτουργεί σε συγκεκριμένες ώρες, από Δευτέρα έως Παρασκευή, και έχει χρέωση. Ωστόσο, η RIKU δηλώνει στην ιστοσελίδα της ότι ενδέχεται (να ενεργοποιηθεί) η υπηρεσία δωρεάν επιστροφής κλήσης (βλέπε ibid.). Οι άνθρωποι μπορούν επίσης να καλέσουν ανώνυμα και, σε περίπτωση που χρειάζονται βοήθεια και συμβουλές, να αφήσουν τα στοιχεία επικοινωνίας τους. Θα πρέπει να διασφαλιστεί ότι ο καλών λαμβάνει απάντηση εντός τουλάχιστον πέντε εργάσιμων ημερών καθώς και στοιχεία επικοινωνίας του πιο κοντινού κέντρου Υποστήριξης Θυμάτων της Φινλανδίας.

Η RIKU είναι μέλος της ευρωπαϊκής κεντρικής οργάνωσης Υποστήριξη Θυμάτων Ευρώπης-Victim Support Europe (VSE), της οποίας τα κεντρικά γραφεία βρίσκονται στις Βρυξέλλες και η οποία υπερασπίζεται όλα τα θύματα εγκληματικότητας.[101] Εκτός από τα κεντρικά της γραφεία, διαθέτει επτά περιφερειακά γραφεία και 30 σημεία εξυπηρέτησης σε όλη τη Φινλανδία, οι οποίες περιλαμβάνουν υπηρεσίες όπως η εθνική τηλεφωνική υπηρεσία, υπηρεσίες on-line βοήθειας, καθώς και προσωπικές υπηρεσίες. Επιπλέον, συνεργάζεται στενά με κρατικές αρχές, όπως η αστυνομία και άλλοι φορείς που αλληλεπιδρούν με θύματα. Το 2013 είχε περίπου 38.000 επαφές με πελάτες και το διοικητικό της συμβούλιο έχει εκπροσώπους από το σύνολο των εκτελεστικών οργανισμών και του Εθνικού Συμβουλίου της Εκκλησίας (βλέπε ibid.).

Το 2017, το Υπουργείο Δικαιοσύνης αποφάσισε να αναθέσει στην RIKU την υποχρέωση της δημόσιας παροχής γενικών υπηρεσιών για τα θύματα στη Φινλανδία κατά τα έτη 2017-2018. Κατά συνέπεια, όλες

[98] Εκτός από την Αυστρία, τη Γερμανία και την Τσεχική Δημοκρατία (βλ. EPRS 2017: 74).
[99] https://www.riku.fi/en/home/ (πρόσβαση στις 17 Απριλίου 2018).
[100] See: https://www.riku.fi/en/services/helpline+116+006/ (πρόσβαση στις 17 Απριλίου 2018).
[101] Βλέπε https://www.riku.fi/en/victim+support+finland/ (πρόσβαση στις 18 Απριλίου 2018).



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οι υπηρεσίες πρέπει να διατίθενται δωρεάν, πριν, κατά τη διάρκεια και για κατάλληλο χρονικό διάστημα μετά την ποινική διαδικασία για όλα τα θύματα εγκληματικότητας.

### *Υπηρεσίες στήριξης παιδιων θυμάτων*

Στη Φινλανδία, υπάρχουν και άλλοι δημοτικοί οργανισμοί για την υποστήριξη των παιδιών και των νεαρών θυμάτων εγκληματικότητας. Παρ' όλα αυτά, η κύρια οργάνωση υποστήριξης θυμάτων για τα παιδιά παραμένει η RIKU. Μολονότι δεν ασχολείται κατά κύριο λόγο με παιδιά θύματα, προσφέρει δωρεάν υπηρεσίες (εκτός από την τηλεφωνική Γραμμή Βοήθειας) σε όλα τα είδη των θυμάτων εγκληματικότητας. Μια βασική υπηρεσία που παρέχει είναι ο διορισμός ατόμου που αναλαμβάνει την επικουρία για τα θύματα, τους στενούς συγγενείς τους και τους μάρτυρες που χρειάζονται ένα τέτοιο άτομο (αυτή η υπηρεσία είναι παρόμοια με την ψυχοκοινωνική δικαστική βοήθεια διαθέσιμη στη Γερμανία και την Αυστρία). Τα άτομα που αναλαμβάνουν την επικουρία είναι προσεκτικά επιλεγμένα και εκπαιδευμένα ειδικά για το σκοπό αυτό σε εθελοντική βάση, π.χ. για τη συνοδεία του θύματος σε αστυνομικές ακροάσεις ή συνεδριάσεις του δικαστηρίου, καθώς και για τη συνδρομή (του θύματος) στην αίτηση για έκδοση περιοριστικών μέτρων ή αποζημίωσης. Τα θύματα ή οι μάρτυρες εγκληματικότητας μπορούν επίσης να συζητήσουν τις εμπειρίες και τα συναισθήματά τους με αυτά τα άτομα που αναλαμβάνουν την επικουρία καθώς και να εξετάσουν (την πιθανότητα να προβούν σε) περαιτέρω ενέργειες.[102]

Άλλες εγκαταστάσεις που είναι υπεύθυνες για την προστασία των παιδιών περιλαμβάνουν, για παράδειγμα, **την Ομοσπονδία Οίκων και Καταφυγίων Μητέρας και Παιδιού**[103] η οποία επίσης συνεργάζεται με την Υποστήριξη Θυμάτων της Φινλανδίας που διατηρεί 14 καταφύγια σε όλη τη χώρα. Επιπλέον, υπάρχουν 20 άλλα καταφύγια που λειτουργούν στη Φινλανδία. Όλα τους είναι κέντρα εξυπηρέτησης, όπου τα άτομα που έχουν ανάγκη είτε (επειδή) υποφέρουν απ 'ευθείας από είτε (επειδή) απειλούνται με οικογενειακή βία, μπορούν να λάβουν βοήθεια για την αντιμετώπιση μιας κρίσης ή δύσκολης κατάστασης. Επιπλέον, στη Φινλανδία υπάρχει μια σειρά κέντρων εξυπηρέτησης γυναικών,

[102] Βλ. Την έκθεση "Διαχείριση θυμάτων και μαρτύρων εγκληματικότητας στη Φινλανδία, 2014-16, που εκδόθηκε από το Διεθνές Παρατηρητήριο Δικαιοσύνης για τα Ανήλικα», σε συνεργασία με το SAPI (Κοινωνική Δραστηριότητα και Ινστιτούτο Πρακτικής Βουλγαρίας), σελ. 16. Στη συνέχεια, το παρόν έγγραφο αναφέρεται στην έκθεση ως εξής: IJJO 2014-16.
[103] Βλέπε: https://ensijaturvakotienliitto.fi/en/ (πρόσβαση στις 18 Απριλίου 2018).


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όπως για παράδειγμα η **Tukinainen**[104] ή για τις γυναίκες μετανάστες και τα παιδιά, όπως για παράδειγμα η **Monika- Πολυπολιτισμική Ένωση Γυναικών στη Φινλανδία**.[105]

Τέλος, μία βασική αρχή που εποπτεύει τα δικαιώματα των παιδιών είναι ο **Κοινοβουλευτικός Συνήγορος του Πολίτη της Φινλανδίας**.[106] Ο Συνήγορος του Πολίτη έχει την κύρια ευθύνη να εποπτεύει τη συμμόρφωση των κρατικών αρχών με το νόμο και την τήρηση των δικαιωμάτων των παιδιών. Είναι ο ανώτατος επόπτης της νομιμότητας στη χώρα και επιλέγεται από το Κοινοβούλιο.

# 5. Οργανωτική υλοποίηση των αναγκών ατομικής αξιολόγησης σε πέντε κράτη μέλη της ΕΕ

Το παρόν κεφάλαιο επικεντρώνεται στην πρακτική εφαρμογή της νομοθεσίας ενσωμάτωσης των Άρθρων 22, 23 και 24 της οδηγίας για τα θύματα. Καταδεικνύει πώς πραγματοποιούνται οι ατομικές αξιολογήσεις σε κάθε ένα από τα πέντε κράτη μέλη της ΕΕ: *Γερμανία, Πορτογαλία, Ισπανία, Ηνωμένο Βασίλειο (Αγγλία και Ουαλία)* και *Φινλανδία.* Ιδιαίτερη έμφαση δίνεται στις πρακτικές ανά χώρα, ιδίως λαμβάνοντας υπόψη και τα δύο, τα εμπόδια και τις επιτυχημένες στρατηγικές για την προστασία των παιδιών θυμάτων, και με τον τρόπο αυτό την προσπάθεια να αναδείξει καλές και πολλά υποσχόμενες πρακτικές.

## 5.1. Γερμανία

Στη Γερμανία, η οδηγία για τα θύματα μεταφέρθηκε μέσα από την «3η μεταρρυθμιστική πράξη για τα δικαιώματα των θυμάτων» (*3.Opferrechtsreformgesetz*[107]) το 2015. Ο νόμος λαμβάνει περαιτέρω σημαντικά μέτρα για την αύξηση των προδιαγραφών για την προστασία των θυμάτων και ενισχύει επίσης τη θέση των θυμάτων στις ποινικές δίκες.[108] Ενώ η Γερμανία έχει ήδη επιτύχει υψηλό επίπεδο στήριξης

[104] Βλέπε: https://www.tukinainen.fi/english/ (πρόσβαση στις 18 Απριλίου 2018).
[105] Βλέπε:: https://monikanaiset.fi/en/ (πρόσβαση στις 18 Απριλίου 2018).
[106] Βλέπε:: https://www.oikeusasiamies.fi/en/web/lasten-ja-nuorten-sivut/home(πρόσβαση στις 18 Απριλίου 2018).
[107] Βλέπε: http://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html; και: http://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (πρόσβαση στις 22 Απριλίου 2018).
[108] Σε ποινικές δίκες τα θύματα θα μπορούσαν να αναλάβουν το ρόλο του μάρτυρα, του ενάγοντος ή του ζημιωθέντος (Zeuge, Nebenkläger, Verletzter), πράγμα που σημαίνει ότι η Γερμανία δεν χρησιμοποιεί το όριο


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των θυμάτων πριν από την εφαρμογή της οδηγίας για τα θύματα, η τελευταία προκάλεσε κάποιες βελτιώσεις, ιδίως όσον αφορά τα διαδικαστικά και πληροφοριακά δικαιώματα των θυμάτων. Επιπλέον, οι Γερμανοί νομοθέτες θέσπισαν δύο σημαντικές νέες παραγράφους σχετικά με τις ατομικές αξιολογήσεις των θυμάτων: παράγραφος §48, τμήμα 3: Υποχρέωση του μάρτυρα και κλήτευση (*Zeugenpflichten; Ladung*)[109] στον γερμανικό Κώδικα Ποινικής Δικονομίας (*Strafprozessordung, StPO*) καθώς και η νέα παράγραφος §406g για ψυχοκοινωνική δικαστική συνδρομή (*psychosoziale Prozessbegleitung*), η οποία αποτελεί ορόσημο στην προστασία των θυμάτων και βασίζεται κυρίως πάνω στο αυστριακό μοντέλο.[110]

Όλα τα ειδικά μέτρα που ορίζονται στην οδηγία για τα θύματα πληρούνται από τη νομοθεσία της Γερμανίας, ενώ διάφορα μέτρα υπήρχαν ήδη πριν από τη μεταφορά της οδηγίας.[111] Παρ' όλα αυτά, τα δικαιώματα αυτά εξασφαλίζονται στις περισσότερες των περιπτώσεων από την πραγμάτωση του Άρθρου 22 (βλέπε μελέτη EPRS 2017: 61). Ωστόσο, σε αυτό το στάδιο η **ατομική αξιολόγηση** και οι ακριβείς διαδικασίες της δεν έχουν επιλυθεί ξεκάθαρα στο γερμανικό νομικό κείμενο (βλέπε ibid.: 61 ). Έτσι, είναι αρκετά ακατανόητο το πώς διενεργείται η ατομική αξιολόγηση και από ποιον.

Ομοίως, ένα προηγούμενο έργο της ΕΕ που ονομάζεται IVOR (Εφαρμογή μεταρρύθμισης του συστήματος ποινικής δικαιοσύνης στην Ευρωπαϊκή Ένωση 2014-2016) κατέληξε στο συμπέρασμα ότι πριν τεθεί σε εφαρμογή η 3η μεταρρυθμιστική πράξη για τα θύματα το 2015, ο Γερμανός νομοθέτης είχε προβλέψει ειδική διάταξη «(...) στο γενικό μέρος του Κώδικα Ποινικής Δικονομίας που ορίζει ότι η πρώτη αρχή που ασχολείται με μια υπόθεση πρέπει να διεξάγει την αξιολόγηση των ατομικών αναγκών και να την καταστήσει σε σύστημα αρχειοθέτησης».[112] Τώρα, μετά την εφαρμογή αυτής της πράξης (συμπεριλαμβανομένων των νέων παραγράφων: §48, τμήμα 3 και §406g), ο Γερμανός νομοθέτης δεν ορίζει ρητά από ποιόν και πώς πρέπει να διενεργείται η ατομική αξιολόγηση.

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θύματος στο νόμο. Για λεπτομερείς πληροφορίες, βλ. την πανευρωπαϊκή μελέτη E-PROTECT σχετικά με τη νομική μεταφορά της οδηγίας D3.6 των θυμάτων

[109] See: https://www.jurion.de/gesetze/stpo/48/ (πρόσβαση στις 5 Απριλίου 2018).

[110] Στην Πορτογαλία και τη Φινλανδία υπάρχουν επίσης ψυχοκοινωνικές δικαστικές αγωγές.

111 π.χ. τις ανακρίσεις σε κατάλληλους χώρους ώστε να αποφευχθεί η οπτική επαφή μεταξύ θύματος και εικαζόμενου παραβάτη· τη διεξαγωγή αυτών των ανακρίσεων από ειδικά εκπαιδευμένα άτομα, τη δυνατότητα ακροάσεων χωρίς το κοινό · για τις λεπτομερείς πληροφορίες σχετικά με τους συγκεκριμένους νόμους και διατάξεις που ρυθμίζουν αυτά τα μέτρα (υπό ποιες συνθήκες και συνθήκες εφαρμόζονται αυτά) βλέπε την άλλη πανευρωπαϊκή μελέτη E-PROTECT για τη μεταφορά της οδηγίας για τα θύματα (D3.6 / 2018).

[112] Βλέπε: http://www.apav.pt/ivor/images/ivor/PDFs/Fact_sheet_germany.pdf (πρόσβαση στις 15 Απριλίου 2018).



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Ωστόσο, ο πρωταρχικός στόχος του Άρθρου 22 για να διασφαλιστεί η αξιολόγηση για τις ατομικές ανάγκες προστασίας των θυμάτων παρακάμπτεται στη Γερμανία - για να ολοκληρωθεί με τους συντάκτες του IVOR:

> «Μολονότι λίγες χώρες έχουν (πλήρως) εφαρμόσει το Άρθρο 22 στην εθνική τους νομοθεσία, είναι σαφές ότι η απουσία ενός νόμου σχετικά με την αξιολόγηση των ατομικών αναγκών δεν σημαίνει ότι ορισμένες ευάλωτες ομάδες δεν αναγνωρίζονται και δεν τους χορηγούνται ειδικά δικαιώματα προστασίας. **Ωστόσο, ο στόχος της ατομικής αξιολόγησης, δηλαδή ότι θα πρέπει να είναι διαθέσιμη σε *όλα τα* θύματα, δεν έχει επιτευχθεί σε σχεδόν κανένα από τα κράτη μέλη**» (Έκθεση IVOR 2016: 163, έμφαση προστέθηκε, έντονοι χαρακτήρες).

Η IVOR διεξήγαγε επίσης συνεντεύξεις με πολλούς εμπειρογνώμονες από διαφορετικά κράτη μέλη της ΕΕ, ένας από τους γερμανούς εμπειρογνώμονες δήλωσε ότι προτιμάται μια πιο ευέλικτη προσέγγιση στις ατομικές αξιολογήσεις. Ο ερωτώμενος αναρωτήθηκε εάν μια αξιολόγηση θα είναι τόσο συγκεκριμένη όσο ένας κατάλογος ελέγχου. Αυτό εξαρτάται από διάφορες συνθήκες, όπως η ποιότητα των πληροφοριών που η αστυνομία έχει σε ένα συγκεκριμένο χρονικό σημείο (ibid.)

Η Γερμανία φαίνεται να ακολουθεί μια προσέγγιση όπου η αξιολόγηση πραγματοποιείται σε οποιοδήποτε στάδιο της νομικής διαδικασίας από διάφορες αρμόδιες αρχές. Αυτό περιλαμβάνει μια πρώτη εκτίμηση, αλλά και διάφορες επαναξιολογήσεις σε περαιτέρω διαδικασίες εάν είναι απαραίτητο.

### 5.1.1. Ορθές πρακτικές στη Γερμανία

#### *Δικαστική ψυχοκοινωνική συνδρομή*

Στο γερμανικό πλαίσιο, η δικαστική ψυχοκοινωνική συνδρομή είναι μια ειδική μορφή συνοδείας, πριν, κατά τη διάρκεια και μετά την ποινική διαδικασία (εκτός από τη νομική υποστήριξη) για συγκεκριμένα ευάλωτα θύματα (σύμφωνα με την ΟΘ και τα Άρθρα 22 και 23). Συγκεκριμένα, τα παιδιά και οι έφηβοι που έχουν πέσει θύματα σοβαρών σεξουαλικών ή βίαιων αδικημάτων έχουν το δικαίωμα δωρεάν δωρεάν δικαστικής ψυχοκοινωνικής συνδρομής. Για τα άλλα θύματα σοβαρών βίαιων και σεξουαλικών αδικημάτων, το δικαστήριο θα πρέπει να αποφασίσει, βάσει της κάθε μεμονωμένης περίπτωσης, εάν πρέπει να πραγματοποιηθεί η δικαστική ψυχοκοινωνική συνδρομή.

Οι δραστηριότητες περιλαμβάνουν την παροχή επαρκούς πληροφόρησης, καθώς και ειδική υποστήριξη καθ' όλη τη διάρκεια της ποινικής διαδικασίας, με στόχο τη μείωση των ατομικών βαρών που αναπόφευκτα συνδυάζονται με αυτές τις διαδικασίες και για να αποφευχθεί η δεύτερη θυματοποίηση (βλέπε Riekenbrauk 2016:7). Το δικαίωμα στην ελεύθερη πρόσβαση έχει ιδιαίτερη σημασία για τα παιδιά



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θύματα, τα άτομα με αναπηρία και τα άτομα τα οποία φέρουν ιδιαίτερο τραύμα από ένα έγκλημα, όπως εγκλήματα μίσους, σεξουαλικής φύσεως εγκλήματα ή βίαια εγκλήματα. Η θεμελίωση ενός τόσο σημαντικού μέτρου προστασίας στη νομοθεσία αποτελεί ορόσημο στην υποστήριξη των (παιδιών) θυμάτων. Η πιο σημαντική πτυχή στο πλαίσιο των προδιαγραφών ποιότητας είναι η σημασία της «αποσαφήνισης των ρόλων» (Rollenklarheit), πράγμα που σημαίνει ότι η δικαστική ψυχοκοινωνική συνδρομή δεν αποτελεί μια νομική συμβουλευτική, μια διερεύνηση ή ψυχοθεραπεία (ibid.). Έχει περισσότερο την υποχρέωση να παράσχει στο θύμα επαρκή υποστήριξη και πληροφόρηση στα ακόλουθα στάδια: πρώτη συνέντευξη (συχνά πριν από ποινική δίωξη), προετοιμασία για την ποινική διαδικασία, υποστήριξη κατά τη διάρκεια της κύριας δίκης και παρακολούθηση της επεξεργασίας. Περιλαμβάνει ένα τεράστιο φάσμα εργασιών υποστήριξης:

- *Πριν από το δικαστήριο*: να είναι παρών/παρούσα σε όλες τις ανακρίσεις (στην αστυνομία και στο δικαστήριο), να συμβουλεύει το θύμα σχετικά με την ποινική διαδικασία (για παράδειγμα, ο/η συνοδός είναι παρών/-ούσα στην αίθουσα του δικαστηρίου εξηγώντας ποιοι είναι οι διάφοροι φορείς κ.λ.π.), να παρέχει πληροφορίες σχετικά με τις συνέπειες και τους κινδύνους μιας δικαστικής διαδικασίας ή ποινικής δίωξης, πληροφορίες σχετικά με διάφορες μορφές ψυχοθεραπείας.
- *Κατά τη διάρκεια της ποινικής διαδικασίας:* οργάνωση της ασφαλούς πρόσβασης στα κτίρια των δικαστηρίων, υποστήριξη κατά τη διάρκεια του χρόνου αναμονής, συνεργασία με άλλες αρχές που είναι παρούσες, φιλική προς κάθε ηλικία μετάφραση της νομικής ορολογίας, επεξήγηση των διαδικασιών.
- *Μετά την ποινική διαδικασία*: πληροφορίες σχετικά με περαιτέρω προσφορές στήριξης ή υποστήριξη για το συναισθηματικό χειρισμό της δικαστικής απόφασης κλπ. (Ibid.:9).

### *Κατάρτιση για το αστυνομικό και δικαστικό σώμα*

Στη Γερμανία προσφέρεται ειδική κατάρτιση στους αστυνομικούς και στους δικαστικούς υπαλλήλους, η οποία οργανώνεται σε μεγάλο βαθμό σε περιφερειακό επίπεδο και εκτείνεται πέρα από το τις απαιτήσεις της οδηγίας για τα θύματα (δείτε τη μελέτη EPRS 2017:72).

> «Στα μαθήματα κατάρτισης για τους υπάρχοντες αστυνομικούς, η προστασία των θυμάτων αποτελεί στοιχειώδες μέρος και στα 16 κρατίδια (Länder). Η κατάρτιση σχεδιάζεται σύμφωνα με το Άρθρο 25 (1) της οδηγίας» (ibid.:72).


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Στα πλαίσια της εκπαίδευσης των νέων **αστυνομικών** υπαλλήλων, η προστασία των θυμάτων αποτελεί ένα βασικό στοιχείο των τριών ετών προπτυχιακών σπουδών στις αστυνομικές ακαδημίες. Το θέμα μελετάται από διαφορετικές οπτικές γωνίες, όπως η εγκληματολογία, η ηθική, οι διαδικασίες εξέτασης, η θυματοποίηση και η ψυχολογία (ibid.), αν και ειδική έμφαση δίνεται στη διδασκαλία εμπάθειας και ευαισθησίας σχετικά με την επικοινωνία με διαφορετικούς τύπους θυμάτων, καθώς και η κατάλληλη αξιολόγηση της κατάστασης. Η κατάρτιση περιλαμβάνει τόσο θεωρητικές όσο και πρακτικές συνεδρίες. Περαιτέρω ιδιαίτερη έμφαση αποδίδεται πάνω σε νομικές και ψυχολογικές τακτικές της αστυνομικής παρέμβασης σε περιπτώσεις ενδοοικογενειακής βίας και υποθέσεων καταδίωξης (ibid.).

> «Επιπλέον, ορισμένα αστυνομικά τμήματα έχουν ήδη αξιωματούχους ειδικά υπεύθυνους για την προστασία των θυμάτων, οι οποίοι έχουν ως καθήκον να ευαισθητοποιήσουν τους συναδέλφους τους για την ανάγκη επαγγελματικής αντιμετώπισης των θυμάτων. Αυτό γίνεται μέσω ενημερωτικών συνεδριών, εκδηλώσεων, εργαστηρίων και συνεδριάσεων. Αυτοί οι συντονιστές ενημερώνουν επίσης τους συναδέλφους τους σχετικά με τις πρόσφατες νομικές αλλαγές που ενισχύουν τα δικαιώματα των θυμάτων» (ibid.:72).

Η **δικαστική εξουσία (δικαστές και εισαγγελείς)** ενίσχυσαν τις καταρτίσεις που σχετίζονται με τα θύματα, ειδικά όσον αφορά τις επικοινωνιακές ικανότητες των δικαστών και εισαγγελέων, συμπεριλαμβανομένων και των ψυχολογικών στοιχείων της προστασίας των θυμάτων. Οι συνεδρίες κατάρτισής τους καλύπτουν, για παράδειγμα, τα ακόλουθα ζητήματα: «εξέταση των θυμάτων-μαρτύρων», «διερεύνηση των πραγματικών περιστατικών στην αίθουσα του δικαστηρίου» και «ψυχολογία των ανακρίσεων στην αντιμετώπιση των μαρτύρων» και «αποζημίωση θύτη-θύματος» (βλ.:ibid.: 73· βλέπε Clemm 2015).[113]

Ωστόσο, η έλλειψη εθνικά εναρμονισμένων προδιαγραφών όσον αφορά, παραδείγματος χάριν, τα προσόντα των ψυχοκοινωνικών εργαζομένων επικρίνονται από ορισμένους νομικούς εμπειρογνώμονες (βλέπε Fastie 2015).[114]

[113] Βλέπε: https://www.bundestag.de/blob/379102/fee53d33062a29c73b8e580e7aa788cc/clemm-data.pdf (πρόσβαση στις 5 Απριλίου 2018).
[114] Βλέπε: https://www.bundestag.de/blob/378818/1151a3374a4dcfd93ff726f45abaca48/fastie-data.pdf (πρόσβαση στις 5 Απριλίου 2018).


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## 5.2. Πορτογαλία

Στην Πορτογαλία υπάρχουν πολλά εμπόδια που αντιμετωπίζουν τα παιδιά στο δικαστικό σύστημα, όπως οι επαναλαμβανόμενες ανακρίσεις, το εκφοβιστικό περιβάλλον και οι εκφοβιστικές διαδικασίες, έλλειψη κατάρτισης των επαγγελματιών που διεξάγουν τις συνεντεύξεις και οι πολύπλοκες και αργές διαδικασίες. Ορισμένοι εμπειρογνώμονες υποστηρίζουν ότι δεν υπάρχει αντιστοιχία μεταξύ του νόμου και της εφαρμογής του.

Εμπειρικές μελέτες έχουν δείξει ότι:

> «τα παιδιά που είναι θύματα σεξουαλικής κακοποίησης στο ενδοοικογενειακό περιβάλλον κάνουν ακροάσεις κατά μέσο όρο οκτώ φορές.[115] Αυτή η επανάληψη είναι η πτυχή της δικαστικής διαδικασίας που τα παιδιά θεωρούν επώδυνη. Ακόμη και σε διαδικασίες όπου υπάρχουν σωματικά και βιολογικά σημάδια σεξουαλικής κακοποίησης, τα παιδιά περνούν από ακροάσεις 4-9 φορές. (...) Η μαρτυρία των παιδιών, όταν είναι νέοι, δεν συλλέγεται ούτε αποτιμάται, γεγονός που οδηγεί σε ποσοστό αρχειοθέτησης άνω του 60%, σύμφωνα με μια μελέτη που ήδη αναφέρθηκε, με βάση τα στοιχεία που παρείχε το Ινστιτούτο Νομικής Ιατρικής του Πόρτο».[116]

Μια πρόσφατη έρευνα με 49 εισαγγελείς και τακτικούς ανακριτές έδειξε ότι και οι δύο κατηγορίες επαγγελματιών

> «(...) αναφέρουν την έλλειψη προετοιμασίας για την ακρόαση παιδιών και εφήβων και τη δυσκολία κατανόησης των αναπτυξιακών τους χαρακτηριστικών (που σχετίζονται με την ηλικία και την ωριμότητα). Θεωρούν ότι τα νεώτερα παιδιά μπορεί να έχουν δυσκολίες στην κατανόηση και την προσοχή, ενώ οι έφηβοι εκδηλώνουν εναντίωση. Οι τακτικοί ανακριτές ανέφεραν επίσης την ανάγκη να εμβαθύνουν στις τεχνικές διευκόλυνσης της επικοινωνίας με τα παιδιά και τους εφήβους και να γνωρίζουν τις τεχνικές συνέντευξης, με τη δυνατότητα οδηγών πρόσβασης ή άλλων σχετικών μέσων». [117]

### 5.2.1. Ορθές πρακτικές στη Γερμανία

Η Ακαδημία Δικηγόρων (Περιφέρεια της Λισαβόνας) δημοσίευσε έναν **Οδηγό Καλών Πρακτικών για την Ακρόαση των Παιδιών** στις δικαστικές διαδικασίες το 2017. Αυτός ο Οδηγός είναι σύμφωνος με τις Κατευθυντήριες Γραμμές του Συμβουλίου της Ευρώπης για Φιλική προς τα Παιδιά Δικαιοσύνη[118] και ενημερωμένος με διεθνή αποδεικτικά στοιχεία. Το εγχειρίδιο ξεκινά με μια περιγραφή του νομικού

[115] Ribeiro, 2009 *in Ibid*. Σελίδα 287.
[116] Jardim, 2011 *in Ibid*. Σελίδα 288.
[117] Rodrigues, Alexandre, & Agulhas (2016). A audição da criança: Desenho, implementação e avaliação de uma formação para Magistrados Portugueses. Dissertação de mestrado do Mestrado de Psicologia Comunitária, Proteção de Crianças e Jovens em Risco. Lisboa. ISCTE-IUL. Page 13.
[118] Κατευθυντήριες γραμμές της Επιτροπής Υπουργών του Συμβουλίου της Ευρώπης για τη δικαιοσύνη φιλική προς τα παιδιά (Εγκρίθηκε από την Επιτροπή Υπουργών στις 17 Νοεμβρίου 2010 κατά τη 1098η συνεδρίαση των αντιπροσώπων των υπουργών).



