

Report of Various Size – Fieldwork research (FRANET)

Rights of crime victims to have access to justice – a comparative analysis

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Executive summary

With a view to contributing to a qualitative study on access to justice for victims of crime in Europe, this report discusses the rights and roles of victims in criminal proceedings as they are currently perceived by a group of practitioners and victims within the criminal justice system in Germany.

The fieldwork conducted between January and June 2017 consisted of a series of qualitative interviews with practitioners and victims of violent crime. 21 professionals working in the criminal justice system, namely judges at higher regional courts, lawyers representing victims of violent crime, police officers, public prosecutors, and staff members of victim support organisations, were asked to reflect on their professional experience and opinion regarding the practical implementation of victims' rights. Furthermore, a group of 11 victims of violent crime who participated in criminal proceedings were asked to elaborate on their personal experiences throughout investigative procedures and trial. The results of these interviews were used to provide an explorative introduction to the rights and roles of victims in criminal proceedings, ranging from the decision to report to the police, over investigative procedures and court trial, to the court decision. The report discusses themes as information and support, protection against secondary and repeat victimisation, as well as active participation and legal remedies for victims. While the small sample prohibits any generalisation, this research gives an overall impression of themes, consensus and discussion which stood out throughout the research.

Chapter 1 reports on practitioners' and victims' assessment of the general role of victims in criminal proceedings. Despite a reported shift from victims being perceived as a passive object, to a potentially active subject of criminal proceedings, in practice, the victims' primary role in the eyes of professionals remains that of a witness, a means to an end to hold successful proceedings and to 'determine the truth'. It was highlighted that only those eligible to act as accessory prosecutors will be able to play a more central role in proceedings provided they are represented by a lawyer. Victims interviewed for the purpose of this study acted as accessory prosecutors or victim witnesses, most of them viewing their role during criminal proceedings as limited and wishing to have been more involved.

Chapter 2 addresses aspects linked to the causes and consequences of underreporting regarding violent crime. Practitioners reflected on the reasons for underreporting and discussed a list of measures potentially raising the likeliness of crimes being reported. All victims interviewed for the purpose of this study reported to the police, yet many were unsure whether they would, in a similar situation, report to the police again. It was the practitioners' opinion that an initial consultation with victim support or a lawyer in which fears and doubts are addressed in-depth and individually can improve the likeliness of reporting. Victims mentioned support organisations as important facilitators for reporting, while doubts and fear of getting in touch with the police, as well as concerns about retaliation through the offender were mentioned to have initially inhibited reporting.

Chapter 3 elaborates on different aspects of the empowerment of victims through support, advice and information. The offer of support organisations was generally presumed to be sufficient; victims felt well-supported by the organisations they were in contact with. In fact, victims reported respective support organisations as crucial in the decision to report a crime, act as accessory prosecutor, or in enabling them to go through proceedings with minimal additional emotional harm. In rural contexts and smaller cities, specialised police units and support services were reported to be rare and insufficient. According to interviewees, information provided to victims of violent crime regarding their rights and potential role in criminal proceedings remains general and is often communicated exclusively through leaflets provided by the federal and regional government. Interviews with victims clearly demonstrated that they felt that

they were not adequately informed about their role and general rights as a victim by the police, while support organisations and lawyers served as a reliable source of information. A question addressing the victim's right to view their case file triggered practitioners to discuss a controversial development over the past two years, which has seen recent court decisions restraining access in cases based solely on the victim's witness statement. Lawyers and staff members of support organisations in particular pointed to an immediate loss in the effectiveness of accessory prosecution if lawyers are restricted from viewing their clients' case files, while judges tended to question the reliability of the victim's statement where access to the files is granted.

Chapter 4 discusses the views and experiences of experts and victims regarding effective remedies where victims feel that the justice system has failed to address their rights. A major concern amongst practitioners is increasingly restrictive jurisprudence with regard to enforcement claims. According to practitioners, this two-step complaint procedure, including a complaint with the attorney general, followed by a complaint at the higher regional court, is currently close to inaccessible not least due to extensive formalities required to file such a complaint. Most victims interviewed were dissatisfied with the outcome of proceedings because they deemed the punishment disproportionate to the harm done and/ or did not receive the desired protection. Smaller penalties as punishment were pointed out as a specific shortcoming in addressing domestic violence, while interviews with victims of racist violence reflected that victims felt that their suggestion that the offenders' actions should have been qualified as 'hate crime' was ignored or neglected by authorities, an impression which significantly diminished the victims' trust in the criminal justice system.

Chapter 5 evaluates the answers provided to questions regarding the victims' active participation in criminal proceedings. Opinions on the extent to which victims should be able to participate and play a major part in proceedings were divided along the lines of practitioners whose profession demands impartiality during proceedings (Group J and P) and those advocating for victim's rights (Group L and S). Overall, while some experts pointed to a reserved victim being a potential barrier to successful proceedings, others suggested that active victims can be perceived as 'trouble-makers'. It was furthermore apparent that several interviewees in Group J regarded accessory prosecutors as a disturbance to effective proceedings. Both, experts and victims, reported that the emotional and subjective perspective of the victim is an uninvited guest in criminal proceedings. Accordingly, while most victims viewed it as essential to participate in proceedings and would have wished for further opportunities to do so, yet several interviewees felt their active engagement in proceedings was perceived to be disturbing by relevant actors and rather hurt their case. Many of the victims interviewed did not feel heard or taken seriously, with information for and communication with victims perceived as insufficient, generalised and distanced, and largely provided through lawyers or support organisations. Accessory prosecutor representatives were pointed out as the voice of victims in criminal proceedings; active participation without legal representation was seen as rare and unlikely. Judges and victim support organisations therefore stressed the importance of quality in legal representation; it was suggested that making accessory prosecution a specialised field of law could significantly improve the quality of legal representation offered to victims.

Chapter 6 discusses protection against secondary victimisation in the context of criminal proceedings. With the exception of victim support organisations and lawyers, most practitioners were of the opinion that it was not their responsibility or outside their capacities to protect victims against secondary victimisation. Accordingly, experts and victims perceived it to be highly dependent on the individual actor, the severity of the case and the actual capacities whether victims will be provided with adequate sensitivity, pro-active protection or information. In combination with an apparent lack of capacities and

resources, practitioners were clear about the fact that priorities often leave no room for taking into account the victims' needs and feelings. Judges elaborated on challenges regarding a balancing act between protection against secondary victimization and successful criminal proceedings, in particular with regard to testing the victims' credibility. Questioning through defence lawyers was a matter of contention between judges, who offered varying interpretations of their role and authority in protecting victims from overt exposure to a risk of secondary victimisation. Victims' perception of their hearing at court differed: while some felt comforted and safe, others reported feeling "grilled", disrespected and unheard. Interviews suggest that, in practice, protection against secondary victimisation largely remains in the hands of victim support organisations and sometimes lawyers.

Chapter 7 explores experiences regarding protection measures preventing repeat victimisation in cases of domestic violence and other violent crime. An assessment of a potential risk of repeat victimisation and according protective measures for violence other than domestic violence is rare according to both, experts and victims. Protection against repeat victimisation for victims of domestic violence remains a futile instrument in the eyes of victims. Procedures following an initial intervention in domestic violence as they stand demand contact and dealing with a multitude of authorities linked to both criminal and civil law – and are viewed as in transparent by both, experts and victims. It was suggested that victims should receive more in-depth information on their options, and that actors involved in the proceedings need to find more effective ways to communicate.

Chapter 8 discusses the extent to which victims are informed of possibilities to make civil law claims in the context of criminal proceedings, including state compensation under the victim compensation law (OEG) and compensation provided through adhesive procedures. None of the victims interviewed for the purpose of this study made claims under the victim compensation law (OEG), and only few raised civil law claims within the framework of criminal proceedings. Interviews with practitioners and victims indicated that victims are rarely informed about their options under the OEG, and are usually not advised to pursue adhesive procedures despite the fact that support services, lawyers and several other experts pointed to the potential positive effect in terms of time and emotional effort spent throughout proceedings. Practitioners pointed to adhesion procedures being rare not least due to a perceived reluctance of criminal law judges to engage in civil law claims, and according hesitation on the side of lawyers to recommend adhesive procedures.

This report is concluded with a general assessment of victims' access to justice in Chapter 9.

As the interviews held for the purpose of this study suggest, the legislator's idea to allow for the victim to participate as an active party to proceedings and to offer extensive protection against secondary victimisation has yet to arrive in every-day practice within the criminal justice system. Interviews suggest that a main cause for this discrepancy between law and practice can be linked back to the practitioners' struggle to balance victims' rights with what they interpret to be the purpose and aims of criminal proceedings. Unsurprisingly, the view that victims' rights, at times, appear incommensurable with the aims of the criminal justice system, is suggested to be particularly prevalent amongst those practitioners whose profession, as defined by law, demands impartiality. While both groups seemed aware of the concerns and challenges of the other, those practitioners whose profession presumes to speak for the victim's rights highlighted a need to further the implementation of the victim's right to be heard and protected in criminal proceedings. The results of this study therefore highlight an on-going and unresolved debate on the gradual evolvement of the law protecting the rights and stance of victims in within the criminal justice system.

Introduction

With a view to contributing to a qualitative study on access to justice for victims of crime in Europe, this report discusses the rights and roles of victims in criminal proceedings as they are currently perceived by a group of practitioners and victims within the criminal justice system in Germany. The information presented therein is based on a series of qualitative interviews conducted between January and June 2017. This includes interviews with 21 practitioners working in the criminal justice system, as well as interviews with 11 persons who participated in criminal proceedings as victims of violent crime.

In a comprehensive call for interviews, interviews with practitioners were contacted through outreach to victim support organisations, police offices, lawyers and courts via email and telephone. Despite randomized contact with these institutions, it is important to note that voluntary participation in this study makes a certain interest in the rights and roles of victims highly likely. Interviewees in Group V were sampled through broad outreach to over 100 victim support organisations (both, larger and generalised as well as smaller, specialised organisations) throughout Germany, as well as to lawyers specialized in victim representation. As a result of this sampling method, this study includes only two interviewees who did not receive any assistance through victim support organisations. Both selection biases were taken into consideration in the interpretation of the results of this research.

The group of professionals interviewed for the purpose of this study included five police officers (Group P), four lawyers specialised in victim representation (Group L), five staff members of victim support organisations (Group S), two public prosecutors (Group J) and five judges working at regional courts responsible for the adjudication of crimes entailing a minimum sentencing of more than four years (Group J). Several interviewees were specialised-, or mainly involved in cases involving sexual violence (J3, S2, S5) and/or domestic violence (P2, S2, S4), while others were appointed to coordinate and address issues linked to victim protection and support (P1, P3, P4). Expert interviews were held in Berlin, Baden-Wuerttemberg, Brandenburg, Hamburg, Saxony, Mecklenburg Western-Pomerania and North Rhine-Westphalia and included practitioners from larger urban areas as well as smaller cities or rural contexts. It is important to note that most questions were answered by all professional groups. Their expertise and practical experience in the various topics accordingly differed widely.

Victims interviewed for the purpose of this study included three men and nine women, including two victims of rape (V5, V9), three victims of grievous bodily injury (V2, V7, V10), four victims of bodily injury (V1, V3, V4, V8), a victim of coercion (V6) and a victim of breach of the peace (V11). Of those cases, four involved domestic violence (V3, V4, V9, V10), while two were classified as hate crime (V6 and V7). In a third case, victims and support organisation pushed to have the crime recognised as hate crime, yet the court decided to treat the case as bodily injury with no further qualification (V8). Initial challenges in gaining access to victims willing to share their experiences arose due to the fact that, according to support organisations, victims meeting the criteria to participate were either in the midst of proceedings when the call for participation was made, or had concluded proceedings and were not willing to revisit the memories linked to proceedings. These challenges in reaching the desired sample of interviewees in group V were partly the reason for the fact that this study includes a disproportionately larger number of women. Smaller support services specialised in the support of victims of domestic violence and women in particular, as well as victims of hate crime and racist violence were very responsive to

our request. While the latter group provided interviews with male victims of violence, the former remains predominantly focused on the needs of women.

All interviewees in Group V were part of criminal proceedings within the last four years (i.e. between 2014 and 2017). In nine cases, the trial had been concluded at the time the interview was held (V1, V3, V4, V5, V6, V7, V8, V9, V11). In seven of those court decisions, the offender was found guilty. Interviews with victims were held in Baden-Wuerttemberg, Bavaria, Berlin, Mecklenburg Western-Pomerania, North Rhine-Westphalia, Saxony and Thuringia.

