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**Enhancing PROtection of Children –
vicTims of crime
E-PROTECT**

WP3: Research and data collection

E-PROTECT Policy Guidelines

WP3 Leader: VICESSE



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I. Introduction

E-PROTECT ('Enhancing PROtection of Children – vicTims of crime') is an EU-funded research project between October 2017 and September 2019 with the aim to strengthen the application of Directive 2012/29/EU (in the following Victims' Directive or VD) in the case of child victims, as well as to contribute to the overall protection of child victims in the European Union.

One of the core aims of the project is to identify how professionals conduct the individual assessment of child victims according to Art. 22 VD, thus, how they determine which protective measures should be taken in a particular case. Several research activities were conducted in close cooperation with experts and practitioners in the field of child victim protection in order to identify challenges as well as good practices.

Five EU Member States participated in the research, namely Bulgaria, Greece, Italy, Austria and Romania. This document contains concrete suggestions for the improvement of current practices of child victim protection in these Member States.



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II. Key Findings: Policy Guidelines for EU policy makers

Between October 2017 and September 2019 the E-PROTECT consortium conducted several research activities with the aim to identify how the Victims' Directive was transposed in Austria, Bulgaria, Italy, Greece and Romania. A particular focus was put on the transposition of the *Individual assessment of victims to identify specific protection needs* according to Art. 22 Victims' Directive. The research findings show that the transposition of the Directive turns out to be very diverse across these Member States.

While different standards existed in all Member States assessed, they had already pre-existing victim support measures in place. These distinct legal frameworks and pre-existing terminologies in which the Directive had to be implemented, constituted one of the major challenges of the transposition processes, in particular for the incorporation of the individual needs' assessment of victims in national legislation. As each Member State operates in its own context of victim support infrastructures which already existed before victim rights were regulated on EU level, every country inevitably produces divergent answers for transposing and implementing the Victims' Directive. These distinct national legislative and socio-practical environments in which practitioners and legislators have to act, exposes different understandings of the Member States' responsibilities towards protecting victims of crime at domestic level.

A key aspect for EU policy making is, thus, to include and understand the *role of context*. It is important that EU policy makers consider the different contextual factors, including different legal systems that determine country specific victim support systems, especially when the goal is to achieve minimum standards. Victims support varies in nature between Member States 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 in Member States.



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Key E-PROTECT Findings

Key Challenges for the protection of child victims of crime in Austria, Bulgaria, Greece, Italy and Romania

- i. There exists a need to **improve cooperation and collaboration** between the different stakeholders involved in procedures involving child victims (police, victim support, judiciary, lawyers).
- ii. **Victim protection legislation, policies and services are often very fragmented.** In particular, there exists a concentration of victim protection services in city centers and a lack of the latter in rural areas.
- iii. **Training for professionals** that are involved in procedures involving child victims – particularly those who conduct interviews - is key to child-friendly justice. Currently, in none of the countries assessed in the scope of E-PROTECT it is ensured that only specially trained professionals conduct interviews with child victims.
- iv. The **transposition of the individual needs' assessment according to Art. 22 Victims' Directive** posed several challenges to Member States.
- v. There is **a lack of victimological evidence-based research** in most Member States. This makes it difficult to compare the standards implemented in EU Member States as well as to identify the impact of the Victims' Directive on EU Member State level.

i. Cooperation and collaboration

In all countries assessed, there exists a dire need to improve cooperation and collaboration between the different stakeholders involved in procedures involving child victims, such as police, victim support organizations, judiciary and lawyers. Further, in most countries there exists no clear allocation of responsibilities between main stakeholders and no clear definition of a case manager. Frequently, multidisciplinary and interdisciplinary collaboration is not perceived as a priority, also because the far-reaching benefits of cooperation are not immediately obvious. As a result, financial and human resources for cooperation activities are often insufficient.



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In Austria, research results show that some practitioners have a lack of understanding for the roles and procedures of other organisations involved in procedures involving child victims due to limited cooperation activities. Research findings in Bulgaria suggest that the lack of clear allocation of responsibilities between stakeholders leads to a dilution of responsibility and passing the buck between the competent institutions and organisation. This process is further enhanced by the lack of communication channels not only from multi-agency perspective, but also in terms of the different regions of the country. Further, also the Italian research findings pinpoint the poor multidisciplinary and inter-agency cooperation among the different actors involved as one of the main challenges that needs to be addressed in the field of child victim protection. In Greece, participants of national seminars recognised the need to increase the cooperation of child protection stakeholders through the creation of a coherent network for information exchange and the enhancement of provided services as one the key challenges to be addressed. Lastly, also in Romania there exists a need to improve cooperation and collaboration between the different stakeholders involved in procedures involving child victims.

ii. Fragmentation of legislation and special protection services for child victims

In all countries assessed in the scope of E-PROTECT, there exist specific victim protection services for child victims of crime. However, these systems are often very fragmented and regionally specific. One of the major challenges in this regard is, that there exists a concentration of victim protection services in city centres and a lack of the latter in rural areas. While, for example, in Bulgaria one-stop-shop systems comparable to the Barnahus model are in place, these efforts only exist as an individual NGOs' effort and not as part of a state child protection policy, exacerbating uneven coverage.

Moreover, there exists also a fragmentation in legislation in some Member States assessed within the scope of E-PROTECT. Due to this fragmentation, ensuring an adequate protection of child victims of crime sometimes poses the challenge to guaranteeing equal standards in all regions. In Italy, for example, the fragmented policies and interventions concerning child victims hinder that child rights are upheld in some regions. Also, in Greece, the research findings show that there exists a lack of a national child protection system, which will serve as an umbrella and coordinate the efforts of all relevant agencies and organisations in the country.



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iii. Training of practitioners

It is generally acknowledged that it requires special skills and competences to conduct an interview with a child victim, as for example knowledge on the evolving capacities of children or about different communication techniques. Our research results show that currently in none of the countries assessed it is ensured that only professionals that have been particularly trained in conducting interviews with child victims conduct these interviews.

In Austria, it is not ensured that all professionals, who conduct interviews with child victims, received a training in doing so, particularly on the countryside. In Greece and Romania, research activities reveal that there exists a lack of systematic training of professionals, including police, judges and prosecutors. Lastly, in Bulgaria, professionals pointed out that mechanisms for supervision and support to the child protection professionals are missing. The latter hinders the practical implementation of child rights in the light of E-PROTECT as the assigned social workers are unable to examine every case in detail, and often, as a result can only provide basic information of the case to the competent Court.

iv. Individual needs assessment

Overall, the research conducted in the scope of E-PROTECT shows that there exist difficulties to transpose and implement article 22 VD. While some Member States assessed in the scope of E-PROTECT undertook specific measures in order to transpose Art. 22, not all Member States fully implemented Art. 22 VD.

In Bulgaria, the individual needs assessment is only carried out in cases of violent crimes against children and in the case of human trafficking. Thus, children that were not a direct victim of crime will not be subject to an individual assessment. Likewise, in Romania an individual assessment of child victims must only be conducted in the case of sexual abuse and domestic violence. Further, in Italy, research conducted in the scope of E-PROTECT points out a lack of a clear legal definition of violence against children and a lack of a legal transposition of the individual assessment procedure. While in Italy there doesn't exist an explicit provision transposing art. 22 VD in black-letter law, there exists an individual assessment in practice. Only in Austria and Greece new provisions regulating the individual assessment procedure were introduced in the course of the transposition process. In both states, however, the E-PROTECT research results find that the provisions are very vague, leaving several questions unresolved. However, in Greece, towards the end



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of the E-PROTECT Project, a Ministerial Decision was issued, which introduced a structured protocol entailing guidelines on how the individual needs assessment should be conducted.

v. Lack of victimological evidence-based research

Lastly, the E-PROTECT research findings reveal that there is a lack of victimological evidence-based research in most European countries. Victimological evidence-based research would constitute an ideal basis for comparing the standards implemented in EU Member States. Understanding the extent of Victims' Directive impact on domestic legislations and practices is difficult to ascertain without evidence of the impact of victim assistance measures on victim experience and a lack of research in this regard.



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III. Methodology

In the first year of the project, a total of thirteen research reports were produced on the basis of 28 expert interviews in Austria (3), Bulgaria (0), Italy (3), Greece (12) and Romania (10) as well as secondary literature. The first eleven studies examined the legal implementation of the Victims' Directive, as well as the practical implementation of the individual assessment of child victims according to Articles 22 - 24 VD. Subsequently, a comparative report on the legal implementation and a comparative report on the practical implementation of the individual assessment were prepared. The purpose of these studies was to highlight common challenges and to identify promising practices. Based on these results, a first draft of a "*Methodology for a rights-based individual assessment of the needs of child victims of crime*" was developed.

In the second year of the project, at least six seminars were held in each of the five partner countries. In total, 35 seminars were held in Austria (6), Bulgaria (7), Italy (7), Greece (6) and Romania (9). In the course of the first round of seminars, the aim was to present the preliminary research findings as well as to identify challenges and good practices. For this purpose, the participants of the seminars were divided into small groups and instructed to discuss a concrete case study following a questionnaire. Both, the case studies and the questionnaire, were used in all partner countries, translated into the local languages. The participants of the seminars were professionals involved in the protection of child victims of crime, including lawyers, judges, prosecutors, police officers, as well as professionals working in child victim protection organisations, psychology and medicine. All participants were sent a protocol containing the main points of discussion with a request for validation.

Based on the findings from the seminars and the research results of the first year of the project, a "*Methodology for a rights-based individual assessment of the needs of child victims of crime*" was developed. This method can be understood as a guide for dealing with child victims in the sense of a child-friendly justice. In addition, concrete suggestions for improvements in the protection of child victims in criminal proceedings were formulated in all five partner countries. The method and the policy guidelines were discussed in a second round of seminars held in the course of 2019 with the aim to present and validate the findings.



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IV. Policy Guidelines for Austria, Bulgaria, Greece, Italy and Romania

In the course of the two-year research project, the research team worked closely with practitioners involved in the procedures involving child victims to identify concrete policy guidelines to improve the protection of child victims in the European Union.

The following pages include the policy guidelines for Austria, Bulgaria, Greece, Italy and Romania. After an executive summary stating the most important areas for reforms, concrete challenges are pinpointed and suggestions for improvement are given. A particular effort was also taken to highlight best practices examples identified in each country.



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1. Austria

Executive summary

Key Findings and E-PROTECT opinions

- In Austria, not all child victims have **the right to free access to psychosocial and a legal court assistance**. For example, children who were not direct victim of domestic violence, but witnessed it, are nor granted this right (§ 65 (1) lit. c StPO).
- The legal provisions regulating **the individual assessment procedure in Austria are very vague**. There is a lack of concrete procedures, defining factors and determination of the involvement of experts in the process of the individual assessment of victims.
- There exists a lack of special protection measures to protect **infants (0 - 4 years)**.
- In Austria, it is currently not guaranteed that the person conducting the interview with a child victim has received a special training. **Trainings for all professionals**, including judges and police, are an important aspect of child-friendly justice.
- **There exists a need to improve multiagency and interdisciplinary cooperation** between practitioners involved in procedures involving child victims. It is suggested that these should take place on a regular basis across all federal states and should be obligatory to involved experts (including for judges and prosecutors).
- There exists a lack of adequate and **child-friendly premises** designed particularly for interrogating children and adolescents in court houses and police stations in Austria.

Austria fulfils all requirements set out in the Victims' Directive. Especially the integrated system of psychological and legal court assistance is a well-functioning support mechanism in all regions in Austria. There exists, however, a need to establish concrete procedures, defining factors and legally determine the involvement of experts in the process of the individual assessment of victims. Moreover, trainings for professionals working with child victims of crime, in particular the police, are needed, in order to ensure that the rights of the child are upheld in every case. Most importantly, there is a need to improve interdisciplinary and multiagency cooperation structures.



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Transposition of Art 22. VD in Austria

Austria	
Does there exist an individual assessment of all victims?	Yes. All victims have a right to a timely assessment to identify their specific protection needs.
Who conducts the assessment?	There exists no legal provision determining the responsible authority for conducting the assessment. In practice, it is mostly conducted by the police.
Are there provisions regulating the manner in which the assessment should take place?	No.
Which criteria have to be taken into account when assessing the specific protection needs?	Victims have a right to a timely assessment to identify their specific protection needs according with their age, emotional and health condition, as well as the particular kind and circumstances of the criminal offence. These preconditions must cumulatively prevail (see § 66a StPO).
Are child victims considered to be particularly vulnerable <i>ex lege</i> ?	Yes.

Policy Recommendations: Transposing the Victims Directive

In Austria the Victims' Directive was transposed through the StPO Amendment Law (Strafprozessrechtsänderungsgesetz I 2016, BGBl. I Nr. 26/2016) which entered into force on 1st of June 2016. Most of the rights outlined in the Victims' Directive were already in place before the transposition process.

Overall, the StPO Anmendment Law included the establishment of the category 'victim with specific protection needs', a systematisation of rights granted to this group of victims in § 66a (2) StPO and an extension of the scope of various rights to a broader group of victims. While there exists no shortcomings or omissions regarding the transposition of the Victims' Directive in Austria, the findings of E-PROTECT suggest that there is room for further improvement of current practices. In particular, concrete procedures and defining factors for the individual assessment procedure should be established.

Concretization of the individual assessment procedure

While the Austrian transposition of Art. 22 VD is laying down all requirements set out in the Victims' Directive, the clarity of § 66a (1) StPO can be called into question. Various experts in the field of victims' support criticize that there are no concrete procedures or defining factors in place that regulate the individual assessment procedure. Neither, it is clarified who should conduct the individual assessment procedure nor



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in which manner qualified professionals are to be involved. Thus, there exists a need to establish concrete procedures, defining factors and legally determine the involvement of experts in the process of the individual assessment of victims.

Further, the research conducted in the scope of E-PROTECT shows that the police generally conducts the individual assessment based on experience, often without concrete guidelines or training. Experts working in the field argue that checklist could never do the heterogeneous needs of victims' justice. A Guideline for practice, however, might be useful for guidance, while keeping in mind that it can never replace the case-management of an individual case. Guidelines need to be well prepared to ensure that those who use them, also understand them.

The right to psychosocial and legal court assistance for “indirectly affected” children

The system of psychosocial and a legal court assistance is a good Austrian-wide practice. Nevertheless, there are still deficiencies that prevent that all vulnerable victims have access to this service free of charge. Many child victims in Austria are excluded from the right to psychosocial and a legal court assistance (namely, victims according to §65 Abs. 1 lit. c StPO). This includes, for example, children who were not direct victim but witnessed domestic violence.

No facilities for victims of human trafficking under the age of 15

There exists no facility or organisation to support victims of human trafficking under the age of 15 in Austria. Also, the police has no specialized unit exists to take care of the needs of this particularly vulnerable victim group. Due to the lifelong victimization, child victims of human trafficking are especially tied to their exploiters, so that they can only rarely seek help. It is important that there exist organizations that are specialized in helping all victims of human trafficking, regardless of their age.

Special protection measures for infants (0-4 years) who are victims of violence

Infants aged between 0 and 4 years are a particularly vulnerable victim group. Frequently, they are not able to testify in a typical manner, because of the lack of developed language ability. Dealing with children of this age group was identified as a key challenge for practitioners in Austria. Although there has been some progress in the area of child-friendly justice for children in the 6-12 age group, there has been a lack of



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developments concerning infants. Practitioners in all seminars highlighted the need to establish new protective measures for this victim group.

The right to inform victims about adequate victim protection organizations

In Austria, there exist a variety of victim protection organisations that are specialised in specific types of victims of crime. However, the police in Austria is not allowed to point out appropriate victim protection organisations to victims. Practitioners in the Austrian Seminars pointed out that this current prohibition on "promoting" a victim protection organization prevents placement to appropriate facilities and should be amended.

Need for more qualified court experts

In Austria, there is a great need for experts in the area of the competency to stand trial and to testify (Aussagetüchtigkeit) of child victims. Currently, there are only a few competent experts in Austria who are responsible to carry out a great workload.

Individual needs assessment: Putting the child in the centre

Our empirical findings suggest several measures that could be taken in order to improve the practice of the individual assessment of a child victims' needs. Overall, these recommendations can be clustered into three broader topics: i) Appropriate training for all professionals working with child victims of crime; ii) Child-friendly premises and iii) cooperation between professionals.

i) Appropriate training for all professionals working with child victims of crime

It requires special skills and competences to conduct an interview with a child victim. For example, the person conducting the interview needs to have knowledge on the evolving capacities of children and about different communication techniques and non-verbal communication. Our research results show that currently in Austria it is not ensured that all professionals, who conduct interviews with child victims, possess these skills.

Our research suggests that trainings for all professionals, including judges and police should take place regularly in form of continued education activities and they have to be obligatory for all practitioners who conduct interviews with child victims. These trainings should include classes on developmental psychology, trauma psychology and memory psychology as well as communication and interview techniques. It might



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make sense to have specific education tools for particular professions. At the same time, joint trainings for different professions are effective to establish a common basis for the work with child victims. Moreover, training of judge candidates could include the allocation to a victim protection organisation. This would constitute a high-impact measure for the promotion of interdisciplinarity.

These trainings are particularly relevant for the police in order to ensure that a child victim is adequately informed about the right to psychosocial and a legal court assistance. Practitioners pointed out that this information often gets lost in the stress of the situation.

Moreover, our research findings suggest, that there exists a lack of knowledge on how to adequately record an interview with a child victim. Experts pointed out that protocols should recorded verbatim, since this entails the statements and not a summary which is coloured by the rating and personal feelings of the person who wrote the protocol. This information is particularly relevant for experts who need to decide on the competency to stand trial and testify (Aussagetüchtigkeit) of a child victim.

Specially trained police officers in Vienna

In Vienna, there exists a team of police officers specially trained in conducting interviews with child victims of crime. Any interview conducted with a child victim under the age of 10 by the police must be conducted through the assistance of one of these specially trained police officers. In these cases, the interview is conducted in a special apartment owned by the police, which is furnished in a child-friendly manner and equipped with cameras and an audio recording system. The latter can be used during further investigation and subsequently, during court procedure.

While this constitutes a promising practice, there exists room for improvement, particularly in two aspects: First, if a child victim is older than 10 years, it is at the discretion of the responsible police officer to decide whether the assistance of a specialised trained police officer should be used. Secondly, procedures are longer than the interview. The specially trained police officer, however, is usually only called as assistance during the interview and is not involved in the further investigation and court procedure.

ii) Child-friendly premises

In most cases the first point of contact for a (child) victim is the police. This implies, that mostly the first interview takes place at the police. In Vienna there exists an special apartment exclusively for interrogating child victims (see box above). These special premises have positive effects on both, the well-being of



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children and the quality of statements made by children. However, our research findings show that special premises for interrogating children and adolescents are a rarity in Austria, at court and police stations. In particular, in district courts, special waiting rooms for child victims are needed.

iii) Cooperation between professionals

An essential prerequisite for enabling both, the protection of victims of crime and the functioning of investigation and information processes, are openness and understanding of the structures and framework conditions of other institutions. While there are some cooperation activities in place in Austria, there exists a major regional gap, particularly urban-rural. Our research findings suggest that multiagency and interdisciplinary cooperation activities should take place on a regular basis across all federal states. Practitioners pointed out that meetings should not only be case-specific, but also take place independently of cases. Our research further shows, that these cooperation activities work best, if there exists clear structures and responsibilities. Lastly, E-PROTECT found that data protection regulations should be clarified in order to ensure that they do not hinder cooperation activities which are helpful for the child victim.

The Styrian Network Against Sexual Violence

The Styrian Network Against Sexual Violence (*steirisches Netzwerk gegen sexualisierte Gewalt*) is a network of organizations working on sexualized violence. The organizations and professions that form part of the network, include violence and victim protection institutions, facilities for the disabled people, health and youth facilities, residential facilities, therapists, youth welfare offices, police, prosecutors and other professionals. They work for children, adolescents, as well as women and men who are indirectly or directly affected or threatened by sexualized violence.

The network is organized and coordinated by a steering group, whose members are elected every two years. The network meetings should enable improved communication, cooperation and content exchange between members. **The network serves four interconnected purposes:** 1) to raise awareness and to give victims of sexual violence a voice; 2) to exchange ideas, as well as to use synergy effects to improve the care for victims; 3) to formulate policy recommendations to decision makers; and 4) to enable a moment of reflection and exchange for the members and, herewith, ensure the quality of the institutions and organizations involved.



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2. Bulgaria

Executive summary

Key Findings and E-PROTECT opinions

- The Bulgarian legislator should take measures to fully transpose Art. 22 of the Victims' Directive, taking into account that a victim might suffer from violent, as well as from non-violent crime. The transposition should consider that one might be either direct or non-direct victim of a crime.
- The Bulgarian legislator should regulate a single point of contact where victims can turn to relevant professionals, and where the provision of social services is organised.
- The coordination between the child protection professionals should be improved, especially in the context of social service provision to child victims of crime.

In total 8 events were organised in Bulgaria, welcoming more 200 child protection professionals. Most of the findings detailed in the **E-PROTECT Country report on the individual assessment methodologies of child victims of crime in Bulgaria** and the **E-PROTECT Country report on the transposition of Victims' Directive in Bulgaria** were confirmed by the participants and the debates led during the E-PROTECT events throughout Bulgaria. In the light of the project, the central finding relevant to the Bulgarian context is the non-transposition of Art. 22 of the Victims' Directive. On a more positive note, both the desk-based research and the events confirmed that there is a multidisciplinary mechanism responsible for the individual needs' assessment performance – the coordination mechanism. In practice, the individual assessment is performed in cases of violence against children, or in cases of human trafficking, clustered under the social and not the judicial system. However, MeetUps' participants highlighted that in an event of an online crime, the coordination mechanism would not be convened, and that in general online crimes and violence tend to be neglected by the law enforcement authorities. This calls for a change of the prerequisites for the coordination mechanisms convergence, as well as the type of experts sitting on it, as cases of cybercrimes and cyberbullying are increasing and the participation of experts in this field will be appreciated.

Part of the issues stemming out of the limited transposition of the Victims' Directive in Bulgaria are rooted in the fragmented legislation regulating the protection of child victims of crime. On the one hand there is



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the legislation on social services and child protection (namely the Child Protection Act, which logically falls in the civil law family), and on the other – the Bulgarian Criminal Procedure Code. In addition, there is also the Act on Support and Financial Compensation to Crime Victims which primarily establishes different administrative procedures. The situation is further aggravated by the lack of communication and interaction between the judicial and social system, and the general unawareness by the different actors on the rules governing the other system. Effectively, there is a necessity to fully transpose the provision of Art. 22 in the national legislation, however the legislator is to consider which is the appropriate legal act fitting its purpose.

With regards to the appropriate measures that are to be applied and observed during ongoing criminal proceedings, it should be noted here that the legislator has failed to provide for the implementation of the basic principles of child-friendly justice aiming to ease child participation. Among the shortcomings is the lack of transposition of the provision of Art. 23 Victims' Directive requiring that child interviews and hearings are to be led by the same person, ideally from the same gender, who has undergone appropriate education/ is of relevant background. In practice however these principles are observed as a result of the individual efforts of appointed experts. Many of the participating judiciary and law enforcement representatives have shared that they strive to organise a single interview with the child, using appropriate premises – the blue room available across Bulgaria, while employing trained in child-sensitive communication professionals. Nonetheless the fact that this is indeed a good practice, its practical realisation is dependent on the individual subjective assessment of the persons responsible for handling the case in the respective phase of the criminal proceedings. When discussing Art. 23 & 24 Victims' Directive prescriptions, one last remark is to be made. From policy- and legal-making point of view, changes are to be introduced to not allow contact between the victim and the perpetrator. The current legislation in this direction is rather scarce, providing the possibility to use communication and information technologies to carry out interviews with the victim, and there is room for improvement. Firstly, the relevant provisions are of discretionary nature which might deprive the child victim of their right to benefit from such protection measures. Then, the legislation might envisage separate entries to the court building, the use of screens, etc. to avoid eye contact between victim and perpetrator and ensure a child-friendly environment throughout the course of the proceedings. As highlighted above, recent changes in the Bulgarian Criminal Procedure Code might potentially contribute to the fragmentation of the process of victim protection, and the inability to allocate responsibilities. Although Art. 417a stipulates that the vulnerable victim is to be informed of the



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prison release of the already sentenced perpetrator by the director of the respective prison, it is not clear how the latter will be aware of who the victims is, nor of his/ her contact details so the provision is appropriately implemented in practice. To this end, it is a duty of the Bulgarian legislator to address the points made in this section and overcome the gaps in legislation underlined here.

E-PROTECT events demonstrated the existing need for the child protection professionals' community consolidation, and for an appropriate forum to facilitate this process. An unexpected value of the E-PROTECT implementation in Bulgaria was precisely its facilitating role establishing a bridge between the array of experts dealing with child victims of crime. This was particularly appreciated in the cities outside the capital where such events are a rare occasion. Human factor is a pivotal element of interagency cooperation thus the E-PROTECT project presented an opportunity for relationships to grow and blossom resulting in an improved holistic approach towards child protection.

Transposition of Art 22. VD in Bulgaria

Bulgaria	
Does there exist an individual assessment of all victims?	No. According to art. 144, para. 3, the individual assessment procedure is an optional step under the framework of criminal proceedings. The provision is prescriptive, not mandatory.
Who conducts the assessment?	As per the wording outlining individual assessment procedure in Bulgaria, it is an expert witness that carries out the individual assessment. An expert witness is nominated by the Court on case-by-case basis.
Are there provisions regulating the manner in which the assessment should take place?	No.
Which criteria have to be taken into account when assessing the specific protection needs?	Under the framework of criminal proceedings, there no criteria defined that need to be considered while conducting an individual assessment.
Are child victims considered to be particularly vulnerable <i>ex lege</i> ?	The law does not explicitly regard to child victims as particularly vulnerable, but the systematic interpretation of the law demonstrates that they are to be considered as such.

Policy Recommendations: Transposing the Victims Directive

The Bulgarian legislator should take measures to fully transpose Art. 22 of the Victims' Directive, taking into account that a victim might suffer as from violent, as well as from non-violent crime. The transposition should consider that one might be either direct or non-direct victim of a crime. Further, the process should follow the procedure outlined in the Law on Normative Acts and carry out impact assessment to include the



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variety of stakeholders. This process should consider also the specific of social and child protection legislation to avoid duplication of competencies and prerogatives.

Furthermore, the Bulgarian legislator should regulate a single point of contact where victims can turn to relevant professionals, and where the provision of social services is organised. Logistically, this change is should introduced as a measure under the pre-trial phase of the criminal procedure. However, the detailed rules might be integrated in Act on Support and Financial Compensation to Crime Victims.