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πλαισίου, ακολουθούμενο από θεωρητικές και πρακτικές εκτιμήσεις για την ακρόαση παιδιών σε δικαστικές διαδικασίες, συμπεριλαμβανομένων ζητημάτων που σχετίζονται με το περιβάλλον, τεχνικές συνέντευξης, πτυχές που πρέπει να εξεταστούν από την οπτική γωνία του παιδιού και του ερευνητή. Ο οδηγός τελειώνει με μια λίστα ελέγχου μετά τη συνέντευξη που επιτρέπει στον ερευνητή να παρακολουθεί τις διαδικασίες και να εντοπίζει πιθανές μελλοντικές πτυχές της δικής του/της πρακτικής.[119] Το παρόν εγχειρίδιο αποτελεί συνέχεια δύο βιβλίων που έχουν δημιουργηθεί και προσαρμοστεί για τα παιδιά σχετικά με το τι πρέπει να περιμένουν κατά τη διάρκεια των δικαστικών διαδικασιών, συμπεριλαμβανομένου του φιλικού για τα παιδιά βιβλίου «Ο João πάει στο δικαστήριο»[120] και το βιβλίο «Η μέρα που δεν ήθελε η Μαριάνα»[121]. Αυτά τα βιβλία και οι κατευθυντήριες γραμμές αποτελούν μέρος μιας πιο ολοκληρωμένης προσέγγισης για την εφαρμογή δικαιοσύνης φιλικά διακείμενης προς τα παιδιά στη χώρα. Το πορτογαλικό Κέντρο για Δικαστικές Μελέτες σχετικά με τις Ακροάσεις Παιδιών έχει προωθήσει την κατάρτιση και την έρευνα, συμπεριλαμβανομένων καινοτόμων πτυχών, όπως η πιλοτική μελέτη με τίτλο «***Η χρήση σκύλων παρέμβασης για τη διευκόλυνση της διαδικασίας ακρόασης στα δικαστήρια ανηλίκων***».

Στην Πορτογαλία, η APAV διαθέτει μακρόχρονη εμπειρία στην υποστήριξη των θυμάτων και συμμετέχει ενεργά σε συνεργασίες σε ευρωπαϊκό επίπεδο για την ενίσχυση της προστασίας των θυμάτων στην Πορτογαλία και συμβάλλει στην ανταλλαγή ορθών πρακτικών σε διεθνές επίπεδο. Επί του παρόντος, η APAV είναι εταίρος του έργου POISE[122], που συγχρηματοδοτείται από το Ευρωπαϊκό Κοινωνικό Ταμείο, με σκοπό την παροχή υποστήριξης σε παιδιά και νέους που έχουν πέσει θύματα σεξουαλικής βίας, με στόχο την ανάκαμψη από την τραυματική εμπειρία και την υγιή ανατροφή και ανάπτυξή τους. Το έργο αυτό συνεπάγεται την ανάπτυξη εργαλείων αξιολόγησης κινδύνων και αξιολόγησης αναγκών καθώς και πρωτοκόλλων για παιδιά και νέους που έχουν πέσει θύματα σεξουαλικής βίας με στόχο την εμβάθυνση και βελτίωση των διαδικασιών υποστήριξης και παρέμβασης του δικτύου CARE. Το έργο αυτό αποτελεί συνέχεια της προηγούμενης εργασίας τους, στόχος της οποίας είναι η επισήμανση του **Εγχειριδίου για την υποστήριξη παιδιών θυμάτων σεξουαλικής κακοποίησης** που περιλαμβάνει λεπτομερείς τεχνικές

[119] Rute Agulhas e Joana Alexandre (2017) *Audição da Criança. Guia de Boas Práticas*. Conselho Regional de Lisboa da Ordem dos Advogados.
[120] Rute Agulhas e Joana Alexandre (2016) *O João vai ao Tribunal.*
[121] Rute Agulhas e Joana Alexandre (2016) *O dia que a Mariana não queria.*
[122] Με το Έργο αριθ.: 03-4639-FSE-000013


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πληροφορίες για τους επαγγελματίες, καθώς και οδηγίες σχετικά με τον τρόπο διεξαγωγής της συνέντευξης και υποστήριξης των παιδιών που έχουν υποστεί κακοποίηση.[123]

Στο μέλλον, θα είναι ιδιαίτερης σημασίας για την Πορτογαλία να πραγματοποιήσει αξιολογήσεις για τον αντίκτυπο των δικών της υποδομών υποστήριξης των θυμάτων για παιδιά θύματα, προκειμένου να εντοπιστούν κενά προς βελτίωση. Υπάρχει επίσης η ευκαιρία να αξιοποιηθούν οι υφιστάμενες προσπάθειες για την προαγωγή της φιλικής προς τα παιδιά δικαιοσύνης και για την εφαρμογή συγκεκριμένων μέτρων της οδηγίας για τα θύματα, όπως οι διαδικασίες ατομικής αξιολόγησης.

## 5.3. Ισπανία

Στην Ισπανία, έχει παρέλθει λίγος χρόνος από την εθνική μεταφορά της οδηγίας για τα θύματα. Ωστόσο, υπάρχουν διαθέσιμα στοιχεία που υπογραμμίζουν τις τρέχουσες πρακτικές και εκτιμούν τον τρόπο εφαρμογής της εγκριθείσας νομοθεσίας καθώς και προτάσεις και συστάσεις για μελλοντικές ενέργειες.

Ο Οργανικός Νόμος 1/1996 της 15ης Ιανουαρίου σχετικά με τη Νομική Προστασία των Ανηλίκων, την Μερική Τροποποίηση του Αστικού Κώδικα και τον Κώδικα Πολιτικής Δικονομίας, περιλαμβάνει το ρυθμιστικό πλαίσιο για τις διάφορες αυτόνομες κοινότητες που έχουν αρμοδιότητες σε θέματα προστασίας ανηλίκων, όταν δηλώνουν προστατευτικά μέτρα (κίνδυνος ή εγκατάλειψη) σε περιπτώσεις κακοποίησης παιδιών. Μία ανερχόμενη πρόκληση αυτής της οργάνωσης μπορεί να είναι η διαφορετική απόδοση των περιφερειακών αρχών, η οποία θα μπορούσε να οδηγήσει σε διαφορετικά επίπεδα προστασίας και πόρους που προσφέρονται στα παιδιά θύματα σε διάφορα μέρη της χώρας.

Η «Σώστε τα Παιδιά» (Save the Children) της Ισπανίας προέβη σε ανάλυση 203 δικαστικών αποφάσεων που εκδόθηκαν από την 1η Οκτωβρίου 2012 έως τις 31 Δεκεμβρίου 2016. Η μελέτη έδειξε ότι κατά μέσο όρο τα παιδιά πρέπει να κοινοποιούν πληροφορίες σχετικά με τις κακοποιήσεις, όταν αυτές έχουν καταγγελθεί έως και 4 φορές. Στο 86% των περιπτώσεων, ο ανήλικος κατέθεσε στην Ολομέλεια. Μόνο στο 13% των αναλυθέντων ποινών έγινε αποδεκτή η καταγεγραμμένη μαρτυρία του παιδιού. Επιπλέον, οι νομικές διαδικασίες είναι χρονοβόρες (3 χρόνια κατά μέσο όρο). Σε ποσοστό 38% των περιπτώσεων, η «αδικαιολόγητη καθυστέρηση» χρησιμοποιείται ως ελαφρυντική περίσταση που το ίδιο το

[123] APAV (2017) Εγχειρίδιο CARE. Apoio a crianças e jovens vítimas de violência sexual.



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δικαστήριο αναγνωρίζει, πράγμα που σημαίνει ότι υπήρξαν καθυστερήσεις που θα μπορούσαν να είχαν αποφευχθεί και μείωσαν την ποινή στον κατηγορούμενο έχοντας υποστεί αυτήν την περιττή αναμονή.[124]

Σε μια μελέτη σχετικά με τη φιλική προς τα παιδιά δικαιοσύνη, η οποία διεξήχθη από τον Ευρωπαϊκό Οργανισμό Θεμελιωδών Δικαιωμάτων, περισσότερα από τα μισά παιδιά που ερωτήθηκαν στην Ισπανία

«(...) αξιολόγησαν αρνητικά τις επικοινωνιακές δεξιότητες των επαγγελματιών, επικρίνοντάς τους για έλλειψη ευαισθησίας και για το ότι έκαναν άσχετες ερωτήσεις που δεν άρμοζαν στην ηλικία τους. (...) Αρκετά παιδιά ανέφεραν τις αλληλεπιδράσεις τους με ιατροδικαστές κατά τη διάρκεια ακροάσεων - για παράδειγμα, όταν ο ιατροδικαστής είναι παρών ως ειδικός μάρτυρας. Τα περισσότερα από αυτά τα παιδιά εκτιμούν αρνητικά αυτούς τους επαγγελματίες λόγω της συμπεριφοράς τους, καθώς και της ανεπάρκειας των χώρων ακρόασης και του αριθμού των επαγγελματιών που είναι παρόντες. (Στην ίδια μελέτη) αρκετοί ερωτηθέντες μεταξύ των ηλικιών 14 και 18 που ήταν θύματα σεξουαλικής κακοποίησης μίλησαν για άβολα συναισθήματα που βίωσαν στο αστυνομικό τμήμα επειδή έπρεπε να μιλούν μπροστά στη μητέρα, τον πατέρα τους ή και στους δύο γονείς.»[125]

### 5.3.1. Ορθές πρακτικές στην Ισπανία

Η παρέμβαση ορισμένων ενδιαφερομένων, συμπεριλαμβανομένων των Γραφείων Υποστήριξης των Θυμάτων στην Ισπανία, φαίνεται να είναι προοδευτική προς την κατεύθυνση της εφαρμογής των διατάξεων της οδηγίας για τα θύματα και των ορθών πρακτικών για τη φιλική προς τα παιδιά δικαιοσύνη.

«Στην Ισπανία, μερικές φορές χρησιμοποιούνται δωμάτια φιλικά προς τα παιδιά κατά τη διάρκεια της προδικαστικής φάσης τόσο στις υπηρεσίες υποστήριξης των θυμάτων όσο και στις τοποθεσίες που εδρεύει το δικαστήριο. Συγκεκριμένα, οι ερωτώμενοι (παιδιά που έχουν υποβληθεί σε διαδικασίες) ανέφεραν το Fundación Márgenes y Vínculos σε διάφορες πόλεις της Ανδαλουσίας· την υπηρεσία υποστήριξης των θυμάτων της Ανδαλουσίας (Servicio de Apoyo a las Víctimas de Andalucía, SAV)· και την υπηρεσία οικογενειακής υποστήριξης (Serveid'Assesorament Tecnic en l'Àmbit de Família, SATAF) που παρέχεται από την καταλανική διοίκηση μέσω οικογενειακών δικαστηρίων. Τα παιδιά γενικά αξιολόγησαν αυτούς τους χώρους θετικά, καθώς βρίσκονται έξω από δικαστηριακό περιβάλλον και έχουν φιλικές προς το παιδί αίθουσες αναμονής και ακρόασης. Τα παιδιά εκτίμησαν επίσης την ευχάριστη, ήρεμη ατμόσφαιρα και την παρουσία ενός μόνο επαγγελματία (ψυχολόγου) για τη συζήτηση» [126]

Το 2009, η Ομοσπονδία Συνδέσμων για την Πρόληψη της Κακομεταχείρισης Παιδιών (FAPMI) ξεκίνησε ένα **πρόγραμμα για την παιδική ηλικία και τη δικαιοσύνη**, με την υποστήριξη και τη χρηματοδότηση του τότε Υπουργείου Εργασίας και Κοινωνικών Υποθέσεων, με στόχο τη βελτίωση της φροντίδας των παιδιών και εφήβων που έρχονται σε επαφή με το δικαστικό σύστημα. Το πρόγραμμα αυτό ασχολήθηκε με πτυχές του εθνικού κανονιστικού πλαισίου, δραστηριότητες ευαισθητοποίησης όπως

[124] Σώστε τα παιδιά (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema.
[125] FRA (2017) Δικαιοσύνη φιλική προς τα παιδιά Προοπτικές και εμπειρίες παιδιών που εμπλέκονται σε δικαστικές διαδικασίες ως θύματα, μάρτυρες ή συμβαλλόμενα μέρη σε εννέα κράτη μέλη της ΕΕ. Σελίδα : *26*
[126] *Ibid.* Σελίδα 30


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θεματικές διασκέψεις πάνω σε διάφορες πτυχές της φιλικής προς τα παιδιά δικαιοσύνης και άλλες δραστηριότητες. Το έργο αυτό είναι συμπληρωματικό της συμμετοχής της FAPMI στην Εθνική Επιτροπή Αρωγής στα Θύματα Βίαιων Εγκλημάτων και κατά της Σεξουαλικής Ελευθερίας του Υπουργείου Δικαιοσύνης.[127]

Διαφορετικές αρχές στην Ισπανία έχουν δημοσιεύσει **υλικά φιλικά προς τα παιδιά που σχετίζονται με τη δικαιοσύνη.** [128]

> «Οι τεχνικές συμβουλές προς τα καταλανικά δικαστήρια οργανώνονται μέσω εδαφικά κατανεμημένων γραφείων όπου ψυχολόγοι και κοινωνικοί λειτουργοί που ειδικεύονται στο έργο της δικαιοσύνης και απαντούν στα αιτήματα για τεχνική βοήθεια από εισαγγελείς, τακτικούς ανακριτές, ερευνητικούς και ποινικούς δικαστές. Η εξειδίκευση αυτών των εργαζομένων όχι μόνο συνεπάγεται ότι εργάζονται αποκλειστικά σε ποινικές υποθέσεις, αλλά και ότι οργανώνονται σύμφωνα με διαφοροποιημένα προγράμματα, όπως συμβουλές για την ποινική ευθύνη και τα κοινωνικο-ατομικά χαρακτηριστικά των κατηγορουμένων για κάποιο έγκλημα. Συμβουλές για εναλλακτικές μορφές στέρησης· αξιολόγηση των κοινωνικών και ατομικών δικαιωμάτων των κατηγορουμένων· τεχνικές συμβουλές για τα θύματα (επακόλουθα, προσαρμογή μέτρων προστασίας κ.λ.π.)· σχετικά με τους μάρτυρες (αξιοπιστία, γνωστικές ιδιότητες)· και, τέλος, το πρόγραμμα για την υποστήριξη των συνεντεύξεων παιδιών στις δικαστικές διαδικασίες και άλλων ευάλωτων μαρτύρων που απαιτούν ειδική υποστήριξη για να δώσουν καταθέσεις. Στην τελευταία περίπτωση, τα παιδιά που έχουν πέσει θύματα σεξουαλικής κακοποίησης έχουν καταγεγραμμένες τις καταθέσεις τους προκειμένου να αποφύγουν τη διεξαγωγή προφορικής δίκης.
>
> (. . .)

[127] FAPMI (2011): Programa Justicia e Infancia. Marco de referencia. Madrid, Federación de Asociaciones para la Prevención del Maltrato Infantil.

[128] Για παράδειγμα, ο Συνήγορος των Παιδιών της Κοινότητας της Μαδρίτης δημοσίευσε ένα λεξικό για τη δικαιοσύνη προσαρμοσμένο στα παιδιά, το οποίο διατίθεται εδώ: http://www.madrid.org/bvirtual/BVCM013875.pdf. και το Συμβούλιο Εργασίας και Κοινωνικής Πολιτικής, Γραμματεία Κοινωνικών Υπηρεσιών για τα Παιδιά και την Οικογένεια της Περιφέρειας Múrcia, συνέταξε μια δημοσίευση για τη λειτουργία των δικαστηρίων, η οποία είναι διαθέσιμη εδώ: http://www.bienestaryproteccioninfantil.es/imagenes/tablaContenidos03SubSec/juzgado_Gu%C3%ADa%20_niño.pdf (πρόσβαση στις 23 Απριλίου 2018).



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Αν και η καταλανική περίπτωση είναι, χωρίς αμφιβολία, μια ορθή πρακτική στην Ισπανία, εξακολουθεί να αντιμετωπίζει μια σειρά προκλήσεων. Αφενός, οι πόροι μερικές φορές δεν επαρκούν και, αφετέρου, ακόμη και αν γίνει καταγραφή, εξαρτάται από τους δικαστές και τους τακτικούς ανακριτές εάν αυτή θα γίνει αποδεκτή από το Δικαστήριο και αν το παιδί δεν χρειάζεται να δώσει άλλη κατάθεση. Δεδομένου ότι αποτελεί νομική σύσταση και όχι υποχρέωση, εξακολουθούν να υπάρχουν περιπτώσεις κατά τις οποίες καταγράφεται η μαρτυρία του παιδιού και, μετά από χρόνια, το ίδιο καλείται να παραστεί στη δίκη».[129]

Πίνακας 1. Ψυχολόγοι και Δικαστικοί Κοινωνικοί Λειτουργοί των «Ομάδων Ποινικής Τεχνικής Αρωγής», Τμήμα Δικαιοσύνης του Γενικού Γραμματέα της Καταλονίας.

Η μελέτη περίπτωσης που τονίζεται στον Πίνακα 1 επίσης περιλαμβανόταν στην έκθεση σχετικά με τη φιλική προς τα παιδιά δικαιοσύνη από τον FRA, που καταλήγει στο συμπέρασμα ότι

«στην Ισπανία, τα παιδιά προτιμούν τις συνεντεύξεις που πραγματοποιούνται από ειδικά εκπαιδευμένους ψυχολόγους στα γραφεία υποστήριξης των θυμάτων και σε φιλικές προς τα παιδιά εγκαταστάσεις στο δικαστήριο παρά τις ακροάσεις που διεξάγονται από τους δικαστές στο δικαστήριο.»[130] Η ίδια μελέτη έχει δείξει ότι «στην Ισπανία, τα παιδιά υπέδειξαν ότι οι ίδιοι ψυχολόγοι που πραγματοποίησαν τις προδικαστικές εκτιμήσεις τους, τους υποστήριξαν κατά τη διάρκεια των ακροάσεων της δίκης, και σχολίασαν θετικά για το πώς οι ψυχολόγοι μεσολάβησαν μεταξύ αυτών και του δικαστηρίου.»[131]

Η νομοθεσία που υιοθετήθηκε στην Ισπανία για τη μεταφορά της οδηγίας προσδιορίζει τα Γραφεία Υποστήριξης Θυμάτων ως τις κύριες αρχές που είναι αρμόδιες για τη διεξαγωγή μιας διαδικασίας ατομικής αξιολόγησης. Ορισμένες περιφέρειες προχώρησαν ένα βήμα παραπέρα και ίδρυσαν εξειδικευμένες ομάδες για την υποστήριξη των παιδιών θυμάτων, όπως στην περίπτωση της Καταλονίας και των *Ομάδων Ποινικής Τεχνικής Αρωγής*. Μαζί με τον Νόμο 4/2015 της 27ης Απριλίου σχετικά με το καθεστώς των θυμάτων εγκληματικότητας, το ισπανικό κράτος υιοθέτησε περαιτέρω την ίδια χρονιά το Βασιλικό Διάταγμα 1109/2015, της 11ης Δεκεμβρίου, το οποίο ρυθμίζει το έργο των Γραφείων

[129] Σώστε τα Παιδιά (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema, Page 111.
[130]FRA(2017) Δικαιοσύνη για τα παιδιά. Προοπτικές και εμπειρίες παιδιών που εμπλέκονται σε δικαστικές διαδικασίες ως θύματα, μάρτυρες ή συμβαλλόμενα μέρη σε εννέα κράτη μέλη της ΕΕ.
[131] Ibid.


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Υποστήριξης Θυμάτων. Στο διάταγμα αυτό, είναι μείζονος σημασίας και η εγκαθίδρυση του Συμβουλευτικού Συμβουλίου για την παροχή βοήθειας στα θύματα, διότι μπορεί να διαδραματίσει θεμελιώδη ρόλο στην επίβλεψη, αξιολόγηση και βελτίωση του έργου των Γραφείων Υποστήριξης Θυμάτων.

## 5.4. Ηνωμένο Βασίλειο – Αγγλία και Ουαλία

Στην Αγγλία και την Ουαλία, οι ατομικές αξιολογήσεις και τα ειδικά μέτρα (για τα παιδιά θύματα εγκληματικότητας) εισήχθησαν στο σύστημα ποινικής δικαιοσύνης μέσω του **«*Κώδικα Πρακτικής για τα Θύματα Εγκληματικότητας*».**

Σύμφωνα με αυτόν τον Κώδικα, οι πάροχοι υπηρεσιών πρέπει να διενεργούν μια **ατομική αξιολόγηση**[132] για να καθοριστεί το είδος της υποστήριξης που μπορεί να χρειαστεί ένα θύμα αφού έχει βιώσει μια εγκληματική πράξη. Η πρώτη αξιολόγηση πραγματοποιείται συχνά στην αστυνομία, ωστόσο η διεξαγωγή της εξαρτάται από τα μεμονωμένα θύματα και το πρώτο σημείο επαφής τους. Ενώ στις περισσότερες περιπτώσεις γίνεται από την αστυνομία, θα μπορούσε επίσης να εκτελεστεί από τον λεγόμενο πάροχο υπηρεσιών, ή από κάποια μη θεσμική οργάνωση υποστήριξης (θυμάτων). Η αξιολόγηση συνεπάγεται τον εντοπισμό των αναγκών ενός θύματος και την κατάσταση της ευπάθειας. Αυτές οι ανάγκες ενδέχεται να επανεκτιμηθούν κατά την περαιτέρω διερεύνηση από την αστυνομία («ενημερώσεις σχετικά με την έρευνα που είναι προσαρμοσμένη στις ανάγκες των θυμάτων») (βλέπε κώδικα των θυμάτων 2015:8).

Μέσω αυτής της διαδικασίας προσδιορίζονται τα ειδικά μέτρα αφότου ληφθούν υπόψη οι ατομικές ανάγκες ενός θύματος (χαρακτηριστικά του εγκλήματος, ηλικία του θύματος). Αυτά τα μέτρα περιλαμβάνουν: ζωντανές συνδέσεις βίντεο, βίντεο με τις καταγεγραμμένες καταθέσεις, οθόνες γύρω από το «κουτί» των μαρτύρων και βοήθεια στην επικοινωνία, συμπεριλαμβανομένης της χρήσης ενός διαμεσολαβητή (δείτε ibid).[133]

[132] Για τον πλήρη κατάλογο των φορέων παροχής υπηρεσιών βλέπε: Κώδικας Πρακτικής για τα Θύματα Εγκλημάτων, σελ. 2, περιλαμβάνει 14 φορείς παροχής υπηρεσιών συνολικά, μεταξύ άλλων: Εισαγγελία Κορώνας, οι Αστυνομικοί και Δικαστές, κ.ά (εδώ αναφέρονται μόνο μερικοί) .

[133] Για τον πλήρη κατάλογο των ειδικών μέτρων με επεξηγήσεις, βλ. Τις ακόλουθες παραγράφους του Κώδικα Πρακτικής για τα Θύματα Εγκλημάτων (1.13-1.15 του Κεφαλαίου 1, σελ. 15-16) .



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Οι Υπηρεσίες υποστήριξης των θυμάτων (όπως οι κοινωνικές υπηρεσίες) δεν περιλαμβάνονται στον κατάλογο των φορέων παροχής υπηρεσιών δεδομένου ότι είναι μη θεσμικές οργανώσεις και κυρίως υπεύθυνες για την παροχή υπηρεσιών συναισθηματικής και πρακτικής υποστήριξης για θύματα εγκληματικότητας, όπως ο τρόπος αντιμετώπισης των συνεπειών ενός εγκλήματος. Αυτό σημαίνει ότι δεν καλύπτονται από τον Κώδικα Θυμάτων και τις διατάξεις του, κάτι το οποίο ορισμένοι εμπειρογνώμονες βλέπουν με κριτική ματιά.

Ο Κώδικας Πρακτικής αποτελεί έναν οδηγό προσανατολισμένο στις πρακτικές (που ακολουθούνται), για όλους τους θεσμικούς φορείς που εμπλέκονται στην προστασία των θυμάτων εγκληματικότητας. Παρέχει χρήσιμες οδηγίες για το πώς να διεξαχθεί μια ατομική αξιολόγηση και πώς να γίνει η κατάλληλη επικοινωνία με τα θύματα, συμπεριλαμβανομένου του πόσο γρήγορα θα πρέπει να λάβουν πληροφορίες τα θύματα σχετικά με διάφορες διαδικασίες ή ποιοί οργανισμοί μπορούν να βοηθήσουν τα θύματα στην αντιμετώπιση ενός εγκλήματος.

Επιπλέον, ο Κώδικας περιλαμβάνει ένα κεφάλαιο για τα παιδιά και τους νέους (που είναι) θύματα εγκληματικότητας, με δύο ξεχωριστά τμήματα: το ένα παρέχει λεπτομερείς και κατανοητές πληροφορίες για τα ίδια τα θύματα (για τα δικαιώματά τους, την περιγραφή των διαδικασιών, τα καθήκοντα των φορέων παροχής υπηρεσιών), το δεύτερο τμήμα αντίθετα, παρέχει πληροφορίες και οδηγίες για τους επαγγελματίες, τους παρόχους υπηρεσιών.

### 5.4.1. Ορθές πρακτικές στην Αγγλία και την Ουαλία

Ο βαθμός της επιτυχίας αυτής της υποχρεωτικής γραμμής καθοδήγησης στην πράξη μπορεί να εκτιμηθεί καλύτερα από τα ίδια τα θύματα. Έχουν πραγματικά πρόσβαση σε όλα τα μέτρα την απόλαυση των οποίων δικαιούνται; Πραγματοποιείται κατάλληλα η αξιολόγηση, συμπεριλαμβάνοντας τη διεξαγωγή της εντός κατάλληλου χρονικού πλαισίου και σε ατομική βάση; Λαμβάνουν πληροφορίες με τον κατάλληλο τρόπο;

Ο Επίτροπος των θυμάτων την έχει κάνει αυτήν (την εκτίμηση) στην μελέτη *«Ανασκόπηση των δικαιωμάτων των παιδιών στον Κώδικα των Θυμάτων»* από το 2017.[134] Η έκθεση λαμβάνει υπόψη τα

[134] Τα συμπεράσματα της μελέτης πρέπει να εξεταστούν προσεκτικά, καθώς έχουν ορισμένους περιορισμούς ως προς την αντιπροσωπευτικότητα. Πρόκειται για μια ποιοτική μελέτη, η οποία περιλαμβάνει συνεντεύξεις με 12



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ευρήματα από μια άλλη έκθεση: *Η Έκθεση Κατάμέτρησης* από το 2009 (βλέπε ibid.:17).[135] Ο Κώδικας αναφέρει ότι τα παιδιά πρέπει να ενημερώνονται για ειδικά μέτρα κατά τη διάρκεια της αστυνομικής έρευνας. Οι περισσότεροι από τους συμμετέχοντες στην έκθεση του Επιτρόπου των θυμάτων, αντιθέτως, δήλωσαν ότι ενημερώθηκαν μόνο για ορισμένα μέτρα, όχι για όλα, ή ότι τα μέτρα δεν εφαρμόστηκαν με τον κατάλληλο τρόπο και σε ορισμένους συμμετέχοντες δεν δόθηκε καμία πληροφορία σχετικά με ειδικά μέτρα. Το ποσό των πληροφοριών εξαρτιόταν επίσης από το σημείο της αστυνομικής έρευνας (βλ.: ibid.:23). Για να δοθεί ένα πρακτικό παράδειγμα από την εμπειρία ενός συμμετέχοντος κατά τη διάρκεια της δίκης:

> «Ο τρόπος με τον οποίο εφαρμόζονται ειδικά μέτρα είναι σημαντικός για να διασφαλιστεί ότι προστατεύουν το νεαρό θύμα όπως προβλέπεται. Για παράδειγμα, η Jenny (ηλικίας 17 ετών) είχε τη δυνατότητα να χρησιμοποιήσει μια οθόνη για να δώσει αποδεικτικά στοιχεία, οπότε δεν θα χρειαζόταν να κοιτάξει τον εναγόμενο ή να την δει αυτός. Ωστόσο, ανέφερε ότι: *Όταν έφυγα από το δικαστήριο πίσω από την οθόνη ήταν ακόμα εκεί. Θα έπρεπε να τον έχουν πάρει έξω, έτσι ώστε να μην τον δω. Ποιο είναι το νόημα της οθόνης όταν ακόμα τον βλέπω κατά την έξοδό μου ούτως ή άλλως;* (Jenny, ηλικίας 17 ετών)» (ibid.: 24).

Ένα ακόμα αξιοσημείωτο παράδειγμα σχετικά με το δικαίωμα απόδοσης Ατομικής Κατάθεσης του Θύματος (VPS) καταδεικνύει ότι αυτή η ευκαιρία δόθηκε μόνο σε τρία από τα 12 παιδιά στην παρούσα έκθεση. Το ίδιο συμπέρασμα αποδεικνύεται στην έρευνα για την εγκληματικότητα για την Αγγλία και την Ουαλία - μόλις το 15% των θυμάτων είχαν την ευκαιρία να δώσουν μια VPS το 2015/16 (βλ.:ibid.:24). Η επανεξέταση έδειξε επίσης ότι όλα τα παιδιά και οι νέοι δεν λαμβάνουν επαρκείς πληροφορίες σχετικά με τις ευκαιρίες και τις οργανώσεις παροχής συμβουλών και υποστήριξης, μερικοί από αυτούς είτε αυτοαναφέρθηκαν στις υπηρεσίες υποστήριξης είτε τους έγινε παραπομπή σε αυτές από τον κοινωνικό τους λειτουργό.

Τα παιδιά της επανεξέτασης αισθάνθηκαν μερικές φορές απογοητευμένα από τις καθυστερήσεις στις υποθέσεις τους και από το γεγονός ότι δεν ενημερώθηκαν για καθυστερήσεις στην έρευνα (βλ. Επίτροπος Θυμάτων 2017).

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κορίτσια (ή τους γονείς τους) ηλικίας μεταξύ 9 και 17 ετών που έχουν πληγεί από βίαια εγκλήματα, σεξουαλική κακοποίηση ή σεξουαλική κακοποίηση.

[135] Για λεπτομερέστερες πληροφορίες σχετικά με τη μεθοδολογία, δείτε τον Επίτροπο Θυμάτων 2017: σελ. 19 και για περισσότερες πληροφορίες σχετικά με τους περιορισμούς της αναθεώρησης, βλ. Σ. 21, http://victimscommissioner.org.uk/app/uploads/2014/10/Are-weiging-it-right-for-young-victims-of-crime.pdf (πρόσβαση στις 12 Απριλίου 2018).



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Δεδομένου ότι πολλά από τα δικαιώματα του Κώδικα των Θυμάτων αναφέρονται στο δικαίωμα του θύματος να λαμβάνει επαρκείς πληροφορίες σχετικά με τις υποθέσεις του με έγκαιρο και ακριβή τρόπο, ο Κώδικας είναι πολύ ελπιδοφόρος όταν τηρείται σωστά. Η ποιότητα της επικοινωνίας μεταξύ των θυμάτων και των παρόχων υπηρεσιών θεωρείται ως μία από τις σημαντικότερες πτυχές από τα ίδια τα θύματα ώστε να διαχειριστούν επιτυχώς τον αντίκτυπο της θυματοποίησης.