According to the criminal procedure code (StPO), victims of certain crimes (including sexual abuse, murder or manslaughter, bodily harm, unlawful detention and stalking, and breach of protection orders under the protection against violence act¹) are entitled to act as accessory prosecutors which grants additional rights linked to their participation and contribution during proceedings.² Seven out of eleven interviewees acted as accessory prosecutors (V2, V5, V6, V7, V8, V9, V10). Those who did not act as accessory prosecutors were not entitled to do so (V11), were, according to their own memory, not informed about the possibility (V1) or chose not to act as accessory prosecutor (V3,V4). Regarding the latter two cases, it should be noted, that, while victims of bodily injury are generally entitled to act as accessory prosecutor, they do not have a right to free legal representation except for aggravating circumstances (see Article 397a StPO), which may have inhibited the decision to act as accessory prosecutor. Those victims who did not act as accessory prosecutors took a limited role in proceedings which will be referred to as 'victim witnesses' ('*Opferzeugen*', a term commonly used within the German justice system to describe a victim making a witness statement).

Interviews with both, practitioners and victims, were structured according to the headings of this report, and included a number of open, as well as closed questions, which are reflected below. Practitioners were asked to reflect on their personal experience and opinion regarding the practical implementation of victims' rights. Interviews lasted between 85 and 140 minutes. Victims were asked to elaborate on their personal experiences throughout investigative procedures and trial. Interviews with this group lasted between 55 and 100 minutes, depending on the extent to which interviewees could report of active involvement in proceedings and were willing and able to share detail of their experience.

Given that this report is based on small-scale qualitative research, which is reflected in the small number of interviews for certain categories of respondents, the reader should bear in mind that the findings reported here are only representative of those persons who were interviewed.

The following aims to introduce the information provided in the interviews and to explore outstanding themes and discussions.

¹ §174 to §182 StGB

² §397 StPO establishes the rights of accessory prosecutors: Victims who act as accessory prosecutors are 'entitled to be present at the main hearing even if he [or she] is to be examined as a witness. They shall be summoned to the main hearing [...]; shall [...] be entitled to challenge a judge [...] or an expert [...], [have the right] to ask questions [...], to object to orders by the presiding judge [...]; to object to questions [...], to apply for evidence to be taken [...]; to make statements [...]. Unless otherwise provided by law, he [or she] shall be called in and heard to the same extent as the public prosecution office. Decisions which are notified to the public prosecution office shall also be notified to the private accessory prosecutor.[...]

1. Perceptions of the victim's role in the criminal justice system

1.1. Views of practitioners

1.1.1. How do practitioners of various professional groups view the primary role of victims in criminal proceedings and its significance?

	S	P	J	L
As a witness testifying and thus providing evidence;	5	5	6	3
As a damaged party seeking restitution;	0	0	0	0
As a party to the criminal proceedings entitled to have a say in the proceedings;	0	0	1	0
Other, please specify below!	0	0	0	1
Don't know	0	0	0	
TOTAL	5	5	7	4

Interviews reflected a general agreement amongst practitioners that victims are primarily witnesses testifying and thus providing evidence.

It was suggested that the concept of the victim as a passive object in criminal proceedings currently prevails in the mind-set of other central actors in the justice system. A staff member of a victim support organisation referred to the professional focus of the several actors involved in criminal proceedings, as well as an overburdening of the criminal justice system as possible explanations:

"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 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." (S4)

A central argument why the victim is seen and treated primarily as a witness is 'the purpose of the criminal justice system', which, according to interviewees, is to 'find the truth':

"The primary role (of the victim) in criminal proceedings is the role as a witness, because the primary task of criminal proceedings is to find the truth, what actually happened. You usually need a damaged party as a witness because they can describe what happened to them. That would be their primary role from my point of view." (J4)

The victim is seen as an instrument in achieving this goal by initiating proceedings through reporting to the police (J7), giving testimony (P4), corroborating the allegations brought by the public prosecutor's office (J5), identifying the offender (S1), and clarifying the course of events (J4).

It was furthermore suggested that the criminal justice system first and foremost addresses a relationship between the state and the offender, thereby leaving little room for the victim to be of central importance, apart from their role as 'a means to an end to get to the offender' (S4). This judge elaborates on his impression that the criminal justice system is primarily offender-oriented:

"I would not say that the victim plays a central role in the proceedings. For us it is more about the offender, we put a lot of effort into that, personal development, family, where it went wrong, what kind of punishment would accordingly be appropriate. If any, the victim plays a secondary role in criminal proceedings. They may be relevant as a witness or if they pursue civil claims."
(J2)

This staff member of a victim support organisation confirms:

"Criminal proceedings are first and foremost offender-oriented and less victim-oriented (...). That means, the witness, the victim or the damaged party are first and foremost evidence. So it will rather be made sure that the witness will be able to make a statement and contribute to the conviction of the offender."
(S1)

Although all but two practitioners limited the role of the victim to that of a witness, most practitioners viewed this 'primary' role of the victim as an important contribution to proceedings. According to interviewees, victims as witnesses are able to 'hold a key position' (J7) 'contribute significantly' (S3), 'enormously important', 'essential' or 'crucial'.

It was suggested that, in cases of sexual violence/domestic violence and cases based solely on the victim's witness statement in particular, victims are often the only witnesses; hence, both public prosecutors pointed out that the success of their work largely depends on the credibility and truthfulness of a victim's statement (J6, J7). A judge and a public prosecutor mentioned the reverse role of victims who refuse to cooperate, which will make proceedings 'exhausting for everyone' (J1, J7). It was furthermore discussed that it is of importance not to overwhelm witnesses and to keep them functioning for the efficiency of proceedings ("*Prozessökonomie*" -> (See Chapter 6)).

Despite this rather clear-cut consent on the current situation, practitioners remarked a shift in the actual and perceived role of victims over the past years, with the victim becoming more prominent and viewed as a subject rather than object (see e.g. P1). Positive developments quoted by the practitioners included amendments in the law introduced through the law on victim protection (*Opferschutzgesetz*, S2), the option to file ancillary lawsuits and adhesive procedures (J5), the police providing more information to victims (J6) and judges showing more sensitivity towards victims (L2).

This perceived shift in practice and attitude was also quoted as the reason for a judge to choose the option 'party to proceedings' (J6), while the second outlier, a lawyer, based his choice on the argument that victims do have the possibility to play a stronger role as accessory prosecutor (L1). However, this was seen as a matter of choice and i.e. not the victim's 'primary' role (see below). As will be apparent throughout the remainder of this report, according to practitioners, the shift from the victim being a passive instrument to victims actively participating in proceedings has so far primarily been a development in discourse and theory, and has yet to reach practice within the German criminal justice system.

1.1.2. How significant do practitioners assess the role of victims in criminal proceedings, apart from victims testifying as witnesses?

Apart from testifying as a witness, practitioners pointed to the reporting of the crime, thereby initiating proceedings, as a central role of the victim (L1, J7).

Practitioners agreed that the victims' role, rights and options in criminal proceedings are extended considerably if they decide to act as accessory prosecutor, which can extend their contribution 'from a simple witness function to an active party to the proceedings on a level playing field' (L2), almost of similar importance as the public prosecutor (J3).

It is viewed as the victims' personal responsibility to 'arrange for themselves', to play a more prominent role in proceedings and it will furthermore depend on the victims' interest (L1). Interviews reflected a variety of opinions on how frequently these options are made use of, ranging from very frequently, (L1, J3), over a high likelihood for severe crimes (P4), lawyers advising to do so (L1), victims being hesitant as they lack knowledge and fear the court trail (P5) to almost never (domestic violence) (S4). It was furthermore suggested that it will be essential to seek support by a lawyer/support organisation to be able to act in this role (S3, J3); and that it is unusual for victims themselves to act as accessory prosecutor or even be present during trial (J2, J3, J4; see further discussion in Chapter 5). As it will become apparent throughout the remaining chapters of this report, 'active participation' of victims is usually realised through their legal representation rather than the victims themselves.

1.2. Views of victims

1.2.1. How did the interviewed victims assess their role in the proceedings?

The extent to which interviewees were involved in criminal proceedings varied considerably, not least because seven out of eleven persons who were interviewed acted as accessory prosecutors (V7, V9, V10, V8, V2, V6, V5), whereas the remainder of interviewees participated as victim witnesses (see introduction for explanation of terms).

While the remaining chapters of this report offer more in-depth insight on the interviewees' involvement, this sub-section discusses the victim's own assessment of their contribution. It is based on the interviewee's responses to being asked about their motivations to get involved, their assessment of their role in proceedings and whether they would have expected to be more or less involved.

Many of the victims spoke of their impression that their own involvement in criminal proceedings would raise chances that the trial would provide the desired outcome of proceedings. A need for safety was stated as the primary goal of all four victims of domestic violence, two of which acted as accessory prosecutors, and two referring to their statement as victim witnesses. Six out of eleven interviewees made mention of their goal to avoid future crimes committed by the offender (V1, V2, V5, V6, V8 V9), also against potential other victims (V5). Three interviewees pointed out that it had played a central role in their decision to actively participate that the offender had committed violent crimes before (V2, V8, V9). Other interviewees wished to make the offender reflect on what they did (V1) and or to take responsibility (V6).

Several of those reasons, including the need for safety and wanting to make sure that the offender was punished were also named as motivation to participate beyond a witness statement, namely to act as accessory prosecutor. An interviewee who had fallen victim to a hate crime involving coercion spoke about his initial hesitation to act as accessory prosecutor, as the investigative stages of the proceedings had had a severe psychological impact; hence, he had initially retrieved, wanting to 'be through with it' and had doubted 'whether to destroy someone's life'. To this interviewee, it was decisive to be encouraged

by family and a support organisation. He furthermore realised that speaking about the offense was helpful for his mental state (V6).

An interviewee who had fallen victim to several incidents of racist violence reported feeling left alone by the police; hence seeing his own participation as the only way to bring the issue to court and to thereby protect his family from further harm:

“The police and the court wanted to close the entire case after such severe damage because they said the offender was unknown (...) the police took 45 minutes to arrive after such severe crime, although we had called much earlier. So, as I said before, we were treated really badly. That is why I had to, let’s say, push things far enough for it to go to court.” (V8)

A victim of domestic violence named an additional aspect to her decision to become accessory prosecutor, namely the opportunity to be noticed and informed:

“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 accessory prosecutor (...) I was very surprised, that as a victim you basically remain unnoticed (...) that bothered me massively, so I went the way of being accessory prosecutor, there was no big question mark for me, I did it.” (V10)

The degree to which victims were satisfied with their own role in proceedings differed with no apparent contrasts between those acting as accessory prosecutors and those participating as victim witnesses. Four victims of various types of crime explained not to have expected their report to the police to result in criminal proceedings (V1, V5, V10, V11) and were therefore satisfied not to be extensively involved (V1, V11) or would have wished to be less involved (V5). A victim of domestic violence explained that she did not initiate proceedings (as it was an ex officio crime) yet once proceedings were initiated felt that she needed to contribute (V10, see below). Two interviewees who did not act as accessory prosecutors put a strong emphasis on their contribution via ‘telling the truth’ (V1, V3).

Despite the initial hesitations reported in several interviews, only one out of ten interviewees stated that her involvement at trial met her expectations (V1), whereas seven interviewees, including five victims acting as accessory prosecutors, stated they would have hoped to be more involved (V2, V4, V6, V8, V10), that they were surprised and disappointed about their limited role in proceedings (V4, V7, V8, V9, V10), or would have liked to receive more information (V6).

Four interviewees, including accessory prosecutors and victim witnesses, explained that their role was undermined during proceedings, as they were unable to finish their statement (V4) or the hearing at court was brief and superficial (V8), evidence was ignored (V4) or they felt they weren’t taken seriously in court (V7, V9). This victim of racist violence who acted as accessory prosecutor shared his impression that his statement was not given due attention by the court:

“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 shortly, and although I wanted to continue giving information, the court was not interested.” (V8)

A victim of rape in the context of domestic violence explained that she participated in all court sessions, which she describes as exhausting and psychologically demanding. Nonetheless, when asked whether she felt she made a difference, she reflected:

“That’s what I wonder about until today, whether I made a difference at all (...) the way you function as accessory prosecutor, in a very limited way, you are just one link in a chain, not really the central person. That (questioning of witnesses by the victim’s lawyer) is the only moment where you have the possibility to contribute something yourself. (...) Otherwise it is like you are imaginarily closed off. You can watch, shake your head or cry, but you are not allowed to interact” (V9)

2. Victims reporting their victimization to the police

2.1. Views of practitioners

2.1.1. How do practitioners assess the impact of victims' reporting (or underreporting) on the criminal justice system's effectiveness?