[Individual needs assessment: Putting the child in the centre of the proceeding](#)

The research conducted in the scope of E-PROTECT suggests the following measures to be taken in Bulgaria to strengthen the individual assessment as a measure applied to child victims of crime:

- There is a need for better societal understanding of child rights in general throughout Bulgaria. To this end, educational and awareness raising campaigns should be implemented to build the understanding that each child is entitled to their own set of rights, and not be seen as an extension or even property of the parents. This is especially relevant in the advent of the on-going public debate and the wide spread of misinformation throughout Bulgaria when it comes to child rights.
- The coordination between the child protection professionals should be improved, especially in the context of social service provision to child victims of crime. This means better understanding and awareness of existing mechanisms, expanding their scope rather than establishing new ones.

A Prosecutor from Plovdiv Regional Prosecution Office has shared that whenever in the case a child victim is involved, a single interview is carried out, in the specialised premises (a blue room) by a specialist trained in child-sensitive communication, with the presences of all parties in the proceedings behind a venetian glass. The specialist has an earbud, and everybody present could ask their questions through him/ her. The interview is duly protocolled, and the produced document is the evidence used in Court, instead of summoning the child victim again and again. This could be replicated across Bulgaria where such premises are available.

- The local context is of primordial importance. For this reason, it should be considered in the framework of child protection services. To this end, the promising example of Milan¹ could be replicated in Bulgaria as well.

¹ E-PROTECT Individual Needs Assessment Methodology, p. 29



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- There is a need to ensure the availability of regular trainings and supervision. These efforts should follow the multidisciplinary approach ingrained in the E-PROTECT project, so experts from different sectors and bodies collaborate with each other, not only on professional but also on personal level. In such efforts, issues such as child-sensitive communication, professional ethics, methods for information exchange, communication to media, privacy and data protection are to be given appropriate attention.

Varna Regional Court provides for specialisation of judicial formations in child-related matters, which allows them to develop skills in child-sensitive communication, and interpersonal relations with social workers which ultimately result in a better examination of each particular case involving children. Varna judicial district is also among the innovators in Bulgaria as they were the first ones to install and use information and communication technologies in Court hearings. This practice could be replicated in the bigger district and regional courts across Bulgaria.

- The provision of victim support services on the basis of the ‘one-stop-shop’ approach is recommended to become a state policy.
- The provision of social services by experts NGOs is to be supported and promoted. As the legal framework in Bulgaria provides the possibility for NGOs to be social services providers and taking into account that across the country it is the third sector who introduces novel approaches to child support and protection, it is important that these efforts are further encouraged and recognised.

A number of NGOs who are social service providers pilot the one-stop-shop approach whenever providing services to victims. Among them are: [Social Activities and Practices Institute](#), who are managing four social services provision centres across Bulgaria; [Animus Association Foundation](#); [Pulse Foundation](#)

- The State is to take a more active, supportive expert role in the provision of social services to victims rather than solely monitoring and control. Currently the Bulgarian social system is limited by its resources and is not fully capable of the actual implementation of child protection policy. Thus, additional resources need to be allocated in this direction, so the public bodies charged to implement child protection policies are empowered to do so. This would also have effect in the relationship of trust between society and state.
- In general, there is a need for the increase in the allocation of resources both human and financial in the system of child protection.



3. Italy

Executive Summary

Key Findings and E-PROTECT opinions

Italian policy makers should:

- Design and implement a structural reform on child protection in order to establish a national child-specific and child-sensitive system of integrated support and assistance to child victims of crime.
- Provide for a qualified system of continuous training under a multidisciplinary and inter-agency approach with the involvement of universities and other competent and accredited training providers.
- Create a centralized data collection system on violence against children that allows to analyze and monitor this phenomenon.

The Italian legislator should:

- Harmonize and integrate laws on child protection from violence and crime, introducing a specific legal definition of violence against children;
- Undertake a legislative reform to specify inter-agency cooperation mechanisms, identifying the actor in charge of overseeing such coordination and defining roles, functions and responsibilities;
- Introduce legal elements to ensure that the best interests of the child are a primary consideration within criminal proceedings involving child victims.



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Transposition of Art 22. VD in Italy

Italy	
Does there exist an individual assessment of all victims?	There is no explicit legal provision transposing art. 22 in black-letter law. In practice victims are subjected to an individual assessment when considered particularly vulnerable, including minors.
Who conducts the assessment?	There exists no legal provision determining the responsible authority for conducting the assessment. In practice, it is mostly conducted by the competent public authorities (judge, prosecutor, social services and judicial police).
Are there provisions regulating the manner in which the assessment should take place?	No.
Which criteria have to be taken into account when assessing the specific protection needs?	Some indications are provided by art. 90-quarter ICCP but as are quite general, local institutions and organizations have tried to elaborate their own criteria.
Are child victims considered to be particularly vulnerable <i>ex lege</i> ?	Yes, ex art. 90-quater ICCP.

Policy Recommendations: Transposing the Victims Directive

The Victim's Directive has been superficially transposed into Italian legislation through Legislative Decree 15 December 2015 no. 212. The transposition was based on a generic interpretation of national law with regards to the provisions of the Victim's Directive. As a consequence, this bureaucratic process only introduced a few changes in the Italian legislation that, in many aspects, was already in line with the EU Directive. However, the Italian legislator has lost a unique occasion to harmonize laws on child protection against violence and crime and to further regulate some principles and safeguards introduced by the Directive.

Italy has a legislation on child victims of crime which is very fragmented and disperse; child victims are not considered as vulnerable victim as such. Their particular vulnerability is only recognised according to some typologies of crime which are particularly serious rather than according to the situation of vulnerability determined by their minor age. Very often, law reforms occur as a response to particularly serious cases that capture public attention. Moreover, often these reforms do not respond to an organic vision and are often poorly integrated in the legislative corpus. This emergency approach gives place to law reforms that are not



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efficient but, on the contrary, risk to add complexity to the already difficult and fragmented normative system.

As a consequence, the Italian legislator should:

- Harmonize and integrate laws on child protection from violence and crime, introducing a specific legal definition of violence against children.
- Introduce legal elements to ensure that the best interests of the child are a primary consideration within criminal proceedings involving child victims. No other interests of any nature (i.e. procedural exigencies) can undermine or go against the best interests of the child. The protection and wellbeing of the child should be prioritised over any other consideration.
- Undertake a legislative reform to specify inter-agency cooperation mechanisms, identifying the actor in charge of overseeing such coordination and defining roles, functions and responsibilities. An option could be to modify article 609-decies of the Penal Code that establishes the communication, for certain crimes committed against children, from the Prosecutor to the Juvenile Court. Instead, such communication could be sent to the Juvenile Prosecutor since it is the actor that has the power to initiate the procedure for the protection of the child.
- Regulate further article 22 of the Victim's Directive in the national normative framework. The individual assessment of child victims is currently not established as such by law. The Italian legislator and/or policymakers should specify by whom, when and how the individual assessment should be carried out. In the meantime, policy-makers at the central level should develop implementation and operational tools to be used by the concerned actors in the local level.

Italian policymakers should:

- Design a structural reform on child protection in order to establish a national child-specific and child-sensitive system of support and assistance to child victims of crime. This system should be public and cover the national territory. It should act also as a referral system to provide child victims with appropriate services and continuity of care.
- Provide for a qualified system of continuous training under a multidisciplinary and inter-agency approach with the involvement of universities and other competent and accredited training providers. This training system should be coordinated by a mandated actor and should be addressed to all those



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professionals working with and for child victims of crime.

- Create a centralized data collection system that allows to analyse and monitor the phenomenon of violence against children.

Individual needs assessment: Putting the child in the centre of the proceeding

The notion of individual assessment as established in article 22 of the Victim's Directive does not correspond with the Italian internal legislation and with the variety of practices. The applicability of article 22 remains vague because it is insufficiently regulated. An intervention would be needed to understand the individual assessment as an integrated process shared among all the actors involved in the protection and care of child victims. Specific roles, functions and operational modalities should be defined. This would avoid the existence of parallel individual assessments which are never compared or shared between the different authorities, agencies and services. To this end, the legislator should identify an actor that is responsible for the coordination of all the different stakeholders that may be involved in the individual assessment or that may make use of it.

With regards to the involvement of the child during the individual assessment, there is a need to optimize time. The earlier authorities are aware of the need to protect a child, the more can be done to unify interviews of the different judicial actors, and to allow the participation of different stakeholders in order to avoid repeated interviews.

In some Italian realities, the figure of the “*curatore speciale*” (special curator) as foreseen in many provisions of the Italian civil code, is assuming a key role also in criminal proceedings. It holds the legal representation of the child during the proceedings when there is a conflict of interests with the “natural” legal representatives of the child. However, if enhanced, this role could assume a function of supervisor of the child’s situation and facilitate the communication between the child and the authorities, institutions and any other involved actor. The special curator should represent and defend the best interests of the child and try to qualify the procedural safeguards the child is entitled with, including the right to receive adequate information.



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The individual assessment requires an understanding of the victim. However, there is different information that needs to be acquired and it is difficult to do so during the first contact. Based on good practices in other EU Member States, it would be important to introduce in advance to the child victim the judge and the environment in which he or she will be listened.

In the ASL Roma 6, under the initiative of the Prosecutor, a child-sensitive listening room has been created which is more child-friendly than the Court rooms. If feasible, this measure could be extended to all the other Italian territories.

To effectively implement the provisions of articles 351 comma 1 ter, 362 and 391 bis, comma 5 of the Code of Criminal Procedure that establish that interviews to children should be carried out with the assistance of an expert on psychology or child psychiatry appointed by the Juvenile Prosecutor, some prosecutor offices have established work shifts to the experts.

A critical aspect regards the time factor. There is the need to ensure prioritized treatment of those proceedings involving children in order to reduce to the minimum the timeframes of the different procedural phases.

Another key aspect is to ensure that there is a follow-up of the child's case, which includes providing always a feedback to the child after a judicial decision. This often does not occur in case of acquittal. Even if it is an extremely delicate moment, it is absolutely necessary above all when the accused person has not been convicted. It is important to clarify to the child that it is not a matter of lack of trust on the child's version but a problem of insufficient evidence.

A last element which emerged from the national consultations regards the fact that victims are also those children who are forced to commit a crime. In order to prevent this phenomenon, there is a need to raise awareness on the importance to report the situations of risk to the Juvenile Prosecutor.

Overall, the E-PROTECT project was an excellent occasion to raise a common reflection on how to reform the protection system for child victims of crime. The significant involvement and collaboration of the Italian Department of Juvenile Justice of the Ministry of Justice, which is in turn responsible for providing support to child victims of sexual abuse, has allowed to start a nation-wide consultative process with key actors aimed at identifying concrete proposals to improve the system.



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4. Greece

Executive summary

At a legislative level, Greece harmonised its national legal order with the Victims' Directive through the adoption of Law 4478/2017. The new legislation transposed the Victims' Directive in whole, 'verbatim' in the main and, to a certain extent, it even provides more protection than the minimum standards imposed by the European legal instrument. This comprehensive transposition is envisaged as a step forward in the way to the establishment of a coherent and effective system of child protection in the country.

Nevertheless, the practical implementation of this normative framework regarding the child victims of crime is still almost non-existent. The two-year period following the entry of the new law into force has shown the few objections and scepticisms voiced during the law-making stages to have valid grounds. The individual needs assessment of the child victims, which constitutes a pivotal point in the Victims Directive towards a child-friendly justice system, is still discussed only in paper. Until the commencement of the operation of the "Houses of the Child", where the individual needs assessment and the interviews during the criminal investigation are due to be taking place hereon, child victims continue to be interviewed by police psychologists in the Police Departments for Minors, which bears significant risks of secondary victimisation.

Failure to check the efficiency of the new legislation from a practical scope steered the discourse during the seminars and MeetUps towards the existing shortcomings or best practices by private and public institutions in the country. The lack of statistical data, a strong and coherent network of interagency communication and sufficient information on the role and duties of every actor involved in child victim protection are only few of the concerns raised during those events. Law enforcement officers are often perceived as intimidating, distant and unapproachable individuals, instead of protective figures where one should feel comfortable to refer to in case of a crime. Social workers are at times resented inside their institution, because their report might expose problems or omissions in the management. New synthesis of the population after the refugee crisis calls for special measures regarding the cultural mediation needs of foreign child victims of crime. And, most importantly, the training of professionals is scarce, inconsistent and relies heavily upon private initiatives, as it does not yet form part of the state agenda.



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The following sections discuss the above conclusions and even go beyond those to pinpoint best practices and suggest changes in order to develop a fortified, coherent and upgraded child protection scheme in Greece, on the basis of the new, harmonised with the requirements of the EU, Greek legislation.

Key Findings and E-PROTECT opinions

- Regular training, of a public character, of all professionals who provide child victim protection services.
- Increase of cooperation of the child protection stakeholders via the creation of a coherent network for the exchange of information and the enhancement of provided services
- Clear distinction of responsibilities among the different actors involved in child protection and creation of a central administrative monitoring body for the accurate implementation of the normative framework.

[Transposition of Art 22. VD in Greece](#)

Greece	
Does there exist an individual assessment of all victims?	All victims shall be subject to a timely and individual assessment to identify their specific protection needs. However, the provision gives priority to the personal and professional freedom of judicial authorities over the individual assessment. Moreover, the referral of a victim to competent authorities that conduct the individual assessment, depends upon the victims' referral request.
Who conducts the assessment?	In the case of child victims of crime, the Independent Offices for Protection of Child Victims are commissioned to undertake the individual assessment.
Are there provisions regulating the manner in which the assessment should take place?	No.
Which criteria have to be taken into account when assessing the specific protection needs?	The Greek legislation lists a far more detailed catalogue of criteria than the Victims' Directive which constitute the basis for the individual assessment. These criteria are, however, not exhaustive and constitute indicative parameters that should be considered for the identification of the victims' special needs. In the cases of child victims of crime, two factors are of particular relevance: the maturity of the child and the child's wishes.
Are child victims considered to be particularly vulnerable <i>ex lege</i> ?	Yes.



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Policy Recommendations: Transposing the Victims Directive

In general, the normative framework developed after the transposition of the Victims Directive in Greece appears to be comprehensive and protective towards the child victims of crime who participate in judicial proceedings as witnesses. In some regards, law 4478/2017 which incorporates the VD even went beyond the minimum standards of the European Directive, by providing, for instance, broader definitions of main terms or by adding categories of persons who benefit from the victim support service.

Recently, this legal legislation was complemented by the Ministerial Decision 7320/2019, which regulates the establishment and operation of the “House of the Child”, the new structure destined for the individual assessment and interviews with child victims of crime. The legal document provides details about the infrastructure, the tools and the proposed methods for the individual assessment and interviews of child victims. In its annex, it introduces a structured protocol for the interview of the child victims during judicial proceedings, which incorporates specific guidelines for all stages of the interview of child victims of crime. The purpose of such protocols, which are already in place as part of the criminal proceedings in other countries, is to minimise the risk of second victimisation of the child victim by building trust, creating a comfortable environment and thoroughly explaining to the child the logistics of the interview in a comprehensible manner. Although the individual assessment methodology developed for the purposes of E-PROTECT project is significantly more elaborated and inclusive, the Ministerial Decision follows a similar direction and features common elements, which verifies the accuracy of the methodology and the harmonisation of both documents with the international guidelines.

Yet, a coherent legal framework only constitutes the basis for the efficient protection of child victims. Despite the legislative developments, issues and malfunctions continue to arise mainly due to the bureaucratic character of the law enforcement and justice system in the country. Although important steps have been taken the last semester, the identification and configuration of appropriate and full equipped spaces where the “House of the Child” could start its operation is still in progress. The training of professionals assigned to conduct the individual assessment of child victims of crime has just been completed and there has been no official information regarding the exact date when these structures will open their doors to child victims of crime.

Considering these administrative delays, the lack of awareness on behalf of the child protection officers does not come as a surprise. In the beginning of this project, almost no stakeholder or agency operating in



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the field of child protection was aware of the transposition of the Victims' Directive and its pivotal role to the advocacy of rights of child victims of crime. From the 12 professionals approached and interviewed for the purposes of this project, only two were acquainted with the new law and its relevant provisions for the establishment of the new, child-friendly premises for child victims. Similarly, only few of the individuals who participated in the national seminars and MeetUps appeared to have knowledge of the legal documents tackling the gap in child victim protection in the country.

In total, and despite the general ignorance regarding the new legislative framework, there were no suggestions for amendments in the child victim protection system at normative level. The transposition of the Victims Directive, for those who are aware of its existence, is considered to be a success in theory. The few relevant concerns about the legal framework revolved around the obsolete character of older provisions which stipulated the operation of certain bodies which were never created in practice. What remains to be seen in the future is whether, when and how practice will be harmonised with the theoretical background established with the adoption of Law 4478/2017 and the subsequent Ministerial Decision 7320/2019.

[Individual needs assessment: Putting the child in the centre of the proceeding](#)

In the heart of the new legislation lies the individual needs assessment of child victims of crime as a core part of the promotion of a child friendly justice system. In Greece, this did not use to be a separate procedure of identifying the special needs and special measures to be taken in each child victim case, but rather an evaluation of the mental and physical condition of the child to determine whether they are competent to participate as a witness in the criminal proceedings. The recent Ministerial Decision entails a detailed description of the individual needs assessment as a state obligation in every case of alleged criminal offence against a minor and the embedded protocol contains specific questions for the performance of this assessment. However, taking into account that the "Houses of the Child" have not yet commenced their operation, any discourse around the individual needs assessment in the seminars and MeetUps conducted under E-PROTECT remained, as expected, only theoretical.

As most of the project's events took place prior to the adoption of the Ministerial Decision, the participants focused on the IAM developed by E-PROTECT and expressed a very positive opinion regarding its structure, coherency and objectives. The sole objection to this document relates to the practicality of assigning every child victim case to the agency of first contact. Such a rotation of responsible agencies is



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prone to create confusion to both the numerous stakeholders and to the children, and may lead in the end to the insufficient handling of the case, thus exposing children to further risks of victimisation.

Learnings from the “Smile of the Child” paradigm

The “Smile of the Child” (SotC), a Greek NGO founded in 1995, undertakes a prominent role in child protection in Greece. The SotC provides a holistic protection to its beneficiaries by featuring services of prevention, intervention and support in cases of criminal offences against minors. These include a national help line receiving calls from any individual (in some cases, the victim itself) who wishes to report a crime against a child; *impromptu in situ* visits to identify offenses and address imminent risks; and a number of structures for hosting and supporting children, among which a Child Advocacy Centre which serves the same purpose as the newly established “Houses of the Child”: to promote a child-friendly justice system and enhance the conditions of participation of child victims in the criminal proceedings. In total, the SotC operates as a substitute agency in lieu of the absent central state mechanism for child protection in the country and exemplifies the modus operandi of similar agencies in Europe which have already a well-developed, comprehensive child protection system in place.

Ambiguity in the responsibility sharing is in fact a burning issue identified by the majority of the professionals in the field. Not even child protection organisations, either private or public, are fully aware of their duties and the limits of their operation. To tackle this problem, there is a dire need for the creation of central public body of child protection, which will coordinate the efforts of the decentralized services and operations already in place. This agency should be endowed with the power to assign tasks and responsibilities to all agencies under its jurisdiction, to monitor their operation and to deliver reprimands when needed. Furthermore, the central agency should establish a solid network for the seamless communication of all institutions and to develop a recording system for all cases of child victims of crime, so as to address the significant gap of statistical data on the phenomenon in the country. Such an organization modification might also contribute to the existing problems of regional distribution and the excessive, uneven workload of certain services, induced by the local concentration of child victim support institutions.

A clear distribution of responsibilities is essential not only at an interagency level, but also among different professionals with different expertise and duties. In Greece, the role of the social worker has been criticised to be a bit vague and, at times, undermined. In cases of reported criminal behaviour against children, social workers of the Child Protection Groups of every municipality take on the task to perform *in situ* visits to



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evaluate the situation at the family home and identify potential hazards or even the need to withdraw the child and place them at other accommodation structures. These visits should always be *impromptu*, to ensure that there is going to be a realistic and not an idealised image of the family environment and, for safety reasons, the assigned social worker should always be escorted by a colleague or a police officer. Apart from their investigative role at the early stage of determining the existence of a criminal offence, social workers serving at educational or child protection institutions should be granted full access to the individual files of the children and be given the leeway to perform their duties, rather than confronted with suspicion and resentment, which has been stated by some professionals to be the case.

More bewildered than the child victim protection agencies are currently the general public, including parents and professionals working with children, who are completely ignorant about the extent of the phenomenon, the authorised parties to handle a child victim case, the channels of reporting a crime against minors and the criminal procedure to be followed. Thus, a complete list of all the services operating in the field of child protection should be available at schools, hospitals, activity centres and every place destined for children. At virtual level, the Ministry of Education and Religion should maintain a friendly website where this information should be made available to the public and updated regularly to include any advancement of legislative, administrational or practical character. Likewise, all child protection actors in the public and private sector should upload and provide unrestricted access to all relevant information about their mission, services, facilities and ways of communication with them.

Safe Kids, Safe Content

As part of the campaign against child-related cyber-crime, the Greek Police acknowledges the numerous lurking online risks for children and the daunting task of parents to monitor the behaviour of their offspring in the Web. Therefore, the police authorities encourage parents to install parental control software in all electronic devices, including phones, tablets and computers. “Safe kids” is such a software developed by Kaspersky and specifically designed to create a child-friendly and risk-free online environment for children.

The pre-emptive character of providing sufficient information to professionals and the society in general has been highlighted as one of the most important aspects in advocating the rights of child victims of crime. The promotion of awareness raising programmes should be a pivotal point in this agenda of prevention. Such programmes may incorporate seminars, webinars, interactive events and exercises, as well as the



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systematic and intensive training for educators, health personnel, social workers, lawyers and every person involved in child protection. Nevertheless, these educational efforts should not be limited to the professionals in child victim support. Parents, relatives and every other adult involved actively in a child's life should remain at all times alert, interested and informed about technological advancements, potential risks and any kind of change which may bear a robust impact on children's development, education and behaviour.

In the context of the recent political developments in the Middle East, Greece has received a continuously growing number of asylum seekers and migrants of all ages bearing a different linguistic, religious and cultural background. Thus, a new need has emerged, or has at least been intensified regarding the participation of this group of individuals in the criminal justice systems: that of cultural mediation. The lack of communication in the Greek or English language and the cultural impediments in cases of underage aliens who fall victims of crime in the Greek territory calls for prompt solutions, namely the recruitment of interpreters and cultural mediators by the State. The services of these professionals should be available primarily in the "Houses of the Child" but also the national helplines, the Police Department for Minors and the judicial authorities, upon request.

To sum up, all the aforementioned guidelines may facilitate the work of professionals operating in the field of child protection not only in Greece, but throughout the European Union. With the transposition of the Victims Directive and the Ministerial Decision that complements it, the legal framework governing the rights of child victims of crime appears, at last, to be comprehensive. However, the lack of practical implementation renders all recommendations voiced during the seminars highly theoretical. The following months will be of the essence in order to observe and shape a well justified opinion on the applicability and efficiency of the new law and newly founded structures. In any case, the foundation for the protection of children from any form of criminal offence is the establishment of strong family bonds, based on transparency and mutual trust. It is within a healthy family environment that children are more protected, develop their own defensive mechanisms and advance their critical view towards an unpredictable and at times extremely dangerous world.



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5. Romania

Executive Summary

Key Findings and E-PROTECT opinions

- The Romanian legislator should improve national legislation in order to properly address all needs for children victims of crime. These measures should include: simplifying procedures and enforcing responsibilities and measures in preventing, treating and monitoring child victims of crime;
- There is a need to provide national trainings for professionals working with child victims of crime, such as social workers, lawyers, policy officers, judges and prosecutors, child psychiatrists and psychologists. These trainings should put a focus on the interaction between different professions, in order to improve cooperation.

Transposition of Art 22. VD in Romania

Romania	
Does there exist an individual assessment of all victims?	Romania has national provisions on individual assessment procedures and special measures. However, these provisions are not applicable for all types of crimes against children. The existing provisions are available under the "Framework Methodology on Multidisciplinary and Networking Prevention and Intervention in Child Violence and Domestic Violence" and "Multidisciplinary and Interinstitutional Interventional Methodology on Children Exposed to and Affected in Operational Risk Situations through work, child victims of trafficking, as well as Romanian migrant children, victims of other forms of violence on the territory of other states".
Who conducts the assessment?	The initial assessment is conducted by the General Direction of Social Assistance and Child Protection. 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 will be performed. The GDSACP Director designates or nominates a case manager who may be employed by the institution or an accredited private body/accredited non-governmental organization or independent forms of exercising the profession of social assistant recognized by law.
Are there provisions regulating the manner in which the assessment should take place?	No.
Which criteria have to be taken into account when assessing the specific protection needs?	There are no specific provisions related to which criteria should be taken into consideration when assessing the specific protection needs.



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Are child victims considered to be particularly vulnerable <i>ex lege</i> ?	Yes.
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Policy Recommendations: Transposing the Victims Directive

It is not possible to formulate a clear recommendation for national policymakers by providing a specific amendment of legislation in order to comply with the Victims' Directive. Whilst there is also the need to update and amend specific laws, there exists an even greater need to create new legislation and measures to ensure that all child victims of crime, not only child victims of domestic violence, are granted special protection measures. The Romanian legislation offers a detailed scheme of intervention for the cases of victims of domestic violence but not for any other types of crimes.

More so, whilst there exists a need to improve, update, amend, and add to the current legislation, also measures for enforcement, and thus the actual implementation, are essential. Most importantly, there exists a need that sufficient budget is allocated for the actions proposed. Only with the necessary budget, regional institutions will have the resources to train people accordingly to the recommendation and therefore the law.

Since 2018 county councils are required to allocate enough and proper resources for the protection of victims of domestic violence, taking into account the number of victims in that region and correlating these numbers with the actual centres in the region as well as with specialized staff that can interact and help victims. Although, this action is required according to the national legislation, no such allocation has been made properly, taking into account the number of victims and their needs. That being said, a series of complex solutions should be taken into consideration, in order to ensure that the problems are addressed from top to bottom.

Individual needs assessment: Putting the child in the centre of the proceeding

In Romania there exists no generally applicable individual needs assessment procedure at national nor regional level. Usually, the best approach towards cooperation is selected by professionals (having in mind their current resources available), whilst always putting the child's interest in the centre. There exists strong collaboration between social workers and police, counsellor and prosecutor in individual cases, thus, ensuring that the child will remain feeling safe from the beginning of the procedure or trial and will not be put in the position to relive the trauma.



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Although there exist the good practices of “Blue Rooms” in Romania, these rooms are not available for hearings with all children. In fact, most children do not have the option to be heard in a “Blue Room”. Therefore, professionals usually try to assist and help the child as much as they can by allowing the hearing to take place in quite spaces or rooms, so that they avoid the re-traumatization by having the child in the same room as the perpetrator. Also, in order to avoid asking the same questions, professionals usually exchange opinions and ideas amongst them in order to provide the best solutions and services to the child victim of crime.