## 5.5. Φινλανδία

Στη Φινλανδία, η μεταφορά της διάταξης της ΟΘ για **την αξιολόγηση των ατομικών αναγκών** (Άρθ. 22) ήταν περιττή, διότι οδηγίες που πληρούν τις απαιτήσεις του Άρθρου 22 είχαν ήδη τεθεί σε εφαρμογή (βλ. IVOR 2016).[136]

Υπάρχουν αρκετές οδηγίες για την ατομική αξιολόγηση στο εθνικό δίκαιο, ιδίως στο πλαίσιο του φινλανδικού νόμου περί Εγκληματολογικών Ερευνών (FICA)[137] για συγκεκριμένες ομάδες (ευάλωτων) θυμάτων, παρόμοια με την περίπτωση της Γερμανίας και της Αυστρίας. Αυτές οι οδηγίες εκπληρώνουν σίγουρα τον σκοπό μιας εξατομικευμένης αξιολόγησης αναγκών σύμφωνα με την ΟΘ. Η FICA αναφέρει ότι οι αρχές διερεύνησης είναι υπεύθυνες και πρέπει πάντοτε να εκτιμούν την ανάγκη ειδικής προστασίας των θυμάτων (βλ. Savonen 2017:8). Σύμφωνα με τη Savonen , το Υπουργείο Εσωτερικών Υποθέσεων έχει επίσης συστήσει μια επιτροπή εργασίας για την περαιτέρω ανάπτυξη των διαδικασιών της IAM στη Φινλανδία. Τα παιδιά ή τα ανήλικα θύματα θεωρούνται ιδιαίτερα ευάλωτα και ως εκ τούτου έχουν ειδικά δικαιώματα και πρόσβαση σε ειδικά μέτρα, τα οποία είχαν ήδη θεσπιστεί βάσει της εθνικής νομοθεσίας στη Φινλανδία.

Οι αστυνομικοί έχουν ιδιαίτερα σημαντικό ρόλο στην αναγνώριση των ειδικών αναγκών του θύματος επειδή είναι κατά κύριο λόγο τα πρώτα πρόσωπα που έρχονται σε επαφή με τα θύματα. Ως εκ τούτου, είναι σημαντικό οι επαγγελματίες, όπως η φινλανδική αστυνομία, να λαμβάνουν επαρκή κατάρτιση κατά

136 Βλέπε επίσης τις επεξηγήσεις στην ενότητα 4.5.2. της παρούσας έκθεσης, όπου περιγράφεται συνοπτικά το νομικό υπόβαθρο της μεταφοράς της οδηγίας σχετικά με την ασυμμετρία στην Φινλανδία.

137 Προληπτικός νόμος 22.7.2011 / 805, βλ. Επίσης: https://www.poliisi.fi/crimes/pretrial_investigation_of_an_offence (πρόσβαση στις 18 Απριλίου 2018).



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τη διεξαγωγή μιας τέτοιας αξιολόγησης.[138] Σύμφωνα με τους συντάκτες της μελέτης IVOR, οι Φιλανδοί επαγγελματίες συμφώνησαν με το σχέδιο ανάπτυξης μιας αίτησης, με ένα πιο τυποποιημένο σύνολο ερωτήσεων για την αξιολόγηση των ατομικών αναγκών των θυμάτων, αλλά παραμένει ασαφές εάν πραγματικά θα εφαρμοστεί.

### 5.5.1. Ορθές πρακτικές στη Φινλανδία

Μετά την αναφορά ενός εγκλήματος, τα παιδιά αμέσως περνάνε από μια αξιολόγηση κινδύνου και τους παρέχονται ειδικά μέτρα συνδρομής του στη συμμετοχή τους στις διαδικασίες, ταυτόχρονα μειώνοντας τη δευτερογενή θυματοποίηση (βλέπε IJJO 2014/16). Στη Φινλανδία, μερικοί αξιωματικοί ειδικεύονται σε έρευνες για αδικήματα που αφορούν παιδιά θύματα. Για το λόγο αυτό, η Φινλανδία ξεκίνησε ένα **έργο που** ονομάζεται ***μοντέλο Senja: Μοντέλο ευαισθησίας για τους επαγγελματίες της Νομολογίας.*** Στο πλαίσιό του, όλοι οι επαγγελματίες που εργάζονται με θύματα ή μάρτυρες εγκληματικότητας λαμβάνουν την κατάλληλη εκπαίδευση.[139] Η ευαισθητοποιημένη προσέγγιση προς τα θύματα της *Senja* διδάσκεται στην αστυνομία, στον εισαγγελέα και τους δικαστικούς υπαλλήλους. Ο πρωταρχικός στόχος της είναι να παρέχει σχετικές και επαρκείς πληροφορίες σχετικά με τις συνέπειες της ενδοοικογενειακής βίας και της σεξουαλικής εγκληματικότητας και να προσφέρει συμβουλές σε όσους εργάζονται με ευάλωτα θύματα σε διάφορα στάδια της νομικής διαδικασίας (βλ.:ibid.:28). Η ιστοσελίδα της *Senja* παρέχει έξι κύριους τομείς με πληροφορίες για επαγγελματίες, που εμπλέκονται στη νομική διαδικασία των θυμάτων εγκληματικότητας *«(Ψυχικοί) Τραυματισμοί», «Θύματα σεξουαλικών εγκλημάτων», «Θύματα ενδοοικογενειακής βίας», «Άτομα με αναπηρία», «Νεαρά θύματα», «Θύματα με αλλοδαπό ιστορικό»* και μια καρτέλα περαιτέρω που στοχεύει *«Συμβουλές για θύματα»*, η οποία παρέχει πληροφορίες για ιδιαίτερα ευάλωτα θύματα και το δικαίωμά τους για δωρεάν συνήγορο και δωρεάν βοηθό. Οι πληροφορίες παρέχονται σε τρεις γλώσσες: φινλανδικά, σουηδικά και αγγλικά και οι «(...) φάκελοι οδηγιών έχουν διανεμηθεί σε όλους τους αστυνομικούς σταθμούς, τις τοπικές εισαγγελίες, τα δημόσια γραφεία νομικής υποστήριξης και τα δικαστήρια της Φινλανδίας» (IJJO 2014/16:28). Το σημαντικότερο είναι πως οι αστυνομικοί λαμβάνουν κάθε χρόνο ειδική εκπαίδευση σχετικά με παιδιά θύματα.

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[138] Οι συντάκτες της έκθεσης IVOR (2016) πραγματοποίησαν μερικές συνεντεύξεις με διάφορους επαγγελματίες. Κατέληξαν στο συμπέρασμα ότι επιβεβαιώθηκε ότι οι αστυνομικοί που είναι υπεύθυνοι για τις μεμονωμένες αξιολογήσεις ή επαγγελματίες από εξειδικευμένες υπηρεσίες λαμβάνουν επαρκή κατάρτιση στη Φινλανδία.

[139] http://senjanetti.fi/en (πρόσβαση στις 19 Απριλίου 2018).



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Ένα άλλο έργο που έχει υλοποιηθεί στη Φινλανδία ονομάζεται ***Το σπίτι των παιδιών - Το μοντέλο Barnahuset*** και αποτελεί ένα πιλοτικό (πρόγραμμα), που εισήχθη το 2014, το οποίο βασίζεται στο Κεντρικό Μοντέλο Υπεράσπισης του Παιδιού στις ΗΠΑ (CAC). Η προσέγγιση αυτή χρησιμοποιείται όλο και περισσότερο σε όλες τις σκανδιναβικές χώρες και προέρχεται από την Ισλανδία όπου εφαρμόζεται από το 1985. Η προσέγγιση αναπτύχθηκε ως απάντηση στη σεξουαλική κακοποίηση παιδιών. Η ιδέα του μοντέλου Barnahus, που μεταφράζεται ως «Το σπίτι των παιδιών» στα αγγλικά, και ομοίως το μοντέλο CAC των ΗΠΑ, ακολουθούν στον πυρήνα τους μια πολυ-επαγγελματική και ενσωματωμένη στην προστασία του παιδιού θύματος προσέγγιση (βλέπε Johansson et al 2017:5).[140] «Και τα δύο μοντέλα βασίζονται στην αντίληψη ότι η κακοποίηση παιδιών είναι ένα περίπλοκο φαινόμενο, απαιτώντας μεγάλη εξειδίκευση και συντονισμένες υπηρεσίες» (ibid.:5).

Η βασική ιδέα του έργου στη Φινλανδία είναι να υπαρχει ένα αμοιβαίο πλαίσιο για την επίσημη κρατική συνεργασία, καθώς και ένας κοινός φυσικός χώρος (η αρχή της «κοινής πόρτας», ή η αρχή «κάτω από την ίδια στέγη») (ibid.), όπου όλοι οι εμπλεκόμενοι επαγγελματίες συνεργάζονται σε μια ενιαία ομάδα, όπως επαγγελματίες υγείας, κοινωνικοί λειτουργοί, αξιωματικοί αστυνομίας και εισαγγελείς. Σύμφωνα με το άρθρο των Johansson et al, τα χαρακτηριστικά του μοντέλου Barnahus ποικίλουν μεταξύ των διαφορετικών σκανδιναβικών χωρών: στη Φινλανδία, δίνεται μεγάλη έμφαση στις εντατικές εγκληματολογικές συνεντεύξεις που πραγματοποιούνται από εγκληματολογικούς ψυχολόγους, αν και κατόπιν αιτήματος της αστυνομίας. Το αναπτυσσόμενο μοντέλο στη Φινλανδία συνδέεται στενά με τις προϋπάρχουσες συνεργατικές δομές, όπως οι Παιδικές Ιατροδικαστικές και Εφηβικές Ψυχιατρικές Μονάδες σε πέντε πανεπιστημιακά νοσοκομεία, (και διατηρεί) ισχυρές σχέσεις με τον τομέα της υγειονομικής περίθαλψης (ibid.:22).[141]

Σε γενικές γραμμές, η διαθεσιμότητα ενός διετούς διεπιστημονικού **προγράμματος κατάρτισης** (για τη διεξαγωγή) συνεντεύξεων απευθυνόμενο σε αστυνομικούς και στους επαγγελματίες της υγειονομικής περίθαλψης που εκτελούν ακροάσεις παιδιών θα πρέπει να τονιστεί ως μια περαιτέρω ελπιδοφόρα

[140] Για λεπτομερή περιγραφή αυτού του συγκεκριμένου μοντέλου προστασίας παιδιών, δείτε το πρώτο κεφάλαιο In. Johansson et aï. 2017, Εφαρμογή του μοντέλου των σκανδιναβικών Barnahus: Χαρακτηριστικά και τοπικές προσαρμογές, σελ. 1-31, https://link.springer.com/content/pdf/10.1007%2F978-3-319-58388-4_1.pdf (πρόσβαση στις 19 Απρίλιος 2018).

[141] Για περισσότερες λεπτομέρειες σχετικά με την ακριβή διαδικασία τέτοιων μεθόδων εγκληματολογικής συνέντευξης, δείτε την προαναφερθείσα μελέτη, IJJO 2014/16, σελ. 20-22.



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πρακτική στη Φινλανδία. Οι εκπαιδευτικές δραστηριότητες οργανώνονται από το Εθνικό Αστυνομικό Συμβούλιο και το Κέντρο Δικαστικής Ψυχιατρικής. «Οι περισσότεροι αστυνομικοί και ψυχολόγοι που εργάζονται σε ποινικές διαδικασίες έχουν παρακολουθήσει το μάθημα και γενικά συμφωνούν ότι έχει συμβάλει στην φιλική προς τα παιδιά προκαταρκτική διαδικασία ακρόασης» (FRA 2015:100). [142]

## 6. Συμπέρασμα και συζήτηση

Η εφαρμογή της οδηγίας για τα θύματα της ΕΕ, η οποία καθορίζει τις ελάχιστες προδιαγραφές για την παροχή βοήθειας στα θύματα, στις εθνικές δικαιοδοσίες έχει προκαλέσει κάποιες δυσκολίες μεταξύ των κρατών μελών της ΕΕ. Σε πανευρωπαϊκό επίπεδο, η εικόνα της αρωγής των θυμάτων σχετικά με τη μεταφορά της οδηγίας αποδεικνύεται ότι είναι ποικιλόμορφη.

Υπό το πρίσμα του *συγκριτικού προβληματισμού* (βλ. Jasanoff/Metzler 2018), έχει γίνει εμφανές ότι κάθε χώρα ερμηνεύει και λειτουργεί μέσα στο δικό της πλαίσιο υποδομών υποστήριξης των θυμάτων και, συνεπώς, αναπόφευκτα παράγει αποκλίνουσες απαντήσεις στο περίπλοκο έργο της αντίδρασης προς την (κατεύθυνση) της εφαρμογής της οδηγίας. Η σύγκριση αποκαλύπτει διακριτά εθνικά νομοθετικά και κοινωνικο-πρακτικά περιβάλλοντα, εντός των οποίων οι επαγγελματίες και οι νομοθέτες πρέπει να δράσουν και έτσι εκθέτει διαφορετικές αντιλήψεις για τις ευθύνες κάθε κράτους όσον αφορά την προστασία των θυμάτων εγκληματικότητας σε εθνικό επίπεδο. Ωστόσο, υπάρχει ένα βασικό πρόβλημα στη σύγκριση των κρατών μελών σχετικά με την εφαρμογή της οδηγίας για τα θύματα:

> «Η επιθυμία να χρησιμοποιηθεί η υποστήριξη των θυμάτων, η γενική κατανόηση της εμπειρίας με τις υπηρεσίες ποινικής δικαιοσύνης μετά τη θυματοποίηση, ο αντίκτυπος της αλληλεπίδρασης με τη διαδικασία της ποινικής δικαιοσύνης στη συναισθηματική ευεξία των θυμάτων, η σημασία των διαφόρων πτυχών της συνδρομής των θυμάτων, δεν υπάρχουν βάσιμα στοιχεία για την πραγματοποίηση σύγκρισης ανάμεσα στα κράτη μέλη της ΕΕ, δεδομένου ότι για το μεγαλύτερο μέρος της Ευρωπαϊκής Ένωσης δεν υπάρχουν διαθέσιμες εμπειρικές έρευνες που να παρέχουν απάντηση» (Έκθεση IVOR 2016: 197).

Η μεταφορά της εφαρμογής ελάχιστων προδιαγραφών για την παροχή βοήθειας στα θύματα στην Ευρωπαϊκή Ένωση αποδεικνύεται παρεκκλίνουσα, ξεκινώντας από τις διαφορετικές ερμηνείες βασικών

[142] http://fra.europa.eu/en/publication/2015/child-friendly-justice-perspectives-and-experiences-professionals-childrens (πρόσβαση στις 19 Απριλίου 2018).



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όρων και εννοιών της οδηγίας[143] από τους εθνικούς νομοθέτες, οι διαφορές περαιτέρω οφείλονται σε διαφορετικές νομικές παραδόσεις στην υποστήριξη των θυμάτων.

Επιπλέον, τα αποτελέσματα του έργου επαλήθευσαν μερικά από τα ευρήματα της έρευνας από το έργο IVOR, υπογραμμίζοντας ότι στις περισσότερες ευρωπαϊκές χώρες υπάρχει έλλειψη στην έρευνα που βασίζεται σε αποδεικτικά στοιχεία σχετικά με τα θύματα, γεγονός το οποίο θα μπορούσε στην πραγματικότητα να αποτελέσει την ιδανική βάση για τη σύγκριση των προδιαγραφών που εφαρμόζονται στα κράτη μέλη της ΕΕ. Ωστόσο, αυτό που η σύγκριση καθιστά εμφανές εδώ, είναι η ανάπτυξη του συστήματος υποστήριξης θυμάτων της κάθε χώρας και, επιπλέον, η εμπειρία που έχουν οι εθνικοί νομοθέτες και οι επαγγελματίες με την στρατηγική για τα θύματα, που επιτρέπει από την άλλη πλευρά, να εξαχθούν κάποια συμπεράσματα για την ΕΕ ως φορέας χάραξης πολιτικής. Συγκεκριμένα, είναι δύσκολο να κατανοηθεί η έκταση της επίδρασης της οδηγίας για τα θύματα στις εθνικές νομοθεσίες και πρακτικές, χωρίς να υπάρχουν αποδείξεις για τον αντίκτυπο των περισσότερων μέτρων βοήθειας των θυμάτων στην εμπειρία των θυμάτων και με την έλλειψη σχετικής έρευνας.

**Η Αγγλία και η Ουαλία** αξίζει να αναφερθούν στο πλαίσιο αυτό, επειδή κρατικοί και μη κρατικοί οργανισμοί έχουν υλοποιήσει εμπειρική έρευνα για την θυματολογία συμπεριλαμβάνοντας τις εμπειρίες και τις προοπτικές των παιδικών θυμάτων, ώστε να αξιολογήσουν πόσο αποτελεσματικές είναι οι διάφορες υπηρεσίες και τα προγράμματα υποστήριξης των θυμάτων στο Ηνωμένο Βασίλειο (κυρίως στην Αγγλία και την Ουαλία).[144] Φαίνεται πολύ ελπιδοφόρα (η προοπτική) να προσδιοριστούν και να παρακολουθούνται τα αποτελέσματα και οι λειτουργίες της υποστήριξης των θυμάτων από τις αναφορές των ίδιων των θυμάτων. Στην Αυστρία και τη Φινλανδία υπάρχει επίσης – αν και όχι σε μεγάλο βάθμο- παράδοση σε τέτοιου είδους έρευνες για την ικανοποίηση του θύματος (στην Αυστρία δίδεται ιδιαίτερη έμφαση στην ενδοοικογενειακή βία). Ωστόσο, οποιαδήποτε αξιολόγηση του αντίκτυπου των προσπαθειών και των πολιτικών (που υιοθετούνται) πρέπει να λαμβάνει υπόψην τις πραγματικές εμπειρίες των

[143] Βλέπε. Τη συμπληρωματική έκθεση E-PROTECT σχετικά με τη νομοθετική μεταφορά της οδηγίας για τα θύματα, η οποία χαρτογραφεί λεπτομερέστερα τις διαφορετικές ερμηνείες των νομικών εννοιών που ορίζονται στην οδηγία..

[144] Όπως για παράδειγμα η έκθεση του Επιτρόπου για τα θύματα, αλλά και οι εκθέσεις που εκπόνησαν μη νομοθετικές υπηρεσίες, όπως η έκθεση της Υποστήριξης των Θυμάτων, "Να γίνει σωστό για νεαρά θύματα και μάρτυρες", https://www.victimsupport.org. uk / sites / default / files / You% 20% 26% 20Co% 20-% 20Getting% 20it% 20right% 20for% 20young% 20victims% 20and% 20witnesses.pdf (πρόσβαση στις 9 Απριλίου 2018).



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θυμάτων, την ικανοποίηση τους από το σύστημα δικαιοσύνης και τα προσφερόμενα μέτρα, αντίστοιχα, με αποτέλεσμα να καθίσταται απαραίτητη η διεξαγωγή συνολικής έρευνας, η οποία να περιλαμβάνει τις εμπειρίες των τελικών χρηστών. Από αυτή την άποψη, μπορεί σίγουρα να γίνει αναφορά στο **Ηνωμένο Βασίλειο** ως παράδειγμα ορθής πρακτικής.

Ως εκ τούτου, μια άλλη βασική πτυχή έγκειται στην ενσωμάτωση και κατανόηση του *ρόλου του πλαισίου* στη χάραξη πολιτικής της ΕΕ, (καθώς) το συνονθύλευμα χωρών της ΕΕ απαιτεί διαφορετική προσέγγιση όσον αφορά τη χάραξη πολιτικής και την εφαρμογή της. Οι φορείς χάραξης πολιτικής της ΕΕ πρέπει να εξετάσουν τους διαφορετικούς συμφραζόμενους παράγοντες, συμπεριλαμβανομένων και των διαφορετικών νομικών συστημάτων –αστικού δικαίου έναντι του κοινοδικαίου (στο Ηνωμένο Βασίλειο)– τα οποία καθορίζουν συγκεκριμένα συστήματα στήριξης θυμάτων ανα χώρα, ειδικά όταν ο στόχος είναι η επίτευξη ελάχιστων προτύπων (βλ. ibid.).

> «Στην παροχή βοήθειας στα θύματα, αυτή η αναγκαιότητα γίνεται πιο έντονη, δεδομένου ότι το **πλαίσιο** είναι επίσης ένας σημαντικός παράγοντας με την ίδια την εμπειρία των θυμάτων, στην αλληλεπίδραση μεταξύ θυμάτων και παρόχων βοήθειας θυμάτων, στον τρόπο με τον οποίο βρίσκεται η βοήθεια των θυμάτων στο δίκτυό της και τη φύση της βοήθειας των θυμάτων ως κυβέρνητική ενίσχυση για την ενδυνάμωση των μεμονωμένων πολιτών. Η εμπειρία σχετικά με τη βελτίωση της θέσης των θυμάτων σε εθνικό επίπεδο σε μια ποικιλία εθνών αφορά στην πολυπλοκότητα και τη δυσκολία να γίνει κάτι τέτοιο σε μια χώρα: τα ζητήματα αυτά ενισχύονται μόνο από το γεγονός ότι η ΕΕ περιλαμβάνει 28 κράτη μέλη» (ibid.:200).

Μερικά συμπεράσματα, ωστόσο, σχετικά με τις καλές ή ακόμα και τις βέλτιστες πρακτικές καθώς και τις δυσκολίες, μπορούν να εξαχθούν από τη μελέτη αυτή, συμπεριλαμβανομένων των αποτελεσμάτων από τις προηγούμενες εκθέσεις των χωρών του E-PROTECT. Επιπλέον, οι προαναφερόμενες δυσκολίες σχετικά με τις πολιτικές της ΕΕ εν γένει και η οδηγία για τα θύματα συγκεκριμένα πρέπει να υποστηριχθούν από ορισμένα εμπειρικά ευρήματα αυτής της έρευνας.

Οι υψηλής ποιότητας πληροφορίες που παρέχονται από την κυβέρνηση του **Ηνωμένου Βασιλείου** και τις διάφορες οργανώσεις υποστήριξης των θυμάτων για τα θύματα εγκληματικότητας είναι αρκετά ελπιδοφόρα. Η τελευταία επικαιροποίηση του Κώδικα των Θυμάτων το 2015 έχει πιθανώς κάποια σημαντική επίδραση στην προστασία των θυμάτων. Κατά συνέπεια, στα θύματα παρέχονται λεπτομερείς και σχετικές πληροφορίες για τα δικαιώματά τους, τα καθήκοντα των νόμιμων παρόχων υπηρεσιών, όπως είναι το χρονικό διάστημα εντός του οποίου η αστυνομία πρέπει να αποστείλει την αναγνώριση της


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αναφοράς του εγκλήματος στο θύμα ή σε ποιο χρονικό πλαίσιο πρέπει να ενημερώσουν τα θύματα με πληροφορίες σχετικά με τις αποφάσεις που λαμβάνουν οι αρχές, σε κατάλληλη γλώσσα. Σε άλλα κράτη μέλη, όπως η **Γερμανία**, υπάρχει έλλειψη επαρκούς σχετικού και προσβάσιμου ενημερωτικού υλικού για τα θύματα (βλ. EPRS 2017). Συγκεκριμένα, λαμβάνοντας υπόψη την πολυπλοκότητα του γερμανικού νόμου, αυτό θα αποτελούσε ένα απαραίτητο βήμα προς μια ακόμη περισσότερο προσανατολισμένη προς τα θύματα προσέγγιση, τουλάχιστον για την ελάφρυνση των θυμάτων από την εξάρτηση των κρατικών αρχών. Το Ηνωμένο Βασίλειο, αντιθέτως, παρήγαγε αυτό το ομοιόμορφο νομικό κείμενο (Κώδικας Πρακτικής για τα Θύματα Εγκληματικότητας), το οποίο αποτελεί εξίσου τη νομική βάση για όλα τα μέρη που εμπλέκονται σε ποινικές διαδικασίες, τόσο για τα θύματα όσο και για τους επαγγελματίες. Αυτή η πρακτική δημιουργεί μια διαφορετική πολιτική ωριμότητα για τους ανθρώπους που πλήττονται από εγκλήματα.

Παρ' όλα αυτά, ο Κώδικας δεν συμπεριλαμβάνει κάποια υποχρεωτική προϋπόθεση για την συνεργασία των υπηρεσιών συντονισμένα ώστε να υποστηρίξουν τα θύματα με κατανόηση μέσα από το ταξίδι τους στο σύστημα ποινικής δικαιοσύνης στο Ηνωμένο Βασίλειο. Αφού τα θύματα εγκληματικότητας έρχονται σε επαφή με μεγάλο αριθμό διαφορετικών επαγγελματιών από διάφορες υπηρεσίες, η εργασία πολλαπλών υπηρεσιών δημιουργεί μια σημαντική διάσταση ώστε να είναι σίγουρο ότι τα παιδιά θύματα υποστηρίζονται με επαρκή τρόπο από όλα τα εμπλεκόμενα όργανα. Εντούτοις, η Επιτροπή των Θυμάτων ανίχνευσε κάποιες ελλείψεις ως προς την συνεργασία πολλαπλών υπηρεσιών.

Ένα πιθανώς κραυγαλέο συμπέρασμα είναι ότι οι κοινωνικές υπηρεσίες δεν καλύπτονται από τον Κώδικα των Θυμάτων και, επομένως, υπάρχουν ορισμένα προβλήματα στην παροχή επαρκούς και ολοκληρωμένης προστασίας των παιδιών, η οποία συνεπάγεται τη συνεχή έλλειψη ενημέρωσης για τις υποθέσεις τους. Ο Επίτροπος των Θυμάτων διαπίστωσε την έλλειψη συντονισμένης ανταπόκρισης μεταξύ του Βασιλικού Δικαστηρίου και του Οικογενειακού Δικαστηρίου ή μεταξύ της αστυνομίας και άλλων παρόχων κοινωνικών υπηρεσιών (ibid.). Η έλλειψη αυτή θα μπορούσε να λυθεί με (τον ορισμό ενός ατόμου επιφορτισμένου με την υποχρέωση) παροχής ενιαίας επαγγελματικής υπεράσπισης με συντονιστικό ρόλο σε κάθε άτομο, (το οποίο) θα παρέχει στο θύμα όλες τις σχετικές πληροφορίες, όπως η αναφορά του θύματος στις κατάλληλες υπηρεσίες υποστήριξης καθώς και η παρακολούθηση της προόδου του σε περίπτωση αλλαγής των αναγκών. (ibid:35).


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Τα ελάχιστα διαθέσιμα στοιχεία στην **Πορτογαλία**, τα οποία σχετίζονται με τις πρακτικές προστασίας των παιδιών αναφορικά τόσο με τα μέτρα παρέμβασης όσο και με τις εμπειρίες παιδιών που έχουν πέσει θύματα εγκληματικών πράξεων, έχουν υποβληθεί σε ακροάσεις και δικαστικές διαδικασίες που καταδεικνύουν ότι υπάρχουν σοβαρές οργανωτικές ελλείψεις που πρέπει να ξεπεραστούν.[145] Η νομοθεσία που σχετίζεται με το παιδί και τη δικαιοσύνη έχει επίσης εξελιχθεί αργά στη χώρα, αλλά οι διεθνείς δεσμεύσεις της Πορτογαλίας συνέβαλαν στην προώθηση του εθνικού ρυθμιστικού πλαισίου και πλέον υπάρχει ένα ολοκληρωμένο πλαίσιο για την προστασία των παιδιών θυμάτων.

Στην **Ισπανία**, υπάρχουν νομοθεσίες και δομές που έχουν τη δυνατότητα, όταν εκτελούνται αποτελεσματικά όπως οι ατομικές αξιολογήσεις, να υποστηρίζουν πλήρως τα παιδιά θύματα. Κατά τα προσεχή έτη, θα είναι σημαντικό να παρακολουθήσουμε την εφαρμογή των δύο νομοθετημάτων που επισημάνθηκαν στην παρούσα έκθεση, για να κατανοήσουμε αν συμβάλλουν στην αντιμετώπιση ορισμένων εμποδίων και τις προκλήσεις που αντιμετωπίζουν τα παιδιά που έρχονται σε επαφή με το δικαστικό σύστημα. Όπως και στην Πορτογαλία, τα διαθέσιμα αποδεικτικά στοιχεία και τα υπάρχοντα προγράμματα μπορούν να αποτελέσουν τη βάση για την προώθηση της φιλικής προς τα παιδιά δικαιοσύνης στην Ισπανία και συγκεκριμένα για την εφαρμογή των μέτρων που προβλέπονται στην οδηγία για τα θύματα. Έχει μεγάλη σημασία να αναλάβουν οι ενδιαφερόμενοι αυτή τη δέσμευση και να επικεντρώσουν την προσοχή τους στην εναρμόνιση των διαδικασιών και πρακτικών σε ολόκληρη τη χώρα, εξασφαλίζοντας ότι δεν υπάρχει διαφορά μεταξύ διαφορετικών περιφερειών ή κενών μεταξύ αστικών και αγροτικών περιοχών, όπως για παράδειγμα στην Αυστρία.

Η **Γερμανία**, η **Φινλανδία** και η **Αυστρία** είναι οι μοναδικές τρεις χώρες σε αυτή την επιλογή των κρατών μελών που διαθέτουν εθνικό κεντρικό όργανο για τον συντονισμό της υποστήριξης των θυμάτων και η ποιότητα των διατάξεων φαίνεται να είναι πιο συνεπής σε σύγκριση με άλλες χώρες. (βλέπε EPRS 2017).

Στην **Αυστρία** και τη **Γερμανία** υπάρχουν ορισμένες δραστηριότητες συνεργασίας πολλαπλών οργανισμών, όπως οι «στρογγυλές τράπεζες», συμπεριλαμβανομένων των διαφόρων φορέων που

[145] Μια μελέτη που διεξήχθη για την αξιολόγηση των εργασιών των Επιτροπών Προστασίας των Παιδιών είναι διαθέσιμη εδώ: http://www.analiatorres.com/pdf/SINOPSEfinalcriancasconclrecomendacoes.pdf (πρόσβαση στις 30 Απριλίου 2018).



