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**D3.6 pan-European Best Practices Report
on Victims' Directive transposition**

WP3 Leader: VICESSE



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Executive summary

The present report evaluates the national transposition legislation of the Victims' Directive (Directive 2012/29/EU) in five Member States (MS) beyond E-PROTECT partner countries – Finland, Germany, Portugal, Spain, and England and Wales – with a particular focus on the rights granted to child victims of crime. Its aim is to gain knowledge on the legal implementation of the Victims' Directive, as well as to identify promising practices and best working legislative solutions. In particular, it assesses the transposition processes of the Victims' Directive in the selected MS, as well as the respective transposition legislation of articles 8-9 and 22-24 of the Victims' Directive. The present research is complemented by an additional report assessing the practical implementation of the individual assessment of victims to identify specific protection needs in the selected MS.¹

The research was conducted in the scope of E-PROTECT - 'Enhancing PROtection of Children – vicTims of crime,' – a project with the aim to reinforce the application of the Victims' Directive, particularly in the cases of child victims of crime. The project consists of several phases, including research and active interaction with practitioners in the field of children's rights. In later phases of the project, amongst others, an online platform on the rights of child victims including relevant information material for practitioners will be established, as well as seminars and virtual events with practitioners and experts in the field of child victim support will be conducted.

The results of the research show that the transposition processes of the Victims' Directive in the selected MS was quite diverse. While Spain and Portugal transposed many parts of the Victims' Directive verbatim, Victims' Code in England and Wales aims to be a practical guide directed towards victims and service providers alike. In general, the establishment of a single document comprising all rights of victim appears to make victims' rights more accessible and clear.

The legal definition of victim also differs in the five MS assessed: In Germany and Finland no legal definition of victim can be found in national black-letter law. Nevertheless, the fact that different terms are used to describe the person that has suffered harm as a result of a crime, does not necessarily mean that national legislations do not provide for the same amount of rights.

¹ D3.13 pan-European Best Practices Report on individual assessment methodologies of child victims of crime, elaborated under the framework of E-PROTECT



The present research shows, that common difficulties emerged in all MS regarding the practical implementation of the individual assessment of victims to identify specific protection needs. Problems included the identification of responsible authorities to conduct the assessment, as well as provisions regulating the procedure. Furthermore, while most of the special measures to guarantee the victims' rights already existed before the transposition process in most MS included in this research, the transposition of the Victims' Directive resulted in several changes in national legislations, as e.g. additional rights, the extension of the beneficiary group of already existent rights, and the systematisation of the existing provisions.

While the legislative solutions chosen by each of the MS clearly go hand in hand with the particular context of their legal system, the present research suggests that nevertheless there exists space for mutual learning amongst MS. Amongst others, the following promising practises were identified:

- In Finland, victim charge is the money that is to be paid by the prosecuted offender to fund the support services of victims.²
- The right to psycho-social support was newly introduced into German legislation. Similar provisions previously existed in Portugal and Finland.
- Portugal and Spain used the transposition process to systematise the rights granted to victims of crime and introduced one single document that entails all rights granted to victims of crime. Also, in England and Wales the Victims' Code lists all victims' rights in one single document.
- In Spain, Victim Support Offices offer a wide range of services, undertake the individual assessment of victims to identify their specific protection needs and coordinate other victim support services. Their teams are interdisciplinary and include judges, psychologists and social workers. The functioning of victim support institutions, mechanisms and guarantees are to be assessed on an annual basis by the Spanish Ministry of Justice.
- In England and Wales, a registered intermediary might help vulnerable victims (incl. a child victim) to give evidence in court and to the police. In a pre-trial hearing, the intermediary helps to establish ground rules for the interview which have to be upheld during the hearing. Moreover, victims may visit the court before the trial date to familiarise themselves with the building and the court.

² A similar system exists in England and Wales: Victim Surcharge.



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List of acronyms

E-PROTECT	‘Enhancing PROtection of Children – vicTims of crime’
FCIA	Finnish Criminal Investigation Act
FCJP	Finnish Code of Judicial Procedure
GCCP	German Code of Criminal Procedure
MS	Member States
PCCP	Portuguese Code of Criminal Procedure
PVS	Portuguese Victims’ Statute
RIKU	Victim Support Finland
VD	Victims’ Directive Victims’ - Directive 2012/29/EU
Victim PS	Victim Personal Statement
Victims’ Code	The Code of Practice for Victims of Crime



1. Introduction

The present paper assesses the national transposition legislation of Directive 2012/29/EU (in the following Victims' Directive or VD)³ of five Member States (MS) - namely Finland, Germany, Portugal, Spain, and England and Wales – with a particular focus on the rights granted to child victims of crime. The aim of the report is to gain further knowledge on the level of legal implementation of the requirements set out in the Victims' Directive, as well as to identify promising practices and best working legislative solutions. The present report does not, however, assess the implementation of the transposition legislations of the Victims' Directive in the selected MS in practice.⁴ It was conducted in the scope of E-PROTECT - 'Enhancing PROtection of Children – vicTims of crime' – a project with the aim to reinforce the application of the Victims' Directive, particularly in the cases of child victims of crime.

The Victims' Directive forms part of a wider priority of the European Commission to improve the rights, protection, support, and participation of victims in criminal proceedings, as set out in the horizontal package of measures which were launched by the Commission in May 2011.⁵ A central aim of the Victims' Directive is to ensure the consideration of victims' needs on an individual basis. It contains various special measures regarding the protection of child victims of crime and stipulates a child-sensitive approach, whereby the child victims best interest must always be the primary consideration during their involvement in criminal proceedings.⁶

E-PROTECT consists of several phases, including research and active interaction with practitioners in the field of children's rights. In a first step, the transposition legislation of the VD in the five partner countries to E-PROTECT⁷ was assessed. The present report complements these reports, assessing the transposition legislation of five additional MS in order to receive further knowledge of the transposition on a broader pan-

³ Official Journal of the European Union, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

⁴ An additional report – D.13 Study on the individual assessment methodologies of child victims of crime in other member states – has the aim to assess the practical implementation of the individual assessment methodologies of child victims of crime in the same selected member states.

⁵ European Commission, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2013 (in the following: European Commission, Guidance Document to the Victims' Directive, 2013).

⁶ Ibid.

⁷ Austria, Bulgaria, Italy, Romania and Greece



European level. These six reports serve as cornerstones for further steps of E-PROTECT, as amongst others the establishment of an online platform on the rights of child victims, as well as the conduction of seminars and virtual events with practitioners and experts in the field of child victim support.

The report structures as follows: The second chapter outlines the methodology, including how the MS assessed within this report were identified, how the articles examined were selected, as well as the methodology of the legal assessment. The third chapter comprises an assessment of the transposition process of the Victims' Directive in the selected MS, considering the timeliness of the transposition and the legislative process, as the involvement of stakeholders in the drafting process.

Subsequently, the fourth chapter contains the heart of the present report: the assessment of the transposition of the selected articles of the Victims' Directive, namely: the legal definition of child victims of crime (art. 2 para. 1 VD), the individual assessment of victims to identify specific protection needs (art. 22 VD), the right to protection of child victims of crime during criminal proceedings (art. 23-24 VD), as well as the access to and support from victim support services (art. 8-9 VD). Each of the above-mentioned sections is divided into sub-chapters, assessing the respective transposition legislation in each of the selected MS individually.

Lastly, chapter five comprises the conclusion of the report. It identifies improvements and achievements which resulted from the transposition processes in the respective MS and aims to pinpoint best working legislative solutions by contrasting the findings of the individual country studies.

2. Methodology

The present report complements five in-depth reviews of the transposition legislation of the Victims' Directive in the five MS part to this project, namely Austria, Bulgaria, Italy, Romania, and Greece. In the light of its aim to gain further knowledge on the transposition of the VD on a pan-European level, the following selection criteria were used to identify the MS assessed within this report:

- **Geographical and cultural scope**
- **Relevance** of the MS as an example, in particular 1) national legislative specifics; 2) approaches to legislative solutions for the transposition of the VD
- **Best working practices**



- **Availability** of literature, policy documents and other materials

The structure of the report is based on the previous reports conducted within E-PROTECT in order to allow comparison between the different legislative solutions. Likewise, the same articles which were covered in the previous reports were assessed within the scope of the present report. A contrasting juxtaposition of the provisions of the Victims' Directive and the respective legislations was conducted, while using the DG Justice Guidance Document⁸ as a point of reference. Lastly, additional information was gathered through desk research.

While an assessment of the implementation of the transposition legislation in practice might have been beneficial particularly in regard to finding best working legislative solutions, such an assessment would have extended the scope of this research. In order to bridge this limitation, information was gathered through various research reports that used primary research methods.⁹

3. The transposition process of Directive 2012/29/EU in selected Members States

The following chapter will provide a brief elaboration of the transposition processes of the Victims' Directive in the selected MS: What were the challenges? Where the transposition processes in time – hence, entered into force by 16th November 2016 as determined in article 27 VD? Did the Commission initiate an infringement proceeding? Subsequently the legislative process, particularly the involvement of stakeholders

⁸ DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

⁹ In fact, there existed several research reports that focus on the protection of victims of crime. Amongst others: APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016; EPRS – European Parliamentary Research Service, The Victims' rights Directive 2012/29/EU: European Implementation Assessment, December 2017; European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015; European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Luxembourg), 2014; FRANET, Victim Support Services in the EU: An overview and assessment of victims' rights in practice: Germany, 2014; Maizener ed. al., EVVI (Evaluation of VItims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf; Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings.



in the drafting process of the law, will be elaborated and the national legislation transposing the VD will be identified.

3.1. Finland

The Finnish parliamentary legislative process¹⁰ is regulated by the Finnish Parliamentary Working Order (*Riksdagens arbetsordning*). For ordinary bills, it foresees that most of the legislative work shall be conducted by the ministries and committees. After a proposal has been introduced into Parliament¹¹ it is first discussed by the respective committee, which is allowed to consult experts, before the proposal is presented in Parliament. Subsequently the bill is either debated, or the Parliament directly proceeds to voting.¹²

In case of the transposition legislation of the Victims' Directive, two working groups prepared the legislative act: First, a working group set up by the Ministry of Justice consisting of representatives from the various Ministries, as well as the Prosecutors Office, the Finnish Bar Association, and Victim Support Finland (RIKU)¹³.¹⁴ This working group had the task to assess which legislative amendments and which further actions were needed in order to implement the Victims' Directive. After drafting the report, authorities, companies, and experts had the possibility to give statements on the suggested amendments. Most of these statements supported the proposed amendments.

Secondly, an additional commission – the Commission of Victim Policy – was set up to prepare the implementation of articles 8 and 9 of the Victims' Directive, in specific, to establish “*a national strategy for the organisation of victim support services and the funding of such services.*”¹⁵ Like the working group,

¹⁰ See Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/> for a detailed explanations on the various steps of the Finnish legislative process.

¹¹ Proposals can be initiated either by government, individual MPs or through citizen initiatives with at least 50.000 signatures.

¹² Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/>

¹³ Victim Support Finland (RIKU) is an organisation based on an cooperation agreement and maintained by the Finnish Red Cross, the Federation of Mother and Child Homes, the Finnish Association for Mental Health, the Mannerheim League for Child Welfare, the Finnish Federation of Settlement Houses and the National Church Council. The operations are coordinated nationwide by the Finnish Association for Mental Health. It operates all around Finland. Its main operation is to improve the position of victims of crime and their relatives. See more at the webpage of RIKU, Victim Support Finland, <https://www.riku.fi/en/victim+support+finland/>

¹⁴ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings.

¹⁵ Ibid., 13.



the commission consisted of various official and NGO representatives, such as Victim Support Finland, The Federation of Mother and Child Homes and Shelters, and the Multicultural Women's Association Finland. More than half of the articles included in the Victims' Directive already existed in Finnish legislation and, hence, did not require transposition, as for example the specific provisions concerning the special needs of children mentioned in article 24 VD. As a result, only articles 4, 5, 6, 7, 8, 9, 12, 22 and 23 required legislative actions.¹⁶ The necessary changes were implemented through the government bill number 66/2015,¹⁷ which transposed the required changes into various acts relevant for criminal proceedings. The amendments entered into force in March 2016.¹⁸ The required changes regarding Article 8 and 9 VD were implemented through government bill number 293/2014¹⁹ and entered into force in December 2016.

The most significant changes in Finnish law concerned the obligations to inform the victim of his or her rights (Chapter 4, Section 18, Finnish Criminal Investigation Act (FCIA)); the provisions regulating the personal assessment (Chapter 11, Section 9 FCIA); and the referral to victim support services (Chapter 4, Section 10, FCIA)²⁰.

3.2. Germany

In Germany, a law proposal can be either introduced by the government (*Bundesregierung*), the federal council (*Bundesrat*), or by at least 5% of the members of the parliament (*Bundestag*) or a fraction.²¹ Before a proposal can be introduced by the government – which is the most common practice²² – the proposal has to be forwarded to the federal council for statements. Subsequently the proposal is – together with the statement of the federal council and the counterstatement by the government – introduced into parliament. Here, the law is debated in three readings, in between which the proposals are discussed within

¹⁶ Ibid.

¹⁷ FINLEY, HE 66/2015, <https://finlex.fi/fi/esitykset/he/2015/20150066> (Finnish).

¹⁸ EUR-LEX mentioned 29 measures which were implemented in order to transpose the Victims' Directive into Finnish jurisdiction. See EUR-LEX, National transposition measures communicated by the Member States concerning: Directive 2012/29/EU, <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029>

¹⁹ FINLEX, HE 293/2014, <https://finlex.fi/fi/esitykset/he/2014/20140293?search%5Btype%5D=pika&search%5Bpika%5D=He%20293%2F2014> (Finnish).

²⁰ RIKU – Rikosuripavystys: victim support Finland, <https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

²¹ Art. 76 Abs.1 Grundgesetz.

²² See webpage of the German Ministry of Interior, legislative procedure, <https://www.bmi.bund.de/DE/themen/verfassung/gesetzgebung/gesetzgebungsverfahren-node.html>



parliamentary committees (*Bundestagsausschüssen*). While inside the latter experts can be heard, the legislative procedure in Germany does not foresee an obligatory participation of civil society by law.²³ If not specifically invited by a respective parliamentary committee, organisations can nevertheless take up the initiative to write critical statements regarding the proposed laws, as several organisations did in the transposition process of the Victims' Directive.²⁴

Not all requirements set out in the Victims' Directive, however, fall within the competence of federal law, but into the competence of the federal states. As a result there are several provisions which could not be implemented on a national level.²⁵ In particular, this was the case regarding the provisions set out in article 8 and 9 (the access to and support from victim support services), as well as article 23 (the right to protection of victims with specific protection needs during criminal proceedings) and article 25 (the training of practitioners).²⁶ Nevertheless, as Germany already passed various laws focusing on the protection and rights of victims in criminal proceedings, not many changes were required in order to transpose the VD into German legislation. Most of the changes were transposed through the "Act to strengthen the rights of victims in criminal proceedings, 3. Act to Reform Victim's Rights" (*Gesetz zur Stärkung der Opferrechte im Strafverfahren – 3. Opferrechtsreformgesetz*),²⁷ which entered into force on 31 December 2015. Most of the amendments were to be transposed in the German Code of Criminal Procedure (*Strafprozessordnung*).

The biggest change that occurred as a result of the transposition process in Germany was the establishment of the psycho-social support (*psychosoziale Prozessbegleitung*), which gives victims with specific protection needs the possibility to receive before, during, and after the criminal proceedings professional support. Additionally, some changes were required in parts of the procedure and concerning the right to

²³ Bundesrat, legislative procedure, https://www.bundesrat.de/DE/aufgaben/gesetzgebung/verfahren/verfahren.html;jsessionid=3CA8BC90B2257E80D96151207647DF27.2_cid391?nn=4353668#doc4353670bodyText2 and bpb, Wie ein Gesetz entsteht, <http://www.bpb.de/politik/grundfragen/24-deutschland/40463/wie-ein-gesetz-entsteht> (German)

²⁴ Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.mietpreisbremse.bund.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (German).

²⁵ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 37.

²⁶ Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeUndOpferschutz/Bericht_BundLaender_AG.pdf?blob=publicationFile&v=2 (German)

²⁷ BMJV, Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf;jsessionid=0EB396255BA84B364DB133AAFF6BBBCE.2_cid289?blob=publicationFile&v=3



information.²⁸ Some experts are of the view, however, that most of the changes are unlikely to have much effect in practice.²⁹

3.3. Portugal

In Portugal a law can either be proposed by members of parliament as projects of law (*projetos de lei*) or by the government as a proposal of law (*propostas de lei*).^{30 31} After a law is admitted by the President of the Assembly of the Republic, the initiative is sent to a specialized committee for an opinion. Subsequently, a vote is held on the general principles of the proposal. The final vote is also held in plenary. Lastly, the initiative has to be signed by the President of the Republic.³²

The Victims' Directive was transposed in Portugal through Law No 130/2015, of September 4, 2015³³, which entered into force on October 4, 2015 and resulted in various changes in the Portuguese Code of Criminal Procedure (PCCP).³⁴ Additionally, an annex – the Portuguese Victims' Statute (PVS) ("*Estatuto da Vítima*") - was adopted which stipulates the safeguard of the status of vulnerable victims as set out in the Victims' Directive.³⁵ Most of the provisions were assumed verbatim from the Victims' Directive.

While several of the requirements set out in the VD already existed in Portuguese legislation, the law resulted in some changes regarding prevention measures, reinforced victims' rights to be informed, as well

²⁸ Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz),

https://www.bmjjv.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (German).

²⁹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, 8.

³⁰ There also exists the possibility of a citizen initiative. Further information on Assembleia da República, Processo Legislativo Comum, <http://www.parlamento.pt/Parlamento/paginas/plc.aspx>

³¹ Additionally to the parliamentary process in which laws are passed, in certain areas decree-laws can be passed by the Government, and regional legislative decrees by the legislative assemblies.

³² See Assembleia da República, Parliament, <http://www.en.parlamento.pt/Parliament/index.html>

³³ Decreto do Presidente da República n.º 101/2015 - Diário da República n.º 173/2015, Série I de 2015-09-04/70186153, Assembleia da República, Lei n.º 130/2015, Procede à vigésima terceira alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001 available at <https://dre.pt/application/file/70186153>

³⁴ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 60-61.

³⁵ Portuguese Victims' Statute, https://apav.pt/apav_v3/images/pdf/estatuto_da_vitima.pdf (Portuguese).



as introduced a new system of compensation to victims of domestic violence and violent crimes. Moreover, a legal definition of ‘victim’ was introduced into the Portuguese legislation.³⁶

3.4. Spain

Spain among other Member States had the obligation to fully transpose the Victims’ Directive by beginning November 2015. Starting with 16th of November 2015, Member States were required to communicate to the Commission the legislative progress in regard to the obligation to fully transpose the Directive. According to the European implementation assessment on the Victims’ Right Directive³⁷ elaborated by the European Parliamentary Research Service during December 2017, Spain among other MS has transposed the Directive through a single act, while the established law amends several other provisions of pre-existing legislation. The most relevant for the present report are modifications of the Spanish Code of Criminal Procedure (SCCP) and the establishment of Law 4/2015 on the Standing of Victims of Crime (Law 4/2015)^{38, 39}.

The main legal instrument used by the Spanish legislator to transpose the Directive is Law 4/2015.⁴⁰ The law had the objective to bring together the totality of victims’ rights in a single piece of legislation and was induced by the obligation to transpose the Victims’ Directive. Although Spain already had an existing regulatory framework that guaranteed the rights of victims⁴¹, a large part of these laws was focused on certain types of victims, so no unitary piece of legislation that applied to all types of victims of crime was in place. Therefore, the Law on the Standing of Victims of Crimes was intended to address in general manner the rights of all crime victims, with a strong emphasis for victims with special needs and vulnerable victims.

³⁶ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, 9.

³⁷ EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, December 2017.

³⁸ Ministerio de Justicia, Law 4/2015, of 27 April on the Standing of Victims of Crime, <https://rm.coe.int/168070ac7f>

³⁹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 81.

⁴⁰ Ministerio de Justicia, Law 4/2015, of 27 April on the Standing of Victims of Crime, <https://rm.coe.int/168070ac7f>

⁴¹ Law 35/1995 on support and assistance for the victims of violent crimes and crimes against sexual freedom (Spain); Organic Law 1/1996 on legal protection for minors; Organic Law 1/2004 on comprehensive protection measures against gender-based violence (Spain); and Law 29/2011 on the recognition and comprehensive protection of victims of terrorism (Spain).



As in the case of Portugal, the Spanish legislator transposed many of the provisions of the Victims' Directive verbatim. Moreover, the structure of the law is identical to the Victims' Directive.⁴² All rights and measures stipulated in the Victims' Directive were fully transposed in Spain. Moreover, similar to Germany, Spain is a federal state consistent of several Autonomous Communities. While the described laws are applicable in all Autonomous Communities, previous research has shown that significant differences exist in certain areas covered by the Law 4/2015, as amongst others the implantation of the victim assistance offices.⁴³

The Spanish legislator aimed to adopt a law that would make it as easy as possible for victims to exercise and protect their rights. Thus, information and orientation regarding the rights of victims are provided. Also, the legislation aims to avoid secondary victimization, which can be caused by unnecessary formalities, amongst others.

3.5. England and Wales

The Code of Practice for Victims of Crime (Victims' Code)⁴⁴ was first introduced in 2006 and had the purpose to determine the services which the criminal justice system has to provide to victims of crime in England and Wales. The revision of the Code was, on the one hand, in response to an internal consultation, which took place in 2012 and showed that the Code required updating in order to reflect changes in practice.⁴⁵ On the other hand, it transposes the Victims' Directive and parts of the Human Trafficking⁴⁶ and Child Sexual Exploitation Directive⁴⁷.

Before revising the Victims' Code, a consultation process was conducted including a wide range of organisations - as police forces, local criminal justice boards, youth offending teams, as well as judiciary and legal professionals and voluntary organisations. These organisations were, on the one hand, invited to

⁴² Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 81.

⁴³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, 10.

⁴⁴ UK Ministry of Justice, Code of Practice for Victims of Crime, October 2015,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF

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⁴⁶ Official Journal of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

⁴⁷ Official Journal of the European Union, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing the Council Framework Decision 2004/68/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN>



submit their responses to the consultation paper.⁴⁸ On the other hand, two public consultation events were held. Additionally, a survey with children and young people about their impressions about the children and young peoples' section of the Victims' Code was conducted.⁴⁹ Following the consultation process, the Ministry of Justice issued a response document⁵⁰, which includes the new Victims' Code, a summary of the responses submitted, as well as an outline of the actions which will be taken following the consultation responses.

The Victims' Code is aimed to be a practical guide, assisting criminal justice agencies in guiding victims' through the criminal proceedings and to develop a more flexible service.⁵¹ For example, Chapter 3 in which the regulations concerning child victims are to be found is written in two parts: Part A aims to provide victims and victim agencies with the relevant information to guide them through every step of the criminal proceeding; Part B is written for organisations who should provide this help and support, e.g. the police⁵². Additionally, the Ministry of Justice issued two EasyRead versions of the Victims' Code – one for adult victims⁵³, another one for child victims of crime⁵⁴ – and a leaflet⁵⁵. These documents comprise easy to read versions of the Victims' Code, explanations of difficult terms in a word bank and explanations through images. The Victim's Code was adopted in October 2015.

In England the victim is – unlike in the other MS assessed within this report – not seen as a party to the criminal proceedings, but essentially as a witness.⁵⁶ As a result, a victim takes a different position within the criminal investigation and proceeding, not being able to exercise any rights relating to legal

⁴⁸ The consultation paper included on the one hand the proposed changes of the Victims' Code. On the other side it was accompanied by an impact assessment and an equality statement. Ministry of Justice, Results Updated 31 Oct 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime>

⁴⁹ UK Ministry of Justice, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8@ 29 March 2013, published on 29 October 2013, 10, <https://consult.justice.gov.uk/digital-communications/code-victims-crime/results/improving-the-code-of-practice-for-victims-of-crime-consultation-response.pdf>

⁵⁰ UK Ministry of Justice, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8@ 29 March 2013, published on 29 October 2013.

⁵¹ Ibid.

⁵² Ibid, Chapter 3.

⁵³ UK Ministry of Justice, the support you should get if you are a victim of crime, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf

⁵⁴ UK Ministry of Justice, The Victims' Code: u18s: Young victims of crime – Understanding the support you should get, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267982/u18-victims-code-leaflet.pdf

⁵⁵ UK Ministry of Justice, Victims of crime: Understanding the support you can expect, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341367/adult-victims-code-leaflet.pdf

⁵⁶ European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Luxembourg), 2014, 29.



representation during court proceedings. In England and Wales, it is the State prosecutor who presents the victim's case, while the victim's role is to provide evidence as a witness.⁵⁷

4. Legal assessment of the transposing measures for Directive 2012/29/EU

The following chapter comprises a legal assessment of the transposition legislation of the Victims' Directive in the selected MS. First, the legal definition of victims of crime in each MS will be pinpointed. Subsequently, the provisions transposing art. 22 VD – the individual assessment to identify specific protection needs – will be identified and outlined. Lastly, the right to protection of child victims of crime during criminal proceedings (art. 23-24 VD), as well as their right to access to and support from victim support services (art. 8-9 VD) will be identified and assessed.

4.1. Legal definition of victims of crime

One of the central aspects of the Victims' Directive was to place the victim in the centre of the criminal justice system and move it away from solely focusing on the role of the prosecution and judge.⁵⁸ Thus, the Victims' Directive provides that 'victim' means:

“(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;

(ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;”⁵⁹

While in the national legislation of most MS included in this report (as well as EU MS in general⁶⁰) do comprise a legal definition of victim of crime, no definition can be found in the national legislation of

⁵⁷ Ibid.

⁵⁸ EPRS – European Parliamentary Research Service, The Victims' rights Directive 2012/29/EU: European Implementation Assessment, December 2017.

⁵⁹ Article 2 para. 1 VD.

⁶⁰ EPRS – European Parliamentary Research Service, The Victims' Rights Directive 2012/29/EU: European Implementation Assessment, December 2017, 13.



Finland nor Germany.⁶¹ Nevertheless, as other research has shown⁶², the fact that different terms are used to describe the person that has suffered harm as a result of a crime, does not necessarily mean that national legislations do not provide for the same amount of rights.

Country	Respective law	Legal definition
Finland	-	In Finland there exists no legal definition of the term victim. An injured party (<i>asianomistaja</i>, literally: “who owns the case”) is 1. “The bearer of the legal value protected by the criminal offence, and 2. The one who has suffered harm directly caused by a criminal offence.”⁶³ The Finnish definition of injured party is, thus, much broader than the definition of victim in the Directive. It includes a person against whom a criminal offence has been committed but did not suffer harm as a result of the offence. Moreover, the term “<i>asianomistaja</i>” includes legal persons. The Finnish legislation also defines indirect victims: a deceased victims’ spouse, a registered partner, people living in the same household, children, siblings, and parents.
Germany	-	In Germany there exists no legal definition of the term victim. Usually the term injured party or co-plaintiff is used, while the latter grants the victim additional rights. A co-plaintiff is an injured party which has the legal right to join the proceeding in accordance with art. 397a GCCP.⁶⁴ The latter also includes particular relatives of a person whose death was caused by a

⁶¹ In Finland the term “injured party” (*asianomistaja*, in Finnish) is used, while the German law the term is usually defined as “co-plaintiff”.

⁶² APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 113-116.

⁶³ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016 116.

⁶⁴ The fact that there exists no legal definition of victim in German law is criticised by German scholars. See Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 341.



		criminal offence (art. 395 para. 2 GCCP).⁶⁵ There are, however, no general provisions for indirect victims.⁶⁶ The reason the word victim is not used in German law is the presumption of innocence of the subject.
Portugal	Titel IV, Article 67, para. 1 lit. a Portuguese Code of Criminal Procedure	A victim is: “i) <i>the natural person who has suffered harm, including an attack on their physical or mental integrity, moral or emotional damage, or damage to property, directly caused by act or omission, under the commission of a crime;</i> ii) <i>the family members of a person whose death has been directly caused by a criminal offense and that have suffered harm as a result of that death. For this matter, within the concept of victim it is included the surviving spouse not legally separated from persons and property, or the person who coexisted with the victim in conditions similar to those of spouses, descendants and ascendants, in the strict extent that they have suffered damage by the death, except the offender who caused the death.</i>”⁶⁷
Spain	Article 2, Law 4/2015, of 27 April, on the Standing of Victims of Crime	“The provisions of this Law shall apply: a) As direct victims, to any natural person who has suffered harm or loss in relation to their person or property, in particular physical or psychological injuries, or emotional harm or financial loss, directly caused by the commission of an offence. b) As indirect victim, in cases of the death or disappearance of a person which has been directly caused by an offence, unless the person in question was responsible for the act: [...]”⁶⁸ This definition resulted from an amendment in April 2015. Previously no general definition of the term victim existed in Spanish legislation.⁶⁹

⁶⁵ Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, 22, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (German).

⁶⁶ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 116.

⁶⁷ IVOR, Portugal: Developments on the implementation of victim assistance mechanisms, 1.

⁶⁸ Ministerio de Justicia, Law 4/2015, of 27 April, on the standing of victims of crime, Article 2, <https://rm.coe.int/168070ac7f>.

⁶⁹ Previously, there only existed the term accusing party, which had as a result that only a person that wanted to accuse the offender as well as be a party in the criminal proceeding or a witness, was granted rights under Spanish legislation; See APAV –



England and Wales	Introduction, para. 4. Victims' Code Glossary, Victims' Code	<i>“For the purpose of [the Victims’ Code], a “victim” is:</i> - <i>a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;</i> - <i>a close relative (...) of a person whose death was directly caused by a criminal offence;”</i> A close relative is <i>“the spouse, the partner, the relatives in direct line, the siblings and the dependants of the victim. Other family members, including guardians and carers, may be considered close relatives at the discretion of the service provide.”</i> While the term victim is defined in British legislation, a victim is not party to the criminal proceedings and has no rights to legal representation during court proceedings.⁷⁰
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4.2. Individual assessment of victims to identify specific protection needs (article 22 VD)

4.2.1. Finland

In Finland, the requirements set out in article 22 VD were transposed through amendments of the Finnish Criminal Investigation Act (FCIA, 805/2011, as amended), amongst others.⁷¹ The Finnish Criminal Investigation Act regulates the pre-trial criminal investigation of an offence, whereas more specific measures may be contained in other Acts (Chapter 1, Section 1 FCIA). While the transposition of the Victims’ Directive also resulted in changes in other laws, most amendments concerned the FCIA.⁷²

In Finland the practice of individually assessing victims already existed previous to the transposition process.⁷³ These provisions were further strengthened by adding a new Section 9a to Chapter 11. This new

Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 110.

⁷⁰ Ibid., 110.

⁷¹ Finnish Ministry of Justice, Criminal Investigation Act (805/2011; amendments to 736/2015 included, Unofficial Translation, <https://www.finlex.fi/en/laki/kaannokset/2011/en20110805.pdf>

⁷² Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 16.

⁷³ EPRS – European Parliamentary Research Service, The Victims’ Rights Directive 2012/29/EU: European Implementation Assessment, December 2017, 60.



section sets out the rules for the personal assessment of victims in order to identify special protection needs to be granted during the preliminary investigation and trial. The personal assessment has to be conducted without unnecessary delay by the investigating authority and may take place during the criminal investigation and trial.⁷⁴ It is to be conducted in cooperation with the victim⁷⁵ and particularly has to take into account:

- The personal situation of the victim, as well as
- The nature of the suspected crime.⁷⁶

Protection measures are to be granted to the victim during the criminal investigation if they do not cause a significant delay of the procedure or cause any other harm.⁷⁷ Moreover, the investigating authority has the duty to inform the victim of his or her procedural rights according to Chapter 4, Section 18 FCIA, including *“information on support services, interpretation and translations, compensation, protection, reimbursement of costs and information on the handling of the case in criminal proceedings.”*⁷⁸

Specific rights are granted to particular groups that are considered to be most vulnerable, as e.g. child victims, victims of domestic or sexual violence, victims of trafficking and victims with physical or mental disabilities.⁷⁹ A Guide for the police for the assessment of the protection needs of a victim was issued. The guide determines rules for the personal assessment and how victims are to be referred to victim support services.⁸⁰

⁷⁴ Oikeus, If you Become a Victim of a Crime: Victim protection:

<https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>

⁷⁵ Ibid.

⁷⁶ Ibid; see also Savonen, Developing Directive-Compatible Practices for the identification, assessment and referral of victims: National Report – Finland, 2017, 6; and Finnish Ministry of Justice, Rights of a Crime Victim, 1.3.2017.

⁷⁷ Oikeus, If you Become a Victim of a Crime: Victim protection:

<https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>

⁷⁸ RIKU, What is the victims’ directive?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

⁷⁹ IVOR, Finland: Developments on the implementation of victim assistance mechanisms.

⁸⁰ RIKU, What is the victims’ directive?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>



4.2.2. Germany

While most of the rights set out in article 23 and 24 already existed in German national law prior to the transposition process of the Victims' Directive, no general provision existed which determined the individual assessment of victims to identify specific protection needs in accordance with article 22 VD.⁸¹ For this cause, the German legislator introduced a new paragraph into the German Code of Criminal Procedure (GCCP): paragraph 3 of article 48 GCCP. According to the latter, all hearings and other acts of the investigation with a witness that is an injured person, must be carried out taking into account his or her special protection needs. In particular, it must be assessed:

1. whether there exists a great danger of a grave disadvantage to the welfare of the witness, requiring measures to avoid the visual contact between the witness and the offender (§168e GCCP) or the arrangement of an audio-visual hearing of a witness (art. 247a GCCP),
2. whether prevailing legitimate interests of the witness require the exclusion of the public from the hearing, and
3. to what extent it is possible to dispense with non-essential questions concerning the personal sphere of life of the witness.

Within this assessment the **personal circumstances of the witness**, as well as the **nature and circumstances of the offense** must be considered (art. 48, para. 3 GCCP).

Additionally, references at the respective locations in the GCCP determine that this provision is also applicable within the investigation of the public prosecutor (article 161a, para. 1 GCCP) and the police (article 163, para. 3 GCCP)⁸². With these provisions the German legislator determined that the individual assessment shall take place with the first contact with the victim.⁸³

Thus, this obligation determines that the specific protection needs of victims must be assessed at all times,⁸⁴ while not specifying who is responsible for conducting the assessment and how the assessment should take

⁸¹ Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksach 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (German), 14.

⁸² Ibid., 15.

⁸³ Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 343. https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html

⁸⁴ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 40.



place. Although the rights mentioned in the new article 48 para. 3 do not constitute new rights, it is only through these legislative changes that the authorities are bound to assess these possibilities by law.^{85 86}

4.2.3. Portugal

In Portugal the transposition of the Victims' Directive not only resulted in the inclusion of a legal definition of the term victim in Portuguese legislation,⁸⁷ but also in the introduction of the term “especially vulnerable victim” (“*vítima especialmente vulnerável*”) into the Portuguese Code of Criminal Procedure (PCCP).

An especially vulnerable victim is a victim whose particular vulnerability results from his or her **age, health status, or disability**, as well as from **the damages with serious consequences** on the victims' psychological well-being or in his or her social integration that were caused by the **type, degree, and duration** of victimization.⁸⁸ Victims of violent crimes⁸⁹ and particularly violent crimes⁹⁰ are always considered to be a particularly vulnerable victim. The Portuguese Criminal Procedure Code specifies that a child or a young person is a natural person under the age of 18⁹¹.

Additionally, the Portuguese Victims' Statute was introduced within the transposition process of the VD, which entails several provisions transposing art. 22 Victims' Directive. It determines, that once a crime has been reported and there is no strong evidence that it is unfounded, the competent authorities need conduct an individual assessment to identify whether a victim is a particular vulnerable victim⁹² and to determine whether he or she should benefit from special protection measures⁹³. In the same act, the victim has to be provided with a document proving his or her status, including his or her rights and duties.⁹⁴ The law does

⁸⁵ Kett-Straub, Wie viel Opferschutz trägt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 343.

⁸⁶ Nevertheless, this norm was criticised, particularly regarding its location. It was argued that this norm is not ideally positioned within the GCCP, as article 48 is relating to witnesses during court proceedings and not victims more general; See further: Löffelmann, Drittes Opferrechtsreformgesetz – Ausgabe 11/2014, 22.11.2014, <http://www.recht-politik.de/drittes-opferrechtsreformgesetz/> (German).

⁸⁷ IVOR, Portugal: Developments on the implementation of victim assistance mechanisms, 2.

⁸⁸ Portuguese Criminal Procedure Code, Titel IV, Article 67 – A, para. 1, lit. b, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (Portuguese).

⁸⁹ Violent crimes are those that are punishable with more than 5 years of imprisonment.

⁹⁰ Particularly violent crimes are those that are punishable with more than 8 years of imprisonment.

⁹¹ Portuguese Criminal Procedure Code, Titel IV, Article 67 – A, para 1, lit. c, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (Portuguese).

⁹² Article 20, para 1, Victims' Statute.

⁹³ Article 21, para 1, Victims' Statute.

⁹⁴ Article 20, para 2, Victims' Statute.



not, however, determine how and under which circumstances the individual assessment needs to take place.⁹⁵

4.2.4. Spain

In Spain, article 22 of the Victims' Directive was transposed through article 23 of Law 4/2015 on the Standing of Victims of Crime. In correlation with the Directive, the Spanish national legislation mentions that the assessment should in particular take into account the following:

- (a) *"The personal characteristics of the victim and particularly [...] if the victim is a minor or in need of special protection [...]"*
- (b) *The nature of the offence and the severity of the harm caused to the victim, as well as the risk of the offence being repeated [...] and*
- (c) *The circumstances of the offence, in particular whether it involved violence.*⁹⁶

In the case of child victims of crime, the protection measures employed shall additionally take into account the personal situation of the victim, their age, gender, any disability and their level of maturity, as well as completely respect the physical, mental, and emotional integrity of the victim.⁹⁷ Moreover, every time a minor is a victim of crime, the public prosecutor's office must take particular care to ensure that the rights of protection of the victim are complied with adopting *"adequate measures in the victims' best interests where necessary to prevent or reduce any harm which the conduct of the proceedings may cause them."*⁹⁸

Further, article 24 of Law 4/2015, elaborates on the competence and assessment procedure, by clarifying who the responsible authority in charge to undertake the assessment at several stages is. The law clarifies that during the investigation stage the prosecutor must undertake the individual assessment, while during the trial stage it is the judge or court responsible for hearing the case. The same article states that in case of victims who are minors or individuals with disabilities in need of special protection, the assessment shall take into account their opinions and interests.

⁹⁵ APAV - Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 152

⁹⁶ Article 23, Law 4/2015 on the Standing of Victims of Crime.

⁹⁷ Article 23 para. 3, Law 4/15 on the Standing of Victims of Crime.

⁹⁸ Article 19, Law 4/15 on the Standing of Victims of Crime.



Furthermore, article 27 of Law 4/2015 elaborates the responsibility and role of Victim Support Offices and specifically states that these offices also carry out an assessment of the victim's individual circumstances⁹⁹ to determine what assistance and support the victim should be provided with. Victim Support Offices must assess whether the victim needs psychological support and assistance, a support person during trial, information, other special support measures which may be granted to by the court, or the referral to specialist support services.¹⁰⁰ Although the national legislation states that individuals' protection needs will be met, no further details are provided regarding the modality in which the assessment shall be conducted.

4.2.5. England and Wales

The individual assessment of victims to identify specific protection needs is regulated in Chapter 1 of the Victims' Code.¹⁰¹ In particular, it sets out enhanced entitlements for victims of three different categories, as they are "*more likely to require enhanced support and services through the criminal justice process.*" These categories are, however, not exclusive, as it is possible that a victim is entitled to enhanced services under more than one category (Chapter 1, para. 1.2). Moreover, even if a victim does not fall under one of the three categories, a service provider¹⁰² might grant the victim enhanced entitlements depending on the particular circumstances of the victim (Chapter 1, para. 1.7). The three categories are:

- Victims of the most serious crime:

A victim who is "a close relative bereaved by a criminal offence; a victim of domestic violence, hate crime, terrorism, sexual offences, human trafficking, attempted murder, kidnap, false imprisonment, arson with intent to endanger life and wounding or causing grievous bodily harm with intent."
(Chapter 1, para. 1.8)

- Persistently targeted victims:

⁹⁹ Maizener ed. al., EVVI (Evaluation of Victims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf, 56 ff.

¹⁰⁰ Article 28 para. 2, Law 4/2015 on the Standing of Victims of Crime.

¹⁰¹ UK Ministry of Justice, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 March 2013, published on 29 October 2013, 87ff.

¹⁰² Service providers within the scope of the Victims' Code are statutory bodies. A list of all service providers is determined in the Introduction, para. 9, of the Victims' Code: The Competition and Markets Authority; The Department for Business, Innovation and Skill (Criminal Enforcement); The Environment Agency; The Financial Conduct Authority; The Gambling Commission; The Health and Safety Executive; Her Majesty's Revenue and Customs; Home Office (Immigration Enforcement); The Information Commissioner's Office; The Independent Police Complaints Commission; The National Crime Agency; Natural Resources Wales; The Office of Rail and Road; and the Serious Fraud Office.



A victim who has “been targeted repeatedly as a direct victim of crime over a period of time” (Chapter 1, para. 1.9)

- Vulnerable or intimidated victims;

A vulnerable victim is a victim who is under 18 years of age at the time of the offence; If the service provider considers that the quality of the evidence of the victim will be affected as a result of fear about testifying in court, a victim is an intimidated victim.

Every victim has the right to an assessment by the police to identify their specific protection needs, “including whether and to what extent they may benefit from Special Measures.” (Chapter 1, para. 1.4). The particular circumstances of the assessment (e.g. length and content), however, depend on the severity of the crime and the individual needs of the victim. The assessment has to take into account the personal characteristics of the victim, the nature and circumstances of the crime, as well as the personal views of the victim. Moreover, the assessment can be repeated, if the needs of the victim change (Chapter 1, para. 1.5). As soon as the eligibility for enhanced entitlements is identified, the service provider has to ensure that this information is passed on to other service providers.¹⁰³

Further, Chapter 5 establishes that also other service providers than the police have the obligation to conduct an individual assessment of victims to identify specific protection needs. (Chapter 5, para. 1.1). A service provider must identify the specific protection needs of a victim every time it is responsible for investigating an offence (Chapter 5, para. 1.30). In these circumstances the service provider must “*determine whether and to what extent the victim would benefit from specific protection measures or Special Measures in the course of being interviewed or Special Measures when giving evidence*” (Chapter 5, para. 1.30). Criticism was raised concerning the procedure and timing of the assessment.¹⁰⁴

¹⁰³ The entitlement of children to an individual assessment of their needs is laid down in Chapter 3, Part A, para. 1.1.

¹⁰⁴ IVOR, United Kingdom: Development on the implementation of victim assistance and mechanisms.



4.3. Right to protection of child victims of crime during criminal proceedings (article 23-24 VD)

4.3.1. Finland

In Finland, there exist two laws that are of explicit relevance regarding the transposition of article 22-23 VD: First, the Finnish Criminal Investigation Act (FCIA, 805/2011, as amended), which regulates the investigation procedure of the police, amongst others and, secondly, the Finnish Code of Judicial Procedure (FCJP, 4/1734, as amended) which determines the rules of court proceedings in general courts of law.

Concerning the protection of child victims of crime during criminal investigation, several provisions already existed before the transposition process, as for example Chapter 4, Section 7 subsection 1 FCIA. The latter states that child victims “**shall be treated in a manner required by his or her age and level of development**” and that particular attention must be paid that the investigation measures do not cause unnecessary inconvenience to the victim in environments that are important to him or her.¹⁰⁵ Moreover, where possible, investigation measures concerning child victims shall be assigned to investigators particularly trained in this function.¹⁰⁶ In fact, most police officers and psychologists who work in criminal proceedings have attended a year-long interdisciplinary interview training programme for police and healthcare professionals who perform child hearings. This course is organised by the National Police Board and the Forensic Psychiatry Centre.¹⁰⁷

Chapter 7 of the FCIA provides that, if a person under the age of 15 is being questioned during criminal investigations, the person responsible for his or her care and custody, or his or her trustee or other legal representative has the right to be present in the questioning as well.¹⁰⁸ If the child victim is over the age of 15, these persons may only be present in the questioning if they obtain the right to speak on behalf or in addition to the minor. The investigator has the right to prohibit the presence of the legal representative, in cases where his or her presence may hamper the clarification of the offence.¹⁰⁹

¹⁰⁵ Chapter 4, Section 7, Subsection 1 Criminal Investigation Act.

¹⁰⁶ Chapter 4, Section 7, Subsection 2 Criminal Investigation Act.

¹⁰⁷ European Union Agency for Fundamental Rights, Child-friendly justice: perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 100.

¹⁰⁸ Chapter 7, Section 14, Subsection 1 Criminal Investigation Act

¹⁰⁹ Chapter 7 Section 14, Subsection 3 Criminal Investigation Act



A new section determining rules for interviews with victims with special protection needs has been added to the FCIA (Chapter 7, Section 21) in order to comply with the requirements, set out in article 23 VD. Depending on the personal situation of the victim and the nature of the suspected crime, the newly established section determines several special protection measures:

- Victims who need special protection must be interrogated in a special room, which has been designed for that purpose.
- In the case of victims with specific protection needs, the interrogation must be conducted by the same person if the victim requests so.
- If the injured party might have been a victim of sexual crimes, the interrogation must be conducted by a person of the same sex as the victim. This provision might also apply to other situations where the nature of the crime requires it.¹¹⁰

Lastly, Chapter 9 FCIA contains provisions concerning the possibility to audio and video-record the questioning of a witness if this recording is intended to be used as evidence in criminal proceedings and if the questioned person “*probably cannot be heard in person without causing him or her detriment*”¹¹¹, due to his or her young age or mental disturbance. This provision may also be applicable to a person between the ages of 15 and 17 if he or she is in need of special protection or may have been a victim of a sexual offence.

The provisions transposing article 23 para. 3 VD - namely, provisions determining the rights to be granted to victims with specific protection needs during court proceedings - are to be found in the Finnish Code of Judicial Procedure (FCJP)¹¹². There exist several measures to avoid the visual contact between victims and offenders. The victim might be questioned:

- **from behind a screen** (Chapter 17, Section 51 FCJP). The court decides whether this measure is necessary to protect the person being heard; if the person being heard would otherwise not reveal what

¹¹⁰ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 17.

¹¹¹ Chapter 9, Section 4, Subsection 1 FCIA.

¹¹² Finnish Ministry of Justice, Code of Judicial Procedure, 4/1734, amendments up to 732/2015 included, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiHx5KJ3MjZAhUBLewKHfZoD60QFggtMAA&url=http%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F1734%2Fen17340004.pdf&usg=AOvVaw0-PJLjKrSH9U01qD0yrl4B>



he or she knows in the matter; if a person disturbs or attempts to mislead the person being heard; if a victim is in the need of special protection. Only the latter has been added within the scope of the transposition process.¹¹³

- **via video connection** (Chapter 17, Section 52 FCJP). The court deems this measure appropriate if – amongst others - it is necessary to protect the person being heard; the person being heard has not reached the age of 15 or his or her mental capacity is impaired; or in the case of a victim with special protection needs. Only the latter has been added within the scope of the transposition process.¹¹⁴
- **without the presence of the accused or another party** (Chapter 17, Section 51 FCJP). The court decides whether this measure is necessary to protect the person being heard; if the person being heard would otherwise not reveal what he or she knows in the matter; if a person disturbs or attempts to mislead the person being heard.

The Finnish legislation also contains special measures to protect the anonymity of a witness, as for example through a suitable means of communication in which the voice of the witness can also be altered (Chapter 17, Section 53 FCJP). Additionally, in some cases the victims' interrogation can be recorded on video and used as evidence in trial. This procedure might apply in the case of child victims who have not reached the age of 15 years or in a case of a person who is mentally impaired; a child victim between the ages of 15 and 17 years taking into consideration his or her personal circumstances and the nature of the offence; as well as in the case of an injured parties of certain sexual offences (Chapter 17 Section 24 FCJP). However, this provision existed already before the transposition process.

Likewise, the Finnish CJP already complied with article 24 para. 1 lit b. VD. The latter states that the court **shall appoint a trustee for a child victim** *“if there is justified reason to assume that the person having care or custody of the child, the trustee or other legal representative cannot objectively ensure the interests of the party in the manner and the appointment of a trustee is not evidently unnecessary”* (Chapter 4 Section 8 FCIA). All relative expenses are paid by State funds.

¹¹³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 17.

¹¹⁴ Ibid.



Lastly, provisions on the hearing of a person without the presence of the public can be found in the Act on the Publicity of Court Proceedings in General Courts¹¹⁵ (Section 15, Point 6). It determines that the court can decide that part or the full proceeding may be held without presence of the public if a person under the age of 14 whose legal capacity is limited or a person with special protection needs is heard in the case.

4.3.2. Germany

Throughout the past years, Germany has constantly improved the position of victims in the criminal proceedings. As a result, most of the rights laid out in the VD for protection of victims with specific protection needs and child victims of crime already existed in German law before the transposition process. However, as previously pointed out, not all requirements set out in the Victims' Directive fall within the competence of federal law but have to be determined by the law of the federal states.

According to article 23 para. 2 lit. b VD interviews with victims with specific protection needs be carried out by or through professionals trained for that purpose. In Germany, adopting regulations concerning the qualifications of the personnel conducting the interviews falls within the jurisdiction of the federal states.¹¹⁶ Police personnel in whole Germany, however, receives training with the aim to facilitate an unbiased, respectful and professional treatment of victims. This training includes profound knowledge on topics like hate crime or the treatment of child victims of crime during investigations. A similar training exists for public prosecutors and judges.¹¹⁷

All physical investigation of victims of sexual violence is to be conducted by a person of the same sex (No. 220 RiStBV). This article already existed before the transposition process, and – according to the reasoning of the German legislator¹¹⁸ - already fulfills all requirements set out in article 22 para. 2 lit. c and d VD, which foresee that interviews to be conducted by the same person unless this is contrary to the good

¹¹⁵ Finnish Ministry of Justice, Act on the Publicity of Court Proceedings in General Courts, 370/2007 amendments to 742/2015 included, <https://encrypted.google.com/url?sa=t&ret=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKewjQ9unn4MjZAhVMYaQKHTmUB14QFgggtMAA&url=https%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F2007%2Fen20070370.pdf&usg=AOvVaw3A34-Ki7L-xk8YksYr1E0V>

¹¹⁶ Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeUndOpferschutz/Bericht_BundLaender_AG.pdf?blob=publicationFile&v=2 (German), 14.

¹¹⁷ Ibid.

¹¹⁸ Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksach 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (German), 15.



administration of justice as well as the possibility that interviews with victims of sexual violence shall be conducted by a person of the same sex under certain circumstances.

Moreover, there exist several measures in German legislation to avoid visual contact between the victim and the offender (art. 23 para. 3 lit. a VD), as well as measures to ensure that the victim may be heard in the courtroom without being present. According to art. 247 GCCP, the court may order the defendant to leave the court room during the interrogation, if his or her presence may hinder that the witness will speak the truth. This applies also to cases in which the witness is under 18 years and when the presence of the defendant is likely to cause a considerable disadvantage to the well-being of the witness.

If there exists an imminent danger of serious harm to the well-being of the witness if he or she was interviewed in the regular court proceedings, the court can dispose that the interview should take place at another location. In this case, the statement is to be simultaneously transmitted in picture and sound to the court room. Further, the statement may be recorded, if the witness cannot be heard in another trial and the record is required to investigate the truth (art. 247a GCCP)

Moreover, interviews with a witness may be audio-visually recorded, if

- the specific protection needs of a child victim or of another person, that was as a victim of a crime against the sexual self-determination, life or personal liberty as a child, can be better protected (art. 255a GCCP);
- or the witness cannot be heard in the courtroom otherwise and the recording is essential for the investigation of truth (§ 58a GCCP).

Additionally, there exists the possibility that a recording of a prior judicial interview of a victim or witness may be used in place of an interview, namely: 1) the recording of a witness below the age of 18 in trials concerning crimes against the sexual self-determination, life, or personal liberty may be used instead of an interview, if the accused and his or her attorney had the possibility to contribute to the interrogation; 2) the recording of a victim of the same crimes, if the person was below the age of 18 at the date of the crime. In these cases, the court has the obligation to take into account the individual protection needs of the witness and reason the display of the recording. An additional interview is, however, admissible (article 255a GCCP). Also, a hearing can take place without the presence of the public if a person under the age of 18 is interrogated (art. 172 German Judicial Systems Act *Gerichtsverfassungsgesetz*)



Measures to avoid unnecessary questioning concerning the victim's private life are regulated in art. 68a GCCP. Accordingly, questions about facts that may prove dishonorable or affect the personal sphere of life of the witness or of a person belonging to his or her family should only be asked if they are indispensable. Questions regarding circumstance affecting the credibility of the witness – in particular his or her relationship with the accused or the injured person – should only be asked where it is necessary.

Lastly, also art. 24 para. 1 lit. b - the provision of the Victims' Directive which foresees that a special representative for a child shall be appointed in cases, in which a conflict of interest exists between the holders of parental responsibility and the child, already existed in German legislation prior to the transposition process. According to art. 52 GCCP, in general, the legal representative of a child can dispose over his or her right to refuse to give evidence if the child does not have sufficient understanding of his or her right to do so. In cases in which the legal representative is at the same time the accused, he or she cannot dispose over this right of the child. The regulations under which circumstances a child is appointed a representative are to be found in the German Civil Code (art. 1773, 1774 and 1909 GCC).

4.3.3. Portugal

Article 23 VD was transposed through article 21 of the Portuguese Victims' Statute (PVS) – which was established in the course of the transposition process of the Victims' Directive. The latter lists the special protection measures that may be granted to particularly vulnerable victims in accordance with their individual needs, while several of these measures are specified in other articles. The wording of various articles adopted the respective provisions of the Victims' Directive verbatim. According to article 21 para. 2 PVS, particularly vulnerable victims may be granted the following rights:

- a. The interviews must be carried out by the same person, if the victim requests so and if it is not contrary to good administration of justice;
- b. All interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless held by a Public Prosecutor or by a judge, must be carried out by a person of the same sex as the victim;
- c. Measures to prevent the visual contact between the victim and the defendant(s), including during testimony, using appropriate technological means;
- d. The possibility to provide a "statement for future" (*"declarações para memória futura"*). This



measure is further determined in article 24 PVS and article 271 PCCP. According to article 24 PVS, the judge may at the request of the particularly vulnerable victim or of the Prosecutor, conduct a hearing during the investigation that may also be taken into account in trial. It is mandatory, that the Prosecutor and the Defender are present at the interview (para. 2). Further, a professional trained for that purposed must be accompanying the victim during interviews. The interview must take place in an informal and reserved environment to guarantee the spontaneity and sincerity of the answers (para. 3). Further, usually the statement for future is done through audio or visual recording or through other means and undertaken by the judge and the Prosecutor (e.g. stenography). Testimony under the conditions of this article must only be given, if the testimony is indispensable to the discovery of the truth and does not call into question the physical or mental health of the victim.

- e. The exclusion from the public from hearings. It must be noted, however, that this article already existed in Portugal (Article 98 PCCP) before the transposition process.

Further, article 22 of the PVS transposes article 24 VD. It determines that all child victims of crime have the right to be heard in criminal proceedings, taking into account their age and maturity. In cases in which the age is uncertain, it shall be presumed for the purposes of this article, that the victim is a child (para. 6 leg. cit.). Further, para. 2 leg. cit. states that if there is no conflict of interest, a child victim may be accompanied by his or her parent, by the legal representative or by the person who has custody during the testimony. In cases in which there exists a conflict of interest, a patron to the child is to be appointed (para. 3 leg. cit.). The Portuguese law also determines that any information that may lead to the identification of a child victim should not be disclosed in public.

The Portuguese transposition legislation does not contain a measure specifically transposing article 24 para. 1 lit. a VD, namely, that in criminal investigations, all interviews with the child victims may be audio-visually recorded and such recorded interview may be used as evidence in criminal proceedings¹¹⁹. However, a similar formulation can be found in article 23 para. 1 PVS. Accordingly, if it is necessary to guarantee the presentation of statements or testimony without any restrictions, testimonies and statements of particularly vulnerable victims are either *ex officio* or at request to be held via videoconference or

¹¹⁹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 63.



teleconference. In these circumstances the victim shall be accompanied by a professional specially trained for that purpose. Thus, this regulation only applies to child victims which are considered to be victims with specific protection needs, and hence, depending on the particular circumstances of the case.

Lastly, the right of a child victim to **be accompanied by their legal representative and a person of their choice** already existed previously to the transposition process in Portuguese legislation (article 70, para 3 and article 132 para 4 PCCP)¹²⁰

4.3.4. Spain

Article 23 and 24 of the Victims' Directive can be found in article 25 of Law 4/2015 called "protection measures." In fact, the provisions are nearly transposed verbatim from the Victims' Directive. Article 25 of Law 4/2015 law determines that the following measures may be ordered for the protection of victims during the investigation stage, while the measures set out in the points a), b) and c) should always apply in the cases of child victims of an offence against sexual freedom or indemnity¹²¹:

- a) *Victims may be interviewed in buildings specially conceived and adapted for the purpose.*
- b) *Victims may be interviewed by professionals who have received special training to reduce or limit harm to the victim, or with the help of such professionals.*
- c) *All statements from a single victim may be taken by the same person, except where doing so could have a significant adverse effect on the conduct of the proceedings or where the statement must be taken by a judge or public prosecutor directly.*
- d) *In the case of any of the victims referred to in numbers 3 and 4 of point b) of section 2 of article 23 and victims trafficked for the purposes of sexual exploitation, statements may be taken by a person of the same sex as the victim where the victim requests it, except where doing so could have a significant adverse effect on the conduct of the proceedings or where the statement must be taken by a judge or public prosecutor directly.*"¹²²

¹²⁰ Ibid, 66.

¹²¹ Article 23 para. 4, Law 4/2015 of the Standing of Victims of Crime.

¹²² Article 25, para. 1, Law 4/2015 on the Standing of Victims of Crime.



Paragraph two the same article stipulates the protection measures that may be ordered during the trial stage in accordance with the Spanish Criminal Procedure Rules, while the first two points may also apply within the investigation phase:

- a) *“Measures to avoid visual contact between the victim and the alleged offender, even when giving evidence, for which communication technologies may be used.*
- b) *Measures to ensure the victim can be heard without being present in the courtroom, by using appropriate communication technologies.*
- c) *Measures to avoid the victim being asked questions relating to his or her private life which are not relevant to the offence being tried, apart from exceptional cases where the judge or court considers that they must be answered to adequately assess the facts or the credibility of the victim’s statement.*
- d) *Holding a private oral hearing. In such cases, the judge or the presiding judge may, nevertheless, authorise the presence of persons who can show they have a particular interest in the case.”¹²³*

Measures determined by article 24 VD concerning the right to protection of child victims during criminal proceedings are transposed through article 25 para. 3 of Law 4/2015. Extending the scope of the Victims’ Directive, this law also applies to persons with disabilities in need of special protection. Further, in accordance with the Spanish Criminal Procedure Code (SCCP)¹²⁴, article 26 of Law on the Standing of Victims of Crime determines that statements taken during the investigation stage shall – in the case of child victims of crime or persons with disabilities in need of special protection - be recorded by audiovisual means and may be played in court in the cases and under the conditions determined by the SCCP. To this end, the national legislation requires that due attention must be paid to the protection of the child or adolescent during interviews and while giving testimony, in doing so, visual contact with the accused must be avoided and screens must be provided to facilitate this measure.

Lastly, paragraph 2 of article 25 of Law 4/2015 determines under which measures a court-appointed guardian shall be appointed for the victim which represents him or her in the investigation and criminal proceedings. The latter is the case, if the public prosecutor considers that there is a conflict of interest

¹²³ Article 15, para. 2 Law 4/2015 on the Standing of Victims of Crime.

¹²⁴ Spanish Criminal Procedure Code, https://www.imolin.org/imolin/amlid/data/spa/document/criminal_procedure_code.html (Spanish).



between the child victim and his or her legal representative, amongst others. Thus, the measures in Spanish national legislation are fully transposing the Victims' Directive into Spanish law.

4.3.5. England and Wales

While all MS assessed within this report implemented provisions specifically ensuring the rights of child victims of crime, the Victims' Code clearly divides entitlements granted to adults¹²⁵ and children into two chapters.¹²⁶ Chapter 3, which comprises the regulations regarding children and young people is further separated into Part A: Entitlements for Children and Young People and Part B: Duties on Service Providers for Children and Young People. Moreover, children can also be granted enhanced entitlements which are determined by Chapter 1. All in all, this Code does entail most of the rights set out in the Victims' Directive to be granted to victims with specific protection needs. In most cases, these rights are extended to all victims of crime.

The Victims' Code does not entail any provisions regarding the possibility to appoint a representative if there is a conflict of interest between the holders of parental responsibility and the child according to Article 24 para. 1 lit. b VD.¹²⁷ Also, it does not contain transposition measures regarding Article 24 para. 1 lit. c, namely, that if the child has a right to a lawyer, it should be granted the right to legal advice and representation in his or her own name.

During police investigation child victims of crime have the entitlement that the interview is held in a manner designed or adapted for that purpose in accordance with Article 23 para. 2 lit. a VD.¹²⁸ While the VD only foresees such a right for victims with specific protection needs, the Victims' Code extends this entitlement to all victims of crime. Moreover, when interviewing a child victim – or any other victim – the police must consider the guidance document “Achieving Best Evidence in Criminal Proceedings”¹²⁹ and ensure that the

¹²⁵ Chapter 2, Part A and B, Victims' Code.

¹²⁶ Chapter 3, Part A and B, Victims' Code.

¹²⁷ See Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 70 – 71, for a precise overview of the articles of the VD in relation to the corresponding provisions of the Victims' Code.

¹²⁸ Chapter 3, Part B 1.2 in reference to Chapter 2 Part A 1.8 Victims' Code.

¹²⁹ UK Ministry of Justice, Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures, March 2011,

https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf



interview is conducted by a suitably trained professional who considers the needs and views of the victim with the aim to minimise his or her stress.¹³⁰ While the “Achieving Best Evidence in Criminal Proceedings” guidance document does not constitute a legally enforceable code of conduct, it describes good practice in interviewing witnesses and victims and should help all persons involved in investigations – including the police, social care workers, judges and lawyers – in the preparation and conduct of interviews.¹³¹

Child victims – as well as all other victims – have the entitlement to have the same person, where possible, conduct all interviews. This provision does not apply, however, if it would “*prejudice the proper handling of the investigation*”.¹³² Moreover child victims – and all other victims - of sexual violence, gender-based violence or domestic violence which are interviewed by the police are entitled to be offered to have a person of the same sex conduct the interview “*unless to do so would prejudice the proper handling of the investigation*”¹³³.

Concerning special measures which are to be made available in accordance with article 23 para. 3 VD, the Victims’ Code fulfils all requirements: There are several special measures in place which ensure that the specific protection needs of victims are protected during court proceedings. For example, measures to avoid the visual contact between victims and offenders are regulated in Chapter 1 of the Victims’ Code. These measures are dependent on the individual needs of the victim as to be determined in the individual assessment. While a victim is entitled to ask for such a special measure, it is the court that decides whether one of the following measures should be applied:

- “*screens/curtains in the courtroom so the witness does not have to see the defendant, and, in some cases, the public gallery;*
- *A live video link allowing a witness to give evidence away from the courtroom. This could be from a separate room within the court, or from a dedicated live-link site outside the court building;*
- *Evidence in private – the public gallery can be cleared in cases involving sexual offence, human trafficking, or where the court is satisfied that someone other than the accused may seek to intimidate*

¹³⁰ Chapter 3, Part B 1.5 in reference to Chapter 2 Part B 1.5 Victims’ Code.

¹³¹ The guidance document “Achieving Best Evidence in Criminal Proceedings” was mentioned as a promising practice in a recent FRA report on child friendly justice; European Union Agency for Fundamental Rights, Child-friendly justice: perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States, 2015.

¹³² Chapter 3, Part B 1.2 in reference to Chapter 2 Part A 1.8 Victims’ Code.

¹³³ Chapter 3, Part B 1.2. in reference to Chapter 2 Part A 1.8 Victims’ Code.



the witness;

- *Removal of wigs and gowns by judges, defence and prosecution advocates;*
- *Video-recorded statements – these allow the witness to use a pre-recorded video statement as their main prosecution evidence.*¹³⁴

Moreover, there exist the possibility that a registered intermediary helps vulnerable witnesses to give their best evidence in court or to the police, if there exists a communication difficulty¹³⁵. The intermediary must be approved by court, has either a social or a legal background and functions as a link between the child and the professionals¹³⁶. In cases in which a registered intermediary is used, the professionals involved agree on ground rules for the type of questions that will be asked to a child in a pre-trial hearing.¹³⁷

If a child victim gives evidence through a pre-recorded witness statement, additional questions may be asked through cross-examination: a measure in which the child victim is in a different room using a video link through which he or she can give evidence away from the court building.¹³⁸ It might also be possible that no further questions are needed and no interview in court needs to take place.¹³⁹

The Crown Prosecution Service has to treat all victims respectfully. If necessary, the court will intervene where it considers a cross-examination inappropriate or aggressive.¹⁴⁰ Also, a victim is entitled to visit the court before the trial date to familiarise him- or herself with the building and the court room before trial.¹⁴¹ In particular, children are shown the separate child's entrance, the court room, the witness waiting room as well as the room in which the interview via live link will take place.¹⁴² These visits are arranged by the Witness Care Units liaise with the court-based Witness Service.¹⁴³ In cases in which the age of the victim is

¹³⁴ Chapter 1, 1.13 Victims' Code.

¹³⁵ Chapter 1, 1.15 Victims' Code.

¹³⁶ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 24.

¹³⁷ This practice was mentioned as a promising practice in a 2015 FRA report on child-friendly justice. Ibid, 27.

¹³⁸ Chapter 3, Part A 3.1 Victims' Code.

¹³⁹ Chapter 3, Part A 1.3 Victims' Code.

¹⁴⁰ Chapter 3, Part A 3.1 Victims' Code.

¹⁴¹ Chapter 3, Part B 1.2. in reference to Chapter 2 Part A 2.14.

¹⁴² European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 63.

¹⁴³ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 34.



uncertain and there are reasons to believe that the person is under 18 years of age, the Victims' Code determines that it is to be presumed that the person is under 18.¹⁴⁴

Lastly, there exists the possibility for victims to make a "Victim Personal Statement" (Victim PS) alongside their witness statement.¹⁴⁵ Victim PS' should give victims the opportunity to record how the crime impacted them and their family. On the contrary, the witness statement only covers what happened at the crime. While the Victim PS cannot be changed, a victim has the right to give a further Victim PS at any time before the sentencing. Victims of a serious crime, persistently targeted, or vulnerable or intimidated are entitled to make a VPS regardless of making a witness statement. The Victim PS will only be considered by the court once the offender has been found guilty and helps to clarify the physical and psychological harm caused by the offence.¹⁴⁶

4.4. Access and support from victim support services (article 8-9 VD)

4.4.1. Finland

In general, every victim has the right to have a legal counsel to support him or her when reporting a crime, during the criminal investigation and in the course of the trial.¹⁴⁷ While usually the legal counsel must be paid by the victim, there exist two circumstances under which legal aid might be granted to a victim or a legal counsel might be appointed to the victim: Legal aid or an appointed legal counsel for victims of certain crimes.

1. Whether and to what extent legal aid is granted depends on the victim's "*income, expenditures, wealth and maintenance liability*."¹⁴⁸ Depending on the victims' financial status, the state might provide a part or the full fee of the counsel.¹⁴⁹ Victims can apply for legal aid at all legal aid offices,

¹⁴⁴ Chapter 5, 1.46 Victims' Code.

¹⁴⁵ Crown Prosecution Service, Victim Personal Statements: Legal Guidance, <https://www.cps.gov.uk/legal-guidance/victim-personal-statements>

¹⁴⁶ Victim Support, Victim Personal Statements, <https://www.victimsupport.org.uk/help-and-support/your-rights/victim-personal-statements>

¹⁴⁷ See further Chapter 4 Section 10 FCIA

¹⁴⁸ Oikeus, Means-testing,

<https://oikeus.fi/en/index/esitteet/oikeusapu/millatuloilla-oikeusapua-myonnetaan-jamitkamenothuomioidaan.html>

¹⁴⁹ Information on the cost of legal aid and deductibles can be found on: Oikeus, Information on Legal Aid, <https://oikeus.fi/en/index/esitteet/oikeusapu/mitaoikeusapuhakijalle-maksaa.html>



online or request a law office to do so for them.¹⁵⁰

2. In the case of a victim of intimate partner violence, sex offence or a serious offence against the life, health or liberty the court may appoint a legal counsel for the victim (Chapter 2, Section 1a FCIA).¹⁵¹ In this cases the appointment of the legal counsel does not depend on the income of the victim, but is paid by the state.¹⁵² Moreover in these cases, the court may appoint a support person for the injured person. This person should provide personal support during criminal investigation and trial as well as assist the injured person in matters arising in the resolution of the case (Chapter 2, Section 9 FCIA)

Depending on the case, the head investigator or the public prosecutor must submit a request to the court for the appointment of legal counsel or a support person before the hearing takes place in the criminal investigation (Chapter 4, Section 10, Subsection 2 FCIA). In particular, this is the case if a person might have become a victim of intimate partner violence, sex offence or a serious offence against the life, health or liberty.

While the right to access victim support services already existed before the transposition of the Victims' Directive into Finnish legislation, several provisions were extended. A provision was added to Chapter 4 Section 10 FICA according to which the plaintiff's special protection needs and his or her personal characteristics are now also a reason on which basis the preliminary investigation official must send the injured parties' contact details to a victim support provider.

Other provisions regarding the access to victim support services are determined in The Act on Victim Charges¹⁵³ which was the only new law that was established in the transposition process of the Victims' Directive.¹⁵⁴ Victim charge is the money paid by the prosecuted offender to fund the support services of victims.¹⁵⁵ With this new law, Finland followed a recommendation of the EU Commission, which recommended the implementation of victim charge to fund general victim services required by the Victims'

¹⁵⁰ Finnish Ministry of Justice, Rights of crime victim, 1.3.2017

¹⁵¹ Ibid.

¹⁵² Finnish Ministry of Justice, Rights of crime victim, 1.3.2017; see also Oikeus, Legal aid, <https://oikeus.fi/oikeusapu/en/index.html>

¹⁵³ FINLEX, Act on Victim Charges, 22.5.2015/669, <https://www.finlex.fi/fi/laki/ajantasa/2015/20150669> (Finnish)

¹⁵⁴ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 70 – 71, for a precise overview of the articles of the VD in relation to the corresponding provisions of the Victims' Code, 23.

¹⁵⁵ Riku, What is a victim charge?, <https://www.riku.fi/en/frequently+asked+questions/what+is+a+victim+charge/>



Directive.¹⁵⁶ Other applicable legislation include the Legal Aid Act (257/2002) and its later amendments; and the Government Decree on Legal Aid (388/2002) and its later amendments (997/2004, 1208/2005, 867/2007 and 1008/2009).

4.4.2. Germany

In Germany there exist two forms of victim support during court proceedings: legal and psycho-social support, while the latter was introduced in the course of the transposition process of the Victims' Directive. Moreover, there are certain conditions under which the victim is granted legal aid.

In this context, it is important to note, that every person that has the right to join the proceeding as a co-plaintiff according to art. 395 GCCP, is also regarded as a victim in the scope of the GCCP. As a result, also particular family members of a person whose death was caused by a criminal offence (children, parents, siblings, spouse or partner) are regarded as victims according to art. 395 para. 2 GCCP and, thus, may have access to legal and psycho-social support free of charge.¹⁵⁷

While according to art. 406f GCCP all injured parties have the right to be represented by a lawyer (*"Verletztenbeistand"*), there are other factors determining whether the victim has access to a lawyer free of charge, for example whether or not he or she has the right to join the proceeding as a co-plaintiff.¹⁵⁸ In particular the law foresees that victims shall be granted the right to a legal representation free of charge: (art. 397a GCCP):

- in the case of particular serious crimes, as e.g. sexual abuse of children, sexual assault and rape, trafficking for the person of sexual exploitation and exfoliation of labour, attempted murder.¹⁵⁹
- if an offence has already led – or is expected to lead - to serious physical or mental damage and falls under the art. 226, 226a, 234-235, 238-239b, 250, 252, 31a GCCP. These crimes include amongst others: serious assault, robbery, kidnapping, deprivation of minors, severe stalking, crimes of

¹⁵⁶ Ibid.

¹⁵⁷ Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, 22, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (German).

¹⁵⁸ These are e.g. crimes against the sexual self-determination, against honour, physical integrity, personal freedom; attempted homicidal offence;

¹⁵⁹ Art. 177, 179, 232-232b, 233a GCCP.



deprivation of liberty.

- in the case of child victims of crime or victims that cannot sufficiently exercise his or her rights, if the crime constituted a sexual offence, exploitation of prostitute, suspension, mistreatment of wards, serious bodily injury, amongst others.¹⁶⁰

If a victim is not granted free legal representation under art. 397a GCCP, he or she may be granted legal aid under the regulations of German Civil Law (art. 397a para. 2 GCCP). This right is dependent on the victims' financial status and income or on the particular circumstances of the case.

Moreover, in the course of the transposition process of the Victims' Directive the right to psycho-social support ("*psychosoziale Prozessbegleitung*")¹⁶¹ was enshrined into the art. 406g GCPP – which constituted the only provision which only entered into force on 1st January 2017¹⁶². Additionally, a new law of the psycho-social supporter in criminal proceedings was established, which regulates principles as well as the requirements to the qualification of psycho-social supporters¹⁶³ (para.2 leg. cit.). The psycho-social supporter can be present during the interviews with the victim as well as all court proceedings.

In the following cases the court must allocate a psycho-social supporter to a victim if the victim so demands:

- Child victims of crime or victims which cannot sufficiently exercise his or her rights, in the case of sexual offences, exploitation of prostitutes, suspension, mistreatment of wards, serious bodily injury, amongst others.¹⁶⁴
- If the specific protection need of the victim so requires, in the case of particular serious crimes. as e.g. sexual abuse of children, sexual assault and rape, trafficking for the person of sexual exploitation and exfoliation of labour, attempted murder;¹⁶⁵

¹⁶⁰ Art. 174-182, 184i, 184j and 225 GCCP (if the victim was under 18 years at the time of the offence); art. 221, 226, 226. 232-235, 237, 238 para. 2 and 3; 239, 239b, 240 para. 4, 249, 250, 252, 255 and 316 GCCO (if the victim was under 18 years in the time of reporting the crime).

¹⁶¹ A psychosocial support needs to be strictly separated from any legal support according to art. 2 para. 2 PsychPbG.

¹⁶² Bundesministerium der Justiz und für Verbraucherschutz, Opferhilfe und Opferschutz im Strafverfahren, 16.11.2017, https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (German).

¹⁶³ Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren vom 21. Dezember 2015 (BGBl. I S. 2525, 2529), (PsychPbG), https://www.bmjbv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (German)

¹⁶⁴ Art. 174-182, 184i, 184j and 225 GCCP (if the victim was under 18 years at the time of the offence); art. 221, 226, 226. 232-235, 237, 238 para. 2 and 3; 239, 239b, 240 para. 4, 249, 250, 252, 255 and 316 GCCO (if the victim was under 18 years in the time of reporting the crime).

¹⁶⁵ Art. 177, 179, 232-232b, 233a GCCP.



- If the specific protection need of the victim so requires, in the case of certain other criminal offences¹⁶⁶ that have already led – or are expected to lead - to serious physical or mental damage of the victim. The latter include amongst others: serious assault, robbery, kidnapping, deprivation of minors, severe stalking, crimes of deprivation of liberty.

While various stakeholders welcomed the new provisions of the psycho-social supporter, others criticised it: In particular there exists the fear that a “coaching of witnesses” could influence the testimony of the victim.¹⁶⁷

Lastly, the German Federal Child Protection Act regulates child protection in Germany on a federal level. It resulted out of an effort to identify and close gaps in child protection in Germany. Amongst others, it regulates the development, application and review of standards for securing the rights of children and adolescents in institutions and their protection against violence.¹⁶⁸

4.4.3. Portugal

In Portugal the victims’ right to legal aid is laid down in the Portuguese constitution, which states that “justice may not be denied to anyone due to lack of sufficient financial means.” (art. 20 para 1. Portuguese Constitution¹⁶⁹), as well as that “everyone has the right to legal information and advice, to legal counsel and to be accompanied by a lawyer before any authority” (art. 20 para. 2 Portuguese Constitution). Moreover, the Constitution protects the victims’ rights to intervene in criminal proceedings, while leaving the more precise elaboration to the law. The most relevant Portuguese legislation in this regard, are the Portuguese Code of Criminal Procedure, the Portuguese Victims’ Statute, the Regulation on Procedural Costs and the Law on Access to Law and to Courts¹⁷⁰ (Law no. 34/2004 of July 29 amended by Law no. 47/2007, of August 28)¹⁷¹.

¹⁶⁶ art. 226, 226a, 234-235, 238-239b, 250, 252, 31a GCCP

¹⁶⁷ Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 344.

¹⁶⁸ Bundesministerium für Familie, Senioren, Frauen und Jugend, German Federal Child Protection Act (Bundeskinderschutzgesetz), <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/bundeskinderschutzgesetz/das-bundeskinderschutzgesetz/86268> (German).

¹⁶⁹ Constitution of the Portuguese Republic, <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>

¹⁷⁰ Law on Access to Law and to Courts, Law no. 34/2004 of July 29 amended by Law no. 47/2007, of August 28, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=80&tabela=leis&so_miolo (Portuguese).

¹⁷¹ Vânia Costa Ramos, Legal Aid for Victims in Criminal Proceedings in Portugal, in Wilinski, Karlik (eds.), Improving Protection of Victims’ Rights: Access to Legal Aid, Adam Mickiewicz University, Poznan, 2014, 192.



According to article 13 PVS, victims have access to legal aid free of charge in the cases established by the Portuguese Law on Access to Law and to Courts. The new legislation does not, hence, extent the provisions which already existed in Portuguese law.¹⁷² The Portuguese the Law on Access to Law and to Courts, on the other hand, clarifies that the access to free legal representation in court as well as legal advice is dependent on the assessment of the victims' income (Article 8 leg. cit.). Thus, only a victim that does not obtain sufficient income will be granted access to a legal representation free of charge.¹⁷³ Moreover, the law clarifies in art. 6 leg. cit. which costs are covered by financial legal aid: legal aid and legal assistance, including the consultation of a lawyer, appointment of a lawyer as well as the payment of his or her fees, the total or partial exemption from the costs of the court.¹⁷⁴

There also exist certain circumstances under which the judge or the public prosecutor may determine when a victim is in need of psychosocial support (*"Técnico de apoio à vítima"*) according to art. 15 para. 3 PVS. The psychological supporter is an employee of APAV whose role it is to help the victim to overcome or mitigate the impact of the crime. Also, he or she may accompany the victim to court, to the police, or medical examinations.¹⁷⁵

While the rights to access victim support services is specified in context within the framework of the right to receive information as soon as possible (transposition of article 4 VD), the specific details of article 9 VD are missing in the Portuguese legislation.¹⁷⁶

4.4.4. Spain

In accordance with art. 8 VD, art. 10 of Law 4/2015 states that all victims of crime are entitled to access the assistance and support services provided by the public authorities and the Victim Support Offices free of charge and in confidence, as determined by national frameworks and regulations. As the Directive stipulates, also the national legislation states that relatives of the victims can benefit from the same rights as the victim.

¹⁷² APAV - Associação Portuguesa de Apoio à Vítima, Developing Directive – compatible practices for the identification, assessment and referral of victims: Portugal Practices Report, 7.

¹⁷³ Info Vitimas, lawyer of the victim, http://infovitimas.pt/pt/004_quem/paginas/004_006.html (Portuguese).

¹⁷⁴ Ibid, 198.

¹⁷⁵ Info Vitima, Psychological Supporter, http://infovitimas.pt/pt/004_quem/paginas/004_007.html (Portuguese).

¹⁷⁶ EPRS – European Parliamentary Research Service, The Victims' Rights Directive 2012/29/EU: European Implementation Assessment, December 2017, 54.



In Spain, Victim Assistance Offices – which exist in several Autonomous Communities¹⁷⁷ - have the responsibility to coordinate the assistance provided by various organisations, institutions and entities that are working on victims' care on a case by case basis. These offices consist of multidisciplinary teams – lawyers, psychologists and social workers – who support victims of crime in the criminal proceedings. A recent report by the Fundamental Rights Agency regarding child friendly justice looked closer at these offices and suggested that they constitute a promising practice for inter-disciplinary departments to support victims. Depending on the location, the offices offer services like pre-trial visits to court facilities; and information to parents. Sometimes the hearing of child victims might take place at the offices themselves.¹⁷⁸ Moreover, as previously mentioned, also Victim Support Offices are required to carry out an individual assessment of the victims' individual protection needs according to article 28 para. 2 of Law 4/2015. In particular, they shall assess whether the victim is in the need of psychological support and assistance, a support person during trial, information, other special support measures which may be granted to by the court or the referral to specialist support services.¹⁷⁹

Further, article 28 of Law 5/2015 sets out the minimum of assistance that Victim Support Offices must provide to victims. Accordingly, the Victim Support Offices shall provide as a minimum the following assistance:

- a) General information on victims' rights
- b) Information regarding available specialist services which can assist victims, in light of their personal circumstances and the nature of the offence
- c) Emotional support for victims
- d) Advice on financial rights related, incl. access to legal aid
- e) Advice on the risk of and how to prevent secondary or repeat victimisation, intimidation or reprisals.
- f) Coordination of the different organisations, institutions and bodies which provide victim support services.
- g) Coordination with judges, courts and the public prosecution service to provide victim support services.

¹⁷⁷ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 110.

¹⁷⁸ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 110.

¹⁷⁹ Article 28 para. 2, Law 4/2015 on the Standing of Victims of Crime.



The Spanish legislator also chose to introduce a system of assessment for the victim support system in Spain. The first additional provision of Law 4/2015 states that the functioning of victim support institutions, mechanisms and guarantees in Spain shall be assessed on an annual basis by the Ministry of Justice. The assessment as well as the results shall be used as a guidance to improve the protection system.

4.4.5. England and Wales

Although England and Wales the term “victim” is used and defined, a victim does not constitute a party to the criminal proceedings.¹⁸⁰ As a result, a victim also cannot exercise any rights which are related to legal representation during court proceedings. The State prosecutor presents the victim’s case, while the victim’s role it to provide evidence as a witness.¹⁸¹ Nevertheless, there exist several victim support services in England and Wales “*which offer victims of crime help and support to help them cope and recover after a crime.*”¹⁸² All victims are entitled to have access to information on the range of available victim support services.¹⁸³ Child victims – as well as all other victims – are entitled to be assessed of whether they need support.¹⁸⁴

Generally, all victims have **access to victim support services**, regardless of filing a complaint or the stage of the criminal trial. This access also exists after the conclusion of the investigation and prosecution.¹⁸⁵ If a victim does report a criminal offence, the service provider has the obligation to refer the victim to a victim support service within two working days of reporting the crime.¹⁸⁶ The victim has the entitlement, however, to ask the police not to pass their information to a victim support service. Moreover, in the case of child victims – and also other victims with enhanced entitlements - the service provider needs to ensure that the victim is content with passing on his or her information to victim support services.¹⁸⁷

Lastly, as in Finland there exists a system in England and Wales which obliges the convicted offender to pay a surcharge which is used to fund victim services through the Victim and Witness General Fund. When

¹⁸⁰ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 112.

¹⁸¹ Ibid.

¹⁸² Chapter 3, Part B 1.2 in reference to Chapter 2, Part A, 1.2 Victims’ Code.

¹⁸³ Introduction, 1.6 and Chapter 3, Part B 1.2 in reference to Chapter 2, Part A, 1.4 Victims’ Code.

¹⁸⁴ Chapter 3, Part B 1.2 in reference to Chapter 2, Part A, 1.1 Victims’ Code.

¹⁸⁵ Introduction, 1.6. and 22 Victims’ Code.

¹⁸⁶ Ibid.

¹⁸⁷ Chapter 1, 1.6 Victims’ Code.



passing a sentence, the court must also order that the respective Victim Surcharge is paid.¹⁸⁸ The amount depends on the sentence as well as on the age and legal personality of the offender and is clearly determined in a table which is accessible online.¹⁸⁹ The Victim Surcharge was first introduced in April 2007 and was last amended in April 2016. A full list of the groups which are supported by the Victim and Witness General Fund can be found online.¹⁹⁰

¹⁸⁸ Sentencing Council, What is the victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>

¹⁸⁹ There exists a table specifically defining the amount that is be paid on Sentencing Council, What is the victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>

¹⁹⁰ Gov.uk, Victims and witnesses funding awards, <https://www.gov.uk/government/publications/victims-and-witnesses-funding-awards>



5. Conclusion

The present report assesses the national transposition legislation of the Victims' Directive in Finland, Germany, Portugal, Spain and England and Wales with a particular focus on the rights granted to child victims of crime. The following conclusion contrasts the findings of the individual country studies with the aim to pinpoint achievements of the transposition of the Victims' Directive, as well as promising practices and best working legislative solutions. As there frequently a gap between legislation and practice exists, it should be pointed out that the present report only lists promising practices and best working legislative solutions without stating how the following examples are implemented in practice.

The transposition processes of the Victims' Directive in the selected MS was quite diverse. Spain and Portugal transposed many parts of the Victims' Directive verbatim. Likewise, both introduced a new law comprising an almost extensive list of victims' rights, namely the Portuguese Victims' Statute and the Spanish Law 4/2015 on the Standing of Victims of Crime. The establishment of these two documents, appears to make victims' rights more accessible and clear.

Similarly, in England and Wales all rights of victims of crime are comprised in the Victims' Code, which is aimed to be a practical guide, intended to assist criminal justice agencies in guiding victims' through the criminal proceedings. It also exists in easy to read versions, which make it more accessible to children. In the transposition process in England and Wales, a broad consultation and evaluation process of the pre-existing Victims' Code took place, which involved written responses by various stakeholders, public consultation events, as well as surveys with children and young people about their impressions on the already existing Victims' Code. The legislative process in Germany, on the other hand, does allow consultation, but does not foresee a binding consultation process by law. The German provisions concerning victim protection are also very fragmented – not only in national, but also in federal law.

The legal definition of victim of crime, as stipulated by article 2 para. 1 VD, was aimed to strengthen the goal to place the victim in the centre of the criminal justice system. Nevertheless, the fact that different terms are used to describe the person that has suffered harm as a result of a crime, does not necessarily mean that national legislations do not provide for the same amount of rights. While in Germany and Finland no legal definition of the term “victim” exists, the protection of victims' rights are very high in both countries. In Finland, for example, while the term “injured party” is used instead of victim, the latter includes also be a natural person who is either insulted or endangered by a crime and is thus much broader than the definition



determined by the Victims' Directive. Also, injured parties are granted a large amount of rights during criminal investigation and court proceedings. On the contrary, while the Victims' Code (England and Wales) does contain a legal definition of the term victim, victims are not seen as a party to the criminal proceeding, but essentially as a witness. Due to this fact, victims in England and Wales are granted less rights, particularly regarding legal representation.

Concerning the legal transposition of the individual assessment of victims to identify specific protection needs as set out in article 22 VD common difficulties emerged in all MS particularly regarding the practical implementation of the individual assessment: While most legislations assessed specify that the individual assessment should take place at the first contact with a competent authority, it is mostly unclear who is responsible or suitable to conduct the individual assessment. In fact, while all assessed MS passed new provisions to comply with article 22 VD, this provision remains the most criticised and debated in all MS. A promising practice can be found in the Victims' Code in England and Wales which clearly states that the police, but also other Service Providers have an obligation to conduct the individual assessment of victims. Also, in Spain it is both the Victim Support Offices – which consist of interdisciplinary teams, including judges, psychologists and social workers – as well as the judge and the prosecutors' responsibility to conduct the individual assessment to identify the victims' needs.

Further, the present research shows that while most of the special measures to guarantee the right to protection of child victims of crime during criminal proceedings (art. 23-24) already existed before the transposition process in most MS, the transposition process resulted in several changes in national legislations: additional rights were introduced to complement existing protection measures (e.g. Finland), the transposition of the Victims' Directive led to an extension of the beneficiary group of certain rights (e.g. Finland, Portugal), and the systematisation of the existing provisions took place (e.g. Portugal, Spain).

Moreover, the research outlines several promising practices regarding art. 23-24 VD: For example, in England and Wales, there exists a guidance document "Achieving Best Evidence in Criminal Proceedings" which – while not constituting an enforceable code of conduct – is a useful guidance pinpointing good practices in interviewing witnesses. Moreover, the Victims' Code foresees the possibility to appoint a registered intermediary, which helps vulnerable victims to give evidence in court and to the police. If a child victim is being interviewed in a pre-trial hearing, the intermediary helps to establish ground rules for the interview which have to be upheld during the hearing. Another promising practice in England and Wales is



the possibility of the victim to visit the court before the trial date. This practice aims to enable the victim to familiarise her- or himself with the building and the court. Moreover, in Finland there exists a year-long interdisciplinary interview programme for police and healthcare professionals who perform child hearings.

Lastly, Chapter 4.4 outlines the respective provisions regarding the access and support from victim support services as described in articles 8-9 VD. Overall, the present research finds that there exist three types of support during court proceedings in the selected MS, while not all of these services are available in every MS: an appointed legal counsel depending on the nature of the crime, as well as the particular circumstances of the victim; legal aid which is granted depending on the victims' financial status; and a support person or psycho-social supporter. However, as in England and Wales, the victim is no party to the criminal proceeding, the victim does not have the right to legal representation during court proceedings. The state prosecutor presents the victims' case, while the victims role is to provide evidence as a witness.

Promising practices that were found in this research regarding the access and support from victim support services are, on the one hand, the victim charge in Finland. The latter constitutes money to be paid by the prosecuted offender to fund the support services of victims. On the other hand, the right of victim to psycho-social support, which previously existed in Portugal and Finland and got newly introduced in German legislation in the course of the transposition process. Lastly, the inter-disciplinary Victim Support Offices in Spain were also regarded as a promising practice in a recent publication of FRA.¹⁹¹ Victim Support Offices offer a wide range of services, undertake the individual assessment of victims to identify their specific protection needs and coordinate other victim support services. Moreover, to constantly improve the protection system in Spain, the functioning of victim support institutions, mechanisms and guarantees is to be assessed on an annual basis by the Spanish Ministry of Justice.

In summary, it can be stated that the Victims' Directive led to various achievements in the selected MS. While several of the provisions already existed in national legislation, the transposition processes opened up space for a revision and reviewing process. While the legislative solutions chosen by each of the MS clearly go hand in hand with the particular context of their legal system, the present research suggests that nevertheless there exists space for mutual learning amongst member states. In particular, it can be observed that as one of the major pitfalls of the transposition processes is the gap between legislation and practice¹⁹²,

¹⁹¹ European Union Agency for Fundamental Rights, *Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States*, 2015, 110.

¹⁹² See also European Union Agency for Fundamental Rights, *Victims of crime in the EU: the extent and nature of support for*





a practical approach to review and drafting of legislation, including a wide consultation processes, are very likely to result in promising solutions that work in practice.

victims, Publication Office of the European Union (Luxembourg), 2014, 74



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Bibliography

APAV – Associação Portuguesa de Apoio à Vítima, Developing Directive – compatible practices for the identification, assessment and referral of victims: Portugal Practices Report.

APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016.

Assembleia da República, Parliament, <http://www.en.parlamento.pt/Parliament/index.html> (last accessed: 25th April 2018).

Assembleia da República, Processo Legislativo Comum, <http://www.parlamento.pt/Parlamento/paginas/plc.aspx> (last accessed: 25th April 2018).

Bpb, Wie ein Gesetz entsteht, <http://www.bpb.de/politik/grundfragen/24-deutschland/40463/wie-ein-gesetz-entsteht> (German) (last accessed: 25th April 2018).

Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2 (German) (last accessed: 25th April 2018).

Bundesministerium der Justiz und für Verbraucherschutz, Opferhilfe und Opferschutz im Strafverfahren, 16.11.2017, https://www.bmjjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (German) (last accessed: 25th April 2018).

Bundesministerium für Familie, Senioren, Frauen und Jugend, German Federal Child Protection Act (Bundeskinderschutzgesetz), <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/bundeskinderschutzgesetz/das-bundeskinderschutzgesetz/86268> (German) (last accessed: 25th April 2018).

Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.mietpreisbremse.bund.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (German) (last accessed: 25th April 2018).

Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksache 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (German) (last accessed: 25th April 2018).

Constitution of the Portuguese Republic, <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf> (last accessed: 25th April 2018).

Decreto do Presidente da República n.º 101/2015 - Diário da República n.º 173/2015, Série I de 2015-09-04/70186153, Assembleia da República, Lei n.º 130/2015, Procede à vigésima terceira alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001, <https://dre.pt/application/file/70186153> (last accessed: 25th April 2018).

Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3.



Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (German) (last accessed: 25th April 2018).

DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, December 2017.

EUR-LEX, National transposition measures communicated by the Member States concerning: Directive 2012/29/EU, <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029> (last accessed: 25th April 2018).

European Commission, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2013 (in the following: European Commission, Guidance Document to the Victims’ Directive, 2013).

European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States, 2015.

European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Luxembourg), 2014

FINLEX, Act on Victim Charges, 22.5.2015/669, <https://www.finlex.fi/fi/laki/ajantasa/2015/20150669> (Finnish) (last accessed: 25th April 2018).

FINLEX, HE 293/2014, <https://finlex.fi/fi/esitykset/he/2014/20140293?search%5Btype%5D=pika&search%5Bpika%5D=He%20293%2F2014> (Finnish) (last accessed: 25th April 2018).

FINLEY, HE 66/2015, <https://finlex.fi/fi/esitykset/he/2015/20150066> (Finnish) (last accessed: 25th April 2018).

Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/> (last accessed: 25th April 2018).

Finnish Ministry of Justice, Act on the Publicity of Court Proceedings in General Courts, 370/2007 amendments to 742/2015 included, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEWjQ9unn4MjZAhVMYaQKHTmUB14QFggtMAA&url=https%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F2007%2Fen20070370.pdf&usg=AOvVaw3A34-Ki7L-xk8YksYr1E0V> (last accessed: 25th April 2018).

Finnish Ministry of Justice, Code of Judicial Procedure, 4/1734, amendments up to 732/2015 included, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEWjHx5KJ3MjZAhUBLeWKhfZoD60QFggtMAA&url=http%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F1734%2Fen17340004.pdf&usg=AOvVaw0-PJLjKrSH9U01qD0yrl4B> (last accessed: 25th April 2018).



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Finnish Ministry of Justice, Criminal Investigation Act (805/2011; amendments to 736/2015 included, Unofficial Translation, <https://www.finlex.fi/en/laki/kaannokset/2011/en20110805.pdf> (last accessed: 25th April 2018).

Finnish Ministry of Justice, Rights of crime victim, 1.3.2017

FRANET, Victim Support Services in the EU: An overview and assessment of victims' rights in practice: Germany, 2014.

Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren vom 21. Dezember 2015 (BGBl. I S. 2525, 2529), (PsychPbG), https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (German) (last accessed: 25th April 2018).

Gov.uk, Victims and witnesses funding awards, <https://www.gov.uk/government/publications/victims-and-witnesses-funding-awards> (last accessed: 25th April 2018).

Info Vitima, Psychological Supporter, http://infovitimas.pt/pt/004_quem/paginas/004_007.html (Portuguese) (last accessed: 25th April 2018).

Info Vitimas, lawyer of the victim, http://infovitimas.pt/pt/004_quem/paginas/004_006.html (Portuguese) (last accessed: 25th April 2018).

IVOR, Finland: Developments on the implementation of victim assistance mechanisms.

IVOR, United Kingdom: Development on the implementation of victim assistance and mechanisms.

Kett-Straub, Wie viel Opferschutz trägt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017.

Law 29/2011 of 22th September, on the recognition and comprehensive protection of victims of terrorism (Spain), <https://www.boe.es/buscar/doc.php?id=BOE-A-2011-15039> (last accessed: 25th April 2018).

Law 35/1995 of 22th December, on support and assistance for the victims of violent crimes and crimes against sexual freedom (Spain) <https://www.boe.es/buscar/doc.php?id=BOE-A-1995-26714> (last accessed: 25th April 2018).

Law on Access to Law and to Courts, Law no. 34/2004 of July 29 amended by Law no. 47/2007, of August 28, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=80&tabela=leis&so_miolo (Portuguese) (last accessed: 25th April 2018).

Löffelmann, Drittes Opferrechtsreformgesetz – Ausgabe 11/2014, 22.11.2014, <http://www.recht-politik.de/drittes-opferrechtsreformgesetz/> (German) (last accessed: 25th April 2018).

Maizener ed. al., EVVI (Evaluation of Victims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf (last accessed: 25th April 2018).

Ministerio de Justicia, Law 4/2015, of 27 April on the Standing of Victims of Crime, <https://rm.coe.int/168070ac7f> (last accessed: 25th April 2018).

Ministry of Justice, Results Updated 31 Oct 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime> (last accessed: 25th April 2018).

Official Journal of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <http://eur->



lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF (last accessed: 25th April 2018).

Official Journal of the European Union, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing the Council Framework Decision 2004/68/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN> (last accessed: 25th April 2018).

Official Journal of the European Union, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN> (last accessed: 25th April 2018).

Oikeus, Attorney and support person for a victim of crime, <https://oikeus.fi/en/index/esitteet/oikeusapu/rikoksenuhrivoisaadaavustajanjatukihenkilon.html> (last accessed: 25th April 2018).

Oikeus, If you Become a Victim of a Crime: Victim protection: <https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html> (last accessed: 25th April 2018).

Oikeus, Information on Legal Aid, <https://oikeus.fi/en/index/esitteet/oikeusapu/mitaoikeusapuhakijallemaksaa.html> (last accessed: 25th April 2018).

Oikeus, Legal aid, <https://oikeus.fi/oikeusapu/en/index.html> (last accessed: 25th April 2018).

Oikeus, Means-testing, <https://oikeus.fi/en/index/esitteet/oikeusapu/millatuloillaoikeusapuyonnetaanjamitkamenothuomioidaan.html> (last accessed: 25th April 2018).

Organic Law 1/1996 of 10th of January, on legal protection for minors (Spain), <https://www.boe.es/buscar/act.php?id=BOE-A-1996-750&p=20170622&tn=1> (last accessed: 25th April 2018).

Organic Law 1/2004 of 28th December, on comprehensive protection measures against gender-based violence (Spain) <https://www.boe.es/buscar/doc.php?id=BOE-A-2004-21760> (last accessed: 25th April 2018).

Portuguese Criminal Procedure Code, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (Portuguese) (last accessed: 25th April 2018).

Portuguese Victims' Statute, https://apav.pt/apav_v3/images/pdf/estatuto_da_vitima.pdf (Portuguese) (last accessed: 25th April 2018).

RIKU – Riksuripavystys: victim support Finland, <https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/> (last accessed: 25th April 2018).

Riku, What is a victim charge?, <https://www.riku.fi/en/frequently+asked+questions/what+is+a+victim+charge/> (last accessed: 25th April 2018).



RIKU, What is the victims' directive?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/> (last accessed: 25th April 2018).

Savonen, Developing Directive-Compatible Practices for the identification, assessment and referral of victims: National Report – Finland, 2017, 6; and Finnish Ministry of Justice, Rights of a Crime Victim, 1.3.2017.

Sentencing Council, What is the victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/> (last accessed: 25th April 2018).

UK Ministry of Justice, Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures, March 2011, https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf (last accessed: 25th April 2018).

UK Ministry of Justice, Code of Practice for Victims of Crime, October 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (last accessed: 25th April 2018).

UK Ministry of Justice, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 March 2013, published on 29 October 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime/results/improving-the-code-of-practice-for-victims-of-crime-consultation-response.pdf> (last accessed: 25th April 2018).

UK Ministry of Justice, the support you should get if you are a victim of crime, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf (last accessed: 25th April 2018).

UK Ministry of Justice, The Victims' Code: u18s: Young victims of crime – Understanding the support you should get, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267982/u18-victims-code-leaflet.pdf (last accessed: 25th April 2018).

UK Ministry of Justice, Victims of crime: Understanding the support you can expect, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341367/adult-victims-code-leaflet.pdf (last accessed: 25th April 2018).

Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings

Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary

Vânia Costa Ramos, Legal Aid for Victims in Criminal Proceedings in Portugal, in Wilinski, Karlik (eds.), Improving Protection of Victims' Rights: Access to Legal Aid, Adam Mickiewicz University, Poznan, 2014, 192.

Webpage of RIKU, Victim Support Finland, <https://www.riku.fi/en/victim+support+finland/> (last accessed: 25th April 2018).

Webpage of the Bundesrat, legislative procedure, <https://www.bundesrat.de/DE/aufgaben/gesetzgebung/verfahren/verfahren.html;jsessionid=3CA8BC90B2>



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[257E80D96151207647DF27.2_cid391?nn=4353668#doc4353670bodyText2](#) (last accessed: 25th April 2018).

Webpage of the German Ministry of Interior, legislative procedure,
<https://www.bmi.bund.de/DE/themen/verfassung/gesetzgebung/gesetzgebungsverfahren/gesetzgebungsverfahren-node.html> (last accessed: 25th April 2018).

Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017.



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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

**D3.6 pan-European Best Practices Report
on Victims' Directive transposition**

WP3 Leader: VICESSE



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Aus Gründen der Lesbarkeit wurde im folgenden Forschungsbericht abwechselnd die männliche und die weibliche Form verwendet, nichtsdestoweniger beziehen sich die Angaben auf Angehörige beider Geschlechter.



Zusammenfassung

Der vorliegende Bericht untersucht die nationalen Umsetzungen der EU-Opferschutz-Richtlinie (Richtlinie 2012/29/EU) in fünf Mitgliedstaaten – Finnland, Deutschland, Portugal, Spanien und England und Wales – und legt hierbei einen besonderen Schwerpunkt auf die Rechte von minderjährigen Opfern. Ziel des Berichts ist es, Kenntnisse über die rechtliche Umsetzung der Opferschutz-Richtlinie zu erlangen sowie vielversprechende Praktiken und erfolgversprechende legislative Lösungen zu identifizieren. Dieser Bericht behandelt die Umsetzungsprozesse der Opferschutz-Richtlinie in den ausgewählten Mitgliedstaaten sowie eine Bewertung der entsprechenden Umsetzungsvorschriften der Artikel 8-9 und 22-24 Opferschutz-Richtlinie. Im Rahmen des Forschungsprojekts wurde ein weiterer Bericht veröffentlicht, welcher ergänzend die praktische Umsetzung der individuellen Begutachtung von Opfern zur Ermittlung besonderer Schutzbedürfnisse im Sinne des art. 22 Opferschutz-RL in den ausgewählten Mitgliedstaaten untersucht.

Die vorliegende Studie wurde im Rahmen von E-PROTECT – „Verbesserung des Schutzes von minderjährigen Opfern von Straftaten“ durchgeführt. E-PROTECT verfolgt das Ziel, die Anwendung der Opferschutz-Richtlinie zu verstärken, insbesondere im Falle von minderjährigen Opfern. Das Projekt besteht aus mehreren Phasen: Die Grundlage des Projekts basiert auf intensiver rechtswissenschaftlicher und sozialwissenschaftlicher Forschung sowie aktiver Interaktion mit ExpertInnen im Bereich Opfer- und Kinderrechte. In späteren Projektphasen werden u.a. eine Online-Plattform über die Rechte von minderjährigen Opfern aufgebaut sowie Seminare und virtuelle Veranstaltungen mit PraktikerInnen und ExpertInnen auf dem Gebiet des Opfer- und Kindesschutzes veranstaltet.

Die Ergebnisse der Untersuchung zeigen, dass die Opferschutz-RL in den ausgewählten Mitgliedstaaten sehr unterschiedlich umgesetzt wurde. Während Spanien und Portugal viele Teile der Opferschutz-RL wörtlich übernommen haben, ist der Opfer-Kodex in England und Wales als praktischer Leitfaden formuliert, der sich sowohl an das Opfer als auch an Dienstleistungserbringer richtet. Grundsätzlich scheint das Vorliegen eines zentralen Dokuments, das alle Opferrechte umfasst, einen leichteren und klareren Zugang zu ermöglichen.

Die Legaldefinition des Begriffs „Opfer“ ist in den fünf behandelten Mitgliedstaaten dieser Studie ebenfalls unterschiedlich umgesetzt: In Deutschland und Finnland existiert beispielsweise gar keine rechtliche Definition des Begriffs „Opfer“ im Strafprozessrecht. Die Tatsache, dass unterschiedliche Begriffe zur Beschreibung der Person verwendet werden, die infolge einer Straftat einen Schaden erlitten hat, bedeutet



jedoch nicht zwangsläufig, dass die nationalen Rechtsvorschriften nicht einen umfassenden Opferschutz gewährleisten.

Die vorliegende Untersuchung zeigt weiters, dass es in allen Mitgliedstaaten zu Schwierigkeiten bei der praktischen Umsetzung der Regelung zur individuellen Begutachtung besonderer Schutzbedürftigkeit von Opfern gekommen ist: In den meisten Gesetzen fehlen konkrete Vorschriften zur Zuständigkeiten bzw. zum genauen Ablauf des Verfahrens. Bezüglich der besonderen Maßnahmen zur Gewährleistung der Opferrechte im Sinne des Art. 23-24 Opferschutz-RL, ist festzustellen, dass diese bereits vor dem Umsetzungsprozess in den meisten in dieser Studie untersuchten Mitgliedstaaten existierten. Nichtsdestotrotz führte die Umsetzung der Opferschutz-RL zu mehreren Änderungen der nationalen Rechtsvorschriften: es wurden etwa zusätzliche Rechte definiert, bereits bestehende Rechte auf eine größere Gruppe von Anspruchsberechtigten ausgeweitet, sowie eine Systematisierung der Rechte vorgenommen.