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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

E-PROTECT Policy Guidelines

WP3 Leader: VICESSE



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I. Einleitung

E-PROTECT („Verbesserung des Schutzes von minderjährigen Opfern von Straftaten“) ist ein EU-finanziertes Forschungsprojekt mit Laufzeit von Oktober 2017 bis September 2019. Das Ziel des Projektes ist die Anwendung der Richtlinie 2012/29/EU (im Folgenden „Opferschutzrichtlinie“) für minderjährige Opfer von Straftaten zu stärken, sowie zum allgemeinen Schutz von minderjährigen Opfern in der Europäischen Union beizutragen. Insbesondere war es eine der Hauptziele des Projekts herauszufinden, wie die individuelle Beurteilung von minderjährigen Opfern von Straftaten gemäß Art. 22 Opferschutzrichtlinie von den entsprechenden Professionen durchgeführt wird und wie in konkreten Fällen über Schutzmaßnahmen entschieden wurde. In Zusammenarbeit mit Expert/inn/en und Praktiker/innen wurden eine Reihe von Forschungsaktivitäten durchgeführt, um existierende Schwierigkeiten und Beispiele guter Praxis zu identifizieren. Fünf EU-Mitgliedstaaten nahmen an der Untersuchung teil: Bulgarien, Griechenland, Italien, Österreich und Rumänien. Dieses Dokument enthält konkrete Vorschläge zur Verbesserung der derzeitigen Kinderschutzpraktiken in diesen Mitgliedstaaten.



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II. Hauptergebnisse: Richtlinien für europäische Gesetzgeber/innen

Zwischen Oktober 2017 und September 2019 führte das E-PROTECT-Konsortium mehrere Forschungsaktivitäten durch, um herauszufinden, wie die Opferschutzrichtlinie in Österreich, Bulgarien, Italien, Griechenland und Rumänien umgesetzt wurde. Ein besonderer Schwerpunkt lag auf der Umsetzung der Beurteilung individueller (Schutz-)Bedürfnisse von Opfern gemäß Art. 22 Opferschutzrichtlinie.

Die Forschungsergebnisse zeigen, dass die Umsetzung der Richtlinie, in den im Projekt beteiligten Mitgliedstaaten, sehr unterschiedlich ausfällt. In allen Mitgliedstaaten gab es bereits vor dem Projekt Maßnahmen zur Unterstützung von Opfern, welche jedoch verschiedenen Standards folgen. Diese unterschiedlichen rechtlichen Rahmenbedingungen und bereits bestehenden Terminologien, innerhalb derer die Richtlinie umgesetzt werden musste, stellten eine der größten Herausforderungen des Implementierungsprozesses dar. Dies galt insbesondere für die Einbeziehung der individuellen Bedarfsermittlung von Opfern in die nationale Gesetzgebung.

Da sich die Infrastruktur der Opferhilfe zwischen den Mitgliedstaaten unterscheidet und diese bereits vor der Regulierung der Opferrechte auf EU-Ebene existierte, fällt auch die Umsetzung der Opferschutzrichtlinie dementsprechend unterschiedlich aus. Diese sich national unterscheidenden Rahmenbedingungen innerhalb derer Praktiker/innen und Gesetzgeber/innen handeln, sind auf das unterschiedliche Verständnis von Verantwortungsübernahme des jeweiligen Mitgliedstaates für den Schutz der Opfer von Straftaten zurückzuführen.

Ein bedeutender Aspekt für politischen Entscheidungsträger/innen der EU ist es, unterschiedliche Kontextfaktoren und die darin miteingebundenen unterschiedlichen Rechtssysteme länderspezifisch zu berücksichtigen. Dies ist insbesondere wichtig, wenn das Ziel verfolgt wird bestimmte Mindeststandards einzuhalten. Die Unterstützung von Opfern gestaltet sich in den Mitgliedstaaten unterschiedlich, weshalb flexible Mittel für die Umsetzung und Entscheidungsfindung in der EU auf politischer und praktischer Ebene berücksichtigt werden müssen.



Zentrale Ergebnisse E-PROTECT

Herausforderungen für den Schutz minderjähriger Opfer im Strafverfahren in Österreich, Bulgarien, Griechenland, Italien und Rumänien

- i. Es besteht Bedarf darin, die Kooperation und Zusammenarbeit der im Verfahren beteiligten Akteur/innen zu verbessern. (Polizei, Opferschutz, Judikatur, Rechtsanwält/inn/e/n).
- ii. **Opferschutzrichtlinien, Rechtsvorschriften und Opferschutzeinrichtungen sind häufig fragmentiert.** Vor allem besteht eine Konzentration des Angebots in Ballungsräumen sowie ein verminderteres Angebot im ländlichen Raum.
- iii. **Training für Expert/inn/en**, die in den Opferschutzprozess eingebunden sind, vor allem jene, die Befragungen mit den Kindern durchführen, ist besonders wichtig, um kindgerechte Justiz gestalten zu können. Derzeit ist in keinem der Mitgliedstaaten, welche im Projekt beteiligt waren, gesichert, dass Befragungen nur durch geschultes Personal durchgeführt werden.
- iv. Die Umsetzung der individuellen Bedürfnisse gemäß Art. 22 Opferschutzrichtlinie eröffnet verschiedene Herausforderungen für Mitgliedstaaten.
- v. Es existiert **ein Mangel an Evidenz basierter Forschung** im Opferschutzbereich in den meisten Mitgliedstaaten. Dies erschwert den Vergleich implementierter Standards der EU Mitgliedstaaten sowie die Identifizierung der Wirkung der EU-Opferschutzrichtlinie.

i. Kooperation und Zusammenarbeit

In allen untersuchten Ländern besteht ein dringender Verbesserungsbedarf zwischen den verschiedenen Akteur/innen, die an Verfahren mit minderjährigen Opfern beteiligt sind, wie Polizei, Opferhilfeorganisationen, Justiz und Rechtsanwält/inn/e/n. Darüber hinaus gibt es in den meisten Ländern keine klare Aufteilung der Zuständigkeiten zwischen den Hauptakteur/inn/e/n und keine klare bzw. einheitliche Verantwortung über das Fallmanagement. Multidisziplinäre und interdisziplinäre Zusammenarbeit wird häufig nicht als vorrangig angesehen, weil die weitreichenden Vorteile der Zusammenarbeit unter anderem nicht unmittelbar ersichtlich sind. Infolgedessen sind die finanziellen und personellen Ressourcen für Kooperationsmaßnahmen häufig unzureichend.

In Österreich zeigen die Forschungsergebnisse, dass einige Praktiker/innen aufgrund mangelnder Kooperation und begrenzter Kooperationsvereinbarungen wenig Verständnis für die Rollen, Aufgaben und Verfahren anderer Organisationen haben. Forschungsergebnisse in Bulgarien legen nahe, dass die fehlende klare Zuständigkeitsaufteilung zwischen den Beteiligten, zu einer Verwässerung der Zuständigkeiten führt, die mit der unklaren Verteilung monetärer Ressourcen einhergeht. Dieser Prozess wird durch fehlende Kommunikationskanäle sowohl aus Sicht mehrerer Behörden als auch in Bezug auf verschiedene Regionen des Landes, verstärkt. Darüber hinaus wird in den italienischen Forschungsergebnissen die mangelnde interdisziplinäre und behördenübergreifende Zusammenarbeit



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zwischen den verschiedenen beteiligten Akteur/inn/e/n als eine der Hauptherausforderungen hervorgehoben, die im Bereich des Schutzes minderjähriger Opfer gemeistert werden müssen. In Griechenland erkannten die Teilnehmer/innen der nationalen Seminare die Notwendigkeit, die Zusammenarbeit der Akteur/inn/e/n im Bereich des Kinderschutzes, durch die Implementierung eines kohärenten Netzes für den Informationsaustausch und die Verbesserung der angebotenen Dienste zu verstärken. Schließlich besteht auch in Rumänien der dringende Bedarf, die Zusammenarbeit zwischen den verschiedenen Akteur/inn/e/n zu verbessern.

i. Fragmentierung von Rechtsvorschriften, Richtlinien und Opferschutzeinrichtungen

In allen im Rahmen von E-PROTECT bewerteten Ländern gibt es spezielle Opferschutzeinrichtungen für Kinder, die Opfer von Straftaten sind. Diese Systeme sind jedoch häufig sehr fragmentiert und regional spezifisch. Eine der größten Herausforderungen in diesem Zusammenhang ist die Konzentration von Opferschutzeinrichtungen in Stadtzentren und das Fehlen von spezialisierten Einrichtungen in ländlichen Gebieten. Während zum Beispiel in Bulgarien One-Stop-Shop-Systeme existieren, die mit dem Barnahus-Modell vergleichbar sind, existieren diese Bemühungen ausschließlich aufgrund des Engagements von NRO und nicht als Teil einer staatlichen Kinderschutzpolitik, was die ungleiche Abdeckung verschärft.

Darüber hinaus gibt es in einigen Mitgliedstaaten auch eine Fragmentierung der Rechtsvorschriften, die im Rahmen von E-PROTECT bewertet werden. Aufgrund dieser Zersplitterung ist die Gewährleistung gleicher Standards in allen Regionen für den angemessenen Schutz der Opfer von Straftaten im Kindesalter manchmal herausfordernd. In Italien beispielsweise behindern die fragmentierten Maßnahmen und Interventionen in Bezug auf Kinderopfer die Wahrung der Kinderrechte in einigen Regionen. Auch in Griechenland zeigen die Forschungsergebnisse, dass es kein nationales Kinderschutzsystem gibt, das als Dachverband fungiert und die Bemühungen aller relevanten Behörden und Organisationen im Land koordiniert.

ii. Training für Praktiker/innen

Es ist allgemein anerkannt, dass für die Durchführung einer Befragung mit einem minderjährigen Opfer besondere Fähigkeiten und Kompetenzen erforderlich sind, dies beinhaltet beispielsweise Kenntnisse über die sich entwickelnden Fähigkeiten von Kindern oder das Beherrschung verschiedener Kommunikationstechniken. Unsere Forschungsergebnisse zeigen, dass derzeit in keinem der untersuchten Länder sichergestellt ist, dass nur Fachkräfte, die speziell für die Befragung minderjähriger Opfer geschult wurden, diese auch ausschließlich durchführen.

In Österreich ist nicht sichergestellt, dass alle Fachkräfte, die Befragungen mit Opfern von Kindern durchführen, eine entsprechende Schulung erhalten, insbesondere im ländlichen Raum. In Griechenland



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und Rumänien zeigen Forschungsaktivitäten, dass es an systematischer und flächendeckender Ausbildung von Fachleuten, einschließlich Polizei, Richter/innen und Staatsanwält/inn/e/n, mangelt. Schließlich wiesen Fachleute in Bulgarien darauf hin, dass Mechanismen für Supervision und Unterstützung der Fachkräfte für Kinderschutz fehlen. Letzteres behindert die praktische Umsetzung der Kinderrechte im Rahmen von E-PROTECT insofern, da die beauftragten Sozialarbeiter/innen nicht in der Lage sind, jeden Fall im Detail zu prüfen und dem zuständigen Gericht daher häufig nur grundlegende und oberflächliche Informationen über den Fall liefern können

iii. Erhebung individueller Bedürfnisse

Insgesamt zeigen die im Rahmen von E-PROTECT durchgeführten Untersuchungen, dass es Schwierigkeiten gibt, Artikel 22 der Opferschutzrichtlinie umzusetzen. Während einige im Rahmen von E-PROTECT bewertete Mitgliedstaaten spezifische Maßnahmen zur Umsetzung von Art. 22 implementiert haben, haben nicht alle Mitgliedstaaten Art. 22 vollständig umgesetzt.

In Bulgarien wird die individuelle Bedarfsermittlung nur bei Gewaltverbrechen gegen Kinder und bei Menschenhandel durchgeführt. Kinder, die nicht unmittelbar Opfer von Straftaten waren, werden daher nicht einer Ermittlung individueller Bedürfnisse unterzogen. Ebenso darf in Rumänien eine solche Ermittlung mit Kinderopfern nur bei sexuellem Missbrauch und häuslicher Gewalt durchgeführt werden. Ferner wurde in Italien in Untersuchungen im Rahmen von E-PROTECT das Fehlen einer klaren rechtlichen Definition von Gewalt gegen Kinder und eine fehlende rechtliche Umsetzung der individuellen Ermittlung der Bedürfnisse minderjähriger Opfer festgestellt. In Italien gibt es zudem keine ausdrückliche Bestimmung zur Umsetzung des Art. 22 Opferschutzrichtlinie im *black-letter law* gibt es eine individuelle Einschätzung in der Praxis. Lediglich in Österreich und Griechenland wurden im Zuge des Umsetzungsprozesses neue Bestimmungen zur Regelung des individuellen Begutachtungsverfahrens eingeführt. In beiden Staaten stellen die E-PROTECT-Forschungsergebnisse jedoch fest, dass die Bestimmungen sehr vage sind, so dass, einige Fragen offenbleiben. In Griechenland wurde jedoch gegen Ende des E-PROTECT-Projekts ein Ministerialbeschluss erlassen, in dem ein strukturiertes Protokoll mit Leitlinien für die Durchführung der individuellen Bedarfsermittlung eingeführt werden sollen.

iv. Nachholbedarf im Bereich evidenz-basierte Forschung im Opferschutz

Schließlich zeigen die Forschungsergebnisse von E-PROTECT, dass es in den meisten europäischen Ländern an evidenzbasierter Forschung im Bereich Opferschutz mangelt. Evidenz-basierte Forschung in diesem Bereich würde eine ideale Grundlage bieten, die in den EU-Mitgliedstaaten umgesetzten Standards zu vergleichen. Da keine entsprechenden Studien vorliegen, ist es schwierig das Ausmaß der Auswirkungen der Opferschutzrichtlinie auf die innerstaatlichen Rechtsvorschriften und Praktiken zu



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ermitteln, ohne vorliegende Anhaltspunkte dafür, wie sich die Opferhilfemaßnahmen unter Berücksichtigung auf das Erleben der Opfer, auswirken.

III. Methodologie

Im ersten Projektjahr wurden auf Basis von 28 Expert/inn/eninterviews in Österreich (3), Bulgarien (0), Italien (3), Griechenland (12) und Rumänien (10), sowie anhand von Sekundärliteratur, insgesamt 13 Forschungsberichte erstellt. Die ersten 11 vertieften Studien untersuchten die rechtliche Umsetzung der Opferschutzrichtlinie sowie die praktische Umsetzung der individuellen Begutachtung von minderjährigen Opfern von Straftaten gemäß Art. 22-24 der Opferschutzrichtlinie. Anschließend wurde ein vergleichender Bericht über die rechtliche Umsetzung sowie ein vergleichender Bericht zur praktischen Umsetzung erstellt, mit dem Ziel, gemeinsame Herausforderungen aufzuzeigen und vielversprechende Praktiken zu identifizieren. Auf der Grundlage dieser Ergebnisse wurde ein erster Entwurf einer "Methodik zur Rechte-basierten individuellen Begutachtung der Bedürfnisse von minderjährigen Opfern von Straftaten" entwickelt.

Im zweiten Projektjahr wurden in jedem der fünf Partnerländer mindestens sechs Seminare abgehalten. Insgesamt fanden 35 Seminare in Österreich (6), Bulgarien (7), Italien (7), Griechenland (6) und Rumänien (9) statt. Im Verlauf der ersten Seminarrunde war es Ziel die vorläufigen Ergebnisse zu präsentieren und Herausforderungen sowie gute Praxis zu identifizieren. Zu diesem Zweck wurden die Teilnehmer/innen in kleine Gruppen aufgeteilt und angewiesen nach einem Fragebogen eine konkrete Fallstudie zu diskutieren. Sowohl die Fallstudien als auch der Fragebogen wurden in allen Partnerländern verwendet und in die jeweiligen Landessprachen übersetzt. Teilnehmer/innen waren unterschiedliche Praktiker/innen aus dem Bereich des Kinderschutzes, wie Anwälte, Richter/innen, Staatsanwält/inn/e/n, Polizeibeamte sowie Fachkräfte aus Organisationen zum Schutz von Kindern, sowie der Psychologie und Medizin. Den Teilnehmer/innen wurde ein Protokoll mit den wichtigsten Diskussionspunkten mit dem Ersuchen um Validierung zugesandt.

Auf Grundlage der Ergebnisse der Seminare und Forschungsberichte des ersten Jahres wurde eine "Methodik zur Rechte-basierten individuellen Begutachtung der Bedürfnisse von minderjährigen Opfern von Straftaten" entwickelt. Diese Methode soll als Leitfaden für den Umgang mit minderjährigen Opfern im Sinne einer kinderfreundlichen Justiz dienen. Darüber hinaus wurden in allen fünf Partnerländern konkrete Vorschläge zur Verbesserung des Schutzes der minderjährigen Opfer in Strafverfahren formuliert. In einer zweiten Seminarrunde wurden die Methodik und die Policy Richtlinien diskutiert, mit dem Ziel die Ergebnisse abschließend vorzustellen und zu validieren.



IV. Policy Guidelines: Schutz von minderjährigen Opfern – konkrete Verbesserungsvorschläge für Österreich

E-PROTECT ist ein EU finanziertes Forschungsprojekt mit dem Ziel mehr Bewusstsein für die Rechte von minderjährigen Opfern zu schaffen, sowie den Austausch von ExpertInnen im Bereich des Opferschutzes zu stärken. Im Rahmen des zweijährigen Forschungsprojekts wurden konkrete Verbesserungsvorschläge für den Schutz von minderjährigen Opfern in Österreich zusammen mit ExpertInnen aus dem Bereich Opferschutz entwickelt. In Österreich wurde das Projekt von dem privaten non-profit Forschungsinstitut VICESSE (Vienna Centre for Societal Security) durchgeführt

Worauf basieren die Ergebnisse von E-PROTECT?

Die Ergebnisse von E-PROTECT basieren auf der Erhebung und Analyse eines zweijährigen Forschungsprozesses. Im ersten Jahr des Projektes wurden die rechtliche Umsetzung der Opferschutz-Richtlinie (Richtlinie 2012/29/EU) in Österreich, sowie die praktische Umsetzung der individuellen Begutachtung von minderjährigen Opfern (Artikel 22-24 Opferschutz-Richtlinie) untersucht. Die Basis für die ersten Berichte bildeten Sekundärliteratur und drei ExpertInnen-Interviews. Im zweiten Jahr des Projektes wurden drei Seminare in Wien, Linz und Graz abgehalten, in denen die Forschungsergebnisse präsentiert wurden und darauf basierend Diskussionen über die Herausforderungen des Schutzes von minderjährigen Opfern in Österreich angeleitet wurden. Die TeilnehmerInnen kamen aus den Bereichen Opferschutz, Recht, Polizei, Psychologie und Medizin. Auf Basis dieser Diskussionsrunden sowie der Forschungsergebnisse des ersten Projektjahrs wurden konkrete Verbesserungsvorschläge für den Schutz minderjährige Opfer in Österreich formuliert, welche wiederum in abschließenden Veranstaltungen in den gleichen drei Städten präsentiert und diskutiert wurden.

Ziel des Projektes war es eine Methode für einen rechtebasierten Ansatz in der individuellen Beurteilung der Bedürfnisse von minderjährigen Opfern zu entwickeln. Die Methode wurde als Leitfaden für den Umgang mit minderjährigen Opfern im Sinne einer kindgerechten Justiz entwickelt und kann auf der Webseite von VICESSE gratis heruntergeladen werden: <https://www.vicesse.eu/news/eprotect>.



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Probleme mit konkretem Handlungsbedarf in Österreich

- Kein Anspruch auf Prozessbegleitung für Kinder, die ZeugInnen von häuslicher Gewalt wurden (§§ 65 (1) lit. c iVm 66 (2) StPO)
- Fehlende Einrichtungen für Opfer von Menschenhandel unter 15 Jahren.
- Fehlende Schutzmaßnahmen für Kleinkinder (0 – 4 Jahre).
- Mangelhafte Informierung von minderj. Opfern über den Anspruch auf Prozessbegleitung.
- Fehlende Befugnis der Polizei an entsprechende Opferschutzorganisationen zu verweisen.
- Mangel an qualifizierten Sachverständigen sowie einheitliche Standards für Sachverständige.

Prozessbegleitung für indirekt betroffene Kinder

In Österreich haben Opfer, die unter die Opferkategorie des §65 Abs. 1 lit. c StPO fallen, keinen Anspruch auf kostenlose Prozessbegleitung. Hierzu zählen etwa Kinder, die keine direkten Opfer, aber ZeugInnen häuslicher Gewalt waren. Da vor allem Gewalt in der Familie nicht auf die unmittelbaren Opfer beschränkt ist, müssen Opferschutzmaßnahmen auch für indirekte Gewallopfer getroffen werden. **Aus diesem Grund sollte allen minderj. Opfern das Recht auf unentgeltlichen Zugang zu Prozessbegleitung gewährt werden.**

Einrichtungen für Opfer von Menschenhandel unter 15 Jahren werden benötigt

Derzeit existiert in Österreich keine Einrichtung, die den Auftrag hat, sich um Opfer von Menschenhandel, die unter 15 Jahre alt sind, zu kümmern. Auch bei der Polizei gibt es für sie keine spezialisierte Einheit. Minderj. Opfer von Menschenhandel sind so stark an ihre AusbeuterInnen gebunden, dass sie nur selten bis nie in der Lage sind Hilfe zu suchen. **Aus diesem Grund ist es notwendig sicherzustellen, dass adäquate Schutzeinrichtungen für diese Opfergruppe existieren.**

Umgang mit Kleinkindern (0-4 Jahre), die Opfer von Gewalt wurden

Kleinkinder im Alter zwischen 0-4 Jahren stellen eine besonders vulnerable Opfergruppe dar, da sie meist noch keine ausgeprägten Sprachfertigkeiten besitzen und daher nicht bzw. nur begrenzt aussagefähig sind. Der Umgang mit Kindern dieser Altersgruppe stellt einen zentralen Problembereich in Österreich dar. **Es müssen daher bessere Schutzmaßnahmen im Umgang mit Kleinkindern getroffen werden.**

Information über das Recht auf Prozessbegleitung

Aus der Praxis zeigt sich, dass die ausführliche Information über das Recht auf Prozessbegleitung oft im Stress der Situation der ErsteinschreiterInnen untergeht. Zudem besteht ein Unterschied darin, ob nur informiert wird, oder ob auch sichergestellt wird, dass die Information auch vom Opfer verstanden



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wird. **Maßnahmen sollten gesetzt werden, um sicherzustellen, dass jedes minderj. Opfer über sein bzw. ihr Recht auf psychosoziale und rechtliche Prozessbegleitung adäquat informiert wird.**

[Verweis von der Polizei an passende Opferschutzorganisationen](#)

Die Polizei darf nicht auf spezielle Opferschutzeinrichtungen verweisen, sondern darf sie nur eine Liste mit allen Einrichtungen aushändigen. Dieses Verbot für eine Einrichtung zu „werben“ hindert die Vermittlung zu Einrichtungen, die für das Opfer als besonders geeignet erscheinen. **Die Polizei sollte daher die rechtliche Befugnis haben Opfer an adäquate Opferschutzeinrichtungen zu verweisen.**

Kindgerechte Befragung

Das Strafverfahren ist prinzipiell täter- und deliktsorientiert. Jedoch ist es auch wichtig, die spezifischen Bedürfnisse des Opfers zu beachten - nicht nur für den Opferschutz, sondern auch für die Wahrheitsfindung. Denn die Aussage des Kindes ist ein zentrales Beweismittel im Strafverfahren, das durch kindgerechte Befragung in seiner Evidenz gestärkt werden kann.

- In Österreich ist derzeit nicht sichergestellt, dass die Person, die eine Befragung von einem minderj. Opfer durchführt, eine spezielle Ausbildung hierfür hat.
- Kindergerechte Räumlichkeiten bei Polizei und Gericht sind eine Rarität in Österreich.
- Es existieren in keiner, der im Rahmen der des Projekts untersuchten Regionen (Wien, Stmk, OÖ), klare Regelungen/Vorgaben für das Protokollieren einer Befragung.

[Bedarf an qualifizierten Sachverständigen sowie Festlegung der nötigen Standards](#)

In Österreich gibt es nur wenige für die Befragung von Kindern qualifizierte Sachverständige. Zudem sind Standards für SV nur sehr spärlich in Berufsgesetzen geregelt. **Es sollten Maßnahmen gesetzt werden, um sicherzustellen, dass mehr qualifizierte SV in Österreich arbeiten. Beispielsweise könnte eine verpflichtende Qualifizierung in Gesprächsführung mit minderj. Opfern eingeführt werden**

[Verpflichtende Schulungen und Ausbildungen für alle PraktikerInnen, welche mindj. Opfer befragen](#)

Es bedarf besonderer Fähigkeiten und Kompetenzen, um minderjährige Opfer zu befragen, etwa um auf ihre sich noch in der Entwicklung befindlichen Fähigkeiten einzugehen oder verschiedenen Kommunikationstechniken anzuwenden. Insbesondere bei Gericht und der Polizei, sollte daher veranlasst werden, dass eine speziell für die Vernehmung von minderj. Opfern ausgebildete Person die Befragung durchführt.



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Damit sichergestellt werden kann, dass alle Kinder – egal, ob Beschuldigte oder Geschädigte - immer von einer speziell geschulten Person betreut werden, bedarf es einer Umstrukturierung der Zuständigkeiten. So könnte zum Beispiel bei Gericht eine Sonderzuständigkeit für die Befragung von minderjährigen Opfern eingeführt werden. **Schulungen zur Befragung von minderjährigen Opfern sollten regelmäßig als Weiterbildungsaktivitäten stattfinden und verpflichtend alle Bediensteten sein, die minderj. Opfer befragen.**

[Training in Entwicklungspsychologie, Trauma-psychologie und Gedächtnispsychologie](#)

Zeitliche Begriffe können in der kindlichen Entwicklung noch nicht im Sprachgebrauch verankert sein bzw. kann von Kindern Zeit anders als von Erwachsenen wahrgenommen werden. Aus diesem Grund sollten **Schulungen speziell für RichterInnen und PolizistInnen in den Gebieten der Entwicklungspsychologie, Trauma-psychologie und Gedächtnispsychologie angeboten werden.**

[Multidisziplinäre und bereichsübergreifende Fortbildungen](#)

Obwohl es sinnvoll sein kann, spezielle Trainingsaktivitäten für eine Profession anzubieten, ist es **auch wichtig, gemeinsame Fortbildungs- bzw. Ausbildungsaktivitäten für verschiedene Berufsgruppen anzubieten**, um ein gemeinsames Fundament und ein multiprofessionelles Verständnis vom Schutz minderj. Opfer zu entwickeln. **Die verpflichtende Station in einer Opferschutzeinrichtung in der Ausbildung von RichteramtsanwärterInnen kann ebenfalls eine beinhalten.**

[Andreasgasse – österreichisches *best practice* mit Verbesserungspotenzial](#)

Obwohl die Andreasgasse eine österreichische *best practice* darstellt, gibt es noch Verbesserungspotenzial. Erstens sollte die Altersgrenze der Opfer, bei deren Befragung die speziell ausgebildeten PolizistInnen beigezogen werden müssen, auf 14 Jahre erhöht werden. Zweitens sollten die PolizistInnen der Andreasgasse nicht nur bei der Befragung als Assistentinnen beigezogen werden, sondern länger in den Fall involviert sein, um das Kind und sein Umfeld auch ein Stück weit zu begleiten.

