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Justice for victims of violent crime Part II

FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

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Foreword

Imagine you were brutally beaten or sexually assaulted, and someone was later charged with this crime. How would you feel if police officers, defence attorneys, prosecutors and judges barely registered your presence in the proceedings to follow – or even treated you like a nuisance?

It's an experience shared by all too many victims of violent crime. With crime primarily seen as an offence against the state, criminal proceedings are centred around prosecutors as representatives of the state and defendants. Victims risk being overlooked.

But violent crime is, of course, committed against people. It represents a severe violation of victims' dignity. This insight has prompted a shift. Increasingly, victims are seen as rights-holders – who are owed certain responses by the states in which they live. The European Convention on Human Rights, the EU Charter of Fundamental Rights, as well as the Victims' Rights Directive have all contributed to this change. They provide strong bases for victims' rights, including to access justice.

How are these rights playing out in practice? Are victims of violent crime properly seen, informed, empowered and heard? Do they tend to feel that justice has been done? Our four-part report series takes a closer look at these questions, based on conversations with victims, people working for victim support organisations, police officers, attorneys, prosecutors and judges.

This report – Part II – focuses on procedural justice, and on whether criminal proceedings are effective, including in terms of giving voice to victims of violent crime. Taken together, the four reports reveal a wide gap between the law 'on the books' and the law in practice. Many victims still feel marginalised – often more so in countries with laws that accord them extensive rights. This underscores that delivering justice is about more than introducing the right legislation. Changing perceptions of victims' rights – and what these mean for victims' role in criminal justice processes – is equally vital.

We hope this series encourages policymakers to take steps to ensure that victims of violent crime receive the attention, support and consideration to which they are entitled – and so make good on states' promise to provide access to justice.

Michael O'Flaherty
Director

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Glossary

Charter	Charter of Fundamental Rights of the European Union
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
FRA	European Union Agency for Fundamental Rights
GNR	National Republican Guard
General support organisation	Organisation providing support services to all victims of crime
Istanbul Convention	Council of Europe Convention on preventing and combating violence against women and domestic violence
Partner violence	A form of gender-based violence directed from a male offender against a female intimate partner or ex-partner with a view to controlling her behaviour; partner violence is interpreted as a consequence and expression of as well as reinforcing an unequal societal distribution of power and status disadvantaging women.
Repeat victimisation	A victim's experience of suffering repeatedly human rights violations by criminal conduct
Secondary victimisation	Being treated in the aftermath of a victimisation in a manner that reinforces the experience of not being respected and in control of one's situation
Specialist support organisation	Organisation providing support services to a particular group of victims, for instance to women as victims of partner or domestic violence
Support organisation	Organisation providing support services to victims of crime
Type 1 country	A country that perceives the victim as the person whose rights are violated by the criminal offence and grants comprehensive participation rights[1]
Type 2 country	A country that perceives the victim as having been harmed as a consequence of the criminal offence and grants only limited or no participation rights
Type 3 country	A country that perceives the victim as having suffered damage as a consequence of the criminal offence and grants participation rights to the extent necessary to allow the victim to claim compensation
Support services	Services provided by support organisations to victims of crime, including information, advice as well as practical, financial, emotional and psychological support relevant to the rights of victims and their role in criminal proceedings
Victimisation	A person's experience of suffering a rights violation by a criminal offence; offences against the person are understood as violating individuals' rights protected by criminal law.
Victims' Rights Directive	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

1 The concept is explained in more detail in Part I of this series of reports (see Chapter 3).

Vulnerable victim	A victim in a disadvantaged societal position in terms of power or social status; the term 'vulnerable' refers to the situations and relations that people find themselves in and does not intend in any way to locate problems in victims.

Figures

Key findings and FRA opinions

Victims of violent crime should be recognised as the person wronged by the offender, protected against repeat victimisation, granted access to justice and enabled to participate in criminal proceedings, according to Article 47 of the EU Charter of Fundamental Rights (the Charter). It applies whenever an EU Member State authority acts within the scope of the Victims' Rights Directive (Directive 2012/29/EU) or any other measure of EU law. This series of four reports takes an in-depth look at how far Member States fulfil those obligations.

The opinions given below build on the key findings of research by the European Union Agency for Fundamental Rights (FRA) into the legal and factual situation of adult victims of violent crimes in seven EU Member States: Austria, France, Germany, the Netherlands, Poland, Portugal and the United Kingdom. The research involved a total of 231 in-depth interviews conducted face to face: 83 interviews with adult victims of violent offences, including 54 female victims; and 148 expert interviews with practitioners – staff of support organisations, lawyers advising victims, police officers, public prosecutors and criminal judges.

Implementing legislative reform and changing mindsets

The Victims' Rights Directive aims to ensure that all victims are recognised and can participate in criminal proceedings. It also stipulates that victims of crime should be recognised as wronged, as the persons whose rights are violated by the offender(s).

When acting within the wide scope of the Victims' Rights Directive, Member State authorities have to take into account the Charter. Victims of violent crime have a right to justice under Article 47 of the Charter. That means that that they are entitled to an investigation and prosecution capable of leading to the identification, conviction and punishment of offenders, to enjoy fair trial rights and to participate actively in criminal proceedings.

However, many victims of violent crime who were interviewed in this project were very unhappy with the level of involvement offered to them in the criminal proceedings.

- Two out of three victims would have liked to have more opportunities to contribute actively to the criminal proceedings.
- One in four respondents expressed strong disappointment at their marginalised role in the criminal proceedings.

Some EU Member States do not recognise victims sufficiently because their legislation falls short of acknowledging victims of violent crime as parties to the criminal proceedings. When considering reforms to procedural codes, governments can draw inspiration from legislation in other EU Member States, including Austria, Germany, Poland and Portugal.

FRA opinion 1

To ensure that victims can enjoy their rights under EU law, Member States should fully implement the Victims' Rights Directive, bearing in mind that the Charter applies whenever Member State authorities act within the scope of the directive. The European Commission is encouraged to follow up on infringement proceedings against Member States reluctant to abide by their obligations under the directive.

Member States are recommended to assess if their criminal procedural codes meet the standards of the Victims' Rights Directive, read in accordance with Article 47 of the Charter concerning victims of violent crime. Recognising victims of violent crime as parties to criminal proceedings should enhance fair trial rights. Where current codes fall short, a review of existing legislation is welcome, to strengthen victims' rights.

It is not only legislation, however, that limits victims' participation in criminal proceedings, as the findings from this research show clearly. Therefore, the seven EU Member States are categorised into three types:

- '**Type 1**' countries: In Austria, Germany, Poland and Portugal, legislation grants victims extensive participation rights.
- '**Type 2**' countries: In the Netherlands and the United Kingdom, victims have significantly fewer rights to participate in the proceedings.
- **'Type 3'** country: France has a civil party system, which focuses on victims claiming damages in criminal proceedings.

The following generalisations can be made:

- In type 1 countries, victims interviewed for the project were no more satisfied with their amount of participation than victims in type 2 countries.

- The law in type 1 countries entitles victims of violent crimes to play a significant, active role in the proceedings. However, 69 % of practitioners there viewed the victim primarily as a witness, compared with 38 % of practitioners in type 2 countries and 6 % of practitioners in France. The tendency of practitioners in type 1 countries to reduce the victim to the function of a witness is particularly pronounced in the professional groups representing state authorities: the police and the judiciary.

- In contrast, nearly all practitioners in all three types of countries agreed that victims of violent crime can legitimately expect the police to conduct a thorough investigation with a view to identifying offenders. Hence, while many practitioners, without hesitation, see the victim as concerned and a stakeholder in criminal justice, they are not ready to grant victims an *active participatory* role in the proceedings.

It takes more than legislation for criminal proceedings to recognise victims. More decisive is how the police, public prosecutors and criminal judges perceive them. If practitioners conceive of victims essentially as witnesses, victims will often feel that they are nothing more, regardless of how procedural law lays down their role.

Therefore, to improve how we treat victims in reality, reformers must concern themselves with practitioners' underlying basic perceptions as well as legislative reforms. How practitioners understand the functions of criminal justice and the tasks and proper roles of those involved in the proceedings will determine how they behave. As long as practitioners view violent crimes as a matter between the state and offenders, not also involving victims, it will remain difficult to give victims an important role in the proceedings. In addition, as long as many court practitioners fear that strengthening the position of victims risks disturbing the subtle balance between prosecution rights and defence rights, they may be reluctant to value victims' participation rights.

Human rights are not meant to be only theoretical, but practical and effective. It is, therefore, not enough for the 'law in books' to acknowledge that victims of violent crime have participation rights. They must also be put into practice. However, this demands that practitioners understand criminal justice as based on human rights. That requires comprehensive communication and training measures that raise practitioners' awareness of victims' rights as fundamental rights, ensure uniform standards for training police officers and court practitioners in victims' rights, and help dissolve myths and preconceived views that stand in the way of victims' recognition.

FRA opinion 2

The Victims' Rights Directive aims to enhance the role of victims in criminal proceedings. When enacting procedural reforms aligned with it, it is important to comprehensively and clearly communicate to practitioners involved in criminal proceedings the reasons for amending legislation and victims' underlying human rights to have access to justice. EU Member States' institutions involved in the training of law enforcement agencies or the judiciary and, at the European level, the European Union Agency for Law Enforcement Training and the European Judicial Training Network, are encouraged to promote training for law enforcement and the judiciary on the rights of victims of violence as human rights.

Ensuring that victims of violent crime do not also have to act as witnesses

- Victims in type 1 countries (Austria, Germany, Poland and Portugal) face contrasting roles as parties to the proceedings and as witnesses obliged to provide evidence, our research shows. These roles are not consistent with each other. If victims are stakeholders in the proceedings, they cannot, at the same time, act as witnesses in an unbiased, non-partisan and objective manner. In addition, where these roles conflict, the victim's duty to deliver evidence as a witness takes precedence in practice over the victim's entitlement to act as a party to the proceedings, our project finds.

- Thus, legislation conceives of the victim as a witness, in spite of acknowledging the victim as entitled to act as a party to the proceedings. This encourages the tendencies of practitioners in type 1 countries to reduce victims to witnesses.

- Article 47 of the Charter entitles victims to act on an equal footing with the other parties to the proceedings and to have the same leeway to pursue their interests ('equality of arms'). If procedural codes impose a duty on the victim, but not also on the defendant, to contribute actively to the proceedings and to be truthful, this differential treatment disadvantages victims and potentially violates their right to a fair trial.

FRA opinion 3

Where EU Member States already recognise victims of violent crime as parties to the proceedings, they are encouraged to consider not also imposing on victims the role and obligations of a witness, as these two roles can potentially conflict.

Reinforcing structures that provide support and assistance

Under Article 8 of the Victims' Rights Directive, all victims of crime have a right to "have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings".

- However, the situation, at least in some countries, falls short of these standards, our findings indicate. The gap between the promise and the reality that this research highlights underlines the need for measures to strengthen and further develop the system of organisations providing victim support services. In some countries, this will imply improving the coordination of support services and increasing considerably the level of public funding and oversight.

FRA opinion 4

EU Member States must step up their efforts to establish efficient, robust and complete networks of victim support organisations to ensure that every victim of violence has access to appropriate support services, in line with the Victims' Rights Directive. This implies better coordination and funding of support organisations as well as effective mechanisms assessing organisations' performance against defined quality standards.

To ensure victims' awareness of their rights and their potential role in the proceedings, the Victims' Rights Directive pursues a twin-track strategy for the provision of information. On the one hand, Article 4 grants victims the right to receive information as soon as they first contact a competent authority. In parallel, according to Article 9, support services shall provide information, advice and support relevant to the rights of victims and on their role in criminal proceedings.

- Findings from this research provide some evidence to support the assumption that differences in levels of information can be traced back to differences in the extent to which non-state bodies provide victims with support and assistance, rather than differences in how officials – the police or public prosecution services – inform victims about their rights.

- This adds further weight to the crucial importance of having robust systems of support services in place that meet the benchmarks in Article 9 of the Victims' Rights Directive. These include the capability of providing information and advice about the rights of victims and how they can act on them.

- The Austrian system of procedural assistance (*Prozessbegleitung*) entitles all victims of violence to be accompanied and advised by a person providing psycho-social support and a legal consultant throughout the proceedings free of charge. That may inspire other systems.

FRA opinion 5

Every victim of violence should have psycho-social and legal assistance available to them free of charge. Emphasis should be placed on a range of support organisations informing victims about their rights and advising them on how to exercise them, rather than relying solely on public authorities to provide information.

Conducting proceedings comprehensibly and transparently

Prominently, Article 3 of the Victims' Rights Directive grants crime victims the right to understand and to be understood. EU Member States must ensure that communications with victims are in simple and accessible language. In addition, Article 7 entitles victims to as much interpretation and translation as they need to play an appropriate role in the proceedings.

- However, two thirds of victims interviewed in this research agreed that, overall, it was difficult to understand and follow the course of the proceedings. One in four victims strongly agreed with this statement.

- Many victims we interviewed indicated that their participation was limited by language barriers. Not only did court practitioners use complex language, but proceedings were in a foreign language for some victims.

Conducting the proceedings in a manner that does not allow victims to understand the course of proceedings side-lines or excludes victims. It sends a message that state authorities do not care about their participation. This can amount to a denial of access to justice. Similarly, conducting the proceedings in a manner that is bureaucratic, time-consuming and not transparent discourages victims' participation.

FRA opinion 6

To enhance victims' participation in the proceedings, EU Member States are called on to adopt legislative, organisational and educational measures ensuring that proceedings are conducted in a manner that is transparent and comprehensible to victims. Victims should receive sufficient information and explanations allowing them to understand developments in the proceedings. In addition, victims who do not understand or speak the language of the proceedings should have interpretation and translation as necessary to allow them to exercise their participation rights.

Enhancing the receptiveness of proceedings to victims' rights

The Victims' Rights Directive entitles all victims of crime to respectful, sensitive and professional treatment.

- Not all professionals working as police officers or court practitioners in criminal justice systems pay due attention to the rights and concerns of victims, our findings indicate. Considerable numbers of victims in Austria, Germany, France and Poland said that they felt that during the investigation the police did not give their rights and concerns due consideration. Of the victims interviewed in Austria, Germany and Poland, 49 % disagreed with the statement that during the investigation they had the impression that their concerns and rights were taken seriously by the police and were given due attention. In France, 67 % of victims interviewed disagreed with this statement and 25 % disagreed strongly.

- In France and Germany, 53 % of the victims interviewed disagreed with the statement that, at the court trial, they had the impression that their concerns and rights were taken seriously and were given due attention by the court.

FRA opinion 7

EU Member States are encouraged to assess training curricula for the police and court practitioners, to ensure that the police and the judiciary treat all victims of violent crime in a respectful and sensitive manner, and that they give due attention to victims' concerns and underlying rights. At the European level, the European Union Agency for Law Enforcement Training and the European Judicial Training Network are encouraged to contribute to training in EU Member States.

Ensuring effective protection against secondary victimisation and retaliation

- Of 68 victims interviewed on the subject, 39 agreed and 21 strongly agreed with the statement that, 'If I look back at the proceedings, there were moments when I experienced the presence of the offender as intimidating.' This includes all the victims interviewed in France and a large majority of victims interviewed in type 1 countries. Differences between countries showed no correlation with differences in the nature of victimisation and types of violent offences among the sample of victims interviewed in each country.

- None of the EU Member States in this research has a comprehensive and effective mechanism in place to assess risks of intimidation for each individual and to protect victims from secondary victimisation caused by the presence of the offender, our findings suggest.

- Similarly, they do not have routine practical mechanisms to assess the risk of victims being the target of retaliation by offenders.

FRA opinion 8

To avoid risks of secondary victimisation, it is imperative that police officers be trained to understand the trauma that victims of violence have suffered, to treat victims of violence in a sympathetic, respectful manner, and to know their rights and take those rights seriously.

FRA opinion 9

EU Member States should evaluate their compliance with their obligations under the Victims' Rights Directive, read in the light of the Charter, to assess the risks of secondary victimisation and of retaliation against victims, as well as to take, whenever necessary, effective measures to protect victims against these risks. In particular, they should have robust protocols and routine practices in place to ensure that offenders do not intimidate victims in the course of criminal proceedings.

Ensuring that effective remedies enable victims to assert their rights

"Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal", according to Article 47 of the Charter. EU Member States are obliged to "provide remedies sufficient to ensure effective legal protection in the fields covered by Union law", under Article 19 of the Treaty on European Union. Hence, for any of the rights granted by the Victims' Rights Directive, a corresponding effective remedy must be in place, allowing victims to assert their rights whenever they can tenably claim a violation. For example, victims claiming that they do not have access to an appropriate support service are entitled to an effective remedy before a tribunal. If the tribunal finds that such access is unlawfully denied, it should be in a position to swiftly grant access to appropriate support services.

However, the lack of effective remedies has been a recurrent theme in this research. To a great extent, effective remedies are absent either in legislation or in practice. A lawyer interviewed in the Netherlands encapsulated the resulting situation by saying: "As it is now, a victim has rights, but no remedies".

FRA opinion 10

EU Member States are encouraged to review their legislation and court practices to ensure that effective remedies are available to victims who can tenably claim that their rights under the Victims' Rights Directive have been violated.

Introduction: assessing criminal proceedings as doing justice to victims of violent crime

This report forms the second part of a series of four reports. The project has collected evidence in seven EU Member States – Austria, France, Germany, the Netherlands, Poland, Portugal and the United Kingdom – to assess criminal justice from the perspectives of (adult) victims of violent crime and practitioners working in criminal justice systems: staff members of support organisations, lawyers advising victims, police officers, public prosecutors and criminal judges.

Project on 'Justice for victims of violent crime'

Building on previous research, in 2017, FRA's multidisciplinary research network, FRANET, conducted social fieldwork on the situation of the rights of victims of violent crime in criminal justice systems in Austria, France, Germany, the Netherlands, Poland, Portugal and the United Kingdom. In the course of this project, FRANET interviewed:

- 148 practitioners active in criminal proceedings – staff members of victim support organisations, lawyers advising victims, police officers, prosecutors and criminal judges;
- 83 adult victims of violent crimes, including two mothers of victims killed in November 2015 in the terrorist attacks in Paris.

Among other aspects, practitioners were asked about their views on the role of victims in criminal proceedings, what can be done to enhance victims' participation, and how they assess victim compensation. Victims were asked about:

- the information and support they received;
- their means of actively participating in the proceedings;
- whether or not they sensed that their participation made a difference;
- how content they were with the result of the proceedings in general and with compensation received in particular;
- overall, whether or not they felt recognised and respected by how criminal proceedings considered and dealt with their concerns and rights.

The results of this project are presented in four reports.

- Part I is on 'Victims' rights as standards of criminal justice'. It puts the project in context by sketching the historical development of victims' rights in Europe and by bringing a consistent human rights perspective to the discussion of victims' rights. It clarifies and spells out the human rights standards applied by Parts II to IV in assessing victims' access to justice in the seven EU Member States researched. The tensions and contradictions that surface throughout this series of reports reflect the current transitional state of criminal justice systems. They are undergoing the difficult passage from upholding public interests and public order to protecting the human rights of individuals.
- Part II is on procedural justice. It applies the standards of victims' rights in assessing the procedural aspects of criminal justice. This project distinguishes between procedural and outcome justice. 'Procedural justice' in general relates to such aspects as the fairness of proceedings, taking all available evidence into account and showing respect for the parties of the proceedings, their rights and their concerns. Hence, this report asks if authorities are committed to conducting effective proceedings, if victims have a voice in and can contribute to the proceedings, and if state organisations pay due attention to the contributions made by victims.
- Part III is on 'sanctions'. It applies the standards of victims' rights in evaluating whether or not the results of criminal proceedings deliver on the promise of criminal justice to victims of violent crime. That would mean by convicting, sentencing and punishing offenders and ensuring that victims are compensated for the consequences of violent crimes.
- Part IV zooms in on one particular group of victims, namely women as victims of gender-based violence in general and of intimate partner violence in particular. It analyses what criminal justice means to victims of forms of violence that express or reinforce societal discrimination. In addition, while Parts II and III deal exclusively with the right of victims of violent crime to criminal justice, Part IV is concerned with the interplay of justice and a victim's right to protection against repeat victimisation. The situation of women as victims of domestic partner violence is a good example.

The fundamental rights-basis of the rights of victims of violent crime

This series of reports is founded on a human rights-based approach to criminal justice. It assumes that victims of violent crime have at least two fundamental rights: a right to justice and a right to protection against repeat victimisation.

- Criminal justice serves to right the wrongs done to victims. If an offender, by committing a violent crime, calls the victim's rights into question, the victim can legitimately expect the legal community to come to the defence of the victim as a rights holder and of the victim's rights. As an effective remedy (Article 13 of the European Convention on Human Rights, Article 47 of the Charter), criminal proceedings assert the victim's rights as much as they preserve the identity of a community of law based on human dignity and human rights. Criminal proceedings confirm the victim's status and rights by effectively identifying, convicting, sentencing and punishing offenders. These are outcome aspects of criminal justice. At the same time, over the course of the proceedings, they recognise victims, treat them with respect and give due consideration to their views and concerns throughout the investigation and the court trial. These are procedural aspects of criminal justice.[2]

- As well as justice, victims are entitled to protection against repeat victimisation. If a violent crime has been committed, the danger of another such offence may still exist. Therefore, victims of violent crime have a right to an assessment of any remaining risks of repeat victimisation and to protection measures if such risks exist.

Part I of this series of reports further clarifies the fundamental rights basis of criminal justice as it appears in the case law of the European Court of Human Rights (ECtHR).

Article 13 of the European Convention on Human Rights

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

The most relevant strand of the ECtHR's case law relates to Article 13 of the European Convention on Human Rights (ECHR). It maintains that, when an individual can argue that a violent offender severely abused their convention rights, "Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigation procedure".[3]

This formula spans three elements:

- the payment of compensation where appropriate;
- an investigation capable of leading to the identification and punishment of offenders;
- effective access for the victim to the procedure.

The EU Charter of Fundamental Rights (the Charter) incorporates the essence of Article 13 of the ECHR into EU primary law. The first paragraph of Article 47 of the Charter captures the contents of Article 13 of the ECHR.

Article 47 of the EU Charter of Fundamental Rights

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

2 The significance of 'procedural justice' has been consistently brought to the fore and elaborated by Tyler (2006); Tyler (2011); Tyler and Blader (2018); Tyler and Trinkner (2017).

3 ECtHR, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], No. 47848/08, 17 July 2014, para. 149.

In granting victims of violent crime rights to an effective remedy and to a fair trial, Article 47 of the Charter is the foundation of the right of victims of violent crime to criminal justice.

How to read this report

The report series consists of four parts. Part I defines the human rights standards relevant to designing criminal law systems and reflects on how the development of victims' rights affected these standards. The report applies the standards in analysing the situation of adult victims of violent crimes in seven EU Member States on the basis of fieldwork research that FRA carried out. Part II, this report, explores procedural aspects of criminal justice. Part III deals with the results of criminal proceedings as relevant to criminal justice; and Part IV focuses on the specific situation of women as victims of violent crime.

This report concentrates on what is commonly referred to as victims' 'access to justice'. This concept, for the sake of analysis, is here deconstructed into the following six components:

- **recognition** of the victim as the person wronged and therefore entitled to justice;
- **empowerment** of the victim by having information about their rights, advice on acting on them and support in re-establishing oneself as a respected member of the community;
- **accessibility** of the proceedings, meaning that the victim is allowed to be present and to participate actively in the proceedings;
- **receptivity** of the proceedings, meaning that the victim receives due attention; one aspect of receptivity is that effective remedies are available to victims in case they feel that the police or the court do not give their contributions due consideration;
- **protection against secondary victimisation**, where 'secondary victimisation' refers to any treatment of victims in a manner that reinforces their (primary) victimisation by the offender and frustrates efforts made to support victims in coming to terms with their experience of (primary) victimisation;
- **protection against retaliation and repeat victimisation**, as victims who fear retaliation or repeat victimisation may be discouraged from participating in the proceedings.

Deficiencies in these six components interact and jointly result in attrition. That means that victims 'drop out' of the proceedings because they are not recognised as victims, because they are not sufficiently supported and informed, or because they are not included in the proceedings. The following chapters explore these aspects of victims' access to justice.

This report does not deal comprehensively with victims' protection against repeat victimisation. Part IV will focus on the paradigmatic situation of women as victims of domestic partner violence. That situation is crucially determined by the interplay of the victim seeking justice for the violence suffered and protection against further victimisation. This report discusses the risk of repeat victimisation only insofar as fear of retaliation by the offender stops victims reporting to the police and thus interferes with victims' access to justice.

It should be stressed that this report is about victims of violent crime. Even where, for simplicity or readability, the text refers to 'crime victims' or 'victims' rights' without any explicit qualification, it should be read as referring to victims of violent crime only. The reason is that, while any form of violence violates human dignity and human rights, this may not necessarily be the case with other crimes.

1 Recognition: the role of victims of violent crime in the criminal justice system

Crime is a wrong against society as well as a violation of the rights of individual victims, according to Recital 9 of the Victims' Rights Directive.[4] Hence, victims of crime must be recognised as the individuals whose rights are violated, and they should be treated on that basis in a respectful, non-discriminatory, sensitive and professional manner. Recital 20 acknowledges that the role of victims in the criminal justice system varies across EU Member States, and the directive, at times, makes concessions to the reality of diverging victim concepts in European criminal justice systems, but Article 1 of the directive states in clear terms that the purpose of the directive is to ensure that victims of crime are able to participate in criminal proceedings.[5]

However, the main point of departure is the right of a victim of violent crime to have access to justice under Article 47 of the Charter. Victims of violent crimes are entitled to an investigation and criminal proceedings capable of leading to the conviction and punishment of offenders, to full fair trial rights and hence to a role as parties to the proceedings. See Part I of this report series for a more comprehensive explanation of the fundamental rights basis of victims' rights.

This chapter explores the role of victims of violent crime:

- firstly, from the perspective of interviewed victims who have participated in criminal proceedings (Section 1.1);
- secondly, from the perspective of practitioners who interact professionally with victims of violent crime on a daily basis (Section 1.2).

This brings to the fore discrepancies between how legislation conceptualises victims of violent crime and how they are perceived and treated in practice. In addition, it highlights tensions arising from the two main roles of victims as witnesses and as parties to the proceedings (Section 1.3). In the light of the several inconsistencies discussed, this chapter finally explores practitioners' views on the need for (further) reform (Section 1.4).

1.1 How victims of violence experience their role in criminal proceedings

People have long known that many victims want to play a more significant role in proceedings, expect to be consulted by the public authorities, and want to have a voice throughout the proceedings so that decision-makers can give consideration to their views and concerns. This would allow the victim to feel that they are recognised and to regain a sense of control or self-efficacy in the aftermath of their victimisation.[6] One question that this research asks is if EU Member

4 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, OJ L 315, 14.11.2012, p. 57.

5 On the Victims' Rights Directive as a means of promoting the participation of victims in criminal proceedings, see Dearing (2017), pp. 2–3, 334–347.

6 See, for example, Shapland et al. (1985); Groenhuijsen (1999); Sebba (1999).

States have made significant and tangible progress in recognising victims and offering them a more prominent role. Hence, the interviews with victims aimed to understand how victims perceive their situation in the criminal justice system.[7]

From the interviews with victims, one significant point of departure emerges, namely the fact that victims are clearly not content with the extent of their involvement in the proceedings. This is reflected in interviewees' responses when asked if they agreed that they would have liked to have more opportunities to be involved in the proceedings (Figure 1).

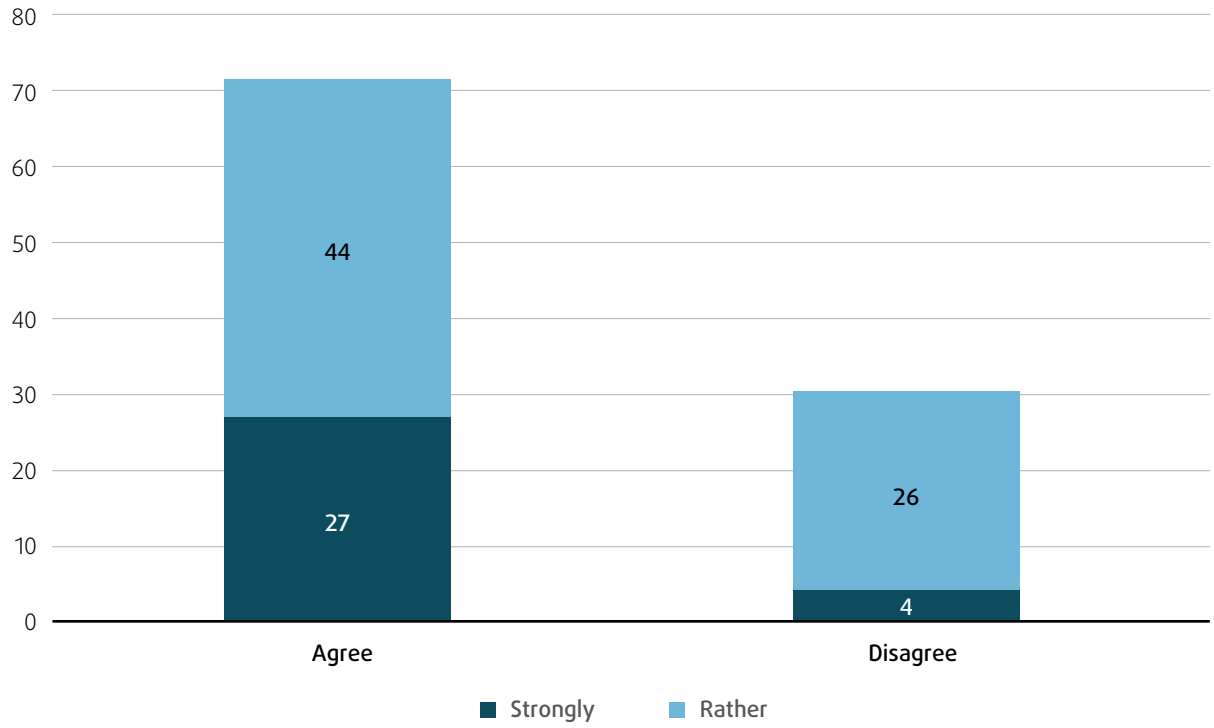
Seven out of 10 victims interviewed in the project would have liked to have more opportunities to be involved in the proceedings. One in four respondents strongly agreed with the statement. That emphasis may express disappointment at the marginalisation they experienced in the proceedings.

Looking at the findings by types of EU Member States, one might expect victims to be more content with their role in type 1 countries, those that offer victims more participation rights: Austria, Germany, Poland and Portugal. However, they are not (Figure 2).

Here a significant – and, in a way, paradoxical – finding surfaces. In some of the countries where national legislation gives victims more participation rights, victims are, overall, less content with their actual opportunities to be involved in the proceedings. In Austria, Germany and Poland, 79 % of the victims interviewed in the project agreed that they would have liked to have more opportunities to participate in the proceedings. That is a higher percentage than in type 2 (65 %) and type 3 countries (73 %).

The high level of dissatisfaction among victims in type 2 countries can be interpreted as reflecting the rather limited participation rights that these countries' procedural codes grant. The even higher level of dissatisfaction in the majority of type 1 countries points to a very considerable gap between the law in books – the procedural codes of type 1 countries – and the law in action.[8]

Figure 1: Victims agreeing/disagreeing with the statement 'Overall, I would have liked to have more opportunities to be involved in the proceedings' (%)

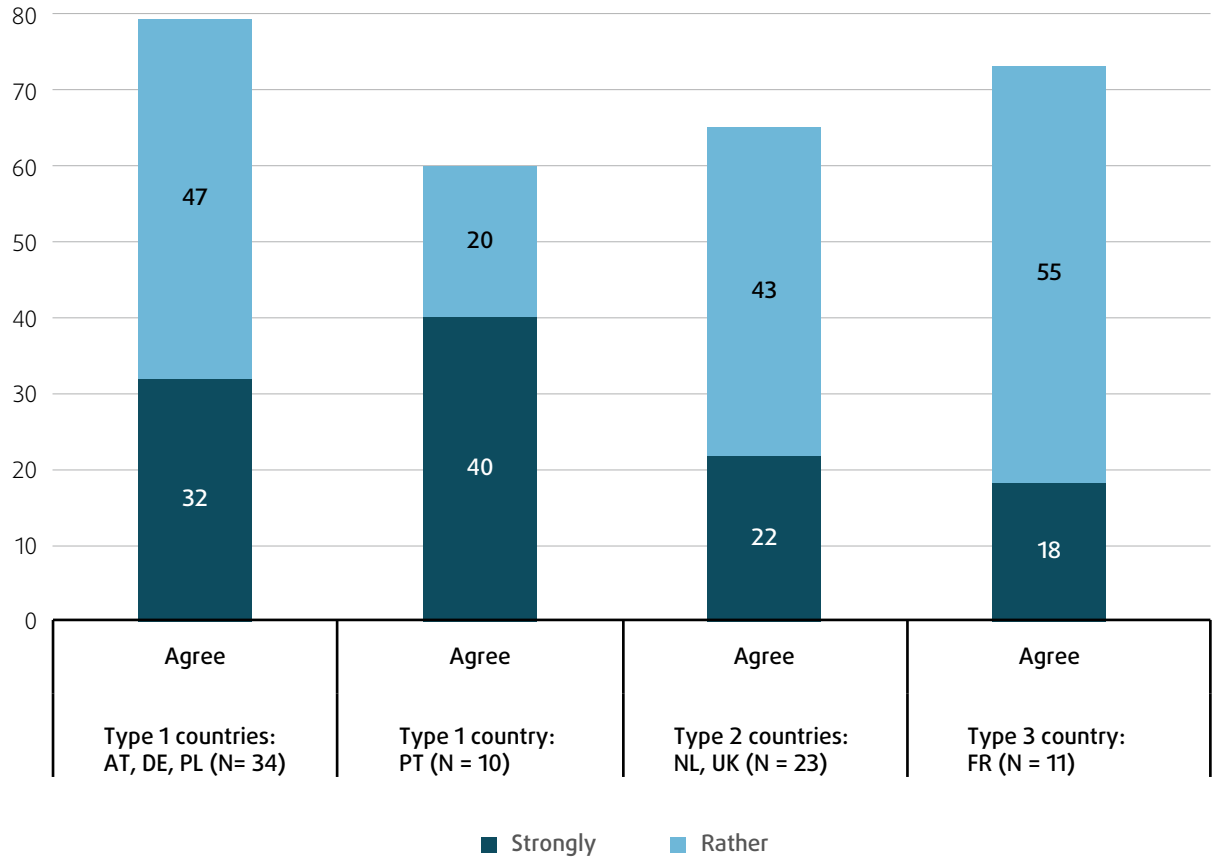


Notes: *N = 78.*
Source: *FRA, 2019*

7 Readers should be aware that the small numbers of interviewees are not representative and do not allow for generalisations.

8 Pound (1910).

Figure 2: Victims who would have liked to have more opportunities to be involved in the proceedings, grouped by types of countries (%)



Source: *FRA, 2019*

A victim could be satisfied if they did not play a significant role in the proceedings but did not expect to do so. Hence, different levels of satisfaction could relate to different levels of expectations, created by differences in legislation and legal traditions. Victims' cultures shape their expectations. Therefore, victims in type 2 countries may have had different expectations of their possible role from those of victims in type 1 countries.

The interviews asked victims if they agreed with the statement 'Overall, I would have expected to be given a more important role in the proceedings.' Of those who did not opt to answer 'Don't know', in all countries at least half of respondents agreed that they would have expected to be able to play a more significant role in the proceedings (Figure 3).

Except for Portugal, across all types of countries, the *ex post* assessment is more critical than the evaluation based on what victims recall as their *ex ante* expectations. This means that, overall, a number of interviewed victims had not expected to have a more important role in the proceedings but now, looking back on their experiences, would have preferred more opportunities to participate actively in the proceedings.

1.1.1 Victims' satisfaction with their role in type 2 countries

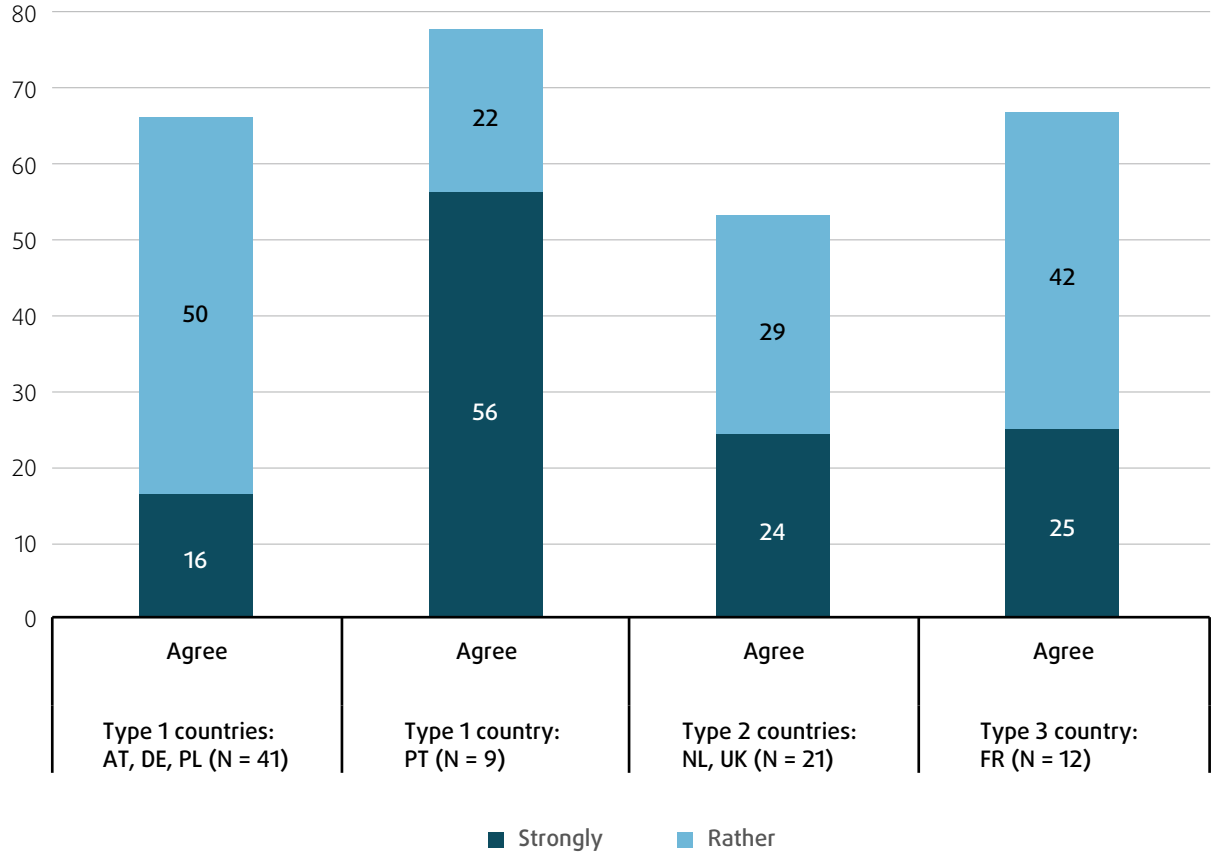
In type 2 countries, lower percentages of victims asserted that they had expected a more significant role in the proceedings. That could well reflect an uncontested tradition of adversarial criminal proceedings between the state and the defendant, which leave little room for a victim to participate, other than as a witness. This shapes expectations. Victims interviewed in the United Kingdom noted:

"Well, as a victim I reported the crime and I gave evidence in court. That was my role, to give evidence to back up [...] the report that I made and as a victim I don't think I could've done much else." (Victim, United Kingdom)

"Well, it's like I said, just giving evidence is giving evidence, so I'd expected what happened to happen. I got up, gave the evidence, got down, that's all I expected to happen, so." (Victim, United Kingdom)

"I don't think there was a point where, other than the victim impact [statement], where [...] it would've been appropriate for me to comment." (Victim, United Kingdom)

Figure 3: Victims who expected a more important role (%)



Source: *FRA, 2019*

However, whereas about half of the victims interviewed in type 2 countries stated that they had not expected a more significant role beforehand, in retrospect 65 % would have liked more opportunities to participate. Hence, some victims learned from the experience of being marginalised in the proceedings that they would have preferred to have more opportunities to participate.

Victims in the Netherlands and the United Kingdom expressed more often than victims in other countries strong feelings of being marginalised and ignored in the proceedings. Asked how he was treated during the court trial, a victim interviewed in the Netherlands responded:

"You are not being treated at all [laughs]. No, you're just sitting there. The last time, I was very happy, I got the opportunity to say something and I was very happy about it." (Victim, Netherlands)

In a similar vein, other victims interviewed in type 2 countries voiced frustration – which was sometimes strong – over being side-lined.

"I don't know, just felt like they just kind of questioned me and pushed me to the side […]." (Victim, United Kingdom)

"I wasn't even a victim in their eyes. I was more a 'we need some information from you so just come on'." (Victim, United Kingdom)

"I had the impression that the whole scene revolved around me, without me being a part of it. The only role I had was providing the necessary information […]." (Victim, Netherlands)

"I felt angry. You don't really have a role, you're told to turn up here […] you fill out all the forms and then you wait and you either turn up at court or you get a letter saying it's been postponed." (Victim, United Kingdom)

One victim, interviewed in the Netherlands, recalled as particularly disturbing the experience of having to listen to the wrong done to her by the offender without anyone acknowledging that she was present in the courtroom and could have told her story herself. Thus, a significant episode of the victim's life is constructed without the victim being allowed to participate in its construction and acknowledged as the 'owner' of that experience.