Obwohl die legislativen Lösungen der Umsetzungsmaßnahmen klar im Zusammenhang mit den bestehenden Rechtsvorschriften und Rechtssystem stehen, weist die vorliegende Studie darauf hin, dass dennoch Raum für gegenseitiges Lernen zwischen den Mitgliedstaaten besteht. Unter anderem wurden die folgenden vielversprechenden Praktiken identifiziert:

- In Finnland wird ein verurteilter Täter dazu verpflichtet zusätzlich zu seiner sonstigen Strafe eine „Opfergebühr“¹ zu zahlen. Das davon lukrierte Geld kommt Opferschutzdiensten zu Gute.
- In Deutschland wurde eine psycho-soziale Prozessbegleitung für besonders schutzbedürftige Verletzte eingeführt. Ähnliche Bestimmungen gab es zuvor auch schon in Portugal und Finnland.
- Portugal und Spanien nutzten den Umsetzungsprozess der Opferschutz-RL um eine Systematisierung bestehender Opferschutz-Rechte durchzuführen. Nun finden sich in beiden Ländern alle Rechte, welchen Opfern gewährt werden, in einem zentralen Dokument. Auch in England und Wales werden alle Opferrechte im Opfer-Kodex zusammengefasst.
- In Spanien bieten Opferhilfe-Büros eine breite Palette von Diensten an, sind (mit-)verantwortlich für die individuelle Begutachtung besonderer Schutzbedürftigkeit, und koordinieren andere Opferunterstützungsdienste. Ihre Teams sind interdisziplinär und beinhalten Richter, Psychologinnen und Sozialarbeiter.
- Die spanischen Regelungen sehen vor, dass die Opferunterstützungseinrichtungen, -mechanismen, und

¹ Vgl. England und Wales siehe Seite 52 (in diesem Report)



- garantien jährlich vom spanischen Justizministerium evaluiert werden sollen.
- In England und Wales gibt es im Falle von vulnerablen Opfern die Möglichkeit einen registrierten Vermittler zu bestellen, welcher das Opfer unterstützen soll vor Polizei und bei Gericht auszusagen. In einer vorgerichtlichen Anhörung hilft der Vermittler dabei, Grundregeln für das Interview festzulegen, die während der Anhörung eingehalten werden müssen.
- In England und Wales können Opfer das Gericht vor dem Verhandlungstermin besuchen, um sich mit dem Gebäude und dem Gericht vertraut zu machen.

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Abkürzungen

DStPO	Deutsche Strafprozessordnung
E-PROTECT	Verbesserung des Schutzes von minderjährigen Opfern von Straftaten“ <i>‘Enhancing PROtection of Children – vicTims of crime’</i>
FSVG	finnisches Strafverfolgungsgesetz <i>Criminal Investigation Act (805/2011)</i>
FVG	finnischen Gerichtsverfahrensgesetz
Gesetz 4/2015	Gesetzes 4/2015 über die Stellung von Opfern von Straftaten (Spanien)
MS	Mitgliedstaaten der EU
Opfer-Kodex	Verhaltenskodex für Opfer von Straftaten (England und Wales)
Opferstatut	portugiesisches Opferstatut
PSTPO	portugiesische Strafprozessordnung
PsychPbG	Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren vom 21. Dezember 2015 (BGBl. I S. 2525, 2529)
RIKU	Opferhilfe Finnland
SStPO	spanische Strafprozessordnung
VD	Opferschutz-RL - Richtlinie 2012/29/EU



1. Einleitung

Der vorliegende Bericht untersucht die nationalen Umsetzungsmaßnahmen der Richtlinie 2012/29/EU (im folgenden Opferschutz-RL oder VD)² von fünf Mitgliedstaaten (MS) – Finnland, Deutschland, Portugal, Spanien und England und Wales – mit einem besonderen Schwerpunkt auf den Rechten von minderjährigen Opfern. Ziel des Berichts ist es, Kenntnisse über das Ausmaß der rechtlichen Umsetzung der Opferschutz-RL zu gewinnen sowie vielversprechende Praktiken und erfolgversprechende legislative Lösungen zu ermitteln. Der vorliegende Bericht stellt jedoch keine Bewertung der praktischen Implementierung der Umsetzungsmaßnahmen in den ausgewählten Mitgliedsstaaten dar.³ Er wurde im Rahmen des Forschungsprojekts E-PROTECT – „Verbesserung des Schutzes von minderjährigen Opfern von Straftaten“ durchgeführt. Ziel von E-PROTECT ist es, die Anwendung der Opferschutz-Richtlinie, speziell im Falle von minderjährigen Opfern, zu stärken.

Die Opferschutz-RL ist Teil einer umfassenderen Strategie der Kommission zur Verbesserung der Rechte, des Schutzes, der Unterstützung und der Beteiligung von Opfern im Strafverfahren. Diese wurde im horizontalen Maßnahmenpaket der Europäischen Kommission vom Mai 2011⁴ festgelegt. Ziel der Opferschutz-RL ist es sicherzustellen, dass die Bedürfnisse von Opfern in Strafverfahren individuell berücksichtigt werden. Sie enthält besondere Maßnahmen zum Schutz von minderjährigen⁵ Opfern und legt fest, dass das Wohl des Kindes bei der Beteiligung an Strafverfahren stets im Vordergrund stehen muss.⁶

E-PROTECT besteht aus mehreren Projektphasen, und beinhaltet Forschung sowie aktive Interaktion mit PraktikerInnen im Bereich Kinderrechte und Opferschutz. In einem ersten Schritt wurde die Umsetzung der Opferschutz-RL in den fünf Partnerländern von E-PROTECT⁷ evaluiert. Die vorliegende Forschung ergänzt

² Amtsblatt der Europäischen Union, Richtlinie 2012/29/EU des Europäischen Parlaments und des Rates vom 25. Oktober 2012 über Mindeststandards für die Rechte, die Unterstützung und den Schutz von Opfern von Straftaten sowie zur Ersetzung des Rahmenbeschlusses 2001/220/JI, https://www.justiz.gv.at/web2013/file/2c94848525f84a6301326975ceb15722.de.0/opferschutz-richtlinie_2012_29_eu.pdf

³ Das Deliverable D3.13 – Studie zu den einzelnen Bewertungsmethoden von Kinderopfern von Straftaten in anderen Mitgliedstaaten – untersucht die praktischen Aspekte der Umsetzung der individuellen Opferbegutachtung zur Ermittlung spezifischer Schutzbedürfnisse in denselben Mitgliedstaaten.

⁴ European Commission, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2013 (im folgenden: European Commission, Guidance Document to the Victims' Directive, 2013).

⁵ In diesem Bericht wird der Begriff minderjähriges Opfer für eine Person verwendet, die das 18. Lebensjahr noch nicht vollendet hat und Opfer einer Straftat geworden ist.

⁶ Ibid.

⁷ Österreich, Bulgarien, Italien, Rumänien und Griechenland



diese Berichte, indem sie die Umsetzung der Opferschutz-RL in fünf weiteren Mitgliedstaaten untersucht. Hierdurch soll die Umsetzung der Opferschutz-RL in einem europaweiten Kontext veranschaulicht und untersucht werden. Die sechs Berichte dienen als Eckpfeiler für die weiteren Projektphasen von E-PROTECT: u.a. die Errichtung einer Online-Plattform zu den Rechten von minderjährigen Opfern, sowie die Veranstaltung von Seminaren und virtuellen Veranstaltungen mit PraktikerInnen und ExpertInnen auf dem Gebiet Opferschutz und Kinderrechte.

Der Bericht hat folgende Struktur: Das zweiten Kapitel beinhaltet eine Darstellung der in diesem Bericht verwendeten Methodik. Insbesondere wird beschrieben, wie die in diesem Bericht untersuchten Mitgliedstaaten ausgewählt wurden. Anschließend umfasst das dritte Kapitel eine Darstellung des Umsetzungsprozesses der Opferschutz-RL in den ausgewählten Mitgliedstaaten.

Das vierte Kapitel beinhaltet eine rechtliche Untersuchung der Umsetzungsmaßnahmen ausgewählter Artikel der Opferschutz-RL, nämlich: die rechtliche Definition von Opfer (Art. 2, Abs. 1 VD), die individuelle Begutachtung von Opfern zur Ermittlung besonderer Schutzbedürfnisse (Art. 22 VD), das Recht auf Schutz von Opfern mit besonderen Schutzbedürfnissen und Opfern im Kindesalter (Art. 23-24 VD), sowie der Zugang zu und die Unterstützung von Opferunterstützungsdiensten (Art. 8-9 VD). Die jeweiligen Abschnitte sind wiederum in Unterkapitel unterteilt, in denen die Umsetzungsmaßnahmen der einzelnen Mitgliedstaaten untersucht werden.

Zuletzt findet sich in Kapitel fünf die Conclusio des Berichts. Sie beschreibt Verbesserungen und Erfolge, welche sich aus dem Umsetzungsprozessen in den jeweiligen Mitgliedstaaten ergeben haben. Zusätzlich wird durch die Gegenüberstellung der einzelnen Länderstudien vielversprechende Praktiken und erfolgversprechende legislative Lösungen ermittelt.



2. Methodologie

Der vorliegende Bericht ergänzt fünf weitere rechtliche Studien, welche die Umsetzungsmaßnahmen der Opferschutz-RL in den fünf Mitgliedstaaten dieses Projekts - Österreich, Bulgarien, Italien, Rumänien und Griechenland – untersuchten. In Hinblick auf das Ziel von E-PROTECT, Kenntnisse über die Umsetzung der Opferschutz-RL auf europäischer Ebene zu gewinnen, wurden die folgenden Kriterien für die Auswahl der Mitgliedstaaten, welche in diesem Bericht untersucht werden, festgelegt:

- **Geografische Lage und Kultur**
- Relevanz des Mitgliedstaates als Beispiel, im Besonderen auf Grund 1) der **Besonderheiten des nationalen Rechtssystems**; 2) **unterschiedlicher legislativer Ansätze im Hinblick auf die Umsetzung** der Opferschutz-RL
- **Erfolgversprechende legislative Lösungen**
- **Verfügbarkeit** von Literatur und anderen Ressourcen

Der Aufbau des Berichts ist an der Struktur der früheren Berichte, die im Rahmen von E-PROTECT durchgeführt wurden, angelehnt. Hierdurch soll ein Vergleich zwischen den verschiedenen legislativen Lösungen ermöglicht werden. Ebenso wurden dieselben Artikel, die in den Länderstudien untersucht wurden, auch im Rahmen des vorliegenden Berichts herangezogen. Es wurde eine Gegenüberstellung der Bestimmungen der Opferschutz-RL und der jeweiligen nationalen Gesetzgebung durchgeführt, wobei der Leitfaden der DG Justiz⁸ als Bezugspunkt diente. Schließlich wurden zusätzliche Informationen durch Sekundärforschung gesammelt.

Während eine Untersuchung der Implementierung der Umsetzungsmaßnahmen in der Praxis vor allem im Hinblick auf die Identifikation von vielversprechenden legislativen Lösungen von Nutzen gewesen wäre, hätte eine solche Bewertung den Umfang dieser Forschung überstiegen. Um diese Einschränkung zu überbrücken, wurde intensiv nach Forschungsberichten gesucht, welche bereits Primärforschung auf dem Gebiet der Rechte von minderjährigen Opfern von Straftaten durchgeführt haben.⁹

⁸ DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

⁹ Zum Zeitpunkt dieser Studie existierten bereits mehrere Forschungsstudien, welche sich auf Opferschutz konzentrierten, z.B.: APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016; EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, December 2017; European Union Agency for Fundamental Rights, Child -



3. Der Umsetzungsprozess der Richtlinie 2012/29/EU in den ausgewählten Mitgliedsstaaten

Im folgenden Kapitel werden die nationalen Umsetzungsprozesse der Opferschutz-RL in den ausgewählten Mitgliedstaaten kurz erläutert: Was waren die Herausforderungen? Wurden die Umsetzungsmaßnahmen rechtzeitig getroffen, nämlich bis 16. November 2015 wie im Artikel 27 VD festgehalten? Hat die Kommission ein Vertragsverletzungsverfahren eingeleitet? Anschließend werden die nationalen Gesetzgebungsprozesse, insbesondere die Einbeziehung von Interessensgruppen, dargestellt sowie die Opferschutz-RL-Umsetzungsgesetze ermittelt.

3.1. Finnland

Der finnische parlamentarische Gesetzgebungsprozess wird durch die finnische parlamentarische Arbeitsordnung (*Riksdagens arbetsordning*) geregelt. Diese sieht vor, dass die meiste legislative Arbeit bei normalen Gesetzen durch die Ministerien und Ausschüsse vorgenommen wird. Nachdem ein Vorschlag in das Parlament eingebracht wurde¹⁰ wird er zuerst vom entsprechenden Ausschuss diskutiert - gegebenenfalls unter Konsultation von Expertinnen, - bevor er dem Parlament vorgelegt wird. Anschließend folgen entweder weitere Diskussionsphasen, oder das Parlament stimmt sofort über den Vorschlag ab.¹¹

Zwei Arbeitsgruppen erarbeiteten den Gesetzesakt zur Umsetzung der Opferschutz-RL: Erstens eine vom Justizministerium eingesetzte Arbeitsgruppe, bestehend aus Vertretern der verschiedenen Ministerien sowie

friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015; European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Luxembourg), 2014; FRANET, Victim Support Services in the EU: An overview and assessment of victims' rights in practice: Germany, 2014; Maizener ed. al., EVVI (Evaluation of Victims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf; Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings.

¹⁰ Vorschläge können entweder von der Regierung, von einzelnen Abgeordneten oder von Bürgerinitiativen mit mindestens 50.000 Unterschriften eingebracht werden.

¹¹ Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/>



der Staatsanwaltschaft, der finnischen Anwaltskammer und Opferhilfe Finnland (RIKU)^{12,13} Diese Arbeitsgruppe hatte die Aufgabe zu beurteilen, welche Gesetzesänderungen und welche weiteren Maßnahmen zur Umsetzung der Opferschutz-RL notwendig waren. Nach Erstellung ihres Berichts, hatten Behörden, Unternehmen und Sachverständige die Möglichkeit, zu den vorgeschlagenen Änderungen Stellung zu beziehen. Die meisten dieser Stellungnahmen unterstützen die vorgeschlagenen Änderungen.

Zweitens wurde eine zusätzliche Kommission - die Kommission der Opfer-Strategie - eingesetzt, um die Umsetzung der Artikel 8 und 9 der Opferschutz-RL vorzubereiten, und insbesondere „eine nationale Strategie für die Organisation von Opferschutz-Diensten und die Finanzierung von solchen Diensten“¹⁴ zu erarbeiten. Die Kommission bestand gleich wie die Arbeitsgruppe aus verschiedenen Vertretern der Exekutive sowie NGOs, wie etwa Opferhilfe Finnland, der Föderation der Mutter-Kind-Häuser und dem multikulturellen Frauenverband Finnland.

Mehr als die Hälfte der in der Opferschutz-RL enthaltenen Artikel existierten bereits vor der Umsetzung der Opferschutz-RL und mussten daher nicht umgesetzt werden. Dies betraf etwa die Bestimmungen über die besonderen Bedürfnisse von Kindern iSd Artikel 24 VD. Lediglich die Regelungen der Artikel 4, 5, 6, 7, 8, 9, 12, 22 und 23 VD waren noch nicht vollständig im finnischen Recht vorhanden.¹⁵ Diese Maßnahmen wurden durch den Regierungsentwurf Nr. 66/2015¹⁶ umgesetzt, durch welchen die erforderlichen Änderungen in verschiedenen für das Strafverfahren relevanten Gesetze vorgenommen wurden. Die Änderungen traten im März 2016 in Kraft.¹⁷ Die erforderlichen Änderungen in Bezug auf Artikel 8 und 9 VD wurden durch den Gesetzesentwurf Nr. 293/2014¹⁸ der Regierung umgesetzt und traten im Dezember 2016 in Kraft.

¹² Opferhilfe Finnland (RIKU) Opferhilfe Finnland (RIKU) ist eine Organisation, die auf einer Kooperationsvereinbarung des Finnischen Roten Kreuz, der Föderation der Mutter-Kind-Heime, der Finnischen Vereinigung für psychische Gesundheit, der Männerheim-Liga für Kinderschutz und dem Finnischen Verband der Siedlungshäuser und des Nationalen Kirchenrats basiert. Die Operationen werden landesweit von der Finnischen Gesellschaft für Seelische Gesundheit koordiniert. RIKU ist in ganz Finnland tätig. Sein Hauptziel ist die Verbesserung der Position von Opfern von Straftaten und ihrer Angehörigen. Mehr unter: RIKU, Victim Support Finland, <https://www.riku.fi/en/victim+support+finland/>

¹³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings.

¹⁴ Ibid., 13.

¹⁵ Ibid.

¹⁶ FINLEY, HE 66/2015, <https://finlex.fi/fi/esitykset/he/2015/20150066> (Finnisch).

¹⁷ Auf EUR-LEX sind 29 Maßnahmen genannt, welche zur Umsetzung der Opferschutz-RL in Finnland beschlossen wurden. Siehe EUR-LEX, National transposition measures communicated by the Member States concerning: Directive 2012/29/EU, <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029>

¹⁸ FINLEX, HE 293/2014, <https://finlex.fi/fi/esitykset/he/2014/20140293?search%5Btype%5D=pika&search%5Bpika%5D=He%20293%2F2014> (Finnisch).



Die wichtigsten Änderungen betrafen Informationspflichten (Kapitel 4, Abschnitt 18, finnisches Strafverfolgungsgesetz (FSVG); die Bestimmungen zur persönlichen Begutachtung (Kapitel 11, Abschnitt 9 FSVG); und die Überweisung an Opferunterstützungsdienste (Kapitel 4, Abschnitt 10, FSVG).¹⁹.

3.2. Deutschland

In Deutschland kann ein Gesetzesvorschlag entweder von der Bundesregierung, dem Bundesrat, von mindestens 5% der Mitglieder des Bundestages oder einer Fraktion eingebracht werden.²⁰ Bevor ein Gesetzesvorschlag der Regierung ins Parlament eingebracht werden kann - was die gängigste Praxis ist²¹ - muss der Vorschlag dem Bundesrat zur Stellungnahme vorgelegt werden. Anschließend wird der Vorschlag - zusammen mit der Stellungnahme des Bundesrates und der Gegendarstellung durch die Regierung - ins Parlament eingebracht. Hier finden drei Lesungen statt, zwischen denen der Gesetzesvorschlag in den Bundestagssausschüssen diskutiert wird. Während innerhalb der Bundestagssausschüsse Experten geladen und konsultiert werden können, sieht das Gesetzgebungsverfahren in Deutschland keine obligatorische Beteiligung der Zivilgesellschaft vor.²² Wenn Organisationen nicht von einem parlamentarischen Ausschuss eingeladen werden, können sie dennoch kritische Stellungnahmen zu den vorgeschlagenen Gesetzen verfassen. Diese Möglichkeit wurde von mehreren Organisationen und Einzelpersonen im Zuge des Umsetzungsgesetzes der Opferschutz-RL ergriffen.²³

Nicht alle rechtlichen Bestimmungen, die in der Opferschutz-RL festgeschrieben wurden, fallen jedoch in die Zuständigkeit des Bundes, sondern auch in jene der Länder. Dies hatte zur Folge, dass mehrere Bestimmungen nicht auf nationaler Ebene umgesetzt werden konnten,²⁴ wie insbesondere Artikel 8 und 9

¹⁹ RIKU – Rikosuripavystys: victim support Finland,
<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victim%E2%80%99s+directive/>

²⁰ Art. 76 Abs.1 Grundgesetz (Deutschland).

²¹ Siehe Bundesministerium für Inneres Deutschland, Gesetzgebungsverfahren,
<https://www.bmi.bund.de/DE/themen/verfassung/gesetzgebung/gesetzgebungsverfahren/gesetzgebungsverfahren-node.html>

²² Bundesrat, Gesetzgebungsverfahren,
https://www.bundesrat.de/DE/aufgaben/gesetzgebung/verfahren/verfahren.html;jsessionid=3CA8BC90B2257E80D96151207647DF27.2_cid391?nn=4353668#doc4353670bodyText2 and bpb, Wie ein Gesetz entsteht,
<http://www.bpb.de/politik/grundfragen/24-deutschland/40463/wie-ein-gesetz-entsteht>.

²³ BMJV Deutschland, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz),
https://www.mietpreisbremse.bund.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html.

²⁴ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 37.



(Zugang zu und Unterstützung durch Opferunterstützungsdiensten) sowie Artikel 23 (das Recht auf Schutz von Opfern mit besonderen Schutzbedürfnissen im Strafverfahren) und Artikel 25 (die Schulung der betroffenen Berufsgruppen).²⁵ Da in Deutschland jedoch der Opferschutz bereits vor der Opferschutz-RL einen sehr hohen Standard hatte, ergab sich nicht viel Änderungsbedarf der bestehenden Gesetze. Die meisten Änderungen wurden durch das am 31. Dezember 2015 in Kraft getretene *Gesetz zur Stärkung der Opferrechte in Strafverfahren, 3. Gesetz zur Reform der Opferrechte* (3. Opferrechtsreformgesetz)²⁶ umgesetzt. Die meisten Änderungen betrafen Bestimmungen in der Deutschen Strafprozessordnung (DStPO).

Die größte Erneuerung im Zuge des Umsetzungsprozesses der Opferschutz-RL in Deutschland war die Schaffung der psychosozialen Prozessbegleitung. Sie gibt Opfern mit besonderen Schutzbedürfnissen die Möglichkeit vor, während und nach dem Strafverfahren professionelle Unterstützung zu erhalten. Zusätzlich waren einige Änderungen in Teilen des Strafverfahrens und in Bezug auf das Recht auf Information erforderlich.²⁷ Einige Expertinnen sind jedoch der Ansicht, dass die meisten Änderungen kaum Auswirkungen in der Praxis haben werden.²⁸

3.3. Portugal

In Portugal kann ein Gesetz entweder von Abgeordneten als Gesetzesvorhaben (*projetos de lei*) oder von der Regierung als Gesetzesvorschlag (*propostas de lei*)²⁹ vorgeschlagen werden.³⁰ Nachdem der Präsident der Versammlung der Republik den Gesetzesentwurf angenommen hat, wird der Entwurf an den zuständigen Fachausschuss zur Stellungnahme übermittelt. Anschließend wird über die allgemeinen

²⁵ BMJV Deutschland, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?blob=publicationFile&v=2.

²⁶ BMJV Deutschland, Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.bmjbv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf;jsessionid=0EB396255BA84B364DB133AAFF6BBBCE.2_cid289?blob=publicationFile&v=3.

²⁷ BMJV Deutschland, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.bmjbv.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html.

²⁸ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, 8.

²⁹ Es besteht auch die Möglichkeit einer Bürgerinitiative. Weitere Informationen unter Assembleia da República (Portugal), Processo Legislativo Comum, <http://www.parlamento.pt/Parlamento/paginas/plc.aspx>.

³⁰ Zusätzlich zu dem parlamentarischen Prozess, kann die Regierung in bestimmten Bereichen Gesetzesdekrete erlassen bzw. die gesetzgebenden Versammlungen regionale Gesetzesdekrete.



Grundsätze des Entwurfs abgestimmt. Die Schlussabstimmung findet im Plenum statt. Zuletzt muss der Entwurf vom Präsidenten der Republik unterzeichnet werden.³¹

Die Opferschutz-RL wurde in Portugal durch das Gesetz Nr. 130/2015 vom 4. September 2015³² umgesetzt, das am 4. Oktober 2015 in Kraft trat und zu einigen Änderungen der portugiesischen Strafprozessordnung (PStPO)³³ führte. Darüber hinaus wurde das Opferstatut („*Estatuto da Vítima*“) angenommen,³⁴ in dem der Schutz von vulnerablen Opfern festgelegt wird.³⁵ Die meisten Bestimmungen des Opfer-Status wurden wörtlich aus der Opferschutz-RL übernommen.

Die Umsetzung der Opferschutz-RL führte zu einigen Änderungen, insbesondere wurden Präventionsmaßnahmen ausgebaut, Opferschutzrechte verstärkte sowie ein neues Entschädigungssystem für Opfer häuslicher Gewalt und Gewaltverbrechen eingeführt. Darüber hinaus wurde eine gesetzliche Definition von „Opfer“ in die portugiesische Strafprozessordnung aufgenommen.³⁶

3.4. Spanien

In Spanien wurde die Opferschutz-RL durch mehrere Gesetzesänderungen umgesetzt.³⁷ Am relevantesten für den vorliegenden Bericht sind die Änderungen der spanischen Strafprozessordnung (SStPO) und die Schaffung des Gesetzes 4/2015 über die Stellung von Opfern von Straftaten (Gesetz 4/2015)^{38, 39}

Obwohl in Spanien bereits vor dem Umsetzungsprozess der Opferschutz-RL einige Opferschutzrechte in einzelnen Gesetz verankert waren, konzentrierte sich ein Großteil dieser Gesetze auf bestimmte Arten von

³¹ Siehe Assembleia da República (Portugal), Parliament, <http://www.en.parlamento.pt/Parliament/index.html>

³² Decreto do Presidente da República n.º 101/2015 - Diário da República n.º 173/2015, Série I de 2015-09-04/70186153, Assembleia da República, Lei n.º 130/2015, Procede à vigésima terceira alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001 available at <https://dre.pt/application/file/70186153>

³³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 60-61.

³⁴ Das portugiesische Opferstatut befindet sich im Anhang von Gesetz Nr. 130/2015.

³⁵ Opferstatut (Portugal), https://apav.pt/apav_v3/images/pdf/estatuto_da_vitima.pdf (portugiesisch).

³⁶ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, 9.

³⁷ EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, December 2017.

³⁸ Ministerio de Justicia, Gesetzes 4/2015 über die Stellung von Opfern von Straftaten (Spanien), <https://rm.coe.int/168070ac7f>

³⁹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 81.



Opfern, wie etwa Opfer von häuslicher Gewalt oder Opfer von Sexualdelikten.⁴⁰ Dies hatte zur Folge, dass keine einheitliche Rechtsvorschrift für alle Opfer von Straftaten bestand. Daher verfolgte der spanische Gesetzgeber mit dem Gesetz 4/2015 über die Stellung von Opfern von Straftaten das Ziel, eine allgemeine Auflistung der Rechte aller Opfer von Straftaten gesetzlich zu verankern. Ein starker Schwerpunkt liegt in dem Gesetz auf den Rechten von Opfern mit besonderen Schutzbedürfnissen und besonders vulnerablen Opfern. Das Gesetz 4/2015⁴¹ fasst nun die Gesamtheit der Opferschutzrechte in einem einzigen Rechtsakt zusammen.

Wie im Fall von Portugal hat auch der spanische Gesetzgeber viele der Bestimmungen der Opferschutz-RL wörtlich übernommen. Im Falle Spaniens, ist auch der Aufbau des Gesetzes 4/2015 weitgehend mit der Struktur der Opferschutz-RL identisch.⁴² Alle in der Opferschutz-RL erlassenen Rechte und Maßnahmen wurden in Spanien vollständig umgesetzt. Zu beachten ist jedoch, dass auch Spanien - ähnlich der Situation in Deutschland – ein Föderalstaat ist, in dem die Autonomen Gemeinschaften (*comunidades autónomas*) weitgehende legislative Kompetenzen besitzen. Während die in weiterer Folge untersuchten Gesetze in allen Autonomen Gemeinschaften anwendbar sind, haben frühere Untersuchungen gezeigt, dass signifikante Unterschiede in der praktischen Anwendung in einigen der vom Gesetz 4/2015 geregelten Bereiche bestehen. Die betrifft vor allem die Tätigkeiten Opferhilfe-Büros.⁴³

Das Ziel des spanischen Gesetzgebers war es ein Gesetz zu verabschieden, dass es Opfern ermöglicht ihre Rechte so einfach wie möglich wahrzunehmen. Aus diesem Grund werden auch Informationen und Auskünfte bzgl. Opferrechte bereitgestellt. Die Gesetzgebung zielt zudem darauf ab, eine sekundäre Viktimisierung zu vermeiden, die unter anderem durch unnötige Formalitäten verursacht werden kann.

⁴⁰ Law 35/1995 on support and assistance for the victims of violent crimes and crimes against sexual freedom (Spanien); Law 1/1996 on legal protection for minors; Law 1/2004 on comprehensive protection measures against gender-based violence (Spanien); and Law 29/2011 on the recognition and comprehensive protection of victims of terrorism (Spanien).

⁴¹ Ministerio de Justicia, Gesetzes 4/2015 über die Stellung von Opfern von Straftaten (Spanien), <https://rm.coe.int/168070ac7f>

⁴² Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 81.

⁴³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, 10.



3.5. England and Wales

Der Verhaltenskodex für Opfer von Straftaten (Opfer-Kodex)⁴⁴ wurde erstmals 2006 eingeführt und hatte zum Ziel, jene Dienstleistungen festzulegen, die das Strafjustizsystem Opfern in England und Wales zur Verfügung stellen muss. Die Novelle des Opfer-Kodex in 2015 war einerseits eine Reaktion auf eine interne Konsultation im Jahr 2012, die aufgezeigt hat, dass der Kodex aktualisiert werden muss um den Änderungen in der Praxis Rechnung zu tragen. Andererseits wurde durch die Novelle die Opferschutz-RL und Teile der Richtlinie über den Menschenhandel⁴⁵ und der Richtlinie über die sexuelle Ausbeutung von Kindern umgesetzt.⁴⁶

Im Zuge der Überarbeitung des Opfer-Kodex wurde ein Konsultationsprozess mit einer Vielzahl von Organisationen durchgeführt – wie zum Beispiel Polizei, örtliche Strafjustizbehörden, Youth Offending Teams, NGOs sowie Experten in den Bereichen Justiz und Recht. Der Konsultationsprozess umfasste die Möglichkeit Stellungnahmen einzureichen,⁴⁷ sowie zwei öffentliche Konsultationsveranstaltungen. Darüber hinaus wurde eine Umfrage mit Kindern und Jugendlichen zu ihren Eindrücken zum Kinder- und Jugendschutz des Opfer-Kodex durchgeführt.⁴⁸ Im Anschluss verfasste das Justizministerium ein umfassendes Dokument, welches den überarbeiteten Opfer-Kodex, eine Zusammenfassung der eingereichten Stellungnahmen, sowie einen Überblick über alle Maßnahmen, die als Antwort auf den Konsultationsprozess ergriffen wurden.⁴⁹

Der Opfer-Kodex soll eine praktische Anleitung sein und Strafverfolgungsbehörden dabei unterstützen Opfer durch das Strafverfahren zu führen und einen flexibleren Dienst zu gewährleisten.⁵⁰ Zum Beispiel ist

⁴⁴ Ministry of Justice UK, Code of Practice for Victims of Crime, October 2015,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF

⁴⁵ Official Journal of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

⁴⁶ Official Journal of the European Union, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing the Council Framework Decision 2004/68/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN>

⁴⁷ Das Konsultationspapier enthielt einerseits die vorgeschlagenen Änderungen des Opfercodes und andererseits eine Folgenabschätzung und eine Gleichstellungserklärung. Ministry of Justice UK, Results Updated 31 Oct 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime>

⁴⁸ Ministry of Justice UK, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 March 2013, published on 29 October 2013, 10, <https://consult.justice.gov.uk/digital-communications/code-victims-crime/results/improving-the-code-of-practice-for-victims-of-crime-consultation-response.pdf>

⁴⁹ Ministry of Justice UK, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 March 2013, published on 29 October 2013.

⁵⁰ Ibid.



Kapitel 3 – Kinder und Jugendliche - in zwei Teile gegliedert: Teil A richtet sich an Opfer und Opferschutz-Organisationen und beinhaltet alle relevanten Informationen um sie durch jeden Schritt des Strafverfahrens zu führen; Teil B richtet sich an Organisationen, die diese Hilfe und Unterstützung bereitstellen sollten, wie etwa die Polizei.⁵¹ Darüber hinaus veröffentlichte das Justizministerium zwei *EasyRead* Versionen⁵² des Opfer-Kodex: eine Version richtet sich an Erwachsene,⁵³ die zweite an minderjährige Opfer.⁵⁴ Diese Dokumente umfassen einfach zu lesende Versionen des Opfer-Kodex, Erklärungen schwieriger Begriffe in sowie Erläuterungen durch Bilder. Der Opfer-Kodex wurde im Oktober 2015 angenommen.

In England und Wales hat das Opfer jedoch - im Gegensatz zu den anderen in diesem Bericht untersuchten Mitgliedstaaten - keine Stellung als Prozesspartei im Strafverfahren, sondern wirkt im Wesentlichen als Zeuge am Strafverfahren mit.⁵⁵ Aus diesem Grund nimmt das Opfer im Rahmen der strafrechtlichen Ermittlungen und des Verfahrens eine andere Position ein. Dem Opfer ist es somit nicht möglich, Rechte in Bezug auf die rechtliche Vertretung während eines Gerichtsverfahrens auszuüben. In England und Wales wird der Fall des Opfers durch die Staatsanwaltschaft vertreten, während dem Opfer die Rolle zukommt als Opfer Beweise zu liefern.⁵⁶

⁵¹ Ibid, Kapitel 3.

⁵² Zusätzlich zu den beiden Easy Read Versionen, wurde auch ein Merkblatt veröffentlicht: Ministry of Justice UK, Victims of crime: Understanding the support you can expect, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341367/adult-victims-code-leaflet.pdf

⁵³ Ministry of Justice UK, the support you should get if you are a victim of crime, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf

⁵⁴ Ministry of Justice UK, The Victims' Code: u18s: Young victims of crime – Understanding the support you should get, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267982/u18-victims-code-leaflet.pdf

⁵⁵ European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Luxembourg), 2014, 29.

⁵⁶ Ibid.



4. Rechtliche Bewertung der Umsetzungsmaßnahmen der Richtlinie 2012/29/EU

Das folgende Kapitel umfasst eine rechtliche Untersuchung der nationalen Umsetzungsmaßnahmen der Opferschutz-RL in den ausgewählten Mitgliedstaaten. Zunächst wird die Legaldefinition von Opfer in jedem Mitgliedstaat ermittelt. Anschließend werden die Bestimmungen welche die nationalen Gesetzgeber zur Umsetzung von Art. 22 VD - nämlich der individuellen Begutachtung zur Ermittlung besonderer Schutzbedürfnisse von Opfern – getroffen haben, identifiziert und aufgezeigt. Schließlich werden das Recht auf Schutz von Opfern mit besonderen Schutzbedürfnissen und Opfern im Kindesalter (Art. 23-24 VD), sowie ihr Recht auf Zugang zu und Unterstützung durch Opferunterstützungsdiensten (Art. 8-9 VD) ermittelt und untersucht.

4.1. Die legale Definition von Opfer

Einer der zentralen Aspekte der Opferschutz-RL besteht darin das Opfer in den Mittelpunkt des Strafverfahrens zu stellen und gleichzeitig von der ausschließlichen Fokussierung auf die Rolle des Staatsanwalts und des Richters abzukommen.⁵⁷ Unter anderem aus diesem Grund findet sich eine explizite Legaldefinition des Begriffs „Opfer“ in der Opferschutz-RL. Demnach ist ein „Opfer“:

“(i) eine natürliche Person, die eine körperliche, geistige oder seelische Schädigung oder einen anderen wirtschaftlichen Verlust, der direkte Folge einer Straftat war, erlitten hat

(ii) Familienangehörige einer Person, deren Tod eine direkte Folge einer Straftat ist, und die durch den Tod dieser Person eine Schädigung erlitten haben;”⁵⁸

Während in den nationalen Rechtsvorschriften der meisten in diesem Bericht untersuchten Mitgliedstaaten - sowie in den meisten MS der EU im Allgemeinen⁵⁹, - eine Legaldefinition des Begriffs „Opfer“ existiert, findet sich keine Definition in Finnland und Deutschland. Wie jedoch andere Forschungsstudien bereits

⁵⁷ EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, December 2017.

⁵⁸ Art. 2 Abs. 1 VD.

⁵⁹ EPRS – European Parliamentary Research Service, The Victims’ Rights Directive 2012/29/EU: European Implementation Assessment, December 2017, 13.



aufgezeigt haben,⁶⁰ bedeutet diese Tatsache nicht unbedingt, dass die nationalen Rechtsvorschriften weniger Opferschutz-Rechte in Ihrem nationalen Recht getroffen haben

Country	Respective law	Legal definition
Finnland	-	In Finnland existiert keine rechtliche Definition des Begriffs Opfer. Eine verletzte Person („<i>asianomistaja</i>“, wörtlich: „wem der Fall gehört“) ist 1. „der Träger des durch die Straftat geschützten rechtlichen Gutes und 2. derjenige, der unmittelbar durch eine Straftat einen Schaden erlitten hat.“⁶¹ Die finnische Definition der verletzten Person ist somit viel weiter gefasst als die Definition von Opfer der Opferschutz-RL. Sie umfasst etwa auch eine Person, gegen die eine Straftat begangen wurde, die aber keinen Schaden aufgrund der Straftat erlitten hat. Darüber hinaus umfasst der Begriff „<i>asianomistaja</i>“ juristische Personen. In der finnischen Gesetzgebung werden auch indirekt verletzte Personen definiert: der Ehepartner, ein eingetragener Partner, im selben Haushalt lebende Personen, Kinder, Geschwister und Eltern eines verstorbenen Opfers.
Deutschland	-	In Deutschland gibt es keine rechtliche Definition des Begriffs Opfer. In der Regel wird der Begriff Verletzter oder Nebenkläger verwendet. Ein Nebenkläger ist eine geschädigte Partei, die das Recht hat sich gem. § 397a DStPO dem Verfahren anzuschließen.⁶² Zu letzteren gehören auch bestimmte Verwandte einer Person, deren Tod durch eine Straftat verursacht wurde (§ 395 Abs. 2 DStPO).⁶³ Ihm bzw. ihr werden

⁶⁰ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 113-116.

⁶¹ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016 116.

⁶² Die Tatsache, dass es keine gesetzliche Definition des Opfers im deutschen Recht gibt, wird von einigen Rechtswissenschaftlern stark kritisiert. Siehe Kett-Straub, Wie viel Opferschutz trägt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 341.

⁶³ Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren

(3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, 22,

<http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf>.



		im Verfahren weitgehende Rechte zugesprochen. Es gibt weiters keine allgemeinen Bestimmungen bzgl. indirekten Opfern.⁶⁴ Als Begründung für die Vermeidung des Wortes Opfer nennt der deutsche Gesetzgeber die Unschuldsvermutung.
Portugal	Titel IV, Artikel 67, Abs. 1 lit. a portugiesische Strafprozessordnung	Ein Opfer ist: i) eine natürliche Person, die einen Schaden erlitten hat, insbesondere durch einen Angriff auf ihre körperliche oder geistige Unversehrtheit; einen moralischen oder emotionalen Schaden; bzw. einer Sachbeschädigung; die unmittelbar durch strafbare Handlungen oder Unterlassungen verursacht wurde; ii) die Familienangehörigen einer Person, deren Tod unmittelbar durch eine Straftat veranlasst wurde und die infolge dieses Todes Schaden erlitten hat. In diesem Zusammenhang wird im Begriff des Opfers erfasst: der überlebende Ehegatte, der rechtlich nicht von Personen und Eigentum getrennt ist, oder die Person, die in ähnlichem Maße mit dem Opfer zusammenlebte wie Ehegatten, Nachkommen und Vorfahren, wenn sie durch den Tod Schaden erlitten haben, außer der Täter, der den Tod verursacht hat.⁶⁵
Spanien	Arikel 2, Gesetz 4/2015 über die Stellung von Opfern von Straftaten	<i>“Die Bestimmungen dieses Gesetzes gelten</i> a) <i>als unmittelbares Opfer für jede natürliche Person, die in Bezug auf ihre Person oder ihr Eigentum einen Schaden oder Verlust erlitten hat, insbesondere physischer oder psychischer Schaden, die unmittelbar durch die Begehung einer Straftat verursacht wurden.</i> b) <i>als indirektes Opfer im Falle des Todes oder Verschwindens einer Person, die unmittelbar durch eine Straftat verursacht wurde, es sei denn, die betreffende Person war für die Tat verantwortlich [...]</i>⁶⁶

⁶⁴ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 116.

⁶⁵ IVOR, Portugal: Developments on the implementation of victim assistance mechanisms, 1.

⁶⁶ Ministry of Justice, Gesetzes 4/2015 über die Stellung von Opfern von Straftaten (Spanien), Art. 2, <https://rm.coe.int/168070ac7f>.



		Diese Definition resultierte aus einer Novelle von April 2015. Zuvor gab es in der spanischen Prozessordnung keine allgemeine Definition des Begriffs Opfer. ⁶⁷
England und Wales	Einleitung, Abs. 4. Opfer-Kodex Glossar, Opfer-Kodex	“Für den Zweck des Opfer-Kodex ist ein „Opfer“: - eine natürliche Person, die einen Schaden erlitten hat, einschließlich einen körperlichen, geistigen oder seelischen Schaden oder wirtschaftlichen Verlust, der unmittelbar durch eine Straftat verursacht wurde; - ein naher Verwandter einer Person, deren Tod unmittelbar durch eine Straftat verursacht wurde. Ein naher Verwandter ist der Ehepartner, der Lebenspartner, die Verwandten in direkter Linie, die Geschwister und die Angehörigen des Opfers. Andere Familienmitglieder, einschließlich Erziehungsberechtigte und Betreuer, können im Ermessen des Opferschutzdienstes als nahe Verwandte angesehen werden. Während der Opfer-Kodex den Begriff „Opfer“ definiert, ist ein Opfer nicht Partei des Strafverfahrens und hat aus diesem Grund auch kein Recht auf rechtliche Vertretung während des Gerichtsverfahrens.⁶⁸

⁶⁷ Previously, there only existed the term accusing party, which had as a result that only a person that wanted to accuse the offender as well as be a party in the criminal proceeding or a witness, was granted rights under Spanish legislation; See APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 110.

⁶⁸ Ibid., 110.



4.2. Individuelle Begutachtung von Opfern zur Ermittlung besonderer Schutzbedürfnisse (Art. 22 VD)

4.2.1. Finnland

In Finnland wurden die Anforderungen des Art. 22 VD u.a. durch Änderungen des finnischen Strafverfolgungsgesetz (FSVG, 805/2011, in der geänderten Fassung) umgesetzt.⁶⁹ Das finnische Strafverfolgungsgesetz setzt die generellen Bestimmungen des strafrechtlichen Ermittlungsverfahrens fest, während spezifischere Regelungen in anderen Gesetzen enthalten sein können (Kapitel 1, Abschnitt 1 FSVG). Während die Umsetzung der Opferschutz-RL auch zu Änderungen anderer Gesetze führte, betrafen die meisten Änderungen das FSVG.⁷⁰

In Finnland existierte bereits vor dem Umsetzungsprozess der Opferschutz-RL die Praxis der individuellen Begutachtung von Opfern.⁷¹ Diese Bestimmungen wurden durch die Beifügung eines neuen Abschnitts 9a im Kapitel 11 weiter ausgebaut und verstärkt. Dieser neue Abschnitt enthält Regeln für die individuelle Begutachtung von Opfern zur Ermittlung besonderer Schutzbedürfnisse während des Ermittlungsverfahrens und der Gerichtsverhandlung. Diese individuelle Begutachtung muss ohne unnötige Verzögerung von der untersuchenden Behörde vorgenommen werden und kann während des Ermittlungsverfahrens oder der Gerichtsverhandlung stattfinden.⁷² Sie ist in Kooperation mit dem Opfer durchzuführen⁷³ und muss insbesondere die folgenden Punkte berücksichtigen:

- Die persönliche Situation des Opfers sowie
- Die Art des mutmaßlichen Verbrechens.⁷⁴

Während dem Ermittlungsverfahren sind dem Opfer Schutzmaßnahmen zu gewähren, wenn sie das Verfahren nicht wesentlich verzögern oder anderen Schaden verursachen.⁷⁵ Darüber hinaus ist die

⁶⁹ Ministry of Justice Finland, Criminal Investigation Act (805/2011; amendments to 736/2015 included), Unofficial Translation, <https://www.finlex.fi/en/laki/kaannokset/2011/en20110805.pdf>

⁷⁰ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 16.

⁷¹ EPRS – European Parliamentary Research Service, The Victims’ Rights Directive 2012/29/EU: European Implementation Assessment, December 2017, 60.

⁷² Oikeus, If you Become a Victim of a Crime: Victim protection: <https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>

⁷³ Ibid.

⁷⁴ Ibid; siehe auch Savonen, Developing Directive-Compatible Practices for the identification, assessment and referral of victims: National Report – Finland, 2017, 8; and Ministry of Justice Finland, Rights of a Crime Victim, 1.3.2017.

⁷⁵ Oikeus, If you Become a Victim of a Crime: Victim protection: <https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>



Ermittlungsbehörde verpflichtet, das Opfer über seine Verfahrensrechte gem. Kapitel 4, Sektion 18 FSVG zu informieren. Letzteres beinhaltet „die Information zu Unterstützungsleistungen, Dolmetsch und Übersetzung, Entschädigung, Schutz, Kostenerstattung und Information zur Handhabung des Falles im Strafverfahren.“⁷⁶

Besonders vulnerablen Opfern werden zusätzliche Rechte gewährt. Hierunter fallen beispielsweise minderjährige Opfer, Opfer häuslicher Gewalt, Opfer sexueller Gewalt, Opfer von Menschenhandel und Opfer mit körperlichen oder geistigen Behinderungen.⁷⁷ Zudem wurde ein Leitfaden für die Polizei entwickelt, der sie dabei unterstützen soll den individuellen Schutzbedarf eines Opfers zu beurteilen. Der Leitfaden legt Regeln für die individuelle Begutachtung fest, sowie die Art und Weise mit der Opfer an Opferunterstützungsdienste verwiesen werden sollen.⁷⁸

4.2.2. Deutschland

Während die meisten der in Art. 23 und 24 VD definierten Rechte bereits vor der Umsetzung der Opferschutz-RL in Deutschland existierten, gab es keine Bestimmung, die eine individuelle Begutachtung der Opfer zur Ermittlung besonderer Schutzbedürfnisse iSd Art. 22 VD vorsah.⁷⁹ Aus diesem Grund wurde im Zuge der DStPO-Novelle 2015 ein neuer Absatz in die deutsche Strafprozessordnung eingeführt: Absatz 3 des § 48 DStPO. Diesem zu Folge, müssen alle Einvernahmen und sonstigen Ermittlungen mit einem Zeugen, der zugleich eine verletzte Person ist, unter Berücksichtigung seiner besonderen Schutzbedürfnisse durchgeführt werden. Insbesondere muss bewertet werden:

1. Ob die dringende Gefahr eines schwerwiegenden Nachteils für das Wohl des Zeugen besteht, welche Maßnahmen zur Vermeidung des Sichtkontakts zwischen dem Zeugen und dem Täter (§ 167e DStPO) bzw. die Anordnung einer audiovisuellen Vernehmung von Zeugen (§ 247a DStPO) erfordert.
2. Ob überwiegend schutzwürdige Interessen des Zeugen den Ausschluss der Öffentlichkeit (§ 171b

⁷⁶ RIKU, What is the victims' directive?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

⁷⁷ IVOR, Finland: Developments on the implementation of victim assistance mechanisms.

⁷⁸ RIKU, What is the victims' directive?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

⁷⁹ Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksach 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf>, 14.



deutsches Gerichtsverfassungsgesetz) erfordern und

3. Inwieweit es möglich ist, auf nicht unerlässliche Fragen zum persönlichen Lebensbereich des Zeugen zu verzichten (§ 68a Abs. 1 DStPO).

Bei dieser Begutachtung sind die **persönlichen Verhältnisse des Zeugen** sowie die **Art und die Umstände der Straftat** zu berücksichtigen (§ 48 Abs. 3 DStPO).

Darüber hinaus legen Verweise an den jeweiligen Passagen der DStPO fest, dass diese Bestimmung auch im Rahmen der Ermittlungen der Staatsanwaltschaft (§ 161a Abs. 1 DStPO) und der Polizei (§ 163 Abs. 3 DStPO) Anwendung findet.⁸⁰ Mit diesen Bestimmungen wollte der deutsche Gesetzgeber festlegen, dass die individuelle Begutachtung beim ersten Kontakt mit dem Opfer erfolgen soll.⁸¹

Dieser Paragraph stellt somit klar, dass die besonderen Schutzbedürfnisse von Opfern jederzeit beurteilt werden müssen.⁸² Der Paragraph lässt jedoch offen, wer für die Durchführung der Begutachtung verantwortlich ist und wie die Begutachtung durchgeführt werden soll. Obwohl die im neuen § 48 Abs. 3 DStPO angeführten Rechte keine neuen Regelungen beinhalten, sind die zuständigen Behörden erst durch diese Gesetzesänderung verpflichtet diese Möglichkeit gesetzlich zu prüfen.^{83 84}

4.2.3. Portugal

In Portugal führte die Umsetzung der Opferschutz-RL nicht nur zur Aufnahme einer rechtlichen Definition von Opfer,⁸⁵ sondern auch zur Einführung des Begriffs besonders schutzbedürftiges Opfer (*“vítima especialmente vulnerável”*) in die portugiesische Strafprozessordnung (PStPO).

Ein besonders schutzbedürftiges Opfer ist ein Opfer, dessen besondere Gefährdung durch

- sein **Alter**, seinen **Gesundheitszustand** oder seine **Behinderung** verursacht wird,

⁸⁰ Ibid., 15.

⁸¹ Wie viel Opferschutz trägt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 343.

https://www.bmjjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeUndOpferschutz/Opferhilfe_node.html

⁸² Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 40.

⁸³ Kett-Straub, Wie viel Opferschutz trägt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 343.

⁸⁴ Dennoch wurde diese Norm kritisiert, insbesondere in Bezug auf ihre Systematik: Es wurde argumentiert, dass diese Norm nicht ideal in der deutschen Strafprozessordnung positioniert sei, da sich § 38 lediglich auf Zeugen und nicht auf Opfer grds. bezieht. Hierzu siehe: Löffelmann, Drittes Opferrechtsreformgesetz – Ausgabe 11/2014, 22.11.2014, <http://www.recht-politik.de/drittes-opferrechtsreformgesetz/>.

⁸⁵ IVOR, Portugal: Developments on the implementation of victim assistance mechanisms, 2.



- sowie durch Schäden, die **schwerwiegende Folgen für das psychische Wohlbefinden des Opfers** oder seine soziale Integration haben,
- die durch **Art, Grad und Dauer der Viktimisierung** verursacht werden.⁸⁶

Opfer von Gewaltverbrechen⁸⁷ und besonders schweren Gewaltverbrechen⁸⁸ sind immer besonders schutzbedürftige Opfer. Die portugiesische Strafprozessordnung legt fest, dass ein Kind bzw. eine junge Person eine natürliche Person unter 18 Jahren ist.⁸⁹

Im Rahmen des Umsetzungsprozesses der Opferschutz-RL wurde auch das portugiesische Opferstatut (Opferstatut) verabschiedet. Das Opferstatut regelt, dass die zuständigen Behörden, sobald ein Verbrechen gemeldet wurde und keine Beweise dafür vorliegen, dass es unbegründet ist, eine individuelle Begutachtung der besonderen Schutzbedürftigkeit von Opfern vornehmen müssen. In letzteren muss festgestellt werden ob es sich bei dem Opfer um ein besonders schutzbedürftiges Opfer⁹⁰ handelt und ob sie oder er spezieller Schutzmaßnahmen bedarf.⁹¹ Zudem muss das Opfer schriftlich über ihren Status, einschließlich ihrer Rechte und Pflichten, informiert werden.⁹² Das Gesetz bestimmt jedoch nicht, wie und unter welchen Umständen die individuelle Begutachtung erfolgen muss.⁹³

4.2.4. Spanien

In Spanien wurde Art. 22 der Opferschutz-RL durch Artikel 23 des Gesetzes 4/2015 über die Stellung von Opfern von Straftaten umgesetzt. In Übereinstimmung mit der Richtlinie legt das spanische Recht nun fest, dass bei der Begutachtung besonderer Schutzbedürftigkeit insbesondere folgendes berücksichtigt werden muss:

- (a) *„Die persönlichen Merkmale des Opfers und insbesondere [...] ob das Opfer minderjährig ist oder besonderen Schutz benötigt [...]*

⁸⁶ portugiesische Strafprozessordnung, Titel IV, Art. 67 – A, Abs. 1, lit. b, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (portugiesisch).

⁸⁷ Gewaltverbrechen sind Straftaten, die mit bis zu mehr als 5 Jahren Gefängnis bestraft werden.

⁸⁸ Besonders schwere Gewaltverbrechen sind Straftaten, die mit bis zu mehr als 8 Jahren Gefängnis bestraft werden.

⁸⁹ portugiesische Strafprozessordnung, Titel IV, Art. 67 – A, Abs. 1, lit. c, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (portugiesisch).

⁹⁰ Art. 20, Abs. 1, Opferstatut (Portugal).

⁹¹ Art. 21, Abs. 1, Opferstatut (Portugal).

⁹² Art. 20, Abs. 2, Opferstatut (Portugal).

⁹³ APAV - Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 152



- (b) *Die Art der Straftat und die Schwere des Schadens, der dem Opfer zugefügt wurde, sowie das Risiko, dass die Straftat wiederholt wird [...] und*
- (c) *Die Umstände der Straftat, insbesondere ob es sich um Gewalt handelte.*⁹⁴

Im Falle von minderjährigen Opfern muss im Rahmen dieser Begutachtung zusätzlich die **persönliche Situation des Opfers, sein Alter, sein Geschlecht**, mögliche **Behinderungen**, und **Reife** berücksichtigen, sowie die **körperliche, geistige und seelische Unversehrtheit** des Opfers vollständig respektieren.⁹⁵ Darüber hinaus muss die Staatsanwaltschaft im Falle von minderjährigen Opfern besonders darauf achten, dass wo notwendig, angemessene Maßnahmen im besten Interesse des Opfers getroffen werden, um jeden möglichen Schaden zu verhindern bzw. zu vermindern, dass die Verfahrensdurchführung Schaden auf das Opfer haben könnte.⁹⁶

Anschließend wird in Art. 24 Gesetz 4/2015 die Zuständigkeit und das Begutachtungsverfahren definiert. Es wird klargestellt, dass die Staatsanwaltschaft während des Ermittlungsverfahrens und der Richter während des Gerichtsverfahrens für Durchführung der individuellen Begutachtung zuständig ist. Derselbe Artikel legt fest, dass die Begutachtung bei minderjährigen Opfern bzw. Opfern mit Behinderungen, die besonderen Schutz benötigen, das individuelle Befinden und Interesse des Opfers miteinbeziehen muss.

Letztlich wird in Art. 27 Gesetz 4/201 die Verantwortung und Rolle der Opferhilfe-Büros definiert. Es wird ausdrücklich bestimmt, dass auch letztere eine Begutachtung der individuellen Umstände des Opfers vornehmen müssen um festzustellen, welche Hilfe und Unterstützung das Opfer erhalten soll.⁹⁷ Opferhilfe-Büros müssen etwa beurteilen, ob das Opfer psychologische Unterstützung oder eine Vertrauensperson während des Prozesses, Informationen, andere spezielle Unterstützungsmaßnahmen, oder die Überweisung an spezialisierte Unterstützungsdienste benötigt.⁹⁸ Obwohl im spanischen Recht festgehalten wird, dass durch diese Regelung den individuellen Schutzbedürfnissen entsprochen wird, werden keine näheren Angaben zur Art und Weise gemacht, in der die Begutachtung durchgeführt werden soll.

⁹⁴ Art. 23, Gesetz 4/2015 (Spanien).

⁹⁵ Art. 23 Abs. 3, Gesetz 4/2015 (Spanien).

⁹⁶ Art. 19, Gesetz 4/2015 (Spanien).

⁹⁷ Maizener ed. al., EVVI (Evaluation of Victims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf, 56 ff.

⁹⁸ Art. 28 Abs. 2, Gesetz 4/2015 (Spanien).



4.2.5. England and Wales

Die individuelle Begutachtung von Opfern zur Ermittlung besonderer Schutzbedürfnisse ist in Kapitel 1 des Opfer-Kodex geregelt.⁹⁹ Insbesondere werden erweiterte Ansprüche für drei verschiedene Kategorien von Opfern festgelegt, da sie *„mit größter Wahrscheinlichkeit eine verstärkte Unterstützung und mehr Dienstleistungen im Rahmen des Strafverfahrens benötigen.“* Diese Kategorien sind jedoch nicht abschließend. Es kann unter anderem der Fall sein, dass ein Opfer unter mehr als eine Kategorie fällt (Kapitel 1, Abs. 1.2). Selbst wenn ein Opfer nicht unter einer der drei Kategorien fällt, kann ein „Dienstleistungserbringer“ dem Opfer je nach den besonderen Umständen auch erweiterte Ansprüche gewähren (Kapitel 1, Absatz 1.7). Die drei Kategorien sind:

- Opfer der schwersten Straftaten:

Hierunter fallen: Opfer von Gewalt in naher Verwandtschaft, Opfer häuslicher Gewalt, Hassverbrechen, Terrorismus, Sexualdelikten, Menschenhandel, versuchten Mordes, Entführung, Freiheitsberaubung, Brandstiftung mit der Absicht Leben zu gefährden und schwere Körperverschädigung. (Kapitel 1, Abs. 1.8)

- Mehrfach-Opfer

Opfer, das wiederholt Opfer einer direkten Straftat geworden ist. (Kapitel 1, Abs. 1.9)

- Gefährdete oder eingeschüchterte Opfer

Ein schutzbedürftiges Opfer, das zum Zeitpunkt der Straftat unter 18 Jahren alt war, wenn der Dienstleister der Ansicht ist, dass die Qualität der Beweismittel aufgrund von Angst des Opfers bei Gericht auszusagen, beeinträchtigt werden könnte.

Jedes Opfer hat das Recht auf eine polizeiliche Begutachtung zur Ermittlung von besonderen Schutzbedürfnissen, *„einschließlich, ob und in welchem Umfang sie von speziellen Maßnahmen profitieren sollen“* (Kapitel 1, Abs. 1.4). Die besonderen Umstände der Begutachtung – wie etwa Länge und Inhalt – hängen von der Schwere der Straftat und den individuellen Bedürfnissen des Opfers ab. Bei der Begutachtung müssen die **persönlichen Merkmale des Opfers**, die **Art und die Umstände des Verbrechens**, sowie die **persönlichen Ansichten des Opfers** berücksichtigt werden. Darüber hinaus kann die Begutachtung wiederholt werden, wenn sich die Bedürfnisse des Opfers ändern (Kapitel 1, Abs. 1.5).

⁹⁹ Ministry of Justice UK, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 March 2013, published on 29 October 2013, 87ff.



Sobald die besondere Schutzbedürftigkeit festgestellt wurde, ist der Dienstleistungserbringer dazu verpflichtet sicherzustellen, dass diese Information an andere Dienstleistungserbringer übermittelt wird.¹⁰⁰

Weiters legt Kapitel 5 Opfer-Kodex fest, dass zusätzlich zur Polizei auch andere Dienstleister¹⁰¹ die Verpflichtung haben die individuelle Begutachtung der besonderen Schutzbedürftigkeit von Opfern vorzunehmen (Kapitel 5, Abs. 1.1.) Ein Dienstleister muss die besondere Schutzbedürftigkeit eines Opfers also jedes Mal beurteilen, wenn er für die Untersuchung einer Straftat verantwortlich ist (Kapitel 5, para. 1.30). In diesen Fällen muss der Dienstleistungserbringer *“feststellen ob und in welchem Umfang das Opfer von besonderen Schutzmaßnahmen im Rahmen der Befragung oder im Rahmen der Beweisaufnahme profitieren soll.“* (Kapitel 4, Abs. 1.30). Kritik wurde hinsichtlich des Verfahrens und des Zeitpunkts der Begutachtung geäußert.¹⁰²

4.3. Schutzanspruch von Opfern im Kindesalter während des Strafverfahrens (Art. 23-24 VD)

4.3.1. Finnland

In Finnland gibt es zwei Gesetze, die für die Umsetzung von Artikel 23-24 VD von besonderer Bedeutung sind: Erstens, die das finnische Strafverfolgungsgesetz (FSVG, 805/2011, in der geänderten Fassung), das das Ermittlungsverfahren der Polizei normiert und zweitens das finnische Gerichtsverfahrensgesetz (FGVG, 4/1734, in der geänderten Fassung), das die Regeln für Gerichtsverfahren bei ordentlichen Gerichten beinhaltet.

Der Schutz von minderjährigen Opfern während des Ermittlungsverfahren fand sich bereits vor dem Umsetzungsprozess in mehreren Bestimmungen der FSVG wieder. Etwa gab es bereits zuvor die Regelung, die festlegt, dass Minderjährige Opfer *“in einer Weise behandelt werden müssen, die ihrem Alter und ihrem Entwicklungsstand entsprechen“* und dass besonders darauf geachtet werden muss, dass die Ermittlungsmaßnahmen dem Opfer in für ihn wichtigen Umfeldern keine unnötigen Unannehmlichkeiten

¹⁰⁰ Der Anspruch von Kindern auf eine individuelle Begutachtung ihrer Bedürfnisse ist in Kapitel 3, Part A, Abs. 1.1 festgelegt

¹⁰¹ Die betroffenen Dienstleister sind in der Einleitung des Opfer-Kodex aufgelistet: The Competition and Markets Authority; The Department for Business, Innovation and Skill (Criminal Enforcement); The Environment Agency; The Financial Conduct Authority; The Gambling Commission; The Health and Safety Executive; Her Majesty's Revenue and Customs; Home Office (Immigration Enforcement); The Information Commissioner's Office; The Independent Police Complaints Commission; The National Crime Agency; Natural Resources Wales; The Office of Rail and Road; and the Serious Fraud Office.

¹⁰² IVOR, United Kingdom: Development on the implementation of victim assistance and mechanisms.



bereitet.¹⁰³ Soweit möglich, sollen Ermittlungsmaßnahmen in denen minderjährige Opfer involviert sind besonders geschulten Ermittlern zugewiesen werden.¹⁰⁴ Tatsächlich haben die meisten Polizeibeamten und Psychologinnen, die im Rahmen von Strafverfahren arbeiten, an einem einjährigen interdisziplinären Kinder-Einvernehmungs-Trainingsprogramm für Polizei- und Gesundheitsfachkräfte teilgenommen.¹⁰⁵

Kapitel 7 FSVG sieht vor, dass grundsätzlich der gesetzliche Vertreter im Falle der Einvernahme eines Opfers unter 15 Jahren das Recht hat bei der Einvernahme anwesend zu sein.¹⁰⁶ Ist das Opfer älter als 15 Jahre, darf der gesetzliche Vertreter nur dann bei der Einvernahme anwesend sein, wenn er das Recht hat, im Namen bzw. zusätzlich zu dem Minderjährigen zu sprechen. Der Ermittlungsbeamte hat das Recht, die Anwesenheit des gesetzlichen Vertreters in jenen Fällen zu untersagen, in denen seine Anwesenheit die Aufklärung der Straftat behindern könnte.¹⁰⁷

Es wurde ein neuer Abschnitt bzgl. der Befragung von Opfern mit besonderen in das FSVG aufgenommen (Kapitel 7, Sektion 21), um den Anforderungen des Art. 23 VD zu entsprechen. Hierin werden besondere Schutzmaßnahmen festgelegt, welchen Opfern – je nach persönlicher Situation und Art der Straftat – gewährt werden können:

- Opfer mit besonderen Schutzbedürfnissen müssen **in einem speziellen Raum**, der für diesen Zweck bestimmt ist, verhört werden.
- Die Einvernahme von Opfern mit besonderen Schutzbedürfnissen muss **von derselben Person** durchgeführt werden, wenn das Opfer dies verlangt.
- Sofern es sich um ein Opfer von Sexualdelikten handeln könnte, muss die Einvernahme von einer Person **desselben Geschlechts** durchgeführt werden, sofern die Art der Straftat dies erfordert. Diese Bestimmung könnte auch für andere Situationen gelten, in denen die Art der Straftat dies erfordert.¹⁰⁸

Schließlich regelt Kapitel 9 FSVG die speziellen Maßnahmen zur Aufnahme der Einvernahme einer Zeugin mittels Ton und Video. Eine solche Aufnahme ist zulässig, wenn sie als Beweismittel im Strafverfahren

¹⁰³ Kapitel 4, Section 7, Subsection 1 FSVG (Finland).

¹⁰⁴ Kapitel 4, Section 7, Subsection 2 FSVG (Finland).

¹⁰⁵ European Union Agency for Fundamental Rights, Child-friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 100.

¹⁰⁶ Kapitel 7, Section 14, Subsection 1 FSVG (Finland)

¹⁰⁷ Kapitel 7 Section 14, Subsection 3 FSVG (Finland)

¹⁰⁸ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 17.



verwendet werden soll und wenn die befragte Person „*wahrscheinlich nicht persönlich gehört werden kann, ohne dass ihr aus dieser Einvernahme ein Nachteil*“¹⁰⁹ aufgrund ihres jungen Alters oder ihrer psychischen Störung erwachsen würde. Diese Bestimmung kann auch für eine Person zwischen 15 und 17 Jahren zur Anwendung kommen, wenn es sich hierbei um ein Opfer mit besonderen Schutzbedürfnissen oder Opfer eines Sexualdelikts handelt.

Die Bestimmungen zur Umsetzung von Art. 23 Abs. 3 VD sind im finnischen Gerichtsverfahrensgesetz (FVGv)¹¹⁰ normiert. In letzteren werden verschiedene Maßnahmen festgelegt, welche den visuellen Kontakt zwischen Opfern und Tätern verhindern sollen. Demnach kann das Opfer auf die folgenden Arten einvernommen werden:

- **hinter einem Bildschirm** (Kapitel 17, Abschnitt 51 FVGv). Das Gericht entscheidet, ob diese Maßnahme notwendig ist: zum Schutz des Zeugen; wenn der Zeuge sonst nicht preisgeben würde, was er in der Sache weiß; wenn eine Person die Zeugin stört oder versucht, sie in die Irre zu führen; wenn ein Opfer besonderen Schutz benötigt. Nur letztere Bestimmung wurde im Rahmen des Umsetzungsprozesses hinzugefügt.¹¹¹
- **über Videoverbindung** (Kapitel 17, Abschnitt 52 FVGv). Das Gericht kann eine solche Maßnahme anordnen, etwa wenn die Zeugin geschützt werden muss; der Zeuge noch nicht 15 Jahre alt oder seine geistige Leistungsfähigkeit beeinträchtigt ist; oder im Fall eines Opfers mit besonderen Schutzbedürfnissen. Nur Letzteres wurde im Rahmen des Umsetzungsprozesses hinzugefügt.¹¹²
- **ohne Anwesenheit des Angeklagten** oder einer anderen Partei (Kapitel 17, Abschnitt 51 FVGv). Das Gericht kann eine solche diese Maßnahme anordnen, um die Zeugin zu schützen; wenn der Zeuge sonst nicht preisgeben würde, was sie in der Sache weiß; wenn eine Person die Zeugin stört oder versucht, sie in die Irre zu führen.

¹⁰⁹ Kapitel 9, Section 4, Subsection 1 FSVG.

¹¹⁰ Finnish Ministry of Justice, Code of Judicial Procedure, 4/1734, amendments up to 732/2015 included, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiHx5KJ3MjZAhUBLeWKHfZoD60QFggtMAA&url=http%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F1734%2Fen17340004.pdf&usg=AOvVaw0-PJLjKrSH9U01qD0YrI4B>

¹¹¹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 17.

¹¹² Ibid.



In der finnischen Rechtsordnung finden sich zudem besondere Maßnahmen **zum Schutz der Anonymität eines Zeugen**, wie zum Beispiel durch die Verzerrung seiner Stimme (Kapitel 17, Artikel 53 FVGv). Es existiert weiters die Möglichkeiten die Einvernahme eines Opfers auf Video aufzuzeichnen und als Beweis in der Verhandlung zu verwenden. Dies könnte beispielsweise bei folgenden Opfern zur Anwendung kommen: Kindern unter 15 Jahren; Personen mit geistiger Behinderung; Kinder zwischen 15 und 17 Jahren unter Berücksichtigung der persönlichen Umstände des Kindes und der Art der Straftat; sowie bei Geschädigten bestimmter Sexualstraftaten (Kapitel 17, Artikel 24 FVGv). Diese Bestimmung existierte jedoch bereits vor dem Umsetzungsprozess.

Es bestanden auch bereits vor dem Umsetzungsprozess der Opferschutz-RL Regelungen iSd Art. 24 Abs. 1 lit. b VD. Die nationalen Regelungen sehen vor, dass das Gericht einen Kurator für ein minderjähriges Opfer ernennen kann, wenn ein begründeter Grund zu der Annahme besteht, dass die Person, die gesetzliche Vertreterin die Interessen des Kindes objektiv nicht gewährleisten kann und die Bestellung eines Kurators nicht offensichtlich unnötig erscheint (Kapitel 4, Abschnitt 8 FSVG). In diesem Falle werden alle Kosten aus staatlichen Mitteln bezahlt.

Schließlich finden sich Bestimmungen zur Einvernahme einer Person unter Ausschluss der Öffentlichkeit im Gesetz über die Öffentlichkeit von Gerichtsverfahren vor allgemeinen Gerichten¹¹³ (Abschnitt 15, Punkt 6). Letzteres legt fest, dass das Gericht entscheiden kann, dass ein Teil oder das gesamte Verfahren ohne Anwesenheit der Öffentlichkeit abgehalten werden kann, wenn eine Person unter 14 Jahren und seine Rechtsfähigkeit eingeschränkt ist, oder eine Person mit besonderem Schutzbedürfnis in der Sache einvernommen wird.

4.3.2. Deutschland

In den vergangenen Jahren hat Deutschland die Stellung von Opfer im Strafverfahren ständig verbessert. Aus diesem Grund bestanden die meisten in der Opferschutz-RL normierten Opferschutzrechte bereits vor

¹¹³ Finnish Ministry of Justice, Act on the Publicity of Court Proceedings in General Courts, 370/2007 amendments to 742/2015 included,

<https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjQ9unn4MjZAhVMYaQKHTmUB14QFgggMAA&url=https%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F2007%2Fen20070370.pdf&usq=AOvVaw3A34-Ki7L-xk8YksYrIE0V>



dem Umsetzungsprozess. Wie bereits ausgeführt, fallen jedoch nicht alle Regelungen der Opferschutz-RL in die Zuständigkeit des Bundes, sondern auch in die der einzelnen Bundesländer.

Gemäß Art. 23 Abs. 2 lit. b VD sollen Einvernahmen mit Opfern mit besonderen Schutzbedürfnissen von bzw. durch zu diesem Zweck ausgebildeten Fachleuten durchgeführt werden. In Deutschland fällt die Verabschiedung von Regelungen bzgl. der Qualifikation des Personals, das Einvernahmen durchführt, in die Zuständigkeit der Länder.¹¹⁴ Polizeipersonal in ganz Deutschland wird jedoch geschult, um eine unvoreingenommene, respektvolle und professionelle Behandlung der Opfer zu ermöglichen. Diese Ausbildung beinhaltet Themen wie Hassverbrechen bzw. die Behandlung von minderjährigen Opfern während des Ermittlungsverfahrens. Ähnliche Ausbildungen existieren auch für Staatsanwälte und Richter.¹¹⁵

Alle körperlichen Untersuchungen von Opfern sexueller Gewalt müssen von einer Person des gleichen Geschlechts (§ 220 RiStBV) durchgeführt werden. Dieser Artikel existierte bereits vor dem Umsetzungsprozess und erfüllt - nach Ansicht des deutschen Gesetzgebers¹¹⁶ - bereits alle Anforderungen des Art. 22 Abs. 2 lit. c und d VD. Letztere sehen vor, dass die Einvernahme von Opfern von derselben Person durchgeführt werden sollen, sofern dies nicht der guten Rechtspflege zuwiderläuft; sowie dass in speziellen Fällen die Möglichkeit bestehen soll, dass Einvernahmen mit Opfern sexueller Gewalt nach Möglichkeit von einer Person des gleichen Geschlechts durchgeführt werden soll.

Zudem existieren im deutschen Recht mehrere spezielle Maßnahmen zur Verhinderung des Blickkontakts zwischen Opfer und Täter (Art. 23 Abs. 3 lit. a VD) sowie Maßnahmen, um sicherzustellen, dass das Opfer ohne Anwesenheit im Gerichtssaal gehört werden kann. Gem. § 247 DStPO kann das Gericht den Angeklagten anordnen, während der Einvernahme eines Opfers den Gerichtssaal zu verlassen, wenn seine Anwesenheit verhindern könnte, dass der Zeuge die Wahrheit sagt. Dies gilt auch für Fälle, in denen der Zeuge noch nicht 18 Jahre alt ist und die Anwesenheit des Angeklagten das Wohlergehen des Zeugen erheblich beeinträchtigen könnte.

¹¹⁴ BMJV Deutschland, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?blob=publicationFile&v=2, 14.

¹¹⁵ Ibid.

¹¹⁶ Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksach 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf>, 15.



Besteht die unmittelbare Gefahr, dass das Wohlergehen des Zeugen ernsthaft beeinträchtigt werden könnte, wenn er oder sie in einem Gerichtsverfahren einvernommen wird, kann das Gericht beschließen, dass die Einvernahme an einem anderen Ort stattfinden soll. In diesem Fall soll die Einvernahme gleichzeitig in Bild und Ton in den Gerichtssaal übertragen werden. Zudem besteht die Möglichkeit, dass die Einvernahme aufgezeichnet wird, wenn der Zeuge in einem anderen Prozess nicht gehört werden kann und die Aufzeichnung für die Wahrheitsfindung benötigt wird (§ 247a DStPO).

Darüber hinaus können Einvernahmen mit einem Zeugen audiovisuell aufgezeichnet werden, wenn:

- die besonderen Schutzbedürfnisse eines Kindes oder einer anderen Person, die als Kind Opfer eines Verbrechens gegen die sexuelle Selbstbestimmung, das Leben oder die persönliche Freiheit wurde, besser geschützt werden können (§ 255a DStPO);
- oder der Zeuge sonst im Gerichtssaal nicht gehört werden kann und die Aufzeichnung für die Untersuchung der Wahrheit unerlässlich ist (§ 58a DStPO).

Darüber hinaus besteht die Möglichkeit, dass eine Aufzeichnung einer vorherigen gerichtlichen Befragung eines Opfers oder Zeugen anstelle einer Einvernahme verwendet werden kann: 1) die Aufnahme der Einvernahme eines Zeugen unter 18 Jahren in einem Prozess wegen eines Verbrechens gegen die sexuelle Selbstbestimmung, Leben oder persönliche Freiheit, wenn der Angeklagte und sein Anwalt die Möglichkeit hatten, bei der Einvernahme Fragen zu stellen; 2) die Aufnahme der Einvernahme eines Opfers derselben Verbrechen, wenn diese zum Zeitpunkt der Straftat unter 18 Jahre alt war. In diesen Fällen ist das Gericht verpflichtet, die individuellen Schutzbedürfnisse des Zeugen zu berücksichtigen sowie die Vorführung der Aufnahme zu begründen. Eine zusätzliche Einvernahme ist jedoch zulässig (Artikel 255a GCCP). Die Einvernahme kann auch ohne Anwesenheit der Öffentlichkeit stattfinden, wenn eine Person unter 18 Jahren einvernommen wird (Art. 172 Deutsches Gerichtsverfassungsgesetz)

Maßnahmen zur Vermeidung unnötiger Fragen zum Privatleben des Opfers sind in § 68a DStPO geregelt. Demnach sollten Fragen nach Tatsachen, die sich als unehrenhaft erweisen oder den persönlichen Lebensbereich des Zeugen oder einer seiner Familienangehörigen betreffen, nur gefragt werden, wenn sie für das Verfahren unentbehrlich sind. Fragen zu Umständen, die die Glaubwürdigkeit des Zeugen beeinträchtigen - insbesondere seine Beziehung zum Angeklagten oder zum Geschädigten - sollten nur dann gestellt werden, wenn es notwendig ist.



Zuletzt existierte auch Art. 24 Abs. 1 lit. b VD bereits vor der Umsetzung der RL in Deutschland. Gem. § 52 DStPO kann grundsätzlich der gesetzliche Vertreter über das Recht seines Kindes verfügen die Aussage zu verweigern, sofern das Kind nicht genügend Verständnis für dieses Recht hat. In Fällen, in denen der gesetzliche Vertreter zugleich der Beschuldigte ist, kann er über dieses Recht des Kindes nicht verfügen. Die Regelungen, unter welchen Voraussetzungen für das Kind ein Kurator bestellt wird, finden sich im Bürgerlichen Gesetzbuch (Art. 1773, 1774 und 1909 BGB).

4.3.3. Portugal

In Portugal wurde Art. 23 VD durch Art. 21 des portugiesischen Opferstatuts umgesetzt, welches im Zuge der Umsetzung der Opferschutz-RL verabschiedet wurde. Das Opferstatut listet alle besonderen Schutzmaßnahmen auf, welche besonders vulnerablen Opfern entsprechend ihren individuellen Bedürfnissen gewährt werden können. Einige Bestimmungen werden in anderen Gesetzestexten näher aufgeführt. Einige der Bestimmungen der Opferschutz-RL wurden wörtlich in das portugiesische Opferstatut übernommen. Gem. Art. 21 Abs. 2 Opferstatut, können besonders vulnerablen Opfer folgenden Rechte gewährt werden:

- a. Die Einvernahme muss von derselben Person durchgeführt werden, wenn das Opfer dies verlangt und wenn dies einer guten Rechtspflege nicht zuwiderläuft;
- b. Alle Einvernahmen mit Opfern sexueller Gewalt oder Gewalt in engen Beziehungen, sofern sie nicht von einem Staatsanwalt oder einem Richter geführt werden, müssen von einer Person des gleichen Geschlechts wie das Opfer durchgeführt werden;
- c. Maßnahmen zur Verhinderung des Blickkontakts zwischen dem Opfer und dem Angeklagten, einschließlich Zeugenaussagen, unter Verwendung geeigneter technologischer Mittel;
- d. Die Möglichkeit der „Aussage für die Zukunft“ ("*declarações para memória futura*").¹¹⁷ Gem. Art. 24 Opferstatut kann der Richter - auf Antrag des besonders schutzbedürftigen Opfers oder des Staatsanwalts – im Rahmen des Ermittlungsverfahrens eine Einvernahme machen, welche auch im Gerichtsverfahren berücksichtigt werden kann. In diesem Fall ist es zwingend erforderlich, dass der Staatsanwalt und der Verteidiger des Angeklagten bei der Befragung anwesend sind (Abs. 2). Ferner muss eine dafür ausgebildete Fachkraft das Opfer bei der Einvernahme begleiten. Die Einvernahme

¹¹⁷ Diese Maßnahme wird weiter in Artikel 24 Opferstatut und Artikel 271 PStPO bestimmt.



muss in einem informellen und reservierten Umfeld stattfinden, um die Spontaneität und Aufrichtigkeit der Antworten zu garantieren (Abs. 3). Eine Aussage unter den Bedingungen dieses Artikels darf nur gegeben werden, wenn die Aussage des Zeugen für die Wahrheitsfindung unentbehrlich ist und die Einvernahme die körperliche und geistige Gesundheit des Opfers nicht gefährdet.

- e. Der Ausschluss der Öffentlichkeit. Dieser Artikel existierte jedoch bereits vor dem Umsetzungsprozess in Portugal (Artikel 98 PStPO).

Weiters wurde Art. 24 VD in Portugal mittels Art. 22 Opferstatut umgesetzt. Letzterer legt fest, dass alle minderjährigen Opfer das Recht haben in Strafverfahren gehört zu werden, wobei ihr Alter und ihre Reife zu berücksichtigen sind. In Fällen, in denen das Alter nicht festgestellt werden kann, wird für die Zwecke dieses Artikels angenommen, dass das Opfer ein Kind ist (Art 22 Abs. 6 Opferstatut). Grds. soll ein Kind - sofern kein Interessenkonflikt vorliegt - von seinem Elternteil, gesetzlichen Vertreter oder der Person, die während der Zeugenaussage das Sorgerecht hat, begleitet werden (Art. 22 Abs. 2 Opferstatut). Wenn ein Interessenkonflikt besteht, ist ein Kurator für das Kind zu bestellen (Art. 22 Abs. 3 Opferstatut). Das portugiesische Gesetz legt zudem fest, dass alle Informationen, die zur Identifizierung eines Kindes führen könnten, nicht öffentlich bekannt gemacht werden dürfen.

Die portugiesischen Umsetzungsvorschriften enthalten keine spezifische Maßnahme zur Umsetzung des Artikels 24 Abs. 1 lit. a VD: dass im Ermittlungsverfahren die Möglichkeit bestehen soll, sämtliche Vernehmungen eines Opfers eines minderjährigen Opfers audiovisuell aufzuzeichnen und diese Aufzeichnung als Beweismittel in Strafverfahren verwenden zu können.¹¹⁸ Eine ähnliche Formulierung findet sich jedoch in Art. 23 Abs. 1 Opferstatut. Demnach können Zeugenaussagen bzw. andere Aussagen von Amts wegen oder auf Antrag per Videokonferenz oder Telekonferenz durchgeführt werden, sofern dies erforderlich ist um eine Aussage ohne Einschränkungen zu garantieren. In diesem Fall muss das Opfer von einer speziell dafür ausgebildeten Fachkraft begleitet werden. Diese Regelung ist also nur auf minderjährige Opfer anzuwenden, welche besonders schutzbedürftig sind und somit von den besonderen Umständen des Falles abhängig.

¹¹⁸ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 63.



Schließlich bestand auch das Recht eines minderjährigen Opfers, von seinem gesetzlichen Vertreter bzw. einer Person seiner Wahl begleitet zu werden, bereits vor dem Umsetzungsprozess (Art. 70 Abs. 3 und Art. 132 Abs. 4 PStPO).¹¹⁹

4.3.4. Spanien

In Spanien finden sich Art. 23 und 24 der Opferschutz-RL im Art. 25 des Gesetzes 4/2015 mit dem Titel „Schutzmaßnahmen“ wieder. Die Bestimmungen sind nahezu wortwörtlich aus der Opferschutz-RL übernommen. Artikel 25 Gesetz 4/2015 bestimmt, dass während des Ermittlungsverfahrens folgende Maßnahmen zum Schutz der Opfer angeordnet werden können, während die Maßnahmen a, b und c zwingend bei minderjährigen Opfern sexueller Gewalt zur Anwendung kommen:¹²⁰

- a) Die Opfer können in speziell für diesen Zweck konzipierten und angepassten Gebäuden befragt werden.
- b) Die Einvernahme von Opfer kann mit Hilfe von bzw. durch Fachkräfte vorgenommen werden, die eine spezielle Ausbildung erhalten haben, um den Schaden für das Opfer zu reduzieren oder zu begrenzen.
- c) Alle Einvernahmen eines Opfers dürfen von derselben Person vorgenommen werden, es sei denn, dies könnte die Verfahrensführung erheblich beeinträchtigen bzw. wenn die Aussage direkt von einem Richter oder Staatsanwalt vorgenommen werden muss.
- d) Das Gesetz listet zudem in Art. 23, lit. 2, 3 und 4 die Arten von Straftaten auf, bei welchen eine Person des gleichen Geschlechts die Einvernahme mit dem Opfer vornehmen soll, wenn das Opfer dies verlangt, es sei denn, dies könnte die Verfahrensführung erheblich beeinträchtigen bzw. wenn die Aussage direkt von einem Richter oder Staatsanwalt vorgenommen werden muss.¹²¹

Absatz 2 des gleichen Artikels legt die Schutzmaßnahmen fest, die während des Gerichtsverfahrens im Einklang mit der spanischen Strafprozessordnung angeordnet werden können, während die ersten beiden Punkte auch während des Ermittlungsverfahrens gelten können:

- a) Maßnahmen zur Vermeidung des Blickkontakts zwischen dem Opfer und dem mutmaßlichen Täter,

¹¹⁹ Ibid, 66.

¹²⁰ Art. 23 Abs. 4, Gesetz 4/2015 (Spanien).

¹²¹ Art. 25, Abs. 1, Gesetz 4/2015 (Spanien).



- auch während der Einvernahme, u.a. durch Einsatz von Kommunikationstechnologien.
- b) Maßnahmen um sicherzustellen, dass das Opfer unter Verwendung von geeigneten Kommunikationstechnologien gehört werden kann, ohne im Gerichtssaal anwesend zu sein.
 - c) Maßnahmen um zu vermeiden, dass dem Opfer Fragen zu seinem Privatleben gestellt werden, die für die Straftat nicht relevant sind. Hiervon ist in Ausnahmefällen abzugehen, wenn der Richter bzw. das Gericht der Auffassung sind, dass diese Fragen beantwortet werden müssen um die Glaubwürdigkeit der Aussage des Opfers beurteilen zu können.
 - d) Durchführung einer geschlossenen mündlichen Verhandlung. In solchen Fällen kann der Richter oder der vorsitzende Richter jedoch die Anwesenheit von Personen genehmigen, die ein besonderes Interesse an dem Fall darlegen können.¹²²

Maßnahmen bzgl. dem Recht auf Schutz von Minderjährigen Opfern im Strafverfahren iSd Art. 24 VD wurden durch Art. 25 Abs. 3 Gesetzes 4/2015 umgesetzt. Diese Regelungen gehen über die von der Opferschutz-RL vorgesehenen Maßnahmen hinaus, und gewähren jene Rechte auch Menschen mit Behinderungen, die besonderen Schutz benötigen. Art. 26 Gesetzes 4/2015 bestimmt zudem im Einklang mit der spanischen Strafprozessordnung (SStPO),¹²³ dass während des Ermittlungsverfahren getätigte Aussagen - im Falle von minderjährige Opfern und Menschen mit Behinderungen, die Opfer von Straftaten sind und besonderen Schutz benötigen - mit audiovisuellen Mitteln aufgezeichnet werden können. Diese Aufnahmen können unter Bedachtnahme der in der SStPO festgelegten Bedingungen vor Gericht abgespielt werden. Der Schutz des Kindes muss während der Einvernahme bzw. Zeugenaussage gebührend berücksichtigt werden. Hierbei muss der Blickkontakt mit dem Beschuldigten vermieden werden. Um diese Maßnahme zu erleichtern müssen auch Bildschirme zur Verfügung gestellt werden.

Schließlich bestimmt Art. 25 Abs. 2 Gesetzes 4/2015, unter welchen Umständen ein gerichtlich bestellter Vertreter für das Opfer bestellt werden soll, welcher das Opfer Ermittlungs- und Strafverfahren vertritt. Dies ist der Fall, wenn der Staatsanwalt der Auffassung ist, dass ein Interessenkonflikt zwischen dem minderjährigen Opfer und seinem gesetzlichen Vertreter vorliegt. Die spanischen Rechtsvorschriften setzen die Opferschutz-RL somit vollständig in spanisches Recht um.

¹²² Art. 15, Abs. 2 Gesetz 4/2015 (Spanien).

¹²³ Spaische Strafprozessordnung, https://www.imolin.org/imolin/amlid/data/spa/document/criminal_procedure_code.html (spanisch).



4.3.5. England und Wales

Alle Ansprüche, die Erwachsenen¹²⁴ und Kindern¹²⁵ im Rahmen des Opfer-Kodex gewährt werden, sind klar in zwei Kapitel unterteilt. Die Bestimmungen betreffend Kinder und Jugendliche finden sich in Kapitel 3, welches weiter in Teil A: Ansprüche von Kindern und Jugendlichen und Teil B: Pflichten von Dienstleistern für Kinder und Jugendliche unterteilt ist. Darüber hinaus können Kindern auch erweiterte Ansprüche gewährt werden, welche in Kapitel 1 festgelegt sind. Insgesamt sind in dem Opfer-Kodex ein Großteil der Rechte enthalten, welche die Opferschutz-RL festlegt. In den meisten Fällen erstrecken sich diese Rechte auf alle Opfer von Straftaten.

Der Opfer-Kodex enthält jedoch keine Bestimmungen bzgl. der Möglichkeit einen Kurator für ein minderjähriges Opfer zu bestellen, sofern ein Interessenkonflikt zwischen dem gesetzlichen Vertreter und dem Kind iSd Art. 24 Abs. 1 lit. b vorliegt.¹²⁶ Er enthält auch keine Umsetzungsmaßnahmen iSd Art. 24 Abs. 1 lit. c VD: dem Recht eines Opfers im Kindesalter im eigenen Namen vertreten zu werden.

Während dem Ermittlungsverfahren haben minderjährige Opfer das Recht, dass die Einvernahme in einer Weise abgehalten wird, welche zu diesem Zweck festgelegt und angepasst wurden.¹²⁷ Während im Rahmen der Opferschutz-RL ein solches Recht nur Opfern mit besonderen Schutzbedürfnissen zukommt, sind von diesem Recht im Rahmen des Opfer-Kodex auf Opfer erfasst. Darüber hinaus muss die Polizei bei der Einvernahme eines Kindes - oder eines anderen Opfers - das Leitliniendokument „Beste Beweise in Strafverfahren“¹²⁸ beachten und sicherstellen, dass die Einvernahme von einem entsprechend ausgebildeten Experten geführt wird, der die Bedürfnisse und Ansichten des Opfers berücksichtigt.¹²⁹ Obwohl der Leitfaden „Beste Beweise in Strafverfahren“ kein rechtlich durchsetzbarer Verhaltenskodex ist, beschreibt er bewährte Techniken zur Befragung von Zeugen und Opfern. Er soll den an der Ermittlung beteiligten

¹²⁴ Kapitel 2, Part A and B, Opfer-Kodex (England und Wales).

¹²⁵ Kapitel 3, Part A and B, Opfer-Kodex (England und Wales).

¹²⁶ Siehe Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 70 – 71, für eine genaue Übersicht über die Artikel der Opferschutz-RL und ihre entsprechenden Bestimmungen des Opfer-Kodex.

¹²⁷ Kapitel 3, Part B 1.2 iVm Kapitel 2 Part A 1.8 Opfer-Kodex (England und Wales).

¹²⁸ Ministry of Justice UK, Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures, March 2011,

https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf

¹²⁹ Kapitel 3, Part B 1.5 iVm Kapitel 2 Part B 1.5 Opfer-Kodex (England und Wales).



Personen - einschließlich Polizei, Sozialarbeiterinnen, Richterinnen und Anwältinnen - bei der Vorbereitung und Durchführung von Einvernahmen helfen.¹³⁰

Minderjährige Opfer - sowie alle anderen Opfer - haben das Recht, zu verlangen nach Möglichkeit von der gleichen Person einvernommen zu werden. Von diesem Recht muss jedoch abgesehen werden, wenn es die ordnungsgemäße Durchführung der Untersuchung beeinträchtigen würde.¹³¹ Darüber hinaus haben Kinder, die Opfer von sexueller Gewalt, geschlechtsbezogener Gewalt oder häuslicher Gewalt wurden, bei der polizeilichen Einvernahme Anspruch darauf, dass eine Person des gleichen Geschlechts die Befragung durchführt, es sei denn, dies würde die ordnungsgemäße Durchführung der Untersuchung beeinträchtigen.¹³²

Auch in Hinblick auf die besonderen Maßnahmen iSd Art. 23 Abs. 3 VD erfüllt der Opfer-Kodex alle Anforderungen: Es gibt einige speziellen Maßnahmen, die sicherstellen sollen, dass die spezifischen Schutzbedürfnisse von Opfern bei Gerichtsverfahren geschützt werden. Beispielsweise sind Maßnahmen zur Vermeidung des Blickkontakts zwischen Opfern und Tätern in Kapitel 1 des Opfer-Kodex geregelt. Diese Maßnahmen hängen von den Bedürfnissen des Opfers ab, welche in der individuellen Begutachtung beurteilt werden. Während ein Opfer dazu berechtigt ist, eine solche spezielle Maßnahme zu beantragen, entscheidet das Gericht, ob diese Maßnahmen anzuwenden sind. Folgende spezielle Maßnahmen stehen im Rahmen des Opfer-Kodex zur Verfügung:

- **Bildschirme bzw. Vorhänge** im Gerichtssaal, so dass der Zeuge den Angeklagten - und in einigen Fällen die öffentliche Galerie - nicht sehen muss;
- Eine **Live-Videoverbindung**, die es einer Zeugin ermöglicht ihre Aussage außerhalb des Gerichtssaals zu machen. Dies kann von einem separaten Raum innerhalb des Gerichts oder von einem Raum außerhalb des Gerichtsgebäudes sein;
- **Ausschluss der Öffentlichkeit** - die öffentliche Galerie kann in Fällen von Sexualdelikten, Menschenhandel bzw. wenn das Gericht überzeugt ist, dass jemand anderes als der Beschuldigte versuchen könnte, den Zeugen einzuschüchtern, geräumt werden;
- **Entfernung von Perücken und Amtskleidung** der Richterin, Verteidigerin und Staatsanwältin;

¹³⁰ Das Leitlinien-Dokument "Bester Beweis in Strafverfahren" wurde in einem kürzlich veröffentlichten Bericht der EU Grundrechteagentur über kinderfreundliche Justiz als vielversprechende Praxis erwähnt; Siehe European Union Agency for Fundamental Rights, Child-friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015.

¹³¹ Kapitel 3, Part B 1.2 iVm Kapitel 2 Part A 1.8 Opfer-Kodex (England und Wales).

¹³² Kapitel 3, Part B 1.2. iVm Kapitel 2 Part A 1.8 Opfer-Kodex (England und Wales).



- **Videoaufzeichnungen** - diese erlauben dem Zeugen, eine vorab aufgezeichnete Videoaussage als Hauptbelastungsnachweis zu verwenden.¹³³

Darüber hinaus besteht die Möglichkeit, dass ein registrierter Vermittler gefährdeten Zeugen hilft, ihre Aussage vor Gericht bzw. der Polizei zu machen, sofern Kommunikationsschwierigkeiten bestehen.¹³⁴ Der Vermittler muss gerichtlich zugelassen sein, hat entweder einen sozialen oder rechtlichen Hintergrund und fungiert als Bindeglied zwischen dem Kind und den Fachkräften.¹³⁵ In Fällen, in denen ein registrierter Vermittler eingesetzt wird, einigen sich die beteiligten Fachleute auf Grundregeln für die Art der Fragen, die in der vorgerichtlichen Einvernahme an das Kind gerichtet werden.¹³⁶ Die Staatsanwaltschaft muss alle Opfer respektvoll behandeln. Falls erforderlich, greift das Gericht ein, wenn es eine kontradiktorische Vernehmung für unangemessen oder aggressiv hält.¹³⁷

Wenn ein minderjähriges Opfer durch eine zuvor aufgezeichnete Zeugenaussage aussagt (pre-recorded witness statement), können durch eine kontradiktorische Vernehmung zusätzliche Fragen gestellt werden: dies ist eine Maßnahme, bei der sich das minderjährige Opfer in einem anderen Raum befindet und mittels Videoverbindung seine Aussagen machen kann.¹³⁸ Es ist auch möglich, dass keine weitere gerichtliche Einvernahme erforderlich ist.¹³⁹

Ein minderjähriges Opfer ist zudem berechtigt, das Gericht vor dem Verhandlungstermin zu besuchen, um sich vor dem Prozess mit dem Gebäude und dem Gerichtssaal vertraut zu machen.¹⁴⁰ Während dieser Maßnahme werden Kindern insbesondere der separate Kindereingang, der Gerichtssaal, der Zeugenwarterraum sowie der Raum gezeigt, in dem die Einvernahme via Live-Link stattfindet.¹⁴¹ Diese Besuche werden von den *Witness Care Units* in Zusammenarbeit mit den innerhalb des Gerichts angesiedelten Zeugenhilfszentren arrangiert.¹⁴² In Fällen, in denen das Alter des Opfers ungewiss ist und

¹³³ Kapitel 1, 1.13 Opfer-Kodex (England und Wales).

¹³⁴ Kapitel 1, 1.15 Opfer-Kodex (England und Wales).

¹³⁵ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 24.

¹³⁶ Der Bericht der Europäischen Grundrechtsagentur aus dem Jahr 2015 nannte den registrierten Vermittler eine erfolgsversprechende Maßnahme. Ibid, 27.

¹³⁷ Kapitel 3, Part A 3.1 Opfer-Kodex (England und Wales).

¹³⁸ Kapitel 3, Part A 3.1 Opfer-Kodex (England und Wales).

¹³⁹ Kapitel 3, Part A 1.3 Opfer-Kodex (England und Wales).

¹⁴⁰ Kapitel 3, Part B 1.2. iVm Kapitel 2 Part A 2.14.

¹⁴¹ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 63.

¹⁴² European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 34.



Grund zu der Annahme besteht, dass die Person unter 18 Jahren ist, bestimmt der Opfer-Kodex, dass davon auszugehen ist, dass die Person unter 18 Jahre alt ist.¹⁴³

Schließlich gibt es die Möglichkeit für Opfer, neben ihrer Zeugenaussage eine „Persönliche Aussage“ abzugeben.¹⁴⁴ Die persönliche Aussage soll Opfern die Möglichkeit geben aufzuzeichnen, wie sich das Verbrechen auf sie und ihre Familie ausgewirkt hat. Im Gegensatz hierzu wird in der generellen Zeugenaussage nur über die Geschehnisse des Verbrechens berichtet. Generell kann die persönliche Aussage nicht mehr abgeändert werden, sobald das Opfer sie abgegeben hat. Das Opfer hat jedoch das Recht, jederzeit vor der Urteilsverkündung eine weitere persönliche Aussage abzugeben. Opfer einer schweren Straftat, Opfer wiederholter Gewalt, bzw. besonders vulnerable Opfer sind berechtigt, einen persönlichen Aussage zu machen, ohne eine Zeugenaussage abzugeben. Die persönliche Aussage wird erst dann vom Gericht berücksichtigt, wenn der Täter für schuldig befunden wurde und hilft, den physischen und psychischen Schaden zu klären, der durch die Straftat verursacht wurde.¹⁴⁵

4.4. Recht auf und Unterstützung durch Opferunterstützungsdienste (Art. 8-9 VD)

4.4.1. Finnland

Grundsätzlich hat in Finnland jedes Opfer das Recht auf einen Rechtsbeistand, der ihn bei der Anzeige, im Ermittlungsverfahren und während des Gerichtsprozesses unterstützt.¹⁴⁶ In der Regel muss dieser Rechtsbeistand jedoch vom Opfer selbst bezahlt werden. Hiervon gibt es zwei Ausnahmen: **Verfahrenshilfe** oder staatlich gewährte **juristische** bzw. **psycho-soziale Prozessbegleitung**:

1. Ob und in welchem Umfang **Verfahrenshilfe** gewährt wird, hängt von dem Einkommen, den Ausgaben, dem Vermögen, sowie den möglichen Unterhaltsverpflichtungen des Opfers ab.¹⁴⁷ Abhängig von dem finanziellen Status des Opfers, kann dem Opfer einen Teil oder die gesamte Gebühr des Rechtsbeistands gewährt werden.¹⁴⁸ Opfer können in allen Rechtsberatungsstellen, in

¹⁴³ Kapitel 5, 1.46 Opfer-Kodex (England und Wales).

¹⁴⁴ Crown Prosecution Service, Victim Personal Statements: Legal Guidance, <https://www.cps.gov.uk/legal-guidance/victim-personal-statements>

¹⁴⁵ Victim Support, Victim Personal Statements, <https://www.victimsupport.org.uk/help-and-support/your-rights/victim-personal-statements>

¹⁴⁶ Siehe weiters Kapitel 4 Section 10 FSVG

¹⁴⁷ Oikeus, Means-testing,

<https://oikeus.fi/en/index/esitteet/oikeusapu/millatuloilla-oikeusapua-vonnetaan-jamitkamenothuomioidaan.html>

¹⁴⁸ Für Informationen bzgl. Kosten von Verfahrenshilfe und Selbstbehalte siehe: Oikeus, Information on Legal Aid,



jeder Rechtsanwaltskanzlei, sowie online Verfahrenshilfe beantragen.¹⁴⁹

2. Eine **juristische Prozessbegleitung** kann das Gericht folgenden Opfern gewähren: Opfern von Gewalt in Beziehungen, Sexualdelikten oder einer schweren Straftat gegen das Leben, die Gesundheit oder die Freiheit (Kapitel 2, Abschnitt 1a FSVG).¹⁵⁰ In diesen Fällen hängt die Bestellung der juristische Prozessbegleitung also nicht vom Einkommen des Opfers ab.¹⁵¹ Weiters kann Opfern der gleichen Straftaten auch eine **psycho-soziale Prozessbegleitung** gewährt werden. Diese Person unterstützt das Opfer persönlich während des Ermittlungs- und Gerichtsverfahrens sowie bei allen Angelegenheiten, welche bei der Klärung des Falles aufkommen (Kapitel 2, Abschnitt 9 FSVG).

Der Ermittlungsleiter bzw. die Staatsanwaltschaft hat die Verpflichtung vor der Hauptverhandlung einen Antrag auf Bestellung einer juristischen bzw. psycho-sozialen Prozessbegleitung zu stellen, wenn hierfür Grund besteht (Kapitel 4, Abschnitt 10 Abs. 2 FSVG). Diese Verpflichtung trifft insbesondere dann ein, sofern es sich bei dem Opfer um eine Person handelt, die Opfer von Gewalt in Beziehungen, von Sexualdelikten oder einer schweren Straftat gegen das Leben, die Gesundheit oder die Freiheit geworden ist.

Während das Recht auf Zugang zu Opferunterstützungsdiensten bereits vor der Opferschutz-RL in Finnland bestand, wurden die bestehenden Bestimmungen im Zuge der Umsetzung erweitert. Nun kann auch das besondere Schutzbedürfnis der Klägerin und ihre persönlichen Merkmale die Verpflichtung des Ermittlungsbeamten auslösen die Kontaktdaten der Geschädigten an einen Opferunterstützungsdienst weiterzuleiten.

Weitere Bestimmungen bzgl. des Zugangs zu Opferunterstützungsdiensten sind im Gesetz über Opfergebühren festgelegt.¹⁵² Dieses Gesetz ist das einzige neue Gesetz, das im Zuge des Umsetzungsprozesses der Opferschutz-RL verabschiedet wurde.¹⁵³ Bei Opfergebühr handelt es sich um

<https://oikeus.fi/en/index/esitteet/oikeusapu/mitaoikeusapuhakijallemaksaa.html>

¹⁴⁹ Ministry of Justice Finland, Rights of crime victim, 1.3.2017

¹⁵⁰ Ibid.

¹⁵¹ Ministry of Justice Finland, Rights of crime victim, 1.3.2017; siehe auch Oikeus, Legal aid,

<https://oikeus.fi/oikeusapu/en/index.html>

¹⁵² FINLEX, Act on Victim Charges, 22.5.2015/669, <https://www.finlex.fi/fi/laki/ajantasa/2015/20150669> (Finnisch)

¹⁵³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 70 – 71, for a precise overview of the Art.s of the VD in relation to the corresponding provisions of the Opfer-Kodex (England und Wales), 23.



jene Gebühr, welche der verurteilte Täter zu zahlen verpflichtet wird, die der Unterstützung von Opfern zu Gute kommt.¹⁵⁴ Mit dem neuen Gesetz über Opfergebühren folgte Finnland einer Empfehlung der EU-Kommission, die die Umsetzung von Opfergebühren zur Finanzierung allgemeiner Opferunterstützungsleistungen gemäß der Opferschutz-RL empfahl.¹⁵⁵ Weitere anwendbare Rechtsvorschriften sind das Gesetz über Verfahrenshilfe; und der Regierungsbeschluss über die Verfahrenshilfe.

4.4.2. Deutschland

In Deutschland gibt es – neben den Opferunterstützungsdiensten – zwei Formen der persönlichen Opferunterstützung während des Gerichtsverfahrens: Der **Verletztenbeistand**, sowie die **psychosoziale Prozessbegleitung**, wobei letztere im Zuge der Umsetzung der Opferschutz-RL eingeführt wurde. Weiters gibt es auch die Möglichkeit **Prozesskostenhilfe** zu beantragen.

In diesem Zusammenhang ist zu beachten, dass jede Person, die das Recht hat sich als Nebenklägerin gemäß § 395 DStPO am Verfahren anzuschließen, auch als Opfer im Rahmen der DStPO angesehen wird. Durch diese Regelung wird klargestellt, dass auch bestimmte Familienmitglieder einer Person, deren Tod durch eine Straftat verursacht wurde (nämlich Kinder, Eltern, Geschwister, Ehepartner oder Partner), als Geschädigte gemäß § 395 Abs. 2 DStPO angesehen werden und somit kostenlosen Zugang zu Verletztenbeistand sowie psychosozialer Prozessbegleitung erhalten können.¹⁵⁶

Prinzipiell haben alle Geschädigten in Deutschland das Recht sich von einem **Verletztenbeistand** vertreten zu lassen (§ 406f DStPO). Ob diese Vertretung unentgeltlich ist, hängt jedoch von mehreren Faktoren ab.¹⁵⁷ Die Regelungen bzgl. der Gewährung von Verletztenbeistand finden sich in § 397a DStPO. Demnach haben folgende Geschädigte das Recht auf unentgeltliche Rechtsvertretung:

- im Falle von besonders schweren Straftaten, wie z.B. sexueller Missbrauch von Kindern, sexuelle

¹⁵⁴ RIKU, What is a victim charge?, <https://www.riku.fi/en/frequently+asked+questions/what+is+a+victim+charge/>

¹⁵⁵ Ibid.

¹⁵⁶ Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, 22, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> .