The interviewees' responses addressed two overarching themes, namely (1) reporting (or underreporting) impacting whether a crime is prosecuted, and (2) reporting (or underreporting) impacting on the chances of success of investigation and trial.

Ex officio crimes will usually be prosecuted once the justice system is made aware, regardless of whether they are reported by the victim. As a judge at a regional court explained, proceedings are in the hands of 'objective authorities'; a victim to report the crime is 'not needed' (J2). It was furthermore pointed out that there may be cases where law enforcement authorities are 'forced to investigate', regardless of whether the victim initiates proceedings (J4) (see victim report (V10)).

Other practitioners rated the statement and participation of victims being extremely important for proceedings based solely on the victim's witness statement (J3, J4). A judge mainly involved in cases involving sexual violence suggested that there will be no proceedings if victims do not cooperate:

"Yes, that (the impact of the attitude of the victims) is quite extreme. Because where there is no victim functioning as a witness, there won't be any criminal proceedings. Those are usually he said she said constellations, which take place in a small protected space, at home, or rape. (...) That is why the victim's behaviour is decisive. (...) They are the number one evidence. It is rare that such a crime can be prosecuted based on other evidence."(J3)

Victims of domestic violence were named as a group prone to change their statement or retrieve from proceedings, thereby inhibiting their functioning as evidence (S2, J7). Practitioners suggested that victims who hesitate may cause the police to doubt that proceedings would be successful and may therefore be less inclined to initiate in-depth proceedings:

"It is definitely relevant for the remainder of proceedings whether someone is rather hesitant or proactive. If they retrieve, it will be difficult to use them as evidence or as a party to proceedings. (...) If you want the police to continue working on your case, it is always good to give them a little push. Furthermore, a more severe crime is seen as more urgent, a priority, important, and will be treated as such. If resources are limited, the police will have to decide where to start, usually those are the more severe crime, and of course it helps to refresh their memory every now and then."(J1)

Finally, practitioners reported a challenge to prosecute crimes which are neither reported by the victims, nor by witnesses. A police officer with experience in the field as well as in the victim protection office, explains the difficulty of underreporting:

"There are the so called ex officio crimes, which will also be prosecuted if no victim reports to the police. Regardless, there is the challenge of how the police will know about the crime (...) It obviously depends on whether there were witnesses. Looking at the classical case 'domestic violence'. We won't

know anything if you presume the classical constellation (...) one can only hope that someone from outside will report, neighbours for example, but the willingness is not very high, those are the exceptions, which means in most cases, especially in critical cases as sexual violence or something similar, where there are no witnesses, chances are relatively low that the police will know about it so, naturally, there won't be any proceedings.” (P1)

2.1.2. How do practitioners assess the potential of the following measures in terms of improving the situation of underreporting? Would the following measures make it significantly easier for victims to report?

Professional groups	S – Agree or strongly agree	P - Agree or strongly agree	J - Agree or strongly agree	L - Agree or strongly agree
2.1.2.1 More victim support services available to victims of violent crime	5/5	0/5	4/7	4/4
2.1.2.2 Raising victims' awareness of their rights and of support services available to them	4/5	4/5	6/7	4/4
2.1.2.3 Better protection of victims against repeat victimisation and retaliation	4/5	4/5	5/7	4/4
2.1.2.4 Setting up specialised police units or contact officers for victims of certain types of crime	5/5	2/5	5/7	3/4
2.1.2.5 Measures aimed to enhance the trust of the public in the police	3/5	5/5	3/7	3/4
2.1.2.6 Measures strengthening professional, respectful and non-discriminatory attitudes and conduct in the police	5/5	5/5	4/7	4/4

All measures suggested to the interviewees were generally seen as valid considerations with a view to strengthening victims' rights and access to the same. Where practitioners disagreed or strongly disagreed, this was usually commented with either of two observations: First, the measure in question has already been implemented successfully, i.e. there is no need to further improve the status-quo. Or second, the practitioners did see a need to improve the aspect discussed in the sub-question, yet doubted that victims of violent crime would be aware of such improvements prior to reporting to the police, and the measure would therefore not raise the likeliness of reporting to the police. Practitioners therefore stressed that any measure would have to be accompanied by an increased focus on awareness-raising amongst victims and the general public (see e.g. L1, J7).

Some practitioners nonetheless agreed that measures aimed at improving initial contact with authorities would improve the likeliness to report, as positive experiences would motivate to report crimes in the future and would be passed on to others, while disappointment in the system would do the opposite (see e.g. S2). A staff member of a victim support organisation specialised in domestic violence further elaborated on this observation in relation to protective measures:

“If victims were to view the justice system as a primary source of protection, it would make it much more likely for them to report. However, that is not the case, and that is also communicated to them very clearly. Protection by the police is only available under very exceptional circumstances.” (S4)

Practitioners made additional recommendations for measures aimed at improving the report rate for violent crime. These included the suggestion to offer more counselling to end violent relationships, as victims who stay in a violent relationship are less prone to report (J4, referring to victims of domestic violence) as well as measures aimed at reducing fear that the system may not believe the victim (L1).

In response to the questions put to interviewees in Chapter II, respondents reflected on the reasons for victims choosing to, or not to report to the police. Other than the aspects mentioned in closed questions, themes which emerged from this reflection included the victims' concern whether the police and other authorities would believe them, as well as the consequences of reporting, for example a potential involvement in criminal proceedings.

Furthermore, reflections on circumstances influencing whether or not a crime is reported generated two sets of factors, namely (1) factors related to the type of crime and (2) factors relating to characteristics and previous experiences of the victims themselves. Practitioners explained that the chance of a crime being reported usually rises with the severity of the violence (J2) and will depend on the context in which the crime takes place (J1). It was furthermore suggested that the likeliness of reporting is lower where proximity to the offender and the level of shame related to the crime is high (S2, J1, J5, P1, P3). Regarding the characteristics of the victim, practitioners mentioned the victims' gender (L2) and social background (S1, J1) as influential and pointed out that previous experiences with crime and the justice system (J1) will impact the decision whether or not to report.

Lawyers and support services, both potentially in contact with victims prior to the crime being reported to the police, spoke about their role and potential influence in the victims' decision whether or not to report. Practitioners explained that they inform about a potential trial and the victims' role and rights (L1, L2, S1) address-, and, if possible, take fears linked to reporting (L1) and manage expectations on their role and chance of success (L1, S1, S3, S5).

Lawyers and support services furthermore explained that they do not recommend reporting to the police to every victim of violent crime approaching them, and usually calculate the risk of re-traumatisation (L1, L2, S4, S5). Lengthy procedures and the risk of failing to reach a verdict against the offender were named as reasons not to encourage reporting. This staff member of a victim support organisation specialised in the support of female victims of violent crime discussed her reservations towards advising to report to the police:

“Only about 10 per cent of the proceedings (relating to sexual violence) lead to a conviction. From this perspective, these hasty measures (‘Aktionismus’) (...) to think one has to report (...) are unrealistic unfortunately. Even if the situation is clear (from the perspective of) (...) common sense, it does not mean that someone will be convicted.”(S5)

Another interviewee specialised in domestic violence expressed her concern about a rather homogenous attitude amongst local support organisations to push victims towards reporting to the police:

“I would appreciate more openness, so that (organisations) really deal with the persons approaching them, rather than pushing them into a pre-determined direction, also regarding the reporting to the police. We experience a certain expectation, you have to report and if you don't it is your responsibility if something happens in the future (...) victims report feeling pressured through their support organisation. (...) if the support lacks an openness to address and maybe question, then the victim's path is in a way predetermined (...) we would need more of a variety in support (...) regarding age, cultural background, religion. All of those aspects play a role, especially when it comes to sexual violence.” (S4)

2.2. Views of victims

2.2.1. Did the interviewees report their victimisation to the police?

Ten out of eleven interviewees reported the crime to the police. A victim of domestic violence/rape did not report the offense as her neighbours forestalled her (V9).

2.2.2. What are the factors identified by victims, who reported to the police, facilitating this reporting?

Support organisations were mentioned as important facilitators for reporting to the police by two victims of domestic violence (V4, V9), a victim of coercion (V6), and a victim of grave bodily injury (V2). Three of these victims reported the crime only after they had sought the advice of support organisations. Information provided by support organisations addressed the topics of protection against repeat victimisation and retaliation, the potential role in-, and confrontation with the offender during trial, and financial support for legal representation (V2, V3, V4).

Other factors named to have facilitated reporting included a supportive family (V6) and, in two cases of domestic violence, the fear for the children as a motivation to report (V4, V3). Two interviewees mentioned encouraging (V11) friendly and interested police officer as a facilitator (V1).

2.2.3. What are the factors identified by victims, who reported to the police, hindering this reporting?

Doubts and fears of getting in touch with the police were mentioned as an important factor hindering reporting the crime. These were based on previous negative experience with the police, including late arrivals at the scene and a hostile and reluctant attitude (V8), or, in a case of domestic violence, fear of the police based on the offender's threats that the police would not believe her or would hurt her (V3). One interviewee who did not know his offender reported having heard rumours that the justice system would not be able to help and doubted whether the police would be able to identify the offender (V6).

Other interviewees mentioned concerns about retaliation through the offender. While this fear was mostly reported by victims of domestic violence, an interviewee who did not know her offender expressed an initial fear of the offender learning her address through case files (V2).

Three interviewees named aspects related to the situation while reporting to the police as inhibiting their reporting, including long waiting periods in a cold hallway (V1) and challenges due to a language barrier as the police did not provide translation during initial contact (V5, V7). This latter aspect was also explored in expert interviews.

2.2.4. What are the factors identified by victims, who did not report to the police, impeding this reporting?

This question does not apply to the victims interviewed for the purpose of this study, as all but one interviewee reported the crime to the police (see Q.2.2.1.).

2.2.5. Would the victims, if they were victimised again, report to the police? What are the reasons given by interviewed victims for their responses?

This question triggered a diverse range of responses. Three out of eleven victims who were interviewed responded that they would report to the police again without hesitation (V5, V6, V10). This group included a victim of racist violence, who had previously described his initial hesitation and doubts towards the justice system, which were reversed based on his experiences following the crime (V6).

A larger group of interviewees expressed their disappointment in the police's work and/or the general justice system (V1, V2, V3, V4, V7, V8, V9, V11). Of those, four interviewees responded that they would not report to the police again (V2, V3, V7, V8). Reasons provided for this decision were diverse, and ranged from an overall disappointment in the criminal justice system, to a perceived failure of the police to offer efficient protection. A victim of bodily harm whose trial had not been concluded at the time of the interview expressed her doubts in the punishing effects of the criminal justice system:

“For me it is clear now that such things are difficult to solve via the rule of law. At least here [the interviewee was referring to her region] I would not want to go through such proceedings again (...).” ‘It’s a question of immediacy, isn’t it? If I look at it from a criminological perspective: If this guy is sentenced to a penalty of 500 Euro 4,5 years (after the incident) this does not have any punishing effect, (...) does it?’ (V2)

Two victims of racist violence as well as a victim of domestic violence explained that they felt the police did not react to immediate threats, hence failed to protect them sufficiently against repeat victimisation and on-going assault/violence (V3, V7, V8). A man who fell victim to racist violence spoke of his disappointment in the system's lack of efforts to protect against further victimisation:

“I honestly won’t give a lot of trust in the police anymore, because I know how us foreigners are being treated. (...) due to my experience I will assume that I have to protect my family myself and will not be able to trust in the police or the court.” (V8)

A woman who had suffered grievous bodily injury from racist violence spoke of ‘being tired’ and not seeing the point in reporting to the police as she had suffered further assaults during and after the trial (V7). A victim of domestic violence explained that she would recommend others in a similar situation to approach a lawyer and victim support organisation, as she identified these actors to have proven more effective in protecting her (V3).

Three interviewees explained that they would report again despite, rather than because of their experiences with the justice system. This latter group named (theoretical) protection (V4), and the

importance of speaking up (V1, V9) as their reasons for answering in the affirmative, yet pointed out that the justice system as such did not live up to their expectations.

Furthermore, interviewees pointed to disappointment regarding the police's work, including the investigation. Interviewees explained that the proceedings did not meet their expectations (V4), described the interaction with the police as discouraging or disquieting (V9), or felt mistreated due to their residence status (V8). It was furthermore mentioned as disappointing that proceedings were stressful and lengthy (V1, V2).