[Mehr Zeit für das “Kennenlernen” vor der Befragung](#)

Vor der Befragung ist ein vertrauensvoller Beziehungsaufbau essenziell. Es wäre ein Schritt mehr in eine kindgerechte Justiz, wenn mehr Zeit für ein Kennenlernen vor der Befragung ermöglicht werden würde.

[Kindgerechte Räumlichkeiten: Warteräume in Gerichten und Polizeistationen](#)

Kindgerechte Räumlichkeiten bei Polizei und Gericht sind eine Rarität in Österreich. Beispielsweise existiert am Landesgericht Wien nur ein Warteraum für minderj. Opfer, der nicht kinderfreundlich



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eingerichtet ist. Derzeit wird dieser zudem auch von AnwältInnen für Gespräche mit Ihren MandantInnen genützt. Große Probleme bestehen zudem an Bezirksgerichten. Meist bestehen hier keine Warteräume für minderj. Opfer aufgrund mangelnder räumlicher Ressourcen. **Es sollten vor allem Bezirksgerichten genügend Ressourcen zur Verfügung gestellt werden, um adäquate Räumlichkeiten für mindj. Opfer zu schaffen.**

[Regelungen und Leitfäden für das korrekte Protokollieren der Befragung](#)

Es existieren in keiner, der im Projekt untersuchten Regionen (Wien, Steiermark, Oberösterreich), klare Regelungen, wie ein Protokoll zu verfassen ist. Protokolle sind jedoch sehr wertvoll für den Prozess, nicht nur für die Wahrheitsfindung, sondern auch für den Opferschutz. Etwa kann ein Protokoll wichtige Informationen für eine Sachverständige erhalten, welche über die Aussagefähigkeit eines minderj. Opfers entscheiden muss. Dies erspart wiederum eine etwaige wiederholte Befragung. **Es sollte eine Regelung erlassen werden, wie Befragungsprotokolle zu verfassen sind. Diese Regelungen sollten mit entsprechenden Schulungen umgesetzt werden.**

Protokolle sollten wörtlich aufgenommen werden, das bedeutet, Frage und Antwort separat zu erfassen. Ein Wortprotokoll trägt zur Wahrheitsfindung bei, da die Aussage und nicht die zusammengefasste, sinngemäß verständlich gemachte und dadurch von Bewertungen gefärbte Aussage, der vernehmenden Person, protokolliert ist.

Zudem könnte es hilfreich sein, wenn die vernehmende Person auch eigene Wahrnehmungen über Auffälligkeiten der befragten Person protokollieren würde (Scham, Schuldgefühle, Auffassung über die eigene Rolle, etc.).

Die individuelle Begutachtung in der Praxis

Die zentrale Frage der individuellen Begutachtung ist, wie bestimmt wird, auf welche Schutzmaßnahmen ein minderjähriges Opfer Anspruch hat. In der Praxis wird meist aus professioneller Erfahrung entschieden und gehandelt. Das Knowhow wird durch Individuen und kaum durch standardisierte Prozesse der Qualitätssicherung weitergetragen.

- Keine bzw. nicht praktikable Einsatzleitfäden.
- Intransparente und unsichere Praxis.

[Leitfaden für die individuelle Beurteilung der Bedürfnisse von minderj. Opfern gewünscht](#)

Grundsätzlich halten PraktikerInnen einen „Begutachtungskatalog“ zur Bedarfserhebung für störend. Die Bedürfnisse von Opfern sind dermaßen heterogen, dass ein standardisiertes Vorgehen im Sinne einer Check-Liste niemals gerecht werden könnte.



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Ein Leitfaden wäre jedoch als Unterstützung nützlich, um sicherzustellen, dass alle Faktoren in Betracht gezogen worden sind. PraktikerInnen könnten damit in ihrer Arbeit unterstützt werden. Leitfäden müssen gut aufbereitet werden, damit auch die NutzerInnen verstehen, wieso etwas befragt und erfragt wird. Zusätzlich **notwendig erscheinen dazu Sensibilisierungsseminare in der Polizei.**

Zusammenarbeit als wichtiges Fundament der kindgerechten Justiz

Eine wesentliche Voraussetzung für Opferschutz sowie für Ermittlungs- und Informationsprozesse sind Offenheit und Verständnis für die Strukturen und Rahmenbedingungen anderer Institutionen. In diesem Bereich besteht Verbesserungspotential in Österreich.

- Große regionale Unterschiede in der Entwicklung von Kooperations-Strukturen.
- Kein Überbau für die Vernetzung in vielen Regionen erschwert eine formelle Organisation.
- Unklarheiten über datenschutzrechtliche Bestimmungen verhindern Zusammenarbeit.
- Zentrales Problem sind mangelnde finanzielle Ressourcen sowie oft auch Unwissen über Vorteile von Vernetzung und Zusammenarbeit.

Finanziellen Ressourcen für multidisziplinäre und bereichsübergreifende Kooperation

Multidisziplinäre und bereichsübergreifende Zusammenarbeit ist eine wesentliche Voraussetzung für Opferschutz und Wahrheitsfindung. Vernetzung scheitert jedoch oft an fehlenden finanziellen Ressourcen. **Genügend finanzielle Ressourcen müssen für multidisziplinäre und bereichsübergreifende, formelle und informelle, sowie fallabhängige und fallunabhängige Zusammenarbeit auf mehreren Ebenen sichergestellt werden.**

Eine verantwortliche Institution für die Vernetzung als Überbau der Kooperation

Zudem sollte ein Überbau für die Vernetzung – eine Stelle, welche die Treffen organisiert und koordiniert – eingerichtet werden, bzw. sollte eine Institution mit dieser Aufgabe betraut werden. Eine entsprechende Finanzierung für diese Tätigkeit muss bereitgestellt werden.

Klärung der datenschutzrechtlichen Bestimmungen im Opferschutz

Letztlich stellen die neuen Datenschutzbestimmungen im Bereich Opferschutz ein großes Hindernis dar. Es herrschen Unsicherheiten bei den zuständigen Personen und Institutionen darüber, welche Information mit wem geteilt werden kann. **Daher sollten Maßnahmen gesetzt werden, um Klarheit über das Recht Daten auszutauschen im Bereich Opferschutz zu schaffen, sowie um sicherzustellen, dass der Datenschutz die professionelle Handlungspraxis nicht behindert.**



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

PROGRAMUL JUSTICE

GA Nr. 760270

Îmbunătățirea PROtecției copiilor –
vicTime ale criminalității
E-PROTECT

WP3: Cercetare și colectare de date

E-PROTECT – Ghid de politici

Lider WP3: VICESSE



Acest proiect este finanțat de UE. Această publicație a fost realizată cu sprijinul financiar al Programului Justiție (2014-2020) al Uniunii Europene. Conținutul acestei publicații este responsabilitatea exclusivă a autorilor și nu poate fi luată în niciun fel pentru a reflecta opiniile Comisiei Europene. [1]

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I. Introducere

E-PROTECT („Îmbunătățirea protecției copiilor - victime ale criminalității”) este un proiect de cercetare finanțat de UE între octombrie 2017 și septembrie 2019, cu scopul de a consolida aplicarea Directivei 2012/29 / UE (în Directiva privind victimele următoare sau VD) în cazul copiilor victime, precum și pentru a contribui la protecția globală a copiilor victime din Uniunea Europeană.

Unul dintre obiectivele esențiale ale proiectului este identificarea modului în care profesioniștii efectuează evaluarea individuală a copiilor victime conform art. Prin urmare, modul în care determină ce măsuri de protecție trebuie luate într-un anumit caz. Mai multe activități de cercetare au fost desfășurate în strânsă cooperare cu experți și practicieni în domeniul protecției copiilor victime, pentru a identifica provocări, precum și bune practici.

Cinci state membre ale UE au participat la cercetare, respectiv Bulgaria, Grecia, Italia, Austria și România. Acest document conține sugestii concrete pentru îmbunătățirea practicilor actuale de protecție a copiilor victime în aceste state membre.



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Constatări cheie: Direcții de politici pentru factorii de decizie din UE

Între octombrie 2017 și septembrie 2019, consorțialul E-PROTECT a desfășurat mai multe activități de cercetare cu scopul de a identifica modul în care Directiva privind victimele a fost transpusă în Austria, Bulgaria, Italia, Grecia și România. Un accent special a fost pus pe transpunerea evaluării individuale a victimelor pentru a *identifica nevoile specifice de protecție în conformitate cu Art. 22 din Directiva Victimelor*. Rezultatele cercetării arată că transpunerea directivei se dovedește a fi foarte diversă în aceste state membre.

Cu toate că au existat standarde diferite în toate statele membre evaluate, acestea au existat deja măsuri de sprijin pentru victime. Aceste cadre juridice distințe și terminologii preexistente în care Directiva a trebuit să fie pusă în aplicare au constituit una dintre provocările majore ale proceselor de transpunere, în special pentru încorporarea evaluării nevoilor individuale ale victimelor în legislația națională. Întrucât fiecare stat membru operează în propriul său context de infrastructuri de sprijin pentru victime, care existau deja înainte ca drepturile victimelor să fie reglementate la nivelul UE, fiecare țară produce inevitabil răspunsuri divergente pentru transpunerea și punerea în aplicare a Directivei despre victime. Aceste medii legislative și socio-practice naționale distințe în care practicienii și legiuitorii trebuie să acționeze, expun înțelegeri diferite ale responsabilităților statelor membre față de protejarea victimelor infracțiunii la nivel intern.

Un aspect cheie pentru elaborarea politicilor UE este, prin urmare, includerea și înțelegerea rolului pe care îl poartă contextul. Este important ca factorii de decizie din UE să ia în considerare diferenții factori contextuali, inclusiv diferite sisteme juridice care determină sisteme specifice de sprijin pentru victime pentru fiecare țară, în special atunci când obiectivul este atingerea standardelor minime. Sprijinul pentru victime variază în natură între statele membre și, prin urmare, factorii de decizie din 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.



Concluzii cheie ale E-PROTECT

Provocări cheie pentru protecția copiilor victim ale infracțiunilor în Austria, Bulgaria, Grecia, Italia și România

- i. Există necesitatea **îmbunătățirii cooperării și colaborării** între diferitele părți interesate implicate în procedurile care implică victime ale copiilor (poliție, sprijin pentru victime, justiție, avocați).
- ii. **Legislația, politicile și serviciile privind protecția victimelor sunt adesea foarte fragmentate.** În special, există o concentrare a serviciilor de protecție a victimelor în centrele orașului și lipsa acestora din urmă în zonele rurale.
- iii. **Instruirea pentru profesioniștii** care sunt implicați în procedurile care implică victime ale copiilor - în special cei care efectuează interviuri - este esențială pentru justiția favorabilă copilului. În prezent, în niciuna dintre țările evaluate în domeniul de aplicare al E-PROTECT, se asigură că numai profesioniști specializați special efectuează interviuri cu victimele copiilor.
- iv. **Transpunerea evaluării nevoilor individuale în conformitate cu Art. 22 din Directiva privind Victimele** a reprezentat mai multe provocări pentru statele membre.
- v. **Nu există cercetări bazate pe dovezi victimologice** în majoritatea statelor membre. Acest lucru face dificilă compararea standardelor puse în aplicare în statele membre ale UE, precum și identificarea impactului Directivei privind victimele asupra nivelului statelor membre ale UE.

i. Cooperare și colaborare

În toate țările evaluate, există o necesitate extremă de a îmbunătăți cooperarea și colaborarea între diferitele părți interesate și implicate în procedurile care implică victime ale copiilor, cum ar fi poliția, organizațiile de sprijinire a victimelor, sistemul judiciar și avocații. Mai mult, în majoritatea țărilor nu există o alocare clară a responsabilităților între părțile interesate principale și nici o definiție clară a unui manager de caz. Frecvent, colaborarea multidisciplinară și interdisciplinară nu este percepță ca prioritate, de asemenea, deoarece avantajele de anvergură ale cooperării nu sunt imediat evidente. Drept urmare, resursele financiare și umane pentru activitățile de cooperare sunt adesea insuficiente.



În Austria, rezultatele cercetărilor arată că unii practicieni au o lipsă de înțelegere pentru rolurile și procedurile altor organizații implicate în procedurile care implică copii victime din cauza activităților de cooperare limitată. Rezultatele cercetărilor din Bulgaria sugerează că lipsa unei alocări clare a responsabilităților între părțile interesate duce la o diluare a responsabilității și la trecerea interacțiunii între instituțiile și organizația competente. Acest proces este sporit și mai mult prin lipsa canalelor de comunicare nu numai din perspectiva mai multor agenții, ci și din punct de vedere al diferitelor regiuni ale țării. Mai mult, de asemenea, rezultatele cercetărilor italiene evidențiază slaba colaborare multidisciplinară și interinstituțională între diferenții actori implicați ca una dintre principalele provocări care trebuie abordate în domeniul protecției copiilor victimelor. În Grecia, participanții la seminarii naționale au recunoscut necesitatea creșterii cooperării părților interesate în domeniul protecției copilului prin crearea unei rețele coerente de schimb de informații și îmbunătățirea serviciilor furnizate ca fiind una dintre principalele provocări care trebuie abordate. În cele din urmă, în România există și necesitatea îmbunătățirii cooperării și colaborării între diferențele părți interesate implicate în procedurile care implică copii victime..

Fragmentarea legislației și a serviciilor speciale de protecție pentru copiii victime

În toate țările evaluate în domeniul E-PROTECT, există servicii specifice de protecție a victimelor pentru copiii victime ale infracțiunii. Cu toate acestea, aceste sisteme sunt adesea foarte fragmentate și specifice la nivel regional. Una dintre provocările majore în această privință este aceea că există o concentrare a serviciilor de protecție a victimelor în centrele orașului și lipsa acestora din urmă în zonele rurale. În timp ce, de exemplu, în Bulgaria există sisteme de ghișe unic comparabile cu modelul Barnahus, aceste eforturi există doar ca eforturi ale ONG-urilor individuale și nu ca parte a politicii de stat pentru protecția copilului, exacerbând acoperirea inegală..

Mai mult, există și o fragmentare a legislației în unele state membre, evaluată în domeniul de aplicare al E-PROTECT. Datorită acestei fragmentări, asigurarea unei protecții adecvate a copiilor victime ale infracțiunii reprezintă uneori provocarea de a garanta standarde egale în toate regiunile. În Italia, de exemplu, politice și intervențiile fragmentate privind victimele copiilor împiedică respectarea drepturilor copilului în unele regiuni. De asemenea, în Grecia, rezultatele cercetărilor arată că lipsește un sistem național de protecție a copilului, care va servi drept umbrelă și va coordona eforturile tuturor agenților și organizațiilor relevante din țară.



ii. Instruirea practicienilor

În general, este recunoscut că necesită abilități și competențe speciale pentru a conduce un interviu cu un copil victimă, cum ar fi de exemplu cunoștințe despre capacitatele în evoluție ale copiilor sau despre diferite tehnici de comunicare. Rezultatele cercetărilor noastre arată că, în prezent, în niciuna dintre țările evaluate, nu este asigurat că numai profesioniștii care au fost instruiți în mod special în efectuarea interviurilor cu victimele copiilor conduc aceste interviuri.

În Austria, nu este asigurat faptul că toți profesioniștii, care efectuează interviuri cu copii victime, au primit o pregătire în acest sens, în special în mediul rural. În Grecia și România, activitățile de cercetare dezvăluie faptul că există o lipsă de pregătire sistematică a profesioniștilor, inclusiv a poliției, judecătorilor și procurorilor. În cele din urmă, în Bulgaria, profesioniștii au subliniat că lipsesc mecanisme de supraveghere și sprijin pentru profesioniștii din protecția copilului. Aceasta din urmă împiedică implementarea practică a drepturilor copilului în lumina E-PROTECT, deoarece asistenții sociali desemnați nu sunt în măsură să examineze în detaliu fiecare caz și, deseori, pot furniza Curții competente informații esențiale ale cazului.

iii. Evaluarea nevoilor individuale

În general, cercetările efectuate în domeniul E-PROTECT arată că există dificultăți în transpunerea și implementarea Ar. 22 din VD. În timp ce unele state membre evaluate în domeniul E-PROTECT au întreprins măsuri specifice pentru transpunerea art. 22, nu toate statele membre au pus în aplicare pe deplin art. 22 VD.

În Bulgaria, evaluarea nevoilor individuale se realizează numai în cazuri de crime violente împotriva copiilor și în cazul traficului de persoane. Astfel, copiii care nu au fost victimă directă a infracțiunii nu vor fi supuși unei evaluări individuale. De asemenea, în România, o evaluare individuală a copiilor victime trebuie efectuată doar în cazul abuzurilor sexuale și violenței domestice. Mai mult, în Italia, cercetările efectuate în cadrul E-PROTECT subliniază lipsa unei definiții legale clare a violenței împotriva copiilor și lipsa unei transpuneri legale a procedurii individuale de evaluare. Deși în Italia nu există o dispoziție explicită care să transpună art. 22 VD în legea cu litere negre, există o evaluare individuală în practică. Numai în Austria și Grecia au fost introduse noi dispoziții care reglementează procedura de evaluare individuală în timpul procesului de transpunere. În ambele state, însă, rezultatele cercetării E-PROTECT consideră că dispozițiile sunt foarte vagi, lăsând câteva soluții nesoluționate. Cu toate acestea, în Grecia,





spre sfârșitul proiectului E-PROTECT, a fost emisă o decizie ministerială, care a introdus un protocol structurat care conține linii directoare privind modul în care trebuie efectuată evaluarea nevoilor individuale

iv. Lipsa cercetărilor victimologice bazate pe dovezi

În cele din urmă, rezultatele cercetării E-PROTECT dezvăluie faptul că lipsește cercetarea victimologică bazată pe dovezi în majoritatea țărilor europene. Cercetările bazate pe dovezi victimologice ar constitui o bază ideală pentru compararea standardelor implementate în statele membre ale UE. Înțelegerea gradului de impact al Directivei despre victime asupra legislațiilor și practicilor interne este dificil de constatat fără a se dovedi impactul măsurilor de asistență a victimelor asupra experienței victimei și a lipsei de cercetare în acest sens.



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II. Metodologie

În primul an al proiectului, au fost realizate un număr de treisprezece rapoarte de cercetare pe baza a 28 de interviuri efectuate de experți în Austria (3), Bulgaria (0), Italia (3), Grecia (12) și România (10). ca literatură secundară. Primele unsprezece studii au examinat implementarea legală a Directivei privind victimele, precum și implementarea practică a evaluării individuale a copiilor victime, în conformitate cu articolele 22 - 24 VD. Ulterior, a fost pregătit un raport comparativ cu privire la implementarea legală și un raport comparativ cu privire la implementarea practică a evaluării individuale. Scopul acestor studii a fost de a evidenția provocările comune și de a identifica practici promițătoare. Pe baza acestor rezultate, a fost elaborat un prim proiect al „*Metodologiei pentru o evaluare individuală bazată pe ideea de drepturi a nevoilor copiilor victime ale criminalității*”.

În al doilea an al proiectului, au avut loc cel puțin șase seminarii în fiecare din cele cinci țări partenere. În total, au avut loc 35 de seminarii în Austria (6), Bulgaria (7), Italia (7), Grecia (6) și România (9). Pe parcursul primei runde de seminarii, scopul a fost de a prezenta concluziile preliminare ale cercetării, precum și de a identifica provocări și bune practici. În acest scop, participanții la seminarii au fost împărțiți în grupuri mici și au fost instruiți să discute un studiu de caz concret în urma unui chestionar. Ambele, studiile de caz și chestionarul, au fost utilizate în toate țările partenere, traduse în limbile locale. Participanții la seminarii au fost profesioniști implicați în protecția copiilor victime ale criminalității, inclusiv avocați, judecători, procurori, ofițeri de poliție, precum și profesioniști care lucrează în organizații de protecție a victimelor copilului, psihologie și medicină. Toți participanții au primit un protocol care conține principalele puncte de discuție cu o cerere de validare.

Pe baza constatărilor din seminare și a rezultatelor cercetării din primul an al proiectului, a fost elaborată o „*Metodologie pentru o evaluare individuală bazată pe drepturi a nevoilor copiilor victime ale criminalității*”. Această metodă poate fi înțeleasă ca un ghid pentru tratarea copiilor victime în sensul unei justiții prietenoase pentru copii. În plus, au fost formulate sugestii concrete de îmbunătățire a protecției copiilor victime în procedurile penale în toate cele cinci țări partenere. Metoda și orientările politice au fost discutate într-o a doua rundă de seminarii desfășurate în cursul anului 2019, cu scopul de a prezenta și de a valida rezultatele.



1. România

Sumar Executiv

Key Findings and E-PROTECT opinions

- Legiuitorul român ar trebui să îmbunătășească legislația națională pentru a răspunde corect tuturor nevoilor copiilor victime ale infracțiunii. Aceste măsuri ar trebui să includă: simplificarea procedurilor și aplicarea responsabilităților și a măsurilor în prevenirea, tratarea și monitorizarea copiilor victime ale infracțiunii;
- Este necesar să se asigure instruirile naționale pentru profesioniștii care lucrează cu copii victime ale infracțiunii, precum lucrători sociali, avocați, polițiști, judecători și procurori, psihiatri pentru copii și psihologi. Aceste instruiriri ar trebui să pună accentul pe interacțiunea dintre diferite profesii, pentru a îmbunătăți cooperarea.

Transpunerea Art 22. din VD în România

România	
Există o evaluare individuală a tuturor victimelor?	România are prevederi naționale privind procedurile individuale de evaluare și măsuri speciale. Cu toate acestea, aceste dispoziții nu sunt aplicabile pentru toate tipurile de infracțiuni împotriva copiilor. Dispozițiile existente sunt disponibile în cadrul „Metodologiei-cadru pentru prevenirea și intervenția multidisciplinară și a rețelelor în violență copiilor și violența în familie” și „Metodologia intervențională multidisciplinară și interinstituțională privind copiii expuși și afectați în situații de risc operațional prin muncă, copii victime ale traficului, precum și copiii migranți români, victime ale altor forme de violență pe teritoriul altor state”.
Cine efectuează evaluarea?	Evaluarea inițială este realizată de Direcția Generală de Asistență Socială și Protecția Copilului. După înregistrarea cazului și încheierea evaluării inițiale, se va efectua o evaluare detaliată, cuprinzătoare și multidimensională a situației copilului victimă. Directorul GDSACP desemnează sau numește un manager de caz care poate fi angajat de instituție sau de un organism privat acreditat / organizație neguvernamentală acreditată sau forme independente de exercitare a profesiei de asistent social recunoscut de lege.
Există dispoziții care reglementează modul în care ar trebui să se desfășoare evaluarea?	Nu.



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Ce criterii trebuie luate în considerare la evaluarea nevoilor specifice de protecție?	Nu există dispoziții specifice legate de criteriile care trebuie luate în considerare la evaluarea nevoilor specifice de protecție.
Copiii sunt considerați victime deosebit de vulnerabile <i>ex lege</i> ?	Da.

Policy Recommendations: Transposing the Victims Directive

It is not possible to formulate a clear recommendation for national policymakers by providing a specific amendment of legislation in order to comply with the Victims' Directive. Whilst there is also the need to update and amend specific laws, there exists an even greater need to create new legislation and measures to ensure that all child victims of crime, not only child victims of domestic violence, are granted special protection measures. The Romanian legislation offers a detailed scheme of intervention for the cases of victims of domestic violence but not for any other types of crimes.

More so, whilst there exists a need to improve, update, amend, and add to the current legislation, also measures for enforcement, and thus the actual implementation, are essential. Most importantly, there exists a need that sufficient budget is allocated for the actions proposed. Only with the necessary budget, regional institutions will have the resources to train people accordingly to the recommendation and therefore the law.

Since 2018 county councils are required to allocate enough and proper resources for the protection of victims of domestic violence, taking into account the number of victims in that region and correlating these numbers with the actual centres in the region as well as with specialized staff that can interact and help victims. Although, this action is required according to the national legislation, no such allocation has been made properly, taking into account the number of victims and their needs. That being said, a series of complex solutions should be taken into consideration, in order to ensure that the problems are addressed from top to bottom.

Individual needs assessment: Putting the child in the centre of the proceeding

In Romania there exists no generally applicable individual needs assessment procedure at national nor regional level. Usually, the best approach towards cooperation is selected by professionals (having in mind their current resources available), whilst always putting the child's interest in the centre. There exists strong collaboration between social workers and police, counsellor and prosecutor in individual cases, thus,





ensuring that the child will remain feeling safe from the beginning of the procedure or trial and will not be put in the position to relive the trauma.

Although there exist the good practices of “Blue Rooms” in Romania, these rooms are not available for hearings with all children. In fact, most children do not have the option to be heard in a “Blue Room”. Therefore, professionals usually try to assist and help the child as much as they can by allowing the hearing to take place in quite spaces or rooms, so that they avoid the re-traumatization by having the child in the same room as the perpetrator. Also, in order to avoid asking the same questions, professionals usually exchange opinions and ideas amongst them in order to provide the best solutions and services to the child victim of crime.



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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

**E-PROTECT – Raccomandazioni di
riforma politica**

WP3 Leader: VICESSE



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I. Introduzione

E-PROTECT ('Enhancing PROtection of Children – vicTims of crime – rafforzare la protezione dei minorenni vittime di reato') è un progetto di ricerca, finanziato dall'UE, sviluppatosi tra ottobre 2017 e settembre 2019 con l'obiettivo di rafforzare l'applicazione della direttiva 2012/29/EU (di seguito Direttiva Vittime o DV) e di contribuire alla piena protezione delle vittime minorenni in tutta l'Unione Europea.

Uno degli obiettivi principali del progetto è quello di identificare le modalità con le quali i professionisti effettuano la valutazione individuale delle vittime minorenni ai sensi dell'art. 22 DV, quindi, come determinano quali misure di protezione devono essere adottate in un caso concreto. Sono state condotte diverse attività di ricerca, in stretta collaborazione con esperti e professionisti che operano nel campo della protezione delle vittime minorenni, al fine di identificare le sfide e le buone pratiche. Sono cinque gli Stati Membri dell'UE che hanno partecipato alla ricerca, precisamente Bulgaria, Grecia, Italia, Austria e Romania. Il presente documento contiene suggerimenti concreti per il miglioramento delle attuali pratiche di protezione delle vittime minorenni in tali Stati membri.