¹⁵⁷ These are e.g. crimes against the sexual self-determination, against honour, physical integrity, personal freedom; attempted homicidal offence;



Übergriffe und Vergewaltigungen, Menschenhandel zur sexuellen Ausbeutung von Arbeitskräften, und versuchter Mord.¹⁵⁸

- wenn eine Straftat bereits zu schweren physischen oder psychischen Schäden geführt hat oder solche zu erwarten sind, und eines der Verbrechen der §§ 226, 226a, 234-235, 238-239b, 250, 252, 31a DStPO vorgeworfen wird. Zu diesen Verbrechen gehören unter anderem schwere Übergriffe, Raubüberfälle, Entführungen, Entbehrungen von Minderjährigen, schwere Stalking-Aktivitäten, sowie Freiheitsentzug.
- minderjährigen Opfern oder Opfern, die ihre Rechte nicht ausreichend ausüben können, sofern es sich bei der Straftat um z.B. ein Sexualdelikt, die Ausbeutung von Prostituierten, Misshandlung von Mündel, schwere Körperverletzung handelt.¹⁵⁹

Wenn einem Opfer kein kostenloser Verletztenbeistand gem. § 397a DStPO gewährt wird, kann er bzw. sie nach den Vorschriften des deutschen Zivilrechts **Prozesskostenhilfe** beantragen (§ 397a Abs. 2 DStPO). Die Gewährung von Prozesskostenhilfe hängt von der finanziellen Lage und dem Einkommen des Opfers sowie von den besonderen Umständen des Falles ab.

Im Zuge des Umsetzungsprozesses der Opferschutz-RL wurde zudem das Recht auf **psychosoziale Prozessbegleitung**¹⁶⁰ in §406 g DStPO verankert. Dies ist die einzige Bestimmung, die erst am 1. Januar 2017 in Kraft trat.¹⁶¹ Des Weiteren wurde ein *Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren* erlassen, welches sowohl Prinzipien der psychosozialen Prozessbegleitung, als auch die benötigte Qualifizierung psychosozialer Prozessbegleiter regelt¹⁶² (Abs. 2 lit. cit.). Die psychosoziale Prozessbegleitung kann während der Einvernahme des Opfers sowie bei allen Gerichtsverhandlungen anwesend sein.

¹⁵⁸ §§ 177, 179, 232-232b, 233a DStPO.

¹⁵⁹ §§ 174-182, 184i, 184j and 225 DStPO (wenn das Opfer zum Zeitpunkt der Tat unter 18 Jahren alt war); §§ 221, 226, 226. 232-235, 237, 238 Abs. 2 and 3; 239, 239b, 240 Abs. 4, 249, 250, 252, 255 and 316 DStPO (wenn das Opfer zum Zeitpunkt der Anzeige unter 18 Jahren alt war).

¹⁶⁰ Der psychosoziale Prozessbegleiter darf nicht die gleiche Person sein wie der, § 2 Abs. 2 PsychPbG.

¹⁶¹ Bundesministerium der Justiz und für Verbraucherschutz, Opferhilfe und Opferschutz im Strafverfahren Deutschland, 16.11.2017,

https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html.

¹⁶² Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren vom 21. Dezember 2015 (BGBl. I S. 2525, 2529), (PsychPbG),

https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3.



In folgenden Fällen muss das Gericht dem Opfer auf sein Verlangen eine psychosoziale Prozessbegleitung gewähren:

- Minderjährigen Opfern oder Opfern, die ihre Rechte nicht ausreichend ausüben können, sofern eine der im Gesetz aufgezählten Straftaten vorliegt: z.B. Sexualdelikte, Ausbeutung von Prostituierten, Misshandlung von Mündel, schweren Körperverletzungen, u.a..¹⁶³
- *wenn das besondere Schutzbedürfnis des Opfers dies erfordert*, bei besonders schweren Straftaten, wie z.B. sexueller Missbrauch von Kindern, sexuelle Übergriffe und Vergewaltigungen, Menschenhandel zur sexuellen Ausbeutung von Arbeitskräften, versuchter Mord;¹⁶⁴
- *wenn das besondere Schutzbedürfnis des Opfers dies erfordert*, bei bestimmten anderen Straftaten, die bereits zu schweren physischen oder psychischen Schäden des Opfers geführt haben oder voraussichtlich führen werden. Zu letzteren gehören unter anderem schwere Übergriffe, Raubüberfälle, Entführungen, Entbehrungen von Minderjährigen, schweres Stalking, Freiheitsentzug.¹⁶⁵

Während verschiedene Interessensvertreterinnen die neuen Bestimmungen der psychosozialen Prozessbegleitung begrüßten, wurde diese Neuregelung von anderen kritisiert: Insbesondere besteht die Befürchtung, dass die psychosoziale Prozessbegleitung zu einem „Zeugencoaching“ werden könnte, welches die Aussage des Opfers beeinflussen könnte.¹⁶⁶

Schließlich regelt das Bundeskinderschutzgesetz den Kinderschutz in Deutschland auf Bundesebene. Es resultierte aus dem Bemühen, Lücken im Kinderschutz in Deutschland zu identifizieren und zu schließen. Es regelt unter anderem die Entwicklung, Anwendung und Überprüfung von Standards zur Sicherung der Rechte von Kindern und Jugendlichen in Einrichtungen und deren Schutz vor Gewalt.¹⁶⁷

¹⁶³ §§ 174-182, 184i, 184j and 225 DStPO (wenn das Opfer zum Zeitpunkt der Tat unter 18 Jahren alt war); §§ 221, 226, 226. 232-235, 237, 238 Abs. 2 and 3; 239, 239b, 240 Abs. 4, 249, 250, 252, 255 and 316 DStPO (wenn das Opfer zum Zeitpunkt der Anzeige unter 18 Jahren alt war).

¹⁶⁴ §§ 177, 179, 232-232b, 233a DStPO.

¹⁶⁵ §§ 226, 226a, 234-235, 238-239b, 250, 252, 31a DStPO

¹⁶⁶ Kett-Straub, Wie viel Opferschutz trägt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 344.

¹⁶⁷ Bundesministerium für Familie, Senioren, Frauen und Jugend Deutschland, Bundeskinderschutzgesetz, <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/bundeskinderschutzgesetz/das-bundeskinderschutzgesetz/86268> .



4.4.3. Portugal

In Portugal ist das **Recht auf Verfahrenshilfe** in der portugiesischen Verfassung verankert. Diese besagt, dass „*Gerechtigkeit mangels ausreichender finanzieller Mittel niemandem verweigert werden darf*“ (Art. 20 Abs. 1 portugiesische Verfassung¹⁶⁸) denn „*jeder hat das Recht auf rechtliche Auskunft und Beratung, auf Rechtsbeistand und auf die Begleitung eines Rechtsanwalts vor jeder Behörde*“ (Art. 20 Abs. 2 Portugiesische Verfassung). Die Verfassung schützt zudem das Recht des Opfers auf Beteiligung am Strafverfahren, während genauere Ausführungen dem einfachen Gesetz überlassen bleibt. Die für dieses Kapitel relevantesten portugiesischen Rechtsvorschriften, sind die *portugiesische Strafprozessordnung*, das *portugiesische Opferstatut*, die *Verordnung über Verfahrenskosten* sowie das *Gesetz über den Zugang zu Recht und Gerichten*.^{169 170}

Artikel 13 des Opferstats hält fest, dass alle Opfer das **Recht auf Zugang zu Rechtsbeistand** in dem Ausmaß haben, in dem es im vom portugiesischen Gesetz über den Zugang zu Recht und Gerichten festgelegt ist. Die neuen Regelungen des Opferstatuts erweitern somit nicht die bereits bestehenden Bestimmungen.¹⁷¹ Der Zugang zu unentgeltlichem Rechtsbeistand vor Gericht sowie Rechtsberatung hängt von der dem Einkommen des Opfers ab (Artikel 8 Opferstatut). Nur einem Opfer, das nicht über ausreichendes Einkommen verfügt, wird der kostenlose Zugang zu Rechtsbeistand gewährt.¹⁷² Falls dem Opfer kostenloser Zugang zu Rechtsbeistand gewährt wird, werden folgende Kosten hiervon erfasst: Rechtsberatung, Bestellung eines Rechtsanwalts, sowie die vollständige oder teilweise Befreiung von den Kosten des Gerichts (Art. 6 Opferstatut).¹⁷³

Zudem gibt es auch in Portugal eine **psychosoziale Prozessbegleitung** („*Técnico de apoio à vítima*“). Diese kann entweder vom Richter bestimmt bzw. von der Staatsanwaltschaft beantragt werden (Art. 15 Abs. 3 Opferstatut). Die psychosoziale Prozessbegleitung ist ein Angestellter von APAV. Seine Rolle ist es ist,

¹⁶⁸ Constitution of the Portuguese Republic, <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>

¹⁶⁹ Law on Access to Law and to Courts (Portugal), Law no. 34/2004 of July 29 amended by Law no. 47/2007, of August 28, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=80&tabela=leis&so_miolo (portugiesisch).

¹⁷⁰ Vânia Costa Ramos, Legal Aid for Victims in Criminal Proceedings in Portugal, in Wilinski, Karlik (eds.), Improving Protection of Victims' Rights: Access to Legal Aid, Adam Mickiewicz University, Poznan, 2014, 192.

¹⁷¹ APAV - Associação Portuguesa de Apoio à Vítima, Developing Directive – compatible practices for the identification, assessment and referral of victims: Portugal Practices Report, 7.

¹⁷² Info Vítimas, lawyer of the victim, http://infovitas.pt/pt/004_quem/paginas/004_006.html (portugiesisch).

¹⁷³ Ibid, 198.



dem Opfer zu helfen, die Folgen des Verbrechens zu überwinden oder abzuschwächen. Zudem kann er oder sie das Opfer vor Gericht, bei der Polizei oder bei medizinischen Untersuchungen begleiten.¹⁷⁴

Das **Recht auf Zugang zu Opferunterstützungsdiensten** wurde im Zusammenhang mit dem Recht auf Informationen umgesetzt (Umsetzung von Artikel 4 VD). Hierzu fehlen jedoch spezifischere Einzelheiten im Gesetzestext.¹⁷⁵

4.4.4. Spanien

Ähnlich wie in Portugal, verweist auch das neue Gesetz 4/2016 in Spanien auf die bereits bestehenden nationalen Regelungen bzgl. des Anspruchs aller Opfer auf unentgeltliche und vertrauliche Verfahrenshilfe (Artikel 10 Gesetzes Nr. 4/2015). Wie in der Opferschutz-RL festgelegt, bestimmen auch nationalen Rechtsvorschriften, dass unter gewissen Umständen Angehörige von Opfern in den Genuss solcher Verfahrenshilfe kommen können.

In Spanien sind die Opferhilfe-Büros verantwortlich für die Koordination der Unterstützungsleistungen durch Organisationen, Institutionen sowie andere Einrichtungen. Sie bestehen in mehreren autonomen Regionen Spaniens.¹⁷⁶ Opferhilfe-Büros bestehen aus multidisziplinären Teams – wie etwa Anwältinnen, Psychologen und Sozialarbeiterinnen – welche die Opfer während dem Strafverfahren unterstützen. Ein kürzlich veröffentlichter Bericht der Grundrechteagentur über kinderfreundliche Justiz hat diese Ämter näher betrachtet und sie als eine vielversprechende Praxis für den Opferschutz bezeichnet. Durch die interdisziplinären Abteilungen sei eine hohe Unterstützung von Opfern gewährleistet. Je nach Standort bieten die Büros verschiedene Dienstleistungen an. Hierzu zählt etwa ein Besuch des Gerichtsgebäudes vor der Verhandlung und Informationen für die Eltern von minderjährigen Opfern. Unter gewissen Umständen kann auch die Anhörung von Kindern in den Räumlichkeiten der Opferhilfe-Büros stattfinden.¹⁷⁷

¹⁷⁴ Info Vitima, Psychological Supporter, http://infovitimas.pt/pt/004_quem/paginas/004_007.html (portugiesisch).

¹⁷⁵ EPRS – European Parliamentary Research Service, The Victims' Rights Directive 2012/29/EU: European Implementation Assessment, December 2017, 54.

¹⁷⁶ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 110.

¹⁷⁷ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 110.



Darüber hinaus sind Opferhilfe-Büros dazu verpflichtet, die besonderen Schutzbedürfnisse jedes Opfers individuell zu begutachten (Art. 28 Abs. 2, Gesetzes 4/2015). Insbesondere müssen sie hierbei beurteilen, ob das Opfer **psychosoziale Unterstützung**, eine **Vertrauensperson während des Prozesses**, Informationen, die Verweisung an spezialisierte Unterstützungsdienste, oder andere Unterstützungsmaßnahmen, die vom Gericht gewährt werden können, benötigt.¹⁷⁸

Ferner legt Artikel 28 des Gesetzes 5/2015 das Mindestmaß an Unterstützung fest, welche die Opferhilfe-Büros den Opfern zukommen lassen müssen:

- a) Allgemeine Informationen zu den Rechten eines Opfers
- b) Informationen über verfügbare spezialisierte Dienste, die das Opfer angesichts ihrer persönlichen Umstände und der Art der Straftat unterstützen können
- c) Emotionale Unterstützung für die Opfer
- d) Beratung zu finanziellen Rechten, inkl. Zugang zu Prozesskostenhilfe
- e) Hinweise auf das Risiko und die Vermeidung von wiederholten oder wiederholten Viktimisierungen, Einschüchterungen oder Repressalien.
- f) Koordinierung der verschiedenen Organisationen, Institutionen und Einrichtungen, die Opferunterstützungsdienste anbieten.
- g) Koordinierung mit Richtern, Gerichten und der Staatsanwaltschaft zur Bereitstellung von Opferhilfsdiensten.

Der spanische Gesetzgeber hat zudem ein Bewertungssystem für das Opferhilfe-System in Spanien eingeführt: Die Funktionsweise der Opferhilfeinstitutionen, -mechanismen und -garantien in Spanien sollen jährlich vom Justizministerium beurteilt werden. Die Bewertung sowie die Ergebnisse sollen als Anleitung zur Verbesserung des Schutzsystems dienen (erste zusätzliche Bestimmung, Gesetz 4/2015).

¹⁷⁸ Art. 28 Abs. 2, Gesetz 4/2015 (Spanien).



4.4.5. England und Wales

Obwohl im Opfer-Kodex der Begriff „Opfer“ rechtlich festgelegt und definiert ist, ist das Opfer im Strafverfahren in England und Wales keine Prozesspartei.¹⁷⁹ Folglich sind im Opfer-Kodex auch keine Opferrechte bzgl. rechtlicher Vertretung während eines Gerichtsverfahrens definiert.¹⁸⁰ In England und Wales übernimmt der Staatsanwalt die Rolle des Anklägers, während das Opfer lediglich die Rolle eines Zeugen einnimmt. Dennoch gibt es in England und Wales **mehrere Opferunterstützungsdienste**, „die Opfern von Verbrechen Hilfe und Unterstützung anbieten, um ihnen bei der Bewältigung und Genesung nach einer Straftat zu helfen.“¹⁸¹ Alle Opfer haben Anspruch auf Informationen über die verfügbaren Opferunterstützungsdienste.¹⁸² Minderjährige Opfer - wie auch alle anderen Opfer - haben Anspruch auf eine Begutachtung ihrer besonderen Schutzbedürftigkeit und darauf, ob sie Unterstützung benötigen.¹⁸³

Grundsätzlich haben alle Opfer Zugang zu Opferunterstützungsdiensten, unabhängig davon, ob sie eine Beschwerde einreichen bzw. in welchem Stadium des Verfahrens sie sich befinden.¹⁸⁴ Dieser Anspruch besteht also auch nach Abschluss eines Gerichtsverfahrens. Wenn Opfer eine Straftat melden, ist der Dienstleistungserbringer (etwa die Polizei) verpflichtet, das Opfer innerhalb von zwei Arbeitstagen nach Meldung der Straftat an einen Opferunterstützungsdienst zu verweisen.¹⁸⁵ Das Opfer hat jedoch das Recht, den Dienstleistungserbringer zu bitten, ihre Informationen nicht an einen Opferunterstützungsdienst weiterzuleiten. Im Falle von minderjährigen Opfern - und auch anderen Opfern mit erweiterten Ansprüchen – muss der Dienstleistungserbringer sicherstellen, dass das Opfer mit der Weitergabe seiner Informationen an Opferunterstützungsdienste einverstanden ist.¹⁸⁶

Schließlich gibt es in England und Wales - ähnlich der Opfergebühr in Finnland - ein System, welches den verurteilten Straftäter dazu verpflichtet einen Beitrag zur Finanzierung von Opferunterstützungsdiensten zu leisten. Dieser „Opferzuschlag“ („*Victim Surcharge*“) muss bei der Urteilsverkündung von dem Gericht angeordnet werden¹⁸⁷ und an den *Victim and Witness General Fund* einbezahlt werden. Die Höhe des

¹⁷⁹ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 112.

¹⁸⁰ Ibid.

¹⁸¹ Kapitel 3, Part B 1.2 iVm Kapitel 2, Part A, 1.2 Opfer-Kodex (England und Wales).

¹⁸² Einleitung, 1.6 and Kapitel 3, Part B 1.2 iVm Kapitel 2, Part A, 1.4 Opfer-Kodex (England und Wales).

¹⁸³ Kapitel 3, Part B 1.2 iVm Kapitel 2, Part A, 1.1 Opfer-Kodex (England und Wales).

¹⁸⁴ Einleitung, 1.6. and 22 Opfer-Kodex (England und Wales).

¹⁸⁵ Ibid.

¹⁸⁶ Kapitel 1, 1.6 Opfer-Kodex (England und Wales).

¹⁸⁷ Sentencing Council, What is the victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of->



Opferzuschlags ist in einer online zugänglichen Tabelle eindeutig festgelegt und hängt von der Strafe sowie vom Alter und der Rechtspersönlichkeit des Täters ab.¹⁸⁸ Der Opferzuschlag wurde erstmals im April 2007 eingeführt und zuletzt im April 2016 geändert. Eine vollständige Liste der Opferunterstützungsdienste, welche vom *Victim and Witness General Fund* unterstützt werden sind ebenfalls online abrufbar.¹⁸⁹

[sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/](https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/)

¹⁸⁸ There exists a table specifically defining the amount that is be paid on Sentencing Council, What is the victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>

¹⁸⁹ Gov.uk, Victims and witnesses funding awards, <https://www.gov.uk/government/publications/victims-and-witnesses-funding-awards>



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5. Conclusio

Der vorliegende Bericht untersucht die nationalen Umsetzungsvorschriften der Opferschutz-RL in Finnland, Deutschland, Portugal, Spanien und England und Wales mit besonderen Schwerpunkt auf den Rechten von minderjährigen Opfern. Die folgende Conclusio stellt die Ergebnisse der einzelnen Länderstudien gegenüber. Sie zeigt die Errungenschaften und die Herausforderungen der Umsetzung der Opferschutz-RL in den untersuchten Mitgliedstaaten auf, und ermittelt vielversprechende Praktiken sowie erfolgversprechende legislative Lösungen. Da häufig eine Lücke zwischen Gesetzgebung und Praxis existiert sollte an dieser Stelle jedoch nochmals darauf hingewiesen werden, dass die vorliegende Studie lediglich die legislative Umsetzung untersucht hat. Es wurde nicht untersucht wie die Umsetzungsmaßnahmen in der Praxis implementiert wurden.

Die untersuchten Mitgliedstaaten haben die Umsetzung der Opferschutz-RL sehr unterschiedlich vorgenommen. In Spanien und Portugal wurden viele Teile der Opferschutz-RL wörtlich in die nationalen Gesetze übernommen. Sowohl der spanische als auch der portugiesische Gesetzgeber haben zudem ein neues Gesetz verabschiedet, welches eine fast vollständige Aufzählung aller Opferrechte in einem Dokument enthält: das portugiesische Opfer-Statut und das spanische Gesetz 4/2015 über die Stellung von Opfern von Straftaten. Die Verabschiedung dieser beiden Dokumente sollte den Zugang zu Opferrechten klarer und einfacher gestalten.

Auch in England und Wales existiert bereits seit einigen Jahren ein Opfer-Kodex, in welchem alle Opferrechte in einem Dokument festgehalten werden. Der Opfer-Kodex soll ein praktischer Leitfaden sein und ist in einfacher Sprache gehalten. Er soll es Strafverfolgungsbehörden ermöglichen, Opfer durch das Strafverfahren zu leiten und zu unterstützen. Es existieren zudem leicht lesbare Versionen des Opfer-Kodex, die Opferrechte auch für Kinder leicht zugänglich machen soll. Im Zuge des Umsetzungsprozesses fand in England und Wales ein umfassender Konsultations- und Evaluierungsprozess des bereits bestehenden Opfer-Kodex statt, der schriftliche Antworten von verschiedenen Interessensgruppen, öffentliche Konsultationsveranstaltungen sowie Umfragen mit Kindern und Jugendlichen über ihre Eindrücke über den bereits bestehenden Opfer-Kodex umfasste. Im Gegensatz hierzu gibt es im Rahmen des Gesetzgebungsprozesses in Deutschland zwar die Möglichkeit Zivilgesellschaft einzubinden, es wird jedoch kein bindendes Konsultationsverfahren im Gesetz vorgegeben. Die deutschen Opferschutz Bestimmungen sind sehr zersplittert, auf nationaler sowie auf föderaler Ebene.



Die Legaldefinition des Begriffs des Opfers in Art. 2 Abs. 1 der Opferschutz-RL sollte unter anderem das Ziel stärken, das Opfer in den Mittelpunkt des Strafrechtssystems zu stellen. Die Tatsache, dass unterschiedliche Begriffe zur Beschreibung der Person verwendet werden, die infolge einer Straftat einen Schaden erlitten hat, bedeutet jedoch nicht zwangsläufig, dass die nationalen Rechtsvorschriften nicht einen hohen Opferrechtsschutz gewährleisten. Während in Deutschland und in Finnland keine rechtliche Definition des Begriffs Opfer existiert, ist in beiden Ländern ein hoher Opferrechtsschutz gewährleistet. In Finnland wird beispielsweise zwar der Begriff „Geschädigter“ anstelle von Opfer verwendet. Letzterer umfasst auch eine natürliche Person, die durch eine Straftat gefährdet bzw. beleidigt worden ist – und geht somit über die Definition der Opferschutz-RL hinaus. Geschädigten Parteien wird im Rahmen des Ermittlungsverfahrens und Gerichtsprozesses eine große Anzahl von Rechten zugesichert. Im Gegensatz hierzu enthält der Opfer-Kodex in England und Wales zwar eine rechtliche Definition des Begriffs Opfer, jedoch werden Opfer im Rahmen der Gerichtsverhandlung nicht als Prozesspartei angesehen. Ihnen kommt im Wesentlichen die Rolle eines Zeugen zu. Aus diesem Grund haben Opfer in England und Wales auch kein Recht auf rechtliche Vertretung im Gerichtsprozess.

In Bezug auf die rechtliche Umsetzung der individuellen Begutachtung zur Ermittlung besonderer Schutzbedürfnisse von Opfer iSd Art. 22 VD traten in allen Mitgliedstaaten Komplikationen auf, insbesondere in Bezug auf die praktische Umsetzung der Vorschrift: Während in den meisten untersuchten Rechtsvorschriften festgelegt ist, dass eine individuelle Begutachtung beim ersten Kontakt mit einer zuständigen Behörde erfolgen sollte, bleibt meist unklar wer diese zuständige Behörde ist bzw. wer qualifiziert ist die Begutachtung durchzuführen. Während alle untersuchten Mitgliedstaaten neue Bestimmungen zur Umsetzung von Art. 22 VD getroffen haben, bleibt diese Regelung in allen Mitgliedstaaten die am meisten kritisierte und debattierte. Eine vielversprechende Praxis findet sich im Opfer-Kodex in England und Wales, der explizit klarstellt wer für die individuelle Begutachtung zuständig ist. Auch die spanische Regelung, welche vorsieht, dass Opferhilfe-Büros – bestehend aus interdisziplinären Teams von Richtern, Psychologen und Sozialarbeiterinnen – dafür zuständig sind die individuelle Begutachtung durchzuführen um die besonderen Schutzbedürfnisse zu ermitteln, sticht als vielversprechende Maßnahme hervor.

Die vorliegende Studie zeigt, dass die meisten besonderen Schutzmaßnahmen zur Gewährleistung des Schutzanspruchs der Opfer im Strafverfahren iSd Art. 23-24 VD bereits vor dem Umsetzungsprozess in den meisten untersuchten Mitgliedstaaten bestanden. Zudem legt die Studie dar, dass der Umsetzungsprozess



dennoch zu mehreren Änderungen der nationalen Gesetzgebung führte: Zusätzliche Rechte wurden festgelegt (z.B. Finnland), bereits bestehende Rechte wurde auf eine größere Gruppe von Anspruchsberechtigten ausgeweitet (z.B. Finnland, Portugal), sowie eine Systematisierung der Rechte wurde vorgenommen (z.B. Portugal, Spanien).

Darüber hinaus skizziert die Studie mehrere vielversprechende Praktiken in Bezug auf Art. 23-24 VD: Zum Beispiel gibt es in England und Wales einen Leitfaden „Bester Beweis im Strafverfahren“, der – obwohl er kein durchsetzbarer Verhaltenskodex ist – eine nützliche Auflistung von guten Praktiken bei der Befragung von Zeugen beinhaltet. Darüber hinaus sieht der Opfer-Kodex die Möglichkeit vor, einen registrierten Vermittler zu bestellen, der vulnerablen Opfern hilft vor Gericht und bei der Polizei auszusagen. Wenn ein minderjähriges Opfer in einer vorgerichtlichen Einvernahme befragt wird, hilft der Vermittler dabei, Grundregeln für die Einvernahme festzulegen, die während der Anhörung aufrechterhalten werden müssen. Eine weitere vielversprechende Praxis in England und Wales ist die Möglichkeit, dass Opfer vor dem Verhandlungstermin das Gericht besuchen können, um sich mit dem Gebäude und dem Gericht vertraut zu machen. Letztlich ist auch das einjährige interdisziplinäre Programm für Polizei- und Gesundheitsfachkräfte zu nennen, welches Fähigkeiten und Kompetenzen im Bereich Einvernahme von minderjährigen Opfern vermittelt.

Zuletzt werden in Kapitel 4.4 die entsprechenden nationalen Bestimmungen in Bezug auf das Recht auf Zugang zu und Unterstützung durch Opferunterstützungsdienste iSd Art. 8-9 VD beschrieben. Insgesamt zeigt die vorliegende Untersuchung, dass es in den ausgewählten Mitgliedstaaten drei Arten von persönlicher Unterstützung während des Gerichtsverfahrens gibt, während nicht alle der folgenden Dienste in jedem untersuchten Mitgliedstaat verfügbar sind: juristische Prozessbegleitung; Verfahrenshilfe, sowie psychosoziale Prozessbegleitung. Da in England und Wales das Opfer keine Prozesspartei ist, kommen ihm auch kein Recht auf rechtliche Vertretung im Gerichtsverfahren zu.

Eine vielversprechende Praxis bzgl. des Zugangs zu und der Unterstützung von Opferunterstützungsdiensten findet sich beispielsweise in Finnland. Hier wird ein verurteilter Täter dazu verpflichtet zusätzlich zu seiner Strafe eine „Opfergebühr“ zu zahlen, welche Opferschutzdiensten zu Gute kommen.¹⁹⁰ Eine weitere vielversprechende Praxis ist das Recht auf psychosoziale Prozessbegleitung, welche im Zuge des Umsetzungsprozesses der Opferschutz-RL auch in die deutsche Strafprozessordnung

¹⁹⁰ Eine ähnliche Regelung existiert in England und Wales.



Eingang gefunden hat. Gemeinsam mit Portugal und Finnland bestehen nun also in drei der fünf untersuchten Mitgliedstaaten Regelungen zu psychosozialen Prozessbegleitung. Schließlich wurden die interdisziplinären Opferhilfe-Büros in Spanien in einer kürzlich erschienenen Studie von der Agentur der Europäischen Union für Grundrechte (FRA) als vielversprechende Praxis genannt. Opferhilfe-Büros bieten eine große Anzahl von Diensten an, nehmen die individuelle Begutachtung zur Ermittlung besonderer Schutzbedürfnisse vor und koordinieren andere Opferunterstützungsdienste. Um das Opferschutz-System in Spanien konstant zu verbessern, sieht das spanische Gesetz zudem vor, dass die Funktion der Opferhilfe-Institutionen, -mechanismen sowie -garantien jährlich vom spanischen Justizministerium evaluiert werden sollen.

Die Opferschutz-RL hat in den untersuchten Mitgliedstaaten zu einigen Errungenschaften geführt. Während einige Bestimmungen bereits in den nationalen Rechtsvorschriften enthalten waren, wurde durch den Umsetzungsprozess Raum geschaffen um die bestehenden Regelungen zu überprüfen und zu überarbeiten. Obwohl die legislativen Lösungen für die Umsetzung der Opferschutz-RL in den untersuchten Mitgliedstaaten ohne Zweifel im Zusammenhang mit den bestehenden Rechtsvorschriften und nationalen Rechtssystemen stehen, empfiehlt die vorliegende Studie, dass dennoch Raum für gegenseitiges Lernen zwischen den Mitgliedstaaten besteht. Insbesondere konnte festgestellt werden, dass eine der größten Schwierigkeiten bei den Umsetzungsprozessen die Kluft zwischen Gesetzgebung und Praxis ist. Ein praktischer Ansatz für die Überarbeitung und Ausarbeitung von Rechtsvorschriften – einschließlich einem breiten Konsultationsprozess – wird sehr wahrscheinlich zu vielversprechenden Lösungen führen, die der Praxis standhalten.



Literaturverzeichnis

APAV – Associação Portuguesa de Apoio à Vítima, Developing Directive – compatible practices for the identification, assessment and referral of victims: Portugal Practices Report.

APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016.

Assembleia da República (Portugal), Parliament, <http://www.en.parlamento.pt/Parliament/index.html> (zuletzt aufgerufen: 25.04.2018).

Assembleia da República (Portugal), Processo Legislativo Comum, <http://www.parlamento.pt/Parlamento/paginas/plc.aspx> (zuletzt aufgerufen: 25.04.2018).

BMJV Deutschland, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.mietpreisbremse.bund.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (zuletzt aufgerufen: 25.04.2018).

BMJV Deutschland, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/BerichtBundLaender_AG.pdf?__blob=publicationFile&v=2 (zuletzt aufgerufen: 25.04.2018).

Bpb, Wie ein Gesetz entsteht, <http://www.bpb.de/politik/grundfragen/24-deutschland/40463/wie-ein-gesetz-entsteht> (zuletzt aufgerufen: 25.04.2018).

Bundesministerium der Justiz und für Verbraucherschutz, Opferhilfe und Opferschutz im Strafverfahren Deutschland, 16.11.2017, https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (zuletzt aufgerufen: 25.04.2018).

Bundesministerium für Familie, Senioren, Frauen und Jugend Deutschland, Bundeskinderschutzgesetz, <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/bundeskinderschutzgesetz/das-bundeskinderschutzgesetz/86268> (zuletzt aufgerufen: 25.04.2018).

Bundesministerium für Inneres Deutschland, Gesetzgebungsverfahren, <https://www.bmi.bund.de/DE/themen/verfassung/gesetzgebung/gesetzgebungsverfahren/gesetzgebungsverfahren-node.html> (zuletzt aufgerufen: 25.04.2018).

Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksache 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (zuletzt aufgerufen: 25.04.2018).

Bundesrat, Gesetzgebungsverfahren, https://www.bundesrat.de/DE/aufgaben/gesetzgebung/verfahren/verfahren.html;jsessionid=3CA8BC90B2257E80D96151207647DF27.2_cid391?nn=4353668#doc4353670bodyText2 (zuletzt aufgerufen: 25.04.2018).

Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (zuletzt aufgerufen: 25.04.2018).



Constitution of the Portuguese Republic,

<http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf> (zuletzt aufgerufen: 25.04.2018).

Decreto do Presidente da República n.º 101/2015 - Diário da República n.º 173/2015, Série I de 2015-09-04/70186153, Assembleia da República, Lei n.º 130/2015, Procede à vigésima terceira alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001, <https://dre.pt/application/file/70186153> (zuletzt aufgerufen: 25.04.2018).

DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, December 2017.

EUR-LEX, National transposition measures communicated by the Member States concerning: Directive 2012/29/EU, <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029> (zuletzt aufgerufen: 25.04.2018).

European Commission, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2013

European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States, 2015.

European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Luxembourg), 2014

FINLEX, Act on Victim Charges, 22.5.2015/669, <https://www.finlex.fi/fi/laki/ajantasa/2015/20150669> (Finnisch) (zuletzt aufgerufen: 25.04.2018).

FINLEX, HE 293/2014,

<https://finlex.fi/fi/esitykset/he/2014/20140293?search%5Btype%5D=pika&search%5Bpika%5D=He%20293%2F2014> (Finnisch) (zuletzt aufgerufen: 25.04.2018).

FINLEY, HE 66/2015, <https://finlex.fi/fi/esitykset/he/2015/20150066> (Finnisch) (zuletzt aufgerufen: 25.04.2018).

Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/> (zuletzt aufgerufen: 25.04.2018).

FRANET, Victim Support Services in the EU: An overview and assessment of victims’ rights in practice: Germany, 2014.

Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren vom 21. Dezember 2015 (BGBl. I S. 2525, 2529), (PsychPbG),

https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (zuletzt aufgerufen: 25.04.2018).



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Gov.uk, Victims and witnesses funding awards, <https://www.gov.uk/government/publications/victims-and-witnesses-funding-awards> (zuletzt aufgerufen: 25.04.2018).

Info Vitima, Psychological Supporter, http://infovitimas.pt/pt/004_quem/paginas/004_007.html (portugiesisch) (zuletzt aufgerufen: 25.04.2018).

Info Vitimas, lawyer of the victim, http://infovitimas.pt/pt/004_quem/paginas/004_006.html (portugiesisch) (zuletzt aufgerufen: 25.04.2018).

IVOR, Finland: Developments on the implementation of victim assistance mechanisms.

IVOR, United Kingdom: Development on the implementation of victim assistance and mechanisms.

Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017.

Law on Access to Law and to Courts (Portugal), Law no. 34/2004 of July 29 amended by Law no. 47/2007, of August 28, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=80&tabela=leis&so_miolo (portugiesisch) (zuletzt aufgerufen: 25.04.2018).

Löffelmann, Drittes Opferrechtsreformgesetz – Ausgabe 11/2014, 22.11.2014, <http://www.recht-politik.de/drittes-opferrechtsreformgesetz/> (zuletzt aufgerufen: 25.04.2018).

Maizener ed. al., EVVI (Evaluation of VICTims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf (zuletzt aufgerufen: 25.04.2018).

Ministerio de Justicia, Gesetzes 4/2015 über die Stellung von Opfern von Straftaten (Spanien), <https://rm.coe.int/168070ac7f> (zuletzt aufgerufen: 25.04.2018).

Ministry of Justice Finland, Act on the Publicity of Court Proceedings in General Courts, 370/2007 amendments to 742/2015 included, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjQ9unn4MjZAhVMYaQKHTmUB14QFgggtMAA&url=https%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F2007%2Fen20070370.pdf&usg=AOvVaw3A34-Ki7L-xk8YksYr1E0V> (zuletzt aufgerufen: 25.04.2018).

Ministry of Justice Finland, Code of Judicial Procedure, 4/1734, amendments up to 732/2015 included, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiHx5KJ3MjZAhUBLeWKhfZoD60QFgggtMAA&url=http%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F1734%2Fen17340004.pdf&usg=AOvVaw0-PJLjKrSH9U01qD0yrl4B> (zuletzt aufgerufen: 25.04.2018).

Ministry of Justice Finland, Criminal Investigation Act (805/2011; amendments to 736/2015 included), Unofficial Translation, <https://www.finlex.fi/en/laki/kaannokset/2011/en20110805.pdf> (zuletzt aufgerufen: 25.04.2018).

Ministry of Justice Finland, Rights of crime victim, <http://oikeusministerio.fi/en/crime-victims> (zuletzt aufgerufen: 25.04.2018).

Ministry of Justice UK, Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures, March 2011, https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf (zuletzt aufgerufen: 25.04.2018).



Ministry of Justice UK, Code of Practice for Victims of Crime, October 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (zuletzt aufgerufen: 25.04.2018).

Ministry of Justice UK, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 March 2013, published on 29 October 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime/results/improving-the-code-of-practice-for-victims-of-crime-consultation-response.pdf> (zuletzt aufgerufen: 25.04.2018).

Ministry of Justice UK, Results Updated 31 Oct 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime> (zuletzt aufgerufen: 25.04.2018).

Ministry of Justice UK, the support you should get if you are a victim of crime, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf (zuletzt aufgerufen: 25.04.2018).

Ministry of Justice UK, The Victims' Code: u18s: Young victims of crime – Understanding the support you should get, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267982/u18-victims-code-leaflet.pdf (zuletzt aufgerufen: 25.04.2018).

Ministry of Justice UK, Victims of crime: Understanding the support you can expect, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341367/adult-victims-code-leaflet.pdf (zuletzt aufgerufen: 25.04.2018).

Official Journal of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> (zuletzt aufgerufen: 25.04.2018).

Official Journal of the European Union, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing the Council Framework Decision 2004/68/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN> (zuletzt aufgerufen: 25.04.2018).

Official Journal of the European Union, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN> (zuletzt aufgerufen: 25.04.2018).

Oikeus, Attorney and support person for a victim of crime, <https://oikeus.fi/en/index/esitteet/oikeusapu/rikoksenuhrivoisaadaavustajanjatukihenkilon.html> (zuletzt aufgerufen: 25.04.2018).

Oikeus, If you Become a Victim of a Crime: Victim protection: <https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html> (zuletzt aufgerufen: 25.04.2018).

Oikeus, Information on Legal Aid,



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<https://oikeus.fi/en/index/esitteet/oikeusapu/mitaoikeusapuhakijallemaksaa.html> (zuletzt aufgerufen: 25.04.2018).

Oikeus, Legal aid, <https://oikeus.fi/oikeusapu/en/index.html> (zuletzt aufgerufen: 25.04.2018).

Oikeus, Means-testing,

<https://oikeus.fi/en/index/esitteet/oikeusapu/millatuloilla-oikeusapua-myonnetaan-jamitkamenothuomioidaan.html> (zuletzt aufgerufen: 25.04.2018).

Opferstatut (Portugal), https://apav.pt/apav_v3/images/pdf/estatuto_da_vitima.pdf (portugiesisch) (zuletzt aufgerufen: 25.04.2018).

portugiesische Strafprozessordnung, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (portugiesisch) (zuletzt aufgerufen: 25.04.2018).

RIKU – Riksuripavystys: victim support Finland,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/> (zuletzt aufgerufen: 25.04.2018).

RIKU, Victim Support Finland, <https://www.riku.fi/en/victim+support+finland/> (zuletzt aufgerufen: 25.04.2018).

RIKU, What is a victim charge?,

<https://www.riku.fi/en/frequently+asked+questions/what+is+a+victim+charge/> (zuletzt aufgerufen: 25.04.2018).

RIKU, What is the victims' directive?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/> (zuletzt aufgerufen: 25.04.2018).

Savonen, Developing Directive-Compatible Practices for the identification, assessment and referral of victims: National Report – Finland, 2017, 6; and Ministry of Justice Finland, Rights of a Crime Victim, 1.3.2017.

Sentencing Council, What is the victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/> (zuletzt aufgerufen: 25.04.2018).

Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings

Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary

Vânia Costa Ramos, Legal Aid for Victims in Criminal Proceedings in Portugal, in Wilinski, Karlik (eds.), Improving Protection of Victims' Rights: Access to Legal Aid, Adam Mickiewicz University, Poznan, 2014, 192.

Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017.



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

JUSTICE PROGRAMME

GA No. 760270

**PROTETT@ - Rafforzare la protezione dei
minorenni vittime di reato**

**(Titolo originale: Enhancing PROtection of
Children – vicTims of crime
E-PROTECT)**

WP3: Ricerca e raccolta dati

**D3.6 pan-European Best Practices Report
on Victims' Directive transposition**

Leader WP3: VICESSE



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Breve sintesi

Il presente rapporto esamina il recepimento legislativo, a livello nazionale, della Direttiva Vittime (Direttiva 2012/29/UE) all'interno di cinque Stati Membri (SM) diversi dai paesi partner del Progetto E-



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PROTECT – Finlandia, Germania, Portogallo, Spagna, e Inghilterra e Galles – con un focus specifico sui diritti garantiti ai minorenni vittime di reato. L’obiettivo è conoscere l’implementazione giuridica della Direttiva Vittime ed identificare le migliori prassi, nonché le migliori soluzioni legislative. In particolare, tale rapporto valuta i processi di trasposizione della Direttiva Vittime negli SM selezionati ed il recepimento legislativo degli articoli 8-9 e 22-24 della stessa. La presente ricerca è integrata da un rapporto aggiuntivo che analizza l’implementazione pratica, negli SM selezionati, della valutazione individuale delle vittime al fine di identificarne gli specifici bisogni di protezione.¹

La ricerca è stata condotta nell’ambito del progetto E-PROTECT - ‘Enhancing PROtection of Children – vicTims of crime,’ – (PROTECT@ - Rafforzare la protezione dei minorenni vittime di reato) che mira a rinforzare l’applicazione della Direttiva Vittime, in particolare nei casi di minorenni vittime di reato. Il progetto consiste di diverse fasi, che includono attività di ricerca e interazione diretta con operatori nel settore dei diritti dell’infanzia. Nelle successive fasi del progetto, tra le altre attività, verrà realizzata una piattaforma sui diritti dell’infanzia dove gli operatori potranno reperire materiali informativi rilevanti e saranno condotti una serie di seminari ed eventi virtuali con operatori ed esperti nel campo del supporto ai minorenni vittime.

I risultati della ricerca mostrano che i processi di recepimento della Direttiva Vittime negli SM selezionati sono stati diversi. Mentre Spagna e Portogallo hanno recepito parola per parola molte parti della Direttiva Vittime, il Victims’ Code in Inghilterra e Galles mira ad essere una guida pratica diretta alle vittime e ai fornitori di servizi. In generale, l’istituzione di un singolo documento che comprenda tutti i diritti delle vittime sembra rendere tali diritti più accessibili e chiari.

Inoltre, la definizione legale di vittima varia nei cinque SM analizzati: in Germania e Finlandia non è reperibile nessuna definizione scritta di vittima all’interno della legislazione nazionale. Ciononostante, il fatto che siano utilizzati termini diversi per descrivere la persona che ha subito un danno come risultato di un crimine, non significa necessariamente che le legislazioni nazionali non forniscano la stessa quantità di diritti.

La presente ricerca dimostra che sono emerse difficoltà comuni in tutti gli SM relative all’implementazione pratica della valutazione individuale delle vittime per identificarne le specifiche

¹ Rapporto transnazionale sulle buone prassi relative alle metodologie di valutazione individuale dei minorenni vittime di reato, effettuato nell’ambito del progetto E-PROTECT.



esigenze di protezione. Le problematiche includono l'identificazione delle autorità responsabili di condurre la valutazione e le disposizioni che regolano la procedura. Inoltre, mentre la maggior parte delle procedure speciali per garantire i diritti delle vittime esistevano già prima del processo di recepimento della direttiva, nella maggioranza degli SM inclusi in questa ricerca, il recepimento della Direttiva Vittime ha comportato diversi cambiamenti alle legislazioni nazionali: ad esempio l'ampliamento dei diritti, l'estensione del gruppo di beneficiari di diritti già esistenti e la revisione di alcune disposizioni già esistenti.

Mentre le soluzioni legislative scelte da ogni SM vanno chiaramente di pari passo con il particolare contesto del proprio sistema legale, la presente ricerca suggerisce che esiste, tuttavia, uno spazio comune di reciproco apprendimento tra gli SM. Tra le altre, sono state identificate le seguenti buone prassi:

- In Finlandia, esiste l'onere pecuniario per la vittima, ossia una somma che la persona giudicata colpevole deve pagare per finanziare i servizi di supporto alle vittime.
- Il diritto al supporto psico-sociale è stato recentemente introdotto nella legislazione tedesca. Disposizioni simili esistevano precedentemente in Portogallo e Finlandia.
- Il Portogallo e la Spagna hanno utilizzato il processo di recepimento per sistematizzare i diritti garantiti alle vittime di reato e hanno introdotto un singolo documento che li contiene tutti. Anche in Inghilterra e Galles il Victims' Code contiene tutti i diritti delle vittime in un singolo documento.
- In Spagna, gli Uffici di Supporto alle Vittime offrono un'ampia gamma di servizi; svolgono la valutazione individuale delle vittime per identificare i loro specifici bisogni di protezione e coordinano altri servizi di supporto alle vittime. I loro team sono multidisciplinari e includono giudici, psicologi e assistenti sociali. Il funzionamento delle istituzioni per il supporto delle vittime, i loro meccanismi e le garanzie offerte vengono valutati annualmente dal Ministero della Giustizia spagnolo.
- In Inghilterra e Galles, un intermediario registrato può aiutare le vittime vulnerabili (inclusi i minorenni) a testimoniare in tribunale e avanti la polizia. Durante l'audizione precedente al processo, l'intermediario aiuta a stabilire regole base per l'interrogatorio che dovranno essere mantenute durante lo stesso. Inoltre, le vittime possono visitare il tribunale prima del processo per prendere familiarità con l'edificio e con lo stesso.



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Acronimi

E-PROTECT	‘Enhancing PROtection of Children – vicTims of crime’
FCIA	Legge sull’Indagine Penale Finlandese
FCJP	Codice di Procedura Penale Finlandese
GCCP	Codice di Procedura Penale Tedesco
SM	Stati Membri
PCCP	Codice di Procedura Penale Portoghese
PVS	Statuto Portoghese della Vittima
RIKU	Victim Support Finland –Supporto alle vittime Finlandia
DV	Direttiva Vittime - Direttiva 2012/29/UE
DP Vittima	Dichiarazione Personale della Vittima
Codice Vittime	Codice delle Pratiche per le vittime di reato



1. Introduzione

Il presente documento analizza la legislazione nazionale di recepimento della Direttiva 2012/29/UE (qui di seguito Direttiva Vittime o DV)² di cinque Stati Membri (SM) – ossia Finlandia, Germania, Portogallo, Spagna e Inghilterra e Galles – con un focus particolare sui diritti spettanti alle vittime di reato. Lo scopo del rapporto è conoscere l’implementazione giuridica della Direttiva Vittime ed identificare le migliori prassi, nonché le migliori soluzioni legislative. In ogni caso, il presente rapporto non analizza lo stato di implementazione delle legislazioni di recepimento della Direttiva Vittime negli SM selezionati a livello pratico.³ Tale rapporto è stato elaborato nell’ambito del progetto E-PROTECT - ‘Enhancing PROtection of Children – vicTims of crime,’ – (PROTETT@ - Rafforzare la protezione dei minorenni vittime di reato) volto a rinforzare l’applicazione della Direttiva Vittime, in particolare nei confronti dei minorenni vittime di reato.

La Direttiva Vittime si inserisce in un contesto prioritario più ampio della Commissione Europea finalizzato a migliorare i diritti, la protezione, il supporto e la partecipazione delle vittime nei procedimenti penali, così come stabilito nel pacchetto orizzontale di misure lanciate dalla Commissione nel mese di maggio 2011.⁴ Uno degli scopi principali della Direttiva Vittime è quello di assicurare che i bisogni delle vittime siano considerati su base individuale. Essa contiene diverse misure speciali relative alla protezione dei minorenni vittime di reato e prevede un approccio adeguato alla minore età, in cui il superiore interesse dei minorenni vittime deve essere sempre tenuto in primaria considerazione durante il loro coinvolgimento nei procedimenti penali.⁵

Il progetto PROTETT@ si compone di diverse fasi, che includono la ricerca e l’interazione attiva con operatori nel settore dei diritti dell’infanzia. Inizialmente, si è valutata la trasposizione legislativa della

² Gazzetta Ufficiale dell’Unione Europea, Direttiva 2012/29/UE del Parlamento Europeo e del Consiglio del 25 ottobre 2012 che istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato e che sostituisce la decisione quadro 2001/220/GAI, <https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32012L0029&from=en>

³ Un rapporto aggiuntivo – D.13 Studio sulle metodologie di valutazione individuale dei minorenni vittime di reato in altri Stati Membri – ha lo scopo di valutare l’implementazione pratica delle metodologie di valutazione individuale dei minorenni vittime di reato negli stessi Stati Membri.

⁴ European Commission, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU **del Parlamento Europeo e del Consiglio del 25 ottobre 2012 che istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato e che sostituisce la decisione quadro 2001/220/GAI**, 2013 (qui di seguito: Commissione Europea, Linee Guida per la Direttiva Vittime, 2013).

⁵ Ibid.



DV nei cinque paesi partner del progetto⁶. Il presente rapporto completa queste analisi, valutando il livello di recepimento della direttiva in cinque Stati Membri aggiuntivi al fine di raccogliere maggiori informazioni, a livello pan-europeo, sul recepimento della Direttiva. Questi sei rapporti servono come fondamento per le successive fasi del progetto PROTETT@, tra cui la messa in atto di una piattaforma online sui diritti dei minorenni vittime e la conduzione di seminari ed eventi virtuali con operatori ed esperti nel settore del supporto ai minorenni vittime.

Il rapporto è così strutturato: il secondo capitolo descrive la metodologia, come sono stati identificati gli SM da analizzare, come sono stati selezionati gli articoli da esaminare e la metodologia seguita per l'analisi giuridica. Il terzo capitolo comprende un esame del processo di recepimento della Direttiva Vittime negli SM selezionati, considerando la tempestività di recepimento e il processo legislativo, nonché il coinvolgimento delle parti interessate nel processo di elaborazione.

Successivamente, il quarto capitolo contiene il cuore del presente rapporto: l'analisi del recepimento degli articoli selezionati della Direttiva Vittime, ossia: la definizione legale di minorenni vittime di reato (art. 2.1 DV), la valutazione individuale delle vittime per individuarne le specifiche esigenze di protezione (art. 22 DV), il diritto alla protezione dei minorenni vittime di reato nel corso del procedimento penale (art. 23-24 DV), il diritto di accesso ai servizi di assistenza alle vittime (art. 8-9 DV). Ognuna delle sezioni sopra menzionate è suddivisa in sotto-capitoli, che valutano in maniera individuale la rispettiva legislazione di recepimento in ciascuno degli SM selezionati.

Infine, il quinto capitolo contiene la conclusione del rapporto. Esso individua i miglioramenti e i risultati ottenuti dai processi di trasposizione nei rispettivi SM e mira a identificare le migliori soluzioni legislative sulla base dei risultati degli studi sui singoli paesi.

2. Metodologia

Il presente rapporto integra le cinque analisi dettagliate della legislazione di recepimento della Direttiva Vittime nei cinque SM parte di questo progetto, ossia Austria, Bulgaria, Italia, Romania e Grecia. Al fine di raccogliere maggiori informazioni sul recepimento della DV a livello pan-europeo sono stati usati i seguenti criteri di selezione per identificare gli SM esaminati in questo rapporto:

⁶ Austria, Bulgaria, Italia, Romania e Grecia.



- **Ambito geografico e culturale**
- **Rilevanza** dello SM come esempio, in particolare, 1) specificità della legislazione nazionale; 2) approcci a soluzioni legislative per il recepimento della DV
- **Buone prassi in atto**
- **Disponibilità** di fonti: letteratura, documenti normativi e altri materiali

La struttura del rapporto si basa sulle precedenti analisi condotte nell'ambito di PROTETT@ al fine di permettere una comparazione tra le differenti soluzioni legislative. Analogamente, gli stessi articoli analizzati nei precedenti rapporti sono stati esaminati nell'ambito del presente rapporto. E' stato condotto un confronto tra le disposizioni della Direttiva Vittime e le rispettive legislazioni, utilizzando le Linee Guida del Dipartimento Generale Giustizia⁷ quale punto di riferimento. Infine, sono state raccolte informazioni aggiuntive attraverso ricerche documentali.

Sebbene un'analisi sullo stato di implementazione della legislazione di recepimento a livello pratico, sarebbe potuta essere vantaggiosa - in particolare relativamente alla ricerca delle migliori soluzioni legislative - tale analisi avrebbe ampliato troppo lo scopo di questa ricerca. Al fine di superare questo limite, le informazioni sono state raccolte attraverso diversi rapporti di ricerca che utilizzano metodologie di ricerca primaria.⁸

⁷ DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

⁸ Infatti, esistono diversi rapporti di ricerca che si focalizzano sulla protezione dei minorenni vittime di reato. Tra gli altri: APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016; EPRS – European Parliamentary Research Service, The Victims' rights Directive 2012/29/EU: European Implementation Assessment, December 2017; European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015; European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Luxembourg), 2014; FRANET, Victim Support Services in the EU: An overview and assessment of victims' rights in practice: Germany, 2014; Maizener et. al., EVVI (Evaluation of Victims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf; Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings.



3. Il processo di recepimento della Direttiva 2012/29/UE negli Stati Membri selezionati

Il capitolo qui di seguito fornirà una breve elaborazione dei processi di trasposizione della Direttiva Vittime negli SM selezionati: quali sono state le sfide? Il recepimento è stato compiuto nei tempi – ovvero, le legislazioni nazionali sono entrate in vigore entro il 16 novembre 2016 come stabilito dall’articolo 27 DV? La Commissione ha avviato una procedura di infrazione?

A seguire, ci si concentrerà sul processo legislativo, in particolare sul coinvolgimento delle parti interessate nel processo di stesura della legge e verrà identificata la legislazione nazionale di recepimento della DV.

3.1. Finlandia

Il processo legislativo parlamentare finlandese⁹ è regolato dall’Ordine di Lavoro del Parlamento Finlandese (*Riksdagens arbetsordning*). Per le leggi ordinarie, esso prevede che la maggior parte del lavoro legislativo sia condotto dai ministeri e dai comitati. Dopo che una proposta è stata introdotta in Parlamento¹⁰ essa viene inizialmente discussa dal rispettivo comitato, al quale è permesso consultare esperti, prima che la proposta venga presentata in Parlamento. Successivamente la legge viene sottoposta a dibattito oppure il Parlamento procede direttamente alla votazione.¹¹

Nel caso del processo di recepimento della Direttiva Vittime, due gruppi di lavoro hanno preparato l’atto legislativo. Inizialmente, il Ministero della Giustizia ha creato un gruppo di lavoro composto dai rappresentanti dei vari Ministeri, dell’Ufficio dei Pubblici Ministeri, dell’Ordine degli Avvocati Finlandese, e del Supporto alla Vittima Finlandia (RIKU)¹².¹³ Questo gruppo di lavoro aveva il compito di

⁹ Si veda Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/> per una spiegazione dettagliata sui diversi passaggi del processo legislativo finlandese.

¹⁰ Le proposte possono essere introdotte dal governo, da singoli parlamentari o attraverso iniziative cittadine con almeno 50.000 firme raccolte.

¹¹ Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/>

¹² Supporto alla Vittima Finlandia (RIKU) è un’organizzazione che deriva e si mantiene in base ad un accordo di cooperazione tra la Croce Rossa Finlandese, la Federazione delle Case Madri-Bambino, l’Associazione Finlandese per la Salute Mentale, la Lega Mannerheim League per il Benessere del Minorenne, la Federazione Finlandese delle Case Rifugio e il Consiglio Nazionale della Chiesa. Le operazioni sono coordinate a livello nazionale dall’Associazione Finlandese per la Salute Mentale. Esso opera in tutta la Finlandia, in particolare per migliorare la posizione delle vittime di reato e dei loro familiari. Per maggiori informazioni, si può visitare la pagina web di RIKU, Supporto alle Vittime Finlandia, <https://www.riku.fi/en/victim+support+finland/>

¹³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings.



valutare quali emendamenti legislativi e successive azioni fossero necessarie per implementare la Direttiva Vittime. Dopo aver elaborato il rapporto, autorità, imprese ed esperti hanno avuto la possibilità di presentare dichiarazioni sugli emendamenti suggeriti. La maggior parte di queste dichiarazioni hanno supportato tali emendamenti.

Secondariamente, è stata creata una commissione aggiuntiva – la Commissione sulle politiche per la vittima – per preparare l’implementazione degli articoli 8 e 9 della Direttiva Vittime, nello specifico, per stabilire *“una strategia nazionale per l’organizzazione dei servizi di supporto alle vittime e il finanziamento di tali servizi.”*¹⁴ Come nel caso del gruppo di lavoro, la commissione era composta da diversi funzionari e rappresentanti di ONG, quali Supporto alla Vittima Finlandia, la Federazione delle case e dei rifugi per madre e bambino e l’Associazione multiculturale delle donne Finlandia.

Più della metà degli articoli inclusi nella Direttiva Vittime esistevano già nella legislazione della Finlandia e non è stato quindi necessario recepirli, come per esempio le disposizioni specifiche relative alle esigenze specifiche dei minorenni citate all’articolo 24 della DV. Di conseguenza, solo gli articoli 4, 5, 6, 7, 8, 9, 12, 22 e 23 hanno richiesto azioni legislative.¹⁵ I cambiamenti necessari sono stati implementati attraverso la proposta di legge 66/2015,¹⁶ che ha recepito i cambiamenti richiesti nei diversi atti rilevanti per i procedimenti penali. Gli emendamenti sono entrati in vigore nel mese di marzo del 2016.¹⁷ I cambiamenti richiesti relativi agli articoli 8 e 9 della DV sono stati implementati attraverso la proposta di legge 293/2014¹⁸ ed entrati in vigore a dicembre 2016.

I cambiamenti più significati nella legislazione finlandese hanno interessato l’obbligo di informare la vittima sui propri diritti (Capitolo 4, Sezione 18, Legge sull’Indagine Penale Finlandese (FCIA)), le disposizioni che regolano la valutazione individuale (Capitolo 11, Sezione 9 FCIA) e l’indirizzamento ai servizi di supporto per le vittime (Capitolo 4, Sezione 10, FCIA)¹⁹.

¹⁴ Ibid., 13

¹⁵ Ibid.

¹⁶ FINLEY, HE 66/2015, <https://finlex.fi/fi/esitykset/he/2015/20150066> (in finlandese).

¹⁷ EUR-LEX ha menzionato 29 misure che sono state implementate per recepire la Direttiva Vittime nella legislazione finlandese. Si veda EUR-LEX, National transposition measures communicated by the Member States concerning: Directive 2012/29/EU, <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029>

¹⁸ FINLEX, HE 293/2014, <https://finlex.fi/fi/esitykset/he/2014/20140293?search%5Btype%5D=pika&search%5Bpika%5D=He%20293%2F2014> (in finlandese).

¹⁹ RIKU – Rikosuripavystys: Supporto alla vittima Finlandia, <https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>



3.2. Germania

In Germania, una proposta di legge può essere introdotta dal governo (*Bundesregierung*), dal consiglio federale (*Bundesrat*) o da almeno il 5% dei membri del parlamento (*Bundestag*) o da un gruppo parlamentare.²⁰ Prima che una proposta possa essere introdotta dal governo – che è la pratica più comune²¹ – la proposta deve essere inviata al consiglio federale per le dichiarazioni. Successivamente, la proposta viene introdotta in Parlamento insieme alla dichiarazione del consiglio federale e alla controdedichiarazione del governo. Qui, la legge viene discussa in tre letture, tra le quali le proposte vengono discusse all'interno di commissioni parlamentari (*Bundestagsausschüssen*). Mentre all'interno di queste ultime è permesso ascoltare esperti, la procedura legislativa tedesca non prevede per legge la partecipazione obbligatoria della società civile.²² Se non specificatamente invitate dalle rispettive commissioni parlamentari, le organizzazioni possono comunque intraprendere l'iniziativa di scrivere dichiarazioni critiche relative alle leggi proposte, come è stato fatto da diverse organizzazioni durante il processo di recepimento della Direttiva Vittime.²³

Non tutti i requisiti sanciti dalla Direttiva Vittime ricadono sotto la competenza della legge federale, alcuni sono di competenza degli stati federali. Per questo, vi sono diverse disposizioni che non è stato possibile implementare a livello nazionale.²⁴ In particolare, questo è avvenuto con le disposizioni sancite dagli articoli 8 e 9 (accesso e supporto da parte dei servizi di supporto alle vittime), 23 (il diritto alla protezione delle vittime con particolari esigenze di protezione durante i procedimenti penali) e 25 (formazione degli operatori).²⁵ Ciononostante, dato che la Germania aveva già approvato diverse leggi

²⁰ Art. 76 Abs.1 Grundgesetz.

²¹ Si veda la pagina web del Ministero dell'Interno Tedesco, procedura legislativa, <https://www.bmi.bund.de/DE/themen/verfassung/gesetzgebung/gesetzgebungsverfahren/gesetzgebungsverfahren-node.html>

²² Bundesrat, procedura legislativa, https://www.bundesrat.de/DE/aufgaben/gesetzgebung/verfahren/verfahren.html;jsessionid=3CA8BC90B2257E80D96151207647DF27.2_cid391?nn=4353668#doc4353670bodyText2 and bpb, Wie ein Gesetz entsteht, <http://www.bpb.de/politik/grundfragen/24-deutschland/40463/wie-ein-gesetz-entsteht> (tedesco)

²³ Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.mietpreisbremse.bund.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (tedesco).

²⁴ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 37.

²⁵ Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?blob=publicationFile&v=2 (tedesco)



incentrate sulla protezione e i diritti delle vittime nei procedimenti penali, non sono stati necessari molti cambiamenti per recepire la DV all'interno della legislazione tedesca. La maggior parte dei cambiamenti sono stati recepiti attraverso la “Legge per rafforzare i diritti delle vittime nei procedimenti penali, 3. Legge per una Riforma dei Diritti della Vittima” (*Gesetz zur Stärkung der Opferrechte im Strafverfahren – 3. Opferrechtsreformgesetz*),²⁶ che è entrata in vigore il 31 dicembre 2015. La maggior parte degli emendamenti sono stati recepiti nel Codice di Procedura Penale tedesco (*Strafprozessordnung*).

Il cambiamento più grande che si è verificato in Germania, quale risultato del processo di recepimento, è rappresentato dall'istituzione di un supporto psico-sociale (*psychosoziale Prozessbegleitung*), che conferisce alle vittime con esigenze specifiche di protezione la possibilità di ricevere supporto professionale prima, durante e dopo il processo penale. Inoltre, sono stati necessari alcuni cambiamenti in parti della procedura e relativamente al diritto ad essere informati.²⁷ Alcuni esperti ritengono, però, che la maggior parte dei cambiamenti difficilmente avrà effetto nella pratica.²⁸

3.3. Portogallo

In Portogallo una legge può essere proposta sia dai membri del parlamento sotto forma di progetti di legge (*projetos de lei*) che dal governo come proposta di legge (*propostas de lei*).^{29 30} Quando una legge viene ritenuta ammissibile da parte del Presidente dell'Assemblea della Repubblica, la proposta viene inviata ad un comitato specializzato per avere un'opinione. Successivamente, si tiene una votazione sui principi generali della proposta. Il voto finale viene espresso in plenaria. Infine, l'iniziativa deve essere firmata dal Presidente della Repubblica.³¹

²⁶ BMJV, Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.bmjb.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf;jsessionid=0EB396255BA84B364DB133AAFF6BBBCE.2_cid289?__blob=publicationFile&v=3

²⁷ Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.bmjb.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (tedesco).

²⁸ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, 8.

²⁹ Esiste anche la possibilità di un'iniziativa cittadina. Maggiori informazioni sono reperibili qui: Assembleia da República, Processo Legislativo Comum, <http://www.parlamento.pt/Parlamento/paginas/plc.aspx>

³⁰ Oltre al processo parlamentare in cui vengono approvate le leggi, in alcune aree il governo può approvare decreti-legge e le assemblee legislative possono approvare decreti legislativi.

³¹ Si veda Assembleia da República, Parliament, <http://www.en.parlamento.pt/Parliament/index.html>



La Direttiva Vittime è stata recepita in Portogallo attraverso la Legge n. 130/2015 del 4 settembre 2015³², che è entrata in vigore il 4 ottobre 2015 ed ha comportato diversi cambiamenti nel Codice di Procedura Penale Portoghese (PCCP).³³ Inoltre, è stato adottato un allegato – lo Statuto Portoghese della Vittima (PVS) (*“Estatuto da Vítima”*) - che stabilisce la salvaguardia dello status delle vittime vulnerabili conformemente alla Direttiva Vittime.³⁴ La maggior parte delle disposizioni sono state recepite testualmente dalla Direttiva Vittime.

Mentre molti dei requisiti stabiliti dalla Direttiva Vittime erano già presenti nella legislazione portoghese, la legge ha apportato cambiamenti con riferimento alle misure di prevenzione, rinforzando il diritto delle vittime ad essere informate e introducendo un nuovo sistema di risarcimento alle vittime di violenza domestica e di altri crimini violenti. Inoltre, nella legislazione portoghese, è stata introdotta una definizione legale di “vittima”.³⁵

3.4. Spagna

La Spagna rientra tra gli Stati Membri obbligati a recepire interamente la Direttiva Vittime entro l’inizio del mese di novembre del 2015. Dal 16 novembre 2015 agli Stati Membri è stato richiesto di comunicare alla Commissione i progressi legislativi relativi all’obbligo di recepimento della Direttiva. In base all’analisi dell’implementazione della Direttiva Vittime³⁶ elaborata dal Centro europeo per la ricerca parlamentare nel mese di dicembre 2017, la Spagna, come altri SM, ha trasposto la direttiva attraverso una singola legge, che emenda diverse altre disposizioni della normativa già esistente. I cambiamenti più rilevanti, ai fini del nostro rapporto, sono rappresentati dalle modifiche apportate al Codice di Procedura

³² Decreto do Presidente da República n.º 101/2015 - Diário da República n.º 173/2015, Série I de 2015-09-04/70186153, Assembleia da República, Lei n.º 130/2015, Procede à vigésima terceira alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001 disponibile su <https://dre.pt/application/file/70186153>

³³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 60-61.

³⁴ Statuto Portoghese della Vittima, https://apav.pt/apav_v3/images/pdf/estatuto_da_vitima.pdf (portoghese).

³⁵ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, 9.

³⁶ EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, dicembre 2017.



Penale Spagnolo (SCCP) e l’emanazione della Legge 4/2015 sulla Posizione delle Vittime di Reato (Legge 4/2015)^{37, 38}.

La Legge 4/2015 è dunque il principale strumento giuridico usato dal legislatore spagnolo per recepire la Direttiva.³⁹ Tale legge ha l’obiettivo di riportare la totalità dei diritti delle vittime in un’unica legge e ciò è stato possibile in adempimento all’obbligo di recepimento della Direttiva Vittime. Nonostante in Spagna esistesse già un quadro normativo che garantiva i diritti delle vittime⁴⁰, una ampia parte di queste leggi si focalizzava su determinati tipi di vittime e quindi non esisteva una legislazione unica applicabile a tutte le tipologie di vittime di reato. Di conseguenza, la Legge sulla Posizione delle Vittime di Reato è volta a considerare in modo generale i diritti delle vittime di reato, con una forte enfasi per le vittime con esigenze specifiche di protezione e per le vittime vulnerabili.

Come nel caso del Portogallo, il legislatore spagnolo ha recepito testualmente molte delle disposizioni della Direttiva Vittime. Inoltre, la struttura della legge è identica alla Direttiva Vittime.⁴¹ Tutti i diritti e le misure sancite nella Direttiva Vittime sono stati pienamente recepiti in Spagna. Inoltre, come la Germania, la Spagna è uno stato decentralizzato composto da diverse Comunità Autonome. Mentre le leggi descritte si applicano in tutte le Comunità Autonome, precedenti ricerche hanno mostrato che esistono differenze significative in alcune aree di competenza della Legge 4/2015, tra le quali vi rientra l’istituzione di uffici per l’assistenza alle vittime.⁴²

Il legislatore spagnolo ha puntato ad adottare una legge che facilitasse il più possibile le vittime ad esercitare e proteggere i propri diritti. A tal fine, vengono forniti informazioni e orientamento con riferimento a tali diritti. Inoltre, la legislazione mira ad evitare la vittimizzazione secondaria, che può essere causata, tra l’altro, da inutili formalità.

³⁷ Ministerio de Justicia, Legge 4/2015, del 27 aprile sulla Posizione delle Vittime di Reato, <https://rm.coe.int/168070ac7f>

³⁸ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 81.

³⁹ Ministerio de Justicia, Legge 4/2015, del 27 aprile sulla Posizione delle Vittime di Reato, <https://rm.coe.int/168070ac7f>

⁴⁰ Legge 35/1995 sul supporto e l’assistenza alle vittime di crimini violenti e di crimini contro la libertà sessuale (Spagna); Legge 1/1996 sulla protezione legale dei minorenni; Legge 1/2004 sulle misure comprensive di protezione contro la violenza basata sul genere (Spagna); e Legge 29/2011 sul riconoscimento e la protezione comprensiva delle vittime di terrorismo (Spagna).

⁴¹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 81.

⁴² Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, 10.



3.5. Inghilterra e Galles

Il Codice di Condotta per le Vittime di Reato (Codice Vittime)⁴³ è stato introdotto per la prima volta nel 2006 allo scopo di determinare i servizi che il sistema di giustizia penale doveva fornire alle vittime di reato in Inghilterra e Galles. La revisione del Codice è stata fatta, in parte, per dare risposta ad una consultazione interna che è avvenuta nel 2012 e che ha mostrato la necessità di aggiornare il Codice per poter riflettere i cambiamenti avvenuti nella pratica. Dall'altra parte, la revisione ha permesso il recepimento della Direttiva Vittime, parte della Direttiva sulla tratta di esseri umani⁴⁴ e della Direttiva sullo sfruttamento sessuale⁴⁵.

Precedentemente alla revisione del Codice Vittime, è stato condotto un processo di consultazione che ha incluso una varietà di attori – come forze di polizia, consigli locali di giustizia penale, gruppi specializzati di supporto in ambito di giustizia minorile, operatori giuridici e legali ed associazioni di volontariato. Tutti questi soggetti sono stati invitati ad inviare le loro risposte al documento di consultazione.⁴⁶ Si sono anche tenuti due eventi di consultazione pubblica. Infine, è stato condotto un sondaggio tra bambini e ragazzi relativamente alle loro impressioni sulla sezione infanzia e adolescenza del Codice Vittime.⁴⁷ A seguito del processo di consultazione, il Ministero della Giustizia ha pubblicato un documento di risposta⁴⁸, che include il nuovo Codice Vittime, un riassunto delle risposte raccolte e uno schema delle azioni da intraprendere in linea con le risposte alla consultazione.

⁴³ UK Ministry of Justice, Code of Practice for Victims of Crime, ottobre 2015,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF

⁴⁴ Gazzetta Ufficiale dell'Unione Europea, Direttiva 2011/36/UE del Parlamento Europeo e del Consiglio del 5 aprile 2011 concernente la prevenzione e la repressione della tratta di esseri umani e la protezione delle vittime, e che sostituisce la decisione quadro del Consiglio 2002/629/GAI, <https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32011L0036&from=en>

⁴⁵ Gazzetta Ufficiale dell'Unione Europea, Direttiva 2011/92/UE del Parlamento Europeo e del Consiglio del 13 dicembre 2011 relativa alla lotta contro l'abuso e lo sfruttamento sessuale dei minori e la pornografia minorile, e che sostituisce la decisione quadro 2004/68/GAI del Consiglio, <https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32011L0093&from=IT>

⁴⁶ Il documento di consultazione includeva da una parte i cambiamenti proposti al Codice Vittime. D'altra parte, esso era accompagnato da una valutazione d'impatto e una dichiarazione di uguaglianza. Ministero della Giustizia, risultati aggiornati al 31 Ott 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime>

⁴⁷ UK Ministry of Justice, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 marzo 2013, pubblicato il 29 ottobre 2013, 10, <https://consult.justice.gov.uk/digital-communications/code-victims-crime/results/improving-the-code-of-practice-for-victims-of-crime-consultation-response.pdf>

⁴⁸ UK Ministry of Justice, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 marzo 2013, pubblicato il 29 ottobre 2013.



Il Codice Vittime ha lo scopo di essere una guida pratica, che assista gli organi di giustizia penale nel guidare le vittime durante il processo penale e nello sviluppare un servizio più flessibile.⁴⁹ Per esempio il Capitolo 3, in cui si trovano i regolamenti relativi ai minorenni vittime, è scritto in due parti: la Parte A che ha lo scopo di fornire alle vittime e agli enti/autorità che operano nel loro interesse informazioni rilevanti nel guidare le stesse in tutte le fasi del procedimento penale; la Parte B che è scritta per gli enti che dovrebbero fornire questo aiuto e supporto, come per esempio la polizia⁵⁰. In aggiunta, il Ministero della Giustizia ha pubblicato due versioni semplificate del Codice Vittime – uno per vittime adulte⁵¹, uno per minorenni vittime di reato⁵² – e un opuscolo⁵³. Questi documenti contengono versioni semplificate del Codice Vittime, spiegazioni di termini difficili in un linguaggio accessibile e tramite immagini. Il Codice Vittime è stato adottato nel mese di ottobre del 2015.

In Inghilterra – diversamente dagli altri SM oggetto di questo rapporto – la vittima non è considerata come una parte del procedimento penale, ma essenzialmente come un testimone.⁵⁴ Di conseguenza, la vittima ha una posizione diversa all'interno dell'indagine penale e del procedimento, in quanto non in grado di esercitare nessuno dei diritti relativi alla rappresentanza legale durante i procedimenti dinanzi alla corte. In Inghilterra e Galles, è il Procuratore di Stato che presenta il caso della vittima, mentre il ruolo della vittima è quello di fornire la prova come testimone.⁵⁵

4. Analisi giuridica delle misure di recepimento della Direttiva 2012/29/UE

Il capitolo che segue comprende un'analisi giuridica della legislazione di recepimento della Direttiva Vittime negli SM selezionati. Inizialmente, si individuerà la definizione legale di vittime di reato in ciascuno degli SM; successivamente, le disposizioni che recepiscono l'art. 22 della DV – la valutazione

⁴⁹ Ibid.

⁵⁰ Ibid, Capitolo 3.

⁵¹ UK Ministry of Justice, the support you should get if you are a victim of crime,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf

⁵² UK Ministry of Justice, The Victims' Code: u18s: Young victims of crime – Understanding the support you should get,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267982/u18-victims-code-leaflet.pdf

⁵³ UK Ministry of Justice, Victims of crime: Understanding the support you can expect,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341367/adult-victims-code-leaflet.pdf

⁵⁴ European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Lussemburgo), 2014, 29.

⁵⁵ Ibid.



individuale delle vittime per individuarne le specifiche esigenze di protezione - saranno identificate e descritte. Infine, saranno analizzati il diritto alla protezione dei minorenni vittime di reato durante i procedimenti penali (art. 23-24 DV) e il loro diritto di accedere e ricevere supporto da parte dei servizi di supporto per le vittime (art. 8-9 DV).

4.1. Definizione legale di vittime di reato

Uno degli aspetti centrali della Direttiva Vittime è quello di porre la vittima al centro del sistema di giustizia penale e quindi superare il focus unico sull'accertamento del fatto. Quindi, la Direttiva Vittime stabilisce che “vittima” significa:

“(i) una persona fisica che ha subito un danno, anche fisico, mentale o emotivo, o perdite economiche che sono stati causati direttamente da un reato;

(ii) un familiare di una persona la cui morte è stata causata direttamente da un reato e che ha subito un danno in conseguenza della morte di tale persona;”⁵⁶

Mentre nella legislazione nazionale della maggioranza degli SM inclusi in questo rapporto (come in generale gli SM dell'UE⁵⁷) è inclusa una definizione legale di vittima di reato, questa definizione non è rintracciabile nelle legislazioni nazionali di Finlandia e Germania.⁵⁸ Ciononostante, come dimostrato da altre ricerche⁵⁹, il fatto di utilizzare termini differenti per descrivere la persona che ha subito un danno come risultato di un crimine non significa automaticamente che la legislazione nazionale non fornisca la stessa quantità di diritti.

Paese	Legge corrispondente	Definizione legale
		In Finlandia non esiste una definizione giuridica del termine

⁵⁶ Articolo 2 para. 1 DV.

⁵⁷ EPRS – European Parliamentary Research Service, The Victims' Rights Directive 2012/29/EU: European Implementation Assessment, dicembre 2017, 13.

⁵⁸ In Finlandia viene utilizzato il termine “parte lesa” (asianomistaja, in finlandese), mentre nella legge tedesca il termine viene solitamente definito come “co-ricorrente”.

⁵⁹ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 113-116.



Finlandia	-	vittima. Una parte lesa (<i>asianomistaja</i>, letteralmente: “chi possiede il caso”) è 1. “Il titolare del diritto ad essere protetto da un reato, e 2. Chi ha sofferto un danno causato direttamente da un reato .”⁶⁰ La definizione finlandese di parte lesa è, quindi, molto più ampia della definizione di vittima della Direttiva. Essa include una persona contro la quale è stato commesso un reato, ma che non ha subito un danno come risultato del reato. Inoltre, il termine “<i>asianomistaja</i>” include persone giuridiche. La legislazione finlandese definisce anche le vittime indirette: il coniuge di una vittima deceduta, un/a compagno/a registrato/a, persone che vivono nella stessa famiglia, figli, fratelli e genitori.
Germania	-	In Germania non esiste una definizione giuridica del termine vittima. Solitamente viene usato il termine parte lesa o co-ricorrente. Quest’ultimo assegna alla vittima diritti aggiuntivi; un co-ricorrente è una parte lesa che ha il diritto legale di partecipare al procedimento in accordo con l’art. 397a del GCCP.⁶¹ Quest’ultimo include anche parenti particolari di una persona la cui morte è stata causata da un reato penale (art. 395 par. 2 GCCP).⁶² Non esistono, comunque, disposizioni generali per le vittime indirette.⁶³ La ragione per la quale la parola vittima non è utilizzata nella legge tedesca è la presunzione di innocenza del soggetto.

⁶⁰ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016 116.

⁶¹ Il fatto che non esista una definizione legale di vittima nella legislazione tedesca viene criticato dagli studiosi tedeschi. Si veda Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 341.

⁶² Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, 22, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (tedesco).

⁶³ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 116.



Portogallo	Titolo IV, Articolo 67, par. 1 lettera. a Codice di Procedura Penale Portoghese	Una vittima è: “i) <i>la persona fisica che ha sofferto un danno, incluso un attacco alla propria integrità fisica o mentale, un danno morale o emotivo, un danno ad una proprietà, direttamente causato da un atto o da un’omissione, tali da configurare un reato;</i> ii) <i>i membri della famiglia di una persona la cui morte è stata causata direttamente da un reato e che hanno sofferto un danno come risultato di quella morte., all’interno del concetto di vittima è incluso il coniuge sopravvissuto non legalmente separato da persone e proprietà, o la persona che ha convissuto con la vittima in condizioni simili a quelle dei coniugi, discendenti e ascendenti, nel senso stretto che hanno sofferto un danno dalla morte, eccetto il trasgressore che ha causato la morte.</i>”⁶⁴
Spagna	Articolo 2, Legge 4/2015, del 27 aprile, sulla Posizione della Vittima di reato	“Le disposizioni di questa Legge si applicano: a) Come vittime dirette, a qualsiasi persona fisica che abbia sofferto un danno o una perdita in relazione alla propria persona o proprietà, in particolare danni fisici o psicologici, oppure danni emotivi o perdite economiche, direttamente causate dal compimento di un reato. b) Come vittima indiretta, nei casi di morte o scomparsa di una persona che è stata direttamente causata da un reato, a meno che la persona in questione non fosse responsabile dell’azione: [...]”⁶⁵ Questa definizione deriva da un emendamento dell’aprile 2015. In precedenza, nella legislazione spagnola non esisteva una definizione generale del termine.⁶⁶

⁶⁴ IVOR, Portugal: Developments on the implementation of victim assistance mechanisms, 1.

⁶⁵ Ministerio de Justicia, Legge 4/2015, del 27 aprile, sulla posizione delle vittime di reato, Articolo 2, <https://rm.coe.int/168070ac7f>.

⁶⁶ In precedenza, esisteva solo il termine parte che accusa, per cui solo ad una persona intenzionata ad accusare il trasgressore e ad essere una parte o un testimone nella procedimento penale, venivano garantiti diritti in base alla legislazione spagnola; Si veda APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 110.



Inghilterra e Galles	Introduzione, par. 4. Codice Vittime	“Allo scopo del [Codice Vittime], una “vittima” è: - una persona fisica che ha sofferto un danno, incluso un danno fisico, mentale o emozionale o una perdita economica che è stata direttamente causata da un reato; - un parente stretto (...) di una persona la cui morte è stata direttamente causata da un reato;”
	Glossario, Codice Vittime	Un parente stretto è “il coniuge, il partner, i parenti in linea diretta, e le persone a carico della vittima. Altri membri della famiglia, inclusi tutori e affidatari, possono essere considerati parenti stretti a discrezione del servizio fornito.” Mentre il termine vittima è definito dalla legislazione Britannica, una vittima non è parte del procedimento penale e non ha diritti alla rappresentanza legale durante il procedimento penale.⁶⁷

4.2. Valutazione individuale delle vittime per individuarne le specifiche esigenze di protezione (art. 22 DV)

4.2.1. Finlandia

In Finlandia, i requisiti stabiliti nell’articolo 22 DV sono stati recepiti, tra gli altri, attraverso emendamenti alla Legge Finlandese sull’Indagine Penale (FCIA, 805/2011, come emendato).⁶⁸ La Legge Finlandese sull’Indagine Penale regola l’indagine preliminare penale di un reato, mentre misure più specifiche possono essere contenute in altre leggi (Capitolo 1, Sezione 1 FCIA). Mentre il recepimento della Direttiva Vittime ha comportato cambiamenti anche in altre leggi, la maggior parte degli emendamenti ha interessato il FCIA.⁶⁹

La pratica di effettuare una valutazione delle vittime in maniera individuale esisteva in Finlandia già prima del processo di recepimento.⁷⁰ Queste disposizioni sono state ulteriormente rafforzate, aggiungendo una

⁶⁷ Ibid., 110.

⁶⁸ Ministero della Giustizia della Finlandia, Legge sull’indagine penale (805/2011; emendamenti al 736/2015 inclusi, traduzione in inglese non ufficiale, <https://www.finlex.fi/en/laki/kaannokset/2011/en20110805.pdf>

⁶⁹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 16.

⁷⁰ EPRS – European Parliamentary Research Service, The Victims’ Rights Directive 2012/29/EU: European Implementation



nuova sezione 9a al Capitolo 11. Questa nuova sezione ha stabilito le regole per la valutazione individuale delle vittime per identificare le esigenze specifiche di protezione da garantire durante le indagini preliminari e il processo. La valutazione personale deve essere condotta senza indebiti ritardi da parte delle autorità investigative e può svolgersi durante l'indagine penale e il processo.⁷¹ Deve essere condotta in collaborazione con la vittima⁷² e in particolare deve tenere in considerazione:

- La situazione personale della vittima, come anche
- La natura del presunto reato.⁷³

Le misure di protezione devono essere garantite alla vittima nel corso dell'indagine penale nel caso in cui non comportino un ritardo significativo nella procedura o non causino altro danno.⁷⁴ Inoltre, l'autorità investigativa ha il dovere di informare la vittima dei suoi diritti procedurali conformemente al Capitolo 4, Sezione 18 FCIA, fornendo altresì *“informazioni sui servizi di supporto, interpretazione e traduzione, compensazione, protezione, rimborso dei costi e informazioni sulla gestione del caso nel procedimento penale.”*⁷⁵

Gruppi particolari di vittime considerate più vulnerabili (come, per esempio, minorenni vittime, vittime di violenza domestica o sessuale, vittime di tratta e vittime con disabilità fisiche o mentali)⁷⁶ godono di diritti specifici. E' stata pubblicata una Guida indirizzata alla polizia per svolgere la valutazione delle esigenze di protezione di una vittima, che stabilisce le regole per la valutazione individuale e come si debbano indirizzare le vittime ai servizi di supporto specifici a loro dedicati.⁷⁷

Assessment, December 2017, 60.

⁷¹ Oikeus, If you Become a Victim of a Crime: Victim protection:

<https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>

⁷² Ibid.

⁷³ Ibid; si veda anche Savonen, Developing Directive-Compatible Practices for the identification, assessment and referral of victims: National Report – Finland, 2017, 6; e Ministero Finlandese della Giustizia, Diritti di una Vittima di reato, 1.3.2017.

⁷⁴ Oikeus, If you Become a Victim of a Crime: Victim protection:

<https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>

⁷⁵ RIKU, What is the victims' directive?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

⁷⁶ IVOR, Finland: Developments on the implementation of victim assistance mechanisms.

⁷⁷ RIKU, What is the victims' directive?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>



4.2.2. Germania

Mentre la maggior parte dei diritti sanciti negli articoli 23 e 24 esisteva nella legislazione tedesca ancor prima del processo di recepimento della Direttiva Vittime, non esisteva nessuna disposizione generale che determinasse la valutazione individuale delle vittime per identificarne le specifiche esigenze di protezione, ai sensi del l'articolo 22 DV.⁷⁸ Per questo, il legislatore tedesco ha introdotto un nuovo paragrafo nel Codice di Procedura Penale tedesco (GCCP): il paragrafo 3 all'articolo 48 GCCP. Secondo questo ultimo, tutte le udienze e gli altri atti investigativi in cui il testimone sia una persona danneggiata, devono essere svolti tenendo in considerazione le sue specifiche esigenze di protezione. In particolare, deve essere valutato:

1. se esista un grave pericolo per il benessere del testimone, che richieda misure per evitare il contatto visivo tra il testimone e l'autore del reato (§168e GCCP) o la messa in atto di un'audizione audio-visiva di un testimone (art. 247a GCCP),
2. se gli interessi legittimi prevalenti del testimone richiedano l'esclusione del pubblico dall'udienza, e
3. in quale misura sia possibile rinunciare a domande non essenziali relative alla sfera personale del testimone.

All'interno di questa valutazione, devono essere considerate le **circostanze personali del testimone**, la **natura** e le **circostanze del reato** (art. 48, para. 3 GCCP).

Inoltre, i riferimenti alle rispettive sedi nel GCCP determina che questa disposizione sia applicabile anche alle indagini svolte dal pubblico ministero (articolo 161a, para. 1 GCCP) e dalla polizia (articolo 163, para. 3 GCCP)⁷⁹. Tramite queste disposizioni, il legislatore tedesco ha previsto che la valutazione individuale debba avvenire nel momento del primo contatto con la vittima.⁸⁰

Quindi, questo obbligo determina che le esigenze specifiche di protezione delle vittime debbano essere valutate in qualsiasi momento,⁸¹ mentre non specifica chi sia responsabile a condurre la valutazione né la

⁷⁸ Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksach 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (tedesco), 14.

⁷⁹ Ibid., 15.

⁸⁰ Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 343.

https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html

⁸¹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of



modalità secondo la quale la stessa debba essere effettuata. Nonostante i diritti menzionati nel nuovo articolo 48 par. 3 non costituiscano nuovi diritti, è solo attraverso questi cambiamenti legislativi che le autorità sono tenute per legge a valutare queste possibilità.^{82 83}

4.2.3. Portogallo

In Portogallo la trasposizione della Direttiva Vittime non ha comportato solo l'inclusione di una definizione legale del termine vittima nella legislazione portoghese,⁸⁴ ma anche l'introduzione del termine “vittima particolarmente vulnerabile” (“*vítima especialmente vulnerável*”) nel Codice di Procedura Penale portoghese (PCCP).

Una vittima particolarmente vulnerabile è una vittima la cui particolare vulnerabilità deriva dalla sua **età**, dal suo **stato di salute, o disabilità**, ed anche dai **danni che hanno avuto gravi conseguenze** sul suo stato psicologico o sulla sua integrazione sociale e che sono stati causati dal **tipo, grado, e durata** della vittimizzazione.⁸⁵ Le vittime di crimini violenti⁸⁶ e di crimini particolarmente violenti⁸⁷ sono sempre considerate vittime particolarmente vulnerabili. Il Codice di Procedura Penale portoghese specifica che un bambino o un giovane è una persona fisica al di sotto dei 18 anni di età⁸⁸.

Inoltre, all'interno del processo di recepimento della DV, è stato introdotto lo Statuto Portoghese per le Vittime, che contiene diverse disposizioni che recepiscono l'articolo 22 della Direttiva Vittime. Esso determina che, quando un reato è stato denunciato e non vi sono gravi indizi che lo rendano infondato, le autorità competenti devono condurre una valutazione individuale per identificare se la vittima sia particolarmente vulnerabile⁸⁹ e per determinare se possa beneficiare di speciali misure di protezione⁹⁰.

Vulnerable Victims in Criminal Proceedings, 40.

⁸² Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 343.

⁸³ Ciononostante, questa norma è stata criticata, in particolare per quanto riguarda la sua sede. Si è discusso del fatto che questa norma non fosse idealmente posta all'interno del GCCP, in quanto l'articolo 48 è relativo al testimone durante il procedimento penale e non alle vittime più in generale; Si veda inoltre: Löffelmann, Drittes Opferrechtsreformgesetz – Ausgabe 11/2014, 22.11.2014, <http://www.recht-politik.de/drittes-opferrechtsreformgesetz/> (tedesco).

⁸⁴ IVOR, Portugal: Developments on the implementation of victim assistance mechanisms, 2.

⁸⁵ Codice di Procedura Penale Portoghese, Titolo IV, Articolo 67 – A, para. 1, lit. b, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (portoghese).

⁸⁶ I crimini violenti sono quelli punibili con più di 5 anni di carcere.

⁸⁷ I crimini particolarmente violenti sono quelli punibili con più di 8 anni di carcere.

⁸⁸ Codice di Procedura Penale Portoghese, Titolo IV, Articolo 67 – A, para 1, lit. c, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (portoghese).

⁸⁹ Articolo 20, para 1, Statuto Vittime.



Nella stessa legge, alla vittima deve essere fornito un documento che attesti il suo status, inclusi i suoi diritti e doveri.⁹¹ Comunque, la legge non determina come e in quali circostanze debba avvenire la valutazione individuale.⁹²

4.2.4. Spagna

In Spagna, l'articolo 22 della Direttiva Vittime è stato recepito attraverso l'articolo 23 della Legge 4/2015 sulla Posizione delle Vittime di Reato. In correlazione con la Direttiva, la legislazione nazionale spagnola menziona che la valutazione dovrebbe, in particolare, tenere conto di tali aspetti:

- (a) *“Le caratteristiche personali della vittima e in particolare [...] se la vittima è minorenni o bisognosa di particolare protezione [...]*
- (b) *La natura del reato e la gravità del danno causato alla vittima, oltre al rischio di reiterazione del reato [...] e*
- (c) *Le circostanze del reato, in particolare se ha comportato violenza.”⁹³*

In caso di minorenni vittime di reato, le misure di protezione utilizzate devono tenere in considerazione la situazione personale della vittima, età, genere, eventuali disabilità e il livello di maturità, oltre a rispettarne pienamente l'integrità fisica, mentale ed emozionale.⁹⁴ Inoltre, ogni qualvolta un minorenne è vittima di un reato, l'ufficio del pubblico ministero deve prestare particolare attenzione ad assicurare che i diritti di protezione della vittima siano rispettati adottando *“misure adeguate nel superiore interesse delle vittime ove sia necessario prevenire o ridurre qualsiasi danno che la condotta del procedimento possa causare loro.”⁹⁵*

Inoltre, l'articolo 24 della Legge 4/2015, approfondisce la competenza e la procedura di valutazione, chiarendo chi sia l'autorità responsabile ad effettuare la valutazione nelle diverse fasi. La legge chiarisce che durante la fase delle indagini il pubblico ministero deve svolgere la valutazione individuale, mentre

⁹⁰ Articolo 21, para 1, Statuto Vittime.

⁹¹ Articolo 20, para 2, Statuto Vittime.

⁹² APAV - Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 152

⁹³ Articolo 23, Legge 4/2015 sulla Posizione delle Vittime di Reato.

⁹⁴ Articolo 23 para. 3, Legge 4/2015 sulla Posizione delle Vittime di Reato.

⁹⁵ Articolo 19, Legge 4/2015 sulla Posizione delle Vittime di Reato.



durante la fase processuale questa spetta al giudice o al tribunale responsabile di trattare il caso. Lo stesso articolo dichiara che, nel caso in cui le vittime siano minorenni o individui con disabilità o con esigenze particolari di protezione, la valutazione debba tenere in considerazione le loro opinioni e interessi.

Inoltre, l'articolo 27 della Legge 4/2015 disciplina la responsabilità e il ruolo degli Uffici di Supporto alla Vittima e in particolare prevede che tali uffici svolgano anche una valutazione delle circostanze individuali della vittima⁹⁶ per determinare quale assistenza e supporto debbano essere forniti alla vittima. Gli Uffici di Supporto alla Vittima devono valutare se la vittima necessiti di supporto e assistenza psicologica, di una persona di sostegno durante il processo, di informazioni, o di altre speciali misure di supporto che possono essere garantite dalla corte o, infine, l'indirizzamento a servizi di supporto specialistici.⁹⁷ Sebbene la legislazione nazionale dichiara che i bisogni di protezione individuali debbano essere corrisposti, non sono forniti altri dettagli relativi alla modalità in cui debba essere svolta la valutazione.

4.2.5. Inghilterra e Galles

La valutazione individuale delle vittime per identificare esigenze specifiche di protezione è regolata nel Capitolo 1 del Codice Vittime.⁹⁸ In particolare, esso stabilisce diritti potenziati per le vittime di tre diverse categorie, in quanto esse hanno “*maggior probabilità di richiedere un supporto e servizi più avanzati attraverso il processo di giustizia penale.*” Ciononostante, queste categorie non sono esclusive in quanto è possibile che una vittima abbia diritti rafforzati in più di una categoria (Capitolo 1, para. 1.2). Inoltre, anche se una vittima non ricade in una delle tre categorie, un fornitore di servizi può concedere diritti rafforzati ad una vittima in base alle sue particolari circostanze (Capitolo 1, para. 1.7). Le tre categorie sono:

- Vittime dei reati più gravi:

Una vittima che è “un parente prossimo in lutto a causa di un reato; una vittima di violenza domestica, crimini d’odio, terrorismo, molestie sessuali, traffico di esseri umani, tentato omicidio,

⁹⁶ Maizener ed. al., EVVI (Evaluation of Victims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf, 56 e ss

⁹⁷ Articolo 28 par. 2, Legge 4/2015 sulla Posizione delle Vittime di Reato.

⁹⁸ Ministero della Giustizia del Regno Unito, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 marzo 2013, pubblicato il 29 ottobre 2013, 87 e ss.



rapimento, falso imprigionamento, incendio doloso con l'intento di mettere in pericolo la vita e ferire o di causare gravi lesioni fisiche.” (Capitolo 1, para. 1.8)

- Vittime di reati perpetrati ripetutamente:

Una vittima che è stata “ripetutamente vittima di un crimine a lui/lei diretto in un certo periodo di tempo” (Capitolo 1, para. 1.9)

- Vittime vulnerabili o che hanno subito intimidazioni;

Una vittima vulnerabile è una persona al di sotto dei 18 anni di età al momento del reato; se il servizio che presta assistenza considera che la qualità della testimonianza della vittima sia influenzata a causa della paura di testimoniare in tribunale, si considera che la vittima abbia subito un'intimidazione.

Ogni vittima ha diritto ad una valutazione da parte della polizia per identificare i propri bisogni di protezione specifici, *“incluso se e in quale misura essi possano beneficiare di misure speciali.”* (Capitolo 1, para. 1.4). Le circostanze particolari della valutazione (come ad esempio durata e contenuto), comunque, dipendono dalla gravità del reato e dai bisogni individuali della vittima. La valutazione deve tenere in considerazione le caratteristiche personali della vittima, la natura e le circostanze del reato e le opinioni personali della vittima. Inoltre, la valutazione può essere ripetuta, se i bisogni della vittima cambiano (Capitolo 1, para. 1.5). Non appena si accerti l'ammissibilità dei diritti rafforzati, il servizio di assistenza deve assicurare che questa informazione passi ad altri servizi di supporto.⁹⁹

Inoltre, il Capitolo 5 stabilisce che anche altri prestatori di servizi, diversi dalla Polizia,¹⁰⁰ hanno l'obbligo di condurre una valutazione individuale delle vittime al fine di identificarne le esigenze specifiche di protezione. (Capitolo 5, para. 1.1). Un prestatore di servizio deve identificare le specifiche esigenze di protezione di una vittima ogni qualvolta sia responsabile di indagare su un reato (Capitolo 5, para. 1.30). In queste circostanze, il fornitore di servizio deve *“determinare se e in quale misura la vittima benefici di misure di protezione specifiche o di misure speciali nel corso dell'interrogatorio o della testimonianza”*

⁹⁹ Il diritto dei minorenni ad avere una valutazione individuale dei propri bisogni è fissato nel Capitolo 3, Part A, par. 1.1.

¹⁰⁰ I fornitori di servizi sono individuati nell'introduzione, par. 9, del Codice Vittime: The Competition and Markets Authority; The Department for Business, Innovation and Skill (Criminal Enforcement); The Environment Agency; The Financial Conduct Authority; The Gambling Commission; The Health and Safety Executive; Her Majesty's Revenue and Customs; Home Office (Immigration Enforcement); The Information Commissioner's Office; The Independent Police Complaints Commission; The National Crime Agency; Natural Resources Wales; The Office of Rail and Road; e il Serious Fraud Office.



(Capitolo 5, para. 1.30). Sono state sollevate delle critiche relativamente alla procedura e alle tempistiche della valutazione.¹⁰¹

4.3. Diritto alla protezione dei minorenni vittime di reato durante i procedimenti penali (articoli 23-24 DV)

4.3.1. Finlandia

In Finlandia esistono due leggi chiaramente rilevanti per la trasposizione degli articoli 22-23 DV: in primo luogo, la Legge per l'Indagine Penale Finlandese (FCIA, 805/2011, e successivi emendamenti), che regola, tra le altre, la procedura di indagine della polizia e, in secondo luogo, il Codice di Procedura Penale Finlandese (FCJP, 4/1734, con successivi emendamenti) che disciplina il procedimento in tribunale.

Già prima del processo di recepimento, esistevano diverse disposizioni relative alla protezione dei minorenni vittime di reato nel corso delle indagini penali, come per esempio il Capitolo 4, Sezione 7 sottosezione 1 del FCIA. Questo ultimo dichiara che i minorenni vittime **“devono essere trattati in modo adeguato alla loro età ed al livello di sviluppo”** e che si debba prestare particolare attenzione a che gli atti investigativi non causino disagi alla vittima in contesti per lui/lei importanti.¹⁰² Inoltre, ove possibile, gli atti istruttori relativi ai minorenni vittime devono essere affidati a investigatori particolarmente formati a tal fine.¹⁰³ Infatti, la maggior parte dei funzionari di polizia e degli psicologi che lavorano nei procedimenti penali hanno frequentato un programma multidisciplinare, della durata di un anno, per essere formati a condurre un interrogatorio con i minorenni. Questo corso è organizzato dal Consiglio Nazionale della Polizia e dal Centro Psichiatrico Forense.¹⁰⁴

Il Capitolo 7 del FCIA dispone che, se una persona al di sotto dei 15 anni di età viene interrogata nel corso delle indagini penali, la persona responsabile della sua cura e custodia, o il suo tutore o altro

¹⁰¹ IVOR, United Kingdom: Development on the implementation of victim assistance and mechanisms.

¹⁰² Capitolo 4, Sezione 7, Sottosezione 1 Legge sull'Indagine Penale.

¹⁰³ Capitolo 4, Sezione 7, Sottosezione 2 Legge sull'Indagine Penale.

¹⁰⁴ European Union Agency for Fundamental Rights, Child-friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 100.



rappresentante legale, ha il diritto di essere presente durante l'interrogatorio.¹⁰⁵ Se il minorenni vittima ha più di 15 anni, queste persone possono essere presenti durante l'interrogatorio solo se ottengono il diritto di parlare per conto o in aggiunta al minorenni. Il soggetto inquirente ha il diritto di proibire la presenza del rappresentante legale nei casi in cui la sua presenza possa ostacolare l'accertamento del fatto.¹⁰⁶

Una nuova sezione che determina le regole per l'interrogatorio con vittime con specifiche esigenze di protezione è stata aggiunta al FCIA (Capitolo 7, Sezione 21) allo scopo di rispettare i requisiti stabiliti dall'articolo 23 della DV. A seconda della situazione personale della vittima e della natura del presunto reato, tale sezione di nuova introduzione prevede diverse misure speciali di protezione:

- Le vittime con specifiche esigenze di protezione devono essere interrogate in una stanza speciale, progettata a quello scopo.
- In caso di vittime con specifiche esigenze di protezione, gli interrogatori devono essere condotti dalla stessa persona, qualora richiesto dalla vittima.
- Se la parte lesa potrebbe essere vittima di reati sessuali, l'interrogatorio deve essere condotto da una persona dello stesso sesso della vittima. Questa disposizione si può applicare anche in altre situazioni, qualora la natura del reato lo richieda.¹⁰⁷

Infine, il capitolo 9 della FCIA contiene disposizioni relative alla possibilità di registrare con strumenti audio/visivi l'interrogatorio di un testimone, qualora tale registrazione sia finalizzata ad essere utilizzata come testimonianza nel procedimento penale e qualora la persona interrogata *“non possa probabilmente essere ascoltata di persona senza che ciò possa causarle un danno”*¹⁰⁸, a fronte della giovane età o di disturbi mentali. Questa disposizione può essere applicata anche a persone tra i 15 e i 17 anni che necessitano di specifica protezione o nell'ipotesi in cui siano state vittime di abuso sessuale.

Le disposizioni che recepiscono l'articolo 23 par. 3 DV - ossia, le disposizioni che determinano i diritti da garantire alle vittime con specifiche esigenze di protezione nel corso del procedimento penale – sono da

¹⁰⁵ Capitolo 7, Sezione 14, Sottosezione 1 Legge sull'Indagine Penale

¹⁰⁶ Capitolo 7, Sezione 14, Sottosezione 3 Legge sull'Indagine Penale

¹⁰⁷ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 17.

¹⁰⁸ Capitolo 9, Sezione 4, Sottosezione 1 FCIA.



reperire nel Codice di Procedura Penale Finlandese (FCJP)¹⁰⁹. Esistono diverse misure speciali per evitare il contatto visivo tra vittime e autori di reato. La vittima può essere interrogata:

- **dietro ad uno schermo** (Capitolo 17, Sezione 51 FCJP). La corte decide se questa misura sia necessaria per proteggere la persona da ascoltare; se la persona sottoposta ad interrogatorio, diversamente, non rivelerebbe ciò di cui è a conoscenza; se un soggetto possa disturbare o tentare di sviare la persona interrogata; se la vittima abbia necessità di speciale protezione. Solo quest'ultima misura è stata aggiunta per effetto del processo di recepimento della Direttiva.¹¹⁰
- **via connessione video** (Capitolo 17, Sezione 52 FCJP). La Corte reputa questa misura appropriata qualora sia necessario proteggere la persona sottoposta ad interrogatorio; la persona audita non abbia raggiunto l'età di 15 anni o la sua salute mentale possa essere danneggiata; o nel caso in cui ci sia una vittima con specifiche esigenze di protezione. Solo questa ultima misura è stata aggiunta nel contesto per effetto del processo di recepimento.¹¹¹
- **in assenza dell'imputato o di altra parte** (Capitolo 17, Sezione 51 FCJP). La corte decide se questa misura sia necessaria per proteggere la persona audita; se la persona sottoposta ad interrogatorio, diversamente, non rivelerebbe ciò di cui è a conoscenza; se un soggetto possa disturbare o tentare di sviare la persona interrogata.

La legislazione finlandese contiene anche misure speciali per proteggere l'anonimato di un testimone, come per esempio attraverso mezzi di comunicazione in cui la voce del testimone possa essere alterata (Capitolo 17, Sezione 53 FCJP). Inoltre, in alcuni casi l'interrogatorio della vittima può essere video-registrato ed utilizzato come testimonianza nel processo. Questa procedura è applicabile nel caso di minorenni vittime che non abbiano compiuto 15 anni o nel caso di una persona con problematiche di salute mentali; nel caso di minorenni vittime tra i 15 e i 17 anni, tenendo in considerazione le circostanze personali e la natura del reato; e nel caso di vittime di determinati abusi sessuali (Capitolo 17 Sezione 24 FCJP). Tale disposizione esisteva già prima del processo di recepimento.

¹⁰⁹ Ministero della Giustizia Finlandese, Codice di procedura giudiziaria, 4/1734, inclusi gli emendamenti fino al 732/2015 compreso,

https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiHx5KJ3MjZAhUBLewKHfZoD60QFggtMAA&url=http%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F1734%2Fen17340004.pdf&usg=AOvVa_w0-PJLjKrSH9U01qD0yr14B

¹¹⁰ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 17.

¹¹¹ Ibid.



Similmente, il CJPF era già in linea con l'articolo 24 par. 1 lit b. DV. Questo ultimo dichiara che la corte **deve nominare un rappresentante speciale per un minorenne vittima** *“se vi sono giustificati motivi per ritenere che la persona che si prende cura o ha la custodia del minorenne, l'amministratore fiduciario o altro rappresentante legale non possano assicurare in maniera obiettiva gli interessi della parte e la nomina di un rappresentante speciale non è evidentemente inutile”* (Capitolo 4 Sezione 8 FCIA). Tutte le spese correlate sono pagate da fondi statali.

Infine, nella Legge sulla Pubblicità del Procedimento in tribunale presso le Corti Generali, si possono reperire disposizioni sull'audizione di una persona in assenza del pubblico¹¹² (Sezione 15, Punto 6). La legge prevede che la corte possa decidere che una parte o l'intero procedimento possa svolgersi senza la presenza del pubblico nel caso in cui si proceda all'ascolto di un soggetto minore di 14 anni, la cui capacità legale sia limitata, o di una persona con specifiche esigenze di protezione.