3. Empowerment of victims (support, advice and information)

a) Support and advice

3.1. Views of practitioners

3.1.1. How do practitioners assess the availability of victim support services to victims of crime?

Practitioners' assessment differed significantly when they were asked if the number and resources of victim support organisations were sufficient in their region. Lawyers practicing in both, larger and smaller cities, affirmed that there are enough organisations and that their resources are sufficient (L1, L2), while a public prosecutor stated that she was not aware of any cases, in which an organisation couldn't provide the support needed due to a lack of resources (J6).

By contrast, other practitioners were under the impression that access to appropriate support services is not provided for every victim of violence. Four practitioners, including three staff members of support organisations (S1, S2, S5, P5) stated that support organisations are neither sufficient in numbers, nor are they adequately resourced. An interviewee working for a victim support organisation for female victims of sexual violence illustrated the lack of funding: *"We are being crobbed off with mere crumbs."*(S5) Some problematized that victims from rural areas often need to travel long distances in order to reach a victim support organisation, as those tend to be located in larger cities (L3, P5).

A judge working in a larger city estimated that 95% of victims of violent crime remain without support by a victim support organisation (J1). Other practitioners, including four out of five police officers, all based in larger cities, differentiated: While the mere number of organisations in place is appropriate, their capacities and resources are not meeting the needs (J2, P1, P2, P3, P4). A police officer elaborated:

"I would say there are enough (...) (organizations). (...) A problem is the (...) money, (...) all of them lack money and therefore they cannot work the way they actually would like to work" (P1).

A lack of places in women shelters was explicitly named by four practitioners of whom three were police officers from large cities (S2, P2, P3, P4). (see Chapter 7)

Interviewees were under the impression that support services currently lack resources to offer sufficient care for migrants (S5) and refugees in particular (S2, S5), victims of sexual violence (S5), victimised men (S1, S3) and male victims of domestic violence in particular (P2, P4, both based in larger cities), women (S5) and disabled women in particular (S5).

Support organisations employing volunteers was noted as a common practice, and a contested subject amongst interviewees (S3, S4, J5). While a staff member of a victim support organisation criticized a deficient quality of these organisations and reported on her impression that she cannot trust them in doing professional work (S4), a judge was of the opinion that organisations led by volunteers are sometimes more successful as the motivation of volunteers to provide good services is perceived to be higher (J5). A victim of domestic violence problematized that the volunteers working for the organisation she approached were not capable to offer any meaningful help (V10, -> for elaboration see Q. 3.2.3)

Two practitioners added that, due to a lack of resources, information about organisations and support services are not well-spread and access is accordingly problematic (L3, J1).

3.1.2. In the view of the interviewed practitioners, are victims provided with information about the general support services available to them in an effective and timely way?

Interviewees were asked if the police provide victims with information in an effective and timely manner.

Overall, interviewees were rather hesitant in answering this question. Seven interviewees stated that police regularly inform victims in an effective and timely manner (L2, L4, S2, J3, J7, P2). Others explained that it depends on aspects as the severity of the case (L3), assessment by individual officers (S1, S5, P4), and the time of day that the crime is reported (J2).

Two interviewees argued that police do not provide victims with information about support services in an effective and timely manner. While these interviewees mentioned an information note handed to victims, they criticised that this is not a regular practice (for example, when the police actively intervene at the crime scene no information notes are handed out), and that the note may be incomprehensible (L1, S3). The lawyer criticized:

“Unfortunately, I have to say no (police do not always inform about support services). This is not the case at times. In part, we find that police officers are not sufficiently trained. Even though they have the basic knowledge and they can make basic statements, it is often the case that the information provided is very basic. It would be preferable if each victim of crime would immediately get a respective leaflet the first time they get in touch, a flyer; anything that provides information on basic rights and basic possibilities, a reference to legal possibilities, the right to accessory prosecution, the law on compensation for victims of crime, the victim support organisations (...).” (L1)

3.1.3. How do practitioners assess the availability of specialist victim support services to victims of sexual or gender-based (including domestic) violence?

Opinions were divided. Seven interviewees explained that there is an insufficient number of support services due to a lack of funding – among them all but one interviewees from support organisations (L1, S2, S3, S4, S5, J2, P5). By contrast, nine interviewees, including most interviewees from group J, stated that there are enough organisations supporting victims of sexual and gender-based violence (L2, L4, S1, J1, J3, J4, J5, J6, P3).

The remaining interviewees did not give a clear answer. A staff member of a victim support organisation explained she would wish for a broader variety, as those few organisations that exist have a tendency to push victims to report rather than to help them find a solution that meets their individual needs (S4, see also Chapter 1).

3.1.4. In the view of the interviewed practitioners, how effectively and timely are victims of sexual or gender-based violence provided information about the specialist support services available to them?

Twelve interviewees, including all but one interviewee from group J affirmed that victims will be informed by the police (L4, S3, S4, S5, J1, J3, J4, J5, J6, J7, P3, P4), while several lawyers and police officers were of the opposite opinion (L1, L2, L3, P1, P5).

It was pointed out that knowledge amongst police officers and the quality of the information provided varies. According to practitioners, specialised police officers tend to be better informed about support services aiming at victims of certain types of crime than police officers who do not have specialised training (L3, S3). Information provided by police officers who are not specialised in specific types of crime or victim support is usually about generalised support. Generalised support organisations are then expected to refer victims to specialised support (L2, P1, P5). A police officer responsible for victim support and protection explained:

“A lack of awareness (of victims’ rights) 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 support 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. The goal is to make it work everywhere but I guess it’s a start that it works well in some police departments. (...) What we have started doing, so that police officers do not have to memorise thousands of specialised support services, is to ask police officers to inform victims of the (larger generalized victim support organisation) and they can then refer them to specialised support.”
(P1)

A staff member of a victim support organisation specialised in domestic violence strongly opposed this practice arguing that it forces victims to go from one service to another, getting exhausted of telling their story over and over. This practice therefore bears a risk that victims stop seeking help before they are able to reach appropriate support (S4).

A lawyer explained that, in his opinion, it is not the police’s task to inform victims about the organisations available to them as their capacities are rather exhausted with identifying the offender and a thorough investigation (L2). It was furthermore discussed that information may be more effective if provided prior to reporting to the police, which is currently not the case (S3, S4).

3.1.5. How do practitioners assess victims’ possibilities of being accompanied by a support person of their trust when they are interviewed by the police?

While interviews reflected a general consensus that victims can bring a trusted person, only one interviewee mentioned a legal right (J6).³ Others saw the decision making power regarding the question whether or not to allow a trusted person to accompany a victim with the responsible police officer (L2, S3, S5, P1, P2, P3, P4). Some practitioners expressed uncertainty regarding the question if there is such legal right (L1, J3, P4).

Interviewees questioned whether it is beneficial for the investigation and the proceedings to have victims being accompanied by a trusted person. A trusted person can be an additional filter or influence, or can intimidate victims during the interview (L1, L2, J2, P1, P3). Two police officers showed concern about practical implications in terms of the possible role of the trusted person in the remainder of proceedings (P1, P2). According to a police officer specialised in domestic violence, in cases where the trusted person who accompanied the victim to proceedings is summoned as a witness him/herself, their reliability as a witness will be diminished (P2). Another police officer elaborated:

³ Section 406f StPO establishes the right to assistance and representation of the aggrieved person.

“Whether or not the police officer will allow for a trusted person to accompany the victim during interview depends on the situation and on whether the police officer feels that they really need support. (...) Regardless of the legal framework, it is essential to consider how to obtain the best outcome of the police interview. (...) If a police officer feels that the victim may be influenced by the presence of a trusted person, it may not be useful. Having a trusted person present may be supportive for the victim, but if it makes sense is a different question. Of course, if they are interviewed without a trusted person, it is important that they have a relationship of trust to the interviewing officer. If it does not work, of course the trusted person can come along but we usually try to talk to them (the victims) without anyone else present.” (P1)

Two staff members of victim support organisations shared their impression that victims will not always be informed about the possibility to bring someone of their trust along. According to their experience, victims usually only know about this right if they approached a victim support organisation. (S1, S4).

3.1.6. How do practitioners assess victims’ possibilities of being accompanied by a support person of their trust during court trial?

Interviewees generally agreed that victims are allowed to bring a trusted person to court. Nonetheless, it was questioned whether access to this right is guaranteed in practice.

A lawyer and a staff member of a victim support organisation criticized, that victims who do not act as accessory prosecutors will not be informed about the option to bring a trusted person, and will have to consult a victim support organisation or a lawyer to know of their rights (S4, L3).

Another lawyer indicated that he occasionally but seldom senses reservations of judges towards allowing a person of trust to be present during the hearing because it may influence a victim’s statement (L2). He elaborated:

“Sometimes judges are reluctant to allow for a person of trust (to join), (...) there is the attitude that victims should not go to therapy before being questioned by a judge to prevent any form of ‘previous intervention’ which could alter the statement. Based on many seminars on the topic of the psychology of memory I consider this approach nonsense because the memory is constantly being altered anyway.” (L2)

Practitioners assuming incommensurability between protection against secondary victimisation and effective proceedings was a recurring topic throughout interviews with practitioners and will be discussed in further detail below.

Psychosocial process counselling was introduced in Germany in January 2017, and has not yet been part of the practical experience of most interviewees. A staff member working as psychosocial counsellor emphasizing that, once a supporter is appointed, judges cannot expel them from the court room which, in her experience, gives victims a feeling of safety. Furthermore, as she perceives it, the professional training that psychosocial support workers are required to undergo is central in building the trust of judges and victims. The extent of the support offered will depend on the victim’s wishes. The interviewee added that the organisation she works for lacks the capacities to offer to accompany victims to all days of the trial (S3).

A lawyer, who frequently represents victims of sexual violence generally approved of the newly implemented psychosocial process support, yet feared it might jeopardize accessory prosecution:

“(...) (We will) see how courts handle the combination of accessory prosecution and psychological process support. It could be that judges say, we only need one and try to get rid of the other thing. This could be a danger in the end.” (L4)

3.1.7. How do practitioners assess victims’ possibilities of being legally advised when they are interviewed by the police?

Interviews generated a general impression that information about legal advice is provided sporadically, rather than as a routine, and that the detail and extent of this information will depend on a multitude of factors.

Eight interviewees, including most practitioners from group J, stated that victims are generally informed about their right to be legally advised when being interviewed by the police (S4, J1, J3, J4, J5, J6, P1, P2, P5), while six interviewees, including most practitioners from group L, argued that it depends on the case if this option will be indicated to victims (L1, L3, L4, S2, P3, P4). It can also depend on the individual police officer or their individual level of training (L1, L3, P3, P4). An interviewee from a victim support organisation differentiated between general police officers and officers working for the criminal investigations department. While the former usually only inform the victims in general terms through brochures, and refer them to a support service, the latter provide more information (S2).

Another expert explained that, in her experience, victims are usually not informed about this right (S3). A lawyer argued that it is usually not the police who inform a victim about this possibility but victim support organisations and specialised lawyers. In his opinion, this results from the understanding of the police that a person who has become a victim of a crime does not need legal advice because they simply have to give a truthful statement (L2). This impression was shared by an interviewee from group V (see below).

Police officers themselves were of varying opinions regarding practice: Three police officers stated that victims will generally be informed (P1, P2, P5) while the remainder argued that it depends on the individual police officer or the case (P3, P4).

It was suggested that, due to a lack of information and the complexity of legal applications, it is not always clear if victims will receive legal aid at the point of time they are interviewed by the police (S3, S5, J1, P2). A police officer spoke about potential consequences of this situation, explaining that many victims fear possible costs and therefore forego legal assistance during the interview (P2 -> see below).

3.1.8. How do practitioners assess victims’ possibilities of being legally advised during court trial?

All interviewees confirmed that victims have the right to be legally advised during court trial. However, opinions on the extent to which victims will be informed about this right varied.

While a staff member of a victim support organisation stated that, in cases in which victims are eligible for accessory prosecution, public prosecutors inform the victim about their right to seek legal advice (S1), several practitioners stated that victims are more likely to be informed about the right to get legal assistance via information leaflets provided by courts (S3), by victim support organisations (L3, S2), by specialised lawyers (S2), or by witness support (L1). A lawyer was of the impression that there is no official information at all (L4), while a judge assumed that victims are not actively informed about their

right, yet it is expected to be general knowledge (J4). This vast variation in experiences amongst practitioners raises concern whether sufficient information is provided to victims in practice.