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II. Principali risultati: Raccomandazioni di riforma politica per le Istituzioni

Tra ottobre 2017 e settembre 2019 il partenariato di E-PROTECT ha condotto diverse attività di ricerca con l’obiettivo di analizzare come la direttiva vittime è stata recepita in Austria, Bulgaria, Italia, Grecia e Romania. Un’attenzione particolare è stata posta alla trasposizione della valutazione individuale delle vittime per identificarne le specifiche esigenze di protezione ai sensi dell’art. 22 DV. I risultati della ricerca dimostrano che il recepimento della Direttiva è avvenuto in maniera molto diversificata nei suddetti Stati Membri.

Sebbene esistano norme diverse in ciascuno degli Stati membri, tutti avevano già pre-esistenti misure di sostegno alle vittime. La diversa terminologia e i diversi contesti giuridici di riferimento, all’interno dei quali la direttiva doveva essere attuata, hanno rappresentato una delle principali sfide, in particolare con riferimento all’inserimento, all’interno della legislazione nazionale, della previsione della valutazione delle esigenze individuali delle vittime. Poiché ogni Stato membro opera nel proprio contesto di servizi di supporto alle vittime, preesistenti alla disciplina emanata a livello europeo in materia di diritti delle vittime, le risposte prodotte da ciascun Paese, con riferimento al recepimento e all’implementazione della DV, sono inevitabilmente divergenti. Questi distinti contesti nazionali, legislativi e sociali, in cui gli operatori professionali e i legislatori devono agire, mostrano concezioni diverse circa la responsabilità degli Stati membri nei confronti della protezione delle vittime di reati a livello nazionale.

Un aspetto chiave per l’elaborazione delle politiche dell’UE è quindi quello di includere e comprendere la funzione del contesto. È importante che i decisori politici dell’UE considerino i diversi fattori di contesto, compresi i diversi sistemi giuridici che determinano i sistemi di sostegno alle vittime, specifici del paese, soprattutto quando l’obiettivo è quello di raggiungere standard minimi. La tipologia di sostegno alle vittime varia tra gli Stati membri e, pertanto, i responsabili politici dell’UE devono tenere conto dei diversi contesti e ambienti per sviluppare strumenti più flessibili, in grado di influenzare le politiche e le pratiche degli Stati membri.



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Principali risultati di E-PROTECT

Principali sfide per la protezione dei minorenni vittime di reato in Austria, Bulgaria, Grecia, Italia e Romania

- i. Vi è la necessità di **implementare la cooperazione e la collaborazione** tra i diversi soggetti coinvolti nelle procedure che coinvolgono le vittime minorenni (polizia, organizzazioni di sostegno alle vittime, magistratura, avvocati).
- ii. **La legislazione, le politiche e i servizi in materia di protezione delle vittime sono spesso molto frammentati.** In particolare, vi è una concentrazione di servizi di protezione delle vittime nei centri cittadini e la mancanza di questi nelle zone rurali.
- iii. **La formazione dei professionisti** coinvolti in procedure che riguardano le vittime minorenni – in particolare di coloro che effettuano gli interrogatori – è fondamentale per dare attuazione ad una giustizia a misura di minore. Attualmente, in nessuno dei paesi esaminati nell'ambito di E-PROTECT, è assicurato che solo i professionisti appositamente formati conducano gli ascolti dei minorenni vittima.
- iv. **La trasposizione dell'art. 22 della Direttiva Vittime relativo alla valutazione delle esigenze individuali** ha posto diverse sfide agli Stati Membri.
- v. Nella maggior parte degli Stati membri **mancano ricerche basate su riscontri oggettivi in materia di vittime.** Ciò rende difficile confrontare le norme attuate nei diversi Stati membri dell'UE e identificare l'impatto della Direttiva Vittime al loro interno.

i. Cooperazione e collaborazione

In tutti i paesi oggetto di analisi, è emersa l'assoluta necessità di rafforzare la cooperazione e la collaborazione tra i diversi soggetti coinvolti in procedure che riguardano le vittime minorenni, come la polizia, le organizzazioni di sostegno alle vittime, la magistratura e gli avvocati. Inoltre, nella maggior parte dei Paesi non esiste una chiara ripartizione delle responsabilità tra i principali attori coinvolti, né una chiara definizione di chi sia il soggetto supervisore del caso. Spesso, la collaborazione multidisciplinare e interdisciplinare non viene percepita come una priorità, anche perché i vantaggi e i benefici della



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cooperazione non sono immediatamente visibili. Di conseguenza, le risorse finanziarie e umane sono spesso insufficienti per realizzare una cooperazione.

In Austria, i risultati della ricerca hanno mostrato che alcuni professionisti non hanno cognizione dei ruoli e dei compiti svolti dalle altre organizzazioni coinvolte nelle procedure relative ai minorenni vittime proprio a causa della scarsa cooperazione esistente. I risultati della ricerca in Bulgaria hanno evidenziato come la mancanza di una chiara ripartizione delle responsabilità, tra le parti coinvolte, porti a un indebolimento delle stesse e di conseguenza a scaricare le responsabilità tra le diverse istituzioni e/o organizzazione competenti. Questo processo è ulteriormente appesantito dalla mancanza di canali di comunicazione non solo dal punto di vista multi-agenzia, ma anche in considerazione della molteplicità di regioni esistenti all'interno del paese. Inoltre, anche i risultati della ricerca italiana hanno individuato la scarsa cooperazione multidisciplinare e inter-agenzia, tra i diversi attori coinvolti, come una delle principali sfide che deve essere affrontata nel campo della protezione delle vittime minorenni. In Grecia, i partecipanti ai seminari nazionali hanno individuato come la necessità di aumentare la cooperazione tra tutti gli attori chiave coinvolti nella protezione dei minorenni, attraverso la creazione di una rete per lo scambio di informazioni e la valorizzazione dei servizi forniti, rappresenti una delle principali sfide da affrontare. Infine, anche in Romania è emersa la necessità di implementare la cooperazione e la collaborazione tra i diversi soggetti coinvolti in procedure che coinvolgono le vittime minorenni.

ii. **Frammentazione della legislazione e dei servizi di assistenza ai minorenni vittima**

In tutti i paesi coinvolti nell'ambito di E-PROTECT esistono specifici servizi di assistenza per i minorenni vittime di reati. Tuttavia, questi servizi sono spesso molto frammentati e differenziati a livello regionale. Una delle maggiori difficoltà a questo proposito è che esiste una concentrazione di servizi di protezione delle vittime nei centri urbani e la mancanza di questi ultimi nelle zone rurali. In Bulgaria, ad esempio, esistono sistemi “a sportello unico” simili al modello Barnahus, ma si tratta di iniziative individuali di singole ONG e non rappresentano una politica nazionale di protezione dei minori, esasperando la mancanza di uniformità.

Inoltre, in alcuni Stati membri oggetto di analisi nell'ambito del progetto E-PROTECT è emersa una frammentazione a livello legislativo. A causa di questa frammentazione, garantire un'adeguata protezione



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dei minorenni vittime di reato che offre standard uniformi in tutte le regioni rappresenta una sfida importante. In Italia, ad esempio, le politiche e gli interventi frammentati riguardanti le vittime minorenni ostacolano la tutela dei loro diritti in alcune regioni. Anche in Grecia, i risultati della ricerca hanno dimostrato che manca un sistema nazionale di protezione dei minori, che possa coordinare gli sforzi di tutte le agenzie e le organizzazioni rilevanti nel paese.

iii. Formazione dei professionisti

Svolgere un colloquio con un minorenne vittima richiede particolari competenze, come ad esempio la conoscenza delle sue capacità evolutive o delle diverse tecniche di comunicazione. La nostra ricerca ha mostrato come attualmente, in nessuno dei paesi oggetto di analisi, sia garantito che solo i professionisti adeguatamente formati a condurre i colloqui con i minorenni vittima effettuino tali ascolti.

In Austria, non viene garantito che tutti i professionisti, che svolgono interrogatori con le vittime minorenni, abbiano ricevuto tale formazione, in particolare questo avviene nelle zone rurali. In Grecia e in Romania, è emersa la mancanza di una formazione continua dei professionisti, compresi la polizia, i giudici e i pubblici ministeri. Infine, in Bulgaria, i professionisti hanno sottolineato che mancano meccanismi di supervisione e sostegno ai professionisti coinvolti nella protezione dei minorenni. Questo ostacola l'attuazione pratica dei diritti dei minorenni alla luce del progetto E-PROTECT in quanto gli assistenti sociali incaricati non sono in grado di esaminare ogni caso in maniera approfondita e spesso, di conseguenza, possono fornire al Tribunale competente solo informazioni di base del caso.

iv. Valutazione individuale dei bisogni

Nel complesso, la ricerca condotta nell'ambito di E-PROTECT ha mostrato che esistono difficoltà nel recepimento ed implementazione dell'articolo 22 DV. Mentre alcuni Stati membri analizzati nell'ambito di E-PROTECT hanno adottato specifiche misure al fine di recepire l'art. 22, altri non hanno dato piena attuazione a tale articolo.

In Bulgaria, la valutazione individuale dei bisogni viene effettuata solo in caso di reati violenti contro i minorenni e nel caso delle vittime di tratta. Pertanto, i minorenni che non sono state vittime dirette di tali



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reati non saranno soggetti ad una valutazione individuale. Allo stesso modo, in Romania la valutazione individuale dei minorenni vittime deve essere condotta solo in caso di abusi sessuali e violenza domestica. Inoltre, in Italia, la ricerca condotta nell'ambito di E-PROTECT ha evidenziato la mancanza di una chiara definizione giuridica della violenza contro i minori e la mancanza di recepimento giuridico della procedura di valutazione individuale. Non esiste dunque una disposizione scritta esplicita di recepimento dell'art. 22 DV ma nella pratica la valutazione individuale esiste. Solo in Austria e in Grecia nel corso del procedimento di recepimento della Direttiva sono state introdotte nuove disposizioni che disciplinano la procedura di valutazione individuale. In entrambi gli Stati, tuttavia, dalla ricerca è emerso che tali disposizioni sono piuttosto generiche, lasciando diverse questioni irrisolte. Tuttavia, in Grecia, verso la fine del progetto E-PROTECT, è stata emessa una decisione ministeriale che ha introdotto un protocollo strutturato che prevede linee guida su come condurre la valutazione individuale dei bisogni.

v. La mancanza di una ricerca scientifica sulla vittima

Altro aspetto emerso dai risultati della ricerca E-PROTECT è relativo alla mancanza, nella maggior parte dei paesi europei, di una ricerca scientifica sulle vittime. Una ricerca di questo tipo costituirebbe una base ideale per procedere al confronto delle norme attuate negli Stati membri dell'UE. Comprendere l'entità dell'impatto della Direttiva Vittime sulle legislazioni e sulle pratiche nazionali è difficile da accettare senza un'adeguata ricerca in merito e senza un riscontro circa l'impatto che le misure di assistenza alle vittime hanno sulle loro esperienze.



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III. Metodologia

Nel primo anno del progetto sono stati realizzati 13 report di ricerca sulla base delle consultazioni con 28 esperti realizzate in Austria (3), Bulgaria (0), Italia (3), Grecia (12) e Romania (10) e sulla base della letteratura scientifica. I primi undici studi hanno analizzato il recepimento giuridico della Direttiva Vittime, nonché l'attuazione pratica della valutazione individuale delle vittime minorenni ai sensi degli articoli 22 - 24 DV. Successivamente, è stata redatta una relazione comparativa sullo stato di recepimento legislativo e una relazione comparativa sull'attuazione pratica della valutazione individuale. Lo scopo di tali analisi era quello di evidenziare le sfide comuni e di identificare le pratiche promettenti. Sulla base di questi risultati, è stata sviluppata una prima bozza di una *"metodologia per una valutazione individuale e basata sui diritti dei bisogni dei minorenni vittime di reato"*.

Nel corso del secondo anno del progetto si sono svolti almeno sei seminari in ciascuno dei cinque paesi partner. In totale si sono svolti 35 seminari; in Austria (6), Bulgaria (7), Italia (7), Grecia (6) e Romania (9). Nel corso del primo ciclo di seminari, l'obiettivo era quello di presentare i risultati preliminari della ricerca e di identificare le sfide e le buone pratiche. A tal fine, i partecipanti ai seminari sono stati divisi in piccoli gruppi e invitati ad analizzare e discutere un caso di studio concreto con l'aiuto di una serie di domande. Sia i casi di studio che le domande utilizzate erano le stesse in tutti i paesi partner, sebbene tradotti nelle rispettive lingue locali. I partecipanti erano professionisti operanti nella protezione dei minorenni vittime di reato, tra cui avvocati, giudici, pubblici ministeri, funzionari di polizia, nonché professionisti che lavorano in organizzazioni volte alla protezione delle vittime minorenni, esperti di psicologia e medicina. A tutti i partecipanti è stato inviato un protocollo contenente i principali punti di discussione con una richiesta di verifica.

Sulla base dei risultati dei seminari e dei risultati della ricerca condotta durante il primo anno del progetto, è stata sviluppata una *"metodologia per la valutazione individuale e basata sui diritti dei bisogni dei minorenni vittime di reato"*. Questa metodologia può essere utilizzata come una mappa quando si ha a che fare con le vittime minorenni in un'ottica di una giustizia a misura di minore. Inoltre, in tutti e cinque i paesi partner sono stati formulati suggerimenti pratici per migliorare la protezione delle vittime minorenni nei procedimenti penali. Tale metodologia e gli orientamenti pratici sono stati oggetto di analisi e discussione durante una seconda tornata di seminari tenutasi nel corso del 2019 con l'obiettivo di presentare e convalidare i risultati raggiunti.



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IV. Orientamenti pratici per l'Italia

Nel corso del progetto biennale di ricerca, il gruppo di ricerca ha lavorato a stretto contatto con i professionisti operanti nelle procedure che coinvolgono le vittime minorenni per identificare orientamenti pratici concreti volti a rafforzare la protezione delle vittime minorenni nell'Unione europea.

Di seguito saranno illustrati gli orientamenti pratici per l'Italia. Dopo una sintesi contenente gli ambiti più importanti da riformare, vengono individuate sfide concrete e forniti suggerimenti di miglioramento. È stato inoltre compiuto uno sforzo particolare per evidenziare le pratiche più promettenti di ciascun paese.



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1. Italia

Sintesi

Principali risultati e suggerimenti emersi dal progetto E-PROTECT

I decisori politici italiani dovrebbero:

- Elaborare e sviluppare una riforma strutturale del sistema di protezione dei minorenni al fine di istituire a livello nazionale un sistema di supporto e assistenza ai minorenni vittime integrato, specializzato e a misura di minore.
- Prevedere un sistema qualificato di formazione continua nell'ambito di un sistema multidisciplinare e inter-agenzia.
- Creare un sistema centralizzato di raccolta dei dati sulla violenza contro i minorenni che consenta di analizzare e monitorare il fenomeno con il coinvolgimento delle università e di altri esperti accreditati.

Il legislatore italiano dovrebbe:

- Armonizzare e integrare le leggi sulla protezione dei minorenni dalla violenza e dalla criminalità, introducendo una definizione giuridica specifica di violenza contro i minorenni;
- Intraprendere una riforma legislativa per specificare i meccanismi di cooperazione inter-agenzia, individuando il soggetto incaricato di effettuare e supervisionare tale coordinamento e definire ruoli, funzioni e responsabilità;
- Introdurre elementi giuridici per garantire che l'interesse superiore del minore sia una considerazione preminente nell'ambito dei procedimenti penali che coinvolgono le vittime minorenni.



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Recepimento dell'art 22 DV in Italia

Italia	
Esiste una valutazione individuale per tutte le vittime?	Non vi è una precisa norma giuridica che recepisca per iscritto l'art. 22 DV. Nella prassi le vittime sono sottoposte ad una valutazione individuale se considerate particolarmente vulnerabili, compresi i minorenni.
Chi conduce le valutazione?	Non esiste alcuna disposizione giuridica che determini l'autorità responsabile per condurre la valutazione. In pratica, la stessa viene effettuata dalle istituzioni pubbliche competenti (giudice, pubblico ministero, servizi sociali e polizia giudiziaria).
Vi sono disposizioni che disciplinano le modalità secondo le quali la valutazione dovrebbe avvenire?	No.
Quali sono i criteri da prendere in considerazione nell'effettuare la valutazione?	Alcune indicazioni sono fornite dall'art. 90-quater C.p.p., ma poiché sono piuttosto generiche, le istituzioni e le organizzazioni locali hanno cercato di elaborare i propri criteri.
Le Vittime minorenni sono considerate particolarmente vulnerabili per legge?	Si, ai sensi dell'art. 90-quater C.p.p.

Raccomandazioni politiche: trasposizione della Direttiva Vittime

La Direttiva Vittime è stata recepita in maniera piuttosto superficiale nella legislazione italiana attraverso il decreto legislativo del 15 dicembre 2015 n. 212. La trasposizione si è basata su un'interpretazione generica del diritto nazionale rispetto alle disposizioni della DV. Di conseguenza, questo processo burocratico ha introdotto solo alcune modifiche nella legislazione italiana che, sotto molti aspetti, era già in linea con la direttiva UE. Tuttavia, il legislatore italiano ha perso un'occasione per armonizzare le leggi sulla protezione dei minorenni contro la violenza e la criminalità e per regolamentare ulteriormente alcuni principi e garanzie introdotte dalla direttiva.

L'Italia ha una legislazione sui minorenni vittime di reato molto frammentata e poco armonica; le vittime minorenni non sono considerate vittime vulnerabili in quanto tali. La loro particolare vulnerabilità è riconosciuta solo in base ad alcune tipologie di reato che sono particolarmente gravi, piuttosto che in base alla situazione di vulnerabilità determinata dalla loro minore età. Molto spesso, le riforme legislative avvengono in risposta a casi particolarmente gravi che catturano l'attenzione dell'opinione pubblica. Inoltre, spesso queste riforme non rispondono a una visione organica e sono scarsamente integrate nel



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corpus legislativo. Questo approccio emergenziale lascia spazio a riforme legislative non efficienti che, al contrario, rischiano di aggiungere complessità al già difficile e frammentato sistema normativo.

Di conseguenza, il legislatore italiano dovrebbe:

- Armonizzare e integrare le leggi sulla protezione dei minorenni dalla violenza e dalla criminalità, introducendo una definizione giuridica specifica di violenza contro i minorenni.
- Introdurre elementi giuridici per garantire che il superiore interesse del minore sia una considerazione preminente nell'ambito dei procedimenti penali che coinvolgono le vittime minorenni. Nessun altro interesse di alcun tipo (ad es. esigenze procedurali) può minare o andare contro il superiore interesse del minore. La protezione e il benessere del minorenne dovrebbero essere prioritari rispetto a qualsiasi altra considerazione.
- Intraprendere una riforma legislativa per specificare i meccanismi di cooperazione inter-agenzia, individuando l'attore incaricato di supervisionare tale coordinamento e definire ruoli, funzioni e responsabilità. Una possibilità potrebbe essere quella di modificare l'articolo 609-decies del codice penale che stabilisce il passaggio di comunicazione, per alcuni reati commessi contro i minorenni, dal Procuratore della repubblica al Tribunale per i minorenni. Tale comunicazione potrebbe, invece, essere inviata alla Procura Minorile dal momento che è l'attore che ha il potere di avviare la procedura per la protezione del minorenne.
- Disciplinare ulteriormente l'articolo 22 della Direttiva Vittime nel quadro normativo nazionale. La valutazione individuale delle vittime minorenni non è attualmente disciplinata come tale dalla legge. Il legislatore e/o i decisori politici italiani devono specificare da chi, quando e come deve essere effettuata la valutazione individuale. Nel frattempo, i decisori politici a livello centrale dovrebbero sviluppare strumenti operativi e pratici che devono essere utilizzati dagli attori interessati a livello locale.

I decisori politici italiani dovrebbero:

- Progettare una riforma strutturale sulla protezione dei minorenni al fine di creare un sistema nazionale specifico e sensibile ai bisogni dei minorenni. Dovrebbe trattarsi anche di un sistema di riferimento che possa fornire alle vittime minorenni servizi adeguati e una continuità delle cure.
- Prevedere un sistema qualificato di formazione continua secondo un approccio multidisciplinare e



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inter-agenzia con il coinvolgimento delle università e di altri formatori competenti e accreditati. Questo sistema di formazione dovrebbe essere coordinato da un attore incaricato e dovrebbe essere rivolto a tutti quei professionisti che lavorano con e per i minorenni vittime di reato.

- Creare un sistema centralizzato di raccolta dei dati che permetta di analizzare e monitorare il fenomeno della violenza contro i minorenni.

Valutazione delle esigenze individuali: mettere il minorenne al centro del procedimento

La definizione di valutazione individuale così come stabilita dall'articolo 22 della Direttiva Vittime non corrisponde alla legislazione italiana interna e alla diversità delle varie prassi. L'applicabilità dell'articolo 22 rimane vaga perché non è sufficientemente regolamentata. Sarebbe necessario un intervento per considerare la valutazione individuale come un processo integrato condiviso tra tutti gli attori coinvolti nella protezione e nella cura delle vittime minorenni. È necessario definire ruoli, funzioni e modalità operative specifiche. Ciò eviterebbe l'esistenza di valutazioni individuali parallele che non vengono mai confrontate o condivise tra le diverse autorità, agenzie e servizi. A tal fine, il legislatore dovrebbe identificare un attore responsabile del coordinamento di tutti i diversi soggetti che possono essere coinvolti nella valutazione individuale o che possono farne uso.

Per quanto riguarda il coinvolgimento del minorenne durante la valutazione individuale, è necessario ottimizzare il tempo. Le autorità procedurali sono consapevoli della necessità di proteggere un minorenne, della necessità di unificare i colloqui dei diversi attori giudiziari coinvolti al fine di evitare interviste

In alcune realtà italiane, la figura del "curatore speciale" (curatore speciale) come previsto in molte disposizioni del codice civile italiano, sta assumendo un ruolo chiave anche nei procedimenti penali. Tale figura ha la rappresentanza legale del minorenne durante il procedimento quando vi è un conflitto di interessi con i suoi rappresentanti legali "naturali". Tuttavia, se rafforzato, questo ruolo potrebbe assumere una funzione di supervisore della situazione del minorenne e facilitare la comunicazione tra lo stesso e le autorità, le istituzioni e qualsiasi altro attore coinvolto. Il curatore speciale dovrebbe rappresentare e difendere il superiore interesse del minorenne e cercare di qualificare le garanzie processuali cui ha diritto, compreso il diritto di ricevere informazioni adeguate.



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ripetute.

La valutazione individuale richiede una comprensione della vittima. Tuttavia, ci sono diverse informazioni che devono essere acquisite ed è difficile farlo durante il primo contatto. Sulla base delle buone prassi in atto in altri Stati membri dell'UE, sarebbe importante far conoscere in anticipo alla vittima minorenne il

Presso l'ASL Roma 6, su iniziativa del Pubblico Ministero, è stata allestita un'aula di ascolto a misura di minorenne che è molto più attenta alle esigenze del minore rispetto ad un aula di Tribunale. Se possibile, questa misura potrebbe essere estesa a tutti gli altri territori italiani.

giudice e l'ambiente in cui sarà ascoltato.

Per dare effettiva attuazione alle disposizioni degli articoli 351 comma 1 ter, 362 e 391 bis, comma 5 con l'assistenza di un esperto di psicologia o psichiatra nominato dal pubblico ministero del Codice di procedura penale che stabiliscono che l'ascolto del minorenne dovrebbe essere effettuato minuti, alcuni uffici della procura hanno stabilito turni di lavoro per agli esperti.

Un aspetto critico riguarda il fattore tempo. Vi è la necessità di garantire un trattamento prioritario di quei procedimenti che coinvolgono i minorenni, al fine di ridurre al minimo i tempi delle diverse fasi procedurali.

Un altro aspetto chiave è quello di garantire che vi sia un follow-up del caso, che include il fornire sempre un feedback al minorenne dopo una decisione giudiziaria. Questo spesso non si verifica in caso di assoluzione. Anche se si tratta di un momento estremamente delicato, è assolutamente necessario soprattutto quando l'imputato non è stato condannato. È importante chiarire al minorenne che non si tratta di una mancanza di fiducia nei confronti di quanto dal lui raccontato, ma di un problema di prove insufficienti.

Un ultimo elemento emerso dalle consultazioni nazionali riguarda il fatto che sono da considerarsi vittime anche quei minorenni che sono costretti a commettere un reato. Per prevenire questo fenomeno, è



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necessario sensibilizzare l'opinione pubblica sull'importanza di segnalare le situazioni di rischio al pubblico ministero minorile.

Nel complesso, il progetto E-PROTECT è stato un'ottima occasione per invitare ad una riflessione comune su come riformare il sistema di protezione per i minorenni vittime di reati. Il significativo coinvolgimento e la collaborazione del Dipartimento Italiano di Giustizia minorile del Ministero della Giustizia, che a sua volta è responsabile del sostegno ai minorenni vittime di abusi sessuali, ha permesso di avviare un processo consultivo a livello nazionale con attori chiave volti a individuare proposte concrete di miglioramento del sistema.



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JUSTICE PROGRAMME

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WP3: Research and data collection

E-PROTECT Policy Guidelines

WP3 Leader: VICESSE



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I. Εισαγωγή

Το E-PROTECT («Ενίσχυση της προστασίας των παιδιών – θυμάτων εγκληματικών πράξεων») είναι ένα ερευνητικό πρόγραμμα χρηματοδοτούμενο από την ΕΕ, το οποίο υλοποιείται από τον Αύγουστο 2017 έως και τον Σεπτέμβριο 2019 με στόχο την ενίσχυση της εφαρμογής της οδηγίας 2012/29/ΕΕ (στο εξής αναφερόμενη χάριν συντομίας ως «οδηγία για τα θύματα» ή VD) αναφορικά με τα ανήλικα θύματα, καθώς και να συμβάλει στη γενική προστασία των ανήλικων θυμάτων στην Ευρωπαϊκή Ένωση. Ένας από τους βασικούς στόχους του έργου ήταν ο προσδιορισμός του τρόπου με τον οποίο οι επαγγελματίες διεξάγουν την ατομική αξιολόγηση των παιδιών θυμάτων σύμφωνα με το άρθρο 22 VD, δηλαδή τον τρόπο που καθορίζουν ποια προστατευτικά μέτρα πρέπει να λαμβάνονται σε κάθε περίπτωση. Διεξήχθησαν πολλές ερευνητικές δραστηριότητες σε στενή συνεργασία με εμπειρογνώμονες και επαγγελματίες στον τομέα της προστασίας των παιδιών-θυμάτων, προκειμένου να προσδιοριστούν οι προκλήσεις καθώς και οι βέλτιστες πρακτικές.