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εμπλέκονται στη βοήθεια των θυμάτων. Οι δραστηριότητες αυτές φαίνονται εξαιρετικά ελπιδοφόρες, καθώς αποτελούν μία από τις σημαντικότερες πτυχές της εναρμόνισης των διαδικασιών μεταξύ των διαφόρων εμπλεκόμενων φορέων (αστυνομία, δικηγόροι, εισαγγελείς, επαγγελματίες υγείας, ψυχολόγοι, κοινωνικοί λειτουργοί), γεγονός που βελτιώνει και την κατάσταση των θυμάτων εγκληματικότητας που διευκολύνει την αποφυγή της δευτερογενούς θυματοποίησης και της εργασιακής κατάστασης για τους ίδιους τους επαγγελματίες. Το **φινλανδικό** πρότυπο Barnahus, μπορεί επίσης να θεωρηθεί ως μια τέτοια πολλά υποσχόμενη πολυεπαγγελματική προσέγγιση. Χρησιμοποιείται ήδη προοδευτικά σε όλες τις σκανδιναβικές χώρες και συμμερίζεται την ιδέα μιας ολοκληρωμένης προσέγγισης στην προστασία των παιδιών θυμάτων.

Τόσο η **Γερμανία** όσο και η **Αυστρία** παρέχουν δωρεάν ψυχοκοινωνική στήριξη σε συγκεκριμένα ευάλωτα θύματα το οποίο, ιδιαίτερα για τα παιδιά θύματα, αποτελεί ένα σημαντικό μέτρο που καθιερώνει μια ενοποιημένη, επαρκή και πλήρη προσέγγιση προστασίας των παιδιών. Η Φινλανδία διαθέτει ένα παρόμοιο μέτρο που έχει κατοχυρωθεί νομικά, το δικαίωμα (του θύματος) να έχει νομικό σύμβουλο, υπάρχει όμως έλλειψη χρηματοδότησης. Έτσι, παρέχεται δωρεάν υπό συγκεκριμένες συνθήκες και σε συγκεκριμένα εγκλήματα, όπως περιπτώσεις ενδοοικογενειακής βίας, σεξουαλικά αδικήματα ή σοβαρά αδικήματα κατά της ζωής, της υγείας ή της ελευθερίας.

Ολοκληρώνοντας, η μελέτη αυτή κατέδειξε, μεταξύ άλλων ερευνών, ότι είναι σημαντικό να συμπεριληφθεί το ατομικό πλαίσιο κάθε χώρας στο οποίο αναπτύσσεται η στήριξη των θυμάτων, ιδίως όσον αφορά τόσο μεγάλα έργα όπως η οδηγία για τα θύματα και η εφαρμογή της σε 28 κράτη μέλη (βλέπε έκθεση IVOR 2016). Η υποστήριξη των θυμάτων ποικίλλει αναπόφευκτα στη φύση από μια περιοχή της Ευρωπαϊκής Ένωσης στην άλλη και ως εκ τούτου οι διαμορφωτές πολιτικής της ΕΕ πρέπει να λάβουν υπόψη αυτά τα πλαίσια και τα διαφορετικά περιβάλλοντα προκειμένου να αναπτύξουν πιο ευέλικτα μέσα για να επηρεάσουν την πολιτική και τις πρακτικές μεταξύ των κρατών μελών. Η σύγκριση είναι μεν δυνατή, αλλά η εκτίμηση και αξιολόγηση του αντίκτυπου της οδηγίας σημαίνει ότι είναι απαραίτητο να ληφθούν υπόψη οι εθνικές ιδιαιτερότητες και στα δύο επίπεδα, νομικά και κοινωνικά, και (η σύγκριση) να ξεκινήσει από αυτό το σημείο. Αυτό θα μπορούσε να αποτελέσει επίσης την ιδανική βάση για την εκπόνηση μιας τέτοιας οδηγίας, καθώ μόνο τότε θα είναι δυνατόν να επιτευχθεί η καλύτερη εμπειρία για τα θύματα εγκληματικών πράξεων σε ολόκληρη την Ευρώπη.


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## 8. Παραδοτέα του E-PROTECT

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E-PROTECT Deliverable D3.9 Study on the individual assessment methodologies of child victims of crime in Austria, EN, (pp.15-22).

E-PROTECT Deliverable D3.10 Study on the individual assessment methodologies of child victims of crime in Romania, EN, (pp.10-14).

E-PROTECT Deliverable D3.11 Study on the individual assessment methodologies of child victims of crime in Italy, EN, (pp.13-22).

E-PROTECT Deliverable D3.12 Study on the individual assessment methodologies of child victims of crime in Greece, EN, (pp.18-26).



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JUST-JACC-VICT-AG-2016

Action grants to support transnational projects to enhance the rights of victims of crime

JUSTICE PROGRAMME

GA No. 760270

# Enhancing PROtection of Children – vicTims of crime

# E-PROTECT

## WP3: Research and Data Collection

# D3.13 pan-ECropean Best Practices Report on individual assessment methodologies of child victims of crime

## WP3 Leader: VICESSE



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## Резюме

Повишаването на нивото на закрила, предоставяно на децата жертви на престъпление чрез задълбочен анализ и оценка на мерките за транспониране на Директива 2012/29/ЕС в петте партньорски държави членки (България, Австрия, Румъния, Гърция и Италия) е една от основните цели на проекта E-PROTECT. Освен това, проектът изследва практическото приложени на една от основните разпоредби на Директива 2012/29/ЕС, а именно *член 22 Индивидуална оценка на жертвите с цел установяване на специфичните им нужди от защита* и по този начин има се стреми да насърчи създаването на мултидисциплинарна мрежа от професионалисти чрез провеждане на семинари във всяка една от партньорските страни в по-нататъшния ход на проекта, както и чрез изграждането и поддържането на онлайн платформа, обединяваща широката гама от експерти, работещи с деца жертви на престъпления.

Този доклад има за цел да разшири географския и културния обхат на E-PROTECT като представи по-богата картина относно практическото приложение на индивидуалната оценка на нуждите за адекватна закрила на на децата жертви на престъпления и техните права и в други държави-членки на ЕС. Докладът предлага задълбочен анализ на практическото приложение на методологии за индивидуална оценка на нуждите – предмет на една от основните разпоредби на Директива 29/2012/ЕС, а именно *член 22 Индивидуалната оценка на жертвите с цел установяване на специфичните им нужди от защита*, в следните държави членки: ***Германия, Португалия, Испания, Обединеното кралство (Англия и Уелс)*** **и** ***Финландия***. В допълнение, в настоящия доклад са обобщени и включени основните изводи от вече изготвените по проекта доклади от партньорските страни: ***България, Австрия, Румъния, Гърция и Италия***.

Избраните държавите-членки, включени в настоящето общоевропейско проучване, са съотносими към целите на изследването в няколко аспекта: първо, от географска и културна гледна точка, като се вземат предвид специфичните национални законодателни особености и различната степен на транспониране на Директива 2012/29 и как те работят на практика. Второ, като се има предвид основната цел на проекта за подобряване на практическото прилагане на правата на деца жертви на престъпления за закрила в различните страни в ЕС, избраните държави могат да се



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ползват за пример, тъй като или разполагат със специална система от институции, работещи в областта на предоставяне на подкрепа на жертви на престъпления, която функционира и преди приемането на Директивата (в случая на Англия и Уелс, Германия и Финландия), или са разработили собствени процедури за работа с деца жертви на престъпления именно в резултат на транспонирането на Директивата за жертвите (в случая на Испания и Португалия).

Един от основните изводи от проведеното изследване, е че всяка страна подпомага жертвите на престъпления спрямо особеностите на собствената си среда и по този начин неизбежно създава разнообразни отговори на сложната задача относно практическото прилагане на разпоредбите на на Директивата (вж. Jasanoff/Metzler, 2018). Настоящето проучване използва качествено сравнение, чиято цел е да изследва употребата на разнообразни подходи към индивидуалната оценка и подкрепата на деца жертви на престъпления в избраните държави. Освен това, докладът излага и различните разбирания за отговорностите на всяка страна към закрилата на жертвите на престъпления на национално ниво (вж. Akrich / Rabeharisoa, 2016).

На общоевропейско равнище, осигуряването на подкрепа на адекватно ниво на закрила на жертви на престъпления, гарантирано с транспонирането на Директивата, се осъществява по различен начин в различните държави. **Финландия**, например, прилага систематичен подход спрямо индивидуалната оценка на жертвите с цел установяване на специфичните им нужди от защита след транспонирането на Директивата (вж. EPRS 2017: 82). В Обединеното кралство (особено **Англия и Уелс**) са разработени някои практически насоки (напр. Кодекс на жертвите), разпространяват се голям брой публични информационни материали и се провеждат специализирани обучения за професионалисти, работещи с жертви на престъпления. Освен това, **Англия и Уелс**, както и **Германия**, имат дългогодишна практика при осигуряването на подкрепа на пострадали от престъпления. **Португалия и Испания** са забележителни примери, тъй като и двете страни са транспонирали дословно пълния текст на Директивата.

И все пак, често срещан проблем при работа с жертви на престъпления е сложна система по отношение на съгласуване и сътрудничество при осигуряване на подкрепа. Точно тук изключително значение има *мултидисциплинарното сътрудничество* между заинтересованите страни на национално и международно равнище (особено, когато престъплението има трансграничен характер).



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Разбирането на *специфичния контекст* при изготвянето на политики на ЕС е друг важен аспект. Различията между държавите членки изискват различен подход към изготвянето и прилагането на политики, поради което следва да се обмислят точно тези различни контекстуални фактори едновременно на национално и европейско ниво, както и специфичните социално-политически и правни особености на страните членки на ЕС.

В заключение, настоящето изследване показва, че е важно да се вземе предвид индивидуалният контекст на всяка страна, в която се осигурява подкрепа на пострадали от престъпления, особено по отношение на транспонирането на значими правни рамките като Директива 2012/29/ЕС и нейното прилагане във всички 28 страни членки на ЕС. Ето защо специфичните особености на отделните държави предполагат необходимост от разработване на по-гъвкави средства за въздействие върху политиките и практиките при осигуряването на подкрепа на пострадали от престъпления.



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# Списък с използвани съкращения

| | |
|---|---|
| CAC | Детски център за застъпничество и подкрепа (модел на САЩ) |
| CILEX | Експертен институт на практикуващите юристи |
| CRAE | Сдружение за детски права за Англия |
| CSEW | Проучване на престъпността в Англия и Уелс |
| EKKA | Национален център за социална солидарност (Гърция) |
| E–PROTECT | Проект „Осигуряване на по-добра закрила на децата жертви на престъпление“ |
| EPRS | Служба на Европейския парламент за научни изследвания |
| EC | Европейски съюз |
| EVVI | Проект „Оценка на жертви“ |
| FRA | Агенцията на ЕС за основните права |
| FAPMI | Федерация от организации, работещи за превенция на малтретиране на деца |
| IAM | Методологии за индивидуална оценка на нуждите |
| IVOR | Проект „Внедряване на реформа в наказателно-правните системи на ЕС, ориентиране на наказателния процес към жертвите на престъпление“ |
| IJJO | Международна обсерватория за младежко правосъдие |
| LSCB | Местни бордове за защита на деца (Обединено кралство) |
| ДЧ | Държави-членки |
| НПО | Неправителствена организация |
| ONS | Национален статистически институт (Обединено кралство) |
| SotC | Усмивката на детето (Гърция) |
| RIKU | Организация за подкрепа на жертвите (Финландия) |
| RUMI | Единен регистър на случаите за подозрение за малтретиране на деца (Испания) |



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| | |
|---|---|
| Victims´ Directive (VD) | Директива 2012/29/ЕС, |
| VPS | Лично обръщение на жертвата (Обединено кралство) |
| UK | Обединеното кралство |
| UNCRC | Конвенция на ООН за правата на детето |



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# 1. Въведение

Укрепването на закрилата на децата жертви на престъпление чрез задълбочен преглед и оценка на мерките за транспониране на Директива 2012/29/ЕС (Директива за жертвите)[1] в петте партньорски държави членки (България, Австрия, Румъния, Гърция и Италия) е една от основните цели на проекта E-PROTECT. В рамките на първоначално изготвените национални доклади по проекта[2], всяка партньорска организация е представила информация относно практическото приложение на различните индивидуални методологии за оценка на нуждите (Член 22 от Директива за жертвите, наричана за кракост Директивата), както и по отношение съответните специални мерки за определени групи уязвими жертви с фокус върху децата жертви в своята държава.

Този доклад има за цел да разшири географския и културния обсег на E-PROTECT, за да даде по-богата картина относно практическото приложени на индивидуалната оценка на нуждите за адекватна защита на децата жертви на престъпления, и съответно техните права в ДЧ на ЕС. Докладът се фокусира върху анализ на практическото приложение на методологиите за индивидуална оценка – предмет на една от основните разпоредби на Директива 29/2012/ЕС, а именно *член 22 Индивидуалната оценка на жертвите с цел установяване на специфичните им нужди от защита*, в следните държави членки: ***Германия, Португалия, Испания, Обединеното кралство (Англия и Уелс),* и *Финландия***.

*Член 23 Право на защита на жертвите със специфични нужди от защита в хода на наказателното производство* и *член 24 Право на защита на децата жертви в хода на наказателното производство* също са обект на изследване в рамките на настоящия доклад що се отнася до посочените по-горе ДЧ. Член 22 е урежда оценката на специфичните нужди от защита на жертвите на престъпления и дали и до каква степен следва да бъдат определени специални мерки. Мерките са предвидени и прецизирани в чл. 22, 23 и 24 по отношение на жертви, определени като

[1] Директива 2012/29/ЕС има за цел да установи минимални стандарти относно правата, подкрепата и защитата на жертвите на престъпления и заменя предшестващото я Рамково решение 2001/220/ ПВР на Съвета (CFD: 2001/220). Тук наричана "Директива за жертвите" или VD; https://ECr-lex.ECropa.EC/legal-content/en/TXT/?uri=CELEX%3A32012L0029 (последно достъпен на 15 март 2018 г.).

[2] Вж.: E-PROTECT Deliverables D3.8-12 (доклади за отделните методи за оценка в различните страни: **България** D3.8, **Австрия** D3.9, **Румъния** D3.10, **Италия** D3.11, **Гърция** D3.12).



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уязвими (в случаи на риск от вторична и повторна виктимизация, сплашване и отмъщение по време на наказателния процес).[3]

Индивидуалната оценка разглежда развитието и въвеждането на подход, при който всеки казус се разглежда поотделно, спрямо специфичните нужди на жертвата (вж. доклада на INASC 2016:20). Оценяването при използването на подхода за разглеждане на всеки казус сам за себе си се основава на три основни аспекта: а) личностната характеристика на жертвата, б) тип и естеството на престъплението, и в) обстоятелствата на престъплението.

С оглед определянето на добри практики относно практическото приложение на посочените по-горе разпоредби Директива 29/2012/ЕС, в обхвата на анализа се включват и мерките по транспониране на *Глава 5: "Други разпоредби"* от Директивата, тъй като се отнася до *Член 25 Обучение на практикуващи лица* и *Член 26 Сътрудничество и координация на службите*.

## 1.1. Добри практики

В основата на този доклад е стои определянето на добри работещи практики. Такива практики описват процедури, които осигуряват адекватна защита на правата и благополучие на децата жертви на престъпление по внимателен и отговорен начин.[4] Такива например са изработването на насоки, които целят да хармонизират и развият процедури за всички включени заинтересувани лица, който предлагат подкрепа и подпомагане на жертви (като доставчици на социални услуги за подкрепа на жертви на насилие, полиция, адвокати и др. под.).

Често срещан проблем при оказването на подкрепа на жертви на престъпление е нейната сложна система по отношение на съгласуване и сътрудничество: жертвите на престъпления трябва да се ориентират в сложни мрежи от институции с различни отговорности, което често се възприема от жертвите като прекомерно. Това показва, че критичният фактор за успешно оказване на подкрепа на жертви е *мултиинстуционално сътрудничество* между широката палитра от експерти, работещи в сферата на подкрепа на жертви, както на национално, така и международно

[3] Вж. съответните членове от Директива 2012/29/ЕС; https://ECr-lex.ECropa.EC/legal-content/en/TXT/?uri=CELEX%3A32012L0029 (последно достъпен на 15 март, 2018 г.); вж. също докладите за страните от D3.8 до D.12, изготвени в рамките на E-PROTECT, които пояснява конкретно основните положения на VD.

[4] Например "Сините стаи" в България, които са специфични помещения (проектирани в среда, подходяща за деца, противоположни на поменията в полицейското управление например), подходящи за деца, създадени за вземане на показания (вж. D3.8 / 2017 - национален доклад за България).



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ниво. Целта е установяването на по-добър и лесно управляем достъп на лицата в нужда до мерки за подкрепа и закрила, както и да се създадат по-добри условия за работа на работещите в този сектор.

Сравняването на различни национални подходи към провеждането на индивидуални оценки е важно, защото:

> "Местният национален опит показва, че подобряването на положението на жертвите на престъпление, може да бъде поверено на промени в установените закони само до определена степен. Вместо това, успехът в голяма степен зависи от действията на практическо ниво: доколкото зачитането на правата е подкрепено с подходящи социални услуги" (IVOR report 2016: 9).[5]

Докладът на IVOR посочва, че практическото изпълнение на разпоредбите, което още на първоначално ниво зависи най-вече от това как законовите предписания се прилагат на практика, е най-важният фактор за ефективна подкрепа на жертвите. Казано по друг начин:

> "Приложението на Директивата на ЕС за правата на жертвите още повече зависи от това дали отговорните лица в рамките на наказателнотп преследване спазват духа на Директивата в ежедневната си работа, на място, за да подкрепят жертвите по време на наказателното производство и да защитят техните права" (INASC 2016: 43).

Следователно, докладът изследва методологиите за индивидуална оценка на нуждите на паневропейско ниво, с фокус върху тяхното приложение във всеки контекст, за да постигне действително подобрение при прилагането на оценките за индивидуалните нужди в ДЧ на ЕС.

## 1.2. Структура

Докладът се състои от четири основни раздела: първоначално се очертава *методологичният подход - сравнение* **(2)**, след което следва глава, обобщаваща *"Ключови моменти от транспонирането на член 22, 23, 24 от Директивата за жертвите в България, Румъния, Гърция, Италия и Австрия"* **(3).**

Резултатите от предходните национални доклади ще бъдат сравнени с тези от настоящия доклад с цел по-добро разбиране на общите предизвикателства пред въвеждането на индивидуалната оценка на нуждите, предвидена в Директива 29/2012/ЕС.

[5]Вж. доклада, изготвен от IVOR - "Прилагане на реформа на системата за наказателно правосъдие в Европейския съюз (2014-2016), ориентирана към жертвите, https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot- WebVersion.pdf (последно достъпен на 25 април 2018 г.).



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Като следваща стъпка, докладът разглежда настоящата система за подкрепа на децата жертви в петте избрани държави членки (Германия, Португалия, Испания, Англия и Уелс, Финландия) **(4)** и продължава с подробно изследване на *организационното въвеждане на оценка на индивидуалните нужди и специфични мерки за децата жертви на престъпление* **(5)**.

Накрая, докладът представя обобщение, което цели да сравни практиките в тези ДЧ и резултатите от държавите партньори, за да се установят най-добре работещите практики **(6)**.

## 2. Методология

От методическа гледна точка, настоящото проучване върху методологиите за индивидуална оценка на нуждите е ориентирано към качествено сравнение с цел да утвърди определени и да формира концепция и аналитично обяснение, отколкото да търси статистическо значение (вж. Krause, 2016). Специфичната цел на качественото сравнение в социалните науки е да се постигне разбиране на даден случай, или по-скоро набор от случаи, тяхната специфичност, и обща приложимост, като се създаде задълбочено описание на тези казуси. Сравняването стимулира доброто разбиране на даден феномен, защото постоянно противопоставя един случай с друг.

Следователно, избраният набор от ДЧ в този доклад следва да бъде защитен, особено по отношение на въпроса - защо точно тези ДЧ? В проучване, което цели да покаже общо европейско ниво, е нужно да се достигне до по-голям географски и културен обхват, особено по отношение на различните нормативни подходи към правата на жертви на престъпление и приложение на Директива 2012/29/ЕС. Възможно е да се погледне и като избирателно представяне на ДЧ на ЕС, от гледна точка на осъществимост на проучването, тъй като прегледът на всяка една от 28-те ДЧ в ЕС би надвишил наличните ресурси. Посочените по-горе страни-членки, а именно Германия, Португалия, Испания, Англия и Уелс, Финландия, са избрани въз основа на първоначален преглед въз основна на техните законодателни и практически особености с цел да се включи по-разнообразна извадка.



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**Финландия**, например, изглежда, че притежава по-систематичен подход спрямо индивидуалното оценка на нуждите след транспонирането на Директивата (виж EPRS 2017: 82)[6]. Обединеното кралство (в частност **Англия и Уелс**) е друг уместен случай, тъй като са налице някои практически насоки (пр. *Кодекс за добри практики по отношение на жертви на насилие*)[7], голямо количество материали за обществена информация и специални обучения за експерти, работещи в системата на подкрепа за жертви. Освен това, **Англия и Уелс**, както и **Германия** се отличават с дългогодишна традиция в сферата на подкрепа и закрила на жертви. **Португалия** и **Испания** също са достоен обект на изследване, предвид че и двете държави транспонират почти буквално целия текст на Директивата в националните си законодателства.

Следователно докладът цели да разгледа по-скоро различните практически, отколкото регулаторни аспекти на подкрепа на жертвите[8] във всяка от избраните ДЧ, през призмата на чуждата рамка за подкрепа на жертвите (виж Akrich/Rabeharisoa 2016).

Следването на този метод подсказва да се сложи фокус върху заложените практики, да изследва как прилагането на IAMs води до различни резултати в практиката през призмата на системите за подкрепа на жертвите, основани на различни култури. Докладът цели да предостави задълбочени изводи за различните начини на управление на индивидуалната оценка и организациите за подкрепа на жертвите, като подчертава общите и надеждни практики.

[6] Директивата относно правата на жертвите 2012/29/ЕС, Европейското проучване за оценка на изпълнението, проведено от Европейската парламентарна изследователска служба (EPRS), декември 2017 г. Това е текущ доклад за оценка на транспонирането на предписанията на директивата в националното законодателство, със специален акцент върху практическото ѝ прилагане, но разгледана по-задълбочено в извадка от 12 държави членки, като също се опитва да представи баланс по отношение на географията, размера, различните правни традиции и подходи (пак там: 4).

[7] Вж.: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (достъпено на 20 март 2018 г.).

[8] Налице е допълващо общоевропейско проучване, по-специално относно правното транспониране на VD (D3.6) със същата извадка от държави-членки Следователно, докладът не взема изцяло предвид законодателния процес на транспониране, но трябва да е ясно, че е невъзможно да се изследват практическите размери и начини на прилагане извън установия закон. Тъй като точно този процес на "превод" представлява основното предизвикателство и прави видимите различия в превръщането на законите/регламентите в практиката. За да се провери леко този процес може да се разглежда и като тест дали законът е добре концептуализиран. Практическото приложение на чл. 22, 23, 24 обаче е в основата на това изследване.



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Вникването в тези практики окуражава взаимното разбиране и изучаване, като се вземат предвид културните особености.

Докладът се съсредоточава основно върху вторично изследване и взема предвид налична информация и знания, които са налични към момента на изследване.[9] Целта е да синтезира вече наличните изследвания за транспонирането на VD, и включва наличните национални документи, например тези, които организациите за подкрепа на жертвите предоставят (насоки, препоръки, стандарти за качество), или други релевантни национални източници (нормативни актове) и академична литература. Всички те позволяват да се постигне по-добро разбиране на приложението на индивидуалните оценки на нуждите и на оказваната подкрепа на децата жертви във всяка от тези държави.

# 3. Ключови изводи от транспонирането на член 22, 23, 24 от Директива 2012/29 България, Румъния, Гърция, Италия и Австрия

В рамките на тази глава ще бъдат представени различните национални практики за подкрепа на децата жертви и, по-конкретно, практиките по извършване на индивидуална оценка на нуждите, които проектът е изследвал и очертал в предишните доклади за *България, Румъния, Гърция, Италия* и *Австрия.*ези практики следва да се считат като добри практики в контекста на оказването на подкрепа на децата жертви.[10]

[9] Например вж. https://victimsupport.EC/about-us/our-projects/ivor/; достъп до доклада от тук: https://www.apav.pt/publiproj/images/yootheme/PDF/IVOR-Repot-WebVersion.pdf; или, http://www.victimsandcorporations.EC/wp-content/uploads/2017/01/Vict-and-Corp_First-Findings.pdf (достъпен на 19 март 2018 г.).

[10] За подробна информация за различните системи за подпомагане на жертвите и количествен преглед на детските жертви във всяка страна, вижте Документи D3.8-12 (доклади за отделните методи за оценка в BG D3.8, AT D3.9, RO D3.10, IT D3.11, EL D3.12).



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## 3.1. Австрия

В Австрия полицията извършва индивидуална оценка на нуждите, тъй като именно тя в повечето случаи е първата точка на контакт и за двете страни - жертвата и заподозряното лице. ***Полицейският отдел за превенция на престъпления***, отговорен за извършването на цялата превантивна дейност, е официално основният отдел, който е отговорян за извършване на своевременна индивидуална оценка. Превенцията включва както провеждане на разговор с жертвата, така и със заподозрения.

Една от добрите практики, въведени в Австрия, е т.нар. ***съдебна подкрепа,*** която включва психосоциално и правно подпомагане в рамките на наказателния процес (*Psychosoziale Prozessbegleitung*)[11], – голямо постижение на австрийската система за подкрепа и закрила на жертвите, тъй като осигурява защита на техните права със специфичен фокус върху осигуряването на подкрепа по време на целия наказателен процес на деца и млади хора. Съдебната подкрепа, като специфична социална услуга за жертвите, се развива през последните 20 години в Австрия и неговите елементи често се обновяват и до днес. Съдебната подкрепа включва подпомагане на (децата) жертви (основно в случаи на престъпления със сексуално, телесно и домашно насилие) по време на цялото наказателно производство. Това включва не само подкрепа по време на съдебната фаза на наказателния процес, а в най-добрия случай започва преди подаването на сигнал за престъпление в полицията и приключва след съдебния процес. Тази социална услугиа включва психосоциално и правно съдебно асистиране. В допълнение, следва да се отбележи, че през 2014 г., Австрия получава международната награда за "*политика на бъдещето*" за нормативното уреждане на този вид социална услуга за психосоциално и съдебно подпомагане на жертвите.[12]

## 3.2. България

В България не съществува една обща методология за индивидуална оценка на децата, станали жертви на престъпления. Въпреки това, налице са добри практики за подкрепа и закрила на деца-жертви, които могат да бъдат допълнително развити и подобрени.

[11] Вж.: http://www.pb-fachstelle.at/fuer-fachlECte/in- formation-was-ist-prozessbegleitung/ (достъпено последно на 11 декември 2017 г.).

[12] E-PROTECT Доклад D3.9 Проучване на индивидуалните методологии за оценка на деца-жертви на престъпления в Австрия, анлийски език, стр.15-22.



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Една от тези специални мерки е ***Координационен механизъм за взаимодействие при работа в случаи на деца, жертви или в риск от насилие и за взаимодействие при кризисна интервенция*** – плод на официално споразумение между Министерството на труда и социалната политика, Министерство на вътрешните работи, Министерство на правосъдието, Министерство на образованието и науката, Министерство на здравеопазването, Министерство на културата, Агенция за социално подпомагане, Национално сдружение на общините и Омбудсмана. Въвеждането на Координационен механизъм е инструмент за обединяване на усилията на системата за защита, полиция и правосъдие, за да се гарантира висшият интерес на детето при случаи на деца жертви или в риск от малтретиране.

В съответствие с ***Координационния механизъм за взаимодействие при работа в случаи на деца, жертви или в риск от насилие и за взаимодействие при кризисна интервенция***, през 2016 г. Институтът по социални дейности и практики, в партньорство с УНИЦЕФ, България, отвори първия ***Детски център за застъпничество и подкрепа***. Интегрираната служба за застъпничество и подкрепа се нарича ***Зона ЗаКрила*** и е ориентирана към деца жертви на всякакъв вид насилие или престъпления, независимо от момента на тяхното извършване. В Зона ЗаКрила се прилага специализиран подход спрямо децата жертви, включително и жертви на насилие, който обединява правни, медицински, психологически и социални практики за подкрепа и закрила при щадяща за тях обстановка.

Друга добра практика в случаите на деца жертви на престъплении са установените специализирани стаи за изслушване, т.нар. ***“сини стаи”***, които позволяват разпит от обучен специалист в щадяща обстановка за деца, както и в присъствието на всички други участници, в зависимост от съответната фаза на съдебния процес. В края на 2017 г., около 70% от областните градове в България разполагат с налични специални помещения за разпит на деца, участници в наказателно производство.

Въпреки това, все още липсва национален стандарт за разпит на деца в граждански производства, който да гарантира, че процесуалните действия по отношение на дете се извършват в



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подходяща обстановка и благоприятни условия, както и че се използва уместен език за комуникация с детето.[13]

## 3.3. Гърция

Извършването на индивидуална оценка нуждите на дете жертва в наказателното производство предполага на първо място докладване на случая пред компетентните органи или институции. На "фронтовата линия" за получаването на тези сигнали, което също влиза в задълженията на полицейските власти, към момента са активни ***две национални линии за помощ, специализирани в превенция на случаи с деца-жертви.***

След регистрирането на сигнал за дете жертва, ***отговорните агенции организират социално разследване***. Такива агенции са именно Групата за Детска Защита от компетентната община или ЕККА - в тежки случаи на престъпна проява срещу деца - или частни организации, специализирани в закрила на детето (пр. ARSIS или SotC).

Получените данни и направените констатации се предават в писмена форма на Прокурора за децата. Този доклад обхваща предложения за бъдещото отношение към детето (пр. отвеждане на детето от семейната обстановка, или месечни посещения за наблюдение на детето и родителите, т.н.), както и констатации относно обстоятелствата на докладваното престъпление. Когато са налични доказателства, държавният механизъм за наказателно преследване се задейства. По време на тези дела, ролята на социалните работници, участващи в социалното разследване остава активна, както в осигуряването на психологическа подкрепа на детето-жертва, така и под формата на свидетел, който се разпитва в рамките на наказателния процес.

Въпреки, че не са пряко свързани с експертизата на дете-жертва, изискван в рамките на наказателния процес, индивидуалните оценки се извършват също и от няколко неправителствени организации. Обичайно това представлява двустепенна оценка на специалните характеристики и нужди на детето на психологическо и образователно ниво, която се актуализира редовно. По време на тази процедура лицето, което извършва оценката, взема предвид сериозността и обстоятелствата на извършеното престъпление и до известна степен, желанията на жертвата, като винаги защитава

[13] E-PROTECT Deliverable D3.8 Изследване на индивидуалните методологии за оценка на деца-жертви на престъпления в България, английски език, стр. 22-31.