"Being in court and having to endure the confrontation with the offender was very traumatising, especially when you are both present and someone reads out loud what he has said and done to you. Something in me changed definitely." (Victim, Netherlands)

Victims interviewed in type 2 countries felt that what they report to the police is their case, but that, once the case is passed on from the police to the public prosecutor, they are dispossessed of their case and criminal proceedings move ahead without them. In a wider context, this situation is the result of a historic development in the course of which "the 'ownership' of crime has moved away from victims to the State" and "any 'rights' victims have to 'own' their own experience of victimisation and its aftermath have been eroded over time".[9] As soon as the public prosecutor takes on the function of driving the case forward, it is no longer the victim's case. A victim interviewed in Scotland reflected on the fact that she was not able to present her case herself with the help of a lawyer, and what the public prosecutor (the 'procurator fiscal') presented was not her case.

"I couldn't employ my own solicitor to represent, you know, to come along and represent me and look after my rights, you just don't get your ... It's the fiscal, she's supposed to be ... Well, no, I thought she was supposed to be looking after me and my rights and she didn't, so ... But from what I gathered, that's not her role." (Victim, United Kingdom)

A victim, interviewed in the Netherlands, put this in a nutshell:

"We [the victims] didn't have any case, the public prosecutor had a case. It was a criminal case in which we could do nothing, ask nothing, say nothing. That's at least what they told us. They said we had nothing to do with this case." (Victim, Netherlands)

With some bitterness, another victim observed that she would have preferred at least to understand her marginalised position before attending the trial.

"[J]ust something that says 'this is what's going to happen to you on the day', you know, 'the fiscal won't give a [*] about you, so don't rely on her' [...] the fiscal [...] could have [...] said 'look, I can't talk to you, [...] you're just another piece of evidence as far as I'm concerned so I can't get involved with you'." (Victim, United Kingdom)

At times, the exclusion of victims also takes the form of victims being denied information about the progress of their case.

"So, I'm the victim thinking, 'this is my life, that court case is what happened to me [...]', but I just stood in the public gallery [...] I don't see why a phone call every other day is such a big thing on such a big deal. It's not about support [...] it's just about staying in the loop." (Victim, United Kingdom)

"I phoned the court in the morning and said that I'd been told this case was going to court today ... And I got told, 'Yeah, the procurator fiscal has dealt with it', so I said, 'What was the outcome?' 'We can't tell you that because of the nature of the case ... have you tried contacting the police?' I phoned the police. 'Well, we've not got anything here. It's with the procurator fiscal. It's them that need to tell you what's going on. [...]' So, I contacted the procurator fiscal. 'Yeah, there's no information we can give you.' 'But I'm involved in this, I'm the one who reported this.' 'Yeah, data protection.'" (Victim, United Kingdom)

1.1.2 Victims' satisfaction with their role in type 1 countries

Victims in type 1 countries voice a somewhat higher level of frustration than victims in type 2 countries over not having been offered more opportunities to participate in the proceedings. That could, partly, relate to victims' higher expectations that they would be offered a more important role in the proceedings. Whereas victims in type 2 countries learn that criminal proceedings are not for them, victims in type 1 countries receive mixed and confusing messages, suggesting that, on the one hand, they have participation rights, while, on the other, these rights are not taken seriously in practice. Therefore, victims in type 1 countries may sense that they are, in practice, deprived of participation that they could legitimately expect, and they may feel that they would have preferred to actually enjoy the opportunities they were promised.

Within the group of type 1 countries, Portugal has a distinct position. While a considerable number of victims strongly agreed that they would have liked to have more opportunities to participate in the proceedings, there were also voices of victims who strongly disagreed with that statement. Hence, views are polarised. Still, Portugal is the country where, overall, the lowest percentage of victims state that they would have liked to participate more in the proceedings.

What makes the situation in Portugal even more exceptional is the fact that it has the highest percentage of victims who had expected a more significant position in the proceedings. Nine victims interviewed in Portugal did not opt to respond 'Don't know'. Seven of them stated – five of them strongly – that they had expected a more important position in the proceedings.

9 Goodey (2005), p. 126.

It is not clear why fewer victims in Portugal than in any other country researched stated that in retrospect they would have liked to have more opportunities to participate. It is, however, worth noting that victims in Portugal were significantly more content with how they were treated by the police than in any other country covered by this research. Asked if they felt that they were treated respectfully by the police, more than half of the victims interviewed in Portugal agreed strongly. To the question if they perceived the police as taking their rights and concerns seriously, 10 victims did not opt to answer 'Don't know'. Seven agreed that this was the case, with five strongly agreeing. In more than one respect, law enforcement officers in Portugal excel in perceived treatment of victims. In particular, victims repeatedly praise the Judicial Police for their professional and sensitive performance and for keeping victims informed. A lawyer, who had been kidnapped, provided extensive and highly critical reflections on the performance of the Portuguese criminal justice system over the course of the interview. This victim commented on the Judicial Police:

"The whole team was extraordinary, I cannot find another adjective. I couldn't ask for more. And this regards all aspects. [...] I have to praise the support given and admit that I did not expect it to be so good and so extraordinary. [...] They were of a degree of professionalism ... I'm not sure if the other police forces work like this." (Victim, Portugal)

Hence, the picture emerges that, even if victims were not given the opportunities to participate that they had expected – in particular, at the court trial – still some felt that the police had considered their concerns sufficiently and dealt with them in an appropriate manner on the victims' behalf.

"I did not get more involved because I felt that the case was well taken care of. The proceedings were being well led and [name of the inspector from the Judicial Police] kept me informed and therefore I was able to follow the case from a distance. There was nothing else I could have done." (Victim, Portugal)

However, in Portugal victims reported that different police services involved in the proceedings, and individual police officers, displayed vastly different levels of professional training. Hence, differences in how content victims were with the role they had in the proceedings could relate to differences in how the police treated victims. A victim of domestic violence, interviewed in Portugal, commented on the sharply contrasting experiences she had with officers from the National Republican Guard (GNR) in Moita, on the one hand, and in Montijo, on the other.

"I did not want to be embarrassed again by the GNR at Moita [...] for them it seemed an entertainment; they were not handling it as professionals. [...] Of Montijo I can't say the same. They always cared about helping me; they were concerned. They even advised me to go directly to court." (Victim, Portugal)

In addition, some victims interviewed in Portugal voiced discontent with their involvement and with the level of procedural justice they experienced during the court trial. Although those who were dealt with by the Judicial Police received regular updates on developments in their case, this ended as soon as the investigation was concluded and the file was passed on to the public prosecutor. Victims who had been well taken care of by the Judicial Police felt excluded at times from the court trial.

"I did everything I could. I never had the chance to talk before the court. [...] I never got justice, from the courts. I was never given the opportunity." (Victim, Portugal)

Hence, overall, victims' perceptions in Portugal were divided. Whether or not victims believed that they had been offered sufficient opportunities to participate in the proceedings also related to whether or not the police and the courts had treated them respectfully and taken due account of their concerns.

Some victims in type 1 countries had been side-lined and excluded not very differently from victims in type 2 countries, although less frequently. A victim of rape, interviewed in Germany, had acted as joint prosecutor in the proceedings. She explained that she had participated in several court sessions, which she described as exhausting and psychologically demanding. When asked if she felt that her presence had made any difference, she reflected on her experiences in terms that convey a strong sense of being marginalised, isolated and even irrelevant:

"That's what I wonder about to this day, whether I made a difference at all [...] the way you function as joint prosecutor, in a very limited way, you are just one link in a chain, not really the central person. [Testifying as a witness] is the only moment where you have the possibility to contribute something yourself [...]. Otherwise, it is like you are imaginarily tied up and closed off. You can watch, shake your head or cry, but you are not allowed to interact." (Victim, Germany)

Hence, when their rights fail to work in practice, victims in type 1 countries end up in a situation very similar to the ones described above by victims in type 2 countries, where legislation does not give them participation rights.

Like in type 2 countries, victims in type 1 countries struggle to understand their role in relation to the public prosecutor. However, unlike type 2 countries, where victims conclude that only the public prosecutor has a case and a role to play, victims in type 1 countries see the prosecutor as their natural ally or even representative. In Portugal, in particular, where the

victim can play the role of an 'assistant to the public prosecutor', victims expect the prosecutor to act in concert with them and are often disappointed at the distance kept.

"It is very difficult to get to the public prosecution office. And in this case, since they kept telling us that this is a public crime and it is the public prosecutor's role to defend us, then I think that there should be much closer proximity in this respect. [...] I feel I need to talk to her. After all, she is the one legally representing me." (Victim, Portugal)

Another difference concerns effective remedies that are sometimes available to victims in type 1 countries who consider that their participation rights have not been respected. A victim interviewed in Poland recalled that, sometime after the police had interviewed her, she went to the court to enquire about the progress of her case, only to learn that the trial was over. Apparently, the court had forgotten to inform her. The victim support organisation assisting her asked the court to provide her with a reasoned judgment and then helped her to lodge an appeal. Thus, if victims in type 1 countries are ignored, they sometimes – although far from always – have means to protest at such treatment, depending on remedies available under procedural codes and on assistance in applying the remedies available to them.

Overall, one in 10 victims interviewed in the project maintained that, while they had not expected a more significant role, looking back at the proceedings now they wish they had been offered more opportunities to participate actively.

1.1.3 Victims' satisfaction with their role in France (type 3 country)

Several of the victims interviewed in France said that they felt abandoned by the criminal justice system.

"I waited for them to call me in, for a meeting between the victim and the defendant at the police station, things like that, however, I was abandoned for years or months, then they sent me a registered letter from the investigating magistrate for the reconstruction, so I go there, I do a reconstruction, then they abandon me again ... then there is a new judge, 'he has to see you, because the judges, they change' ... [...] there are lots of files, 'we cannot cope with it', ... it is totally disorganised [...] I lodge a complaint and then, what do you do with me? Nothing at all." (Victim, France)

Victims of violence experience society as failing to demonstrate solidarity with and sympathy for them. They sense that they are not recognised and are left to their own devices. One victim, interviewed in France, observed:

"The justice system did not listen to me, the procedure lasted nine years. [...] You are not listened to at all... there was a moment when I regretted it, but I was already in the middle of the procedure, I regretted it, I said 'but why did I lodge a complaint?' [...] I was alone in the world, lost, without any money, with nothing at all, whereas him, on his side, he was fine, he had nothing to pay, they listened to him more. They don't listen to the victims, they listen to the offenders, they have more rights than us." (Victim, France)

The same victim, asked about her role in the proceedings, noted:

"No, I had no role. I did not feel listened to." (Victim, France)

The two mothers of victims of the terrorist attacks in Paris also voiced this sense of not being included in the proceedings.

"I wanted to be involved, in particular to understand what had happened. [...] I do not have much of a role, because it is mainly the judges who are involved in the investigation [...] In 2016, the judges called in all the civil parties for a day [...] where people were angry because of a big lack of information on the events." (Victim, France)

Victims also noted that how victims are served and acknowledged differs between regions. A victim of domestic partner violence observed:

"No, the police never informed me of anything. I have to say that I lived in Vitry sur Seine, it's a town classed as a red zone which has only that, only violence. When I went there, they did not even take me seriously: 'Ah, Madam, it's you again?'... Once I came here, in the 15th district of Paris, I was in another world. I could not believe it. It is no longer Vitry, it's Paris! [...] It was totally different, I felt like the Queen. You go in: 'Yes, Madam?' Whereas there you arrive, you give your identity card: 'So, what was it about again? Go back home, there are lots of people like that, like you and everything'. You have to see how they speak to you! You are no longer a victim, you are a woman who comes to complain like all the others. It doesn't do anything, it creates a number." (Victim, France)

Overall, in terms of recognition and support in overcoming their victimisation, victims of violent crime in France are at least no better off than victims in other countries covered by this research.

1.2 How practitioners view the role of victims of violent crime in the criminal justice system

This section presents practitioners' views on the victim. It first examines whether or not practitioners acknowledge the victim as a person whose legitimate interests are at stake in criminal proceedings. Then it analyses the roles practitioners assign to victims of violent crime. It looks at differences between types of countries. The analysis is motivated by two assumptions. One is that how practitioners perceive victims and their appropriate role in criminal proceedings will have an impact on how they treat victims. The other is that, consequently, the operation of the criminal justice system in practice will mirror the underlying concepts, work hypotheses and attitudes of the practitioners constituting that system. In practice, individual police officers, prosecutors and judges decide on the standing of victims in criminal proceedings.

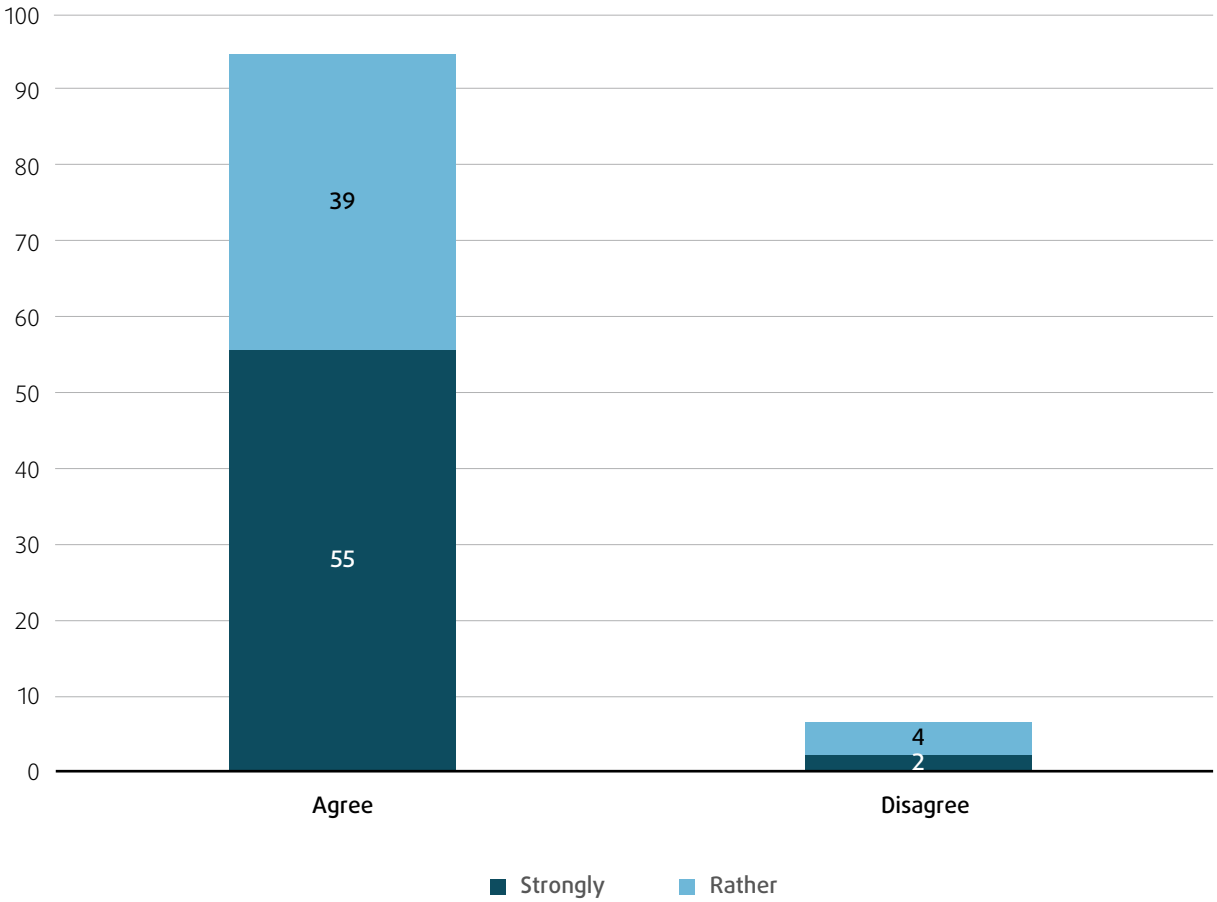
At this point, a very significant gap opens between how these practitioners, on the one hand, and law makers, on the other, perceive victims. It appears that recent legislative reforms in type 1 countries meet with some reservations and reluctance on the part of competent authorities.

The more victims of violent crime are acknowledged as stakeholders of criminal justice and allowed to play an active and significant role, the more the question arises of whether or not it is still appropriate to require the victim to act as a witness at the same time. Therefore, this section investigates possible conflicts between the two main roles assigned to victims.

1.2.1 The victim as a stakeholder in criminal justice

One way to approach the question of how practitioners view the legitimate role of the victim is to ask if practitioners conceive of the victim as a stakeholder, i.e. as a person whose legitimate interests are concerned by the operation of the criminal justice system. If practitioners see criminal proceedings as having an

Figure 4: Practitioners agreeing/disagreeing with the statement 'When people fall victim to violent crime they can legitimately expect that the police conduct a thorough investigation with a view to identifying offenders' (%)



Source: *FRA, 2019*

impact on the legitimate interests of the victim, then we can expect them to be ready to allow the victim to have a say in the proceedings and to defend their legitimate interests.

Therefore, we asked practitioners if they agreed with the following statement: 'When people fall victim to violent crime they can legitimately expect that the police conduct a thorough investigation with a view to identifying offenders.' While the question is explicitly about the police investigation, it is also about identifying offenders, which is a core task of criminal justice. If practitioners regard victims' expectation of an effective investigation as 'legitimate', that adds a normative element to the question. Victims would be right to expect that an effective investigation is conducted.

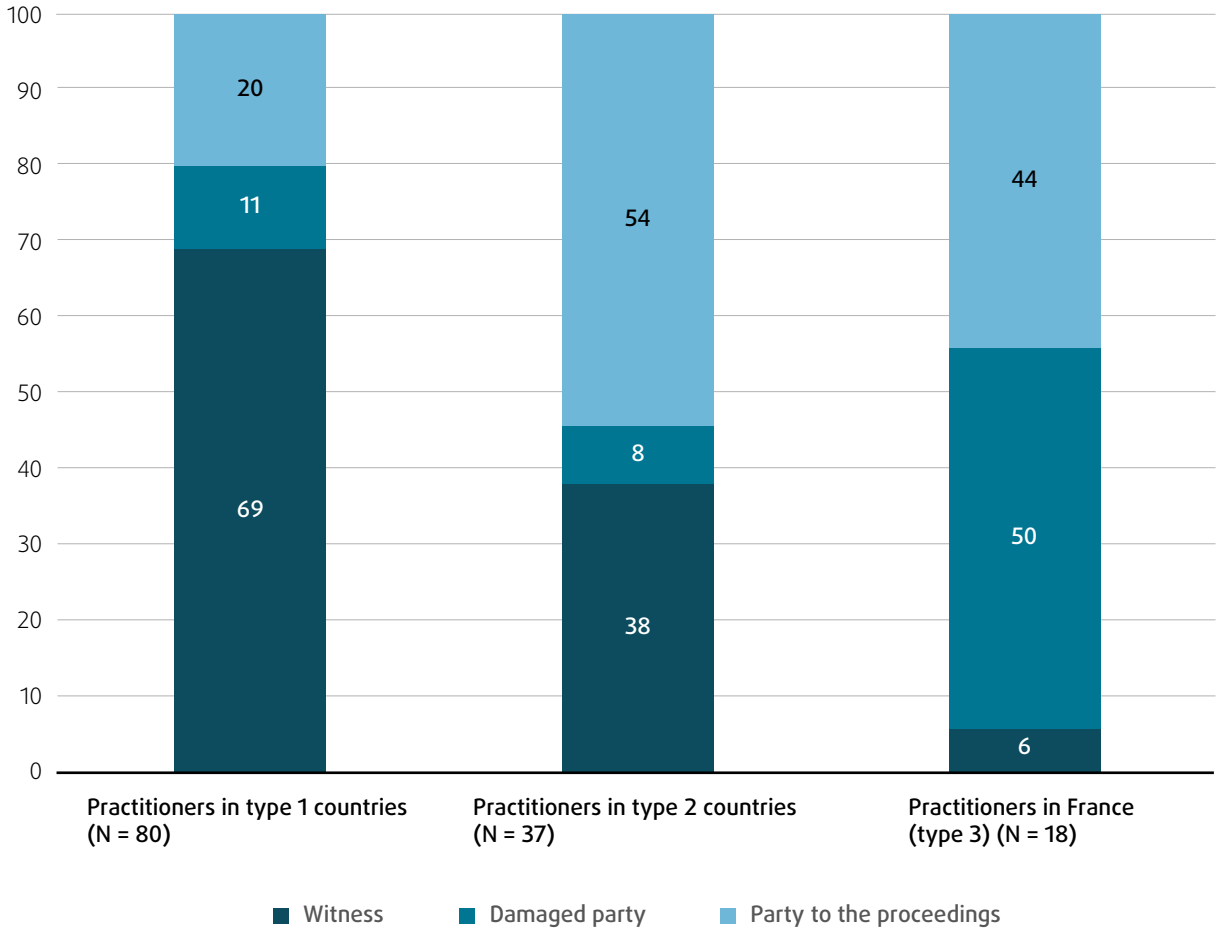
Almost all practitioners – 94 % – agreed with the statement. More than half – 55 % – agreed strongly (Figure 4). Remarkably, all police officers agreed – with two thirds agreeing strongly – and only one out of 53 respondents from the 'judiciary' group disagreed, with two answering 'Don't know'. Hence, there can be little doubt that practitioners view criminal proceedings as answering to a legitimate expectation of victims. They realise that the victim is not a bystander, but a central stakeholder of the criminal justice system, a person whose legitimate interests are very significantly concerned by how – and how effectively – the criminal justice system operates. A member of a support organisation, interviewed in the United Kingdom, observed:

"Without [the victim] there would be no … why would there be a case in the first place? […] whether that person is dead or alive, […] they're still the whole of why the criminal proceedings would be taking place." (Member of support organisation, United Kingdom)

1.2.2 The victim's role in the proceedings as perceived by practitioners

Practitioners interviewed in the research were asked how they view the primary role of victims in criminal proceedings and whether they would perceive the victim primarily as:

Figure 5: Practitioners assessing the primary role of victims in criminal proceedings, grouped by types of countries (%)



Note: *N=135.*
Source: *FRA, 2019*

- a witness testifying and thus providing evidence;
- a damaged party seeking restitution; or
- a party to the criminal proceedings entitled to have a say in the proceedings.

One might expect that interviewees from type 1 countries would readily acknowledge the victim as a party to the criminal proceedings, while practitioners working in France, the Netherlands and the United Kingdom would view the victim primarily as either a witness or a person damaged by the offence.

However, strikingly, this is not the case (Figure 5). The only country where the assessment made by practitioners reflects the procedural code faithfully is France. A majority there viewed the victim as a damaged party claiming restitution. Those who categorised the victim as a party to the proceedings also meant a civil party, it is clear from the interviews. For the rest, far more practitioners in type 1 countries view the victim essentially as a witness than in type 2 or type 3 countries. Far more practitioners from type 2 countries than from type 1 countries perceive the victim primarily as a party to the criminal proceedings. Hence, how practitioners see the victim is, with the exception of France, to a remarkable extent detached from procedural codes.

The victim's role as perceived by practitioners in type 1 countries

Some two in three interviewees – 69 % – from the type 1 countries assert that they perceive the victim primarily as a witness testifying and thus providing evidence. Only one in five acknowledges the victim's legal status as a party to the proceedings. The responses and explanations given in answering open questions consistently corroborate this finding. They frequently picture the victim as a witness and hence as a tool needed and used by the authorities.

"The victim is, first of all, a provider of facts for the justice system." (Judge, Poland)

"The victim is a witness, both – victim and witness. However, we are a prosecution authority, not a victim protection authority, thus the victim is relevant for us as a witness, whom we need in order to convict the offender. [...] the main task of the prosecution authority is to prove and prosecute criminal acts that occurred and to see to it that the offender is brought to justice, and it is not to think all the time about 'What favour I can do the victim?' but rather to think 'How can I convict the offender without harming the victim?' [...] Of course, they play a central role, because she is my witness, with whom I can convict the offender." (Public prosecutor, Austria)

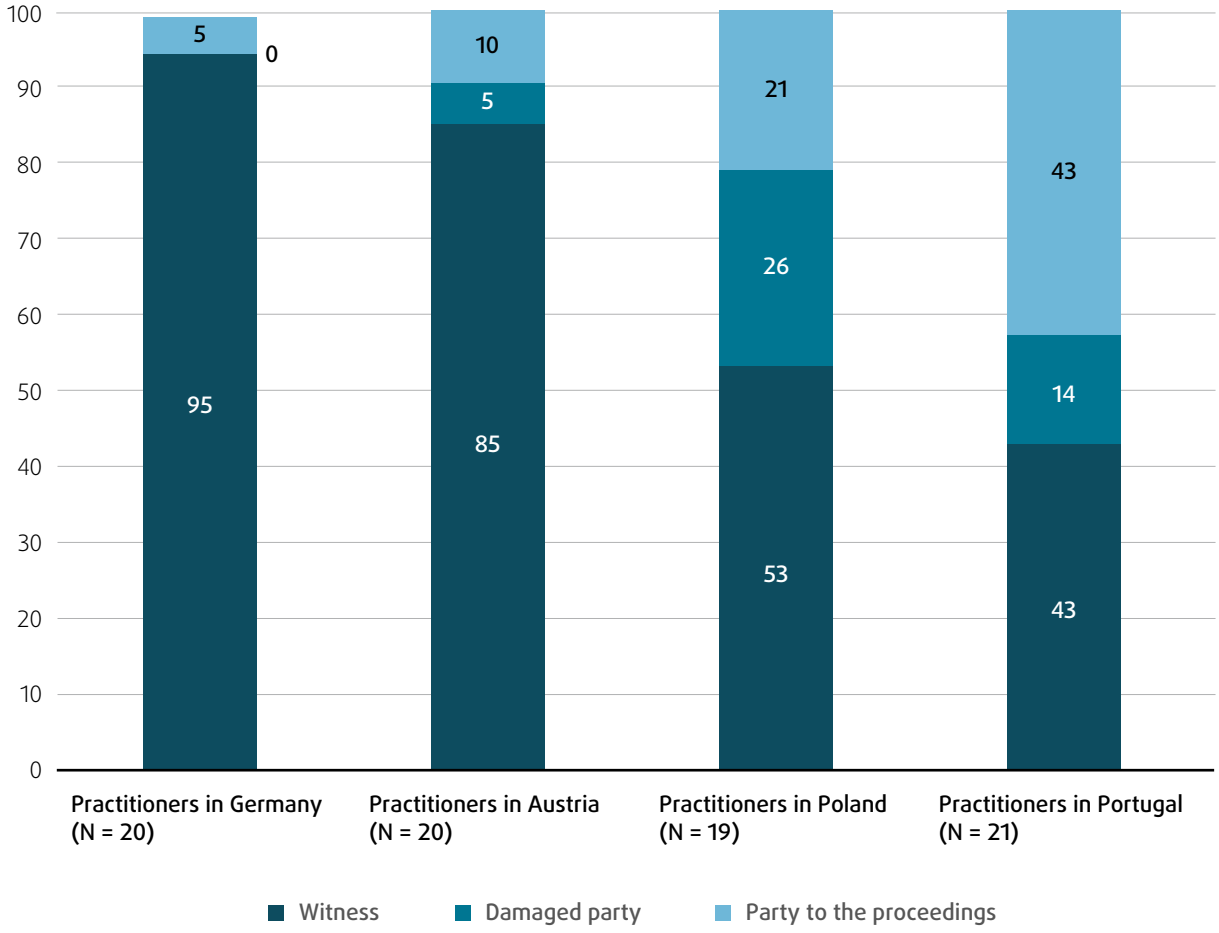
A clear majority of practitioners interviewed in type 1 countries do not follow the legal concept of the victim as a party to the criminal proceedings in their own right. Instead, they perceive the victim as primarily a witness (Figure 6). This insistence is particularly pronounced in Austria and Germany and less dogmatic, but still powerful, in Poland and Portugal.

This suggests that, among practitioners, the shift from the victim being a passive instrument to the victim actively participating in proceedings has yet to reach practice. For example, in Germany, in spite of extensive rights to participate in the proceedings as a party, the victim's primary role in the eyes of professionals remains that of a witness, a means to the end of holding successful proceedings and to "determine the truth", the country report observes. All professional groups share this view. The private professionals involved in criminal proceedings – staff members of support organisations and lawyers representing victims – largely accept the authorities' view of those actors' 'genuine' tasks, the limitations on their ability to take victims' concerns into account and the risk that by acknowledging victims' rights would overburden the criminal justice system. Members of support organisations maintained:

"Police, public prosecutors and judges alike view the victim as a witness, as part of evidence, a possibility to further criminal proceedings. The needs of the victims are not their priority, rather 'How can we use this person purposefully to further the proceedings?', and that's irrespective of the victims' interests, they do not consider those. That's also not their job. [...] I think it has become the norm for victims to be reduced to an object or instrument by the several actors involved, also due to an overburdening of the system." (Member of support organisation, Germany)

"Criminal proceedings are first and foremost offender-oriented and less victim-oriented [...] That means, the witness – the 'victim' or the 'damaged party' – is first and foremost evidence. So, it will rather be ensured that the witness will be able to make a statement and contribute to the conviction of the offender." (Member of support organisation, Germany)

Figure 6: Answers to 'How do practitioners view the primary role of victims in criminal proceedings?' in type 1 countries (%)



Source: *FRA, 2019*

Similarly, while the Polish Code of Criminal Procedure provides numerous opportunities for victims to participate actively in proceedings, in practice the role of the victim is usually only to provide information as a witness and support the police in finding other pieces of evidence, the country report on Poland explains. Practitioners are resistant to the wide catalogue of victims' powers and rights to participate in criminal proceedings, laid down in legislation. Therefore, it takes effect only if victims express their firm will and professional representatives support them. In general, victims are heard in criminal proceedings as witnesses required to provide information. Only rarely are their opinions heard.

Five respondents from the judiciary group interviewed in the United Kingdom recognised the victim as a legitimate party to the proceedings, in spite of a lack of such recognition in UK legislation. In contrast, of 22 representatives of the judiciary groups interviewed in Austria, Germany and Poland, only one viewed the primary role of the victim in criminal proceedings as a party, while 18 perceived the victim mainly as a witness testifying and thus providing evidence.

"I would not say that the victim plays a central role in criminal proceedings. For us, it is more about the offender. […] If any, the victim plays a secondary role in criminal proceedings. They may be relevant as a witness or if they pursue civil claims." (Judge, Germany)

"For the judge, what is important is the testimony, the credible statement and the delivering of evidence by the victim, for the judge. Otherwise, the victim – actually, they couldn't care less." (Police officer, Austria)

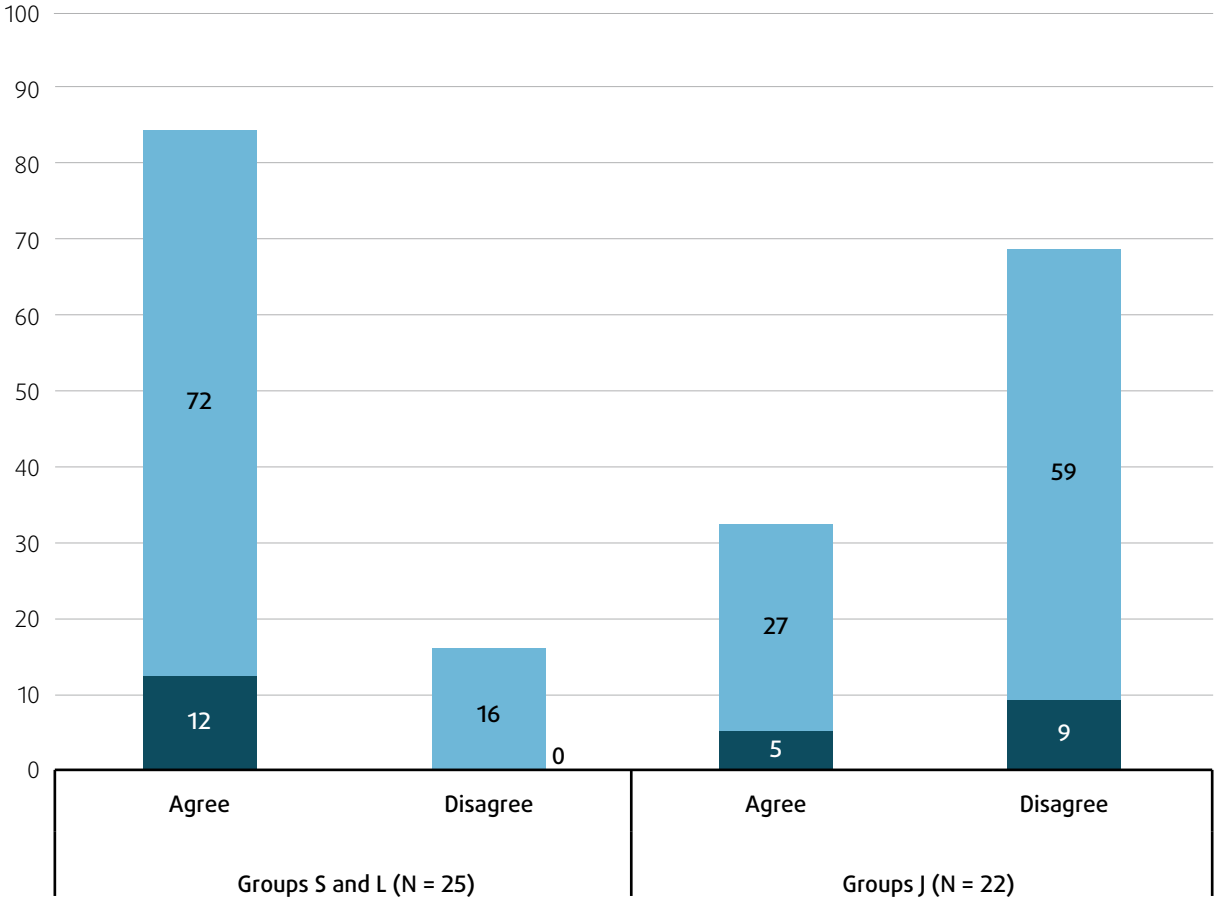
Overall, it appears that legislative reforms in type 1 countries have only limited support from the authorities whose job is to implement them. They are among the most advanced countries in terms of legislation acknowledging participation rights of victims, but practitioners are particularly reluctant to confer on the victim a role that is significantly different from that of a witness or a civil party. They acknowledge the defendant, without reservation, as a party to the proceedings, but not victims.

The question arises of whether or not practitioners are aware of the gap between the law in books and the law in action. Therefore, we asked practitioners if they agreed with the statement 'Public prosecutors and judges don't see the victim as playing a central role in criminal proceedings.' Given that a witness is present in the courtroom only if summoned to give evidence, and in this role can only respond to the questions asked, it is fair to say that a victim who is reduced to the role of a witness is denied any central role. However, only a third of the prosecutors and judges interviewed in Austria, Germany and Poland were ready to draw that conclusion. Figure 7 juxtaposes the assessment made by members of support organisations and lawyers interviewed (groups S and L), on the one hand, and the answers given by interviewees representing the judiciaries of these three countries (group J), on the other. Although none of the interviewees in those groups answered 'Don't know', four of the 15 police officers interviewed gave that response, which indicates that the police may have little knowledge of how prosecutors and judges see the victim.

The fact that interviewees from the judiciary in Austria, Germany and Poland tend to reduce the victim to the function of a witness casts some doubt on the judiciary's favourable self-assessment. So does the highly critical views of the members of support organisations and the lawyers interviewed in these countries. This may indicate that judges and prosecutors working in Austria, Germany and Poland may not fully realise the gap between law and practice, whereas interviewees from other professional groups clearly do. A member of a support organisation interviewed in Austria explained:

"[V]ictims obviously have the status as participants to the proceeding. It's regulated legally in the code of criminal procedure. […] That means the victim can make motions to take evidence, is entitled to be heard, entitled to ask questions, these rights all exist. But in practice it's then the case that victims are not well informed about having these entitlements and then they go there, testify, make use of few entitlements […]." (Member of support organisation, Austria)

Figure 7: Practitioners from three professional groups in Austria, Germany and Poland agreeing or disagreeing with the statement 'Public prosecutors and judges don't see the victim as playing a central role in criminal proceedings' (%)



Source: *FRA, 2019*

The victim's role as perceived by practitioners in type 2 countries

Practitioners interviewed in type 2 countries see the victim either as a witness or as a party to the proceedings (Figure 8).

There can be little doubt that victims in the United Kingdom are formally not acknowledged as parties to the proceedings and that victims in the Netherlands have only fairly limited participation rights. Therefore, the responses indicate again a difference between the 'official' position of essentially adversarial proceedings and a competing interpretation.

Practitioners in the Netherlands made a seemingly victim-friendly assessment. However, what surfaced was an understanding of the relationship of victims and the criminal justice system as fundamentally adverse and inevitably conflictual. Relating to victims' rights and interests, what practitioners often had in mind was protecting vulnerable victims against criminal proceedings and the risk of secondary victimisation arising from the proceedings. Thus, they view proceedings as not serving the victims' needs and as potentially adding to the harm suffered by the victim.

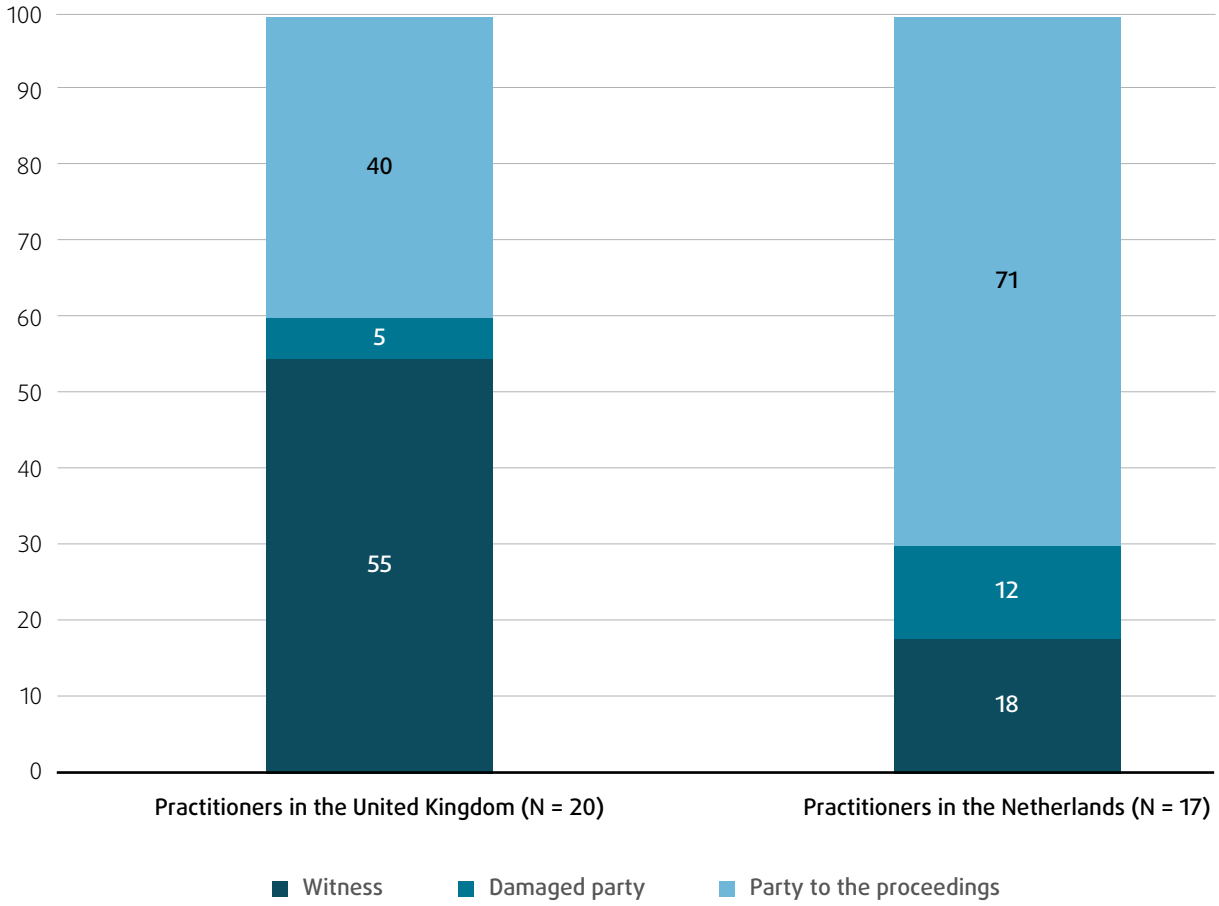
"The victim is a human being with needs and has to be served according to this principle. The victim's involvement in the proceedings should therefore be an appropriate one, based on their needs, so they will not suffer from secondary victimisation." (Police officer, Netherlands)

"I really understand that a lot of the victims' rights are limited, for the protection of the victim. You don't want to expose [the victim] entirely to the criminal proceedings." (Lawyer, Netherlands)

"It's a train you cannot stop, and you are obliged to stay in. You are being heard over and over again, whether you want it or not. You have to appear in court. You have to listen to things you don't want to hear." (Lawyer, Netherlands)

Professionals perceive the victim is not as playing an active role but as exposed to strong and potentially hostile powers. While this dark picture contrasts with the concept of a victim playing an active role as a party to the proceedings, there are indications that it is not entirely wrong. While a majority of the victims

Figure 8: Answers to 'How do practitioners view the primary role of victims in criminal proceedings?' in type 2 countries (%)



Source: *FRA, 2019*

interviewed in the Netherlands felt that their presence at the court trial made little difference, victims were exposed to questions that go beyond what would be tolerated in other jurisdictions. The lawyers interviewed in the project were almost unanimously of the opinion that the interests of the parties – prosecution and defence – in practice always take precedence over the interests of the victim.