4.3.2. Germania

Durante gli scorsi anni, la Germania ha costantemente migliorato la posizione delle vittime all'interno dei procedimenti penali. Come risultato, la maggior parte dei diritti sanciti nella DV per la protezione delle vittime con specifiche esigenze di protezione e dei minorenni vittime di reato già esisteva nella legislazione tedesca prima del processo di recepimento. Comunque, come sottolineato in precedenza, non tutti i requisiti della Direttiva Vittime ricadono sotto la competenza della legge federale, ma devono essere determinati dalla legge degli stati federali.

In base all'articolo 23 par. 2, b DV le audizioni delle vittime con specifiche esigenze di protezione devono essere condotte da professionisti formati a tale scopo. In Germania, l'adozione della regolamentazione relativa alle qualifiche del personale che conduce le audizioni ricade sotto la giurisdizione degli stati federali.¹¹³ In tutto il territorio nazionale, il personale di polizia, comunque, riceve una formazione al fine di facilitare un trattamento delle vittime che sia imparziale, rispettoso e professionale. Questa formazione include una profonda conoscenza in materie relative ai reati dettati dall'odio o al trattamento dei

¹¹² Ministero della Giustizia Finlandese, Legge sulla Pubblicità del Procedimento in tribunale presso le Corti Generali, 370/2007 emendamenti alla 742/2015 inclusi, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKewjQ9unn4MjZAhVMYaqKHTmUB14QFggtMAA&url=https%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F2007%2Fen20070370.pdf&usq=AOvVaw3A34-Ki7L-xk8YksYr1E0V>

¹¹³ Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?blob=publicationFile&v=2 (German), 14.



minorenni vittime di reato nel corso delle indagini penali. Una formazione simile esiste per i pubblici ministeri e i giudici.¹¹⁴

Tutte le indagini fisiche sulle vittime di violenza sessuale devono essere condotte da una persona dello stesso sesso (No. 220 RiStBV). Questo articolo esisteva già prima del processo di trasposizione e – in accordo con il ragionamento del legislatore tedesco¹¹⁵ - rispondeva a tutti i requisiti sanciti dall'articolo 23 par. 2, c e d DV, che prevede che le audizioni siano condotte dalla stessa persona, a meno che ciò sia contrario alla buona amministrazione della giustizia, e la possibilità che, in determinate condizioni, le audizioni delle vittime di violenza sessuale debbano essere svolte da una persona dello stesso sesso..

Inoltre, nella legislazione tedesca esistono diverse misure per evitare il contatto visivo tra la vittima e l'autore del reato (art. 23 par. 3, a VD) e misure che assicurano che la vittima possa essere ascoltata nell'aula del tribunale senza essere presente. In base all' art. 247 GCCP, la corte può ordinare al difensore di lasciare l'aula del tribunale durante l'interrogatorio, qualora la sua presenza possa impedire al testimone di dire la verità. La stessa disposizione si applica anche ai casi in cui il testimone abbia meno di 18 anni e qualora sia probabile che la presenza di un difensore causi un disagio al testimone stesso.

Se esiste un imminente pericolo di un danno grave al benessere del testimone, nel caso in cui venga interrogato nel corso del regolare procedimento in aula, la corte può disporre che l'interrogatorio avvenga in altro luogo. In questo caso, la dichiarazione deve essere trasmessa in maniera simultanea in video e suono all'aula di tribunale. Inoltre, la dichiarazione può essere registrata, se il testimone non può essere ascoltato in altra udienza e se la registrazione è necessaria ad investigare la verità (art. 247a GCCP).

Inoltre, le audizioni di un testimone possono essere audio-video registrate se:

- le esigenze specifiche di protezione di un minorenni vittima o di un'altra persona, che è stata vittima di un reato contro l'autodeterminazione sessuale, la vita o la libertà personale mentre era minorenne, possono essere protetti in maniera più adeguata (art. 255a GCCP);
- il testimone non può essere ascoltato nell'aula di tribunale secondo altra modalità e la registrazione è essenziale per conoscere la verità (§ 58a GCCP).

¹¹⁴ Ibid.

¹¹⁵ Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksach 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (tedesco), 15.



Inoltre, esiste la possibilità che la registrazione di un precedente interrogatorio giudiziario di una vittima o di un testimone possa essere usata al posto di un interrogatorio, in particolare: 1) la registrazione di un testimone minore di 18 anni in processi che riguardano crimini contro l'autodeterminazione sessuale, la vita o la libertà personale può essere usata al posto di un interrogatorio, se l'imputato o il suo avvocato ha avuto la possibilità di contribuire all'interrogatorio; 2) la registrazione della vittima degli stessi reati, se la persona era minore di 18 anni alla data del reato. In questi casi, la corte ha l'obbligo di tenere in considerazione le specifiche esigenze di protezione del testimone e motivare l'esposizione della registrazione. Un interrogatorio aggiuntivo è comunque ammissibile (articolo 255a GCCP). Inoltre, un'audizione può avvenire senza la presenza del pubblico se viene interrogata una persona minore di 18 anni (art. 172 Legge sul Sistema Giudiziario Tedesco *Gerichtsverfassungsgesetz*).

Le misure per evitare domande non necessarie relative alla vita privata della vittima sono regolate dall'art. 68a GCCP. Ai sensi dello stesso, si dovrebbero fare domande su fatti che possano risultare disonorevoli o interessare la sfera personale della vita del testimone o di una persona che faccia parte della sua famiglia solo se indispensabili. Allo stesso modo, si dovrebbero porre domande relative alle circostanze che riguardano la credibilità del testimone – in particolare la sua relazione con la persona imputata o danneggiata – solo quando necessario.

Infine, anche l'art. 24 par. 1, b – disposizione della Direttiva Vittime che prevede la nomina di uno speciale rappresentante del minore in caso in cui esista un conflitto di interessi tra chi detiene la responsabilità genitoriale e il minore stesso, esisteva già nella legislazione tedesca prima del processo di recepimento. In generale, in base all'art. 52 GCCP, il legale rappresentante di un minore può rifiutare di fornire testimonianza se il minore non ha sufficiente comprensione del suo diritto a farlo. Nei casi in cui il legale rappresentante del minore sia allo stesso tempo l'imputato, non può disporre di questo diritto del minore. La regolamentazione delle circostanze nelle quali viene nominato un rappresentante legale per il minore si trova nel codice civile tedesco (art. 1773, 1774 e 1909 GCC).

4.3.3. Portogallo

L'articolo 23 DV è stato trasposto attraverso l'articolo 21 dello Statuto Portoghese delle Vittime (PVS) – costituito nel corso del processo di recepimento della Direttiva Vittime. Questo ultimo elenca le specifiche misure di protezione che possono essere garantite alle vittime vulnerabili in accordo con i propri bisogni



individuali, mentre altre misure sono specifiche in altri articoli. La formulazione dei diversi articoli ha testualmente adottato le rispettive disposizioni della Direttiva Vittime. In accordo con l'articolo 21 par. 2 PVS, alle vittime particolarmente vulnerabili possono essere garantiti i seguenti diritti:

- a. Le audizioni devono essere svolte dalla stessa persona, se la vittima lo richiede e se questo non è contrario alla buona amministrazione della giustizia;
- b. Tutte le audizioni con le vittime di violenza sessuale, violenza di genere o violenza all'interno di relazioni strette, a meno che non siano tenute da un pubblico ministero o da un giudice, devono essere svolte da una persona dello stesso sesso della vittima;
- c. Misure per evitare il contatto visivo tra la vittima e l'imputato, anche durante la testimonianza, usando tecnologie appropriate;
- d. La possibilità di fornire una "dichiarazione per il futuro" ("*declarações para memória futura*"). Questa misura è determinata inoltre dall'articolo 24 PVS e dall'articolo 271 PCCP. Secondo l'articolo 24 PVS, il giudice può, su richiesta di una vittima particolarmente vulnerabile o del pubblico ministero, condurre un interrogatorio durante le indagini che possa essere tenuto in considerazione anche durante il processo. E' obbligatorio che il pubblico ministero e l'avvocato siano presenti durante l'interrogatorio (par. 2). Inoltre, la vittima deve essere accompagnata agli interrogatori da un operatore specificatamente formato. L'interrogatorio deve avvenire in un ambiente informale e riservato per garantire la spontaneità e la sincerità delle risposte (par. 3). Inoltre, solitamente la dichiarazione per il futuro viene fatta attraverso mezzi di registrazione audio o video o tramite altri mezzi (per es. stenografia) ed è disposta dal giudice e dal procuratore. Le deposizioni, fatte secondo tali modalità, devono essere fornite solo se sono indispensabili a scoprire la verità e non incidano sulla salute fisica o mentale della vittima
- e. L'esclusione del pubblico dall'interrogatorio. Si deve notare, comunque, che questo articolo era già presente nella legislazione Portoghese (Articolo 98 PCCP) prima del processo di recepimento.

L'articolo 22 del PVS ha recepito l'articolo 24 DV. Esso stabilisce che tutti i minorenni vittime di reato hanno il diritto ad essere ascoltati durante il procedimento penale, tenendo in considerazione la loro età e grado di maturità. Nei casi in cui l'età sia incerta, ai fini di tale articolo si deve presumere che la vittima sia minorenne (par. 6 legge cit.). Inoltre, il par. 2 legge cit. prevede che se non vi è conflitto di interesse, un minorenne vittima può essere accompagnato a testimoniare da un genitore, dal legale rappresentante o



da una persona che ne abbia la custodia. Nei casi in cui esiste un conflitto di interesse, viene nominato un “curatore” (par. 3 legge cit.). La legge portoghese prevede, infine, che qualsiasi informazione che possa portare all’identificazione di un minorenne vittima non debba essere rivelata in pubblico.

La legislazione portoghese di recepimento non contiene una disposizione che recepisce specificatamente l’articolo 24 par. 1, a DV, ossia, che nel corso delle indagini penali, tutte le audizioni dei minorenni vittime possono essere oggetto di registrazioni audio-visive e che tali registrazioni possono essere usate come prova nel corso del procedimento penale¹¹⁶. Comunque, una simile formulazione si può reperire all’articolo 23 par. 1 PVS, il quale prevede che qualora fosse necessario garantire la presentazione delle dichiarazioni o testimonianze senza restrizioni, le testimonianze e le dichiarazioni di vittime particolarmente vulnerabili devono tenersi, *ex officio* o su richiesta, tramite video- o tele-conferenza. In tali circostanze la vittima deve essere accompagnata da un operatore specificatamente formato a questo scopo. Quindi, questa disposizione si applica solo a minorenni vittime ritenuti bisognosi di specifiche esigenze di protezione da valutarsi in base alle particolari circostanze del caso.

Infine, il diritto dei minorenni vittime **ad essere accompagnati dal loro avvocato e da una persona da loro scelta** esisteva già prima del processo di recepimento della direttiva nella legislazione portoghese (articolo 70, par. 3 e articolo 132 par. 4 PCCP).¹¹⁷

4.3.4. Spagna

Gli articoli 23 e 24 della Direttiva Vittime possono essere ritrovati nell’articolo 25 della Legge 4/2015 denominato “misure di protezione”. Infatti, le disposizioni sono recepite quasi testualmente dalla Direttiva Vittime. L’articolo 25 della Legge 4/2015 statuisce che le seguenti misure per la protezione delle vittime possano essere previste durante la fase istruttoria, mentre le misure previste ai punti a), b) e c) debbano essere sempre applicate nei casi di minorenni vittime di un reato contro la libertà sessuale o l’identità¹¹⁸:

- a) *“Le vittime possono essere interrogate in edifici specificatamente concepiti e adatti allo scopo.*
- b) *Le vittime possono essere intervistate da operatori che hanno ricevuto una formazione specifica o*

¹¹⁶ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 63.

¹¹⁷ Ibid, 66.

¹¹⁸ Articolo 23 para. 4, Legge 4/2015 sulla Posizione delle Vittime di Reato.



con l'aiuto degli stessi per ridurre o limitare il danno alla vittima.

- c) Tutte le dichiarazioni di una singola vittima possono essere prese in considerazione dalla stessa persona, a meno che ciò possa avere un effetto negativo sullo svolgimento del processo o qualora le dichiarazioni debbano essere raccolte direttamente da un giudice o da un pubblico ministero.*
- d) Nel caso delle vittime di cui ai numeri 3 e 4 del punto b) della sezione 2 dell'articolo 23 e delle vittime di tratta a scopo di sfruttamento sessuale, le dichiarazioni possono essere raccolte da una persona dello stesso sesso della vittima nel caso in cui la vittima lo richieda, a meno che ciò possa avere un effetto negativo sullo svolgimento del processo o qualora le dichiarazioni debbano essere raccolte direttamente da un giudice o da un pubblico ministero.”¹¹⁹*

Il paragrafo 2 dello stesso articolo indica le misure di protezione che possono essere disposte durante la fase processuale, in accordo con le Regole di Procedura Penale Spagnola, mentre i primi due punti si applicano anche alla fase delle indagini:

- a) “Misure per evitare il contatto visivo tra la vittima e il presunto autore di reato, anche quando sono fornite testimonianze per cui sia possibile utilizzare tecnologie di comunicazione.*
- b) Misure per assicurare che la vittima possa essere ascoltata senza essere presente all'interno dell'aula di tribunale, utilizzando tecnologie di comunicazione appropriate.*
- c) Misure per evitare che alla vittima vengano poste domande relative alla sua vita privata che non sono rilevanti per il reato in oggetto, fatta eccezione per i casi in cui il giudice o la corte considerino che si debba rispondere a queste domande per effettuare una valutazione adeguata dei fatti o circa la credibilità della dichiarazione della vittima.*
- d) Svolgere un'audizione orale privata. In tali casi, il giudice o il giudice che presiede possono, comunque, autorizzare la presenza di persone che possano dimostrare di avere un particolare interesse nel caso.”¹²⁰*

Le misure previste dall'articolo 24 DV relative al diritto di protezione dei minorenni vittime durante i procedimenti penali sono recepite dall'articolo 25 par. 3 della Legge 4/2015. Estendendo lo scopo della Direttiva Vittime, questa legge si applica anche alle persone con disabilità che hanno necessità di speciale

¹¹⁹ Articolo 25, para. 1, Legge 4/2015 sulla Posizione delle Vittime di Reato.

¹²⁰ Article 15, para. 2 Law 4/2015 on the Standing of Victims of Crime.



protezione. Inoltre, in accordo con il Codice di Procedura Penale Spagnolo (SCCP)¹²¹, l'articolo 26 della Legge sulla Posizione delle Vittime di Reato statuisce che le dichiarazioni raccolte durante la fase di indagine debbano – in caso di minorenni vittime di reato o di persone con disabilità che hanno bisogno di speciale protezione – essere registrate con mezzi audiovisivi e possano essere mostrate in aula nei casi e alle condizioni previsti dal SCCP. A questo scopo, la legislazione nazionale richiede che si debba prestare la dovuta attenzione alla protezione del bambino o adolescente durante gli interrogatori e la testimonianza e che il contatto visivo con l'imputato debba essere evitato, prevedendo la messa a disposizione di schermi per facilitare l'applicabilità di tale misura.

Infine, il paragrafo 2 dell'articolo 25 della Legge 4/2015 stabilisce i casi nei quali si debba procedere alla nomina d'ufficio di un tutore della vittima affinché la rappresenti durante la fase delle indagini ed il procedimento penale. Questo avviene, tra gli altri, nel caso in cui un pubblico ministero consideri che vi sia un conflitto di interesse tra il minorenne vittima e il suo rappresentante legale.

Si può, pertanto, ritenere che le misure previste dalla legislazione spagnola recepiscano pienamente la Direttiva Vittime.

4.3.5. Inghilterra e Galles

Mentre tutti gli SM analizzati all'interno di questo rapporto hanno implementato disposizioni che assicurano specificatamente i diritti dei minorenni vittime di reato, il Codice Vittime opera una chiara divisione, in due capitoli, tra i diritti garantiti agli adulti¹²² e quelli garantiti ai minorenni.¹²³ Il capitolo 3, che comprende la regolamentazione relativa a bambini e giovani, è ulteriormente diviso nella Parte A: Diritti per bambini e giovani e Parte B: Doveri dei prestatori di servizi per bambini e giovani. Inoltre, ai minorenni possono essere garantiti diritti rafforzati specificati nel Capitolo 1. Tutto ciò considerato, questo Codice racchiude la maggior parte dei diritti sanciti dalla Direttiva Vittime che devono essere garantiti alle vittime con esigenze specifiche di protezione. Nella maggior parte dei casi, questi diritti sono estesi a tutte le vittime di reato.

¹²¹ Spanish Criminal Procedure Code, https://www.imolin.org/imolin/amlid/data/spa/document/criminal_procedure_code.html (Spanish).

¹²² Capitolo 2, Parte A e B, Codice Vittime.

¹²³ Capitolo 3, Parte A e B, Codice Vittime.



Il Codice Vittime non contiene nessuna disposizione relativa alla possibilità di nominare un rappresentante in caso vi sia un conflitto di interessi tra i detentori della responsabilità genitoriale e il minorenni come previsto dall'articolo 24 par. 1, b DV.¹²⁴ Inoltre, esso non contiene misure di recepimento relative all'articolo 24 par. 1, c, ossia, al diritto del minorenni di godere della consulenza e rappresentanza legale, in nome proprio, nell'ambito di procedimenti in cui sussiste, o potrebbe sussistere, un conflitto di interessi tra il minore vittima di reato e i titolari della potestà genitoriale. Durante le indagini di polizia i minorenni vittime di reato hanno diritto a che l'audizione si svolga secondo modalità adatte allo scopo in accordo con l'articolo 23 par. 2, a DV.¹²⁵ Mentre la DV si limita a prevedere tale diritto per vittime con esigenze specifiche di protezione, il Codice Vittime estende tale diritto a tutte le vittime di reato. Inoltre, durante il colloquio con un minorenni vittima – o qualsiasi altra vittima – la polizia deve tenere in considerazione il documento orientativo “Achieving Best Evidence in Criminal Proceedings”¹²⁶ ed assicurare che l'audizione sia condotta da un operatore adeguatamente formato che consideri i bisogni e le opinioni della vittima allo scopo di diminuirne lo stress.¹²⁷ Sebbene il documento orientativo “Achieving Best Evidence in Criminal Proceedings” non costituisca un codice di condotta legalmente esecutivo, esso descrive buone prassi nell'interrogare testimoni e vittime e dovrebbe aiutare tutte le persone coinvolte nell'indagine – incluse la polizia, gli operatori del servizio sociale, giudici e avvocati – nella preparazione e conduzione degli interrogatori.¹²⁸

I minorenni vittime – come tutte le altre vittime – hanno diritto a che sia la stessa persona a condurre tutti gli interrogatori, quando possibile. Questa disposizione non si applica, tuttavia, se ciò possa “compromettere lo svolgimento dell'indagine”.¹²⁹ Inoltre i minorenni vittime – e tutte le altre vittime - di violenza sessuale, violenza di genere o violenza domestica che sono interrogati dalla polizia hanno diritto

¹²⁴ Si veda Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 70 – 71, per una panoramica precisa sugli articoli della DV in relazione alle disposizioni corrispondenti nel Codice Vittime.

¹²⁵ Capitolo 3, Parte B 1.2 in riferimento al Capitolo 2 Parte A 1.8 Codice Vittime.

¹²⁶ UK Ministry of Justice, Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures, March 2011, https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf

¹²⁷ Capitolo 3, Parte B 1.5 in riferimento al capitolo 2 Parte B 1.5 Codice Vittime.

¹²⁸ Il documento orientativo “Achieving Best Evidence in Criminal Proceedings” è stato menzionato quale pratica promettente in un recente rapporto della FRA sulla giustizia a misura di minorenni; European Union Agency for Fundamental Rights, Child-friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015.

¹²⁹ Capitolo 3, Parte B 1.2 in riferimento al Capitolo 2 Parte A 1.8 Codice Vittime.



a che l'interrogatorio venga condotto da una persona del loro stesso sesso, “salvo che ciò possa pregiudicare lo svolgimento dell'indagine”¹³⁰.

Relativamente alle misure speciali che devono essere garantite ai sensi dell'articolo 23 par. 3 DV, il Codice Vittime rispetta tutti i requisiti: vi sono diverse misure speciali che assicurano che le esigenze specifiche di protezione delle vittime siano protette durante il procedimento penale. Per esempio, le misure per evitare il contatto visivo tra vittime e autori di reato sono regolate nel capitolo 1 del Codice Vittime. Queste misure dipendono dai bisogni individuali della vittima, così come determinati dalla valutazione individuale. Sebbene la vittima abbia il diritto a chiedere tale misura speciale, spetta alla corte decidere quale tra le seguenti misure debba essere applicata:

- “Schermi/tende nell'aula di tribunale così che il testimone non debba vedere l'imputato e, in alcuni casi, il pubblico;
- Collegamento video in diretta che permetta al testimone di fornire testimonianza fuori dall'aula del tribunale. Questo può essere fatto da un'aula separata all'interno del tribunale o da altro luogo collegato in diretta con il tribunale;
- Testimonianza in privato – il pubblico può essere allontanato in casi relativi ad abuso sessuale, tratta degli esseri umani o qualora il giudice abbia accertato che qualcuno diverso dall'imputato possa cercare di intimidire il testimone;
- Rimozione di parrucche e toghe da parte di giudici, avvocati della difesa e dell'accusa;
- Dichiarazioni video-registrate – queste permettono al testimone di avvalersi di una dichiarazione video pre-registrata come maggiore testimonianza dell'accusa.”¹³¹

Inoltre, esiste la possibilità che un intermediario registrato aiuti le vittime vulnerabili a fornire la loro testimonianza in tribunale o presso la polizia, qualora esista una difficoltà di comunicazione¹³². L'intermediario deve essere autorizzato dal tribunale, avere una formazione sociale o legale e fungere da connessione tra il minorenne e gli operatori.¹³³ Nei casi in cui si utilizzi un intermediario autorizzato, gli

¹³⁰ Capitolo 3, Parte B 1.2 in riferimento al Capitolo 2 Parte A 1.8 Codice Vittime.

¹³¹ Capitolo 1, 1.13 Codice Vittime.

¹³² Capitolo 1, 1.15 Codice Vittime.

¹³³ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 24.



operatori coinvolti si accordano sulle regole base relative al tipo di domande che verranno poste ad un minorenni durante l'interrogatorio preliminare al processo.¹³⁴

Se un minorenni vittima fornisce testimonianza attraverso una dichiarazione di testimonianza pre-registrata, gli/le possono essere poste domande aggiuntive attraverso esami incrociati: si tratta di una misura che consente al minorenni vittima di trovarsi in una sala diversa, fuori dall'edificio del tribunale, e usare un collegamento video attraverso il quale fornire la sua testimonianza.¹³⁵ Potrebbe anche succedere che non siano necessarie altre domande e che non debba quindi avere luogo alcun interrogatorio in tribunale.¹³⁶

L'ufficio della pubblica accusa deve trattare tutte le vittime in maniera rispettosa. Se necessario, la corte interverrà qualora consideri un esame incrociato inappropriato o aggressivo.¹³⁷ Inoltre, una vittima ha diritto a visitare il tribunale prima della data di udienza per familiarizzare con lo stesso prima dell'inizio del processo.¹³⁸ In particolare, ai minorenni viene mostrata l'entrata separata a loro dedicata, l'aula del tribunale, la sala di attesa per i testimoni e la sala in cui si effettuerà l'audizione in diretta.¹³⁹ Queste visite sono organizzate dalla Witness Care Units (Unità Cura della Vittime) in connessione con il Witness Service (Servizio Testimoni) del tribunale.¹⁴⁰ Nei casi in cui l'età della vittima è incerta e vi sono motivi per ritenere che la persona sia minore di 18 anni, il Codice Vittime determina che si debba presumere che quella persona sia minorenni.¹⁴¹

Infine, esiste la possibilità per le vittime di effettuare una "Dichiarazione Personale della Vittima" (DPS) unitamente alla loro dichiarazione di testimonianza.¹⁴² La DPS dovrebbe fornire alle vittime l'opportunità di registrare l'impatto che il reato ha avuto su di loro e sulle loro famiglie. Al contrario, la dichiarazione di testimonianza si basa solo su quanto avvenuto durante il reato. Mentre la dichiarazione di testimonianza

¹³⁴ Questa pratica è stata menzionata come pratica promettente nel report 2015 della FRA sulla giustizia a misura di minorenni. Ibid, 27.

¹³⁵ Capitolo 3, Parte A 3.1 Codice Vittime.

¹³⁶ Capitolo 3, Parte A 1.3 Codice Vittime.

¹³⁷ Capitolo 3, Parte A 3.1 Codice Vittime.

¹³⁸ Capitolo 3, Parte B 1.2. in riferimento al Capitolo 2, Parte A 2.14.

¹³⁹ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 63.

¹⁴⁰ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 34.

¹⁴¹ Capitolo 5, 1.46 Codice Vittime.

¹⁴² Ufficio della pubblica accusa, Dichiarazione personale della vittima: orientamenti giuridici, <https://www.cps.gov.uk/legal-guidance/victim-personal-statements>



non può essere cambiata, la vittima può fornire altre dichiarazioni personali in qualsiasi momento prima della sentenza. Le vittime di reati particolarmente gravi, le vittime vulnerabili o che hanno subito un'intimidazione hanno diritto a rendere una DPS indipendentemente dalla dichiarazione di testimonianza. La DPS sarà considerata dal tribunale solo se l'autore di reato sia stato dichiarato colpevole ed aiuti a chiarire il danno fisico e psicologico causato dal reato.¹⁴³

4.4. Accesso e supporto da parte dei servizi di supporto alle vittime (articoli 8-9 DV)

4.4.1. Finlandia

In generale, ogni vittima ha il diritto di avere un difensore che la supporti nella denuncia di un reato, durante la fase delle indagini penali e naturalmente durante il processo.¹⁴⁴ Sebbene, normalmente, il consulente legale debba essere remunerato dalla vittima, esistono due circostanze in cui alla vittima può essere garantito il supporto legale gratuito o in cui si può nominare un avvocato per la vittima: accesso al sistema di gratuito patrocinio o nomina d'ufficio di un avvocato per vittime di determinati reati.

1. I presupposti per l'ammissione al gratuito patrocinio sono collegati al “*reddito, spese, salute e garanzie di mantenimento*”¹⁴⁵ della vittima. A seconda della situazione economica della vittima, lo stato potrebbe fornire una parte o l'intero pagamento della parcella del consulente.¹⁴⁶ Le vittime possono fare richiesta di gratuito patrocinio presso gli uffici preposti, on-line o chiedendo allo studio legale che le rappresenta di richiederlo per loro.¹⁴⁷
2. Nel caso di una vittima di violenza domestica, abuso sessuale o di una grave offesa alla vita, alla salute o alla libertà, il giudice può provvedere alla nomina di un avvocato per la vittima (Capitolo 2, Sezione 1a FCPA).¹⁴⁸ In questi casi la nomina del legale non dipende dal reddito della vittima, ma lo stesso è remunerato dallo stato.¹⁴⁹ Inoltre in questi casi, il tribunale può nominare una

¹⁴³ Supporto alle vittime , Victim Personal Statements, <https://www.victimsupport.org.uk/help-and-support/your-rights/victim-personal-statements>

¹⁴⁴ Si veda inoltre Capitolo 4 Sezione 10 FCIA

¹⁴⁵ Oikeus, Means-testing,

<https://oikeus.fi/en/index/esitteet/oikeusapu/millatuloilla-oikeusapua-myonnetaan-jamitkamenothuomioidaan.html>

¹⁴⁶ Le informazioni sui costi del gratuito patrocinio e sulle deduzioni possono essere reperite qui: Oikeus, Information on Legal Aid, <https://oikeus.fi/en/index/esitteet/oikeusapu/mitaoikeusapuhakijallemaksaa.html>

¹⁴⁷ Ministero della Giustizia Finlandese, Diritti delle Vittime di Reato, 1.3.2017

¹⁴⁸ Ibid.

¹⁴⁹ Ministero della Giustizia Finlandese, Diritti delle Vittime di Reato, 1.3.2017; si veda anche Oikeus, Legal aid,



persona di supporto per la parte lesa. Tale soggetto dovrebbe fornire supporto personale durante l'indagine penale e il processo e assistere la parte lesa nella soluzione del caso (Capitolo 2, Sezione 9 FCPA).

A seconda dei casi, l'investigatore capo o il pubblico ministero deve inviare una richiesta al tribunale per la nomina dell'avvocato o di una persona di supporto prima che avvenga l'audizione durante la fase delle indagini penali (Capitolo 4, Sezione 10, Sottosezione 2 FCIA). In particolare, questo avviene qualora una persona possa essere stata vittima di violenza domestica, abuso sessuale o di una grave offesa alla vita, alla salute o alla libertà.

Mentre il diritto di accesso ai servizi di supporto alla vittima esisteva già prima del recepimento della Direttiva Vittime nella legislazione finlandese, altre disposizioni sono state inserite. E' stata aggiunta una disposizione al Capitolo 4 Sezione 10 FCIA in base al quale le specifiche esigenze di protezione dell'attore e le sue caratteristiche personali rappresentano anche il motivo in base al quale il funzionario, preposto allo svolgimento dell'indagine investigativa preliminare, deve inviare le informazioni di contatto delle parti lese ad un servizio di supporto per le vittime.

Altre disposizioni relative all'accesso da parte della vittima ai servizi di supporto sono determinate nella Legge sugli oneri della Vittima¹⁵⁰ che è stata l'unica legge emanata a fronte del processo di recepimento della Direttiva Vittime.¹⁵¹ L'onere della vittima è il denaro pagato dall'autore di reato sottoposto a processo per finanziare i servizi di supporto alle vittime.¹⁵² Con questa nuova legge, la Finlandia ha dato seguito ad una raccomandazione della Commissione Europea che raccomandava l'implementazione dell'onere della vittima per finanziare i servizi generali per le vittime richiesti dalla Direttiva Vittime.¹⁵³ L'altra legislazione applicabile include la Legge sul Gratuito Patrocinio (257/2002) e i suoi ultimi emendamenti; e il Decreto Governativo sul Gratuito Patrocinio (388/2002) e i suoi ultimi emendamenti (997/2004, 1208/2005, 867/2007 e 1008/2009).

<https://oikeus.fi/oikeusapu/en/index.html>

¹⁵⁰ FINLEX, Legge sugli oneri della vittima, 22.5.2015/669, <https://www.finlex.fi/fi/laki/ajantasa/2015/20150669> (Finlandese)

¹⁵¹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 70 – 71, per una panoramica precisa sugli articoli della DV in relazione alle disposizioni corrispondenti nel Codice Vittime, 23.

¹⁵² Riku, What is a victim charge?, <https://www.riku.fi/en/frequently+asked+questions/what+is+a+victim+charge/>

¹⁵³ Ibid.



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4.4.2. Germania

In Germania esistono due forme di supporto prestato alle vittime durante il procedimento in tribunale: supporto legale e psicosociale; questo ultimo introdotto nel corso del processo di recepimento della Direttiva Vittime. Inoltre, vi sono alcune condizioni in base alle quali alla vittima è garantito il gratuito patrocinio.

In questo contesto, è importante notare che ogni persona che ha il diritto di partecipare al procedimento come co-ricorrente, in base all'articolo 395 del GCCP, viene anche considerata come vittima nell'ambito del GCCP. Per effetto di ciò, anche alcuni membri della famiglia di una persona la cui morte è stata causata da un reato (figli, genitori, fratelli, coniuge o partner) sono considerati vittime in base all'art. 395 par. 2 GCCP e, quindi, possono accedere al supporto legale e psico-sociale gratuitamente.¹⁵⁴

Mentre in base all'art. 406f GCCP tutte le parti lese hanno il diritto di essere rappresentate da un avvocato (*"Verletztenbeistand"*), vi sono altri fattori che determinano se la vittima possa accedere ad un avvocato gratuitamente, per esempio se ha o meno il diritto di partecipare al procedimento come co-ricorrente.¹⁵⁵ In particolare, la legge prevede che alle vittime dovrebbe essere garantito il diritto ad una rappresentanza legale gratuita nei seguenti casi: (art. 397a GCCP):

- reati particolarmente gravi, per esempio abuso sessuale di minorenni, violenza sessuale e stupro, tratta della persona a scopo di sfruttamento sessuale e lavorativo, tentato omicidio.¹⁵⁶
- Se un reato ha già causato – o ci si aspetti che possa causare – gravi danni fisici o mentali e rientra negli articoli 226, 226a, 234-235, 238-239b, 250, 252, 31a GCCP. Questi reati includono tra gli altri: aggressione grave, rapina, rapimento, sottrazione di minorenne, stalking aggravato, reati legati alla privazione della libertà.
- Qualora si tratti di vittime minorenni o di vittime che non sono in grado di esercitare i propri diritti e si tratti, tra gli altri, di reato sessuale, sfruttamento della prostituzione, maltrattamento di persone

¹⁵⁴ Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, 22, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (tedesco).

¹⁵⁵ Questi sono per esempio crimini contro l'autodeterminazione sessuale, l'onore, l'integrità fisica, la libertà personale; tentato omicidio;

¹⁵⁶ Art. 177, 179, 232-232b, 233a GCCP.



poste sotto la propria tutela, gravi danni fisici.¹⁵⁷

Se una vittima non ha diritto alla rappresentanza legale gratuita in base all' art. 397a GCCP, può comunque avere diritto all'assistenza legale, in base alle norme della Legge Civile Tedesca (art. 397a par. 2 GCCP). Questo diritto dipende dalla situazione finanziaria e dal reddito della vittima o dalle particolari circostanze del caso.

Inoltre, nel corso del processo di recepimento della Direttiva Vittime, il diritto al supporto psico-sociale ("*psychosoziale Prozessbegleitung*")¹⁵⁸ è stato racchiuso all'interno dell'art. 406g GCPP – che è stata l'unica disposizione ad entrare in vigore solo l'1 gennaio 2017¹⁵⁹. Inoltre, è stata emanata una nuova legge indirizzata agli operatori che prestano supporto psico-sociale, che regola i principi e i requisiti necessari per ottenere tale qualifica¹⁶⁰ (par. 2 legge cit.). L'operatore che presta supporto psico-sociale può essere presente durante gli interrogatori con la vittima e durante il procedimento in tribunale.

Il tribunale deve fornire un operatore che presti supporto psico-sociale alla vittima, qualora ne faccia richiesta, nei seguenti casi:

- Minorenni vittime di reato o vittime che non sono in grado di esercitare adeguatamente i propri diritti, nel caso di reati sessuali, sfruttamento della prostituzione, maltrattamento di persone poste sotto la propria tutela, gravi danni fisici, tra gli altri;¹⁶¹
- qualora la specifica esigenza di protezione della vittima lo richieda, nel caso di reati particolarmente gravi, per esempio abuso sessuale di minorenne, aggressione sessuale e stupro, tratta di persone allo scopo dello sfruttamento sessuale e lavorativo, tentato omicidio;¹⁶²
- qualora la specifica esigenza di protezione della vittima lo richieda, nel caso di altri determinati reati

¹⁵⁷ Art. 174-182, 184i, 184j e 225 GCCP (se la vittima era minore di 18 anni al momento del reato); art. 221, 226, 226. 232-235, 237, 238 para. 2 e 3; 239, 239b, 240 para. 4, 249, 250, 252, 255 e 316 GCCO (se la vittima era minore di 18 anni al momento della denuncia del reato).

¹⁵⁸ Un supporto psicosociale deve essere rigidamente separato da qualsiasi supporto legale in base all'art. 2 para. 2 PsychPbG.

¹⁵⁹ Bundesministerium der Justiz und für Verbraucherschutz, Opferhilfe und Opferschutz im Strafverfahren, 16.11.2017, https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (tedesco).

¹⁶⁰ Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren vom 21. Dezember 2015 (BGBl. I S. 2525, 2529), (PsychPbG), https://www.bmjbv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (tedesco)

¹⁶¹ Art. 174-182, 184i, 184j and 225 GCCP (se la vittima era minore di 18 anni al momento del reato); art. 221, 226, 226. 232-235, 237, 238 para. 2 e 3; 239, 239b, 240 para. 4, 249, 250, 252, 255 e 316 GCCO (se la vittima era minore di 18 anni momento della denuncia del reato).

¹⁶² Art. 177, 179, 232-232b, 233a GCCP.



penali¹⁶³ che hanno già causato – o ci si aspetti possano causare – gravi danni fisici o mentali alla vittima. Tali reati comprendono, tra gli altri: aggressione grave, rapina, rapimento, sottrazione di minorenni, stalking aggravato, reati legati alla privazione della libertà.

Mentre diversi attori hanno accolto favorevolmente le nuove disposizioni sugli operatori psico-sociali, altri le hanno criticate: in particolare vi è il timore che un “allenamento dei testimoni” possa influenzare la testimonianza della vittima.¹⁶⁴

Infine, la Legge Federale Tedesca per la Protezione del Minorenne regola la protezione dei minorenni in Germania a livello federale. Essa deriva da uno sforzo per identificare e colmare i vuoti esistenti nel sistema di protezione minorile in Germania. Tra gli altri, essa regola lo sviluppo, l'applicazione e la revisione degli standard per assicurare i diritti di bambini e adolescenti in istituti e la loro protezione da qualsiasi forma di violenza.¹⁶⁵

4.4.3. Portogallo

In Portogallo il diritto delle vittime all'assistenza legale è sancito dalla Costituzione portoghese, la quale prevede che *“la giustizia non può essere negata a nessuno a causa della mancanza di adeguati mezzi finanziari”* (art. 20 par 1. Costituzione portoghese¹⁶⁶), e che *“tutti hanno il diritto a ricevere informazione ed alla consulenza legale, ad un avvocato e ad essere accompagnati dallo stesso dinanzi a qualsiasi autorità”* (art. 20 par. 2 Costituzione portoghese). Inoltre, la Costituzione protegge i diritti delle vittime a partecipare al procedimento penale, affidandone l'elaborazione più precisa alla legge. La legislazione portoghese più rilevante al riguardo è rappresentata dal Codice di Procedura Penale, dallo Statuto Vittime del Portogallo, dal Regolamento sui Costi Procedurali e dalla Legge sull'Accesso alla Legge e ai Tribunali¹⁶⁷ (Legge no. 34/2004 del 29 luglio modificata dalla Legge no. 47/2007 del 28 agosto)¹⁶⁸.

¹⁶³ Art. 226, 226a, 234-235, 238-239b, 250, 252, 31a GCCP

¹⁶⁴ Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 344.

¹⁶⁵ Bundesministerium für Familie, Senioren, Frauen und Jugend, German Federal Child Protection Act (Bundeskinderschutzgesetz), <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/bundeskinderschutzgesetz/das-bundeskinderschutzgesetz/86268> (tedesco).

¹⁶⁶ Costituzione della Repubblica Portoghese, <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>

¹⁶⁷ Legge sull'Accesso alla Legge e ai Tribunali, Legge no. 34/2004 del 29 luglio emendata dalla Legge no. 47/2007, del 28 agosto, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=80&tabela=leis&so_miolo (portoghese).

¹⁶⁸ Vânia Costa Ramos, Legal Aid for Victims in Criminal Proceedings in Portugal, in Wilinski, Karlik (eds.), Improving Protection of Victims' Rights: Access to Legal Aid, Adam Mickiewicz University, Poznan, 2014, 192.



In base all'articolo 13 PVS, le vittime hanno accesso al gratuito patrocinio nei casi stabiliti dalla Legge Portoghese sull'Accesso alla Legge e ai Tribunali. La nuova legislazione non amplia, quindi, la portata normativa delle disposizioni già esistenti nella legislazione portoghese.¹⁶⁹ La Legge Portoghese sull'Accesso alla Legge e ai Tribunali, d'altra parte, chiarisce che l'accesso alla rappresentanza legale gratuita in tribunale ed al relativo supporto legale dipendono dalla valutazione del reddito della vittima (Articolo 8 legge cit.). Quindi, solo una vittima che non ha un reddito sufficiente avrà diritto alla rappresentanza legale gratuita.¹⁷⁰ Inoltre, la legge chiarisce all'art. 6 legge cit. quali costi sono coperti dal gratuito patrocinio: supporto e assistenza legale, inclusa la consulenza di un avvocato, nomina di un avvocato e pagamento della sua parcella, esenzione parziale o totale dei costi del tribunale.¹⁷¹

Esistono anche alcune circostanze in presenza delle quali il giudice o il pubblico ministero possono determinare se una vittima necessita di supporto psicosociale (*"Técnico de apoio à vítima"*) in base all'art. 15 par. 3 PVS. L'operatore che presta il supporto psicosociale è un impiegato dell'APAV il cui ruolo è quello di aiutare la vittima a superare o mitigare l'impatto del reato. Inoltre, egli/lei può accompagnare la vittima in tribunale, presso la polizia o per effettuare esami medici.¹⁷²

Mentre i diritti di accesso ai servizi di supporto per le vittime sono previsti e specificati nell'ambito del diritto di ricevere, il prima possibile, informazione legale (recepimento dell'articolo 4 DV), nella legislazione Portoghese mancano i dettagli specifici relativi all'articolo 9 DV.¹⁷³

4.4.4. Spagna

Ai sensi dell'art. 8 DV, l'art. 10 della Legge 4/2015 dichiara che tutte le vittime di violenza hanno diritto di accedere ai servizi di assistenza e supporto forniti dalle autorità pubbliche e agli Uffici di Supporto alla Vittima, in maniera gratuita e confidenziale, come previsto dai regolamenti e dal quadro nazionale di riferimento. Come precisato dalla stessa Direttiva, anche la legislazione nazionale statuisce che i parenti delle vittime possono beneficiare degli stessi diritti spettanti alla vittima.

¹⁶⁹ APAV - Associação Portuguesa de Apoio à Vítima, Developing Directive – compatible practices for the identification, assessment and referral of victims: Portugal Practices Report, 7.

¹⁷⁰ Info Vitimas, avvocato della vittima, http://infovitimas.pt/pt/004_quem/paginas/004_006.html (portoghese).

¹⁷¹ Ibid, 198.

¹⁷² Info Vitima, operatore per il supporto psicosociale, http://infovitimas.pt/pt/004_quem/paginas/004_007.html (portoghese).

¹⁷³ EPRS – European Parliamentary Research Service, The Victims' Rights Directive 2012/29/EU: European Implementation Assessment, December 2017, 54.



In Spagna, gli Uffici di Assistenza alla Vittima – che esistono in diverse Comunità Autonome¹⁷⁴ - hanno la responsabilità di coordinare l'assistenza fornita da diverse organizzazioni, istituzioni ed entità che lavorano al supporto alle vittime. Questi uffici sono costituiti da team multidisciplinari – avvocati, psicologi e operatori sociali – che supportano le vittime di reato nei procedimenti penali. Un recente rapporto dell'Agenzia per i Diritti Fondamentali (FRA Agency) sulla giustizia a misura di minorenne ha osservato da vicino questi uffici e ritenuto che essi rappresentano una prassi promettente per i dipartimenti interdisciplinari preposti al supporto delle vittime. A seconda del luogo, gli uffici offrono servizi, quali visite alle strutture del tribunale prima del processo e informazioni ai genitori. A volte l'audizione di un minorenne può tenersi negli stessi uffici.¹⁷⁵ Inoltre, come già menzionato, anche agli Uffici di Supporto alla Vittima è richiesto di effettuare una valutazione individuale delle esigenze di protezione individuale della vittima, ai sensi dell'articolo 28 par. 2 della Legge 4/2015. In particolare, essi dovrebbero valutare se la vittima abbia bisogno di sostegno e assistenza psicologica, di una persona di supporto durante il processo, di informazioni o di altre speciali misure che possano essere garantite dal tribunale, oppure necessiti di essere indirizzata a servizi di supporto specialistici.¹⁷⁶

Inoltre, l'articolo 28 della Legge 5/2015 stabilisce il livello di assistenza minima che gli Uffici di Supporto alla Vittima devono prestare alle vittime:

- a) Informativa generale sui diritti della vittima
- b) Informativa sui servizi specialistici disponibili che possano assistere le vittime, in considerazione delle loro condizioni personali e della natura del reato
- c) Supporto emotivo per le vittime
- d) Consulenza finanziaria, compreso l'accesso al gratuito patrocinio
- e) Consulenza sul rischio di, e su come prevenire, una vittimizzazione secondaria o ripetuta, intimidazioni o rappresaglie
- f) Coordinamento delle diverse organizzazioni, istituzioni o organi che forniscono servizi di supporto alle vittime
- g) Coordinamento con giudici, tribunali e l'ufficio del pubblico ministero per fornire servizi di

¹⁷⁴ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015. 110.

¹⁷⁵ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015, 110.

¹⁷⁶ Articolo 28 par. 2, Legge 4/2015 sulla Posizione delle Vittime di Reato.



supporto alle vittime.

Il legislatore spagnolo ha, inoltre, scelto di introdurre un meccanismo di valutazione del Sistema di supporto alla vittima in Spagna. La prima disposizione aggiuntiva della Legge 4/2015 dichiara che il funzionamento delle istituzioni, dei meccanismi e delle garanzie per il supporto della vittima in Spagna debba essere valutato su base annuale da parte del Ministero della Giustizia. La valutazione e i suoi risultati devono essere usati quale orientamento per migliorare il Sistema di protezione.

4.4.5. Inghilterra e Galles

Sebbene in Inghilterra e Galles il termine “vittima” sia usato e definito, la vittima non costituisce una parte al procedimento penale.¹⁷⁷ Di conseguenza, una vittima non può esercitare nessun diritto relativo alla rappresentanza legale nel corso del procedimento penale. Il Procuratore di Stato presenta il caso della vittima, mentre il ruolo della vittima è quello di fornire prove quale testimone.¹⁷⁸ Ciononostante, esistono diversi servizi di supporto per le vittime in Inghilterra e Galles “*che offrono alle vittime di reato aiuto e supporto per affrontare la situazione e riprendersi a seguito di un reato.*”¹⁷⁹ Tutte le vittime hanno diritto ad avere informazioni sui servizi di supporto alla vittima disponibili.¹⁸⁰ I minorenni vittima – come tutte le vittime – hanno diritto ad una valutazione sul bisogno o meno di essere supportati.¹⁸¹

Generalmente, tutte le vittime hanno **accesso ai servizi di supporto alle vittime**, indipendentemente dal fatto che abbiano presentato o meno un reclamo e dalla fase del processo in cui si trovano, quindi anche dopo la conclusione delle indagini e l’incriminazione.¹⁸² In seguito alla denuncia di un reato, i soggetti prestatori di servizi hanno l’obbligo di inviare la vittima ad un servizio di supporto, entro due giorni lavorativi dalla denuncia del reato.¹⁸³ La vittima ha il diritto, comunque, di chiedere alla polizia di non trasmettere informazioni su di sé a un servizio di supporto alle vittime. Inoltre, in caso di minorenni

¹⁷⁷ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, 112.

¹⁷⁸ Ibid.

¹⁷⁹ Capitolo 3, Parte B 1.2 in riferimento al Capitolo 2, Parte A, 1.2 Codice Vittime.

¹⁸⁰ Introduzione, 1.6 e Capitolo 3, Parte B 1.2 in riferimento al Capitolo 2, Parte A, 1.4 Codice Vittime.

¹⁸¹ Capitolo 3, Parte B 1.2 in riferimento al Capitolo 2, Parte A, 1.1 Codice Vittime.

¹⁸² Introduzione, 1.6. and 22 Victims’ Code.

¹⁸³ Ibid.



vittime – e anche di altre vittime con diritti più ampi – il fornitore del servizio deve assicurarsi che la vittima sia d'accordo con il fornire le proprie informazioni ai servizi di supporto alla vittima.¹⁸⁴

Infine, come in Finlandia, anche in Inghilterra e Galles esiste un sistema che obbliga l'autore di reato che sia stato condannato a pagare un supplemento al fine di finanziare i servizi di supporto alle vittime mediante il Fondo generico per le vittime e i testimoni. Quando viene emessa sentenza, il giudice deve altresì disporre il pagamento del "Victim Surcharge".¹⁸⁵ L'importo dipende dalla condanna, così come dall'età e dalla personalità giuridica dell'autore di reato ed è stabilito secondo una tabella accessibile on line.¹⁸⁶ Tale "Victim Surcharge" è stato introdotto nel mese di Aprile 2007 e successivamente modificato ad Aprile 2016. On line è disponibile una lista completa dei gruppi che ricevono il supporto dal Fondo vittime e testimoni.¹⁸⁷

¹⁸⁴ Capitolo 1, 1.6 Victims' Code.

¹⁸⁵ Sentencing Council, Cosa si intende per victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>

¹⁸⁶ Tabella relativa all'importo reperibile al sito <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>

¹⁸⁷ Gov.uk, Victims and witnesses funding awards, <https://www.gov.uk/government/publications/victims-and-witnesses-funding-awards>



5. Conclusioni

Il presente rapporto analizza la legislazione nazionale di recepimento della Direttiva Vittime in Finlandia, Germania, Portogallo, Spagna e Inghilterra e Galles, con un particolare focus sui diritti garantiti ai minorenni vittime di reato al fine di identificare i risultati raggiunti dalla Direttiva Vittime, le migliori prassi e le soluzioni legislative più adeguate. Considerato il divario, spesso presente, tra la legislazione e la prassi, si deve evidenziare che il presente rapporto si limita ad elencare le buone prassi e le migliori soluzioni legislative senza entrare nel merito di come gli esempi seguenti siano di fatto implementati nella pratica.

I processi di recepimento della Direttiva Vittime negli SM selezionati sono stati abbastanza diversi. Spagna e Portogallo hanno recepito molte parti della Direttiva Vittime testualmente. Similmente, entrambi i Paesi hanno introdotto una nuova legge che comprende un elenco quasi esaustivo dei diritti delle vittime, ossia lo Statuto Vittime Portoghese e la Legge 4/2015 sulla Posizione delle Vittime di Reato in Spagna. L’emanazione di questi due documenti sembra rendere i diritti delle vittime più accessibili e chiari.

Parimenti, in Inghilterra e Galles, tutti i diritti delle vittime di reato sono contenuti nel Codice Vittime, che vuole essere una guida pratica per assistere gli enti di giustizia penale nel guidare le vittime nel corso del procedimento penale. Esiste anche una versione facilitata, che lo rende più accessibile ai minorenni. Durante il processo di recepimento, in Inghilterra e Galles è stato organizzato un ampio processo di consultazione e valutazione del Codice Vittime pre-esistente, che ha comportato risposte scritte da parte di diversi stakeholders, eventi pubblici di consultazione e questionari con bambini e ragazzi circa le loro impressioni rispetto al Codice Vittime. Al contrario, in Germania, il processo legislativo consente la consultazione, ma non prevede un processo di consultazione vincolante dalla legge. Le disposizioni tedesche relative alla protezione della vittima sono, inoltre, molto frammentate, non solo nella legislazione nazionale ma anche in quella federale.

La definizione legale di vittima di reato, così come sancita dall’articolo 2 par. 1 DV, mirava a rafforzare l’obiettivo di collocare la vittima al centro del sistema di giustizia penale. Ciononostante, il fatto che siano utilizzati diversi termini per descrivere la persona che ha subito un danno, quale risultato di un reato, non significa necessariamente che le legislazioni nazionali non forniscano la stessa quantità di diritti. Sebbene in Germania e Finlandia non esista una definizione legale del termine “vittima”, la protezione dei diritti della vittima è molto elevata in entrambi i paesi. In Finlandia, per esempio, viene utilizzato il termine



“parte lesa” invece di vittima e quest’ultimo include anche una persona fisica che sia stata insultata o minacciata ed è quindi una definizione molto più ampia della definizione contenuta nella Direttiva Vittime. Inoltre, le parti godono di una grande quantità di diritti nel corso della fase delle indagini e del procedimento in tribunale. Al contrario, sebbene il Codice Vittime (in Inghilterra e Galles) contenga una definizione giuridica del termine vittima, le vittime non sono considerate come parte del procedimento penale, ma essenzialmente come testimoni. Per questo, le vittime in Inghilterra e Galles godono di minori diritti, in particolare relativamente alla rappresentanza legale.

Con riferimento al recepimento legale della disposizione relativa alla valutazione individuale delle vittime allo scopo di identificarne le specifiche esigenze di protezione, così come sancito dall’articolo 22 DV, emergono difficoltà comuni in tutti gli SM, in particolare relativamente all’implementazione pratica della valutazione individuale. Sebbene la maggior parte delle legislazioni analizzate specifichi che la valutazione individuale dovrebbe avvenire al primo contatto con l’autorità competente, in massima parte non è chiaro chi sia il soggetto responsabile o idoneo a condurre tale valutazione. Infatti, mentre tutti gli SM analizzati hanno introdotto nuove disposizioni per adeguarsi all’articolo 22 DV, questa disposizione rimane la più criticata e dibattuta in tutti gli SM. Si può reperire una buona prassi nel Codice Vittime di Inghilterra e Galles ove viene precisato che la polizia, ma anche gli altri fornitori di servizi, hanno l’obbligo di condurre la valutazione individuale delle vittime. Inoltre, in Spagna sia gli Uffici di Supporto alla Vittima – formati da team multidisciplinari, che includono giudici, psicologi e operatori sociali – sia giudici e procuratori, sono responsabili di condurre la valutazione individuale per identificare le esigenze della vittima.

Inoltre, la presente ricerca mostra che, sebbene la maggior parte delle misure speciali volte a garantire il diritto di protezione dei minorenni vittime di reato nel corso dei procedimenti penali già esistesse prima del processo di recepimento, in gran parte degli SM, tale processo di recepimento ha apportato diverse modifiche alle legislazioni nazionali: sono stati introdotti diritti aggiuntivi per complementare le procedure di protezione esistenti (ad esempio in Finlandia), il recepimento della Direttiva Vittime ha portato ad un’estensione del gruppo di beneficiari di determinati diritti (ad esempio in Finlandia e Portogallo) e alla sistematizzazione delle disposizioni esistenti (ad esempio in Portogallo e Spagna).

Inoltre, la ricerca ha evidenziato diverse buone prassi relative agli articoli 23-24 DV. Per esempio, in Inghilterra e Galles esiste un documento orientativo “Achieving Best Evidence in Criminal Proceedings”



che – mentre non costituisce un codice di condotta esecutivo – costituisce un’indicazione orientativa di buone pratiche da seguire durante l’interrogatorio dei testimoni. Inoltre, il Codice Vittime prevede la possibilità di nominare un intermediario registrato, che aiuta le vittime vulnerabili a testimoniare in tribunale e presso la polizia. Se un minorenne vittima è interrogato nel corso di un’audizione precedente al processo, l’intermediario può aiutare a stabilire delle regole base che dovranno poi essere tenute in considerazione nel corso dell’audizione. Un’altra pratica promettente in Inghilterra e Galles è costituita dalla possibilità per la vittima di andare a vedere il tribunale prima della data del processo. Questa pratica consente alla vittima di familiarizzare con l’edificio e con il tribunale. Inoltre, in Finlandia esiste un corso interdisciplinare della durata di un anno, rivolto alla polizia e agli operatori della salute che svolgono audizioni di minorenni.

Infine, il Capitolo 4.4 delinea le disposizioni relative all’accesso ai servizi di supporto alle vittime, così come descritte agli articoli 8 e 9 della DV. In generale, la presente ricerca rileva che negli SM selezionati esistono tre tipi di supporto durante il procedimento in tribunale, sebbene non tutti questi servizi siano disponibili in tutti gli SM: a) difensore legale nominato in base alla natura del reato e delle particolari circostanze della vittima; b) gratuito patrocinio concesso in base allo status finanziario delle vittime; c) una persona di supporto o una persona per il supporto psico-sociale. Tuttavia, in Inghilterra e Galles, dove la vittima non è parte del processo penale, la stessa non ha diritto alla rappresentanza legale nel corso del procedimento in tribunale. Il Procuratore dello Stato presenta i casi delle vittime, il cui ruolo è quello di fornire testimonianza quale testimone.

Le buone prassi riscontrate in questa ricerca relative all’accesso ed al supporto prestato dai servizi di supporto alla vittima sono rappresentate, da una parte, nell’onere della vittima in Finlandia - cifra che l’autore di reato imputato deve pagare per finanziare i servizi di supporto alle vittime - dall’altra parte, nel diritto della vittima al supporto psico-sociale. Tale diritto, che in precedenza esisteva in Portogallo e Finlandia, è stato introdotto in Germania nel corso del processo di recepimento della Direttiva. Infine, gli Uffici interdisciplinari per il Supporto alla Vittima in Spagna sono stati considerati quali buona prassi in una recente pubblicazione della FRA Agency.¹⁸⁸ Gli Uffici di Supporto alle Vittime offrono un’ampia gamma di servizi, svolgono la valutazione individuale delle vittime per identificare le loro specifiche esigenze di protezione e coordinano altri servizi di supporto alla vittima. Inoltre, in Spagna, per migliorare

¹⁸⁸ European Union Agency for Fundamental Rights, *Child -friendly justice: perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States*, 2015, 110.



costantemente il sistema di protezione, il funzionamento, i meccanismi e le garanzie prestate dagli enti di supporto alla vittima sono sottoposti ad una valutazione annuale da parte del Ministero della Giustizia spagnolo.

In sintesi, si può dichiarare che la Direttiva Vittime ha portato a diverse conquiste negli SM selezionati. Sebbene alcune disposizioni fossero già presenti nelle singole legislazioni nazionali, i processi di recepimento hanno aperto spazio a un processo di revisione e riesame. Le soluzioni legislative scelte da ciascuno SM vanno, chiaramente, di pari passo con il contesto particolare del proprio sistema legale, ma la presente ricerca suggerisce che può comunque esistere uno spazio per il mutuo apprendimento tra gli stati membri. In particolare, si può osservare che una delle principali insidie dei processi di recepimento sia rappresentata dal divario esistente tra la legislazione e la prassi¹⁸⁹. Un approccio pratico alla revisione e redazione dei testi legislativi, che includa anche un ampio processo di consultazione, ha infatti una maggiore probabilità di portare a soluzioni efficaci che funzionino nella pratica.

¹⁸⁹ Si veda anche European Union Agency for Fundamental Rights, *Victims of crime in the EU: the extent and nature of support for victims*, Publication Office of the European Union (Luxembourg), 2014, 74



Bibliografia

- APAV – Associação Portuguesa de Apoio à Vítima, Developing Directive – compatible practices for the identification, assessment and referral of victims: Portugal Practices Report.
- APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016.
- Assembleia da República, Parliament, <http://www.en.parlamento.pt/Parliament/index.html>
- Assembleia da República, Processo Legislativo Comum, <http://www.parlamento.pt/Parlamento/paginas/plc.aspx>
- Bpb, Wie ein Gesetz entsteht, <http://www.bpb.de/politik/grundfragen/24-deutschland/40463/wie-ein-gesetz-entsteht> (tedesco)
- Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2 (tedesco)
- Bundesministerium der Justiz und für Verbraucherschutz, Opferhilfe und Opferschutz im Strafverfahren, 16.11.2017, https://www.bmjjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (tedesco)
- Bundesministerium für Familie, Senioren, Frauen und Jugend, German Federal Child Protection Act (Bundeskinderschutzgesetz), <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/bundeskinderschutzgesetz/das-bundeskinderschutzgesetz/86268> (tedesco)
- Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.mietpreisbremse.bund.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (tedesco).
- Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksache 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (tedesco)
- Constitution of the Portuguese Republic, <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>
- Decreto do Presidente da República n.º 101/2015 - Diário da República n.º 173/2015, Série I de 2015-09-04/70186153, Assembleia da República, Lei n.º 130/2015, Procede à vigésima terceira alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001, <https://dre.pt/application/file/70186153>
- Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (tedesco)
- DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.



- EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, December 2017.
- EUR-LEX, National transposition measures communicated by the Member States concerning: Directive 2012/29/EU, <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029>
- European Commission, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2013 (in the following: European Commission, Guidance Document to the Victims’ Directive, 2013).
- European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States, 2015.
- European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Lussemburgo), 2014
- FINLEX, Act on Victim Charges, 22.5.2015/669, <https://www.finlex.fi/fi/laki/ajantasa/2015/20150669> (finlandese)
- FINLEX, HE 293/2014, <https://finlex.fi/fi/esitykset/he/2014/20140293?search%5Btype%5D=pika&search%5Bpika%5D=He%20293%2F2014> (finlandese)
- FINLEY, HE 66/2015, <https://finlex.fi/fi/esitykset/he/2015/20150066> (finlandese)
- Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/>
- Finnish Ministry of Justice, Act on the Publicity of Court Proceedings in General Courts, 370/2007 inclusi emendamenti fino al 742/2015, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjQ9unn4MjZAhVMYaQKHTmUB14QFggtMAA&url=https%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F2007%2Fen20070370.pdf&usg=AOvVaw3A34-Ki7L-xk8YksYr1E0V>
- Finnish Ministry of Justice, Code of Judicial Procedure, 4/1734, inclusi emendamenti fino al 732/2015, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiHx5KJ3MjZAhUBLeWKhFZoD60QFggtMAA&url=http%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F1734%2Fen17340004.pdf&usg=AOvVaw0-PJLjKrSH9U01qD0yrl4B>
- Finnish Ministry of Justice, Criminal Investigation Act (805/2011; inclusi emendamenti fino al 736/2015, Traduzione non ufficiale, <https://www.finlex.fi/en/laki/kaannokset/2011/en20110805.pdf>
- Finnish Ministry of Justice, Rights of crime victim, 1.3.2017
- FRANET, Victim Support Services in the EU: An overview and assessment of victims’ rights in practice: Germany, 2014.
- Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren vom 21. Dezember 2015 (BGBl. I S. 2525, 2529), (PsychPbG), https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (tedesco)
- Gov.uk, Victims and witnesses funding awards, <https://www.gov.uk/government/publications/victims-and-witnesses-funding-awards>
- Info Vitima, Psychological Supporter, http://infovitimas.pt/pt/004_quem/paginas/004_007.html (portoghese)



- Info Vitimas, lawyer of the victim, http://infovitimas.pt/pt/004_quem/paginas/004_006.html (portoghese)
- IVOR, Finland: Developments on the implementation of victim assistance mechanisms.
- IVOR, United Kingdom: Development on the implementation of victim assistance and mechanisms.
- Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017.
- Law 1/1996 on legal protection for minors; Law 1/2004 on comprehensive protection measures against gender-based violence (Spagna)
- Law 29/2011 on the recognition and comprehensive protection of victims of terrorism (Spagna).
- Law 35/1995 on support and assistance for the victims of violent crimes and crimes against sexual freedom (Spagna)
- Law on Access to Law and to Courts, Law no. 34/2004 of July 29 amended by Law no. 47/2007, of August 28, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=80&tabela=leis&so_miolo (Portoghese)
- Löffelmann, Drittes Opferrechtsreformgesetz – Ausgabe 11/2014, 22.11.2014, <http://www.recht-politik.de/drittes-opferrechtsreformgesetz/> (tedesco)
- Maizener ed. al., EVVI (Evaluation of Victims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf
- Ministerio de Justicia, Law 4/2015, of 27 April on the Standing of Victims of Crime, <https://rm.coe.int/168070ac7f>
- Ministry of Justice, Results Updated 31 Oct 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime>
- Official Journal of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>
- Official Journal of the European Union, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing the Council Framework Decision 2004/68/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN>
- Official Journal of the European Union, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>
- Oikeus, Attorney and support person for a victim of crime, <https://oikeus.fi/en/index/esitteet/oikeusapu/rikoksenuhrivoisaadaavustajanjatukihenkilon.html>
- Oikeus, If you Become a Victim of a Crime: Victim protection: <https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>
- Oikeus, Information on Legal Aid, <https://oikeus.fi/en/index/esitteet/oikeusapu/mitaoikeusapuhakijallemaksaa.html>
- Oikeus, Legal aid, <https://oikeus.fi/oikeusapu/en/index.html>
- Oikeus, Means-testing, <https://oikeus.fi/en/index/esitteet/oikeusapu/millatuloillaoikeusapumyonnetaanjamitkamenothuomioidaan.html>



Portuguese Criminal Procedure Code, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (Portoghese).

Portuguese Victims' Statute, https://apav.pt/apav_v3/images/pdf/estatuto_da_vitima.pdf (Portoghese).

RIKU – Rikosuripavystys: victim support Finland,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

Riku, What is a victim charge?, <https://www.riku.fi/en/frequently+asked+questions/what+is+a+victim+charge/>

RIKU, What is the victims' directive?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

Savonen, Developing Directive-Compatible Practices for the identification, assessment and referral of victims: National Report – Finland, 2017, 6; and Finnish Ministry of Justice, Rights of a Crime Victim, 1.3.2017.

Sentencing Council, What is the victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>

UK Ministry of Justice, Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures, March 2011,

https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf

UK Ministry of Justice, Code of Practice for Victims of Crime, October 2015,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF

UK Ministry of Justice, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29

March 2013, published on 29 October 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime/results/improving-the-code-of-practice-for-victims-of-crime-consultation-response.pdf>

UK Ministry of Justice, the support you should get if you are a victim of crime,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf

UK Ministry of Justice, The Victims' Code: u18s: Young victims of crime – Understanding the support you should get, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267982/u18-victims-code-leaflet.pdf

UK Ministry of Justice, Victims of crime: Understanding the support you can expect,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341367/adult-victims-code-leaflet.pdf

Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings

Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary

Vânia Costa Ramos, Legal Aid for Victims in Criminal Proceedings in Portugal, in Wilinski, Karlik (eds.), Improving Protection of Victims' Rights: Access to Legal Aid, Adam Mickiewicz University, Poznan, 2014, 192.

Webpage of RIKU, Supporto alla Vittima Finlandia, <https://www.riku.fi/en/victim+support+finland/>



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Webpage of the Bundesrat, legislative procedure,

https://www.bundesrat.de/DE/aufgaben/gesetzgebung/verfahren/verfahren.html;jsessionid=3CA8BC90B2257E80D96151207647DF27.2_cid391?nn=4353668#doc4353670bodyText2

Webpage of the German Ministry of Interior, legislative procedure,

<https://www.bmi.bund.de/DE/themen/verfassung/gesetzgebung/gesetzgebungsverfahren/gesetzgebungsverfahren-node.html>

Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017.



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

Programul de Justiție

GA No. 760270

**Consolidarea protecției copiilor – victime
ale infracțiunilor**

E-PROTECT

WP3: Cercetare și Colectare de date

**D3.6 pan-European Best Practices Report
on Victims' Directive transposition**

Liderul WP3: VICESSE



Nivelul de diseminare:		
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Rezumat

Prezentul raport evaluează legislația națională privind transpunerea Directivei privind victimele (Directiva 2012/29 / UE) în cinci state membre (SM) dincolo de țările partenere E-PROTECT - Finlanda, Germania, Portugalia, Spania și Anglia și Țara Galilor – accentul punându-se în special pe drepturile acordate copiilor victime ale infracțiunilor. Scopul acestuia este de a obține cunoștințe despre implementarea legală a Directivei privind victimele, precum și de a identifica practicile promițătoare și cele mai bune soluții legislative de lucru. În special, acesta evaluează procesele de transpunere a Directivei privind victimele în statele membre selectate, precum și legislația referitoare la transpunerea articolelor 8-9 și 22-24 din Directiva privind Victimele. Cercetarea de față este completată de un raport suplimentar care evaluează implementarea practică a evaluării individuale a victimelor pentru a identifica nevoile specifice de protecție în statele membre selectate.¹

Cercetarea a fost realizată în domeniul proiectului E-PROTECT - 'Enhancing PROtection of Children – vicTims of crime,' –care are scopul de a repune în aplicare Directiva Victimelor, în special în cazurile copiilor care sunt victime ale criminalității. Proiectul constă în mai multe faze, inclusiv cercetare și interacțiuni active cu practicanți din domeniul drepturilor copiilor. În ultimele faze ale proiectului, printre altele, va fi realizată o platformă online despre drepturile copiilor victime, care să includă informații relevante pentru practicanți, de asemenea vor fi organizate seminarii și evenimente virtuale cu aceștia și experți din domeniu.

Rezultatele cercetării arată că transpunerea proceselor Directivei Victimelor în statele membre selectate a fost destul de diversă. În timp ce Spania și Portugalia a transpus mai multe părți din directive ad litteram, Codul Victimelor din Anglia și Țara Galilor se dorește a fi un ghid practic îndreptat atât spre victime, cât și spre furnizorii de servicii. În general, realizarea unui singur document care să includă toate drepturile victimelor pare să le facă mai clare și mai accesibile.

¹ D3.13 pan-European Best Practices Report privind metodologiile individuale de evaluare a copiilor care sunt victime ale infracțiunilor, elaborate în cadrul E-PROTECT



Definiția legală a victimei este de asemenea diferită în cele cinci state membre analizate: în Germania și în Finlanda nu există o definiție legală a termenului victimă în legislația națională. Totuși, faptul că sunt folosiți termeni diferiți pentru a denumi o persoană care a fost agresată, nu înseamnă neapărat că legislațiile naționale nu prevăd aceleași drepturi.

Cercetările din prezent relevă dificultățile comune din statele membre referitoare la implementarea practică a analizei individuale a victimelor pentru a identifica necesitățile specifice de protecție. Problemele includ identificarea autorităților responsabile cu evaluarea, și totodată prevederile care reglementează procedura. De asemenea, în timp ce majoritatea măsurilor speciale care garantează drepturile victimelor existau deja înaintea procesului de transpunere în cele mai multe dintre statele membre din această cercetare, transpunerea Directivei Victimelor a rezultat în mai multe schimbări ale legislațiilor naționale, precum drepturi adiționale, extinderea grupului care beneficiază de drepturile deja în vigoare, dar și sistematizarea prevederilor existente.

În timp ce soluțiile legislative pentru care au optat statele membre merg mână în mână cu contextul particular al sistemelor lor legale, cercetarea de față sugerează că totuși mai există un spațiu pentru învățare reciprocă între statele membre. Printre altele, următoarele practici promițătoare au fost identificate:

- În Finlanda, agresorul urmărit penal trebuie să achite costurile serviciilor necesare victimelor
- Dreptul la suport psiho-social a fost recent introdus în legislația germană. Prevederi similare existau deja în Portugalia și Finlanda
- Portugalia și Spania au folosit procesul de transpunere pentru a sistematiza drepturile oferite victimelor crimelor și au introdus un singur document care conține toate drepturile garantate acestora. De asemenea, în Anglia și Țara Galilor, Codul Victimelor enumeră toate drepturile victimelor într-un singur document.
- În Spania, Oficiul de Sprijin al Victimelor oferă o varietate de servicii, se ocupă de evaluarea individuală a victimelor pentru a identifica nevoile specifice de protecție și pentru a se coordona cu alte servicii de sprijin pentru victime
- Echipele acestora sunt interdisciplinare și includ judecători, psihologi și asistenți sociali. Funcționarea instituțiilor de sprijin pentru victime, mecanismele și garanțiile sunt evaluate anual de către Ministerul de Justiție al Spaniei



- În Anglia și Țara Galilor, un intermediar înregistrat poate ajuta victimele vulnerabile (inclusiv copiii) să ofere dovezi în instanță și poliției. Într-o audiere preliminară, intermediarul ajută stabilirea regulilor de bază ce trebuie respectate în timpul audierii. Totodată, victimele pot vizita tribunalul înainte de audiere pentru a se familiariza cu clădirea și sala de judecată



Cuprins

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Listă de acronime

E-PROTECT	‘Enhancing PROtection of Children – vicTims of crime’
FCIA	Finnish Criminal Investigation Act
FCJP	Finnish Code of Judicial Procedure
GCCP	German Code of Criminal Procedure
MS	Member States
PCCP	Portuguese Code of Criminal Procedure
PVS	Portuguese Victims’ Statute
RIKU	Victim Support Finland
VD	Victims’ Directive Victims’ - Directive 2012/29/EU
Victim PS	Victim Personal Statement
Victims’ Code	The Code of Practice for Victims of Crime



1. Introducere

Prezenta lucrare evaluează transpunerea legislativă a Directivei 2012/29/EU (Directiva Victimelor/Victims' Directive sau VD)² din cele cinci State Membre – Finlanda, Germania, Portugalia, Spania și Anglia și Țara Galilor – cu o atenție specială asupra drepturilor oferite copiilor victime ale abuzurilor. Scopul raportului este de a obține mai multă cunoaștere despre nivelul de implementare legislativă al cerințelor stabilite în Directiva Victimelor, dar și pentru a identifica practici promițătoare și cele mai eficiente soluții legislative. Acest raport nu evaluează, totuși, implementarea transpunerii legislațiilor prevăzute în VD în SM în practică³. A fost realizat în domeniul E-PROTECT - 'Enhancing PROtection of Children – vicTims of crime' – un proiect ce are ca scop repunerea în aplicare a VD, în special în cazurile copiilor victime ale criminalității.

Directiva Victimelor reprezintă o parte dintr-un efort extins al Comisiei Europene de a îmbunătăți drepturile, protecția, sprijinul și participarea victimelor în procedurile penale, cum a fost stabilit în pachetul orizontal de măsuri lansat de Comisie în mai 2011.⁴ Un obiectiv central al Directivei Victimelor este cel de a asigura luarea în considerare a nevoilor victimelor la nivel individual. Conține o varietate de măsuri speciale referitoare la protecția copiilor victime ale criminalității și stipulează abordarea grijulie față de ei, unde binele acestora primează în timpul includerii acestora în procedurile penale.⁵

E-PROTECT constă în mai multe faze, incluzând cercetare și interacțiuni cu practicanți din domeniul drepturilor copiilor. Ca prim pas, transpunerea legislației din VD în cele cinci state partenere ale E-PROTECT a fost evaluată.⁶ Acest raport vine în completarea acestor rapoarte, care evaluează transpunerea legislației a unor State Membre adiționale, pentru a obține mai multe informații cu privire la transpunerea pe plan european. Aceste șase rapoarte servesc drept pietre de temelie pentru viitorii pași ai E-PROTECT,

² Official Journal of the European Union, Directiva 2012/29 / UE a Parlamentului European și a Consiliului din 25 octombrie 2012 de stabilire a standardelor minime cu privire la drepturile, sprijinul și protecția victimelor infracțiunilor și de înlocuire a Deciziei-cadru 2001/220 / JAI a Consiliului , <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

³ Un raport suplimentar - D.13 Studiu privind metodologiile individuale de evaluare a copiilor care sunt victime ale infracțiunilor în alte state membre - are scopul de a evalua implementarea metodologiilor individuale de evaluare a copiilor care sunt victime ale criminalității în aceleași state membre selectate.

⁴ Comisia Europeană, DG Justice Guidance Document privind transpunerea și punerea în aplicare a Directivei 2012/29 / UE a Parlamentului European și a Consiliului din 25 octombrie 2012 de stabilire a unor standarde minime privind drepturile, sprijinul și protecția victimelor infracțiunilor și de înlocuire a deciziei-cadru 2001/220 / JAI, 2013 (în continuare: Comisia Europeană, Document de orientare pentru Directiva privind Victimele, 2013).

⁵ Ibid.

⁶ Austria, Bulgaria, Italia, România și Grecia



la fel ca, printre altele, înființarea unei platforme online despre drepturile copiilor victime, organizarea unor seminarii și a unor evenimente virtuale cu practicanți și specialiști din domeniul sprijinului copiilor victime.

Structura raportului este următoarea: al doilea capitol schițează metodologia, inclusiv felul în care MS evaluate în raport au fost identificare, cum au fost selectate articolele examinate, de asemenea și metodologia evaluării legale. Al treilea capitol comprimă o evaluare a procesului de transpunere al Directivei Victimelor în MS selectate, luând în considerare actualitatea acestuia și a procesului legislativ, dar și implicarea părților interesate în actul redactării.

Apoi, al patrulea capitol conține elementul esențial al acestui raport: evaluarea transpunerii articolelor selectate din VD, definiția legală a copiilor victime ale criminalității (art. 2 para. 1 VD), evaluarea individuală a victimelor pentru a identifica nevoile de protecție specifice (art. 22 VD), dreptul la protecție al copiilor victime în timpul procedurilor penale (art. 23-24 VD), dar și accesul la suport din partea serviciilor de sprijin pentru victime (art. 8-9 VD). Fiecare dintre secțiunile menționate anterior sunt divizate în mai multe sub-capitole, analizând transpunerea legislației în fiecare dintre statele membre la nivel individual.

În final, capitolul cinci prezintă concluzia raportului. Acesta identifică îmbunătățirile și realizările care au rezultat din procesele de transpunere din statele membre, și are ca scop marcarea celor mai eficiente soluții legislative, punând în lumină rezultatele cercetărilor din fiecare țară.

2. Metodologie

Prezentul raport completează cinci revizuri aprofundate ale legislației de transpunere a Directivei privind victimele în cele cinci părți ale acestui proiect, Austria, Bulgaria, Italia, România și Grecia. Având în vedere scopul său de a obține cunoștințe suplimentare privind transpunerea VD la nivel paneuropean, următoarele criterii de selecție au fost utilizate pentru a identifica statele membre evaluate în cadrul acestui raport:

- Domeniul geografic și cultural
- Relevanța SM ca exemplu, în special 1) specificul legislativ național; 2) abordări ale soluțiilor legislative de transpunere a VD
- Cele mai bune practici de lucru



- Disponibilitatea literaturii, a documentelor de politici și a altor materiale

Structura raportului se bazează pe rapoartele anterioare realizate în cadrul E-PROTECT pentru a permite compararea diferitelor soluții legislative. De asemenea, aceleași articole care au fost incluse în rapoartele anterioare au fost evaluate în cadrul prezentului raport. A fost efectuată o juxtapunere a dispozițiilor Directivei privind victimele și a legislațiilor respective, utilizând în același timp Justice Guidance Document⁷ ca punct de referință. În cele din urmă, au fost colectate informații suplimentare prin intermediul cercetării.

În timp ce evaluarea punerii în aplicare a legislației privind transpunerea în practică ar fi putut fi benefică, în special în ceea ce privește găsirea celor mai bune soluții legislative de lucru, o astfel de evaluare ar fi extins domeniul de aplicare al acestei cercetări. Pentru a depăși această limitare, informațiile au fost colectate prin diferite rapoarte de cercetare care au utilizat metode de cercetare primară⁸.

3. Procesul de transpunere a Directivei 2012/29 / UE în statele membre selectate

Următorul capitol va oferi o scurtă elaborare a proceselor de transpunere a Directivei privind victimele în SM selectat: Care au fost provocările? În cazul în care procesele de transpunere în timp - prin urmare, au intrat în vigoare până la 16 noiembrie 2016, așa cum este stabilit în articolul 27 VD? Comisia a inițiat o procedură privind încălcarea dreptului comunitar? Ulterior va fi elaborat

⁷ DG Justice Guidance Document referitor la transpunerea și punerea în aplicare a Directivei 2012/29 / UE a Parlamentului European și a Consiliului din 25 octombrie 2012 de stabilire a standardelor minime privind drepturile, sprijinirea și protecția victimelor infracțiunilor și înlocuirea Deciziei-cadru 2001 a Consiliului / 220 / JAI

⁸De fapt, au existat mai multe rapoarte de cercetare care se concentrează pe protecția victimelor infracțiunilor. Printre altele: APAV - Associação Portuguesa de Apoio à Vítima, IVOR Raport: Implementarea reformei orientate spre victime a sistemului justiției penale în Uniunea Europeană, 2016; EPRS - Serviciul de cercetare parlamentară european, Directiva privind drepturile victimelor 2012/29 / UE: Evaluarea europeană a punerii în aplicare, decembrie 2017; Agenția pentru Drepturi Fundamentale a Uniunii Europene, Dreptul copiilor: perspective și experiențe ale profesioniștilor privind participarea copiilor la procedurile judiciare civile și penale în 10 state membre ale UE, 2015; Agenția Europeană pentru Drepturi Fundamentale, Victimele criminalității în UE: amploarea și natura sprijinului acordat victimelor, Biroul de Publicații al Uniunii Europene (Luxemburg), 2014; FRANET, Serviciile de sprijinire a victimelor în UE: o imagine de ansamblu și o evaluare a drepturilor victimelor în practică: Germania, 2014; Maizener ed. al., EVVI (Evaluarea victimelor), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf; Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Cercetare juridică comparativă: Drepturile și protecția victimelor vulnerabile în procedurile penale.



procesul legislativ, în special implicarea părților interesate în procesul de elaborare a legii, și va fi identificată legislația națională care transpune VD.

3.1. Finlanda

Procesul legislativ parlamentar finlandez⁹ este reglementat de Ordinul parlamentar de lucru finlandez (*Riksdagens arbetsordning*). În ceea ce privește reglementările obișnuite, aceasta prevede că majoritatea lucrărilor legislative să fie conduse de ministere și comisii. După ce o propunere a fost introdusă în Parlament¹⁰, ea este dezbătută mai întâi de comisia respectivă, care are dreptul să consulte experți, înainte ca propunerea să fie prezentată în Parlament. Ulterior, proiectul de lege este fie dezbătut, fie Parlamentul conduce în mod direct la vot¹¹.

În cazul transpunerii legislației Directivei privind victimele, două grupuri de lucru au pregătit actul legislativ: în primul rând, un grup de lucru înființat de Ministerul Justiției format din reprezentanți ai diferitelor ministere, precum și Procuratura, Asociația și Asistența Victimelor din Finlanda (RIKU)¹².¹³ Acest grup de lucru a avut sarcina de a evalua care amendamente legislative și care acțiuni suplimentare au fost necesare pentru punerea în aplicare a Directivei victimelor. După redactarea raportului, autoritățile, companiile și experții au avut posibilitatea de a da declarații cu privire la amendamentele propuse. Majoritatea acestor declarații au sprijinit amendamentele propuse.

În al doilea rând, a fost înființată o comisie suplimentară - Comisia pentru politica victimelor - pentru a pregăti punerea în aplicare a articolelor 8 și 9 din Directiva privind victimele, în special pentru a stabili "o strategie națională pentru organizarea serviciilor de sprijinire a victimelor și finanțarea astfel de servicii"¹⁴. Ca și grupul de lucru, comisia a constatat din reprezentanți oficiali și reprezentanți ai ONG-urilor, precum

⁹Vezi Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/> pentru o explicație detaliată a diferitelor etape ale procesului legislativ finlandez

¹⁰Propunerile pot fi inițiate fie de guvern, deputați individuali, fie prin inițiative cetățenești cu cel puțin 50.000 de semnături.

¹¹Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/>

¹² Suportul pentru victime Finlanda (RIKU) este o organizație bazată pe un acord de cooperare și sprijinită de Crucea Roșie finlandeză, de Federația Familiei de Mame și Copii și Asociația finlandeză pentru sănătate mintală, Liga Mannerheim pentru protecția copilului, Federația finlandeză a casei de decontare și Consiliul Național al Bisericii. Operațiunile sunt coordonate la nivel național de Asociația finlandeză pentru sănătate mintală. Având activități în toată Finlanda. Principala sa activitate este îmbunătățirea poziției victimelor infracțiunilor și a rudelor acestora. Vedeți mai multe pe pagina web a RIKU, Victim Support Finland, <https://www.riku.fi/en/victim+support+finland/>

¹³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Cercetare juridică comparativă: Rights and Protection of Vulnerable Victims in Criminal Proceedings.

¹⁴Ibid., 13.

Victim Support Finland, Federația Casei și Adăposturilor pentru Mame și Copil și Asociația Multiculturăa a femeilor din Finlanda.

Mai mult de jumătate din articolele incluse în Directiva privind victimele au existat deja în legislația finlandeză și, prin urmare, nu au necesitat transpunere, cum ar fi, de exemplu, dispozițiile specifice privind nevoile speciale ale copiilor menționate la articolul 24 din VD. Ca urmare, numai articolele 4, 5, 6, 7, 8, 9, 12, 22 și 23 au necesitat acțiuni legislative¹⁵. Modificările necesare au fost puse în aplicare prin proiectul de lege al guvernului nr. 66/2015¹⁶, care a transpus modificările necesare în diverse acte relevante pentru procedurile penale. Modificările au intrat în vigoare în martie 2016¹⁷. Modificările necesare privind articolele 8 și 9 ale VD au fost puse în aplicare prin proiectul de lege al guvernului cu numărul 293/2014¹⁸ și au intrat în vigoare în decembrie 2016.

Modificările cele mai semnificative din legislația finlandeză au vizat obligațiile de a informa victima despre drepturile sale (capitolul 4, secțiunea 18, Legea finlandeză de investigare penală (FCIA)); dispozițiile care reglementează evaluarea personală (capitolul 11, secțiunea 9 FCIA); și referirea la serviciile de sprijinire a victimelor (Capitolul 4, Secțiunea 10, FCIA)¹⁹.

3.2. Germania

În Germania, o propunere de lege poate fi introdusă fie de guvern (Bundesregierung), de consiliul federal (Bundesrat), fie de cel puțin 5% din membrii parlamentului (Bundestag) sau o fracțiune²⁰. Înainte ca o propunere să poată fi introdusă de guvern - care este practica cea mai comună²¹ - propunerea trebuie să fie înaintată consiliului federal pentru declarații. Ulterior, propunerea - împreună cu declarația consiliului

¹⁵Ibid.

¹⁶ FINLEY, HE 66/2015, <https://finlex.fi/fi/esitykset/he/2015/20150066> (Finlandeză).

¹⁷EUR-LEX a menționat 29 de măsuri care au fost puse în aplicare pentru a transpune Directiva pentru Victime în jurisdicția finlandeză. A se vedea EUR-LEX, Măsuri naționale de transpunere comunicate de statele membre cu privire la: Directiva 2012/29 / UE, <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029>

¹⁸ FINLEX, HE 293/2014, <https://finlex.fi/fi/esitykset/he/2014/20140293?search%5Btype%5D=pika&search%5Bpika%5D=He%20293%2F2014> (Finlandeză).

¹⁹RIKU – Rikosuripavystys: victim support Finland, <https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

²⁰Art. 76 Abs.1 Grundgesetz

²¹See webpage of the German Ministry of Interior, legislative procedure, <https://www.bmi.bund.de/DE/themen/verfassung/gesetzgebung/gesetzgebungsverfahren/node.html>



federal și contravaloarea guvernului – este introdusă în parlament. Aici, legea este dezbătută în trei lecturi, între care propunerile sunt discutate în cadrul comisiilor parlamentare (*Bundestagsausschüssen*). În timp ce în experții pot fi audiați, procedura legislativă din Germania nu prevede o participare obligatorie a societății civile prin lege²². Dacă nu sunt invitați în mod expres de către un respectiv comitet parlamentar, organizațiile pot totuși să ia inițiativa de a scrie declarații critice cu privire la legile propuse, așa cum au procedat mai multe organizații în procesul de transpunere a Directivei victimelor²³.

Nu toate cerințele prevăzute în directiva victimelor intră în competența legii federale, ci în competența statelor federale. În consecință, există mai multe dispoziții care nu ar putea fi puse în aplicare la nivel național²⁴. În special, acesta a fost cazul în ceea ce privește dispozițiile articolelor 8 și 9 (accesul și sprijinul acordat serviciilor de sprijinire a victimelor), precum și articolul 23 (dreptul la protecție a victimelor cu nevoi specifice de protecție în cursul procedurilor penale) și articolul 25 (formarea practicanților)²⁵. Cu toate acestea, deoarece Germania a adoptat deja diverse legi care se axează pe protecția și drepturile victimelor în cadrul procedurilor penale, nu au fost necesare multe modificări pentru transpunerea VD în legislația germană. Majoritatea modificărilor au fost transpuse prin "Legea pentru consolidarea drepturilor victimelor în procedurile penale, 3. Actul de reformă a drepturilor victimelor" (*Gesetz zur Stärkung der Opferrechte im Strafverfahren – 3. Opferrechtsreformgesetz*)²⁶, care a intrat în vigoare la 31 decembrie 2015. Cele mai multe modificări au fost transpuse în Codul german de procedură penală (*Strafprozessordnung*).

Cea mai mare schimbare care a avut loc în Germania ca urmare a procesului de transpunere a fost stabilirea sprijinului psiho-social (*psychosoziale Prozessbegleitung*), care oferă victimelor care au nevoie de protecție specifică posibilitatea de a primi înainte, în timpul și după desfășurarea procedurii penale sprijin profesional.

²²Bundesrat, procedură legislativă

https://www.bundesrat.de/DE/aufgaben/gesetzgebung/verfahren/verfahren.html;jsessionid=3CA8BC90B2257E80D96151207647DF27.2_cid391?nn=4353668#doc4353670bodyText2 și bpb, Wie ein Gesetz entsteht, <http://www.bpb.de/politik/grundfragen/24-deutschland/40463/wie-ein-gesetz-entsteht> (Germană)

²³Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.mietpreisbremse.bund.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (German).

²⁴Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Studii juridice comparative: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 37.

²⁵Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?blob=publicationFile&v=2 (German)

²⁶BMJV, Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf;jsessionid=0EB396255BA84B364DB133AAFF6BBBCE.2_cid289?blob=publicationFile&v=3



În plus, au fost necesare anumite modificări în unele părți ale procedurii și în ceea ce privește dreptul la informație²⁷. Unii experți consideră, cu toate acestea, că este puțin probabil ca majoritatea schimbărilor să aibă mare efect în practică²⁸.

3.3. Portugalia

În Portugalia, o lege poate fi propusă fie de parlamentari ca proiecte de drept (projetos de lei), fie de guvern ca o propunere de lege (*propostas de lei*)²⁹. După ce o lege este admisă de președintele Adunării Republicii, inițiativa este trimisă unui comitet specializat pentru aviz. Ulterior, are loc un vot cu privire la principiile generale ale propunerii. Votul final se desfășoară, de asemenea, în plen. În cele din urmă, inițiativa trebuie să fie semnată de Președintele Republicii³⁰.

Directiva privind victimele a fost transpusă în Portugalia prin Legea nr. 130/2015 din 4 septembrie 2015³¹, care a intrat în vigoare la 4 octombrie 2015³² și a dus la diverse modificări ale Codului de procedură penală portugheză (PCCP)³³. În plus, a fost adoptată o anexă - statutul victimelor portugheze (PVS) (*"Estatuto da Vítima"*) care prevede garantarea statutului victimelor vulnerabile, astfel cum este prevăzut în directiva privind victimele³⁴. Majoritatea dispozițiilor au fost preluate în mod literal din Directiva privind victimele.

În timp ce mai multe dintre cerințele stabilite în VD existau deja în legislația portugheză, legea a dus la unele modificări privind măsurile de prevenire, la consolidarea drepturilor victimelor, precum și la

²⁷Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (Germană).

²⁸Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Studiu juridic comparativ: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, 8

²⁹În plus față de procesul parlamentar în care sunt adoptate legi, în anumite domenii pot fi adoptate legi-decrete de către Guvern și decrete legislative regionale de către adunările legislative.

³⁰See Assembleia da República, Parliament, <http://www.en.parlamento.pt/Parliament/index.html>

³¹Decreto do Presidente da República n.º 101/2015 - Diário da República n.º 173/2015, Série I de 2015-09-04/70186153, Assembleia da República, Lei n.º 130/2015, Procede à vigésima terceira alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001 available at <https://dre.pt/application/file/70186153>

³²Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 60-61.

³³Portuguese Victims' Statute, https://apav.pt/apav_v3/images/pdf/estatuto_da_vitima.pdf (Portugheză).

³⁴Portuguese Victims' Statute, https://apav.pt/apav_v3/images/pdf/estatuto_da_vitima.pdf (Portugheză).

³⁴Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Studiu juridic comparativ: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, 9



introducerea unui nou sistem de compensare a victimelor violenței domestice și violenței. În plus, o definiție legală a "victimei" a fost introdusă în legislația portugheză³⁵.

3.4. Spania

Spania, printre alte state membre, a fost obligată să transpună integral Directiva privind victimele până la începutul lunii noiembrie 2015. Începând cu 16 noiembrie 2015, statele membre au fost obligate să comunice Comisiei progresul legislativ în ceea ce privește obligația de a transpune integral directiva. În conformitate cu evaluarea europeană privind punerea în aplicare a Directivei privind Victimele³⁶, elaborată de Serviciul Parlamentar de Cercetare în decembrie 2017, Spania, printre alte state membre, a transpus directiva printr-un act unic, în timp ce alte câteva dispoziții ale legislației preexistente au fost modificate. Cele mai relevante pentru prezentul raport sunt modificările Codului spaniol de Procedură Penală (CSPP) și instituirea Legii 4/2015 privind statutul victimelor criminalității (Legea 4/2015)^{37,38}.

Principalul instrument juridic utilizat de Spania pentru transpunerea directivei este Legea 4/2015³⁹. Legea a avut ca obiectiv să reunească totalitatea drepturilor victimelor într-un singur proiect legislativ și a fost indusă de obligația de a transpune Directiva Victimelor. Deși Spania a avut deja un cadru de reglementare existent care garanta drepturile victimelor⁴⁰, o mare parte din aceste legi se concentrează pe anumite tipuri de victime, astfel că nu există o legislație unitară care să se aplice tuturor tipurilor de victime ale criminalității. Prin urmare, Legea cu privire la stabilirea victimelor infracțiunilor a fost destinată să abordeze în mod general drepturile tuturor victimelor infracțiunilor, cu un accent puternic pe victimele cu nevoi speciale și pe victimele vulnerabile.

³⁵ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Studiu juridic comparativ: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, 9.

³⁶ EPRS – European Parliamentary Research Service, Directiva privind Victimele 2012/29 / UE: Evaluarea europeană a punerii în aplicare, decembrie 2017.

³⁷ Ministerio de Justicia, Legea 4/2015, din 27 aprilie privind starea victimelor infracțiunilor, <https://rm.coe.int/168070ac7f>

³⁸ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Studiu juridic comparativ: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 81.

³⁹ Ministerio de Justicia, Legea 4/2015, din 27 aprilie privind starea victimelor infracțiunilor, <https://rm.coe.int/168070ac7f>

⁴⁰ Legea 35/1995 privind sprijinirea și asistența victimelor infracțiunilor violente și a infracțiunilor împotriva libertății sexuale (Spania); Legea 1/1996 privind protecția juridică a minorilor; Legea 1/2004 privind măsurile de protecție cuprinzătoare împotriva violenței pe motive de gen (Spania); și Legea 29/2011 privind recunoașterea și protecția cuprinzătoare a victimelor terorismului (Spania).

Ca în cazul Portugaliei, legiuitorul spaniol a transpus multe dintre prevederile Directivei Victimelor textual. În plus, structura legii este identică cu cea a Directivei privind Victimele⁴¹. Toate drepturile și măsurile prevăzute în Directiva privind Victimele au fost transpuse pe deplin în Spania. În plus, asemenea Germaniei, Spania este un stat federal compus din mai multe comunități autonome. În timp ce legile descrise sunt aplicabile în toate comunitățile autonome, cercetările anterioare au arătat că există diferențe semnificative în anumite domenii acoperite de Legea 4/2015, printre care și implementarea birourilor de asistență a victimelor.⁴²

Legiuitorul spaniol vizează adoptarea unei legi care să facă cât mai facilă exercitarea și protejarea drepturilor victimelor. Astfel, sunt furnizate informații și recomandări de orientare privind drepturile victimelor. De asemenea, legislația urmărește evitarea victimizării secundare, care poate fi cauzată, printre altele, de formalități inutile.

3.5. Anglia și Țara Galilor

Codul de Practici pentru Victimele Criminalității (Codul Victimelor)⁴³ a fost introdus pentru prima dată în 2006 și avea scopul de a determina serviciile pe care sistemul de justiție penală trebuie să le ofere victimelor infracțiunilor din Anglia și Țara Galilor. Revizuirea Codului a venit, pe de o parte, ca răspuns la o consultare internă care a avut loc în 2012 și a arătat că acest Cod a necesitat actualizarea pentru a reflecta schimbările survenite în practică⁴⁴. Pe de altă parte, transpune Directiva privind victimele și anumite părți ale Directivei privind traficul de ființe umane⁴⁵ și exploatarea sexuală a copiilor.⁴⁶

⁴¹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Studiu juridic comparativ: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 81.

⁴² Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Studiu juridic comparativ: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, 10.

⁴³ Ministerul de Justiție al Marii Britanii, Codul de practice pentru victimele infracționalității, octombrie 2015 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF

⁴⁴

⁴⁵ Official Journal of the European Union, Directiva 2011/36/EU a Parlamentului European și a Consiliului din 5 April 2011, privind prevenirea și combaterea traficului de persoane și protejarea victimelor și înlocuirea Deciziei-cadru 2002/629 / JAI a Consiliului <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

⁴⁶ Official Journal of the European Union, Directiva 2011/92/EU a Parlamentului European și a Consiliului din 13 December 2011 privind combaterea abuzului sexual asupra copiilor, a exploatării sexuale a copiilor și a pornografiei infantile și de înlocuire a Deciziei-cadru 2004/68 / JAI a Consiliului, <https://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:32011L0093&from=EN>



Înainte de revizuirea Codului Victimelor a fost realizat un proces de consultare care a inclus o gamă largă de organizații – forțe de poliție, consilii locale de justiție penală, grupuri care se ocupă de combaterea delincvenței juvenile, precum și profesioniști din domeniul juridic și organizații de voluntariat. Aceste organizații au fost, pe de o parte, invitate să își prezinte răspunsurile la documentul de consultare, iar pe de altă parte, au avut loc două evenimente de consultare publică cu acestea⁴⁷. În plus, a fost realizat un studiu cu copii și tineri despre impresiile lor despre secțiunea referitoare la copii și tineri din Codul Victimelor⁴⁸. În urma procesului de consultare, Ministerul Justiției a emis un document⁴⁹ care include noul Cod al Victimelor, un rezumat al răspunsurilor trimise, precum și o schiță a acțiunilor care vor fi luate în urma răspunsurilor la consultare.

Codul Victimelor urmărește să fie un ghid practic, care să ajute actorii din domeniul justiției penale să orienteze victimele "în ceea ce privește procedurile penale și să dezvolte un mecanism de sprijin mai flexibil⁵⁰. De exemplu, Capitolul 3, în care se găsesc reglementările privind copiii care sunt victime, este redactat în două părți: Partea A urmărește să ofere victimelor și agențiilor care se ocupă cu problema victimelor informațiile relevante pentru a le îndruma în fiecare etapă a procesului penal; Partea B este scrisă pentru organizațiile care ar trebui să furnizeze acest ajutor și sprijin, de exemplu poliția⁵¹. În plus, Ministerul Justiției a emis două versiuni EasyRead ale Codului Victimelor - unul pentru victimele adulte⁵², altul pentru copiii victime ale infracțiunii⁵³, și un prospect⁵⁴. Aceste documente cuprind versiuni ușor de citit ale Codului Victimelor, explicații ale termenilor dificili explicații prin imagini. Codul Victimelor a fost adoptat în octombrie 2015.

⁴⁷ Documentul de consultare a inclus pe de-o parte schimbările propuse privind Codul Victimelor. Pe de altă parte a fost însoțit de o evaluare de impact și de o declarație privind problema egalității. Ministerul Justiției, rezultate actualizate 31 octombrie 2013 <https://consult.justice.gov.uk/digital-communications/code-victims-crime>

⁴⁸ Ministerul de Justiție al Marii Britanii, Îmbunătățirea Codului de Bune Practici pentru Victimele Infracțiunilor: răspuns la consultările CP8® 29 martie 2013, publicat la 29 octombrie 2013, 10 <https://consult.justice.gov.uk/digital-communications/code-victims-crime/results/improving-the-code-of-practice-for-victims-of-crime-consultation-response.pdf>

⁴⁹ Ministerul Justiției al Marii Britanii, Îmbunătățirea Codului de Practici pentru Victimele Criminalității: răspuns la consultările CP8® din 29 martie 2013, publicat la 29 octombrie 2013.

⁵⁰ Ibid.

⁵¹ Ibid, Capitolul 3

⁵² Ministerul de Justiție al Marii Britanii, sprijinul pe care ar trebui să îl primiți dacă sunteți o victimă a unei infracțiuni https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf

⁵³ Ministerul de Justiție al Marii Britanii, Codul victimelor: u18s: Tinerii victime ale infracțiunilor - Înțelegerea sprijinului pe care ar trebui să-l primiți, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267982/u18-victims-code-leaflet.pdf

⁵⁴ Ministerul de Justiție al Marii Britanii, Victimele infracționalității: Înțelegerea sprijinului pe care îl puteți primi, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341367/adult-victims-code-leaflet.pdf



În Anglia, victima nu este - spre deosebire de celelalte state membre evaluate în cadrul acestui raport - văzută ca parte la procedurile penale, ci în esență ca martor⁵⁵. În consecință, o victimă are o poziție diferită în cadrul anchetei și a procedurii penale, neputând să exercite nici un drept în ceea ce privește reprezentarea juridică în timpul procedurilor judiciare. În Anglia și Țara Galilor, procurorul de stat prezintă cazul victimei, în timp ce rolul victimei este de a furniza probe ca martor.⁵⁶

4. Evaluarea juridică a măsurilor de transpunere a Directivei 2012/29/UE

Următorul capitol cuprinde o evaluare juridică a legislației de transpunere a Directivei privind victimele în statele membre selectate. În primul rând, se va identifica definiția juridică a victimelor infracțiunilor în fiecare stat membru. Ulterior, dispozițiile care transpun art. 22 din Directiva Victimelor – evaluarea individuală pentru a identifica nevoile specifice de protecție – vor fi identificate și subliniate. În cele din urmă, va fi identificat și evaluat dreptul la protecție a copiilor victime ale infracțiunilor în cursul procedurilor penale (art.23-24 DV), precum și dreptul acestora de a accesa serviciile de sprijinire a victimelor (art.8-9 DV).

4.1. Definiția juridică a victimelor criminalității

Unul dintre aspectele centrale ale Directivei Victimelor a fost acela de a plasa victima în centrul sistemului de justiție penală și de a evita aducerea în centrul atenției doar a procurorului și judecătorului.⁵⁷ Astfel, directiva privind victimele prevede că "victimă" înseamnă:

"(I) o persoană fizică care a suferit un prejudiciu, inclusiv daune fizice, mentale sau emoționale sau pierderi economice cauzate direct de o infracțiune;

*(ii) membrii familiei unei persoane a cărei deces a fost cauzat în mod direct de o infracțiune și care au suferit un prejudiciu ca urmare a decesului persoanei respective; "*⁵⁸

⁵⁵ Agenția Europeană pentru Drepturi Fundamentale, Victimele infracțiunilor în UE: amploarea și natura sprijinului acordat victimelor, Biroul de Publicații al Uniunii Europene (Luxemburg), 2014, 29.

⁵⁶ Ibid.

⁵⁷ EPRS – European Parliamentary Research Service, Directiva privind Drepturile Victimelor 2012/29/UE: Evaluarea europeană a punerii în aplicare, Decembrie 2017.

⁵⁸ Articolul 2 paragraful 1 DV



În timp ce legislația națională a majorității statelor membre incluse în acest raport (precum și legislația din statele membre ale UE în general⁵⁹) cuprind o definiție juridică a victimei infracțiunii, nicio definiție nu poate fi găsită în legislația națională a Finlandei și a Germaniei⁶⁰. Cu toate acestea, după cum arată alte cercetări⁶¹, faptul că termenii diferiți sunt utilizați pentru a descrie persoana care a suferit un prejudiciu ca urmare a unei infracțiuni nu înseamnă neapărat că legislațiile naționale nu prevăd același număr de drepturi pentru acestea.

Țară	Legea aferentă	Definiție juridică
Finlanda	-	În Finlanda nu există o definiție juridică a termenului victimă. O parte vătămată (<i>asianomistaja</i>, literal: "cine deține cazul") este 1. "Purtătorul valorii juridice protejate de infracțiunea penală și 2. Cel care a suferit un prejudiciu cauzat direct de o infracțiune."⁶² Definiția finlandeză a părții vătămate este, prin urmare, mult mai largă decât definiția de victimă din directivă. Aceasta include o persoană împotriva căreia a fost comisă o infracțiune, dar nu a suferit un prejudiciu ca urmare a infracțiunii. Mai mult, termenul "asianomistaja" include persoane juridice. Legislația finlandeză definește, de asemenea, victimele indirecte: un soț decedat al victimelor, un partener înregistrat, persoanele care locuiesc în aceeași gospodărie, copii, frați și părinți.
Germania	-	În Germania nu există o definiție juridică a termenului victimă. De obicei se folosește termenul de parte vătămată sau co-reclamant, acesta din urmă acordând victimei drepturi suplimentare. Un co-reclamant este o parte vătămată care are dreptul legal de a se alătura procedurii în conformitate cu art.

⁵⁹ EPRS – European Parliamentary Research Service, Directiva privind Drepturile Victimelor 2012/29/UE: Evaluarea europeană a punerii în aplicare, Decembrie 2017, 13.

⁶⁰ În Finlanda este folosit termenul "partea vătămată" (*asianomistaja*, în limba finlandeză), în timp ce în legea germană termenul folosit de obicei este cel de "co-reclamant".

⁶¹ APAV – Associação Portuguesa de Apoio à Vítima, Raportul IVOR: Implementarea unei reforme orientate spre victime în sistemul de justiție al Uniunii Europene, 2016, 113-116.