Πέντε κράτη μέλη της ΕΕ συμμετείχαν στην έρευνα, συγκεκριμένα η Βουλγαρία, η Ελλάδα, η Ιταλία, η Αυστρία και η Ρουμανία. Το έγγραφο αυτό περιέχει συγκεκριμένες προτάσεις για τη βελτίωση των σημερινών πρακτικών προστασίας αυτής της κατηγορίας θυμάτων.



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II. Βασικά πορίσματα: Κατευθυντήριες γραμμές πολιτικής για τους φορείς χάραξης πολιτικής της ΕΕ

Από τον Αύγουστο του 2017 έως τον Σεπτέμβριο του 2019, η κοινοπραξία E-PROTECT διεξήγαγε διάφορες ερευνητικές δραστηριότητες με στόχο τον προσδιορισμό του τρόπου μεταφοράς της οδηγίας για τα θύματα στην Αυστρία, τη Βουλγαρία, την Ιταλία, την Ελλάδα και τη Ρουμανία. Ιδιαίτερη έμφαση δόθηκε στη μεταφορά της ατομικής αξιολόγησης των θυμάτων για τον εντοπισμό συγκεκριμένων αναγκών προστασίας σύμφωνα με το άρθρο 22 της Οδηγίας για τα θύματα. Τα πορίσματα της έρευνας δείχνουν ότι η μεταφορά της οδηγίας εμφανίζεται πολύ διαφορετική ανάμεσα σε αυτά τα κράτη μέλη.

Παρότι παρατηρήθηκαν διαφορετικά πρότυπα σε όλα τα κράτη μέλη που αξιολογήθηκαν, υπήρχαν ήδη σε εφαρμογή μέτρα προστασίας ανηλίκων θυμάτων. Αυτά τα διαφορετικά νομικά πλαίσια και οι προϋπάρχουσες ορολογίες στις οποίες έπρεπε να εφαρμοστεί η οδηγία αποτέλεσαν μια σημαντική πρόκληση στις διαδικασίες μεταφοράς, ιδίως για την ενσωμάτωση της αξιολόγησης των ατομικών αναγκών των θυμάτων στην εθνική νομοθεσία. Καθώς κάθε κράτος μέλος λειτουργεί στο δικό του πλαίσιο υποδομών υποστήριξης των θυμάτων που υπήρχαν ήδη πριν από τα δικαιώματα των θυμάτων σε επίπεδο ΕΕ, κάθε χώρα δημιουργεί αναπόφευκτα αποκλίνουσες απαντήσεις για τη μεταφορά και την εφαρμογή της οδηγίας για τα θύματα. Αυτά τα διαφορετικά εθνικά νομοθετικά και κοινωνικο-πρακτικά περιβάλλοντα στα οποία οι επαγγελματίες και οι νομοθέτες πρέπει να δράσουν, εκθέτουν διαφορετικές αντιλήψεις για τις ευθύνες των κρατών μελών όσον αφορά την προστασία των θυμάτων εγκληματικών πράξεων σε εθνικό επίπεδο.

Μια βασική πτυχή της χάραξης πολιτικής της ΕΕ είναι, συνεπώς, η συμπερίληψη και κατανόηση του ρόλου του πλαισίου. Είναι σημαντικό οι υπεύθυνοι για τη χάραξη πολιτικής της ΕΕ να εξετάζουν τους διάφορους παράγοντες, συμπεριλαμβανομένων των διαφορετικών νομικών συστημάτων που καθορίζουν τα συστήματα στήριξης θυμάτων ειδικά για κάθε χώρα, ιδίως όταν ο στόχος είναι η επίτευξη ελάχιστων προτύπων. Η στήριξη των θυμάτων ποικίλει στη φύση μεταξύ των κρατών μελών και συνεπώς οι υπεύθυνοι για τη διαμόρφωσης πολιτικής στην ΕΕ πρέπει να λάβουν υπόψη αυτά τα πλαίσια και τα



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διαφορετικά περιβάλλοντα, προκειμένου να αναπτύξουν πιο ευέλικτα μέσα για να επηρεάσουν την πολιτική και τις πρακτικές στα κράτη μέλη.

Βασικά ευρήματα E-PROTECT

Βασικές προκλήσεις για την προστασία παιδιών που πέφτουν θύματα εγκληματικών πράξεων στην Αυστρία, τη Βουλγαρία, την Ελλάδα, την Ιταλία και τη Ρουμανία

- i. Υπάρχει ανάγκη βελτίωσης της συνεργασίας και της συνεργασίας μεταξύ των διαφόρων φορέων που εμπλέκονται σε διαδικασίες που αφορούν ανήλικα θύματα (αστυνομία, υποστήριξη των θυμάτων, δικαστική εξουσία, δικηγόροι).
- ii. **Η νομοθεσία, οι πολιτικές και οι υπηρεσίες για την προστασία των θυμάτων είναι συχνά πολύ κατακερματισμένες.** Συγκεκριμένα, υπάρχει συγκέντρωση υπηρεσιών προστασίας των θυμάτων στα κέντρα των πόλεων και έλλειψη των τελευταίων σε αγροτικές περιοχές.
- iii. **Η κατάρτιση για τους επαγγελματίες** που εμπλέκονται σε διαδικασίες που αφορούν ανήλικα θύματα - ιδιαίτερα εκείνους που διεξάγουν συνεντεύξεις - είναι καθοριστικής σημασίας για τη φιλική προς τα παιδιά δικαιοσύνη. Επί του παρόντος, σε καμία από τις χώρες που αξιολογούνται στο πεδίο εφαρμογής του E-PROTECT δε διασφαλίζεται ότι μόνο ειδικευμένοι επαγγελματίες διεξάγουν συνεντεύξεις με ανήλικα θύματα.
- iv. **Η μεταφορά της αξιολόγησης ατομικών αναγκών σύμφωνα με το άρθρο 22 της Οδηγίας για τα θύματα** θέτει πολλές προκλήσεις στα κράτη μέλη.
- v. Στην πλειονότητα των κρατών μελών υπάρχει έλλειψη έρευνας επί των αποδείξεων σε περίπτωση θυματοποίησης. Αυτό καθιστά δύσκολη τη σύγκριση των προτύπων που εφαρμόζονται στα κράτη μέλη της ΕΕ, καθώς και τον προσδιορισμό των επιπτώσεων της οδηγίας για τα θύματα σε επίπεδο κρατών μελών της ΕΕ.



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i. Συνεργασία

Σε όλες τις χώρες που εξετάσθηκαν, υπάρχει μεγάλη ανάγκη βελτίωσης της συνεργασίας μεταξύ των διαφόρων φορέων που εμπλέκονται σε διαδικασίες που αφορούν ανήλικα θύματα, όπως η αστυνομία, οι οργανώσεις υποστήριξης των θυμάτων, η δικαστική εξουσία και οι δικηγόροι. Επιπλέον, στις περισσότερες χώρες δεν υπάρχει σαφής κατανομή ευθυνών μεταξύ των κύριων ενδιαφερομένων και δεν υπάρχει σαφής καθορισμός του διαχειριστή των υποθέσεων ανήλικης θυματοποίησης. Συχνά, η διüπηρεσιακή και διεπιστημονική συνεργασία δεν γίνεται αντιληπτή ως προτεραιότητα, επειδή τα μεγάλα οφέλη της συνεργασίας δεν είναι άμεσα προφανή. Κατά συνέπεια, οι οικονομικοί και ανθρώπινοι πόροι για τις δραστηριότητες ενίσχυσης της συνεργασίας είναι συχνά ανεπαρκείς.

Στην Αυστρία, τα αποτελέσματα της έρευνας δείχνουν ότι ορισμένοι επαγγελματίες έχουν έλλειψη κατανόησης για τους ρόλους και τις διαδικασίες άλλων οργανισμών που εμπλέκονται σε διαδικασίες που αφορούν ανήλικα θύματα λόγω των περιορισμένων συνεργατικών δράσεων. Τα ευρήματα της έρευνας στη Βουλγαρία υποδηλώνουν ότι η έλλειψη σαφούς κατανομής αρμοδιοτήτων μεταξύ των ενδιαφερομένων οδηγεί σε μείωση της ευθύνης και υπέρβαση του κόστους μεταξύ των αρμόδιων φορέων και των οργανισμών. Η διαδικασία αυτή ενισχύεται περαιτέρω από την έλλειψη διαύλων επικοινωνίας όχι μόνο από την άποψη των πολυεθνικών οργανισμών αλλά και ανάμεσα στις διάφορες περιοχές της χώρας. Επιπλέον, τα ιταλικά ερευνητικά ευρήματα εντοπίζουν την κακή διεπιστημονική και διοργανική συνεργασία μεταξύ των διαφόρων φορέων που εμπλέκονται ως μία από τις κύριες προκλήσεις που πρέπει να αντιμετωπιστούν στον τομέα της προστασίας των παιδιών-θυμάτων. Στην Ελλάδα, οι συμμετέχοντες σε εθνικά σεμινάρια επεσήμαναν την ανάγκη να ενισχυθεί η συνεργασία των φορέων προστασίας των παιδιών μέσω της δημιουργίας ενός συνεκτικού δικτύου για την ανταλλαγή πληροφοριών και την ενίσχυση των παρεχόμενων υπηρεσιών ως μία από τις βασικές προκλήσεις που πρέπει να αντιμετωπιστούν. Τέλος, και στη Ρουμανία υπάρχει ανάγκη βελτίωσης της συνεργασίας μεταξύ των διαφόρων φορέων που εμπλέκονται σε διαδικασίες που αφορούν παιδιά-θύματα.

ii. Κατακερματισμός της νομοθεσίας και των υπηρεσιών ειδικής προστασίας για παιδιά θύματα

Σε όλες τις χώρες που αξιολογούνται στο πεδίο εφαρμογής του E-PROTECT υπάρχουν ειδικές υπηρεσίες προστασίας των θυμάτων για ανήλικα θύματα αξιόποινων πράξεων. Ωστόσο, τα συστήματα αυτά είναι



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συχνά πολύ κατακερματισμένα και εξειδικευμένα σε περιφερειακό επίπεδο. Μία από τις σημαντικότερες προκλήσεις στο θέμα αυτό είναι ότι υπάρχει συγκέντρωση υπηρεσιών προστασίας των θυμάτων στα κέντρα των πόλεων και έλλειψη των τελευταίων σε αγροτικές περιοχές. Ενώ, για παράδειγμα, στη Βουλγαρία υπάρχουν συστήματα μίας στάσης το οποία προσιδιάζουν στο μοντέλο Barnahus, αποτελούν προσπάθεια μεμονωμένων ΜΚΟ και όχι μέρος μιας κρατικής πολιτικής για την προστασία των παιδιών, επιδεινώνοντας το φαινόμενο της άνισης κάλυψης σε εθνικό επίπεδο.

Επιπλέον, υπάρχει και κατακερματισμός της νομοθεσίας σε ορισμένα κράτη μέλη που μελετήθηκαν στο πλαίσιο του E-PROTECT. Λόγω αυτού του κατακερματισμού, η εξασφάλιση επαρκούς προστασίας των παιδιών θυμάτων εγκληματικών πράξεων γεννά μερικές φορές την πρόκληση να διασφαλιστούν ισότιμα πρότυπα σε όλες τις περιφέρειες. Στην Ιταλία, για παράδειγμα, οι κατακερματισμένες πολιτικές και παρεμβάσεις που αφορούν παιδιά-θύματα δημιουργούν κάλυμμα στην προάσπιση των δικαιωμάτων των παιδιών σε ορισμένες περιοχές. Επίσης, στην Ελλάδα, τα ευρήματα της έρευνας δείχνουν ότι υπάρχει έλλειψη εθνικού συστήματος προστασίας των παιδιών.

iii. Εκπαίδευση των επαγγελματιών

Αναγνωρίζεται γενικά ότι απαιτούνται ειδικές δεξιότητες και ικανότητες για τη διεξαγωγή συνέντευξης με ανήλικο θύμα, όπως για παράδειγμα η γνώση σχετικά με τις εξελισσόμενες ικανότητες των παιδιών ή σχετικά με τις διάφορες τεχνικές επικοινωνίας. Τα αποτελέσματα της έρευνας μας δείχνουν ότι σήμερα σε καμία από τις χώρες που αξιολογούνται δεν διασφαλίζεται ότι μόνο οι επαγγελματίες που έχουν εκπαιδευτεί ιδιαίτερα για τη διεξαγωγή συνέντευξεων με ανήλικα θύματα πραγματοποιούν αυτές τις συνέντευξεις. Στην Αυστρία, δεν διασφαλίζεται ότι όλοι οι επαγγελματίες, οι οποίοι διεξάγουν συνέντευξεις με ανήλικα θύματα έχουν λάβει σχετική κατάρτιση, ιδίως στην ύπαιθρο. Στην Ελλάδα και τη Ρουμανία, οι ερευνητικές δραστηριότητες αποκαλύπτουν ότι υπάρχει έλλειψη συστηματικής κατάρτισης επαγγελματιών, συμπεριλαμβανομένης της αστυνομίας, των δικαστών και των εισαγγελέων. Τέλος, στη Βουλγαρία, οι επαγγελματίες επεσήμαναν ότι λείπουν οι μηχανισμοί εποπτείας και υποστήριξης των επαγγελματιών προστασίας παιδιών. Το τελευταίο εμπόδιο παρακωλύει την πρακτική εφαρμογή των δικαιωμάτων των παιδιών υπό το πρίσμα του E-PROTECT, δεδομένου ότι οι κοινωνικοί λειτουργοί στους οποίους ανατίθενται τέτοιες υποθέσεις δεν είναι σε θέση να εξετάσουν κάθε περίπτωση λεπτομερώς και συνεπώς συχνά μπορεί να παράσχουν μόνο βασικές πληροφορίες της υπόθεσης στο αρμόδιο δικαστήριο.



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iv. Αξιολόγηση ατομικών αναγκών

Συνολικά, η έρευνα που διεξήχθη στο πλαίσιο του E-PROTECT δείχνει ότι υπάρχουν δυσκολίες μεταφοράς και εφαρμογής του άρθρου 22 VD. Ενώ ορισμένα από τα κράτη μέλη που αξιολογήθηκαν στο πλαίσιο του E-PROTECT έλαβαν συγκεκριμένα μέτρα προκειμένου να μεταφέρουν στο εθνικό δίκαιο το άρθρο 22, αυτό δεν ενσωματώθηκε πλήρως σε όλα τα κράτη μέλη.

Στη Βουλγαρία, η αξιολόγηση των ατομικών αναγκών πραγματοποιείται μόνο σε περιπτώσεις βίαιων εγκλημάτων κατά παιδιών και σε περιπτώσεις εμπορίας ανθρώπων. Ετσι, τα παιδιά που δεν ήταν άμεσα θύματα εγκληματικών πράξεων δεν θα υποβληθούν σε ατομική αξιολόγηση. Ομοίως, στη Ρουμανία, η ατομική αξιολόγηση των παιδικών θυμάτων πρέπει να γίνεται μόνο σε περιπτώσεις σεξουαλικής κακοποίησης και ενδοοικογενειακής βίας. Επιπλέον, στην Ιταλία, η έρευνα που διεξάγεται στο πλαίσιο του E-PROTECT επισημαίνει την έλλειψη σαφούς νομικού ορισμού της βίας κατά των παιδιών και την έλλειψη νομικής μεταφοράς της διαδικασίας ατομικής αξιολόγησης. Ενώ στην Ιταλία δεν υπάρχει ρητή διάταξη μεταφοράς του άρθρου 22 VD στην εθνική νομοθεσία, υπάρχει μια διαδικασία ατομικής αξιολόγησης στην πράξη. Μόνο στην Αυστρία και στην Ελλάδα εισήχθησαν νέες διατάξεις που ρυθμίζουν τη διαδικασία ατομικής αξιολόγησης κατά τη διαδικασία μεταφοράς. Και στα δύο κράτη, ωστόσο, τα αποτελέσματα της έρευνας E-PROTECT διαπιστώνουν ότι οι διατάξεις είναι πολύ αόριστες, αφήνοντας ασαφή τα διάφορα ερωτήματα.

v. Στατιστικά δεδομένα

Τέλος, τα ευρήματα έρευνας του E-PROTECT αποκαλύπτουν ότι υπάρχει έλλειψη έρευνας με γνώμονα το θύμα στις περισσότερες ευρωπαϊκές χώρες. Η έρευνα υπό αυτή τη βάση θα αποτελούσε ιδανική αφετηρία για τη σύγκριση των προτύπων που εφαρμόζονται στα κράτη μέλη της ΕΕ. Η κατανόηση του βαθμού επίδρασης της οδηγίας για τα θύματα στις εθνικές νομοθεσίες και πρακτικές είναι δύσκολο να εξακριβωθεί χωρίς αποδεικτικά στοιχεία σχετικά με τον αντίκτυπο των μέτρων βοήθειας των θυμάτων στην εμπειρία των θυμάτων και την έλλειψη σχετικής έρευνας.



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III. Μεθοδολογία

Κατά το πρώτο έτος του έργου, πραγματοποιήθηκαν συνολικά δεκατρείς ερευνητικές εκθέσεις βάσει 28 συνεντεύξεων με ειδικούς στην Αυστρία (3), Βουλγαρία (0), Ιταλία (3), Ελλάδα (12) και Ρουμανία (10) καθώς και δευτερογενή βιβλιογραφία. Οι πρώτες έντεκα μελέτες εξέτασαν τη νομική εφαρμογή της οδηγίας για τα θύματα, καθώς και την πρακτική εφαρμογή της ατομικής αξιολόγησης των ανήλικων θυμάτων σύμφωνα με τα άρθρα 22-24. Στη συνέχεια, εκπονήθηκε μια συγκριτική έκθεση σχετικά με τη νομική εφαρμογή και μια συγκριτική έκθεση σχετικά με την πρακτική εφαρμογή της ατομικής αξιολόγησης. Σκοπός αυτών των μελετών ήταν να αναδειχθούν οι κοινές προκλήσεις και να προσδιοριστούν οι υποσχόμενες πρακτικές. Με βάση αυτά τα αποτελέσματα, αναπτύχθηκε ένα πρώτο σχέδιο της «Μεθοδολογίας για την ατομική αξιολόγηση των αναγκών των παιδιών θυμάτων εγκληματικών πράξεων με γνώμονα τα δικαιώματα αυτών».

Κατά το δεύτερο έτος του έργου, πραγματοποιήθηκαν τουλάχιστον έξι σεμινάρια σε καθεμία από τις πέντε χώρες εταίρους. Συνολικά, πραγματοποιήθηκαν 35 σεμινάρια στην Αυστρία (6), τη Βουλγαρία (7), την Ιταλία (7), την Ελλάδα (6) και τη Ρουμανία (9). Κατά τη διάρκεια του πρώτου κύκλου σεμιναρίων, ο στόχος ήταν να παρουσιαστούν τα προκαταρκτικά ερευνητικά ευρήματα καθώς και να εντοπιστούν οι προκλήσεις και οι βέλτιστες πρακτικές. Για το σκοπό αυτό, οι συμμετέχοντες στα σεμινάρια χωρίστηκαν σε μικρές ομάδες και τους δόθηκε η εντολή να συζητήσουν συγκεκριμένη μελέτη περίπτωσης μετά από ερωτηματολόγιο. Τόσο οι μελέτες περιπτώσεων όσο και το ερωτηματολόγιο χρησιμοποιήθηκαν σε όλες τις χώρες εταίρους και μεταφράστηκαν στις τοπικές γλώσσες. Οι συμμετέχοντες στα σεμινάρια ήταν επαγγελματίες που ασχολούνταν με την προστασία παιδιών θυμάτων εγκληματικών πράξεων, μεταξύ των οποίων δικηγόροι, δικαστές, εισαγγελείς, αστυνομικοί, καθώς και επαγγελματίες που εργάζονται σε οργανώσεις προστασίας των παιδιών, ψυχολογία και ιατρική. Σε όλους τους συμμετέχοντες εστάλη ένα πρωτόκολλο που περιείχε τα κύρια σημεία συζήτησης με αίτημα επικύρωσης. Με βάση τα πορίσματα των σεμιναρίων και τα ερευνητικά αποτελέσματα του πρώτου έτους του έργου αναπτύχθηκε μια «Μεθοδολογία για την ατομική αξιολόγηση των αναγκών των παιδιών θυμάτων εγκληματικότητας». Η μέθοδος αυτή αποτελεί έναν οδηγό για την αντιμετώπιση των ανηλίκων θυμάτων υπό το πρίσμα της φιλικής προς τα παιδιά δικαιοσύνης. Επιπλέον, διατυπώθηκαν συγκεκριμένες προτάσεις για βελτιώσεις στην προστασία των ανηλίκων θυμάτων σε ποινικές διαδικασίες και στις πέντε χώρες εταίρους. Η μέθοδος και οι κατευθυντήριες γραμμές πολιτικής συζητήθηκαν σε δεύτερο γύρο σεμιναρίων



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που πραγματοποιήθηκαν κατά τη διάρκεια του 2019 με σκοπό την παρουσίαση και επικύρωση των ευρημάτων.



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IV. Κατευθυντήριες γραμμές για τη χάραξη πολιτικής στην Ελλάδα

Κατά τη διάρκεια του διετούς ερευνητικού έργου, η ερευνητική ομάδα συνεργάστηκε στενά με τους επαγγελματίες που συμμετείχαν στις διαδικασίες που σχετίζονται με παιδιά-θύματα για να προσδιορίσουν συγκεκριμένες κατευθυντήριες γραμμές χάραξης πολιτικής για τη βελτίωση της προστασίας των ανηλίκων θυμάτων στην Ευρωπαϊκή Ένωση.

Στις σελίδες που ακολουθούν περιλαμβάνονται οι κατευθυντήριες γραμμές πολιτικής για την Αυστρία, τη Βουλγαρία, την Ελλάδα, την Ιταλία και τη Ρουμανία. Μετά από μια σύνοψη που αναφέρει τους σημαντικότερους τομείς μεταρρυθμίσεων, αναφέρονται οι υπάρχουσες προκλήσεις και διατυπώνονται προτάσεις για τη βελτίωση αυτών. Έγιναν επίσης ιδιαίτερες προσπάθειες για να επισημανθούν παραδείγματα βέλτιστων πρακτικών που εντοπίστηκαν σε κάθε χώρα.

Ελλάδα

Σύνοψη

Σε νομοθετικό επίπεδο, η Ελλάδα εναρμόνισε την εθνική έννομη τάξη της με την Οδηγία για τα θύματα με την υιοθέτηση του νόμου 4478/2017. Η νέα νομοθεσία ενσωμάτωσε στο σύνολό της την οδηγία για τα θύματα, σε μεγάλο βαθμό «κατά λέξη» σε σημεία προσφέρει ακόμη μεγαλύτερη προστασία από τα ελάχιστα πρότυπα που επιβάλλει το ευρωπαϊκό νομικό κείμενο. Αυτή η εκτεταμένη μεταφορά της ευρωπαϊκής νομοθεσίας θεωρείται ως καίριο βήμα προς την κατεύθυνση της καθιέρωσης ενός συνεκτικού και αποτελεσματικού συστήματος προστασίας των παιδιών στη χώρα.

Παρ' όλα αυτά, η πρακτική εφαρμογή αυτού του κανονιστικού πλαισίου όσον αφορά τα ανήλικα θύματα εγκληματικών πράξεων εξακολουθεί να είναι σχεδόν ανύπαρκτη. Η διετία που ακολούθησε της έναρξης τιχύος του νέου νόμου απέδειξε ότι οι λίγες αντιρρήσεις και ενδοιασμοί που διατυπώθηκαν κατά τη φάση της νομοθετικής διαδικασίας ήταν βάσιμοι. Η αξιολόγηση των ατομικών αναγκών των ανήλικων θυμάτων, η οποία αποτελεί βασικό σημείο της οδηγίας για τα θύματα, προς ένα φιλικό προς τα παιδιά σύστημα δικαιοσύνης, εξακολουθεί να συζητείται μόνο στη θεωρία. Μέχρι να ξεκινήσει η λειτουργία των «Σπιτιών του Παιδιού», όπου θα πραγματοποιείται η αξιολόγηση των ατομικών αναγκών και οι



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συνεντεύξεις κατά τη διάρκεια της ποινικής έρευνας, οι συνεντεύξεις των ανήλικων θυμάτων εξακολουθούν να πραγματοποιούνται από αστυνομικούς ψυχολόγους στα Τμήματα Ανηλίκων, πρακτική που εγκυμονεί σοβαρούς κινδύνους δευτερογενούς ή νέας θυματοποίησης.

Η αδυναμία διαπίστωσης της αποτελεσματικότητας της νέας νομοθεσίας από πρακτικής απόψεως έστρεψε τον διάλογο κατά τη διάρκεια των σεμιναρίων και των συνεδριάσεων προς τα υπάρχοντα προβλήματα ή τις βέλτιστες πρακτικές ιδιωτικών και δημόσιων θεσμών στη χώρα. Η έλλειψη στατιστικών στοιχείων, ενός ισχυρού και συνεκτικού δικτύου επικοινωνίας μεταξύ των διαφόρων υπηρεσιών και επαρκούς ενημέρωσης σχετικά με το ρόλο και τα καθήκοντα κάθε φορέα που εμπλέκεται στην προστασία των παιδιών είναι μόνο λίγες από τους προβληματισμούς που διατυπώθηκαν κατά τη διάρκεια αυτών των εκδηλώσεων. Τα όργανα επιβολής του νόμου συχνά αντιμετωπίζονται ως απόμακρες, εκφοβιστικές και απρόσιτες φιγούρες αντί για προστατευτικού παράγοντες όπου οι πολίτες πρέπει να αισθάνονται άνετα να απευθυνθούν σε περίπτωση εγκλήματος. Οι κοινωνικοί λειτουργοί μερικές φορές αντιμετωπίζονται με δυσαρέσκεια στον φορέα όπου υπηρετούν, καθώς οι εκθέσεις που συντάσσουν μπορεί να αναφέρει προβλήματα ή και παραλείψεις εκ μέρους της διοίκησης του άνω φορέα. Η νέα σύνθεση του πληθυσμού μετά την προσφυγική κρίση απαιτεί τη λήψη ειδικών μέτρων σχετικά με τις ανάγκες πολιτισμικής διαμεσολάβησης στις περιπτώσεις αλλοδαπών ανηλίκων θυμάτων εγκληματικών πράξεων. Και το πιο σημαντικό είναι ότι η κατάρτιση των επαγγελματιών είναι σπάνια, ασυνεπής και εξαρτάται σε μεγάλο βαθμό από τις ιδιωτικές πρωτοβουλίες, καθώς δεν αποτελεί ακόμη σημείο της κρατικής ημερήσιας διάταξης.