"I'm not really under the impression that any restraint is exercised. Questions are asked, or remarks are made often by the defence, such as 'You have always been a slut'. That's very common." (Lawyer, Netherlands)

"Especially lawyers of suspects really cross limits of decency, really go much too far in this; it is disastrous for victims who are present at a trial. They cannot respond to these insulting statements anymore because they exercised their right to speak at an earlier stage in the trial." (Lawyer, Netherlands)

This passivity forced on victims is apt to convey a message of marginalisation and a lack of recognition. Asked if public prosecutors and judges attach importance to treating victims in a respectful manner, a member of the judiciary interviewed in the Netherlands commented:

"[B]ear in mind that it always concerns an interaction between a judge and a victim or offender. And, like offenders, victims can be very unpleasant people as well. So, sure, generally people are treated with utmost respect, but if they are very annoying they can also be sent away from the courtroom." (Judge, Netherlands)

However, we can assume that even a 'very unpleasant' or 'annoying' defendant cannot, given their status as a party to the proceedings, simply be removed from the courtroom. Perceiving the victim as a tool, to accept as long as it is useful, contributes to the marginalisation of victims.

Public prosecutors interviewed in the Netherlands made it clear that they do not see treating victims in a sympathetic manner as lying at the heart of their responsibilities.

"I think the position of the Public Prosecution Service [PPS] should be better understood. The PPS is not social work. At times, too much is demanded of public prosecutors in terms of that they should take the problems and emotions of the victim into account, whereas these problems belong in therapy rooms. Since public prosecutors are not educated to handle this, I draw the line at that point." (Public prosecutor, Netherlands)

However, court professionals who are not trained to understand the "problems and emotions" of victims risk secondarily victimising them.

The victim's role as perceived by practitioners in France (type 3)

Practitioners in France take the most consistent view on victims' primary role. All professional groups perceive the victim primarily as a civil party asking the offender to make restitution for the damage incurred. Where the victim does not stand as civil party, the victim is simply witness. Hence, practitioners in France conceive the victim in the same way as the law does.

Practitioners interviewed in France stress victims' importance in initiating the proceedings. However, beyond this initial function, they appear to consider victims less significant for the rest of the investigation or proceedings. Identifying victims with their 'private' compensation claims distances them from the public task of conducting criminal proceedings. A member of the French judiciary explained:

"On the criminal law level, justice is the legal case between the prosecutor and the defence. The criminal sanction aspect is not something for the victim. The interests of society are defended by the public prosecutor. The victim defends their own interests. These are two different things." (Judge, France)

A police officer stressed that for victims it is not only about compensation; they are also in need of help and protection. Thus, the French approach sees the harm done by the offender to the victim not as a violation of the victim's rights but as human suffering resulting from the consequences of the crime. Thus, as members of the judiciary interviewed in France pointed out, victims embody their suffering, so their mere presence allows the offender to realise the significance of the offence, thereby reinforcing the legitimacy of the criminal justice system.

But then again, there is a marked difference between France and the United Kingdom about compensation. Several practitioners in the United Kingdom stressed that emphasising victims' personal interests in the case would undermine their credibility as witnesses. This focus on the victim's role as a witness is a significant difference from the French victim concept.

1.3 A victim's conflicting roles as a witness and a party

Historically, the development of criminal justice increasingly acknowledged the defendant as a party to the proceedings. Accordingly, the defendant was no longer considered a witness, as these functions were regarded as incompatible. However, although

victims of violent crimes can opt to act as parties to the proceedings in several EU Member States, this prominent status has left their role and tasks as 'chief witnesses' unaffected. Thus, the persistent tendency to view and treat the victim as a witness collides with efforts to accord the victim the role of a party to the proceedings. A party, by definition, is partial, while a witness should be impartial. In fact, when it comes to obliging victims to act as witnesses, type 1 countries hardly differ from type 2 or 3 countries in how they treat victims.

The task of a witness is to provide a truthful, sober and unbiased account, from the perspective of an objective observer. This is not what a victim of violence can – or should – be expected to deliver. That would overlook how much is at stake for the victim. The very reasons for acknowledging the victim as a stakeholder and for allowing the victim to act as a party to the proceedings militate against also treating the victim as an unconcerned bystander whose involvement in the proceedings is merely due to their presence at the crime scene when the offence was committed. A victim of rape, interviewed in the United Kingdom, recalled:

"I became a victim to then become a witness to then become a complainant and I never understood what those three things changed. No one ever explained that to me. I hated the fact that I was being called a witness [...] I was the person most involved, to be called a witness, like I witnessed it, and you're just one part of the cooperation they need to take it to court. Why on earth did they call us a witness? [...] 'Victim' makes you feel like you're a victim and that the other person has taken something from you, 'witness' makes you feel that you're a piece in the puzzle [...] I've had a lot of time to think about those three words and they get to you." (Victim, United Kingdom)

In addition, the victim will often – at least for some time – not be in a position to understand what happened in the crime, decades of research into the psychological trauma of violent victimisation have shown. This would require them to face a reality that may be deeply threatening, painful and, at the time of the proceedings, still unbearable. Expecting the victim to act readily as a competent witness ignores a large body of research explaining why it is particularly difficult for the victim to fully grasp what befell them.

There are indications that the authorities tend to rely on the victim's active contributions more than necessary and to dismiss the case if the victim is not successful in providing all the evidence needed. In Portugal, practitioners pointed out that investigation procedures often rely almost exclusively on the testimony of the victim as a witness, and place on victims the burden of bringing the necessary evidence to the case. Even in cases of domestic partner violence, where the offender obviously pressurises the victim, the responsibility to press charges rests on the victim, as if it were not for the state authorities to ensure that justice is done. After one victim reported to the police, the offender threatened that he would kill her, so she told the police that she would withdraw her complaint. The police blamed her.

"They reproached me for withdrawing the complaint. 'You should not have withdrawn this complaint. It could have gone a long way, he would have been sent to prison for quite a bit. That would have taught him a lesson. It is your fault; you should not have withdrawn your complaint. Now you sort yourself out: get divorced, do what you want.' The file for them was closed." (Victim, France)

In the same vein, a victim of rape observed:

"I have the impression that it is done just to say, 'look, we have a law, so you have to lodge a complaint' [...] During the proceedings [...] I have to defend myself, it is the opposite, I am accused, and I have to provide evidence to justify myself ... What proof, what do you want me to provide? He attacked five people ... And in spite of that they doubt, they continue to listen to his lawyers." (Victim, France)

The tendency to task the victim with providing the necessary evidence exacerbates tensions between the victim's roles as a party and as an instrument for the sake of public interests. In Portugal, all professional groups confirmed this reliance on victims' active participation and on their readiness to shoulder the 'burden of proof'.

"Without the victim's testimony, the case cannot go forward." (Judge, Portugal)

"If there is a victim who does not want to participate, who does not want to cooperate, [...] the case falls by itself very often. Very often courts subject the continuation of the criminal case to the attitude of the victim." (Member of support organisation, Portugal)

"[T]he criminal proceedings are in fact extremely demanding for a crime victim. Why? Because she is not merely a victim. She is someone who provides the evidence to the case and she is someone who has the burden of proof. It is not merely a right, but it is rather a burden [...]. She has to tell the truth, she is called by the public prosecutor to be interviewed as many times as it is deemed necessary, and then there is all this obligation to bring to the case all the necessary evidence to ensure that justice is done. [...] the victim's feeling is that, apart from being a victim of crime, she is also a victim of the system itself and that she has a double role to play [...]." (Lawyer, Portugal)

"They have the main role. [...] She is the crucial party. [...] and then she arrives here and decides to keep silent. And we cannot proceed with the investigation. The case dies there." (Police officer, Portugal)

Similarly, a police officer, interviewed in Austria, stressed the reluctance of public prosecutors to follow up on cases where they see a risk that the victim could refuse to testify in court.

"The prosecution service often closes the case, when we are not even done with the investigation. If the prosecutor [...] thinks it's not worth the effort because the victim will anyway make use of their right to refuse to testify, then he doesn't even wait, while we are still in the course of identifying witnesses, who could objectively assess something and could contribute to the trial. So, in my opinion, cases are closed far too quickly." (Police officer, Austria)

Where the victim is required to fulfil two functions – as a witness and as a party to the proceedings –these roles sometimes collide. Then, the victim's duty to deliver evidence as a witness takes precedence over their entitlement to act as a party to the proceedings, this research suggests. For example, it appears that victims acting as parties in Austria and Germany often have to leave the courtroom to avoid influencing their testimony. This deprives them of their right to participate in the proceedings as parties.

"Victims have the status of witnesses and have to stay away from the trial until their statement is taken. Once they have testified they can remain in the courtroom. But before their testimony they have to ask their lawyer to ask questions on their behalf. So, the victim has the right [to put questions to witnesses], but, if the victim has no representative, they will not be heard before their witness statement. Nor will the victim be invited to have a seat to be present at the trial." (Lawyer, Austria)

In addition, practitioners interviewed in Germany drew attention to a controversial development over recent years. Court decisions have restricted victims' access to the file in cases where the prosecution mainly or entirely relied on the victim's witness statement.[10] Lawyers and staff members of support organisations pointed out that joint prosecution is less effective if lawyers representing victims have restrictions on viewing their clients' case files. Judges tended to question the reliability of the victim's statement if they have access to the files.

"This is of course a catastrophe. I cannot think of a word extreme enough to say this, because joint prosecution is crucial in precisely these cases, and this means that this possibility is undermined, because, without access to their case file, it is impossible to represent joint prosecutors. You may as well skip it. That is absurd." (Member of support organisation, Germany)

Another interviewee, working for a support organisation in Germany, explained that lawyers usually do not inform their clients that not only the lawyer but also the victim can access the files. Lawyers argue that if they allowed their client to see the file they would risk impairing the quality of the victim's witness statement and the proceedings in general, because the statement would not be considered authentic any longer, and the defence lawyer could make use of that.

Victims' rights are respected whenever this enhances the victim's functioning as a witness, some practitioners indicated. This expressed in a pure form the priority that the victim's role as a witness takes over the victim's rights as a party. Victims are disappointed to find that support and protection offered to them turn out to be less about their concerns and more about their ability to deliver *evidence*.

"What they've since said to SARC [Sexual Assault Referral Centres] or New Pathways is that the victim is going to be centre-stage and their needs taken first. The evidence comes second. With me it was very much the evidence, you know, I provided the evidence, but I wasn't looked after... When I got to SARC they were very, very poor in their response [...] I felt that all that they wanted was to get the evidence out of me, which they did, but I wasn't looked after at all." (Victim, United Kingdom)

The same victim was not allowed to be accompanied by a person she trusted, because of her function of giving evidence.

"I said I wanted to ring my friend up and they said, 'Look, we just need to get some evidence out of you, we need to get the information without anybody else around, then you can phone your friend.'" (Victim, United Kingdom)

Similarly, a victim interviewed in Poland recalled that immediately after her violent husband was arrested she was driven to the police station and heard for four hours without the assistance of a psychologist, as the police were unable to bring one to the police station promptly. Because the victim could not stop crying, she was finally allowed the assistance of a female friend. However, as the officers did not like her friend being present at the interview, her friend waited outside for one hour before she was finally admitted to the interview room.

Victims have a right to be accompanied to the police interrogation by a person they trust. However, in France the police usually prefer to see the victim alone, to exclude any influence on the victim, interviewees from various professional groups noted. Sometimes they would allow the presence of a support person if this promised to help the victim testify. In Germany, a police officer explained:

10 See, for example, Higher Regional Court (OLG) Hamburg, 1 Ws 88/15, 22 July 2015; however, the ruling of the Supreme Court (BGH), 5 StR 40/16, 5 April 2016 is more in favour of the rights of the joint prosecutor as a party to the proceedings.

"Whether or not the police officer will allow a trusted person to accompany the victim during questioning depends on the situation [...] Regardless of the legal framework, it is essential to consider how to obtain the best outcome of the police interrogation. [...] Having a trusted person present may be supportive for the victim, but whether it makes sense is another question." (Police officer, Germany)

Discussing the victim's right to be accompanied, a member of a support organisation, interviewed in the United Kingdom, recalled:

"I've had one lot of police say, can you come in, because it would help them out. Because supporting the client gives them best evidence. And then another police force said, no you can't come in [...]." (Member of support organisation, United Kingdom)

Practitioners' focus on the victim's role as a witness can lead to victims being denied moral support or treatment that they need. A lawyer in Germany observed:

"Sometimes judges are reluctant to allow a person of trust [...] there is the attitude that victims should not have therapy before being questioned by a judge to prevent any form of 'previous intervention' which could alter the statement." (Lawyer, Germany)

Victims interviewed in the United Kingdom had to wait for counselling for several months. A victim was critical about this delay and related it to the inappropriate role of victims as merely providing evidence:

"[Y]ou need counselling immediately, not in six months' time. And there seemed to be an issue about pre-trial counselling, because, you know, the victim's being 'coached' to say something and that's absolutely totally ridiculous, because, if you're supposed to be having a system which is victim focused, that clearly isn't, that's evidence focused." (Victim, United Kingdom)

However, practitioners interviewed in Austria emphasised that the victim is not forced to testify. For about a decade, victims have been acknowledged as parties and had extensive participation rights. That has significantly improved their readiness to report to the police and to contribute actively to the proceedings. This would suggest that recognising and empowering victims is not only the proper way to respect victims' rights, but also a promising way to make the criminal justice system better at establishing the truth and convicting offenders. In any case, the question is a matter of principle and human rights: is it legitimate to view and treat the victim primarily as a witness, or is the victim entitled to recognition as a stakeholder in and party to the criminal proceedings? Therefore, it cannot be left to ad hoc decisions of practitioners.

1.4 Practitioners' views on the need for reform

Across the seven EU Member States participating in the research, many victims recalled experiences of marginalisation, a lack of opportunity for them to participate actively in proceedings and, above all, a lack of recognition because they were reduced to witnesses or private parties. Hence, if victims' participation rights are to become a reality, there is a clear need for reform. However, the extent to which practitioners acknowledge this need differs considerably between professional groups and countries.

1.4.1 General recognition of the need for reform, opposition from the judiciary

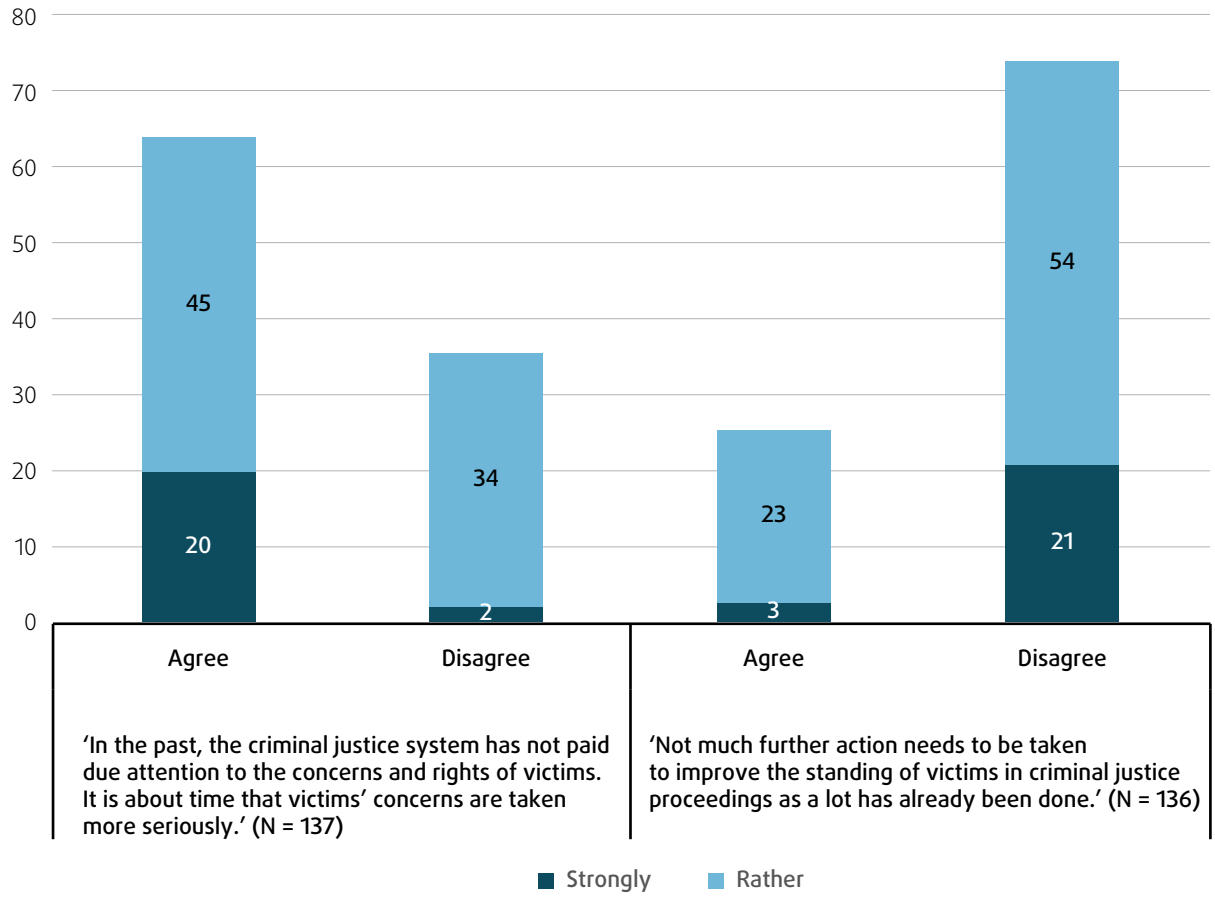
The interviews included several questions to explore practitioners' views on the need for reform. Two questions were more general. We asked practitioners if they agreed with two statements. One was that it is about time that victims' concerns are taken more seriously. The other, contrarily, was that not much further action needs to be taken to improve the standing of victims in criminal proceedings.

About two in three practitioners interviewed acknowledged the need for (further) reform to take the rights of victims more seriously and to improve their standing in proceedings (Figure 9). One in five practitioners supported this view strongly. This points to a clear overall majority of practitioners agreeing that (further) reform is needed to improve the standing and rights of victims in criminal proceedings.

We also asked practitioners directly if they believed that victims should be offered more opportunities to participate actively in the proceedings. At first sight, their views seem balanced, with 64 interviewees agreeing and 72 disagreeing with the statement. However, on closer inspection, the responses display very pronounced differences between professional groups. No fewer than four out of five interviewees from the judiciary disagreed with the statement.

Practitioners in the United Kingdom stand out as holding significantly more victim-friendly views, softening this picture. There, about half of the respondents from the judiciary group agreed that victims should be offered more opportunities to participate, and similarly balanced numbers agreed and disagreed in other professional groups. Hence, the situation in the United Kingdom is best described as ambivalent. In other words, in the United Kingdom at least no professional group is clearly *against* increasing the active participation of victims in criminal proceedings, judging by the interviews.

Figure 9: Practitioners assessing the need for reform (%)



Source: *FRA, 2019*

In the remaining six EU Member States, the judiciary opposes allowing victims to participate actively in the proceedings. A total of 90 % of interviewees representing the judiciary disagreed with the proposition that victims should be offered more participation in the proceedings (Figure 10).

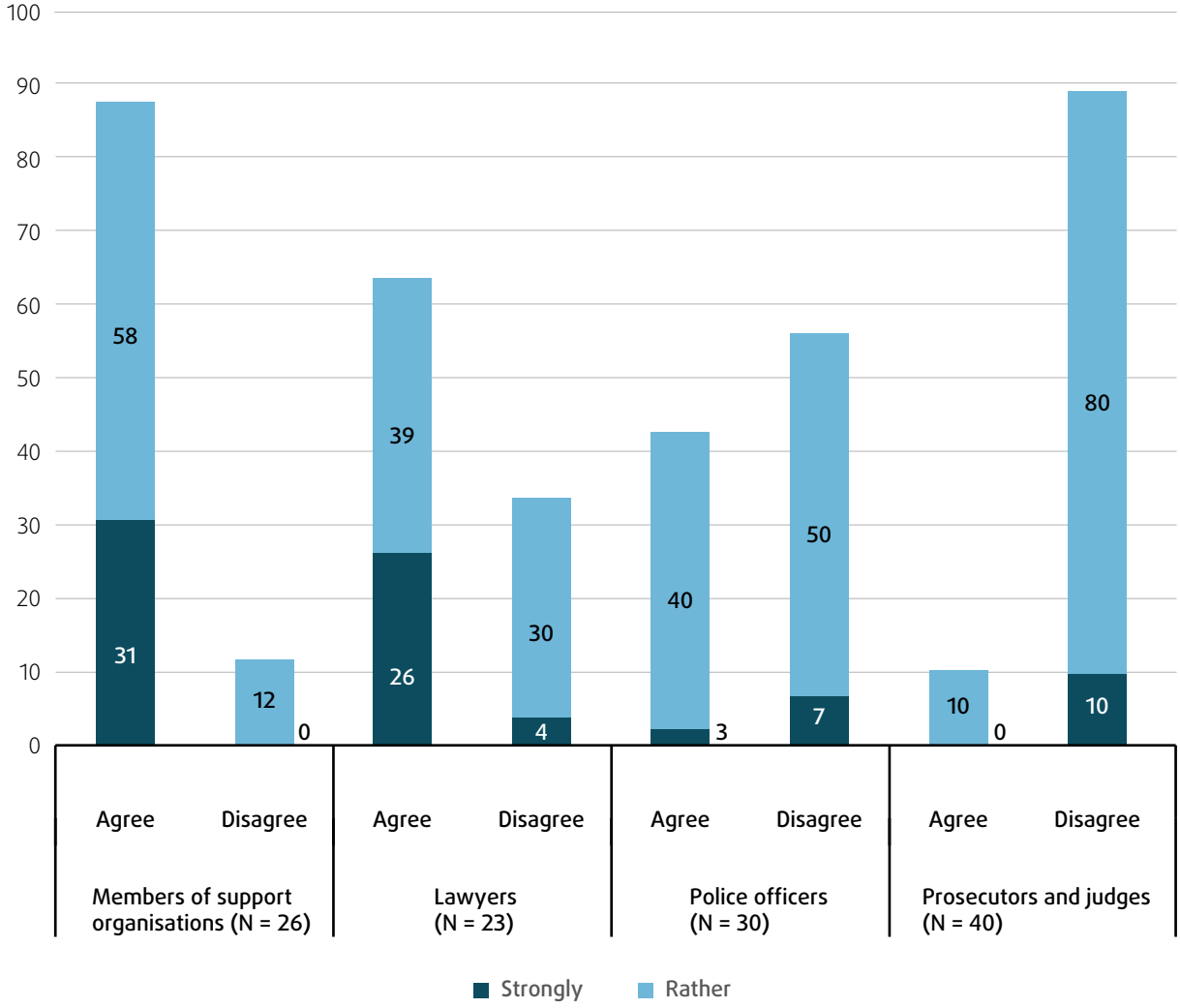
In type 1 countries, victims of violent crime have for some time been entitled to act as parties to the proceedings. The reluctance of the police and, in particular, the judiciary to agree to enhanced participation of victims in the proceedings may be a reaction to challenges or tensions arising from the experience of legislation granting victims more participation. In Austria, a member of a support organisation described the judiciary's resistance:

"[V]ictims have a very subordinated role in the proceedings, they don't have very many rights and [even if they are] parties to the proceedings, they [their rights] are not always given attention or taken into account much by the judiciary or perceived as good. [...] still incredibly many treatises are written about whether it creates tensions if victims have more participation rights. There are very powerful advocates who don't want the victim to have a significant role in criminal proceedings or even any participatory role, but at most the role as an 'injured' party [civil party], just like it was in former times." (Member of support organisation, Austria)

This resistance can explain why practitioners are hesitant to implement legislative reforms that do not fit their basic understanding of the victim's role in the criminal justice system.

Figure 11 shows differences between types of countries. Again, type 1 countries subdivide into Portugal, on the one hand, and Austria, Germany and Poland, on the other. In Portugal, overall, 64 % of the practitioners interviewed in the project agreed with the statement that victims should be offered more opportunities to participate actively in the proceedings. Only 40 % of practitioners interviewed in the other three type 1 countries agreed.

Figure 10: Practitioners from six Member States (excluding the United Kingdom) agreeing/disagreeing with the statement 'Victims should be offered more opportunities to actively participate in the proceedings', by professional group (%)



Source: *FRA, 2019*

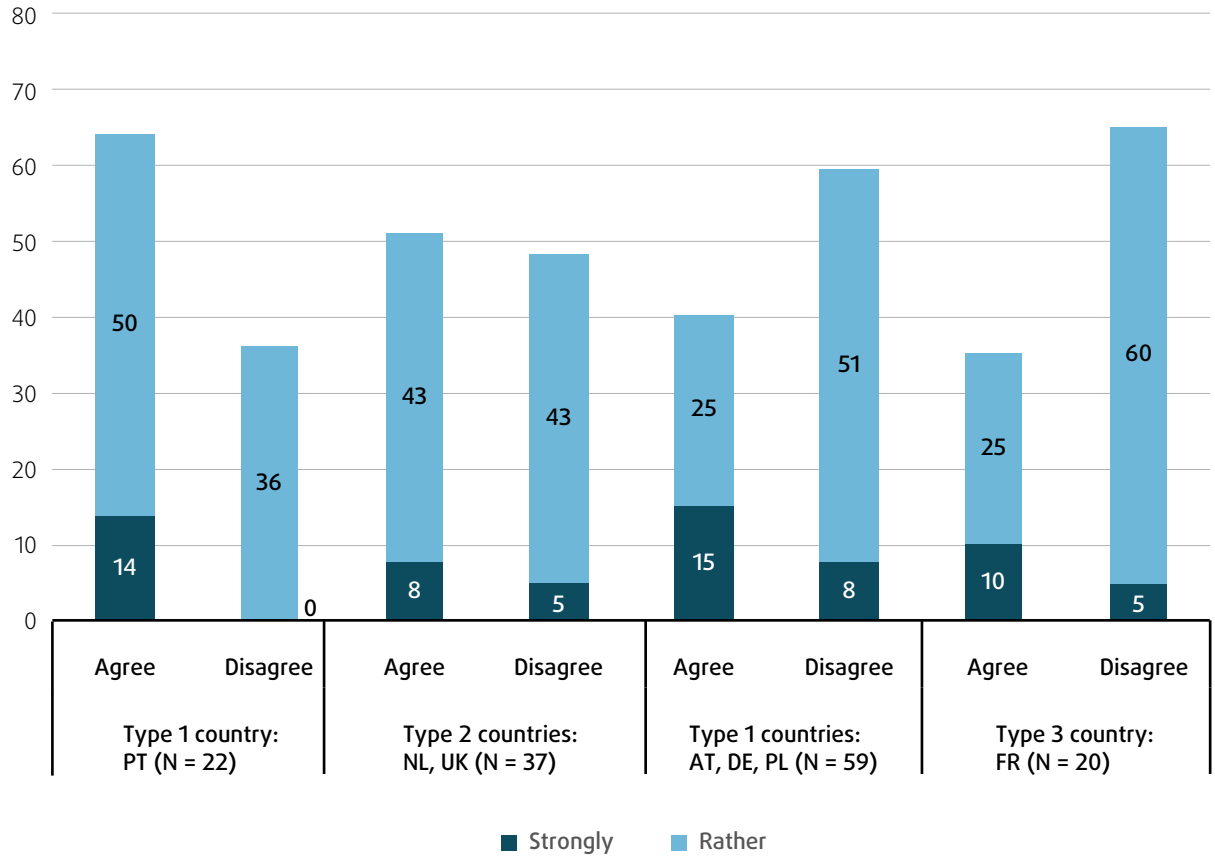
In France, 65 % of practitioners interviewed disagreed with the statement that victims should have more opportunities to participate in the proceedings. All professional groups in France share this reluctance except for the interviewees representing support organisations.

The specific position of France also surfaces in practitioners' responses to the statement 'Considering that victims, in criminal proceedings, mainly perform the role of witnesses, already too much is done to strengthen their position in criminal proceedings' (Figure 12). France is the only country in this project where slightly more practitioners agreed than disagreed with this view. That includes five of seven from the judiciary. In the Netherlands, no interviewee agreed with this view. Only one each in Poland and the United Kingdom agreed. Another reason this is interesting is that agreeing with the statement means accepting that, in criminal proceedings, the victim mainly plays the role of a witness, which diverges from the 'official' perception of the victim as mainly a civil party.

In France:

- 65 % of practitioners disagreed that victims should be offered more opportunities to actively participate in the proceedings;
- 56 % of practitioners maintained that already too much is done to strengthen the position of the victim in criminal proceedings;
- eight of 12 victims agreed that they had expected and would have liked a more important role in the proceedings;

Figure 11: Practitioners agreeing/disagreeing with the statement 'Victims should be offered more opportunities to actively participate in the proceedings', by type of country (%)



Source: *FRA, 2019*

- seven of 12 victims maintained that what they experienced during the investigation and the court proceedings added to – rather than mitigated – the harm done by the offender.

France is among the top group of countries where victims unambiguously and consistently expressed discontent with their situation in the criminal justice system. Hence, practitioners' reluctance to support reform contrasts uncomfortably with the need for reform measures that take seriously the frustration that victims and support organisations voice.

1.4.2 Practitioners' reservations about strengthening victims' rights, and their reasons

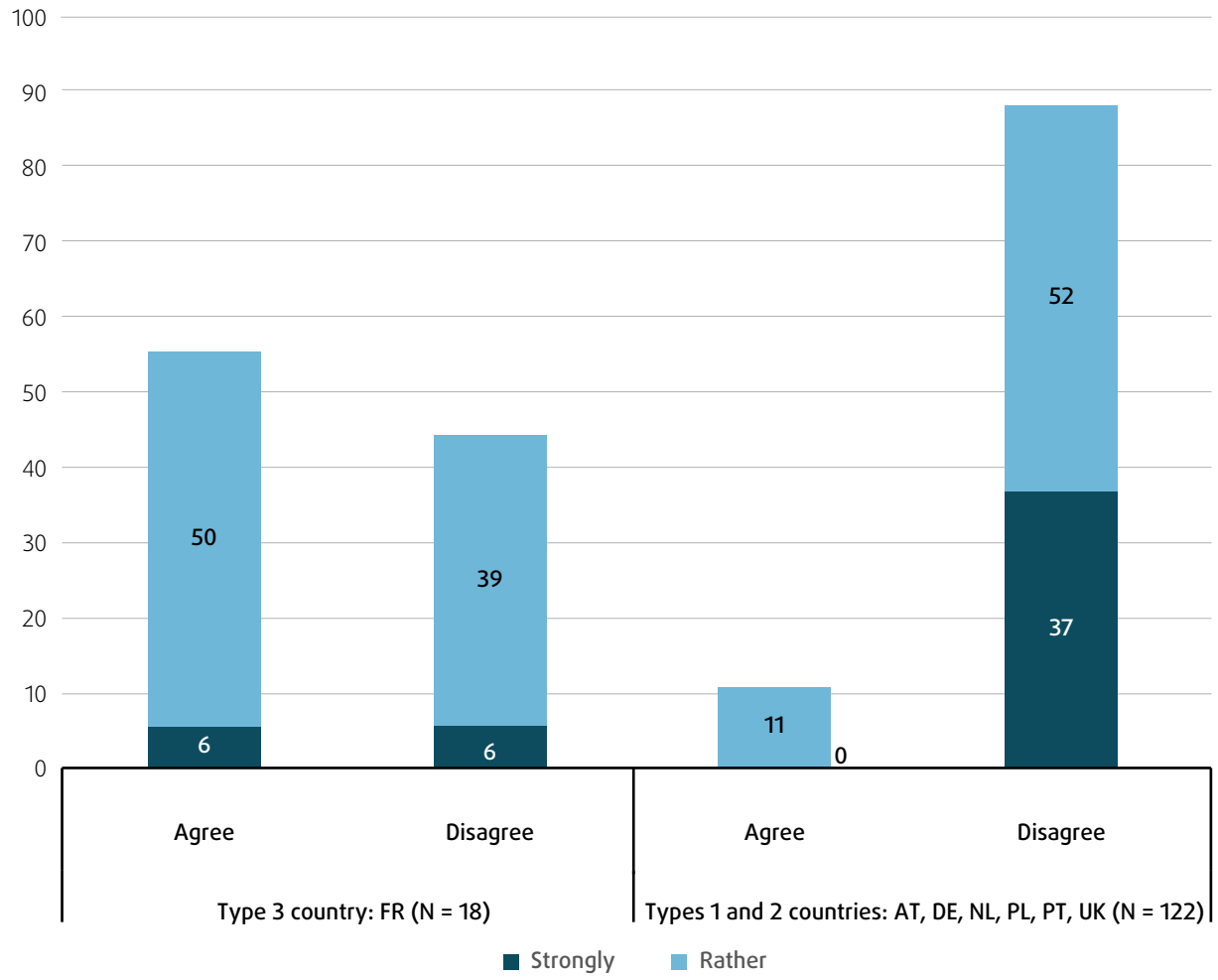
The previous subsection showed the reluctance of some practitioners to support reforms intended to give victims a role as a genuine party to the criminal proceedings. This subsection explores this resistance and two possible reasons. One is the basic understanding of the task of criminal justice. The other is concern about the balance to be maintained between defence rights and the powers of those who want to hold the offender accountable.

Victims' 'necessarily peripheral' role

Practitioners' reluctance to strengthen the role of victims could relate to how they interpret the very task of criminal justice. Legal practitioners do not necessarily conceptualise criminal justice as a means of asserting and reinforcing victims' rights. Rather, they often still perceive criminal justice as a matter between the state and offenders, where state authorities represent the public interests that offenders violate. In this picture, the victim cannot aspire to any role beyond serving as a witness, called on to support state authorities in performing their public tasks, or acting as a civil party, allowed to pursue their private interests within the framework of criminal proceedings as long as they do not interfere with the primary function of criminal justice, which is public action brought by the public prosecutor against the defendant in the public interest.

In this vein, while all practitioners in the Netherlands seemed to have a positive attitude towards the increased attention to victims' rights, several expressed their concern that extended rights of victims would not fit within the current Dutch criminal justice system.

Figure 12: Practitioners agreeing/disagreeing with the statement 'Considering that victims, in criminal proceedings, mainly perform the role of witnesses, already too much is done to strengthen their position in criminal proceedings', by type of country (%)



Source: *FRA, 2019*

"Concerns and rights of victims are important to take into consideration, but our system is not equipped to do this. So, it is not as simple as is stated here: that professionals need to take things more seriously. Rather, professionals in this system have to carry out conflicting tasks. Which is not easy, and there is no easy solution." (Public prosecutor, Netherlands)

The fieldwork research, we asked practitioners if they agreed with the following statement: 'Criminal justice is mainly a matter between the public and offenders; hence victims' role in criminal proceedings is necessarily peripheral.' Overall, about half of the practitioners agreed and half disagreed (Figure 13). A staff member of a support organisation interviewed in Portugal emphasised:

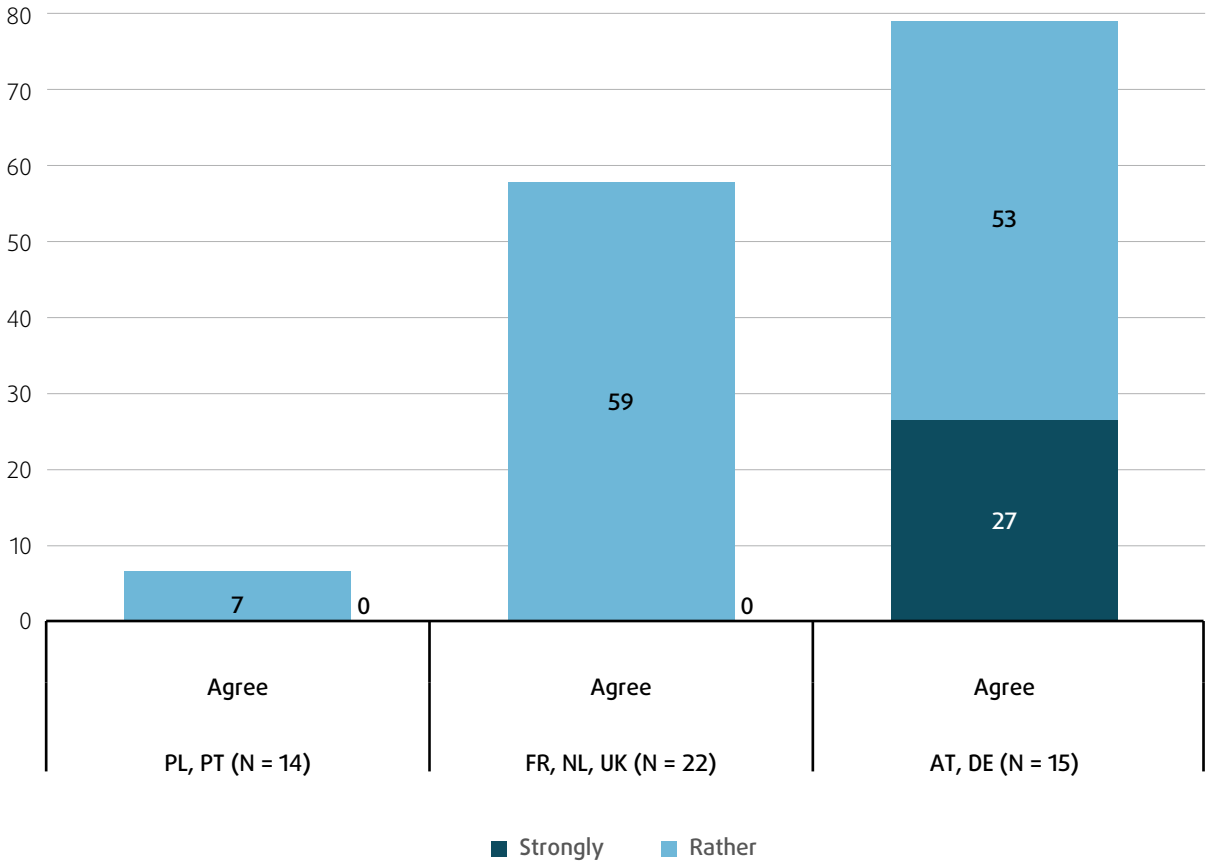
"It shouldn't only be a matter between the public prosecutor and the offender. The victim has a role and should have an increasingly important role. It cannot only be between the public prosecutor and the offender." (Member of support organisation, Portugal)

However, more specifically, the responses of prosecutors and judges reveal highly significant differences between EU Member States.

In all three type 2 and type 3 countries, slight majorities of judges and prosecutors lean towards agreeing with the statement, but the absence of any strong views there reflects much ambivalence.

Type 1 countries are split into two radically distinct subgroups. In Poland and Portugal, judges and prosecutors disagreed almost unanimously with the statement. In Austria and Germany, the vast majority agreed with the statement. This reveals that judiciaries in these four countries have quite basic differences in how they conceive of the criminal justice system and its potential to confer a significant role on victims. In Austria and Germany, 80 % of prosecutors and judges adhere to the traditional concept of criminal justice as a matter between the state and offenders, and on this basis conclude that the victim can play only a minor role in the proceedings. This strong consensus is not

Figure 13: Members of judiciaries (prosecutors and judges) agreeing with the statement 'Criminal justice is mainly a matter between the public and offenders; hence victims' role in criminal proceedings is necessarily peripheral' (%)



Source: *FRA, 2019*

a coincidence but points to a shared powerful theory and doctrine of criminal justice.

In Austria and Germany, this state-centred approach exists mainly among the judiciary but otherwise hardly has any followers. In contrast, there is a strong consensus among practitioners in Poland and Portugal, across all the professional groups, rejecting the view of criminal justice as a matter between state authorities, representing the public, and offenders.

Hence, the reluctance of court practitioners in Austria and Germany to acknowledge and realise legislative reforms promoting victims' participation rights could stem from their conviction that criminal proceedings serve to assert not the rights of individual victims but the state's right to punish the offender. This basic concept is referred to as *staatlicher Strafanspruch* in German legal language.[11] Court practitioners still identify with the traditional state-centred criminal justice paradigm. According to it, criminal proceedings are fundamentally a matter between state authorities and offenders, in which the victim does not have a significant role. It does not acknowledge the fact that a violent crime violates human dignity. Various factors could hinder legislators from granting victims of violent crime a more important role in criminal proceedings. For example, there is no consensus on how such a role for victims can fit the basic orientation and task of the criminal justice system. As long as there is no consistent and convincing answer to this question, there is a risk that practice in Austria and Germany may remain fundamentally unchanged.

The 'fragile balance' of criminal proceedings

Another argument against strengthening the rights of victims stresses the subtle and sensitive balance between defendants, on the one hand, and those who incriminate and charge them, on the other. Therefore, we asked practitioners if they agreed with the statement 'If victims became influential in criminal proceedings, this would come with a risk of unsettling the fragile balance between public prosecution and the rights of defendants.'

As one might expect, a clear majority of interviewees agreed with this view in the United Kingdom: 13 interviewees agreed, five disagreed and three answered

11 Beulke and Swoboda (2018), p. 3.

'Don't know'. A majority of interviewees in France also agreed, with strong support from the judiciary group. In the five remaining countries, a majority of practitioners disagreed. However, the amount of disagreement differs (Figure 14).

Answers given by practitioners in Austria and Germany are noteworthy. More than half of the representatives of judiciary groups agreed with the statement, 29 % strongly, thus placing some emphasis on this view.

None of the 13 respondents from the judiciary groups in Poland and Portugal shared that view, nor does it have many supporters from other professional groups in any of the type 1 countries.

We assumed above that resistance from the judiciary in Austria and Germany against implementing legislative reforms that recognise victims of violent crime as parties to proceedings is powerful and builds on a theoretical and doctrinal basis. These findings corroborate that assumption. Unless this basis is challenged, there is a risk that victims' rights will not become a reality in these countries.