⁶² APAV – Associação Portuguesa de Apoio à Vítima, Raportul IVOR: Implementarea unei reforme orientate spre victime în sistemul de justiție al Uniunii Europene, 2016, 116



		397a GCCP⁶³. Acest termen include și rudele specifice ale unei persoane a cărei moarte a fost cauzată de o infracțiune (articolul 395 alineatul 2 GCCP)⁶⁴. Cu toate acestea, nu există dispoziții generale pentru victimele indirecte.⁶⁵ Motivul pentru care cuvântul victimă nu este folosit în legislația germană este prezumția de nevinovăție a subiectului.
Portugalia	Titlu IV, Articolul 67, para. 1 lit. a Codul Portughez de Procedură Penală	Victima este: <i>"I) persoana fizică care a suferit un prejudiciu, inclusiv un atac asupra integrității sale fizice sau psihice, daune morale sau emoționale sau daune materiale, cauzate direct de o acțiune sau prin omisiune, în cazul săvârșirii unei infracțiuni;</i> <i>ii) membrii familiei unei persoane a cărei moarte a fost cauzată în mod direct de o infracțiune și care au suferit un prejudiciu ca urmare a acestui deces. În acest sens, în conceptul de victimă se include soțul supraviețuitor care nu este separat legal de persoanele și bunurile sau persoana care a coexistat cu victima în condiții similare cu cele ale soților, descendenților și ascendenților, în măsura în care a suferit daune prin moarte, cu excepția infractorului care a provocat moartea. "</i>⁶⁶
Spania	Articolul 2, Legea 4/2015, din 27 Aprilie, privind starea victimelor infracțiunilor	"Dispozițiile prezentei legi se aplică: a) victimelor directe, oricărei persoane fizice care a suferit un prejudiciu sau o pierdere în ceea ce privește propria persoană sau proprietatea, în special leziuni fizice sau psihologice sau daune emoționale sau pierderi financiare, cauzate direct de săvârșirea unei infracțiuni. b) victimelor indirecte, în cazul decesului sau dispariției unei persoane care au fost în mod direct provocate de o infracțiune, cu excepția cazului în care persoana în cauză a fost responsabilă de fapte: [...]"⁶⁷

⁶³ Faptul că nu există o definiție legală a victimei în legislația germană este criticat de cercetătorii germani. Vezi Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren ?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 341.

⁶⁴ Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, 22, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (German).

⁶⁵ APAV – Associação Portuguesa de Apoio à Vítima, Raportul IVOR: Implementarea unei reforme orientate spre victime în sistemul de justiție al Uniunii Europene, 2016, 116

⁶⁶ IVOR, Portugal: Evoluții privind punerea în aplicare a mecanismelor de asistență a victimelor, 1.

⁶⁷ Ministerio de Justicia, Legea 4/2015, din 27 aprilie, privind statutul victimelor infracționalității, Articolul 2, <https://rm.coe.int/168070ac7f>.

[illegible]

4.2.Evaluarea individuală a victimelor pentru identificarea nevoilor specifice în ceea ce privește protecția (articolul 22 DV)

4.2.1. Finlanda

În Finlanda, cerințele prevăzute în articolul 22 DV au fost transpuse, printre altele, prin amendamente în Legea finlandeză de investigare penală (FCIA, 805/2011, în urma amendării)⁷⁰. Legea finlandeză de investigare penală reglementează ancheta penală de dinaintea începerii procesului, în timp ce măsuri mai specific sunt stipulate în alte legi (Capitolul 1, Secțiunea 1 FCIA). În timp ce transpunerea directivei victimelor a dus, de asemenea, la modificări în alte legi, majoritatea amendamentelor au vizat FCIA.⁷¹

⁶⁸ Anterior, a existat doar termenul de învinuit, ceea ce a avut ca rezultat faptul că doar o persoană care dorea să acuze infractorul sau să ia parte în parcursul procedurii penale sau un martor, se bucura de drepturi în temeiul legislației spaniole; A se vedea APAV - Associação Portuguesa de Apoio à Vítima, Raport IVOR: Implementarea reformei orientate spre victime în sistemul de justiți al Uniunii Europene, 2016, 110.

⁶⁹ Ibid., 110.

⁷⁰ Ministerul de Justiție al Finlandei, Legea privind investigațiile penale (805/2011, amendamente la legea 736/2015 incluse, traducere neoficială, <https://www.finlex.fi/en/laki/kaannokset/2011/en20110805.pdf>

⁷¹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), *Studiu juridic comparativ: Rights and Protection of*

În Finlanda, practica evaluării individuale a victimelor a existat înainte de procesul de transpunere a reglementărilor directivei⁷². Aceste dispoziții au fost consolidate în continuare prin adăugarea unei noi secțiuni, Secțiunea 9a, la Capitolul 11. Această nouă secțiune stabilește regulile pentru evaluarea personală a victimelor pentru a identifica nevoile speciale de protecție care trebuie acordate în cursul anchetei și în cursul procesului preliminar. Evaluarea personală trebuie efectuată fără o întârziere redundantă din partea autorității care investighează cazul și poate avea loc în timpul anchetei și în timpul procesului⁷³. Aceasta trebuie să se desfășoare în cooperare cu victima⁷⁴ și, în special, trebuie să țină seama de:

- situația personală a victimei, precum și
- natura infracțiunii suspectate.⁷⁵

Măsurile de protecție trebuie să fie acordate victimei în cursul urmăririi penale, în cazul în care nu provoacă o întârziere semnificativă a procedurii sau nu cauzează vreun alt prejudiciu⁷⁶. În plus, autoritatea de investigare are datoria de a informa victima cu privire la drepturile sale procedurale în conformitate cu capitolul 4 secțiunea 18 FCIA, inclusiv referitor la *"informații privind serviciile de asistență, interpretarea și traducerea, compensarea, protecția, rambursarea costurilor și informații privind derularea procedurii penale."*⁷⁷

Drepturi specifice sunt acordate anumitor grupuri care sunt considerate a fi cele mai vulnerabile, cum ar fi copiii, victimele violenței domestice sau sexuale, victimele traficului de persoane și victimele cu dizabilități fizice sau mentale⁷⁸. A fost emis un ghid pentru poliție pentru evaluarea nevoilor de protecție ale unei

Vulnerable Victims in Criminal Proceedings, 16.

⁷² EPRS – European Parliamentary Research Service, Directiva privind Victimele 2012/29/UE: Evaluarea europeană a punerii în aplicare, decembrie 2017, 60.

⁷³ Oikeus, Dacă devii o victimă: Protecția victimelor:

<https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>

⁷⁴ Ibid.

⁷⁵ Ibid; a se vedea și Savonen, Dezvoltarea practicilor compatibile cu directivele pentru identificarea, evaluarea și sesizarea victimelor: Raportul național - Finlanda, 2017, 6; și Ministerul finlandez al Justiției, Drepturile unei Victime a Infracționalității, 1.3.2017.

⁷⁶ Oikeus, Dacă devii o victimă: Protecția victimelor:

<https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>

⁷⁷ RIKU, Ce este directiva privind victimele?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

⁷⁸ IVOR, Finlanda: Evoluții privind punerea în aplicare a mecanismelor de asistență a victimelor.



victime. Ghidul stabilește reguli pentru evaluarea personală și modul în care victimele trebuie să fie puse în contact cu serviciile de sprijinire a victimelor.⁷⁹

4.2.2. Germania

Deși majoritatea drepturilor prevăzute în articolele 23 și 24 au existat deja în legislația națională germană înainte de procesul de transpunere a Directivei privind Victimele, nu a existat o dispoziție generală care să determine evaluarea individuală a victimelor pentru a identifica nevoile de protecție specifice în conformitate cu articolul 22 al DV⁸⁰. Din acest motiv, legiuitorul german a introdus un nou paragraf în Codul German de Procedură Penală (GCCP): paragraful 3 al articolului 48 GCCP. Potrivit acestuia, toate audierile și alte acte care țin de procesul de investigare care implică un martor care este o persoană vătămată trebuie să fie efectuate ținând cont de nevoile sale speciale de protecție. În special, trebuie evaluată:

1. dacă există pericolul unui dezavantaj grav în raport cu bunăstarea martorului, fiind necesare măsuri pentru a evita contactul vizual dintre martor și infractor (§168e GCCP) sau pentru a evita organizarea audierii audiovizuale a unui martor (articolul 247a GCCP),
2. dacă interesele legitime ale martorului pretind excluderea publicului de la audiere și
3. în ce măsură este posibil să se renunțe la întrebările neesențiale privind sfera personală a vieții martorului.

În cadrul acestei evaluări, trebuie luate în considerare circumstanțele personale ale martorului, precum și natura și circumstanțele infracțiunii (articolul 48 alineatul 3 GCCP).

În plus, trimiterea la situațiile respective din GCCP determină faptul că această prevedere este aplicabilă și în cadrul anchetei procurorului (articolul 161a, paragraful 1 GCCP)⁸¹ și poliției (articolul 163, paragraful 3 GCCP). Cu aceste prevederi legiuitorul german a stabilit că evaluarea individuală va avea loc începând cu primul contact cu victima.⁸²

⁷⁹ RIKU, Ce este directiva privind victimele?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

⁸⁰ Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksach 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (Germană), 14.

⁸¹ Ibid., 15.

⁸² Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 343.

https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html



Astfel, această obligație determină faptul că nevoile specifice de protecție ale victimelor trebuie să fie evaluate în fiecare moment⁸³, fără a specifica cine este responsabil pentru efectuarea evaluării și cum trebuie să aibă loc evaluarea. Deși drepturile menționate în noul articol 48 alin. 3 nu constituie drepturi noi, doar prin aceste modificări legislative autoritățile sunt obligate să evalueze aceste posibilități prin lege.^{84 85}

4.2.3. Portugalia

În Portugalia, transpunerea Directivei Victimelor nu numai că a inclus o definiție legală a termenului victimă în legislația portugheză⁸⁶, ci a dus și introducerea termenului de "victimă deosebit de vulnerabilă" (*"vítima especialmente vulnerável"*) în Codul Portughez de Procedură Penală (PCCP)

O victimă deosebit de vulnerabilă este o victimă a cărei vulnerabilitate deosebită rezultă din **vârsta, starea ei de sănătate sau dintr-o dizabilitate**, precum și **din daunele cu consecințe grave** asupra bunăstării psihologice a acesteia sau a integrării sociale cauzată **de tipul, gradul și durata** victimizării⁸⁷. Victimele infracțiunilor violente⁸⁸ sau a infracțiunilor deosebit de violente⁸⁹ sunt întotdeauna considerate a fi o victimă deosebit de vulnerabilă. Codul Portughez de Procedură Penală specifică faptul că un copil sau o persoană tânără este o persoană fizică cu vârsta sub 18 ani.⁹⁰

În plus, Statutul Victimelor a fost introdus în procesul de transpunere a DV, ceea ce implică mai multe dispoziții care transpun art. 22 din Directiva privind Victimele. Aceasta stabilește că, odată ce o infracțiune a fost raportată și nu există dovezi clare că aceasta este nefondată, autoritățile competente trebuie să efectueze o evaluare individuală pentru a identifica dacă victima este o victimă deosebit de vulnerabilă⁹¹ și

⁸³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Cercetare juridică comparativă: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 40.

⁸⁴ Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 343.

⁸⁵ Cu toate acestea, această normă a fost criticată, în special în ceea ce privește amplasarea acesteia. S-a argumentat că această normă nu este poziționată în mod ideal în cadrul GCCP, întrucât articolul 48 se referă la martori în timpul procedurilor judiciare și nu la victime la modul general; A se vedea în continuare: Löffelman, Drittes Opferrechtsreformgesetz - Ausgabe 11/2014, 22.11.2014, <http://www.recht-politik.de/drittes-opferrechtsreformgesetz/> (germană).

⁸⁶ IVOR, Finlanda: Evoluții privind punerea în aplicare a mecanismelor de asistență a victimelor, 2.

⁸⁷ Codul Portughez de Procedură Penală, Titlul IV, Articolul 67 – A, para. 1, lit. b, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (Portugheză).

⁸⁸ Crimele violente sunt cele care sunt pedepsite cu mai mult de 5 ani de închisoare.

⁸⁹ Infracțiunile deosebit de violente sunt cele care sunt pedepsite cu mai mult de opt ani de închisoare.

⁹⁰ Codul Portughez de Procedură Penală, Titlul IV, Articolul 67 – A, para 1, lit. c, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (Portugheză).

⁹¹ Articolul 20, para 1, Statutul Victimelor

pentru a determina dacă ar trebui să beneficieze de măsuri de protecție⁹². Victima trebuie să primească și un document care să ateste statutul său, inclusiv drepturile și îndatoririle sale.⁹³ Cu toate acestea, legea nu stabilește cum și în ce împrejurări trebuie să aibă loc evaluarea individuală.⁹⁴

4.2.4. Spania

În Spania, articolul 22 din Directiva Victimelor a fost transpus prin articolul 23 din Legea 4/2015 privind statutul victimelor criminalității. În corelație cu directiva, legislația națională spaniolă menționează că evaluarea trebuie să țină seama în special de următoarele:

(a) *"Caracteristicile personale ale victimei și, în special, [...] dacă victima este minoră sau necesită protecție specială [...]"*

(b) *natura infracțiunii și gravitatea prejudiciului cauzat victimei, precum și riscul repetării infracțiunii [...]* și

(c) *circumstanțele infracțiunii, în special dacă aceasta implică violență.*"⁹⁵

În cazul copiilor victime ale infracțiunilor, măsurile de protecție utilizate trebuie să ia în considerare în plus situația personală a victimei, vârsta, sexul, orice dizabilitate și nivelul de maturitate, precum și respectarea deplină a drepturilor fizice, mentale și integritatea emoțională a victimei⁹⁶. În plus, de fiecare dată când un minor este victima unei infracțiuni. Parchetul trebuie să acorde o atenție deosebită pentru a se asigura respectarea drepturilor de protecție a victimei prin adoptarea *"unor măsuri adecvate în interesul superior al victimelor, acolo unde este necesar pentru a preveni sau a reduce orice prejudiciu pe care derularea procedurii l-ar putea provoca."*⁹⁷

În plus, articolul 24 din Legea 4/2015, elaborează procedura de competență și evaluare, clarificând cine este autoritatea responsabilă pentru efectuarea evaluării în mai multe etape. Legea clarifică faptul că în timpul etapei de investigare procurorul trebuie să efectueze evaluarea individuală, în timp ce pe parcursul procesului evaluarea ar trebui efectuată de judecător sau de instanța responsabilă pentru judecarea cauzei.

⁹² Articolul 21, para 1, Statutul Victimelor

⁹³ Articolul 20, para 2, Statutul Victimelor

⁹⁴ APAV – Associação Portuguesa de Apoio à Vítima, Raportul IVOR: Implementarea unei reforme orientate spre victime în sistemul de justiție al Uniunii Europene, 2016, 152

⁹⁵ Articolul 23, Legea 4/2015 privind Statutul Victimelor Infracționalității

⁹⁶ Articolul 23, para. 3, Legea 4/2015 privind Statutul Victimelor Infracționalității

⁹⁷ Articolul 19, Legea 4/2015 privind Statutul Victimelor Infracționalității



Același articol prevede că, în cazul victimelor care sunt persoane minore sau persoane cu handicap care au nevoie de protecție specială, evaluarea trebuie să țină seama de opiniile și interesele acestora.

Mai mult, articolul 27 din Legea 4/2015 stabilește responsabilitatea și rolul Birourilor de Sprijinire a Victimelor și precizează în mod special că aceste birouri efectuează, de asemenea, o evaluare a circumstanțelor individuale⁹⁸ ale victimei pentru a determina ce fel de asistență și sprijin ar trebui acordate victimei. Serviciile de sprijinire a victimei trebuie să evalueze dacă victima are nevoie de asistență psihologică, de o persoană de sprijin în timpul procesului, de informații, de alte măsuri de asistență specială care pot fi acordate de instanță sau de trimitere la serviciile de asistență specializată⁹⁹. Deși legislația națională prevede că nevoile de protecție ale indivizilor vor fi satisfăcute, nu sunt furnizate detalii suplimentare cu privire la modalitatea de efectuare a evaluării.

4.2.5. Anglia și Țara Galilor

Evaluarea individuală a victimelor pentru a identifica nevoile specifice de protecție este reglementată în Capitolul 1 al Codului Victimelor¹⁰⁰. În special, este prevăzută consolidarea drepturilor victimelor din trei categorii diferite, deoarece acestea "au o probabilitate mai mare de a solicita sprijin și servicii prin procesul de justiție". Aceste categorii nu sunt totuși exclusive, deoarece este posibil ca o victimă să aibă dreptul la servicii consolidate în mai mult de o categorie (capitolul 1, punctul 1.2). Mai mult, chiar dacă o victimă nu se încadrează în una dintre cele trei categorii, un prestator de servicii ar putea acorda victimelor drepturi sporite în funcție de circumstanțele specifice ale victimei (capitolul 1, punctul 1.7). Cele trei categorii sunt:

- Victimele celor mai grave infracțiuni

O victimă care este "o rudă apropiată îndolitată în urma unei infracțiuni; victimă a violenței domestice, a infracțiunilor de ură, a terorismului, a infracțiunilor sexuale, a traficului de ființe umane, a încercărilor de ucidere, a răpirii, a închisorii nejustificate, a incendierii cu intenția de a pune în pericol viața sau cu intenția de a provoca vătămări corporale grave cu intenție" (Capitolul 1, paragraful 1.8)

- victime persistente:

⁹⁸ Maizener ed. al., EVVI (Evaluation of Victims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf, 56 ff.

⁹⁹ Articolul 28 para. 2, Legea 4/2015 privind Statutul Victimelor Infracționalității

¹⁰⁰ Ministerul Justiției al Marii Britanii, Îmbunătățirea Codului de Practici pentru Victimele Criminalității: răspuns la consultarea CP8® 29 martie 2013, publicat la 29 octombrie 2013, 87ff.

O victimă care "a fost vizată în mod repetat ca victimă directă a crimei într-o perioadă de timp" (Capitolul 1, paragraful 1.9)

- victime vulnerabile sau intimidat;

O victimă vulnerabilă este o victimă care are vârsta sub 18 ani în momentul infracțiunii; În cazul în care furnizorul de servicii consideră că valoarea dovezii victimei va fi afectată ca urmare a unei dovezi scrise în fața instanței, victima este o victimă intimidată.

Fiecare victimă are dreptul la o evaluare de către poliție pentru a-și identifica nevoile specifice de protecție, "inclusiv dacă și în ce măsură poate beneficia de măsuri speciale" (Capitolul 1, paragraful 1.4). Circumstanțele particulare ale evaluării (de exemplu, lungimea și conținutul) depind, totuși, de gravitatea infracțiunii și de nevoile individuale ale victimei. Evaluarea trebuie să ia în considerare caracteristicile personale ale victimei, natura și circumstanțele infracțiunii, precum și opiniile personale ale victimei. În plus, evaluarea poate fi repetată, dacă nevoile victimei se schimbă (Capitolul 1, paragraful 1.5). De îndată ce se identifică eligibilitatea pentru drepturi sporite, furnizorul de servicii trebuie să se asigure că aceste informații sunt transmise altor furnizori de servicii.¹⁰¹

În plus, Capitolul 5 stabilește că și alți furnizori de servicii decât poliția¹⁰² au obligația de a efectua o evaluare individuală a victimelor pentru a identifica nevoile specifice de protecție. (Capitolul 5, paragraful 1.1). Un furnizor de servicii trebuie să identifice nevoile specifice de protecție ale unei victime de fiecare dată când este responsabil de investigarea unei infracțiuni (Capitolul 5, paragraful 1.30). În aceste condiții, prestatorul de servicii trebuie să "stabilească dacă și în ce măsură victima ar beneficia de măsuri specifice de protecție sau de măsuri speciale în cursul interviului sau de măsuri speciale atunci când se vor aduce dovezi" (Capitolul 5, paragraful 1.30). Au fost aduse critici în ceea privește procedurile și cronologia evaluării.¹⁰³

¹⁰¹ Dreptul copiilor la o evaluare individuală a nevoilor acestora este stabilit în capitolul 3, partea A, alin. 1.1.

¹⁰² Furnizorii de servicii sunt determinați în Introducere, par. 9 din Codul Victimelor: Autoritatea pentru concurență și piețe; Departamentul pentru afaceri, inovare și abilități (executare penală); Agenția de Mediu; Autoritatea de conduită financiară; Comisia pentru jocuri de noroc; Executivul pentru sănătate și siguranță; Her Majesty's Revenue and Customs; Biroul de imigrații (Imigrația); Biroul Comisarului pentru Informații; Comisia pentru plângeri independente de poliție; Agenția Națională pentru Criminalitate; Agenția de Resurse naturale Țara Galilor; Biroul feroviar și rutier; și Oficiul pentru Fraude Grave.

¹⁰³ IVOR, Marea Britanie: Dezvoltarea implementării asistenței și mecanismelor victimelor.



4.2.6. 4.3. Dreptul la protecția copiilor victime ale infracțiunilor în cadrul procedurilor penale (articolul 23-24 VD)

4.2.7. Finlanda

În Finlanda, există două legi care au o relevanță explicită în ceea ce privește transpunerea articolului 22-23 VD: În primul rând, Legea finlandeză de investigare penală (FCIA, 805/2011, astfel cum a fost modificată), care reglementează procedura de investigație a poliției, printre alții și, în al doilea rând, Codul de procedură judiciară finlandeză (FCJP, 4/1734, astfel cum a fost modificat), care determină normele procedurilor judiciare în instanțele judecătorești generale.

În ceea ce privește protecția copiilor victime ale infracțiunilor în cursul urmăririi penale, mai multe prevederi existau deja înainte de procesul de transpunere, cum ar fi capitolul 4 secțiunea 7 subsecțiunea 1 FCIA. Acesta din urmă afirmă că victimele "trebuie tratate într-o manieră necesară vârstei și nivelului lor de dezvoltare" și că trebuie acordată o atenție deosebită faptului că măsurile de investigare nu cauzează inconveniente inutile victimei în medii importante pentru el sau ea¹⁰⁴. În plus, în măsura în care este posibil, măsurile de investigare privind copiii victime vor fi repartizate anchetatorilor special instruiți în această funcție¹⁰⁵. De fapt, majoritatea ofițerilor de poliție și psihologilor care lucrează în cadrul procedurilor penale au participat la un program de formare interdisciplinar de interviu pentru cadrele de poliție și profesioniștii din domeniul sănătății care efectuează audierile copilului. Acest curs este organizat de Consiliul Național al Poliției și de Centrul de Psihiatrie Legală¹⁰⁶.

Capitolul 7 al FCIA prevede că, dacă o persoană sub vârsta de 15 ani este interogată în cursul anchetelor penale, persoana responsabilă pentru îngrijirea și custodia sa, mandatarul său sau alt reprezentant legal are dreptul de a fi prezent la interogatoriul acestuia¹⁰⁷. În cazul în care victima copilului are vârsta de peste 15 ani, aceste persoane pot fi prezente în interogatoriu numai dacă obțin dreptul de a vorbi în numele sau în

¹⁰⁴ Capitolul 4, Secțiunea 7, Subsecțiunea 2 Legea privind investigațiile penale

¹⁰⁵ Capitolul 4, Secțiunea 7, Subsecțiunea 2 Legea privind investigațiile penale

¹⁰⁶ Agenția Europeană pentru Drepturi Fundamentale, Child-friendly justice: perspective și experiențe profesionale privind participarea copiilor la procedurile judiciare civile și penale în 10 state membre ale UE, 2015, 100

¹⁰⁷ Capitolul 7, Secțiunea 14, Subsecțiunea 1 Legea privind investigațiile penale

plus față de minor. Investigatorul are dreptul de a interzice prezența reprezentantului legal, în cazurile în care prezența lui poate împiedica clarificarea infracțiunii¹⁰⁸.

O nouă secțiune care stabilește regulile pentru interviurile victimelor cu nevoi speciale de protecție a fost adăugată la FCIA (capitolul 7, secțiunea 21) pentru a respecta cerințele prevăzute la articolul 23 din VD.

În funcție de situația personală a victimei și de natura infracțiunii suspectate, secția nou înființată stabilește mai multe măsuri de protecție speciale:

- Victimele care au nevoie de o protecție specială trebuie să fie interogate într-o cameră specială, proiectată în acest scop.
- În cazul victimelor cu nevoi specifice de protecție, interogarea trebuie să fie efectuată de aceeași persoană în cazul în care victima solicită acest lucru.
- În cazul în care partea vătămată ar fi putut fi victima unor infracțiuni sexuale, interogarea trebuie să fie condusă de o persoană de același sex ca și victima. Această prevedere se poate aplica și în cazul altor situații în care natura infracțiunii o impune¹⁰⁹.

În cele din urmă, capitolul 9 FCIA conține prevederi referitoare la posibilitatea înregistrării audio și video a interogatoriului unui martor dacă această înregistrare este destinată a fi folosită ca probă în cadrul procedurilor penale și dacă persoana chestionată "probabil nu poate fi audiată personal fără ca aceasta să se în detrimentul ei "¹¹⁰, din cauza vârstei tinere sau a perturbării mintale. Această dispoziție poate fi aplicabilă și unei persoane cu vârsta cuprinsă între 15 și 17 ani dacă are nevoie de protecție specială sau poate fi fost victima unei infracțiuni sexuale.

Dispozițiile care transpun articolul 23 alin. 3 VD - și anume, dispozițiile care stabilesc drepturile care trebuie acordate victimelor care au nevoie de protecție specifică în timpul procedurilor judiciare - se găsesc în Codul

¹⁰⁸ Capitolul 7 Secțiunea 14, Subsecțiunea 3 Legea privind investigațiile penale

¹⁰⁹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Studiu juridic comparativ: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 17.

¹¹⁰ Capitolul 9, Secțiunea 4, Subsecțiunea 1 FCIA.



de procedură judiciară finlandeză (FCJP)¹¹¹. Există mai multe măsuri pentru a evita contactul vizual între victime și infractori.

Victima ar putea fi audiată :

- **din spatele unui ecran** (Capitolul 17, Secțiunea 51 FCJP). Instanța decide dacă această măsură este necesară pentru a proteja persoana care este audiată; dacă persoana audiată nu ar dezvălui altfel ceea ce știe în această chestiune; dacă o persoană deranjează sau încearcă să inducă în eroare persoana care este ascultată; dacă o victimă are nevoie de protecție specială. Numai acesta din urmă a fost adăugat în cadrul procesului de transpunere¹¹².

- **prin conexiune video** (capitolul 17, secțiunea 52 FCJP). Instanța consideră că această măsură este adecvată dacă - printre altele - este necesar să se protejeze persoana care este audiată; persoana în curs de audiere nu a împlinit vârsta de 15 ani sau capacitatea sa mentală este afectată; sau în cazul unei victime cu nevoi speciale de protecție. Numai acesta din urmă a fost adăugat în cadrul procesului de transpunere¹¹³.

- **fără prezența acuzatului sau a unei alte părți** (Capitolul 17, Secțiunea 51 FCJP). Instanța decide dacă această măsură este necesară pentru a proteja persoana care este audiată; dacă persoana audiată nu ar dezvălui altfel ceea ce știe în această chestiune; dacă o persoană deranjează sau încearcă să inducă în eroare persoana care a fost ascultată.

Legislația finlandeză conține, de asemenea, măsuri speciale pentru a proteja anonimatul unui martor, de exemplu printr-un mijloc adecvat de comunicare în care vocea martorului poate fi, de asemenea, modificată (capitolul 17, secțiunea 53 FCJP). În plus, interogarea victimelor poate fi înregistrată pe video și utilizată ca probă în proces. Această procedură se poate aplica în cazul victimelor infantile care nu au împlinit vârsta de 15 ani sau în cazul unei persoane cu deficiențe mintale; o victimă copil cu vârsta cuprinsă între 15 și 17 ani, ținând cont de circumstanțele personale și de natura infracțiunii; precum și în cazul părților lezate de

¹¹¹ Ministerul de Justiție Finlandez, Codul de procedură juridică, 4/1734, amendamentele până la 732/2015 inclusiv, https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiHx5KJ3MjZAhUBLewKHfZoD60QFggtMAA&url=http%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F1734%2Fen17340004.pdf&usg=AOvVa_w0-PJLjKrSH9U01qD0yrl4B

¹¹² Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Estudio jurídico comparativo: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 17

¹¹³ Ibid.



anumite infracțiuni sexuale (Capitolul 17 Secțiunea 24 FCJP). Cu toate acestea, această prevedere exista deja înainte de procesul de transpunere.

De asemenea, CJP finlandeză a respectat deja articolul 24 alineatul 1 lit. b. VD. Acesta din urmă prevede că instanța va desemna un mandatar pentru o victimă copil "dacă există motive justificate să se presupună că persoana care are în îngrijire sau custodia a copilului, mandatar sau alt reprezentant legal nu poate asigura în mod obiectiv interesele părții în modul iar numirea unui mandatar nu este evident inutil "(Capitolul 4 secțiunea 8 FCIA). Toate cheltuielile relative sunt plătite prin fonduri de stat.

În cele din urmă, dispozițiile privind audierea unei persoane fără prezența publicului se găsesc în Legea privind publicarea procedurilor judiciare în instanțele judecătorești generale¹¹⁴ (secțiunea 15, punctul 6). Ea stabilește că instanța poate decide că partea sau procedura completă pot fi ținute fără prezența publicului, în cazul în care o persoană în vârstă de 14 ani a cărei capacitate juridică este limitată sau o persoană cu nevoi speciale de protecție este audiată în cauză.

4.2.8. Germania

În ultimii ani, Germania a îmbunătățit în mod constant poziția victimelor în cadrul procedurilor penale. Drept urmare, majoritatea drepturilor prevăzute în VD pentru protecția victimelor cu nevoi specifice de protecție și copii victime ale infracțiunilor au existat deja în legislația germană înainte de procesul de transpunere. Cu toate acestea, după cum sa menționat anterior, nu toate cerințele prevăzute în Directiva privind victimele intră în competența legii federale, dar trebuie să fie determinate de legea statelor federale. Conform art. 23 alin. 2 lit. b Interviuurile VD cu victimele cu protecție specifică trebuie să fie efectuate de către sau prin intermediul unor profesioniști instruiți în acest scop. În Germania, adoptarea de reglementări privind calificările personalului care efectuează interviurile intră sub jurisdicția statelor federale¹¹⁵. Totuși, personalul de poliție din întreaga Germanie primește instruire cu scopul de a facilita un tratament imparțial,

¹¹⁴ Ministerul de Justiție Finlandez, Act on the Publicity of Court Proceedings in General Courts, 370/2007 amendamentele până la 742/2015 inclusiv
<https://encrypted.google.com/url?sa=t&ret=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKewjQ9unn4MjZAhVMYaQKHTmUB14QFgggMAA&url=https%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F2007%2Fen20070370.pdf&usg=AOvVaw3A34-Ki7L-xk8YksYr1E0V>

¹¹⁵ Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfseundOpferschutz/Bericht_BundLaender_AG.pdf?blob=publicationFile&v=2 (Germană), 14.



respectuos și profesional al victimelor. Această formare include cunoștințe profunde cu privire la subiecte precum crima din motive de ură sau tratamentul copiilor victime ale infracțiunilor în cursul investigațiilor. Există o formare similară pentru procurori și judecători¹¹⁶.

Toate investigațiile fizice ale victimelor violenței sexuale trebuie să fie efectuate de o persoană de același sex (numărul 220 RiStBV). Acest articol a existat deja înainte de procesul de transpunere și - conform raționamentului legiuitorului¹¹⁷ german - îndeplinește deja toate cerințele prevăzute la articolul 22 alineatul 2 litri c și d VD, care prevăd că interviurile vor fi efectuate de aceeași persoană, cu excepția cazului în care acest lucru este contrar bunei administrări a justiției, precum și posibilitatea ca interviurile victimelor violenței sexuale să fie efectuate de o persoană de același sex în anumite circumstanțe.

În plus, în legislația germană există mai multe măsuri pentru a evita contactul vizual între victimă și infractor (art.23 alin. 3 lit.a), precum și măsuri pentru a se asigura că victima poate fi audiată în sala de judecată fără a fi prezentă. Potrivit art. 247 GCCP, instanța poate obliga pârâtul să părăsească sala de judecată în timpul interogatoriului, în cazul în care prezența sa poate împiedica martorul să vorbească adevărul. Acest lucru se aplică și cazurilor în care martorul are mai puțin de 18 ani și când prezența inculpatului poate cauza un dezavantaj considerabil pentru bunăstarea martorului.

Dacă există un pericol iminent de vătămare gravă a bunăstării martorului dacă acesta a fost intervievat în cadrul procedurii judiciare obișnuite, instanța poate dispune că interviul trebuie să aibă loc într-o altă locație. În acest caz, declarația trebuie transmisă simultan în imagine și sunet în camera de judecată. Mai mult, declarația poate fi înregistrată, dacă martorul nu poate fi audiat într-un alt proces și este necesară înregistrarea adevărului (articolul 247a GCCP).

În plus, interviurile cu un martor pot fi înregistrate audio-vizual, dacă

- pot fi mai bine protejate nevoile specifice de protecție ale copilului victimă sau ale altei persoane, care a fost victimă a unei infracțiuni împotriva autodeterminării sexuale, a vieții sau a libertății personale ca copil (articolul 255a GCCP);
- sau martorul nu poate fi ascultat în sala de judecată în caz contrar și înregistrarea este esențială

¹¹⁶¹¹⁶ Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?blob=publicationFile&v=2 (Germană), 14.

¹¹⁷ Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksach 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (Germană), 15.



pentru cercetarea adevărului (58a GCCP).

În plus, există posibilitatea ca o înregistrare a unui interviu judiciar prealabil al unei victime sau al unui martor să poată fi utilizată în locul unui interviu, și anume: 1) înregistrarea unui martor sub vârsta de 18 ani în procese privind infracțiunile împotriva sinelui sexual -determinarea, viața sau libertatea personală poate fi folosită în locul unui interviu, în cazul în care acuzatul și avocatul său au avut posibilitatea de a contribui la interogatoriu; 2) înregistrarea victimei aceluiași infracțiuni, dacă persoana a fost sub vârsta de 18 ani la data infracțiunii. În aceste cazuri, instanța are obligația de a ține seama de nevoile individuale de protecție ale martorului și de motivul afișării înregistrării. Cu toate acestea, un interviu suplimentar este admisibil (articolul 255a din GCCP). De asemenea, audierea poate avea loc fără prezența publicului dacă se interoghează o persoană sub vârsta de 18 ani (articolul 172 din *Gerichtsverfassungsgesetz*).

Măsurile de evitare a chestionării inutile privind viața privată a victimei sunt reglementate în art. 68a GCCP. În consecință, întrebările referitoare la fapte care se pot dovedi dezonorante sau care afectează sfera personală a vieții martorului sau a unei persoane aparținând familiei sale ar trebui adresate doar dacă sunt indispensabile. Întrebările referitoare la circumstanțele care afectează credibilitatea martorului - în special relația cu inculpatul sau cu persoana vătămată - ar trebui adresate doar acolo unde este necesar.

Lastly, also art. 24 para. 1 lit. b - the provision of the Victims' Directive which foresees that a special representative for a child shall be appointed in cases, in which a conflict of interest exists between the holders of parental responsibility and the child, already existed in German legislation prior to the transposition process. According to art. 52 GCCP, in general, the legal representative of a child can dispose over his or her right to refuse to give evidence if the child does not have sufficient understanding of his or her right to do so. In cases in which the legal representative is at the same time the accused, he or she cannot dispose over this right of the child. The regulations under which circumstances a child is appointed a representative are to be found in the German Civil Code (art. 1773, 1774 and 1909 GCC).

4.2.9. Portugalia

Articolul 23 din VD a fost transpus prin articolul 21 din Statutul victimelor portugheze (PVS) - care a fost stabilit în cursul procesului de transpunere a Directivei privind victimele. Acestea din urmă indică măsurile speciale de protecție care pot fi acordate victimelor deosebit de vulnerabile, în funcție de nevoile lor



individuale, în timp ce unele dintre aceste măsuri sunt specificate în alte articole. Modul de redactare a diferitelor articole a adoptat în mod corespunzător dispozițiile respective ale Directivei privind victimele.

Conform art. 21 alin. 2 PVS, victimele deosebit de vulnerabile pot beneficia de următoarele drepturi:

A. Interviuurile trebuie să fie efectuate de aceeași persoană, dacă victima cere acest lucru și dacă nu contravine bunei administrări a justiției;

b. Toate interviurile cu victimele violenței sexuale, a violenței pe motive de gen sau a violenței în relații strânse, cu excepția cazului în care sunt deținute de un procuror sau de un judecător, trebuie să fie efectuate de o persoană de același sex ca victima;

c. Măsuri de prevenire a contactului vizual între victimă și inculpat, inclusiv în timpul mărturiilor, folosind mijloace tehnologice adecvate;

d. Posibilitatea de a furniza o "declarație pentru viitor" ("*declarações para memória futura*") Această măsură este determinată în continuare în articolul 24 PVS și articolul 271 PCCP. Potrivit articolului 24 PVS, judecătorul poate, la cererea victimei sau a persoanei deosebit de vulnerabile Procurorul și apărătorul sunt prezenți la interviu (paragraful 2) .În plus, un profesionist instruit pentru acest scop trebuie să se să se însoțească victima în timpul interviurilor Interviul trebuie să aibă loc într-un mediu informal și rezervat pentru a garanta spontaneitatea și sinceritatea răspunsurilor (paragraful 3) În plus, declarația pentru viitor se face de obicei prin înregistrare audio sau video sau prin alte înseamnă și este întreprinsă de judecător și de procuror (de exemplu stenografia). Mărturia în condițiile prezentului articol trebuie dată numai, mărturia este indispensabilă pentru descoperirea adevărului și nu pune sub semnul întrebării sănătatea fizică sau psihică a victimei.

e. Excluderea publicului de la audieri. Trebuie totuși remarcat faptul că acest articol a existat deja în Portugalia (articolul 98 PCCP) înainte de procesul de transpunere.

Mai mult, articolul 22 din PVS transpune articolul 24 VD. Aceasta stabilește că toate victimele infracțiunilor infracționale au dreptul de a fi audiate în cadrul procedurilor penale, luând în considerare vârsta și maturitatea acestora. În cazurile în care vârsta este nesigură, se presupune, în sensul prezentului articol, că victima este copil (paragraful 6 pct.). Mai mult, para. 2.,menționează faptul ca dacă nu există un conflict de

interese, victima copil poate fi însoțită de părintele său, de reprezentantul legal sau de persoana care are custodie în timpul mărturiei. În cazurile în care există un conflict de interese, trebuie să fie numit patronul copilului (paragraful 3 pct.). De asemenea, legea portugheză stabilește că orice informație care ar putea conduce la identificarea unei victime copil nu ar trebui să fie dezvăluită în public.

Legislația portugheză de transpunere nu conține o măsură care transpune în mod specific articolul 24 alineatul 1 lit. un VD, și anume că, în anchetele penale, toate interviurile cu copii victime pot fi înregistrate audio-vizual, iar interviul înregistrat poate fi folosit ca probă în cadrul procedurilor penale¹¹⁸. Cu toate acestea, o formulă similară poate fi găsită în articolul 23 alin. 1 PVS. În consecință, în cazul în care este necesar să se garanteze prezentarea de declarații sau mărturii fără restricții, mărturiile și declarațiile victimelor deosebit de vulnerabile sunt fie în afara biroului sau la cererea de a fi ținute prin videoconferință sau teleconferință. În aceste condiții, victima este însoțită de un profesionist special instruit pentru aceasta. Astfel, acest regulament se aplică numai victimelor infantile care sunt considerate a fi victime cu nevoi specifice de protecție și, prin urmare, în funcție de circumstanțele particulare ale cazului.

În cele din urmă, dreptul copilului victimă de a fi însoțit de reprezentantul său legal și de o persoană aleasă de acesta a existat deja în procesul de transpunere în legislația portugheză [articolul 70 alineatul (3) și articolul 132 alineatul (4) PCCP]¹¹⁹.

4.2.10.Spania

Articolele 23 și 24 din Directiva privind victimele pot fi găsite în articolul 25 din Legea 4/2015, numit "măsuri de protecție". De fapt, dispozițiile sunt aproape transpuse în mod verbal din directiva privind victimele. Articolul 25 din legea 4/2015 stabilește că pot fi dispuse următoarele măsuri pentru protecția victimelor în timpul etapei de investigare, în timp ce măsurile prevăzute la punctele a), b) și c) trebuie să se aplice întotdeauna în cazul copilului victime ale unei infracțiuni împotriva libertății sau indemnizației sexuale¹²⁰:

a) Victimele pot fi intervievate în clădiri special concepute și adaptate în acest scop.

¹¹⁸ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Studiu juridic comparativ: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 63.

¹¹⁹ Ibid, 66.

¹²⁰ Articolul 23 para. 4, Legea 4/2015 privind Statutul Victimelor Infracționalității



b) Victimele pot fi intervievate de către profesioniștii care au beneficiat de o pregătire specială pentru a reduce sau a limita răul victimei sau cu ajutorul unor astfel de profesioniști.

c) Toate declarațiile unei singure victime pot fi luate de aceeași persoană, cu excepția cazului în care acest lucru ar putea avea un efect negativ asupra desfășurării procedurii sau în cazul în care declarația trebuie luată direct de un judecător sau procuror.

d) În cazul oricăreia dintre victimele la care se face referire în numărul 3 și 4 al pct. b) al secțiunii 2 din art. 23 și a victimelor traficate în scopul exploatații sexuale, declarațiile pot fi luate de o persoană de același sex ca victimă în cazul în care victima solicită acest lucru, cu excepția cazului în care acest lucru ar putea avea un efect negativ semnificativ asupra desfășurării procedurii sau în cazul în care declarația trebuie să fie luată direct de un judecător sau procuror."¹²¹

Al doilea paragraf al aceluiași articol prevede măsurile de protecție care pot fi ordonate în cursul procesului, în conformitate cu regulile spaniole penale, în timp ce primele două puncte se pot aplica și în faza de investigație:

a) "Măsuri de evitare a contactului vizual între victimă și presupusul infractor, chiar și atunci când se prezintă dovezi, pentru care pot fi utilizate tehnologii de comunicare.

b) Măsuri pentru a asigura că victima poate fi audiată fără a fi prezentă în sala de judecată, utilizând tehnologii de comunicare adecvate.

c) Măsuri pentru a evita ca victima să fie întrebată cu privire la viața sa privată, informații care nu sunt relevante pentru infracțiunea judecată, cu excepția cazurilor excepționale în care judecătorul sau instanța consideră că trebuie să li se răspundă pentru a evalua în mod adecvat faptele sau credibilitatea din declarația victimei.

d) Organizarea unei audieri private. În astfel de cazuri, judecătorul sau președintele poate, totuși, să autorizeze prezența persoanelor care pot demonstra că au un interes deosebit pentru acest caz "¹²².

¹²¹ Articolul 25, para.1, Legea 4/2015 privind Statutul Victimelor Infracționalității

¹²² Articolul 15, para.2 Legea 4/2015 privind Statutul Victimelor Infracționalității



Măsurile prevăzute de art. 24 VD privind dreptul la protecție a victimelor copilului în procesul penal sunt transpuse prin articolul 25 alin. 3 din Legea 4/2015. Extinzând domeniul de aplicare al Directivei privind victimele, această lege se aplică și persoanelor cu handicap care au nevoie de protecție specială. În plus, în conformitate cu Codul de procedură penală spaniolă (SCCP)¹²³, articolul 26 din Legea privind locul victimelor criminalității stabilește că declarațiile luate în timpul etapei de investigare - în cazul copiilor victime ale infracțiunii sau persoanelor cu handicap care au nevoie de protecție specială - să fie înregistrate prin mijloace audiovizuale și pot fi folosite în instanță în cazurile și în condițiile stabilite de CSPC. În acest scop, legislația națională impune să se acorde atenția cuvenită protecției copilului sau adolescentului în timpul interviurilor și, în timp ce se dă mărturie, să se evite contactul vizual cu acuzatul și să fie furnizate ecrane pentru a facilita această măsură .

În sfârșit, articolul 25 alineatul (2) din Legea 4/2015 stabilește în ce măsură trebuie să fie numit un tutore desemnat de instanță pentru victima care îl reprezintă pe acesta în cadrul anchetei și al procedurii penale. Asta în cazul în care procurorul consideră că există un conflict de interese între copilul victimă și reprezentantul său legal, printre altele. Astfel, măsurile din legislația națională spaniolă transpun pe deplin directiva privind victimele în legislația spaniolă.

4.2.11. Anglia și Țara Galilor

În timp ce toate statele membre au evaluat în cadrul acestui raport dispoziții care asigură în mod special drepturile copiilor victime ale infracțiunilor, Codul victimelor împarte în mod clar drepturile acordate adulților¹²⁴ și copiilor în două capitole¹²⁵. Capitolul 3, care cuprinde regulamentele privind copiii și tinerii, este separat în continuare în Partea A: Drepturile copiilor și tinerilor și Partea B: Obligațiile asupra prestatorilor de servicii pentru copii și tineri. Mai mult, copiilor li se pot acorda, de asemenea, drepturi consolidate determinate de capitolul 1. În totalitate, acest Cod implică faptul că majoritatea drepturilor prevăzute în Directiva privind victimele se acordă victimelor cu nevoi specifice de protecție. În majoritatea cazurilor, aceste drepturi sunt extinse la toate victimele infracțiunilor.

¹²³ Codul Spaniol de Procedură Penală, https://www.imolin.org/imolin/amlid/data/spa/document/criminal_procedure_code.html (Spaniolă).

¹²⁴ Capitolul 2, Părțile A și B, Codul Victimelor

¹²⁵ Capitolul 3, Părțile A și B, Codul Victimelor

Codul victimelor nu implică nicio prevedere referitoare la posibilitatea de a numi un reprezentant în cazul în care există un conflict de interese între titularii răspunderii părintești și copil în conformitate cu art. 24 alin. 1 lit. b VD¹²⁶. De asemenea, nu conține măsuri de transpunere cu privire la articolul 24 alin. 1 lit. c, și anume, dacă copilul are dreptul la un avocat, acesta ar trebui să beneficieze de dreptul la consiliere juridică și reprezentare în nume propriu.

În timpul investigațiilor efectuate de poliție, copiii victime ale infracțiunii au dreptul ca interviul să fie ținut într-o manieră concepută sau adaptată în acest scop, în conformitate cu articolul 23 alineatul lit.2 un VD¹²⁷. În timp ce VD prevede doar un astfel de drept pentru victimele cu nevoi specifice de protecție, Codul Victimelor extinde acest drept la toate victimele infracțiunilor. În plus, atunci când interviuează o victimă copil - sau orice altă victimă - poliția trebuie să ia în considerare documentul de orientare "Realizarea celor mai bune dovezi în procedurile penale"¹²⁸ și să se asigure că interviul este condus de un profesionist instruit corespunzător care consideră nevoile și opiniile victimei scopul de a-i minimaliza stresul¹²⁹. În timp ce documentul de orientare "Avantajarea celei mai bune dovezi în procedurile penale" nu constituie un cod de conduită prin lege, acesta descrie bunele practici în interviuarea martorilor și a victimelor și ar trebui să ajute toate persoanele implicate în anchete - inclusiv poliția, lucrătorii sociali, avocați - în pregătirea și desfășurarea interviurilor¹³⁰.

Victimele copiii- precum și toate celelalte victime - au dreptul să aibă aceeași persoană, dacă este posibil, care să efectueze toate interviurile. Cu toate acestea, această dispoziție nu se aplică în cazul în care aceasta ar "aduce atingere bunei gestionări a anchetei"¹³¹. În plus, victimele - și toate celelalte victime - ale violenței sexuale, ale violenței pe motive de gen sau ale violenței domestice interviuate de poliție au dreptul să li se

¹²⁶ Vezi Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Studiu juridic comparativ: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 70 – 71, pentru o imagine de ansamblu precisă a articolelor din DV în raport cu prevederile corespunzătoare ale Codului Victimelor.

¹²⁷ Capitolul 3, Partea B 1.2 cu referire la Capitolul 2 Part A 1.8 Codul Victimelor

¹²⁸ Ministerul de Justiție al Marii Britanii, Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures, martie 2011

https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf

¹²⁹ Capitolul 3, Partea B 1.5 cu referire la Capitolul 2 Partea B 1.5 Codul Victimelor

¹³⁰ Documentul de orientare "Achieving Best Evidence in Criminal Proceedings" a fost menționat ca o practică promițătoare într-un raport recent al FRA privind justiția favorabilă copiilor; Agenția Europeană pentru Drepturi Fundamentale, Child-friendly justice: perspective și experiențe ale profesioniștilor privind participarea copiilor la procedurile judiciare civile și penale în 10 state membre ale UE, 2015.

¹³¹ Capitolul 3, Partea B 1.2 cu referire la Capitolul 2 Partea A 1.8 Codul Victimelor

ofere o persoană de același sex să efectueze interviul "cu excepția cazului în care acest lucru ar aduce atingere gestionarea corespunzătoare a investigației" ¹³².

În ceea ce privește măsurile speciale care urmează să fie puse la dispoziție în conformitate cu art. 23 alin. 3 VD, Codul Victimelor îndeplinește toate cerințele: Există mai multe măsuri speciale care asigură că necesitățile specifice de protecție ale victimelor sunt protejate în timpul procedurilor judiciare. De exemplu, măsura de evitare a contactului vizual între victime și infractori este reglementată în Capitolul 1 al Codului Victimelor. Aceste măsuri depind de nevoile individuale ale victimei care trebuie determinate în evaluarea individuală.

În timp ce o victimă are dreptul să solicite o astfel de măsură specială, instanța decide dacă trebuie aplicată una dintre următoarele măsuri:

- "ecrane / perdele în sala de judecată, astfel încât martorul nu trebuie să vadă pârâtul și, în unele cazuri, galeria publică;

- O legătură video live care permite unui martor să depună mărturie departe de sala de judecată. Aceasta ar putea fi dintr-o cameră separată din cadrul instanței sau dintr-un site dedicat live-link în afara clădirii instanței;

- Dovezi în particular - galeria publică poate fi soluționată în cazuri care implică infracțiuni sexuale, trafic de persoane sau atunci când instanța este convinsă că altcineva decât cel învinuit poate încerca să-l intimideze pe martor;

- îndepărtarea perucilor și halatelor de către judecători, avocații de apărare și de urmărire penală;

- Declarații video înregistrate - acestea permit martorului să folosească o declarație video pre-înregistrată drept dovada principală a urmăririi penale. ¹³³

În plus, există posibilitatea ca un intermediar înregistrat să ajute martorii vulnerabili să dea cele mai bune dovezi în instanță sau poliție, dacă există o dificultate de comunicare ¹³⁴. Intermediarul trebuie să fie aprobat

¹³² Capitolul 3, Partea B 1.2. cu referire la Capitolul 2 Partea A 1.8 Codul Victimelor

¹³³ Capitolul 1, 1.13 Codul Victimelor

¹³⁴ Capitolul 1, 1.15 Codul Victimelor.

de instanță, are un statut social sau juridic și funcționează ca o legătură între copil și profesioniști. În cazurile în care este folosit un intermediar înregistrat, profesioniștii¹³⁵ implicați sunt de acord cu regulile de bază pentru tipurile de întrebări care va fi cerut unui copil într-o audiere pre-proces¹³⁶.

În cazul în care o victimă-copil dă dovadă printr-o declarație de martor, pot fi solicitate întrebări suplimentare prin intermediul unei examinări încrucișate: o măsură în care copilul victimă se află într-o încăpere diferită folosind o legătură video prin care poate furniza dovezi departe de clădirea instanței¹³⁷. Ar putea fi, de asemenea, posibil să nu mai fie necesare alte întrebări și să nu aibă loc niciun interviu în instanță¹³⁸. Serviciul de urmărire a corupției trebuie să trateze toate victimele în mod respectuos. Dacă este necesar, instanța va interveni atunci când consideră că o examinare încrucișată este inadecvată sau agresivă¹³⁹. De asemenea, o victimă are dreptul să viziteze instanța înainte de data procesului pentru a se familiariza cu clădirea și sala de judecată înainte de proces¹⁴⁰. În particular, copiii sunt prezenți în intrarea separată a clădirii, în sala de judecată, la sala de așteptare a martorilor, precum și la sala în care se va desfășura interviul prin link-ul live¹⁴¹. Aceste vizite sunt aranjate de Unitățile de asistență a martorilor care se află în legătură cu Serviciul Martor al Curții¹⁴². În cazurile în care vârsta victimei este incertă și există motive să se creadă că persoana are vârsta sub 18 ani, Codul Victimelor stabilește că se presupune că persoana este sub 18 ani¹⁴³.

În final, există posibilitatea ca victimele să facă o "Declarație personală a victimei" (Victim PS) alături de declarația lor de martor¹⁴⁴. Declarația ar trebui să ofere victimelor posibilitatea de a înregistra modul în care infracțiunea i-a afectat pe ei și familia lor. Dimpotrivă, declarația martoră acoperă doar ceea ce sa întâmplat la infracțiune. În timp ce declarația inițială nu poate fi schimbată, o victimă are dreptul să dea o declarație

¹³⁵ Agenția Europeană pentru Drepturi Fundamentale, Child-friendly justice: perspective și experiențe ale profesioniștilor privind participarea copiilor la procedurile judiciare civile și penale în 10 state membre ale UE, 2015, 24.

¹³⁶ This practice was mentioned as a promising practice in a 2015 FRA report on child-friendly justice. Ibid, 27.

¹³⁷ Capitolul 3, Partea A 3.1 Codul Victimelor.

¹³⁸ Capitolul 3, Partea A 1.3 Codul Victimelor.

¹³⁹ Capitolul 3, Partea A 3.1 Codul Victimelor.

¹⁴⁰ Capitolul 3, Partea B 1.2. cu referire la Capitolul 2 Part A 2.14.

¹⁴¹ Agenția Europeană pentru Drepturi Fundamentale, Child-friendly justice: perspective și experiențe ale profesioniștilor privind participarea copiilor la procedurile judiciare civile și penale în 10 state membre ale UE, 2015, 63

¹⁴² Agenția Europeană pentru Drepturi Fundamentale, Child-friendly justice: perspective și experiențe ale profesioniștilor privind participarea copiilor la procedurile judiciare civile și penale în 10 state membre ale UE, 2015, 34.

¹⁴³ Capitolul 5, 1.46 Codul Victimelor.

¹⁴⁴ Crown Prosecution Service, Victim Personal Statements: Legal Guidance, <https://www.cps.gov.uk/legal-guidance/victim-personal-statements>

de victima în orice moment înainte de condamnare. Victimele unei crime grave, vizate în mod persistent, sau vulnerabile sau intime, au dreptul să facă un o declarație cu privire la declarația martorului. Declarația personală a victimei va fi luată în considerare numai de către instanță după ce infractorul a fost găsit vinovat și ajută la clarificarea prejudiciului fizic și psihic cauzat de infracțiune¹⁴⁵.

4.3. Accesul și sprijinul oferit de serviciile de sprijinire a victimelor (articolele 8-9 DV)

4.3.1. Finlanda

În general, fiecare victimă are dreptul de a avea un avocat legal care să îl/o susțină atunci când raportează o infracțiune, în cursul urmăririi penale și în cursul procesului¹⁴⁶. În timp ce de obicei victima trebuie să plătească un avocat, există două circumstanțe în care ar putea fi acordată asistență juridică sau un avocat din oficiu unei victime: asistență juridică sau avocat din oficiu pentru victimele unor anumite infracțiuni.

1. Dacă și în ce măsură asistența juridică este acordată, depinde de venitul, nivelul cheltuielilor, *averea și răspunderea de întreținere a victimei*¹⁴⁷. În funcție de statutul financiar al victimelor, statul ar putea să achite o parte sau întreaga taxă a avocatului.¹⁴⁸ Victimele pot solicita asistență juridică la toate birourile de asistență juridică online sau pot solicita unui birou de avocatură să facă acest lucru.¹⁴⁹

2. În cazul unei victime a violenței domestice, a unei infracțiuni sexuale sau a unei infracțiuni grave împotriva vieții, sănătății sau libertății, instanța poate numi un avocat pentru victimă (Capitolul 2, Secțiunea 1a FCPA)¹⁵⁰. În aceste cazuri, numirea avocatului nu depinde de venitul victimei, acest serviciu fiind asigurat de către stat¹⁵¹. Mai mult, în aceste cazuri, instanța poate desemna o persoană de sprijin pentru persoana vătămată. Această persoană ar trebui să ofere asistență personală în cursul urmăririi penale și

¹⁴⁵ Sprijinul Victimelor, Declarații personale ale victimelor, <https://www.victimsupport.org.uk/help-and-support/your-rights/victim-personal-statements>

¹⁴⁶ Vezi Capitolul 4 Secțiunea 10 FCIA

¹⁴⁷ Oikeus, Means-testing,

<https://oikeus.fi/en/index/esitteet/oikeusapu/millatuloillaoikeusapumyynnetaanjamitkamenothuomioidaan.html>

¹⁴⁸ Informații privind costul asistenței juridice și a deductibilelor pot fi găsite la: Oikeus, Information on Legal Aid, <https://oikeus.fi/en/index/esitteet/oikeusapu/mitaoikeusapuhakijallemaksaa.html>

¹⁴⁹ Ministerul de Justiție Finlandez, Drepturile victimelor infracționalității, 1.3.2017

¹⁵⁰ Ibid.

¹⁵¹ Ministerul de Justiție Finlandez, Drepturile victimelor infracționalității, 1.3.2017, vezi și Oikeus, Legal aid, <https://oikeus.fi/oikeusapu/en/index.html>



procesului, precum și să asiste persoana vătămată în chestiunile care decurg din rezolvarea cazului (Capitolul 2, Secțiunea 9 FCPA)

În funcție de caz, anchetatorul șef sau procurorul trebuie să înainteze o cerere instanței pentru numirea unui avocat sau a unei persoane de sprijin înainte ca audierea să aibă loc în cadrul urmăririi penale (capitolul 4 secțiunea 10 subsecțiunea 2 FCIA). Acest lucru se petrece în special în cazul în care o persoană ar fi putut deveni victimă a violenței domestice, a infracțiunii sexuale sau a unei infracțiuni grave împotriva vieții, a sănătății sau a libertății.

În timp ce dreptul de a accesa serviciile de sprijinire a victimelor a existat deja înainte de transpunerea Directivei privind Victimele în legislația finlandeză, au fost extinse mai multe dispoziții. A fost adăugată o prevedere la capitolul 4 secțiunea 10 FICA potrivit căreia nevoile speciale de protecție ale reclamantului și caracteristicile personale ale acestuia sunt acum un motiv pe baza căruia funcționarul însărcinat cu ancheta preliminară trebuie să trimită datele de contact ale părților vătămate unui furnizor de asistență pentru victime.

Alte prevederi privind accesul la serviciile de sprijinire a victimelor sunt stabilite în Legea privind taxele victimelor¹⁵² care a fost singura lege nouă care a fost promulgată în procesul de transpunere a Directivei privind Victimele¹⁵³. Taxa pentru victimă este o sumă plătită de infractorul urmărit penal pentru a finanța serviciile de sprijin al victimelor¹⁵⁴. Prin această nouă lege, Finlanda a urmat o recomandare a Comisiei Europene, care a dispus punerea în aplicare a taxei victimelor pentru finanțarea serviciilor generale de sprijin impuse de Directiva Victimelor¹⁵⁵. Alte legislații aplicabile includ Legea privind asistența juridică (257/2002) și amendamentele ulterioare; și Decretul guvernamental privind asistența juridică (388/2002) și amendamentele ulterioare (997/2004, 1208/2005, 867/2007 și 1008/2009).

¹⁵² FINLEX, Act privind taxele pentru victime, 22.5.2015/669, <https://www.finlex.fi/fi/laki/ajantasa/2015/20150669> (Finlandeză)

¹⁵³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Studiu juridic comparativ: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 70 – 71, pentru o privire de ansamblu precisă a articolelor din DV în raport cu prevederile corespunzătoare ale Codului Victimelor, 23.

¹⁵⁴ Riku, What is a victim charge?, <https://www.riku.fi/en/frequently+asked+questions/what+is+a+victim+charge/>

¹⁵⁵ Ibid.



4.3.2. Germania

În Germania există două forme de sprijinire a victimelor în timpul procedurilor judiciare: sprijin juridic și psiho-social, acesta din urmă fiind introdus în cursul procesului de transpunere a Directivei privind Victimele. În plus, există anumite condiții în care victimei i se acordă asistență juridică.

În acest context, este important de menționat că orice persoană care are dreptul să se alăture procesului în calitate de co-reclamant, conform art. 395 GCCP, este, de asemenea, considerată o victimă în domeniul GCCP. În consecință, sunt considerați ca fiind victime și membrii familiei unei persoane a cărei moarte a fost cauzată de o infracțiune (copii, părinți, frați, soț sau partener) conform art. 395 alin. 2 GCCP și, prin urmare, poate avea acces gratuit la asistență juridică și psiho-socială.¹⁵⁶

În timp ce conform art. 406f GCCP toate părțile vătămate au dreptul de a fi reprezentate de un avocat ("*Verletztenbeistand*"), există și alți factori care determină dacă victima are acces la un avocat în mod gratuit, de exemplu dacă are sau nu dreptul de a se alătura procedurii în calitate de co-reclamant¹⁵⁷. Legea prevede că victimele beneficiază de dreptul la o reprezentare juridică gratuită: (articolul 397a GCCP):

- în cazul unor infracțiuni grave, cum ar fi, de exemplu abuzul sexual asupra copiilor, hățuirea sexuală și violul, traficul de persoane în care se desfășoară exploatarea sexuală și tentativa de omor.¹⁵⁸
- dacă o infracțiune a condus deja - sau se așteaptă să ducă - la daune fizice sau psihice grave și intră sub incidența art. 226, 226a, 234-235, 238-239b, 250, 252, 31a GCCP. Aceste infracțiuni includ, printre altele, agresiuni grave, jaf, răpire, privarea de libertate a minorilor, severe stalking, infracțiunile de privare de libertate.
- în cazul copiilor care sunt victime ale infracțiunilor sau al victimelor care nu își pot exercita toate drepturile, dacă infracțiunea a constituit o infracțiune sexuală, exploatarea lucrătoarelor sexuale, suspendarea, abuzul unor instituții, vătămarea corporală gravă și altele¹⁵⁹

¹⁵⁶ Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, 22, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (German).

¹⁵⁷ Acestea sunt de ex. crimele împotriva autodeterminării sexuale, împotriva demnității umane, integrității fizice, libertății personale; tentativă de omucidere;

¹⁵⁸ Art. 177, 179, 232-232b, 233a GCCP.

¹⁵⁹ Art. 174-182, 184i, 184j și 225 GCCP (dacă victima nu împlinise 18 ani la momentul săvârșirii infracțiunii); art. 221, 226, 226. 232-235, 237, 238 para. 2 și 3; 239, 239b, 240 para. 4, 249, 250, 252, 255 și 316 GCCO (dacă victima nu împlinise 18 ani la momentul raportării infracțiunii).

Dacă victimei nu i se acordă reprezentare legală gratuită în temeiul art. 397a GCCP, acestea i se poate acorda asistență juridică în temeiul reglementărilor din Legea Civilă germană (articolul 397a alineatul 2 GCCP). Acest drept depinde de situația financiară și de venitul victimelor sau de circumstanțele particulare ale cazului.

În plus, în cursul procesului de transpunere a Directivei privind Victimele, dreptul la sprijin psiho-social ("*psihosocial Prozessbegleitung*")¹⁶⁰ a fost consacrat în art. 406g GCCP – constituind singura dispoziție care a intrat în vigoare la 1 ianuarie 2017¹⁶¹. În plus, a fost stabilită o nouă lege a persoanei care oferă sprijin psiho-social în cadrul procedurilor penale, care reglementează principiile și cerințele privind calificarea acestor persoane¹⁶² (paragraful 2). Suportul psiho-social poate fi acordat în timpul interviurilor cu victima, precum și în timpul tuturor procedurilor judiciare

În următoarele cazuri, instanța trebuie să aloce un susținător psiho-social victimei dacă aceasta solicită:

- Copiii care sunt victime ale infracțiunilor sau victimele care nu își pot exercita toate drepturile, în cazul infracțiunilor sexuale, exploatarea lucrătoarelor sexuale, suspendarea, abuzul unor instituții, vătămrile corporale grave, și altele.¹⁶³
- Dacă necesitatea specifică de protecție a victimei impune acest lucru, în cazul unor infracțiuni grave. ca de ex. abuzul sexual asupra copiilor, hărțuirea sexuală și violul, traficul de persoane care implică exploatarea sexuală, tentativă de omor,¹⁶⁴
- Dacă necesitatea specifică de protecție a victimei impune acest lucru, în cazul altor infracțiuni¹⁶⁵ care au condus - sau se așteaptă să ducă - la daune fizice sau psihice grave ale victimei. Acestea din urmă includ,

¹⁶⁰ Un sprijin psiho-social trebuie să fie strict separat de orice sprijin legal conform art. 2 par. 2 PsychPbG

¹⁶¹ Bundesministerium der Justiz und für Verbraucherschutz, Opferhilfe und Opferschutz im Strafverfahren, 16.11.2017, https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (Germană).

¹⁶² Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren vom 21. Dezember 2015 (BGBl. I S. 2525, 2529), (PsychPbG), https://www.bmjbv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (Germană)

¹⁶³ Art. 174-182, 184i, 184j și 225 GCCP (dacă victima nu împlinise 18 ani la momentul săvârșirii infracțiunii); art. 221, 226, 226. 232-235, 237, 238 para. 2 și 3; 239, 239b, 240 para. 4, 249, 250, 252, 255 și 316 GCCO dacă victima nu împlinise 18 ani la momentul raportării infracțiunii).

¹⁶⁴ Art. 177, 179, 232-232b, 233a GCCP.

¹⁶⁵ art. 226, 226a, 234-235, 238-239b, 250, 252, 31a GCCP

printre altele, agresiuni grave, jaf, răpire, privarea de libertate a minorilor, urmărirea severă, privarea de libertate.

În timp ce diferiți actori au salutat noile dispoziții ale persoanei care oferă sprijin psiho-social, alții le-au criticat: în particular, există temerea că un fenomen de "coaching of witnesses" ar putea influența mărturia victimei.¹⁶⁶

În cele din urmă, Legea federală germană privind protecția copilului reglementează protecția copilului în Germania la nivel federal. Aceasta a rezultat dintr-un efort de a identifica și a elimina lacunele din domeniul protecției copilului în Germania. Printre altele, reglementează elaborarea, aplicarea și revizuirea standardelor de asigurare a drepturilor copiilor și adolescenților în instituții și protecția acestora împotriva violenței.¹⁶⁷

4.3.3. Portugalia

În Portugalia, dreptul la asistență juridică a victimelor este stabilit în Constituția portugheză, care prevede că "justiția nu poate fi refuzată nimănui din cauza lipsei mijloacelor financiare suficiente" (articolul 20 alineatul 1. Constituția portugheză¹⁶⁸), precum și ca "fiecare are dreptul la informații și consiliere juridică, la avocat și să fie însoțit de un avocat în fața oricărei autorități" (articolul 20 alineatul 2 din Constituția portugheză). Mai mult, Constituția protejează dreptul victimelor de a interveni în procedurile penale, lăsând în același timp elaborarea mai precisă a legii. Legislația portugheză cea mai relevantă în această privință este Codul de procedură penală portugheză, Statutul victimelor portugheze, Regulamentul privind cheltuielile de procedură și Legea privind accesul la lege și instanțe judecătorești¹⁶⁹ (Legea nr. 34/2004 din 29 iulie, modificată prin Legea nr. 47/2007, din 28 august)¹⁷⁰.

Potrivit articolului 13 PVS, victimele au acces gratuit la asistență juridică în cazurile stabilite de Legea portugheză privind accesul la lege și la instanțele judecătorești. Noua legislație nu cuprinde, prin urmare,

¹⁶⁶ Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 344.

¹⁶⁷ Bundesministerium für Familie, Senioren, Frauen und Jugend, Actul Federal German de Protecție a Copilului (Bundeskinderschutzgesetz), <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/bundeskinderschutzgesetz/das-bundeskinderschutzgesetz/86268> (Germană).

¹⁶⁸ Constituția Republicii Portugalia, <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>

¹⁶⁹ Legea privind accesul la lege și instanțele judecătorești, Legea nr. 34/2004 din 29 iulie amendată prin Legea nr. 47/2007, din 28 august, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=80&tabela=leis&so_miolo (Portuguese).

¹⁷⁰ Vânia Costa Ramos, Asistență juridică pentru victimele procedurilor penale în Portugalia, Wilinski, Karlik (eds.), Îmbunătățirea protecției drepturilor victimelor: accesul la asistență juridică, Universitatea Adam Mickiewicz, Poznań, 2014, 192.



dispozițiile care existau deja în legislația portugheză¹⁷¹. Legea portugheză privind accesul la lege și instanțe judecătorești, pe de altă parte, clarifică faptul că accesul la reprezentarea legală gratuită în instanță, precum și consilierea juridică depind de evaluarea veniturilor victimelor (articolul 8). Astfel, doar o victimă care nu obține venituri suficiente va avea acces gratuit la o reprezentare juridică¹⁷². Mai mult, legea clarifică în art. 6 specifica ce costuri sunt acoperite de asistență juridică financiară: asistență juridică și asistență juridică, inclusiv consultarea unui avocat, numirea unui avocat, precum și plata taxelor sale, scutirea totală sau parțială de la cheltuielile de judecată¹⁷³.

Există, de asemenea, anumite circumstanțe în care judecătorul sau procurorul pot stabili când o victimă are nevoie de sprijin psihosocial ("Técnico de apoio à vítima") conform art. 15 par. 3 PVS. Suportul psihologic este oferit de către un angajat al APAV al cărui rol este de a ajuta victima să depășească sau să atenueze impactul infracțiunii. De asemenea, el sau ea poate însoți victima în instanță, la poliție sau la examene medicale¹⁷⁴.

În timp ce drepturile de a accesa serviciile de sprijinire a victimelor sunt specificate în context în cadrul dreptului de a primi informații cât mai curând posibil (transpunerea articolului 4 VD), detaliile specifice articolului 9 VD lipsesc în legislația portugheză¹⁷⁵.

4.3.4. Spania

În conformitate cu art. 8 VD, art. 10 din Legea 4/2015 prevede că toate victimele infracțiunilor au dreptul să acceseze gratuit și confidențial serviciile de asistență și suport oferite de autoritățile publice și Birourile de Suport pentru Victime, conform cadrelor și reglementărilor naționale. După cum prevede directiva, legislația națională prevede că rudele victimelor pot beneficia de aceleași drepturi ca și victima.

În Spania, Birourile de Asistență pentru Victime - care există în mai multe Comunități Autonome¹⁷⁶ - au responsabilitatea de a coordona asistența oferită de diverse organizații, instituții și entități care lucrează

¹⁷¹ APAV - Associação Portuguesa de Apoio à Vítima, Elaborarea de practici compatibile cu directivele pentru identificarea, evaluarea și sesizarea victimelor: Raportul privind practicile Portugaliei, 7.

¹⁷² Info Vitimas, avocatul victimei, http://infovitimas.pt/pt/004_quem/paginas/004_006.html (Portugheză).

¹⁷³ Ibid, 198.

¹⁷⁴ Info Vitima, Psychological Supporter, http://infovitimas.pt/pt/004_quem/paginas/004_007.html (Portugheză).

¹⁷⁵ EPRS – European Parliamentary Research Service, Directiva privind drepturile victimelor 2012/29 / UE: Evaluarea europeană a punerii în aplicare, decembrie 2017, 54.

¹⁷⁶ Agenția pentru Drepturi Fundamentale a Uniunii Europene, Child -friendly justice: perspectivele și experiențele profesioniștilor privind participarea copiilor la procedurile judiciare civile și penale în 10 state membre ale UE, 2015. 110.



pentru îngrijirea victimelor, de la caz la caz. Aceste birouri constau din echipe multidisciplinare - avocați, psihologi și asistenți sociali - care susțin victimele infracțiunilor în cadrul procedurilor penale. Un raport recent al Agenției pentru Drepturi Fundamentale privind justiția prietenoasă cu copilul s-a axat mai mult pe aceste birouri și le-a sugerat că acestea constituie o practică promițătoare pentru departamentele interdisciplinare de sprijinire a victimelor. În funcție de locație, birourile oferă servicii cum ar fi vizite în instanțele de judecată; și informații părinților. Uneori audierea victimelor copilului ar putea avea loc la birourile acestor institutii¹⁷⁷. Mai mult, după cum s-a menționat anterior, birourile de sprijinire a victimei au fost obligate să efectueze o evaluare individuală a necesităților individuale de protecție a victimelor, în conformitate cu articolul 28 alineatul 2 din Legea 4/2015. În special, aceștia evaluează dacă victima are nevoie de suport și asistență psihologică, o persoană de sprijin în timpul procesului, informații, alte măsuri de sprijin special care pot fi acordate de instanță sau trimiterea la servicii de asistență specializate¹⁷⁸.

În plus, articolul 28 din Legea 5/2015 stabilește minimul de asistență pe care Oficiile de Suport pentru Victime trebuie să le ofere victimelor. În consecință, Oficiul de Suport al Victimelor oferă cel puțin următoarea asistență:

- a) Informații generale privind drepturile victimelor
- b) Informații privind serviciile de specialitate disponibile care pot ajuta victimele, ținând cont de circumstanțele lor personale și de natura infracțiunii
- c) Sprijin emoțional pentru victime
- d) Sfaturi cu privire la drepturile financiare, inclusiv accesul la asistență juridică
- e) Sfaturi privind riscul și modul de prevenire a victimizării, intimidării sau represaliilor secundare sau repetate.
- f) Coordonarea diferitelor organizații, instituții și organisme care oferă servicii de sprijin pentru victime.
- g) Coordonarea cu judecătorii, instanțele judecătorești și serviciul de urmărire penală pentru a oferi servicii de sprijin pentru victime.

¹⁷⁷ Agenția pentru Drepturi Fundamentale a Uniunii Europene, Child -friendly justice: perspectivele și experiențele profesioniștilor privind participarea copiilor la procedurile judiciare civile și penale în 10 state membre ale UE, 2015. 110.

¹⁷⁸ Articolul 28 para. 2, Legea 4/2015 privind Statutul Victimelor Infracționalității

De asemenea, legiuitorul spaniol a ales să introducă un sistem de evaluare a sistemului de sprijinire a victimelor în Spania. Prima prevedere din Legea 4/2015 prevede că funcționarea instituțiilor, mecanismelor și garanțiilor pentru sprijinirea victimelor în Spania va fi evaluată anual de Ministerul Justiției. Evaluarea, precum și rezultatele, vor servi drept îndrumare pentru îmbunătățirea sistemului de protecție.

4.3.5. Anglia și Țara Galilor

Deși în Anglia și Țara Galilor este folosit și definit termenul "victimă", victima nu constituie parte la procedura penală¹⁷⁹. În consecință, o victimă nu poate, de asemenea, să exercite niciun drept legat de reprezentarea juridică în timpul procedurilor judiciare. Procurorul de stat prezintă cazul victimei, în timp ce rolul victimei este acela de a furniza probe ca martor¹⁸⁰. Cu toate acestea, există mai multe servicii de sprijinire a victimelor în Anglia și Țara Galilor ", care oferă victimelor crimei ajutor și sprijin pentru a le ajuta să se descurce și să se recupereze după o crimă." Toate victimele au dreptul de a avea acces la informații despre gama de servicii de sprijinire a victimelor.¹⁸¹ Victimele copii - precum și toate celelalte victime - au dreptul de a fi evaluate dacă au nevoie de sprijin¹⁸².

În general, toate victimele au acces la serviciile de sprijinire a victimelor, indiferent de cand se depune plângerea și în ce stadiu al procesului sunt, de asemenea, și după încheierea investigației și a urmăririi penale¹⁸³. În cazul în care raportează o infracțiune, prestatorul de servicii are obligația de a trimite victima la un serviciu de asistență pentru victime în termen de două zile lucrătoare de la raportarea infracțiunii¹⁸⁴. Victima are totuși dreptul de a cere poliției să nu transmită informațiile unui serviciu de asistență pentru victime. În plus, în cazul victimelor infantile - și, de asemenea, altor victime cu drepturi consolidate - furnizorul de servicii trebuie să se asigure că victima este de acord cu transmiterea informațiilor sale către serviciile de sprijinire a victimelor¹⁸⁵.

În concluzie, la fel ca în Finlanda, în Anglia și Țara Galilor există un sistem care obligă infractorul condamnat să plătească o suprataxă care este utilizată pentru a finanța serviciile victimelor prin Fondul

¹⁷⁹ APAV - Associação Portuguesa de Apoio à Vítima, IVOR Raport: Implementarea reformei orientate spre victime a sistemului justiției penale în Uniunea Europeană, 2016, 112.

¹⁸⁰ Ibid.

¹⁸¹ Introducere, 1.6 și Capitolul 3, Partea B 1.2 cu referire la Capitolul 2, Part A, 1.4 Codul Victimelor.

¹⁸² Capitolul 3, Partea B 1.2 cu referire la Capitolul 2, Partea A, 1.1 Codul Victimelor.

¹⁸³ Introducere, 1.6 și 22 Codul Victimelor.

¹⁸⁴ Ibid.

¹⁸⁵ Capitolul 1, 1.6 Codul Victimelor.



general pentru victime și martori. Atunci când se pronunță o sentință, instanța trebuie să dispună, de asemenea, plata plății pentru Victima¹⁸⁶. Suma depinde de sentință, precum și de vârsta și personalitatea juridică a infractorului și este clar determinată într-un tabel accesibil online. Taxa pentru victime a fost introdusă pentru prima dată în aprilie 2007 și a fost modificată ultima dată în aprilie 2016. O listă completă a grupurilor care sunt susținute de Fondul Victim și Martor General poate fi găsită online¹⁸⁷.

¹⁸⁶ Sentencing Council, What is the victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>

¹⁸⁷ Gov.uk, Victims and witnesses funding awards, <https://www.gov.uk/government/publications/victims-and-witnesses-funding-awards>



5. Concluzii

Prezentul raport evaluează legislația națională cu privire la transpunerea directivei asupra victimelor din Finlanda, Germania, Portugalia, Spania, Anglia și Țara Galilor, cu un accent deosebit pe drepturile acordate copiilor, victime ale infracțiunilor. Următoarea concluzie contrastează cu constatările studiilor efectuate în fiecare țară cu scopul de a identifica realizările transunerii directivei privind victimele, precum și de practicile promițătoare și cele mai bune soluții legislative. Deoarece există frecvent un decalaj între legislație și practică, trebuie subliniat faptul că prezentul raport enumeră doar practicile promițătoare și cele mai bune soluții legislative fără să precizeze modul în care următoarele exemple sunt implementate în practică.

Procesele de transpunere a Directivei privind victimele în statele membre selectate au fost diverse. Spania și Portugalia au transpus cu rigurozitate multe părți ale Directivei victimelor. De asemenea, ambele au introdus o nouă lege care cuprinde o listă largă a drepturilor victimelor, și anume Statutul victimelor portugheze și Legea spaniolă 4/2015 privind protecția victimelor criminalității. Stabilirea acestor două documente conturează într-o manieră mai accesibilă și mai clară drepturile victimelor.

În mod similar, în Anglia și Țara Galilor, toate drepturile victimelor infracțiunii sunt cuprinse în Codul victimelor, care este destinat să fie un ghid practic, destinat să sprijine agențiile de justiție penală în îndrumarea victimelor "în cadrul procedurilor penale". Există și versiuni ușor de citit, care îl fac mai accesibil copiilor. În procesul de transpunere, în Anglia și Țara Galilor, a avut loc un amplu proces de consultare și evaluare a variantelor Codului Victimelor preexistente, care a implicat o serie de răspunsuri scrise din partea diferitelor părți interesate, evenimente de consultare publică, precum și sondaje cu copii și tineri despre impresiile lor privind codul victimelor deja existent. Procesul legislativ din Germania, pe de altă parte, permite consultarea, dar nu prevede un proces obligatoriu de consultare prin lege. Dispozițiile germane privind protecția victimelor sunt, de asemenea, divizate - nu numai în legislația națională, dar și în cea federală.

Mai mult, cercetarea conturează câteva practici promițătoare privind art. 23-24 VD: De exemplu, în Anglia și Țara Galilor există un document de orientare "Atingerea celor mai bune dovezi în procedurile penale"



care, deși nu constituie un cod de conduită aplicabil, reprezintă un ghid util care identifică bunele practici în interviuarea martorilor. În plus, Codul Victimelor prevede posibilitatea de a desemna un intermediar înregistrat, care să ajute victimele vulnerabile să aduca dovezi în fața instanței și poliției. În cazul în care un copil-victimă este interviuat într-o audiere precontencioasă, intermediarul ajută la stabilirea unor reguli de bază pentru interviu care trebuie să fie admise în timpul ședinței. O altă practică promițătoare în Anglia și Țara Galilor este posibilitatea ca victima să viziteze sala de judecată înainte de data procesului. Această practică are scopul de a permite victimei să se familiarizeze cu ea, cu clădirea și instanța. În plus, în Finlanda există un program de interviuri interdisciplinare de un an pentru polițiști și profesioniști din domeniul sănătății care efectuează audieri cu copii.

În cele din urmă, capitolul 4.4 prezintă dispozițiile respective privind accesul și sprijinul oferit de serviciile în cauză, victimelor, astfel cum sunt descrise în articolele 8-9 VD. În ansamblu, cercetarea de față constată că există trei tipuri de sprijin în timpul procedurilor judiciare în statele membre amintite, în timp ce nu toate aceste servicii sunt disponibile în fiecare stat membru: un consilier juridic numit în funcție de natura infracțiunii, circumstanțele victimei; asistența juridică acordată în funcție de situația financiară a victimelor; și o persoană de sprijin sau susținător psiho-social. Cu toate acestea, ca și în Anglia și Țara Galilor, victima nu este parte la procesul penal, victima nu are dreptul la reprezentare juridică în timpul procedurilor judiciare. Procurorul de stat prezintă cazul victimelor, în timp ce rolul victimei este de a furniza probe ca martor.

Practicile promițătoare care au fost constatate în cadrul acestei cercetări privind accesul și sprijinul acordat de serviciile de asistență victimelor sunt, pe de o parte, sarcina victimelor în Finlanda. Acestea din urmă constituie bani care trebuie plătiți de infractorul penal pentru a finanța serviciile de sprijin ale victimelor. Pe de altă parte, dreptul victimei la ajutorul psiho-social, care exista în Portugalia și Finlanda, a fost introdus recent în legislația germană în cursul procesului de transpunere. În cele din urmă, birourile interdisciplinare de sprijinire a victimelor din Spania au fost, de asemenea, considerate o practică promițătoare într-o recentă publicare a FRA . Serviciile de sprijinire a victimelor oferă o gamă largă de servicii, realizează evaluarea individuală a victimelor pentru a-și identifica nevoile specifice de protecție și pentru a coordona alte servicii de asistență a victimelor. În plus, pentru a îmbunătăți în mod constant sistemul de protecție din Spania,



funcționarea instituțiilor de sprijinire a victimelor, a mecanismelor și a garanțiilor trebuie evaluată anual de către Ministerul spaniol al justiției.

În concluzie, se poate afirma că Directiva privind victimele a condus la realizări diferite în statele membre menționate. În timp ce mai multe dispoziții existau deja în legislația națională, procesele de transpunere au deschis spațiul pentru un proces de revizuire și reevaluare. În timp ce soluțiile legislative alese de fiecare stat membru se înscriu în mod clar în contextul particular al sistemului lor juridic, cercetarea prezentă sugerează că există totuși un spațiu pentru practici reciproce între statele membre. În special, se poate observa că, întrucât una dintre principalele capcane ale proceselor de transpunere este decalajul dintre legislație și practică, este foarte probabil ca o abordare practică de revizuire și elaborare a legislației, inclusiv un proces larg de consultare, să ducă la soluții promițătoare care funcționează în practică.



Bibliografie

APAV – Associação Portuguesa de Apoio à Vítima, Developing Directive – compatible practices for the identification, assessment and referral of victims: Portugal Practices Report.

APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016.

Assembleia da República, Parliament, <http://www.en.parlamento.pt/Parliament/index.html>

Assembleia da República, Processo Legislativo Comum,
<http://www.parlamento.pt/Parlamento/paginas/plc.aspx>

Bpb, Wie ein Gesetz entsteht, <http://www.bpb.de/politik/grundfragen/24-deutschland/40463/wie-ein-gesetz-entsteht> (German)

Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU,
https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/BerichtBundLaender_AG.pdf?__blob=publicationFile&v=2 (German)

Bundesministerium der Justiz und für Verbraucherschutz, Opferhilfe und Opferschutz im Strafverfahren, 16.11.2017,
https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (German).

Bundesministerium für Familie, Senioren, Frauen und Jugend, German Federal Child Protection Act (Bundeskinderschutzgesetz), <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/bundeskinderschutzgesetz/das-bundeskinderschutzgesetz/86268> (German).

Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz),
https://www.mietpreisbremse.bund.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (German).

Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksache 56/15,
<http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (German)

Constitution of the Portuguese Republic,
<http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>

Decreto do Presidente da República n.º 101/2015 - Diário da República n.º 173/2015, Série I de 2015-09-04/70186153, Assembleia da República, Lei n.º 130/2015, Procede à vigésima terceira alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001, <https://dre.pt/application/file/70186153>

Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren(3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015,
<http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (German)

DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU



of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, December 2017.

EUR-LEX, National transposition measures communicated by the Member States concerning: Directive 2012/29/EU, <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029>

European Commission, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2013 (in the following: European Commission, Guidance Document to the Victims’ Directive, 2013).

European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States, 2015.

European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Luxembourg), 2014

FINLEX, Act on Victim Charges, 22.5.2015/669, <https://www.finlex.fi/fi/laki/ajantasa/2015/20150669> (Finnish)

FINLEX, HE 293/2014, <https://finlex.fi/fi/esitykset/he/2014/20140293?search%5Btype%5D=pika&search%5Bpika%5D=He%20293%2F2014> (Finnish).

FINLEY, HE 66/2015, <https://finlex.fi/fi/esitykset/he/2015/20150066> (Finnish).

Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/>

Finnish Ministry of Justice, Act on the Publicity of Court Proceedings in General Courts, 370/2007 amendments to 742/2015 included, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjQ9unn4MjZAhVMYaQKHTmUB14QFggtMAA&url=https%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F2007%2Fen20070370.pdf&usg=AOvVaw3A34-Ki7L-xk8YksYrIE0V>

Finnish Ministry of Justice, Code of Judicial Procedure, 4/1734, amendments up to 732/2015 included, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiHx5KJ3MjZAhUBLeWKhFZoD60QFggtMAA&url=http%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F1734%2Fen17340004.pdf&usg=AOvVaw0-PJLjKrSH9U01qD0yrl4B>

Finnish Ministry of Justice, Criminal Investigation Act (805/2011; amendments to 736/2015 included, Unofficial Translation, <https://www.finlex.fi/en/laki/kaannokset/2011/en20110805.pdf>

Finnish Ministry of Justice, Rights of crime victim, 1.3.2017

FRANET, Victim Support Services in the EU: An overview and assessment of victims’ rights in practice: Germany, 2014.

Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren vom 21. Dezember 2015 (BGBl. I S. 2525, 2529), (PsychPbG), https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (German)



Gov.uk, Victims and witnesses funding awards, <https://www.gov.uk/government/publications/victims-and-witnesses-funding-awards>

Info Vitima, Psychological Supporter, http://infovitimas.pt/pt/004_quem/paginas/004_007.html (Portuguese)

Info Vitimas, lawyer of the victim, http://infovitimas.pt/pt/004_quem/paginas/004_006.html (Portuguese)

IVOR, Finland: Developments on the implementation of victim assistance mechanisms.

IVOR, United Kingdom: Development on the implementation of victim assistance and mechanisms.

Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017.

Law 1/1996 on legal protection for minors; Law 1/2004 on comprehensive protection measures against gender-based violence (Spain)

Law 29/2011 on the recognition and comprehensive protection of victims of terrorism (Spain).

Law 35/1995 on support and assistance for the victims of violent crimes and crimes against sexual freedom (Spain)

Law on Access to Law and to Courts, Law no. 34/2004 of July 29 amended by Law no. 47/2007, of August 28, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=80&tabela=leis&so_miolo (Portuguese)

Löffelmann, Drittes Opferrechtsreformgesetz – Ausgabe 11/2014, 22.11.2014, <http://www.recht-politik.de/drittes-opferrechtsreformgesetz/> (German)

Maizener ed. al., EVVI (Evaluation of Victims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf

Ministerio de Justicia, Law 4/2015, of 27 April on the Standing of Victims of Crime, <https://rm.coe.int/168070ac7f>

Ministry of Justice, Results Updated 31 Oct 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime>

Official Journal of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

Official Journal of the European Union, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing the Council Framework Decision 2004/68/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN>

Official Journal of the European Union, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

Oikeus, Attorney and support person for a victim of crime, <https://oikeus.fi/en/index/esitteet/oikeusapu/rikoksenuhrivoisaadaavustajanjatukihenkilon.html>

Oikeus, If you Become a Victim of a Crime: Victim protection: <https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>



Oikeus, Information on Legal Aid,

<https://oikeus.fi/en/index/esitteet/oikeusapu/mitaoikeusapuhakijallemaksaa.html>

Oikeus, Legal aid, <https://oikeus.fi/oikeusapu/en/index.html>

Oikeus, Means-testing,

<https://oikeus.fi/en/index/esitteet/oikeusapu/millatuloillaoikeusapuamyonnetaanjamitkamenothuomioidaan.html>

Portuguese Criminal Procedure Code, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (Portuguese).

Portuguese Victims' Statute, https://apav.pt/apav_v3/images/pdf/estatuto_da_vitima.pdf (Portuguese).

RIKU – Rikosripavystys: victim support Finland,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

Riku, What is a victim

charge?, <https://www.riku.fi/en/frequently+asked+questions/what+is+a+victim+charge/>

RIKU, What is the victims'

directive?, <https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

Savonen, Developing Directive-Compatible Practices for the identification, assessment and referral of victims: National Report – Finland, 2017, 6; and Finnish Ministry of Justice, Rights of a Crime Victim, 1.3.2017.

Sentencing Council, What is the victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>

UK Ministry of Justice, Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures, March 2011,

https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf

UK Ministry of Justice, Code of Practice for Victims of Crime, October 2015,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF

UK Ministry of Justice, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 March 2013, published on 29 October 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime/results/improving-the-code-of-practice-for-victims-of-crime-consultation-response.pdf>

<https://consult.justice.gov.uk/digital-communications/code-victims-crime/results/improving-the-code-of-practice-for-victims-of-crime-consultation-response.pdf>

UK Ministry of Justice, the support you should get if you are a victim of crime,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf

UK Ministry of Justice, The Victims' Code: u18s: Young victims of crime – Understanding the support you should get,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267982/u18-victims-code-leaflet.pdf

UK Ministry of Justice, Victims of crime: Understanding the support you can expect,



https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341367/adult-victims-code-leaflet.pdf

Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings

Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary

Vânia Costa Ramos, Legal Aid for Victims in Criminal Proceedings in Portugal, in Wilinski, Karlik (eds.), Improving Protection of Victims' Rights: Access to Legal Aid, Adam Mickiewicz University, Poznan, 2014, 192.

Webpage of RIKU, Victim Support Finland, <https://www.riku.fi/en/victim+support+finland/>

Webpage of the Bundesrat, legislative procedure,

https://www.bundesrat.de/DE/aufgaben/gesetzgebung/verfahren/verfahren.html;jsessionid=3CA8BC90B2257E80D96151207647DF27.2_cid391?nn=4353668#doc4353670bodyText2

Webpage of the German Ministry of Interior, legislative procedure,

<https://www.bmi.bund.de/DE/themen/verfassung/gesetzgebung/gesetzgebungsverfahren/gesetzgebungsverfahren-node.html>

Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017.



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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

**D3.6 pan-European Best Practices Report
on Victims' Directive transposition**

WP3 Leader: VICESSE



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Περίληψη

Η παρούσα έκθεση αξιολογεί την εθνική νομοθεσία για τη μεταφορά της οδηγίας για τα θύματα (Οδηγία 2012/29/ΕΕ) σε πέντε κράτη μέλη πέρα από τις χώρες εταίρους του E-PROTECT - Φινλανδία, Γερμανία, Πορτογαλία, Ισπανία και Αγγλία καθώς και Ουαλία - με ιδιαίτερη έμφαση στα δικαιώματα που χορηγούνται σε παιδιά-θύματα εγκληματικότητας. Στόχος του είναι να αποκτήσει γνώσεις σχετικά με τη νομική εφαρμογή της οδηγίας για τα θύματα, καθώς και να εντοπίσει ελπιδοφόρες πρακτικές και βέλτιστες νομοθετικές λύσεις. Συγκεκριμένα, αξιολογεί τις διαδικασίες μεταφοράς της οδηγίας για τα θύματα στα επιλεγμένα κράτη μέλη, καθώς και την αντίστοιχη νομοθεσία μεταφοράς των άρθρων 8-9 και 22-24 της οδηγίας. Η παρούσα έρευνα συμπληρώνεται από μια πρόσθετη έκθεση που αξιολογεί την πρακτική εφαρμογή της ατομικής αξιολόγησης των θυμάτων προκειμένου να προσδιοριστούν ειδικές ανάγκες προστασίας στα επιλεγμένα κράτη μέλη.¹

Η έρευνα πραγματοποιήθηκε στα πλαίσια του E-PROTECT - «Ενίσχυση της προστασίας των παιδιών-θυμάτων εγκληματικότητας», ένα έργο με στόχο να ενισχυθεί η εφαρμογή της οδηγίας των θυμάτων, ιδιαίτερα στις περιπτώσεις των παιδιών-θυμάτων εγκληματικότητας. Το έργο αποτελείται από διάφορες φάσεις, συμπεριλαμβανομένης της έρευνας και της ενεργούς αλληλεπίδρασης με τους επαγγελματίες στον τομέα των δικαιωμάτων των παιδιών. Σε μεταγενέστερα στάδια του έργου, μεταξύ άλλων, θα δημιουργηθεί μια ηλεκτρονική πλατφόρμα για τα δικαιώματα των παιδιών-θυμάτων, συμπεριλαμβανομένου υλικού με σχετικές πληροφορίες για τους επαγγελματίες και θα διεξαχθούν σεμινάρια και εξ αποστάσεως εκδηλώσεις με τους επαγγελματίες και εμπειρογνώμονες στον τομέα της υποστήριξης των παιδιών-θυμάτων.

Τα αποτελέσματα της έρευνας δείχνουν ότι οι διαδικασίες μεταφοράς της οδηγίας για τα θύματα στα επιλεγμένα κράτη μέλη έγιναν ποικιλοτρόπως. Ενώ η Ισπανία και η Πορτογαλία μετέφεραν πολλά μέρη από την οδηγία για τα θύματα αυτολεξεί, ο Κώδικας των θυμάτων στην Αγγλία και την Ουαλία αποσκοπεί στο να είναι ένας πρακτικός οδηγός ο οποίος να απευθύνεται τόσο στα θύματα όσο και στους παρόχους υπηρεσιών. Γενικά, η καθιέρωση ενός ενιαίου εγγράφου που να περιλαμβάνει όλα τα δικαιώματα του θύματος φαίνεται να καθιστά τα δικαιώματα των θυμάτων πιο προσιτά και σαφή.

¹ D3.13 Έκθεση για τις βέλτιστες πρακτικές πανευρωπαϊκής πρακτικής σχετικά με τις μεμονωμένες μεθοδολογίες αξιολόγησης των παιδιών-θυμάτων εγκληματικότητας, η οποία εκπονήθηκε στα πλαίσια του E-PROTECT.

Ο νομικός ορισμός του όρου «θύμα» διαφέρει ανάμεσα στα πέντε αξιολογούμενα κράτη μέλη: Στη Γερμανία και τη Φινλανδία, η εθνική νομοθεσία δεν συμπεριλαμβάνει νομικό ορισμό του όρου θύματος. Ωστόσο, το γεγονός ότι χρησιμοποιούνται διαφορετικοί όροι για την περιγραφή του προσώπου που έχει υποστεί βλάβη από την τέλεση κάποιου εγκλήματος, δεν σημαίνει απαραίτητα ότι οι εθνικές νομοθεσίες δεν προβλέπουν ίσο αριθμό δικαιωμάτων.

Η παρούσα έρευνα καταδεικνύει ότι σε όλα τα κράτη μέλη εμφανίστηκαν κοινές δυσκολίες όσον αφορά την πρακτική εφαρμογή της ατομικής αξιολόγησης των θυμάτων προκειμένου να προσδιοριστούν οι ειδικές ανάγκες προστασίας. Τα προβλήματα περιελάμβαναν τον προσδιορισμό αρμόδιων αρχών για τη διεξαγωγή της αξιολόγησης, καθώς και διατάξεις που να ρυθμίζουν τη διαδικασία. Επιπλέον, ενώ τα περισσότερα από τα ειδικά μέτρα για την εξασφάλιση των δικαιωμάτων των θυμάτων ήδη υφίσταντο πριν από τη διαδικασία μεταφοράς στα περισσότερα κράτη μέλη που περιλαμβάνονται στην έρευνα αυτή, η μεταφορά της οδηγίας για τα θύματα οδήγησε σε πολλές αλλαγές στις εθνικές νομοθεσίες, όπως π.χ. τα πρόσθετα δικαιώματα, την διεύρυνση της ομάδας δικαιούχων των ήδη υφιστάμενων δικαιωμάτων και τη συστηματοποίηση των υφιστάμενων διατάξεων.

Ενώ οι νομοθετικές λύσεις που επέλεξε κάθε κράτος μέλος είναι σαφώς εναρμονισμένες με το εκάστοτε πλαίσιο του νομικού τους συστήματος, η παρούσα έρευνα υποδηλώνει ότι υπάρχει, ωστόσο, χώρος για αμοιβαία μάθηση μεταξύ των κρατών μελών. Μεταξύ άλλων εντοπίστηκαν οι ακόλουθες ελπιδοφόρες πρακτικές:

- Στη Φινλανδία, η χρηματική ποινή υπέρ των θυμάτων είναι τα χρήματα που πρέπει να καταβληθούν από τον διωκόμενο δράστη για τη χρηματοδότηση των υπηρεσιών υποστήριξης των θυμάτων.²
- Το δικαίωμα στην ψυχοκοινωνική υποστήριξη εισήχθη πρόσφατα στη γερμανική νομοθεσία. Παρόμοιες διατάξεις υπήρχαν προηγουμένως στην Πορτογαλία και τη Φινλανδία.
- Η Πορτογαλία και η Ισπανία χρησιμοποίησαν τη διαδικασία μεταφοράς προκειμένου να συστηματοποιήσουν τα δικαιώματα που έχουν χορηγηθεί στα θύματα εγκληματικότητας και εισήγαγαν ένα ενιαίο έγγραφο που περιλαμβάνει όλα τα δικαιώματα που παρέχονται στα θύματα εγκληματικότητας. Επίσης, στην Αγγλία και την Ουαλία ο Κώδικας των θυμάτων απαριθμεί όλα τα δικαιώματα των θυμάτων σε ένα ενιαίο έγγραφο.

2 Παρόμοιο σύστημα υπάρχει στην Αγγλία και την Ουαλία: πρόσθετη επιβάρυνση υπέρ του θύματος.



- Στην Ισπανία, τα Γραφεία Υποστήριξης Θυμάτων προσφέρουν ένα ευρύ φάσμα υπηρεσιών, αναλαμβάνουν την ατομική αξιολόγηση των θυμάτων για να προσδιορίσουν τις ειδικές ανάγκες προστασίας τους και να συντονίσουν άλλες υπηρεσίες υποστήριξης θυμάτων. Οι ομάδες τους είναι διεπιστημονικές και περιλαμβάνουν δικαστές, ψυχολόγους και κοινωνικούς λειτουργούς. Η λειτουργία των θεσμών υποστήριξης θυμάτων, των μηχανισμών και των εγγυήσεων αξιολογούνται σε ετήσια βάση από το Υπουργείο Δικαιοσύνης της Ισπανίας.
- Στην Αγγλία και την Ουαλία, ένας εγγεγραμμένος διαμεσολαβητής μπορεί να βοηθήσει τα ευάλωτα θύματα (συμπεριλαμβανομένων των παιδιών-θυμάτων) να προσκομίσουν αποδεικτικά στοιχεία στο δικαστήριο και στην αστυνομία. Σε μια προδικαστική ακρόαση, ο διαμεσολαβητής συμβάλλει στη θέσπιση βασικών κανόνων για τη συνέντευξη που πρέπει να τηρηθούν κατά την ακρόαση. Επιπλέον, τα θύματα μπορούν να επισκεφθούν το δικαστήριο πριν από την ημερομηνία της δίκης έτσι ώστε να εξοικειωθούν με το κτίριο και το δικαστήριο.



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Λίστα Ακρωνυμίων

E-PROTECT	‘Enhancing PROtection of Children – vicTims of crime’ (επεξήγηση παραπάνω)
FCIA	Φινλανδικός νόμος περί ποινικής έρευνας
FCJP	Φινλανδικός Κώδικας Δικαστικής Διαδικασίας
GCCP	Γερμανικός Κώδικας Ποινικής Δικονομίας
MS	Κράτη Μέλη
PCCP	Πορτογαλικός Κώδικας Ποινικής Δικονομίας
PVS	Καταστατικό των θυμάτων της Πορτογαλίας
RIKU	Υποστήριξη Θυμάτων της Φινλανδίας
VD	Οδηγία για τα Θύματα 2012/29/EU (θα τη βρείτε στο κείμενο ως ΟΘ)
Victim PS	Προσωπική δήλωση του θύματος
Victims’ Code	Κώδικας πρακτικής για τα θύματα (αναφερόμενος ως Κώδικας θυμάτων)



1. Εισαγωγή

Το παρόν έγγραφο αξιολογεί την εθνική νομοθεσία για τη μεταφορά της Οδηγίας 2012/29/ΕΕ (στην ακόλουθη Οδηγία για τα Θύματα ή ΟΘ) των πέντε κρατών μελών (ΚΜ)³ - δηλαδή τη Φινλανδία, τη Γερμανία, την Πορτογαλία, την Ισπανία, την Αγγλία και την Ουαλία - με ιδιαίτερη έμφαση στα δικαιώματα που παρέχονται στα παιδιά-θύματα εγκληματικότητας. Στόχος της έκθεσης είναι η απόκτηση περαιτέρω γνώσεων σχετικά με το επίπεδο της νομικής εφαρμογής των απαιτήσεων που ορίζονται στην οδηγία για τα θύματα, καθώς και ο προσδιορισμός ελπιδοφόρων πρακτικών και βέλτιστων νομοθετικών λύσεων. Ωστόσο, η παρούσα έκθεση δεν αξιολογεί στην πράξη την εφαρμογή των νομοθεσιών μεταφοράς της οδηγίας για τα θύματα στα επιλεγμένα κράτη μέλη.⁴

Διεξήχθη στα πλαίσια του E-PROTECT-«Ενίσχυση της προστασίας των παιδιών-θυμάτων εγκληματικότητας», ένα έργο με στόχο την ενίσχυση της εφαρμογής της οδηγίας για τα θύματα, ιδίως στις περιπτώσεις παιδιών-θυμάτων εγκληματικότητας.

Η οδηγία για τα θύματα αποτελεί μέρος μιας ευρύτερης προτεραιότητας της Ευρωπαϊκής Επιτροπής για τη βελτίωση των δικαιωμάτων, της προστασίας, της υποστήριξης και της συμμετοχής των θυμάτων σε ποινικές διαδικασίες, όπως ορίζονται στην οριζόντια δέσμη μέτρων που δρομολογήθηκαν από την Επιτροπή τον Μάιο του 2011.⁵ Ένας κεντρικός στόχος της οδηγίας για τα θύματα είναι να εξασφαλιστεί η εξέταση των αναγκών των θυμάτων σε ατομικό επίπεδο. Περιέχει διάφορα ειδικά μέτρα σχετικά με την προστασία των παιδιών που πέφτουν θύματα εγκληματικότητας και προβλέπει μια προσέγγιση με γνώμονα το παιδί, σύμφωνα με την οποία τα συμφέροντα των παιδιών-θυμάτων πρέπει να είναι πάντα πρωταρχικό μέλημα κατά τη συμμετοχή τους σε ποινικές διαδικασίες.⁶

³ Επίσημη Εφημερίδα της Ευρωπαϊκής Ένωσης, Οδηγία 2012/29/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου, της 25ης Οκτωβρίου 2012, για τον καθορισμό ελάχιστων προτύπων για τα δικαιώματα, την υποστήριξη και την προστασία των θυμάτων εγκληματικότητας και την αντικατάσταση της απόφασης-πλαίσιο 2001/220/ΔΕΥ του Συμβουλίου, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

⁴ Μια πρόσθετη έκθεση - D.13 Μελέτη σχετικά με τις μεμονωμένες μεθοδολογίες αξιολόγησης παιδιών-θυμάτων εγκληματικότητας σε άλλα κράτη μέλη - αποσκοπεί στην αξιολόγηση της πρακτικής εφαρμογής των μεμονωμένων μεθοδολογιών αξιολόγησης παιδιών-θυμάτων εγκληματικότητας στα ίδια επιλεγμένα κράτη μέλη.

⁵ Ευρωπαϊκή Επιτροπή Έγγραφο Κατευθυντήριων Αρχών της ΓΔ Δικαιοσύνης σχετικά με τη μεταφορά και την εφαρμογή της οδηγίας 2012/29/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου, της 25ης Οκτωβρίου 2012, για τον καθορισμό ελάχιστων προτύπων για τα δικαιώματα, την υποστήριξη και την προστασία των θυμάτων εγκληματικότητας, Απόφαση-πλαίσιο 2001/220/ΔΕΥ, 2013 (στο εξής: Ευρωπαϊκή Επιτροπή, Έγγραφο καθοδήγησης για την οδηγία για τα θύματα, 2013).

⁶ Ibid.

Το E-PROTECT αποτελείται από διάφορα στάδια, συμπεριλαμβανομένης της έρευνας και της ενεργούς αλληλεπίδρασης με επαγγελματίες στον τομέα των δικαιωμάτων των παιδιών. Σε ένα πρώτο βήμα, αξιολογήθηκε η νομοθεσία μεταφοράς (της οδηγίας για τα θύματα) των πέντε χωρών εταίρων του E-PROTECT.⁷ Η παρούσα έκθεση συμπληρώνει αυτές τις αναφορές, αξιολογώντας τη νομοθεσία μεταφοράς πέντε επιπλέον κρατών μελών, προκειμένου να αποκτήσει περαιτέρω γνώση της μεταφοράς σε ένα ευρύτερο πανευρωπαϊκό επίπεδο. Αυτές οι έξι αναφορές χρησιμεύουν ως ακρογωνιαίοι λίθοι για περαιτέρω βήματα του E-PROTECT, όπως μεταξύ άλλων η δημιουργία μιας ηλεκτρονικής πλατφόρμας για τα δικαιώματα των παιδιών-θυμάτων, καθώς και η διεξαγωγή σεμιναρίων και εξ αποστάσεων εκδηλώσεων με επαγγελματίες και εμπειρογνώμονες στον τομέα της υποστήριξης του παιδιού-θύματος.