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Τα áκολουθα μέρη του παρόντος εγγράφου αναπτύσσουν τα áνω συμπεράσματα και προχωρούν πέραν αυτών στον εντοπισμό των βέλτιστων πρακτικών και την διατύπωση προτάσεων για αλλαγές προκειμένου να αναπτυχθεί ένα ενισχυμένο, συνεκτικό και αναβαθμισμένο σύστημα προστασίας των παιδιών στην Ελλάδα, επι τη βάσει της νέας, εναρμονισμένης με τις επιταγές της ΕΕ, ελληνικής νομοθεσίας.

Κύριες προτάσεις

- Τακτική επιμόρφωση κρατικού χαρακτήρα για όλους τους επαγγελματίες που παρέχουν υπηρεσίες στον χώρο της παιδικής προστασίας.
- Αύξηση της συνεργασίας των φορέων παιδικής προστασίας μέσω της δημιουργίας ενός συνεκτικού δικτύου για την ανταλλαγή πληροφοριών και την βελτίωση των παρεχόμενων υπηρεσιών.
- Σαφής διάκριση των αρμοδιοτήτων των διαφόρων φορέων που εμπλέκονται στην παιδική προστασία και δημιουργία ενός κεντρικού οργάνου για την επίβλεψη της ακριβούς εφαρμογής του κανονιστικού πλαισίου.

Ενσωμάτωση του άρθρου 22 ΒΔ στην Ελλάδα

Ελλάδα	
Υπάρχει εν ισχύ ατομική αξιολόγηση όλων των θυμάτων;	Όλα τα θύματα υπόκεινται σε έγκαιρη και ατομική αξιολόγηση για να προσδιοριστούν οι ειδικές ανάγκες προστασίας τους. Ωστόσο, η διάταξη δίνει προτεραιότητα στην προσωπική και επαγγελματική ελευθερία των δικαστικών αρχών έναντι της ατομικής αξιολόγησης. Επιπλέον, η παραπομπή ενός θύματος στις αρμόδιες αρχές που διεξάγουν την ατομική αξιολόγηση εξαρτάται από σχετικό αίτημα των θυμάτων.
Ποιος πραγματοποιεί την αξιολόγηση;	Στην περίπτωση ανήλικων θυμάτων εγκληματικών πράξεων, τα Αυτοτελή Γραφεία Προστασίας Ανηλίκων Θυμάτων είναι αρμόδια για την ατομική αξιολόγηση.
Υπάρχουν διατάξεις για τον τρόπο	Όχι.



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διεξαγωγής της ατομικής αξιολόγησης;	
Ποια κριτήρια λαμβάνονται υπόψη κατά την ατομική αξιολόγηση των αναγκών;	Η ελληνική νομοθεσία απαριθμεί πολύ πιο λεπτομερή κατάλογο κριτηρίων από ότι η οδηγία για τα θύματα, τα οποία αποτελούν τη βάση για την ατομική αξιολόγηση. Τα κριτήρια αυτά, ωστόσο, δεν είναι εξαντλητικά και αποτελούν ενδεικτικές παραμέτρους που πρέπει να λαμβάνονται υπόψη για τον εντοπισμό των ειδικών αναγκών των θυμάτων. Στις περιπτώσεις ανήλικων θυμάτων, δύο παράγοντες έχουν ιδιαίτερη σημασία: ηωριμότητα του παιδιού και οι επιθυμίες του παιδιού.
Θεωρούνται τα ανήλικα θύματα ιδιαίτερα ευάλωτα <i>ex lege</i> ?	Ναι.

Προτάσεις για σχεδιασμό πολιτικής: Ενσωματώνοντας την Οδηγία περί Θυμάτων

Γενικά, το κανονιστικό πλαίσιο που αναπτύχθηκε μετά τη μεταφορά της οδηγίας για τα θύματα στην Ελλάδα φαίνεται να είναι περιεκτικό και προστατευτικό έναντι των παιδιών θυμάτων εγκλημάτων που συμμετέχουν στις δικαστικές διαδικασίες ως μάρτυρες. Σε ορισμένες περιπτώσεις, ο νόμος 4478/2017 που ενσωματώνει την οδηγία υπερέβη τα ελάχιστα πρότυπα της ευρωπαϊκής οδηγίας, παρέχοντας, για παράδειγμα, ευρύτερους ορισμούς των κύριων όρων ή προσθέτοντας κατηγορίες ατόμων που επωφελούνται από την υπηρεσία υποστήριξης των θυμάτων.

Πρόσφατα, αυτή η νομική νομοθεσία συμπληρώθηκε με την Υπουργική Απόφαση 7320/2019, η οποία ρυθμίζει την ίδρυση και τη λειτουργία του «Σπιτιού του Παιδιού», τη νέα δομή που προορίζεται για ατομική αξιολόγηση και τις συνεντεύξεις των ανήλικων θυμάτων εγκληματικών πράξεων. Το νομικό έγγραφο παρέχει λεπτομέρειες σχετικά με την υποδομή, τα εργαλεία και τις προτεινόμενες μεθόδους για την ατομική αξιολόγηση και τις συνεντεύξεις παιδιών θυμάτων. Στο παράρτημα, εισάγει ένα δομημένο πρωτόκολλο για τη συνέντευξη των παιδιών θυμάτων κατά τη διάρκεια των δικαστικών διαδικασιών, το οποίο ενσωματώνει ειδικές κατευθυντήριες γραμμές για όλα τα στάδια της συνέντευξης παιδιών θυμάτων εγκληματικών πράξεων. Σκοπός των πρωτοκόλλων αυτών, που ήδη εφαρμόζονται στο πλαίσιο των ποινικών διαδικασιών σε άλλες χώρες, είναι η ελαχιστοποίηση του κινδύνου δεύτερης θυματοποίησης του ανήλικου θύματος με την δημιουργία εμπιστοσύνης, τη διαμόρφωση ενός άνετου περιβάλλοντος και την πλήρη ενημέρωση του παιδιού, με απλό και κατανοητό τρόπο, σχετικά με τη διαδικασία της συνέντευξης. Παρόλο που η μεθοδολογία ατομικής αξιολόγησης που αναπτύχθηκε για τους σκοπούς του έργου E-PROTECT είναι πολύ πιο ολοκληρωμένη και λεπτομερής, η υπουργική



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απόφαση ακολουθεί παρόμοια κατεύθυνση και παρουσιάζει κοινά στοιχεία, τα οποία επαληθεύουν την ακρίβεια της μεθοδολογίας του E-PROTECT και την εναρμόνιση των ελληνικών νομοθετημάτων με τις διεθνείς κατευθυντήριες γραμμές.

Ωστόσο, ένα συνεκτικό νομικό πλαίσιο αποτελεί μόνο τη βάση για την αποτελεσματική προστασία των παιδιών θυμάτων. Παρά τις νομοθετικές εξελίξεις, εξακολουθούν να προκύπτουν προβλήματα και δυσλειτουργίες, κυρίως λόγω του γραφειοκρατικού χαρακτήρα του συστήματος επιβολής του νόμου και της δικαιοσύνης στη χώρα. Παρόλο που έχουν πραγματοποιηθεί σημαντικά βήματα το τελευταίο εξάμηνο, η ταυτοποίηση και η διαμόρφωση των κατάλληλων και πλήρως εξοπλισμένων χώρων στους οποίους θα μπορούσε να αρχίσει η λειτουργία του «Σπιτιού του Παιδιού» βρίσκεται ακόμα σε εξέλιξη. Η κατάρτιση των επαγγελματιών που έχουν επιφορτιστεί με τη διεξαγωγή της ατοικής αξιολόγησης των ανηλίκων θυμάτων εγκλημάτων έχει μόλις ολοκληρωθεί και δεν έχουν δημοσιοποιηθεί πληροφορίες σχετικά με την ακριβή ημερομηνία κατά την οποία οι δομές αυτές θα ανοίξουν τις πόρτες τους στα ανήλικα θύματα.

Λαμβάνοντας υπόψη αυτές τις διοικητικές καθυστερήσεις, η έλλειψη ενημέρωσης εκ μέρους των υπευθύνων προστασίας των παιδιών δεν αποτελεί έκπληξη. Κατά την έναρξη αυτού του έργου, σχεδόν κανένας φορέας ή οργανισμός που δραστηριοποιείται στον τομέα της προστασίας των παιδιών δεν γνώριζε τη μεταφορά της οδηγίας για τα θύματα και τον κεντρικό ρόλο της στην υπεράσπιση των δικαιωμάτων παιδιών θυμάτων εγκληματικών πράξεων. Από τους 12 επαγγελματίες που προσέγγιστηκαν και συμμετείχαν σε συνεντεύξεις για τους σκοπούς αυτού του έργου, μόνο δύο γνώριζαν τον νέο νόμο και τις σχετικές διατάξεις του για τη δημιουργία νέων, φιλικών προς τα παιδιά χώρων προορισμένων για τα ανήλικα θύματα. Ομοίως, μόνο λίγα άτομα που συμμετείχαν σε εθνικά σεμινάρια και συναντήσεις γνώριζαν τα άνω νομικά κείμενα που θεσπίσθηκαν για την κάλυψη του νομοθετικού κενού στην προστασία των παιδιών-θυμάτων στη χώρα.

Συνολικά, και παρά τη γενική άγνοια σχετικά με το νέο νομοθετικό πλαίσιο, δεν υπήρχαν προτάσεις για τροποποιήσεις στο σύστημα προστασίας των ανηλίκων θυμάτων σε κανονιστικό επίπεδο. Η μεταφορά της οδηγίας για τα θύματα, για όσους γνωρίζουν την ύπαρξή της, θεωρείται επιτυχής ως νομοθέτημα. Οι λίγες σχετικές ανησυχίες για το νομικό πλαίσιο περιστρέφονταν γύρω από τον παρωχημένο χαρακτήρα των παλαιότερων διατάξεων, οι οποίες προβλέπουν τη δημιουργία ορισμένων οργάνων που δεν



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λειτούργησαν ποτέ στην πράξη. Αυτό που μένει να εξεταστεί στο μέλλον είναι εάν, πότε και πώς θα εναρμονιστεί η πρακτική με το θεωρητικό υπόβαθρο που θεσπίσθηκε με την υιοθέτηση του Ν. 4478/2017 και της μεταγενέστερης υπουργικής απόφασης 7320/2019.

Ατομική αξιολόγηση αναγκών: Τοποθετώντας το παιδί στο επίκεντρο των διαδικασιών

Στο επίκεντρο της νέας νομοθεσίας έγκειται η ατομική αξιολόγηση των αναγκών των παιδιών θυμάτων εγκληματικών πράξεων ως βασικό τμήμα της προώθησης ενός φιλικού προς τα παιδιά συστήματος δικαιοσύνης. Στην Ελλάδα, στο παρελθόν δεν υπήρχε ξεχωριστή διαδικασία αξιολόγησης για τον εντοπισμό των ειδικών αναγκών και των ειδικών μέτρων που πρέπει να ληφθούν σε κάθε περίπτωση ανήλικου θύματος, αλλά μόνο αξιολόγηση της ψυχικής και σωματικής κατάστασης του παιδιού για να προσδιοριστεί αν είναι ικανό να συμμετάσχει ως μάρτυρας στην ποινική διαδικασία. Η πρόσφατη υπουργική απόφαση περιλαμβάνει λεπτομερή περιγραφή της ατομικής αξιολόγησης που συνιστά πλέον νομική υποχρέωση σε κάθε περίπτωση φερόμενης τέλεσης ποινικού αδικήματος εναντίον ανηλίκου και το ενσωματωμένο πρωτόκολλο περιέχει συγκεκριμένα ερωτήματα για την εξέταση του ανήλικου θύματος ως μάρτυρα. Ωστόσο, λαμβάνοντας υπόψη ότι δεν έχουν ακόμη αρχίσει να λειτουργούν τα "Σπίτια του Παιδιού", κάθε διάλογος γύρω από την ατομική αξιολόγηση των αναγκών στα σεμινάρια και τις συναντήσεις που διενεργήθηκαν στο πλαίσιο του E-PROTECT ήταν αναμενόμενο να παραμείνει μόνο θεωρητικός.

Καθώς τα περισσότερα από τα γεγονότα του έργου έλαβαν χώρα πριν από την έγκριση της υπουργικής απόφασης, οι συμμετέχοντες επικεντρώθηκαν στη μεθοδολογία ατομικής αξιολόγησης που αναπτύχθηκε από την ομάδα του E-PROTECT και εξέφρασαν πολύ θετική γνώμη σχετικά με τη δομή, τη συνοχή και τους στόχους τους. Η μόνη αντίρρηση σε αυτό το έγγραφο σχετίζεται με την πρακτικότητα της ανάθεσης κάθε υποθέσεως ανήλικου θύματος στον θεσμό ο οποίος έρχεται πρώτος σε επαφή με την υπόθεση. Μια τέτοια εναλλαγή των αρμόδιων υπηρεσιών δύναται να προκαλέσει σύγχυση τόσο στους πολυάριθμους παράγοντες όσο και στα παιδιά και μπορεί τελικά να οδηγήσει σε ανεπαρκή χειρισμό της υπόθεσης, εκθέτοντας έτσι τα παιδιά σε περαιτέρω κινδύνους θυματοποίησης.



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Αξιοποιώντας το "Χαμόγελο του παιδιού" ως παράδειγμα

Το «Χαμόγελο του Παιδιού», ελληνική μη κυβερνητική οργάνωση που ιδρύθηκε το 1995, αναλαμβάνει εξέχοντα ρόλο στην προστασία των παιδιών στην Ελλάδα. Το ΧτΠ παρέχει μια ολιστική προστασία στους δικαιούχους του, παρέχοντας υπηρεσίες πρόληψης, παρέμβασης και υποστήριξης σε περιπτώσεις ποινικών αδικημάτων εναντίον ανηλίκων. Αυτά περιλαμβάνουν μια εθνική γραμμή βοήθειας που δέχεται κλήσεις από οποιοδήποτε άτομο (σε πολλές περιπτώσεις από το ίδιο το θύμα) που επιθυμεί να αναφέρει ένα έγκλημα κατά ανηλίκου, αιφνίδιες επιτόπιες επισκέψεις για τον εντοπισμό αδικημάτων και την αντιμετώπιση επικείμενων κινδύνων, καθώς και μια σειρά δομών φιλοξενίας και υποστήριξης των παιδιών, μεταξύ των οποίων ένα Κέντρο Προστασίας Παιδιών που εξυπηρετεί τον ίδιο σκοπό με τα νεοσυσταθέντα «Σπίτια του Παιδιού»: να προωθήσει ένα φιλικό προς τα παιδιά σύστημα δικαιοσύνης και να ενισχύσει τους όρους συμμετοχής των παιδιών θυμάτων στην ποινική διαδικασία. Συνολικά, το ΧτΠ υποκαθιστά την έλλειψη του κεντρικού, κρατικού μηχανισμού για την προστασία των παιδιών στη χώρα και επεξηγεί τον τρόπο λειτουργίας παρόμοιων οργανισμών στην Ευρώπη που έχουν ήδη αναπτύξει ένα ολοκληρωμένο σύστημα προστασίας των παιδιών.

Η ασάφεια όσον αφορά την κατανομή των ευθυνών είναι στην πραγματικότητα ένα καίριο ζήτημα που εντοπίστηκε από την πλειοψηφία των επαγγελματιών στον τομέα. Ούτε οι οργανώσεις προστασίας του παιδιού, είτε ιδιωτικές είτε δημόσιες, έχουν πλήρη επίγνωση των καθηκόντων τους και των ορίων λειτουργίας τους. Για την αντιμετώπιση αυτού του προβλήματος, υπάρχει μεγάλη ανάγκη για τη δημιουργία κεντρικού κρατικού οργανισμού προστασίας των παιδιών, ο οποίος θα συντονίζει τις προσπάθειες των ήδη αποκεντρωμένων υπηρεσιών και επιχειρήσεων. Ο οργανισμός αυτός θα πρέπει να έχει την εξουσία να αναθέτει καθήκοντα και ευθύνες σε όλους τους φορείς που υπάγονται στη δικαιοδοσία του, να παρακολουθεί τη λειτουργία τους και να εκδίδει επιθέσεις όταν αυτό απαιτείται. Επιπλέον, η κεντρική υπηρεσία θα πρέπει να δημιουργήσει ένα σταθερό δίκτυο για την απρόσκοπτη επικοινωνία όλων των θεσμικών οργάνων και να αναπτύξει ένα σύστημα καταγραφής για όλες τις περιπτώσεις ανήλικων θυμάτων εγκληματικών πράξεων, ώστε να αντιμετωπιστεί η έλλειψη στατιστικών



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στοιχείων σχετικά με το φαινόμενο στη χώρα. Μια τέτοια τροποποίηση της οργάνωσης θα μπορούσε επίσης να συμβάλει στα υφιστάμενα προβλήματα με την αποκέντρωσης των υπηρεσιών και την απαλλαγή ορισμένων υπηρεσιών από τον υπερβολικό φόρτο εργασίας, που προκαλείται από την συγκέντρωση των φορέων υποστήριξης παιδιών θυμάτων στα αστικά κέντρα.

Η σαφής κατανομή των ευθυνών είναι απαραίτητη όχι μόνο σε επύπεδο αλληλεγγύης, αλλά και μεταξύ διαφόρων επαγγελματιών με διαφορετική εξειδίκευση, γνώσεις και καθήκοντα. Στην Ελλάδα, ο ρόλος του κοινωνικού λειτουργού έχει επικριθεί ότι είναι λίγο αόριστος και, κατά καιρούς, υποτιμάται. Σε περιπτώσεις καταγγελία ποινικού αδικήματος κατά ανηλίκου, οι κοινωνικοί λειτουργοί των Ομάδων Προστασίας του Παιδιού κάθε δήμου αναλαμβάνουν το καθήκον να πραγματοποιούν επιτόπιες επισκέψεις για να αξιολογούν την κατάσταση στην οικογενειακή κατοικία και να εντοπίζουν πιθανούς κινδύνους ή ακόμα και την ανάγκη να απομακρύνουν το παιδί και να το τοποθετήσουν σε άλλες δομές φιλοξενίας. Αυτές οι επισκέψεις θα πρέπει να είναι πάντα αιφνίδιες, ώστε να διασφαλιστεί ότι θα διαμορφωθεί μια ρεαλιστική και όχι εξιδανικευμένη εικόνα του οικογενειακού περιβάλλοντος και, για λόγους ασφαλείας, ο κοινωνικός λειτουργός θα πρέπει πάντα να συνοδεύεται από έναν συνάδελφο ή έναν αστυνομικό. Εκτός από τον ερευνητικό τους ρόλο στο αρχικό στάδιο της διαπίστωσης της ύπαρξης ποινικού αδικήματος, οι κοινωνικοί λειτουργοί που υπηρετούν σε εκπαιδευτικά ιδρύματα ή ιδρύματα προστασίας παιδιών θα πρέπει να έχουν πλήρη πρόσβαση στα ατομικά αρχεία των παιδιών και να τους παρέχεται η δυνατότητα να ασκούν τα καθήκοντά τους και όχι να αντιμετωπίζονται με καχυποψία και δυσαρέσκεια, κάτι που έχει σημειωθεί από ορισμένους επαγγελματίες ότι συμβαίνει στην πράξη.

Ακόμη μεγαλύτερη είναι η σύγχυση του κοινού, συμπεριλαμβανομένων των γονέων και των επαγγελματιών που εργάζονται με παιδιά, οι οποίοι αγνοούν πλήρως την έκταση του φαινομένου, τους αρμόδιους φορείς για τη διαχείριση υποθέσεων ανήλικης θυματοποίησης, τις διόδους για την καταγγελία εγκλήματος κατά ανηλίκου και την ποινική διαδικασία που πρέπει να ακολουθηθεί. Έτσι, θα πρέπει να υπάρχει ένας πλήρης κατάλογος όλων των υπηρεσιών που λειτουργούν στον τομέα της προστασίας των παιδιών στα σχολεία, στα νοσοκομεία, στα κέντρα δραστηριοτήτων και σε κάθε χώρο που προορίζεται για παιδιά. Σε διαδικτυακό επύπεδο, το Υπουργείο Παιδείας και Θρησκευμάτων θα πρέπει να διατηρεί έναν φιλικό ιστότοπο στον οποίο οι πληροφορίες αυτές πρέπει να τίθενται στη διάθεση του κοινού και να ενημερώνονται τακτικά ώστε να περιλαμβάνονται όλες οι εξελίξεις νομοθετικού, διοικητικού ή



πρακτικού χαρακτήρα. Ομοίως, όλοι οι φορείς προστασίας του παιδιού στον δημόσιο και τον ιδιωτικό τομέα θα πρέπει να ανεβάζουν και να παρέχουν απεριόριστη πρόσβαση σε όλες τις πληροφορίες σχετικά με την αποστολή, τις υπηρεσίες, τις εγκαταστάσεις τους και τους τρόπους επικοινωνίας του κοινού με αυτούς.

Ασφαλή παιδιά, ασφαλές περιεχόμενο

Στο πλαίσιο της εκστρατείας κατά της εγκληματικότητας κατά ανηλίκων στον κυβερνοχώρο, η Ελληνική Αστυνομία αναγνωρίζει τους πολυάριθμους διαδικτυακούς κινδύνους για τα παιδιά και το δύσκολο έργο των γονέων να παρακολουθούν τη συμπεριφορά των τέκνων τους στον Παγκόσμιο Ιστό. Ως εκ τούτου, οι αστυνομικές αρχές ενθαρρύνουν τους γονείς να εγκαταστήσουν λογισμικό γονικού ελέγχου σε όλες τις ηλεκτρονικές συσκευές, συμπεριλαμβανομένων των τηλεφώνων, των tablets και των υπολογιστών. Το "safe kids (ασφαλή παιδιά)" είναι ένα τέτοιο λογισμικό που αναπτύχθηκε από την Kaspersky και έχει σχεδιαστεί ειδικά για να δημιουργήσει ένα φιλικό προς τα παιδιά και χωρίς κίνδυνο διαδικτυακό περιβάλλον για τα παιδιά.

Ο προληπτικός χαρακτήρας της παροχής επαρκών πληροφοριών στους επαγγελματίες και στην κοινωνία εν γένει έχει επισημανθεί ως μία από τις σημαντικότερες πτυχές στην υποστήριξη των δικαιωμάτων των παιδιών θυμάτων εγκληματικών πράξεων. Η προώθηση προγραμμάτων ευαισθητοποίησης θα πρέπει να αποτελέσει κεντρικό σημείο αυτού του σχεδίου πρόληψης. Τα προγράμματα αυτά μπορούν να περιλαμβάνουν σεμινάρια, διαδικτυακά σεμινάρια, διαδραστικές εκδηλώσεις και ασκήσεις, καθώς και τη συστηματική και εντατική κατάρτιση εκπαιδευτών, υγειονομικού προσωπικού, κοινωνικών λειτουργών, δικηγόρων και όλων των ατόμων που εμπλέκονται στην προστασία των παιδιών. Παρόλα αυτά, αυτές οι επιμορφωτικές προσπάθειες δεν θα πρέπει να περιορίζονται στους επαγγελματίες του τομέα υποστήριξης των παιδιών. Οι γονείς, οι συγγενείς και όλοι οι ενήλικες που συμμετέχουν ενεργά στη ζωή ενός παιδιού θα πρέπει να παραμένουν σε εγρήγορση, διαρκώς ενημερωμένοι σχετικά με τις τεχνολογικές εξελίξεις, τους πιθανούς κινδύνους και κάθε είδους αλλαγή που μπορεί να έχει ισχυρό αντίκτυπο στην ανάπτυξη, την εκπαίδευση και τη συμπεριφορά των παιδιών.



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Στο πλαίσιο των πρόσφατων πολιτικών εξελίξεων στη Μέση Ανατολή, η Ελλάδα έχει δεχθεί έναν συνεχώς αυξανόμενο αριθμό αιτούντων άσυλο και μεταναστών όλων των ηλικιών με διαφορετικό γλωσσικό, θρησκευτικό και πολιτιστικό υπόβαθρο. Έτσι, προέκυψε μια νέα ανάγκη ή έχει ενταθεί τουλάχιστον η συμμετοχή αυτής της ομάδας ατόμων στα συστήματα ποινικής δικαιοσύνης: αυτή της πολιτιστικής διαμεσολάβησης. Η έλλειψη επικοινωνίας στην ελληνική ή στην αγγλική γλώσσα και τα πολιτιστικά εμπόδια σε περιπτώσεις ανήλικων αλλοδαπών που πέφτουν θύματα εγκλημάτων στην ελληνική επικράτεια απαιτούν άμεσες λύσεις, δηλαδή την πρόσληψη διερμηνέων και πολιτιστικών διαμεσολαβητών από το κράτος. Οι υπηρεσίες αυτών των επαγγελματιών πρέπει να είναι διαθέσιμες κατά κύριο λόγο στα «Σπίτια του Παιδιού», αλλά και στις εθνικές γραμμές βοήθειας, στα Τμήματα Ανηλίκων της Ελληνικής Αστυνομίας και στις δικαστικές αρχές, κατόπιν αιτήματος.

Συνοψίζοντας, όλες οι προαναφερθείσες κατευθυντήριες γραμμές μπορούν να διευκολύνουν το έργο των επαγγελματιών που δραστηριοποιούνται στον τομέα της προστασίας των παιδιών, όχι μόνο στην Ελλάδα αλλά και σε ολόκληρη την Ευρωπαϊκή Ένωση. Με τη μεταφορά της οδηγίας για τα θύματα και την υπουργική απόφαση που την συμπληρώνει, το νομοθετικό πλαίσιο που διέπει τα δικαιώματα των παιδιών θυμάτων εγκληματικών πράξεων εμφανίζεται επιτέλους να είναι πλήρες. Ωστόσο, η έλλειψη πρακτικής εφαρμογής καθιστά όλες τις συστάσεις που εκφράστηκαν κατά τη διάρκεια των σεμιναρίων ιδιαίτερα θεωρητικές. Οι μήνες που ακολουθούν είναι κρίσιμοι για την παρακολούθηση και τη διαμόρφωση εμπεριστατωμένης άποψης σχετικά με την εφαρμογή και την αποτελεσματικότητα του νέου νόμου και των νεοσυσταθεισών δομών. Σε κάθε περίπτωση, το ίδρυμα για την προστασία των παιδιών από οποιαδήποτε μορφής ποινικό αδίκημα είναι η δημιουργία ισχυρών οικογενειακών δεσμών, βασισμένων στη διαφάνεια και την αμοιβαία εμπιστοσύνη. Μέσα σε ένα υγιές οικογενειακό περιβάλλον, τα παιδιά προστατεύονται περισσότερο, αναπτύσσουν τους δικούς τους αμυντικούς μηχανισμούς και προωθούν την κριτική σκέψη τους προς έναν απρόβλεπτο και κατά καιρούς εξαιρετικά επικίνδυνο κόσμο.