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висшия интерес на детето, с цел превенция на вторична виктимизация. Въпреки това, липсата на единна политика за закрила на детето се оказва предизвикателство за задълбочено изследване на практиките на всяко НПО по отделно.[14]

## 3.4. Италия

Според италианското законодателство децата по презумпция се приемат за изключително уязвими и следователно различни мерки за закриала и подкрепа следва да бъдат приложени. В Италианския наказателен кодекс е уредено, че в случай на определено криминално деяние (всички тези, които са срещу "личността", например тормоз, малтретиране, робство, склоняване към проституция и порнография, сексуално насилие или трафик на хора), упражнявано върху непълнолетни или от единия от родителите върху другия (т.нар. "наблюдаване на насилие"), прокурорът е длъжен да уведоми **Съда за непълнолетни.** Въпреки това, единствено в случай, че извършител е един от родителите или един от тях е заподозрян, и са неспособни да се грижат за детето си[15] – се завежда гражданско дело в Съда за непълнолетни.

Италианското законодателство не включва изрично определени разпоредби и правила за осъществяване на индивидуална оценка. Въпреки това, всяка една институация, която установява първия контакт с детето-жертва и обстоятелствата на престъплението, има задължение да започне процедура за индивидуална оценка, за да подкрепи детето и да задоволи неговите/ нейните нужди за закрила.

***Индивидуалната оценка*** следва да се ***осъществи*** два пъти: ***в началото на наказателното преслдване*** по време на досъдебната фаза, както и ***по време на съдебната фаза на процеса***, когато съдебните органи изискат такава. Следователно, съотношението на използваните всички мерки е с цел да защити уязвимите жертви и да ограничи риска от ненужна емоционална и психологическа травма, като резултат от повторни интервюта и разпити, без конкретна необходимост от тяхното провеждане. По този начин Директивата за жертвите (или

[14] E-PROTECT Доклад D3.12 Изследване на индивидуалните методологии за оценка на децата-жертви на престъпления в Гърция, английски език, стр.18-26.
[15] Това се случва, когато родителите не могат да упражняват изцяло или частично родителска отговорност.



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поне принципите ѝ за оценяването на деца и уязвими жертви и техните мерки за закрила) е транспонирана и въведена от италиански законодател в системата от мерки за закрила.[16]

## 3.5. Румъния

Според националните законодателни рамки, ***първоначалната оценка*** се извършва незабавно, веднага щом местните органи за закрила на детето са информирани или са получили информация за малтретирано дете или за случай на домашно насилие. Според разпоредбите на националната рамка, първоначалната оценка се извършва от социален работник. Щом случаят се регистрира и първоначалната оценка е вече извършена, следва да се извърши подробна, обширна и многопластова оценка на положението на детето-жертва на престъпление или насилие.

Според националното законодателство, ***подробната, обширна и многопластова индивидуална оценка*** може да бъде от няколко типа, например: ***(а) Медицинска оценка; (б) Психологическа оценка; (в) Социална оценка; (г) Правна оценка; (д) Оценка на риска.***

Съгласно приложимото законодателство*, медицинската оценка* се извършва при наличие на постъпило искане от лекар или от всеки друг член на системата за социална интервенция. За да се установи потенциална връзка между сигнализираната ситуация и наблюдаваните здравословни обсоятелства, се изискват медицинско и правно свидетелства. *Социалната оценка* се извършва с цел да изследва най-вече качеството на обстановката, в която детето живее (жилище, храна, облекло, хигиена, физическа и психическа стабилност и т.н.). *Правната оценка* се занимава с идентификацията на съответните юридически проблеми, свързани със случая и също така се определят правата на децата, както и начините за упражняване тези права.

Щом подробната оценка на цялостната ситуация се изготви, мултидисциплинарен екип представя характеристика на извършената форма на насилие над детето (в случай на домашно насилие), нуждите на детето-жертва и приоритетна интервенция при необходимост. Главният

[16] E-PROTECT Доклад D3.11 Изследване на индивидуалните методологии за оценка на деца-жертви на престъпления в Италия, английски език, стр. 13-22.



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отговорник по случая[17] описва цялата налична информация в подробния доклад за оценката, който следва да се изготви в рамките на 30 дни след подаване на сигнала пред отговорните органи.[18]

# 4. Системи за подкрепа на децата-жертви на пет държави-членки на ЕС

Тази глава разглежда съществуващите различни системи за подкрепа на децата-жертви, функциониращи на територията на на пет държави-членки: *Германия, Испания, Португалия, Обединеното Кралство (Англия и Уелс)* и *Финландия,* въз основова на измерения:[19]

- преглед на статистически данни за деца-жертви на престъпления;
- институционални практики: статус на децата жертви, включително кратък анализ на нормативната уредба, ниво на закрила на техните права, общи социлани услуги за закрила на жертви на престъпление, услуги за закрила на детето, и специфични учреждения за деца-жертви.
- релевантни институции и органи работещи с (децата) жертви на престъпления.

## 4.1. Германия

### 4.1.1. Обзор на случаите на деца жертви на престъпления в Германия

През 2015 г. е имало 13 760 деца жертви на сексуално насилие според германския доклад за криминална статистика[20]. Що се отнася до престъпления като телесна повреда, грабеж, престъпления, нарушаващи личната свобода и престъпления срещу сексуалното самоопределяне, децата и подрастващите са сред най-засегнатите групи сред пострадалите лица. От друга страна, от

[17] Лицето, което отговаря за конкретния случай на дете, жертва на престъпление.
[18] E-PROTECT Доклад D3.10 Изследване на методологиите за индивидуална оценка на деца жертви на престъпления в Румъния, английски език, стр. 10-14.
[19] Понякога по-задълбочено, а понякога и по-малко, в зависимост от наличието на достъпна информация, ресурси и материали.
[20] Вж.: http://www.aktionkinderschutz.de/statistiken/; http://www.aktionkinderschutz.de/WP/wp-content/uploads/2016/12/pks2015ImkBericht.pdf (достъпено на 21 март 2018 г.).



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статистическа гледна точка, те са още и най-обременената възрастова група (виж PKS 2015: 30)[21]. Германската неправителствена организация за закрила на детето *aktionkinderschutz* установява доста висок брой на недокладвани случаи на малтретирани деца в Германия. Тази информация показва колко е значителен проблемът с липсата на подаване на сигнали и показва, че е предизвикателство, с което многото заинтересовани страни трябва да се справят. Заключенията на *aktionkinderschutz* също служат като важен показател за необходимостта от допълнително подобряване на закрилата на детето.

Очевидно, недокладваните случаи не са характерни само за Германия, а представляват генерален проблем, който следва да получи необходимото внимание от държавните и неправителствените власти, както на национално, так и международно ниво.

Между 2009 г. и 2012 г. докладваните случаи на секуално насилие над деца **(§§ 176, 176a, 176b StGB)**[22] нарастват прогресивно и след това отбелязват лек спад, наблюдаван от от 2013 г. насам (-2,7 % до 11.808 случая). Следва да се отбележи, сексуалното насилие генерално представлява престъпление, при което се наблюдават има високи нива на недокладвани случаи. Както е споменато по-горе, има няколко фактора, които влияят на статистиката, например повишената чувствителност, промяна на педагогическите методи и институции, "нови" криминализирани деяния, включени в Наказателния кодекс, като всички влияят на процента на подадените сигнали.

Следователно, данните от криминалната статистика трябва да се приемат с резерви, защото те неизбежно имат ограничено значение спрямо реалните нива на насилието над деца, и особено що се отнася до случаите на сексуалното насилие над деца. Друго предизвикателство в тази област или е фактът, че децата-жертви често имат близки взаимоотношения с насилника и следователно имат по-малка възможност да подадат сигнал или да избегнат малтретирането.

[21] PKS е германският доклад за криминална статистика (*polizeiliche Kriminalstatistik 2015*).
[22] StGB е Немският наказателен кодекс, вж.: https://dejure.org/gesetze/StGB/176b.html (достъпен на 21 март 2018 г.)



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### 4.1.2. Закрила на деца, жертви на престъпления в Германия

От седемдесетте години на двадесети век насам, Германия има утвърдена система за подкрепа на жертвите, като постоянно я подобрява. Германия е една от държавите с централен орган (Weisser Ring) за координиране на службите за подпомагане и закрила на жертвите на национално ниво. Въпреки наличието на добре развита институционална подкрепа, по-общата подкрепа е често по-слабо развита, в сравнение различните видове специализирана помощ (вж. EPRS 2017: 65).

#### *Правно положение*

През последните няколко години, усилията са насочени към укрепването на някои закони по отношение на закрила на детето, по-конкретно т.нар. "Закон за закрила на детето" (*Bundeskinderschutzgesetz – BkiSchG*)[23], който влиза в сила през 2012 г. Последният всъщност представлява цялостен пакет от мерки (*Artikelgesetz*), преобразуващ няколко закона с различно съдържание. Основната цел е да се подобри и защити телесното, менталното и интелектуалното състояние на децата и подрастващите. Един от акцентите е поставен върху подобряването на "предварителното асистиране" (*Frühe Hilfe*), което цели да стимулира благоприятно за деца възпитание при проблемни семейни ситуации, като започват от най-ранен етап, а именно чрез консултации с очакващите дете майки и бащи, както и по време на първите няколко години от живота на детето. По този начин фокусът е основно върху сътрудничеството между отговорните институции, по-конкретно между професионалистите от системата на здравеопазването и службата за младежко благосъстояние. Понастоящем на национално ниво законът постановява, че служителите в системата на здравеопазване могат да информират службата за младежко благосъстояние в случай на тежка опасност за състоянието на детето. Преди влизането в сила на този закон, тази хипотеза не е било ясно регулирана на национално ниво в Германия. Законът включва също и други важни подобрения - установяването на мрежа от служби за закрила на детето на местно ниво, разширяване на стандартите за качество на самите служби за младежко благосъстояние, задължение да се предоставят дългосрочни сертификати за добро представяне на

[23] Вж.: http://dip21.bundestag.de/dip21/btd/17/062/1706256.pdf; и: https://www.gesetze-im-internet.de/kkg/KKG.pdf (достъпен на 3 април 2018).



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всички работещи в сектора на младежко благосъстояние, както и на персонала на институциите подлежащи на упълномощение (вж. *Bundeskinderschutzgesetz* 2012)[24].

Друг закон, който влиза в сила през 2013 г., относно укрепването на правата на жертвите на сексуални престъпления (*Gesetz zur Stärkung der Rechte von Opfern sexuellen Missbrauchs – StORMG*)[25], се фокусира специално върху закрилата на деца и подрастващи, както и върху мерки за избягване на повторна виктимизация.

Въпреки това, ключовото регулаторно подобрение относно положението на жертвите от престъпления влиза в сила с третия "Закон за изменение на Закона за жертвите" (*3. Opferrechtsreformgesetz*)[26] през 2015 г. Повратната точка е Член 4 от Закона, който регулира *психо-социалното асистиране* в рамките на наказателното производство за определени групи уязвими жертви (*Art.4 Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren – PsychPbG*) и влиза в сила през 2017.[27]

### *Водещи институции в системата на закрила на детето*

В Германия закрилата на жертвите попада основно под компетенциите на федералните региони, поради принципа на федералната система и не е изцяло регулирана от федералния закон. Това означава, че присъства широк набор от различни местни социални услуги и мерки за подобряване на положението на жертвите и в частност това на децата-жертви на престъпление.

Въпреки това, има изключения (вж. горепосочените закони), които показват наличието на усилия за установяването на общи стандарти и социални услуги за цялата страна (в Германия отдавна има установени високи стандарти за закрила на жертвите на местно ниво). Въпреки това, тяхното прилагане е задължение на федералната държава, което означава, че следва да се установят разликите на местно ниво, за да се приложат законовите предписания.

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[24] Вж.: http://dip21.bundestag.de/dip21/btd/17/062/1706256.pdf (достъпен на 3 април 2018).
[25] Вж.: http://www.bundesgerichtshof.de/SharedDocs/Downloads/DE/Bibliothek/Gesetzesmaterialien/17_wp/Stormg/bgbl.pdf?__blob=publicationFile (достъпено на 3 април 2018 г.).
[26] Вж.: https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf;jsessionid=E6B66F638270FA2F059EA60081263A5B.2_cid289?__blob=publicationFile&v=3 (достъпено на 3 април 2018 г.).
[27] Повече подробности - Глава 5.1. от настоящия доклад.



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Текущо, Германия е една от малкото ДЧ на ЕС, които са въвели национална мрежа за координиране на системите за подпомагане и закрилата на жертви и по-конкретно децата жертви на престъпления. По отношение на общата закрила на жертви, съществуват две национални организации: едната се нарича "Белият пръстен" (*Weisser Ring*) - главната точка на контакт на национално ниво, като предлага и първа безплатна консултация с адвокат по избор. *Weisser Ring* поддържа още денонощна гореща линия[28]. Втората национална организация е "Работна група за закрила на жертвите в Германия" (*Arbeitskreis der Opferhilfe in DECtschland e.V.*), която е представителна организация, обхващаща палитрата от професионални организации в сферата на подкрепа и закрила.

Допълнително съществуват огромен брой местни специализирани центрове за закрила в шестнадесетте федерални области на Германия. Някои от тях са ориентирани към предлагането на социални услуги за закрила на жертви според спецификата им: например центрове за закрила на деца, жени, мъже и момчета, а други са насочени към предлагането на закрила според спецификата на престъпленията, като центрове за закрила от престъпления от омраза, сексуални престъпления и домашно насилие.

### *Сдружения за закрила на децата жертви*

Както е вече бе споменато по-горе, на пръв поглед, мерките за подкрепа и закрила на жертви изглеждат твърде разнородни в Германия. Въпреки това съществува национална обединяваща асоциация за закрила на детето, която се нарича "Центрове за закрила на детето" (*Die Kinderschutz-Zentren*)[29], чиято основна цел е да установи и поддържа система от организации за закрила на детето.

Асоциацията "Центрове за закрила на детето" (действаща от 1986 г. насам) и нейните усилия да хармонизира подкрепата на децата-жертви на национално равнище са обещаващи. В днешни дни, тя функционира като мрежа от 28 центъра за закрила на детето в различните региони

[28] На номер 116006, който се прилага в цяла Европа за подпомагане на жертвите, жертвите могат безплатно да получават помощ и подкрепа по всяко време; вж.: http://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfECndOpferschutz/Opferhilfe_node.html (достъпено на 22 март 2018 г.).

[29] Виж: http://www.kinderschutz-zentren.org/index.php (достъпено на 3 април 2018 г,).



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на Германия.[30] Самата мрежа обединява широката общност от експерти, работещи с деца, из цялата страна и е организирана под формата на неправителствена организация, която се стреми да подпомогне системата за закрила на детето на макросоциално ниво чрез комбиниране на практични знания и опит. На първо място, „Центрове за закрила на детето“ регулярно развива професионални стандарти, като предлагат курсове и обучение за професионалисти в сферата, издава професионални публикации и организира конгреси, заздравява връзките с гражданското общество и пресата и са ценен партньор в провеждането на консултации по повод развитието на политики.[31] Близкото взаимодействие между ежедневно практикуващите центровете за закрила на детето и надрегионалните задачи на мрежата изгражда основа за задълбочено познание, което от своя страна се предлага на други професионалисти (пак там). Например – професионалисти, работещи с деца-жертви на терен, но също така и изследователи, политици и журналисти. Техният ангажимент следва да бъде съгласуван с последните изследвания, както и актуалните политики в областта на проблемите на закрила на детето, за да се осигури възможно най-високото качество и добра организация на местно и национално ниво. От юридическа гледна точка, мрежата за закрила на детето е базирана на вече споменатия Закон за закрила на детето, други федерални и национални закони, както и редица международни споразумения като Всеобщата декларация за правата на човека на ООН, Конвенция за правата на детето на ООН, Конвенция за премахване на всички форми на дискриминация по отношение на жените и Конвенция за правата на хората с увреждания на ООН.[32]

За всичките 28 действащи центрове за закрила на детето, както и тези, които тепърва ще отварят център, се предлагат следните шест основни услуги: консултирация и терапия за родители, обгрижващи лица, деца и юноши; превенция на кризи и конфликт; консултация на професионалисти в съответсвие с §8a SGB VIII, най-вече по отношение на рисковата оценка

[30] Вж.: http://www.kinderschutz-zentren.org/der-verein (достъпено на 3 април 2018 г.).
[31] Вж.: http://www.kinderschutz-zentren.org/selbstverstaendnis (достъпено на 4 април 2018 г.).
[32] Целият доклад е достъпен на техния уебсайт по отношение на мултидисциплинарни стандарти за качество (пр. юридически, социални, професионални и др.), както и широкия спектър от услуги, които те осигуряват от една страна за професионалисти, но също и за онези, които търсят подкрепа: http://www.kinderschutz-zentren.org/qualitaetsstandards (достъпено на 4 април 2018 г.).



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(*Gefahreneinschätzung*)[33]; наблюдение и супервизия на други професионални институции; възможности за курсове и обучение в съответния район; и информационни събития и работилници.

## 4.2. Португалия

### 4.2.1. Обзор на случаите на деца жертви на престъпления в Португалия

През 2017 г., повечето арести, свързани с децата жертви, регистрирани от полицейските власти, са въз основа сексуално насилие, последвано от изнасилване и порнография. 98 мъже са били арестувани за сексуално насилие над 3 жени; 53 мъже са били арестувани за изнасилване (0 жени); и 34 мъже и 3 жени за склоняване на деца към порнография. Във връзка със сексуалната злоупотреба с деца, юноши и зависими малолетни, преобладаващата възрастова група на жертвите е 8-13 години (68.5%), следвана от 7-4 години (19.1%) и 0-3 годишна възраст (6.7%). Както и през предходната година, семейството преобладава като основна социална среда между извършителя и жертвата (44.5% от случаите). По отношение на  други видове престъпления, 3 912 деца на възраст под 16 години са били жертви на домашно насилие. Освен това, при 34% от случаите на домашно насилие, малолетни са станали свидетели на престъплението. 45 непълнолетни са идентифицирани като (предполагаеми) жертви на трафик на хора в Португалия; компетентните органи класифицират 24 в процес на разследване и 4 като непотвърдени. Службата "Чужденци и граници" си сътрудничи с Центровете за постоянно приемане, като гарантира постоянен мониторинг на жертвите на трафик във всички ситуации, в които е необходима закрила и настаняване, както и по отношение на последващите ги действия по различните процесуални стъпки.[34]

Последният доклад на Португалската асоциация за подкрепа на жертвите (APAV), основната неправителствена организация, предлагаща социална, правна и психологическа подкрепа на жертвите, показва, че децентрализираните ѝ служби са предоставили подкрепа на 810 деца жертви през 2017 г. 62,6% от жертвите са от женски пол, като средната възраст е 11 години. Във връзка с жертвите на сексуални престъпления, от общо 488 случая, в 54,9% жертвите са деца, а 32,6% - възрастни.[35]

[33] Виж §8a SGB VIII, http://www.sozialgesetzbuch-sgb.de/sgbviii/8a.html (достъпено на 4 април 2018 г.).
[34] Relatório de Segurança Interna 2017. Sistema de Segurança Interna. Gabinete do Secretário-Geral.
[35] Portuguese Association for Victim Support (APAV). Estatísticas APAV. Relatório Anual 2017.



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### 4.2.2. Закрила на децата жертви на престъпления в Португалия

*Правно положение*

В Португалия Закон № 130/2015 от 4 септември променя действащия Наказателнен кодекс и укрепва статута на жертвите, като транспонира Директива 2012/29/ЕС.[36] Членове 17, 20 и 21 транспонират предписанията на чл. 22-24 от Директивата, но те не надхвърлят тяхното първоначалното съдържание. Член 21, пар. 1 от Директивата предвижда, че "ДЧ гарантират, че жертвите получават навременна и индивидуална оценка в съответствие с националните процедури, за да се определят специфичните им нужди от закрила". В португалското законодателство, в текста на член 21, пар. 1 лиспва изискването за *навременна* индивидуална оценка, заложено в Директивата, и не се уточнява чрез какви мерки или процедури следва да се извърши индивидуалната оценка. Закон № 130/2015 от 4 септември не уточнява също и кой е основният орган, отговорен за извършването на индивидуалната оценка, въпреки че чл. 21 (2-б) предвижда, че "разпитът на жертви на сексуално насилие, насилие, основано на пола или насилие в интимни отношения, освен ако това не е извършено от прокурор или съдия, следва да бъде извършено от лице от същия пол, ако жертвата желае, и при условие, че това няма да доведе до нарушения в процедурата".[37]

На практика, прокурорът или отговорният съдия обикновено прибягват до подкрепата на персонала на различните институции за изпълнението на мерките, посочени в член 23 от Директивата, въз основа на това кой е "референтното лице" на детето. Референтното лице е експертът, който администрира мерките за подкрепа и закрила на детето-жертва. Това лице може да бъде част от местните комисии за насърчаване на правата и закрилата на деца и млади хора или от звената за закрила на децата и младите хора, създадени в местни здравни центрове или болници. Това означава, че няма определен нито един екип или звено, които да отговарят за извършването на индивидуална оценка, подпомагане и закрила докато тече наказателното производство. В

[36] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.
[37] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.



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нормативната уредба разпитът и участието на детето в рамките на насърчаването и защитата на неговите права са уредени в чл. 4, (j) и чл.84.[38]

Липсват още правила или официални указания, които да се следват от експертите, работещи в различните институции. Въпреки това, някои инициативи за подобрение на приложимите мерки като интервюта, паметни записки, както и адаптирането на съдебните зали, са вече предприети. [39]

Следва да бъде отбелязано, че португалската регулаторна рамка на Португалия и преди е включвала много от аспектите, предписани от Директивата, вследствие на редица международни споразумения като Конвенцията за правата на детето и някои конвенции на Съвета на Европа.

### *Водещи институции в системата на закрила на детето*

APAV допринася за създаването на инструмент за оценка на специфичните потребности за защкрила на жертвите на престъпления, както и на *Ръководството за индивидуална оценка на жертвите (EVVI)*[40] в рамките на проект, подкрепен от Европейската комисия. В това ръководство се посочва, че в Испания и Португалия, индивидуалните оценки не са извършват систематично в момента на изготвяне на ръководството.[41] APAV е взела мерки като е споделила този документ с Генерална дирекция "Правосъдие" на Министерството на правосъдието, Главната прокуратура, Съдебната полиция, Полицията за обществена сигурност, Републиканската национална гвардия и Службата за чужденци и граници на Португалия и е получила положителна обратна връзка.[42]

Според EVVI:

[38] Одобрен от Закон № 147/99 от 1 септември с промени, въведени от Закон № 31/2003 от 22 август и от Закон № 142/2015 от 8 септември.
[39] Някои от тези инициативи са описани подробно по-долу.
[40] Наръчникът е достъпен тук: https://victimsupport.EC/news/a-guide-for-individual-evaluation-of-victims-evvi-now-available/ (достъпено на 23 април 2018 г.).
[41] Victim Support ECrope (2015) EVVI (Evaluation of Victims) - Ръководство за индивидуална оценка на жертвите, съфинансирано от Програма за наказателно правосъдие на Европейския съюз.
[42] APAV. Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento ECropEC e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001.



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"През 2017 г., промяната на Наказателно-процесуалния кодекс от 2007 (Закон № 48/2007 от 29-08) променя режима на паметните записки, вследствие на международни задължения, поети от португалската държава. По отношение на малолетните жертви, органиите в наказателно-правната система ще имат задължение да събират изявления за паметни записки, както и да гарантират подходящи условия за тяхното изготвяне, съгласно член 271, параграф 4. По-конкретно, разпитите по отношение на престъпления срещу сексуалната свобода и самоопределяне на деца, ще трябва да се извършва място и по начин, който да гарантира неформална и щадяща среда, в присъствието на специално обучен за целта експерт".[43]

Въпреки че сега съществува подходяща правна рамка, Sottomayor твърди, че "правата на децата са разпръснати в различни закони и кодекси, което затруднява систематизирането и приложението им. Събирането на правата на деца-жертви на престъпления в един законодателен акт, който да улесни процеса на тълкуване и изпълнение би било полезно."[44]

Чл. 18 от Закон № 130/2015 от 4 септември предвижда изграждането на **помещения за предоставяне на услуги на жертви** за помощ и информация на жертвите във всяко полицейско звено и служба за сигурност. Член 1 ясно казава, че "всяка служба за сигурност следва да състави своя мрежа от подходящи помещения, оборудвани по начин, който осигурява неприкосновеността на жертвите".[45] Докладът на министъра на вътрешните работи от 2017 г. за вътрешна сигурност посочва, че:

"Грижите за жертвите на домашно насилие в сградите на силите за сигурност обикновено се извършват в техните помещение, за да се гарантират неприкосновеността и комфорта. Новите отряди имат подходящи помещения за обслужване на жертвата. Адаптирани са и по-старите съоръжения. 447 станции, отряди, звена и подразделения на силите за сигурност имат подходящи зали за разпит и среши. В останалите звена, събирането на информация се извършва в помещения, които отговарят на условията за комфорт и неприкосновеност."[46]

Националната мрежа за подкрепа и закрлиа на жертвите на домашно насилие включва партньори от публични и частни организации и предоставя набор от социални услуги на жертвите на домашно насилие като приюти, кризисни центрове, безплатна телефонна линия с национално

[43] *Пак там.*
[44] *Пак там.*
[45] Diário da República, 1.ª série — N.º 173 — 4 de setembro de 2015.
[46] Relatório de Segurança Interna 2017. Sistema de Segurança Interna. Gabinete do Secretário-Geral, Page 38.



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покритие на информация за жертвите на домашно насилие, групи за взаимопомощ , за насърчаване на самопомощ и овластяване на жертвите с оглед на тяхната независимост.

Друг нов закон от 2018 г. въвежда набор от правила и процедури за подобряване на ефективността при функционирането на структурите за предоставяне на грижи, кризисни центрове и приюти, което позволява процес на самооценка и систематичен преглед на тяхното функциониране. В рамките на тези процесури е предвидено още идентифицирането на възможности за подобряване и оценка на връзката между свършеното и постигнатото. Структурите за спешна помощ, реагирането при спешни случаи и приютите се управляват от неправителствени организации, които поддържат партньорства с държавните органи, отговорни за предотвратяването на домашното насилие, както и подпомагане и закрила на жертвите. Чл. 4 предвижда, че институциите, отговорни за прилагането на закона, трябва да действат така, че да вземат предвид, наред с другото, системата за закрила на децата и развитието на техните права. Адресираните от закона структури предлагат социални услуги за всички жертви на домашно насилие, включително за непълнолетни деца и деца с увреждания и грижещите се за тях лица.[47]

### *Обществени служби за подкрепа на детето*

Наскоро преименуваната *Национална комисия за насърчаване на правата и закрилата на децата и младите хора* е основният публичен орган в Португалия, работещ в "(...) планирането на държавната интервенция и координация, мониторинг и оценка на инициативите, предприети от обществените институции и общността за популяризиране на правата и закрилата на децата и младите хора, а именно чрез 309 *местни комисии за закрила на деца и младихора*, разпространени в цялата страна".[48] Местните комисии работят в два формата – т. нар. "тесни" и "разширени" формати. Първият е технически - "специализирана" група, която действа с цел закрила в индивидуални случаи, а вторият - работна група, която работи като пленарен орган с цел проактивна закрила на децата като част от общността.

[47] Decreto Regulamentar n.º 2/2018 Regula as condições de organização e funcionamento das estruturas de atendimento, das respostas de acolhimento de emergência e das casas de abrigo que integram a rede nacional de apoio às vítimas de violência doméstica. Diário da República n.º 17/2018, Série I de 2018-01-24

[48] Информация, достъпна на уебсайта на Комисията на адрес:https://www.cnpdpcj.gov.pt/relacoes-internacionais/international-relations.aspx (достъпена на 9 април 2018 г.).



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Тази втора работна група е мултидисциплинарна и се състои основно от представители на общината, представител на Института за социално осигуряване, представители на министерствата на образованието и здравеопазването, представители на неправителствени организации, родителски асоциации, представители на полицейските сили, които извършват дейности за деца и младежи.

"Тесните" комисии са отговорни за интервенция в идентифицирани критични ситуации за дете или младеж. В тази връзка те са отговорни за диагностиката и насоките относно процеса, вземането на решение, наблюдението и прегледа на мерките за закрила, включително придружаване на деца в съдебно производство и оказване на подкрепа на прокурора или съдията във връзка със специални мерки за защита. Комисията има набор от общи ръководства за практикуващите експерти в сферата на социални услуги, образование и полицейски сили.[49] Съществува още и ръководство за извършване на интервенция в случаи на деца-жертви на насилие. То е подготвено от Генерална дирекция "Здравеопазване", като включва някои правила и добри практики при провеждането на разпити и интервюта с деца.[50] Въпреки съществуването на тези ръководства и провеждането на специализирани обучения, липсват доказателства как те се прилагат ефективно на практика.

Институтът за закрила на деца (*Instituto de Apoio à Criança*) е водеща неправителствена организация, която работи от 1983 г. насам за закрилата и насърчаването на правата на детето. Някои от основните ѝ дейности включват правна помощ; SOS услуга за деца, в чиито рамки се предоставя специализирана социална, психологическа и правна помощ и насочване на деца в нужда към подходящи институции; и хуманизиране на грижите за децата (пр. здравеопазване в щадяща за деца среда, осигуряване на право на игра и т.н.). През 2013 г. службата предоставя правна помощ в 680 случая, 284 от които са свързани с уреждането на родителска отговорност,

[49] Наръчници за професионалисти са достъпни тук: https://www.cnpdpcj.gov.pt/direito-das-criancas/guias-para-profissionais.aspx (достъпено на 23 април 2018 г.).
[50] Наръчникът е достъпен тук: https://www.cnpdpcj.gov.pt/direito-das-criancas/guias-para-profissionais/maus-tratos-em-criancas-e-jovens.aspx (достъпено на 23 април 2018 г.).