Η δομή της έκθεσης έχει ως εξής: Το δεύτερο κεφάλαιο περιγράφει τη μεθοδολογία, συμπεριλαμβανομένου του τρόπου με τον οποίο εντοπίστηκαν τα κράτη μέλη που αξιολογήθηκαν στο πλαίσιο της παρούσας έκθεσης, τον τρόπο με τον οποίο τα άρθρα που εξετάστηκαν επιλέχθηκαν, καθώς και τη μεθοδολογία της νομικής αξιολόγησης. Το τρίτο κεφάλαιο περιλαμβάνει μια αξιολόγηση της διαδικασίας μεταφοράς της οδηγίας για τα θύματα στα επιλεγμένα κράτη μέλη, λαμβάνοντας υπόψη την επικαιρότητα της μεταφοράς και τη νομοθετική διαδικασία, όπως η συμμετοχή των ενδιαφερομένων στη διαδικασία σύνταξης.

Στη συνέχεια, το τέταρτο κεφάλαιο περιέχει την ουσία της παρούσας έκθεσης: την αξιολόγηση της μεταφοράς των επιλεγμένων άρθρων της οδηγίας για τα θύματα, και συγκεκριμένα: το νομικό ορισμό των «παιδιών-θυμάτων εγκληματικότητας» (άρθρο 2, παρ. 1 ΟΘ), την ατομική αξιολόγηση των θυμάτων ώστε να προσδιοριστούν συγκεκριμένες ανάγκες προστασίας (άρθρο 22 ΟΘ), το δικαίωμα προστασίας των παιδιών-θυμάτων εγκληματικότητας κατά τη διάρκεια ποινικών διαδικασιών (άρθρο 23-24 ΟΘ), καθώς και την πρόσβαση σε υπηρεσίες υποστήριξης των θυμάτων και την παροχή υποστήριξης από τις προαναφερθείσες (άρθρο 8-9 ΟΘ). Κάθε ένα από τα ανωτέρω αναφερθέντα τμήματα διαιρείται σε υποκεφάλαια, τα οποία αξιολογούν την αντίστοιχη νομοθεσία μεταφοράς σε καθένα από τα επιλεγμένα κράτη μέλη ξεχωριστά.

Τέλος, το πέμπτο κεφάλαιο περιλαμβάνει το συμπέρασμα της έκθεσης. Αναγνωρίζει τις βελτιώσεις και τα επιτεύγματα που προέκυψαν από τις διαδικασίες μεταφοράς στο αντίστοιχο κράτος μέλος και έχει ως στόχο να εντοπίσει τις βέλτιστες νομοθετικές λύσεις αντιπαραβάλλοντας τα ευρήματα μεμονωμένων ανά χώρα μελετών.

⁷ Αυστρία, Βουλγαρία, Ιταλία, Ρουμανία και Ελλάδα



2. Μεθοδολογία

Η παρούσα έκθεση συμπληρώνει πέντε ενδεδειγμένες αξιολογήσεις της νομοθεσίας μεταφοράς της οδηγίας των θυμάτων στα πέντε κράτη μέλη συγκεκριμένα την Αυστρία, τη Βουλγαρία, την Ιταλία, τη Ρουμανία και την Ελλάδα. Στη προσπάθειά της να αποκτήσει περισσότερες γνώσεις σχετικά με τη μεταφορά της οδηγίας για τα θύματα σε ένα πανευρωπαϊκό επίπεδο, τα ακόλουθα κριτήρια επιλογής χρησιμοποιήθηκαν για τον προσδιορισμό των αξιολογούμενων κρατών μελών σε αυτή την έκθεση:

- Γεωγραφικό και πολιτιστικό πεδίο
- Συνάφεια των κρατών μελών ως παράδειγμα, ιδίως 1) εθνικές νομοθετικές προδιαγραφές 2) τις προσεγγίσεις των νομοθετικών λύσεων για τη μεταφορά της οδηγίας για τα θύματα
- Βέλτιστες πρακτικές
- Διαθεσιμότητα της βιβλιογραφίας, έγγραφα πολιτικών και άλλο υλικό

Η δομή της έκθεσης βασίζεται στις προηγούμενες εκθέσεις που διεξήχθησαν στα πλαίσια του E-PROTECT ώστε να είναι δυνατή η σύγκριση μεταξύ διάφορων νομοθετικών λύσεων. Ομοίως, τα ίδια άρθρα που καλύφθηκαν στις προηγούμενες εκθέσεις αξιολογήθηκαν στο πλαίσιο της παρούσας έκθεσης. Διεξήχθη μια αντιπαράθεση των διατάξεων της οδηγίας για τα θύματα και της αντίστοιχης νομοθεσίας, κατά τη χρήση του Εγγράφου Κατευθυντήριων Αρχών της ΓΔ Δικαιοσύνης ⁸ ως σημείο αναφοράς. Τέλος, συγκεντρώθηκαν πρόσθετες πληροφορίες μέσω της έρευνας γραφείου.

Αν και η αξιολόγηση της εφαρμογής της νομοθεσίας μεταφοράς στην πράξη ίσως να ήταν επωφελής, ιδίως όσον αφορά την εξεύρεση βέλτιστων νομοθετικών λύσεων, μια τέτοια αξιολόγηση θα επέκτεινε το πεδίο αυτής της έρευνας. Προκειμένου να γεφυρωθεί αυτός ο περιορισμός, οι πληροφορίες συγκεντρώθηκαν μέσω διαφόρων ερευνητικών εκθέσεων που χρησιμοποίησαν πρωτογενείς μεθόδους έρευνας.⁹

⁸ Έγγραφο Κατευθυντήριων Αρχών της ΓΔ Δικαιοσύνης σχετικά με τη μεταφορά και την εφαρμογή της οδηγίας 2012/29/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου, της 25ης Οκτωβρίου 2012, για τον καθορισμό ελάχιστων προτύπων για τα δικαιώματα, την υποστήριξη και την προστασία των θυμάτων εγκληματικότητας και την αντικατάσταση της απόφασης-πλαίσιου 2001 του Συμβουλίου / 220 / ΔΕΥ

⁹ Στην πραγματικότητα, υπήρξαν αρκετές ερευνητικές εκθέσεις που επικεντρώνονται στην προστασία των θυμάτων του εγκλήματος. Μεταξύ άλλων: APAV - Associação Portuguesa de Apoio à Vítima, Έκθεση IVOR: Εφαρμογή της μεταρρύθμισης του συστήματος ποινικής δικαιοσύνης στην Ευρωπαϊκή Ένωση, 2016; EPRS - Υπηρεσία Κοινοβουλευτικής Έρευνας του Ευρωπαϊκού Κοινοβουλίου, Οδηγία 2012/29 / ΕΕ για τα Δικαιώματα των Θυμάτων: Ευρωπαϊκή αξιολόγηση εφαρμογής, Δεκέμβριος 2017. Οργανισμός Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, δικαιοσύνη φιλική προς τα παιδιά: προοπτικές και εμπειρίες των επαγγελματιών σχετικά με τη συμμετοχή των παιδιών στις αστικές και ποινικές δικαστικές



3. Η διαδικασία μεταφοράς της Οδηγίας 2012/29/ΕΕ σε επιλεγμένα κράτη μέλη

Το ακόλουθο κεφάλαιο θα παράσχει μια σύντομη περιγραφή των διαδικασιών μεταφοράς της οδηγίας για τα θύματα στα επιλεγμένα κράτη μέλη: Ποιες ήταν οι προκλήσεις; Οι διαδικασίες μεταφοράς έγιναν εγκαίρως - ήτοι, τέθηκε σε ισχύ από τις 16 Νοεμβρίου 2016, όπως καθορίζεται στο άρθρο 27 της οδηγίας για τα θύματα; Μήπως η Επιτροπή κίνησε διαδικασία επί παραβάσει; Στη συνέχεια θα εκπονηθεί η νομοθετική διαδικασία, ιδιαίτερα η συμμετοχή των ενδιαφερόμενων μερών στη διαδικασία σύνταξης του νόμου, και θα προσδιοριστεί η εθνική νομοθεσία που μεταφέρει την οδηγία για τα θύματα.

3.1 Φινλανδία

Η φινλανδική κοινοβουλευτική νομοθετική διαδικασία¹⁰ ρυθμίζεται από το Φινλανδικό Κοινοβουλευτικό Κανονισμό (Riksdagens arbetsordning). Για τυπικά νομοσχέδια, προβλέπει ότι το μεγαλύτερο μέρος των νομοθετικών εργασιών θα διεξάγονται από τα υπουργεία και τις επιτροπές. Μετά την υποβολή μιας πρότασης στο Κοινοβούλιο,¹¹ αυτή η πρόταση πρέπει πρώτα να συζητηθεί από την αντίστοιχη επιτροπή, η οποία διατηρεί το δικαίωμα να συμβουλευτεί εμπειρογνώμονες, πριν η πρόταση παρουσιαστεί στο Κοινοβούλιο. Στη συνέχεια, το νομοσχέδιο είτε τίθεται προς συζήτηση ή το Κοινοβούλιο προχωρά απευθείας στην ψηφοφορία.¹²

Στην περίπτωση της νομοθεσίας μεταφοράς της οδηγίας για τα θύματα, δύο ομάδες εργασίας προετοίμασαν τη νομοθετική πράξη: Πρώτον, μια ομάδα εργασίας που συγκροτήθηκε από το Υπουργείο Δικαιοσύνης αποτελούμενη από εκπροσώπους διαφόρων Υπουργείων, καθώς και από την Εισαγγελία, το Δικηγορικό

διαδικασίες σε 10 κράτη μέλη της ΕΕ το 2015 · Οργανισμός Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, θύματα εγκληματικότητας στην ΕΕ: η έκταση και η φύση της υποστήριξης των θυμάτων, Γραφείο Δημοσίευσης της Ευρωπαϊκής Ένωσης (Λουξεμβούργο), 2014 · FRANET, Υπηρεσίες Υποστήριξης Θυμάτων στην ΕΕ: Μια επισκόπηση και αξιολόγηση των δικαιωμάτων των θυμάτων στην πράξη: Γερμανία, 2014; Maizener ed. al., EVVI (Αξιολόγηση των Victims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf. Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία εύλωτων θυμάτων σε ποινικές διαδικασίες.

¹⁰ Δείτε το Finley-julkaisut, Οδηγός Διαδικασίας Νομοθετικής Διατύπωσης, <http://lainvalmistelu.finlex.fi/en/> για λεπτομερείς εξηγήσεις σχετικά με τα διάφορα στάδια της νομοθετικής διαδικασίας της Φινλανδίας.

¹¹ Οι προτάσεις μπορούν να ξεκινήσουν είτε από κυβερνήσεις είτε από μεμονωμένους βουλευτές είτε μέσω πρωτοβουλιών πολιτών με τουλάχιστον 50.000 υπογραφές.

¹² Finley-julkaisut Οδηγός Διαδικασίας Νομοθετικής Σύνταξης, <http://lainvalmistelu.finlex.fi/en/>



Σύλλογο Φινλανδίας, και την Υποστήριξη Θυμάτων Φινλανδίας (RIKU)^{13,14} Αυτή η ομάδα εργασίας είχε ως έργο να αξιολογήσει ποιες νομοθετικές τροποποιήσεις και ποιες περαιτέρω ενέργειες ήταν απαραίτητες για την εφαρμογή της οδηγίας για τα θύματα. Μετά τη σύνταξη της έκθεσης, οι αρχές, οι εταιρείες και οι ειδικοί είχαν τη δυνατότητα να δώσουν δηλώσεις σχετικά με τις προτεινόμενες τροποποιήσεις. Η πλειοψηφία των δηλώσεων υποστήριξε τις προτεινόμενες τροποποιήσεις.

Δεύτερον, μια επιπλέον επιτροπή - η Επιτροπή της Πολιτικής Θυμάτων - συστάθηκε για την προετοιμασία της εφαρμογής των άρθρων 8 και 9 της οδηγίας των θυμάτων και συγκεκριμένα για να δημιουργήσει «μια εθνική στρατηγική για την οργάνωση των υπηρεσιών υποστήριξης των θυμάτων και τη χρηματοδότηση της τέτοιων υπηρεσιών.»¹⁵ Όπως και η ομάδα εργασίας, η επιτροπή αποτελούνταν από διάφορους επισήμους και εκπροσώπους ΜΚΟ, όπως η Υποστήριξη Θυμάτων Φινλανδίας, η Ομοσπονδία Σπιτιών και Καταφυγίων για τη Μητέρα και το Παιδί, και η Ένωση Πολυπολιτισμικών Γυναικών Φινλανδίας.

Περισσότερα από τα μισά άρθρα που περιλαμβάνονται στην οδηγία για τα θύματα υπήρχαν ήδη στη φινλανδική νομοθεσία και, ως εκ τούτου, δεν απαιτούσαν μεταφορά, όπως παραδείγματος χάριν οι ειδικές διατάξεις σχετικά με τις ειδικές ανάγκες των παιδιών που αναφέρονται στο άρθρο 24 της οδηγίας για τα θύματα. Ως αποτέλεσμα, μόνο τα άρθρα 4, 5, 6, 7, 8, 9, 12, 22 και 23 απαιτούσαν νομοθετικές ενέργειες.¹⁶ Οι απαραίτητες αλλαγές υλοποιήθηκαν μέσω του κυβερνητικού νομοσχεδίου υπ' αριθ. 66/2015,¹⁷ το οποίο μετέτρεψε τις απαιτούμενες τροποποιήσεις σε διάφορες πράξεις σχετικές με τις ποινικές διαδικασίες. Οι τροποποιήσεις τέθηκαν σε ισχύ τον Μάρτιο του 2016.¹⁸ Οι απαιτούμενες αλλαγές σχετικά με τα Άρθρα 8 και 9 (ΟΘ) εφαρμόστηκαν μέσω του κυβερνητικού νομοσχεδίου υπ' αριθ. 293/2014¹⁹ και τέθηκε σε ισχύ τον Δεκέμβριο του 2016.

¹³ Η Στήριξη των Θυμάτων της Φινλανδίας (RIKU) είναι ένας οργανισμός που βασίζεται σε συμφωνία συνεργασίας και διατηρείται από τον Φινλανδικό Ερυθρό Σταυρό, την Ομοσπονδία Μητέρας και Παιδιών, τη Φινλανδική Ένωση για την Ψυχική Υγεία, την Ομοσπονδία Mannerheim για την προστασία των παιδιών, τη Φινλανδική Ομοσπονδία Διακανονισμού Οικισμών και το Εθνικό Συμβούλιο Εκκλησίας. Οι ενέργειες συντονίζονται σε εθνικό επίπεδο από τη Φινλανδική Ένωση Ψυχικής Υγείας. Λειτουργεί σε όλη τη Φινλανδία. Η κύρια λειτουργία του είναι η βελτίωση της θέσης των θυμάτων εγκληματικότητας και των συγγενών τους. Δείτε περισσότερα στην ιστοσελίδα RIKU, Victim Support Finland, <https://www.riku.fi/en/victim+support+finland/>

¹⁴ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία ευάλωτων θυμάτων σε ποινικές διαδικασίες.

¹⁵ Ibid., 13.

¹⁶ Ibid.

¹⁷ FINLEY, HE 66/2015, <https://finlex.fi/fi/esitykset/he/2015/20150066> (Finnish).

¹⁸ EUR-LEX 29 μέτρα που εφαρμόστηκαν για τη μεταφορά της οδηγίας για τα θύματα, στη φινλανδική δικαιοδοσία. Βλέπε EUR-LEX, εθνικά μέτρα μεταφοράς που κοινοποιήθηκαν από τα κράτη μέλη σχετικά με: την οδηγία 2012/29 / ΕΕ, <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029>

¹⁹ FINLEX, HE 293/2014,



Οι σημαντικότερες αλλαγές στη φινλανδική νομοθεσία αφορούσαν την υποχρέωση της ενημέρωσης του θύματος για τα δικαιώματά του (Κεφάλαιο 4, Τμήμα 18, Φινλανδικός Νόμος περί Ποινικού Ερευνήματος (FCIA)), τις διατάξεις που ρυθμίζουν την προσωπική αξιολόγηση (Κεφάλαιο 11, Τμήμα 9 FCIA) και την παραπομπή σε υπηρεσίες υποστήριξης των θυμάτων (Κεφάλαιο 4, Τμήμα 10, FCIA).²⁰

3.2 Γερμανία

Στη Γερμανία, μια πρόταση νόμου μπορεί να εισαχθεί από την κυβέρνηση (Bundesregierung), από το ομοσπονδιακό συμβούλιο (Bundesrat), ή από τουλάχιστον το 5% των μελών του κοινοβουλίου (Bundestag) ή ένα μικρό μέρος του.²¹ Προτού να μπορέσει μια πρόταση να εισαχθεί από την κυβέρνηση - η οποία είναι η συνηθέστερη τακτική²² - η πρόταση πρέπει να προωθηθεί στο ομοσπονδιακό συμβούλιο για δηλώσεις. Στη συνέχεια η πρόταση - μαζί με τη δήλωση του ομοσπονδιακού συμβουλίου και την αντιδήλωση από την κυβέρνηση - εισάγεται στο κοινοβούλιο. Εδώ, ο νόμος συζητείται σε τρεις αναγνώσεις, μεταξύ των οποίων οι προτάσεις συζητούνται στο πλαίσιο κοινοβουλευτικών επιτροπών κοινοβουλευτικών επιτροπών (Bundestagsausschüssen). Ενώ οι εμπειρογνώμονες αυτοί μπορούν να εκφέρουν άποψη, η νομοθετική διαδικασία στη Γερμανία δεν προβλέπει υποχρεωτική συμμετοχή της κοινωνίας των πολιτών βάσει νόμου.²³ Αν δεν αν δεν λάβουν συγκεκριμένη πρόσκληση από μια αντίστοιχη κοινοβουλευτική επιτροπή, οι οργανώσεις μπορούν να αναλάβουν την πρωτοβουλία να γράψουν επικριτικές δηλώσεις σχετικά με τους προτεινόμενους νόμους, όπως έκαναν αρκετές οργανώσεις κατά τη διαδικασία μεταφοράς της οδηγίας για τα θύματα.²⁴

<https://finlex.fi/esitykset/he/2014/20140293?search%5Btype%5D=pika&search%5Bpika%5D=He%20293%2F2014> (Finnish).

²⁰ RIKU – Rikosuripavystys: υποστήριξη θυμάτων Finland,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

²¹ Art. 76 Abs.1 Grundgesetz.

²² Δείτε το δικτυακό τόπο του γερμανικού Υπουργείου Εσωτερικών, τη νομοθετική

διαδικασία, <https://www.bmi.bund.de/DE/themen/verfassung/gesetzgebung/gesetzgebungsverfahren/gesetzgebungsverfahren-node.html>

²³ Bundesrat, νομοθετική διαδικασία,

https://www.bundesrat.de/DE/aufgaben/gesetzgebung/verfahren/verfahren.html;jsessionid=3CA8BC90B2257E80D96151207647DF27.2_cid391?nn=4353668#doc4353670bodyText2 and bpb, Wie ein Gesetz entsteht,

<http://www.bpb.de/politik/grundfragen/24-deutschland/40463/wie-ein-gesetz-entsteht> (German)

²⁴ Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz),

https://www.mietpreisbremse.bund.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (German).



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Όμως δεν εμπίπτουν όλες οι προϋποθέσεις, που καθορίζονται στην οδηγία για τα θύματα στην αρμοδιότητα της ομοσπονδιακής νομοθεσίας, αλλά και στην αρμοδιότητα των ομοσπονδιακών κρατών. Συνεπώς, υπάρχουν αρκετές διατάξεις που δεν θα μπορούσαν να εφαρμοστούν σε εθνικό επίπεδο.²⁵ Συγκεκριμένα, αυτό συνέβη όσον αφορά τις διατάξεις που ορίζονται στα Άρθρα 8 και 9 (πρόσβαση σε και υποστήριξη από υπηρεσίες υποστήριξης των θυμάτων), καθώς και το άρθρο 23 (δικαίωμα προστασίας των θυμάτων με ειδικές ανάγκες προστασίας κατά τη διάρκεια ποινικών διαδικασιών) και το άρθρο 25 (εκπαίδευση των επαγγελματιών).²⁶ Παρ' όλα αυτά, καθώς η Γερμανία έχει ήδη εγκρίνει διάφορους νόμους που αφορούν στην προστασία και τα δικαιώματα των θυμάτων στις ποινικές διαδικασίες, δεν χρειάστηκαν πολλές τροποποιήσεις για τη μεταφορά της ΟΘ στη γερμανική νομοθεσία. Οι περισσότερες από τις αλλαγές ενσωματώθηκαν μέσω του «νόμου για την ενίσχυση των δικαιωμάτων των θυμάτων σε ποινικές διαδικασίες», 3. Πράξη για την αναμόρφωση των δικαιωμάτων του θύματος (Gesetz zur Stärkung der Opferrechte im Strafverfahren - 3. Opferrechtsreformgesetz),²⁷ που τέθηκε σε ισχύ στις 31 Δεκεμβρίου 2015.

Οι περισσότερες τροποποιήσεις μεταφέρθηκαν στο γερμανικό Κώδικα Ποινικής Δικονομίας (Strafprozessordnung).

Η μεγαλύτερη αλλαγή που επήλθε ως αποτέλεσμα της διαδικασίας μεταφοράς στη Γερμανία ήταν η δημιουργία της ψυχο-κοινωνικής υποστήριξης (psychosoziale Prozessbegleitung), η οποία παρέχει στα θύματα με ανάγκη ειδικής προστασίας τη δυνατότητα να λάβουν πριν, κατά τη διάρκεια και μετά τις ποινικές διαδικασίες, επαγγελματική υποστήριξη. Επιπλέον, απαιτήθηκαν ορισμένες αλλαγές σε μέρη της διαδικασίας σχετικά με το δικαίωμα ενημέρωσης.²⁸ Ορισμένοι εμπειρογνώμονες θεωρούν, ωστόσο, ότι οι περισσότερες από τις αλλαγές δεν είναι τόσο πιθανό να έχουν μεγάλη επίπτωση στην πράξη.²⁹

²⁵ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία ενάλωτων θυμάτων σε ποινικές διαδικασίες., 37.

²⁶ Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeUndOpferschutz/Bericht_BundLaender_AG.pdf?blob=publicationFile&v=2 (German)

²⁷ BMJV, Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.bmjbv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf;jsessionid=0EB396255BA84B364DB133A8FF6BBBCE.2_cid289?blob=publicationFile&v=3

²⁸ Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz),

https://www.bmjbv.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (German).

²⁹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία



3.3 Πορτογαλία

Στην Πορτογαλία, ένας νόμος μπορεί να προταθεί είτε από τα μέλη του κοινοβουλίου ως σχέδιο νόμου (projetos de lei) είτε από την κυβέρνηση ως πρόταση νόμου (propostas de lei).^{30 31} Αφότου ένας νόμος έχει εισαχθεί από τον Πρόεδρο του Κοινοβουλίου της Δημοκρατίας, η πρόταση αποστέλλεται σε μια ειδική επιτροπή για γνωμοδότηση. Στη συνέχεια, διεξάγεται ψηφοφορία επί των γενικών αρχών της πρότασης. Η τελική ψηφοφορία διεξάγεται επίσης στην Ολομέλεια. Τέλος, η πρόταση πρέπει να υπογραφεί από τον Πρόεδρο της Δημοκρατίας.³²

Η οδηγία για τα θύματα μεταφέρθηκε στην Πορτογαλία μέσω του νόμου υπ' αριθ. 130/2015, στις 4 Σεπτεμβρίου 2015,³³ ο οποίος τέθηκε σε ισχύ στις 4 Οκτωβρίου 2015 και οδήγησε σε διάφορες αλλαγές στον πορτογαλικό Κώδικα Ποινικής Δικονομίας (PCCP).³⁴ Επιπλέον, υιοθετήθηκε ένα παράρτημα – το πορτογαλικό καθεστώς θυμάτων (“Estatuto da Vítima”) – το οποίο προβλέπει τη διασφάλιση του καθεστώτος των ευάλωτων θυμάτων, όπως ορίζεται στην οδηγία για τα θύματα.³⁵ Οι περισσότερες διατάξεις ελήφθησαν αυτολεξεί από την οδηγία για τα θύματα.

Ενώ πολλές από τις προϋποθέσεις που ορίζονται στην ΟΘ υπήρχαν ήδη στην πορτογαλική νομοθεσία, ο νόμος οδήγησε σε κάποιες αλλαγές όσον αφορά στα μέτρα πρόληψης, ενίσχυσε τα δικαιώματα των θυμάτων στην ενημέρωση και εισήγαγε ένα νέο σύστημα αποζημίωσης σε θύματα ενδοοικογενειακής βίας και εγκλημάτων βίας. Επιπλέον, στην πορτογαλική νομοθεσία εισήχθη ένας νομικός ορισμός του όρου «θύμα».³⁶

ευάλωτων θυμάτων σε ποινικές διαδικασίες - Συνοπτική παρουσίαση, 8.

³⁰ Υπάρχει επίσης η δυνατότητα πρωτοβουλίας πολιτών. Περαιτέρω πληροφορίες on Assembleia da República, Processo Legislativo Comum, <http://www.parlamento.pt/Parlamento/paginas/plc.aspx>

³¹ Εκτός από την κοινοβουλευτική διαδικασία στην οποία ψηφίζονται οι νόμοι, σε ορισμένους τομείς μπορούν να ψηφιστούν νομοθετικά διατάγματα από την κυβέρνηση και περιφερειακά νομοθετικά διατάγματα από τις νομοθετικές συνελεύσεις.

³² See Assembleia da República, Parliament, <http://www.en.parlamento.pt/Parliament/index.html>

³³ Decreto do Presidente da República n.º 101/2015 - Diário da República n.º 173/2015, Série I de 2015-09-04/70186153, Assembleia da República, Lei n.º 130/2015, Procede à vigésima terceira alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001 available at <https://dre.pt/application/file/70186153>

³⁴ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία ευάλωτων θυμάτων σε ποινικές διαδικασίες, 60-61.

³⁵ Portuguese Victims' Statute, https://apav.pt/apav_v3/images/pdf/estatuto_da_vitima.pdf (Portuguese).

³⁶ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία ευάλωτων θυμάτων σε ποινικές διαδικασίες - Συνοπτική παρουσίαση, 9.



3.4 Ισπανία

Η Ισπανία μεταξύ άλλων κρατών μελών είχε την υποχρέωση να μεταφέρει πλήρως την οδηγία για τα θύματα μέχρι τις αρχές Νοεμβρίου του 2015. Από τις 16 Νοεμβρίου 2015, τα κράτη μέλη είχαν την υποχρέωση να κοινοποιούν στην Επιτροπή τη νομοθετική πρόοδο σχετικά με την υποχρέωση πλήρους μεταφοράς της οδηγίας. Σύμφωνα με την ευρωπαϊκή αξιολόγηση της εφαρμογής της οδηγίας για τα δικαιώματα των θυμάτων³⁷ που εκπονήθηκε από την Υπηρεσία Ερευνών του Ευρωπαϊκού Κοινοβουλίου στη διάρκεια του Δεκεμβρίου του 2017, η Ισπανία, μεταξύ άλλων κρατών μελών, μετέφερε την οδηγία μέσω μιας ενιαίας πράξης, ενώ ο θεσπισμένος νόμος τροποποιεί διάφορες άλλες διατάξεις της προϋπάρχουσας νομοθεσίας. Οι πιο σημαντικές για την παρούσα έκθεση είναι οι τροποποιήσεις του ισπανικού Κώδικα Ποινικής Δικονομίας (SCCP) και η θέσπιση του νόμου 4/2015 για τη θέση των θυμάτων εγκληματικότητας (νόμος 4/2015)^{38,39}

Το κύριο νομικό μέσο που χρησιμοποιεί ο Ισπανός νομοθέτης για τη μεταφορά της οδηγίας είναι ο νόμος 4/2015.⁴⁰ Ο νόμος είχε ως στόχο να συγκεντρώσει το σύνολο των δικαιωμάτων των θυμάτων σε μια ενιαία νομοθετική πράξη και προκλήθηκε από την υποχρέωση μεταφοράς της οδηγίας για τα θύματα. Παρόλο που η Ισπανία είχε ήδη ένα υφιστάμενο κανονιστικό πλαίσιο που εξασφάλιζε τα δικαιώματα των θυμάτων⁴¹, μεγάλο μέρος αυτών των νόμων επικεντρώθηκε σε ορισμένους τύπους θυμάτων, επομένως δεν υπήρχε ενιαία νομοθεσία που να εφαρμόζεται σε όλους τους τύπους θυμάτων εγκληματικότητας. Ως εκ τούτου, ο νόμος για το καθεστώς των θυμάτων αποσκοπούσε στο να απευθυνθεί με γενικό τρόπο στα δικαιώματα όλων των θυμάτων εγκληματικότητας, με ιδιαίτερη έμφαση στα θύματα με ειδικές ανάγκες και στα ευάλωτα θύματα.

³⁷ EPRS - Υπηρεσία Ερευνών του Ευρωπαϊκού Κοινοβουλίου, Η οδηγία για τα δικαιώματα των θυμάτων 2012/29 / ΕΕ: Ευρωπαϊκή αξιολόγηση εφαρμογής, Δεκέμβριος 2017.

³⁸ Ministerio de Justicia,

Νόμος 4/2015, της 27ης Απριλίου σχετικά με τη στάση των θυμάτων εγκληματικότητας, <https://rm.coe.int/168070ac7f>

³⁹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία ευάλωτων θυμάτων σε ποινικές διαδικασίες, 81.

⁴⁰ Ministerio de Justicia, της 27ης Απριλίου σχετικά με τη στάση των θυμάτων εγκληματικότητας, <https://rm.coe.int/168070ac7f>

⁴¹ Νόμος 35/1995 για την παροχή και βοήθειας στα θύματα βίαιων εγκλημάτων και εγκλημάτων κατά της σεξουαλικής ελευθερίας (Ισπανία). Οργανικός νόμος 1/1996 για τη νομική προστασία των ανηλίκων. Οργανικός Νόμος 1/2004 σχετικά με τα συνολικά μέτρα προστασίας κατά της βίας με βάση το φύλο (Ισπανία). και του νόμου 29/2011 σχετικά με την αναγνώριση και πλήρη προστασία των θυμάτων της τρομοκρατίας (Ισπανία).



Όπως και στην περίπτωση της Πορτογαλίας, ο Ισπανός νομοθέτης μετέφερε αυτολεξεί πολλές από τις διατάξεις της οδηγίας για τα θύματα. Επιπλέον, η δομή του νόμου είναι ίδια με αυτήν της οδηγίας για τα θύματα.⁴² Όλα τα δικαιώματα και τα μέτρα που προβλέπονται στην οδηγία για τα θύματα μεταφέρθηκαν πλήρως στην Ισπανία. Επιπλέον, όπως και στη Γερμανία, η Ισπανία είναι μια ομοσπονδιακή πολιτεία που αποτελείται από πολλές αυτόνομες κοινότητες. Αν και οι περιγραφόμενοι νόμοι εφαρμόζονται σε όλες τις αυτόνομες κοινότητες, προηγούμενες έρευνες έχουν δείξει ότι υπάρχουν σημαντικές διαφορές σε ορισμένους τομείς που καλύπτονται από το Νόμο 4/2015, όπως μεταξύ άλλων η εγκαθίδρυση γραφείων βοήθειας των θυμάτων.⁴³

Ο Ισπανός νομοθέτης είχε ως στόχο την υιοθέτηση ενός νόμου ο οποίος θα διευκόλυνε όσο το δυνατόν περισσότερο την άσκηση και προστασία των δικαιωμάτων των θυμάτων. Έτσι παρέχονται πληροφορίες και προσανατολισμός σχετικά με τα δικαιώματα των θυμάτων. Επίσης, η νομοθεσία αποσκοπεί στην αποφυγή της δευτερογενούς θυματοποίησης, η οποία μπορεί να προκληθεί μεταξύ άλλων από περιττούς τύπους.

3.5 Αγγλία και Ουαλία

Ο κώδικας πρακτικής για τα θύματα εγκληματικότητας (Κώδικας των θυμάτων)⁴⁴ εισήχθη για πρώτη φορά το 2006 και είχε σκοπό να καθορίσει τις υπηρεσίες που πρέπει να παρέχει το σύστημα ποινικής δικαιοσύνης στα θύματα εγκληματικότητας στην Αγγλία και την Ουαλία. Η αναθεώρηση του Κώδικα έγινε, αφενός, ως απάντηση σε μια εσωτερική διαβούλευση, η οποία πραγματοποιήθηκε το 2012 και έδειξε ότι ο κώδικας απαιτεί ενημέρωση, ώστε να αντανakλά τις αλλαγές στην πράξη.⁴⁵ Αφετέρου δε, (έδειξε ότι) μεταφέρει την οδηγία για τα θύματα, και τμήματα της οδηγίας για Εμπορία Ανθρώπων⁴⁶ και Σεξουαλική Εκμετάλλευση Παιδιών.⁴⁷

⁴² Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI),

Συγκριτική νομική έρευνα: Δικαιώματα και προστασία ευάλωτων θυμάτων σε ποινικές διαδικασίες, 81.

⁴³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία ευάλωτων θυμάτων σε ποινικές διαδικασίες – Σύνοψη περίληψη, 10.

⁴⁴ Υπουργείο Δικαιοσύνης του Ηνωμένου Βασιλείου, κώδικας ορθής πρακτικής για τα θύματα του εγκλήματος, Οκτώβριος 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF

⁴⁵ Ibid.

⁴⁶ Official Journal of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

⁴⁷ Official Journal of the European Union, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing the Council Framework Decision 2004/68/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN>



Πριν από την αναθεώρηση του Κώδικα των θυμάτων, μια διαδικασία διαβούλευσης διεξήχθη περιλαμβάνοντας ένα ευρύ φάσμα οργανισμών – όπως αστυνομικές δυνάμεις, τοπικά συμβούλια ποινικής δικαιοσύνης, ομάδες νεανικής παραβατικότητας, καθώς και δικαστικούς και νομικούς ειδήμονες και εθελοντικές οργανώσεις. Οι οργανισμοί αυτοί, αφενός, κλήθηκαν να υποβάλουν τις απαντήσεις τους στο έγγραφο διαβούλευσης.⁴⁸ Από την άλλη, πραγματοποιήθηκαν δύο εκδηλώσεις δημόσιας διαβούλευσης. Επιπρόσθετα, διεξήχθη έρευνα με παιδιά και νέους για τις εντυπώσεις τους σχετικά με το τμήμα του Κώδικα των θυμάτων πάνω σε παιδιά και νέους.⁴⁹ Μετά τη διαδικασία διαβούλευσης, το Υπουργείο Δικαιοσύνης εξέδωσε ένα έγγραφο απάντησης,⁵⁰ το οποίο περιλαμβάνει τον νέο Κώδικα για τα θύματα, μια περίληψη των απαντήσεων που υποβλήθηκαν, καθώς και μια σύνοψη των δράσεων που θα αναληφθούν μετά τις απαντήσεις της διαβούλευσης.

Ο Κώδικας των θυμάτων έχει ως στόχο να είναι ένας πρακτικός οδηγός, που βοηθάει τις αρχές της ποινικής δικαιοσύνης στην καθοδήγηση των θυμάτων για τη ποινική διαδικασία και στην ανάπτυξη μιας πιο ευέλικτης υπηρεσίας.⁵¹ Για παράδειγμα, το κεφάλαιο 3, στο οποίο βρίσκονται οι κανονισμοί σχετικά με τα παιδιά-θύματα, αποτελείται από δύο μέρη: Το Μέρος Α αποσκοπεί στο να παράσχει στα θύματα και στις υπηρεσίες των θυμάτων τις σχετικές πληροφορίες για να τους καθοδηγήσει σε κάθε στάδιο της ποινικής διαδικασίας. Το μέρος Β έχει συνταχθεί για οργανισμούς που θα πρέπει να παρέχουν αυτή τη βοήθεια και υποστήριξη, π.χ. την αστυνομία.⁵² Επιπλέον, το Υπουργείο Δικαιοσύνης εκδίδει δύο ευανάγνωστες εκδόσεις του Κώδικα των θυμάτων - ένα για ενήλικα θύματα,⁵³ ένα άλλο για παιδιά-θύματα εγκληματικότητας⁵⁴ – και ένα φυλλάδιο.⁵⁵ Τα έγγραφα αυτά περιλαμβάνουν ευανάγνωστες εκδόσεις του

⁴⁸ Το έγγραφο διαβούλευσης περιελάμβανε, αφενός, τις προτεινόμενες αλλαγές του κώδικα των θυμάτων. αφετέρου, συνοδεύτηκε από εκτίμηση επιπτώσεων και από δήλωση ισότητας. Υπουργείο Δικαιοσύνης, 31 Οκτ.

2013 Αποτελέσματα <https://consult.justice.gov.uk/digital-communications/code-victims-crime>

⁴⁹ Υπουργείο Δικαιοσύνης του Ηνωμένου Βασιλείου, Βελτίωση του κώδικα δεοντολογίας για τα θύματα εγκληματικότητας:

Ανταπόκριση στις διαβουλεύσεις CP8@ 29 Μαρτίου 2013, που δημοσιεύθηκε στις 29 Οκτωβρίου 2013, 10, <https://consult.justice.gov.uk/digital-communications/code-victims-crime/results/improving-the-code-of-practice-for-victims-of-crime-consultation-response.pdf>

⁵⁰ Υπουργείο Δικαιοσύνης του Ηνωμένου Βασιλείου, Βελτίωση του κώδικα δεοντολογίας για τα θύματα εγκληματικότητας: Ανταπόκριση στις διαβουλεύσεις CP8@ 29 Μαρτίου 2013, που δημοσιεύθηκε στις 29 Οκτωβρίου 2013.

⁵¹ Ibid.

⁵² Ibid, Κεφάλαιο 3.

⁵³ Υπουργείο Δικαιοσύνης του Ηνωμένου Βασιλείου, την υποστήριξη που πρέπει να λάβετε αν είστε θύμα εγκλήματος, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf

⁵⁴ Υπουργείο Δικαιοσύνης του Ηνωμένου Βασιλείου, Κωδικός u18s: Νεαρά θύματα εγκληματικότητας - Κατανόηση της υποστήριξης που πρέπει να λάβετε, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267982/u18-victims-code-leaflet.pdf

⁵⁵ Υπουργείο Δικαιοσύνης του Ηνωμένου Βασιλείου, θύματα εγκληματικότητας: Κατανόηση της υποστήριξης που μπορείτε να περιμένετε, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341367/adult-victims-code-leaflet.pdf



Κώδικα των θυμάτων, επεξήγηση δύσκολων όρων σε μια τράπεζα λέξεων και εξηγήσεις μέσω εικόνων. Ο Κώδικας των θυμάτων εγκρίθηκε τον Οκτώβριο του 2015.⁵⁶

Στην Αγγλία, το θύμα - σε αντίθεση με τα άλλα κράτη μέλη που αξιολογούνται στο πλαίσιο της παρούσας έκθεσης - δεν θεωρείται μέρος της ποινικής διαδικασίας, αλλά ουσιαστικά μάρτυρας. Ως εκ τούτου, ένα θύμα αποκτά διαφορετική θέση στα πλαίσια της ποινικής έρευνας και της διαδικασίας και δεν μπορεί να ασκήσει οποιοδήποτε δικαίωμα σχετικά με τη νομική εκπροσώπηση κατά τη διάρκεια δικαστικών διαδικασιών. Στην Αγγλία και την Ουαλία, ο εισαγγελέας παρουσιάζει την υπόθεση του θύματος, ενώ ο ρόλος του θύματος είναι να παρουσιάσει αποδεικτικά στοιχεία ως μάρτυρας.⁵⁷

4. Νομική αξιολόγηση των μέτρων μεταφοράς της οδηγίας 2012/29/ΕΕ

Το ακόλουθο κεφάλαιο περιλαμβάνει τη νομική αξιολόγηση της νομοθεσίας της μεταφοράς της οδηγίας για τα θύματα στα επιλεγμένα κράτη μέλη. Πρώτον, θα προσδιοριστεί ο νομικός ορισμός των θυμάτων εγκληματικότητας σε κάθε κράτος μέλος. Ακολούθως, θα προσδιοριστούν και θα περιγραφούν οι διατάξεις που ενσωματώνουν το άρθρο 22 ΟΘ - η ατομική αξιολόγηση για τον εντοπισμό ειδικών αναγκών προστασίας. Τέλος, θα προσδιοριστεί και θα αξιολογηθεί το δικαίωμα προστασίας παιδιών-θυμάτων εγκληματικότητας κατά τη διάρκεια ποινικών διαδικασιών (Άρθρα 23-24 ΟΘ), καθώς και το δικαίωμά τους για πρόσβαση σε και υποστήριξη από τις υπηρεσίες υποστήριξης των θυμάτων (Άρθρα 8-9 ΟΘ).

4.1 Νομικός ορισμός των θυμάτων εγκληματικότητας

Μία από τις βασικές πτυχές της οδηγίας για τα θύματα ήταν η τοποθέτηση του θύματος στο επίκεντρο του συστήματος ποινικής δικαιοσύνης και η απομάκρυνσή του από την αποκλειστική επικέντρωση στον ρόλο της δίωξης και του δικαστή.⁵⁸

Έτσι, η οδηγία για τα θύματα προβλέπει ότι «θύμα» σημαίνει:

⁵⁶ Οργανισμός Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, Θύματα εγκληματικότητας στην ΕΕ: η έκταση και η φύση της υποστήριξης των θυμάτων, Γραφείο Δημοσίευσης της Ευρωπαϊκής Ένωσης (Λουξεμβούργο), 2014, 29.

⁵⁷ Ibid.

⁵⁸ EPVS – Υπηρεσία για την Έρευνα του Ευρωπαϊκού Κοινοβουλίου, Η οδηγία για τα δικαιώματα των θυμάτων 2012/29 / ΕΕ: Ευρωπαϊκή αξιολόγηση εφαρμογής, Δεκέμβριος 2017.



- (i) «ένα φυσικό πρόσωπο που έχει υποστεί βλάβη, συμπεριλαμβανομένης σωματικής, ψυχικής ή συναισθηματικής βλάβης ή οικονομικής ζημίας που προκλήθηκε άμεσα από ποινικό αδίκημα·
- (ii) μέλη οικογένειας προσώπου του οποίου ο θάνατος προκλήθηκε άμεσα από ποινικό αδίκημα και τα οποία υπέστησαν βλάβη ως αποτέλεσμα του θανάτου αυτού του προσώπου.»⁵⁹

Ενώ στην εθνική νομοθεσία των περισσότερων κρατών μελών που περιλαμβάνονται στην έκθεση αυτή (καθώς και τα κράτη μέλη της ΕΕ εν γένει⁶⁰) εμπεριέχεται νομικός ορισμός των θυμάτων εγκληματικότητας, κανένας ορισμός δεν μπορεί να βρεθεί στην εθνική νομοθεσία της Φινλανδίας και της Γερμανίας.⁶¹ Ωστόσο, όπως έδειξε άλλη έρευνα,⁶² το γεγονός ότι χρησιμοποιούνται διαφορετικοί όροι για την περιγραφή του ατόμου που έχει υποστεί βλάβη ως αποτέλεσμα εγκληματικής πράξης, δεν σημαίνει απαραίτητα ότι οι εθνικές νομοθεσίες δεν προβλέπουν ίσο αριθμό δικαιωμάτων.

Χώρα	Αντίστοιχος νόμος	Νομικός ορισμός
Φινλανδία	-	Στη Φινλανδία δεν υπάρχει νομικός ορισμός του όρου «θύμα». Ενα ζημιωθέν μέρος (asianomistaja , κυριολεκτικά : «ποιος κατέχει την υπόθεση») είναι 1. «Ο κομιστής της νομικής αξίας που προστατεύεται από το ποινικό αδίκημα, και 2. Αυτός που έχει υποστεί βλάβη που προκλήθηκε άμεσα από ποινικό αδίκημα..»⁶³ Η φινλανδικός ορισμός του ζημιωθέντος (θύματος) είναι, ως εκ τούτου, πολύ ευρύτερος από τον ορισμό του θύματος στην οδηγία. Περιλαμβάνει ένα πρόσωπο κατά του οποίου έχει διαπραχθεί ποινικό αδίκημα αλλά δεν υπέστη βλάβη ως αποτέλεσμα του αδικήματος. Επιπλέον, ο όρος «asianomistaja» περιλαμβάνει νομικά πρόσωπα. Η φινλανδική νομοθεσία ορίζει επίσης ως έμμεσα θύματα : τον σύζυγο του θανόντος θύματος, τον εγγεγραμμένο/δηλωμένο

⁵⁹ Αρθ.2 παρα. 1 VD.

⁶⁰ EPRS – Ευρωπαϊκή Υπηρεσία Έρευνας του Ευρωπαϊκού Κοινοβουλίου, η οδηγία για τα Δικαιώματα των Θυμάτων: 2012/29 / ΕΕ: Ευρωπαϊκή αξιολόγηση εφαρμογής, Δεκέμβριος 2017, 13.

⁶¹ Στη Φινλανδία χρησιμοποιείται ο όρος "ζημιωθέν μέρος" (asianomistaja , στα φινλανδικά), ενώ στο γερμανικό νόμο ο όρος συνήθως απαγγέλλεται ως "συν-ενάγων"

⁶² APAV – Associação Portuguesa de Apoio à Vítima, IVOR Έκθεση: Εφαρμογή της μεταρρύθμισης του συστήματος ποινικής δικαιοσύνης στην Ευρωπαϊκή Ένωση, 2016, 113-116.

⁶³ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Έκθεση: Εφαρμογή της μεταρρύθμισης του συστήματος ποινικής δικαιοσύνης στην Ευρωπαϊκή Ένωση, 2016 116.



		σύντροφο, τα άτομα που ζουν στο ίδιο σπίτι, τα παιδιά, τα αδέλφια και τους γονείς.
Γερμανία	-	Στη Γερμανία δεν υπάρχει νομικός ορισμός του όρου «θύμα». Συνήθως χρησιμοποιείται ο όρος ζημιωθείς ή συν-ενάγων. Ο όρος συν-ενάγων όμως παρέχει στο θύμα πρόσθετα δικαιώματα. Ο συν-ενάγων είναι ο ζημιωθείς που έχει το νόμιμο δικαίωμα να συμμετέχει στην διαδικασία, σύμφωνα με το Άρθ. 397a GCCP.⁶⁴ Ο όρος συν-ενάγων περιλαμβάνει επίσης συγκεκριμένους συγγενείς ενός προσώπου του οποίου ο θάνατος προκλήθηκε από από την τέλεση ποινικού αδικήματος (άρθρο 395 παράγραφος 2 του GCCP).⁶⁵ Δεν υπάρχουν, ωστόσο, γενικές διατάξεις για τα έμμεσα θύματα.⁶⁶ Ο λόγος που η λέξη θύμα δεν χρησιμοποιείται στο γερμανικό δίκαιο είναι τεκμήριο αθωότητας του κατηγορουμένου.
Πορτογαλία	Titel IV, άρθρο 67, παρά. 1 lit. a Πορτογαλικός Κώδικας Ποινικής Δικονομίας	Ένα θύμα είναι : i) το φυσικό πρόσωπο το οποίο υπέστη βλάβη, συμπεριλαμβανομένης μιας επίθεσης στη σωματική ή ψυχική του ακεραιότητα, ηθική ή συναισθηματική βλάβη ή υλικές ζημιές, που προκαλούνται άμεσα από πράξη ή παράλειψη, υπό την διάπραξη ενός εγκλήματος. ii) τα μέλη της οικογένειας ενός προσώπου του οποίου ο θάνατος έχει προκληθεί άμεσα από ποινικό αδίκημα και που έχουν υποστεί βλάβη ως αποτέλεσμα αυτού του θανάτου. Για το θέμα αυτό, στο πλαίσιο της έννοιας του θύματος περιλαμβάνεται ο επιζών σύζυγος που δεν είναι νομικά διαχωρισμένος από τα πρόσωπα και την περιουσία ή το πρόσωπο που συνυπήρχε με το θύμα υπό συνθήκες παρόμοιες με εκείνες των συζύγων, των απογόνων και των ανιόντων, στο βαθμό που έχουν υπέστη βλάβη από το θάνατο, εκτός από τον δράστη που προκάλεσε τον θάνατο.”⁶⁷
		«Ισχύουν οι διατάξεις του παρόντος Νόμου:

⁶⁴ Το γεγονός ότι δεν υπάρχει νομικός ορισμός θύματος στο γερμανικό δίκαιο επικρίνεται από γερμανούς μελετητές. See Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 341.

⁶⁵ Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, 22, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (German).

⁶⁶ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Έκθεση: Εφαρμογή της μεταρρύθμισης του συστήματος ποινικής δικαιοσύνης στην Ευρωπαϊκή Ένωση, 2016, 116.

⁶⁷ IVOR, Πορτογαλία: Εξελίξεις στην εφαρμογή των μηχανισμών βοήθειας των θυμάτων, 1.



Ισπανία	άρθρο 2, Νόμος 4/2015, 27 Απριλίου, σχετικά με τη στάση των θυμάτων εγκληματικότητας	α) Ως άμεσα θύματα , σε οποιοδήποτε φυσικό πρόσωπο που έχει υποστεί βλάβη ή απώλεια σε σχέση με το πρόσωπο ή την ιδιοκτησία του, ιδίως σωματικές ή ψυχολογικές βλάβες ή συναισθηματική βλάβη ή οικονομική ζημία που προκαλείται άμεσα από τη διάπραξη αδικήματος. β) Ως έμμεσο θύμα , σε περίπτωση θανάτου ή εξαφάνισης προσώπου που έχει προκληθεί άμεσα από αδίκημα, εκτός εάν το εν λόγω πρόσωπο ήταν υπεύθυνο για την πράξη [...]»⁶⁸ Ο ορισμός του οφείλεται σε τροποποίηση που έγινε τον Απρίλιο του 2015. Προηγουμένως δεν υπήρχε γενικός ορισμός του όρου «θύμα» στην ισπανική νομοθεσία.⁶⁹
Αγγλία και Ουαλία	Εισαγωγή, παρά. 4. Κώδικας των θυμάτων Γλωσσάριο, Κώδικας των θυμάτων	«Για τους σκοπούς του [Κώδικα των θυμάτων], ένα "θύμα" είναι: - ένα φυσικό πρόσωπο που έχει υποστεί βλάβη, συμπεριλαμβανομένης σωματικής, πνευματικής ή συναισθηματικής βλάβης ή οικονομικής ζημίας που προκλήθηκε άμεσα από ποινικό αδίκημα · - ένα στενό συγγενικό πρόσωπο (...) ενός προσώπου του οποίου ο θάνατος προκλήθηκε άμεσα από ποινικό αδίκημα» Ένας στενός συγγενής είναι «ο σύζυγος, ο σύντροφος, οι πρώτου βαθμού συγγενείς, τα αδέρφια και τα εξαρτώμενα μέλη του θύματος. Άλλα μέλη της οικογένειας, συμπεριλαμβανομένων των κηδεμόνων και των φροντιστών, μπορεί να θεωρούνται στενοί συγγενείς κατά τη διακριτική ευχέρεια της υπηρεσίας." Μολονότι ο όρος «θύμα» ορίζεται στη βρετανική νομοθεσία, το θύμα δεν είναι μέρος της ποινικής διαδικασίας και δεν έχει δικαιώματα νομικής εκπροσώπησης κατά τη διάρκεια δικαστικών διαδικασιών.⁷⁰

⁶⁸ Ministerio de Justicia, Νόμος 4/2015, 27 Απριλίου, Άρθρο 2, σχετικά με τη στάση των θυμάτων εγκληματικότητας, <https://rm.coe.int/168070ac7f>.

⁶⁹ Προηγουμένως, υπήρχε μόνο ο όρος κατηγορούμενος, το οποίο είχε ως αποτέλεσμα ότι μόνο τα άτομα που ήθελαν να κατηγορήσουν τον δράστη, ή να λαβουν μέρος στην ποινική διαδικασία ή αν ήταν μάρτυρας, θα μπορούσαν λάβουν δικαιώματα βάσει της ισπανικής νομοθεσίας. Βλέπε APAV - Associação Portuguesa de Apoio à Vítima, Έκθεση IVOR: Εφαρμογή της μεταρρύθμισης του συστήματος ποινικής δικαιοσύνης στην Ευρωπαϊκή Ένωση, 2016, 110.

⁷⁰ Ibid., 110.



4.2. Δικαίωμα στην προστασία παιδιών θυμάτων εγκληματικότητας κατά τη διάρκεια ποινικών διαδικασιών (άρθρο 22 ΟΘ)

4.2.1 Φινλανδία

Στη Φινλανδία, οι πρϋποθέσεις που ορίζονται στο άρθρο 22 ΟΘ μεταφέρθηκαν μέσω τροπολογιών φινλανδικού νόμου περί ποινικής έρευνας (FCIA,805/2011 όπως έχει τροποποιηθεί), μεταξύ άλλων.⁷¹ Ο φινλανδικός νόμος περί ποινικής έρευνας ρυθμίζει την προδικαστική ποινική διερεύνηση ενός αδικήματος, ενώ πιο συγκεκριμένα μέτρα είναι δυνατόν να περιέχονται σε άλλες Πράξεις (Κεφάλαιο 1, Τμήμα 1 FCIA). Ενώ η μεταφορά της οδηγίας για τα θύματα οδήγησε επίσης σε αλλαγές σε άλλους νόμους, οι περισσότερες τροπολογίες αφορούσαν τον φινλανδικό νόμο περί ποινικής έρευνας.⁷²

Στη Φινλανδία, η τακτική της ατομικής αξιολόγησης των θυμάτων υπήρχε ήδη πριν από τη διαδικασία μεταφοράς.⁷³ Οι διατάξεις αυτές ενισχύθηκαν περαιτέρω με την προσθήκη ενός νέου τμήματος 9α στο κεφάλαιο 11. Αυτό το νέο τμήμα καθορίζει τους κανόνες για την προσωπική αξιολόγηση των θυμάτων προκειμένου να προσδιοριστούν οι ειδικές ανάγκες προστασίας που πρέπει να παρέχονται κατά την προκαταρκτική έρευνα και δίκη. Η προσωπική αξιολόγηση πρέπει να διεξάγεται χωρίς περιττή καθυστέρηση από την ανακριτική αρχή και μπορεί να λάβει χώρα κατά τη διάρκεια της ποινικής έρευνας και της δίκης.⁷⁴ Πρέπει (ακόμη) να διεξάγεται σε συνεργασία με το θύμα⁷⁵ και ειδικότερα πρέπει να λαμβάνει υπόψη :

- Την προσωπική κατάσταση του θύματος και
- Τη φύση του εικαζόμενου εγκλήματος.⁷⁶

⁷¹ Φινλανδικό Υπουργείο Δικαιοσύνης, Νόμος περί Διερεύνησης Εγκλημάτων (805/2011 · τροποποιήσεις 736/2015 περιλαμβάνονται, Ανεπίσημη Μετάφραση, <https://www.finlex.fi/en/laki/kaannokset/2011/en20110805.pdf>

⁷² Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία ευάλωτων θυμάτων σε ποινικές διαδικασίες, 16.

⁷³ EPRS – Ευρωπαϊκή Υπηρεσία Έρευνας του Ευρωπαϊκού Κοινοβουλίου, η οδηγία 2012/29 / ΕΕ για τα Δικαιώματα των Θυμάτων: Ευρωπαϊκή αξιολόγηση εφαρμογής, Δεκέμβριος 2017, 60.

⁷⁴ Oikeus, Εάν είστε θύμα εγκλήματος: Προστασία των θυμάτων: <https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>

⁷⁵ Ibid.

⁷⁶ Ibid; see also Savonen, Ανάπτυξη συμβιβάσιμων με την οδηγία πρακτικών για τον εντοπισμό, την αξιολόγηση και την



Τα μέτρα προστασίας πρέπει να χορηγούνται στο θύμα κατά τη διάρκεια της ποινικής έρευνας, εφόσον δεν προκαλούν σημαντική καθυστέρηση στη διαδικασία ή προκαλούν οποιαδήποτε άλλη βλάβη.⁷⁷ Επιπλέον, η εν λόγω αρχή έχει την υποχρέωση να ενημερώσει το θύμα για τα δικονομικά δικαιώματά του, σύμφωνα με το κεφάλαιο 4, άρθρο 18 FCIA, συμπεριλαμβανομένων των κάτωθι: «πληροφορίες σχετικά με τις υπηρεσίες υποστήριξης, διερμηνείας και μετάφρασης, αποζημίωσης, προστασίας, επιστροφής των εξόδων και πληροφορίες για την αντιμετώπιση της υπόθεσης σε ποινικές διαδικασίες».⁷⁸

Ειδικά δικαιώματα χορηγούνται σε συγκεκριμένες ομάδες που θεωρούνται πιο ευάλωτες, όπως π.χ. παιδιά-θύματα, θύματα ενδοοικογενειακής ή σεξουαλικής βίας, θύματα εμπορίας και θύματα με σωματικές ή διανοητικές αναπηρίες.⁷⁹ Έχει εκδοθεί ένας οδηγός για την αστυνομία σχετικά με την αξιολόγηση των αναγκών προστασίας ενός θύματος. Ο οδηγός καθορίζει τους κανόνες για την προσωπική αξιολόγηση και τον τρόπο με τον οποίο τα θύματα πρέπει να απευθύνονται στις υπηρεσίες υποστήριξης των θυμάτων.⁸⁰

4.2.2 Γερμανία

Ενώ τα περισσότερα από τα δικαιώματα που ορίζονται στα Άρθρα 23 και 24 υπήρχαν ήδη στο γερμανικό εθνικό δίκαιο πριν από τη διαδικασία μεταφοράς της οδηγίας για τα θύματα, δεν υπήρχε γενική διάταξη που να καθορίζει την ατομική αξιολόγηση των θυμάτων για τον προσδιορισμό των ειδικών αναγκών προστασίας σύμφωνα με το άρθρο 22 ΟΘ.⁸¹ Για το σκοπό αυτό, το γερμανικό νομοθετικό σώμα εισήγαγε μια νέα παράγραφο στο γερμανικό Κώδικα Ποινικής Δικονομίας (GCCP): παράγραφος 3 του άρθρου 48 του GCCP. Σύμφωνα με την τελευταία, όλες οι ακροάσεις και άλλες πράξεις της έρευνας με έναν μάρτυρα που είναι έχει υποστεί βλάβη, πρέπει να διεξάγονται λαμβάνοντας υπόψη τις ειδικές ανάγκες προστασίας του. Συγκεκριμένα, πρέπει να συνεκτιμηθεί:

- εάν υπάρχει μεγάλος κίνδυνος να αποβεί (η έρευνα) επιβλαβής για τον μάρτυρα, απαιτώντας μέτρα

παραπομπή των θυμάτων: Εθνική έκθεση - Φινλανδία, 2017, 6; και το Υπουργείο Δικαιοσύνης της Φινλανδίας, Δικαιώματα του Εγκλήματος, 1.3.2017.

⁷⁷ Oikeus, Εάν είστε θύμα εγκλήματος: Προστασία των θυμάτων:

<https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>

⁷⁸ RIKU, Ποια είναι η οδηγία για τα θύματα?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

⁷⁹ IVOR, Φινλανδία: Εξελίξεις στην εφαρμογή των μηχανισμών βοήθειας των θυμάτων.

⁸⁰ RIKU, Ποια είναι η οδηγία για τα θύματα?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

⁸¹ Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksach 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (German), 14.



για την αποφυγή της οπτικής επαφής μεταξύ του μάρτυρα και του δράστη (§168e GCCP) ή της διευθέτησης μιας οπτικοακουστικής ακρόασης ενός μάρτυρα (Άρθ. 247a GCCP) ,

- εάν τα επικρατέστερα νόμιμα συμφέροντα του μάρτυρα απαιτούν την διεξαγωγή της ακροαματικής διαδικασίας κλεισμένων των θυρών, και
- σε ποια έκταση είναι δυνατόν αποφευχθούν μη απαραίτητες ερωτήσεις σχετικά με την προσωπική ζωή του μάρτυρα.

Στο πλαίσιο της παρούσας αξιολόγησης πρέπει να λαμβάνονται υπόψη η προσωπική κατάσταση του μάρτυρα, καθώς και η φύση και οι συνθήκες του αδικήματος (άρθρο 48, παράγραφος 3 του GCCP).

Επιπλέον, παραπομπές στις αντίστοιχες θέσεις του GCCP καθορίζουν ότι η διάταξη αυτή εφαρμόζεται επίσης στο πλαίσιο της έρευνας του εισαγγελέα (άρθρο 161α, παρ. 1 GCCP) και της αστυνομίας (άρθρο 163, παρ. 3 GCCP).⁸² Με τις διατάξεις αυτές το γερμανικό νομοθετικό σώμα καθόρισε ότι η ατομική αξιολόγηση θα λαμβάνει χώρα κατά την πρώτη επαφή με το θύμα.⁸³

Έτσι, αυτή η δέσμευση καθορίζει ότι οι ειδικές ανάγκες προστασίας των θυμάτων πρέπει να αξιολογούνται ανά πάσα στιγμή,⁸⁴ ενώ δεν διευκρινίζει ποιος είναι υπεύθυνος για τη διεξαγωγή της αξιολόγησης και πώς αυτή πρέπει να γίνεται. Αν και τα δικαιώματα που αναφέρονται στο νέο άρθρο 48 παρ. 3 δεν αποτελούν νέα δικαιώματα, είναι μόνο μέσω αυτών των νομοθετικών αλλαγών που οι αρχές υποχρεούνται να αξιολογούν αυτές τις πιθανότητες βάσει νόμου.^{85 86}

⁸² Ibid., 15.

⁸³ Wie viel Opferschutz trägt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 343. https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html

⁸⁴ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία ευάλωτων θυμάτων σε ποινικές διαδικασίες, 40.

⁸⁵ Kett-Straub, Wie viel Opferschutz trägt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 343.

⁸⁶ Παρ' όλα αυτά, ο κανόνας αυτός επικρίθηκε, ιδιαίτερα όσον αφορά τη θέση του. Υποστηρίχθηκε ότι ο κανόνας αυτός δεν είναι ιδανικά τοποθετημένος στο πλαίσιο του GCCP, καθώς το άρθρο 48 αφορά τους μάρτυρες κατά τη διάρκεια των δικαστικών διαδικασιών και όχι τα γενικότερα θύματα. Δείτε περαιτέρω: Löffelmann, Drittes Opferrechtsreformgesetz – Ausgabe 11/2014, 22.11.2014, <http://www.recht-politik.de/drittes-opferrechtsreformgesetz/> (German).



4.2.3 Πορτογαλία

Στην Πορτογαλία, η μεταφορά της οδηγίας για τα θύματα οδήγησε όχι μόνο στη συμπερίληψη ενός νομικού ορισμού του όρου «θύμα» στην πορτογαλική νομοθεσία,⁸⁷ αλλά και στην εισαγωγή του όρου «ιδιαίτερα ευάλωτου θύματος» (" vítima especialmente vulnerável ") στον Πορτογαλικό Κώδικα Ποινικής Δικονομίας (PCCP) .

Ιδιαίτερα ευάλωτο θύμα είναι ένα θύμα του οποίου η ευπάθεια είναι αποτέλεσμα της ηλικίας του, της κατάστασης της υγείας του ή αναπηρίας, καθώς και αποτέλεσμα βλάβης με σοβαρές συνέπειες για την ψυχολογική ευεξία ή την κοινωνική ένταξη των θυμάτων, που οφείλονται στο είδος, στον βαθμό και στη διάρκεια της θυματοποίησης.⁸⁸ Τα θύματα βίαιων εγκληματικών πράξεων⁸⁹ και τα θύματα ιδιαίτερα βίαιων εγκληματικών πράξεων⁹⁰ θεωρούνται πάντοτε ως ιδιαίτερα ευάλωτα θύματα. Ο Πορτογαλικός Ποινικός Κώδικας Δικονομίας ορίζει ως παιδί ή νέο κάθε φυσικό πρόσωπο ηλικίας κάτω των 18 ετών.⁹¹

Επί προσθέτως, το πορτογαλικό καθεστώς για τα θύματα εισήχθη στο πλαίσιο της διαδικασίας μεταφοράς της οδηγίας για τα θύματα και εμπεριέχει αρκετές διατάξεις για τη μεταφορά του άρθρου 22 για την οδηγία για τα θύματα. Καθορίζει ότι, από τη στιγμή που ένα έγκλημα έχει καταγγελλθεί και δεν υπάρχουν ισχυρές ενδείξεις ότι είναι αβάσιμο, οι αρμόδιες αρχές πρέπει να διεξάγουν ατομική αξιολόγηση για να προσδιορίσουν εάν ένα θύμα είναι ιδιαίτερα ευάλωτο θύμα ⁹² και να καθορίσουν εάν χρήζει ειδικής προστασίας.⁹³ Στην ίδια πράξη, στο θύμα πρέπει να διατίθεται ένα έγγραφο το οποίο να αποδεικνύει τη κατάστασή του, συμπεριλαμβανομένων των δικαιωμάτων και των καθηκόντων του.⁹⁴ Ο νόμος δεν καθορίζει, ωστόσο, τον τρόπο και υπό ποιες συνθήκες η ατομική αξιολόγηση πρέπει να λάβει χώρα.⁹⁵

⁸⁷ IVOR, Πορτογαλία: Εξελίξεις στην εφαρμογή των μηχανισμών βοήθειας των θυμάτων, 2.

⁸⁸ Portuguese Criminal Procedure Code, Titel IV, Article 67 – A, para. 1, lit. b, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (Portuguese).

⁸⁹ Βίαια εγκλήματα είναι αυτά που τιμωρούνται με φυλάκιση άνω των 5 ετών.

⁹⁰ Ιδιαίτερα βίαια εγκλήματα είναι αυτά που τιμωρούνται με φυλάκιση άνω των 8 ετών.

⁹¹ Πορτογαλικός κώδικας ποινικής δικονομίας, Titel IV, Article 67 – A, para 1, lit. c, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (Portuguese).

⁹² Άρθρο 20, παράγραφος 1, το καταστατικό των θυμάτων.

⁹³ Άρθρο 21, παράγραφος 1, το καταστατικό των θυμάτων.

⁹⁴ Άρθρο 20, παράγραφος 3, το καταστατικό των θυμάτων.

⁹⁵ APAV - Associação Portuguesa de Apoio à Vítima, IVOR Έκθεση: Εφαρμογή της μεταρρύθμισης του συστήματος ποινικής δικαιοσύνης στην Ευρωπαϊκή Ένωση, 2016, 152



4.2.4 Ισπανία

Στην Ισπανία, το άρθρο 22 της οδηγίας για τα θύματα ενσωματώθηκε μέσω του άρθρου 23 του Νόμου 4/2015 σχετικά με την ενίσχυση των θυμάτων εγκληματικότητας. Σε συσχετισμό με την οδηγία, η ισπανική εθνική νομοθεσία αναφέρει ότι η αξιολόγηση θα πρέπει να λαμβάνει υπόψη ιδίως τα ακόλουθα:

- (α) «Τα προσωπικά χαρακτηριστικά του θύματος και ιδίως [...] αν το θύμα είναι ανήλικος ή χρήζει ειδικής προστασίας [...]
- (β) τη φύση του αδικήματος και τη σοβαρότητα της βλάβης που προκλήθηκε στο θύμα, καθώς και τον κίνδυνο επανάληψης της αξιόποινης πράξης [...] και
- (γ) τις συνθήκες του αδικήματος, συγκεκριμένα αν περιελάμβανε βία.»⁹⁶

Στην περίπτωση των παιδιών-θυμάτων εγκληματικότητας, τα μέτρα προστασίας που λαμβάνονται θα πρέπει επιπλέον να λαμβάνουν υπόψη την προσωπική κατάσταση του θύματος, την ηλικία, το φύλο, οποιαδήποτε τυχόν αναπηρία και το επίπεδο ωριμότητάς του, καθώς και να σέβονται πλήρως τη σωματική, ψυχική και συναισθηματική ακεραιότητα του θύματος.⁹⁷ Επιπλέον, κάθε φορά που ένας ανήλικος γίνεται θύμα εγκληματικής πράξης, η εισαγγελία οφείλει να μεριμνήσει ιδιαιτέρως για να διασφαλίσει ότι τα δικαιώματα προστασίας του θύματος συμμορφώνονται προς την υποχρέωση υιοθεσίας «κατάλληλων μέτρων για τα συμφέροντα των θυμάτων, όπου κρίνεται απαραίτητο για αποφευχθούν ή να μειωθούν τυχόν βλάβες που μπορεί να προκληθούν από τη διεξαγωγή των διαδικασιών.»⁹⁸

Περαιτέρω, το άρθρο 24 του Νόμου 4/2015 αναλύει τη διαδικασία επάρκειας και αξιολόγησης, διευκρινίζοντας ποια είναι η αρμόδια αρχή που είναι υπεύθυνη για την διεξαγωγή της αξιολόγησης σε διάφορα στάδια. Ο νόμος αποσαφηνίζει ότι ο εισαγγελέας πρέπει να προβεί στην ατομική αξιολόγηση κατά τη διάρκεια της έρευνας, ενώ κατά τη διάρκεια της δίκης ο δικαστής ή το δικαστήριο είναι υπεύθυνοι για την εξέταση της υπόθεσης. Το ίδιο άρθρο ορίζει ότι στην περίπτωση που τα θύματα είναι ανήλικοι ή άτομα με ειδικές ανάγκες που χρήζουν ειδικής προστασίας, η αξιολόγηση λαμβάνει υπόψη τις απόψεις και τα συμφέροντά τους.

⁹⁶ Άρθρο 23, Νόμος 4/2015 σχετικά με τη θέση των θυμάτων εγκληματικότητας.

⁹⁷ Άρθρο 23 παράγραφος. 3, Νόμος 4/15 σχετικά με τη θέση των θυμάτων εγκληματικότητας.

⁹⁸ Άρθρο 19, Νόμος 4/15 σχετικά με τη θέση των θυμάτων εγκληματικότητας



Επιπλέον, το άρθρο 27 του Νόμου 4/2015 επεξεργάζεται την ευθύνη και το ρόλο των Γραφείων Υποστήριξης Θυμάτων και δηλώνει συγκεκριμένα ότι τα εν λόγω γραφεία πραγματοποιούν επίσης αξιολόγηση της κατάστασης του θύματος⁹⁹ ώστε να καθορίσουν ποια βοήθεια και υποστήριξη πρέπει να παρασχεθεί στο θύμα. Τα Γραφεία Υποστήριξης Θυμάτων πρέπει να αξιολογήσουν αν το θύμα χρειάζεται ψυχολογική υποστήριξη και βοήθεια, κάποιο πρόσωπο το οποίο να του παράσχει υποστήριξη κατά τη διάρκεια της δίκης, πληροφορίες, άλλα μέτρα ειδικής στήριξης που μπορούν να χορηγηθούν από το δικαστήριο, ή την παραπομπή σε εξειδικευμένες υπηρεσίες υποστήριξης.¹⁰⁰ Αν και η εθνική νομοθεσία ορίζει ότι οι ανάγκες προστασίας των ατόμων θα πρέπει να πληρούνται, δεν παρέχονται περαιτέρω λεπτομέρειες σχετικά με τον τρόπο με τον οποίο θα πρέπει να διεξάγεται η αξιολόγηση.

4.2.5 Αγγλία και Ουαλία

Η ατομική αξιολόγηση των θυμάτων για τον εντοπισμό ειδικών αναγκών προστασίας ρυθμίζεται στο Κεφάλαιο 1 του Κώδικα των θυμάτων.¹⁰¹ Συγκεκριμένα, εκθέτει ενισχυμένα δικαιώματα για τα θύματα τριών διαφορετικών κατηγοριών, καθώς είναι «πιο πιθανό να απαιτούν ενισχυμένη υποστήριξη και υπηρεσίες μέσα από την ποινική διαδικασία.» Ωστόσο, αυτές οι κατηγορίες δεν είναι αποκλειστικές, καθώς είναι πιθανό ένα θύμα να δικαιούται ενισχυμένες υπηρεσίες σε περισσότερες από μία κατηγορίες (Κεφάλαιο 1, παράγραφος 1.2). Επιπλέον, ακόμη και αν ένα θύμα δεν εμπίπτει σε μία από τις τρεις κατηγορίες, ο πάροχος υπηρεσιών μπορεί να χορηγήσει στο θύμα ενισχυμένα δικαιώματα ανάλογα με τις ιδιαίτερες συνθήκες του θύματος (Κεφάλαιο 1, παράγραφος 1.7). Οι τρεις κατηγορίες είναι:

- Θύματα του σοβαρότερου εγκλήματος :

Ένα θύμα που είναι «στενός συγγενής ο οποίος έχασε κάποιον εξαιτίας της διάπραξης ορισμένου ποινικού αδικήματος, θύμα ενδοοικογενειακής βίας, εγκλήματος μίσους, τρομοκρατίας, σεξουαλικών αδικημάτων, εμπορίας ανθρώπων, απόπειρας δολοφονίας, απαγωγής, εσφαλμένης φυλάκισης, εμπρησμού με σκοπό να θέσει σε κίνδυνο ανθρώπινη ζωή και τραυματισμού ή πρόκλησης σοβαρής σωματικής βλάβης από πρόθεση» (Κεφάλαιο 1, παράγραφος 1.8)

⁹⁹ Maizener ed. al., EVVI (Αξιολόγηση των Θυμάτων), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf, 56 ff.

¹⁰⁰ Άρθρο 28 παράγραφος. 2, Νόμος 4/2015 σχετικά με τη θέση των θυμάτων εγκληματικότητας.

¹⁰¹ Υπουργείο Δικαιοσύνης του Ηνωμένου Βασιλείου, Βελτίωση του κώδικα δεοντολογίας για τα θύματα εγκληματικότητας: Ανταπόκριση στις διαβουλεύσεις CP8® 29 Μαρτίου 2013, που δημοσιεύθηκε στις 29 Οκτωβρίου 2013, 87 ff.



– Συστηματικά στοχοποιημένα θύματα:

Ένα θύμα που «έχει στοχοποιηθεί επανειλημμένα ως άμεσο θύμα εγκληματικής πράξης για ορισμένο χρονικό διάστημα» (Κεφάλαιο 1, παράγραφος 1.9)

– Ευάλωτα ή εκφοβισμένα θύματα

Ένα ευάλωτο θύμα είναι ένα θύμα ηλικίας κάτω των 18 ετών κατά τον χρόνο τέλεσης του αδικήματος. Εάν ο πάροχος υπηρεσιών θεωρεί ότι η ποιότητα των αποδεικτικών στοιχείων του θύματος θα επηρεαστεί εξαιτίας του φόβου (του θύματος) να καταθέσει ενώπιον του ακροατηρίου, το θύμα θεωρείται εκφοβισμένο.

Κάθε θύμα δικαιούται αξιολόγησης από την αστυνομία για τον προσδιορισμό των ειδικών αναγκών προστασίας του «συμπεριλαμβανομένου του κατά πόσον και σε ποιο βαθμό μπορεί (το θύμα) να επωφεληθεί από ειδικά μέτρα.» (Κεφάλαιο 1, παράγραφος 1.4). Ωστόσο, οι ιδιαίτερες συνθήκες της αξιολόγησης (π.χ. διάρκεια και περιεχόμενο) εξαρτώνται από τη σοβαρότητα του εγκλήματος και τις ατομικές ανάγκες του θύματος. Η αξιολόγηση πρέπει να λαμβάνει υπόψη τα προσωπικά χαρακτηριστικά του θύματος, τη φύση και τις συνθήκες του εγκλήματος, καθώς και τις προσωπικές απόψεις του θύματος. Επιπλέον, η αξιολόγηση μπορεί να επαναληφθεί, εάν οι ανάγκες του θύματος αλλάξουν (Κεφάλαιο 1, παράγραφος 1.5). Μόλις διαπιστωθεί ότι πληρούνται οι προϋποθέσεις για ενισχυμένα δικαιώματα, ο πάροχος υπηρεσιών πρέπει να διασφαλίσει ότι οι πληροφορίες αυτές διαβιβάζονται και σε άλλους παρόχους υπηρεσιών.¹⁰²

Παρακάτω, το Κεφάλαιο 5 ορίζει ότι και άλλοι πάροχοι υπηρεσιών πέρα από την αστυνομία¹⁰³ έχουν την υποχρέωση να προβούν σε ατομική αξιολόγηση των θυμάτων προκειμένου να προσδιορίσουν συγκεκριμένες ανάγκες προστασίας (Κεφάλαιο 5, παράγραφος 1.1). Ένας πάροχος υπηρεσιών πρέπει να προσδιορίζει τις ειδικές ανάγκες προστασίας ενός θύματος κάθε φορά που είναι υπεύθυνος για τη διερεύνηση ενός αδικήματος (Κεφάλαιο 5, παράγραφος 1.30). Σε αυτές τις περιπτώσεις, ο πάροχος

¹⁰² Τα δικαιώματα των παιδιών για ατομική αξιολόγηση των αναγκών τους καθορίζονται στο Κεφάλαιο 3, Μέρος Α, παρ. 1.1.

¹⁰³ Οι πάροχοι υπηρεσιών καθορίζονται στην Εισαγωγή, παρ. 9 του κώδικα των θυμάτων: η Αρχή Ανταγωνισμού και Αγορών · Το Τμήμα Επιχειρήσεων, Καινοτομίας και Δεξιοτήτων (Ποινικές Κυρώσεις) Ο Οργανισμός Περιβάλλοντος. Η Αρχή Χρηματοοικονομικής Συμπεριφοράς. Η Επιτροπή Τυχερών Παιχνιδιών Το υπουργείο Υγείας και Ασφάλειας. Τα έσοδα και τα τελωνεία της Αυτής Μεγαλειότητας (Φορολογική αρχή). Υπουργείο Εσωτερικών, Γραφείο του Επιτρόπου Πληροφόρησης. Η Ανεξάρτητη Επιτροπή Αστυνομικών Καταγγελιών. Η Υπηρεσία Εθνικού Εγκλήματος. Φυσικοί Πόροι Ουαλίας Το γραφείο σιδηροδρομικών και οδικών και το γραφείο σοβαρής απάτης.



υπηρεσιών πρέπει να «καθορίσει εάν και σε ποιο βαθμό το θύμα θα επωφεληθεί από ειδικά μέτρα προστασίας ή ειδικά μέτρα κατά τη διάρκεια συνέντευξης ή ειδικά μέτρα κατά την παροχή αποδεικτικών στοιχείων» (Κεφάλαιο 5, παράγραφος 1.30). Κριτική έχει ασκηθεί σχετικά με τη διαδικασία και το χρονοδιάγραμμα της αξιολόγησης.¹⁰⁴

4.3. Δικαίωμα στην προστασία παιδιών-θυμάτων εγκληματικότητας κατά την ποινική διαδικασία (άρθρο 23-24 ΟΘ)

4.3.1 Φινλανδία

Στη Φινλανδία, υπάρχουν δύο νόμοι που έχουν σαφή σημασία όσον αφορά τη μεταφορά των Άρθρων 22-23 ΟΘ: Πρώτον, ο φινλανδικός νόμος περί ποινικής έρευνας (FCIA, 805/2011, όπως τροποποιήθηκε), ο οποίος ρυθμίζει, μεταξύ άλλων, τη διαδικασία έρευνας της αστυνομίας. Δεύτερον, ο φινλανδικός Κώδικας Δικαστικής Διαδικασίας (FC JP, 4/1734, όπως τροποποιήθηκε), ο οποίος καθορίζει τους κανόνες των δικαστικών διαδικασιών σε γενικά δικαστήρια.

Όσον αφορά στην προστασία των παιδιών-θυμάτων εγκληματικότητας κατά τη διάρκεια της εγκληματικής έρευνας, αρκετές διατάξεις υπήρχαν ήδη πριν από τη διαδικασία μεταφοράς, όπως για παράδειγμα το Κεφάλαιο 4 τμήμα 7 υποτμήμα 1 FCIA . Ο τελευταίος αναφέρει ότι τα παιδιά-θύματα «θα πρέπει να αντιμετωπίζονται με τρόπο που υπαγορεύεται από την ηλικία τους και το επίπεδο της ανάπτυξης» και ότι ιδιαίτερη προσοχή πρέπει να δοθεί ώστε τα μέτρα έρευνας να μην προκαλέσουν άσκοπη ταλαιπωρία στο θύμα σε χώρους που είναι σημαντικοί για αυτά.¹⁰⁵ Επιπλέον, όπου είναι δυνατόν, τα μέτρα έρευνας σχετικά με τα παιδιά - θύματα θα ανατίθενται σε ερευνητές που θα είναι ιδιαίτερα εκπαιδευμένοι για αυτές τις περιπτώσεις.¹⁰⁶ Στην πραγματικότητα, οι περισσότεροι αστυνομικοί και ψυχολόγοι που εργάζονται σε ποινικές διαδικασίες έχουν παρακολουθήσει ένα μονοετές πρόγραμμα διεπιστημονικής κατάρτισης συνεντεύξεων για τους αστυνομικούς και τους επαγγελματίες της υγειονομικής περίθαλψης που εκτελούν ακρόασεις παιδιών. Το μάθημα αυτό διοργανώνεται από το Εθνικό Αστυνομικό Συμβούλιο και το Κέντρο

¹⁰⁴ IVOR, United Kingdom: Development on the implementation of victim assistance and mechanisms.

¹⁰⁵ Κεφάλαιο 4, Τμήμα 7, Υποτμήμα 1 Νόμος περί ποινικής έρευνας.

¹⁰⁶ Κεφάλαιο 4, Τμήμα 7, Υποτμήμα 2 Νόμος περί ποινικής έρευνας.



Δικαστικής Ψυχιατρικής.¹⁰⁷

Το Κεφάλαιο 7 της FCIA προβλέπει ότι αν κάποιος κάτω από την ηλικία των 15 ετών υποβάλλεται σε ερωτήσεις κατά τη διάρκεια ποινικών ερευνών, ο υπεύθυνος για τη φροντίδα και την επιμέλειά του ή ο διαχειριστής του ή άλλος νόμιμος εκπρόσωπός του έχει το δικαίωμα να είναι παρών/ούσα στη διαδικασία.¹⁰⁸

Εάν το παιδί - θύμα έχει ηλικία άνω των 15 ετών, τα άτομα αυτά μπορούν να είναι παρόντα μόνο κατά τη διάρκεια υποβολής των ερωτήσεων εάν αποκτήσουν το δικαίωμα να μιλήσουν εξ ονόματος ή μαζί με τον ανήλικο. Ο ερευνητής έχει το δικαίωμα να απαγορεύει την παρουσία του νόμιμου εκπροσώπου σε περιπτώσεις όπου η παρουσία του μπορεί να παρεμποδίσει τη διευκρίνιση του αδικήματος.¹⁰⁹

Ένα νέο τμήμα που καθορίζει τους κανόνες για συνεντεύξεις με θύματα με ειδικές ανάγκες προστασίας έχει προστεθεί στην FCIA (Κεφάλαιο 7, Τμήμα 21) προκειμένου να πληρεί τις απαιτήσεις που ορίζονται στο άρθρο 23 ΟΘ. Ανάλογα με την προσωπική κατάσταση του θύματος και τη φύση του εικαζόμενου εγκλήματος, το νεοσύστατο τμήμα καθορίζει διάφορα ειδικά μέτρα προστασίας:

- Τα θύματα που χρειάζονται ειδική προστασία πρέπει να υποβληθούν σε ερωτήσεις σε ειδικό χώρο που έχει σχεδιαστεί για το σκοπό αυτό.
- Σε περίπτωση θυμάτων με ειδικές ανάγκες προστασίας, η υποβολή ερωτήσεων πρέπει να διεξαχθεί από το ίδιο πρόσωπο, εάν το ζητήσει το θύμα.
- Εάν ο ζημιωθείς ενδέχεται να έχει πέσει θύμα σεξουαλικών εγκλημάτων, η υποβολή ερωτήσεων πρέπει να διεξάγεται από άτομο του ίδιου φύλου με το θύμα. Η διάταξη αυτή μπορεί να ισχύει και για άλλες περιπτώσεις όπου η φύση του εγκλήματος το απαιτεί.¹¹⁰

Τέλος, το Κεφάλαιο 9 της FCIA περιέχει διατάξεις σχετικά με τη δυνατότητα οπτικοακουστικής εγγραφής της ανάκρισης του μάρτυρα, εάν αυτή η εγγραφή προορίζεται για να χρησιμοποιηθεί ως αποδεικτικό μέσο στο δικαστήριο και εάν ο ερωτώμενος «δεν μπορεί να ακουστεί αυτοπροσώπως χωρίς αυτός να του προκαλέσει βλάβη»¹¹¹, λόγω της νεαρής ηλικίας του/της ή διανοητικής διαταραχής. Η

¹⁰⁷ Οργανισμός Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, δικαιοσύνη φιλική προς τα παιδιά: προοπτικές και εμπειρίες επαγγελματιών σχετικά με τη συμμετοχή των παιδιών σε αστικές και ποινικές διαδικασίες σε 10 κράτη μέλη της ΕΕ, 2015, 100.

¹⁰⁸ Κεφάλαιο 7, Τμήμα 14, Υποτμήμα 1 Νόμος περί ποινικής έρευνας

¹⁰⁹ Κεφάλαιο 7, Τμήμα 14, Υποτμήμα 3 Νόμος περί ποινικής έρευνας

¹¹⁰ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, 17.

¹¹¹ Κεφάλαιο 9, Τμήμα 4, Υποτμήμα 1 FCIA.



διάταξη αυτή μπορεί επίσης να εφαρμοστεί σε άτομο ηλικίας 15 έως 17 ετών εάν χρειάζεται ειδική προστασία ή μπορεί να έχει πέσει θύμα σεξουαλικής πράξης.

Οι διατάξεις για τη μεταφορά του άρθρου 23 παρ. 3 ΟΘ - δηλαδή, διατάξεις που καθορίζουν τα δικαιώματα που πρέπει να χορηγούνται σε θύματα με ειδικές ανάγκες προστασίας κατά τη διάρκεια της δικαστικής διαδικασίας - βρίσκονται στον φινλανδικό Κώδικα Δικαστικής Διαδικασίας (FCJP)112. Υπάρχουν διάφορα μέτρα για την αποφυγή της οπτικής επαφής μεταξύ θυμάτων και παραβατών. Το θύμα μπορεί να υποβληθεί σε ερωτήσεις:

- πίσω από μια οθόνη (Κεφάλαιο 17, Ενότητα 51 FCJP) . Το δικαστήριο αποφασίζει εάν αυτό το μέτρο είναι απαραίτητο για την προστασία του ατόμου ανακρίνεται, εάν το πρόσωπο αυτό σε οποιαδήποτε άλλη περίπτωση δεν θα αποκάλυπτε με άλλο τρόπο αυτό που γνωρίζει για το θέμα, εάν ένα άτομο διαταράσσει ή επιχειρεί να παραπλανήσει το πρόσωπο που ακούγεται και εάν ένα θύμα έχει ανάγκη ειδικής προστασίας. Μόνο το τελευταίο προστέθηκε στο πλαίσιο της διαδικασίας μεταφοράς.¹¹³
- μέσω σύνδεσης βίντεο (Κεφάλαιο 17, Τμήμα 52 F CJP). Το δικαστήριο κρίνει ότι αυτό το μέτρο είναι κατάλληλο εάν - μεταξύ άλλων - είναι αναγκαίο να προστατευθεί το άτομο που ακούγεται, το άτομο που ακούγεται δεν έχει φτάσει την ηλικία των 15 ετών ή έχει μειωθεί η διανοητική ικανότητά του ή σε περίπτωση θύματος με ειδικές ανάγκες προστασίας. Μόνο το τελευταίο έχει προστεθεί στο πεδίο της διαδικασίας μεταφοράς.¹¹⁴
- χωρίς την παρουσία του κατηγορούμενου ή τρίτου (Κεφάλαιο 17, Τμήμα 51 FCJP). Το δικαστήριο αποφασίζει εάν αυτό το μέτρο είναι απαραίτητο για την προστασία του ατόμου που ακούγεται, αν το πρόσωπο που ακούγεται δεν θα αποκαλύψει αλλιώς αυτό που γνωρίζει στο θέμα ή εάν ένα άτομο ενοχλεί ή επιχειρεί να παραπλανήσει το άτομο που ακούγεται.

Η φινλανδική νομοθεσία περιέχει επίσης ειδικά μέτρα για την προστασία της ανωνυμίας ενός μάρτυρα, όπως για παράδειγμα μέσω ενός κατάλληλου μέσου επικοινωνίας στο οποίο η φωνή του μάρτυρα μπορεί επίσης να τροποποιηθεί (Κεφάλαιο 17, τμήμα 53 FCJP). Επιπρόσθετα, σε ορισμένες περιπτώσεις η

¹¹² Υπουργείο Δικαιοσύνης της Φινλανδίας, Κώδικας Δικαστικής Δικονομίας, 4/1734, τροπολογίες μέχρι και 732/2015, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiHx5KJ3MjZAhUBLewKHfZoD60QFggtMAA&url=http%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F1734%2Fen17340004.pdf&usg=AOvVaw0-PJLjKrSH9U01qD0yrl4B>

¹¹³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία ευάλωτων θυμάτων σε ποινικές διαδικασίες, 17.

¹¹⁴ Ibid.



υποβολή ερωτήσεων στα θύματα μπορεί να καταγραφεί σε βίντεο και να χρησιμοποιηθεί ως αποδεικτικό στοιχείο σε δίκη. Η διαδικασία αυτή μπορεί να εφαρμοστεί στην περίπτωση παιδιών - θυμάτων που δεν έχουν συμπληρώσει την ηλικία των 15 ετών ή σε περίπτωση ενός άτομου με διανοητική αναπηρία· παιδί - θύμα ηλικίας μεταξύ 15 και 17 ετών, λαμβάνοντας υπόψη την προσωπική του κατάσταση και τη φύση του αδικήματος· καθώς και στην περίπτωση ζημιωθέντων μερών ορισμένων σεξουαλικών αδικημάτων (Κεφάλαιο 17, άρθρο 24 FCJP). Ωστόσο, η διάταξη αυτή υπήρχε ήδη πριν από τη διαδικασία μεταφοράς.

Ομοίως, η φινλανδική CJP εναρμονίστηκε ήδη με το άρθρο 24 παρ. 1 b. ΟΘ. Το τελευταίο δηλώνει ότι το δικαστήριο ορίζει έναν διαχειριστή για το παιδί- θύμα «αν υπάρχει βάσιμος λόγος να υποτεθεί ότι το πρόσωπο το οποίο είναι υπεύθυνο για την επιμέλεια του παιδιού ή φροντίζει το παιδί, ο διαχειριστής ή άλλος νόμιμος εκπρόσωπος, δεν μπορεί να εξασφαλίσει αντικειμενικά τα συμφέροντα του διαδίκου και ο διορισμός ενός διαχειριστή δεν είναι εμφανώς περιττός» (Κεφάλαιο 4, τμήμα 8, FCIA). Όλες οι σχετικές δαπάνες καταβάλλονται από τα κρατικά κονδύλια.

Τέλος, οι διατάξεις σχετικά με την ακρόαση ενός ατόμου κεκλεισμένων των θυρών μπορούν να βρεθούν στη Πράξη για την δημοσιότητα των δικαστικών διαδικασιών στα Γενικά Δικαστήρια¹¹⁵ (άρθρο 15, σημείο 6). Καθορίζει ότι το δικαστήριο μπορεί να αποφασίσει εάν ένα μέρος ή ολόκληρη η διαδικασία μπορεί να διεξαχθεί χωρίς την παρουσία του κοινού, εάν ακουστεί στην υπόθεση ένα άτομο κάτω των 14 ετών, του οποίου η νομική ικανότητα είναι περιορισμένη ή ένα πρόσωπο με ειδικές ανάγκες προστασίας.

4.3.2 Γερμανία

Κατά τα τελευταία χρόνια, η Γερμανία βελτίωσε συνεχώς τη θέση των θυμάτων στις ποινικές διαδικασίες. Ως εκ τούτου, τα περισσότερα από τα δικαιώματα που ορίζει η οδηγία για την προστασία των θυμάτων με ειδικές ανάγκες προστασίας και τα παιδιά - θύματα εγκληματικότητας υπήρχαν ήδη στο γερμανικό δίκαιο πριν από τη διαδικασία μεταφοράς. Ωστόσο, όπως επισημάνθηκε προηγουμένως, οι απαιτήσεις που ορίζονται στην οδηγία θυμάτων δεν εμπίπτουν στην αρμοδιότητα της ομοσπονδιακής νομοθεσίας, αλλά πρέπει να καθορίζονται από τη νομοθεσία των ομοσπονδιακών κρατών.

¹¹⁵ Υπουργείο Δικαιοσύνης της Φινλανδίας, νόμος περί δημοσιότητας των δικαστικών διαδικασιών σε γενικά δικαστήρια, 370/2007 τροπολογίες 742/2015, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjQ9unn4MjZAhVMYaQKHTmUB14QFggtMAA&url=https%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F2007%2Fen20070370.pdf&usq=A0vVaw3A34-Ki7L-xk8YksYrIE0V>



Σύμφωνα με το άρθρο 23 παρ. 2β ΟΘ οι συνεντεύξεις με θύματα με ειδικές ανάγκες προστασίας πρέπει να διεξάγονται μέσω επαγγελματιών που έχουν εκπαιδευτεί για το σκοπό αυτό. Στη Γερμανία, η θέσπιση κανονισμών σχετικά με τα προσόντα του προσωπικού που διεξάγει τις συνεντεύξεις εμπίπτει στη δικαιοδοσία των ομοσπονδιακών κρατών.¹¹⁶ Το προσωπικό της αστυνομίας σε όλη τη Γερμανία, υποβάλλεται από εκπαίδευση, με στόχο να διασφαλιστεί μια αμερόληπτη, σεβαστή και επαγγελματική μεταχείριση των θυμάτων. Αυτή η εκπαίδευση περιλαμβάνει βαθιά γνώση σε θέματα όπως το έγκλημα μίσους ή τη μεταχείριση των παιδιών-θυμάτων εγκληματικότητας κατά τη διάρκεια των ερευνών. Παρόμοια εκπαίδευση υπάρχει και για τους εισαγγελείς και τους δικαστές.¹¹⁷

Όλες οι σωματικές εξετάσεις των θυμάτων της σεξουαλικής βίας θα διεξάγονται από άτομο του ίδιου φύλου (αριθ. 220 RiStBV). Αυτό το άρθρο υπήρχε ήδη πριν από τη διαδικασία μεταφοράς, και - σύμφωνα με τη εξήγηση του Γερμανού νομοθέτη¹¹⁸ - πληροί ήδη όλες τις απαιτήσεις του άρθρου 22 παρ. 2γ και δ ΟΘ, τα οποία προβλέπουν ότι οι συνεντεύξεις θα διεξάγονται από το ίδιο πρόσωπο, εκτός εάν αυτό είναι αντίθετο προς την ορθή απονομή της δικαιοσύνης της δικαιοσύνης, καθώς και το ενδεχόμενο οι συνεντεύξεις με θύματα σεξουαλικής βίας να πρέπει να διεξάγονται από πρόσωπο του ίδιου φύλου υπό ορισμένες περιστάσεις.

Επιπλέον, υπάρχουν πολλά μέτρα στη γερμανική νομοθεσία για την αποφυγή της οπτικής επαφής μεταξύ του θύματος και του δράστη (άρθρο 23 παρ. 3 ΟΘ), καθώς και μέτρα για να εξασφαλιστεί ότι το θύμα μπορεί να ακουστεί στην δικαστική αίθουσα χωρίς την παρουσία του. Σύμφωνα με το Άρθ. 247 GCCP, το δικαστήριο μπορεί να διατάξει τον εναγόμενο να αποχωρήσει από την αίθουσα του δικαστηρίου κατά τη διάρκεια της εξέτασης, αν η παρουσία του/της ενδέχεται να παρεμποδίσει τον μάρτυρα να εκφράσει την αλήθεια. Αυτό ισχύει και για περιπτώσεις στις οποίες ο μάρτυρας είναι κάτω των 18 ετών και όταν η παρουσία του εναγομένου είναι πιθανό να προκαλέσει σημαντικό τραύμα στην ευημερία του μάρτυρα.

Εάν υπάρχει άμεσος κίνδυνος σοβαρής βλάβης στην ευημερία του μάρτυρα, εφόσον αυτός ερωτήθηκε κατά κατά την ακροαματική διαδικασία, το δικαστήριο μπορεί να αποφασίσει ότι η συνέντευξη πρέπει να

¹¹⁶ Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeUndOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2 (German), 14.

¹¹⁷ Ibid.

¹¹⁸ Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksach 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (German), 15.



διεξαχθεί σε άλλη τοποθεσία. Σε αυτή την περίπτωση, η δήλωση πρέπει να μεταδίδεται ταυτόχρονα σε εικόνα και ήχο στην αίθουσα του δικαστηρίου. Περαιτέρω, η δήλωση μπορεί να καταγραφεί, εάν ο μάρτυρας δεν μπορεί να ακουστεί σε άλλη δίκη και το αρχείο απαιτείται για να διερευνηθεί η αλήθεια (άρθρο 247α του GCCP).

Επιπλέον, μπορεί να γίνει οπτικοακουστική καταγραφή συνεντεύξεων με μάρτυρες, εφόσον

- μπορούν να προστατευθούν καλύτερα οι ειδικές ανάγκες προστασίας παιδιού-θύματος ή άλλου προσώπου, που ήταν θύμα εγκλημάτων κατά της σεξουαλικής αυτοδιάθεσης, της ζωής ή της προσωπικής ελευθερίας του (άρθρο 255α του GCCP)
- ή ο μάρτυρας δεν μπορεί να ακουστεί στην αίθουσα του δικαστηρίου για διάφορους λόγους και η καταγραφή είναι απαραίτητη για την διερεύνηση της αλήθειας (§ 58α του GCCP).

Επιπλέον, υπάρχει η πιθανότητα να χρησιμοποιηθεί στη θέση μιας συνέντευξης μια δικαστική εξέταση του θύματος ή του μάρτυρα που έχει διεξαχθεί εκ των προτέρων, συγκεκριμένα : 1) η καταγραφή της εξέτασης μάρτυρα ηλικίας κάτω των 18 ετών σε δίκες σχετικά με εγκλήματα κατά της σεξουαλικής αυτοδιάθεσης, της ζωής ή της προσωπικής ελευθερίας, μπορεί να χρησιμοποιηθεί αντί για μια συνέντευξη, αν ο κατηγορούμενος και η/ο δικηγόρος του/της είχαν τη δυνατότητα να συμβάλουν στην ανάκριση 2) η καταγραφή της εξέτασης ενός θύματος των ίδιων εγκλημάτων, εάν το πρόσωπο ήταν κάτω των 18 ετών κατά τον χρόνο τέλεσης του εγκλήματος. Στις περιπτώσεις αυτές, το δικαστήριο έχει την υποχρέωση να λάβει υπόψη τις ατομικές ανάγκες προστασίας του μάρτυρα και να αιτιολογήσει την προβολή της οπτικοακουστικής εγγραφής. Ωστόσο, μια πρόσθετη συνέντευξη μπορεί να γίνει δεκτή ως αποδεικτικό μέσο (άρθρο 255Α GCCP). Επίσης, μια ακρόαση μπορεί να πραγματοποιηθεί χωρίς την παρουσία του κοινού εάν ανακρίνεται ένα άτομο ηλικίας κάτω των 18 ετών (άρθρο 172 Γερμανικού Δικαστικού Συστήματος Νόμου Gerichtsverfassungsgesetz)

Τα μέτρα για την αποφυγή άσκοπων ερωτήσεων σχετικά με την ιδιωτική ζωή του θύματος ρυθμίζονται στο Άρθ. 68α GCCP. Επομένως, ερωτήσεις σχετικά με γεγονότα που μπορεί να αποδειχθούν επαίσχυντα ή να επηρεάσουν την προσωπική ζωή του μάρτυρα ή ενός προσώπου που ανήκει στην οικογένειά του πρέπει να τίθενται μόνο εάν είναι απαραίτητο. Οι ερωτήσεις σχετικά με τις περιστάσεις που επηρεάζουν την αξιοπιστία του μάρτυρα -ιδίως τη σχέση του με τον κατηγορούμενο ή τον ζημιωθέντα - θα πρέπει να τίθενται μόνο όταν αυτό είναι απαραίτητο.



Τέλος, το άρθρο 24 παρ. 1β - η διάταξη της οδηγίας για τα θύματα η οποία προβλέπει ότι ειδικός εκπρόσωπος για κάποιο παιδί διορίζεται σε περιπτώσεις στις οποίες υπάρχει σύγκρουση συμφερόντων μεταξύ των κηδεμόνων και του παιδιού, υπάρχει ήδη στη γερμανική νομοθεσία πριν από τη διαδικασία της μεταφοράς. Σύμφωνα με το Άρθ. 52 του GCCP, γενικά, ο νόμιμος εκπρόσωπος ενός παιδιού μπορεί να παρατάσσει το δικαίωμά του να αρνηθεί να δώσει αποδείξεις, εάν το παιδί δεν έχει επαρκή κατανόηση αυτού του δικαιώματός του. Σε περιπτώσεις όπου ο νόμιμος εκπρόσωπος είναι ταυτόχρονα κατηγορούμενος, δεν μπορεί να παρατάσσει το δικαίωμα του παιδιού. Οι κανονισμοί υπό τους οποίους ορίζεται εκπρόσωπος για το παιδί περιέχονται στον γερμανικό αστικό κώδικα (Άρθρα 1773, 1774 και 1909 GCC).

4.3.3 Πορτογαλία

Το άρθρο 23 ενσωματώθηκε μέσω του άρθρου 21 του Καταστατικού των Πορτογάλων (PVS) - το οποίο θεσπίστηκε κατά τη διαδικασία μεταφοράς της οδηγίας για τα θύματα. Το τελευταίο απαριθμεί τα ειδικά μέτρα προστασίας που μπορούν να χορηγηθούν σε ιδιαίτερα ευάλωτα θύματα ανάλογα με τις ατομικές τους ανάγκες, ενώ πολλά από αυτά τα μέτρα καθορίζονται σε άλλα άρθρα. Η διατύπωση διαφόρων άρθρων υιοθέτησε αυτολεξεί τις αντίστοιχες διατάξεις της οδηγίας για τα θύματα.

Σύμφωνα με το άρθρο 21 παρ. 2 PVS, στα ιδιαίτερα ευάλωτα θύματα μπορούν να αναγνωρισθούν τα ακόλουθα δικαιώματα:

- α) Οι συνεντεύξεις πρέπει να διεξάγονται από το ίδιο πρόσωπο, εφόσον το ζητήσει το θύμα και αν δεν εμποδίζει την ορθή απονομή της δικαιοσύνης.
- β) Όλες οι συνεντεύξεις με θύματα σεξουαλικής βίας, βίας με βάση το φύλο ή βίας σε στενές σχέσεις, εκτός εάν διεξάγονται από εισαγγελέα ή δικαστή, πρέπει να πραγματοποιούνται από άτομο του ίδιου φύλου με το θύμα.
- γ) Μέτρα για την αποτροπή της οπτικής επαφής μεταξύ του θύματος και του κατηγορουμένου, ακόμη και κατά τη διάρκεια της κατάθεσης, χρησιμοποιώντας κατάλληλα τεχνολογικά μέσα.



- δ) Η δυνατότητα παροχής «δήλωσης για το μέλλον» (“declaraciones para memoria futura”). Το μέτρο αυτό προσδιορίζεται περαιτέρω στο άρθρο 24 PVS και στο άρθρο 271 του PCCP. Σύμφωνα με το άρθρο 24 του PVS, ο δικαστής μπορεί κατόπιν αιτήματος του ιδιαίτερα ευάλωτου θύματος ή του εισαγγελέα, να διεξάγει μια ακρόαση κατά τη διάρκεια της έρευνας, η οποία μπορεί επίσης να ληφθεί υπόψη κατά τη δίκη. Είναι υποχρεωτική η παρουσία του εισαγγελέα και του συνηγόρου υπεράσπισης στη συνέντευξη (παράγραφος 2). Επιπλέον, ένας επαγγελματίας εκπαιδευμένος για το σκοπό αυτό πρέπει να συνοδεύει το θύμα κατά τη διάρκεια συνεντεύξεων. Η συνέντευξη πρέπει να πραγματοποιηθεί σε ένα ανεπίσημο και αποκλειστικά προορισμένο για αυτόν τον σκοπό περιβάλλον για να εξασφαλιστεί ο αυθορμητισμός και η ειλικρίνεια των απαντήσεων (παράγραφος 3.) Επιπλέον, συνήθως η δήλωση για το μέλλον γίνεται μέσω ηχητικής ή οπτικής μαγνητοσκόπησης ή με άλλα μέσα και αναλαμβάνεται από τον δικαστή και τον εισαγγελέα (π. χ. στενογραφία). Η μαρτυρία υπό τις προϋποθέσεις αυτού του άρθρου πρέπει να δοθεί μόνο, εάν η μαρτυρία είναι απαραίτητη για την ανακάλυψη της αλήθειας και δεν διακινδυνεύεται η σωματική ή ψυχική υγεία του θύματος.
- ε) Ο αποκλεισμός του κοινού από ακροάσεις. Πρέπει να σημειωθεί ωστόσο ότι το άρθρο αυτό υπήρχε ήδη στην Πορτογαλία (άρθρο 98 PCCP) πριν από τη διαδικασία μεταφοράς.