3.1.9. How do practitioners assess victims' possibilities of being legally advised free of charge?

Answers to this question showed a striking consistency within the different groups of practitioners.

All lawyers and staff members of victim support organizations with the exception of one (S1) argued that it can be difficult and complex for victims to receive legal aid. Although victims of severe violent crime have a right to be represented by a lawyer for whom they do not bear the costs⁴, a lawyer stated that the catalogue of crimes allowing for this option should be extended to ensure an appointment independent of the victim's income capacity (L2). This catalogue was furthermore seen as problematic because a specific case may be assessed as a crime falling under the list of crimes entitling a person to legal aid by the police, while at a later point in proceedings, the public prosecutor's office may define the crime differently. This raises the financial risk victims have to take when seeking legal advice (S2). A lawyer added that a person who has become a victim of a crime may not be psychologically fit to assess if it makes sense to hire legal representation and hence bear the financial risk (L3). A staff member of a victim support organization was therefore of the opinion that legal representation should generally be free of charge for victims (S3).

Another staff member of a victim support organisation stated that, according to her impression, the office for legal inquiries at court (*'Rechtsantragsstelle'*) has recently been trying to limit the number of approved applications as far as possible. She added that it is furthermore not uncommon for lawyers to demand payment in addition to that provided by the state from the victims. According to this interviewee's experience, it has been the case that lawyers have stopped informing the victim about the trial or stopped representing them if they were unable to pay such additional fees (S4).

A lawyer argued that offenders and victims are treated very differently concerning this aspect. While offenders easily get legal aid, it is much more complicated for victims (L4).

Six (J2, J3, J4, J5, J6, J7) out of the seven interviewees from group J stated that legal aid is offered generously (J2, J4) and access to it has a low threshold (J4). Both public prosecutors stated that access to legal aid works well, is effective and adequate (J6 and J7).

A public prosecutor indicated that it is also possible for witnesses and victims who do not act as accessory prosecutors to request legal advice free of charge during the proceedings⁵ (J6).

Only one of the judges was of the opinion that applying for legal aid was complex and difficult:

'There are two ways, the way through a lawyer is rather easy, that is also the first question the lawyers will ask themselves, what they get paid off, so they will ask them (the victims) what their financial situation is like and whether it makes sense to apply. That's very easy I think. But access as a private person is very difficult. (...) You will receive a mess of forms and are supposed to somehow send it to the court, but they don't know how to proceed. There are three or four paragraphs which discuss accessory prosecution and legal aid

⁴ §397a StPO lists the types of cases in which a legal representative is appointed free of charge to victims who act as accessory prosecutors.

⁵ §68b StPO determines that witnesses have the right to legal representation. Lawyers can be appointed free of charge if certain criteria are met.

which are so complicated that I wouldn't expect a normal person to understand whether they can receive legal aid. To differentiate between the various options is difficult.' (J1)

Among the group of police officers, answers were less concrete. Three police officers stated that they do not inform victims about the option to get legal aid as it will only be relevant at later stages of proceedings (P1), or because police officers do not perceive themselves as legal counsellors and lack the knowledge (P5). Two police officers assumed that the more severe the crime, the more likely it is that victims will receive legal aid (P2, P5).

3.2. Views of victims

3.2.1. Were the interviewees in contact with an organisation providing victim support services?

All interviewees were in contact with victim support organisations.

3.2.2. Those who were, how did they know about the service?

Three interviewees knew the organisation before the crime was committed (V1, V2, V11), while three interviewees were informed by the police (V5, V9, V10).

In four cases, another person indicated the possibility of contacting a victim support organisation: a teacher in a language school (V3), a friend (V7), the interviewee's lawyer (V8), and the youth welfare office (V4).

An interviewee from a larger city who fell victim to bodily injury remarked that it was very difficult to find an organisation which had the capacities to help him and his family. He explained that he approached 12 or 13 different organisations and that it took eight months before he found an organisation that was willing to deal with right-wing violence and his specific case. According to the interviewee, the other organisations had turned him down because they were not equipped to deal with cases such as his. (V8)

Another victim of hate crime indicated that the organisation had called his home number. According to the interviewee, someone from the police had given his contact details to a journalist who had then informed the victim's support organisation whose staff proactively contacted the interviewee. He furthermore stated that he had not agreed to such a procedure, yet was glad to receive support (V6).

3.2.3. Those interviewees who were in contact with an organisation providing support services, how did they assess the services provided?

Most interviewees expressed gratitude for the support they received through the organisation (V1, V2, V3, V4, V6, V7, V8, V9, V11).

"It was simply a place where you could go to talk, people who would understand you. (...) They are doing a great job, they are good to you, they take you seriously, and if you have a matter that came up in the meantime, then they are there." (V1)

For four of the interviewees, the organisation played a major role either through emotional support (V1, V8, V11) or advise (V3, V11). A victim of domestic violence:

“No, I did not know my rights, I do not understand a lot, but (...) (the victim support organisation) helped, they did everything, made all applications for me. Now I know, but before, how should I have known (...)?” (V3)

Two interviewees reported that the organisation did not play an important role, as they were not in need for in-depth support (V2) or were simply advised to get a lawyer (V5).

A victim of domestic violence spoke of her struggle to find appropriate support in a rural area. Seeking protection against further assaults, the interviewee was told that the organisation had no options to support her, besides financing therapy or legal aid. The interviewee mentioned she felt they were unable to cope with such severe violence and criticised that the organisation mainly works with volunteers (V10). She elaborated:

“(I said) I get legal aid, I have my lawyers, I do not need that. What else can you do? Somehow they were at their wits’ end. That may be so because they are a suburban small-town organisation, I don’t know, but due to the manifold, repeated harassment I didn’t have the time or energy to work my way through faraway places to see whether they can help (...) I cannot just drive to (larger city in the South of Germany), that’s more than an hour away, I have to work, I have my children, that’s simply not doable. In that regard I really feel a bit left alone.” (V10)

She furthermore pointed out that she was unable to seek support by organisations in larger cities, as her employment and responsibilities for her children make it impossible for her to travel long distances (V10). All other victims of domestic violence live in large cities and reported no such difficulties in finding a support organisation (V3, V4, V9).

3.2.4. Those interviewees who were in contact with an organisation providing support services, did they feel that the services provided encouraged and helped them to participate in the proceedings?

Several interviewees were encouraged to appear as accessory prosecutors (V2, V9) while others were encouraged to go through the proceedings (V3, V6 and V8). The interviewees elaborated on several aspects concerning the support they received: provision of information, help finding a lawyer, psychological support and being accompanied to the court trial.

Another group of interviewees did not feel that the organisation played an important role in encouraging them to participate in the proceedings, but provided information (V1), offered psychological support (V11) or advised the interviewee to consult a lawyer (V5). One interviewee stated she reported the crime before she had contacted the organisation and would have gotten a lawyer without the organisation as well (V7).

3.2.5. In cases of domestic violence (‘D’), were the interviewees supported in overcoming the risk of repeat victimisation?

Two interviewees were advised by the victim support organizations to contact the police every time the offender shows up and to move into a women’s shelter (V3, V4). In a case in which the offender repeatedly violated the Protection against Violence Act, the organisation informed the victim about the possibility to receive an emergency button to inform the police in cases of emergency (V4).

One interviewee approached the organisation to find additional protection but the organisation was unable to cope with the extreme situation (V10) For an elaboration of her struggle to find a victim support organization see Q.3.2.3.

3.2.6. When being interviewed by the police, were the interviewed victims accompanied by a support person of their trust? Were the interviewees informed beforehand that they would be entitled to such assistance?

Three interviewees were accompanied by a trusted person, including a victim of hate crime who was accompanied by her husband (V7) as well as a victim of domestic violence and a victim of grievous bodily injury who were accompanied by a staff member of an organization for victim support (V2, V4). A victim of bodily injury reported having to argue with the police to ensure that the support organisation could attend the interview:

“He (police officer) said: ‘Who is this?’ I said: ‘My victim counsellor’. He then said in a degrading manner: ‘Victim counsellor? What is that about? There isn’t such thing here.’ I said: ‘Well (...), I think it’s my right.’” (V2)

A victim of racist violence made similar experiences and elaborated that the police had not informed him but –to the contrary- urged him and his wife, who was also victimized, to give separate statements and to not be in the same room during the interview (V8).

Another group of interviewees was not accompanied when they were interviewed by the police (V1, V6, V8, V9, V10, V11). With the exception of one person who was informed by a victim support organisation (V6), this group clarified that they were never informed that they could bring someone along (V1, V8, V9, V10).

3.2.7. At the court trial, were the interviewees accompanied by a support person of their trust? Were the interviewees informed beforehand that they would be entitled to such assistance?

Only few of the interviewees stated that they were explicitly informed about this right. Five interviewees were informed about the option by their support organisation (V1, V4, V6) or by their lawyers (V5, V9). Nonetheless, all but one interviewees were accompanied at the court trial, either by staff members of a victim support organisation (V1, V2, V3, V4, V6, V7, V9, V11), by family members (V7, V9) or by a lawyer (V5). Being accompanied to court was perceived as a self-evident right by some of the interviewees (V2, V7),

An interviewee who reported several problems concerning how police officers treated him, indicated that, to the contrary, the police had claimed that he did not need anybody present during court trial as he was the victim, not the defendant (V8). This concern was mentioned by practitioners as elaborated in Q. 3.1.5 and Q. 3.1.6.

3.2.8. When being interviewed by the police, were the victims accompanied or advised beforehand by a lawyer? Were the interviewees informed beforehand that they would be entitled to such assistance or advice?

Five interviewees neither remembered being advised or accompanied by a lawyer when being interviewed by the police nor did they recall being informed about the option (V1, V2, V6, V7, V8).

A victim of domestic violence was informed by her victim support organisation but went on her own (V4). A victim of domestic violence and a victim of disturbance to peace stated that the police had informed them about the possibility to seek legal advice (V9, V11). A victim of bodily injury added that the police had moreover indicated that there was no need to consult a lawyer as he and his family were merely victims and witnesses (V8).

**3.2.9. During the court trial, were the interviewees accompanied or advised by a lawyer?
Were the interviewees informed beforehand that they would be entitled to such
assistance or advice?**

Most of the interviewees were advised by a lawyer (V2, V3, V5, V6, V7, V8, V9, V11). Most of these were informed about the option by their victim support organisation (V2, V3, V6, V7, V8, V9, V11).

There were two interviewees who reported difficulties: A victim of domestic violence was informed about the option of legal representation by her support organisation. A lawyer informed her that she would not receive legal aid. As she recalled, it was assumed that she could represent herself at court. Since she could not afford to pay her herself, she had no legal representation (V4).

A victim of bodily injury was not advised or accompanied by a lawyer during court trial and was not informed about the option. She appeared rather irritated by the question and explained that she did not need a lawyer, as she simply had to give a true statement (V1).

b) Information

3.3. Views of practitioners

**3.3.1. In the view of the interviewed practitioners, how reliably, comprehensively and
effectively are victims provided information about their potential role and their rights
in proceedings, when they are first in contact with an authority, such as, in particular,
the police?**

As the interviewees' answers were diverse, it cannot generally be concluded if victims receive information about their role and rights in an effective manner. Answers suggest though that the police do not reliably inform victims.

Two judges affirmed that the police inform victims (J2, J3). Four of five police officers referred to an information leaflet containing this information (P1, P2, P3, P4.). Several interviewees questioned the effectiveness of leaflets as a source of information for victims. A staff member of a victim support organisation stated that he sees a need to provide more information in easy language to ensure that all victims understand their rights and options (S1). Two lawyers added that victims who are not well informed often misperceive their role in the proceedings since they are not adequately prepared (L2, L3). Furthermore, some practitioners stated that the police will not initiate to talk about the topic. If victims actively ask about their rights, the police will answer their questions (L1, P4, P5). Three interviewees remarked that police officers who benefitted from special training or work at specialised department rather tend to inform victims than other police officers (L2, L3, S2).

Several staff members of victim support organisations questioned whether the police was the right actor to provide such information (S2, S3, S4). It was argued that, in order to remain neutral, the police cannot cooperate too closely with the victims and provide in-depth information (S2). Furthermore, police appear to be overwhelmed with their duties to also inform the victims about their rights and possibilities after the

third reform of the protection of victims act (S3), or that there are doubts that the first contact with the police is the right moment for this information to be provided as victims are usually unable to take in the information at that point in time (S4).