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следвани от случаи на деца в опасност (117 случая) и разяснения на законодателството (75 искания).[51]

APAV, създаден през 2016 чрез мрежата CARE, предоставя ескпертна помощ на деца и младежи до 23-годишна възраст, които са били жертва на сексуално насилие. Помощта се предоставя в отговор на насочване на пострадалото лице от съдебната полиция и може да включва съдействие и последващи действия по текущо съдебно производство и други процесуални действия, медико-правни консултации, изготвянето на паметни записки, последващи действия по приключило съдебно производство. 446 деца-жертви са получили такава помощ в годините 2016-2018. Това специализирано звено има девет постоянни служители, включително юристи и психолози, с възможност за посещение на всяка точка на страната, за оказване на подкрепа в спешни случаи, препратени към мрежата.[52]

## 4.3. Испания

### 4.3.1. Обзор на случаите на деца жертви на престъпления в Испания

През 2016 г., общо 80 деца на възраст между 0 и 13 години са били жертви на сексуално насилие, като 20 от тях са от мъжки пол и 60 от женски пол; общо 193 деца на възраст между 14 и 17 години са станали жертва на сексуално насилие, като 18 от тях са от мъжки пол и 175 от женски пол; общо 29 деца на възраст между 0 и 13 години са станали жертви на детска порнография, 12 от които са били от мъжки пол и 17 от женски пол; общо 35 деца на възраст между 14 и 17 години са били жертви на детска порнография, 8 от които от мъжки пол и 27 от женски пол.

Във връзка с други престъпления срещу сексуалната свобода и себеопределяне, общо 1 932 деца на възраст между 0 и 13 години са пострадали - 460 от мъжки пол и 1 470 - от женски пол; в другата възрастова група, обхващаща деца на възраст между 14 и 17 години, жертвите са общо 1 716 - 328 от мъжки пол и 1 387 от женски пол.

С оглед на посочените по-горе данни, момичетата са несъразмерно засегнати от подобен

[51] За повече информация посетете сайта на института: http://www.iacrianca.pt (достъпено на 23 април 2018 г.).
[52] Diário de Notícias. *Rede Care acompanha 446 crianças e jovens vítimas de violência sexual.* 21 de Fevereiro de 2018.



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тип посегателства. Съществуват най-значителни вариации в броя на жертвите спрямо предходната година: случаите на детска порнография във възрастовата група от 0 до 13 години са намалели с 40,8% в сравнение с 2015 г.; във възрастовата група от 14 до 17 години – случаите на детска порнография намаляват с по-голям процент: 54,5%. Най-значимата разлика е регистрирана в престъпленията срещу сексуалната свобода и себеопределяне във възрастовата група от 14 до 17 години, с увеличение от 50,5% спрямо 2015 г.[53]

През последните години в Испания са проведени редица проучвания, чиято цел е да се установят измеренията на сексуалното малтретиране сред децата и юношите, като се използват различни методологии. Сред тях са и така наречените ретроспективни проучвания, в които възрастни са питани дали са били жертви на сексуално насилие по време на детството си:

> "Най-значимото и цитирано от тези разследвания е макро-изследването, проведено през 1994 г., в което са анкетирани 2 000 души, дали са били обект на малтретиране преди навършване на 16-годишна възраст. Резултатът показват, че 18,9% от населението е било жертва на сексуално насилие, разпределено по пол по следния начин: 15,2% от мъжете и 22,5% от жените са преживели сексуално насилие. (...) Най-скорошното проучване на разпространението на този тип насилие до момента стига до извода, че 9,5% от общия брой на анкетираните, 6,5% от мъжете и 10% от жените, са били жертви на сексуално насилие."[54]

По отношение на трафика на деца, неотдавашно проучване, публикувано от Националния УНИЦЕФ комитет в Испания, показва трудности при събирането на точни данни. Според данни на Министерството на вътрешните работи, жертвите на трафик за сексуална експлоатация са 50% от общия брой жертви на трафик на хора през 2015 г. (133 идентифицирани жертви), а останалите 50% са жертви на трафик с цел експлоатация на труда (134 идентифицирани жертви). Тази статистика обаче се различава от информацията, публикувана от Главния прокурор, а именно от 96-те Мерки за мониторинг на трафика на хора през 2015 г. Според тази информация 978 са предполагаемите жертви на трафик с цел сексуална експлоатация, а 92 са предполагаемите жертви на трафик на хора за трудова експлоатация, 22 случая на трафик на хора за принудителна просия и 3 случая на принудителни бракове, като всички предполагаеми жертви на трафик на хора за

[53] Anuario Estadístico del Ministerio del Interior - 2016. España

[54] Save the Children (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema, стр. 46



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принудителен брак са непълнолетни момичета. В доклада се твърди още, че "тези цифри са далеч по различни от тези, изчислени от организациите, които работят на терен, които например докладват, че между 40 000 до 50 000 жени са жертви на трафик на хора за сексуална експлоатация в Испания. От друга страна, не всички организации, които работят с жертви на престъпления, систематично събират данни, а още по-малко – за случаи с момчета и момичета. С оглед на данните може да се заключи, че в Испания престъплението с най-много жертви е трафикът на хора с цел сексуална експлоатация, като жертвите са основно жени и момичета."[55]

### 4.3.2. Закрила на децата жертви на престъпления в Испания

*Правно положение и водещи организации за закрила на детето*

В Испания, със Закон 4/2015 се одобрява Устав на жертвите на престъпления.[56] Именно дял III от закона транспонира в мерките, предписани от чл. 22-24 от Директивата. Член 19 предвижда, че "в случай на жертви са малолетни лица, прокуратурата гарантира спазването правото на закрила като приема подходящи мерки в техния най-добър интерес, когато е необходимо, за да предотврати или намали вредите, които могат да възникнат за тях от протичането на процеса" Важно е да се подчертае значението на Службата на прокурора за закрилата на децата жертви и приоритетното спазване на ръководните принципи на Конвенцията за правата на детето. Чл. 23 от Закон 4/2015 "Индивидуалната оценка на жертвите за определяне на техните нужди от специална закрила" и чл. 24 "Процедури за компетентност и оценка" транспортират предписанията на чл. 22-23 от Директивата.

Законът урежда функциите на службите за подкрепа на жертвите на престъпления в дял IV, глава I, чл. 27-29 от Закон 4/2015. **Службите за подкрепа и закрила на жертви на престъпления** са мрежа от обществени, безплатни услуги, създадени от Испанското министерство на правосъдието през 1996 г., което допълнително се регулира с приемането на Кралски указ 1109/2015. Тези служби отговарят за извършване на **индивидуална оценка на жертвите**, като определят особено уязвими жертви и въвеждат защитни мерки, за да избегнат по-нататъшна

[55] Castaño, M., Pérez, A. (2017) Son niños y niñas, son víctimas. Situación de los menores de edad víctimas de trata en España. Cuadernos para el Debate no 5, UNICEF Comité Español, Huygens Editorial, стр. 12.
[56] Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito. Boletín Oficial de lo Estado núm. 101, de 28/04/2015



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виктимизация. След индивидуалната оценка службите могат да изготвят доклад, в съответствие с гореспоменатото законодателство, с предварителното и информирано съгласие на жертвата, който ще бъде изпратен на компетентния орган за предприемане на мерките за защита.

Службите за подкрепа на жертвите на престъпления могат да предложат мерките, които считат за подходящи за подпомагане и закрила на жертвата по време на фазата на досъдебното наказателно производство, особено в случаи с уязвими жертви. Подкрепата на жертви се осъществява на четири етапа: ориентиране след прием[57], информиране, интервенция и последващи действия.[58],[59]

Тук е важно да се отбележи и дейността на **Консултативния съвет за съдействие на жертвите**, който съгласно чл. 10 от Кралския указ:

a) консултира функционирането на службите за подкрепа на жертвите от престъпления;
b) проверява статистическите данни;
c) подпомага технически проучвания на действията на офисите и координационната мрежа;
d) сравнява различните планове за психологическата подкрепа, прилагани от службите, за да се предложат подобрения в подпомагането на жертвите;
e) насърчава разработването на правила и процедури за действие и ги актуализира с оглед национални и международни разпоредби;
f) съветва Министерството на правосъдието при изготвянето на годишния доклад за периодичната оценка на системата за подкрепа на жертвите на престъпления;
g) изпълнява всяка друга функция, която в рамките на нейните правомощия се приписва на нея или по силата на друга нормативна разпоредба.[60]

Консултативният съвет е създаден през юни 2017 г. и една от четирите му приоритетни области обхваща закрилата на децата, която следва да се предоставя от момента, в който те влязат в контакт със правосъдната система.

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[57] Ориентиране след прием е, когато жертвите са приети за пръв път, техните нужди са оценени и са "насочени" към различни социални услуги.

[58] Real Decreto 1109/2015, de 11 de diciembre, por el que se desarrolla la Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito, y se regulan las Oficinas de Asistencia a las Víctimas del Delito. Boletín Oficial de lo Estado núm. 312, de 30 de diciembre de 2015, páginas 123162 a 123181.

[59] Обобщена информация за Службите можете да намерите на уебсайта на Министерството на правосъдието, който можете да намерите тук:https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-14263 (достъпено на 23 април 2018 г.).

[60] Чл. 10, *пак там.*



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Други приложими законови разпоредби в страната включват Кралски указ 3/2013, който изменя системата за **безплатна правна помощ** и гарантира на всички деца, които са жертви на насилие или малтретиране, независимо от разполагаемостта им ресурси за участие в наказателното производство, право на безплатна и незабавна правна помощ. Тази норма, в сила от февруари 2013 г., позволява на Съда правомощието да отпуска безплатна специализирана експертна помощ, която може да бъде предоставена незабавно, съобразно обстоятелствата по конкретния случай и най-добрия интерес на детето.[61]

В Закона за наказателното производство, чл. 433 предвижда:

> "в случай на свидел, който е непълнолетно лице или лице, с ограничена дееспоспособност, съдията-следовател може да реши кога, с оглед на липсата на зрялост на жертвата, е необходимо да се избегне причиняването на сериозна вреда върху него/нея, че да може да бъде взет предвид **протокол** от интервенцията на експерти или от интервенцията на на прокуратурата. За тази цел, може да се постигне съгласие относно провеждането на разпит като на жертвата директно от експерт или дори да изключи или ограничи присъствието на участниците в процеса по време на провеждането на разпита на жертвата. В тези случаи съдията урежда необходимото, за да се улесни възможността на страните да предоставят въпросите си, когато това е възможно. Съдията разпорежда **записването на разпита чрез аудиовизуални средства**."

Чл. 449 на същия закон гласи, че "[р]азпитът на непълнолетни свидетели/ свидели с ограничена дееспособност, може да се извърши при вземане на мерки за избегване на **визуална конфронтация** с обвиняемия, като се използват всички технически средства, които правят това възможно".[62]

В допълнение към националната регулаторна рамка, във всяка автономна общност на Испания са разработени специфични законодателства, планове за действие, рамкови програми или

[61] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014.
[62] Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal. Boletín Oficial de lo Estado n úm. 260, de 17/09/1882.



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дори конкретни процедури за справяне с проблема с малтертирането на деца и насилието срещу жени.[63]

### *Водещи организации за закрила на детето*

Реакцията на ситуации на пренебрегване или злоупотреба с деца в Испания се разпределя между социалните служби на общинско ниво и специализираните служби за закрила на детето. Тези два вида служби са достъпни във всички региони на Испания. Отговорностите между двете нива се разпределят според категоризацията и тежестта на случилото се насилие. Всички регионални органи в Испания разполагат с централни и т.нар. териториални специализирани служби за закрила на детето (мерките за закрила са предвидени в Организационен закон 1/1996 за правната закрила на малолетните и непълнолетните лица)[64]. През 2014 г. Министерството на здравеопазването, социалните услуги и равенството публикува *Основна процедура за намеса срещу малтретирането на деца в семейството*. Въпреки че процедурата действително предоставя *основна* информация, тя представлява всеобхватен и полезен източник на информация за всички участници в системата на закрила на детето - от превенция, през ранно идентифициране и закрила до съдебно производство. Документът съдържа резюме на международната и националната регулаторна рамка, препоръки за подобряване (включително създаване на допълнителни структури) и насоки за добри практики в областта на закрила на детето, което включва и аспекти на защитата на правата на детето жертва в съдебно производство.[65] Съществуват още множество допълнителни ръководства за процедури за закрила на детето в различни региони, насочени към различни налични социалну услуги.[66]

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[63] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014.

[64] Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor, de modiFCIAción parcial del Código Civil y de la Ley de Enjuiciamiento Civil. Boletín Oficial de lo Estado núm. 15, de 17 de enero de 1996

[65] Ministerio de Sanidad, Servicios Sociales e Igualdad. *Protocolo básico de intervención contra el maltrato infantil en el ámbito familiar*. Informes, Estudios e Investigación 2014

[66] Вижте например Наръчника за интервенция на социалните услуги на Община Мадрид за закрила на детето, достъпен тук: http://www.madrid.es/UnidadesDescentralizadas/ServALaCiudadania/SSociales/EspInformativos/Especial Infancia/Publicaciones/manual.pdf; и инструментът за оценка на тежестта на ситуациите на закрила на детето в Арагон, достъпен тук:



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Детските звена на националната полицейска служба (*Unidades de Menores del Cuerpo Nacional de Policía*) представляват интегрирани в провинциалните бригади на съдебната полиция звена. Тези звена имат две основни функции: закрила на децата жертви на малтретиране, било то физическо (включително сексуално насилие) или психологическо, както и закрила на непълнолетни нарушители (Инструкция № 11/2007 на секретаря на Държавата за сигурност, одобрява "[п]роцедура за полицейско действие с непълнолетните").[67] Тези звена работят съвместно с публични и частни институции, работещи с и за деца, както по отношение на тяхната закрила и образование, така и по отношение на непълнолетните нарушители. Детските звена на Националната полицейска служба трябва да следват *Процедура за действие на силите за сигурност и координация със съдебните органи за защита на жертвите на домашно насилие и насилие, основано на пола*.[68]

Макар че те да не са сред сновните участници в пряката интервенция, важно е да се подчертае ролята на Националния комитет на УНИЦЕФ и неправителствените организации "Спасете децата“ и „Закрила за деца" в застъпничеството, обучението и повишаването на осведомеността относно насилието срещу деца, правата на децата и детското правосъдие в Испания.

## 4.4. Обединеното Кралство - Англия и Уелс

### 4.4.1. Обзор на случаите на деца жертви на престъпления в Англия

Службата за национални статистики (ONS), която ежегодишно издава Изследване на престъпността за Англия и Уелс (CSEW) е най-голямата независима организация, които изготвя и публикува официални статистики във Великобритания.[69] В техния ежегодишен доклад относно

https://www.aragon.es/estaticos/GobiernoAragon/Organismos/InstitutoAragonesServiciosSociales/IASS_new/Documentos/infancia/MALTRATO-2014-valoracion-gravedad-menores.pdf (достъпен на 23 април 2018).

[67] InstrucciÓN N° 11/2007, de 12 De Septiembre, de la Secretaria de EsTado de Seguridad, por la que se aprueba el “Protocolo de Atuacion Policial con Menores”.

[68] Protocolo de Actuación de las Fuerzas y Cuerpos de Seguridad y de CoordinaciÓN con los Órganos Judiciales para la ProtecciÓN de las Víctimas de Violencia Doméstica y de Género, Aprobado por la Comisión Técnica de la Comisión Nacional de Coordinación de la Policía Judicial el 28 de junio de 2005, tras haberse adaptado el anterior Protocolo a las modiFCIAciones de la LO 1/2004, de Medidas de Protección Integral contra la Violencia de Género, достъпно на 23 април, 2018

[69] Вж.: https://www.ons.gov.uk (достъпено на 9 април 2018 г.).



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децата жертви на престъпление[70] е установено, че към септември 2016 г., приблизително 12 от 100 деца на възраст 10 до 15 години са станали жертва на поне едно престъпление. В края на септември 2017 г., жертвите на престъпления, които са в същата възрастова група са около 10 към 100. Установеният общ брой, на деца жертви в посочената възрастова група, до края на септември 2017 г., е 652,000 престъпления.

Въпреки това, основният недостатък на този доклад е, че в неговия обхват не са включени деца под 10 годишна възраст или тези над 15 (т.е. между 15 и 17 години)[71] и също не включва въпроси свързани със сексуалното насилие и експлоатация на деца (вж. доклада на Комисаря на жертвите за 2017 г.)[72]. Като резултат, статистиките в Изследване на престъпността за Англия и Уелс не са от голямо значение, тъй като изгражда ограничена представа относно положението на децата-жертви.

Комисарят на жертвите (Баронеса Нюлъв от Уорингтън) също включва в своя доклад *"Правилно ли разбираме младите жертви на престъпление? Преглед на правата на децата в Кодекса на жертвите"* (2017) допълнителни статистики, за да създаде по-богата картина относно истинската степен на засягане на децата жертва на престъплене. Например, включена е информация относно броя престъпления докладвани от полицията на Англия и Уелс, както и статистиката от съвместния доклад от 2014 г. на организацията *Подкрепа на жертвите* и Университета Бедфордшир - *"Страдане в тишината"* относно прикритата виктимизация на деца и млади хора, по задание на *Парламентарна група за жертвите и свидетелите* (вж. доклада на Комисаря на жертвите за 2017 г.). Данните, регистрирани от полицията, за агресивни и сексуални

[70] Във връзка с престъпленията срещу домакинствата и възрастните, включително данни за престъпността, преживяна от деца, и престъпления срещу бизнеса и обществото, вж.: https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingseptember2017 (достъпено на 9 април 2018 г.).

[71] Вж. Доклада "Are we getting it right for young victims of crime? A review of children's entitlements in the victims' code" Преглед на правата на децата в Кодекса на жертвите", изготвен от Комисаря на жертвите през февруари 2017 г .; вижте: http://victimscommissioner.org.uk/app/uploads/2014/10/Are-we-getting-it-right-for-young-victims-of-crime.pdf (достъпено на 9 април 2018 г.).

[72] Комисарят по жертвите и свидетелите (комисар по жертвите) има законово задължение да следи редовно кодекса на жертвите, да изслушва мненията на жертвите и да разбира системата за наказателно правосъдие с цел подобряване на услугите и подкрепата за жертвите на престъпления. (вж. Министерство на правосъдието, Кодекс на практиката за жертвите на престъпления, октомври 2015).



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посегателства през 2015 г., показват, че децата под 16 години става свидетелт на огромен брой от насилствените престъпления - "[м]алко под една трета (30%) от момичета, жертви на изнасилване са под 16, а мнозинство (60%) са момчета под 16". Според доклада на Комисара на жертвите, жертвите на изнасилване са между 15 и 19 години и представляват приблизително една четвърт (23%) от всички случаи на изнасилване, докладвани на полицията. В допълнение, полицейските данни що се отнася до престъплението изнасилване във Великобритания впоследствие показват, че голям процент от децата под 16 са свидетели и на други сексуалните престъпления. 50% са жертвтеи от женски пол и 62% - жертвите от мъжки пол, под 16 години. 28% от жертвите на други сексуални престъпления, докладвани на полицията, са между 10 и 14 години.

Подобно на описаната по-горе ситуация в Германия, най-голямо предизвителско тук също се оказва докладването на престъпления, при които жертви са деца, како повърждава и Комисаря на жертвите:

> "Въпреки големия процент на докладвани престъпления над деца, налице са доказателства, които са основа за предположение, че масата от извършените престъпления над деца и млади хора остават недокладвани, и, следователно, не биват отразени, което сочи, че децата и младите хора стават жертви на по-висок процент престъпления отколкото полицейските данни показват" (пак там: 13).

Докладът допълнително изследва потенциалните причини за ниските нива на докладване на престъпления при деца и млади хора като завършва с препратка към доклада "Страдане в тишина"[73], в който е посочено, че децата не винаги умеят да идентифицират дадено деяние като престъпление, най-вече когато престъпното поведение е нормализирано от техните връстници или когато са били дълго подготвяни за малтретиране и/ или експлоатация (вж. Beckett и др., 2014, както е цитирано в Victims' Commissioner 2017). Допълнително се установява, че децата не са запознати къде и как да сигнализират престъпление, както и че децата не са склонни да докладват престъпното проявление, когато познават престъпника (това означава, че престъплението се случва в позната обстановка, например в училище, вкъщи и т.н.). Понякога децата изпитват страх поради липса на доверие към полицията. Следователно, докладът препоръчва "Министерството на вътрешните работи и Министерството на правосъдието" да "(...)координират и наблюдават

[73] Проучване, проведено от Бекет и Уарингтън 2014, чиито резултати показват, че повечето престъпления срещу деца и младежи не са били сигнализирани а само 13% от насилствените престъпления (вж. Бекет и др., 2014).



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събраните от полицейските данни за сравнение с наличните случаи на индивидуално докладване на престъпления. Те съветват, при изготвянето на статистика, тези данни да разграничават децата и младите хора от възрастните, както и да се разшири нейния обхат така щото да покрие всички видове престъпления“ (пак там: 14). Това означава, че събирането на данни относно деца жертви между 10 и 15 години и то само за някои видове престъпления, както е в случая на CSEW, създава опасна предпоставка да неглижира както голям брой криминални проявления (например сексуални престъплния и т.н.), така и други възрастови групи. Следователно, съществува риск да се създаде несъответствие между официалната статистика и до точния обем от престъпляния, при които пострадали са деца и млади хора в Англия и Уелс.

### 4.4.2. Закрила на деца жертви на престъпления във Великобритания

Във Великобритания, заедно с *полицията* и *Кралската прокуратура*, има множество различни организации, работещи с деца жертви, включително и различни правителствени и неправителствени организации (НПО). Те основно работят за осигуряване на подкрепа на децата и младите хора, които са станали жертви на престъпления и за удовлетворяването на техните специфични нужди (вж. Codd et al. 2016: 23). В допълнение, органите на местна власт също играят важна роля в системата на закрила и за насърчаване на благосъстоянието на деца и млади хора в нужда.

#### *Правно положение*

Тук е моментът да се отбележи разликата в правната система на Великобритания с останалите държави-членки, разгледани в този доклад. Правната система в Англия и Уелс, и Ирландия, е **система на общото право**, при която съдебната практика и съдебните прецеденти определят приложимостта на закона, докато в по-голямата част от ДЧ на ЕС (и особено тези разгледани в рамките на настоящия доклад) правото е организирано въз основа на т. нар. **романо-германска правна система**. Съществуват и смесени правни системи, както е случаят с Шотландия например (вж. EPRS 2017: 47). Тази разлика слева да се отбележи, тъй като тя поражда значителен ефект върху начина на транспониране на европейски директиви. В държави със система на общото право като Англия и Уелс, директивите се транспонират като се примат изцяло нови закони (вместо да изменят вече съществуващи закони, като например закона за изменение на наказателното право в Германия). В случая с Англия и Уелс, Директива 2012/19 е транспонирана



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чрез **Кодекса на практиките за жертвите на престъпления** [74] (Кодекс на жервите). Този кодекс е приет през 2006 г. с оглед на Закона за домашно насилие, престъпления и жертви от 2004 г. и е ревизиран два пъти: през декември 2013 г., за да поясни правата на жертвите и задълженията на наказателно-правните органи и през 2015 г., за втори път, с цел да се транспонират разпоредбите на Директива 2012/29 и установените в нея стандартите относно правата на жертвите (вж. Victim Support) [75].

Към момента, във Великбритания, закрилата на правата на децата е уредена от Закона за правата на човека от 1998 г.[76] Тук следва да се отбележи, че Уелс е първата и единствена част от Великобритания успяла да интегрира приведе местните си закони в съответствие с Конвенцията на ООН за правата на детето[77] (вж. Codd и др., 2016: 10).

### *Водещи организации за закрила и подкрепа на жервти*

В Англия и Уелс, една от водещите организация за закрила и подкрепа на жертви е „*Подкре за жертвите" (Victim Support)*, която съществува повече от 40 години. Създадена е през 1974 г. в град Бристол и след 1986 г. всеки окръг в Англия и Уелс има поне една служба на „Подкрепа за жертвите". През 1998 г. организацията се открива безплатна национална телефонна линия за помощ и подкрепя, наречена *Линия за подкрепа (Supportline)* (вж. Victim support).[78] „Подкрепа за жертвите" е независима неправителствена организация за хора станали жертви на престъпления и травмиращи събития. Тя предлага огромен набор от услуги безплатно, достъпен за всяка жертва, независимо дали престъплението е било сигнализиран или не. Социалните услуги се предлагат на лично, независимо, емоционално и практическо ниво, таке че да позволят на пострадалите да се справят и възстановят от последствията на преживяно престъпление (вж. пак там.). „Подкрепа за

[74] Вж.: Министерство на правосъдието, октомври 2015 г. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (достъпено на 9 април 2018 г.).
[75] Вж.: https://www.victimsupport.org.uk/help-and-support/your-rights/victims-code (достъпено на 9 април 2018 г).
[76] Вж.: Children Rights Alliance for England (CRAE), http://www.crae.org.uk/our-work/protection-of-childrens-rights-in-domestic-law/ (достъпен на 9 април 2018 г.).
[77] Вж.: https://www.unicef.org.uk/what-we-do/un-convention-child-rights/ (достъпен на 9 април 2018 г.).
[78] За повече информация за тяхната история, разгледай на сайта: https://www.victimsupport.org.uk/more-us/about-us/history (достъпен на 9 април 2018 г.).



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жертвие“ предлага също специализирани социални услуги спрямо нуждите на специфичен вид жертви като деца и млади хора, и жертви на домашен тормоз. „Подкрепа за жертвите“ не е част от полицията, съдебната система или други орган на наказателния правоцес. През 2017 г. организацията е предложила помощ на 814,000 човека според данни от нейния уебсайт. Основната цел на „Подкрепа за жертвите“ е подпомогане на жертви на местно ниво и привличане не общественото внимание върху нуждите на жертвите на национално ниво.

„Подкрепа на жертвите“ има четири основни сфери на дейност, свързани с предоставянето на социални услуги за подкрепа на деца и млади хора. Те са: първо, *подкрепа за деца и млади хора.* Така от 2014 г. насам организацията поддържа собствен сайт, начерен *Ти и останалите,*[79] където е достъпен огромен набор от информационни материали, които на достъпен език предоставят образователна информация на деца и млади хора могат относно престъпленията (пр. какво е престъпление и т.н.), техните последици и какъв тип помощ и подкрепа могат да изискат и търсят. Втората сфера на дейност предоставя *подкрепа и консултиране на родители и гледачи*, третата – е насочена към професионалисти и учители, както и им предоставя информация и връзки към важни източници.[80] На последно място, „Подкрепа на жертвите“ е създала “инструментариум за подкрепа на деца и млади хора”, който се състои от серия от учебници, подходящи за всички възрасти, брошури с насоки за персонал и доброволци, и насоки относно провеждането на практическа интервенция в подкрепа на деца и млади хора.[81] Важно е да се отблежи, че инструментариума отчита важността на сътрудничеството между професионалисти и родители, в работата за подкрепа и закрила на деца и млади хора.

[79] Виж: https://www.youandco.org.uk (достъпено на 9 април 2018 г.).
[80] За пример, вж, доклад, изготвен от Victim support: https://www.victimsupport.org.uk/sites/default/files/You%20%26%20Co%20-%20Getting%20it%20right%20for%20young%20victims%20and%20witnesses.pdf (достъпено на 9 април 2018 г.).
[81] Вж. техния сайт: https://www.victimsupport.org.uk/help-and-support/young-victims-crime/teachers-and-professionals/useful-resources (достъпено на 9 април 2018 г.).



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### *Водещи организации за закрила на децата жертви*

Освен „Подкрепа за жервите“, на територията на Англия и Уелс работи и Борд за местна закрила на детето (LSCB), който се занимава с правата на деца и тези. Целите и задачите на тези бордове са определени в раздел 13 от Закона за децата от 2004 г.[82] (вж, Codd и др., 2016 г.: 23).

> “Бордът за местна закрила на детето изпълнява голям брой действащи задачи и законови функции, включително разработване на местна политики и процедури, както и контрол за тяхното съблюдаване на спазване на местно ниво” (пак там.: 23).

В допълнение:

> “Функционирането на борд за местна закрила на детето се регулира от Инструкцията за Борда за местна закрила на детето от 2006 г. Техни основни принципи са стремеж към ефективно мултидисциплинарно сътрудничство за закрила на детето” (пак там.: 23).

Бордовете за местна закрила на детето имат основно координирдинационна роля по отношение на различните институции – част от неговия съатав. Целта е да се осигури ефективно сътрудничество и насърчаване и закрила на благосъстоянието на децата.

Неправителствените организации (доброволчески организации) (НПО), наричани още третия сектор, са също с водеща роля що се отнася до защитата на правата на децата. Именно работата на този вид организации оказва най-голямо влияние върху жертви, които са деца и млади хора, тъй като НПО предлагат специфични програми и социални услуги за деца жертви. Често тези програми са специализирани върху един вид престъпление (напр. сексуални посегателства), или дори върху вид специфично положение на детето жертва (напр. сексуални посегалтества в семейна среда). По този начин разбработените социални услуги отговарят в максимална степен на нуждите на детето жертва.

Сред добрите примери е националната неправителствена организация *Barnados*[83], която, предлага социални услуги като: консултации с деца, които са били обект на тормоз и насилие, консултации относно отглеждане и осиновяване, интеграция чрез професионално обучение, водене

[82] Закон за децата 2004, https://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga_20040031_en.pdf (достъпен на 9 април 2018 г.).
[83] За подробна информация относно работните места и услугите, предоставяни на деца и младежи от Bernado, вижте техния уебсайт: http://www.barnardos.org.uk/what_we_do/our_work.htm (достъпна на 9 април 2018).



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на групи за интегриране на хора с увреждания. Друга обещаваща практика може да се отличи от изпълнението на проекти на местно ниво като *Семейните центрове Хауджил (HFC)*[84], които също предлагат голям брой социални услуги, насочени към семейства и деца от Западна кумбрия (пак там.: 23).

## 4.5. Финландия

### 4.5.1. Обзор на случаите на деца жертви на престъпления във Финландия

Във Финландия ежегодно се провежда националното проучване на престъпността (вж. Савонен, 2017 г.). Това проучване обаче включва само малка част от броя на децата жертви и видове престъпления, в които децата са пострадали. През 2016 г. в страната са регистрирани общо 8 235 000 престъпления от полицията, митниците и гранична полиция, според официалната статистиката (вж. Statistic Finland, 2017 г.)[85]. 4,400 нарушения повече (0,5%) са извършени в сравнение с предходната година. Според статистиката за 2016 г., 37 600 са пострадалите лица от насилствени престъпления.