Περαιτέρω, το άρθρο 22 του PVS ενσωματώνει το άρθρο 24 ΟΘ. Ορίζει ότι όλα τα παιδιά-θύματα εγκληματικότητας έχουν το δικαίωμα ακρόασης κατά την ποινική διαδικασία λαμβάνοντας υπόψη την ηλικία και την ωριμότητα τους. Σε περιπτώσεις όπου η ηλικία είναι αβέβαιη, θεωρείται ότι για τους σκοπούς του παρόντος άρθρου, το θύμα είναι παιδί (παράγραφος 6). Περαιτέρω, η παρ. 2 leg. cit. ορίζει ότι εάν δεν υπάρχει σύγκρουση συμφερόντων, ένα παιδί-θύμα μπορεί να συνοδεύεται από τον γονέα του, από τον νόμιμο εκπρόσωπο ή από το πρόσωπο που έχει την επιμέλεια του παιδιού κατά τη διάρκεια της κατάθεσης. Στις περιπτώσεις που υπάρχει σύγκρουση συμφερόντων, πρέπει να διοριστεί ένας κηδεμόνας του παιδιού (παράγραφος 3). Ο πορτογαλικός νόμος ορίζει επίσης ότι οποιαδήποτε πληροφορία που μπορεί να οδηγήσει στην αναγνώριση παιδιού-θύματος δεν πρέπει να δημοσιοποιείται.

Η πορτογαλική νομοθεσία μεταφοράς δεν περιλαμβάνει νομικό μέτρο που να μεταφέρει συγκεκριμένα το άρθρο 24 παρ. 1α' ΟΘ, δηλαδή, ότι σε ποινικές έρευνες, όλες οι συνεντεύξεις με τα παιδιά - θύματα μπορούν να καταγραφούν οπτικοακουστικά και μια τέτοια συνέντευξη μπορεί να χρησιμοποιηθεί ως αποδεικτικό



στοιχείο σε ποινικές διαδικασίες.¹¹⁹ Ωστόσο, μια παρόμοια διατύπωση μπορεί να βρεθεί στο άρθρο 23 παρ. 1 PVS. Συνεπώς, εάν είναι απαραίτητο να εξασφαλιστεί η παρουσίαση δηλώσεων ή καταθέσεων χωρίς περιορισμούς, οι καταθέσεις και οι δηλώσεις ιδιαίτερα ευάλωτων θυμάτων μπορούν είτε αυτεπαγγέλτως είτε κατόπιν αιτήματος να διεξάγονται μέσω εικονοδιάσκεψης ή τηλεδιάσκεψης. Υπό αυτές τις συνθήκες, το θύμα συνοδεύεται από επαγγελματία ειδικά εκπαιδευμένο για το σκοπό αυτό. Συνεπώς, ο παρών κανονισμός ισχύει μόνο για παιδιά - θύματα που θεωρούνται θύματα με ειδικές ανάγκες προστασίας και, ως εκ τούτου ανάλογα με τις ιδιαίτερες περιστάσεις της υπόθεσης.

Τέλος, το δικαίωμα παιδιού-θύματος να συνοδεύεται από το νόμιμο εκπρόσωπό του και ένα πρόσωπο της επιλογής τους υπήρχε ήδη στη διαδικασία μεταφοράς στο εθνικό δίκαιο της πορτογαλικής νομοθεσίας (άρθρο 70, παράγραφος 3 και άρθρο 132 παράγραφος 4 PCCP).¹²⁰

4.3.4 Ισπανία

Τα Άρθρα 23 και 24 της οδηγίας για τα θύματα περιέχονται στο άρθρο 25 του νόμου 4/2015 που ονομάζεται «μέτρα προστασίας». Πράγματι, οι διατάξεις σχεδόν μεταφέρονται κατά λέξη από την οδηγία για τα θύματα. Το άρθρο 25 του νόμου 4/2015 ορίζει ότι μπορούν να ζητηθούν τα ακόλουθα μέτρα για την προστασία των θυμάτων κατά τη διάρκεια της έρευνας, ενώ τα μέτρα που αναφέρονται στα σημεία α), β) και γ) πρέπει πάντα να εφαρμόζονται στις περιπτώσεις παιδιών-θυμάτων κατά της σεξουαλικής ελευθερίας ή ασυλίας.¹²¹

α) Οι συνεντεύξεις των θυμάτων μπορούν να λάβουν μέρος σε κτίρια ειδικά σχεδιασμένα και προσαρμοσμένα για το σκοπό αυτό.

β) Οι συνεντεύξεις των θυμάτων πραγματοποιούνται με επαγγελματίες που έχουν λάβει ειδική εκπαίδευση για τη μείωση ή τον περιορισμό της βλάβης στο θύμα ή με τη βοήθεια τέτοιων επαγγελματιών.

¹¹⁹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία ευάλωτων θυμάτων σε ποινικές διαδικασίες, 63.

¹²⁰ Ibid, 66.

¹²¹ Άρθρο 23 παρ. 4, νόμος 4/2015 για τη θέση των θυμάτων εγκληματικότητας.



γ) Όλες οι δηλώσεις ενός θύματος μπορούν να ληφθούν από το ίδιο πρόσωπο, εκτός εάν αυτό μπορεί να έχει σημαντικές αρνητικές επιπτώσεις στη διεξαγωγή της διαδικασίας ή όταν η δήλωση πρέπει να ληφθεί απευθείας από δικαστή ή εισαγγελέα.

δ) Σε περίπτωση που οποιοδήποτε από τα θύματα που αναφέρονται στους αριθμούς 3 και 4 του σημείου β) από το τμήμα 2 του άρθρου 23 και τα θύματα που διακινούνται για σκοπούς σεξουαλικής εκμετάλλευσης, μπορούν να ληφθούν δηλώσεις από πρόσωπο του ίδιου φύλου με το θύμα, εάν το ζητήσει το θύμα, εκτός εάν αυτό μπορεί να έχει σημαντικό αρνητικό αντίκτυπο στη διεξαγωγή της διαδικασίας ή όταν η δήλωση πρέπει να ληφθεί απευθείας από δικαστή ή εισαγγελέα.¹²²

Η δεύτερη παράγραφος του ίδιου άρθρου ορίζει τα μέτρα προστασίας που μπορούν να επιβληθούν κατά τη διάρκεια της δίκης σύμφωνα με τους ισπανικούς κανόνες ποινικής δικονομίας, ενώ τα δύο πρώτα σημεία μπορούν επίσης να εφαρμοστούν στο στάδιο της έρευνας:

α) «Μέτρα για την αποφυγή της οπτικής επαφής μεταξύ του θύματος και του φερόμενου παραβάτη, ακόμη και κατά την υποβολή αποδεικτικών στοιχείων, για τα οποία μπορούν να χρησιμοποιηθούν τεχνολογίες επικοινωνίας

β) Μέτρα για να εξασφαλίσουν την ακρόαση του θύματος χωρίς να είναι παρόν στην αίθουσα του δικαστηρίου, χρησιμοποιώντας τις κατάλληλες τεχνολογίες επικοινωνίας

γ) Μέτρα για την αποφυγή ερωτημάτων που αφορούν την ιδιωτική ζωή του θύματος και τα οποία δεν σχετίζονται με το αδίκημα, εκτός από εξαιρετικές περιπτώσεις κατά τις οποίες ο δικαστής ή το δικαστήριο θεωρεί ότι πρέπει να δοθεί απάντηση για την επαρκή αξιολόγηση των γεγονότων ή της αξιοπιστίας της δήλωσης του θύματος.

δ) Διεξαγωγή ιδιωτικής προφορικής ακρόασης. Στις περιπτώσεις αυτές, ο δικαστής ή ο προεδρεύων δικαστής μπορεί, ωστόσο, να επιτρέψει την παρουσία προσώπων που μπορούν να αποδείξουν ότι έχουν ιδιαίτερο ενδιαφέρον για την υπόθεση».¹²³

Τα μέτρα που καθορίζονται από το άρθρο 24 της ΟΘ σχετικά με το δικαίωμα προστασίας παιδιών-θυμάτων κατά τη διάρκεια ποινικών διαδικασιών ενσωματώνονται μέσω του άρθρου 25 παρ. 3 του Ν. 4/2015. Με

¹²² Άρθρο 25, παρ. 1, Νόμος 4/2015 για τη θέση των θυμάτων του εγκλήματος.

¹²³ Άρθρο 15, παρ. 1, Νόμος 4/2015 για τη θέση των θυμάτων του εγκλήματος.

την επέκταση του πεδίου εφαρμογής της οδηγίας για τα θύματα, ο νόμος αυτός ισχύει και για τα άτομα με ειδικές ανάγκες που χρειάζονται ειδική προστασία. Επιπλέον, σύμφωνα με τον ισπανικό κώδικα ποινικής δικονομίας (SCCP)¹²⁴, το άρθρο 26 του νόμου για τη θέση των θυμάτων εγκληματικότητας ορίζει ότι οι δηλώσεις που λαμβάνονται κατά τη φάση της έρευνας πρέπει - σε περίπτωση παιδιών-θυμάτων ή ατόμων με αναπηρία που χρειάζονται ειδική προστασία - να καταγράφονται με οπτικοακουστικά μέσα και μπορούν να παίζονται ενώπιον του δικαστηρίου στις υποθέσεις και υπό τις προϋποθέσεις που καθορίζει η ΕΕΚΠ(SCCP). Για το σκοπό αυτό, η εθνική νομοθεσία απαιτεί να δοθεί η δέουσα προσοχή στην προστασία του παιδιού ή του εφήβου κατά τη διάρκεια συνεντεύξεων και, παράλληλα με την κατάθεση μαρτυρίας, πρέπει να αποφευχθεί η οπτική επαφή με τον κατηγορούμενο και να πρέπει να παρέχονται οθόνες για τη διευκόλυνση αυτού του μέτρου.

Τέλος, η παράγραφος 2 του άρθρου 25 του νόμου 4/2015 καθορίζει υπό ποια μέτρα ο δικαστής έχει διορίσει κηδεμόνα για το θύμα που εκπροσωπεί κατά την έρευνα και την ποινική διαδικασία. Το τελευταίο ισχύει, αν ο εισαγγελέας κρίνει ότι υπάρχει σύγκρουση συμφερόντων μεταξύ του παιδιού-θύματος και του νόμιμου αντιπροσώπου του, μεταξύ άλλων. Συνεπώς, τα μέτρα της ισπανικής εθνικής νομοθεσίας μεταφέρουν πλήρως την οδηγία για τα θύματα στην ισπανική νομοθεσία.

4.3.5 Αγγλία και Ουαλία

Ενώ όλα τα κράτη μέλη που αξιολογήθηκαν στο πλαίσιο αυτής της έκθεσης εφάρμοσαν διατάξεις που διασφαλίζουν συγκεκριμένα τα δικαιώματα παιδιών-θυμάτων εγκληματικότητας, ο Κώδικας των θυμάτων διαχωρίζει φανερά τα δικαιώματα που χορηγούνται στους ενήλικες¹²⁵ και στα παιδιά σε δύο κεφάλαια.¹²⁶ Το Κεφάλαιο 3, το οποίο περιλαμβάνει τους κανονισμούς σχετικά με τα παιδιά και τους νέους, χωρίζεται περαιτέρω σε Μέρος Α: Δικαιώματα για Παιδιά και Νέους και Μέρος Β: Καθήκοντα των παρόχων υπηρεσιών για Παιδιά και Νέους. Επιπλέον, τα παιδιά μπορούν να λάβουν ενισχυμένα δικαιώματα τα οποία καθορίζονται στο Κεφάλαιο 1. Συνολικά, ο Κώδικας επιβάλλει την χορήγηση της πλειοψηφίας των

¹²⁴ Ισπανικό κώδικα ποινικής δικονομίας, https://www.imolin.org/imolin/amlid/data/spa/document/criminal_procedure_code.html (Spanish).

¹²⁵ Κεφάλαιο 2, Μέρος Α και Β, Κώδικας των θυμάτων.

¹²⁶ Κεφάλαιο 3, Μέρος Α και Β, Κώδικας των θυμάτων.



δικαιωμάτων της οδηγίας στα θύματα με ειδικές ανάγκες προστασίας. Στις περισσότερες περιπτώσεις, τα δικαιώματα αυτά επεκτείνονται σε όλα τα θύματα εγκληματικότητας.

Ο Κώδικας των θυμάτων δεν περιλαμβάνει καμία διάταξη σχετικά με τη δυνατότητα διορισμού αντιπροσώπου σε περίπτωση σύγκρουσης συμφερόντων μεταξύ των ασκούντων γονικής μέριμνας και του παιδιού σύμφωνα με το άρθρο 24 παρ. 1β ΟΘ.¹²⁷ Επίσης, δεν περιλαμβάνει μέτρα μεταφοράς στο άρθρο 24 παρ. 1γ, δηλαδή, εάν το παιδί έχει δικαίωμα σε δικηγόρο, θα πρέπει να του παρέχεται το δικαίωμα σε νομικές συμβουλές και εκπροσώπηση στο δικό του όνομα.

Κατά τη διάρκεια της αστυνομικής έρευνας, τα παιδιά - θύματα εγκληματικότητας έχουν το δικαίωμα η συνέντευξη να διεξαχθεί κατά τρόπο σχεδιασμένο ή προσαρμοσμένο για το σκοπό αυτό σύμφωνα με το άρθρο 23 παρ. 2α' ΟΘ.¹²⁸ Παρόλο που ο Κώδικας των θυμάτων προβλέπει μόνο ένα τέτοιο δικαίωμα για τα θύματα με ειδικές ανάγκες προστασίας, ο Κώδικας των θυμάτων διευρύνει αυτό το δικαίωμα για όλα τα θύματα εγκληματικότητας. Επιπλέον, κατά την συνέντευξη ενός παιδιού - θύματος - ή οποιουδήποτε άλλου θύματος - η αστυνομία πρέπει να λάβει υπόψη το έγγραφο καθοδήγησης «Επίτευξη των καλύτερων αποδεικτικών στοιχείων σε ποινικές διαδικασίες»¹²⁹ και να εξασφαλίσει ότι η συνέντευξη διεξάγεται από κατάλληλα εκπαιδευμένο επαγγελματία ο οποίος λαμβάνει υπόψη τις ανάγκες και τις απόψεις του θύματος με στόχο την ελαχιστοποίηση του άγχους του.¹³⁰ Παρόλο που το έγγραφο καθοδήγησης «Επίτευξη καλύτερων αποδεικτικών στοιχείων σε ποινικές διαδικασίες» δεν αποτελεί νομικά δεσμευτικό κώδικα συμπεριφοράς, περιγράφει ορθές πρακτικές σε συνεντεύξεις με μάρτυρες και θύματα και πρέπει να βοηθήσει όλα τα πρόσωπα που εμπλέκονται στις έρευνες - συμπεριλαμβανομένης της αστυνομίας, των κοινωνικών λειτουργών, των δικαστών και δικηγόρων - στην προετοιμασία και διεξαγωγή συνεντεύξεων.¹³¹

¹²⁷ See Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία ευάλωτων θυμάτων σε ποινικές διαδικασίες, 70 - 71, για ακριβή επισκόπηση των άρθρων της ΟΘ σε σχέση με τις αντίστοιχες διατάξεις του κώδικα των θυμάτων.

¹²⁸ Κεφάλαιο 3, Μέρος Β 1.2 με αναφορά στο Κεφάλαιο 2 Μέρος Α 1.8 Κωδικός Θυμάτων.

¹²⁹ Υπουργείο Δικαιοσύνης του Ηνωμένου Βασιλείου, για την επίτευξη των καλύτερων αποδεικτικών στοιχείων σε ποινικές διαδικασίες: καθοδήγηση σχετικά με τη συνέντευξη σε θύματα και μάρτυρες και καθοδήγηση σχετικά με τη χρήση ειδικών μέτρων, Μάρτιος 2011,

https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf

¹³⁰ Κεφάλαιο 3, Μέρος Β 1.5 σε σχέση με το κεφάλαιο 2 Μέρος Β 1.5 Κώδικας των θυμάτων..

¹³¹ Το έγγραφο καθοδήγησης "Η επίτευξη των καλύτερων αποδεικτικών στοιχείων σε ποινικές διαδικασίες" αναφέρθηκε ως πολλά υποσχόμενη πρακτική σε πρόσφατη έκθεση του FRA σχετικά με τη φιλική δικαιοσύνη προς τα παιδιά. Οργανισμός Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, φιλική δικαιοσύνη προς τα παιδιά: προοπτικές και εμπειρίες των επαγγελματιών σχετικά με τη συμμετοχή των παιδιών στις αστικές και ποινικές δικαστικές διαδικασίες σε 10 κράτη μέλη της ΕΕ, το 2015.



Τα παιδιά-θύματα - καθώς και όλα τα άλλα θύματα - έχουν το δικαίωμα να έχουν το ίδιο πρόσωπο, όπου είναι δυνατόν, για τη διεξαγωγή όλων των συνεντεύξεων. Η διάταξη αυτή δεν εφαρμόζεται, ωστόσο, στην περίπτωση που επρόκειτο να επηρεάσει τον ορθό χειρισμό της έρευνας.¹³² Επιπλέον, τα παιδιά - θύματα - και όλα τα άλλα θύματα - σεξουαλικής βίας, βίας λόγω φύλου ή οικογενειακής βίας των οποίων η αστυνομία θα διεξάγει την συνέντευξη έχουν το δικαίωμα να έχουν ένα άτομο του ίδιου φύλου για τη διεξαγωγή της συνέντευξης στην περίπτωση που επρόκειτο να επηρεάσει τον ορθό χειρισμό της έρευνας.¹³³

Όσον αφορά στα ειδικά μέτρα που πρέπει να διατίθενται σύμφωνα με το άρθρο 23 παρ. 3 ΟΘ, ο Κώδικας των θυμάτων πληροί όλες τις απαιτήσεις: Υπάρχουν διάφορα ειδικά μέτρα που διασφαλίζουν την προστασία των ειδικών αναγκών προστασίας των θυμάτων κατά τη διάρκεια δικαστικών διαδικασιών. Για παράδειγμα, τα μέτρα για την αποφυγή της οπτικής επαφής μεταξύ θυμάτων και παραβατών ρυθμίζονται στο Κεφάλαιο 1 του Κώδικα των θυμάτων. Αυτά τα μέτρα εξαρτώνται από τις ατομικές ανάγκες του θύματος και καθορίζονται κατά την ατομική αξιολόγηση. Ενώ το θύμα δικαιούται να ζητήσει ένα τέτοιο ειδικό μέτρο, το δικαστήριο αποφασίζει εάν πρέπει να εφαρμοστεί ένα από τα ακόλουθα μέτρα:

- «Παραβάν/κουρτίνες στην αίθουσα του δικαστηρίου, οπότε ο μάρτυρας δεν χρειάζεται να δει τον εναγόμενο και, σε ορισμένες περιπτώσεις, το θεωρείο του κοινού.
- Μια ζωντανή τηλεοπτική σύνδεση που επιτρέπει σε έναν μάρτυρα να παράσχει αποδείξεις μακριά από την αίθουσα του δικαστηρίου. Αυτό θα μπορούσε να γίνει από ένα ξεχωριστό δωμάτιο μέσα στο δικαστήριο, ή από έναν ειδικό χώρο ζωντανής σύνδεσης έξω από το κτίριο του δικαστηρίου.
- Αποδεικτικά στοιχεία κατ'ιδίαν - το θεωρείο του κοινού μπορεί να αποχωρίσει σε περιπτώσεις σεξουαλικού αδικήματος, εμπορίας ανθρώπων ή όταν το δικαστήριο είναι πεπεισμένο ότι κάποιος άλλος πέρα από τον κατηγορούμενο μπορεί να επιχειρήσει να εκφοβίσει τον μάρτυρα.
- Αφαίρεση περουκών και ρόμπες από δικαστές, συνηγόρους υπεράσπισης και εισαγγελείς.
- Οι καταγεγραμμένες δηλώσεις σε βίντεο - αυτές επιτρέπουν στον μάρτυρα να χρησιμοποιήσει προεγγεγραμμένα βίντεο ως το κύριο αποδεικτικό στοιχείο στη δίκη του.»¹³⁴

¹³² Κεφάλαιο 3, Μέρος Β 1.2 με αναφορά στο Κεφάλαιο 2 Μέρος Α 1.8 Κωδικός Θυμάτων.

¹³³ Κεφάλαιο 3, Μέρος Β 1.2. με αναφορά με το Κεφάλαιο 2 Μέρος Α 1.8 Κώδικα των Θυμάτων..

¹³⁴ Κεφάλαιο 1, 1.13 Κώδικας των θυμάτων.



Επιπλέον, υπάρχει το ενδεχόμενο ένας εγγεγραμμένος διαμεσολαβητής να βοηθήσει τους ευάλωτους μάρτυρες ώστε να παρουσιάσουν καλύτερα τα αποδεικτικά στοιχεία στο δικαστήριο ή στην αστυνομία, εάν υπάρχει δυσκολία επικοινωνίας.¹³⁵ Ο διαμεσολαβητής πρέπει να έχει εγκριθεί από το δικαστήριο, έχει κοινωνικό ή νομικό υπόβαθρο και λειτουργεί ως σύνδεσμος μεταξύ του παιδιού και των επαγγελματιών.¹³⁶ Στις περιπτώσεις που χρησιμοποιείται εγγεγραμμένος διαμεσολαβητής, οι εμπλεκόμενοι επαγγελματίες συμφωνούν σε βασικούς κανόνες για τον τύπο των ερωτήσεων που θα ζητηθούν από ένα παιδί κατά την προδικαστική ακρόαση.¹³⁷

Εάν ένα παιδί-θύμα παραχωρήσει αποδεικτικά στοιχεία μέσω προεγγεγραμμένης μαρτυρίας, μπορούν να του τεθούν πρόσθετες ερωτήσεις μέσω διασταυρούμενης εξέτασης: ένα νομικό μέτρο στο οποίο το παιδί-θύμα βρίσκεται σε διαφορετικό δωμάτιο χρησιμοποιώντας μια τηλεοπτική σύνδεση μέσω του οποίου μπορεί να παράσχει αποδείξεις μακριά από το δικαστικό μέγαρο.¹³⁸ Επίσης είναι πιθανό να μη χρειάζονται περαιτέρω ερωτήσεις και να μη χρειάζεται να πραγματοποιηθεί συνέντευξη στο δικαστήριο.¹³⁹

Η Βασιλική Εισαγγελία πρέπει να αντιμετωπίζει όλα τα θύματα με σεβασμό. Εάν κριθεί απαραίτητο, το δικαστήριο θα παρέμβει όταν θεωρήσει ότι μια διασταυρούμενη εξέταση είναι ακατάλληλη ή επιθετική.¹⁴⁰ Επίσης, ένα θύμα δικαιούται να επισκεφθεί το δικαστήριο πριν από την ημερομηνία της δίκης για να εξοικειωθεί με το κτίριο και την αίθουσα πριν από τη δίκη.¹⁴¹ Συγκεκριμένα, παρουσιάζεται στα παιδιά-θύματα η ξεχωριστή είσοδός τους, η αίθουσα του δικαστηρίου, η αίθουσα αναμονής του μάρτυρα καθώς και η αίθουσα στην οποία θα πραγματοποιηθεί η συνέντευξη μέσω ζωντανής σύνδεσης.¹⁴² Αυτές οι επισκέψεις διοργανώνονται από τις Μονάδες Φροντίδας Μάρτυρα που συνεργάζονται με την υπηρεσία μαρτύρων που εδρεύει στο δικαστήριο.¹⁴³ Στις περιπτώσεις που η ηλικία του θύματος είναι αβέβαιη και

¹³⁵ Κεφάλαιο 1, 1.15 Κώδικας των θυμάτων.

¹³⁶ Οργανισμός Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, φιλική δικαιοσύνη για τα παιδιά: προοπτικές και εμπειρίες επαγγελματιών σχετικά με τη συμμετοχή των παιδιών στις αστικές και ποινικές διαδικασίες σε 10 κράτη μέλη της ΕΕ, 2015, 24.

¹³⁷ Η πρακτική αυτή αναφέρθηκε ως μια πολλά υποσχόμενη πρακτική σε μια έκθεση του FRA για το 2015.

¹³⁸ Κεφάλαιο 3, Μέρος Α 3.1 Κωδικός θυμάτων.

¹³⁹ Κεφάλαιο 3, Μέρος Α 1.3 Κωδικός θυμάτων.

¹⁴⁰ Κεφάλαιο 3, Μέρος Α 3.1 Κωδικός θυμάτων.

¹⁴¹ Κεφάλαιο 3, Μέρος Β 1.2. με αναφορά στο Κεφάλαιο 2 Μέρος Α 2.14..

¹⁴² Οργανισμός Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, φιλική δικαιοσύνη για τα παιδιά: προοπτικές και εμπειρίες των επαγγελματιών σχετικά με τη συμμετοχή των παιδιών στις αστικές και ποινικές δικαστικές διαδικασίες σε 10 κράτη μέλη της ΕΕ, 2015, 63.

¹⁴³ Οργανισμός Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, φιλική δικαιοσύνη για τα παιδιά: προοπτικές και εμπειρίες των επαγγελματιών σχετικά με τη συμμετοχή των παιδιών στις αστικές και ποινικές δικαστικές διαδικασίες σε 10 κράτη μέλη της ΕΕ, 2015, 34.



υπάρχουν λόγοι να πιστεύεται ότι το άτομο είναι κάτω των 18 ετών, ο Κώδικας των θυμάτων καθορίζει ότι το άτομο πρέπει θεωρηθεί ότι είναι κάτω των 18.¹⁴⁴

Τέλος, υπάρχει η δυνατότητα για τα θύματα να κάνουν μια «προσωπική δήλωση θύματος» (Victim PS) μαζί με την μαρτυρία τους.¹⁴⁵ Η προσωπική δήλωση θύματος πρέπει να δίνει στα θύματα την ευκαιρία να καταγράψουν πώς το έγκλημα επηρέασε τους ίδιους και την οικογένειά τους. Από την άλλη, η μαρτυρία καλύπτει μόνο όσα συνέβησαν στο έγκλημα. Ενώ η δήλωση αυτή (Victim PS) δεν μπορεί να αλλάξει, ένα θύμα έχει το δικαίωμα να παράσχει μια άλλη δήλωση (Victim PS) ανά πάσα στιγμή πριν από την καταδίκη. Τα θύματα ενός σοβαρού εγκλήματος, επίμονα στοχοποιημένα ή ευάλωτα ή εκφοβισμένα έχουν το δικαίωμα να κάνουν μια δήλωση (Victim PS) ανεξάρτητα από την υποβολή μαρτυρίας. Η δήλωση θα εξεταστεί από το δικαστήριο μόνον αφού ο δράστης κριθεί ένοχος και βοηθά στη διευκρίνιση της σωματικής και ψυχολογικής βλάβης που προκλήθηκε από το αδίκημα.¹⁴⁶

4.4. Πρόσβαση και υποστήριξη από υπηρεσίες υποστήριξης των θυμάτων (άρθρο 8-9 ΟΘ)

4.4.1 Φινλανδία

Γενικά, κάθε θύμα έχει το δικαίωμα να έχει νομικό σύμβουλο για να τον υποστηρίξει όταν καταγγέλλει ένα έγκλημα, κατά τη διάρκεια της ποινικής έρευνας, και κατά τη διάρκεια της δίκης.¹⁴⁷ Συνήθως ο δικηγόρος πρέπει να πληρώνεται από το θύμα αλλά υπάρχουν δύο περιπτώσεις υπό τις οποίες μπορεί να χορηγηθεί ευεργέτημα πενίας σε θύμα ή μπορεί να διοριστεί νομικός σύμβουλος: Νομική βοήθεια ή διορισμός νομικού συμβούλου για θύματα ορισμένων εγκληματικών πράξεων.

1. Το κατά πόσον και σε ποιο βαθμό χορηγείται ευεργέτημα πενίας εξαρτάται από το « εισόδημα, τις δαπάνες, τον πλούτο και την ευθύνη συντήρησης του θύματος». ¹⁴⁸ Ανάλογα με την οικονομική

¹⁴⁴ Κεφάλαιο 5, 1.46 Κώδικας των θυμάτων.

¹⁴⁵ Εισαγγελέας του Στέμματος, Προσωπικές δηλώσεις θύματος: Νομική καθοδήγηση, <https://www.cps.gov.uk/legal-guidance/victim-personal-statements>

¹⁴⁶ Υποστήριξη θυμάτων, Προσωπικές δηλώσεις θυμάτων, <https://www.victimsupport.org.uk/help-and-support/your-rights/victim-personal-statements>

¹⁴⁷ Δείτε το κεφάλαιο 4, ενότητα 10FCIA

¹⁴⁸ Okieus, Δοκιμές μέσων,

<https://oikeus.fi/en/index/esitteet/oikeusapu/millatuloillaoikeusapumyonnetaanjamitkamenothuomioidaan.html>



κατάσταση του θύματος, το κράτος μπορεί να παράσχει ένα μέρος ή ολόκληρη τη δικηγορική αμοιβή.¹⁴⁹ Τα θύματα μπορούν να υποβάλουν αίτηση για ευεργέτημα πενίας σε όλες τις κρατικές υπηρεσίες παροχής νομικής βοήθειας, μέσω διαδικτύου ή να ζητήσουν από ένα δικηγορικό γραφείο να το πράξει γι' αυτούς.¹⁵⁰

2. Σε περίπτωση θύματος ενδοοικογενειακής βίας, σεξουαλικού εγκλήματος ή σοβαρού εγκλήματος κατά της ζωής, της υγείας ή της ελευθερίας, το δικαστήριο μπορεί να ορίσει νομικό σύμβουλο για το θύμα (Κεφάλαιο 2, Τμήμα 1α FCPA).¹⁵¹ Στις περιπτώσεις αυτές, ο διορισμός του νομικού συμβούλου δεν εξαρτάται από το εισόδημα του θύματος αλλά η δικηγορική αμοιβή καταβάλλεται από το κράτος.¹⁵² Επιπλέον, σε αυτές τις περιπτώσεις, το δικαστήριο μπορεί να διορίσει κάποιον να υποστηρίζει του προσώπου που υπέστη βλάβη. Το πρόσωπο αυτό θα πρέπει να παρέχει προσωπική υποστήριξη κατά τη διάρκεια της ποινικής έρευνας και της δίκης καθώς και να βοηθά το θύμα σε θέματα που προκύπτουν σχετικά με την επίλυση της υπόθεσης (Κεφάλαιο 2, Τμήμα 9 FCPA)

Ανάλογα με την περίπτωση, ο επικεφαλής ερευνητής ή ο εισαγγελέας πρέπει να υποβάλει αίτηση στο δικαστήριο για το διορισμό νομικού συμβούλου ή υποστηρικτικού προσώπου πριν από την πραγματοποίηση της ακρόασης κατά την ποινική έρευνα (Κεφάλαιο 4, Τμήμα 10, Υποτμήμα 2 FCIA). Συγκεκριμένα, αυτό συμβαίνει εάν ένα άτομο μπορεί να έχει πέσει θύμα βίας συντρόφου, σεξουαλικού εγκλήματος ή σοβαρού εγκλήματος κατά της ζωής, της υγείας ή της ελευθερίας.

Παρόλο που το δικαίωμα πρόσβασης στις υπηρεσίες υποστήριξης των θυμάτων υπήρχε ήδη πριν από τη μεταφορά της οδηγίας για τα θύματα στη φινλανδική νομοθεσία, παρατάθηκαν αρκετές διατάξεις. Προστέθηκε μια διάταξη στο Κεφάλαιο 4 Τμήμα 10 FICA σύμφωνα με την οποία οι ανάγκες ειδικής προστασίας του αιτούντος και τα προσωπικά του χαρακτηριστικά είναι πλέον ένας λόγος επί του οποίου ο υπεύθυνος της προκαταρκτικής έρευνας πρέπει να στείλει τα στοιχεία επαφής των ζημιωθέντων σε έναν πάροχο υποστήριξης θυμάτων.

¹⁴⁹ Πληροφορίες σχετικά με το κόστος της ευεργετήματος πενίας και των εκπτώσεων μπορείτε να βρείτε στο Oikeus, Πληροφορίες για τη νομική βοήθεια, <https://oikeus.fi/en/index/esitteet/oikeusapu/mitaoikeusapuhakijajallemaksaa.html>

¹⁵⁰ Φινλανδικό Υπουργείο Δικαιοσύνης, Δικαιώματα θύματος εγκληματικότητας, 1.3.2017

¹⁵¹ Ibid.

¹⁵² Φινλανδικό Υπουργείο Δικαιοσύνης, Δικαιώματα θύματος εγκληματικότητας, 1.3.2017; βλ. επίσης Oikeus, ευεργετήματος πενίας, <https://oikeus.fi/oikeusapu/en/index.html>



Άλλες διατάξεις σχετικά με την πρόσβαση στις υπηρεσίες υποστήριξης των θυμάτων καθορίζονται στον νόμο για τα χρηματική ποινή υπέρ του θύματος¹⁵³ ο οποίος ήταν ο μόνος νέος νόμος που θεσπίστηκε στη διαδικασία μεταφοράς της οδηγίας για τα θύματα.¹⁵⁴ Η χρηματική ποινή υπέρ του θύματος είναι τα χρήματα που καταβάλλει ο διωκόμενος δράστης για τη χρηματοδότηση των υπηρεσιών υποστήριξης των θυμάτων.¹⁵⁵ Με αυτόν τον νέο νόμο, η Φινλανδία ακολούθησε μια σύσταση της Ευρωπαϊκής Επιτροπής, η οποία πρότεινε την εφαρμογή χρηματικής ποινής υπέρ των θυμάτων για τη χρηματοδότηση των γενικών υπηρεσιών θύματος που απαιτεί η οδηγία για τα θύματα.¹⁵⁶ Άλλη ισχύουσα νομοθεσία περιλαμβάνει τον νόμο περί ευεργετήματος πενίας (257/2002) και τις μεταγενέστερες τροποποιήσεις του και το κυβερνητικό διάταγμα για τα ευεργέτημα πενίας (388/2002) και τις μεταγενέστερες τροπολογίες του (997/2004, 1208/2005, 867/2007 και 1008/2009)

4.4.2 Γερμανία

Στη Γερμανία υπάρχουν δύο μορφές υποστήριξης των θυμάτων κατά τη διάρκεια δικαστικών διαδικασιών: νομική και ψυχοκοινωνική υποστήριξη, όπου η δεύτερη εισήχθη κατά τη διαδικασία μεταφοράς της οδηγίας για τα θύματα. Επιπλέον, υπάρχουν ορισμένες προϋποθέσεις υπό τις οποίες χορηγείται στο θύμα ευεργέτημα πενίας.

Σε αυτό το πλαίσιο, είναι σημαντικό να σημειωθεί ότι κάθε πρόσωπο που έχει δικαίωμα να συμμετάσχει στη διαδικασία ως συνενάγων σύμφωνα με το άρθρο 395 GCCP, θεωρείται επίσης θύμα στο πεδίο εφαρμογής του GCCP. Ως αποτέλεσμα, θεωρούνται θύματα και τα συγκεκριμένα μέλη της οικογένειας ενός προσώπου, του οποίου ο θάνατος προκλήθηκε από ποινικό αδίκημα (παιδιά, γονείς, αδέρφια, σύζυγος ή σύντροφος) σύμφωνα με το άρθρο 395 παρ. 2 GCCP και επομένως μπορεί να έχει δωρεάν πρόσβαση σε νομική και ψυχοκοινωνική υποστήριξη.¹⁵⁷

¹⁵³ FINLEX,

Πράξη για τα τέλη θύματος, 22.5.2015/669, <https://www.finlex.fi/fi/laki/ajantasa/2015/20150669> (Finnish)

¹⁵⁴ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Συγκριτική νομική έρευνα: Δικαιώματα και προστασία ευάλωτων θυμάτων σε ποινικές διαδικασίες, 70 - 71, για ακριβή επισκόπηση των άρθρων της οδηγίας για την υγεία σε σχέση με τις αντίστοιχες διατάξεις του κώδικα των θυμάτων, 23.

¹⁵⁵ Riku, Τι είναι τέλη θύματος?, <https://www.riku.fi/en/frequently+asked+questions/what+is+a+victim+charge/>

¹⁵⁶ Ibid.

¹⁵⁷ Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren

(3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, 22, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (German).



Παρότι σύμφωνα με το άρθρο 406f GCCP όλοι οι ζημιωθέντες έχουν το δικαίωμα να εκπροσωπούνται από δικηγόρο ("Verletztenbeistand"), υπάρχουν και άλλοι παράγοντες που καθορίζουν εάν το θύμα έχει πρόσβαση σε δικηγόρο δωρεάν, για παράδειγμα, αν έχει δικαίωμα συμμετοχής στη διαδικασία ως συν-ενάγων.¹⁵⁸ Ειδικότερα, ο νόμος προβλέπει ότι τα θύματα έχουν δικαίωμα δωρεάν αντιπροσώπευσης: (άρθρο 397α του GCCP):

- σε περιπτώσεις ιδιαίτερα σοβαρών εγκλημάτων, όπως π.χ. σεξουαλική κακοποίηση παιδιών, σεξουαλική επίθεση και βιασμός, σωματεμπορία με σκοπό τη σεξουαλική και εργατική εκμετάλλευση και απόπειρα δολοφονίας.¹⁵⁹
- εάν ένα αδίκημα έχει ήδη οδηγήσει - ή αναμένεται να οδηγήσει - σε σοβαρές σωματικές ή πνευματικές βλάβες και εμπίπτει στα Άρθρα 226, 226α, 234-235, 238-239β, 250, 252, 31α GCCP. Στα εγκλήματα αυτά συγκαταλέγονται, μεταξύ άλλων: σοβαρή επίθεση, ληστεία, απαγωγή, στέρηση ελευθερίας ανηλίκων, σοβαρή παρακολούθηση, εγκληματική στέρηση της ελευθερίας.
- στην περίπτωση παιδιών-θυμάτων εγκληματικότητας ή θυμάτων που δεν μπορούν να ασκήσουν επαρκώς τα δικαιώματά τους, εάν το έγκλημα αποτελεί σεξουαλικό αδίκημα, εκμετάλλευση ιερόδουλων, αναστολή, κακομεταχείριση στρατιωτικών σωμάτων, σοβαρό σωματικό τραυματισμό, μεταξύ άλλων.¹⁶⁰

Αν στο θύμα δεν έχει χορηγηθεί δωρεάν νομική εκπροσώπηση σύμφωνα με το άρθρο. 397α του GCCP, τότε μπορεί να του χορηγηθεί ευεργέτημα πενίας σύμφωνα με τους κανονισμούς του γερμανικού αστικού δικαίου (άρθρο 397α παράγραφος 2 του GCCP). Το δικαίωμα αυτό εξαρτάται από την οικονομική κατάσταση και το εισόδημα των θυμάτων ή από τις ιδιαίτερες συνθήκες της υπόθεσης.

Επιπλέον, κατά τη διάρκεια της διαδικασίας μεταφοράς της οδηγίας για τα θύματα, το δικαίωμα στην ψυχοκοινωνική υποστήριξη ("psychosoziale Prozessbegleitung")¹⁶¹ κατοχυρώθηκε στο Άρθ. 406g GCCP - το οποίο αποτελούσε τη μόνη διάταξη η οποία τέθηκε σε ισχύ στις 1η Γενάρη 2017.¹⁶² Επιπρόσθετα,

¹⁵⁸ Αυτά είναι π.χ. εγκλήματα κατά της σεξουαλικής αυτοδιάθεσης, έναντι τιμής, σωματικής ακεραιότητας, προσωπικής ελευθερίας, απόπειρα ανθρωποκτονίας;

¹⁵⁹ Αρθ.. 177, 179, 232-232b, 233a GCCP.

¹⁶⁰ Αρθ.. 174-182, 184i, 184j and 225 GCCP (εάν το θύμα ήταν κάτω των 18 ετών κατά τη στιγμή της παράβασης); Αρθ.. 221, 226, 226. 232-235, 237, 238 παρα.. 2 and 3; 239, 239b, 240 παρα. 4, 249, 250, 252, 255 and 316 GCCO (εάν το θύμα ήταν κάτω των 18 ετών κατά τη στιγμή της παράβασης).

¹⁶¹ Μια ψυχοκοινωνική στήριξη πρέπει να διαχωρίζεται αυστηρά από οποιαδήποτε νομική υποστήριξη σύμφωνα με το άρθρο. 2 παρ. 2 PsychPbG.

¹⁶² Bundesministerium der Justiz und für Verbraucherschutz, Opferhilfe und Opferschutz im Strafverfahren, 16.11.2017, https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (German).



θεσπίστηκε νέος νόμος του ψυχοκοινωνικού υποστηρικτή σε ποινικές διαδικασίες, ο οποίος ρυθμίζει τις αρχές καθώς και τις απαιτήσεις για την αναγνώριση των ψυχοκοινωνικών υποστηρικτών 163 (παρά.2 leg. cit.). Ο ψυχοκοινωνικός υποστηρικτής μπορεί να είναι παρών κατά τη διάρκεια των συνεντεύξεων με το θύμα καθώς και σε όλες τις δικαστικές διαδικασίες.

Στις ακόλουθες περιπτώσεις, το δικαστήριο πρέπει να διαθέσει έναν ψυχοκοινωνικό υποστηρικτή στο θύμα, εάν το θύμα το ζητήσει:

- Παιδιά - θύματα εγκληματικής πράξης ή θύματα που δεν μπορούν να ασκήσουν επαρκώς τα δικαιώματά τους, σε περιπτώσεις σεξουαλικών αδικημάτων, εκμετάλλευσης ιερόδουλων, αναστολής, κακομεταχείρισης στρατιωτικών σωμάτων, σοβαρών σωματικών βλαβών, μεταξύ άλλων.¹⁶⁴
- Εάν το απαιτεί η ειδική προστασία του θύματος, σε περίπτωση ιδιαίτερων σοβαρών εγκλημάτων. όπως η σεξουαλική κακοποίηση παιδιών, η σεξουαλική επίθεση και ο βιασμός, η σωματεμπορία για σεξουαλική και εργατική εκμετάλλευση, και η απόπειρα δολοφονίας.¹⁶⁵
- Εάν η ειδική ανάγκη προστασίας του θύματος το απαιτεί, σε περίπτωση ορισμένων άλλων ποινικών αδικημάτων¹⁶⁶ που έχουν ήδη οδηγήσει - ή αναμένεται να οδηγήσουν - σε σοβαρές σωματικές ή πνευματικές βλάβες του θύματος. Οι τελευταίες περιλαμβάνουν μεταξύ άλλων: σοβαρή επίθεση, ληστεία, απαγωγή, στέρηση ελευθερίας ανηλίκων, σοβαρή καταδίωξη, εγκλήματα στέρησης της ελευθερίας.

Ενώ διάφοροι ενδιαφερόμενοι υποδέχτηκαν θετικά τις νέες διατάξεις για το ψυχοκοινωνικό υποστηρικτή, άλλοι τον επέκριναν: Συγκεκριμένα, υπάρχει ο φόβος ότι η «καθοδήγηση μαρτύρων» θα μπορούσε να επηρεάσει τη μαρτυρία του θύματος.¹⁶⁷

Τέλος, ο γερμανικός Ομοσπονδιακός Νόμος για την προστασία του παιδιού ρυθμίζει την προστασία των παιδιών στη Γερμανία σε ομοσπονδιακό επίπεδο. Αποτέλεσμα της προσπάθειας ήταν να εντοπιστούν και να καλυφθούν τα κενά στην προστασία των παιδιών στη Γερμανία. Μεταξύ άλλων, ρυθμίζει την ανάπτυξη,

¹⁶³ Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren vom 21. Dezember 2015 (BGBl. I S. 2525, 2529), (PsychPbG), https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (German)

¹⁶⁴ Art. 174-182, 184i, 184j and 225 GCCP (εάν το θύμα ήταν κάτω των 18 ετών κατά τη στιγμή της παράβασης) αρθ. 221, 226, 226. 232-235, 237, 238 παρα. 2 and 3; 239, 239b, 240 παρα. 4, 249, 250, 252, 255 and 316 GCCO (εάν το θύμα ήταν κάτω των 18 ετών κατά τη στιγμή της παράβασης)

¹⁶⁵ Αρθ. 177, 179, 232-232b, 233a GCCP.

¹⁶⁶ Αρθ. 226, 226a, 234-235, 238-239b, 250, 252, 31a GCCP

¹⁶⁷ Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, 344.



εφαρμογή και αναθεώρηση προτύπων για την εξασφάλιση των δικαιωμάτων των παιδιών και των εφήβων στα ιδρύματα και την προστασία τους από τη βία.¹⁶⁸

4.4.3 Πορτογαλία

Στην Πορτογαλία, το δικαίωμα των θυμάτων στο ευεργέτημα πενίας καθορίζεται στο πορτογαλικό σύνταγμα, το οποίο ορίζει ότι «Κανείς δεν μπορεί να στερηθεί την πρόσβαση στη δικαιοσύνη εξαιτίας της έλλειψης επαρκών οικονομικών μέσων» (άρθρο 20 παρ. 1 του πορτογαλικού Συντάγματος),¹⁶⁹ καθώς και ότι «ο καθένας έχει το δικαίωμα σε νομικές πληροφορίες και συμβουλές, σε νομικό σύμβουλο και στο να συνοδεύεται από δικηγόρο ενώπιον οποιασδήποτε αρχής» (άρθρο 20 παράγραφος 2 πορτογαλικό Σύνταγμα). Επιπλέον, το Σύνταγμα προστατεύει τα δικαιώματα των θυμάτων να παρεμβαίνουν σε ποινικές διαδικασίες, αφήνοντας ταυτόχρονα τον καθορισμό των περαιτέρω λεπτομερειών στον νόμο. Η πιο σχετική πορτογαλική νομοθεσία σχετικά με το θέμα αυτό είναι ο πορτογαλικός κώδικας ποινικής δικονομίας, το πορτογαλικό καταστατικό των θυμάτων, ο κανονισμός για τα διαδικαστικά έξοδα και ο νόμος για την πρόσβαση στη δικαιοσύνη και στα δικαστήρια¹⁷⁰ (Νόμος αριθ. 34/2004 του Ιουλίου 29 όπως τροποποιήθηκε από το Νόμο 47/2007, 28 Αυγούστου).¹⁷¹

Σύμφωνα με το άρθρο 13 του PVS, τα θύματα έχουν δωρεάν πρόσβαση σε νομική βοήθεια στις περιπτώσεις που προβλέπει ο πορτογαλικός νόμος για την πρόσβαση στο δίκαιο και στα δικαστήρια. Η νέα νομοθεσία δεν επεκτείνει την εφαρμογή διατάξεων που ήδη υπήρχαν στο πορτογαλικό δίκαιο.¹⁷² Ο πορτογαλικός νόμος για την πρόσβαση στο δίκαιο και στα δικαστήρια, από την άλλη πλευρά, διευκρινίζει ότι η πρόσβαση στην δωρεάν νομική εκπροσώπηση ενώπιον του δικαστηρίου καθώς και οι νομικές συμβουλές εξαρτώνται από την εκτίμηση του εισοδήματος των θυμάτων (άρθρο 8) . Έτσι, μόνο θύματα που δεν έχουν επαρκή

¹⁶⁸ Bundesministerium für Familie, Senioren, Frauen und Jugend, Ομοσπονδιακός Νόμος για την προστασία των παιδιών (Bundeskinderschutzgesetz), <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/bundeskinderschutzgesetz/das-bundeskinderschutzgesetz/86268> (German).

¹⁶⁹ Σύνταγμα της Πορτογαλικής Δημοκρατίας, <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>
¹⁷⁰ Νόμος για την πρόσβαση στο δίκαιο και στα δικαστήρια, Νόμος αριθ. 34/2004 της 29ης Ιουλίου, όπως τροποποιήθηκε με το Ν. 47/2007, του Αυγούστου 28, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=80&tabela=leis&so_miolo (Portuguese).

¹⁷¹ Vânia Costa Ramos Νομική Βοήθεια για τα Θύματα Ποινικών Διαδικασιών στην Πορτογαλία, στο Wilinski, Karlik (εκδ.), Βελτίωση της Προστασίας των Δικαιωμάτων των Θυμάτων: Πρόσβαση στη Νομική Βοήθεια, Adam Mickiewicz University, Poznan, 2014, 192.

¹⁷² APAV - Associação Portuguesa de Apoio à Vítima, Ανάπτυξη συμβατών με την οδηγία πρακτικών για τον εντοπισμό, την αξιολόγηση και την παραπομπή των θυμάτων: έκθεση Πρακτικών της Πορτογαλίας, 7.



εισοδήματα θα έχουν πρόσβαση σε δωρεάν νομική εκπροσώπηση.¹⁷³ Επιπλέον, ο νόμος διευκρινίζει στο άρθρο 6 νομ. cit. ποια έξοδα καλύπτονται από οικονομική νομική βοήθεια: το ευεργέτημα πενίας και η νομική συνδρομή, συμπεριλαμβανομένης της διαβούλευσης με δικηγόρο, του διορισμού δικηγόρου καθώς και της καταβολής τελών, την πλήρη ή μερική απαλλαγή από τα δικαστικά έξοδα.¹⁷⁴

Υπάρχουν επίσης ορισμένες προϋποθέσεις υπό τις οποίες ο δικαστής ή ο εισαγγελέας μπορεί να καθορίσει τότε ένα θύμα χρειάζεται ψυχοκοινωνική υποστήριξη ("Técnico de apoio à vítima") σύμφωνα με το άρθρο 15 παρ. 3 PVS. Ο ψυχολογικός υποστηρικτής είναι υπάλληλος του APAV, ο ρόλος του οποίου είναι να βοηθήσει το θύμα να ξεπεράσει ή να μετριάσει τον αντίκτυπο που του έχει αφήσει το εγκλήμα. Επίσης, μπορεί να συνοδεύσει το θύμα στο δικαστήριο, στην αστυνομία ή στις ιατρικές εξετάσεις.¹⁷⁵

Παρότι τα δικαιώματα πρόσβασης στις υπηρεσίες υποστήριξης των θυμάτων διευκρινίζονται στο πλαίσιο του δικαιώματος λήψης πληροφοριών το συντομότερο δυνατό (μεταφορά στο άρθρο 4 ΟΘ), οι ακριβείς λεπτομέρειες του Άρθρου 9 ΟΘ λείπουν από την πορτογαλική νομοθεσία.¹⁷⁶

4.4.4 Ισπανία

Σύμφωνα με το άρθρο 8 ΟΘ και άρθρο. 10 του Ν. 4/2015 ορίζεται ότι όλα τα θύματα εγκληματικότητας έχουν δικαίωμα πρόσβασης στις υπηρεσίες βοήθειας και υποστήριξης που παρέχονται από τις δημόσιες αρχές και τα γραφεία υποστήριξης των θυμάτων δωρεάν και εμπιστευτικά, όπως καθορίζονται από τα εθνικά πλαίσια και τους κανονισμούς. Όπως προβλέπει η οδηγία, επίσης η εθνική νομοθεσία ορίζει ότι οι συγγενείς των θυμάτων μπορούν να επωφεληθούν από τα ίδια δικαιώματα με τα θύματα.

Στην Ισπανία, τα γραφεία βοήθειας για τα θύματα - που υπάρχουν σε πολλές αυτόνομες κοινότητες¹⁷⁷ - έχουν την ευθύνη να συντονίζουν τη βοήθεια που παρέχεται από διάφορους οργανισμούς, ιδρύματα και φορείς που ασχολούνται με τη φροντίδα των θυμάτων κατά περίπτωση. Αυτά τα γραφεία αποτελούνται από πολυτομεακές ομάδες - δικηγόρους, ψυχολόγους και κοινωνικούς λειτουργούς - που υποστηρίζουν τα θύματα εγκληματικότητας κατά την ποινική διαδικασία. Μια πρόσφατη έκθεση του Οργανισμού

¹⁷³ Info Vítimas, δικηγόρος του θύματος, http://infovitimas.pt/pt/004_quem/paginas/004_006.html (Portuguese).

¹⁷⁴ Ibid, 198.

¹⁷⁵ Info Vítima, Ψυχολογικός υποστηρικτής, http://infovitimas.pt/pt/004_quem/paginas/004_007.html (Portuguese).

¹⁷⁶ EPRS – Ευρωπαϊκή Υπηρεσία Έρευνας του Ευρωπαϊκού Κοινοβουλίου, η οδηγία 2012/29 / ΕΕ για τα Δικαιώματα των Θυμάτων: Ευρωπαϊκή αξιολόγηση εφαρμογής, Δεκέμβριος 2017, 54.

¹⁷⁷ Οργανισμός Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, φιλική δικαιοσύνη προς τα παιδιά: προοπτικές και εμπειρίες επαγγελματιών σχετικά με τη συμμετοχή των παιδιών στις αστικές και ποινικές διαδικασίες σε 10 κράτη μέλη της ΕΕ, 2015. 110.



Θεμελιωδών Δικαιωμάτων σχετικά με φιλική προς τα παιδιά δικαιοσύνη εξέτασε αυτά τα γραφεία και πρότεινε ότι αποτελούν μια πολλά υποσχόμενη πρακτική για τα διεπιστημονικά τμήματα για την υποστήριξη των θυμάτων. Ανάλογα με την τοποθεσία, τα γραφεία προσφέρουν υπηρεσίες όπως προδικαστικές επισκέψεις σε δικαστικές εγκαταστάσεις και πληροφορίες στους γονείς. Μερικές φορές η ακρόαση παιδιών-θυμάτων μπορεί να πραγματοποιηθεί στα ίδια τα γραφεία.¹⁷⁸ Επιπλέον, όπως αναφέρθηκε προηγουμένως, τα Γραφεία Υποστήριξης Θυμάτων οφείλουν να διεξάγουν ατομική αξιολόγηση των ατομικών αναγκών προστασίας των θυμάτων, σύμφωνα με το άρθρο 28 παρ. 2 του Ν. 4/2015. Ειδικότερα, αξιολογούν κατά πόσο το θύμα χρήζει ψυχολογικής υποστήριξης και αρωγής, πρόσωπο υποστήριξης κατά τη διάρκεια της δίκης, πληροφορίες, άλλα ειδικά μέτρα υποστήριξης που μπορεί να χορηγηθούν από το δικαστήριο ή με παραπομπή σε υπηρεσίες ειδικής υποστήριξης.¹⁷⁹

Περαιτέρω, το άρθρο 28 του Νόμου 5/2015 ορίζει το ελάχιστο όριο βοήθειας που πρέπει να παρέχουν τα Στελέχη Υποστήριξης Θυμάτων στα θύματα. Ως εκ τούτου, τα Γραφεία Υποστήριξης Θυμάτων παρέχουν τουλάχιστον την ακόλουθη βοήθεια:

- Α) Γενικές πληροφορίες για τα δικαιώματα των θυμάτων
- β) Πληροφορίες σχετικά με τις διαθέσιμες εξειδικευμένες υπηρεσίες που μπορούν να βοηθήσουν τα θύματα, λαμβάνοντας υπόψη την προσωπική τους κατάσταση και τη φύση του αδικήματος
- γ) Συναισθηματική υποστήριξη των θυμάτων
- δ) Συμβουλές σχετικά με τα οικονομικά δικαιώματα, συμπεριλαμβανομένης της πρόσβασης στη νομική αρωγή.
- ε) Συμβουλές για τον τρόπο και κίνδυνο αποτροπής της δευτερογενούς ή επανειλημμένης θυματοποίησης, εκφοβισμού ή αντιποιίνων.
- ζ) Συντονισμός των διαφόρων οργανισμών, ιδρυμάτων και φορέων που παρέχουν υπηρεσίες υποστήριξης των θυμάτων.

¹⁷⁸ Οργανισμός Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, δικαιοσύνη φιλική προς τα παιδιά: προοπτικές και εμπειρίες επαγγελματιών σχετικά με τη συμμετοχή των παιδιών στις αστικές και ποινικές διαδικασίες σε 10 κράτη μέλη της ΕΕ.110

¹⁷⁹ Άρθρο 28 παρ. 2, Νόμος 4/2015 σχετικά με τη θέση των θυμάτων εγκληματικότητας.



η) Συντονισμός με τους δικαστές, τα δικαστήρια και τη δημόσια εισαγγελική αρχή για την παροχή υπηρεσιών υποστήριξης των θυμάτων.

Ο Ισπανός νομοθέτης επέλεξε επίσης να εισάγει ένα σύστημα αξιολόγησης για το σύστημα υποστήριξης των θυμάτων στην Ισπανία. Η πρώτη πρόσθετη διάταξη του Νόμου 4/2015 ορίζει ότι η λειτουργία των ιδρυμάτων, μηχανισμών και εγγυήσεων για την υποστήριξη των θυμάτων στην Ισπανία αξιολογείται σε ετήσια βάση από το Υπουργείο Δικαιοσύνης. Η αξιολόγηση καθώς και τα αποτελέσματα χρησιμοποιούνται ως οδηγός για τη βελτίωση του συστήματος προστασίας.

4.4.5 Αγγλία και Ουαλία

Αν και η Αγγλία και η Ουαλία χρησιμοποιούν τον όρο «θύμα», ένα θύμα δεν αποτελεί μέρος της ποινικής διαδικασίας.¹⁸⁰ Ως αποτέλεσμα, ένα θύμα επίσης δεν μπορεί να ασκήσει δικαιώματα που σχετίζονται με τη νομική εκπροσώπηση κατά τη διάρκεια δικαστικών διαδικασιών. Ο εισαγγελέας παρουσιάζει την υπόθεση του θύματος, ενώ ο ρόλος του θύματος είναι να παραχωρήσει αποδεικτικά στοιχεία ως μάρτυρας.¹⁸¹ Παρ'όλα αυτά, υπάρχουν πολλές υπηρεσίες υποστήριξης των θυμάτων στην Αγγλία και την Ουαλία που προσφέρουν βοήθεια και υποστήριξη στα θύματα του εγκλήματος για να τα βοηθήσουν να αντεπεξέλθουν και να ανακάμψουν μετά από ένα έγκλημα.¹⁸² Όλα τα θύματα δικαιούνται να έχουν πρόσβαση σε πληροφορίες σχετικά με τις διαθέσιμες υπηρεσίες υποστήριξης θύματος.¹⁸³ Τα παιδιά - θύματα - καθώς και όλα τα άλλα θύματα - δικαιούνται να αξιολογηθούν εάν χρειάζονται υποστήριξη.¹⁸⁴

Γενικά, όλα τα θύματα έχουν πρόσβαση σε υπηρεσίες υποστήριξης των θυμάτων, ανεξάρτητα από την υποβολή καταγγελίας και σε ποιο στάδιο της δίκης είναι, επίσης, και μετά την ολοκλήρωση της έρευνας και της δίωξης.¹⁸⁵ Όταν δηλώνουν ένα ποινικό αδίκημα, ο πάροχος υπηρεσιών υποχρεούται να παραπέμψει το θύμα σε υπηρεσία υποστήριξης θυμάτων εντός δύο εργάσιμων ημερών από την αναφορά του εγκλήματος.¹⁸⁶ Ωστόσο, το θύμα έχει το δικαίωμα να ζητήσει από την αστυνομία να μην διαβιβάσει τις

¹⁸⁰ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Εφαρμογή της μεταρρύθμισης του συστήματος ποινικής δικαιοσύνης στην Ευρωπαϊκή Ένωση, 2016, 112.

¹⁸¹ Ibid.

¹⁸² Κεφάλαιο 3, Μέρος Β 1.2 με αναφορά στο Κεφάλαιο 2, Μέρος Α, 1.2 Κώδικας των Θυμάτων.

¹⁸³ Εισαγωγή, 1.6 και Κεφάλαιο 3, Μέρος Β 1.2 σε σχέση με το Κεφάλαιο 2, Μέρος Α, 1.4 Κώδικας των Θυμάτων.

¹⁸⁴ Κεφάλαιο 3, Μέρος Β 1.2 με αναφορά στο Κεφάλαιο 2, Μέρος Α, 1.1 του Κώδικα των Θυμάτων.

¹⁸⁵ Εισαγωγή, 1.6. και 22 κώδικα θυμάτων.

¹⁸⁶ Ibid.



πληροφορίες του σε υπηρεσία υποστήριξης των θυμάτων. Επιπλέον, στην περίπτωση παιδιών - θυμάτων - καθώς και άλλων θυμάτων με ενισχυμένα δικαιώματα - ο πάροχος υπηρεσιών πρέπει να διασφαλίσει ότι το θύμα είναι ικανοποιημένο με τη διαβίβαση των πληροφοριών του σε υπηρεσίες υποστήριξης των θυμάτων.¹⁸⁷

Τέλος, όπως και στη Φινλανδία, υπάρχει ένα σύστημα στην Αγγλία και την Ουαλία, το οποίο υποχρεώνει τον καταδικασθέντα δράστη να καταβάλει μια πρόσθετη επιβάρυνση (ή χρηματική ποινή), η οποία χρησιμοποιείται για τη χρηματοδότηση των υπηρεσιών θυμάτων μέσω του Ταμείου Θυμάτων και Μαρτύρων. Κατά την έκδοση μιας ποινής, το δικαστήριο πρέπει επίσης να διατάξει την καταβολή της αντίστοιχης πρόσθετης χρέωσης του θύματος.¹⁸⁸ Το ποσό εξαρτάται από την ποινή καθώς και από την ηλικία και τη νομική προσωπικότητα του δράστη και προσδιορίζεται ξεκάθαρα σε έναν πίνακα που είναι προσβάσιμος στο διαδίκτυο.¹⁸⁹ Η πρόσθετη χρηματική ποινή υπέρ του θύματος εισήχθη για πρώτη φορά τον Απρίλιο του 2007 και τροποποιήθηκε τελευταία τον Απρίλιο του 2016. Ένας πλήρης κατάλογος των ομάδων που υποστηρίζονται από το Ταμείο Θυμάτων και Μαρτύρων μπορεί να βρεθεί στο διαδίκτυο.¹⁹⁰

¹⁸⁷ Κεφάλαιο 1, 1.6 Κώδικας των θυμάτων.

¹⁸⁸ Sentencing council, Τι είναι το τέλος θύματος?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>

¹⁸⁹ Υπάρχει ένας πίνακας που καθορίζει συγκεκριμένα το ποσό που πρέπει να καταβληθεί στο Sentencing Council, τι είναι το τέλος θύματος?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>

¹⁹⁰ Gov.uk, Βραβεία χρηματοδότησης θυμάτων και μαρτύρων , <https://www.gov.uk/government/publications/victims-and-witnesses-funding-awards>



5. Συμπέρασμα

Η παρούσα έκθεση αξιολογεί την εθνική νομοθεσία μεταφοράς της οδηγίας για τα θύματα στη Φινλανδία, τη Γερμανία, την Πορτογαλία, την Ισπανία και την Αγγλία και την Ουαλία, με ιδιαίτερη έμφαση στα δικαιώματα που παρέχονται σε παιδιά-θύματα εγκληματικότητας. Το ακόλουθο συμπέρασμα φέρνει σε αντίθεση τα πορίσματα των μεμονωμένων μελετούμενων χωρών με στόχο να εντοπιστούν τα επιτεύγματα της μεταφοράς της οδηγίας για τα θύματα, καθώς και οι πολλά υποσχόμενες πρακτικές και οι βέλτιστες νομοθετικές λύσεις. Δεδομένου ότι υπάρχει συχνά ένα χάσμα μεταξύ νομοθεσίας και πρακτικής, πρέπει να επισημανθεί ότι η παρούσα έκθεση απεικονίζει μόνο υποσχόμενες πρακτικές και βέλτιστες νομοθετικές λύσεις χωρίς να δηλώνει πώς εφαρμόζονται τα ακόλουθα παραδείγματα στην πράξη.

Οι διαδικασίες μεταφοράς της οδηγίας για τα θύματα στα επιλεγμένα κράτη μέλη ήταν αρκετά διαφορετικές. Η Ισπανία και η Πορτογαλία μετέφεραν κατά γράμμα πολλά μέρη της οδηγίας για τα θύματα. Ομοίως, και οι δύο εισήγαγαν ένα νέο νόμο που περιλαμβάνει έναν σχεδόν εκτεταμένο κατάλογο των δικαιωμάτων των θυμάτων, συγκεκριμένα το πορτογαλικό καθεστώς των θυμάτων και τον ισπανικό Νόμο 4/2015 για τη θέση των θυμάτων εγκληματικότητας. Η καθιέρωση αυτών των δύο εγγράφων φαίνεται να καθιστά τα δικαιώματα των θυμάτων πιο προσιτά και σαφή.

Ομοίως, στην Αγγλία και την Ουαλία, όλα τα δικαιώματα των θυμάτων εγκληματικότητας περιλαμβάνονται στον Κώδικα των θυμάτων, ο οποίος αποσκοπεί να αποτελέσει έναν πρακτικό οδηγό, ο οποίος στοχεύει να βοηθήσει τις υπηρεσίες ποινικής δικαιοσύνης να καθοδηγούν τα θύματα στις ποινικές διαδικασίες. Υπάρχει επίσης σε ευανάγνωστες εκδόσεις, οι οποίες την καθιστούν πιο προσιτή στα παιδιά. Στη διαδικασία μεταφοράς στην Αγγλία και Ουαλία, πραγματοποιήθηκε μια ευρεία διαδικασία διαβούλευσης και αξιολόγησης του προϋπάρχοντος κώδικα για τα θύματα, η οποία περιελάμβανε γραπτές απαντήσεις από διάφορους ενδιαφερόμενους, δημόσιες εκδηλώσεις διαβούλευσης, καθώς και έρευνες με παιδιά και νέους σχετικά με τις εντυπώσεις τους για τον ήδη υπάρχοντα Κώδικα των θυμάτων. Η νομοθετική διαδικασία στη Γερμανία, από την άλλη πλευρά, επιτρέπει τη διαβούλευση, αλλά δεν προβλέπει μια δεσμευτική διαδικασία διαβούλευσης από το νόμο. Οι γερμανικές διατάξεις σχετικά με την προστασία των θυμάτων είναι επίσης πολύ κατακερματισμένες - όχι μόνο στο εθνικό, αλλά και στο ομοσπονδιακό δίκαιο.

Ο νομικός ορισμός του όρου «θύμα εγκληματικής πράξης», όπως ορίζεται στο άρθρο 2 παρ. 1 ΟΘ, αποσκοπούσε στην ενίσχυση του στόχου να τεθεί το θύμα στο επίκεντρο του συστήματος ποινικής δικαιοσύνης. Ωστόσο, το γεγονός ότι διαφορετικοί όροι χρησιμοποιούνται για την περιγραφή του προσώπου



που έχει υποστεί βλάβη εξαιτίας ενός εγκλήματος, δεν σημαίνει απαραίτητα ότι οι εθνικές νομοθεσίες δεν προβλέπουν ίσο αριθμό δικαιωμάτων. Παρόλο που στη Γερμανία και στη Φινλανδία δεν υπάρχει νομικός ορισμός του όρου «θύμα», η προστασία των δικαιωμάτων των θυμάτων είναι πολύ υψηλή και στις δύο χώρες. Στη Φινλανδία, για παράδειγμα, ενώ ο όρος «ζημιωθείς» χρησιμοποιείται αντί για θύμα, αυτός περιλαμβάνει επίσης ένα φυσικό πρόσωπο που είτε προσβάλλεται είτε κινδυνεύει από εγκληματική πράξη και είναι επομένως πολύ ευρύτερος από τον ορισμό που ορίζεται στην οδηγία για τα θύματα. Επίσης, στους ζημιωθέντες παρέχεται μεγάλος αριθμός δικαιωμάτων κατά τη διάρκεια της ποινικής έρευνας και των δικαστικών διαδικασιών. Αντίθετα, ενώ ο Κώδικας των θυμάτων (Αγγλία και Ουαλία) περιέχει έναν νομικό ορισμό του όρου «θύμα», τα θύματα δεν θεωρούνται ως μέρος της ποινικής διαδικασίας, αλλά ουσιαστικά ως μάρτυρες. Λόγω αυτού, τα θύματα στην Αγγλία και την Ουαλία έχουν λιγότερα δικαιώματα, ιδίως όσον αφορά τη νομική εκπροσώπηση.

Όσον αφορά τη νομική μεταφορά της ατομικής αξιολόγησης των θυμάτων για τον εντοπισμό ειδικών αναγκών προστασίας, όπως διατυπώνεται στο άρθρο 22, προκύπτουν κοινές δυσκολίες σε όλα τα κράτη μέλη, ιδίως όσον αφορά την πρακτική εφαρμογή της ατομικής αξιολόγησης: Ενώ οι περισσότερες νομοθεσίες που έχουν αξιολογηθεί διευκρινίζουν ότι πρέπει να πραγματοποιηθεί η ατομική αξιολόγηση κατά την πρώτη επαφή με μια αρμόδια αρχή, είναι ως επί το πλείστον ασαφές ποιος είναι υπεύθυνος ή κατάλληλος για τη διεξαγωγή της ατομικής αξιολόγησης. Στην πραγματικότητα, ενώ όλα τα αξιολογούμενα κράτη μέλη ψήφισαν νέες διατάξεις προκειμένου να συμμορφωθούν με το άρθρο 22 ΟΘ, η διάταξη αυτή παραμένει η πλέον επικριθείσα και συζητήσιμη σε όλα τα κράτη μέλη. Μια ελπιδοφόρα πρακτική μπορεί να βρεθεί στον Κώδικα των θυμάτων στην Αγγλία και την Ουαλία, όπου αναφέρεται ξεκάθαρα ότι η αστυνομία αλλά και άλλοι πάροχοι υπηρεσιών έχουν υποχρέωση να διεξάγουν την ατομική αξιολόγηση των θυμάτων. Επίσης, στην Ισπανία, τα Γραφεία Υποστήριξης Θυμάτων - τα οποία αποτελούνται από διεπιστημονικές ομάδες, συμπεριλαμβανομένων δικαστών, ψυχολόγων και κοινωνικών λειτουργών - και οι δικαστές με τους εισαγγελείς έχουν την ευθύνη να διεξάγουν την ατομική αξιολόγηση για να προσδιορίσουν τις ανάγκες των θυμάτων.

Επιπλέον, η παρούσα έρευνα δείχνει ότι τα περισσότερα από τα ειδικά μέτρα για την εξασφάλιση των δικαιωμάτων στην προστασία παιδιών-θυμάτων εγκληματικότητας κατά τη διάρκεια ποινικών διαδικασιών (Άρθρα 23-24) υπήρχαν ήδη πριν από τη διαδικασία μεταφοράς στα περισσότερα κράτη μέλη. Η διαδικασία μεταφοράς οδήγησε σε διάφορες αλλαγές στις εθνικές νομοθεσίες: εισήχθησαν πρόσθετα δικαιώματα που συμπληρώνουν τα υφιστάμενα μέτρα προστασίας (π.χ. Φινλανδία), η μεταφορά της οδηγίας για τα θύματα



οδήγησε στην διεύρυνση της δικαιούχου ομάδας ανθρώπων ορισμένων δικαιωμάτων (π.χ. Φινλανδία, Πορτογαλία) και πραγματοποιήθηκε η συστηματοποίηση των υφιστάμενων διατάξεων (π.χ. Πορτογαλία, Ισπανία) .

Επιπρόσθετα, η έρευνα περιγράφει κάποιες αρκετά υποσχόμενες πρακτικές σχετικά με τα Άρθρα 23-24 ΟΘ: Για παράδειγμα, στην Αγγλία και την Ουαλία υπάρχει ένα έγγραφο καθοδήγησης με τίτλο «Επίτευξη καλύτερων αποδεικτικών στοιχείων σε ποινικές διαδικασίες», το οποίο - αν και δεν συνιστά δεσμευτικό κώδικα δεοντολογίας - αποτελεί χρήσιμη καθοδήγηση για τις ορθές πρακτικές στις συνεντεύξεις μαρτύρων. Επιπλέον, ο Κώδικας των Θυμάτων προβλέπει τη δυνατότητα ορισμού εγγεγραμμένου διαμεσολαβητή, ο οποίος θα βοηθά τα ευάλωτα θύματα να δώσουν αποδεικτικά στοιχεία στο δικαστήριο και στην αστυνομία. Εάν σε ένα παιδί-θύμα διεξάγεται συνέντευξη σε προδικαστική ακρόαση, ο διαμεσολαβητής βοηθά στο να θεσπιστούν οι βασικοί κανόνες για τη συνέντευξη που πρέπει να τηρηθούν κατά την ακρόαση. Μια άλλη ελπιδοφόρα πρακτική στην Αγγλία και την Ουαλία είναι η δυνατότητα για το θύμα να επισκεφθεί το δικαστήριο πριν από την ημερομηνία της δίκης. Αυτή η πρακτική στοχεύει να επιτρέψει στο θύμα να εξοικειωθεί με το κτίριο και το δικαστήριο. Επιπλέον, στη Φινλανδία υπάρχει ένα μακροχρόνιο διεπιστημονικό πρόγραμμα συνέντευξης για αστυνομικούς και επαγγελματίες του υγειονομικού τομέα που διεξάγουν ακροάσεις παιδιών.

Τέλος, στο Κεφάλαιο 4.4 περιγράφονται οι αντίστοιχες διατάξεις σχετικά με την πρόσβαση και την υποστήριξη από τις υπηρεσίες υποστήριξης των θυμάτων, όπως περιγράφονται στα Άρθρα 8-9. Σε γενικές γραμμές, η παρούσα έρευνα διαπιστώνει ότι υπάρχουν τρία είδη υποστήριξης κατά τη διάρκεια δικαστικών διαδικασιών στα επιλεγμένα κράτη μέλη, αλλά οι υπηρεσίες δεν είναι διαθέσιμες σε όλα τα κράτη μέλη: ένας εξουσιοδοτημένος νομικός σύμβουλος ανάλογα με τη φύση του εγκλήματος καθώς και με ιδιαίτερες συνθήκες του θύματος, το ευεργέτημα πενίας που χορηγείται ανάλογα με την οικονομική κατάσταση των θυμάτων · και ένα άτομο για υποστήριξη ή ένας ψυχοκοινωνικός υποστηρικτής. Ωστόσο, στην Αγγλία και την Ουαλία, το θύμα δεν είναι μέρος της ποινικής διαδικασίας και δεν έχει το δικαίωμα σε νομική εκπροσώπηση κατά τη διάρκεια δικαστικών διαδικασιών. Ο εισαγγελέας παρουσιάζει την υπόθεση των θυμάτων, ενώ ο ρόλος των θυμάτων είναι να δώσουν αποδεικτικά στοιχεία ως μάρτυρες.

Οι υποσχόμενες πρακτικές που διαπιστώθηκαν σε αυτή την έρευνα σχετικά με την πρόσβαση και την υποστήριξη των υπηρεσιών υποστήριξης των θυμάτων είναι, αφενός, η πρόσθετη χρηματική ποινή υπέρ των θυμάτων στη Φινλανδία. Το τελευταίο αποτελεί μια μορφή χρηματικής επιβάρυνσης που πρέπει να



καταβάλλεται από τον διωκόμενο δράστη για τη χρηματοδότηση των υπηρεσιών υποστήριξης των θυμάτων. Αφετέρου δε, το δικαίωμα του θύματος για ψυχοκοινωνική στήριξη, που υπήρχε προηγουμένως στην Πορτογαλία και στη Φινλανδία και εισήχθη πρόσφατα στη γερμανική νομοθεσία κατά τη διαδικασία μεταφοράς. Τέλος, τα διεπιστημονικά Γραφεία Υποστήριξης Θυμάτων στην Ισπανία θεωρήθηκαν επίσης ως μια υποσχόμενη πρακτική σε πρόσφατη δημοσίευση του FRA. Τα γραφεία υποστήριξης των θυμάτων προσφέρουν ένα ευρύ φάσμα υπηρεσιών, αναλαμβάνουν την ατομική αξιολόγηση των θυμάτων για να εντοπίσουν τις ειδικές ανάγκες προστασίας τους και να συντονίσουν άλλες υπηρεσίες υποστήριξης των θυμάτων. Επιπλέον, για τη συνεχή βελτίωση του συστήματος προστασίας των θυμάτων στην Ισπανία, η λειτουργία των θεσμών, μηχανισμών και εγγυήσεων πρέπει να αξιολογείται σε ετήσια βάση από το ισπανικό Υπουργείο Δικαιοσύνης.

Εν συντομία, μπορούμε να πούμε ότι η οδηγία για τα θύματα οδήγησε σε διάφορα επιτεύγματα στα επιλεγμένα κράτη μέλη. Ενώ αρκετές από τις διατάξεις υπήρχαν ήδη στην εθνική νομοθεσία, οι διαδικασίες μεταφοράς άνοιξαν χώρο για μια διαδικασία αναθεώρησης και επανεξέτασης. Ενώ οι νομοθετικές λύσεις που επέλεξε κάθε κράτος μέλος συμβαδίζουν με το ιδιαίτερο πλαίσιο του νομικού τους συστήματος, η παρούσα έρευνα δείχνει ότι υπάρχει ωστόσο χώρος για αμοιβαία μάθηση μεταξύ των κρατών μελών. Συγκεκριμένα, μπορεί να παρατηρηθεί ότι, καθώς μια από τις σημαντικότερες παγίδες των διαδικασιών μεταφοράς είναι το χάσμα μεταξύ νομοθεσίας και πρακτικής¹⁹¹, μια πρακτική προσέγγιση στην αναθεώρηση και τη σύνταξη της νομοθεσίας, συμπεριλαμβανομένης μιας ευρείας διαδικασίας διαβούλευσης, είναι πολύ πιθανό να οδηγήσει σε ελπιδοφόρες λύσεις που λειτουργούν στην πράξη.

¹⁹¹ Βλέπε επίσης Οργανισμός Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, Θύματα Εγκληματικότητας στην ΕΕ: η κλίμακα και η φύση της υποστήριξης των θυμάτων, Γραφείο Τύπου της Ευρωπαϊκής Ένωσης (Λουξεμβούργο), 2014, 74



Βιβλιογραφία

APAV – Associação Portuguesa de Apoio à Vítima, Developing Directive – compatible practices for the identification, assessment and referral of victims: Portugal Practices Report.

APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016.

Assembleia da República, Parliament, <http://www.en.parlamento.pt/Parliament/index.html> (last accessed: 25th April 2018).

Assembleia da República, Processo Legislativo Comum, <http://www.parlamento.pt/Parlamento/paginas/plc.aspx> (last accessed: 25th April 2018).

Bpb, Wie ein Gesetz entsteht, <http://www.bpb.de/politik/grundfragen/24-deutschland/40463/wie-ein-gesetz-entsteht> (German) (last accessed: 25th April 2018).

Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2 (German) (last accessed: 25th April 2018).

Bundesministerium der Justiz und für Verbraucherschutz, Opferhilfe und Opferschutz im Strafverfahren, 16.11.2017, https://www.bmjjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (German) (last accessed: 25th April 2018).

Bundesministerium für Familie, Senioren, Frauen und Jugend, German Federal Child Protection Act (Bundeskinderschutzgesetz), <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/bundeskinderschutzgesetz/das-bundeskinderschutzgesetz/86268> (German) (last accessed: 25th April 2018).

Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.mietpreisbremse.bund.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (German) (last accessed: 25th April 2018).

Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksache 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (German) (last accessed: 25th April 2018).

Constitution of the Portuguese Republic, <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf> (last accessed: 25th April 2018).

Decreto do Presidente da República n.º 101/2015 - Diário da República n.º 173/2015, Série I de 2015-09-04/70186153, Assembleia da República, Lei n.º 130/2015, Procede à vigésima terceira alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001, <https://dre.pt/application/file/70186153> (last accessed: 25th April 2018).

Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3.



Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (German) (last accessed: 25th April 2018).

DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, December 2017.

EUR-LEX, National transposition measures communicated by the Member States concerning: Directive 2012/29/EU, <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029> (last accessed: 25th April 2018).

European Commission, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2013 (in the following: European Commission, Guidance Document to the Victims’ Directive, 2013).

European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States, 2015.

European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Luxembourg), 2014

FINLEX, Act on Victim Charges, 22.5.2015/669, <https://www.finlex.fi/fi/laki/ajantasa/2015/20150669> (Finnish) (last accessed: 25th April 2018).

FINLEX, HE 293/2014, <https://finlex.fi/fi/esitykset/he/2014/20140293?search%5Btype%5D=pika&search%5Bpika%5D=He%20293%2F2014> (Finnish) (last accessed: 25th April 2018).

FINLEY, HE 66/2015, <https://finlex.fi/fi/esitykset/he/2015/20150066> (Finnish) (last accessed: 25th April 2018).

Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/> (last accessed: 25th April 2018).

Finnish Ministry of Justice, Act on the Publicity of Court Proceedings in General Courts, 370/2007 amendments to 742/2015 included, <https://encrypted.google.com/url?sa=t&ret=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEWjQ9unn4MjZAhVMYaQKHTmUB14QFggtMAA&url=https%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F2007%2Fen20070370.pdf&usg=AOvVaw3A34-Ki7L-xk8YksYr1E0V> (last accessed: 25th April 2018).

Finnish Ministry of Justice, Code of Judicial Procedure, 4/1734, amendments up to 732/2015 included, <https://encrypted.google.com/url?sa=t&ret=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEWiHx5KJ3MjZAhUBLewKHfZoD60QFggtMAA&url=http%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F1734%2Fen17340004.pdf&usg=AOvVaw0-PJLjKrSH9U01qD0Yr14B> (last accessed: 25th April 2018).



Finnish Ministry of Justice, Criminal Investigation Act (805/2011; amendments to 736/2015 included, Unofficial Translation, <https://www.finlex.fi/en/laki/kaannokset/2011/en20110805.pdf> (last accessed: 25th April 2018).

Finnish Ministry of Justice, Rights of crime victim, 1.3.2017

FRANET, Victim Support Services in the EU: An overview and assessment of victims' rights in practice: Germany, 2014.

Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren vom 21. Dezember 2015 (BGBl. I S. 2525, 2529), (PsychPbG), https://www.bmjjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (German) (last accessed: 25th April 2018).

Gov.uk, Victims and witnesses funding awards, <https://www.gov.uk/government/publications/victims-and-witnesses-funding-awards> (last accessed: 25th April 2018).

Info Vitima, Psychological Supporter, http://infovitimas.pt/pt/004_quem/paginas/004_007.html (Portuguese) (last accessed: 25th April 2018).

Info Vitimas, lawyer of the victim, http://infovitimas.pt/pt/004_quem/paginas/004_006.html (Portuguese) (last accessed: 25th April 2018).

IVOR, Finland: Developments on the implementation of victim assistance mechanisms.

IVOR, United Kingdom: Development on the implementation of victim assistance and mechanisms.

Kett-Straub, Wie viel Opferschutz trägt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017.

Law 29/2011 of 22th September, on the recognition and comprehensive protection of victims of terrorism (Spain), <https://www.boe.es/buscar/doc.php?id=BOE-A-2011-15039> (last accessed: 25th April 2018).

Law 35/1995 of 22th December, on support and assistance for the victims of violent crimes and crimes against sexual freedom (Spain) <https://www.boe.es/buscar/doc.php?id=BOE-A-1995-26714> (last accessed: 25th April 2018).

Law on Access to Law and to Courts, Law no. 34/2004 of July 29 amended by Law no. 47/2007, of August 28, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=80&tabela=leis&so_miolo (Portuguese) (last accessed: 25th April 2018).

Löffelmann, Drittes Opferrechtsreformgesetz – Ausgabe 11/2014, 22.11.2014, <http://www.recht-politik.de/drittes-opferrechtsreformgesetz/> (German) (last accessed: 25th April 2018).

Maizener ed. al., EVVI (Evaluation of VIctims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf (last accessed: 25th April 2018).

Ministerio de Justicia, Law 4/2015, of 27 April on the Standing of Victims of Crime, <https://rm.coe.int/168070ac7f> (last accessed: 25th April 2018).

Ministry of Justice, Results Updated 31 Oct 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime> (last accessed: 25th April 2018).

Official Journal of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <http://eur->



lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF (last accessed: 25th April 2018).

Official Journal of the European Union, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing the Council Framework Decision 2004/68/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN> (last accessed: 25th April 2018).

Official Journal of the European Union, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN> (last accessed: 25th April 2018).

Oikeus, Attorney and support person for a victim of crime, <https://oikeus.fi/en/index/esitteet/oikeusapu/rikoksenuhrivoisaadaavustajanjatukihenkilon.html> (last accessed: 25th April 2018).

Oikeus, If you Become a Victim of a Crime: Victim protection: <https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html> (last accessed: 25th April 2018).

Oikeus, Information on Legal Aid, <https://oikeus.fi/en/index/esitteet/oikeusapu/mitaoikeusapuhakijallemaksaa.html> (last accessed: 25th April 2018).

Oikeus, Legal aid, <https://oikeus.fi/oikeusapu/en/index.html> (last accessed: 25th April 2018).

Oikeus, Means-testing, <https://oikeus.fi/en/index/esitteet/oikeusapu/millatuloillaoikeusapuyonnetaanjamitkamenothuomioidaan.html> (last accessed: 25th April 2018).

Organic Law 1/1996 of 10th of January, on legal protection for minors (Spain), <https://www.boe.es/buscar/act.php?id=BOE-A-1996-750&p=20170622&tn=1> (last accessed: 25th April 2018).

Organic Law 1/2004 of 28th December, on comprehensive protection measures against gender-based violence (Spain) <https://www.boe.es/buscar/doc.php?id=BOE-A-2004-21760> (last accessed: 25th April 2018).

Portuguese Criminal Procedure Code, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (Portuguese) (last accessed: 25th April 2018).

Portuguese Victims' Statute, https://apav.pt/apav_v3/images/pdf/estatuto_da_vitima.pdf (Portuguese) (last accessed: 25th April 2018).

RIKU – Riksuripavystys: victim support Finland, <https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/> (last accessed: 25th April 2018).

Riku, What is a victim charge?, <https://www.riku.fi/en/frequently+asked+questions/what+is+a+victim+charge/> (last accessed: 25th April 2018).



RIKU, What is the victims' directive?,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99directive/> (last accessed: 25th April 2018).

Savonen, Developing Directive-Compatible Practices for the identification, assessment and referral of victims: National Report – Finland, 2017, 6; and Finnish Ministry of Justice, Rights of a Crime Victim, 1.3.2017.

Sentencing Council, What is the victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/> (last accessed: 25th April 2018).

UK Ministry of Justice, Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures, March 2011, https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf (last accessed: 25th April 2018).

UK Ministry of Justice, Code of Practice for Victims of Crime, October 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (last accessed: 25th April 2018).

UK Ministry of Justice, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 March 2013, published on 29 October 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime/results/improving-the-code-of-practice-for-victims-of-crime-consultation-response.pdf> (last accessed: 25th April 2018).

UK Ministry of Justice, the support you should get if you are a victim of crime, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf (last accessed: 25th April 2018).

UK Ministry of Justice, The Victims' Code: u18s: Young victims of crime – Understanding the support you should get, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267982/u18-victims-code-leaflet.pdf (last accessed: 25th April 2018).

UK Ministry of Justice, Victims of crime: Understanding the support you can expect, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341367/adult-victims-code-leaflet.pdf (last accessed: 25th April 2018).

Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings

Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary

Vânia Costa Ramos, Legal Aid for Victims in Criminal Proceedings in Portugal, in Wilinski, Karlik (eds.), Improving Protection of Victims' Rights: Access to Legal Aid, Adam Mickiewicz University, Poznan, 2014, 192.

Webpage of RIKU, Victim Support Finland, <https://www.riku.fi/en/victim+support+finland/> (last accessed: 25th April 2018).

Webpage of the Bundesrat, legislative procedure, <https://www.bundesrat.de/DE/aufgaben/gesetzgebung/verfahren/verfahren.html;jsessionid=3CA8BC90B2>



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[257E80D96151207647DF27.2_cid391?nn=4353668#doc4353670bodyText2](#) (last accessed: 25th April 2018).

Webpage of the German Ministry of Interior, legislative procedure,
<https://www.bmi.bund.de/DE/themen/verfassung/gesetzgebung/gesetzgebungsverfahren/gesetzgebungsverfahren-node.html> (last accessed: 25th April 2018).

Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017.



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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

**D3.6 pan-European Best Practices Report
on Victims' Directive transposition**

WP3 Leader: VICESSE



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Резюме

Настоящият доклад има за цел да направи оценка на националното законодателство по транспониране на Директивата за жертвите на престъпления (Директива 2012/29/ЕС) в пет държави-членки (ДЧ), извън партньорските страни по E-PROTECT – Финландия, Германия, Португалия, Испания, Англия и Уелс, като е обърнато специално внимание върху правата, гарантирани на децата жертви на престъпление. Целта му е да събере информация и да проучи как е уредено практическото прилагане на Директивата за жертвите на престъпления, както и да идентифицира обещаващи практики и добре работещи законодателни решения. В частност, докладът дава оценка на процесите по транспониране на Директивата в избраните ДЧ, както и на съответното законодателство по транспониране на чл. 8-9 и 22-24 от Директивата. Настоящото изследване се допълва от спомагателен доклад, даващ оценка на практическото прилагане на индивидуалната оценка на жертвите, за да се определят специфичните нужди за защита в избраните ДЧ.¹

Изследването е проведено в рамките на проект E-PROTECT – “Осигуряване на по-добра закрила на децата жертви на престъпление” –имащ за цел да укрепи прилагането на Директивата за жертвите на престъпления, в частност – в случаите, когато именно деца са тези жертви. Проектът се осъществява на няколко фази, включително изследване и активно взаимодействие с практикуващи специалисти в областта на правата на детето. В по-късните етапи на проекта ще бъде пилотирана онлайн платформа, съдържаща информация относно правата на децата-жертви, включваща информационни материали, които да бъдат полезни на практикуващите в сферата на закрила на детето. Ще бъдат проведени и поредица от семинари и виртуални събития, насочени към практикуващите експерти в областта на подкрепа на децата-жертви.

Резултатите от изследването показват, че процесите по транспониране на Директивата в избраните държави-членки, се различават значително. Докато Испания и Португалия транспонират голяма част от Директивата дословно, Кодексът на жертвите на насилие в Англия и Уелс има за цел да бъде практическо ръководство, насочено, както към жертвите, така и към доставчиците на социални услуги за подкрепа. Изглежда, че създаването на единен документ, включващ всички права на жертвите, прави информацията по-достъпна и ясна.

¹ D3.13 Pan-European study on best practices in individual assessment methodologies of child victims of crime, изготвен в рамките на проекта E-PROTECT



Легалната дефиниция „жертва“ също се различава в петте разгледани ДЧ: в Германия и Финландия не съществува легална дефиниция на „жертва“ в установеното законодателство. Независимо от това, фактът, че се използват различни термини, за да се означаи лицето, претърпяло вреди в резултат на престъпление, не означава непременно, че националните законодателства не предвиждат същия набор от права.

Настоящото изследване показва, че във всички изследвани държави-членки са възникнали общи трудности във връзка с практическото прилагане на разпоредбата относно извършването на индивидуална оценка на жертвите за идентифициране на специфичните нужди от закрила. Проблемите включват идентифицирането на отговорните органи, които да дадат оценка, както и на разпоредбите, регулиращи процедурата. Освен това, макар че повечето от специалните мерки за гарантиране на правата на жертвите вече са съществували преди процеса на транспониране в повечето държави-членки, включени в това проучване, транспонирането на Директивата за жертвите води до промени в някои от разгледаните тук националните законодателства, като напр. осигуряване на допълнителни права, разширяване на групата на бенефициентите на вече съществуващи права и систематизиране на съществуващите разпоредби.

Въпреки че избраните законодателни решения от всяка държава-членка съвпадат ясно със специфичния контекст на собствената си правна система, настоящото изследване показва, че все пак съществува пространство за взаимно обучение между държавите-членки. Наред с другите неща, бяха отличени следните добри практики:

- във Финландия съществува, така наречената, „victim charge“ (такса – жертва), която трябва да бъде заплатена от нарушителя и да послужи за финансиране на услугите в подкрепа на жертвата;
- въвеждане на правото на психо-социално подпомагане в германското законодателство. Подобни разпоредби съществуват преди приемането на Директивата в Португалия и Финландия;
- Португалия и Испания използват процеса на транспониране, за да систематизират правата, предоставени на жертвите на престъпления и въвеждат единен документ, който включва всички права, предоставени на жертвите на престъпления. Кодексът на жертвите в Англия и Уелс също изброява всички права на жертвите в един документ.



- В Испания службите за подкрепа на жертвите предлагат широка гама от услуги, извършват индивидуална оценка на жертвите, за да идентифицират специфичните им нужди за защита и да координират други услуги за подкрепа на жертвите. Техните екипи са интердисциплинарни и включват съдии, психолози и социални работници. Функционирането на институциите, механизмите и гаранциите за подкрепа на жертвите се оценяват ежегодно от испанското министерство на правосъдието.
- В Англия и Уелс регистриран посредник може да сътрудничи на уязвимите жертви (в това число деца-жертви) за даване на показания пред съда и полицията. В досъдебното производство, посредникът помага да се установят основните правила за провеждане на разпита, които трябва да бъдат спазени по време на изслушването. Освен това, жертвите могат да посещават съда преди датата на насроченото дело, за да се запознаят със сградата и съда.



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Списък с използвани съкращения

E-PROTECT	„Осигуряване на по-добра закрила на децата жертви на престъпление“
FCIA	Финландски закон за наказателното разследване
FCJP	Финландски съдебно-процесуален кодекс
GCCP	Германски наказателно-процесуален кодекс
ДЧ	Държави-членки
PCCP	Наказателно-процесуален кодекс на Португалия
PVS	Португалски статус на жертвите
RIKU	Финландската организация за подкрепа на жертвите
VD	Директивата за жертвите на престъпления - Директива 2012/29/ЕС
Victim PS	Лично обръщение на жертвата
Victims' Code	Правилник за работа с жертви на престъпления



1. Въведение

Настоящото изследване оценява транспонирането на Директива 2012/29/ЕС (Директива за жертвите на престъпления) в националното законодателство на пет държави-членки на Европейския съюз – по-точно Финландия, Германия, Португалия, Испания, Англия и Уелс – със специален фокус върху правата, гарантирани на деца жертви на престъпления. Целта на доклада е да събере допълнителна информация относно степента на прилагане на разпоредбите, предписани от Директивата за жертвите на престъпления, както и да идентифицира обещаващи практики и добре работещи законодателни решения. Настоящият доклад, обаче, не оценява практическото прилагане на транспонираната Директивата в националните законодателства на избраните държави-членки. Изследването е проведено в рамките на проект E-PROTECT - “Осигуряване на по-добра закрила на децата жертви на престъпление” – имащ за цел засилване на прилагането на Директивата, особено в случаите, когато жертвите са деца.

Директивата за жертвите на престъпления е част от разгърнатия приоритет на Европейската комисия, целящ да подобри правата, защитата и участието на жертви в наказателни производства, както е посочено в хоризонталния пакет от мерки на Комисията от май 2011 г.² Основна цел на Директивата е да се гарантира индивидуалното оценяване на потребностите на жертвите. Тя съдържа различни специални мерки по отношение на защитата на деца-жертви на престъпления и предвижда щадящ подход, подходящ за деца, при който интересът на децата-жертви е първостепенен приоритет по време на участието им в наказателното производство.³

Проектът E-PROTECT се осъществява на няколко фази, включително изследване и активно взаимодействие с практикуващите експерти в областта на правата на детето. Първата стъпка от проекта се състои в оценката на законовите разпоредби, транспониращи Директивата в петте партньорски страни.⁴ Настоящият доклад допълва тези доклади като оценява законодателството по транспониране на Директивата в пет допълни държави-членки, за да се придобие по-широка представа за транспонирането ѝ на Европейско ниво. Тези шест доклада служат като крайъгълни

² European Commission, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2013 (in the following: European Commission, Guidance Document to the Victims’ Directive, 2013).

³ Вж. горното.

⁴ Австрия, България, Италия, Румъния и Гърция.



камъни за по-нататъшните стъпки от изпълнението на проекта E-PROTECT, като създаването на онлайн платформа за правата на децата-жертви на престъпления, както и провеждането на семинари и виртуални събития с практикуващи експерти в областта на подкрепа на децата-жертви.

Докладът е структуриран, както следва: Втора глава очертава методологията, включително как е дефиниран обхвата на разглежданите държави-членки, оценени в рамките на доклада, как са избрани разглежданите статии, както и избраната методология за правна оценка. Трета глава включва оценка на процеса на транспониране на Директивата за жертвите на престъпления в избраните държави-членки като се има предвид навременността на транспонирането и законодателния процес, както и участието на заинтересуваните страни в процеса на изготвяне.

На следващо място, същината на настоящия доклад се съдържа в Четвърта глава: оценката на транспонирането на избрани разпоредби от Директивата, а именно: легална дефиниция за деца-жертви на престъпление (чл. 2, пар. 1 от Директивата), индивидуалната оценка на жертвите за идентифициране на специфичните им нужди от закрила (чл. 22), правото на закрила на децата-жертви на престъпления по време на наказателно производство (чл. 23-24), както и достъпът до защита и служби за подкрепа на жертвите (чл. 8-9). Всяка от посочените глави е разделена на подточки, оценяващи съответното законодателство във всяка от избраните държави-членки по отделно.

Накрая, Пета глава съдържа заключението на доклада. Идентифицирани са подобренията и постиженията, които са в резултат от процеса по транспониране на Директивата в съответните държави-членки. Идентифицирани са още и добри работни законодателни решения като съпоставят изводите от индивидуалните проучвания за разглежданите страни.

2. Методология

Настоящият доклад допълва петте задълбочени анализа на законодателството за транспониране на Директивата в петте държави-членки, участващи в проекта - Австрия, България, Италия, Румъния и Гърция. Имайки предвид главната цел на доклада, а именно да събере информация относно транспонирането на Директивата за жертвите на престъпления на Европейско ниво, следните критерии за подбор бяха използвани за идентифициране на държавите-членки, оценени в рамките на настоящия доклад:

- Географски и културен обхват;



- Доколко държавата-членка е уместен пример, по-специално са разгледани 1) националните законодателни особености; 2) законодателните подходи, предприети при транспонирането на Директивата;
- Добри практики;
- Наличието на литература, документи, съдържащи политики и други материали.

Структурата на доклада се основава на предходните доклади, изготвени в рамките на проекта E-PROTECT, за да се даде възможност за сравнение между различните законодателни решения. Подобно на предишните доклади, едни и същи разпоредби са обект на оценка в рамките на настоящия доклад, на база на сравнителен анализ на предписанията на Директивата и кореспондиращото им национално законодателство, като Насоките на Генерална дирекция „Правосъдие“ са използвани като отправна точка.⁵ На последно място, следва да се вземе предвид, че допълнителна информация е събрана чрез кабинетно проучване.

Оценка на практическото прилагането на законодателите решения за транспониране на Директивата би могла да бъде от полза, особено по отношение на отличаването на работещи законодателни решения, но тази оценка би разширила обхвата на изследването. За да се преодолее това ограничение, информацията е събрана чрез анализ на различни изследователски доклади, използващи първични изследователски методи.⁶

⁵ DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

⁶ Всъщност съществуват няколко различни доклада върху защитата на жертви на престъпления. Сред тях: APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016; EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, December 2017; European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States, 2015; European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Luxembourg), 2014; FRANET, Victim Support Services in the EU: Преглед и оценка на правата на жертвите на практика: Germany, 2014; Maizener ed. al., EVVI (Evaluation of Victims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf; Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings.



3. Процесът по транспониране на Директива 2012/29/ЕС в избрани държави-членки

Настоящата глава описва накратко процесите по транспониране на Директивата за жертвите на престъпления в избраните държави-членки: Какви са предизвикателствата? Къде във времето се позиционират мерките по транспониране – дали се прилагат от 16 ноември 2016 г., както е определено в чл. 27 от Директивата? Комисията започнала ли е производство за установяване на нарушение? Впоследствие е разгледан законодателният процес е, като особено внимание е отделено на участието на заинтересуваните страни в процеса на изготвяне на закона, както и друго национално законодателство за транспониране на Директивата.

3.1. Финландия

Финландският парламентарен законодателен процес⁷ се регулира от правилата на Финландския парламент (*Riksdagens arbetsordning*). Предвидено е, че за обикновените закони, голяма част от нормотворческата дейност се извършва от министерствата и комитетите. След като бъде внесено предложение в Парламента⁸, първо се обсъжда от съответната комисия, консултирана от експерти, преди предложението да е представено пред Парламента. Впоследствие, проектозаконът се обсъжда или Парламента директно го гласува.⁹

В случая, когато Директивата за жертвите на престъпления се транспонира във Финландия, две работни групи подготвят законодателния акт: първо, работна група, назначена от Министерството на правосъдието, състояща се от представители на няколко министерства, както и такива на прокуратурата, адвокатската колегия и финландската организация за подкрепа на жертвите

⁷ Вж. Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/> за по-подробно обяснение на различните стъпки от финландския законодателен процес.

⁸ Законопроекти могат да бъдат внасяни или от правителството, членове на Парламента или чрез гражданска инициатива подкрепена с поне 50 000 подписа.

⁹ Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/>.



(RIKU) ¹⁰¹¹. Задачата на тази работна група е да оцени какви законодателни промени са необходими и какви допълнителни действия следва да бъдат предприети за отговаряне на изискванията, поставени от Директивата за жертвите на престъпления. След изготвяне на доклада, властите, компаниите и експертите имат възможност да дадат своите становища относно предложените промени. Повечето от изразените във Финландия становища подкрепят предложените изменения. Второ, допълнителна комисия – Комисия по политиката за жертвите, е създадена, за да се подготви изпълнението изискванията, въведени с чл. 8 и чл. 9 от Директивата, по-специално за създаването на „Национална стратегия за организацията на услуги за подкрепа на жертвите и финансирането на тези услуги“.¹² Подобно на работната група, комисията се състои от различни официални представители и представители на неправителствени организации, като например на организацията за подкрепа на жертвите, на Федерацията на майките и домовете за деца и приюти, както и на асоциацията на мултикултурните майки.

Повече от половината предписания, включени в Директивата за жертвите на престъпления, вече съществуват във финландското законодателство и преди приемането на Директивата. Следователно голяма част от нейните разпоредби не се нуждаят от транспониране - като например специфичните разпоредби, засягащи специалните нужди на децата-жертви, споменати в чл. 24 от Директивата. В резултат на това само членове 4, 5, 6, 7, 8, 9, 12, 22 и 23 изискват транспониране.¹³ Необходимите промени са осъществени чрез Закон № 66/2015¹⁴, който транспонира необходимите промени в няколко законодателни акта, регламентиращи наказателния процес. Измененията влязат в сила през март 2016 г.¹⁵ Необходимите промени, произтичащи от изисквания на член 8 и 9 от

¹⁰ Victim Support Finland (RIKU) е организация, базирана на взаимно съгласие и поддържана от Финландския Червен кръст, the Federation of Mother and Child Homes, the Finnish Association for Mental Health, the Mannerheim League for Child Welfare, the Finnish Federation of Settlement Houses и the National Church Council. Операциите се координират на национално ниво от Финландската асоциация за психическо здраве. Организацията работи на територията на цяла Финландия. Основната ѝ цел е да подобри положението на жертвите на престъпления и техните семейства. За повече информация вж.: <https://www.riku.fi/en/victim+support+finland/>.

¹¹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings.

¹² Вж. горното, 13.

¹³ Вж. горното.

¹⁴ FINLEY, HE 66/2015, <https://finlex.fi/fi/esitykset/he/2015/20150066> (на финландски).

¹⁵ EUR-LEX споменава 29 мерки, които са приложени, за да се транспонира Директивата във финландското законодателство. EUR-LEX, National transposition measures communicated by the Member States concerning: Directive 2012/29/EU, <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029>.



Директивата са изпълнени чрез правителствен Закон № 293/2014¹⁶ и влязат в сила през декември 2016 г.

Най-значителните промени в финландското законодателство засягат задълженията за осведомяване на жертвите за техните права (Глава 4, Раздел 18 от Финландския закон за наказателното разследване (FCIA)); разпоредбите, регламентиращи индивидуална оценка на нуждите (Глава 11, Раздел 9 от FCIA); и за гарантиране на достъп на жертвите до услуги за закрила и подкрепа (Глава 4, Раздел 10, FCIA)¹⁷.

3.2. Германия

В Германия предложение за приемане на закон може да бъде внесено от правителството (*Bundesregierung*), федералния съвет (*Bundesrat*), или поне от 5% от членовете на Парламента (*Bundestag*) или от фракция.¹⁸ Преди предложението да бъде представено от правителството - което е най-често срещаната практика¹⁹ - то трябва да бъде изпратено до федералния съвет за становище. Впоследствие предложението - заедно със становището на федералния съвет и отговорът на правителството - се внася в Парламента. Там, законът се обсъжда на три четения, между които предложенията се обсъждат от парламентарните комисии (*Bundestagsausschüssen*). Докато в рамките на последните, експерти могат да бъдат изслушани, генерално законодателната процедура в Германия не предвижда задължително участие на гражданското общество.²⁰ Ако не са специално поканени от съответната парламентарна комисия, организациите все пак могат да поемат инициативата и да напишат критични становища относно предложените закони, както е и направено от няколко организации в процеса на транспониране на Директивата за жертвите на престъпления.²¹

¹⁶ FINLEX, HE 293/2014,

<https://finlex.fi/fi/esitykset/he/2014/20140293?search%5Btype%5D=pika&search%5Bpika%5D=He%20293%2F2014> (на финландски).

¹⁷ RIKU – Rikosuripavystys: victim support Finland,

<https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victim%E2%80%99s+directive/>.

¹⁸ Член 76, пар.1, Grundgesetz.

¹⁹ Вж. страницата на германското министерство на вътрешните работи, законодателна процедура,

<https://www.bmi.bund.de/DE/themen/verfassung/gesetzgebung/gesetzgebungsverfahren/gesetzgebungsverfahren-node.html>.