A judge and both public prosecutors stated that they do not know for sure if the police provide this information. (J1, J6, J7)

3.3.2. Are victims later informed about any significant progress of the proceedings and their potential role in various phases of the proceedings? If yes, on which occasions?

A larger group of interviewees explained that victims or their lawyers who actively ask for this information will receive information on the proceedings, while others are unlikely to be informed (L1, L2, L3, L4, S3, J5, J6, P2).

Police officers (P2, P3, P4, P5) reported a separate information policy for cases involving safety concerns. For instance, victims are arguably threatened by the offender, police officers will most likely inform them when the offender is arrested. A police officer stated that she unaware of a duty to inform the victim (P1). A judge stated that a lack in capacities can be reason not to inform victims:

“(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 primarily. The time and the capacities are insufficient.” (J5)

Another concern mentioned by a judge and a police officer were cases in which it is not absolutely sure if the person who reported a crime is telling the truth. As there may be doubts about the truthfulness of the alleged victim’s statement, victims should not receive information on how their case progresses, until their role is absolutely clear (J3, P2).

A judge argued that such a right is not foreseen according to the StPO (J4). He explained that he would run the risk of being removed due to partiality if he would brief the accessory prosecutor upon them asking. J1 and J6 suggested the opposite. They explained accessory prosecutors will automatically be informed about everything that happens and that victims are entitled to be informed about the date, time, and result of the trial or if investigations are discontinued according to § 406d StPO.⁶ S4 complained about information being 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, or whether and where they will be transferred. (...). In my cases, there will be information about the release of the offender approximately 2 months after the fact. (...) And the information (...) does not go directly to the victim but to their lawyer (...) but with delay. I cannot recall (a case) in which it worked well. (...) It’s written in the law. I think it’s good that it is in there. It would be even better if it would work. It doesn’t.” (S4)

Two staff members of victim support organisations remarked that the impersonal way a discontinuance of proceedings is currently being communicated often conveys the victims the feeling of being blamed or

⁶ § 406d StPO determines the extent to which a victim is informed about proceedings, including in particular termination of proceedings, the outcome of proceedings, and several other aspects depending on the situation.

not taken seriously, and i.e. a risk for secondary victimisation (S2, S4). A staff member specialised in domestic violence explains:

“Basically public prosecutors use text modules when they close proceedings (...) They do it because it saves time, but it doesn’t do justice to the individual. They (the victims) read ‘on grounds of insignificance’ and ‘lack of public interest’. I would wish that they would consider what they are writing, and stop conveying the feeling: ‘You are too dumb, you failed. Your testimony was too weak, it is your own fault and it wasn’t that bad’ (...) It is such an unnecessary experience, victimization, secondary, tertiary (...) caused by the justice system.” (S4)

3.3.3. How do the interviewed practitioners assess victims’ possibilities of having access to the case file either personally or through a legal representative?

There was overall consensus that a victim’s lawyer can access the case file of their clients. Nonetheless, assessments of the practical access to this right and of its consequences were remarkably contradicting, as this question touched upon an on-going debate within the German criminal justice system. Over the past two years, as access to the file may influence the victim’s statement in court, several regional courts have limited access in cases which are based solely on the victim’s witness statement.⁷ Practitioners discussed this development:

“Well, my impression is, nobody will confirm this: I am sure, (that there is) a general suspicion against victims. (...) that, when they see their case file and learn about the content they can memorize their statement and (when) they make their statement at court, it is not their memory (of the incident). And that has a negative influence on the court’s ability to decide on the case. Vice versa it obviously doesn’t play a role. (...) Offenders always get the case file.” (L4)

“This is of course a catastrophe. I cannot think of a word drastic enough to say this because accessory 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 accessory prosecutors. You may as well skip it. That is absurd.” (S2)

Another interviewee working for a victim support organization explained that lawyers usually do not tell their clients that it is not only the lawyer, but also the victim, who can access the files. If they would allow their client to view the file they risk damaging the quality of their statement, and generally the proceedings because the statement is no longer authentic and the defence lawyer will make use of that. They will argue that the victim’s statement at court was prepared, that they simply remembered what is written in their case file. The interviewee understands the lawyers’ reasoning but does not see it as justified not to explain this to the victim, as she sees it as a form of incapacitation (S4). A public prosecutor who had

⁷ See for example Higher Regional Court (OLG) Hamburg, decision of 22 July 2015, 1 Ws 88/15 (<https://openjur.de/u/874100.html>); see also the decision of the Federal Court of Justice (BGH) which ruled that in cases of doubt of the creditability of the accessory prosecutor access to the case file can be limited, but that there is no general reason to question accessory prosecutor’s access to their case file. BGH, decision of 5 April 2016, 5 StR 40/16 (<http://www.hrr- strafrecht.de/hrr/5/16/5-40-16.php>)

worked as a lawyer herself affirmed that, in her opinion, good lawyers do not give the case files to their clients, as they thereby risk the victim's credibility (J7).

Two judges considered it to be a common phenomenon that victims will learn by heart what was said at the police station or they will change their statement depending on what other witnesses have said and that they usually deny access in these cases (J3 and J4).

3.4. Views of victims

3.4.1. When the interviewees first came into contact with the police, were they informed about

- a. their potential role and their rights in proceedings and**
- b. how they can access an appropriate support service?**

a) Answers supported the impression from Q. 3.1.2 and Q3.1.4: Police at most tend to inform victims about places where they can receive further information. None of the interviewees mentioned the information leaflet the police mentioned in Q 3.3.1. This does not necessarily mean that the interviewees did not receive the leaflet, but it strongly suggests that the leaflets provided to victims does not bring the desired result to effectively inform them about their rights.

Seven interviewees stated they were neither informed about their potential role nor about their rights in the proceedings (V2, V3, V4, V5, V6, V7, V8, V11).

Three interviewees received basic information about their rights and potential role in the proceedings, their role as witnesses and legal possibilities (V1 V9, V10).

b) Five interviewees were not informed about access to support services (V1, V2, V3, V6, V8) whereas five confirmed that they received such information from the police (V4, V5, V7, V9, V10). Another interviewee did not remember whether he was informed (V11).

3.4.2. Were interviewees continuously updated on how the case developed and on their potential role and relevant rights over the course of the proceedings?

The majority of the interviewees received important updates on their case by their victim support organisation (V1, V4, V11), their lawyers (V5, V7, V9), or by a police officer (V2, V3, V6). A victim of hate crime received letters by the court updating her on progress regarding her case (V7). A victim of domestic violence was in contact with the public prosecutor who assured her that there would be serious consequences for the offender (V10).

Interviewees furthermore reported to have received information about the offender being summoned (V2), protective measures (V2), plans to aim for a speedy trial (V6), or the offender being charged (V10).

Two interviewees indicated that the police did not keep them updated about the developments in their case (V8, V11). V8 criticized that he did not hear from authorities for three weeks after the incident.

A victim of domestic violence explained that her lawyer was the only source of continuous information for her. Beyond, she actively called and visited police officers she had been in contact with in the beginning in order to stay updated. Initially (the first 2 – 3 days after the offence), the police had kept her posted about the developments in her case, for instance, that the offender was still in custody. After that period, she did not receive much information, unless she actively inquired about it. She was not informed when the offender was released from prison. To the contrary, the interviewee experienced very inadequate,

disturbing comments on the part of the police, when she attempted to acquire information about her case or was seeking support (V9).

3.4.3. Did interviewees, either personally or through a legal representative, have access to the case file? If yes, at which stages of the proceedings?

Four interviewees did not have access to their case file as they did not act as accessory prosecutors (V1, V3, V4, V11).

The remaining interviewees affirmed that their lawyers had access to their case files (V2, V5, V6, V7, V8, V9, V10). Two interviewees were also able to view their case files themselves (V2, V8) and one interviewee was shown certain parts of the file. As she recalled, her lawyer explained that she was not allowed to show her the entire file, but only parts that were relevant to her (V10).

c) General assessment

3.5. Views of practitioners

3.5.1. To what extent have the interviewed practitioners, divided by professional groups, agreed with the following statements?

3.3.4.1. More needs to be done to ensure that all victims have access to appropriate support services.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	4	1	0	0	0	5
P	2	2	1	0	0	5
J	1	3	3	0	0	7
L	4	0	0	0	0	4
3.3.4.2. Considering that victims, in criminal proceedings, mainly perform the role of witnesses, already too much is done to strengthen their position in criminal proceedings.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	0	0	1	4	0	5
P	0	0	3	2	0	5
J	0	2	2	3	0	7
L	0	0	0	4	0	4
3.3.4.3. More needs to be done to ensure that victims are informed in an	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL

effective manner about the proceedings and their potential role in them.						
S	2	3	0	0	0	5
P	4	0	1	0	0	5
J	0	4	3	0	0	7
L	4	0	0	0	0	4
3.3.4.4. Not much further action needs to be taken to improve the standing of victims in criminal justice proceedings as a lot has already been done in recent years.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	0	0	3	2	0	5
P	0	0	4	1	0	5
J	2	2	1	2	1	7
L	0	0	0	4	0	4

With the exception of group J, practitioners clearly asserted that more needs to be done to include victims in the proceedings and provide them an appropriate role. Except for one police officer and three judges all practitioners agreed that victim's access to support services is insufficient as discussed in more detail in Q.3.1.1., Q.3.1.2, Q.3.1.3. and Q.3.1.4. Answers of those interviewees, who disagreed showed inconsistencies with regard to their previous answers. For example, a judge and the police officer who disagreed, stated in Q.3.1.1 that while the mere number of organisations is appropriate, their capacities and resources are not meeting the needs.

Only two judges, both working in a larger city, agreed that too much is being done in order to strengthen victims' position in criminal proceedings. All other interviewees disagreed or strongly disagreed. Q.3.3.4.3: All interviewees except two judges, a public prosecutor and a police officer agreed or strongly agreed that more needs to be done in order to ensure that victims are informed about proceedings and their role in them. Given the criticism by other interviewees concerning police officers not providing sufficient information to victims (see Q.3.4.2.), it was remarkable that all police officers strongly agreed when being asked if victims need to be better informed about their potential rights in the proceedings.

All interviewees disagreed or strongly disagreed with the statement that no further action needs to be taken to improve the standing of victims in criminal justice proceedings, except for two judges who strongly agreed and two judges who agreed.

It is apparent from several of these answers that judges tend to disagree with other professions, leaning towards limiting the rights and role of the victim in criminal proceedings. This tendency continued throughout the remaining chapters of this study. It is arguable that the fact that judges are bound to the principle of neutrality for professional reasons while some other groups of practitioners specifically work to protect the interests of victims, is a possible explanation for their attitudes.

3.6. Views of victims

3.6.1. To what extent did the interviewed victims agree with the following statements?

	Strongly agree	Rather agree	Rather disagree	Strongly disagree	Don't know	TOTAL
3.6.1.1 Throughout the proceedings I had the support I needed.	0	8	1	0	2	11
3.6.1.2 Overall, I wish I had more legal advice .	5	4	2	0	0	11
3.6.1.3 Throughout the proceedings I received sufficient information about the progress of the case .	1	4	4	2	0	11
3.6.1.4 At times, I would have wished for more information about my potential role in the proceedings.	4	5	0	0	2	11

Interviewees tended to refer to the support they received from the victim support organizations when answering Q.3.6.1.1. The fact that the majority of the interviewees highly valued their support was already elaborated in Q. 3.2.3. A victim of racist violence who disagreed stressed he did not receive enough support apart from that of the victim support organisation, as elaborated in Q.3.2.6, Q3.2.7 and Q.3.2.8. (V8).

Answers to Q.3.6.1.2. show the interviewees perceived a lack of legal support, which affirms the criticism regarding access under Q.3.2.8 and Q. 3.2.9. Interviewees were not informed about the option of being legally advised when being interviewed by the police. It should be noted that some interviewees who had been represented by a lawyer at court, yet agreed or strongly agreed to the question, as they presumably would have wished for more in-depth legal advice.

Answers to Q.3.6.1.3 differ widely which corresponds to the varying degree to which interviewees were informed according to the answers in Q.3.4.2. However, only two of the interviewees who disagreed or strongly disagreed stated that they were not informed at all under Q.3.4.2 (V8, 11). Others who disagreed or strongly disagreed stated that a police officer or their victim support organisation kept them updated, which presumably was not perceived as sufficient information (V1, V2, V3, V4).