Броят на жертвите от насилствени престъпления на възраст между 18 и 20 години е бил 3 000 (9 %). 4 600 (13,8 %) са жертвите на възраст над 50 години, а насилствените нападени, насочени към деца на възраст под 18 години, са били 6 450. Броят на децата-жертви през 2016 г. се е увеличил с 9,2 % в сравнение с предходната 2015 година. 19,6 % е делът на жертвите на насилствени нападения спрямо всички останали видове престъпления. Що се отнася до децата жертви на нападения, статистиката отбелязва 4 100 (64,1 %) момчета и 2 300 (35,9 %) момичеа. 33,3 % от пострадалите непълнолетни са на възраст под десет години, 34,9 % - на възраст между 10 и 14 години и 31,8 % - на възраст между 15 и 17 години.

Освен това, статистиката за 2016 г. свидетелства за 1 100 жертви на сексуално насилие, от които 87,4% са момичета, а 12,6% са момчета. Statistic Finland отбелязва, че в резултат на законодателната промяна от 2011 г. значително е увеличен броят на докладваните насилствени престъплния. След изменението, престъпления като дребните нападения срещу непълнолетни или

[84] Вж.: http://www.howgill-centre.co.uk (достъпено на 9 април 2018 г.).
[85] Вж.: http://www.stat.fi/til/rpk/2016/13/rpk_2016_13_2017-03-23_en.pdf (достъпено на 16 април 2018 г.).



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близки роднини стават официално преследвани от закона (пак там.). Тук следва да се вземе предвид и изменението на Закона за закрила на детето (1302/2014)[86], влязло в сила през април 2015 г., което води до разширяване на обхвата на задължението за сигнализиране на случаи на престъпления срещу деца (пак там).

Според друг доклад - *"Разработване на практики, съвместими с директивите за идентифициране, оценка и насочване на жертви"*, във Финландия (2017 г.) - по-вероятно е младите хора да станат жертва на насилие от възрастните - 13,9 % от лицата на възраст 15 до 24 години, които са станали жертва на насилствени престъпления. Докато едва 2,3 % от лицата на възраст между 55 и 74 години са сигнализирали същото (вж. Савонен, 2017 г.: 13)[87]. Насилствените престъпления срещу младежи се извършват предимно от други млади хора: от роднина (23%), приятел (17%) или друг млад човек, познат на жертвата (15%) (пак там). В доклада се посочва още, че възрастните рядко са насилниците спрямо младите хора, напр. родителите са извършителите в едва 8% от отчетените случаи (пак там):

### 4.5.2. Закрила на деца, жертви на престъпления във Финландия

От деветдесетте години на миналия век насам, Финландия насърчава активно съблюдаването на правата на жертвите на престъпления и това се отразява и от съществуващото законодателство, като например установяване на законодателни гаранции за спазване на правото на разпит на жертвите в съда (вж. EPRS 2017: 66). На практическо ниво, закрилата на жертвите на престъпления се осъществява най-вече от финландските неправителствени организации. Въпреки ограниченото национално финансиране, тези мрежи за подкрепа са установени още преди транспонирането на Директива 2012/29. Освен това, във всяка финландска община местните органи са отговорни за организирането на услуги за социално подпомагане на децата. Тези услуги се предоставят или от самите общини или тяхното предоставяне се възлага на външни доставчици. Ако е избран втория вариант, общините са отговорни да контролират качеството на дейността на

[86] Вж.: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=101110&p_classiFCIAtion=04 (достъпено на 16 април 2018 г.).
[87] Вж.: Доклада за националните практики във Финландия, http://victimspractices.EC/?page_id=119 (достъпено на 16 април 2018 г.).



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доставчиците на социални услуги.[88] Обществените дискусии относно проблеми, свързани с домашно насилие и насилие срещу жени също водят до въвеждането на нови законодателни рамки за ефективна подкрепа на жертвите в страната (пак там).

### *Правно положение*

Министерството на здравеопазването и социалната политика отговаря главно за изготвянето на законодателство относно благосъстоянието на децата, както и за общата координация при предоставяне на социални услуги за закрила на детето. Освен това, за адмнистриране и координиране на помощта за жертви на престъпления са отговорни следните министерства: Министерство на правосъдието, Министерство на здравеопазването и социалната политика и Министерството на вътрешните работи, заедно с финландската полиция.[89] Полицията е разследващият орган по наказателни дела, а общите окръжни съдилища, апелативните съдилища и Върховният съд се произнасят по тях.

Процесуалните норми, приложими в наказателния процес във Финландия, в повето случаи са еднакво приложими както за възрастните, така и за децата. Има все пак някои специфични разпоредби, чийто субект е детето, като на първо място като се поставя **Раздел 6 от Финландската конституция,**[90] който регламентира, че "децата се третират еднакво и като отделни личности, и следва да биват допускани до процеса по вземане на решения, отнасящи се до тях, до степен, съответстваща на нивото им на развитие."[91] Освен това, специални разпоредби относно благосъстоянието на децата са заложени в Закона за закрила на детето (виж по-горе). Европейската конвенция за правата на човека и Конвенцията на ООН за правата на детето[92] са задължителни и за Финландия. Веднъж ратифицирани, тези конвенции задължават държавите винаги да вземат

[88] Вж.: Министерство на социалните въпроси и здравеопазването във Финландия, http://stm.fi/en/social-services/child-welfare (достъпено на 17 април 2018 г.) .

[89] Вж. доклада „Managing Victims and Witnesses of crime in Finland, 2014-16, изготвен от Международната обсерватория на правосъдието за малолетни и непълнолетни", в сътрудничество с Института по социални дейности и практики, България. Вж. допълнително Ministry of Social Affairs and Health, http://stm.fi/en/social-services/child-welfare (достъпено на 17 април 2018 г.).

[90] Виж: Конституция на Финландия, 11 юни 1999, (731/1999, изменения до 11/12/2011 са включени), https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf (достъпено от 17 април 2018 г.).

[91] Пак там.

[92] http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx (достъпено от 17 април 2018 г.).



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предвид най-добрия интерес на детето, както и на неговото благополучие при всички действия на държавните органи.

Директива 2012/29 е частично транспонирана във финландското законодателство, тъй като много от мерките, предвидени в нея, са налице във финландското законодателство и преди нейното приемане. По-конкретно, във Финландия и преди съществува норма, която въвежда изискванията, формулирани в разпоредбата на член 24 от Директивата (*"Право на защита на децата жертви по време на наказателното производство"*).[93] Необходимите промени обаче са направени със закон № 66/2015,[94] с който са направени различни промени в някои закони, свързани с наказателното производство. Тези изменения влязат в сила през март и декември 2016 г.[95]

Най-значителната промяна във финландското законодателство, във връзка с транспонирането на Директива 2012/29, е въвеждането на разпоредба относно задълженията за информиране на жертвите за техните права, въвеждането на разпоредби, които регулират извършването на индивидуална оценка на нуждните (въпреки че на практика на индивидуални оценки се изготвят и преди транспонирането на Директивата (вж. EPRS 2017: 60)), както и въвеждането на задължение за препращане към службите за подкрепа на жертвите.

В допълнение, финландският законодател приема Закон за надбавка за жертвите (2015/669), която урежда създаването и функционирането на финансов фонд, чийто ресурси се формират от платени от извършителите на престъпления глоби. Средствата от фонда се разходват пряко за жертви на престъпления (EPRS 2017: 58).

[93] За по-подробна информация кои членове от Директива 2012/29 съществуват във финланското законодателство и преди приемането ѝ и кои разпоредби са транспонирани, вж. E-PROTECT доклад 3.6: „Pan-European study on the legal transposition of Directive 2012/29/EC in other MS“.
[94] Вж.: FINLEX, HE 66/2015 за финландската версия, https://finlex.fi/fi/esitykset/he/2015/20150066 (достъпено на 17 април 2018 г.).
[95] Вж.: ECR-LEX, http://ECr-lex.ECropa.EC/legal-content/EN/NIM/?uri=CELEX:32012L0029 (достъпен на 17 април 2018 г.).



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### *Водещи институции за закрила на жертви*

Финландия е една от малкото страни в ЕС[96], която има централизиран орган, отговарящ за координирането на подкрепата за жертвите в цялата страна, и по този начин качеството на предоставянето на услуги изглежда по-последователно в страната в сравнение с останалите държави, изследвани в настоящия доклад (вж. EPRS 2017). Този централизиран национален орган за подпомагане на жертвите се нарича **RIKU** (Rikosuhripäivystys) **Victim Support Finland**[97] и предоставя обща подкрепа на жертвите на престъпления, техните семейства, близки, както и свидетели по наказателни дела. Освен това, органът поддържа национална *телефонна линия*,[98] която работи в определени часове, от понеделник до петък. Повикванията към нея се заплащат. Въпреки това, в своя уебсайт RIKU е посочил че има възможност и за безплатни обаждания (виж пак там.). Лицата могат да позвънят анонимно, а в случай на необходимост от помощ и съвети - да оставят своите контакти. RIKU гарантира, че обаждащият получава обратна връзка в рамките на пет работни дни и се насочва към най-близката **Victim Support Finland**.

RIKU е член на европейската организация **Victim Support Europe (VSE)**, чиято централа е в Брюксел и се бори за всички жертви на престъпления.[99] В допълнение към централния си офис, RIKU разполага със седем регионални офиса и 30 обслужващи точки около Финландия, като всички те предлагат социални услуги като национална телефонна линия, онлайн подкрепа, както и индивидуални социални услуги. RIKU работи в тясно сътрудничество с държавните органи като полицията и други органи, работещи с жертви на престъпления. През 2013 г., RIKU е осъществил контакт с лица приблизително 38 000 пъти. (вж. пак там).

През 2017 г. финландското министерство на правосъдието задължава RIKU да предоставя на обществени услуги на жертви на престъпления във Финландия за 2017-2018 г.. В резултат на това, всички социални услуги се предоставят безплатно от RIKU, преди, по време на и подходящо време след приключване на наказателното производство за всички жертви на престъпление.

[96] Заедно с Австрия, Германия и Чешката република (вж. EPRS 2017: 74).
[97] https://www.riku.fi/en/home/ (достъпено на 17 април 2018 г.).
[98] Вж.: https://www.riku.fi/en/services/helpline+116+006/ (достъпено на 17 април 2018 г.).
[99] Вж. https://www.riku.fi/en/victim+support+finland/ (достъпено на 18 април 2018 г.).



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### *Водещи организации за подкреда на деца-жертви*

Във Финландия работят множество граждански организации за подпомагане на деца и млади хора жертви на престъпления. Въпреки това, основната организация за подпомагане на жертвите остава RIKU. Въпреки че нейните услуги не съсредоточени специално върху децата жертви, нейните екипит предлагат безплатни услуги (с изключение на телефонната линия) на жертви на всички видове престъпления. Една от основните услуге, която те предоставят, представлява назначаване на лице за подкрепа на жертвите, техните близки роднини и свидетели, които се нуждаят от тях (подобно на психосоциалния асистент в Германия и Австрия). Лицата, които осигуряват подкрепа, са внимателно подбрани и специално обучени за тази цел на доброволни начала. Такова лице придружава жертвата на полицейски разпити или съдебни заседания, както и да съдейства при подаването на молба за издаване на ограничителна заповед или обезщетение. Жертвите или свидетелите на престъпление могат също да обсъждат своите преживявания и чувства с лицето за подкрепа, както и да обмислят допълнителни действия.[100]

Друга институция, която отговаря за закрилата на детето, е **Федерацията на домовете и домовете за майки и деца**,[101] които също си сътрудничи с RIKU. Федерацията подкрепя жертвите и поддържа 14 убежища в цялата страна. Освен това, във Финландия функционират още 20 защитени убежища. Всички те са обслужващи центрове, където нуждаещите се, които са жертва на или са заплашени от семейно насилие, могат да получат помощ за преодоляване на ситуация. Във Финландия има също редица центрове за услуги, насочени специфично към жените, например **Tukinainen**[102] или към жени и деца имигранти, например **Monika - Асоциация на мултикултурните жени във Финландия**[103].

[100] Вж. Доклада „Managing Victims and Witnesses of crime in Finland", 2014-16, изготвен от Международната обсерватория на правосъдието за малолетни и непълнолетни", в сътрудничество с Института по социални дейности и практики, България, стр.16. Следващата статия се отнася до доклада, както следва: IJJO 2014-16.
[101] Вж.: https://ensijaturvakotienliitto.fi/en/ (достъпено на 18 април 2018 г.).
[102] Вж.: https://www.tukinainen.fi/english/ (достъпено на 18 април 2018 г.).
[103] Вж.: https://monikanaiset.fi/en/ (достъпено на 18 април 2018 г.).



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И накрая, един основен орган, който упражнява надзор върху правата на децата, е **Парламентарният омбудсман на Финландия**.[104] Отговорността, която се носи Омбудсманът, се изразява в наблюдение как държавните органи спазват закона и как права на децата се зачитат. Той е най-висшият надзорен орган за законност в страната и е избран от Парламента.

# 5. Практическо приложение на индивидуалната оценка на нужди в избраните пет държави-членки на ЕС

Фокусът на тази глава е поставен върху практическото приложение на разпоредбите на членове 22-24 от Директива 2012/29, като предоставя информация как индивидуалната оценка на нуждите се извършва във всяка една от избраните пет държави-членки на ЕС: *Германия, Португалия, Испания, Великобритания (Англия и Уелс)* и *Финландия.* Специфичен акцент е поствен върху специфичните национални практики, като се вземат предвид, както предизвикателствата, така и успешните стратегии спрямо повишаването на нивото на закрила на децата жертви. Така, в тази част от докладът има за цел да подчертае добри и обещаващи практики.

## 5.1. Германия

В Германия, Директива 2012/29 е транспонирана чрез изменение на Трети закон за реформа на правата на жертвите (*3. Opferrechtsreformgesetz*[105]) през 2015 г. След изменението, законът предписва допълнителни стъпки за повишаване на стандарта за закрила на жертвите и укрепва положението им в рамките на наказателния процес.[106] Въпреки че и преди приемането на Директива в Германия е установен висок стандарт за подкрепа на жертви, нейното транспониране

[104] Вж.: https://www.oikECsasiamies.fi/en/web/lasten-ja-nuorten-sivut/home (достъпено на 18 април 2018 г.).
[105] Вж.: http://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfECndOpferschutz/Opferhilfe_node.html; и: http://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (достъпено на 22 март 2018 г.).
[106] В рамките на наказателния процес жертвите могат да участват в него в ролята на свидетел, ищец или увредено лице (ZECge, Nebenkläger, Verletzter), което означава, че Германия липсва легална дефиница на понятието жертва. За подробна информация вижте паневропейското проучване E-PROTECT за правното транспониране на Директива 2012/29 - D3.6.



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води до някои промени по отношение на процесуалните права и правото на информация на жертвите. Тук следва да се отбележи, че немския законодател въвежда два важни параграфа относно индивидуалната оценка на нуждите на жертвата: §48, раздел 3: Задължение на жертвата и призования (*ZECgenpflichten; Ladung*)[107] в немския наказателно-процесуален кодекс (*Strafprozessordung, StPO*), както и новия параграф, §406g Психосоциална съдебна помощ (*psychosoziale Prozessbegleitung*). Приемането на тези разпоредби е ключов момент за системата за закрила на жертвите и е основно базирано на австийския модел.[108]

Германското законодателство отговаря на всички специални мерки, заложени в Директива 2012/29, като тези, които липсват в него преди процеса на транспониране, са въведени именно чрез тази законодателна техника.[109] В повечето случаи, съблюдаването на тези права са е гаранция за изпълнение на предписанията на член 22 (вж. EPRS study 2017: 61). Въпреки това, на този етап **индивидуалната оценка на нуждите** и точните ѝ параментри не са ясно установени в германското законодателства (пак там.: 61). Ето защо съществува неяснота как индивидуалната оценка се извършва на практика и от кого.

До същото заключение са стигнали и експерите, част от екипа на друг проект, подкрепен от ЕС, наречен IVOR (Implementing victim-oriented reform of the criminal justice system in the ECropean Union 2014-2016). В рамките на изпълнение на проекта се е стига до заключението, че преди Третия закон за реформа на правата на жертвите през 2015 г., немския законодател е планирал специална разпоредба "(...) за общата част на наказателно-процесуалния закон, която установява, че първият орган, който се работи по дадено дело, трябва да извърши индивидуална оценка на нуждите на жертвата и да въведе нейния резултат в системата с досиетата".[110] Сега, след въвеждането на този акт (включително и новите параграфи: §48, раздел 3 и §406g), немското законодателство не посочва изрично кой и как трябва да извърши индивидуална оценка.

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[107] Вж.: https://www.jurion.de/gesetze/stpo/48/ (достъпено на 5 април 2018 г.).

[108] В Португалия и Финландия също съществуват психо-социални съдилища.

[109] Например разпит в подходящи помещения за избягване на визуален контакт между жертвата и предполагаемия нарушител; провеждането на тези разпити от специално обучени лица, възможността за водене на съдебни заседания при закрити вара; за подробна информация относно специфичните закони и разпоредби, които регулират тези мерки (при какви условия и обстоятелства те се прилагат), вж. другото паневропейско проучване на E-PROTECT относно транспонирането на Директива 2012/29 (D3.6 / 2018).

[110] Вж.: http://www.apav.pt/ivor/images/ivor/PDFs/Fact_sheet_germany.pdf (достъпено на 5 април 2018 г.).



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Въпреки това, първата цел, очертана в член 22 - да се оценят на индивидуалните нужди за закрила за всички жертви, е изпълнена в Германия. Същото заключение е достигнато и от проектия екип по IVOR:

> „Въпреки че едва няколко държави са транспонирали (изцяло) предписанията на член 22 в националните си законодателства, липсата на закон, уреждащ индивидуална оценка на нуждите, не означава, че определени групи не са идентифицирани като уязвими или не могат да се ползват от специфични права (за закрила). **Въпреки това, целта на индивидуалната оценка - да е на разположение за *всички* жертви, е постигната едва в няколко държави-членки**" (IVOR report 2016: 163, б.а. удебелен и наклонен шрифт).

В рамките на проекта IVOR са интервюирани мнозина експерти от различни държави-членки на ЕС. В едно от тези интервюта немски експерт отбелязва, че по-гъвкавият подход спрямо индивидуалните оценки е за предпочитане. Респондентът Интервюираният експерт отбелязва още, че подходът при извършване на индивидуална оценка няма как да наподобява контролен списък, а зависи от различни обстоятелства като качеството на информацията, която полицията има в определен момент (пак там).

В Германия се следва метод, който позволява извършването на индивидуалан оценка по всяко време на съдебното производство от различни компетентни органи. Това включва първоначална оценка, но също и вторирична оценка през следващите етапи на наказателния процес, ако това се налага.

### 5.1.1. Добри практики в Германия

#### *Психосоциално съдебно асистиране*

В Германия психосоциалното съдебно асистиране се разбира като специфична форма на придружаване преди, по време и след приключване на наказателното производство за определени уязвими жертви (в съответствие с член 22 и член 23 от Директивата), което обаче изключва правна помощ. Деца и младежи, които са станали жертви на тежки сексуални и насилствени престъпления, имат право на безплатна психосоциална съдебна подкрепа. За другите жертви на тежки насилствени и сексуални престъпления, съдът решава спрямо конкретното дело дали осигуряването на психосоциално съдебно асистиране е необходимо.

В рамките на психосоциалното асистиране се включват дейности като даването на подходяща информация, както и осигуряването на квалифицирана подкрепа за времетраенето на



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целия процес, с цел да предотврати повторна виктимизация и да намали личната травма, които са неизбежно свързани с тези дела (вж. Riekenbrauk 2016: 7). Правото на безплатна психосоциална подкрепа е от особена важност за жертви, които са деца, хора с увреждания и хора, силно травмирани от престъпления като престъпления от омраза, сексуални престъпления и насилствени престъпления. Регулирането на подобен тип мерки за закрила в закон е важно събитие за подкрепата на (децата) жертви. Най-важният аспект с оглед на качествените стандарти в подкрепата на жертва е "яснота на ролите" (*Rollenklarheit*), което означава, че психосоциалното съдебно асистиране нито е от правна консултация, нито от разпит или психотерапия (пак там). По-скоро, психосоциалното асистиране има за задача да предостави на жертвата подходяща подкрепа и информация в следните фази: първи разпит (често в началото на досъдебно наказателно производство), подготовка за наказателния процес, подкрепа по време на наказателния процес и след неговото приключване. Лицето, което е ангажирано като психосоциален асистент има редица задължения, сред които:

- *Преди съдебния процес*: присъствие на всички разпити (в полицията и в съда), съветване на жертвата относно наказателното производство (придружителят присъства в стаята, например обяснява кои са различните участници и т.н.), информиране относно последствията и рисковете, които могат да възникнат в резултат на делото и относно различните видове психотерапия.
- *По време на съдебния процес*: организация на безопасен достъп до съдебните помещения, подкрепа при изчакване на началото на конкретно заседание, сътрудничество с други присъстващи органи, подходящо обяснение на достъпен език на използваната юридическа терминология, разяснение на процесуалните действия.
- *След приключване на съдебния процес*: информация относно други варианти за подкрепа, включително подкрепа за емоционалното справяне с съдебни решения и т.н. (пак там.: 9).

### *Обучение на полицаи и магистрати*

В Германия специализирано обучение се предлага на полицаи и служители на съда, които се организират на регионално ниво и отиват отвъд изискванията на Директивата (вж. EPRS study 2017: 72).

> "В курсовете за обучение на полицаи, закрилата на жертвата представлява основна част във всички 16 федерални провинции. Обучението е създадено в съответствие с член 25, ал. 1 на Директивата" (пак там:



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72).

Закрилата на жертви е основен компонент от тригодишното обучение за бакалавърската степен в полицейските академии. Темата се изучава от различни гледни точки, например криминология, етика, експертиза на вещи лица, виктимизация и психология (пак там.). Специален фокус е поставен върху обучителни модули като емпатия и сензитивност в комуникация си с различните типове жертви, както и адекватна преценка на всяка ситуация. Обученията включват теоретична и практическа част. Допълнително внимание в програмата е отделено върху психилогично-тактичните аспекти на полицейска намеса в случаите на домашно насилие (пак там).

> "Освен това, някои полицейски дирекции вече разполагат със служители, изцяло отговорни за закрила на детето, които имат задачата да повишат информираносста измежду колегите им относно нуждата от професионална работа с жертве. Това се постига чрез информационни презентации, събития, работилници и срещи. Същите служители информират колегите си за последните законови промени относно правата на жертвите" (пак там.: 72).

**Съдебната система (съдии и прокурори)** в Германия също актуализира своите обучителни програми за работа с жертви, особено що се отнася до комуникативните умения на съдиите и прокурорите включвайки психологически елементи за закрила на жертвите. Сред темите на обучителните модули са: "разпит на жертви свидетели", "съдебно дирене" и "психологически аспекти при даване на гласни доказателства от свидтели" и "компенсация" (вж. пак там: 73; Clemm 2015).[111]

Въпреки това, липсата на национални стандарти относно квалификацията, например на психосоциалните работници, е критикувана от някои правни експерти (вж. Fastie 2015).[112]

## 5.2. Португалия

В Португалия се наблюдават значителен брой препятствия, срещу които децата се изправят в съдебната система, например повторни разпити, смущаващи обстановка и процесуални действия,

[111] Вж.: https://www.bundestag.de/blob/379102/fee53d33062a29c73b8e580e7aa788cc/clemm-data.pdf (достъпено на 5 април 2018 г.).
[112] Вж.: https://www.bundestag.de/blob/378818/1151a3374a4dcfd93ff726f45abaca48/fastie-data.pdf (достъпено на 5 април 2018 г.).



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липса на обучение на водещите разпита професионалисти, както и бавни и сложи дела. Някои експерти твърдят, че има разминаване между закона и прилагането му.

Емпирични проучвания са показали, че

> "деца, които са станали жертви на сексуален тормоз в семейството се разпитват средно около осем пъти.[113] Именно това повторение е частта от съдебния процес, която децата намират за травмираща. Дори и в дела, при които физическите и биологически белези от сексуален тормоз са ясно видими, децата се разпитват между четири и девет пъти. (...) Доказателствата, събрани от по-малки деца, нито се събират, нито се вземат предвид, (…) по данни, предоставени от Института по съдебна медицина в Порто"[114]

Едно от последните проучвания с 49 португалски магистраиа показа, че и съдии, и прокурори

> "(...) докладват липсата на подготовка за провеждане на разпити с деца и юноши, както и трудността за разбиране на техните особености (свързани с възраст и зрялост). Респондентите споделят, че по-малките деца може да изпитват затруднения за разбиране на ситуацията и концентрацията на внимание, докато юношите често се противопоставят. Магистратите споделят още нужда от задълбочаване на уменията им с методи за улесняване на комуникацията с деца и юноши, както и за методи за водене на разпит, с възможност за достъп до ръководства и други подходящи инструменти."[115]

### 5.2.1. Добри практики в Португалия

Академията за адвокати (регион Лисабон) публикува **Наръчник за добри практики за разпит на деца** в рамките на съдебен процес през 2017 г. Наръчникът е съгласуван с Насоките за щадящо правосъдие на Съвета на Европа[116], вземайки предвид международни доказателства. Наръчникът започва с описание на правната рамка, последвано от теоретични и практически съображения за разпит на деца, включително и аспекти, свързани с обстановка, техники за разпит, аспекти, които да се разгледат от гледна точка на детето и разпитващия. Справочникът завършва с контролен списък за приключени разпити, позволяващ на разпитващия да оцени извършените

[113] Ribeiro, 2009 *пак там.* стр. 287.
[114] Jardim, 2011 *пак там.* стр. 288.
[115] Rodrigues, Alexandre, & Agulhas (2016). A audição da criança: Desenho, implementação e avaliação de uma formação para Magistrados Portugueses. Dissertação de mestrado do Mestrado de Psicologia Comunitária, Proteção de Crianças e Jovens em Risco. Lisboa. ISCTE-IUL. стр. 13.
[116] Насоки на Комитета на министрите на правосъдието на Съвета на Европа относно щадящо правосъдие за деца (прието от Комитета на министрите на 17 ноември 2010 г. на 1098-ата среща на депутатите на министрите).



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процесуални действия, което да му помогне да развие неговата/нейната собствена практика и подход.[117] Този наръчник е издаден в продължение на две книги изготвени и адаптирани за деца - "Жуел отива на съд"[118] и „Денят, в който Марина не желаеше"[119] относно това какво могат да очакват по време на съдебното производство. Тези книги и наръчници са част от националния подход за въвеждането на щадящо правосъдие. Португалският център за съдебни изследвания на разпити на деца насърчава провеждането обучения и изследвания в иновативни аспекти като например пилотнотно изследване ***"Ползата от използване на кучета за улесняване на разпита в детските съдилища."***

Организацията APAV в Португалия има дългогодишен опит в подкрепата на жертви и е силно ангажирана с партньорства на европейско ниво за подобрение на нивото на закрила на жертви в Португалия, като допринася за обмяна на добри практики на международно ниво. В момента, APAV е партньор на проекта POISE[120], съфинансиран от Европейския социален фонд с цел да предостави подкрепа на деца и млади хора, станали жертви на сексуално насилие, с оглед възстановяване от травматичните преживявания и здравословното израстване и развитие на децата. Този проект включва развитието на инструменти за оценките за риск и нужди, както и правила за поведение спрямо деца и млади хора, които са жертви на сексуално насилие, за да се задълбочат и подобрят процедурите за подкрепа и намеса на мрежата CARE. Проектът е и продължение на предишна разработка, чиято цел е да популяризира **Ръководството за подкрепа на деца-жертви на сексуален тормоз** като включва подробна практическа информация за професионалисти като насоки как да се разпитват и подкрепят деца, които са пострадали от тормоз.[121]

В бъдеще ще бъде важно Португалия да извърши оценка на въздействието на системата им за подкрепа на деца-жертви, за да дефинира пропуските и да ги подобри. Съществува възможност да се надградят вече съществуващи практики, за да подобрят практиките на щадящо правосъдие,

[117] Rute Agulhas e Joana Alexandre (2017) *Audição da Criança. Guia de Boas Práticas*. Conselho Regional de Lisboa da Ordem dos Advogados.
[118] Rute Agulhas e Joana Alexandre (2016) *O João vai ao Tribunal.*
[119] Rute Agulhas e Joana Alexandre (2016) *O dia que a Mariana não queria.*
[120] С проект №: 03-4639-FSE-000013
[121] APAV (2017) Manual CARE. Apoio a crianças e jovens vítimas de violência sexual.



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като се приложат специфичните мерки, препоръчани от Директивата, като най-вече индивидуална оценка на нуждите.

## 5.3. Испания

Към момента на изготвяне на настоящия доклад, транспонирането на Директива 2012/29 е все още скорошно събие в Испания. Въпреки това е налична информация относно настоящите практики и оценка на приложението на приетото законодателство, както и относно препоръки за бъдещи действия.

Компетенциите на испанските автономни общности относно закрилата на непълнолени и различните мерки за закрила в случаи на насилие над деца са регулирани от няколко различни законодателни актове като Закон 1/1996 за закрила на непълнолетни и Закона за гражданския процес. Като едно нарастващо предизвикателство в резултат на това разделение на компетенциите може да се определи различното изпълнение на предписаните мерки от регионалните органи, което може да доведе до различни нива на закрила и ресурси, които са на разположение на децата жертви в различните части на страната.

Save the Children Испания е изготвила анализ на 203 съдебни решения между 1 октомври 2012 г. и 31 декември 2016 г. Изследването показва, че средностатистически се налага децата да споделят информация за тормоз до 4 пъти, щом вече подобен случай е бил докладван веднъж. 86% от случаите, непълнолетни са свидетелствали в пленарната зала. Само в 13% от анализираните присъди, събраните показания от дете са били приети. Още повече, съдебните процеси са дълги (средно около 3 години). В 38% от случаите, "ненужно забавяне" е използвано като смекчаващо обстоятелство, който самият съдът навежда, което означава, че е имало забавяния, които е можело да се избегнат и в чийто резултат присъдата на обвиняемия е намалена за това, че е страдал от ненужно изчакване.[122]

Според проучване на правосъдието за деца на Агенцията на ЕС за основните права, повече от половината от испанските децата, към които са се допитали

[122] Save the Children (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema.