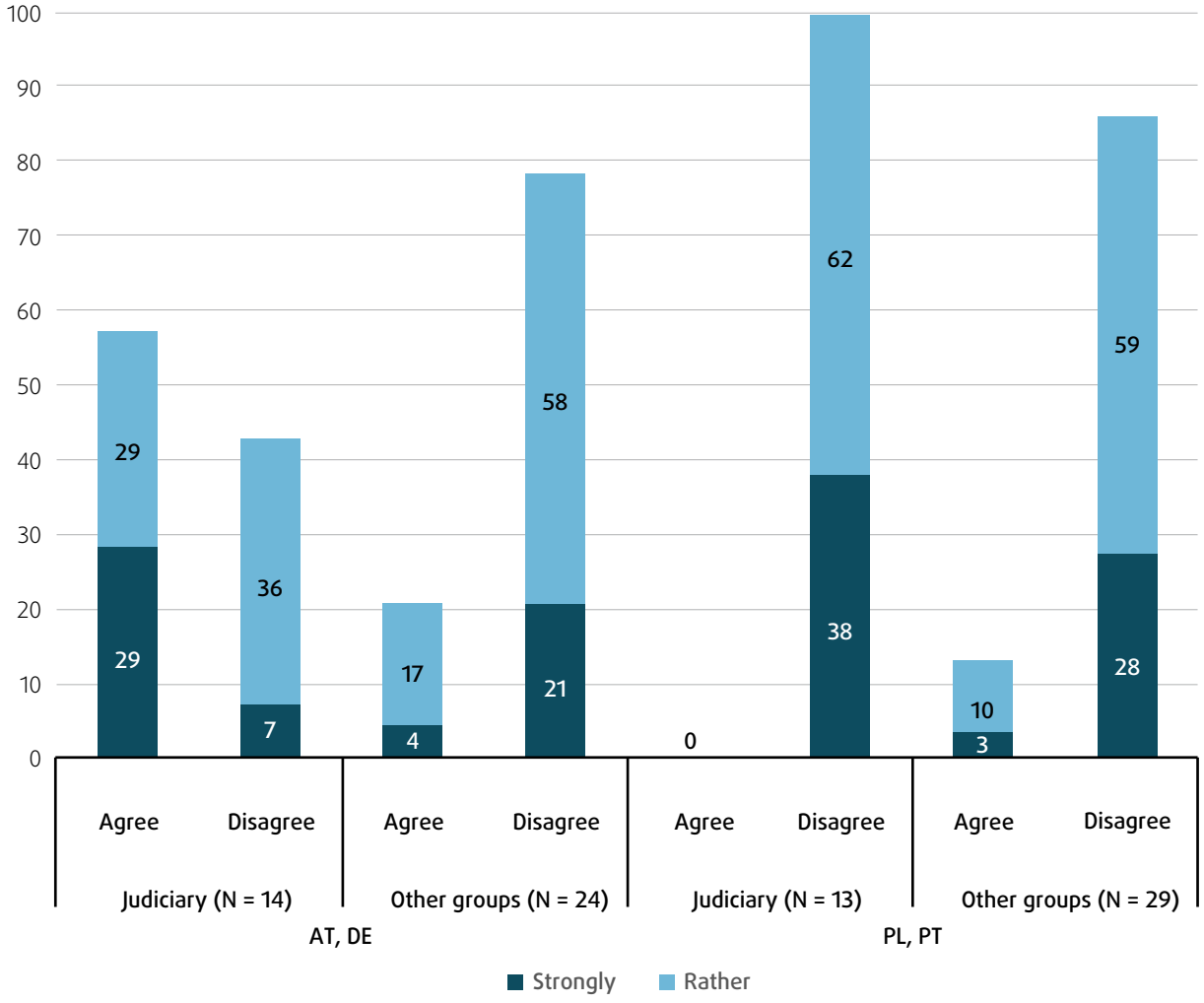
Conclusion

Victims' dissatisfaction with their role

Victims of violent crime whom we interviewed are discontent with the level of involvement offered to them in the proceedings.

- Two out of three would have liked more opportunities to be involved in the proceedings.
- A significant majority had also expected a more important role in the proceedings.

Figure 14: Practitioners in type 1 countries agreeing/disagreeing with the statement 'If victims became influential in criminal proceedings, this would come with a risk of unsettling the fragile balance between public prosecution and the rights of defendants', by profession (%)



Source: *FRA, 2019*

- One in four respondents strongly agreed with each of those statements and thus expressed disappointment at the marginalisation they experienced in the proceedings.

This dissatisfaction attests to a lack of effective access to justice across all countries in the project. The failure of EU Member States to grant victims of violent crimes access to justice is institutional and systemic, so we need to find institutional and systemic causes and remedies.

Law in books and law in action

Victims in type 1 countries – Austria, Germany, Poland and Portugal – have more participation rights, according to procedural codes. However, they are less satisfied with the amount of participation offered to them in practice than victims in type 2 and type 3 countries.

One obvious reason is that, notwithstanding the legal situation, practitioners in type 1 countries are more inclined to reduce victims to the role of witnesses than those in type 2 and type 3 countries. This tendency is more pronounced in the professional groups representing state authorities (the police, prosecution services and courts), and particularly strong in the judiciary groups in Austria and Germany.

Prosecutors and criminal judges in Austria and Germany have a theoretical and doctrinal basis for resisting implementing legislative reforms that grant victims of violent crime a role as parties to the proceedings, it emerges from the interviews.

This report helps answer two questions: firstly, how criminal proceedings marginalise victims and, secondly, why. The following chapters illustrate how. For example, in type 1 countries, support services are insufficient, victims lack information about their rights or proceedings are conducted in a language they cannot understand. In type 2 and type 3 countries, practitioners pointed out, over and over again, the limits that procedural codes set to victims' participation.

On the other question – why victims are side-lined in type 1 countries, despite their legal recognition – this research draws attention to the interaction between legislators and court practitioners. When the reform process does not involve practitioners and take them on board, there is a risk that their attitudes might not only lag behind but even turn against the reform. Practitioners in Austria and Germany have reservations about victims' rights and may even oppose them. That may be a reaction to legislation that endorsed these rights when there was not a strong consensus among a sufficient number of court practitioners on the rationale and legitimacy of victims' rights. Practitioners' reluctance to respect victims' participation rights can be interpreted as:

- reacting against the rise of the victim;
- defending the investigation and the proceedings against the intrusion of the victim as a party; and
- insisting that the victim must remain a source of evidence, serving state authorities.

We cannot understand how practitioners view and treat victims unless we pay attention to the 'theory' of criminal justice on which they act. That is a set of basic assumptions, dogmas and beliefs that orient their actions. This 'theory' differs from country to country and between professional groups. It becomes more relevant the more powerful a player is, and the more other, less powerful, players come to accept the predominant theory. What primarily decides whether or not victims feel that criminal proceedings acknowledge them is not their role according to legislation but the victim concepts of practitioners. Private associations of defence lawyers can create a climate adverse to victims' rights.[12] If they insist that victims are essentially witnesses, victims will often continue to feel that they are nothing more than that, whatever role procedural law gives them.

This is not to say that procedural codes should not be amended to acknowledge victims' rights. It demonstrates that amending codes is not enough. To improve the reality of how victims are treated and recognised, reformers must also concern themselves with the doctrinal theory guiding the conduct of practitioners, in addition to legislative reforms. For legislative reforms to become effective, we need to question and change the mindsets of practitioners. This part of the reform may turn out to be more difficult to implement. The issue also relates to the role of law faculties in shaping doctrinal discourses and in training legal practitioners.[13]

Human rights are meant to be not only theoretical law in books but practical and effective.[14] To comply with their obligations under Article 47 of the Charter, governments must ensure that practitioners know, comprehend and value victims' rights as human rights. Governments cannot do this without implementing comprehensive measures aimed at raising practitioners' awareness, understanding and respect of victims' rights. Assessing victims' rights must take into account internal factors

12 Jesionek (2017).
13 For a critical view on the reluctance of criminal law doctrine to integrate a victims' rights perspective, see Kilchling (2010), pp. 46–48.
14 Goodey (2018), pp. 25–27.

of criminal justice systems, such as litigation styles and attitudes of practitioners.[15]

Overcoming the victim's role as witness

In type 1 countries, practitioners find it easy to regress to the traditional conception of the victim as primarily a witness because legislation in these countries, while acknowledging the victim as entitled to act as party to the proceedings, continues to conceive of the victim as a witness. However, assigning victims both roles is not consistent. If victims are stakeholders in the proceedings, they cannot, at the same time, act as witnesses in an unbiased, non-partisan and objective manner. In addition, if procedural codes impose a duty of truthfulness on the victim but not also on the defendant, this differential treatment disadvantages victims and violates the principle of equality of arms and hence victims' rights under Article 47 of the Charter to a fair trial.

For advice on the issues highlighted in these conclusions, see FRA opinions 1 to 3 in Key findings and FRA opinions.

15 Brienen and Högen (1999).

2 Empowering victims by providing support, legal advice and information

The purpose of the Victims' Rights Directive is "to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings", according to Article 1. This can be read as demanding that, by receiving appropriate information, support and protection, victims should be able to participate in the proceedings. Support, legal advice and information are means of empowering victims, building their capacity and helping them in accessing justice. Chapter 2 of the directive, 'Provision of information and support', fleshes out in some detail the rights of victims to receive information and to access support services.

The focus of this chapter is on the empowerment of victims. It looks at efforts to make victims aware that they have rights and a role to play in the proceedings, and to encourage them to exercise their rights.

Even where legislation grants them participation rights, victims either are not aware of their rights or do not have enough advice and support to use them in a manner that serves their interests, ample evidence from this research indicates. In sum, victims are often not sufficiently empowered – informed, advised, supported, encouraged – to be able to act on their rights in a meaningful and authentic way. However, there are other cases where victims are encouraged to engage in the proceedings and are able to play a significant role. What makes the difference is effective support services that empower and encourage victims. For example, we asked a victim of domestic violence in Portugal if in the event of a similar victimisation she would report again:

"I would not hesitate, because … how shall I put it … This time I felt support, and I felt that people really wanted to help me. And this is something I had never felt during the other cases. And in fact, I knew there were a lot of people fighting for me, too. I was not alone. […] Because, every time I went there, they helped me filling in the papers, which I could not do […] and in the other cases no one ever helped me." (Victim, Portugal)

This chapter first explores the crucially important contributions of support organisations and discusses shortcomings that victims and practitioners interviewed in this project observed (Section 2.1). It then examines how and to what extent victims are provided with information relevant to their participation in the proceedings (Section 2.2). In many EU Member States, the obligation to inform victims about their rights and their potential role in the proceedings rests primarily with the police as a public authority. The police is supposed to fulfil the state's obligation to inform victims. As the police are regularly the first public authority to deal with the victim, entrusting the police with providing information to victims promises to inform victims right away, at their first contact with a public organisation. However, findings from this research cast doubts on the feasibility and effectiveness of this model.

Therefore, we suggest as an alternative model that support services can inform victims of their rights. Support services should encompass "information, advice and support relevant to the rights of victims […] and on their role in criminal proceedings", according to Article 9 of the Victims' Rights Directive. The Austrian system of 'procedural assistance' (*Prozessbegleitung*) is a promising practice and may serve to inspire policies in other EU Member States.

2.1 Support services

One of the core provisions of the Victims' Rights Directive is Article 8. It grants victims the right to access victim support services, or, more precisely, to "confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings." Article 9 of the directive conceptualises victim support services in a fairly comprehensive manner as comprising:

- emotional and psychological support;
- social support in terms of advice concerning practical and financial issues;
- information about victims' rights and their potential role in the proceedings;
- advice concerning the risk of secondary victimisation; and
- advice relating to the risk of repeat victimisation.

Enabling a support person to fulfil all these functions requires a considerable amount of training in the fields of psychology, traumatology and social work, as well as in legal, procedural and institutional questions. These challenging standards limit support organisations' reliance on volunteers, as we discuss later.

Many findings from this research highlight the crucial importance of support services to empower victims and give them moral support. Many victims expressed strong appreciation of the support they received from support organisations and stressed that this support made all the difference.

Interviewer: "How do you assess the services provided?"

Interviewee: "Very good. A lot, loads of support from every side."

Interviewer: "Earlier on, you told me that all this support mattered a lot to you."

Interviewee: "Yes, it did, a lot. In my opinion, it would have mattered to anyone. I think that it was half the battle won, as we say." *(Victim, Portugal)*

Not every victim will need the entire support package to be able to access justice effectively. For instance, a victim interviewed in Poland assessed the support organisation she had been in contact with very positively because it offered a whole range of services. As she had received emotional support from her family and friends, she was not looking for comfort. What she needed was legal advice, guidance on acting on her rights, and support in booking an appointment with a psychologist as part of the national healthcare system. From the support organisation, she received exactly what she was looking for.

Most victims of violent crime will not be in a position to play any significant role in criminal proceedings, beyond that of a witness, unless they receive competent and empowering assistance and support. Thus, support organisations establish an essential link between the victim and the criminal justice system by providing victims with advice and guidance.

2.1.1 Victims' assessment of support services

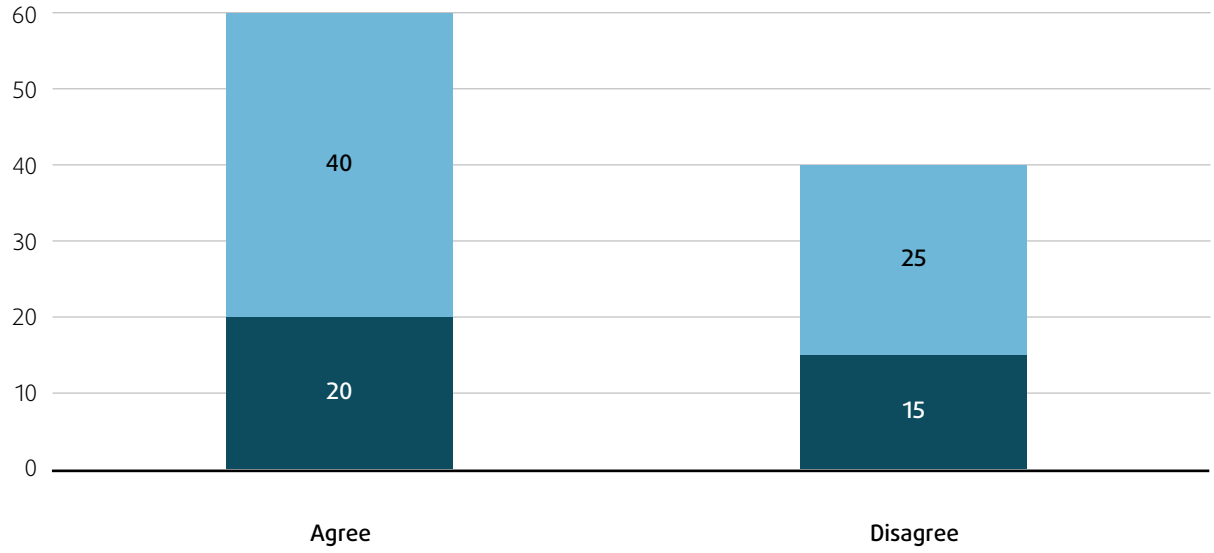
When we asked victims about 'support' in general, they often related the question primarily to psycho-social aid and 'moral' support rather than to legal advice and assistance in playing an active role in the proceedings. Many victims attested that they were sufficiently supported in a generic sense. However, dissatisfaction surfaced when we asked victims about specific aspects of support services, for instance if they were informed about their rights and their potential role in the proceedings or if they were helped to overcome the threat of repeat victimisation.

We asked victims if they agreed that they had been provided with the support they needed (Table 1). On the one hand, a majority agreed that they had received sufficient support and about a fifth strongly agreed. On the other hand, around a third of interviewed victims were discontent with the support they had received.

Clear differences between EU Member States show. Whereas almost all victims interviewed in Austria and about two thirds of victims interviewed in the other three type 1 countries agreed with the statement, most interviewees from the type 2 and type 3 countries disagreed, almost one in four of them strongly.

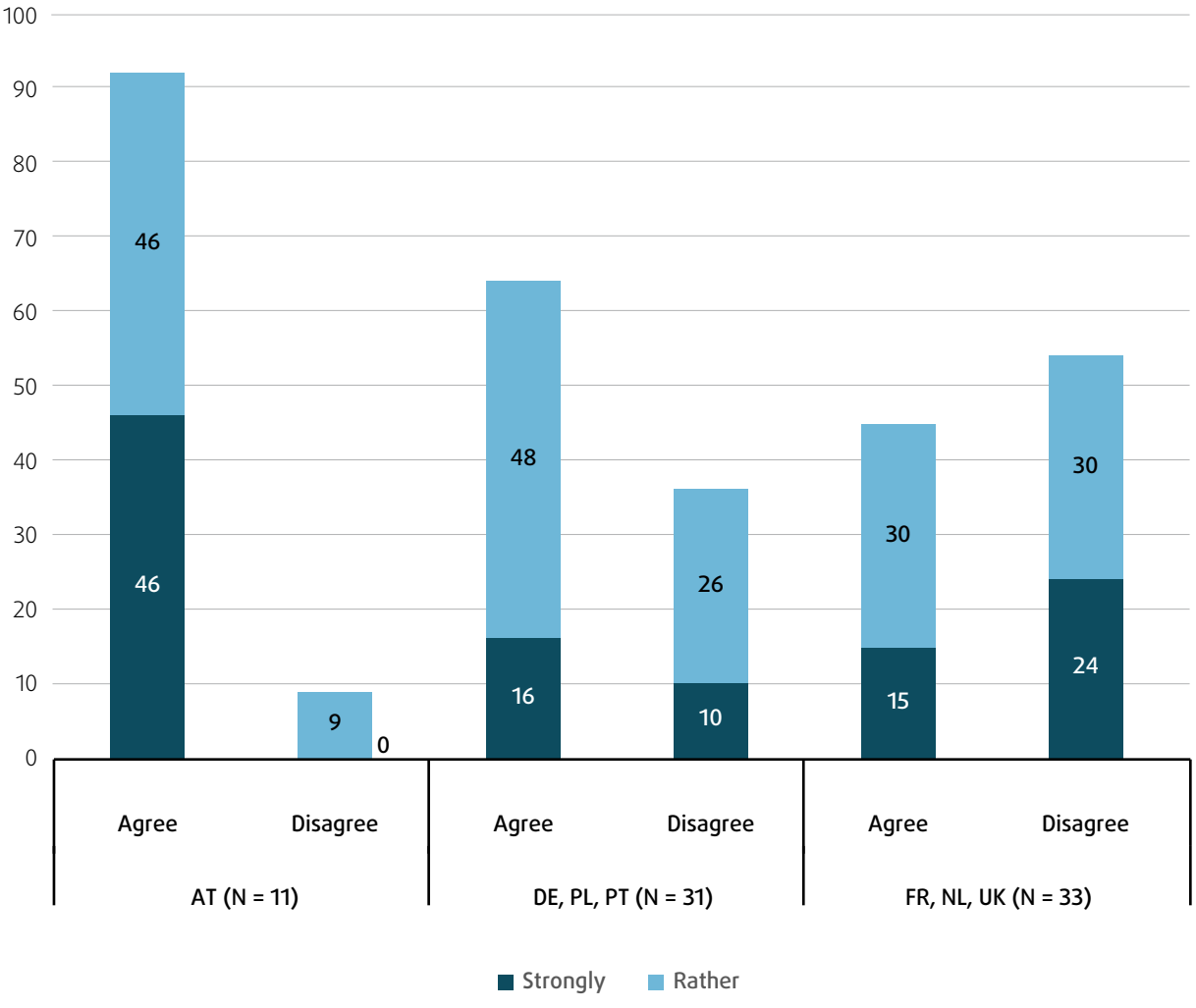
How victims assess the support services provided to them points to differences between EU Member States in how they organise providing support services and in the resources they invest. For example, the Austrian procedural code entitles all victims of violent crime to 'procedural assistance' (*Prozessbegleitung*) free of charge for the entire proceedings, combining psycho-social support (*psycho-soziale Prozessbegleitung*) and legal advice and representation (*juristische Prozessbegleitung*). The system ensures that procedural assistance is implemented across the country and provided to different groups of victims of violent crime. As a result, almost half of the victims interviewed in Austria strongly agreed that they had received the support they needed.

Figure 15: Victims agreeing/disagreeing with the statement 'Throughout the proceedings I had the support I needed' (%)



Note: *Answers by victims in the seven EU Member States covered by this report (N=75).*
Source: *FRA, 2019*

Figure 16: Victims agreeing/disagreeing with the statement 'Throughout the proceedings I had the support I needed', by country (%)



Source: *FRA, 2019*

For victims, it is vital that they are listened to in an empathic manner, that they are believed and understood, and that they have an expert on their side who can assist and accompany them throughout the proceedings.

"I don't know how to describe it. They are like family to me. [...] The support, the caring, the comfort. They were the ones who gave me the courage." (Victim, Portugal)

Victims attribute great importance to the relationship being a matter of trust, commitment and confidentiality. In this respect, private support organisations, at times, obtain better scores than public authorities.

"I can state that the majority of people dealing with domestic violence in the Municipal Centre for Social Aid aren't qualified to deal with this subject. [...] The Municipal Centre for Social Aid itself can help, but the more human approach was missing there." (Victim, Poland)

"I had no idea [...] how the whole system worked, so it would've been nice to have been asked [...] 'look, you realise this is what's going to happen [...]' That's where I think victim support probably would have filled that gap [...] the court witness people, they weren't interested." (Victim, United Kingdom)

Repeatedly, victims stressed the importance of being accompanied to the police by a person they trusted, not least because of the stressful situation.

"I spent a lot of time at the police station having tests and things done and it would've helped to have had somebody there. Because I didn't really know what was going on [...] it would've been nice to have somebody *[...]" (Victim, United Kingdom)*

Victims appreciated support in preparing for the court trial, e.g. allowing them to inspect the courtroom in advance of the trial and learn where the various people would be. They stressed the significance of being accompanied to the court trial.

"They just provided information and basically accompanied me, and [...] this feeling to have someone at your side [...] I never had anything to do with the court, fortunately. So, I would not know how things work there [...] So, they really explained that to me beforehand very well, so that I knew where the judge will be sitting [...] how that works." (Victim, Germany)

"She was just great, she was taking me through the process, she was talking with me about it, you know, what happens, she came with me to court and when we were sitting in the [...] anterooms [...] I was shaking like mad [...] I think she was holding my hand at one point, so I felt supported all the way [...]." (Victim, United Kingdom)

Victims interviewed in Poland found access to support services overly restricted by formal requirements. A support organisation informed one victim that they could not offer support unless the victim provided a written confirmation of the offender's arrest issued by the prosecutor's office. According to the interviewee, the process of obtaining the document required was time-consuming and she did not have any assistance at that stage. Another victim recalled:

"They told me 'I should have come straight from the police. I told them, 'about two hours ago police officers came to my place but they didn't take me here from the apartment, nobody even proposed that'." (Victim, Poland)

While most victims favourably assessed the support services they received, some victims voiced highly critical views of support organisations. Of the 12 victims interviewed in France, seven indicated that they had not been provided with the support services they needed. Of the nine victims in the United Kingdom who agreed or disagreed, only three agreed with the statement that they had the support they needed, while five strongly disagreed. This indicates strong discontent with the support services they had received, and the situation in the Netherlands is similar.

"Forget it. I don't know, they made the whole thing worse. They made me anxious. [...] So, they made it worse, they made me feel unsafe, yes." (Victim, United Kingdom)

"[M]issed the boat completely. The police told me that they have to help you, but they don't. I called them myself and begged them to come. Especially to give my parents a better feeling about the situation. He threatened my parents as well. But they just tell you 'no we can't come until the perpetrator is convicted.'" (Victim, Netherlands)

These critical voices point to the necessity for governments to ensure that all organisations providing support services to victims of violent crime meet defined standards of performance. This means not only organisations receiving government funding but all organisations that provide victims of violent crimes with support services and thus intervene in a highly critical and sensitive situation. If governments rely on the services of private organisations in fulfilling their duty to ensure that all victims of violent crime have access to appropriate support services, governments have an obligation to assess continuously whether or not these organisations meet the standards defined both by the Victims' Rights Directive and by the government or some body acting on its behalf.

At times, victims said that they believed that support services could have done more for them if these organisations had had the necessary resources. For example, victims observed:

"The association helped me psychologically but then they made it clear that it was then up to me to sort it out myself." (Victim, France)

"I would really wish that [...] support services, that they get more support, that they get more staff." (Victim, Germany)

"Women's Aid are stretched, if I could still have a Women's Aid worker in my life, I would still have it, but [...] she had to move on to the other women who were needing her help more than I was." (Victim, United Kingdom)

This serves as a reminder that, to a considerable extent, the capacities of support organisations depend on sufficient public funding.

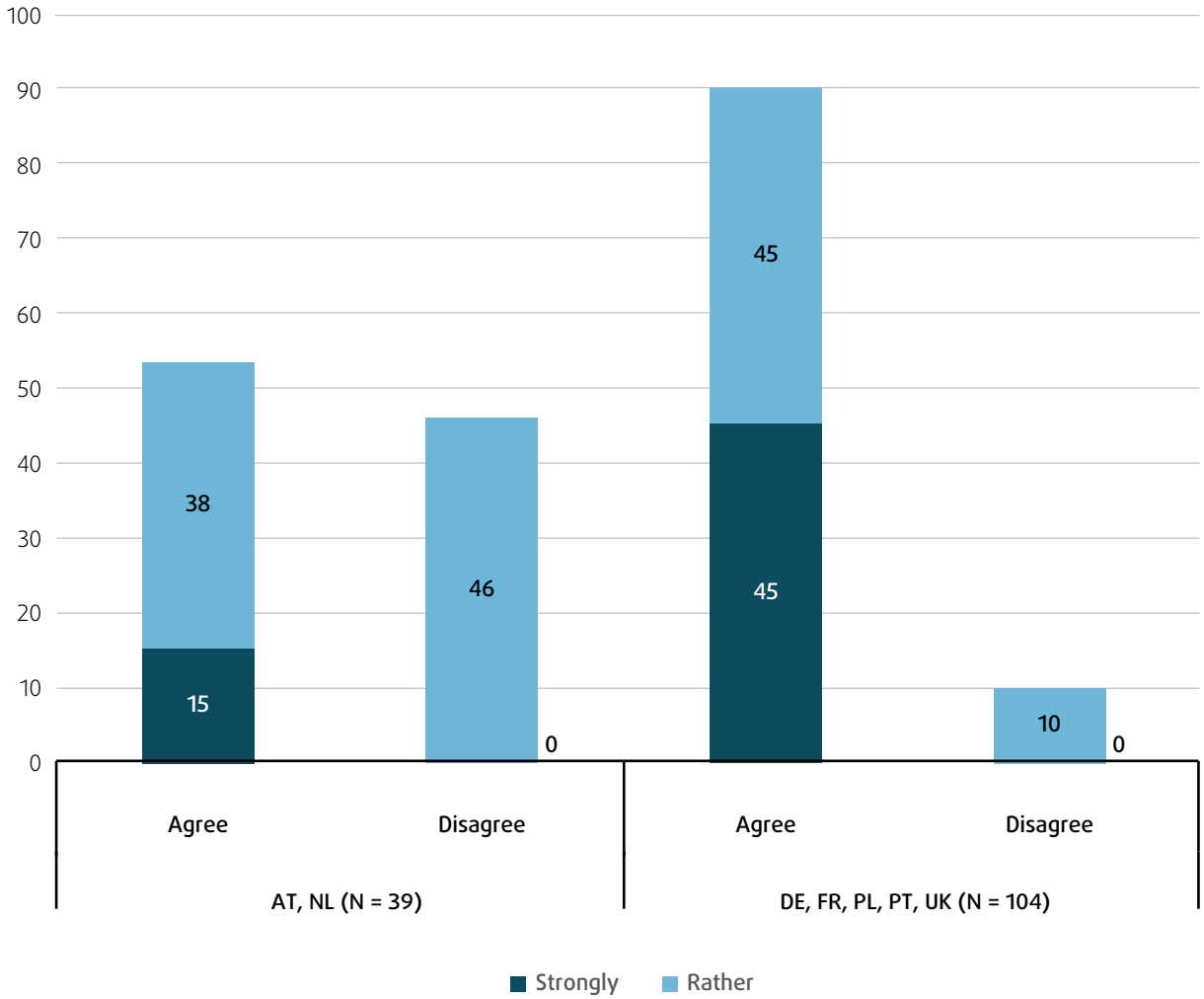
2.1.2 Views of practitioners on support services

We asked practitioners if they believed that more should be done to ensure that all victims have access to appropriate support services. About four in five agreed with that view. It is worth noting the large number of practitioners strongly agreeing with the statement. This emphasises the need to strengthen the system of organisations providing support services.

Two different patterns emerge (Figure 16).

- In Austria and the Netherlands, agreement and disagreement is somewhat balanced. Only a few interviewees strongly agreed that more needs to be done to ensure the availability of support services to all victims.
- Contrarily, in Germany, France, Poland, Portugal and the United Kingdom, only one in 10 interviewees disagreed and considerable numbers strongly agreed with the statement. This indicates that, overall, the practitioners interviewed in these five EU Member States assess the existing system of support organisations as clearly deficient.

Figure 17: Practitioners agreeing/disagreeing with the statement 'More needs to be done to ensure that all victims have access to appropriate support services', by group of countries (%)



Note: N=143.
Source: FRA, 2019

Shortcomings that the interviewed practitioners identified – and are backed up by assessments made by victims – mainly related to the following aspects:

- In France, Poland, Portugal and the United Kingdom, interviewees emphasised that support organisations suffer from severe underfinancing. Victims supported this view and believed that support organisations could do better if they had more resources.

"When you do not have sufficient money, you are swimming against the tide and, even if there is good will both from the organisations and from those working there, if the resources are lacking they cannot provide adequate support." (Police officer, Portugal)

"I think there should be more resources [...] And talking about more resources, it is important to think about financial resources in order to be able to support victims also in this respect." (Judge, Portugal)

"There are not enough organisations. But even if there are, I don't think their staff is sufficient in number to take all the cases [...]." (Police officer, France)

- In France, Germany, the Netherlands, Portugal and the United Kingdom, interviewees assessed the structure of support organisations as patchy and incomplete, both the geographical spread – not covering rural areas and smaller towns – and the availability of specialised support services. For example, specialised services for migrants and refugees were lacking. A victim of racist violence, interviewed in Germany, reported that it was difficult to find an organisation with the capacity to support him and his family. He explained that he had approached more than 10 different organisations and it had taken him eight months before he found an organisation that was willing to deal with a case of right-wing violence. Both victims and practitioners pointed out in interviews that victims have to travel long distances to access appropriate services.

"There [are] not enough [support services], again, a lot of this work falls to charities and it is again austerity etc., you know, cuts. [...] and you will find in some areas you have two or three possible [support organisations] and in some areas nothing. Some areas only for women [...] it's a postcode lottery." (Member of support organisation, United Kingdom)

"Because of the multitude of organisations, I have the feeling you cannot see the wood for the trees and it is unclear what each organisation stands for. I believe that these organisations have sufficient resources and capacity but could work more effectively. Organisations could have better alignment, for example. Currently, different organisations could be working on the same case without even knowing it." (Police officer, Netherlands)

- In the United Kingdom, support services are divided among several organisations. Some are private and some are public victim services based at police stations, prosecution offices or courts. Some victims would have preferred to be supported by one organisation comprehensively and over the entire duration of the proceedings.

"I've always thought single point of contact just covering everything would've been ideal [...] people say there's organisations [...] and yes, it's true, but there's so much out there and you're in a position on your own for the first time, you don't know which one to go to." (Victim, United Kingdom)

- In some EU Member States – such as Germany, the Netherlands and Portugal – practitioners were sceptical about support organisations' heavy reliance on volunteers. This leads to a high degree of turnover of staff, to services being provided by inexperienced workers and to a lack of well-trained, specialised staff members.

"[Victim Support Netherlands] do useful work, but there are not a lot of professionals. It's almost all volunteers, without a degree in psychology, without a degree in law. I think that's a disadvantage; especially in larger cases, they make some mistakes." (Lawyer, Netherlands)

"Above all, more training is needed and more qualified practitioners. Avoid resorting to over-using the work of volunteers, who are sometimes young, very young, with little experience in this area, which is difficult." (Member of support organisation, Portugal)

"We are witnessing more and more what we call double diagnosis situations, that is a crime victim who also has a mental health issue. Victim support services do not have resources in the mental health area [...]. And that kind of support is not available in any victim support organisation operating in Portugal." (Member of support organisation, Portugal)

2.1.3 Categorisation and differential treatment of victims of violent crime

What surfaced at various instances of the research is differential treatment of categories of victims of violent crime. For example, Portugal has achieved several important improvements in recent years, such as an increased level of professionalism among the police reacting to the situation of victims, more support services available, more information available to victims and more effective inter-agency cooperation. However, these improvements benefit mainly victims of domestic violence rather than victims of other forms of violence.

In the provision of support services and other areas, different levels of investments for different categories of victims of violent crime can lead to a 'hierarchy' of victims. In Austria, investments in support services for victims of domestic violence far exceed investments in support organisations for victims of other forms of violent crime. That is in response to the historical reluctance to address domestic violence, which led to a lack of programmes supporting women who are victims of intimate partner violence.

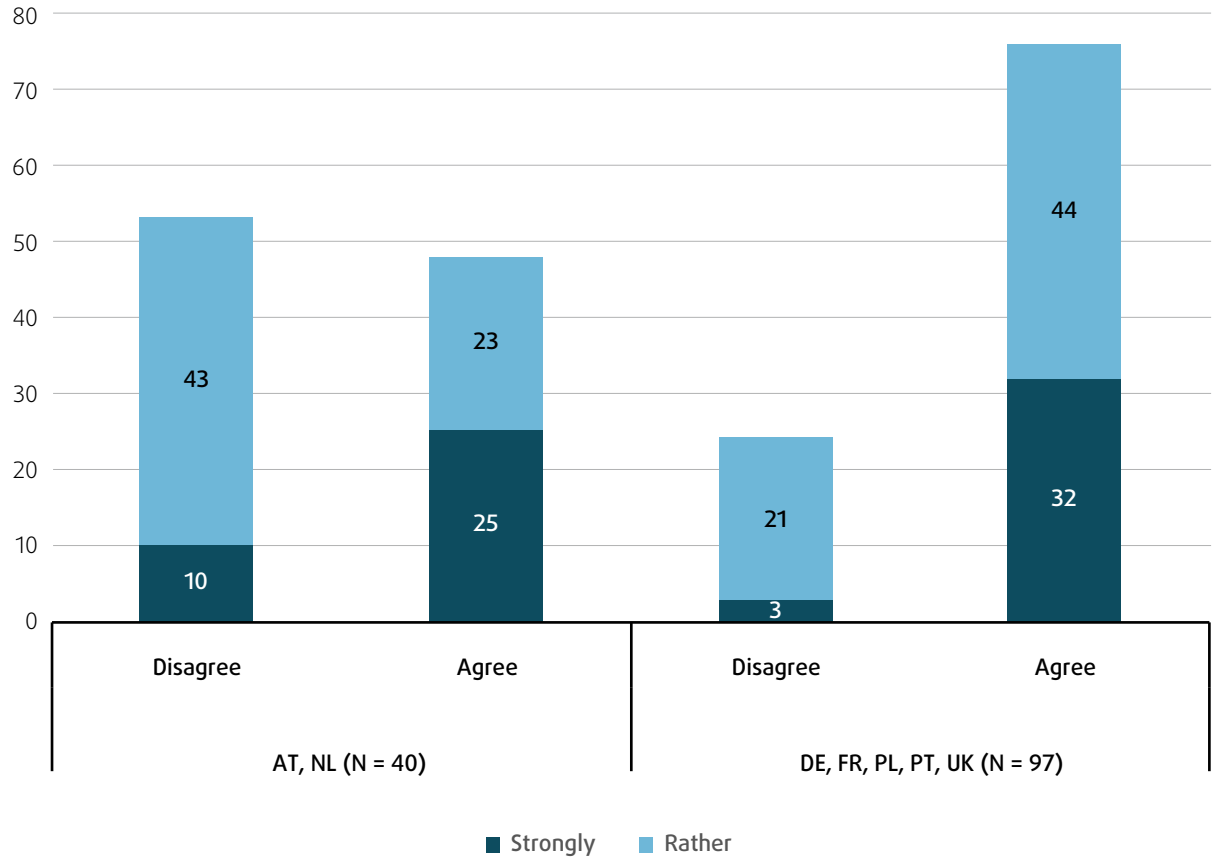
"We always speak of the three groups, and those are children, women and everyone else, victims of – as we call it – situational crimes […] no social proximity. And they are financed very differently, right? […] The most financed is the area of women, by far, right? There we have far more resources than all the others." (Member of support organisation, Austria)

Support services with limited resources may be inclined to prioritise victims who require less investment than complex cases. For example, they may prefer to engage with victims of burglary before dealing with victims of interpersonal violence.[16] However, EU Member States are obliged to see to it that victims are supported in a manner that respects their right to equal treatment under Article 20 of the Charter. Therefore, if victims are categorised and some groups receive preferential treatment, that necessitates better coordination of support services. The topic merits further research.

2.1.4 Support services and victims reporting to the police

One aspect of the support services concerns the ability and inclination of victims to report their victimisation to the police. When discussing the fact that many victims do not report their victimisation to the police, we asked practitioners if they believed that certain measures would make it significantly easier for victims to report, including whether or not it would make a difference if more victim support services were available to victims of violent crime. Two in three practitioners interviewed

Figure 18: Practitioners' responses to the question 'Would the following measures make it significantly easier for victims to report? More victim support services available to victims of violent crime' (%)



Source: *FRA, 2019*

16 Goodey (2005), pp. 136–138.

agreed that, if support services were available to more victims, significantly more victims would report to the police. The need to take measures to allow more victims to have access to support services is less pronounced in Austria and the Netherlands than in the other five countries (Figure 17). That is in line with the differences identified above.

In both groups, a considerable number of practitioners strongly agreed with the statement. This emphasises the importance of allowing victims to have access to support services as a means of improving victims' reporting. It also draws attention to the fact that supporting, empowering and encouraging victims not only serves to make victims' rights practically effective, but also benefits the criminal justice system. The functioning of the system relies heavily on reporting by victims and other contributions from them. In this vein, practitioners interviewed in Germany observed that victims are more likely to report if they have an initial consultation with a support organisation or a competent lawyer. This would enable the victim to discuss fears and doubts, for instance about police procedures or the risk of provoking retaliation by the offender.

Victims' views strongly confirm practitioners' assessment. When asked to identify circumstances that helped them to report, victims most frequently mentioned the support of organisations that provide victim support services. Such services provided the necessary encouragement and moral support to report, or even helped victims realise that they were in fact a victim, they said. They described the support provided as pivotal in the process of understanding their status and situation as victims.

In addition, support services provided victims with information about the practicalities of reporting to the police. In one instance, an interviewee describes contacting such a service before reporting, to find out if she would be required to confront the offender in proceedings, if he would have access to her address and the cost of legal assistance. Lack of such knowledge was a major obstacle to overcome, a number of interviewees said. Thus, they emphasised the role of support organisations in providing practical and reliable information.

It is often only after consulting a support organisation that victims can make a mature decision to report their victimisation to the police or not, it emerges. For victims to experience their participation in the proceedings as an expression of their agency and as a means of restoring control of their situation, it is important that they be able to enter into the proceedings in a considered and controlled manner.

2.2 Victims receiving information

In some EU Member States, legislation grants victims' rights to participate in the proceedings but it does not always happen in practice. A key reason is that victims lack sufficient information about those rights. After all, victims cannot act on their rights unless they know them and have advice on using them.

In general terms, information that the authorities pass on to victims falls into three categories:

1. information regarding the victim's rights and potential involvement in the proceedings;

2. information on other people who can support or advise victims, including support organisations;

3. information about the case, including the contents of the case file, the progress of the case and the evidence gathered.