Answers to Q.3.6.1.4 clearly show that all but two interviewees (V4, V5, who answered “don’t know”) would have wished for more information about their potential role in the proceedings. This is reflected by the answers to Q.3.4.1. where the majority of interviewees indicated that they were not informed about their potential role and their rights in the proceedings. Others stated that they were only given basic information.

4. Effective remedy

4.1. Views of practitioners

4.1.1. According to the interviewed practitioners, do the police view themselves as obliged to investigate whenever there is substantive suspicion that a crime has been committed or do they see themselves as enjoying a margin of discretion whether to investigate or not?

Practitioners differentiated between the questions whether the police will investigate once a substantive suspicion has been established, and whether the police views themselves as having a margin of discretion in determining whether such a substantive suspicion exists. The former question was generally affirmed with a reference to the mandatory prosecution principle, which obliges authorities to investigate whenever a substantive suspicion has been established. Answers regarding the latter question were more diverse. Practitioners shared their impression that the police may in fact see themselves as having a margin of discretion in establishing whether a substantive suspicion exists. A staff member of a victim support organisation described her experiences with practice at the police as follows:

“The mandatory prosecution principle has been internalised, that’s how I experience it at the police. It is being handled responsibly and with seriousness. The question is always, what are the suspicions. Where is the evidence? And at what point do we have to (investigate)? That is the line that is being drawn; I would say a relatively open line, it is always subjective how the officer will treat it, and whether they will really investigate everything possible. And that line can vary.” (S4)

An aspect which may affect the police’s behaviour and decision-making is the way in which the person reporting the crime is perceived by the police. The suspicion of being a ‘trouble maker’ (L2) and mental illness (P3, P4, S3) were seen as influential factors. It was furthermore remarked that the police conduct a subjective assessment of the victim’s credibility (P1, S3, S5). Other practitioners suggested that the police may be setting priorities due to an overburdening of the system (L3, S2, J2) and that the quality of investigations may vary depending on whether the crime is taken seriously (J4, P3, L3, S4).

It was pointed out that the presence of a lawyer or support organisation may alter the police’s behaviour in individual cases:

“In general, the police operates under a certain margin of discretion. You have to note one thing, (...), and it’s not only true for the police but also other public authorities: Whenever the (larger, generalized victim support organization) or a lawyer for that matter are involved in a case, the door is more open. We’ve seen many times that a victim went to a public authority and was sent away. Then we come in as (larger victim support organization), and suddenly we talk. This is not the majority of cases though.” (L2)

All five police officers confirmed that they will investigate in all cases where there is a substantive suspicion that a crime has been committed as they are legally bound to do so. Four police officers see a certain margin of discretion in deciding whether something that has been reported is true or ‘non-sense’.

4.1.2. According to the interviewed practitioners, do public prosecutors view themselves as obliged to prosecute in any case where there are significant indications that a crime has been committed or do they see themselves as enjoying a margin of discretion in this regard?

Ten interviewees, including three police officers, either did not view themselves to be in the position to answer the question, or did not make a clear statement.

Those practitioners who saw themselves in the position to answer this question were in disagreement, with five interviewees stating that public prosecutors will always investigate if there are significant indications (L1, L4, J1, J3, J6), while six interviewees stated that public prosecutors had-, or viewed themselves as having a certain margin of discretion (L3, S2, S3, J2, P1, P5).

Interviewees named it as relevant for the decision of the public prosecutor whether there is sufficient evidence to prosecute (L2, S2, S3), whether an investigation is in the interest of the public (S3); and that smaller crimes were often not followed-up on (P1). A judge mentioned the public prosecutor’s office being understaffed and therefore having to prioritise (J2).

While two interviewees viewed the decision of the public prosecutor to be rather intransparent and unapproachable for support organisations (S2, L2), another support worker mentioned on-going communication and cooperation between the support organisation and a specialised unit at the public prosecutor’s office, with public prosecutors and organisation discussing whether or not a trial would be in the best interest of the victim (S4).

4.1.3. As assessed by the interviewed practitioners, divided by professional groups, how often does it happen in cases concerning violent crimes that prosecution becomes time-barred because of a statute of limitation?

This occurs	S	P	J	L
Often or very often	1	0	0	0
Occasionally	3	2	1	0
Only in exceptional cases or not at all	1	1	6	4
Don't know	0	2	0	0
TOTAL	5	5	7	4

Interviewees stated that prosecution of violent crime becomes time-barred occasionally, only in exceptional cases, or not at all. A staff member of a victim support organisation answered that prosecution of violent crime becomes time-bared often or very often, yet restricted her answer to cases of sexual violence, which is her field of expertise:

“At our organisation, it happens quite frequently as we are dealing with cases of sexual violence. As some women approach us very very late we often have to check whether prosecution has become time-barred. (...) Considering that we only cover one specific type of crime it happens relatively often.” (S3)

4.1.4. According to the interviewed practitioners, if the police fail to carry out a thorough and effective investigation, does the victim have an effective means of challenging this failure?

Four interviewees explained that the police does not have the authority to make the decision to close proceedings (including public prosecutors), i.e. there is no need and possibility for victims to complain about decisions made by the police (L4).

A larger group of interviewees affirmed that victims do in fact have the possibility to challenge the police's decision, namely a disciplinary complaint with the police (L1, L2, L3, S2, S3, S5, J4). Seven interviewees commented that this means is rarely to never used, while five explained that this option was not effective (L3, J4) or very complex (L1). A telling remark was made by a judge who pointed out that a victim's complaint may indicate them being a 'trouble-maker' and trigger doubt in the truthfulness of their statement amongst practitioners rather than doubt in the work of the police (J4). Two staff members of victim support organisations routinely tell the persons they work with to contact a lawyer to assist them in the process (S2, S5).

Four interviewees affirmed that a disciplinary complaint with the police can be an effective means to challenge the police's failure to investigate (S1, S3, L2, S4) . A lawyer described this option as considerable and constructive (L2).

4.1.5. According to the interviewed practitioners, if the public prosecutor decides to discontinue prosecution, does the victim have an effective means of challenging this decision?

Practitioners listed an internal complaint at the public prosecutor's office, an enforcement claim (including a complaint with the attorney general and an enforcement claim at the higher regional court)⁸, and a complaint at the federal constitutional court as remedies against a public prosecutor's decision to discontinue prosecution. It was elaborated that information on these options to complain is communicated through the letter informing of the discontinuation of proceedings (e.g. J6)

Most prominent in the practitioners' evaluations was the complaint with the attorney general. Compared to the options of challenging the police's inactiveness, this option seemed to be a much more frequently used instrument. Only three interviewees mentioned that it does not happened very frequently (L1, S2, S3), while most had made experiences with an according challenge.

Practitioners expressed varying opinions on the chances of success. Factors which were named to be influential in the chances of success were the way in which the reasoning is conveyed (S2, J1), and whether the victim is seen as a 'trouble maker' (J4), as well as the potential consequences of a successful complaint regarding the workload for public prosecutors (J1). It was furthermore suggested that the relationship between attorney general and the public prosecutor's office could be a factor in the success rate. A judge saw a tendency not to embarrass ones' own people (J2) while a judge from a different region spoke of public prosecutors and attorney generals not getting along and therefore saw a high chance of

⁸ See Article 172 StPO: (1) Where the applicant is also the aggrieved person, he shall be entitled to lodge a complaint against the notification made pursuant to Section 171 to the official superior of the public prosecution office within two weeks after receipt of such notification. (...) (2) The applicant may, within one month of receipt of notification, apply for a court decision in respect of the dismissal of the complaint by the official superior of the public prosecution office. (...) (4) The Higher Regional Court shall be competent to decide on the application. (...)

success for complaints (J4). Staff members of support organisations stressed that they advise persons they support to consult a lawyer when filing such a complaint, as the presence of a lawyer raises the chances of success (S2, S3, S4, S5).

Complaints at the courts were discussed by fewer practitioners. Several interviewees indicated that this is due to restrictive jurisprudence, as well as to extensive formalities required to file such a complaint. A judge at a higher regional court explained:

“Jurisprudence of the higher regional courts is ultra-destructive, it is hardly possible to even file an admissible application for an enforcement procedure. What can still bring results is an internal complaint at the public prosecutor’s office, i.e. when you are informed that proceedings are discontinued you can complain at the attorney general. (...) That is still an effective remedy or at least one that promises success, but once the attorney general finds that it was justified to discontinue proceedings, you can forget about it, the enforcement procedure at the higher regional court in Germany is practically futile. Jurisprudence has completely shut down this remedy.” (J4)

A lawyer also practicing as a volunteer for a victim support organisation affirmed this impression, explaining that formalities in filing an enforcement complaint are currently the biggest challenge to the effectiveness of this remedy (L2).

Police officers were hesitant in answering the question, explaining that it was not their field of expertise and that they are not informed about this step in proceedings.

4.1.6. To what extent did the interviewed practitioners, divided by professional groups, agree to 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.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	3	2	0	0	0	5
P	5	0	0	0	0	5
J	6	1	0	0	0	7
L	3	1	0	0	0	4

Many respondents reacted surprised as they saw the premise addressed in this question as obvious. A lawyer commented:

“That is the job of the state (...)That’s what we pay taxes for.’ ‘The duty by the state to protect includes/ in any case the protection of its citizens, and if the citizens experience something bad, then the state is obliged to fight the whole thing.” (L1)

Respondents who answered that they 'agreed', rather than 'fully agreed', indicated that, while victims have a legitimate expectation, reality may prove certain shortcomings in terms of the thoroughness of the investigation (J1), in particular regarding sexual violence or domestic violence (L3) or that the quality of investigations may suffer due to human error (S1) or a lack of capacities (S4). A lawyer elaborated on the reasons for his hesitation to fully agree:

"Yes, I generally agree, but there are exceptions. Specific types of crime are not investigated to a sufficient extent, including sexual abuse and everything taking place in the private sphere, also domestic violence. They do not like to investigate and the investigation is insufficient." (L3)

4.2. Views of victims

4.2.1. According to the interviewed victims, what was the outcome of criminal proceedings in terms of offenders being convicted, of sanctions imposed and of compensation being awarded?

In all except for one case (V8) the offenders were found guilty.

Sanctions included imprisonment (V9), penalties (V4, V3, V6, V11), community service (V1, V7), and an anti-aggression training (V1). Three interviewees explained that the offender was held to pay compensation (V3, V7, V9). V5 was unsure of the details of the sentencing except for the guilty verdict.

4.2.2. Do interviewees assess the outcome of the proceedings as appropriate and satisfactory? What were their observations and the reasons they gave to support their assessments?

Out of the nine proceedings where the court had already made a decision, two interviewees were fully satisfied with the outcome (V1, V5). For a victim of rape, the decision in question was that of the second instance court where the offender had been found guilty (V5). A victim of bodily injury saw her primary goal in teaching the offender a lesson, as to prevent her from doing similar things in the future. The interviewee explained that she herself recommended to the judge for the offender to undergo an anti-aggression training and was surprised that the judge accepted her suggestion (V1).

A recurring impression amongst interviewees was that sentencing seemed disproportionate to the harm done. V6 stated that while he was generally satisfied with the guilty verdict, he found the punishment too marginal. In a similar manner, a victim of a hate crime, a victim of racist violence and a victim of rape were dissatisfied as they saw the sentencing as disproportionate to the harm done (V7, V9, V11). A victim of rape in the context of domestic violence commented on the court's decision to reduce the offender's sanctions due to him being intoxicated at the time of the crime:

"A little justice, (...) because I think that things like drugs and alcohol shouldn't always be used for a reason to reduce the sentencing (...). Especially if the judge and the jurors base their sentencing on that they should really check whether the person has a habit of drinking, then there should be differences"
(V9)

Another victim of domestic violence remembers her ex-husband laughing when he was sentenced to a 200€ penalty for bodily harm (V4). Criticism of comparably light sentences for violent crime was also reflected in several expert interviews. Two victims of racist violence criticised that the violence they endured was neglected (V7) or not recognised as a hate crime (V8). The latter described:

“(...) I felt the police officers (...) were completely unfair. I repeatedly stated (...) (it was) a hate crime. It wasn’t written in the report. They considered it as a normal bodily harm. That doesn’t relate to our case at all. (...) I must say, I don’t trust (...) (the police officers). (...)” (V8)

Two of the interviewees who had experienced domestic violence were dissatisfied with the verdict as they had primarily hoped for safety, which was not provided through the sentencing to pay a fine (V3 and V4). It was furthermore criticised that the offenders were unable to pay a fine, and it was not perceived as an appropriate punishment. A victim of repeated domestic violence recalled several instances in which the ex-husband had previously been sentenced to pay a fine to the state which he made her pay from her own money (V3).