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"(...) оценяват комуникативните умения на професионалистите негативно, критикуват липсата им на чувствителност и задаването на въпроси, които са несъответстващи и неподходящи за тяхната възраст. (...) Няколко деца споделят за личния си опит със съдебни лекари по време на заседание - например, когато лекар е присъстващ като вещо лице. По-голямата част от децата оценяват тези професионалисти негативно заради тяхното поведение, както и неадекватността им в съдебната зала и броя на присъстващи професионалисти. (В същото проучване) няколко интервюирани лица между 14 и 18 години, които са жертви на сексуален тормоз споделят, че са се чувствали неудобно в полицейския участък, защото е трябвало да говорят пред един или двамата родители."[123]

### 5.3.1. Добри практики в Испания

Практическото приложение на мерките, установени с Директива 2012/29, и насърчаването на щадящото правосъдие се прилагат все повече и повече в Испания благодарение на намесата на заинтересовани странти като службите за подкрепа на жертви:

"В Испания, **адаптираните за деца помещения,** намиращи се както в службите за подкрепа на жертви, така и е съда понякога се ползват по време на досъдебната фаза на наказателния процес. По-конкретно, в различни андалусииски градове в рамкитеа на службата за семейна подкрепа (*Servei d'Assesorament Tècnic en l'Àmbit de Família, SATAF*) предоставена от каталонската администрация чрез гражданския съд за семейни дела. Генерално децата оценяват тези помещения позитивно, тъй като са извън съдебната обстановка и имат специални **стаи за разпит и чакални, пригодени за деца**. Децата също оценяват приятната и спокойна атмосфера и това, че **има само един професионалист (психологът) присъстващ на разговора**"[124]

През 2009, Федерацията на асоциации за превенция на малтретирането на деца (FAPMI) стартира **програма за детство и правосъдие** с подкрепата и финансирането на тогавашното Министерство на труда и социалната политика. Целта на програмата е да подобри грижата за деца и юноши, които са в контакт със съдебната система. Програмата се концентрира върху националната регулаторна рамка, дейности за по-широка осведоменост като тематични конференции за различни аспекти на детското правосъдие и други дейности. Тази програма

[123] Франция (2017) *Child-friendly justice Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EC Member States, стр. 26*
[124] *Пак там.* стр. 30



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допълва ангажимента на FAPMI към Националната комисия за асистиране на жертви на насилствени престъпления и над сексуалната свобода към Министерството на правосъдието.[125]

Други органи в Испания са публикували **материали, достъпни за деца, свързани с правосъдната система**.[126]

> "Експертното консултиране на каталонските съдилища е организирано чрез териториално разпределение на офиси, в които работят психолози и социални работници, специализирани в правосъдие и отговарят на искания за експертна помощ от прокурори, магистрати, следователи и наказателни съдии. Специализацията на тези експерти не само подсказва, че те работят само по наказателни дела, но и че са организирани спрямо диференцирани програми, например съветване по въпроси на наказателна отговорност и социално-личностна характеристика на обвиняемия; консултиране относно алтернативни форми на лишаване от свобода; оценка на социалните и личните права на обвиняемия; експертни съвети на жертви (последствия, пригодяване на мерките за сигурност и др.); на свидетели (доверие, когнитивен афект); и на последно място, програмата за подкрепа на разпити на деца в съдебни производства и други уязвими свидетели, които се нуждаят от специализирана подкрепа. В последния случай, показанията на деца, които са били жертва на сексуален тормоз, се записват, с оглед избягването на присъствен разпит.
>
> (…)
>
> Въпреки че описаната по-горе практика несъмнено може да се окачествти като добра практика в Испания, тя продължава да се сблъсква със серия от предизвикателсва. От една страна, ресурсите невинаги са достатъчни, а от друга - дори и да бъде направен

[125] FAPMI (2011): Programa Justicia e Infancia. Marco de referencia. Madrid, Federación de Asociaciones para la Prevención del Maltrato Infantil.

[126] Например, общинският омбудсман на децата в Мадрид публикува речник за правосъдието, адаптиран към децата, който е на разположение тук: http://www.madrid.org/bvirtual/BVCM013875.pdf; и Съветът по труда и социалната политика, Секретариатът на социалните услуги за деца и семейство от Мърсия подготви публикация за работата на съдилищата, която е достъпно тук: http://www.bienestaryproteccioninfantil.es/imagenes/tablaContenidos03SubSec/juzgado_Gu%C3%ADa%20_niño.pdf (достъпено на 23 април 2018 г.).



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запис на разпит, зависи от съдебния състав дали ще го приеме и дали детето ще трябва да даде допълнителни показания. Тъй като използването на аудиозапис от разпит е само възможност, но не и задължение, все още съществуват случаи, в които разпита на дете е записан и години по-късно, то е длъжност да участва отново в наказателния процес"[127]

Таблица 1. Психолози и съдебни социални работници от "Екипи за експертна помощ в наказателния процес", Министерство на правосъдието на област Каталония

Описаната в Таблица 1 практика е включена и в доклада за щадящо правосъдие на FRA:

"в Испания, децата предпочитат разпитите, проведени от психолози, специално обучени за това в специално пригодени за целта помещения в службите за подкрепа на жертви или в съд, в сравнение с разпитите, проведени от съдии в пленарна зала."[128] Същото проучване показва, че "в Испания, децата посочват, че същите психолози, които са изготвили досъдебната оценка, са ги подкрепили по време на съдебното заседание и изразяват своето позитивно мнение относно посредничеството на психолозите между тях и съда."[129]

Приетото законодателство за транспониране на Директива 2012/29 в Испания утвърждава Службата за подкрепа на жертвите като основен орган, отговорен за извършването на индивидуална оценка на нуждите. Някои региони са направили още една крачка напред и са формирали специални екипи за подкрепа на деца-жертви, като случая на Каталония и екипи за експертна помощ в наказателния процес. В допълнение към Закон 4/2015 за Статута за жертви на престъпления, испанската държава приема допълнително същата година Кралски декрет 1109/2015, който регулира работата на Службата за подкрепа на жертви. В този декрет, учредяването на Консултативен съвет за съдействие на жертвите е от основно значение, защото може да изиграе важна роля в наблюдението, оценяването и подобряването на работата на Службата за подкрепа на жертви.

[127] Save the Children (2017) Ojos Que No Quieren Ver. Los abusos sexuales a niños y niñas en España y los fallos del sistema, *стр. 111*.
[128] Франция (2017) *Child-friendly justice Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EC Member States*.
[129] *Пак там*.



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## 5.4. Великобритания - Англия и Уелс

В Англия и Уелс индивидуалната оценка на нуждите и специалните мерки (за деца жертви на престъпления) са въведени в системата на наказателното правосъдие чрез **"Кодекса на практиките за жертвите на престъпления"**.

Съгласно този кодекс, доставчиците на социални услуги следва да извършват **индивидуална оценка на нуждите**,[130] за да определят вида подкрепа, от която жертвата може да се нуждае след извършване на престъпление. Първоначалната оценка често се извършва в полицията, но нейното провеждане зависи от самата жертва и съответната първа точка на котакт. Докато в повечето случаи тя се провежда от полицията, тя може да се извършва и от т. нар. доставчици на социални услуги или от неправителствена организация за подпомагане и подкрепа. Оценката включва идентифициране на нуждите на жертвата и статус на уязвимост. Тези нужди могат да бъдат преразгледани при по-нататъшното разследване от страна на полицията ("актуализиране на разследването, съобразено с потребностите на жертвите") (вж. Кодекс на жертвите 2015: 8).

Чрез този процес се определят специални мерки, отчитащи индивидуалните потребности на жертвата (характеристики на престъплението, възраст на жертвата). Тези мерки включват: жива видео връзка; видео записване на показатения; прикриване на свидетелската ложа и помощ при комуникацията, включително използването на посредник (пак там).[131]

Услугите за подпомагане на жертвите (като социални услуги) не са включени в списъка на доставчиците на социални услуги, тъй като те не са публични организации и по този начин основно отговарят за предоставяне на емоционални и практически услуги за подкрепа на жертвите на престъпления, като например как да се справят с последиците от престъпления. Това означава,

[130] За пълния списък на доставчиците на услуги вижте: Кодекс на практиките за жертвите на престъпления, стр. 2, включва общо 14 доставчици на услуги, нато например Кралската прокуратура, комисарите на полицията и престъпността, екипите за младежки престъпления или екип за грижа на жертвите.
[131] За пълния списък на специалните мерки с обяснения вижте следните параграфи в Кодекса на практиките за жертвите на престъпления (1.13-1.15 от глава 1, стр. 15-16).



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че те не са обхванати от Кодекса за жертвите, което също се разглеждат критично от някои експерти.

Кодекс на практиките за жертвите на престъпления представлява практически ориентирано ръководство за всички участници по закон в защитата на жертвите на престъпления. Той дава полезни инструкции как да се извърши индивидуална оценка и как да се общуване с жертвите по подходящ начин, включително колко бързо жертвите следва да получат информация за различните процесуални действия или кои организации могат да им помогнат да се справят с едно престъпление.

Освен това, Кодексът има глава, посветена на деца и младежи, жертви на престъпления, с две отделни секции: едната предоставя подробна и разбираема информация за самите жертви (за техните права, описание на процесуалните фействия и фази, задължения на доставчиците на социални услуги), втората част - от друга страна, предоставя информация и насоки за практикуващите, доставчиците на услуги.

### 5.4.1. Добри практики в Англия и Уелс

Доколко успешна е тази законоустановена насока на практиката, може да се оценени най-добре от самите жертви. Наистина ли получават достъп до всички мерки, на които имат право? Извършена ли е оценката на нуждите правилно, в подходящ срок и на индивидуална основа? Получават ли информацията по подходящ начин?

Комисаря на жертвите прави подобна оценка в проучването "*Преглед на правата на децата в Кодекса за жертвите*" от 2017 г.[132]. В доклада са взети предвид констатациите на друг доклад: *Докладът за измерване* от 2009 г. (вж. пак там: 17).[133] Според Кодекса, децата трябва да бъдат информирани за специалните мерки по време на полицейското разследване. Повечето от

[132] Заключенията от проучването трябва да бъдат разгледани внимателно, тъй като има известни ограничения по отношение на представителността. Това е качествено проучване, включващо интервюта с 12 момичета (или техните родители) на възраст между 9 и 17 години, които са били засегнати от насилствени престъпления или сексуално насилие.

[133] За по-подробна информация относно методологията вж. Комисаря на жертвите 2017: стр.19, а за повече информация относно ограниченията на прегледа вж. стр. 21, http://victimscommissioner.org.uk/app/uploads/2014/10/Are-we-getting-it-right-for-young-victims-of-crime.pdf (достъпено на 12 април 2018 г.).



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участниците в проучването на Комисаря на жертвите обаче заявяват, че те са били информирани за някои мерки, а не за всички, или че мерките не са приложени по подходящ начин, а на някои участници не е казано нищо за специалните мерки. Количеството информация също зависи от гледната точка на полицейското разследване (вж. пак там.: 23), илюстрирано чрез пример от на един участник в съдебния процес:

> "Начинът, по който се прилагат специални мерки е важен, за да се гарантира, че те защитават младата жертва, както следва. Например, на Джени (17 години) е разрешено използването на прикритие, че да даде доказателства, за да не се налага да гледа обвиняемия или да бъде видяна от него. Въпреки това, тя споделя: „*[к]огато напуснах съдебната зала, излизайки зад паравана, той все още беше там. Трябваше да го отведат, за да не го виждам. Какъв е смисълът от прикритие, когато така или иначе ще го видя на излизане*“ (Джени, на 17 години)" (пак там: 24).

Друг пример относно правото на лично обръщение на жертвата (VPS) показва, че тази възможност е била дадена и на три деца от дванадесет в разглеждания доклад. Същата констатация се очертава и в Проучването за престъпленията за Англия и Уелс - само 15% от жертвите имат възможност да направят VPS през 2015/16 (вж. пак там: 24). Прегледът установява, че не всички деца и младежи получават адекватна информация относно възможностите за консултиране и подкрепа и организациите, някои от които са се обърнали към службите за подпомагане или са се обърнали към тях от социален работник.

Част от децата, интервюирани в доклада, споделят разочарование от закъсненията в своите случаи и от факта, че не са информирани за забавяния в разследването (виж Victim’s Commissioner 2017 г.).

Тъй като голяма част от разпоредбите в Кодекса на жертвите се отнасят до правото на жертвата да получи подходяща информация навреме и по адекватен начин, Кодексът е много обещаващ, когато се спазва правилно. Качеството на комуникацията между жертвите и доставчиците на социални услуги се разглежда като един от най-важните аспекти от самите жертви, които успешно се справят с въздействието на виктимизацията.



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## 5.5. Финландия

Във Финландия, не е необходимо транспониране на разпоредбата на Директива 2012/29 относно **индивидуалната оценка на нуждите** (член 22), тъй приложимото законодателство вечее отговаря на изискванията на член 22 (вж. IVOR, 2016 г.).

Подобно на Германия и Австрия, във Финландия Законът за наказателното разследване (FCIA) съдържа приложимите към индивидуалната оценка на нуждите на конкретни групи (уязвими) жертви разпоредби. Тези предписания определено отговарят на целта на индивидуалната оценка на нуждите според Директивата. FCIA посочва, че разследващите органи са отговорни и винаги трябва да преценят дали жертвите имат нужда от специална закрила (вж. Савонен 2017: 8). Според Савонен, Министерството на вътрешните работи е създало и работна комисия, която да доразвие процеса на индивидуална оценка на нуждите във Финландия. Децата или непълнолетните жертви се считат за особено уязвими и следователно те имат специфични права и достъп до специални мерки, които и преди транспонирането на Директиава са били приложими съгласно националното законодателство във Финландия.

Полицаите имат особено важна роля при идентифицирането на специфичните нужди на жертвата, защото те са първите, които влизат в контакт с пострадалите. Именно затова е важно професионалисти като финландската полиция да получат подходящо обучение за извършването на тази оценка. Според авторите на проучването IVOR, финландските професионалисти са се съгласили да се разработи приложение със стандартен набор от въпроси за оценка на индивидуалните нужди на жертвите, но остава неясно дали реално се прилага.

### 5.5.1. Добри практики във Финландия

След като е сигнализирано престъпление, децата веднага минават през оценка на риска и са осигурени специални мерки, които им помагат да участват в производството, като същевременно намаляват риска от повторна виктимизация (вж. IJJO 2014/16). Във Финландия някои полицаи са специализирани в разследвания на престъпления, които включват деца жертви. По тази причина Финландия започна **проект**, наречен ***Сеня: Модел на чувствителност за професионалисти в юриспруденцията (Senja)***. В зависимост от своята сфера, всички специалисти, работещи с жертви



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или свидетели на престъпления, получават подходящо обучение.[134] Полицията, прокурорите и съдебния състав се обучават в подход, описан в Сеня, чувствителен към потребностите на жертвата. Основната цел на подхода е да предостави подходяща и адекватна информация за последиците от това да бъдеш подложен на домашно и сексуално насилие и да предлага съвети на работещите с уязвими жертви на различни етапи от наказателния процес (вж. пак там: 28). На уебсайта на *Сеня* са представени шест основни области с информация за професионалистите, които работят с жертви на престъпления в рамките на наказателния процес: *„Травматизация“, „Жертви на сексуално престъпление“, „Жертви на домашно насилие“, „Насилие върху хора с увреждания“, „Млади жертви“, „Жертви от чужд произход“* и още един раздел, насочен към *„Съвет за жертвите“*, който предоставя информация на особено уязвими жертви и на правото им да получат безплатен съветник и безплатен асистент. Информацията е предоставена на три езика: финландски, шведски и английски език, а инструкциите са предоставени на всички полицейски участъци, местни прокуратури, държавни учреждения за правна помощ и съдилища във Финландия“ (IJJO 2014/16: 28). По-важното е, че полицаите всяка година участват в специални обучения по отношение на децата жертви.

Друг проект, който е реализиран във Финландия, се нарича **Детски Дом - Моделът на Барнахусет** и представлява пилотен проект, въведен през 2014 г., който се основава на американския модел за детски център за закрила (US Child Advocacy Centre Model (CAC)). Този подход се използва все по-често в северните държави и произхожда от Исландия, където се прилага от 1985 г. насам. Моделът е разработен за предоляване на последиците от сексуалното малтретиране на деца. Идеята на Модела на Барнахусет, както и на американския CAC, следва в своята същност мултидисциплинаред и интегриран подход в защитата на децата жертви (виж Johansson et al. 2017: 5)[135]. „И двата модела се основават на разбирането, че детското насилие е сложен феномен, изискващ високоспециализирана експертиза и координирани услуги“ (пак там: 5).

[134] http://senjanetti.fi/en (достъпен на 19 април 2018).

[135] За подробно описание на този конкретен модел за защита на децата, вижте първата глава In. Johansson et al. 2017, който прилага северния модел на Барнахусет: Характеристики и местни адаптации, стр. 1-31, https://link.springer.com/content/pdf/10.1007%2F978-3-319-58388-4_1.pdf (достъпно на 19 април 2018).



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Основната идея на проекта във Финландия е да осигури взаимна рамка за официално държавно сътрудничество, както и общо физическо пространство (принципите „една врата“ или „под един покрив“) (пак там), където всички ангажирани професионалисти работят заедно в един екип, като здравни специалисти, социални работници, полицаи и прокурори. Според документа на Johansson et al, характеристиките на Модела на Барнахусет варират в различни скандинавски държави: във Финландия има силен акцент върху разпит, провеждан от съдебни психолози, въпреки че е по искане на полицията. Развиващият се модел във Финландия е силно свързан с вече съществуващите структури за сътрудничество, като например Съдебните детски и юношески психиатрични звена в петте университетски болници, както и сътрудничеството със сектора на здравеопазването (пак там: 22).[136]

В общи линии, наличността на едногодишни **програми за интердисциплинарно обучение** за полицейски и здравни специалисти, които извършват разпити на деца, се подчертава като още една обещаваща практика във Финландия. Обученията се организират от Националния полицейски съвет и Центъра на съдебната психиатрия. „Повечето полицаи и психолози, които работят в наказателното производство, са минавали курса и като цяло са съгласни, че това е допринесло за приятелското отношение към децата в предварителния етап на изслушване“ (FRA 2015: 100).[137]

[136] За повече подробности относно точната процедура на такива методи за съдебно интервю, вижте гореспоменатото проучване, IJJO 2014/16, pp. 20-22.
[137] http://fra.ECropa.EC/en/publication/2015/child-friendly-justice-perspectives-and-experiences-professionals-childrens (достъпно на 19 април 2018).



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# 6. Заключение и дискусия

Транспонирането на Директивата за ЕС за правата на жертвите, която налага минимални стандарти за помощ за жертвите, в националните законодателства води до известни затруднения между държавите-членки на ЕС. На общоевропейско равнище, подходът при оказването на подкрепа на жертвите с оглед на транспонирането на Директивата се оказва много различен.

В контекста на *сравнителната проблематика* (вж. Jasanoff/Metzler 2018 г.) става ясно, че всяка държава тълкува и оперира по свой начин структурите за подкрепа на жертвите и това неизбежно води до разнопосочни решения на въпроса с прилагането на Директивата. Сравнението разкрива различни национални законодателни и социално-практически среди, в които практикуващите експерти и законодателите трябва да действат и да излагат различни гледни точки във връзка с отговорностите на всяка държава относно защитата на жертвите на престъпления на национално ниво. Налице е обаче принципен проблем при сравняването на държавите-членки по отношение на прилагането на Директивата на място:

> "Желанието за подкрепа на жертвите, цялостното разбиране на опита с наказателноправните органи с оглед виктимизация, влиянието на взаимодействието с наказателноправния процес върху емоционалното благосъстояние на жертвите, значението на различните аспекти на помощта за жертвите, няма достатъчно основания за сравнение между държавите-членки на ЕС, като се има предвид, че за повечето от Европейския съюз липсва емпирично изследване, което би предложило отговор" (IVOR доклад 2016: 197).

Установяването на минимални стандарти относно оказване на помощ и закрила на жертвите в рамките на Европейския съюз чрез транспонирането на Директивата се оказва много различно. Като се започне от различните тълкувания на ключови понятия и концепции, заложени в Директивата[138] от националните законодатели, различията се задълбочават допълнително и отделните правни традиции относно подкрепата на жертвите.

Освен това, резултатите от проекта потвърждават част от изводите, в резултат на изпълнението на проекта IVOR, като отбелязват, че в повечето европейски държави липсват виктимологични изследвания, които всъщност би могли да бъдат идеална основа за сравняване на

[138] Вж. Доклад 3.6. на E-PROTECT относно законодателното транспониране на директивата за жертвите, в който са представени по-подробно различните тълкувания на използваните в Директивата термини.



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стандартите, прилагани в държавите-членки на ЕС. Въпреки всичко - това, което сравнението показва, е развитието на системата за подпомагане на жертвите на всяка страна и също така опитът, който националните законодатели и практикуващи имат с насочените към жертвите политики, което позволява в обратен смисъл да се направят някои изводи за ЕС като политически фактор (вж. пак там). Това означава, че разбирането на въздействието на Директивата върху националните законодателства и практики е трудно да се установи без доказателства за въздействието на повечето мерки за подпомагане и закрила върху опита на жертвите и липсата на научни изследвания в това отношение.

**Англия и Уелс** си струва да бъдат споменати в този контекст, тъй като публични и частни организации са провели емпирични изследвания в областта на виктимологията, като включват опита и мнението на децата жертви, за да преценят до колко ефективни са различните социални услуги и програми за подпомагане на жертвите в Обединеното кралство (по-конкретно Англия и Уелс).[139] Изглежда е много обещаващо да се определят и наблюдават ефектите и функциите на подкрепата на жертвите чрез обратната връзка от самите жертви. В **Австрия** и **Финландия** има - макар и не в голяма степен - традиция в такива проучвания за удовлетворението на жертвите (в Австрия с особен акцент върху домашното насилие). Въпреки това, всяка оценка на въздействието на политическите усилия трябва да обхване преживяното от жертвите, тяхното удовлетворение от съдебната система и предлаганите мерки, поради което е необходимо да се провеждат всеобхватни изследвания, които включват опита на крайните бенефициери. В това отношение **Великобритания** може да бъде категорично цитирана като пример за добра практика.

Друг ключов аспект е включването и разбирането на *ролята на контекста* при разработването на политиките на ЕС, различните страни в ЕС изискват различен подход към разработването и изпълнението на политиките. Създателите на политики в ЕС трябва да разгледат точно тези различни контекстуални фактори, включително и различните правни системи – романо-германската правна система и системата на обичайното право (в Обединеното кралство), които определят системите за закрила на жертвите, специфични за отделните държави, особено когато

[139] Такъв е например докладът на Комисаря на жертвите, но също така и докладите, изготвени от неправителствени агенции, като например доклада на Victim Support "Getting it right for young victims and witnesses", https://www.victimsupport.org.uk/sites/default/files/You%20%26%20Co%20-%20Getting%20it%20right%20for%20young%20victims%20and%20witnesses.pdf (достъпено на 9 април 2018 г.).



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целта е да се установят минимални стандарти (виж пак там.).

> "В закрилата на жертви тази необходимост се усеща по-силно, тъй като контекстът е важен фактор, заедно със самия опит на жертвата, взаимодействието между жертвите и оказващите им помощ, по начина, по който изглежда помощта и естеството ѝ, като по-голямо овластяване на отделните граждани от правителството. Опитът с подобряването на положението на жертвите на национално равнище при различните нации говори за сложността и трудностите в една страна: тези въпроси се усложняват от факта, че ЕС има 28 държави-членки" (пак там: 200).

Въпреки това, някои от заключенията за обещаващите или дори добрите практики, както и за трудностите, могат да бъдат извлечени от това проучване, включително резултатите от предишните доклади за партньорските по E-PROTECT страни. Освен това, посочените по-горе трудности, свързани с политиките на ЕС като цяло и Директива 2012/29, трябва да бъдат подкрепени от някои емпирични констатации на това изследване.

Висококачествената информация, предоставена от правителството на **Обединеното кралство** и от различни организации за подкрепа на жертвите на престъпления, е обещаваща. Последното актуализиране на Кодекса на жертвите през 2015 г. вероятно има значително въздействие върху закрилата на жертви. В резултат на това, на жертвите се предоставя подробна и подходяща информация за техните права и по отношение на задълженията на публичните доставчици на социални услуги, като например в какъв срок полицията трябва да изпрати потвърждение за докладване на престъпление на жертвата или в какъв срок трябва да информират жертвите за решенията, взети от властите, на подходящ език. В други държави-членки, като **Германия**, липсва подходящ и езиково достъпен информационен материал за жертвите (вж. EPRS 2017). По-конкретно, като се има предвид сложността на германското законодателство, това би била необходима стъпка към още по-ориентиран към жертвите подход, поне да освободи жертвите от зависимостта им от държавните органи. За разлика от това, Обединеното кралство изготви този единен правен текст (Кодекс на практиката за жертвите на престъпление), който регулира поведението на всички лица, участващи в наказателното производство - както за жертви, така и за професионалисти.

Кодексът обаче не включва задължително изискване към органите да работят заедно по координиран начин, за да подкрепят жертвите максимално при преминаването им през системата на наказателно правосъдие във Великобритания. Тъй като жертвите на престъпления се сблъскват



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с голям брой различни професионалисти от различни органи, мултидисциплинарните форми на работа представляват важен аспект, за да се гарантира, че децата жертви се подкрепят по адекватен начин от всички участници. Независимо от това, Комисарят на жертвите признава някои недостатъци, свързани със сътрудничеството между органите.

Едно очевидно заключение е, че социалните услуги не попадат в обхвата на Кодекса на жертвите и по този начин възникват проблеми при осигуряването на адекватна и всеобхватна закрила на децата, което непрекъснато води до липса на информация за техните случаи. Комисарят на жертвите е установил още липса на координирана реакция между Кралския съд и Семейния съд или между полицията и други доставчици на социални услуги (пак там). Тази липса би могла да бъде компенсирана чрез предоставяне на едно професионално застъпничество с координационна роля на всяко лице, което предоставя на жертвата цялата съответна информация, като например препращане на жертвата към подходящи услуги за подкрепа, както и наблюдение на напредъка в случай, че нуждите им се променят (пак там.: 35).

Малките налични в **Португалия** данни, свързани с практиките за закрила на детето, както по отношение на интервенционните мерки, така и на опита на деца, които са били жертви на престъпление – участници в наказателното производство, вкл. като свидетели, показват, че съществуват сериозни организационни и образователни недостатъци за преодоляване[140]. Законодателството, свързано с въпросите относно закрилата на децата, също напредва бавно в страната, но международните ангажименти на Португалия допринасят за напредъка на националната регулаторна рамка и сега е налица всеобхватна рамка за закрила на децата жертви.

В **Испания** съществуват законодателство и структури, които когато се съблюдават ефективно, като например индивидуалните оценки, имат възможност да подкрепят в пълна степен децата-жертви. През следващите години ще бъде важно да се наблюдава прилагането на двата законодателни акта, разгледани в настоящия доклад, за да се установи дали те допринасят за преодоляване на някои от пречките и предизвикателствата пред децата, които са в контакт със съдебната система. Подобно на Португалия, наличните доказателства и съществуващите програми

[140] Проучване извършено за оценка на работата на Комисията за закрила на детето на адрес: http://www.analiatorres.com/pdf/SINOPSEfinalcriancasconclrecomendacoes.pdf (достъпено на 30 април 2018 г.).



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могат да осигурят основа за развитие на справедливостта за децата в Испания и по-специално за прилагането на мерките, предвидени в Директива 2012/29. Ще бъде от решаващо значение заинтересованите страни да поемат този ангажимент и да съсредоточат вниманието си върху балансирането на процедурите и практиките в цялата страна, като гарантират, че няма различия между отделните региони или пропуски между градовете и селските райони, както например в Австрия.

**Германия**, **Финландия** и **Австрия** са единствените три страни в този подбор на държави-членки, които имат национален централен орган за координиране на подкрепата за жертвите, а качеството на разпоредбите изглежда по-последователно от това в други страни (вж. EPRS 2017).

В **Австрия** и **Германия** има няколко съвместни агенции за сътрудничество, като "кръгли маси", които обединяват различни заинтересовани страни, участващи в подпомагането и закрилата на жертвите. Тези дейности изглеждат извънредно обещаващи, тъй като това е един от най-важните аспекти при хармонизирането на процедурите между различните действащи лица (полиция, адвокати, прокурори, здравни специалисти, психолози, социални работници), което подобрява както положението на жертвите на престъпления, като улеснява избягването на повторна виктимизация, така и работната ситуация за самите професионалисти. **Финландският** модел Барнахусет също може да се разглежда като такъв обещаващ мултидисциплинарен подход. Той вече се използва в скандинавските страни и въплъщава идеята за интегриран подход в защитата на децата-жертви.

Както **Германия**, така и **Австрия** предоставят безплатна психосоциална подкрепа за конкретни уязвими жертви, което е особено важна мярка за децата-жертви, която създава интегриран и подходящ за деца и всеобхватен подход за закрила. Финландия има подобна мярка, предписана от закона, правото на правна помощ, но липсва финансиране. Тя се предоставя безплатно при конкретни обстоятелства и по отношение на конкретни престъпления като случаи на домашно насилие, сексуални престъпления или тежки престъпления срещу живота, здравето или свободата.

Това проучване показва, важността от включването на националния контекст на всяка страна, в който се развива системата, практиките и политиките за подкрепа на жертви, особено по отношение на такива голмие проекти като Директива 2012/29 в 28 държави-членки (вж. доклада



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IVOR 2016). Подкрепата на жертвите неизбежно варира от една част на Европейския съюз до друга и поради това европейският законодател трябва да вземат предвид тези особеност и различия, за да се разработят по-гъвкави средства за влияние върху политиките и практиките между държавите-членки. Сравнението е възможно, но оценката на въздействието на Директивата означава да се вземат под внимание вътрешните особености и на двете нива - законови и социални. Това може да бъде и идеалната основа за разработването на такава директива, едва тогава е възможно да се постигне по-доброто положение на жертвите на престъпления в цяла Европа.



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## Доклади на E-PROTECT

E-PROTECT Deliverable D3.8 Study on the individual assessment methodologies of child victims of crime in Bulgaria, EN, (стр.22-31).

E-PROTECT Deliverable D3.9 Study on the individual assessment methodologies of child victims of crime in Austria, EN, (стр.15-22).

E-PROTECT Deliverable D3.10 Study on the individual assessment methodologies of child victims of crime in Romania, EN, (стр.10-14).

E-PROTECT Deliverable D3.11 Study on the individual assessment methodologies of child victims of crime in Italy, EN, (стр.13-22).

E-PROTECT Deliverable D3.12 Study on the individual assessment methodologies of child victims of crime in Greece, EN, (стр.18-26).



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