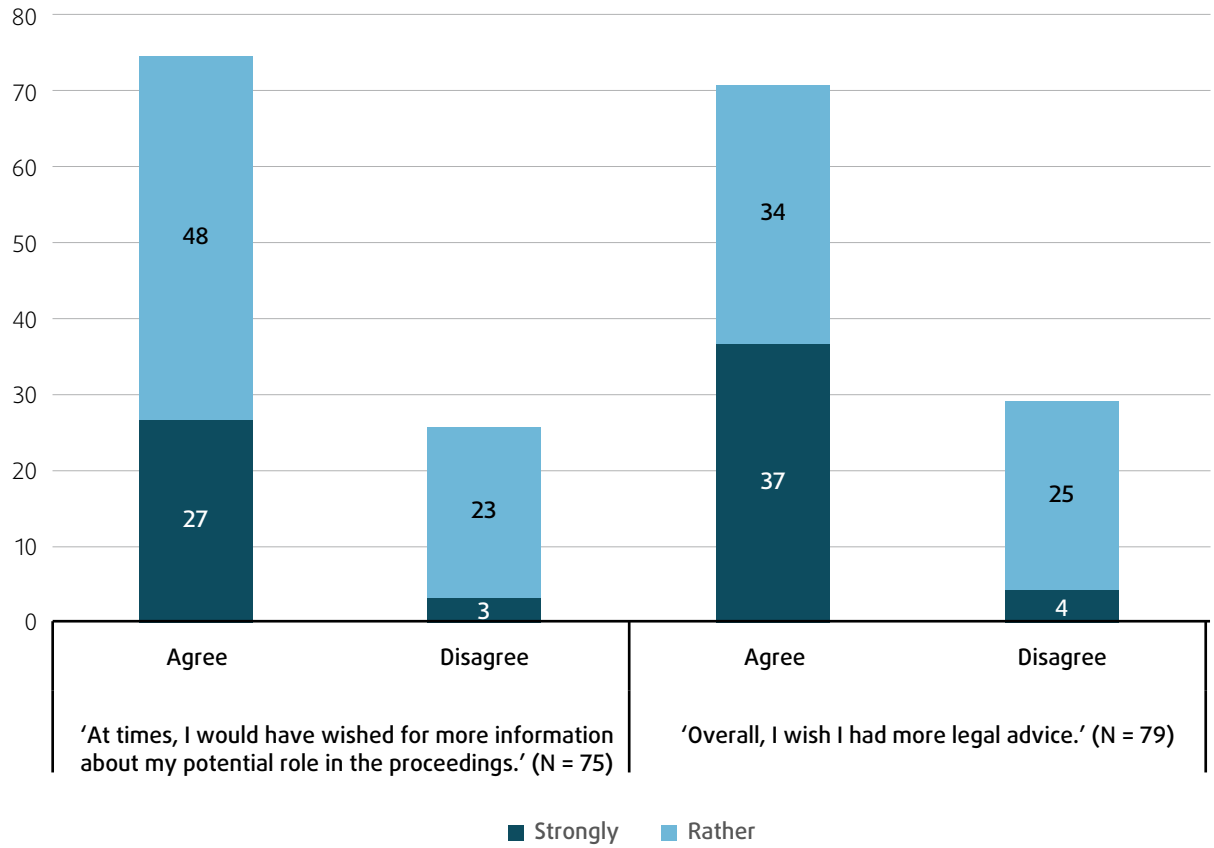
The Victims' Rights Directive deals with these three categories under different headings. The right of victims to receive information about their potential role in the proceedings is in Article 4. So is victims' right to be informed about support services and advice available to them. Victims' right to receive information about their case, including "information enabling the victim to know about the state of the criminal proceedings", is in Article 6.

2.2.1 Information on victims' rights and their potential role in the proceedings

We asked victims about the information they received regarding their rights and potential role in the proceedings. A clear majority asserted that they would have liked more information about their rights and their legal status in the proceedings (Figure 18).

Some three in four victims wished that they had had more information about their potential role in the proceedings and more legal advice. A significant number of interviewees strongly agreed, which may express disappointment over the lack of information received. This demonstrates that victims understood – at least at the time of the interviews – that procedural codes defined their rights and position, and they had a keen interest in knowing more about their potential role and being able to decide whether to make use of their participation rights or not.

Figure 19: Victims' responses to the question 'Do you personally agree or disagree with the following statements?' (%)



Source: *FRA, 2019*

In all EU Member States participating in the research, victims were inclined to be dissatisfied with the amount of legal information provided to them. There are some differences between countries.

- Victims are clearly more frustrated in type 1 than type 2 and type 3 countries, with the exception of Austria.
- Of the 11 victims interviewed in Germany, nine agreed that they would have liked more information about their potential role in the proceedings – four strongly – and two answered 'Don't know'.
- In Poland, 10 agreed – two strongly; one disagreed; and one answered 'Don't know'.

The variation in responses to the question about wanting more legal advice is very similar (Figure 19).

One major conclusion from the interviews with victims in Portugal "is a general lack of awareness regarding their rights as victims of crime," the country report observes, with two exceptions: one victim who is a police officer and one who is a lawyer. This means not that victims are completely unaware that they have rights and a role to play, but that they lack information about what these rights and this role are and what they mean for them.

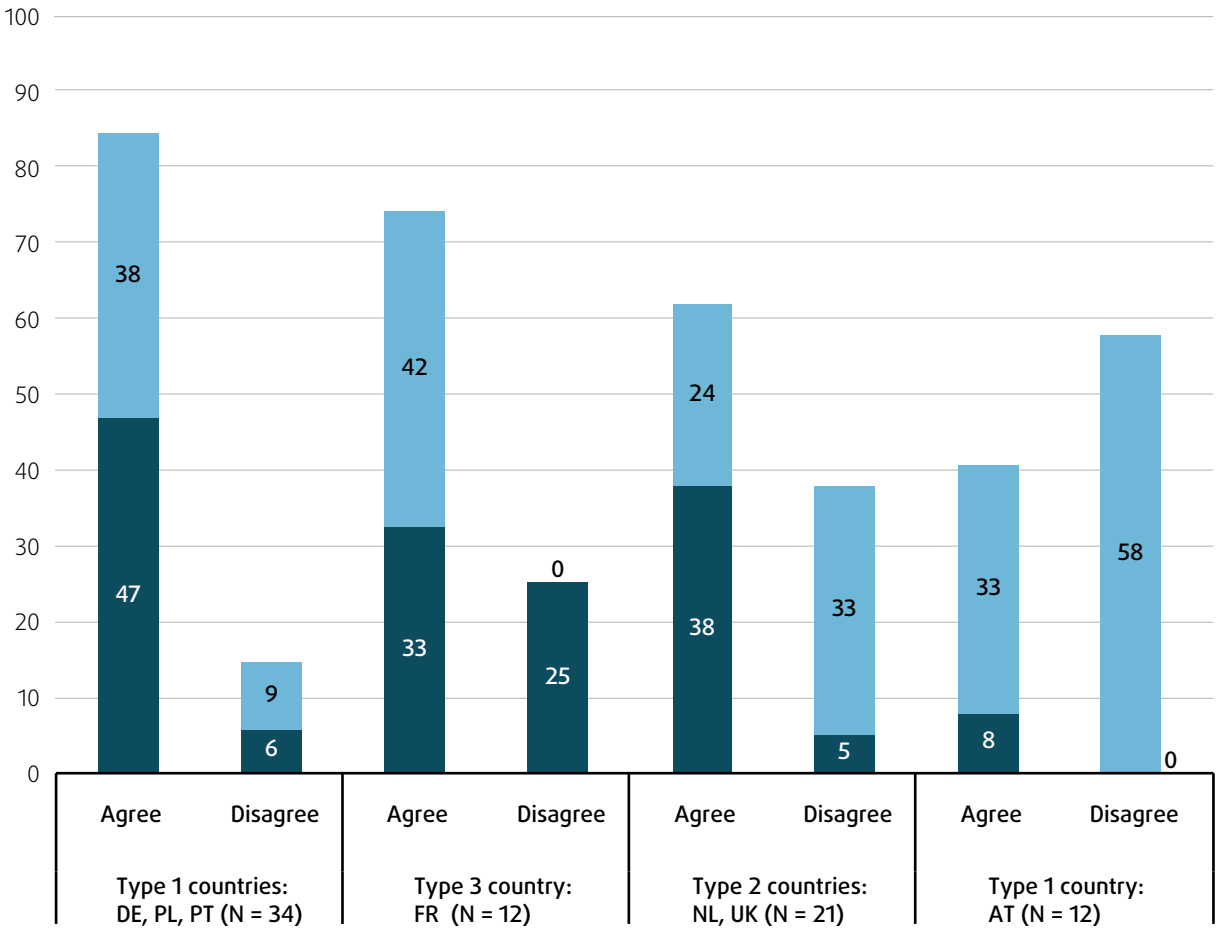
The more rights victims have, the less content they are, except in Austria. Victims are most discontent in type 1 countries, where they know that they are entitled to act as parties to the proceedings but they have no more information about their rights and receive no advice on how to make use of them.

The main reason for this lack of information is that criminal justice systems rely on the police to provide it. However, the police inform victims either incompletely or ineffectively, our findings demonstrate.

Overall:

- Victims' widespread unawareness of their concrete rights is a major reason why victims of violent crimes in type 1 countries are not able to make use of their participation rights.
- At the same time, their emphasis on wishing they had had more information leaves little doubt about their interest in having a significant role in the proceedings.

Figure 20: Victims agreeing/disagreeing with the statement 'Overall, I wish I had more legal advice', by type of country (%)



Note: *N=79.*
Source: *FRA, 2019*

- A lack of information prevented many victims from playing a more significant role in the proceedings and, in the end, left them dissatisfied with their low level of participation.

Most practitioners are aware of these shortcomings in providing information that would allow victims to understand their rights and role in the proceedings (Table 2).

- An overwhelming majority of practitioners agreed that 'More needs to be done to ensure that victims are informed in an effective manner about the proceedings and their potential role in them.'
- Overall, only one in five of the practitioners interviewed disagreed with the statement.
- No fewer than one in three interviewees strongly agreed with the proposition.

In the interviews, practitioners often observed that certain rights exist according to legislation but nobody tells victims about them.

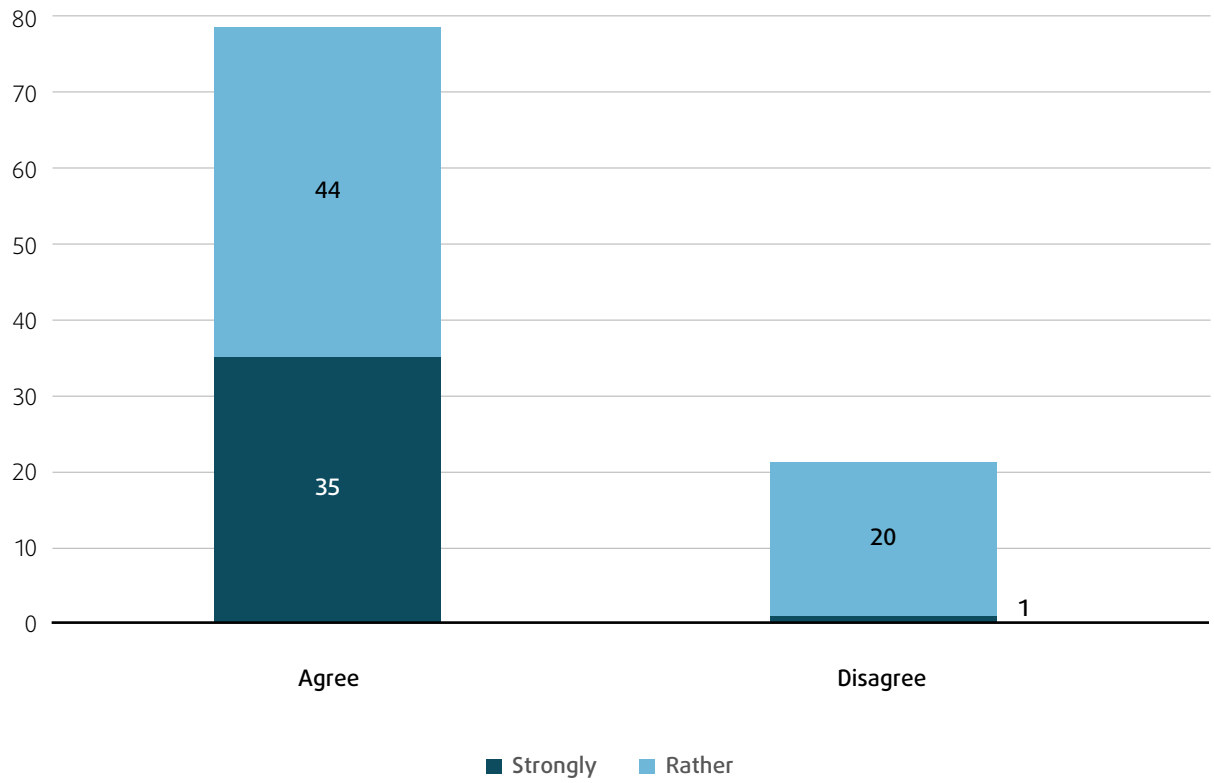
Interviewer: "Can victims choose to be accompanied by a trusted support person during court trial? If yes, are victims informed beforehand that they have this right?"

Interviewee: "Of course, but they are not informed about it." (Lawyer, Austria)

The consequences of victims not having sufficient advice during court proceedings also showed in an interview with a member of the French judiciary, who observed:

"The president of the court cannot give legal advice to the victim [...]. But sometimes, it is true that it is delicate: there are victims who did not take a lawyer, who want to ask something, but they do not know what. The victim has to determine their damages claim and quantify it. But the victim does not know how to do this. They then give a figure which may be lower than that what they have a right to." *(Judge, France)*

Figure 21: Practitioners agreeing/disagreeing with the statement 'More needs to be done to ensure that victims are informed in an effective manner about the proceedings and their potential role in them' (%)



Note: *Answers by practitioners in the seven EU Member States covered by this report (N=141).*
Source: *FRA, 2019*

Victims being asked to take decisions without having the necessary information was a recurrent theme in the interviews. For example, a victim of domestic violence was made to sign a form stating that she refused to testify, which she did not understand. As an immediate consequence, the case was dismissed.

"I got this letter [from the court] and I went there but I didn't understand, so I asked. 'You should know what you are here for. Read the letter and decide what you want to do. Whether you want to sign or not.' And I was like, I don't know. […] 'You should know.' And I signed it. [The court clerk explained] nothing, nothing, he said nothing." (Victim, Portugal)

In the same vein, a victim recalled:

"When I received the notice from the court asking me if I wanted to become joint prosecutor to the case, I just stared at it. What does this mean?" (Victim, Portugal)

There can be little doubt that practitioners consider that current mechanisms of providing information to victims are ineffective. In addition, practitioners are aware of the link that exists between victims not being informed about their rights and not being able to play an active role in the proceedings. Members of support organisations interviewed in the Netherlands and Portugal maintained:

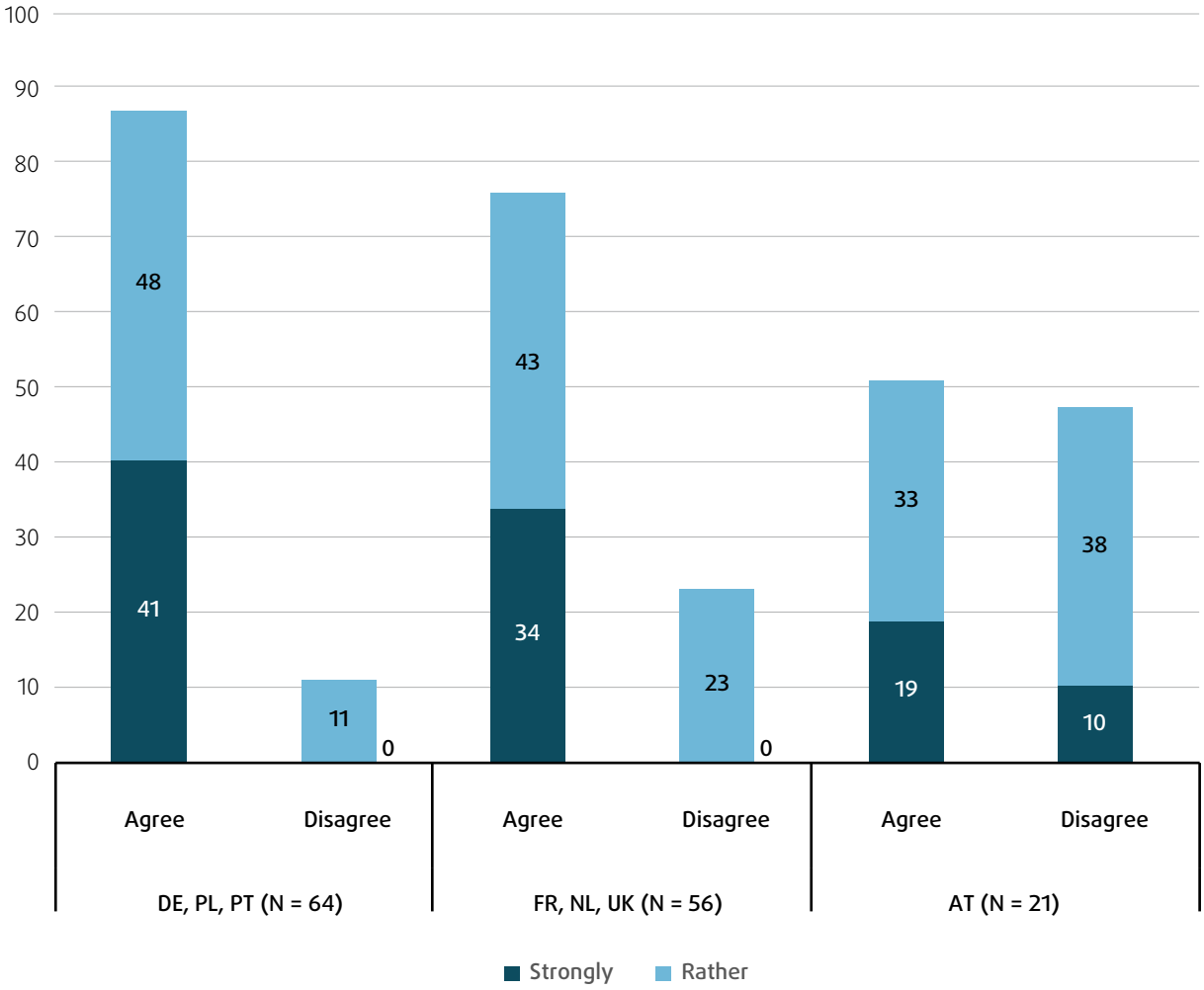
"Victims are not aware of their rights and the possibilities of asking for compensation. If victims had this knowledge from the beginning of the proceedings, this would break down barriers." (Member of support organisation, Netherlands)

"A lot more needs to be done so that the victims have information and can play a more active role in their proceedings." (Member of support organisation, Portugal)

In this context, differences between EU Member States are considerable and telling (Figure 20).

Type 1 countries are again split. The vast majority of practitioners interviewed in Germany, Poland and Portugal agreed that victims need to be informed in a more effective manner, while agreement and disagreement are more evenly balanced in Austria. Considerably more practitioners disagreed with the statement in Austria than in any other country covered in the research.

Figure 22: Practitioners agreeing/disagreeing with the statement 'More needs to be done to ensure that victims are informed in an effective manner about the proceedings and their potential role in them', by country (%)



Source: *FRA, 2019*

Practitioners attach great significance to the deficiencies in how victims are provided with information about their rights and about support services available to victims. When asked about measures that would encourage more victims to report to the police, practitioners strongly supported the view that raising victims' awareness of their rights, including the right to have access to an organisation providing victim support services, would significantly facilitate reporting (Table 3).

An overwhelming majority of interviewees agreed, one in three strongly. Thus, practitioners acknowledge that raising victims' awareness of their rights and access to support services significantly empowers victims and facilitates their reporting. This finding is in line with the results from previous FRA research.[17]

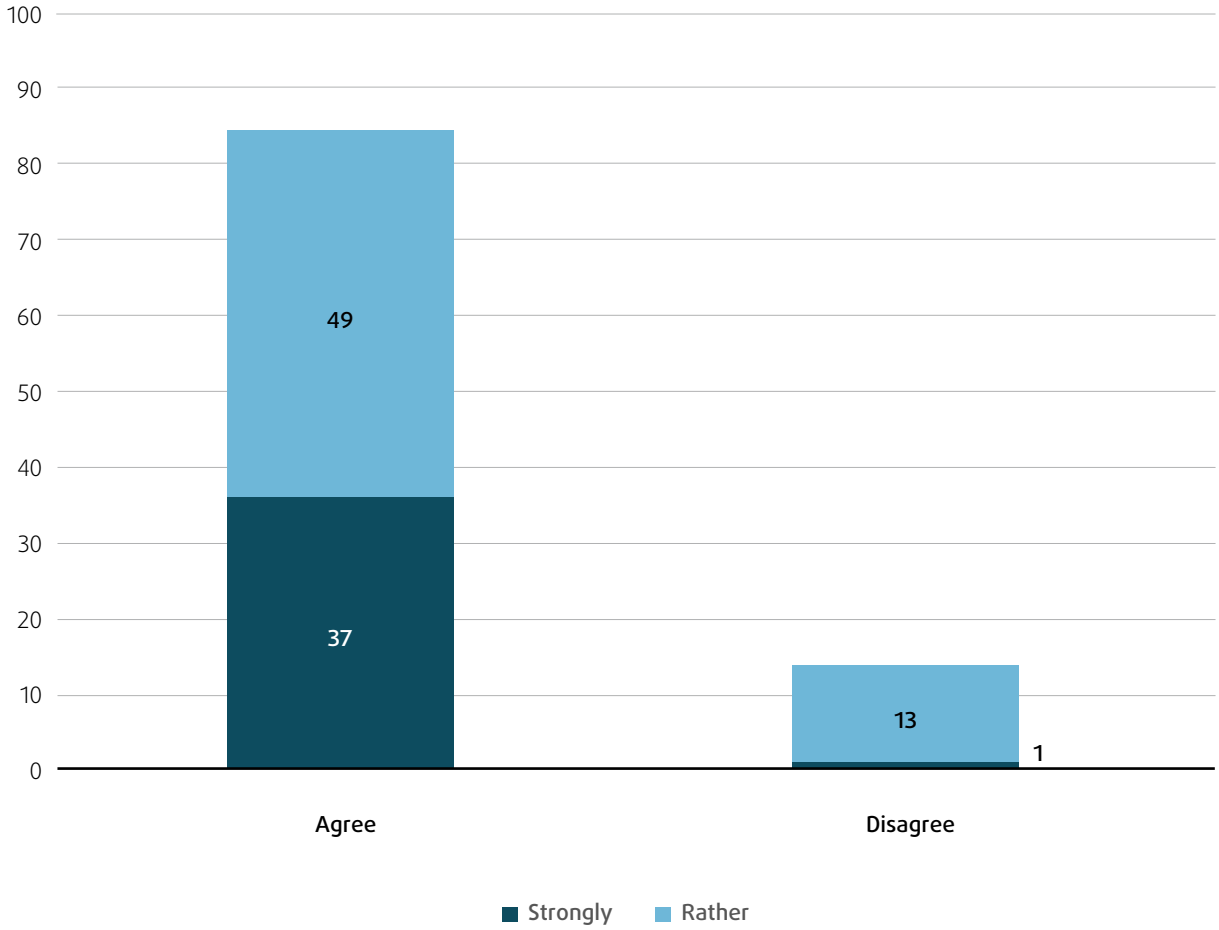
17 On victims of hate crime, compare FRA (2016), p. 30, and references there to similar findings from FRA surveys.

2.2.2 Information on the case and its progress, and access to the file

Across the EU Member States that this research covers, a significant majority of victims interviewed would have liked to have more information about the progress of the case. Victims' sense of being side-lined or left out reflects, among other factors, the lack of information victims received about the case and its development.

Particularly many interviewees disagreed that they had received sufficient information about the progress of their case in France and the United Kingdom, and in Germany, Poland and Portugal (Figure 21). Of the 11 victims interviewed in Portugal, five strongly disagreed with the statement, thus expressing some frustration over the lack of information shared with them concerning their case and its progress. A member of a support organisation interviewed in Portugal explained:

Figure 23: Practitioners' responses to the question 'Would the following measures make it significantly easier for victims to report? Raising victims' awareness of their rights and of support services available to them' (%)



Note: *Answers by practitioners in the seven EU Member States covered by this report (N=142).*
Source: *FRA, 2019*

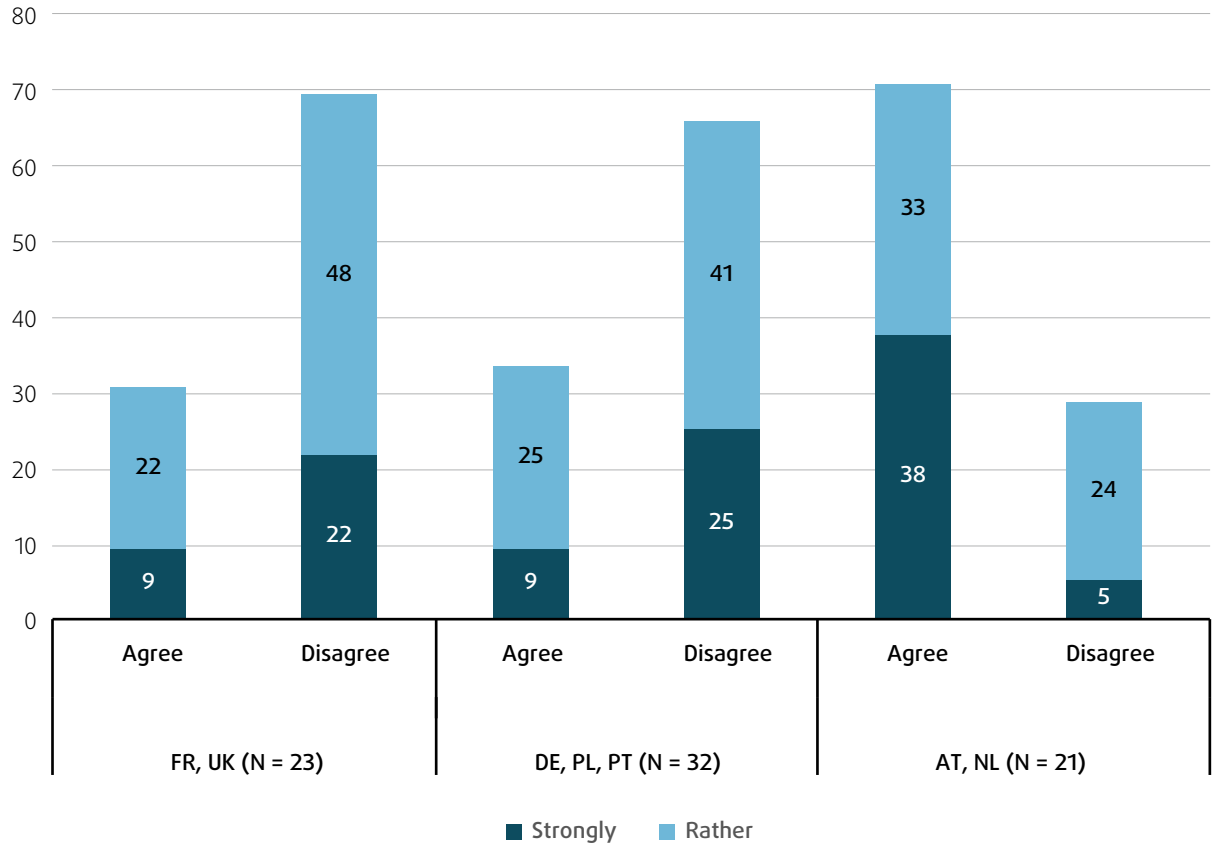
"[T]hen the proceedings take off and people lose the thread a little. I don't have the idea that people are informed or are followed up. [...] Some of them are not even duly informed when their court cases, for example, are dismissed or something like that. No information is given. The victims are not given any relevant information." (Member of support organisation, Portugal)

In contrast, Austria and the Netherlands stand out, with 71 % of the victims agreeing and 38 % strongly agreeing that they had received sufficient information about the progress of the case. Still, even in these countries there is room for improvement. A victim interviewed in the Netherlands tried to obtain information on the outcome of the proceedings from the Public Prosecution Service. The only message that came through was that the offender had been released.

"I called them several times to obtain some information about my case, but they were very unfriendly. Moreover, they told me that they would arrange it right away and they didn't. I called them again and they told me they would ask the manager to solve it. I still haven't received anything. This organisation is nothing." (Victim, Netherlands)

Victims in the United Kingdom described the efforts they made to receive information, and the risk of being misinformed. The police referred a victim of domestic violence to a specialist support service. It acted as her liaison point with the Crown Office once a charge had been brought against the offender, and it was responsible for keeping her updated on the progress of the case. She described her difficult communication with this support organisation and criticised the fact that she was not informed by the Crown Office directly.

Figure 24: Victims agreeing/disagreeing with the statement 'Throughout the proceedings, I received sufficient information about the progress of the case', by country (%)



Source: *FRA, 2019*

"They won't come and see you, but they liaise between you and the Crown Office to make sure that you still want to pursue the case and they'll phone you up and say, like, you know, 'he's still pleading not guilty' [...] These people on the end of the phone were dreadful and I don't even know why the Crown Office just couldn't have told me what was going on anyway, because these people were useless. They gave me the wrong information three times, they wrongly told me his bail had been lifted and I'm sitting waiting on him coming in the front door ... Every time they phoned you've got your bag packed, and I'm phoning the police, I'm phoning the Crown Office saying, 'What's happening here?' [...] So, that was a nightmare." (Victim, United Kingdom)

Practitioners corroborated victims' sense of not being appropriately informed about the progress of the case. Police officers and representatives from the judiciary, interviewed in Germany, doubted that they had an obligation to inform victims about any progress in their case. In addition, a judge indicated that a lack of capacity could result in victims not receiving information.

"[When I receive] such a request from victims [...] asking for an update on proceedings, I will do it if I have the time, but not as a priority. The time and the capacities are insufficient." (Judge, Germany)

An interviewee from a support organisation indicated that information was seriously delayed.

"Victims have many rights, but that's not of interest, or it happens too late. For example, the right of the victim to receive information whether someone has been arrested or when they will be released [...] In my cases, there will be information about the release of the offender approximately two months after the event. [...] And the information [...] does not go directly to the victim, but to their lawyer [...] It's written in the law, I think it is good that it is in there. It would be even better, if it worked. It doesn't." (Member of support organisation, Germany)

Similarly, in France, practitioners pointed out that the authorities are not obliged to provide the victim with information about the case and its progress. Without the assistance of a support organisation or a lawyer, it is difficult for victims to obtain such information.

In the Netherlands, victims complained that they were not informed in time of the date of the trial.

"I trusted in their professionalism and I was shocked when I found out by myself that the trial would be so soon, since until that moment we hadn't received any information whatsoever from the Public Prosecution Service. It was only after we spoke to our legal advisor that information was sent by the Public Prosecution Service to inform me about the trial. That was very short-term. […] I do understand, however, since that is what they told me, that they are very busy with cases […]." (Victim, Netherlands)

One important means to learn about the case and its progress is accessing the case file. In all type 1 countries, procedural law entitles victims to see the case file. However, in Portugal, victims who want to see their case file face complex bureaucracy.

"I once asked in court whether I could have access to the case file and they raised a thousand obstacles. They said I had to make a written request, which then had to go for approval and only after that would I be able to have access. […] I let it go because it meant wasting a lot of time. And the court's schedule is not friendly either. But I did ask." (Victim, Portugal)

"All the time, they told me it [the case file] had not yet arrived from Barreiro, and at Barreiro they told me that [the court in] Moita would send it to them and it was like a ping-pong ball. […] I had to give up […]." (Victim, Portugal)

In Germany, in practice, only the victim's legal representative can act on this right. In Austria, on the one hand, the victim is definitely allowed to exercise this right in person, but, on the other hand, a victim who has no legal education will have difficulty understanding the contents of the file. Hence, in practice, victims usually rely on the assistance of a lawyer or of someone from a support organisation.

"[Victims] have the right to access their case file. […] I don't think that it's made use of very often, only when they are represented, where the lawyer makes a request, or if one of us [from the support organisation] goes there […] that victims do that of their own accord, I don't really think so. Firstly, it takes quite a bit of effort, often it takes a while until it's approved and then – so, it depends on the file, but there are many forms inside and many written documents that are not understandable at all for a layperson." (Member of support organisation, Austria)

In France, not the victim, but their lawyer – if they have one – can have access to the case file. However, that is only after the investigation has been concluded and the results are sent to the prosecutor.

"[Y]ou have to wait until the procedure [the investigation] has finished for copies to be sent to the public prosecutor. Then, through their lawyer the victim effectively has access to their file, so, to all the parts of the investigation. […] Unfortunately, without a lawyer, you cannot have a copy of your file in court. And that is a real shame, I think. You are obliged to take a lawyer *to have access to your file."* (Police officer, France)

In countries where victims are not parties to the proceedings, victims depend on the readiness of officials to help them. For example, in the United Kingdom, to prepare for the court trial, a victim turned to the prosecutor's office to ask if she could look at the statement she had given to the police 17 months earlier.

"I did ask if I could come in and read over my statement that I gave to the police and they made this, 'Oh, well, it's in another building and …', they just made it as if I was being a pain, so, I never got to read my statement. […] I don't know if you're allowed that but just, they just didn't seem to bother." (Victim, United Kingdom)

2.2.3 Effectiveness of how the police and public prosecutors' services inform victims

The police have an obligation to inform victims of violent crime of their rights, but we found ample and consistent evidence of widespread system failure. Police routines to ensure that victims know their rights are either lacking or not effective. Even when police provide information to victims, the victims often do not have enough information to use and act on their rights.

Across the EU Member States participating in the research, victims described the information that the police or a public prosecution service gave them as difficult to understand, untimely and incomplete. That is in line with many practitioners' assessments. Several victims learned only from our interview about the rights they had during the police investigation. They were retrospectively discontent with the lack of information from the police.

"[M]any things I didn't know before, such as – what you just said – about compensation, having a look at the case file, a lawyer. So, I would have definitely wished for more information on these things." (Victim, Germany)

While the interviews conducted with police officers demonstrate that some police officers make efforts to inform victims, interviews with victims reveal that the information often does not reach them.

Legalistic and bureaucratic language

Recital 21 of the Victims' Rights Directive emphasises that information should be in simple and accessible language that can be understood by victims. However, a recurring theme across the EU Member States where this research took place is that the police use leaflets, brochures or a written letter of rights. Practitioners interviewed were often critical of the language and contents of such tools, as they are in a formal, legalistic and difficult language. A lawyer interviewed in the Netherlands noted:

"Even for a lawyer it is sometimes not clear what a specific letter is about. Some of the information concerning the case and the time limits for victims' involvement is even incorrect – for example regarding deadlines provided which are not in line with the legal requirements." (Lawyer, Netherlands)

Victims received such letters without appropriate explanations, they recalled.

Interviewee: "In this letter which I received, I think something was written about it, that I can, but I don't remember exactly. These legal texts are so difficult that ..."

Interviewer: "One needs to be a lawyer to understand them?"

Interviewee: "Sometimes, yes." (Victim, Poland)

Interviewer: "When you first came into contact with the police, did the police inform you about your potential role [...] and about your rights as a victim in proceedings?"

Interviewee: "Yes. They gave me some forms that I filled in about the status of the victim of domestic violence."

Interviewer: "And did you know what they meant? Did they explain the meaning of them to you or ...?"

Interviewee: "No. They didn't explain anything. Afterwards, I read the forms and I more or less saw that they were about the rights I had. But I had to read them; no one ever explained anything." (Victim, Portugal)

In addition, letters contained too much information. That risks discouraging victims from reading them or acting on their rights. Most victims get some information without actually being informed, as the country report on Portugal puts it. Members of support organisations in Portugal and Austria noted:

"Security forces give them a little piece of paper with some very tiny letters which people rarely or never read. Then they come up here asking us what that actually means." (Member of support organisation, Portugal)

"But you then get information sheets [...]. And for many victims it's not understandable [...] there is [...] the standard sheet, on which simply the legal texts are written, nobody understands that. [...] often victims come to us when everything is over, they are not informed about the outcome of the proceedings, they have not made any claims for compensation, nobody informed them about the fact that they can make claims for compensation [...] Nobody told them any of that, surely it said somewhere on a sheet they got, but that's not enough." (Member of support organisation, Austria)

"However, the victims are not informed about their rights at the police station [...] From a purely formal point of view, yes, victims are informed according to the law, but not in a manner that victims could understand. [...] This is written in a language that no one understands who is not involved in this field on a regular basis, especially not a person who is agitated, nervous and in a situation of crisis, she will not understand, this cannot work." (Member of support organisation, Austria)

In Portugal, members of criminal investigation teams shared this critical view. They contended that frontline police officers working in police stations should do more to inform victims.

"She signs the victim statute, but she doesn't read it, she doesn't even know what the victim statute is. And when she comes here at the second stage, when she comes to the criminal investigation, the proceedings are already running, and you realise that she has no knowledge at all, because ... I don't know... there was no time or ... [...] No explanation is given, I think, because when she comes here this is what I see. [...] they should give it more importance, to explain victims their rights." (Police officer, Portugal)

"[S]he is given 'her documents', the victim's file, whatever that might be, and she ends up in a black hole. From there on she does not know what will happen to her, then she is afraid of the offender, she is afraid of the proceedings." (Police officer, Portugal)

Sometimes, when victims enquired about their rights, they were referred to the letters of rights that they would receive. For example, a victim interviewed in Poland eventually came into contact with a support organisation, which made her aware that she could act as a joint prosecutor. This was the first time she received information about her potential role and rights.

"Thanks to the information that I can be a joint prosecutor, I got access to the case file, after I filed a motion. Nobody told me I could do anything like that during the first contact [with the police], though. Or how I can learn about it. I was told 'Wait for the letter, it will all be explained there', and the subject was closed." (Victim, Poland)

Thus, authorities use letters of rights as a fig-leaf to conceal a lack of effective information.

Issues of timing

There are difficulties with the idea that the police should inform the victim of their rights at their first contact. Firstly, this contact will often follow very soon after the violent offence. Therefore, victims will not be interested in or able to absorb much information.

"At that moment I did not need that. What I wanted was to give them all the details I could on the robbers so that they could be caught as soon as possible." (Victim, Portugal)

"In the early days, you are on complete automatic, you don't take information in, you need to be given very simple, short words, because, literally, I couldn't take information in. I mean, I'm an intelligent woman, but I was like a zombie." (Victim, United Kingdom)

In the same vein, practitioners reflected on victims' lack of capacity to absorb information when they first face the police:

"I believe that many people who come to the police are in an exceptional mental state and not capable of absorbing everything that they are told, or of understanding the many pages of legal information on their lawful rights. […] Most of them are traumatised […]." (Police officer, Austria)

"Victims are informed, but the way in which this happens does not work. If a victim receives a letter, she or he is often stressed. They don't get the message." (Member of support organisation, Netherlands)

Secondly, at this very early stage the victim will often not have made up their mind about the prospect of justice, what is 'in it for them' and what role they want to play in the criminal proceedings. Hence, they might not yet know how relevant their rights are. Even if they have decided, some rights will not be relevant at the start of the investigation, such as their right to see the case file – possibly when no case file yet exists – or the availability of an appeal to challenge the judgment of the court of first instance. A member of a support organisation interviewed in the Netherlands pointed out:

"I mostly deal with crisis situations […] In these situations, it is of no use to inform victims of their rights and potential role, it is simply not relevant and will not be heard. At most, an officer can say: 'Okay, this is not important for now, but later we will inform you about the part you can play in the proceedings.' But I doubt whether that really happens in practice." (Member of support organisation, Netherlands)

Consequently, many victims interviewed in the Netherlands could recall neither what the police told them nor the contents of the information letters from the Public Prosecution Service.

Practitioners emphasised the importance of victims' awareness of their rights and of support services available to them as a factor that helps them reporting to the police. This points to another difficulty. If providing victims with information about their rights and the availability of support services is left to the police, this information comes too late to help victims decide to report to the police. Ideally, victims would understand the potential role they can opt to play in the proceedings and obtain advice and encouragement from support service providers *before* deciding to report to the police. For victims, the decision to report to the police is not easy. Hence, it is in making this decision that victims need support, information and encouragement, and the police cannot provide these.

Institutional concerns

In Austria and the Netherlands, practitioners in all professional groups voiced concerns about the appropriate distribution of roles and tasks. They maintained that the police should not engage too closely with victims, to avoid undermining their position as an objective and impartial authority. According to these practitioners, the partisan function of advising victims should be left to support organisations and lawyers assisting victims.

In addition, the police agenda is highly complex. Victims may not view the police as unreservedly on their side and hence a credible source of advice and information. However, if victims do not trust the police, this limits the effectiveness of the police in providing victims with information and advice about their rights and their appropriate role in the proceedings.

2.2.4 Providing information as part of victim support services

The question is, then, can the police can be relied on to perform the function of informing victims of their rights and their potential role in the proceedings? Does it suffice that the police, at first contact with the victim, pass on just the information that is relevant in that situation? That would cover necessary urgent protection measures and include referral to an organisation that will, in the near future, contact the victim to offer comprehensive support and assistance, including legal advice.

The Victims' Rights Directive entitles all victims to have access to support services free of charge. That entails the provision of "information, advice and support relevant to the rights of victims including […] on their role in criminal proceedings", according to Article 9. When informing victims in a manner that is effective in practice, organisations providing support services will regularly outperform the police. There are many reasons, including that they are more transparent to outsiders and committed to the interests of victims. A member of a support organisation can assist a victim throughout the proceedings and gradually provide the bits of information that are relevant at each stage of the proceedings, so that victims do not have to absorb all the information about their rights at the start and store it for hypothetical later use.

Hence, providing information should be part of a comprehensive relationship of support, guidance and trust that encompasses all the components in Article 9 of the Victims' Rights Directive, including legal advice. The concept of providing information in isolation should be replaced by a comprehensive concept of partisan assistance that integrates the provision of

information within a wider function of assistance and relies on a counsellor who accompanies, informs, guides and advises the victim over the entire course of the proceedings.

One example of comprehensive support is the Austrian system of *Prozessbegleitung* (see 'Promising practice' box). Austria and the Netherlands score better than the other EU Member States researched for victims' satisfaction with the information they received. Austria's good score reflects this structure of victim assistance, while still leaving room for improvement.

Promising practice

Providing procedural assistance to victims of violent crime

At the meeting of the UN General Assembly on 14 October 2014 in Geneva, the **Austrian** legislation on procedural assistance (*Prozessbegleitung*) received the World Future Council's Future Policy Award 2014.

In the Austrian system of *Prozessbegleitung*, two counsellors accompany victims of violent crime during the proceedings. One is a person who provides psycho-social support (*psychosoziale Prozessbegleitung*) and one acts as a legal advisor (*juristische Prozessbegleitung*). Austrian law entitles all victims of violent crime to both forms of assistance free of charge to the extent that this serves their procedural rights (Article 66, paragraph 2, of the Austrian Code of Criminal Procedure). Psycho-social assistance includes supporting the victim in preparing for the proceedings and the emotional stress entailed, as well as accompanying the victim to all interviews and the court proceedings. Practitioners interviewed in Austria stressed the importance of preparing the victim for appearing in court.