²⁰ Bundesrat, законодателна процедура,

https://www.bundesrat.de/DE/aufgaben/gesetzgebung/verfahren/verfahren.html;jsessionid=3CA8BC90B2257E80D96151207647DF27.2_cid391?nn=4353668#doc4353670bodyText2 and bpb, Wie ein Gesetz entsteht,

<http://www.bpb.de/politik/grundfragen/24-deutschland/40463/wie-ein-gesetz-entsteht> (на немски).

²¹ Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz),



Не всички изисквания, заложи в Директивата за жертвите обаче попадат в компетентността на федералното законодателство, има и такива, които са в полето на компетенциите на федералните провинции. В резултат на това съществуват няколко разпоредби, които не могат да бъдат приложени на национално равнище.²² По-специално това се отнася до транспонираните разпоредби на чл. 8 и чл. 9 (относно достъпа на жертвите до услуги за закрила и подкрепа), както и на чл. 23 (правото на защита на жертви със специфични нужди от закрила по време на наказателното производство) и чл. 25 (относно обучението на практикуващите).²³ Въпреки това, в резултат на това, че в Германия са приети различни закони, насочени към защитата и права на жертвите на престъпления в наказателното производство, за да се транспонира Директивата в германското законодателство не са необходими значително промени в наказателно-правната система. Повечето от промените с оглед транспониране на Директивата се въвеждат чрез „Закон за укрепване на правата на жертвите на престъпления в наказателното производство“ (*Gesetz zur Stärkung der Opferrechte im Strafverfahren – 3. Opferrechtsreformgesetz*),²⁴ който влиза в сила на 31 декември 2015 г. Повечето от измененията следва също да бъдат включени в германския наказателно-процесуален кодекс (*Strafprozessordnung*).

Най-голямата промяна, в следствие на процеса по транспониране на Директивата в Германия, е създаването на услуга за психо-социална подкрепа (*psychosoziale Prozessbegleitung*), която предоставя на жертвите със специфични нужди за закрила възможност да получат професионална подкрепа преди, по време на и след приключване на наказателното производство. Освен това, наказателният процес преминава през още необходими промени, най-вече свързани с

https://www.mietpreisbremse.bund.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (German).

²² Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, стр. 37.

²³ Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeUndOpferschutz/Bericht_BundLaender_AG.pdf?blob=publicationFile&v=2 (на немски).

²⁴ BMJV, Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf;jsessionid=0EB396255BA84B364DB133AAFF6BBBCE.2_cid289?blob=publicationFile&v=3



правото на информация.²⁵ Има експерти, обаче, които са на мнение, че повечето от промените в Германия нямат особен ефект на практика.²⁶

3.3. Португалия

В Португалия, закон може да бъде предложен или от депутати като проектозакон (*projetos de lei*) или от правителството като предложение за закон (*propostas de lei*).²⁷ ²⁸ След като законът бъде приет от Председателя на Асамблеята на Републиката (Парламента), проектът се изпраща на специализирана комисия, която да даде становище. Впоследствие се гласуват общите принципи на предложението. Окончателното гласуване се провежда отново на пленарно заседание. Накрая, инициативата трябва да бъде подписана от президента на Републиката.²⁹

Директивата за жертвите на престъпления е транспонирана в Португалия чрез Закон № 130/2015 от 4 септември 2015 г.³⁰, влизащ в сила на 4 октомври 2015 г., довеждайки до промени в наказателно-процесуалния кодекс на Португалия (РССР).³¹ Към него е прието също приложение – Португалски устав на жертвите (PVS) (*“Estatuto da Vítima”*), което предвижда закрилата на статуса на уязвимите жертви, както е посочено в Директивата.³² Повечето от разпоредбите в приложението пресъздават дословно предписанията на Директивата.

Въпреки че някои от изискванията, установени в Директивата, съществуват и преди в португалското законодателство, законът по транспонирането води до някои промени по отношение на мерките за превенция, укрепване на правото на жертвите да бъдат информирани, както и до

²⁵ Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.bmjjv.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (на немски).

²⁶ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, стр. 8.

²⁷ Съществува още възможността за гражданска инициатива. Повече информация има на страницата на Assembleia da República, Processo Legislativo Comum, <http://www.parlamento.pt/Parlamento/paginas/plc.aspx>

²⁸ Освен от парламента, в някои случаи закони-декрети могат да се приемат от правителството, и регионални правни декрети – от законодателни събрания.

²⁹ Вж. Assembleia da República, Parliament, <http://www.en.parlamento.pt/Parliament/index.html>

³⁰ Decreto do Presidente da República n.º 101/2015 - Diário da República n.º 173/2015, Série I de 2015-09-04/70186153, Assembleia da República, Lei n.º 130/2015, Procede à vigésima terceira alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001 достъпно на <https://dre.pt/application/file/70186153>

³¹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, стр. 60-61.

³² Portuguese Victims' Statute, https://apav.pt/apav_v3/images/pdf/estatuto_da_vitima.pdf (на португалски).



въвеждането на нова система за обезщетяване на жертвите на домашно насилие и насилствено престъпление. Освен това, с транспонирането на Директивата в португалското законодателство се въвежда легалният термин „жертва“.³³

3.4. Испания

Испания, наред с другите държави-членки, следва да транспонира изцяло Директивата за жертвите на престъпления до началото на ноември 2015 г. На 16 ноември 2015 г. стартира периодът, в който държавите-членки са задължени да съобщят на Комисията законодателните мерки, предприети по отношение на задължението за пълното транспониране на Директивата. Европейската оценка за прилагането на Директивата за права на жертвите на престъпления³⁴, разработена от Европейската парламентарна служба за научни изследвания през декември 2017 г., посочва, че Испания, измежду други държави-членки, транспонира Директивата с приемането на един закон, чрез който се изменят и някои от разпоредбите на друго релевантно законодателство, съществувало преди момента на транспониране. С оглед целите на настоящия доклад, интерес представляват измененията на испанския наказателно-процесуален кодекс и приемането на Закон № 4/2015 относно статуса на жертвите на престъпления^{35, 36}.

Основният инструмент, използван от испанския законодател за транспониране на Директивата, е Закон № 4/2015.³⁷ Законът има за цел да обедини всички права на жертвите на престъпления в един единствен законодателен акт и е приет в съответствие на задължението за транспониране на Директивата за жертвите на престъпления. Въпреки че в Испания и преди съществува регулаторна рамка³⁸, която гарантира права на жертвите на престъпления, голяма част от тези закони са насочени към жертви на определени видове престъпления като по този начин единно законодателство, което да се прилага спрямо жертви на престъпления изобщо, не

³³ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, стр. 9.

³⁴ EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, декември 2017 г.

³⁵ Ministerio de Justicia, Law 4/2015, of 27 April on the Standing of Victims of Crime, <https://rm.coe.int/168070ac7f>

³⁶ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, стр. 81.

³⁷ Ministerio de Justicia, Law 4/2015, of 27 April on the Standing of Victims of Crime, <https://rm.coe.int/168070ac7f>

³⁸ Law 35/1995 on support and assistance for the victims of violent crimes and crimes against sexual freedom (Испания); Law 1/1996 on legal protection for minors; Law 1/2004 on comprehensive protection measures against gender-based violence (Испания); and Law 29/2011 on the recognition and comprehensive protection of victims of terrorism (Испания).



съществува. Поради тази причина, законът за статуса на жертвите на престъпления цели да регламентира генерално всички права на жертвите на престъпления, със силен акцент върху закрилата на правата на жертви със специални нужди и уязвимите жертви.

Както в Португалия, така и испанският законодател транспонира голяма част от разпоредбите на Директивата дословно. Още повече, структурата на закона следва тази на Директивата.³⁹ Всички права и задължения, заложи в Директивата за жертвите на престъпления, са изцяло транспонирани в Испания. Испания, подобно на Германия, е федерална държава, състояща се от няколко автономни области. Въпреки че описаните нормативни актове се прилагат във всички автономни области, предишни изследвания показват, че съществуват значителни различия в някои от сферите, обхванати от Закон 4/2015, като например, създаването на служби за закрила и подкрепа на жертви на престъпления.⁴⁰

Испанският законодател се стреми да приеме закон, който да подпомогне и улесни жертвите на престъпления при упражняване и закрила на правата им. Ето защо, информация и насоки относно права на жертвите са също предоставени. Също така законодателството цели да предотврати вторично виктимизиране, което може да бъде причинено от ненужни формалности.

3.5. Англия и Уелс

Правилникът за работа с жертви (Victims' Code)⁴¹ е въведен за първи път през 2006 г. с цел да определи обхвата на услугите, които системата на наказателен процес следва да предостави на жертвите на престъпления в Англия и Уелс. Преработването на Правилника, от една страна, е в отговор на външна консултация, проведена през 2012 г. и ясно сочеща нуждата от промяна с цел да се вземат предвид промени в практиката. От друга страна, преработването на Правилника въвежда изискванията на Директивата за жертвите на престъпления и от части тези на Директивата относно предотвратяването и борбата с трафика на хора и защитата на жертвите от него⁴² и на Директивата

³⁹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, стр. 81.

⁴⁰ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary, стр. 10.

⁴¹ UK Ministry of Justice, Code of Practice for Victims of Crime, октомври 2015 г.,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF

⁴² Official Journal of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>



относно борбата със сексуалното насилие и със сексуалната експлоатация на деца, както и с детската порнография⁴³.

Преди осъществяването на промени в текста на Правилника, е проведена консултация с широк кръг от организации – като полиция, местни наказателно-правни институции, екипи за справяне с младежката престъпност, както и с представители на съдийската и юридическата общност, и доброволчески организации. Тези заинтересувани лица са поканени да представят становища по консултативния документ⁴⁴, като в допълнение от това са и организирани две публично-консултативни събития. Проведено е още проучване с деца и младежи относно впечатленията им от раздела за децата и младежите в Правилника.⁴⁵ След приключване на процеса по консултиране, Министерството на правосъдието на Великобритания обобщава резултати с документ⁴⁶, включващ новия текст на Правилника за работа с жертви, резюме на представените становища, както и описание на действията, които ще бъдат предприети след консултациите.

Целта на Правилника е да бъде практическо ръководство, подпомагащо наказателно-правните органи за оказване на съдействие на жертви на престъпления по време на наказателно производство и за развиване на по-гъвкава услуга.⁴⁷ Например, трета глава от Правилника, в която се намират разпоредбите относно децата-жертви на престъпления, е разделена на две части: Част А има за цел да предостави на жертвите и организациите за закрила и подкрепа на жертви необходимата информация за по-лесното преминаване през всяка стъпка от наказателното производство; Част Б е написана за органите, които трябва да предоставят тази помощ и подкрепа, напр. полицията⁴⁸. В допълнение, Министерството на правосъдието на Великобритания издава две опростени версии на Правилника – една, насочена към възрастни, станали жертва на престъпление⁴⁹,

⁴³ Official Journal of the European Union, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing the Council Framework Decision 2004/68/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN>

⁴⁴ Докладът от консултациите включва от една страна предложените промени за Кодекса на жертвите. От друга страна е придружен от оценка на въздействието и декларация за равенство. Ministry of Justice, Results Updated, 31 октомври 2013 г., <https://consult.justice.gov.uk/digital-communications/code-victims-crime>

⁴⁵ UK Ministry of Justice, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 March 2013, published on 29 октомври 2013 г., стр. 10, <https://consult.justice.gov.uk/digital-communications/code-victims-crime/results/improving-the-code-of-practice-for-victims-of-crime-consultation-response.pdf>

⁴⁶ UK Ministry of Justice, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 March 2013, published on 29 октомври 2013 г.

⁴⁷ Вж. горното.

⁴⁸ Вж. горното, глава 3.

⁴⁹ UK Ministry of Justice, the support you should get if you are a victim of crime,



и друга – насочена към децата-жертви на престъпление⁵⁰ - както и листовка⁵¹. Тези документи представляват опростен вариант на Правилника за жертвите на престъпления, като включват разяснения на сложни термини, както и обяснения чрез картинки. Правилникът е приет през октомври 2015 г.

В Англия, жертвата – за разлика от останалите държави-членки, разгледани в този доклад – не участва като страна по наказателното производство, а като свидетел.⁵² В резултат, жертвата получава различна роля в рамките на наказателното производство, като не може да упражнява никакви права, както и не може да бъде надлежно представлявана по време на съдебното производство. В Англия и Уелс прокурорът защитава правата и интересите на жертвата, докато ролята на жертвата е да представи показания си като свидетел.⁵³

4. Правна оценка на мерките по транспониране на Директива 2012/29 ЕС

Следващата глава съдържа правната оценка на мерките по транспониране на Директивата за жертвите на престъпления в избрани държави-членки. На първо място е разгледана легалната дефиниция жертва на престъпление във всяка от избраните държави членки. На следващо място, разпоредбите, транспониращи чл. 22 от Директивата - индивидуалната оценка за идентифициране на специфичните нужди от защита - са идентифицирани и анализирани. На последно място, е отличено и оценено правото на закрила на децата-жертви на престъпления по време на наказателното производство (чл.23-24 от Директивата), както и тяхното право на достъп до закрила и подкрепа (чл.8-9 от Директивата).

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf

⁵⁰ UK Ministry of Justice, The Victims' Code: u18s: Young victims of crime – Understanding the support you should get, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267982/u18-victims-code-leaflet.pdf

⁵¹ UK Ministry of Justice, Victims of crime: Understanding the support you can expect, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341367/adult-victims-code-leaflet.pdf

⁵² European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Luxembourg), 2014 г., стр. 29.

⁵³ Вж. горното.



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4.1. Легална дефиниция „жертва на престъпление“

Един от основните моменти в Директивата за жертвите на престъпления е поставянето на жертвата в центъра на системата за наказателно правосъдие, премествайки фокуса от ролята на прокуратурата и съдията.⁵⁴ Така Директивата за жертвите на престъпления въвежда следната легална дефиниция на "жертва":

“(i) физическо лице, което е претърпяло вреди, включително физическо, душевно или емоционално страдание или икономическа вреда, които са пряка последица от престъпление;

(ii) членове на семейството на лице, чиято смърт е пряка последица от престъпление и които са претърпели вреда в резултат на смъртта на лицето;”⁵⁵

Докато в националното законодателство на повечето държави членки, включени в настоящия доклад (както и в държавите членки на ЕС като цяло⁵⁶), е въведен легалният термин жертва на престъпление, в националното законодателство на Финландия и Германия подобен липсва.⁵⁷ Въпреки това, както показват и други изследвания⁵⁸, фактът, че различни термини се използват, за да се опише лице, което е претърпяло вреди в резултат на престъпление, не означава непременно, че националните законодателства не предвиждат същите права и ниво на закрила.

Страна	Съответно законодателство	Правна дефиниция
Финландия	-	Във Финландия не съществува легална дефиниция на термина „жертва на престъпление“. Страна, претърпяла вреди (<i>asianomistaja</i> , буквално: „този, който притежава делото“) е: 1. „собственикът на благото, защитено от закона , и 2. този, който е претърпял вреди, причинени пряко от

⁵⁴ EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, декември 2017 г.

⁵⁵ Чл. 2, пар. 1 Директива 2012/29/ЕС.

⁵⁶ EPRS – European Parliamentary Research Service, The Victims’ Rights Directive 2012/29/EU: European Implementation Assessment, декември 2017 г., стр. 13.

⁵⁷ Във Финландия се използва терминът „страна, претърпяла вреди“, докато в Германия обикновено терминът е съ-ищец.

⁵⁸ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016 г., стр. 113-116.



		<i>престъпление.</i>⁵⁹ Следователно, финландската легална дефиниция за лице, претърпяло вреди, е много по-широка от дефиницията за жертва в Директивата. Тя включва също лицето, срещу което е извършено престъпление, но не е претърпяло вреди в резултат на престъплението. Освен това терминът "<i>asianomistaja</i>" включва и юридически лица. Финландското законодателство определя и косвени жертви: починал съпруг / съпруга на жертвата, регистриран партньор, лица, живеещи в едно домакинство, деца, роднини и родители.
Германия	-	Във Германия не съществува легална дефиниция на термина „жертва на престъпление“. Обикновено се използва терминът „лице, претърпяло вреди“ или ищец, като последният предоставя на жертвата допълнителни права. Ищецът е увредено лице, което има законното право да се присъедини към производството в съответствие с чл. 397а от ГССР.⁶⁰ Това включва и определен кръг от роднини на лице, чиято смърт е била причинена от престъпление (чл.395, ал.2 ГССР).⁶¹ Не съществуват обаче общи разпоредби, регламентиращи правата на косвените жертви.⁶² Причината, поради която, терминът „жертва“ не се използва в германското законодателство, е с оглед презумпцията за невиновност .
Португалия	Глава IV, чл. 67, пар. 1 т. а от	Жертва е: “i) <i>физическото лице, което е претърпяло вреда, включително атака срещу неговата физическа или психическа неприкосновеност, неимуществена или емоционална вреда или имуществена вреда, пряко</i>

⁵⁹ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016 г., стр. 116.

⁶⁰ Липсата на легална дефиниция е силно критикувана от немските академици. Вж. Kett-Straub, Wie viel Opferschutz trägt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, стр. 341.

⁶¹ Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, стр. 22, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (на немски).

⁶² APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016 г., стр. 116.



	Португалския наказателен кодекс	причинена от действие или бездействие, при извършване на престъпление; ii) членове на семейството на човек, чиято смърт е пряко причинена от престъпление и които са претърпели вреди, в резултат на тази смърт. Така понятието „жертва“ включва преживелият съпруг, при условие че не е налице законна раздяла, както и лицето, което е живяло във фактическо съжителство, низходящи и възходящи, в случай че са претърпели вреда в следствие от смъртта, като от обхвата на легалното определение е изключен причинителят на смъртта“.⁶³
Испания	Чл. 2, Закон 4/2015, от 27 април, относно статута на жертвите на престъпления	“Разпоредбите на този закон следва да се прилагат: a) Като „пряка жертва“, всяко физическо лице, претърпяло вреди или загуби, по отношение на личността или имуществото му, по-конкретно психически или психологически наранявания, емоционални вреди или финансови загуби, директно причинени от извършване на престъплението.. b) Като „косвена жертва“, в случай на смърт или изчезване на лице, причинено пряко от престъпление, освен ако лицето не е извършител на престъплението: [...]”⁶⁴ Тази дефиниция е резултат от промените, направени през април 2015 г. Преди това в испанското законодателство не съществува легално определение на понятието „жертва“⁶⁵
Англия и Уелс	Въведение, пар. 4. Правилник за работа с жертви	“За целите на [Правилника], жертва е: - Физическо лице, което е претърпяло вреди, включително физически, емоционални или психологически вреди или икономически загуби, които са пряко причинени от престъплението; - Близък роднина (...) на лице, чиято смърт е причинена пряко от престъпление;”

⁶³ IVOR, Portugal: Developments on the implementation of victim assistance mechanisms, стр. 1.

⁶⁴ Ministerio de Justicia, Law 4/2015, of 27 April, on the standing of victims of crime, Article 2, <https://rm.coe.int/168070ac7f>.

⁶⁵ В предишната уредба съществува само терминът обвиняваща страна, което предполага че права според испанското законодателство имат само лица, които се конституират като частни обвинители и са страна в наказателния процес; Вж. APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016, стр. 110.



	Речник, Правилник за работа с жертви	Близък роднина е „съпруг/съпруга, партньор, възходящи и низходящи, , братя и сестри, лица, пряко зависими от жертвата. Други членове на семейството, включително настойници и попечители, могат да бъдат сметнати за близки роднини по преценка на службата.“ Въпреки че понятието "жертва" е дефинирано в британското законодателство, жертвата не е страна по наказателното производство и не участва в него. ⁶⁶
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4.2. Индивидуална оценка на жертвите с цел установяване на специфичните им нужди от защита (чл. 22 от Директивата)

4.2.1. Финландия

Във Финландия, изискванията на чл. 22 от Директивата са транспонирани чрез поправки във Финландския закон за наказателно разследване (the Finish Criminal Investigation Act, FCIA, 805/2011).⁶⁷ Финландския закон за наказателното разследване урежда досъдебното наказателно производство като по-конкретни мерки могат да се съдържат и в други нормативни актове (Глава 1, Раздел 1 FCIA). Транспонирането на Директивата за жертви на престъпления води до промени и в други закони, но повечето изменения засягат именно FCIA.⁶⁸

Във Финландия практиката на индивидуална оценка на жертвите на престъпление съществува преди процеса на транспониране на Директивата.⁶⁹ Тези разпоредби са допълнително прецизирани чрез добавяне на нов Раздел 9а към Глава 11 от FCIA. Този нов раздел определя правилата за индивидуална оценка на жертвите, за да се определи специалната защита, която следва да бъде предоставена по време на досъдебното производство и съдебния процес.⁷⁰ Това се прави в сътрудничество със жертвата⁷¹ и най-вече се взимат предвид:

⁶⁶ Вж. горното.

⁶⁷ Finnish Ministry of Justice, Criminal Investigation Act (805/2011; amendments to 736/2015 included, Unofficial Translation, <https://www.finlex.fi/en/laki/kaannokset/2011/en20110805.pdf>

⁶⁸ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, стр. 16.

⁶⁹ EPRS – European Parliamentary Research Service, The Victims' Rights Directive 2012/29/EU: European Implementation Assessment, December 2017, стр. 60.

⁷⁰ Oikeus, If you Become a Victim of a Crime: Victim protection: <https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>

⁷¹ Вж. горното.



- Личното положение на жертвата, както и
- Естеството на предполагаемото престъпление.⁷²

Мерките за закрила следва да бъдат предоставени на жертвата по време на наказателното разследване, ако не причиняват значително забавяне на процедурата или причиняват други вреди.⁷³ Освен това разследващият орган има задължението да информира жертвата за нейните процесуални права съгласно Глава 4, Раздел 18 FCIA, включително *„информация относно услугите за подкрепа, устен и писмен превод, обезщетение, защита, възстановяване на разноските и информация за разглеждане на делото в наказателното производство.“*⁷⁴

Специални права се предоставят на определени групи, определени като най-уязвими, като например деца-жертви, жертви на домашно или сексуално насилие, жертви на трафик на хора и жертви на физически или психически тормоз.⁷⁵ В тази връзка е издадено Ръководство за полицията при оценка на потребностите от защита на жертвите. Ръководството определя правила за извършване на индивидуална оценка и как жертвата следва да бъде насочена към службите за подкрепа на жертви.⁷⁶

4.2.2. Германия

Въпреки че повечето от правата, посочени в член 23 и 24, съществуват в германското законодателство и преди процеса на транспониране на Директивата за жертвите на престъпления, в този период липсва обща разпоредба, която да регламентира извършването на индивидуална оценка на жертвата за идентифициране на специфични нужди за закрила и подкрепа в съответствие в член 22 от Директивата.⁷⁷ Поради тази причина, германският законодател добавя нова разпоредба в германския наказателно-процесуален кодекс (GCCP): параграф 2 от чл. 48 на GCCP. Според него,

⁷² Вж. горното; За повече информация вж. също: Savonen, Developing Directive-Compatible Practices for the identification, assessment and referral of victims: National Report – Finland, 2017 г., стр. 6; и Finnish Ministry of Justice, Rights of a Crime Victim, 01 март 2017 г.

⁷³ Oikeus, If you Become a Victim of a Crime: Victim protection: <https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>

⁷⁴ RIKU, What is the victims' directive?, <https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

⁷⁵ IVOR, Finland: Developments on the implementation of victim assistance mechanisms.

⁷⁶ RIKU, What is the victims' directive?, <https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

⁷⁷ Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13 февруари 2015 г. – BR-Drucksach 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (на немски), стр. 14.



всички разпити и процесуални действия с участие на свидетел, който е пострадал от престъпление, трябва да бъдат извършени като се вземат предвид неговите специални нужди от закрила. Индивидуалната оценка трябва да определи следното:

1. дали съществува по-голяма опасност от сериозно накърняване на благополучието на свидетеля, изискваща мерки за избягване на визуален контакт между свидетеля и подсъдимия/ обвиняемия (§168e GCCP) или организиране на аудиовизуално изслушване на свидетел (art. 247a GCCP),
2. дали правният интерес на свидетеля изисква ограничение на публичността при провеждане на разпита и
3. до каква степен е възможно да се отхвърлят несъществени въпроси, засягащи личната сфера на живота на свидетеля.

В рамките на тази оценка следва да се вземе предвид **състоянието на свидетеля**, както и **естеството и обстоятелствата на престъплението** (чл. 48, пар. 3 GCCP).

Освен това систематичното тълкуване на GCCP показва, че тази разпоредба е приложима и при осъществяване на процесуални действия от прокурора (чл. 161a, пар. 1 от GCCP) и полицията (чл. 163, пар. 3 от GCCP) ⁷⁸. С тези разпоредби германският законодател установява, че индивидуалната оценка следва да се извърши още при първия контакт с жертвата.⁷⁹

По този начин, установяването на това задължение определя, че специфичните нужди за закрила на жертвата следва да бъдат определяни по всяко време, без да се посочва кой отговаря за извършването на оценката и как следва да се извърши тя. Въпреки че правата, регламентирани в новия член 48, пар. 3 не представляват сами по себе си нововъведение, само чрез тези законодателни промени властите са законово задължени да извършат оценка на нуждите.^{80 81}

⁷⁸ Вж. горното, стр. 15.

⁷⁹ Wie viel Opferschutz trägt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, стр. 343. https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html

⁸⁰ Kett-Straub, Wie viel Opferschutz trägt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, стр. 343.

⁸¹ Все пак този член е критикуван от систематична гледна точка. Експерти твърдят, че не е позициониран правилно в GCCP, тъй като чл. 48 се отнася до свидетели в наказателния процес, а не до жертви на престъпления; Вж. още: Löffelmann, Drittes Opferrechtsreformgesetz – Ausgabe 11/2014, 22 ноември 2014 г., <http://www.recht-politik.de/drittes-opferrechtsreformgesetz/> (на немски).

4.2.3. Португалия

В Португалия транспонирането на Директивата за жертвите не само води до установяването на легално определение на понятието "жертва" в португалското законодателство⁸², но и до въвеждането на термина "особено уязвима жертва" ("*vítima especialmente vulnerável*") в Наказателно-процесуалния кодекс на Португалия (РССР).

Особено уязвима жертва е жертва, чиято особена уязвимост е резултат от нейната **възраст, здравословен статус или увреждане**, както и от **вредите, които имат сериозни последици** за психическото благосъстояние на жертвите или за социалната им интеграция, причинени по **вид, степен и продължителност** от виктимизация.⁸³ Жертвите на престъпления, свързани с насилие⁸⁴ винаги се считат за особено уязвими жертви. Португалският Наказателно-процесуален кодекс уточнява, че дете или млад човек е физическо лице на възраст под 18 години⁸⁶.

Освен това, в процеса по транспониране на Директивата, е представен и португалският Статут на жертвите, който включва разпоредби, транспониращи предписанията на чл. 22 от Директивата. Той определя, че след като е съобщено за извършено престъпление и няма сериозни доказателства, че последното е неоснователно, компетентните органи следва да извършат индивидуална оценка на нуждите, за да установят дали дадена жертва е особено уязвима жертва⁸⁷ и да определени дали трябва да се ползва от специални мерки за защита⁸⁸. В същия документ се определя, че жертвата следва да получи документ, удостоверяващ нейния статут, включително и нейните правата и задълженията.⁸⁹ Законът обаче не определя как и при какви обстоятелства трябва да се извърши индивидуалната оценка.⁹⁰

⁸² IVOR, Portugal: Developments on the implementation of victim assistance mechanisms, стр. 2.

⁸³ Portuguese Criminal Procedure Code, Titel IV, Article 67 – A, para. 1, lit. b, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (на португалски).

⁸⁴ Престъпленията, свързани с насилие са тези, наказуеми с повече от 5 години лишаване от свобода.

⁸⁵ Престъпленията, свързани с особено насилие са тези, наказуеми с повече от 8 години лишаване от свобода.

⁸⁶ Portuguese Criminal Procedure Code, Titel IV, Article 67 – A, para 1, lit. c, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (на португалски).

⁸⁷ Чл. 20, пар. 1, Victims' Statute.

⁸⁸ Член 21, пар. 1, Victims' Statute.

⁸⁹ Член 20, пар. 2, Victims' Statute.

⁹⁰ APAV - Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016 г., стр. 152.



4.2.4. Испания

В Испания, чл. 22 от Директивата е транспониран чрез чл. 23 от Закон 4/2015 относно статуса на жертвите на престъпления. В съответствие с Директивата, испанското законодателство посочва, че оценката трябва да вземе предвид по-специално следното:

- (a) *“Личните характеристики на жертвата и по-специално [...] ако жертвата е непълнолетна или се нуждае от специална закрила [...]*
- (b) *Естеството на престъплението и сериозността на вредите, причинени на жертвата, както и риска от повторение на нарушението [...] и*
- (c) *Обстоятелствата на престъплението, по-специално дали е свързано с насилие.”⁹¹*

В случай, когато жертвите са деца, при използването на мерки за закрила допълнително следва да се отчетат личното положение на жертвата, нейната възраст, пол, всяко увреждане и степента на зрялост, както и пълно зачитане на физическата, умствената и емоционалната цялост на жертвата.⁹² Освен това, всеки път, когато непълнолетно лице е жертва на престъпление, прокуратурата следва да обърне особено внимание, за да се гарантира, че правата за закрила на жертвата са спазени, като се вземат *“подходящи мерки в най-добрия интерес на жертвата, когато това е необходимо, за да се предотвратят или намалят вредите, които биха могли да се предизвикат от производството”*.⁹³

В допълнение, чл. 24 от Закон 4/2015 разяснява компетенциите и процедурата по извършването на индивидуална оценка като определя кой е компетентният орган, който извършва оценката на няколко етапа. Законът пояснява, че във фазата на наказателно преследване прокурорът трябва да извърши индивидуалната оценка, докато по време на съдебния процес съдията или съдът, разглеждащи делото са отговорни за извършване на индивидуалната оценка. Същият член гласи, че когато жертвата е малолетно лице или лице с увреждания, нуждаещи се от специална закрила, оценката трябва да отчете техните мнения и интереси.

Освен това, член 27 от Закон 4/2015 уточнява отговорността и ролята на службите за подкрепа на жертвите и конкретно заявява, че тези служби извършват и оценка на индивидуалните нужди на

⁹¹ Член 23, Law 4/2015 on the Standing of Victims of Crime.

⁹² Член 23 пар. 3, Law 4/15 on the Standing of Victims of Crime.

⁹³ Член 19, Law 4/15 on the Standing of Victims of Crime.

жертвата⁹⁴, за да определят обхвата на подкрепа и закрила, които следва да бъдат предоставени. Службите за подкрепа на жертвите трябва да преценят дали жертвата се нуждае от психологическа подкрепа и помощ, от подкрепящо лице по време на делото, информация, и други специални мерки за подкрепа, които могат да бъдат предоставени от съда или дали следва да се обърнат към специализиран орган, предоставящ услуги за закрила и подкрепа.⁹⁵ Въпреки че националното законодателство гласи, че нуждите за закрила на лицата ще бъдат удовлетворени, не са предоставени допълнителни подробности относно начина, по който ще се извършва самата индивидуална оценка.

4.2.5. Англия и Уелс

Индивидуалната оценка на жертвите за идентифициране на специфичните им нужди за закрила се регламентира от Глава 1 от Правилника за работа с жертви.⁹⁶ По-конкретно, той предвижда повече права за жертвите от три различни категории, тъй като те „*по-често се нуждаят от засилена подкрепа по време на наказателния процес*“. Тези категории обаче не са изключителни, тъй като е възможно жертвата да има право на допълнителна подкрепа, произтичаща от повече от една категория (Глава 1, пар. 1.2). Освен това, дори и жертвата да не попада в нито една от трите категории, доставчикът на услуги за закрила и подкрепа би могъл да предостави на жертвата по-широк обхват от социални услуги в зависимост от конкретните обстоятелства на жертвата (Глава 1, пар. 1.7). Трите категории са:

- Жертви на най-тежко престъпление:

Жертва, която е „близък роднина, опечален от престъпление; жертва на домашно насилие, на престъпление от омраза, тероризъм, сексуално престъпление, трафик на хора, опит за убийство, отвлечане, фалшиво задържане, палеж с умисъл да се застраши живот или да се причини сериозно нараняване или с умисъл да се причини тежка телесна повреда“ (Глава 1, пар. 1.8)

- Нарочени жертви:

Жертва, която е „била многократно нарочена като пряка жертва на престъпление за определен период от време“ (Глава 1, пар. 1.9)

⁹⁴ Maizener ed. al., EVVI (Evaluation of Victims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf, стр. 56.

⁹⁵ Член 28, пар. 2, Law 4/2015 on the Standing of Victims of Crime.

⁹⁶ UK Ministry of Justice, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 March 2013, от 29 октомври 2013 г., стр. 87.



- Уязвими и застрашени жертви;

Уязвима жертва е жертва, която е на възраст под 18- години по време на престъплението; Ако доставчикът на социални услуги счита, че качеството на доказателствата ще бъде засегнато в резултат на даване на показания в съда, жертвата е застрашена жертва.

Всяка жертва има право оценка от страна на полицията, за да се определят специфичните ѝ нужди за закрила "включително дали и до каква степен може да се възползва от специални мерки". (Глава 1, пар. 1.4). Особеностите на оценката (например дължина и съдържание), обаче, зависят от тежестта на престъплението и индивидуалните нужди на жертвата. Оценката следва да отчита личните характеристики на жертвата, естеството и обстоятелствата на престъплението, както и личните възгледи на жертвата. Освен това оценката може да бъде повторена, ако нуждите на жертвата се променят (Глава 1, пар. 1.5). Веднага след като бъде определена възможността за получаване на подобрени права, доставчикът социални услуги за закрила и/ подкрепа трябва да гарантира, че тази информация се предава на други доставчици социални услуги за закрила и/ подкрепа.⁹⁷

Освен това, Глава 5 установява, че и други доставчици на социални услуги за закрила и подкрепа, различни от полицията⁹⁸, имат задължението да извършват индивидуална оценка на жертвите, за да идентифицират специфичните нужди от защита. (Глава 5, пар. 1.1). Доставчикът на социални услуги за закрила и/ подкрепа следва да идентифицира специфичните нужди от защита на жертвата всеки път, когато е отговорен за разследване на престъплението (Глава 5, пар. 1.30). При тези обстоятелства доставчикът на социални услуги за закрила и/ подкрепа трябва "да определи дали и до каква степен жертвата би се ползвала от специалните мерки за закрила или специален режим в хода на разследването или специален режим при даване на показания" (Глава 5, пар. 1.30). Процедурата и сроковете на оценката обаче са обект на критика.⁹⁹

⁹⁷ Правото на децата да получат индивидуална оценка на нуждите е уредено в глава 3, част А, пар. 1.1.

⁹⁸ Доставчиците на услуги са определени в увода, пар. 9, на Victims' Code: The Competition and Markets Authority; The Department for Business, Innovation and Skill (Criminal Enforcement); The Environment Agency; The Financial Conduct Authority; The Gambling Commission; The Health and Safety Executive; Her Majesty's Revenue and Customs; Home Office (Immigration Enforcement); The Information Commissioner's Office; The Independent Police Complaints Commission; The National Crime Agency; Natural Resources Wales; The Office of Rail and Road; and the Serious Fraud Office.

⁹⁹ IVOR, United Kingdom: Development on the implementation of victim assistance and mechanisms.



4.3. Право на защита на децата-жертви на престъпления в хода на наказателното производство (чл. 23-24 от Директивата)

4.3.1. Финландия

Във Финландия съществуват два закона, които са изрично свързани с транспонирането на чл. 22-23 от Директивата: Първо, Финландският закон за наказателното разследване (FCIA, 805/2011, с измененията), който регламентира процедурата за разследване на полицията и на второ място – Финландският съдебен процесуален кодекс (FCJP, 4/1734, с измененията), който определя правилата на съдебните производства в общите съдилища.

По отношение на закрилата на децата жертви на престъпления по време на наказателното разследване съществуват няколко разпоредби преди процеса на транспониране, като например глава 4, Раздел 7, Подраздел 1 FCIA. Там е посочено, че децата-жертви *„би следвало да се третират по начин, съобразен с възрастта им и нивото им на развитие“* и че трябва да се обърне специално внимание на начина на извършването на процесуалните действия по разследване така, че да не се причиняват ненужни неудобства на жертвите.¹⁰⁰ Освен това, когато е възможно, процесуалните действия по разследване на престъпления, където жертвата е дете, следва да се разпределят на специално обучени следователи.¹⁰¹ Всъщност повечето полицейски служители и психолози, които работят в рамките на наказателното производство, преминават през едногодишна интердисциплинарна програма за провеждането на разпит, насочена към полицейски служители и медицински персонал, които провеждат разпити на деца. Този курс се организира съвместно от Националния полицейски съвет и Центъра за съдебна психиатрия.¹⁰²

Глава 7 от Финландския закон за наказателното разследване (FCIA) предвижда, че ако лице, което е под 15-годишна възраст, се разпитва в рамките на наказателно разследване, лицето, отговорно за грижите и задържането му, неговият попечител или друг законен представител също имат правото да присъстват на разпита.¹⁰³ Ако детето е на възраст над 15 години, тези лица могат да присъстват на разпита само ако получат правото да говорят от името на или в допълнение към

¹⁰⁰ Глава 4, Раздел 7, Подраздел 1, FCIA.

¹⁰¹ Глава 4, Раздел 7, Подраздел 2, FCIA.

¹⁰² European Union Agency for Fundamental Rights, Child-friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, 2015 г., стр. 100.

¹⁰³ Глава 7, Раздел 14, Подраздел 1, FCIA.



непълнолетното лице. Разследващият има право да забрани присъствието на законен представител в случаите, когато неговото присъствие може да възпрепятства изясняването на престъплението.¹⁰⁴

В същия закон (глава 7, раздел 21) е добавено нововъведение, определящо правилата за провеждане на разпит с жертви със специфични нужди от закрила, за да се спазят изискванията, посочени в член 23 от Директива 2012/29/ЕС. В зависимост от индивидуалната ситуация и естеството на предполагаемото престъпление, новият раздел определя няколко специални мерки за защита:

- Жертвите, които се нуждаят от специална закрила, следва да бъдат разпитани в специално помещение, предназначено за тази цел.
- По отношение на жертви със специфични нужди от закрила, разпитът следва да се извърши от едно и също лице, ако пострадалото лице поиска това.
- Ако пострадалото лице има вероятност да е жертва на сексуално престъпление, разпитът трябва да бъде извършен от лице от същия пол. Тази разпоредба следва да се прилага и за други ситуации, когато естеството на престъплението предполага такава необходимост.¹⁰⁵

Глава 9 съдържа разпоредби относно възможността за аудио- и видеозапис на разпит на свидетел, ако този запис е предназначен да се използва като доказателство в наказателното производство и ако въпросното лице „вероятно не може да бъде изслушано лично, без това да му причинява вреда“¹⁰⁶, поради неговата/нейната възраст или психическо състояние. Тази разпоредба следва да се прилага и за лица на възраст между 15 и 17 години, при наличие на необходимост от специална закрила или вероятност жертвата да е пострадала от сексуално престъпление.

Разпоредбите, транспониращи чл. 23 ал. 3 от Директива 2012/29/ЕС, а именно разпоредбите за определяне на правата, които следва да бъдат предоставени на жертвите със специфични нужди от закрила в хода на съдебното производство, могат да бъдат намерени във Финландския закон за наказателното разследване (FCJP)¹⁰⁷. Съществуват няколко мерки за избягване на визуалния контакт между жертвите и нарушителите. Жертвата може да бъде разпитана:

¹⁰⁴ Глава 7, Раздел 14, Подраздел 3, FCIA.

¹⁰⁵ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, стр. 17.

¹⁰⁶ Глава 9, Раздел 4, Подраздел 1, FCIA.

¹⁰⁷ Finnish Ministry of Justice, Code of Judicial Procedure, 4/1734, amendments up to 732/2015 included, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiHx5KJ3MjZAhUBLeWKhfZoD>



- чрез провеждането на разпит в помещение, обособено за избягването на пряк визуален контакт (Глава 17, Раздел 51 от FCJP). Съдът решава дали тази мярка е необходима за осигуряване на закрила на лицето, което се разпитва; ако изслушваното лице, при други обстоятелства няма разкрие това, което той/тя знае във връзка със случая; ако дадено лице смущава или се опитва да заблуди изслушваното лице; ако жертвата се нуждае от специфична закрила. Последната хипотеза е добавена в процеса на транспониране на Директива 2012/29/ЕС.¹⁰⁸
- чрез видео връзка (Глава 17, Раздел 52 от FCJP). Съдът следва да приложи тази мярка като подходяща, ако е необходима закрила за лицето, което се изслушва; изслушваното лице е под 15-годишна възраст или с психични заболявания; както и в случай, когато жертвата се нуждае от специфична закрила. Последната хипотеза е добавена в процеса на транспониране на Директива 2012/29/ЕС.¹⁰⁹
- без присъствието на обвиняемия или друга страна (Глава 17, Раздел 51 от FCJP). Съдът следва да приложи тази мярка като подходяща, ако е необходима за закрила на лицето, което се изслушва; ако изслушваното лице в противен случай няма да разкрие това, което той/тя знае във връзка със случая; ако дадено лице смущава или се опитва да заблуди изслушваното лице.

Финландското законодателство също така съдържа специфични мерки за запазване на анонимността на свидетел, например чрез подходящо средство за комуникация, при което гласът на свидетеля може да бъде променен (Глава 17, Раздел 53 от FCJP). Освен това, в някои случаи разпитът на жертвата може да се запише на видео, което да се използва като доказателство в съдебния процес. Тази процедура се прилага в случай на деца жертви, които не са навършили 15 години или в случай на лица с психични заболявания; когато децата жертви са на възраст между 15 и 17 години, като се вземат предвид техните индивидуални потребности, както и с оглед естеството на престъплението; както и в случай на пострадали лица при определени сексуални престъпления (Глава 17, Раздел 24

60QFggtMAA&url=http%3A%2F%2Fwww.finlex.fi%2Fen%2Fflaki%2Fkaannokset%2F1734%2Fen17340004.pdf&usg=AOvVaw0-PJLjKrSH9U01qD0yrI4B

¹⁰⁸ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, стр. 17.

¹⁰⁹ Вж. горното.



от FCJP). Тази разпоредба съществува още преди процеса на транспониране на Директива 2012/29/ЕС.

По същия начин, Финландския закон за наказателното разследване е в съответствие с чл. 24, пар. 1, ал. 4 от Директивата. Там се посочва, че съдът назначава попечител за детето-жертва *„ако има основателна причина да се предположи, че лицето, което се грижи за детето или е негов попечител или законен представител, не може обективно да гарантира интересите на заинтересуваната страна по подходящ начин и назначаването на попечител не е очевидно ненужно“* (Глава 4, Раздел 8 FCIA). Всички разходи се покриват от държавни средства.

На последно място, разпоредбите относно разпит на лице в съдебна зала при закрити врата се намират в Закона публичност на съдебните производства по общите съдилища¹¹⁰ (Раздел 15, Точка 6). Според тях, съдът може да реши, че част ти или всички съдебни заседания могат да се проведат при закрити врата, ако лицето е на възраст под 14 години и с ограничена дееспособност или има нужда от специални мерки за закрила на някое от разпитваните лица.

4.3.2. Германия

През последните години, Германия постоянно работи в насока за подобряване на положението на жертвите в наказателното производство. В резултат на това повечето разпоредби на Директивата относно закрилата на жертви със специални нужди и тези за децата-жертви съществуват в германското законодателство още преди процеса по транспониране на Директивата. Както е отбелязано и по-горе, не всички мерки, предписани от Директивата за жертвите на престъпления, попадат в компетенциите на Федералното законодателство, а са част от тези на федералните провинции.

Съгласно чл. 23, пар. 2, б. б от Директивата, разпитът на жертви със специфична нужда от закрила следва да се извършва от професионалисти, обучени за тази цел. В Германия, приемането на законодателство относно квалификацията на експертите провеждащи разпит попада под

¹¹⁰ Finnish Ministry of Justice, Act on the Publicity of Court Proceedings in General Courts, 370/2007 amendments to 742/2015 included,
<https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKFwjQ9unn4MjZAhVMYaQKHTmUB14QFggtMAA&url=https%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F2007%2Fen20070370.pdf&usg=AOvVaw3A34-Ki7L-xk8YksYr1E0V>



юрисдикцията на федералните провинции.¹¹¹ Полицейският персонал в цяла Германия преминава през обучение с цел да се улесни и гарантира безпристрастното, уважителното и професионалното отношение към жертвите. Тези обучения включват задълбочено разглеждане на теми като престъпления от омраза и методологии за третиране на децата-жертви на престъпления по време на разследването. Подобни обучения съществуват и за прокурори и съдии.¹¹²

Всеки медицински преглед на жертви на сексуално насилие се извършва от лице от същия пол (No. 220 RiStBV). Тази разпоредба съществува преди транспонирането на Директивата и според Германският законодател¹¹³ - формулирана по този начин разпоредбата отговаря на всички мерки, посочени в чл. 22, пар. 2, ал. "с" и "d", предвиждащи провеждането на интервюта да се извършва от едно и също лице, освен ако това е в противоречие с доброто правораздаване и с възможността разпитите с жертви на сексуално насилие да се провеждат от лица от същия пол при определени обстоятелства.

Освен това, в германското законодателство съществуват правила относно избягването на визуален контакт между жертвата и извършителя (чл. 23, пар. 3, б. а от Директивата), както и гаранции, че жертвата може да бъде изслушана в съдебна зала, без да присъства физически. Според чл. 247 GCCP, съдът може да разпорежи подсъдимия да напусне залата по време на разпита, ако неговото/ нейното присъствие би попречило на жертвата да говори истината. Това важи и за случаите, когато жертвата е под 18 години и когато присъствието на подсъдимия би могло да влоши състоянието на свидетеля.

Ако съществува непосредствена опасност от сериозно увреждане на състоянието на свидетеля при разпита му в редовно съдебно заседание, съдът може да разпорежи провеждането на разпита на друго място. В този случай, показанията следва да се предават в реално време със звук и картина в съдебната зала. Освен това, показанията могат да бъдат записани, ако свидетелят не може да бъде изслушан в друго заседание, като трябва да се изследва истинността на записа (чл. 247a GCCP).

Разпитите могат да бъдат записвани, ако:

¹¹¹ Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU, https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?blob=publicationFile&v=2 (на немски), стр. 14.

¹¹² Вж. горното.

¹¹³ Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksach 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (на немски), стр. 15.



- специалните нужди от закрила на децата жертви или друго лице, което е жертва като дете на престъпление срещу сексуалното самоопределяне, живота или свободата, могат да бъдат гарантирани и защитени по-добре (чл. 255a GCCP);
- свидетелят не може да бъде изслушан в заседателната зала и записът е от съществено значение за разкриването на обективната истината (§ 58a GCCP).

Освен това, съществува възможността, запис на разпит на жертва или свидетел, проведен в рамките на досъдебното производство, да бъде използван, в следните случаи:

- 1) записът на разпит на свидетел под 18-годишна възраст относно дела за престъпно посегателство върху сексуалното самоопределяне, живота или свободата, може да бъде използван като доказателство, ако подсъдимият или неговият адвокат имат възможността да вземат отношение към разпита от записа;
- 2) записите на разпит на жертвата на посочените по-горе престъпления, ако лицето е на възраст под 18 години към датата на престъплението. В тези случаи, съдът има задължението да вземе предвид индивидуалните нужди за закрила на свидетеля и да представи записа. Допустимо е, обаче, да се проведе допълнителен разпит (чл. 255a GCCP). Може да бъде насрочено и съдебно заседание при закрити врати, на което да се проведе разпит, ако лицето е под 18-годишна възраст (чл. 172, Закон за съдебната власт, *Gerichtsverfassungsgesetz*).

Мерките за избягване на задаването на ненужни въпроси относно личния живот на жертвата при провеждането на разпит са регулирани в чл. 68a GCCP. Следователно, въпроси свързани с факти, които могат да се окажат непочтени или да засягат личната сфера на живот на свидетеля, или на човек, принадлежащ към семейството му, следва да се задават, само ако това е действително необходимо. Въпроси относно обстоятелствата, засягащи достоверността на показанията на свидетеля – по-точно неговата / нейната връзка с обвиняемия или пострадалото лице – следва да бъдат задавани, само ако това е необходимо.

На последно място, разпоредбата на чл. 24, пар. 1, б. “b” от Директивата предвижда, че специален представител на дете следва да се назначи, в случаи, когато съществува конфликт на интереси между носителите на родителските права и детето. Тази разпоредба също съществуват в германското законодателство преди процеса по транспониране на Директивата. Според чл. 53 GCCP, законният представител на детето може да се разпорежда с правото му да откаже да даде показания,



ако детето не разбира достатъчно добре естеството на това си право. В случаите, когато законният представител е в същото време и обвиняем, той/ тя няма право да се разпорежда с това право на детето. Уредбата на правилата, които определят обстоятелствата за назначаване на такъв законен представител, се намира в Германския наказателен кодекс (чл. 1773, 1774 и 1909 GCC).

4.3.3. Португалия

Член 23 от Директивата за жертвите на насилие е транспонирана в чл. 21 от Португалски статус на жертвите (PVS), който е създаден в рамките на процеса по транспониране на Директивата за жертвите на престъпления. Там са изброени специалните мерки за закрила, които следва да бъдат гарантирани на особено уязвими жертви в съответствие с индивидуалните им нужди, като някои от тези мерки са допълнително пояснени в други разпоредби. Формулировката на няколко члена, приети съгласно предписанията на Директивата за жертвите, възпроизвеждат дословно европейското в националното законодателство. Съгласно чл. 21, пар. 2 от PVS, особено уязвимите жертви, се ползват от следните права:

- a. разпитите следва да се провеждат от един и същи човек, ако жертвата поиска това и ако това не противоречи на доброто правораздаване;
- b. всички разпити на жертви на сексуално насилие, насилие, основано на пола или насилие при близките взаимоотношения, освен ако не са проведени от Главния прокурор или съдия, следва да се провеждат от лице от същия пол;
- c. вземане на мерки за да предотвратяване на визуалния контакт между жертвата и извършителя, включително по време на събиране на свидетелските показания, като се използват подходящи технологични средства;
- d. възможността за предоставяне на „изявление за бъдещето“ (*“declarações para memória futura”*). Тези мерки са доразписани от чл. 24 от PVS и чл. 271 от ПССР. Според чл. 24 PVS, съдията може, по искане на особено уязвима жертва или на Главния прокурор, да проведе разпит по време на разследването, което да бъде взето предвид по време на делото. Задължително е Главният прокурор и защитникът да присъстват на провеждането на разпита (пар. 2). В допълнение към това, обучен професионалист за тези цел следва да придружава жертвата по време на разпитите. Разпитът следва да се проведе в неформална и защитена среда, за да се гарантира спонтанността и искреността на отговорите (пар. 3). Освен това,



обикновено „изявление за бъдещето“ се извършва чрез аудио- и визуален запис или други средства (например стенография) от съдията или прокурора. Показания според условията на този член следва да бъдат събирани, само ако са абсолютно необходими за откриването на обективната истина и не застрашават физическото или психическото здраве на жертвата.

- е. провеждане на разпити при закрити врата. Следва да се отбележи, че тази разпоредба съществува в Португалия (чл. 98 РССР) и преди процеса по транспониране.

В допълнение с гореописаните разпоредби, чл. 22 от PVS транспонира чл. 24 от Директивата. Той определя, че всички деца-жертви имат правото да бъдат изслушани в наказателното производство, като се има предвид тяхната възраст и зрелост. В случаите, когато възрастта е неопределена, за целите на тази разпоредба, трябва да се приложи презумпцията, че жертвата е дете (пар. 6). В допълнение, пар. 2 отбелязва, че ако няма конфликт на интереси, детето-жертва може да бъде придружено от родител, законен представител или попечител по време на даване на свидетелски показания. В случаите, когато има конфликт на интереси, се назначава отговорник за детето (пар. 3). Португалското право също така определя, че всяка информация, която може да доведе до идентифициране на детето-жертва не следва да се разкрива публично.

Португалското законодателство по транспониране на Директивата не съдържа мярка, която специално транспонира предписанията на чл. 24, ал. 1 от Директивата, а именно, че в рамките на текущо наказателно производство, всички разпити на деца-жертви могат да бъдат записвани и тези записи могат да се използват като доказателства¹¹⁴. В този смисъл е и разпоредбата на чл. 23, пар. 1 от PVS. Съответно, ако е необходимо предоставяне на свидетелски показания без ограничения от особено уязвими жертви, следва или *ex officio* или при поискване да се организира тяхното провеждане чрез видеоконферентна или телеконферентна връзка. При тези обстоятелства, жертвата е придружена от професионалист, специално обучен за тази цел. По този начин, настоящата разпоредба се прилага само спрямо деца-жертви, за които се счита, че имат специфични нужди от закрила или в зависимост от конкретните обстоятелства по случая.

¹¹⁴ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, стр. 63.

Следва да се отбележи, че правото на децата-жертви да бъдат придружени от своя законен представител или лице по техен избор съществува в португалското законодателство преди процеса по транспониране на Директивата за жертви на престъпления (чл. 70, пар. 3 и чл. 132, пар. 4 РССР).¹¹⁵

4.3.4. Испания

Разпоредбите на член 23 и 24 от Директивата за жертвите на престъпления могат да бъдат открити в чл. 25 от Закон 4/2015, озаглавен „Мерки за закрила“. В действителност, предписанията на Директивата са транспонирани дословно в испанското законодателство. Член 25 от Закон 4/2015 предвижда, че следните мерки трябва да бъдат спазени, за да се осигури закрила на жертвите по време на разследването, докато мерките, описани в букви „а“, „б“ и „с“ следва винаги да се прилагат в случаите, когато деца са жертви на престъпления срещу сексуалната свобода.¹¹⁶

- a) жертвите могат да бъдат разпитани в сгради, специално предназначени и адаптирани за целта;
- b) жертвите могат да бъдат разпитани от специално обучени професионалисти, с цел да се намали или предотврати настъпването на вреди за жертвата;
- c) всички показания на дадена жертва могат да бъдат взети от едно лице, освен ако това може да доведе до значителен неблагоприятен ефект върху хода на производството или когато показанията следва да бъдат взети директно от прокурор или съдия;
- d) по отношение на жертвите, описани в точки 3 и 4, буква „б“, раздел 2 на чл. 23 и на жертвите на трафик с цел сексуална експлоатация, показанията могат да бъдат взети от лице от същия пол, когато жертвата поиска това изрично, с изключение на случаите, когато това би могло да има неблагоприятен обратен ефект върху хода на производството или когато разпитът е проведен директно от съдия или прокурор.”¹¹⁷

Параграф 2 от същия член урежда мерките за закрила, които могат да бъдат постановени по време на съдебната фаза от наказателния процес в съответствие с Правилата за испанския наказателен процес, докато първите две точки могат да се прилагат и в рамките на досъдебното разследване:

¹¹⁵ Вж. горното, стр. 66.

¹¹⁶ Чл. 23, пар. 4, Law 4/2015 of the Standing of Victims of Crime.

¹¹⁷ Чл. 25, пар 5, 1, Law 4/2015 on the Standing of Victims of Crime.



- a) “мерки за избягване на визуален контакт между жертвата и предполагаем извършител, дори при събиране показания, за които могат да се използват комуникационни технологии;
- b) мерки за осигуряване на разпит на жертвата, дори и да не присъства в заседателна зала, като се използват подходящи комуникационни технологии;
- c) мерки за избягването на задаване на въпроси на жертвата, свързани с личния ѝ живот, които не са от значение за разкриване на обективната истина, освен в изключителни случаи, когато съдът счита, че същите следва да получат отговор, за да се оценят адекватно фактите по делото и достоверността на показанията на жертвата;
- d) провеждане на устен разпит при закрити врати. В такива случаи съдът може да разреши присъствието на лица, които могат да докажат, че имат особен интерес по делото.”¹¹⁸

Мерките, описани в чл. 24 от Директивата за жертвите на престъпления, относно правото на закрила на децата-жертви в рамките на наказателното производство, са транспонирани в чл. 25, пар. 3 от Закон 4/2015. Разширявайки приложното поле на Директивата за жертвите на престъпления, тази разпоредба се прилага и спрямо лицата с увреждания, които се нуждаят от специална закрила. Освен това, в съответствие с Испанския наказателно-процесуален кодекс (SCCP)¹¹⁹, чл. 26 от Закона за правното положение на жертвите на престъпления определя, че показанията, събрани по време на разследването, в случай, че жертвите е дете или лице с увреждания, нуждаещо се от специална закрила, се записват с аудиовизуални средства и могат да бъдат представени пред съда в случаите и условията, определени от SCCP. За тази цел, националното законодателство изисква да се обърне внимание върху защитата на непълнолетните лица по време на разпитите и докато дават показания, като за тази цел следва да се избягва визуалният контакт между жертвата и подсъдимия, и следва да се осигурят екрани, които да улеснят изпълнението на тази мярка.

На последно място, параграф 2 от член 25 от Закон 4/2015 определя условията за назначаване на настойник от съда, който да представлява жертвата в разследването и по време на съдебната фаза на наказателното производство. Това се случва, ако прокурорът прецени, че е налице конфликт на интереси между детето-жертва и неговия законен представител. По този начин, мерките, разписани

¹¹⁸ Член 15, пар. 2 Law 4/2015 on the Standing of Victims of Crime.

¹¹⁹ Spanish Criminal Procedure Code, https://www.imolin.org/imolin/amlid/data/spa/document/criminal_procedure_code.html (на испански).



в националното законодателство, транспонира напълно Директивата за жертвите на престъпления, в Испанското право.

4.3.5. Англия и Уелс

Докато всички държави-членки, обект на оценка в този доклад, прилагат разпоредби, които специално гарантират правата на децата-жертви на престъпления, Правилникът за работа с жертви ясно разделя правата на жертви на престъпления, на такива, предоставени на възрастни¹²⁰ и такива, чийто субект са деца в две глави¹²¹. Глава 3, която включва разпоредбите относно децата и младежите, е допълнително обособена в Част А: Права на децата и младежите и Част Б: Задължения на доставчиците на социални услуги за деца и млади хора. Освен това, на децата са предоставени и правата, установени в Глава 1 от Правилника. Като цяло, текущата версия на Правилник предвижда повечето права, уредени в Директивата за жертвите на престъпления, да бъдат предоставени на жертви със специфични нужди от закрила. В повечето случаи от тези права могат да се ползват всички жертви на престъпления.

Правилникът за работа с жертви не съдържа разпоредби относно назначаването на специален представител на детето-жертва при конфликт на интереси между носителите на родителската отговорност и детето съгласно чл. 24, пар. 1, б. „b“ от Директивата.¹²² Освен това, липсват мерки по транспонирането на чл. 24, пар. 1, б. „c“, а именно, правото на детето на адвокат, правото да получи правни съвети и правото на участие в съдебния процес от свое име.

В етапа на разследване, децата-жертви на престъпления имат правото разпитът им да се провежда по начин, установен и адаптиран в съответствие с изискванията, посочени в чл. 23, пар. 2, б. „a“ от Директивата за жертвите на престъпления.¹²³ Докато в Директивата, тези права са гарантирани само на жертви със специфични нужди от закрила, Правилникът разширява обхвата на това право и го предоставя на всички жертви на престъпления. Освен това, при разпита на дете-жертва или на всяка друга жертва, полицията следва да вземе предвид ръководството за „Добри

¹²⁰ Глава 2, Част А и В, Victims' Code.

¹²¹ Глава 3, Част А и В, Victims' Code.

¹²² Вж. Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, за по-пълна информация относно съотношението между предписанията на Директивата и разпоредбите, транспониращи я в Британския Victims' Code.

¹²³ Глава 3, Част В, точка 1.2 във връзка с Глава 2, Част А, точка 1.8, Victims' Code.



практики при събиране на доказателства в наказателното производство¹²⁴ и да гарантира, че разпитът се провежда от подходящо обучен специалист, който отчита нуждите и възгледите на жертвата с цел да намали усещането за стрес у нея.¹²⁵ Въпреки, че документът с насоки „Добри практики при събиране на доказателства в наказателното производство“ не е нормативен акт, той препоръчва прилагането на добри практики при разпит на свидетели и жертви и има за цел да подпомогне на всички лица, участващи в разследването – включително полицията, социалните работници, съдии и адвокати – при подготовката и провеждането на разпити.¹²⁶

Децата-жертви, както и всички други жертви на престъпления, имат право да бъдат разпитани от едно и също лице, когато това е възможно. Тази разпоредба не се прилага ако това би „накърнило правилното протичане на разследването“.¹²⁷ Освен това децата-жертви - както и всички други жертви - на сексуално насилие, насилие, основано на пола или домашно насилие разпитвани от полицията, имат право да бъдат разпитани от лице от същия пол „освен ако това не е в ущърб на правилното протичане на разследването“¹²⁸.

По отношение на специалните мерки, които следва да бъдат предоставени в съответствие с чл. 23, пар. 3 от Директивата за жертвите на престъпления, Правилникът отговаря на всички изисквания, като съществуват няколко специални мерки, които гарантират, че специфичните нужди от закрила на жертвата са взети предвид и в съдебната фаза на наказателния процес. Например, мерките за избягване на визуалния контакт между жертвите и нарушителите са регламентирани в Глава 1 от Правилника. Прилагането на подобни мерки зависи от индивидуалните потребности на жертвата, които следва да бъдат определени при индивидуалната оценка. Докато жертвата има право да поиска прилагането на специална мярка, съдът решава дали следва да се приложи или не една от следните мерки:

- *“наравани/ завеси в съдебната зала, така че свидетелят да не вижда подсъдимия, а в някои случаи и частта от залата, в която се намират присъстващите граждани;*

¹²⁴ UK Ministry of Justice, Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures, Март 2011 г.,

https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf

¹²⁵ Глава 3, Част В, точка 1. във връзка с Глава 2, Част В, точка 1.5, Victims' Code.

¹²⁶ Наръчникът “Achieving Best Evidence in Criminal Proceedings” е отличен като обещаваща практика в доклад върху щадащо правосъдие на Агенцията на ЕС за основните права – „Child-friendly justice: perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States“, 2015 г.

¹²⁷ Глава 3, Част В, точка 1.2 във връзка с Глава 2, Част А, точка 1.8, Victims' Code.

¹²⁸ Глава 3, Част В, точка 1.2 във връзка с Глава 2, Част А, точка 1.8, Victims' Code.



- *видеовръзка на живо, позволяваща на свидетеля да даде показания отдалечено. Видеовръзката може да се осъществява от отделна стая в съда или от друго определено място извън сградата на съда;*
- *разпит при закрити врата – разпитът може да се проведе при закрити врата, в случаи на сексуално престъпление, трафик на хора или когато съдът е убеден, че някой от присъстващите в залата може да притесни свидетеля;*
- *премахване на перуките и тогите на съдиите, защитниците и прокурорите;*
- *видеозаписи на показания – това позволява на свидетеля да използва предварителен запис на показанията си като главно доказателство.*¹²⁹

Освен посочените по-горе мерки, съществува и възможността за назначаване на посредник, който подпомага уязвимите свидетели при даване на показания пред съд или полиция, в случай че съществува пречка в комуникацията¹³⁰. Посредникът трябва да бъде одобрен от съда и следва да притежава социален или правен опит, има функциите да действа като връзка между детето и професионалистите, които водят разследването¹³¹. В случаите, когато се назначава такъв посредник, професионалисти, които водят разследването, установяват правила за типа въпроси, които ще бъдат задавани на детето в досъдебната фаза на наказателния процес.¹³²

Ако от детето-жертва се събират показания чрез предварително записване на разпита, по отношение на събраните доказателства могат да бъдат зададени допълнителни въпроси чрез кръстосан разпит: мярка, при която детето-жертва се намира и разпитва в различно помещение, извън сградата на съда и се използва видеовръзка.¹³³ Възможно е и да не са необходими допълнителни въпроси, следователно да липсва необходимост за извършването на такъв кръстосан разпит.¹³⁴

Кралската прокуратура следва да се отнася към всички жертви на престъпление с уважение. Ако е необходимо, съдът се намесва, когато счита, че кръстосаният разпит е неподходящ или твърде

¹²⁹ Глава 1, точка 1.13 Victims' Code.

¹³⁰ Глава 1, точка 1.15 Victims' Code.

¹³¹ Агенция на ЕС за основните права, „Child-friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States“, стр. 24, 2015 г.

¹³² This practice was mentioned as a promising practice in a 2015 FRA report on child-friendly justice. Ibid, 27.

¹³³ Глава 3, Част А, точка 3.1, Victims' Code.

¹³⁴ Глава 3, Част А, точка 1.3, Victims' Code.



агресивен.¹³⁵ Също така, жертвата има право да посети съда преди процеса, за да се запознае със сградата и съдебната зала, в която ще се проведе заседанието.¹³⁶ На децата се показва специалния вход, съдебната зала, чакалнята за свидетели, както и стаята, в която ще се проведе разпитът чрез жива видеовръзка.¹³⁷ Тези посещения се организират от звената за грижа за свидетели, които са свързани със съдебната служба за свидетелите.¹³⁸ В случаите, когато възрастта на жертвата не може да се определи и има основания да се счита, че лицето е под 18-годишна възраст, Правилникът за жертвите установява презумпцията, че лицето се третира като такова под 18-годишна възраст.¹³⁹

На последно място, за жертвата съществува възможност да направят т. нар. „лично обръщение на жертвата“, заедно с техните свидетелски показания.¹⁴⁰ Обръщението дава възможност на жертвата да опише по какъв начин извършеното престъпление е засегнало нея и семейството ѝ. Въпреки това, обръщението обхваща само това, което се е случило по време на престъплението. Докато личното обръщение на жертвата не може да бъде променяно, жертвата има право да дава допълнително такова по всяко време преди издаването на присъдата. Жертвите на тежки престъпления, нарочените жертви, уязвими и притеснявани лица могат да дават лично обръщение, независимо дали са дали или не свидетелски показания. Личното обръщение на жертвата се разглежда от съда само след като подсъдимият е признат за виновен и то помага да се изяснят физическите и психологическите вреди, причинени от престъплението.¹⁴¹

¹³⁵ Глава 3, Част А, точка 3.1, Victims' Code.

¹³⁶ Глава 3, Част В, точка 1.2. във връзка с Глава 2, Част А, точка 2.14.

¹³⁷ Агенция на ЕС за основните права, „Child-friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States“, стр. 63, 2015 г.

¹³⁸ Агенция на ЕС за основните права, „Child-friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States“, стр. 34, 2015 г.

¹³⁹ Глава 5, точка 1.46, Victims' Code.

¹⁴⁰ Crown Prosecution Service, Victim Personal Statements: Legal Guidance, <https://www.cps.gov.uk/legal-guidance/victim-personal-statements>

¹⁴¹ Victim Support, Victim Personal Statements, <https://www.victimsupport.org.uk/help-and-support/your-rights/victim-personal-statements>



4.4. Право на достъп до служби за подкрепа на жертвите (чл. 8-9 от Директивата)

4.4.1. Финландия

Във Финландия, всяка жертва на престъпление има правото да получи правна консултация, която да го/я подкрепи в процеса по докладване на престъпление, по време на наказателното разследване и на съдебното производство.¹⁴² Въпреки че адвокатските такси обикновено се дължат от жертвата, съществуват две хипотези, при които правна помощ може да бъде предоставена безплатно:

1. Дали и до каква степен се отпуска безплатна правна помощ, зависи от "доходите, разходите, богатството и задължения за издръжка" на жертвата.¹⁴³ В зависимост от финансовото положение на жертвата, държавата може да възстанови частично или напълно направените разходи за получаване на правна консултация.¹⁴⁴ Жертва на престъпление може да кандидатства за получаване на безплатна правна помощ чрез всички служби за подкрепа и закрила на жертви, онлайн или да отправи запитване към адвокатска кантора.¹⁴⁵
2. В случай на жертва на насилие от интимен партньор, сексуално престъпление или тежко престъпление против личността, съдът може да назначи правен съветник на жертвата (Глава 2, секция 1a FCIA).¹⁴⁶ В този случай назначаването на адвокат не зависи от дохода на жертвата, а се заплаща от държавата.¹⁴⁷ Освен това, в тези случаи съдът може да назначи лице за подкрепа на жертвата. Това лице предоставя лична подкрепа по време на наказателното разследване и съдебен процес, както и подпомага пострадалото лице по въпроси, възникнали в решаването на делото (Глава 2, секция 9 FCIA)

В зависимост от случая, главният следовател или прокурорът подава молба до съда за назначаването на правен съветник или на лице за подкрепа преди провеждане на първия разпит

¹⁴² Вж. още: Глава 4, Раздел 10, FCIA

¹⁴³ Oikeus, Means-testing,

<https://oikeus.fi/en/index/esitteet/oikeusapu/millatuloilla-oikeusapumyonna-jamitkamenothuomioidaan.html>

¹⁴⁴ Повече информация относно стойността на правната помощ и удържки от нея е достъпна на: Oikeus, Information on Legal Aid, <https://oikeus.fi/en/index/esitteet/oikeusapu/mitaoikeusapuhakijalle-maksaa.html>

¹⁴⁵ Finnish Ministry of Justice, Rights of crime victim, 01 март 2017 г.

¹⁴⁶ Вж. горното.

¹⁴⁷ Finnish Ministry of Justice, Rights of crime victim, 01 март 2017 г.; Вж. още Oikeus, Legal aid, <https://oikeus.fi/oikeusapu/en/index.html>



(глава 4, секция 10, подсекция 2 FCIA). Такъв е случаят, например, ако дадено лице е станало жертва на насилие от интимен партньор, сексуално престъпление или тежко престъпление против личността.

Въпреки че правото на достъп до социални услуги за подпомагане на жертва на престъпления съществува и преди транспонирането на Директивата във финландското законодателство, хипотезите на някои от приложимите разпоредби са разширени в резултат на този процес. Към глава 4, секция 10 от FICA, е добавена разпоредба, установяваща че на база специалните нужди на пострадалото лице и неговите лични характеристики, длъжностното лице, ръководещо досъдебното разследване, следва да предостави на жертвата контакти на доставчик на социални услуги за подпомагане и закрила на жертви.

Други разпоредби относно достъпа до услуги за подпомагане и закрила на жертви на престъпления са установени в Закона за обезщетенията на жертви¹⁴⁸ - единственият нов закон, създаден се в процеса по транспониране на Директивата във Финландия.¹⁴⁹ Обезщетенията на жертви се формират от сумите, платени от обвиненото лице, за да се финансират услугите по подпомагане и закрила на жертви.¹⁵⁰ С този нов закон, Финландия изпълнява препоръката на Европейската комисия за въвеждане правила за изплащане на обезщетения на жертви от престъпления и финансиране на услугите, предписани от Директивата.¹⁵¹ Други релевантни законови мерки, включват Законът за правна помощ (257/2002) и последните му поправки; и Държавният декрет за правна помощ (388/2002) с последните поправки (997/2004, 1208/2005, 867/2007 and 1008/2009).

4.4.2. Германия

В Германия съществуват две форми на подкрепа на жертвите по време на съдебното производство: Правна и психо-социална подкрепа, като последната е въведена в процеса на транспониране на Директивата. Освен това, при определени условия, жертвата е има право да получи безплатна правна помощ.

¹⁴⁸ FINLEX, Act on Victim Charges, 22.5.2015/669, <https://www.finlex.fi/fi/laki/ajantasa/2015/20150669> (на финландски)

¹⁴⁹ Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings, стр. 70 – 71.

¹⁵⁰ Riku, What is a victim charge?, <https://www.riku.fi/en/frequently+asked+questions/what+is+a+victim+charge/>

¹⁵¹ Вж. горното.



В този контекст е важно да се отбележи, че всяко лице, което има право да се конституира като страна в наказателния процес съгласно чл. 395 GCCP, също се счита за жертва. В резултат на това, членове на семейството на лице, чиято смърт е причинена от престъпление (деца, родители, братя и сестри, съпруг/а или партньор), се считат за жертви по чл. 395 ал. 2 GCCP и по този начин, имат достъп до правна и психо-социална подкрепа безплатно.¹⁵²

Според чл. 406f GCCP всички пострадали лица имат право да бъдат представлявани от адвокат в процеса (*“Verletztenbeistand”*). Но има и други фактори, определящи дали жертвата има достъп до адвокат безплатно. По-специално Законът предвижда, че на жертвите се предоставя презплатно правно представителство: (art. 397a GCCP):

- в случай на особено тежки престъпления, като например сексуална злоупотреба с деца, сексуално насилие и изнасилване, трафик на хора за сексуална експлоатация и експлоатация на труда, опит за убийство;¹⁵³
- ако престъплението вече е довело или се очаква да доведе до сериозни физически или умствени увреждания и попада в обхвата на чл. 226, 226a, 234-235, 238-239b, 250, 252, 31a от GCCP. Тези престъпления включват: тежко посегателство, грабеж, отвличане, неправомерно лишаване от свобода, престъпно преследване, и други.
- в случай на деца жертви на престъпления или жертви, които не могат ефективно да упражняват своите права, ако престъплението представлява сексуално престъпление, насилствена проституция, малтретиране на поверени лица, тежка телесна повреда, и други.¹⁵⁴

Ако на жертвата не получи безплатно процесуално представителство по чл. 397a GCCP, той или тя може да получи правна помощ съгласно разпоредбите на Германското гражданско право (чл. 397a ал. 2 GCCP). Възползването от това право зависи от финансовото състояние и дохода на жертвата или от конкретните обстоятелства по делото.

¹⁵² Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, 22, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (German).

¹⁵³ Art. 177, 179, 232-232b, 233a GCCP.

¹⁵⁴ Член 174-182, 184i, 184j и 225 от GCCP (ако жертвата е под 18-годишна възраст по време на извършването на престъплението); член 221, 226, 226. 232-235, 237, 238 пар. 2 and 3; 239, 239b, 240 пар. 4, 249, 250, 252, 255 и 316 GCCO (ако жертвата е под 18-годишна възраст при докладването на престъплението).

В хода на процеса на транспониране на Директивата в Германия, е създадено правото на психо-социална подкрепа (*“psychosoziale Prozessbegleitung”*),¹⁵⁵ уредено от чл. 406g GCCP – единствената разпоредба, която влиза в сила на 1 Януари 2017 г.¹⁵⁶ Освен това е създаден нов закон относно лицето, осигуряващо психо-социална подкрепа в наказателното производство, който регламентира принципите, както и изискванията към квалификацията на тези лица¹⁵⁷. Психо-социалният асистент може да присъства по време на разпита на жертвата, както и на всички заседания в хода на съдебното производство.

Съдът следва да назначи психо-социален асистент, при постъпило искане от жертвата в следните случаи:

- деца-жертви на престъпления или жертви, които не могат да упражняват в достатъчна степен своите права, в случай на сексуални престъпления, насилствена проституция, малтретиране на поверени лица, тежка телесна повреда, и други.¹⁵⁸
- ако необходимостта от специфична закрила на жертвата изисква това, в случай на особено тежки престъпления, например сексуална злоупотреба с деца, сексуално насилие и изнасилване, трафик на хора за сексуална експлоатация и експлоатация на труда, опит за убийство;¹⁵⁹
- ако необходимостта от специфична защита на жертвата изисква това, в случай на някои други криминални престъпления, които вече са довели или се очаква да доведат до сериозно физическо или психическо увреждане на жертвата. Последните включват, наред с други: сериозно нападение, грабеж, отвлечение, неправомерно лишаване от свобода, тежко

¹⁵⁵ Осигуряването на психо-социална подкрепа следва да бъде строго разделено от осигуряването на безплатна правна помощ според член 2, пар. 2 PsychPbG.

¹⁵⁶ Bundesministerium der Justiz und für Verbraucherschutz, Opferhilfe und Opferschutz im Strafverfahren, 16 ноември 2017 г., https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (на немски).

¹⁵⁷ Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren vom 21. Dezember 2015 (BGBl. I S. 2525, 2529), (PsychPbG), https://www.bmjbv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (на немски)

¹⁵⁸ Член 174-182, 184i, 184j и 225 GCCP (ако жертвата е била под 18-годишна възраст по време на извършване на престъплението); Член 221, 226, 226. 232-235, 237, 238 пар. 2 and 3; 239, 239b, 240 пар. 4, 249, 250, 252, 255 и 316 GCCO (ако жертвата е под 18-годишна възраст при докладването на престъплението).

¹⁵⁹ Член 177, 179, 232-232b, 233a GCCP.

преследване.

Докато някои заинтересувани страни приветстват новите разпоредби относно психосоциалния асистент, други го критикуват: по-специално съществува страх, че подобно "трениране на свидетелите" може да повлияе на свидетелските показания на жертвата.¹⁶⁰

На последно място, Германският федерален закон за закрила на детето регламентира закрилата на детето в Германия на федерално ниво, резултат от усилията за идентифициране и елиминиране на пропуските в закрилата на детето в Германия. Той регламентира разработването, прилагането и прегледа на стандарти за закрила на правата на децата и юношите в институциите и защитата им срещу насилието.¹⁶¹

4.4.3. Португалия

В Португалия правото на правна помощ на жертвите е постановено в Португалската конституция, която гласи, че *"справедливост не може да бъде отказана на никого поради липса на достатъчно финансови средства"* (чл. 20, пар.1),¹⁶² както и че *"всеки има право на правна информация и съвети, на правен съветник и да бъде придружен от адвокат пред всеки орган"* (чл. 20, пар. 2). Освен това, Конституцията защитава правата на жертвите да участват в наказателното производство, като същевременно определя прецизирането на уредбата на ниво закон. Най-релевантното португалско законодателство в това отношение е Португалският наказателно-процесуален кодекс, Уставът на португалските жертви (PVS), Правилникът за процедурните разходи и Законът за достъп до право и съдилища¹⁶³ (Закон № 34/2004 от 29 юли, поправен от Закон № 47/2007, от 28 август)¹⁶⁴.

¹⁶⁰ Kett-Straub, Wie viel Opferschutz trägt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017, стр. 344.

¹⁶¹ Bundesministerium für Familie, Senioren, Frauen und Jugend, German Federal Child Protection Act (Bundeskinderschutzgesetz), <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/bundeskinderschutzgesetz/das-bundeskinderschutzgesetz/86268> (на немски).

¹⁶² Constitution of the Portuguese Republic, <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>

¹⁶³ Law on Access to Law and to Courts, Law no. 34/2004 of July 29 amended by Law no. 47/2007, of August 28, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=80&tabela=leis&so_miolo (на португалски).

¹⁶⁴ Vânia Costa Ramos, Legal Aid for Victims in Criminal Proceedings in Portugal, in Wilinski, Karlik (eds.), Improving Protection of Victims' Rights: Access to Legal Aid, Adam Mickiewicz University, Poznan, стр. 192, 2014 г.



Съгласно член 13 от PVS жертвите имат безплатен достъп до правна помощ в случаите, установени от Закона за достъп до право и съдилища. Следователно, новото законодателство, прието с оглед транспонирането на Директива 2012/29/ЕС, не разширява обхвата на разпоредбите, които вече съществуват в португалското право.¹⁶⁵ Португалският закон за достъп до право и съдилищата, от друга страна, пояснява, че достъпът до безплатно процесуално представителство пред съда, както и до безплатни правните съвети зависи от нивото на доходите на конкретната жертва (чл. 8). По този начин само жертва, която не получава достатъчно висок приход, ще получи право на безплатно процесуално представителство.¹⁶⁶ Освен това, Законът изяснява в чл. 6 кои разходи са покрити от държавната финансова помощ: правна помощ, включително консултиране с адвокат, назначаване на адвокат, както и плащане на неговите/ нейните такси, пълно или частично освобождаване от задължение за съдебните разноски.¹⁶⁷

Съществуват също така определени обстоятелства, при които съдията или прокурорът могат да определят кога жертвата се нуждае от психо-социална подкрепа ("*Técnico de apoio à vítima*"), съгласно чл. по 15 ал. 3 PVS. Психологическият асистент е служител на APAV, чиято роля е да помогне на пострадалия да преодолее или смекчи въздействието от извършеното престъпление. Също така, той или тя може да придружава жертвата в съда, полицията, или медицински прегледи.¹⁶⁸

Въпреки че правата за достъп до услуги за подпомагане на жертвите са уредени в контекста на правото на получаване на информация във възможно най-кратък срок (транспониране на член 4 от Директивата), специфичните изисквания на член 9 от Директивата липсват в португалското законодателство.¹⁶⁹

4.4.4. Испания

В съответствие с чл. 8 от Директивата, чл. 10 от Закон 4/2015 посочва, че всички жертви на престъпление имат право на достъп до услугите за помощ и подкрепа, предоставяни от публични

¹⁶⁵ APAV - Associação Portuguesa de Apoio à Vítima, Developing Directive – compatible practices for the identification, assessment and referral of victims: Portugal Practices Report, стр. 7.

¹⁶⁶ Info Vítimas, lawyer of the victim, http://infovitimas.pt/pt/004_quem/paginas/004_006.html (на португалски).

¹⁶⁷ Вж. горното, стр. 198.

¹⁶⁸ Info Vítima, Psychological Supporter, http://infovitimas.pt/pt/004_quem/paginas/004_007.html (на португалски).

¹⁶⁹ EPRS – European Parliamentary Research Service, The Victims' Rights Directive 2012/29/EU: European Implementation Assessment, стр. 54, Декември 2017 г.



органи и служби за подкрепа на жертвите, безплатно, в условия на поверителност, както е определено от националната нормативна уредба. Както предвижда Директивата, в националното законодателство се посочва, че роднини и близки на жертвата могат да се ползват от същите права като жертвата.

В Испания, служби за подпомагане на жертвите, които съществуват в няколко автономни общности¹⁷⁰ - имат отговорността да координират подкрепата, предоставяна от различни организации и институции, които предоставят грижа на жертвата за всеки отделен случай. Тези служби се състоят от мултидисциплинарни екипи – адвокати, психолози и социални работници, които подкрепят жертвите на престъпление в наказателното производство. Един скорошен доклад на Агенцията на ЕС за основните права по отношение на щадящо правосъдие за децата разглежда по-подробно тези служби и стига до извода, че те представляват обещаваща практика за интердисциплинарни отдели за подкрепа на жертви. В зависимост от местоположението си, офисите предлагат услуги като предварително посещение в съдебната зала и предоставяне информация на родителите на деца-жертви. Понякога самият разпит на децата жертви може да се осъществи в офисите на службите за подпомагане.¹⁷¹ Освен това, както вече беше обсъдено, от службите за подкрепа на жертвите се изисква да се изготви оценка на индивидуалните нужди от закрила на жертвата съгласно член 2, пар. 2 от Закон 4/2015. По-специално, те преценяват дали жертвата има нужда от психологическа подкрепа и помощ, лице за подпомагане по време на съдебния процес, информация, други специални мерки за подпомагане, които могат да бъдат предоставени от съда или следва да се препрати към специализирани служби за подкрепа.¹⁷²

Освен това, член 28 от Закон 5/2015 определя минималната помощ, която службите за подкрепа следва да предоставят на жертвите. Съответно, службите за подкрепа осигуряват като минимум следната помощ:

- a) обща информация за правата на жертвите;
- b) информация за наличните специализирани услуги, които са в помощ на жертвите от гледна точка на положението им и естеството на престъплението;

¹⁷⁰ Агенция на ЕС за основните права, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, стр. 110, 2015 г.

¹⁷¹ Агенция на ЕС за основните права, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, стр. 110, 2015 г.

¹⁷² Член 28, пар. 2, Law 4/2015 on the Standing of Victims of Crime.



- c) емоционална подкрепа за жертвите;
- d) консултации по въпроси, свързани с финансовите права, включително достъп до правна помощ;
- e) координиране на различните организации, институции и органи, които предоставят услуги за подпомагане на жертви на престъпления;
- f) координация със съдиите, съдилищата и прокуратурата за предоставяне на услуги за подпомагане на жертвите.

Испанският законодател също така избира да въведе оценка на системата за подпомагане на жертвите в Испания. Първата допълнителна разпоредба на Закон 4/2015 гласи, че функционирането на институциите за подпомагане на жертвите, механизмите и гаранциите в Испания се оценява ежегодно от Министерството на правосъдието. Оценката, както и резултатите, се използват като насоки за подобряване на системата за подкрепа и закрила на жертви на престъпление.

4.4.5. Англия и Уелс

Въпреки че Англия и Уелс терминът „жертва“ се използва и има легално определение, жертвите не могат се конституират като страна в наказателното производство.¹⁷³ Прокурорът защитава правата и интересите жертвата, а ролята на жертвата е да предостави доказателства като свидетел.¹⁷⁴ Въпреки това, съществуват няколко служби за подкрепа на жертвите в Англия и Уелс *"които предлагат на жертви на престъпления помощ и подкрепа, за справяне и възстановяване след престъпление."*¹⁷⁵ Всички жертви имат право на достъп до информация относно обхвата на наличните услуги за подкрепа и закрила.¹⁷⁶ Децата-жертви, както и всички други жертви, имат право да преминат през индивидуална оценка на нуждите.¹⁷⁷

Генерално в Англия и Уелс, всички жертви на престъпление имат достъп до социални услуги за подкрепа и закрила, независимо от това на кой етап от процеса са те, като по този начин, те могат

¹⁷³ APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, стр.112, 2016 г.

¹⁷⁴ Вж. горното.

¹⁷⁵ Глава 3, Част В, точка 1.2 във връзка с Глава 2, Част А, точка 1.2, Victims' Code.

¹⁷⁶ Въведение, точка 1.6 и Глава 3, Част В, точка 1.2 във връзка с Глава 2, Част А, точка 1.4, Victims' Code.

¹⁷⁷ Глава 3, Част В, точка 1.2 във връзка с Глава 2, Част А, точка 1.1, Victims' Code.



да се възползват от тях и след приключване на наказателното преследване.¹⁷⁸ В случай на жертва, която докладва престъпление, органът, който приема сигнала има задължението да препрати жертвата към служба за подкрепа на жертвите в рамките на два работни дни от докладването на престъплението.¹⁷⁹ Жертвата има право, обаче, да поиска от полицията да не дава информацията им на служби за подкрепа на жертви. Освен това, в случай на деца-жертви, а също и други жертви със специфични нужди от закрила - доставчикът на социални услуги трябва да гарантира, че жертвата е съгласна информацията им да бъде предадена на службите за подкрепа на жертвите.¹⁸⁰

На последно място, както и във Финландия, така и в Англия и Уелс съществува система, която задължава осъдените лица да плащат глоба, чиято стойност се използва за финансиране на услуги на жертвите чрез Общ фонд на жертвите и свидетелите. При издаването на присъда, съдът следва да нареди изплащането на съответните обезщетения.¹⁸¹ Сумата зависи от присъдата, както и от възрастта и дееспособността на осъденото лице и е ясно определена в таблица, достъпна онлайн.¹⁸² Обезщетението на жертви е въведено за първи път през април 2007 г. и правилата относно тази процедура са изменени последно през април 2016 г. Пълен списък на групите, които са обезщетени по този ред може да се намери онлайн.¹⁸³

5. Заключение

Настоящият доклад оценява националното законодателство за транспониране на Директива 2012/29/ЕС във Финландия, Германия, Португалия, Испания, и Англия и Уелс с особен акцент върху правата, предоставени на деца-жертви на престъпления. Настоящото заключение отличава констатациите от проучванията на отделните държави с цел да се очертаят резултатите от транспонирането на Директивата, както и да се посочат обещаващи практики и законодателни решения. Тъй като често съществуват несъответствие между законодателство и практика, следва да

¹⁷⁸ Въведение, точка 1.6 и 22 Victims' Code.

¹⁷⁹ Вж. горното.

¹⁸⁰ Глава 1, точка 1.6, Victims' Code.

¹⁸¹ Sentencing Council, What is the victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>

¹⁸² There exists a table specifically defining the amount that is be paid on Sentencing Council, What is the victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>

¹⁸³ Gov.uk, Victims and witnesses funding awards, <https://www.gov.uk/government/publications/victims-and-witnesses-funding-awards>



се подчертае, че настоящият доклад само идентифицира обещаващи практики и законодателни решения, без да посочва как се прилагат на практика.

Процесите по транспониране на Директивата в избраните държави-членки са доста разнообразни. Испания и Португалия транспонират големи части от Директивата дословно. По един и същи начин и двете страни въвеждат нов закон, включващ почти всички предписания на Директивата за уреждане на права на жертви, а именно Португалския закон за Жертвите и Испанския закон 4/2015 относно положението на жертвите на престъпления. Създаването на тези два нормативни акта прави правата на жертвите по-достъпни и ясни.

Аналогично, в Англия и Уелс всички права на жертвите на престъпления са уредени в Кодекса на жертвите, който има за цел да бъде практическо ръководство, предназначено да подпомага органите в наказателното правораздаване в работата им с жертви на всички етапи на наказателното производство. Кодексът е наличен в лесни за четене версии, които го правят по-достъпен и за деца. В рамките на транспонирането на Директива 2012/29/ЕС, в Англия и Уелс се е състоял широк процес на консултации и оценка на вече съществуващия Кодекс, който включва писмени становища от различни заинтересувани страни, събития за проучване на общественото мнение, както и проучвания с деца и млади хора относно впечатленията им от вече съществуващия Кодекс. Законодателният процес в Германия, от друга страна, дава възможност за консултации, но не въвежда законоустановено задължение за тяхното организиране и провеждане. В същото време, германските разпоредби относно закрилата на правата на жертви на престъпление са много разпокъсани - не само на национално, но и на федерално ниво.

Легалната дефиниция за жертвата на престъпление, в съответствие с член 2, пар. 1 на Директивата, има за цел да подпомогне поставянето на жертвата в центъра на системата на наказателното правораздаване. Независимо от това, фактът, че се използват различни термини за означаване на лицето, претърпяло вреди в резултат на престъпление, не означава непременно, че националните законодателства не предвиждат еднакъв набор от права за жертвите на престъпление. Въпреки, че в Германия и Финландия не съществува легална дефиниция на термина "жертва", закрилата на правата на жертвите е на много високо ниво и в двете страни. Във Финландия, например, докато терминът "увредена страна" се използва вместо жертва. Последният включва и физическо лице, което е било обидено или застрашено от престъпление и следователно е с много по-широк обхват от определението, дадено от Директивата. Също така, на пострадалите лица се



предоставят широк набор права по време на целия наказателен процес. От друга страна, въпреки че Кодексът на жертвите (Англия и Уелс) съдържа легално определение на термина жертва, жертвите не се разглеждат като страна в наказателното производство, а като свидетел. Поради този факт, жертвите в Англия и Уелс се ползват от по-ограничен кръг от права, особено по отношение на процесуално представителство.

Относно транспониране на предписанията на член 22 от Директивата относно провеждането на индивидуална оценка на жертвите за идентифициране на конкретни нужди от закрила, общите трудности, които се срещат във всички изследвани държави-членки се проявяват по отношение на практическото прилагане на подобни процедури. Докато повечето законодателства определят, че индивидуалната оценка следва да се извърши при първия контакт с компетентен орган, не е ясно кой експерт е отговорен или подходящ за извършването ѝ. Всъщност, въпреки че всички изследвани в настоящия доклад държави-членки са приели нови разпоредби, за да се съобразят с изискванията на член 22 от Директивата, тази разпоредба остава най-критикуваната и дискутирана във всички държави-членки. В Кодекса на жертвите в Англия и Уелс може да се намери обещаваща практика, която ясно заявява, че полицията, но и други доставчици на социални услуги имат задължение да извършват индивидуална оценка на нуждите на жертвата от закрила и подкрепа. В Испания отговорността за извършване на индивидуална оценка за идентифициране на нуждите на жертвите се носи както от службите за подкрепа на жертвите, които се състоят от интердисциплинарни екипи, вкл. съдии, психолози и социални работници, така и от съдията и прокуратурата.

Освен това, настоящото проучване показва, че докато повечето от специалните мерки за гарантиране на правото на закрила на децата жертви на престъпления, по време на наказателното производство (член 23-24) съществуват и преди процеса на транспониране в повечето държави-членки, транспонирането води до редица промени в националните законодателства: въведени са допълнителни права за разширяване обхвата на съществуващите мерки за защита (напр. Финландия), транспонирането на Директивата води и до разширяване на групата субекти, които могат да се ползват от някои права (напр. Финландия, Португалия) и систематизиране на съществуващите разпоредби (напр. Португалия, Испания).

Освен това, изследването очертава няколко обещаващи практики по отношение на практическото приложени на чл. 23-24 от Директивата. Например, в Англия и Уелс съществува "Добри практики при събиране на доказателства в наказателното производство", който – макар и



да не е нормативен акт — е полезно ръководство, което определя добрите практики при разпит на свидетел. Освен това Кодексът на жертвите предвижда възможност за назначаване на посредник, който подпомага уязвимите жертви при даване на показания в съда и полицията. Ако дете жертва се разпитва в досъдебното производство, посредникът помага да се установят основни правила относно провеждането на разпита, които трябва да бъдат спазени. Друга обещаваща практика от Англия и Уелс е възможността жертвата да посети съда преди датата на делото. Тази практика има за цел да даде възможност на пострадалия/пострадалата да се запознае със сградата и съда. От друга страна, във Финландия съществува едногодишна мултидисциплинарна програма за обучение на полицейски и здравни специалисти, която ги подготвя за провеждане на разпити с деца.

На последно място, Глава 4.4 от настоящия доклад разглежда разпоредбите по транспониране на членове 8-9 от Директивата относно достъпа до и подкрепата от службите за подкрепа и закрила на жертви. Генерално, настоящото проучване констатира, че съществуват три вида подкрепа по време на съдебното производство в изследваните тук държави-членки¹⁸⁴: назначаване на служебен адвокат в зависимост от характера на престъплението, както и конкретното състояние на жертвата; безплатна правна помощ, която се предоставя в зависимост от финансовото положение на жертвата, назначаване на лице за психо-социална подкрепа. Въпреки това, в Англия и Уелс жертвата не е страна в наказателното производство и няма право на процесуално представителство по време на съдебното производство. Прокурорът защитава правата и интересите на жертвата, а нейната роля е да даде доказателства като свидетел.

Обещаваща практика, която е идентифицирани в хода на проучването по отношение на достъпа до службите за подкрепа и закрила на жертви е, Фондът за обезщетение на жертви във Финландия. Тази практика представлява събиране на глоби платени от осъдените лица за финансиране на дейността на службите за подкрепа на жертвите. От друга страна, правото на жертвата на психо-социална подкрепа, което и преди това е съществувало в Португалия и Финландия, е въведено неотдавна в германското законодателство в хода на процеса на транспониране. И накрая, мултидисциплинарните екипи за подкрепа на жертвите в Испания също се разглеждат като обещаваща практика в неотдавнашен доклад на Агенцията на ЕС по основните права.¹⁸⁵ Службите

¹⁸⁴ Не всички от тези услуги са на разположение във всяка от изследваните ДЧ.

¹⁸⁵ European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, стр. 110, 2015 г.



за подкрепа на жертвите предлагат широк спектър от услуги, извършват индивидуална оценка на специфичните нужди от подкрепа и закрила и координират други услуги за подпомагане. Освен това, за постоянно подобряване на системата за защита в Испания, функционирането на институциите за подпомагане на жертвите, механизмите и гаранциите се оценяват ежегодно от испанското Министерство на правосъдието.

В обобщение може да се посочи, че приемането и транспонирането на Директивата води до подобряване на положението на децата жертви в избраните държави-членки. Въпреки че някои от разпоредбите съществуват и преди в националното законодателство, процесът на транспониране отваря възможност за преразглеждане и преоценка. Въпреки че законодателните решения, избрани от всяка една от разглежданите тук държавите-членки, вървят ръка за ръка с особеностите на съответната правна система, настоящото изследване показва, че въпреки това съществува пространство за взаимно учене между държавите-членки. Тук следва да се отбележи, че едно от сериозните препятствия в процеса на транспониране е несъответствието между законодателството и практиката¹⁸⁶. Практическият подход към изготвянето и преоценката на законодателство, включително широк процеси на обществени и експертни консултации, е много вероятно да доведе до обещаващи решения, които работят на практика.

¹⁸⁶ Вж. още: European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Luxembourg), стр. 74, 2014 г.



Библиография

APAV – Associação Portuguesa de Apoio à Vítima, Developing Directive – compatible practices for the identification, assessment and referral of victims: Portugal Practices Report.

APAV – Associação Portuguesa de Apoio à Vítima, IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union, 2016.

Assembleia da República, Parliament, <http://www.en.parlamento.pt/Parliament/index.html>

Assembleia da República, Processo Legislativo Comum, <http://www.parlamento.pt/Parlamento/paginas/plc.aspx>

Bpb, Wie ein Gesetz entsteht, <http://www.bpb.de/politik/grundfragen/24-deutschland/40463/wie-ein-gesetz-entsteht> (German)

Bundesministerium der Justiz und für Verbraucherschutz, Bericht zur Umsetzung der Richtlinie 2012/29/EU,

https://www.bmjjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2 (на немски)

Bundesministerium der Justiz und für Verbraucherschutz, Opferhilfe und Opferschutz im Strafverfahren, 16.11.2017,

https://www.bmjjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html (на немски).

Bundesministerium für Familie, Senioren, Frauen und Jugend, German Federal Child Protection Act (Bundeskinderschutzgesetz), <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/bundeskinderschutzgesetz/das-bundeskinderschutzgesetz/86268> (на немски).

Bundesministerium für Justiz und Verbraucherschutz, Aktuelle Gesetzgebungsverfahren: Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), https://www.mietpreisbremse.bund.de/SharedDocs/Gesetzgebungsverfahren/DE/Staerkung_Opferrechte_Strafverfahren.html (на немски).

Bundesrat, Gesetzentwurf, Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend), 13.02.2015 – BR-Drucksache 56/15, <http://dipbt.bundestag.de/dip21/brd/2015/0056-15.pdf> (на немски)

Constitution of the Portuguese Republic, <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>

Decreto do Presidente da República n.º 101/2015 - Diário da República n.º 173/2015, Série I de 2015-09-04/0186153, Assembleia da República, Lei n.º 130/2015, Procede à vigésima terceira alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001, <https://dre.pt/application/file/70186153>

Deutscher Bundestag, Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), Drucksache 18/6906 vom 02.12.2015, <http://dip21.bundestag.de/dip21/btd/18/069/1806906.pdf> (на немски)

DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the



rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

EPRS – European Parliamentary Research Service, The Victims’ rights Directive 2012/29/EU: European Implementation Assessment, December 2017.

EUR-LEX, National transposition measures communicated by the Member States concerning: Directive 2012/29/EU, <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029>

European Commission, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2013 (in the following: European Commission, Guidance Document to the Victims’ Directive, 2013).

European Union Agency for Fundamental Rights, Child -friendly justice: perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States, 2015.

European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Publication Office of the European Union (Luxembourg), 2014

FINLEX, Act on Victim Charges, 22.5.2015/669, <https://www.finlex.fi/fi/laki/ajantasa/2015/20150669> (Finnish)

FINLEX, HE 293/2014, <https://finlex.fi/fi/esitykset/he/2014/20140293?search%5Btype%5D=pika&search%5Bpika%5D=He%20293%2F2014> (Finnish).

FINLEY, HE 66/2015, <https://finlex.fi/fi/esitykset/he/2015/20150066> (на финландски).

Finley-julkaisut, Legislative Drafting Process Guide, <http://lainvalmistelu.finlex.fi/en/>

Finnish Ministry of Justice, Act on the Publicity of Court Proceedings in General Courts, 370/2007 amendments to 742/2015 included, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjQ9unn4MjZAhVMYaQKHTmUB14QFggtMAA&url=https%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F2007%2Fen20070370.pdf&usg=AOvVaw3A34-Ki7L-xk8YksYr1E0V>

Finnish Ministry of Justice, Code of Judicial Procedure, 4/1734, amendments up to 732/2015 included, <https://encrypted.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiHx5KJ3MjZAhUBLeWKhfZoD60QFggtMAA&url=http%3A%2F%2Fwww.finlex.fi%2Fen%2Flaki%2Fkaannokset%2F1734%2Fen17340004.pdf&usg=AOvVaw0-PJLjKrSH9U01qD0yrl4B>

Finnish Ministry of Justice, Criminal Investigation Act (805/2011; amendments to 736/2015 included, Unofficial Translation, <https://www.finlex.fi/en/laki/kaannokset/2011/en20110805.pdf>

Finnish Ministry of Justice, Rights of crime victim, 1.3.2017

FRANET, Victim Support Services in the EU: An overview and assessment of victims’ rights in practice: Germany, 2014.

Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren vom 21. Dezember 2015 (BGBl. I S. 2525, 2529), (PsychPbG), https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3 (German)

Gov.uk, Victims and witnesses funding awards, <https://www.gov.uk/government/publications/victims-and-witnesses-funding-awards>



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witnesses-funding-awards

Info Vitima, Psychological Supporter, http://infovitimas.pt/pt/004_quem/paginas/004_007.html (Portuguese)

Info Vitimas, lawyer of the victim, http://infovitimas.pt/pt/004_quem/paginas/004_006.html (на португалски)

IVOR, Finland: Developments on the implementation of victim assistance mechanisms.

IVOR, United Kingdom: Development on the implementation of victim assistance and mechanisms.

Kett-Straub, Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017.

Law 1/1996 on legal protection for minors; Law 1/2004 on comprehensive protection measures against gender-based violence (на испански).

Law 29/2011 on the recognition and comprehensive protection of victims of terrorism (на испански).

Law 35/1995 on support and assistance for the victims of violent crimes and crimes against sexual freedom (на испански)

Law on Access to Law and to Courts, Law no. 34/2004 of July 29 amended by Law no. 47/2007, of August 28, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=80&tabela=leis&so_miolo (на португалски)

Löffelmann, Drittes Opferrechtsreformgesetz – Ausgabe 11/2014, 22.11.2014, <http://www.recht-politik.de/drittes-opferrechtsreformgesetz/> (на немски)

Maizener ed. al., EVVI (Evaluation of Victims), 2015, http://www.justice.gouv.fr/publication/evvi_guide_en.pdf

Ministerio de Justicia, Law 4/2015, of 27 April on the Standing of Victims of Crime, <https://rm.coe.int/168070ac7f>

Ministry of Justice, Results Updated 31 Oct 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime>

Official Journal of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

Official Journal of the European Union, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing the Council Framework Decision 2004/68/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN>

Official Journal of the European Union, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

Oikeus, Attorney and support person for a victim of crime, <https://oikeus.fi/en/index/esitteet/oikeusapu/rikoksenuhrivoisaadaavustajanjatukihenkilön.html>

Oikeus, If you Become a Victim of a Crime: Victim protection: <https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html>



Oikeus, Information on Legal Aid, <https://oikeus.fi/en/index/esitteet/oikeusapu/mitaoikeusapuhakijallemaksaa.html>

Oikeus, Legal aid, <https://oikeus.fi/oikeusapu/en/index.html>

Oikeus, Means-testing, <https://oikeus.fi/en/index/esitteet/oikeusapu/millatuloilla-oikeusapua-myonnetaan-jamitkamenothuomioidaan.html>

Portuguese Criminal Procedure Code, http://viginti.datajuris.pt/pdfs/codigos/cppenal_t.pdf (на португалски).

Portuguese Victims' Statute, https://apav.pt/apav_v3/images/pdf/estatuto_da_vitima.pdf (на португалски).

RIKU – Rikosuripavystys: victim support Finland, <https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

Riku, What is a victim charge?, <https://www.riku.fi/en/frequently+asked+questions/what+is+a+victim+charge/>

RIKU, What is the victims' directive?, <https://www.riku.fi/en/refer+your+customers+to+riku%E2%80%99s+service/what+is+the+victims%E2%80%99+directive/>

Savonen, Developing Directive-Compatible Practices for the identification, assessment and referral of victims: National Report – Finland, 2017, 6; and Finnish Ministry of Justice, Rights of a Crime Victim, 1.3.2017.

Sentencing Council, What is the victim surcharge?, <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>

UK Ministry of Justice, Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures, March 2011, https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf

UK Ministry of Justice, Code of Practice for Victims of Crime, October 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF

UK Ministry of Justice, Improving the Code of Practice for Victims of Crime: Response to Consultation CP8® 29 March 2013, published on 29 October 2013, <https://consult.justice.gov.uk/digital-communications/code-victims-crime/results/improving-the-code-of-practice-for-victims-of-crime-consultation-response.pdf>

UK Ministry of Justice, the support you should get if you are a victim of crime, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf

UK Ministry of Justice, The Victims' Code: u18s: Young victims of crime – Understanding the support you should get, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267982/u18-victims-code-leaflet.pdf

UK Ministry of Justice, Victims of crime: Understanding the support you can expect,



https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341367/adult-victims-code-leaflet.pdf

Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings

Unidad de Atención a Víctimas con Discapacidad Intelectual (UAVDI), Comparative legal research: Rights and Protection of Vulnerable Victims in Criminal Proceedings – Executive Summary

Vânia Costa Ramos, Legal Aid for Victims in Criminal Proceedings in Portugal, in Wilinski, Karlik (eds.), Improving Protection of Victims' Rights: Access to Legal Aid, Adam Mickiewicz University, Poznan, 2014, 192.

Webpage of RIKU, Victim Support Finland, <https://www.riku.fi/en/victim+support+finland/>

Webpage of the Bundesrat, legislative procedure, https://www.bundesrat.de/DE/aufgaben/gesetzgebung/verfahren/verfahren.html;jsessionid=3CA8BC90B2257E80D96151207647DF27.2_cid391?nn=4353668#doc4353670bodyText2

Webpage of the German Ministry of Interior, legislative procedure, <https://www.bmi.bund.de/DE/themen/verfassung/gesetzgebung/gesetzgebungsverfahren/gesetzgebungsverfahren-node.html>

Wie viel Opferschutz verträgt das Strafverfahren?, Zeitschrift für Internationale Strafrechtsdogmatik, 2/2017.