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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

**E-PROTECT – Общи Насоки на
Политика за България**

WP3 Leader: VICESSE



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I. Въведение

E-PROTECT („Осигуряване на по-добра закрила на децата жертви на престъпление“) е проект, финансиран от Европейския съюз, който се изпълнява между октомври 2017 г. и септември 2019, г. с цел да подсилит прилагането на Директива 2012/29/EС (по нататък, Директива за жертвите на престъпления) в случаи, при които деца са жертва на престъпление, както и да допринесе за цялостната закрила на децата жертва на престъпление в Европейския съюз.

Една от основните цели на проекта е да разгледа методите, по които се извършва индивидуалната оценка на нуждите спрямо деца жертва на престъпление в съответствие с член 22 от Директивата за жертвите на престъпления, и следователно как се установяват кои мерки за защита трябва да бъдат предприети в определен случай. В тази връзка са проведени поредица от изследователски дейности в сътрудничество с експерти и практикуващи в сферата на защита на децата жертва на престъпление, за да бъдат идентифицирани както предизвикателствата, така и добrite практики.

В проекта участват организации от пет страни членки на Европейския съюз а, именно България, Гърция, Италия, Австрия и Румъния. Този документ съдържа конкретни препоръки за подобряването на текущите практики за закрила и подкрепа на деца жертва на престъпление в България.



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II. Ключови резултати: общи препоръки относно създаването на политики на ниво ЕС

Между октомври 2017 г. и септември 2019 г., екипът на E-PROTECT извършва поредица от изследователски дейности с цел да се проучи по какъв начин Директивата за жертвите на престъпления е транспорнирана в Австрия, България, Италия, Гърция и Румъния. Специално внимание е обърнато на транспорнирането разпоредбата що се отнася до *Индивидуалната оценка на жертвите с цел установяване на специфичните нужди от защита* в съответствие с член 22 от Директивата. Резултатите от проучването показват, че транспорнирането на Директивата се е случило под различна форма в държавите членки.

Въпреки различието на съществуващите стандарти във всички проучени държави членки, се установи, че в тях съществуват мерки за подкрепа на жертвите на престъпления и преди процеса по транспорниране. Именно съществуващите законови рамки и съществуващата ги терминология, в които Директивата следва да се транспорнира представляват едно от основните предизвикателства пред процеса на транспорниране, в частност включването на индивидуалната оценка на нуждите на жертвите на престъпления в националното законодателство. Тъй като всяка държава членка действа в своите институционални рамки и система за подкрепа и закрила на жертви на престъпление, които съществуват преди правата на жертвата на бъдат регулирани на европейско ниво, всяка държава неизбежно представя разминаящи се решения за транспорнирането и прилагането на Директивата за жертвите на престъпления. Тази отличителна национална законова и социално-практически среда, в които специалисти и законодатели работят, разкрива различните разбирания за отговорностите на страните членки спрямо защита на жертвите на престъпление на национално ниво.

Ключов аспект в създаването на политики на Европейския съюз е, следователно, включването и разбирането на ролята на контекста. При изготвянето на политики на Европейския съюз е важно да се вземат под внимание различните контекстуални фактори, включително различните правни системи, които определят системи за защита на жертвите на престъпления, специфични за държавата, особено когато целта е установяването на минимални стандарти. Подкрепата към жертви на престъпление съществено се различава между страните членки и, следователно, развитието на политики спрямо Европейския съюз трябва да вземе предвид различните контексти и среди, за да развият по-гъвкави методи и да повлияят на политиката и



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практиките в страните членки.



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КЛЮЧОВИ РЕЗУЛТАТИ ОТ ИЗПЪЛНЕНИЕТО НА Е-PROTECT

Ключови предизвикателства пред закрилата на деца жертва на престъпление в България

- i. Съществува нужда от подобреие на **сътрудничеството и съвместната работа** между различните институции, участващи в процедурите, включващи деца жертва на престъпление (полиция, служби за подкрепа на жертвите, съдебна власт, адвокати).
- ii. **Законодателството за закрила на жертвите, политиките и услугите са често твърде разпокъсани.** В частност, съществува съсредоточаване на услуги за защита на жертвии в градските центрове и липса на подобни услуги в някои региони от страната.
- iii. **Обучението на професионалисти**, участващи в процедурите, включващи деца жертва на престъпление – особено тези, които провеждат интервю и оценки- е от ключово значение за щадящо правосъдие. Понастоящем в никоя от изследваните държави в рамките на E-PROTECT не е осигурено индивидуалната оценка на нуждите и съпътстващите я интервюта да бъдат провеждани само от професионалисти, специално обучени в щадяща комуникация.
- iv. **Транспорнирането на разпоредбата относно индивидуална оценка на нужди в съответствие с член 22 от Директивата за жертвите на престъпления поставя предизвикателства пред държавите членки.**
- v. Налице е липса на **виктимологични проучвания, основани на доказателства** в повечето държави членки. В резултат, сравнението на приложените стандарти в държавите членки на Европейския съюз, както и идентифицирането на въздействието, което Директивата за жертвите на престъпления има на равнище държава членка на Европейския съюз е трудно.



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i. Сътрудничество и съвместна работа

Във всички проучени държави съществува нужда от подобреие на сътрудничеството и съвместната работа между различните институции, участващи в процедурите, касаещи деца жертва на престъпление, като полицията, организации за подкрепа на жертвите, съдебната система и адвокати. В допълнение, в повечето държави не съществува ясно разпределение на отговорностите между основните заинтересувани страни, няма и ясно дефиниране кой точно упражнява ролята на ръководител на случая. Често, мултидисциплинарна и междудисциплинарна съвместна работа не се приема като приоритет, тъй като широкообхватните ползи от сътрудничеството не са непосредствено очевидни. В резултат на това, финансовите и човешки ресурси за дейности за сътрудничество са често недостатъчни.

В Австрия, резултатите от проекта показват, че някои от практиците в сферата на закрила на детето не познават в дълбочина ролите и процедурите на други организации, част от системата по закрила и подкрепа на деца жертва на престъпление, поради ограничени дейности на сътрудничество. Според резултатите от проучването в България, липсата на ясно разпределение на отговорностите между институциите води до размиване на отговорност и прехвърлянето ѝ между институции и организации. Този процес се задълбочава допълнително от липсата на комуникационни канали не само от многоведомствена перспектива, но също така и от гледната точка на различните региони в страната. Резултатите от E-PROTECT в Италия посочват слабото мултидисциплинарно и многоведомствено сътрудничество между различните участващи страни като едно от основните предизвикателства, което е необходимо да бъде преодоляно в сферата на защита на децата жертва на престъпление. В Гърция, участници в национални семинари отчитат необходимостта от повишаване на сътрудничеството между заинтересувани страни в сферата на закрила на детето чрез създаването на съгласувана мрежа за обмен на информация и подобряването на предоставяни услуги като едно от ключовите предизвикателства, които следва да бъдат разгледани. На последно място, в Румъния също съществува необходимост от подобряване на сътрудничеството и съвместната работа между различните заинтересувани страни, участващи в процедури, включващи деца жертва на престъпление.



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ii. **Фрагментиране на законодателството и специалните услуги за закрила на деца жертва на престъпление**

Във всички партньорски държави в рамките на E-PROTECT съществуват специфични услуги за закрила на децата жертви на престъпление. Въпреки това, тези услуги често са разпокъсани и поставени в регионални зависимости. Едно от основните предизвикателства в тази връзка е съследоточаването на услуги за защита на жертви на престъпление в градските центрове и липса на подобни услуги в някои региони от страната. Докато, например, в България съществуват услуги „всичко под един покрив“, отговарящи на моделът Барнахус, тези услуги са налице единствено в резултат от усилията на индивидуални неправителствени организации, а не като част от държавна политика за закрила на детето, изостряйки неравномерното покритие.

Заедно с това, съществува и фрагментация на законодателството в някои от партньорските държави в E-PROTECT. Поради тази разпокъсаност, осигуряването на подходяща защита на децата жертва на престъпление понякога представлява предизвикателство за гарантиране на еднакви стандарти във всички региони. В Италия например, разпокъсаните политики и интервенции, касаещи деца жертва на престъпление, затрудняват спазването на правата на детето в някои региони. Резултатите от Гърция показват, че там липсва национална система за закрила на детето, която да служи като обща рамка и да координира усилията на всички съответни агенции и организации в страната.

iii. **Обучение на специалисти**

Общопризнато е, че за провеждане на интервю с дете жертва на престъпление са необходими специални умения, като например знание за развиващите се способности на децата или за различните техники на комуникация. Резултатите от нашето проучване показват, че понастоящем в никоя от разглежданите държави не е установено със закон интервютата да бъдат провеждани само от специалисти, обучени в провеждането на интервюта с дета жертва на престъпление.



В Австрия не е гарантирано всички професионалисти, които провеждат интервюта с деца жертва на престъпление, да са преминали съответното обучение, особено в провинцията. В Гърция и Румъния, дейности от проекта разкриват, че е налице липса на систематично обучение на специалисти, включително полиция, съдии и прокурори. На последно място, в България професионалисти посочват, че липсват механизми за надзор и подкрепа на специалисти в сферата на закрила на детето. Това възпрепятства практическото приложение на правата на детето в светлината на E-PROTECT, тъй като определените за целта социални работници са неспособни да проучат детайлно всеки случай, по който работят, и често, могат единствено да предоставят само най-основната информация относно случая пред компетентния съд.

iv. Индивидуална оценка на нуждите

Извършеното проучване в рамките на E-PROTECT показва, че съществуват трудности при транспонирането и практическото прилагане на член 22 от Директивата за жертвите на престъпления. Докато някои държави членки, част от E-PROTECT предприемат специфични мерки за транспонирането на член 22, не всички от тях изцяло въвеждат член 22 от Директивата в националното си законодателство.

В България, индивидуална оценка на нуждите се извършва само в случаи на насилие срещу деца и в случай на трафик на хора. Следователно, деца, които не са били преки жертви на престъпление няма да бъдат обект на индивидуалната оценка.

Също така в Румъния, индивидуална оценка на деца жертва на престъпление се извършва единствено в случаи на сексуално и домашно насилие. В Италия, извършеното проучване в рамките на E-PROTECT разкрива липсата на ясна легална дефиниция на насилие срещу деца, както и липса на транспониране на процедурата за индивидуална оценка.

Докато в Италия не съществува изрична разпоредба за транспонирането на член 22 в националното законодателство, на практика индивидуална оценка се извършва. Единствено в Австрия и Гърция в хода на процеса по транспониране са въведени нови разпоредби, регулиращи процедурата за индивидуална оценка. Въпреки това, и в двете държави резултатите от проучването на E-PROTECT разкриват, че новите разпоредби са доста неясни и оставят неразрешени въпроси.



Независимо от това, в Гърция, към края на проекта E-PROTECT, е издадено Министерско решение, което въвежда структуриран протокол, съдържащ насоки как да бъде извършена индивидуална оценка на нуждите.

v. Статистически данни

На последно място, резултатите от изпълнението на Е-PROTECT разкриват, че е налице липса на виктимологични проучвания, основани на доказателства в повечето европейски държави. Подобни данни биха представлявали идеална база за сравнение на стандартите, въведени в европейските държави членки. Установяването на разбиране на степента на въздействие, която Директивата за жертвите на престъпления има върху национални законодателства и практики е трудно да се постигне без данни относно въздействието на мерките за помощ на жертвите на престъпления върху тяхното положение, както и при липса на проучвания в тази връзка.



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III. Методология

В първата година на проекта, общо тринадесет доклада са изгответи на базата на 28 експертни интервюта в Австрия (3), България (0), Италия (3), Гърция (12) и Румъния (10), както и на вторична литература. Първите единадесет проучвания разглеждат приложението на Директивата за жертвите на престъпления, както и това на индивидуалната оценка на деца жертва на престъпление, в съответствие с членове 22-24 от Директивата. В последствие се изготви сравнителен доклад върху правното приложение, както и сравнителен доклад върху приложението на практика на индивидуалната оценка. Целта на тези проучвания е да отбележи общите предизвикателства и да откри обещаващи практики. На базата на тези резултати е развита първоначална версия на „Методология за индивидуална оценка на нуждите на деца жертва на престъпление“.

През втората година на проекта се провеждат най-малко шест семинара във всяка една от петте страни партньори. Общо, 35 семинара се състоят в Австрия (6), България (7), Италия (7), Гърция (6) и Румъния (9). В рамките на първия етап, семинарите имат за цел да представят резултатите от проведеното проучване в рамките на Е-PROTECT, както и идентифицирането на предизвикателства и добри практики. За тази цел участниците в семинарите бяха разпределени в малки групи, за да дискутират конкретен казус, следвайки предварително изгответи указания. И двете, казусите и указания, се ползват във всички с партньорски държави, преведени на съответния език. Участниците в семинарите са специалисти, част от системата за закрила на деца жертва на престъпление, като адвокати, съдии, прокурори, полицейски служители, както и професионалисти, работещи в организации за закрила на детето, сферите на психологията и медицината.

Въз основа на резултатите от семинарите и проучването от първата година на проекта е развита „Методология за индивидуална оценка на нуждите на деца жертва на престъпление“. Методологията може да бъде разглеждана като ръководство за работа с деца жертва на престъпление в контекста на щадящо правосъдие. В допълнение, конкретни предложения за подобряния в защитата на деца жертва на престъпление в хода на наказателното производство са формулирани във всички пет страни партньори. Методологията и препоръките за формулиране на политики са обектът на дискусия във втория етап на семинарите, проведени през 2019 г. с цел представяне и валидиране на резултатите.



IV. Общи насоки спрямо България

Обобщение

Основни открития и Е-PROTECT мнения

- Българският законодател следва да транспонира в цялост разпоредбата на член 22 от Директивата за жертвите на престъпления, взимайки предвид, че жертвата може да е потърпевша както от насилиствено, така и от ненасилиствено престъпление. Транспонирането трябва да вземе под внимание, че лицето може да бъде пряка или косвена жертва на престъпление.
- Следва да се установи единна точка за контакт, където жертвите на престъпление могат да се обърнат към съответните професионалисти за предоставяне на подходящи социални услуги.
- Координацията между професионалисти от сферата за закрила на детето следва да бъде подобрена, особено в контекста на предоставяне на социални услуги на деца жертви на престъпление.

В рамките на проекта са организирани общо 8 събития в България, приветстващи повече от 200 професионалисти от сферата за закрила на детето. По-голямата част от констатациите, направени в **Националния доклад на Е-PROTECT относно индивидуалните методологии за оценка на деца жертва на престъпление в България** и **Националния доклад на Е-PROTECT относно транспонирането на Директивата за жертвите на престъпления в България** на Е-PROTECT са потвърдени и от участниците и дебатите, проведени по време на събитията по Е-PROTECT в България. В светлината на проекта, основният резултат що се отнася до положението у нас е липсата на пълно транспониране на член 22 от Директивата за жертвите на престъпления. От по-позитивна гледна точка, както проучването, така и събитията потвърдиха, че съществува мултидисциплинарен механизъм, отговорен за изпълнението на оценката за индивидуалните нужди – а именно добре познатият координационен механизъм. На практика, индивидуална оценка се извършва в случаи на насилие над деца, или в случаи на трафик на хора, като водеща роля е отредена на социалната, а не на съдебната система. Въпреки това, участници в събитията подчертаха, че в не във всеки случай на онлайн престъпление, координационният механизъм ще бъде свикан и че, по принцип, онлайн престъплениета и насилие имат тенденцията да биват пренебрегвани от правоприлагашците органи. Това изисква промяна на предпоставките за свикване на



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координационния механизъм, както и на професионалната принадлежност на участниците в него, тъй като случаите на киберпрестъпления и кибертормоз се увеличават и участието на експерти в тази сфера е от особена важност.

Част от проблемите, произлизащи от ограниченото транспорниране на Директивата за жертвите на престъпления в България, се основават на фрагментираното законодателство, регулиращо закрилата на деца жертва на престъпление. От една страна съществува законодателството за социалните услуги и закрила на детето (именно, Законът за закрила на детето, който попада в сферата на семейното право), а от друга - Наказателно-процесуалния кодекс (НПК). Освен това, Законът за подпомагане и финансова компенсация на пострадали от престъпления е също част от тази регулация., като той установява различни административни процедури. Ситуацията е допълнително утежнена от липсата на ефективна комуникация и взаимодействие между съдебната и социалната система, както и от незапознатостта, като цяло, на различните институции спрямо правилата, регулиращи останалите. В резултат налице е необходимост от пълно транспорниране на разпоредбата на член 22 в националното законодателство, като законодателят следва да реши кой е подходящият нормативен акт, подходящ за целта.

Във връзка с подходящите мерки, нужни да бъдат приложени и наблюдавани по време на текущи наказателни производства, тук следва да се отбележи, че законодателят не е въвел основните принципи за съобразено с щадящо, което да улесни участието на децата в наказателния процес.

Сред недостатъците е нетранспорнирането на разпоредбата на член 23 от Директивата за жертвите на престъпления, изискваща интервютата и разпити на деца да бъдат водени от едно и също лице, в най-добрая случай от същия пол, което е завършило подходящо образование/ преминало е съответното обучение. На практика обаче, тези принципи са съблюдавани в резултат на индивидуалните усилия на работещите по случая експерти. Мнозина от представителите на съдебната власт и правоприлагашите органи споделят, че се стремят да организират едно единствено изслушване на детето, използвайки подходящо помещение - синя стая, водено от професионалисти обучени в щадяща комуникация. Въпреки това, фактът, че в действителност това е добра практика, практическото ѝ осъществяване зависи от индивидуалната субективна оценка на лицата, отговарящи за случая в съответната фаза на наказателния процес. Говорейки за разпоредбите на членове 23 и 24 от Директивата за жертвите на престъпления, е необходимо да бъде направен един последен



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коментар. От политическа и правна гледна точка е необходимо да бъдат въведени промени, за да не бъде позволяван контакт между жертвата и извършителя. Настоящото законодателство в тази посока осигуряващо възможността за използване на комуникационни и информационни технологии, за провеждането на интервюта с жертвата, е недостатъчно, и има възможност за подобрение. На първо място, съответните разпоредби имат диспозитивен характер, който може да лиши детето жртва на престъпление от правото му да ползва такива мерки за осигуряване на защита. В тази връзка, законодателството може да предвиди отделни входове до сградата на съда, използването на параван и т.н., за да се избегне зрителен контакт между жертвата и извършителя и да осигури среда, благоприятна за деца по време на съдебното дело.

В същото време някои нововъведения в Наказателно-процесуалния кодекс потенциално може да допринесат към разпокъсаността на процеса на защита на жертвите и неспособността за разпределение на отговорности. Въпреки че член 417а от НПК постановява информирането на уязвимата жртва относно пускането на свобода на вече осъден извършител от директора на съответния затвор, не е ясно как последният ще бъде информиран относно самоличността на жртвата, нито как ще получи неговите/нейните координати, така че разпоредбата да бъде приложена на практика. За тази цел, българският законодател следва да разгледа повдигнатите въпроси в тази секция и да преодолее пропуските в законодателството подчертани тук.

Събитията по E-PROTECT демонстрират съществуващата нужда от консолидирането на общността на професионалистите от сферата на закрила на детето, както и подходяща среда, която да улесни този процес. Неочекван позитивен аспект от изпълнението на E-PROTECT в България е именно неговата подпомагаща роля, изграждаща мост между палитрата от експерти, работещи с деца жртва на престъпление. Това е особено оценено в градовете извън столицата, където подобни събития са рядкост. Човешкият фактор е определящ елемент за междуведомствено сътрудничество, следователно проектът E-PROTECT предостави възможност за разрастване и развитие на тази общност, в резултат на което има подобряване на цялостния подход спрямо закрила на детето.

България

Изготвя ли се индивидуална оценка на нуждите за всички жртви на престъпление?

Не. Според член 144, параграф 3 НПК, процедурата за индивидуална оценка е една възможност в рамките на наказателното производство. Мярката е препоръчителна, а не задължителна.



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Кой извършва оценката?	В съответствие с посочената по-горе разпоредба, вечно лице изготвя индивидуалната оценка. Вещето лице е определено от Съда за всеки отделен случай.
Има ли разпоредби, регулиращи начина, по който следва да се извърши оценката?	Не.
Кои критерии трябва да се вземат предвид, когато се оценяват специфичните нужди за закрила?	В рамките на наказателното производство няма определени критерии, които да се следват по време на индивидуалната оценка.
Смятат ли се децата жертви на престъпление особено уязвими <i>ex lege</i> ?	Законът не посочва изрично децата жертви на престъпление за особено уязвими, но систематичното тълкуване на закона води до извода, че те се считат като такива.

Транспониране на член 22 от Директивата за жертвите на престъпления в България

Препоръки: Транспониране на Директивата за жертвите на престъпления

Необходимо е българският законодател да транспонира разпоредбата на член 22 от Директивата за жертвите на престъпления в пълнота, взимайки предвид, че жертвата може да е потърпевша както от насилиствено, така и от ненасилиствено престъпление. Следва да се вземе под внимание, че лицето може да бъде пряка или косвена жертва на престъпление. Процесът по транспониране трябва да следва реда, посочен в Закона за нормативните актове и да включва извършването оценка на въздействието, за да включи в него разнообразието от заинтересовани страни. Необходимо е в този процес да се вземат под внимание спецификите на социалното законодателство, както и законодателството за закрила на детето, за да се избегне дублиране на компетенции и правомощия. Освен това, българският законодател трябва да въведе единна точка за контакт, където жертвите на престъпление могат да се обърнат към съответните професионалисти за предоставяне на подходящи социални услуги. От структурна гледна точка, тази промяна трябва да бъде въведена като мярка в досъдебната фаза на наказателното производство. Въпреки това, промени могат да бъдат приети и в Закона за подпомагане и финансова компенсация на пострадали от престъпления.

Индивидуална оценка на нуждите: Поставяне на детето в центъра на процеса

В резултат на изпълнението на проекта, екипът на E-PROTECT предлага следните мерки да бъдат предприети в България, за да укрепят индивидуалната оценка като мярка, прилагаща се спрямо деца жертва на престъпление:



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- По-добро обществено разбиране на правата на детето в България. За тази цел, могат да бъдат организирани образователни кампании и кампании за повишаване на осведомеността, за да изградят разбиране, че всяко дете има право на свой собствен набор от права, а не е продължение, или дори собственост на своите родители. Това е особено актуално в контекста на противачия обществен дебат и широкото разпространение на дезинформация във връзка с правата на детето.
- Координацията между професионалисти от сферата за закрила на детето следва да бъде подобрена, особено в контекста на предоставяне на социални услуги на деца жертва на престъпление. Това означава по-добро разбиране и осведоменост за съществуващи механизми, както и разширяване на техния обхват, а не създаване на нови такива.

Прокурор от Окръжна прокуратура – Пловдив сподели, че всеки път, при случай на дете жертва на престъпление, организира провеждането на един единствен разпит в специално помещение (синя стая) от специалист, обучен в щадяща комуникация, в присъствието на всички страни в наказателното производство, които стоят зад венецианско стъкло. Водещият разпита носи слушалка в ухото и всеки от присъстващите може да задава своите въпроси чрез него/нея. Разпитът е надлежно протоколиран и изготвеният протокол е използван като доказателство в съда, вместо детето жертва да бъде призовавано отново и отново. Тази добра практика може да се използва навсякъде в страната, където подобни помещения са налице.

- Регионалните особености са от първостепенно значение. Те следва да се вземат под внимание в системата за закрила на детето. За тази цел, обещаващият пример от Милано¹ може да бъде пресъздаден и у нас.
- Редовни обучения и подкрепа. При тяхната организация трябва да се следва мултидисциплинарен подход, вкоренен във философията на проекта E-PROTECT, така че експерти от различни сектори и институции да си сътрудничат един с друг не само на професионално, но и на личностно ниво. Тези инициативи следва да се съредоточат върху въпроси като щадяща комуникация, професионална етика, методи за обмен на информация,

¹ E-PROTECT Методология за индивидуална оценка на нуждите на деца жертва на престъпление, стр. 29



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комуникация с медиите, защита на личния живот и данните.

- Представянето на услуги за закрила на детето на базата на метода „всичко под един покрив“ се препоръчва да се превърне в целенасочена държавна политика.
- Представяне на социални услуги от неправителствени организации, тъй като правната рамка в България позволява възможността неправителствените организации да предоставят социални услуги. Взимайки предвид, че именно те са третият сектор, който въвежда нови подходи, свързани с подкрепа и закрила на детето у нас, е важно тези усилия да бъдат допълнително наಸърчавани и разпознавани.

У нас някои неправителствени организации, които са и доставчици на социални услуги, прилагат метода „всичко под един покрив“ при представянето на услуги на жертви на престъпление. Сред тях са: [Институт по социални дейности и практики](#), който управляват четири социални услуги в България; [Фондация „Асоциация Анимус“](#); [Фондация П.У.Л.С.](#).

- Необходимо е държавата да поеме по-активна, подкрепяща експертна роля в предоставянето на социални услуги на жертви, вместо да упражнява предимно контролни функции. Понастоящем, българската социална система е ограничена откъм своите ресурси и не е напълно способна действително да въведе политика за закрила на детето. Следователно, следва да бъдат насочени допълнителни ресурси за тази цел, така че държавните органи, отговарящи за въвеждането на политики за закрила на детето, да могат да ги осъществят и на практика. Това също ще има ефект и спрямо доверието към институциите.
- Генерано, необходимост е повишаването и по-доброто разпределение на ресурсите, както човешки, така и финансови, в системата за закрила на детето.

V. Заключение

Проектът E-PROTECT ('Осигуряване на по-добра закрила на децата жертви на престъпление') поставя във фокуса на своята дейност практическото осъществяване на правата на децата, жертва на престъпление с цел цялостна защита на техните най-добри интереси в рамките на Европейския съюз. Резултатите от извършените проучвания в България определят цялостното транспортиране в българското законодателство на член 22 от Директивата за жертвите на престъпления, касаещ индивидуална оценка за деца жертва на престъпление, като основен приоритет, заедно с



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въвеждането на подходящи критерии за провеждане на подобно оценяване от специално обучени за целта експерти. Проучването откроява и някои ключови предизвикателства като наличие на разпокъсаност в законодателството, неосведоменост и дезинформация в обществото относно правата на детето, липса на достатъчно ресурси и активност от страна на държавата, както и липса на качествено и ефективно сътрудничество и комуникация между професионалисти и практикуващи в сферата на закрила на детето, включително и отствие на подходяща среда, където това сътрудничество може да се реализира. В същото време, добрите практики у нас трябва да бъдат отбелязани тук. Като такива бяха определени социалните услуги „всичко под един покрив“, отговарящи на модела Барнахус, като се препоръчва те да се превърнат в държавна политика, както и да се насърчи участието на неправителствени организации в предоставянето на социални услуги.



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