As one lawyer noted, "The main problem for victims is that they don't know what to expect. Hence, it is important that they are informed: that's what a courtroom looks like, who is the person here, that's what happens. When I am prepared, I'm in a better position to make myself heard."

The role of a legal advisor covers legal assistance and representation by a lawyer throughout the proceedings. The Austrian Minister of Justice is in charge of establishing and maintaining this system by contracting private organisations who provide this form of assistance.

A staff member from *Weisser Ring*, an organisation providing generalised victim support services, observed that "victims of intentional violent crimes are entitled to legal and psycho-social assistance provided by us if they find their way to us in time. All victims. We only need to assess if it's necessary, because we will instruct our lawyers and we get money from the Ministry of Justice. So, in that regard we have a relatively unique situation in Austria, which is great, because [...] we have funding contracts with the Ministry of Justice – not only us, but also 45 other institutions in Austria [...] me as a staff member, if I have a client in front of me, I can decide if they receive assistance, and it is financed by public funds. That's very unique; I once reported about that in Germany and they were stunned that you can do that without a court decision."

In practice, *Weisser Ring* is tasked with organising and reviewing the system at an operational level and with allocating the cases. In addition, the Ministry of Justice in 2011 established a management centre for victim support. The management centre is tasked with coordinating, at an organisational level, the contributions of all those involved in the provision of victim support services, and serves as a central hub of communication among these organisations.

For more information, see the website of Weisser Ring.

In cases of severe violence, Germany appoints a legal representative free of charge to victims who opt to act as joint prosecutors (Article 397a of the German Code of Criminal Procedure). Provisions introducing a psycho-social counsellor in German procedural law entered into force on 1 January 2017. Practitioners interviewed in the project did not yet have practical experiences of this.

Evidence from this research supports the view that victim support organisations and independent lawyers providing legal assistance are more effective at providing information than the police. For instance, victims without support from a lawyer or a support service are likely to receive less information, evidence from Dutch participants indicates. As a result, they are in general less aware of their rights and possible role in the proceedings. Portuguese participants observed that victims have to rely on the services provided by a support organisation that will inform them of their rights. In the absence of such an organisation, they will remain totally unaware of their rights.

Interviewer: "And when you were interviewed by the police, were you informed beforehand that you were entitled to be represented by a lawyer?"

Interviewee: "No."

Interviewer: "The police never told you that you could be represented by a lawyer?"

Interviewee: "No, they didn't. The one who told me was Ms Y [staff member of support organisation]."

Interviewer: "It was also the support service …"

Interviewee: "To find me a lawyer, yes." (Victim, Portugal)

In the same vein, victims in Germany felt that the police did not adequately inform them about their role and rights, participants indicated. Support organisations and lawyers served as a reliable source of information and of practical support.

Another indication derives from the outlying position of Austria within the group of type 1 countries. As shown above, victims are better – or at least less badly – informed about their role and rights in the proceedings and receive more of the legal advice they wish for in Austria than in the other three countries of this group, in the views of both victims and professionals. Similarly, they have better access to support services in Austria than in the other three countries, again, according to both victims and practitioners. Doubtless, victims in Austria know more about their rights and potential role in the proceedings *because* they enjoy a better level of support services, including legal advice. The contribution of the police is mainly in pointing victims to the assistance available to them. While this clearly falls short of fulfilling the legal obligation on the police to inform victims comprehensively about their rights, in practice it suffices as a referral to the powerful system of procedural assistance that Austria has.

In short, whether or not victims are informed about their rights in practice depends less on efforts made by the police to provide victims with comprehensive information and more on legal advice provided by non-state bodies. Informing victims about their rights as part of providing support services works better than information being provided by the police. Consequently, victims receive more information in countries where they are more effectively provided with support services and legal advice, regardless of the routines adopted by the police.

2.2.5 Legal representation and legal aid

For victims of violent crime to understand and be able to make use of their participation rights, legal advice is crucially important. A victim interviewed in the United Kingdom observed:

"I couldn't employ my own solicitor to […] represent me and look after my rights […] There was nobody there fighting that corner […] you're on your own." (Victim, United Kingdom)

Article 13 of the Victims' Rights Directive, entitled 'Right to legal aid', obliges EU Member States to ensure that victims have access to legal aid, where the victims have the status of parties to criminal proceedings. For victims of violent crime, this provision is to be read in the light of Article 47 of the Charter, according to which victims of violence should have the status of parties and enjoy fair trial rights. These include a right to legal aid for "those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice".

The considerable costs of a lawyer potentially discourage victims' access to justice, practitioners assessed.

"Legal aid? It depends on your income. Either you get it, or you do not get it. If you meet the conditions, you get it, if, unfortunately, you are not within the framework, it is you who pays the lawyer and that can perhaps be a constraint, because a procedure can cost several thousands of euros, effectively." (Police officer, France)

In some EU Member States covered by this report – including Poland and Portugal – it appears that victims' access to legal aid is severely restricted. The system of legal aid in Portugal has restrictive conditions for eligibility, the country report stresses. Consequently, many victims have no access to legal aid and do not have the financial means to pay for a lawyer. In Portugal, the social security service provides victims in need with legal aid. However, several interviewees were critical about how the system functions.

"At the moment, it takes some months, two, three months to get a state-appointed lawyer. Afterwards, our experience with the registered lawyers hasn't been all that positive. Sometimes, the lawyers, well, play a very modest role in the case, and that's to put it mildly. […] very often the lawyers who have been appointed fail to duly follow up the cases." (Member of support organisation, Portugal)

Similarly, victims interviewed in France who were dependent on legal aid complained about the deficient level of services they received.

"Legal aid, when I presented my case, what it consists of and everything, 'no, no, Madam, I'm not taking on your case, […] we are not well paid in France, myself, I only take certain cases', there you go, you are stuck everywhere." (Victim, France)

"[A]n officially appointed lawyer, who is telling me, 'They are only going to give me € 800, so I cannot do anything'." (Victim, France)

2.2.6 Referral

Where support organisations and lawyers have the task of informing victims about their rights and potential role in the proceedings, it remains crucially important for the police to ensure that victims who are not already in contact with a support organisation are referred there for advice before having to make any decisions.

Ideally, the police should be able to inform a support organisation themselves and not rely on the victim to do so. The police could then inform the victim that the organisation will contact them in the near future to offer support. Victims interviewed in Scotland reported having received a letter from Victim Support Scotland after the police had passed their address to this support organisation. In Austria, in cases of domestic violence, the police immediately inform specialised support organisations, which then get in contact with the victim to explain the support they can provide. In other cases, the police ask the victim to sign a statement enabling the police to transfer their contact data to a generalised support organisation. A similar routine exists in parts of Germany. A police officer interviewed in Germany noted:

"A new policy offers the option to have the victim sign a declaration, stating that the police are allowed to pass their information on to Weisser Ring. This declaration is sent to Weisser Ring and they will then contact the person. This avoids the initial reluctance 'I have to call them'. That's what's being done in most cases now." (Police officer, Germany)

Such a model depends, firstly, on a robust and comprehensive structure of support organisations and, secondly, on the police having sufficient knowledge of support services available to victims or, at least, of generalised support organisations that can refer victims to specialised organisations, whenever necessary. The police may not be sufficiently prepared to perform this function, evidence from this research suggests.

In Poland, generic public institutions for social assistance offer victim support services and so do private organisations specialised in providing support to victims of crime. A network of 33 non-governmental organisations (NGOs) cooperates in providing victim support services. Although practitioners interviewed in Poland had some awareness of available victim support services, they named institutions for social assistance, such as social care centres or crisis intervention centres, more often than NGOs specifically dedicated to providing victim support services. Even though police officers were able to name some organisations that provided support services, victims did not effectively learn from the police about appropriate support services available to them, interviews with victims in Poland revealed.

Likewise, in France and Germany, practitioners commented critically on how the police inform victims about organisations offering support services. They pointed out that police officers' knowledge of support services varies, as does the quality of information they provide.

"When a victim lodges a complaint, they receive a slip referring them to victim support services. But then, what does a victim do with a piece of paper that we give them and which they do not fully understand? What can a victim do who does not speak French well and who does not understand the existing social structures?" (Prosecutor, France)

"A lack of awareness starts with police officers; we are trying to make colleagues aware of relevant support services. Whether victims will be informed depends on the extent to which regional police departments are committed to the subject. There are some officers who are very active in the field of victims' rights and who are dedicated; others rather neglect the subject." (Police officer, Germany)

2.3 Legal advice and representation

As their primary task, the victim's counsel should advise and empower the victim, not replace them. However, in Austria, France, Germany and Portugal indications are that lawyers tend to act in the victim's stead. That runs counter to the objective of empowering victims. For example, a victim interviewed in Portugal complained that her lawyer frustrated her attempts to participate in the proceedings more actively. He insisted on handling everything himself as a matter of duty and was reluctant to pass on any information to his client. This led the victim to mistrust the action that her lawyer took.

"I gave the photos to my lawyer and he did not take them. If it hadn't been for [the support organisation] and the police, they would have never gone into the case file. [...] [The lawyer] never brought anything to the case file." (Victim, Portugal)

The situation in Germany is instructive. If victims of violence opt to act as joint prosecutors, they enjoy a wide range of participation rights under German procedural law. However, in practice it is regularly the victim's lawyer who acts on these rights, at times somewhat detached from their client, in particular if during a court trial the victim is asked to wait outside the courtroom until their witness statement has been taken. In Germany, it is unusual for victims themselves to act as joint prosecutor, participants in this research reported. 'Active participation' is only by victims' legal representation rather than by victims themselves.

Victims' access to justice entails a right to be *personally* present at and involved in the proceedings, as far as the victims want to. Therefore, lawyers should find ways to advise and represent victims in a manner that victims experience as empowering rather than patronising or marginalising.

Conclusion

- At least some countries do not fulfil the right of all victims to have access to appropriate support services that Articles 8 and 9 of the Victims' Rights Directive establish, findings from this research indicate. Nine in 10 practitioners interviewed in France, Germany, Poland, Portugal and the United Kingdom saw room for improvement. Likewise, some victims complained that they had difficulty in finding or accessing an appropriate support organisation.

- Practitioners stressed the importance of support services as a means to enable and encourage victims to report to the police and actively contribute to the proceedings. The interviews with victims corroborate this view.

- More than two thirds of victims interviewed would have liked more information about their potential role in the proceedings and more legal advice. This fits with the vast majority of practitioners believing that more needs to be done to ensure that victims are informed effectively about the proceedings and their potential role in them. Again, in Germany, Poland and Portugal, nine in 10 practitioners interviewed agreed with this view.

- Often, victims cannot enforce their rights to have access to support services, to information and to legal aid in court proceedings, because effective remedies are not in place. In particular, legislation should be in place ensuring that victims can assert their right to have, within a reasonable time, access to appropriate support services.

- Governments must ensure an appropriate level for funding of support organisations and that all organisations providing victim support services meet defined standards of performance. Involving civil society organisations in decisions on funding and in the assessment of the performance of support organisations can be a means of enhancing transparency and trust.

Particular attention should be paid to how victims are informed. Across EU Member States researched, practitioners and victims criticised the manner in which the police – and, to a lesser extent, public prosecution services – inform victims about their rights, their potential role in the proceedings and support services available to them. Victims' first contact with the police will be at a fairly early stage. For many victims, it is a stressful situation, when they are not able to absorb much information. In addition, the authorities cannot expect victims to store large amounts of information for possible later use. Most of all, what victims are interested in is not rights at the level of abstract legislation, but rights applied meaningfully to their concrete situation. They need advice and guidance, not just legal information.

All in all, this criticism is consistent and widespread enough to cast doubt on the very idea of relying on the police – or on public prosecution services – to inform victims of their rights. Rather, informing victims should be an integral part of providing support services and accompanying, guiding and advising the victim over the course of the proceedings. Information should respond ad hoc to a victim's needs at a specific time relative to the state of the proceedings, the role the victim wants to play and the rights relevant to the victim's particular situation. Hence, providing victims with the advice they need so they can understand and act on their rights should be part of a comprehensive concept of providing support services.

This research presents evidence of a connection between the effectiveness of support services and how much information victims really have. At present, whether victims are informed or not depends more on the effectiveness of support services that victims receive and less on efforts that the police make to inform victims of their rights.

Therefore, the authorities should enable victims to find their way to a support organisation, which should inform them about their rights. These include their entitlement to free legal advice and assistance, their right to be accompanied when dealing with the police, their right to have a say in the ensuing criminal proceedings and their right to protection against retaliation and secondary victimisation. Victims should decide on this basis whether or not they want to initiate proceedings by reporting to the police. This course of events is premised on:

- sufficient visibility and public awareness of the existence of organisations offering victim support services;

- an effective referral mechanism from the police to support organisations;

- strong coordination among support organisations, ensuring that victims quickly find the most appropriate support organisation available to them; and

- these organisations' capacity, by providing information and by offering comprehensive assistance, to empower and encourage victims to initiate proceedings and to play an active role in them.

The European Parliament deplores "the complexity of procedures for accessing support services and shortcomings in the victim support system, including insufficient access to legal aid and compensation, lack of financial support and coordination between support services, and inconsistent referral mechanisms".[18] In addition, it stresses the need to improve information mechanisms, and underlines the fact that failure to provide information to victims "results in poor enjoyment of victims' rights and dissatisfaction with the justice system and discourages victims from actively participating in the criminal proceedings." This research provides further evidence corroborating the European Parliament's criticism.

For advice on the issues highlighted in these conclusions, see FRA opinions 4 and 5 in Key findings and FRA opinions.

18 European Parliament Resolution of 30 May 2018 on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2328(INI)).

3 Accessibility of proceedings

Overall, to grant victims access to justice, proceedings must be inclusive. That means they must integrate victims, provide them with a significant role and thus overcome a long tradition of excluding or marginalising victims. Two aspects of such inclusivity are the accessibility and receptivity of the proceedings. 'Accessibility' refers to enabling the victim to have a role in the proceedings and to facilitating the victim's participation. Proceedings are accessible if the victim can be present at important stages of the proceedings and have a say. 'Receptivity' is about the criminal justice system's readiness to accept the victim's contribution and hence about the potential impact of the victim's participation on the proceedings. In other words, the victim is not only allowed to be present and to speak, but also listened to, given weight and able to make a real difference to the proceedings.

In a way, Article 1 of the Victims' Rights Directive reflects this distinction. The first sentence announces that the purpose of the directive is to ensure that victims of crime are able to participate in criminal proceedings. The next sentence adds that EU Member States must ensure that victims are recognised and treated in a respectful manner. This can be read as expressing that victims should receive due regard and consideration.

Chapter 4 explores some aspects of the receptivity of proceedings. This chapter is about accessibility.

- It commences with an analysis of victims' reporting to the police (Section 3.1). We asked victims what motivated them to turn to the police, what factors they could identify as facilitating or hindering their reporting and, finally, if they would report again if they fell victim to a similar offence. In addition, we asked practitioners if they believed that certain measures would significantly improve victims' reporting. Based on their assessments, we discuss circumstances that have the potential to facilitate or impede reporting.
- Section 3.2 observes how victims assert their participation rights during the proceedings.
- Section 3.3 deals with aspects of the victims' participation in the court trial. One powerful impediment is victims being unable to cope with language barriers. Sometimes a victim has limited knowledge of the official language of the proceedings; more often the language used is particularly legalistic, bureaucratic and complex.
- Section 3.4 touches on a more general issue. Many procedural rights of victims are not backed up by effective remedies and thus fall short of meeting the standards established by Article 47 of the Charter.

3.1 Victims reporting to the police

This section focuses on victims' experiences in reporting their victimisation, as relayed by participants in this research who had themselves experienced violence. Victims' coming forward and reporting to the police is the main force driving the criminal justice system. In most cases of violent crimes, it is the victim who initiates proceedings by turning to the police and delivering the information on which the police can start to build a case. An overwhelming majority of the victims interviewed had reported their victimisation to the police (some 90 %) and the vast majority of them would report again (85 %).

3.1.1 Victims' motives for reporting to the police

We asked victims about their motives for reporting to the police. The most frequent responses emphasised that what the offender did was wrong and the severity of the offence. As victims see it, it is a matter of justice, of right and wrong. They have been wronged, and they cannot allow this to pass uncontested.

"I was assaulted. […] I just wanted her to be arrested for what she had done; obviously it was against the law. Out of right and wrong." (Victim, United Kingdom)

The wrong done to the victim means that the offender questions and undermines their rights and their status as a rights holder. Therefore, to re-establish a sense of recognition as a respected person, the victim needs a symbolically powerful institution to support them in protesting at and rejecting the message sent by the offender.

"They [the police] have to see that they catch them. If you don't report, then it remains your problem, actually, then you submit to the other one [the offender]. And that's what they [the police] are for, right?" (Victim, Netherlands)

"I think we had to report to the police. We could not just sit there and do nothing. […] This was not a joke, it involved a gun […] This got on our nerves in such a way, inside us, you know." (Victim, Portugal)

Thus, the criminal justice system limits and contains the impact of the offence on the victim as a person and supports the victim in coming to terms with the bewildering, unsettling and disorientating experience of their victimisation. On this basis, the victim can put the victim role behind them and start anew. A member of a support organisation described victims' motivation to report to the police in the following terms:

"[I]t is usually as part of a healing process that is taking place. In trying to come to terms and, you know, get a better quality of life." (Member of support organisation, United Kingdom)

Interviewees described reporting as a way to guarantee that a case file is built up so that the offender can be appropriately convicted and punished. Reporting is the method by which victims can have the facts correctly established and secure recognition as a victim whom the offender has wronged.

For those facing a risk of repeat victimisation – including prominently, but in no way limited to, victims of domestic partner violence – their urgent need for protection measures will be at the forefront of their interest and the reason why they turn to the police.

"I felt my life was in danger and it was a last resort that I needed the police to get this man away, so, safety was my most important." (Victim, United Kingdom)

"Sheer terror that the man might come back and murder me. I had to have the police there to defend me, basically, so, sheer terror." (Victim, United Kingdom)

At times, what motivates victims to report is their sense of responsibility for preventing others from being victimised. A member of a support organisation, specialised in supporting victims of sexual crime, stressed this aspect.

Interviewer: "If I asked you to describe victims' attitudes to reporting their crimes to the police, how would you describe them? […]"

Interviewee: "Huge fear of not being believed and often a huge feeling of responsibility to report due to other people possibly being hurt."

Interviewer: "Okay, so they feel they need to report because they're concerned that someone else might be victimised?"

Interviewee: "That is the main motivator rather than their own self. Again, it's looking at others." (Member of support organisation, United Kingdom)

Many statements of victims corroborated this.

"I just thought […] I need to do this, I'm not doing it for myself, I'm doing it to protect other people. And that was the approach that I took to it. I'm not doing it for myself, I'm doing it for other people." (Victim, United Kingdom)

For some victims interviewed in Poland, reporting the violence they had experienced was a means of drawing public attention to issues of public concern such as risks of abuse by law enforcement officers (municipal guards) or racist hate.

"My wife and I decided that the situation was highly exceptional. […] It was pretty obvious to us that something like that shouldn't go unpunished. For instance, if I had been drunk, got into an argument with someone, hit someone … Then I would give it a second thought. But I was absolutely innocent. Considering this additional context that we live in – the fact that someone can tell an Iranian to get out [of Poland] […] It was important to me that I can speak foreign languages on a tram and I don't want to be afraid of doing this." (Victim, Poland)

3.1.2 Challenges victims face when reporting incidents to the police

It is seldom easy for a victim to decide to report an incident to the police. Victims have to overcome concerns and doubts. A member of a support organisation, interviewed in the United Kingdom, pointed out that a victim's reporting should be seen

against the background of many others who do not report.

"The vast majority don't report, so, those that do you can kind of tell that they have made up their mind that they are going to do that [...]." (Member of support organisation, United Kingdom)

To reach the decision, victims often have to overcome the fear of not being believed as well as feelings of shame and their own guilt. A victim of rape reported it to the police after a number of months.

"I was afraid that people would've blamed me. And I was also ashamed to come forward [...] I thought, you know, my friends and family might have found out, [...] that's why it was quite a long debate." (Victim, United Kingdom)

Many interviewees had concerns about the availability of evidence. One interviewee stated that the pros and cons of reporting have to be carefully weighed, and only if there was a lot of evidence would he report again. This concurs with the view that some members of support organisations expressed: they would not advise a victim to report if they believed that a conviction was not likely for lack of evidence. One expert reflected on the particularly difficult situation of women as victims of sexual violence.

"Only about 10 % of the proceedings lead to a conviction. From this perspective, this activism [...] to think one has to report [...] is unrealistic, unfortunately. Even if the situation seems clear [...] it does not mean that someone will be convicted." (Member of support organisation, Germany)

Whether victims opt to report to the police or not, it must remain their autonomous decision. They sometimes experience it as a burden. A victim of domestic partner violence, interviewed in France, felt pressurised by the police. She was not comfortable with having turned to the police.

"It was not easy. I felt as if I had done something bad, to put somebody in prison. I was disturbed by that. I did not want people to say that I went to report or lodge a complaint, even the phrase [porter plainte] makes me ... Even today, when people speak about it, I feel guilty. That's why I could not report it before... It is as if they obliged me a little to lodge a complaint... I said at the beginning 'I do not want to'. They said 'No, we have a file on him, he is violent, we are not going to leave him like that again, if you do not agree to lodge a complaint, we are going to set him free, then it could happen to someone else or you again, so, it should be done.'" (Victim, France)

Several victims noted that it was not easy for them to decide whether they should report or not. People often take the decision after some reflection, and some victims felt the responsibility of having to evaluate the offender's behaviour and on that basis decide if the offender should be held to account.

"There's only me and him, there's no other person involved. I feel as if it's down to me to say, you know, 'this is how I feel, this is what he'd done'." (Victim, United Kingdom)

Turning to the police is particularly difficult when the offender is a close relative, friend or neighbour. The decision to report the offender's conduct to the police can require detaching it from its social context and assessing it somewhat in isolation – as a wrong that, whatever its history, social context and personal background, cannot be allowed to go uncontested. People find it a relief when, once they have reported the offence, the police take over and the victim can simply support the police.

"I had somebody do something to me that I thought justified going to court ... Justice [...] with it being such a close personal friend for a long time before that, it wasn't a simple matter. The police involved and saying, 'Yes, let's take him to court', [...] I'm quite happy for the police and to give them everything they need to know to get the ball rolling." (Victim, United Kingdom)

Victims feel responsibility for what, by reporting the offence and supporting the police and the prosecutor, they do to offenders.

"I am a quite empathic person and the sight of a man in handcuffs escorted by the police caused in me this sensation that it was partially my fault." (Victim, Poland)

If the offender lives within close proximity – as is often the case – the social repercussions of reporting the offence can be significant. Asked if the criminal proceedings overall improved his situation, a victim of intentional wounding replied:

"Well, to be honest I don't know. I feel like I wish he wasn't in jail now [...] Because of all the stick I get." (Victim, United Kingdom)

Hence, to reach a decision to report to the police, victims need to overcome uncertainties and ambivalences. One important function of the proceedings is to assure victims who reported to the police that they were right to not allow the wrong to pass unchallenged.

3.1.3 Victims' willingness to report again

Not all of those who initially reported stated that they would report to the police again if they fell victim to a similar offence. Nonetheless, across all EU Member States covered by the research, the number of those victims who would report again was always higher than the number who would not. While reasons for reporting

and for not reporting a similar offence varied, we can identify a number of common themes. Some of them reflect the motivations of the initial decision to report or not to report in the first place.

Those interviewees who stated they would not report a similar offence referred to two key issues. The first was that they had received poor treatment from the police. They often referred to instances of discrimination and the feeling that they were not being taken seriously.

The second relates not to the procedure of reporting to the police itself, but rather to the subsequent criminal proceedings. If proceedings are bureaucratic, time-consuming and not transparent, they can discourage victims from reporting or leave victims with feelings of helplessness and a lack of control of their situation.[19]

3.1.4 Factors facilitating or hindering victims' reporting

One crucially important aspect of the criminal justice system's accessibility concerns how easy or difficult it is for victims to report to the police, once they have decided to do so. This also depends on aspects that state authorities control and shape. The height of the threshold that the victim needs to overcome depends on factors such as victim-friendly attitudes, and procedures that are less bureaucratic and more accommodating of the rights and needs of victims.

Some victims, at an early stage of the proceedings, wanted to participate but a certain experience discouraged them or they gradually lost motivation over the course of the proceedings. Factors that victims identified include:

- a lack of support, leading to victims feeling that they are abandoned, and support systems that discourage victims from participating in the proceedings, as observed in Poland;
- a lack of recognition as a victim of violence, or a lack of commitment on the part of the law enforcement agencies resulting in an ineffective investigation;
- inappropriate reactions, comments or treatment by the police.

Victims said that one obstacle to their access to justice was the reluctance of police to pay attention to victims' reporting. Two interviewees relate this reluctance to the feeling that the police did not take their complaint seriously. Other victims described having to report several instances of violence before an investigation was initiated. Relatedly, one interviewee spoke of the feeling of having to prove that her complaints were trustworthy. In some cases, victims had to insist or to report the same crime multiple times before their complaints were accepted.

"It was difficult. I had to go there several times for them to take my complaint. I insisted a lot. […] The police did not listen very well. They tried on several occasions to make me withdraw the complaint. I did not do that, I left it, but it was difficult." (Victim, France)

A victim of homophobic harassment experienced the police as unresponsive. That had a major impact on the victim, as his attempts to defend his rights against constant violation failed. It was secondary victimisation. From the victim's perspective, the police's reluctance to stop the offender's abusive behaviour confirms and reinforces it.

"I've put in nearly five and a half years' worth of effort. Hundreds of phone calls, literally hundreds of phone calls to the police, my local MP […], I've had [the] City Council involved, I […] was just ignored … I was just constantly reporting it […] to try and to get things to stop but [the] police took absolutely no notice of me. […] I wanted to be acknowledged, for a start […]. But they didn't take any notice of me. […] It's had a massive effect on me […] Because they don't acknowledge it. […] he's going mad, screaming and shouting at me outside and I'm inside my property, pleading for help, saying, '[…] will you please send somebody out?' Nothing." (Victim, United Kingdom)

As well as being reluctant to record a complaint, the police tend to convert a report of criminal victimisation into a less specific incident report, as a judge interviewed in France noted:

"What is sure is that there are still practices of dissuasion from lodging a complaint by the police: a refusal to record the complaint, an incident report." (Judge, France)

Similarly, an interviewee from a support organisation in Portugal observed that the police would at times discourage victims from reporting. In one case of homophobic harassment in the United Kingdom, police officers openly expressed doubt about the possibility of proving a case and told the interviewee to keep on reporting individual incidents. This continued for over a year and left the victim hesitant to continue reporting.

Some practitioners interviewed in the project were reluctant to acknowledge and treat the victim as the person wronged by the offender. However, some still saw it as the task of the victim to see to it that 'their' case is taken up, even if the police are hesitant to initiate

19 On bureaucratic and time-consuming proceedings as a factor discouraging victims, see previous FRA publications, including FRA (2013a), p. 51; FRA (2016b), p. 32.

proceedings. Thus, they see the victim as the 'owner' of the case and responsible for it, at least before the public prosecutor takes over. A representative of the judiciary in Germany explained:

"If you want the police to continue working on your case, it is always good to give them a little push. [...] If resources are limited, the police will have to decide where to start [...] and of course it helps to refresh their memory every now and then." (Judge, Germany)

Some groups of victims encounter a particularly sceptical attitude, including victims of sexual violence. Several interviewees in Austria reported that police officers intimidated victims by calling their reports into question and by pointing out the consequences of a false witness statement. A staff member of a support organisation observed:

"If I report to the police that my bike was stolen, no one would call this into question, although it is often done because of the insurance and so on. But as soon as I report rape as a woman, it is, first of all, doubted. 'Why did you not come earlier if the rape happened the day before yesterday?' [...] In addition, the victim is immediately cautioned about the legal consequences of false testimony or defamation. The victim as a witness must not lie; the suspect may lie to protect themselves. [...] These routines may be legitimate from a formal legal point of view, but they are not respectful treatment of the victim." (Member of support organisation, Austria)

A victim of rape, interviewed in the United Kingdom, recalled the scepticism she met with when reporting to the police.

"[O]ne officer [...] asked me if I'd dreamed it. The first detective. She said a lot of women do dream [...] and I said, 'I spent 15 minutes talking to the b*stard, I didn't dream it'. And the other physical evidence showed that I didn't dream it either, because I was extremely cut up inside." (Victim, United Kingdom)

In addition, some police officers are reluctant to accept victims' reporting and to initiate proceedings. For instance, a police officer interviewed in the Netherlands commented on victims reporting in domestic violence cases:

"I'm not a big fan of reporting, since the police cannot always offer the person reporting what they are hoping for, since not all things are provable. There are so many cases in which the police cannot investigate. When it comes to the victim, I believe more in having a conversation about their needs and then finding the best way in which they can be accommodated, and which organisations need to be involved. In cases of domestic violence, for example, it's not always useful to interfere in a family by pursuing a criminal proceeding." (Police officer, Netherlands)

In addition, police are at times reluctant to respect rights that empower victims and facilitate their reporting, our research finds. This is possibly because they lack awareness of victims' rights. For example, a victim interviewed in Germany who was accompanied to the police station by a member of a support organisation recalls:

"[The police officer] said: 'Who is this?' I said: 'My victim counsellor.' He then remarked in a really degrading manner: 'Victim counsellor? What's that about? There is no such thing here.' So, I said: 'Well, I think it's my right.'" (Victim, Germany)

3.2 Victims asserting their participation rights

Legislation is gradually shifting from perceiving the victim as a passive object towards entitling the victim to act as a party to criminal proceedings. Despite that, in the eyes of professionals, the victims' primary role remains that of a witness, a means to the end of successfully conducting proceedings and establishing the truth. Hence, victims often do not receive information about or encouragement to make use of their participation rights. Rather, one factor that determines whether or not victims are content with the amount of participation they achieved in the proceedings is their own persistence in demanding that they should be heard. Victims commented that, if they had not been self-reliant and assertive, they would not have found out how criminal proceedings work and about their own potential role. Regrettably, less assertive victims will not be able to exercise their participation rights to a similar extent.

"For people who are not so assertive, or less literate, do not look for information by themselves, those people really need to be more effectively informed. The communication towards those people needs to be improved." (Victim, Netherlands)

"Therefore, a victim who is more proactive, who shows that she's more certain, I believe ... I don't have any studies telling me this but it's my belief that the victim will get a better reception than someone who is more reluctant." (Member of support organisation, Portugal)

As the justice system will not make participation rights easily accessible, access to justice depends on a proactive victim, preferably backed up by a lawyer or a support organisation.

However, a police officer interviewed in Austria observed that, in general, victims of violence are not in a situation where they can be expected to fight for their rights and defend their position.

"In another life situation, they would probably be more likely to muster up the energy to defend themselves, but if it is about the story of their experience of violence, when they are traumatised already, and now [the impression that] 'Nobody believes, and nobody helps me,' this reinforces their depressing [experience] and then they don't have the energy at all to put up a fight." (Police officer, Austria)

This points to a vicious circle. Because of their victimisation, victims are not in a position to assert their rights. As a consequence, the authorities do not take their rights seriously. Victims experience that as a form of further – secondary – victimisation and it reinforces their lack of self-assurance, orientation or sense of being in control of their situation.

What motivated victims to act as joint prosecutors was, in many instances, the hope that they could thus overcome being side-lined and improve their level of involvement in the proceedings.

"I was told [by the police] that, as a victim of severe bodily injury, I would have no further function during criminal proceedings except for being questioned [...] my lawyer also explained to me that, as a victim as such, I wouldn't necessarily be able to view the files, except if I was joint prosecutor [...] I was very surprised, that as a victim you basically remain unnoticed [...] that bothered me massively, so I went the way of being joint prosecutor, there was no big question mark for me, I did it." (Victim, Germany)

However, the majority of victims who opted to act as a joint prosecutor experienced this role as limited. They ended up wishing that they had been more involved in the proceedings. The victims in Germany who had opted to act as joint prosecutors were no more content with the level of their involvement than those who had not adopted that role. This raises the question of why the considerable participation rights linked to the status of a joint prosecutor make, in practice, little or no difference from the victims' perspective.

In Poland, obtaining the position of a joint prosecutor requires that the victim submit a motion, which requires some legal expertise. This requirement is another limitation to victims' access to their participation rights.

"I could have acted as a joint prosecutor, but I would have needed to prepare a motion for a charge of legal qualification, of which I know nothing. If I had devoted a lot of time to this and had studied the Criminal Code, I'd probably have prepared such a motion [...]." (Victim, Poland)

3.3 Victims in the court trial

3.3.1 Victims' participation in the court trial

For victims to sense that justice is done, it is important that they are present and able to participate in the court trial. This is not the case in the United Kingdom, where some victims were surprised not to have any part in the trial.

"It was just taken for granted that I wasn't going to go to court to hear the outcome. [...] Victim Support said victims just don't go to court to find, to hear the judge giving a sentence, so, I basically just sat at home waiting for a phone call and as I said, some court reporter rang me and then the witness person rang me." *(Victim, United Kingdom)*

This victim was not even properly informed about the outcome of the proceedings.

"The court wrote to me and told me that he'd been found not guilty, when he'd been found guilty, just another blunder. That was after the phone call, so the court reporter said, 'he's been found guilty and he's been given a compensation order for GBP 2,000', then the witness lady phoned and said, 'no, the guy said he'd been fined GBP 2,000'." (Victim, United Kingdom)

Similarly, several victims, interviewed in the Netherlands, were critical about their marginal role during the court trial. On the advice of a support organisation or their lawyer, many victims had submitted a written victim impact statement to be read out during the court trial, but did not find this a sufficient means of involvement. A victim from the Netherlands who had submitted a written victim impact statement was disappointed at his limited involvement at the court trial.

"I would have expected to be able to speak longer, since it was now no more than a minute, more or less. I would have liked to tell the whole story of what has happened, but there has been no possibility. Moreover, I expected to receive more information during the proceedings. I knew only the minimum." (Victim, Netherlands)

Like those in the United Kingdom, victims interviewed in the Netherlands complained that they were not informed about the outcome of the proceedings.

"I wasn't present at the court trial and they didn't ask me as a witness. I didn't get any information after the trial [...] upon which I decided to call the public prosecutor myself. Up until today, I only heard orally what the verdict of the judge was. Besides that: nothing! No letter about the verdict, no information on the restraining order. Absolutely nothing." (Victim, Netherlands)

One victim described it as very stressful and re-traumatising to be forced into an entirely passive role and a situation that was beyond the victim's control.

"Regarding the trial, it would have been nice if I had known what was about to happen. I had no idea. Being in court and having to endure the confrontation with the offender was very traumatising. Especially when you are both present and someone reads out loud what he has said and done to you. Something in me changed definitely." (Victim, Netherlands)

Some victims emphasised their positive role in ensuring that justice was done in the court proceedings. That role allowed them to fight against their marginalisation. A victim of domestic partner violence explained why it was important for her to be able to speak up in the court trial.

"I had the impression that it was the man who was listened to more [...] I was not listened to at all. So that motivated me to say 'No, it is unjust, it is out of the question for me to give up, I'm not giving up any more, because the truth is on my side.'" (Victim, France)

Some victims interviewed in Poland felt the necessity to act as joint prosecutors because they sensed that the public prosecutor was weak in putting their case.

"What surprised me most was that prosecutors – every hearing was attended by a different prosecutor – came completely unprepared. I counted that, for 70 questions asked by the defence counsel in the course of one court hearing, there was one question from the prosecutor. In his final plea, the prosecutor displayed a lack of knowledge of the case." (Victim, Poland)

Similarly, several victims in Portugal observed that at various court hearings different prosecutors acted on the case, with, at times, very different outcomes. One victim interviewed in Portugal, an experienced lawyer himself, observed that two prosecutors assisted him and their performance was radically different. One was highly effective and the other one did a very poor job.

"[I]t was a complete disgrace, a total scandal. He had no idea what he was doing. [...] he knew nothing of his job, he hadn't even read the case file. This was so obvious that the judge told him to shut up many times. A disgrace." (Victim, Portugal)

Thus, victims were critical about public prosecutors not being committed to their function and not ensuring that justice is done.

The police at times lack robust knowledge of court practices, so we asked only other practitioners two questions about victims' participation rights at court: if victims are entitled to call for any evidence that they consider relevant; and if victims can ask questions or have questions put to witnesses during court trial.

Victims have both rights in all type 1 countries, provided that they opt to act as a party to the proceedings. They have those rights as civil parties in France, according to the relevant legal provisions. In the Netherlands, victims have the right to ask for evidence to be taken, but not the right to ask questions to witnesses. Victims have neither right in the United Kingdom.

In general, answers from prosecutors and judges reflected the legal situation. However, in some instances, interviewees were not sure or gave answers that diverged from procedural codes. This may indicate the lack of consolidated court practice, possibly because victims only rarely act on the rights in question.

- For instance, in France five interviewees agreed that victims are entitled to call for evidence while two disagreed.
- Similarly, of eight respondents from the judiciary group in Austria, five said that victims can put questions to witnesses, one said no and two were unclear.
- In the Netherlands, two interviewees observed that victims have a right to call for evidence to be taken but that they had never experienced this in practice.

Hence there are indications that some rights in question exist in theory rather than in practice.

Concerning the right to ask questions or to have questions put to witnesses, practitioners from Austria, Germany, Portugal and France stressed that in practice only the lawyer can act on this right. In Poland, at least occasionally, victims themselves act on their rights, it appears. For example, one victim interviewed in Poland recalled:

"After a whole series of lies from the defendants I informed the court that I have one more recording that will disprove their testimonies. The judge concluded that I can attach this recording [to the file] and it was included [as evidentiary material]." (Victim, Poland)

In France, practitioners interviewed in the project explained that questions usually go through the president of the court. Occasionally the president will allow the representative of the victim to put a question to a witness directly, under the control of the court, but never the victim in person.

As often in this research, these questions sparked lively comments from court practitioners in the United Kingdom on whether such rights would be feasible, beneficial or desirable. They had highly diverse standpoints.

"[I]t would definitely impact in terms of the length of the trial and the whole way in which we conduct our business. It would be radical, you know [...] I'm not saying that it shouldn't happen, but it would be a radical development and it would probably turn the whole criminal justice system on its head." (Public prosecutor, United Kingdom)

"Under no circumstances. [...] You can't have offers of people asking questions, the Crown are there to prosecute in the public interest and that's what it's all about and they will ask the questions, nobody else. If [the victims] were asking questions then you end up with them entitled to make a jury speech as well, so I don't think you can have that." (Judge, United Kingdom)

"I'd never really thought of it from that perspective, but in a way, whyever not? Before I was a prosecutor I was a barrister [...] you wouldn't dream of cross-examining someone without having some input from your client, but ultimately the questions you ask are up to you." (Public prosecutor, United Kingdom)

3.3.2 Victims (not) understanding the course of proceedings

Article 3 of the Victims' Rights Directive grants victims a right to understand and to be understood in any interaction they have with a competent authority in the context of criminal proceedings. Consequently, victims who do not understand the language of the proceedings have a right to interpretation and translation, according to Article 7 of the directive. Victims are to be provided with interpretation free of charge, at least during any interviews, including police questioning.

For victims, one element of overcoming their victimisation consists in re-establishing a sense of control of their situation. The proceedings should support victims in this process. However, for many victims, criminal proceedings are opaque, incomprehensible, beyond their control and at times even Kafkaesque. A victim interviewed in Portugal observes:

"I made the complaint in writing, because being heard ... I was never heard. They gave me the paper to file my request. The lady there told me immediately that it would take time. [...] It took some because I went from court to court, because some people said that it had gone to Barreiro and then from Barreiro to Moita and then it never got to Barreiro. After all, it is still in Moita. The only thing I have from the court is this letter telling me to go to court." (Victim, Portugal)

In the interviews, we asked victims whether they agreed or disagreed with the proposition that 'Overall, it was difficult to understand and follow the course of the proceedings' (Figure 22).

- Two out of three victims interviewed agreed. One in four strongly agreed with this view.
- Particularly many victims in France, Poland and Portugal agreed. However, despite significant differences, in all the EU Member States participating in the research at least half of the victims interviewed found it difficult to understand and follow the proceedings.

"Yes, I would say it was difficult to understand, because I didn't understand about this category A, category B crime and I was totally bemused how you can go from a low B to a high A in the space of minutes, and then it was explained to me that she was just doing her job. But I didn't know anything about categories of crime, and that would've been beneficial to have understood that." (Victim, United Kingdom)

Only a few victims interviewed in the research were not able to understand the language of the proceedings because they came from other countries. Still, several victims interviewed maintained that language difficulties restricted their participation in the proceedings. A victim interviewed in Poland was 'informed' of his rights by the police, who handed over a letter of rights in Polish although it was obvious that the victim would not be able to understand the text.

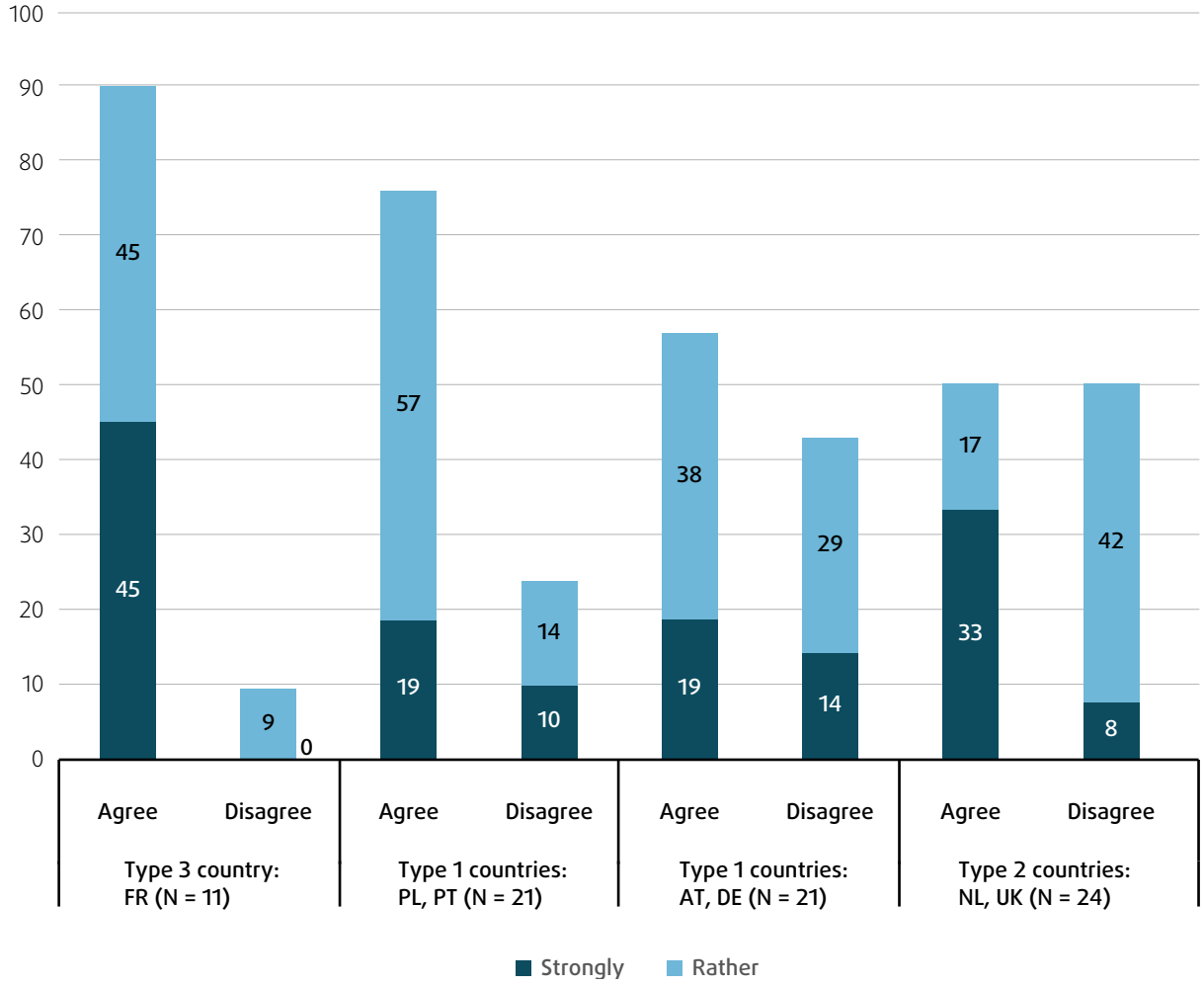
"They didn't tell me about any lawyer, but they gave me a paper in Polish language. I didn't understand it well. Maybe it was written there." (Victim, Poland)

The mother of a victim of the terrorist attacks in Paris recalled:

"The counter-terrorism police took some statements from myself and from my daughter, and they were very nice, but the main problem was the language, they did not speak Spanish, and the person who was supposed to translate arrived too late. So, I used my very poor French, and the police woman who interviewed me used her poor Spanish and we finally managed to get to understand each other." (Victim, France)

For good reasons, the European Parliament's Resolution of 30 May 2018 on the implementation of the Victims' Rights Directive criticises the fact that "clear information is often not provided in more than one language, making it difficult, de facto, for victims to seek protection abroad in another Member State." If victims are not able to follow the proceedings, they are not in a position to intervene meaningfully. Rather, it conveys the message that those conducting the proceedings are not very interested in victims' participation or contributions. If victims feel that what happens with 'their' case is beyond their comprehension and control, this can make them feel all the more that they have lost their footing and control of their situation. It adds to the confusion that the offender caused. A victim of armed robbery, interviewed in Portugal, found the letter he received from the court intimidating.

Figure 25: Victims agreeing/disagreeing with the statement 'Overall, it was difficult to understand and follow the course of the proceedings', by type of country (%)



Source: *FRA, 2019*

"The first time I got the court's notice, the first letter, [...] I started to tremble. Until this stage, I was not afraid. But when I got those letters ... you know, they are written in a way that it almost seems that you are the robber ... I think it could be a bit moderate." (Victim, Portugal)

In sum, if proceedings are conducted in a manner that does not help victims participate, it contributes to sidelining victims and excluding them from the proceedings. It has almost as significant an impact as giving victims inadequate information about their rights and potential role.

3.4 Effective remedies available to victims

Victims must have effective remedies available to them in two situations, according to Article 47 of the Charter:

1. if there is not a thorough and effective investigation or prosecution;
2. if their concrete rights to participate in the investigation or in the court proceedings under the Charter or the Victims' Rights Directive are not respected.

3.4.1 Remedies to challenge the reluctance of authorities to act

In several of the jurisdictions in this project, while the police in practice enjoy considerable leeway in what and how they investigate, the investigation is formally under the authority and overview of the public prosecutor. Hence, if the police fail to conduct an effective investigation, the victim can turn to the public prosecutor's office. For example, a victim of stalking, interviewed in Poland, first turned to the police but felt that they did not take her seriously. Only after she reported directly to the public prosecutor were the police ready to take her statement.

"[T]he inquiry is run by the public prosecutor's office; the one investigating these crimes is the public prosecutor. The public prosecutor may delegate such an inquiry to the police. When we say here that they [victims] are going to a criminal investigation unit and have to answer the police, we are saying that the public prosecutor has delegated the power to investigate to the police […]." (Member of support organisation, Portugal)

If the public prosecutor decides not to prosecute, victims have a right to a review of this decision, according to Article 11 of the Victims' Rights Directive. While Article 11 grants victims this right "in accordance with their role in the relevant criminal justice system," for victims of violent crime Article 11 of the directive is to be read in the light of Article 47 of the Charter. That grants victims of violence the right to an effective investigation capable of leading to the identification of the offender(s), and fair trial rights in the proceedings.

In France, the police do not investigate all cases reported to them, mainly for lack of resources, and public prosecutors may exercise wide discretionary powers, practitioners observed. However, in France the victim can initiate proceedings and stand as a civil party. That can, to a certain extent, overcome deficiencies resulting from any reluctance of authorities to take action.

Interviewer: "Does the victim have recourse if ever the prosecutor refuses to prosecute?"

Interviewee: "Yes, there is a direct subpoena. When you have an identified perpetrator and the prosecutor dismisses the case, and the victim believes that they are within their rights, they directly subpoena the perpetrator." (Police officer, France)

In Austria, in practice, there is no effective means to make the police investigate in a suspicious situation if they are reluctant to do so, practitioners observed. In Portugal, practitioners across professional groups agreed that a victim could challenge an ineffective investigation but that they rarely do, either because they do not have enough information about the course of the investigation or because nobody informs victims of their right to challenge a deficient investigation. In addition, practitioners interviewed believed that the prospects of such a remedy were poor. It is easier to have the case reopened on the basis of the victim offering new facts or additional evidence.

The question of whether or not the police are obliged to investigate in cases of suspicion would seem rather straightforward. Still, the research in Poland showed significant discrepancies in professionals' perceptions of the duties of law enforcement bodies.

- Respondents from support organisations and lawyers (groups S and L) firmly stated that the police enjoy a wide margin of appreciation in deciding whether to investigate or not.
- The representatives of the police (group P) did not agree with this view.
- Respondents from the judiciary (group J) presented more mixed answers.

In addition, respondents from groups S and L stated that victims have to present solid evidence to initiate an investigation, while interviewees from group P stated that they have to provide only some basic facts.

Many reasons why the police do not investigate a case of suspicion, or prosecutors do not take a case to court, surfaced in the research. They need more detailed investigation. One example from this project concerned a rape case. It was discontinued because the offender was a migrant in an irregular situation of residence and was returned to his country of origin after the police apprehended him, before a prosecutor had dealt with the case. The victim went to the prosecutor's office to find out about her situation and was told that the police had never informed the prosecutor of the case. She felt that the police were more concerned with the offender's immigration status than with the fact that he had raped her. If the evidence available to the police would have enabled the prosecutor to take the case to court, not informing the prosecutor would amount to a violation of the victim's right to justice under Article 47 of the Charter. The police remarked that the victim no longer had to worry about the offender. That gave the victim the impression that the police did not understand that the offender's removal was not an adequate outcome for her. Voices from academia have maintained that, if the police or the public prosecutor want to drop the case, for whatever reasons, this should not happen without the involvement of the victim.[20]

Another reason why cases do not proceed is that prosecution is statute barred. In particular, this affects cases of sexual child abuse that are reported to the police many years after the violence occurred.

20 Weigend (2012), p. 48; Schädler (2012), p. 64.

Interviewee: "Not so long ago, on allegations of a rape, the rape of a child. So, a girl who was raped by her father. She reported it 20 to 25 years later. I do not know the time limitation […] in any case, it was statute barred. The investigation was nevertheless undertaken, even though it was statute barred, but knowing that in any event …."

Interviewer: "Why? What was the objective if you knew that the case would be dismissed?"

Interviewee: "Yes, but she came to us. We cannot say 'no, it is statute barred' and see her leave. We carried out the investigation, we informed the public prosecutor. […] But then, in fact, it was statute barred." (Police officer, France)

For victims to feel that justice is done, they need not only an effective police investigation. The resolve and diligence of public prosecutors in taking the case to court are also important. Members of support organisations, interviewed in Austria and Portugal, pointed out that, in practice, public prosecutors enjoy wide discretion about whether they opt to prosecute a case or not. Reluctance to prosecute can be in tension with victims' rights to have access to justice. It can cause considerable frustration to victims and police officers.

"[T]he public prosecution service has the full power, I would say. The public prosecution service is the institution closing cases, right? So, it's much more of an institution closing cases than a prosecution service; extremely many proceedings are discontinued. […] I think it's really also a matter of economy, to be honest. Obviously, no one there will officially say so, but we are often on the receiving end of victims' frustration […]. If it's about intentional crimes, intentional physical harm and violent crimes, then they do take it very badly. And it's especially difficult in the area of sexual crimes: extremely many proceedings are terminated […]." (Member of support organisation, Austria)

"But here, there's a margin in which the prosecutors may not … what I mean is, they investigate but they may not prosecute. They may discontinue the case; they may reclassify it so that it becomes a less serious crime. […] The prosecutors have the autonomy to do this." (Member of support organisation, Portugal)

Practitioners interviewed in Germany were particularly concerned that jurisprudence is placing increasing restrictions on victims' means of challenging a decision by the public prosecutor to discontinue the proceedings. The complaint procedure has two steps: a complaint to the attorney general, followed by a second complaint to the higher regional court. It is almost inaccessible, not least because of the extensive formalities required to file such complaints. A representative of the judiciary comments:

"Jurisprudence of the higher regional courts is ultra-destructive, it is hardly possible to even file an admissible application for an enforcement procedure. […] the enforcement procedure at the higher regional courts in Germany is practically futile. Jurisprudence has completely shut down this remedy." (Judge, Germany)

Again, this criticism could indicate that remedies are ineffective. That would be in breach of Article 47 of the Charter.

3.4.2 Remedies to challenge decisions that fall short of respecting specific procedural rights of victims

The second category of effective remedies is those available to victims who feel that their concrete rights in criminal proceedings are not respected.

Such remedies are lacking, this research finds. Either legislation has shortcomings, or remedies that exist at the level of legislation are not used in practice. Only practitioners interviewed in Austria reported that, if participation rights are violated, victims, in some cases, would challenge the final judgment. A superior court can then annul it.

"[I]f a request to take evidence is wrongly not accepted. Then you can file an appeal for nullity […] In this sense: you [the court] can't really just ignore the law." (Member of support organisation, Austria)

But practitioners in Austria criticised the fact that violations of victims' rights can be challenged only if they had an impact on the final judgment. Nothing can be done during the original proceedings to ensure that they take victims' rights seriously.

Elsewhere, an apparent lack of remedies impairs victims' rights and, in a way, condones practices that fall short of taking victims' rights seriously. Practitioners saw this as a serious and significant shortcoming.

"The [criminal] justice system is the last bubble that needs to be burst. […] As it is now, a victim has rights, but no remedies." (Lawyer, Netherlands)

As a result, practitioners, at times, treat victims' participation rights as merely an option. In Germany, many aspects of victims' participation rights are perceived as informal options reliant on the assessment, good-will and capacities of the institutions or individual practitioners responsible, rather than concrete rights guaranteed to victims, the research indicated. This

includes, for example, victims having a trusted person present during the police interview or the hearing at court, or an individual assessment of the risk of repeated or secondary victimisation.

Victims' participation rights will materialise in practice only when practitioners treat them as legally binding, and effective remedies back them up.

Conclusion

- Police officers and public prosecutors are not always aware that a victim of violence has the right to an effective investigation and prosecution capable of leading to the identification, conviction and punishment of offenders. The authorities have a duty to do their best, but there is no guarantee of the result. Nevertheless, the obligations are strict. They do not give competent authorities significant discretion if a victim can argue that a violent offender has violated their fundamental rights. The police and public prosecutors should act in a manner that leaves no doubts about their commitment to a thorough investigation and their determination to prosecute offenders rigorously.

- Two out of three victims interviewed in this research agreed that, overall, it was difficult to understand and follow the course of the proceedings. One in four interviewees strongly agreed. However, if the proceedings side-line victims, exclude them and do not allow them to understand what is happening, it sends a message that state authorities do not care about their participation. That can amount to a denial of access to justice. Similarly, conducting the proceedings in a manner that is bureaucratic, time-consuming and not transparent discourages victims from participating.

- In some EU Member States, rights of victims to participate actively in the proceedings exist more in books than in practice. What helps explain the difference between legislation and practice is a lack of effective remedies. In the current state of play, the victim has rights but no remedies, interviewees reckoned. That situation violates Article 47 of the Charter. Legislation must comprehensively ensure that victims have effective remedies available to them, where they sense a lack of committed investigation or prosecution or that the authorities do not take seriously their rights to participate in the proceedings.

For advice on the issues highlighted in these conclusions, see FRA opinions 6 and 10 in Key findings and FRA opinions.

4 Receptivity of criminal proceedings

According to Article 47 of the Charter, the victim has a right to be heard. 'Hearing' in this context does not mean just perceiving but includes social aspects such as recognising victims, paying them attention and taking them seriously. Hence, 'receptivity' denotes the criminal justice system's willingness not just to tolerate the presence of the victim but to hear them. That means listening to the victim's views and suggestions, considering them and, when appropriate, accepting them. In the same vein, Article 1 of the Victims' Rights Directive obliges EU Member States to ensure "that victims are recognised and treated in a respectful [...] manner". Accordingly, victims' core right to be heard under Article 10 of the directive obliges the police, prosecutors and judges to give due consideration to what the victim has to say.

The litmus test of access to justice is if victims feel that their contributions are heard, appreciated and given due attention. Victims of violence need to establish a self that others recognise. It is important to listen to and acknowledge their account of their victimisation. If 'hearing the victim' is a mere ritual with little significance, if victims are given the floor only to realise that nobody pays attention to what they have to say and that they, unlike the defendant, have no real role in the proceedings, this can amount to a form of secondary victimisation. Hence, access to justice requires conveying a clear message to victims that they are heard and that their rights and concerns are taken seriously. Only then will victims sense that they have a real voice – a say – in the proceedings.[21]

In the end, victims' access to justice is very much about practitioners' attitudes towards victims. Practitioners' understanding of the functions of criminal justice may lead them to regard victims' participation rights as an onerous formality or as legitimate and welcome. This touches on the topic of Section 1.2: how practitioners view the role of victims of violent crime. Many victims sense that practitioners do not appreciate their participation and do not take what they say seriously, at least not to the extent that it could have an impact on the proceedings, this research shows.

In the interviews, we asked victims if they felt that the police (see Section 4.1) and the courts (Section 4.2) gave their rights and concerns due consideration. We asked practitioners if those working in the criminal justice system would take the rights and concerns of victims seriously (Section 4.3).

4.1 Victims' views on the receptivity of police investigations

Victims want to contribute their personal account of their victimisation and, on this basis, to gain recognition as victims of criminal wrong. The reaction of the police is what first tells them if the state authorities representing the criminal justice system understand that wish and take it seriously. One victim had been stalked for almost two years and had reported to the police a number of times without success. He was relieved when the police finally accepted that he had been wronged.

"The police didn't respond in a strange way; that has helped me a lot. They didn't think it was weird I reported this situation. If they had responded differently, if they had put me down, I would have thought that the way in which the offender treated me was somehow the truth. Words are very strong." (Victim, Netherlands)

A particularly sensitive issue is how the police deal with victims of sexual violence. A rape victim, interviewed

21 On "influential victim voice", see Holder (2018), pp. 162–178.

in France, observed bitterly the failure of the police to convey an appropriate message to the offender.

"I have the impression that the judicial police department rather took the side of the offender; he must feel really good, and the remarks of the police justified what he did, so he can do that whenever he wants." (Victim, France)

Some victims of racist violence, interviewed in Germany, felt that the police had treated them in a discriminatory manner. Thus, the police corroborated the message of discrimination that the offender's conduct conveyed, and reinforced the victimisation. The same holds for a victim in Poland who was severely beaten in the street. When the police arrived, they first took the victim to the police station to check the legality of his residence status. Only then did they call an ambulance.

"I was surprised because when the police came one of them said to me 'You will be deported.' [...] I was injured. I was bleeding, and he did not ask anything." (Victim, Poland)

Thus, the police discriminated against the victim like the offender had. Staff members of support organisations confirmed victims' observations concerning discriminatory treatment of certain groups of victims.

Interviewer: "Which group would you identify as being particularly susceptible to discrimination from the police?"

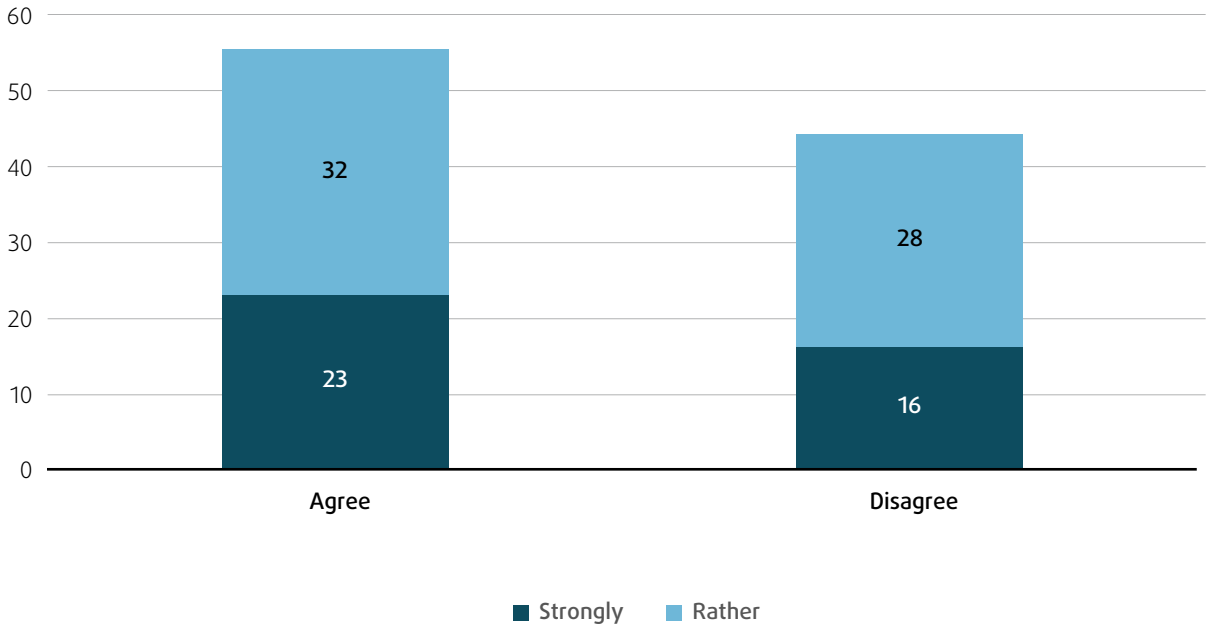
Interviewee: "On the one hand obviously people with a migratory background, refugees, but also homeless people, people with addiction problems are very often not taken seriously, [...] also women who file reports because of partner violence [...]" (Member of support organisation, Austria)

We asked victims if they felt that the police took their concerns and rights seriously and gave them due attention.

This overall picture is quite mixed (Table 4). Considerable numbers of interviewees strongly agree and strongly disagree with the statement. Given this diversity of answers, we can expect differences between countries (Figure 23).

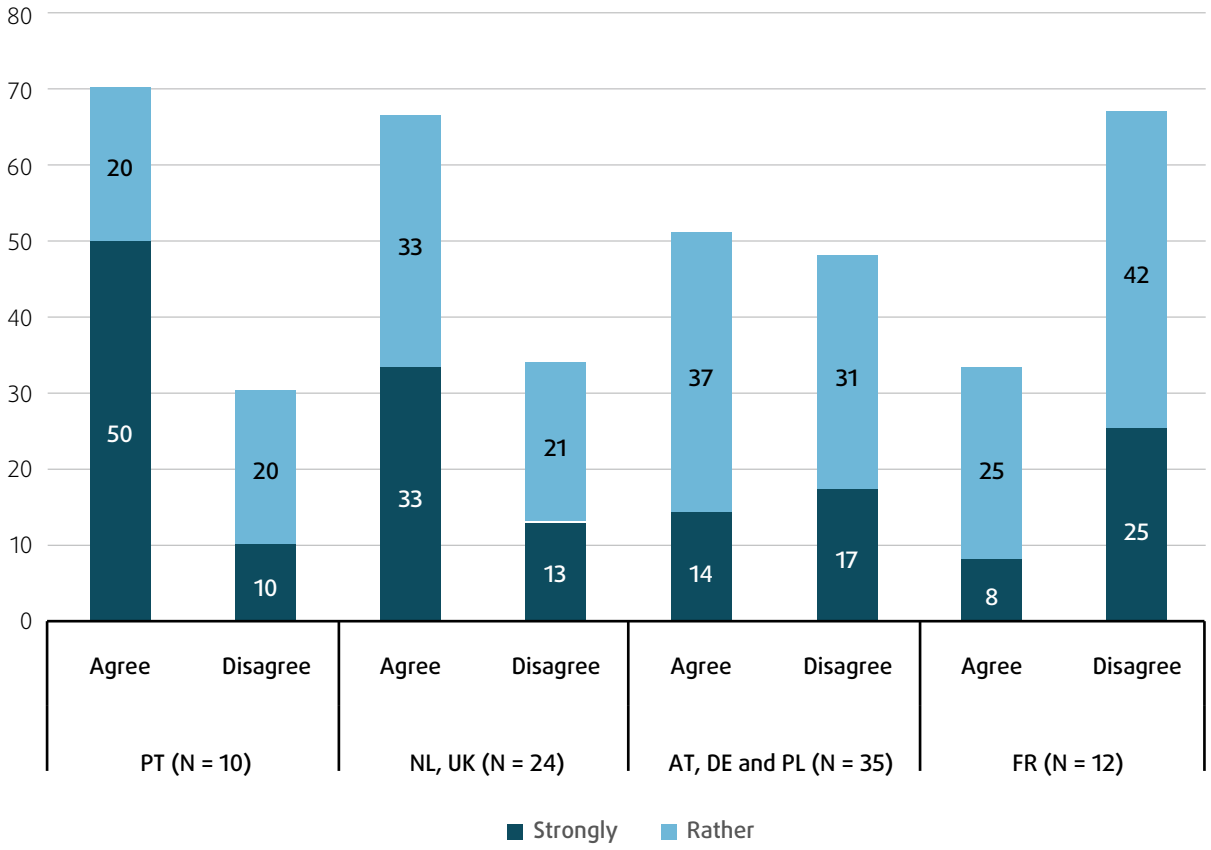
- In the Netherlands, Portugal and the United Kingdom, twice as many respondents agreed as disagreed.
- In Austria, Germany and Poland, similar numbers of interviewees agreed and disagreed.
- In France, two thirds of respondents disagreed.

Figure 26: Victims' responses to the statement 'During the investigation, I had the impression that my concerns and rights were taken seriously by the police and were given due attention' (%)



Note: *Answers by victims in the seven EU Member States covered by this report (N=81).*
Source: *FRA, 2019*

Figure 27: Victims agreeing/disagreeing with the statement 'During the investigation, I had the impression that my concerns and rights were taken seriously by the police and were given due attention', by country (%)



Notes: *N=81.*
Source: *FRA, 2019*

These considerable numbers of victims feeling that the police did not give their rights and concerns due attention indicate a lack of training. They may also indicate attitudes and a police culture that are not very responsive to the rights of victims.

Victims at times experienced the police as cold, unsympathetic and insensitive, it appears from the interviews. Victims interviewed in Germany and Poland recalled:

"I remember, I was a bit shocked how matter-of-factly it is handled, when you're a victim. […] Because at this point he [the police officer] didn't know what exactly had happened but he appeared very unemotional and reserved." (Victim, Germany)

"The behaviour of police officers there on the spot was very weird and on the day of the event it was also very strange. […] I felt I was disturbing someone in their work, right?" (Victim, Poland)

An interviewee, whose daughter was killed during the terrorist attacks in Paris, recalled:

"[A] woman came to get us, she did not even introduce herself, she took us, she started to type the official restitution report […] She made me repeat her name, her age, her date of birth, everything. […] she did not even say, 'My condolences'. Nothing at all, she typed her thing on the computer, she printed it and had us sign … I said, 'Excuse me, Madam, you have made a mistake in my daughter's name'. She took the piece of paper and said, 'Yes, of course, I have, we'll start again … I did not save it'. There I cried." (Victim, France)

For victims to feel recognised, it is important that the police record the victim's statement precisely and comprehensively. Victims appreciated the work of the Judicial Police in Portugal in this respect. Several victims interviewed in France commented that, when they came to the police to give their statement, the police asked them to sign a document that had been prepared in advance.

"[W]hen I went to the police, I saw things that had already been typed and they said to me, 'we will read it and then you say if it is right or not', they said that to me. And then when they read, I said, 'no, there are certain things which you say there, it was not like that'. And then they changed it and told me to sign. Before signing, I asked, 'why am I signing?' They said, 'you sign because you are a victim, it has been reported to us, we came, and him, he will go to prison'. And I said, 'no, I do not want to sign'. And they said, 'it is your obligation, because it is a report'." (Victim, France)

Another victim, interviewed in France, complained that the police did not faithfully record what was said.

"[F]or the meeting between myself and the defendant they changed or removed things which had been said; and that should not be done, it is against the law." (Victim, France)

A victim interviewed in the Netherlands felt that they had treated him like an offender. He had been taken to hospital with a severe head injury. He would have liked his wife to be present at the questioning; however, the police arrived at the hospital before her and started asking questions as soon as the victim recovered consciousness. This the victim experienced as not only insensitive, but ridiculous.

"How can you interview someone with brain damage as soon as he wakes up?" (Victim, Netherlands)

In several countries, practitioners noted that the police do not all have the same level of professional training. Hence, how they treat the victim depends to a great extent on the performance of the intervening organisation or the skills and attitudes of individual officers.

"In the Netherlands, it is a matter of chance, it depends on which police officer you have in front of you. You are lucky if you happen to encounter an officer who is empathetic and well-trained, who is aware of the appropriate measures and services and refers you accurately." (Police officer, Netherlands)

"I have to tell you that everything depends on luck, on the police officer the victim is 'lucky' to get in touch with. The information is available on the website of the GNR, but everything else depends on the officer who is dealing with the victim. [...] And many times, when she [the victim] leaves, she is more confused than when she arrived." (Police, Portugal)

"The public prosecutor delegates to the police but sometimes they also delegate the interviewing to the court clerks. Court clerks have no training in this area. [...] Training is zero. And they are the ones who interview the victims." (Lawyer, Portugal)

"[W]hen they [the victims] are interviewed by officers of the court and not by the prosecutor, the officers of the court do not have any training whatsoever concerning domestic violence here in Cascais." *(Member of support organisation, Portugal)*

In Portugal, there was a very significant difference between how various police organisations performed. Two distinctions apply. Firstly, the GNR generally polices rural areas, while the Public Security Police has jurisdiction in the cities. Secondly, alongside these generic police organisations, there is a Judicial Police specialised in investigating violent and other forms of severe crime. However, the Judicial Police does not deal with cases of domestic violence; they remain under the jurisdiction of the general police organisations. Throughout the interviews, victims showed more, and more consistent, satisfaction with the Judicial Police than with the GNR and the Public Security Police. When the Judicial Police dealt with them, victims appreciated that the same officer contacted them throughout the investigation, that 'their' reference person kept them updated on important progress made in the investigation, that the Judicial Police took the information seriously that victims provided, and that overall the Judicial Police worked effectively and swiftly.

Within the GNR, officers displayed vastly different professional attitudes and patterns of performance. This indicates that not all officers working in the GNR have in-depth training.

Significant differences between how officers handle cases also appear in accounts by victims of sexual violence interviewed in the United Kingdom.

"Well, first of all, there was a lady who was dealing with it, and she came round to the house and she was really good that day. Then she passed it over to another officer who then, don't know, just didn't seem too interested and I had to phone him all the time to get information. It kind of went a bit wrong." (Victim, United Kingdom)

"So, they interviewed my sister, and one of them fell asleep. [...] And then they phoned me up and said, 'We're going to have to drop your investigation at the moment because somebody's been raped in Glasgow [...], so, all hands on deck'. That made me feel crap and that man falling asleep made me feel crap [...] I get the impression some of the police are just [...] desensitised or they just minimise it and it's just another day at the office for them, whereas for people going through it it's horrific, absolutely horrific." (Victim, United Kingdom)

In any case, the current state of police training leaves room for improvement, across the EU Member States researched, our evidence shows. All police officers who contact victims of violent crime need sufficient training to understand the situation and rights of these victims.

4.2 Victims' views on the receptivity of court proceedings

Victims' assessment of receptivity at the court trial is similar to how they assessed the receptivity of police investigations.

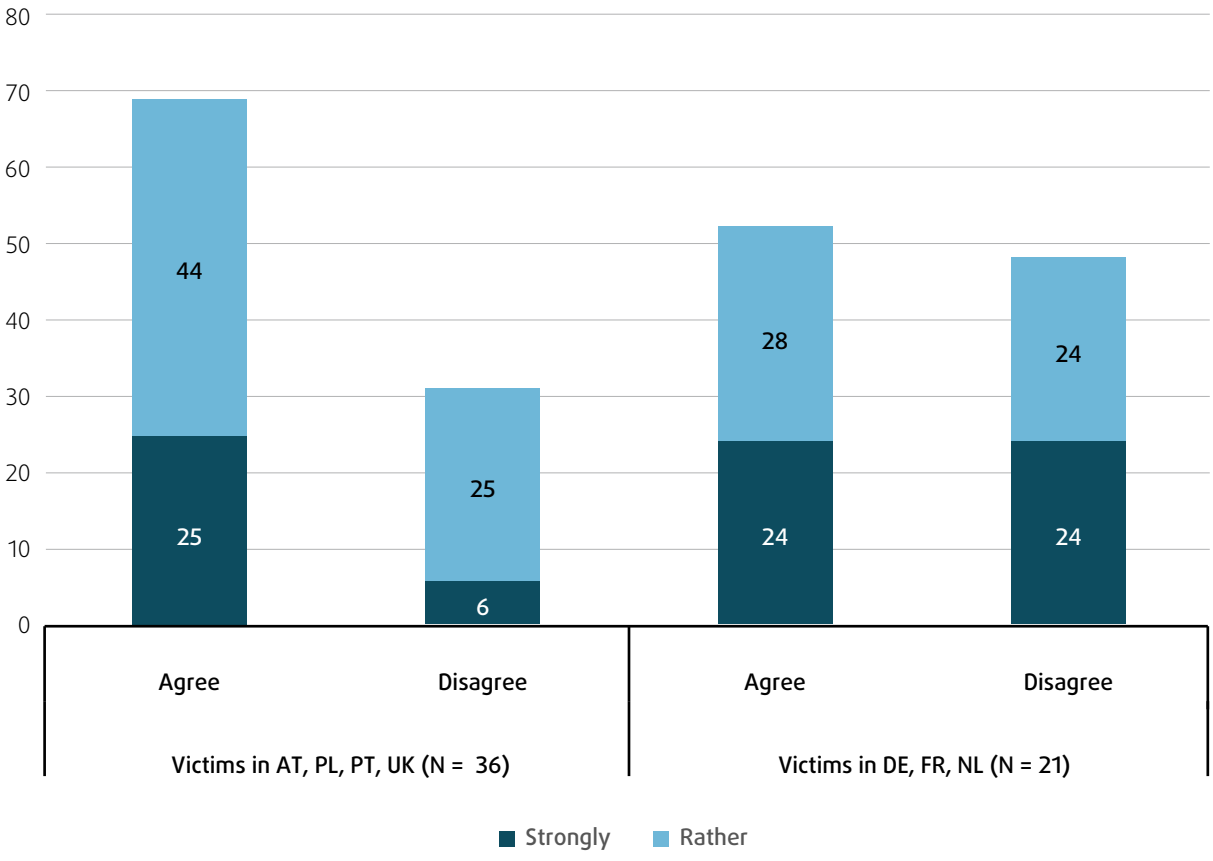
Again, there are significant differences between the EU Member States (Figure 24). In Austria, Poland, Portugal and the United Kingdom, two in three victims felt that the court had taken their concerns and rights seriously at the trial. Answers agreeing and disagreeing were balanced in France, Germany and the Netherlands, and one in four victims strongly disagreed.

Victims interviewed in Germany explained that their role during the court trial was flawed. They were not allowed to finish their statement, the court hearing was overall brief and superficial, evidence was ignored or they felt that the court had not taken them seriously. In fact, active victims can even be perceived as trouble makers, the interviews conducted with practitioners in Germany show. Several interviewees from the judiciary group regarded joint prosecutors as just an impediment to effective proceedings. Consequently, while most victims viewed it as essential to participate in proceedings and would have liked more opportunities to do so, several interviewees felt that the court perceived their active engagement in proceedings as disturbing and that it rather hurt their case. Many of the victims interviewed in Germany perceived communication at the court trial as insufficient, abstract and distanced. A victim of racist violence, acting as joint prosecutor, felt that the court had not given him due attention:

"I really expected more, that we would at least have the right to repeat our statement at court as often as necessary, and to defend ourselves, but that really was not the case. We were only called as a witness very briefly, and, although I wanted to continue giving information, the court was not interested." (Victim, Germany)

Some victims felt that their contributions had been completely irrelevant to the proceedings. Not only did they have no chance to present their observations, overall their role was limited to what they perceived as insignificant. For instance, the majority of victims interviewed in the Netherlands assessed their role as only minimal or vague and, all in all, unclear.

Figure 28: Victims agreeing/disagreeing with the statement 'At the court trial, I had the impression that my concerns and rights were taken seriously and were given due attention by the court', by country (%)



Source: *FRA, 2019*

"We couldn't do anything; how could we have a role in the proceedings? We played no role. Even our lawyer couldn't do anything, because he couldn't add information to the dossier. The court trial would have continued, even if we had withdrawn our police report." (Victim, Netherlands)

"I'm afraid my contribution to the proceedings didn't make any difference. They [support organisation] said I could say something, so I let them write down that my advice for them [the offenders] was to take a job if they needed money. That's what my boys did when they were young." (Victim, Netherlands)

While in Portugal victims felt more respected overall, still some victims voiced clear frustration with their limited role during the court trial. One victim observed:

"I did everything I could. I never had the chance to talk before the court. [...] I never got justice, from the court. I was never given such opportunity." (Victim, Portugal)

In that victim's account, not being heard and not encountering justice flow into one another. This points to the significance of procedural justice for victims. Doing justice depends not only on the outcome of criminal proceedings but also on how well they recognise the victim as a major stakeholder of criminal justice.

Another victim interviewed in Portugal, who had been attacked by a drug-related organised crime group, felt that the atmosphere in the courtroom did not match the seriousness of the matter dealt with.

"It was like a circus. I felt as if it was a circus. People laughing in the back. People answering their mobile phones, mobiles ringing." (Victim, Portugal)

Victims are much more satisfied if their participation influences the course of the proceedings. For instance, in Poland, in a case of sexual abuse of a minor, the victim's mother acted as joint prosecutor. While she believed that, compared to the defendant, her position was disadvantaged, she still assessed her role as having a significant impact on the proceedings. Another victim, interviewed in Germany, suggested to the judge that the offender should be ordered to participate in anti-aggression training. The court took this up. The victim found that satisfying, because it let her see that her views were taken seriously and that her participation in the proceedings made a difference.

Victims do not aspire to control the outcome of the proceedings, but they are not content with only being present and allowed to speak. What they claim lies in between. They want to be heard and to experience that what they have to say is given due consideration and taken into account in decision making. That comes close to defining a fair trial.[22]

4.3 Practitioners' views on how seriously practitioners take victims' concerns

We asked practitioners if they agreed with the statement 'Generally speaking, practitioners working in the criminal justice system take the rights and concerns of victims very seriously.' Differences between professional groups are striking (Table 5).

There is a strong divide between the views of private professionals (groups S and L), on the one hand, and the perspective of state officials (groups P and J), on the other. The majority of non-state bodies do not support the rather confident self-assessment of some officials.

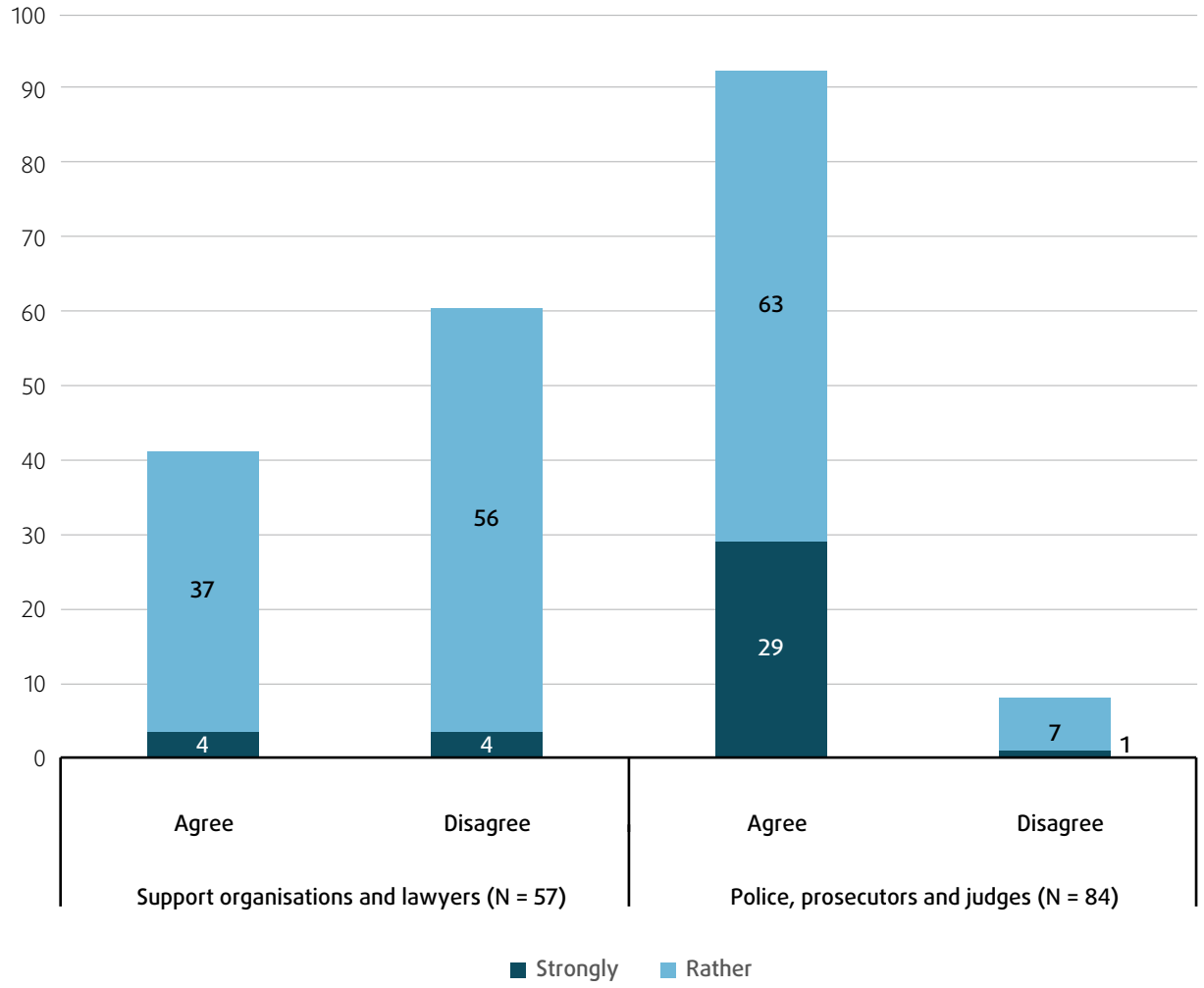
In addition, the gap between the assessments by state and non-state bodies is even more marked in type 1 countries than in type 2 and type 3 countries. Figure 25 does not reflect seven responses of 'Don't know'.

Overall, the assessment is less favourable in type 1 than type 2 and type 3 countries. About twice as many interviewees in type 1 countries disagreed with the statement as in the other group.

Secondly, in type 1 countries, the views of state bodies (police and judiciary) are almost diametrically opposed to the views of non-state bodies (lawyers and members of organisations supporting victims). In type 2 and type 3 countries, a majority of interviewees from groups S and L agreed that practitioners take the rights and concerns of victims very seriously. In type 1 countries, a large majority of interviewees from these groups downright deny it: four in five. The highly critical assessment by practitioners working outside public institutions contrasts profoundly with the self-assessment of officials working in the criminal justice system. This critical assessment reflects the fact that, in practice, type 1 countries deny victims the rights to which procedural codes entitle them. A clear line of conflict runs between civil society organisations, which expect victims' rights to become a reality, and state authorities, which are reluctant to put legislation into practice. Support organisations and lawyers see themselves as having to make the case for the lawful rights of victims and persuade officials to abide by the procedural code. Staff members of support organisations, interviewed in Austria and Portugal, commented:

22 On procedural justice from the perspective of victims of crime, see Wemmers (2002); Elliott et al. (2014); Holder (2018).

Figure 29: Practitioners' responses to the statement 'Generally speaking, practitioners working in the criminal justice system take the rights and concerns of victims very seriously' (%)



Note: *N= 141.*
Source: *FRA, 2019*

"Unfortunately, a large proportion of our work is not dedicated to supporting victims, as it should be. Unfortunately, a large proportion of our work is dedicated to bringing the authorities to work in the way they actually should." *(Member of support organisation, Austria)*

Interviewer: "And when the victim is accompanied by this practitioner, are victims informed beforehand that they have this right?"

Interviewee: "We inform the victims. […] Even the court was unaware that it could happen. In other words, people were a little taken aback when we sent the Decree-Law and stated that we wanted to accompany the victim."

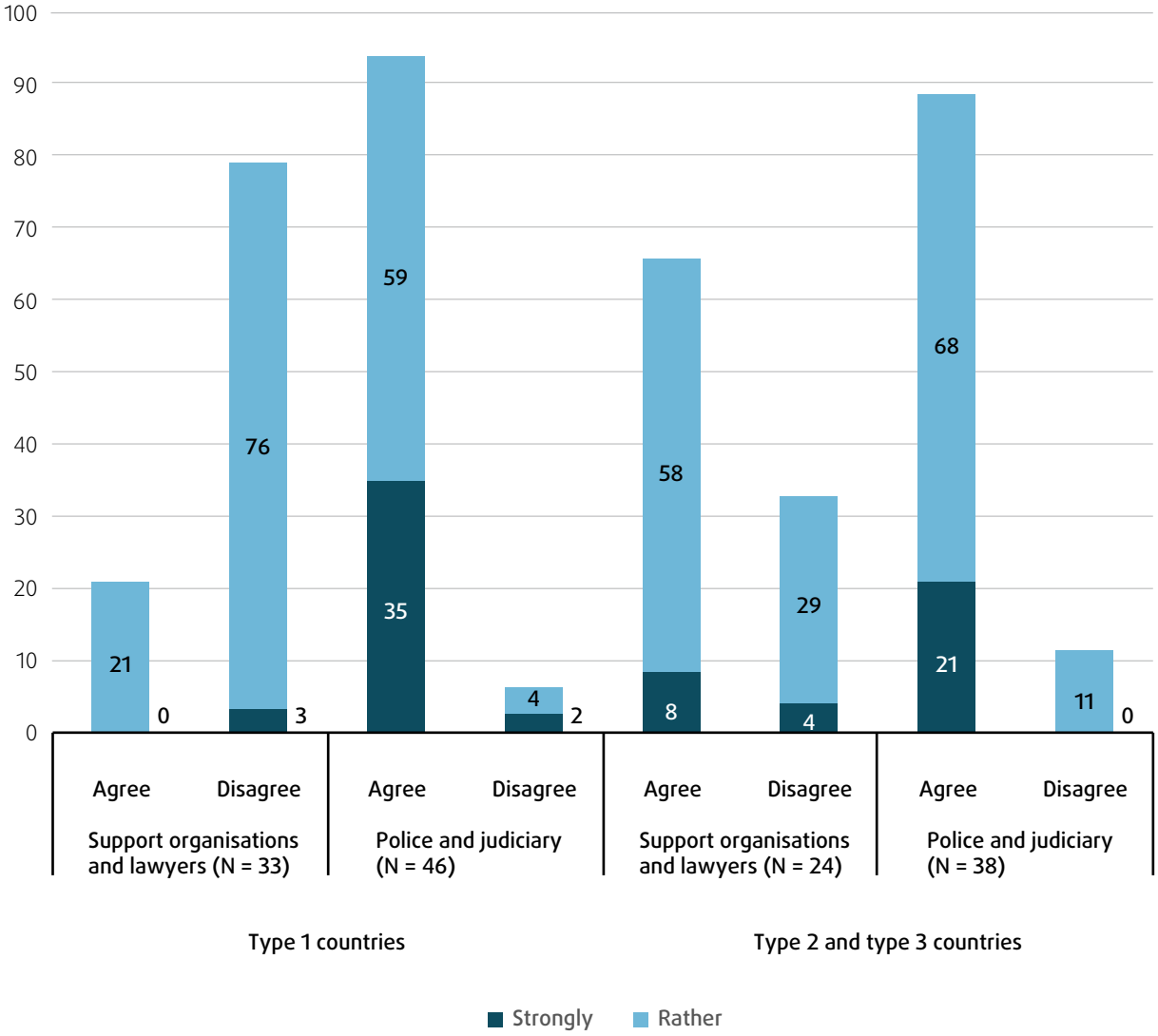
Interviewer: "The court itself did not know about the law?"

Interviewee: "It didn't know anything about the existence of this character [a person of trust accompanying the victim]. […] I sat in the gallery with the other people. […] the prosecutor who was there came to me and asked: 'So, what's your purpose here? What are you doing here? Do you want to sit in the victim's lap?' He was even a bit rude because he didn't know anything about this possibility."
(Member of support organisation, Portugal)

Conclusion

- Two thirds of victims interviewed in the Netherlands, Portugal and the United Kingdom had the impression that the police took their rights and concerns seriously. Half of victims interviewed in Austria, Germany and Poland and two thirds of victims interviewed in France had the opposite impression.
- At the court trial, only half of the victims interviewed in France, Germany and the Netherlands felt that their rights and concerns were taken seriously, compared with two thirds of the victims interviewed in the four other countries in the research.
- Of the practitioners interviewed in type 1 countries who did not opt to answer 'Don't know', 94 % of those from the police and the judiciary believed that practitioners working in the criminal justice system take the rights and concerns of victims very seriously.

Figure 30: Practitioners agreeing/disagreeing with the statement 'Generally speaking, practitioners working in the criminal justice system take the rights and concerns of victims very seriously', by type of country (%)



Source: *FRA, 2019*

Only 21 % of interviewees from support organisations and the group of lawyers shared this view. Non-state bodies have very critical views on the performance of the officials who form the criminal justice system. That reflects a situation where victims are denied in practice the rights that procedural codes grant them.

Article 47 of the Charter and the Victims' Rights Directive entitle all victims of violent crime to respectful treatment that takes their dignity and rights seriously. If victims' rights to recognition and participation are to become a reality, attitudes of officials must change. This requires communication and training measures to make the police, public prosecutors and criminal judges more aware of victims' rights as human rights.

For advice on issues highlighted in these conclusions, see FRA opinion 7 in Key findings and FRA opinions.

5 Victims' right to protection against secondary victimisation and retaliation

Article 18 of the Victims' Rights Directive is entitled 'Right to protection'. According to it, EU Member States must ensure that measures are available to protect victims from secondary victimisation, intimidation and retaliation. Article 22 of the directive complements this provision; it obliges EU Member States to ensure a timely assessment of victims' protection needs.

'Secondary victimisation' simply means that those who are in contact with the victim in the aftermath of the offence reinforce the victim's experience of victimisation at the hands of the offender. What the offence means to the victim is a lack of respect for the victim as a person and rights holder, and a loss of autonomy and control of their situation. If any treatment disregards the victim as a person entitled to rights and to autonomous control of their situation, it consolidates that experience. Doing justice means rejecting and countering the offence as a violation of the victim's rights and thus supporting the victim's restoration as an autonomous person and reintegration into their legal community. Secondary victimisation means the contrary: sending signals that deepen the victimisation that the offender caused and reinforce the victim's depersonalisation.

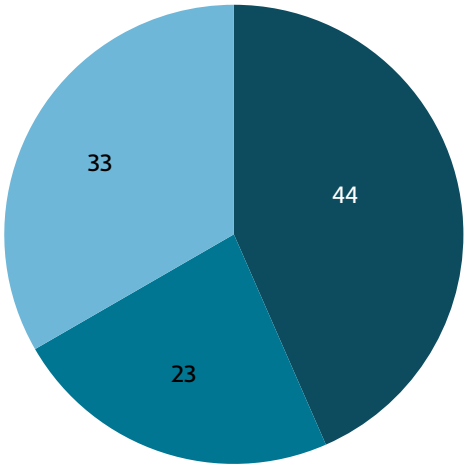
This chapter examines risks of secondary victimisation, and measures adopted to counter these risks. It also looks at risks of retaliation and corresponding protective measures. It explores two specific aspects of potential secondary victimisation: firstly, the risk of secondary victimisation that emanates from how the system treats victims (Section 5.1); secondly, secondary victimisation caused by unprotected contact of the victims with the offender or persons supporting the offender (Section 5.2). Then comes a brief analysis of measures protecting victims against retaliation by the offender and people close to the offender, or the lack of such measures (Section 5.3).

5.1 The marginalisation of the victim as large-scale secondary victimisation: criminal justice adding to the wrong done by the offender

When exploring specific risks of secondary victimisation, we must not overlook the more fundamental fact that the large-scale and continuous marginalisation of victims in criminal proceedings may in itself amount to a form of secondary victimisation. The criminal proceedings would affirm the message sent by the offender that the victim need not be respected as a member of their legal community. This is the flip side of the coin that the first chapter dealt with. The criminal justice system side-lines victims and denies them recognition as persons and rights holders, ample evidence in our research shows. That is because the system is reluctant to acknowledge that the violent crime was primarily a wrong that the offender did to the victim and that hence the victim is entitled to be recognised as a party to the proceedings. This lack of recognition has a potential impact on victims as secondary victimisation. Reducing the victim to a means to the end of public authorities, again, treats the victim as an instrument to serve their purposes and thus denies the victim the status of a person holding rights. Being denied victim status and forced into the role of a witness – a bystander unconcerned by the wrong done by the offender – is at the core of many negative experiences of victims of violent crime.

"I'd rather have been a victim than a witness or a complainant, because at least with a victim they might have seen that I have emotions and they can't do these certain things." (Victim, United Kingdom)

Figure 31: Victims' assessment of the impact of the proceedings: 'Overall, what I experienced during the investigation and the court proceedings…' (%)



Note: *N = 81.*
Source: *FRA, 2019*

We asked victims whether their experiences during the investigation and the court proceedings added to or mitigated the harm done by the offender (Figure 26). One third of the interviewees answered that they could not tell or did not know. Of the remaining respondents, almost two in three answered that their experiences in the criminal justice system rather added to the harm done by the offender.

Differences between EU Member States are not significant, with the exception of France. Seven of the 12 victims interviewed there felt that the proceedings rather added to the harm done by the offender and only two believed that the proceedings mitigated this harm. In all countries in the research, more victims assessed the proceedings as adding to the harm than as mitigating it. Once again, the significant differences between the legal traditions and legislative models in type 1 and type 2 countries do not translate into different levels of satisfaction with the responsiveness of criminal justice systems to victims' concerns and rights. Rather, in all EU Member States participating in this research more victims felt that criminal proceedings made things worse rather than better and, hence, did not perceive the proceedings as supporting them in coming to terms with the wrong and depersonalisation suffered.

Proceedings reinforce victimisation if they:

- side-line victims and hence deny them autonomy and control of their situation;
- use victims for the sake of public interests;
- are lengthy, bureaucratic and not transparent.

Telling examples are rape victims, interviewed in the United Kingdom and in France, who found the proceedings more difficult to cope with than the sexual assault.

*"So, you know, for me being sexually assaulted for an hour, this whole procedure was worse than that. So, and I have no justice at the end of it. […] and it wasn't the incident itself that I had to have an extra year at university, it was not being able to cope with the whole court procedures, that was what cost me an extra year of my life […] I look back and I could probably get over the incident that happened, but I don't think I'll ever get over this, the whole sh*tty court procedure where you're left in a situation with no control, and I had the control taken off me […] having your control taken from you by professionals that you think are trying to help you was worse than the actual assault itself."* (Victim, United Kingdom)

"Ultimately, I regret it and I do not regret it, because it is a very, very painful battle. In addition to the violence suffered, the justice system is even more painful than anything else, because I am rather accused, whereas I am the victim." (Victim, France)

One victim of sexual violence also brought a civil action against the offender. Compared with her previous experiences with criminal justice, she found her position in civil proceedings preferable.

"I've got more control over this one, people are telling me what's happening. It's all my decisions. I have actually got the control back. […] I would go civil rather than criminal. Because civil your voice is heard, your decisions, you have the control." (Victim, United Kingdom)

Interviewees stressed that the criminal justice procedure is very long, and there is no follow-up for victims. In the end, they feel side-lined, abandoned and physically, psychologically and financially exhausted. A victim of rape, interviewed in France, whose case was still pending after eight years, observed:

"[I]t is suicide to lodge a complaint. You die, you leave your health behind during the procedure, which is very long. It happened in 2009, now it's 2017. We're dead, we are killing ourselves, they kill you slowly, psychologically, it has a physical impact, later it has an impact socially, financially. [...] the problem with the courts in France is that the longer it lasts, the more doubt is created with respect to the evidence, so they start to doubt, [...] the lawyers took time to look into my past, to see, 'look this person maybe had a problem with her husband, therefore she consented'. [...] I would rather shoot myself in the head than again lodge a complaint; with the justice system you lose everything: you lose your job, you lose everything, you have nobody to support you [...] there is nobody to listen to us. There is no follow-up, nothing at all, they give you an officially appointed lawyer who does nothing [...] Lodging a complaint is pointless, it just adds one bad thing to another. They kill you once with the offender, and the justice system doesn't kill you once but a thousand times [...]." (Victim, France)

One interviewee described the length of the proceedings as "like becoming another victim in the system". Another stated that, although she would call the police if her life were in danger, she would not again go down the route of filing a complaint and seeking redress in the criminal justice system. A victim interviewed in Portugal observed that the proceedings were stuck and out of control:

"I have been holding on, but I feel that I am running out of strength. This does not move forward, and I don't have the case in my hands [...]. No, I just listen bit by bit and this makes me think, see how it will all end, what will happen or not. And the depression is arriving." (Victim, Portugal)

A member of a support organisation, interviewed in the United Kingdom, strongly sympathised with victims' concerns, assessing the length of criminal proceedings as "horrendous". Asked about the impact on victims, she explained:

"Well it's huge, because they've got it hanging over them. [...] you know you are going to have to stand up there and be cross-examined, that's an awful weight to carry on your shoulders for that length of time." (Member of support organisation, United Kingdom)

A member of a support organisation, interviewed in the United Kingdom, remarked:

"I had someone tell me today that they had reported an incident of rape, or sexual assault, and the police told them it might be up to two years. They haven't heard anything since. And that was about a year ago." (Member of support organisation, United Kingdom)

At times, victims felt that they were treated as depersonalised evidentiary objects. A male victim interviewed in Poland recalled:

"The bodily examination was conducted by a police woman who put a camera in my mouth, taking pictures of a broken tooth. With the doors open, I undressed to show that I have bruises all over my body. People were, generally, going in and out all the time." (Victim, Poland)

Overall, there is still a serious risk that how criminal justice systems in Europe work results in systematic secondary victimisation of victims, we can conclude from the evidence from this research. If they do not recognise victims as parties to the proceedings but treat them as means to the end of public interests, proceedings confirm and reinforce the message sent by the violent offender that the victim need not be respected as a full member of the community.

On the other hand, if the victim senses that justice is done, this can ease the experience of depersonalisation inherent in violent victimisation. For instance, a victim of a particularly long-lasting and severely abusive intimate partner relationship, when asked whether the proceedings added to or eased the harm done by the offender, responded:

"I think it eased it a little because at least I saw justice being done." (Victim, Portugal)

Hence, the identity and personhood of the individual are key to understanding the interplay of violent victimisation and recognition as an element of procedural justice.[23]

5.2 Secondary victimisation caused by unprotected contact with the offender

Article 18 of the Victims' Rights Directive grants victims a general right to be protected against intimidation. Following this, Article 19, 'Right to avoid contact between victim and offender', obliges EU Member States to establish the necessary conditions to enable the victim to avoid contact with the offender. As one element of this obligation, EU Member States must ensure that new court premises have separate waiting areas for victims.

Findings from this research are sobering. The interviews with victims occasionally revealed that authorities were not aware of the necessity to ensure that victims are not exposed to unprotected contact with the offender. For example, a victim of domestic violence, interviewed in Poland, recalled that she was shocked because, after the police arrested her violent husband, they drove both of them to the interview in the same police car. The

23 Tyler and Blader (2003).

victim and the offender were even sitting next to each other. What is more, the officers left the interviewee and the perpetrator alone in a locked car for a couple of minutes. For the victim, this situation was terrifying, as her husband used to threaten her with a kitchen knife. She panicked, rattled the door handle and shouted for the officers to let her out.

Placing a victim of violent crime in a position of fear of a violent offender is the clearest instance of secondary victimisation. At the same time, it can discourage victims from participating in the proceedings and impede their access to justice.

5.2.1 Individual risk assessment conducted, or not, by the police

According to Article 22 of the Victims' Rights Directive, EU Member States must ensure that victims receive a timely and individual assessment to identify specific protection needs, including risks of secondary victimisation and intimidation by the offender.

In none of the EU Member States researched did the police systematically and routinely carry out individual risk assessments, at the time of the interviews. People gave reasons including:

- not knowing the relevant risks;
- not knowing that they had a duty to assess these risks;
- lacking power over risks at later stages of the proceedings, such as the court trial;
- a lack of resources, preventing the police from adopting time-consuming routines.

Often they maintained that whether or not risks of secondary victimisation would be assessed depends on the individual officers and apparently is left to them. However, some EU Member States covered by the research may have stepped up their efforts to implement individual assessments after the interviews were conducted. For example, in the Netherlands, from 1 June 2018, the police, the Public Prosecution Service and Victim Support Netherlands have started to cooperate on the basis of a new protocol to improve risk assessments and the protection of victims.[24]

If countries routinely adopt measures aiming to protect victims against secondary victimisation, it is for only certain types of offences, such as sexual crime and offences involving minors or victims with intellectual or psycho-social disabilities. For instance, in the United Kingdom the police routinely record the statements of victims of sexual offences. The police do not even inform victims of sexual offences that they have the right to have their statement documented on paper instead of in an audio-visual recording, according to a member of a support organisation specialised in supporting victims of sexual crime.

5.2.2 Lack of protection against confrontation with the offender during the court trial

Regularly, victims of violent crimes fear confrontation with the offender during the police investigation and, in particular, at the court trial. Victims' fear of being confronted with the offenders is not only a matter of secondary victimisation, it emerges from the interviews with victims; it is also a major factor discouraging them from participating further, or at all, in the proceedings. A victim who withdrew entirely from the proceedings explained:

Interviewer: "And did they talk to you about the confrontation with the perpetrator?"

Interviewee: "I actually did not want that. This is why I did not want to take part in the procedure." (Victim, Poland)

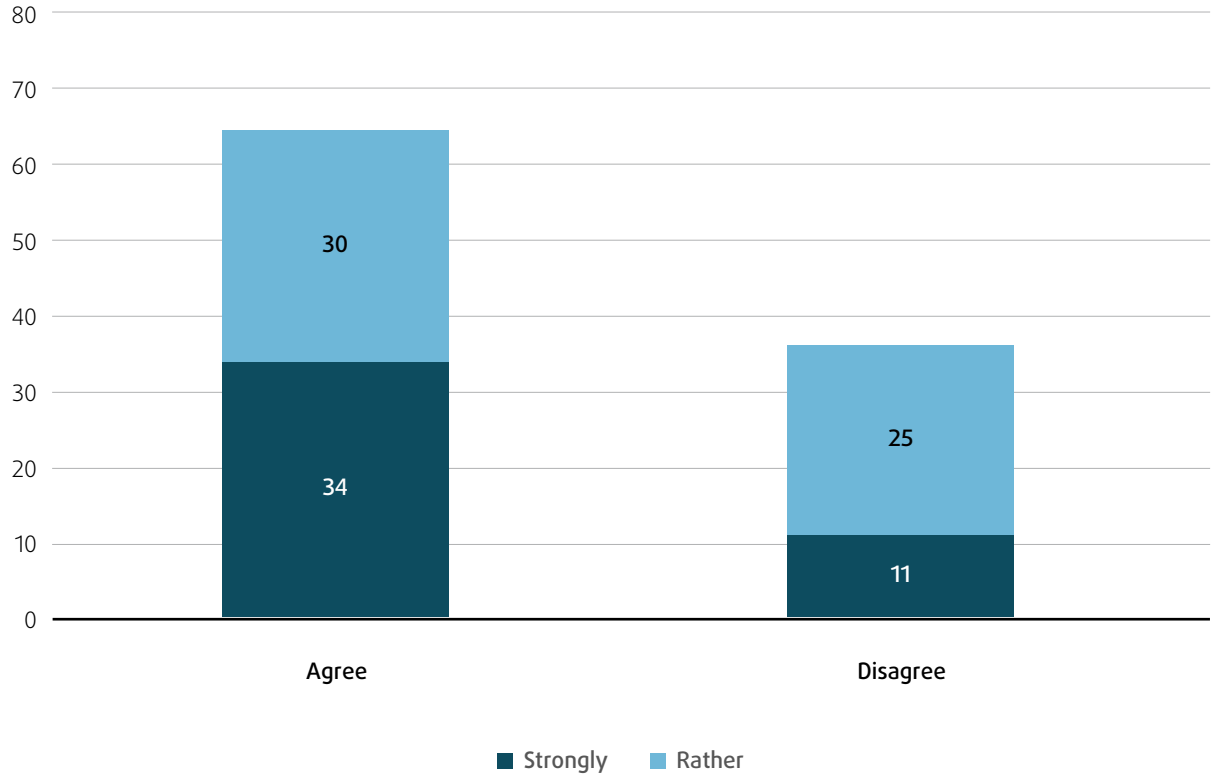
Hence, it is important and indispensable to have measures protecting the victim against secondary victimisation resulting from intimidating contact with the offender. It should be for victims of violent crime to decide whether they can cope with being confronted with the offender or not. In several EU Member States, victims can, under certain conditions, ask for their statement to be recorded, and the recording to be played at the court trial. In Austria, only minors and victims of sexual violence can ask for their statement to be recorded in advance. In Portugal, the police can record the victim's statement for future reference in order to disburden the victim of having to deliver their statement at the court trial. While this measure is used in cases of sexual child abuse, it appears that it is less common with adult victims.

"[H]earing the victim's statement for future reference, so that her presence is no longer required in the courtroom where she repeats her whole story, hardly ever happens." (Member of support organisation, Portugal)

In the United Kingdom, in cases of sexual crime, ABE (Achieving Best Evidence) video statements are recorded before the trial and played in court. In addition, screens are used in courtrooms to keep the offender or the audience from seeing victims.

24 For more information, see the Government of the Netherlands's website.

Figure 32: Victims' responses to the statement 'If I look back at the proceedings, there were moments when I experienced the presence of the offender as intimidating' (%)



Note: *Answers by victims in the seven EU Member States covered by this report (N=61).*
Source: *FRA, 2019*

Other practices avoid a confrontation by removing the defendant from the courtroom when the victim delivers their statement.

"I had never been inside a courtroom. And that is all very scaring. And then there is the confrontation with him. And it was at [the support organisation] that they said we could ask for him to leave the room during my testimony. And that's what happened. Because this was something very upsetting to me." (Victim, Portugal)

However, several interviewees pointed out deficiencies in the rest of the court building. Victims reported that they encountered the offender and their family or friends in the hall or waiting areas.

"I think I should've been given protection, you know, kind of like gone to a separate room and watched it through a video, I would've been much, much happier doing that because I did find it, I found it intimidating with these guys beside us […]." (Victim, United Kingdom)

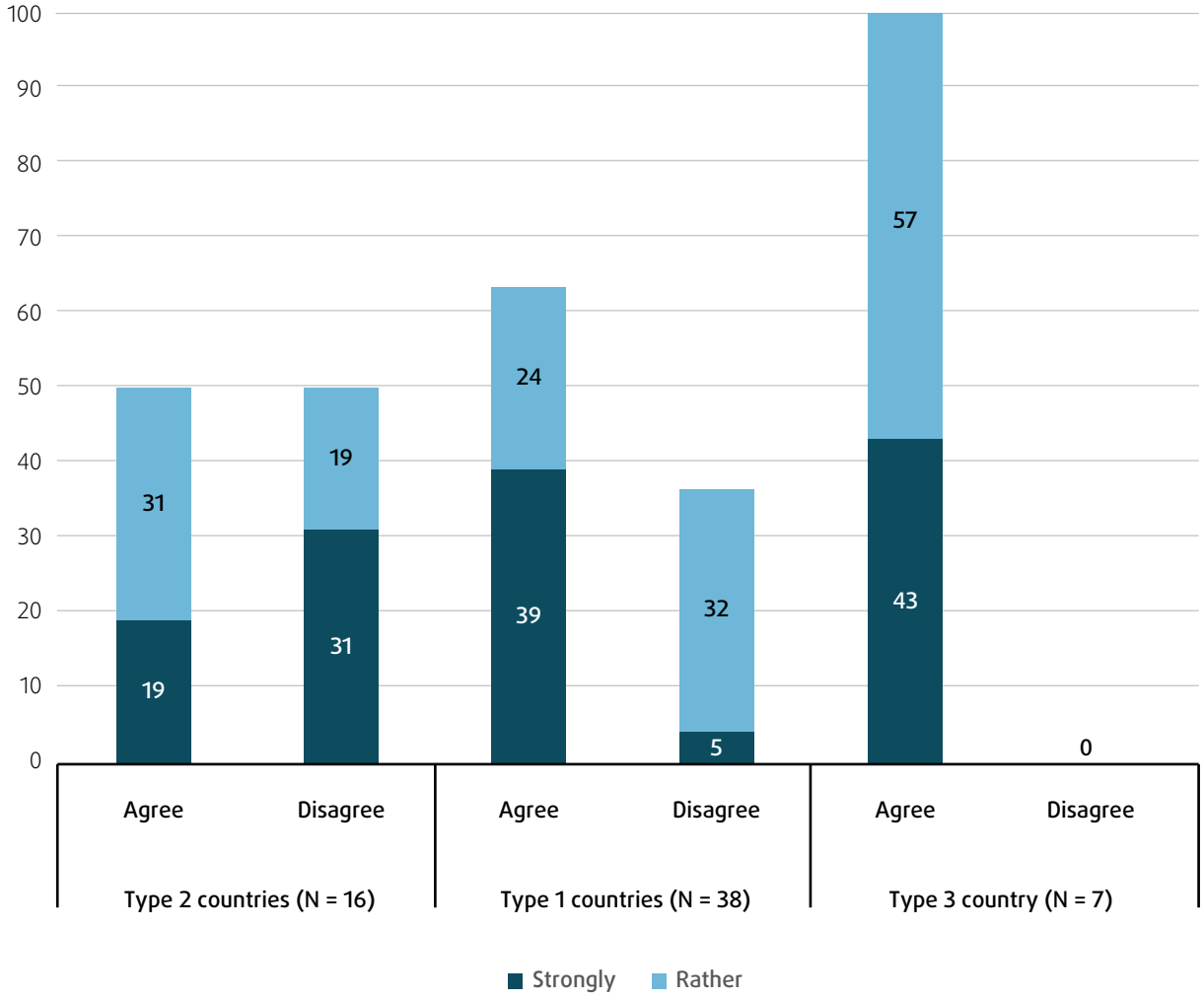
"And it is not pleasant. We are all there waiting, waiting for them to call us. There should be a split between those witnesses of one of the parties and those witnesses of the other party." (Victim, Portugal)

"I did complain about it and the man who runs the courts came out along with somebody from the Crown Office, the Policy Officer, to discuss what had happened. The man who runs the courts basically says, 'I never thought of that'. He never thought it would be a problem for somebody to be confronted by an abuser in a hallway! It's just, that's his job day in, day out and it never occurred to him that …, because we as victims and witnesses put up with it […] So, he says he would put measures in place, but I don't think he has, there's still one entrance and exit at […] Sheriff Court […] so, I get the impression they don't care." (Victim, United Kingdom)

In general, it appears that courts often fail to adopt effective protection measures. As a result, when we asked victims if at times they experienced the presence of the offender as intimidating, almost two in three admitted to having experienced such feelings. Close to one in three interviewees strongly agreed with the statement, thus revealing more intense feelings of fear and intimidation (Table 6).

In all countries covered by the research, at least about half of the victims interviewed indicated that they experienced the presence of the offender as intimidating. Still, significant differences between EU Member States show (Figure 27).

Figure 33: Victims agreeing/disagreeing with the statement 'If I look back at the proceedings, there were moments when I experienced the presence of the offender as intimidating', by type of country (%)



Note: *N = 61.*
Source: *FRA, 2019*

Type 1 countries have rather similar results. Some three in five victims had experienced intimidation, and some 40 % strongly agreed that they had felt intimidated by the offender's presence at some stage of the proceedings.

The interviews with practitioners corroborate victims' critical assessments. Officials interviewed in Germany were of the opinion that it was not their responsibility, or it was beyond their capacities, to protect victims against secondary victimisation. In France, all victims interviewed in the research had felt intimidated by the offender, except two who opted to answer 'Don't know'. It appears that at least some police officers in France are aware of the risk of an unwanted confrontation, but they do not inform victims about this risk and means of protection.

"No, these are not things which we inform them about, we do not particularly tell them that if there is a complaint there will be a prosecution, and that, if there is a prosecution, they will be called before the criminal court at the same time as their husband or whoever has committed the violent offence. It is not something we tell them. For me, we are there to do the investigation, to establish the facts, that comes within the investigation part. […] It is perhaps a surprise for them to see them [offenders] at the hearing. But I suppose that, if they have a lawyer, they will be aware of this." (Police officer, France)

In addition, practitioners maintained that priorities often leave no room to take account of victims' needs and feelings. Judges elaborated on the necessity to establish a balance between protecting victims against secondary victimisation and conducting successful criminal proceedings. The latter can include testing victims' credibility by confronting them with offenders.

In the end, protection against secondary victimisation largely remains in the hands of victim support organisations and lawyers. However, neither support organisations nor lawyers are in a position to adopt measures that reliably protect victims from secondary victimisation. If victims knew about and acted on their rights to protection against secondary victimisation, it was often thanks to the advice that support organisations provided.

A staff member of a support organisation, interviewed in Germany, reported a particular negative example. The interviewee had accompanied a victim to court and had agreed beforehand with the judge that the victim would be heard without the presence of the offender. That happened at first. However, later the court decided to ask the victim additional questions, without requiring the defendant to leave the courtroom. When the victim entered the courtroom and faced the offender, she broke down. The interviewee described the indifference of court practitioners in dramatic terms:

"Nothing is done as prevention. The hearing will be conducted, and, if the witness collapses, they'll call for an ambulance." (Member of support organisation, Germany)

If a confrontation in the courtroom cannot be avoided, it is of crucial importance that the victim have a support person – a lawyer or a member of a support organisation – at their side. For example, a victim interviewed in Poland, whose ex-husband had stalked her for a long time, recalled:

"When a woman is alone with him in the courtroom and she sees the face of her abuser, it is hard without support [cries]. Because, when there is a lawyer, you feel different." (Victim, Poland)

This assessment is confirmed by practitioners' views.

"Usually the victim goes alone. And here, I think, it makes a huge difference, really a huge difference. [...] a victim who does not have a lawyer goes totally unprotected, and in fact, there, at the court trial, she is reduced to the condition of a witness. Very often she hears things she does not want, she is confronted with questions she does not want, she hears comments on her which are deeply negative, and that moment is traumatic, it turns into a really traumatic moment. [...] It is not that bad, when there is a lawyer who is actually supporting the victim." (Lawyer, Portugal)

However, the vast majority of victims interviewed in the project received no information about the possibility of being accompanied during the court trial by a person they trusted. On the contrary, at times, members of support organisations are not allowed to stay with the victim during the court trial.

"I doubt that any court allows me to be present there. I have been there, [...] but I had to stay outside the courtroom." (Member of support organisation, Portugal)

Similarly, a victim interviewed in the Netherlands had asked the organisation providing support services to accompany her to the court trial but received a negative reply.

"[Victim support organisation] explained to me, no one would be present during the trial. They claimed this is not possible, [...]. I find that very strange." (Victim, Netherlands)

One aspect that showed in the interviews with victims is that victims often face not the offender alone but also family members or friends of the offender. For example, a victim who was injured by a young woman reported her fear of retaliation by the offender's father:

"Less [the offender's'] presence, but more her father's. [...] he was sitting in front of us in the audience area and we basically sat one row behind him and he constantly turned around, well, if it was for his glances I should have dropped dead right there. [...] I was under the impression that the judge and the public prosecutor noticed this too." (Victim, Germany)

While protection in the courtroom is often deficient, the situation could well be even worse in other areas of the court building. For example, lawyers interviewed in Austria consistently attested to a complete lack of protection outside the courtroom:

"No, no measures are adopted routinely. If a court hearing takes place, all wait outside the courtroom, except when the defendant is detained. For the rest, it is left to victims and defendants to seek or avoid coming close to one another." (Lawyer, Austria)

"In the case of adult victims, they rely on the legal representatives to avoid encounters. Judges may even state explicitly that their oversight function ends at the entrance to the courtroom. What happens beyond the door is beyond their control and responsibility." (Lawyer, Austria)

Overall, none of the EU Member States researched has a comprehensive and effective mechanism to protect victims from secondary victimisation arising from the presence of the offender, findings from this research suggest. In general, we found a lack of routinely conducted assessments of the risks of secondary victimisation, interacting with a lack of clear protocols and of routinely adopted protection measures.

5.3 Victims' protection against retaliation

Many victims fear how the offender will react to their reporting the crime to the police, instigating proceedings or acting at the court trial. Many victims were disappointed that nothing was done to protect them against retaliation.

"Now, after that, if one could avoid … or in any way protect the witness, that would be the most important […] there is always fear that there might be retaliation. I don't know what kind of guns they have, how influential they are." (Victim, Portugal)

An organised crime group had attacked another victim. He took offence at the police's lack of concern for the security of himself and his family.

"I think they never did, they never asked me about it. And I must tell you that my family was really scared for a while. Very scared indeed. And then there were news out there saying that we had two sons and that one of them was living in the Algarve […] even my picture was on the newspaper." (Victim, Portugal)

Many practitioners are aware of victims' fear of retaliation, it emerged from the interviews. Nevertheless, the police and courts do little to protect and reassure victims. It seems that authorities do not see themselves as responsible for initiating or adopting protection measures.

"In the case of violent offences, victims are less willing to report, because they are often in great fear of the offender, in fear of retaliation, and in fear of the justice system not operating effectively, so things only get worse; you can really feel that when victims make their statement. […] many victims are in great fear that, when they make a statement, that they must fear retaliation or something." (Police officer, Austria)

"[Victims wonder] if I tell the police something, and then, will the police be able to protect me so that the person doesn't come back and harm me again. […] We hear a lot of things like that." (Member of support organisation, United Kingdom)

A rape victim, whom the offender also stalked, recalled:

"The public prosecutor, even though she's not allowed to be too close to the victim, came to me after the trial and told me to watch my back. That made me really angry, with my lawyer, with the public prosecutor, and I said: 'this is outrageous, I win the trial […] and now I'm the one being told to hide and watch out?' And the same game starts over. I can't prove it, but the stalking continues, and until the new trial everybody is worried if I'll make it till then." (Victim, Germany)

In the same vein, a victim of domestic violence interviewed in Poland observed:

"I have heard from many people, from friends, that I should really be careful myself, including this judge on the divorce case, that he [the offender] should not harm the children, but that I myself should also be careful because something may happen to me – says the judge. Why wouldn't this judge file some additional motion, so that we were secured?" (Victim, Poland)

Like the lack of routines and protocols protecting victims against confrontation with the offender, it appears that measures protecting victims against retaliation are also largely missing or piecemeal.

Some victims would appreciate it if the police would, at least, stay in contact with them as a means of protection against retaliation and repeat victimisation, it appears from the interviews.

"I think the assistance of a police officer, somebody who would call or visit from time to time, ask if everything's been all right, whether he [the offender] doesn't pester us, stalk us […] would bring a kind of sense of safety to our life." (Victim, Poland)

Conclusion

- We asked 68 victims if they had experienced the presence of the offender as intimidating. A total of 39 interviewees said that they had, and 21 strongly agreed. This includes a large majority of the victims interviewed in type 1 countries. No victims interviewed in France disagreed.
- None of the EU Member States researched has a comprehensive and effective mechanism in place to assess risks of intimidation and to protect victims from secondary victimisation resulting from encounters with the offender that the victim finds threatening.
- They also lack routines to prevent offenders or their family and friends from targeting victims and retaliating against them.

For advice on the issues highlighted in these conclusions, see FRA opinions 8 and 9 in Key findings and FRA opinions.

Conclusions: criminal justice systems in transition

This research shows criminal justice systems in states of transition. Legislation grants victims rights to participate as parties to the proceedings, but everyday practice in criminal proceedings has yet to catch up. One of the main causes of this discrepancy is that practitioners struggle to reconcile victims' rights with what they interpret to be the purpose and aims of criminal proceedings, interviews suggest. They perceive victims' rights, at times, as incommensurable with the aims of the criminal justice system. This runs the risk of creating an ongoing and unresolved debate over the evolvement of victims' rights.

The wrong done by the offender cannot be reduced to a wrong done against the state representing a collectivity: society, the public, or the people. We must take into account the wrong done to the individual victim, a wrong that can be grasped only as a severe violation of the victim's human rights. The Charter and the Victims' Rights Directive suggest that we can start by recognising this fact.

Practitioners in the Netherlands and the United Kingdom (type 2 countries) and France (type 3 country) expressly recognised the need for fundamental reform, and that such a reform requires overcoming the traditional paradigm of criminal justice as involving only the state and the defendant. We should not overlook their voices. In particular, practitioners in the Netherlands repeatedly noted that the situation of victims' rights in the Netherlands should be critically reviewed, along with the entire system of criminal justice.

"I'm against the limitless expansion of rights and possibilities. However, if there is a strong rational reason behind it, to reform the system so that the victim gets a say, yes. Then victims could be offered more opportunities to actively participate in the proceedings. But then also the system needs to be fundamentally changed." (Judge, Netherlands)

"I can imagine that due to the way the Dutch criminal law system works, in comparison with law systems in other countries, from an international perspective, it could be that Dutch victims don't have sufficient rights." (Judge, Netherlands)

We asked lawyers about the statement that criminal justice is mainly a matter between the public and offenders and that therefore a victim's role in criminal proceedings is necessarily peripheral. One interviewee remarked:

"That's probably how it is; but I don't agree with it. I think that criminal law is focused on the offender and we in the Netherlands really have to – just like with other changes – go through a process of change, to think more victim-minded. That the victim is simply a party to the proceedings. But that is still a lot of work." (Lawyer, Netherlands)

Asked if victims should be offered more opportunities to participate actively in the proceedings, a police officer answered:

"I believe this is not enough now, yes. […] I think the perception and the experience of the victim can make a difference […] I think you would get a somewhat better balance in the case. A public prosecutor explaining something on behalf of the victim or the victim sitting there himself […] I think that makes a huge difference." (Police officer, Netherlands)

In a similar vein, we asked if 'it's about time that victims' concerns are taken more seriously'. A judge in the United Kingdom responded:

"In the past the issue has been very much 'this is it, this is a public prosecution, you're a witness and you have no other rights or interests in the matter', and I think that has been in the past very much the approach that's been taken, but I think that's changed quite a lot, and that a much greater recognition of the victim's role and victim's rights has taken place." (Judge, United Kingdom)

A lawyer interviewed in France maintained:

"One could imagine a tripartite trial with society, the victim and the perpetrator. Today, the legal proceedings are an opposition between the prosecution and the defence, but we are moving towards more place for the victim. Gradually we are moving towards tripartite proceedings, which I would favour to." (Lawyer, France)

However, the important lesson to learn from the situation in type 1 countries is that fundamental reform cannot be limited to the level of legislation. It must take practitioners and their understanding of criminal justice on board, as well as, consequently, the role of academia in educating criminal lawyers. For example, a popular German textbook on procedural law advocates the state's right to punish offenders and is, consequently, highly critical about victims' active participation in criminal proceedings.[25]

25 Roxin and Schünemann (2017), pp. 2, 520, 527, 535.

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Victims of violent crime have various rights, including to protection and to access justice. But how are these rights playing out in practice? Are victims of violent crime properly seen, informed, empowered and heard? Do they tend to feel that justice has been done? Our four-part report series takes a closer look at these questions, based on interviews with victims, people working for victim support organisations, police officers, attorneys, prosecutors and judges.

This report — Part II — focuses on procedural justice, and on whether criminal proceedings are effective, including in terms of giving voice to victims of violent crime. Taken together, the four reports reveal a wide gap between the law 'on the books' and the law in practice, showing that many victims still feel marginalised. We hope this series encourages policymakers to take steps to ensure that victims of violent crime receive the attention, support and consideration to which they are entitled.

SUSTAINABLE DEVELOPMENT GOALS

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