For the two interviewees in whose cases proceedings had not yet been concluded, expectations were rather levelled:

“I am still hoping that the court will make a decision which gives me some sort of feeling of gratification, being compensated. That’s also a point where it is very helpful to have my lawyer, who follows the criminal proceedings, who warns me in a very clear manner, and simply says that I shouldn’t expect a lot. That protects me, not to be caught off-guard. (...). She says even with such clear evidence, it is uncertain what the judge will make out of such evident video material and the fact that my husband was in a psychotic state at the time the crime took place.” (V10)

4.2.3. As concerns interviewees who found the outcome of proceedings at the court of first instance not satisfactory, were they informed of any means to challenge the decision taken by the court of first instance?

Out of the seven interviewees who were dissatisfied with the outcome of court proceedings at the court of first instance, five were told about their option to appeal (V4, V5, V6, V8, V9), by a victim support organisation (V4) or by their lawyers (V5, V9)), while others did not specify.

Two victims of domestic violence explained that they would have liked to appeal, yet lacked evidence (V3) or were unable to pay for a lawyer (V4). A victim of rape appealed successfully (V5). In two cases, the offender appealed (V1, V9), and in one case the public prosecutor appealed (V8). All three appeal trials were on-going at the moment when the interview was held.

4.2.4. How did the interviewees assess their own influence on the outcome of the proceedings?

Perceptions of the interviewees’ own influence on the outcome of proceedings were mixed.

Two interviewees doubted their influence in proceedings, stating that their testimony was cut short and evidence ignored (V4), and that the feeling was conveyed that one was one of many components of the proceedings, rather than a central actor (V9):

“That is what I wonder about until today, whether I made a difference at all (...) the way you function as accessory prosecutor, in a very limited way, you are just one link in a chain, not really the central person. That (questioning of witnesses by the victim’s lawyer) is the only moment where you have the possibility to contribute something yourself. (...) Otherwise it is like you are

imaginarily closed off. You can watch, shake your head or cry, but you are not allowed to interact.” (V9)

By contrast, two interviewees saw their role as extremely important in proceedings (V6 and V8), yet had very different experiences with the courts' reaction to their active participation. While V6 felt he made an essential contribution through his statement and by identifying the offender, V8 explained that the court held his active engagement against him, suggesting that he had alternative motives for his involvement:

“I myself took my role as very important, especially after the (negative) way I had been treated by the police. But the court (...) although I just wanted to fight for my rights and justice. They even took it as a negative.” (V8)

Three of the interviewees saw their role to make a statement (V1, V3, V5), whereas V1 and V3 saw this role as important, either because their recommendation to the judge was accepted (V1), or because it meant that other actors in court learned the truth (V3).

4.2.5. How did the interviewees assess the manner in which the police investigation was carried out; was it (a) thorough and effective, (b) timely and efficient, (c) any other observations?

Two interviewees explained they did not have sufficient insights on the investigation in order to be able to answer the question (V1 and V2). It was overall apparent that the experiences victims made with the police differed significantly. This is clearly visible in the contrast between the accounts of two victims of racist violence, both of which mentioned experiences in the police's efforts to secure evidence and identify the offender:

“The patrolmen were extremely good at securing evidence. They went to the crossing and gathered all the bullet shells and searched everything, the two of them, and they found everything, took fingerprints, and asked for the tapes of surveillance cameras of the car dealerships along the crossing. They really did their part.” (V6)

“I asked them to do so (check the apartment for fingerprints) but they said the offender was unknown and they wouldn't be able to identify him (...) The janitor overheard them saying that the offender was unknown, and said very clearly that he had cameras installed in front of the entrance, so they would be able to see who it was. They said no and did not take anything.” (V8)

In addition, evaluations were very subjective. For example, while one interviewee positively remarked that the police asked a lot of questions (V5), another pointed out that police asked too many questions (V4).

Overall, four interviewees were satisfied with the police's work or mentioned positive aspects of the police's investigation (V5, V6, V10, V11). Interviewees pointed to details of the investigation which they assessed as satisfactory, including police officers asking a lot of questions (V5), listening (V10) and securing evidence (V5, V6). It was furthermore pointed out that the police quickly identified the offender (V6), or was otherwise quick in closing the case (V9). This victim of rape spoke about her experiences with the police when they intervened at the crime scene:

“I had the impression the police did a good job. [They] [...] were very friendly when they investigated the offence. I told them about the key [The offender

locked the room with a key.]. They looked for [it] [...] but couldn't find it. But they asked me many questions about it.” (V5)

Factors named as negative aspects of the investigation were victims feeling like they were not taken seriously (V3, V8, V10), the police failing to follow-up on clues provided by victim (V8), the police asking too many questions (V4), did not arrest the offender (V7), did not contribute the information gathered from hearing the victim to the trial (V9, V11), or lost important documents required to proof the crime (V11).

A victim of racist violence criticised the police for ignoring his explanation that the offence was a hate crime, and noted it down as simple assault which was also what it was later dealt with in court (V8). Another victim of racist violence pointed out that the police seemed more invested in protecting the offenders:

“The police here (in her home town) are standing together with those people. Not all of them, but most of them. (...) They seemed invested in supporting the others (the offenders). (V7).

In many cases, victims differentiated between individual police officers, departments, or instances in which they came in contact with the police. For example, a victim of rape in the context of domestic violence differentiated between older and younger police officers, the former being more compassionate in her experience (V9), while another victim of domestic violence differentiated between the officers who intervened at the scene and those of the criminal investigation department, which she found gave her more attention and informed her about progress made in proceedings on a regular basis (V3). A third victim of domestic violence made a clear distinction between the police investigating in the bodily harm she had suffered, and the death of son which had occurred shortly after (V10), While she experienced committed police officers in the former case, she distinguished between the police department in her home town and the criminal investigation department which took over investigations when it became clear that her son had become victim to a crime. As was the case for V3, she had a much better experience regarding the criminal investigations department.

4.2.6. To what extent did the interviewed victims agree to the following statements?

	Strongly agree	Rather agree	Rather disagree	Strongly disagree	Don't know	TOTAL
4.2.6.1 Overall, I would have expected to be given a more important role in the proceedings.	2	4	2	1	2	11
4.2.6.2 The police appeared to be committed to an effective investigation.	4	4	1	1	1	11

As was reflected in the open questions discussed above, a larger group of victims would have expected to be given a more important role in proceedings. This group included all except for one accessory prosecutors. As it was reflected in the outcome of the open questions above, an assessment of the victims' own role can be very subjective, and will heavily depend on expectations and wishes of individual interviewees. For example, while some saw their role as accessory prosecutors as insufficient

involvement, others saw their witness statement as such as an important and satisfying contribution to proceedings. The interviewees' assessment furthermore differed depending on the specific aspect of proceedings (namely investigation, period between investigation and trial, trial) that they were referring to. Several interviewees reported a period between investigation and court trial during which they remained uninformed and unable to contribute, which gave them a feeling of insecurity (V2, V6, V10). Others differentiated between their involvement during the investigation and towards the court trial (see e.g. V10). This interviewee's account of proceedings exemplifies this distinction:

"The police no, that was ok. The public prosecutor's office did not show any reaction to my request. For example I said that I wanted to make two witnesses available, but I wanted security for them (...) the public prosecutor's office would have had to agree to then. And nothing came. They never asked for witnesses again." (V2)

The majority of victims felt that the police appeared to be committed to an effective investigation, which is a surprising outcome given the various negative comments and assessment provided in the open questions above. While the reasons for choosing to answer in the affirmative are unclear, it may suggest a general tendency to trust in the overall work of the police despite several shortcomings in specific aspects of their work experienced by the victims. An additional explanation for the outcome may be an arguably higher threshold to give a negative review to the overall work of the police, as opposed to pointing out individual, smaller shortcomings. .

5. Victims' active participation

5.1. Views of practitioners

5.1.1. According to the interviewed practitioners, are victims heard during the proceedings at important stages or before decisions are taken?

Interviews reflected a general consensus that victims are not heard during the proceedings except for their witness statement, unless there is a need to ask them on newly arisen aspects of the case (S3), clarify aspects of their statement (J6), or to (re)establish credibility (S3). It was furthermore remarked that victims can contact the police, public prosecutors or the court in case they would like to make further contributions.

Victims acting as accessory prosecutors will be heard 'at all stages of the proceedings' (L1) and have 'a right to be heard' (L4). However, practitioners differentiate between informing victims about developments in proceedings and involving victims in decision-making, the latter of which is not the case.

As shortcomings in the extent to which victims are currently heard during proceedings, practitioners named a lack of involvement in the public prosecutor's decision to discontinue proceedings (L1), and insufficient involvement in- and information on deals made between the court and the offender (L2, S2, S4).

It was furthermore discussed that, where victims are heard, they are usually addressed through their accessory prosecutor representative, rather than personally, which can lead to the feeling of being 'incapacitated'. A staff member of a victim support organisation described a typical situation at court where the lawyers are asked to describe the long-term effects of the crime on the victim:

"That (how the crime has affected the victim) is being asked, not to the victim him or herself but usually through their representative (...). And the lawyer replies yes (...) it's a heavy burden. Then they look to their right. That's right Miss X, one could say that? Then they nod, and that's it. (...) it is preferred to ask the representative, because one might otherwise risk an emotional breakout during court proceedings." (S4)

She goes on to explain:

"I wish that the incapacitation of victims during criminal proceedings, starting with investigation and not even ending with the verdict, would stop. That the justice system would be more sensitive to the fact that the victims are human beings with whom one can talk, communicate, not through a third person, the lawyer, psychosocial support." (S4)

This impression has been confirmed by several of the victims of domestic violence interviewed for the purpose of this study.

5.1.2. During the investigation, are victims entitled to ask that relevant evidence is secured?

Practitioners agreed that victims can point to relevant evidence, yet cannot claim an entitlement to have that evidence secured. Some point to police, some point to the public prosecutor being in charge of the decision whether a specific piece of evidence will in fact be secured. It was furthermore discussed that the police usually takes this evidence into consideration.

Public prosecutors and police officers agreed that victims are entitled to ask that relevant evidence is secured, yet pointed out that it is up to the individual police officer's discretion whether this evidence will be secured. It was furthermore pointed out that public prosecutors and courts will be responsible to decide whether or not the evidence secured will be used in court proceedings (P3) and that it may be technically challenging to secure parts of the evidence (P5).

In their answers to this question, several interviewees pointed to shortcomings in the extent to which efforts are made to secure relevant evidence. Victim support organisations remarked that evidence involving timely and complicated procedures, including DNA, finger prints and evidence provided on cell phones/other technical equipment, may not be accepted into evidence as it may prolong proceedings (S2), cause additional paper work (S4), or occupy capacities which would rather be used for other crimes which are being prioritised (S4). A judge working at a regional court confirmed this impression, and discussed one of his recent decisions in which he felt forced to clear the defendant of the charges as the police had failed to secure relevant evidence. He describes his hope of setting a 'wake-up'-call to the police and public prosecution. It is his opinion that the police should appoint someone responsible for new technology, to whom witnesses can be sent with according evidence, as it is currently the case that evidence may not be secured if an individual police officer is unable to handle the technology (J1).

5.1.3. Are victims entitled, during court trial, to call for any evidence they view as relevant?

Practitioners agreed that victims are only entitled to call for evidence if they are accessory private prosecutors and are, as such, represented by a lawyer.

5.1.4. According to the interviewed practitioners, are victims entitled, during court trial, to ask questions or have questions being put to witnesses?

Practitioners agreed that victims are allowed to ask questions or have questions being put to witnesses through accessory prosecutor representatives. Many practitioners made mention that this right is usually exercised through the accessory prosecutor representative as victims themselves are passive, absent or unable to take up the task themselves. Two interviewees remarked that this right is rarely made use of (S4, J2), while a lawyer remarked that the right is crucial, as it will also entail the accessory prosecutor representative addressing questions to the victim and thereby allow to ensure a rich and comprehensive description of the crime from the point of view of the victim (L2).

5.1.5. Which safeguards are implemented, if any, ensuring that victims' participation in proceedings is not impeded or rendered impossible by the victim's irregular status of residence?

The majority of practitioners interviewed lacked experience in the matter, as most had never come across a case where the residence status of the victim had any relevance. Only six interviewees mentioned concrete experiences in this matter, which they limited to one or 'few' cases (P3, L1, L3, S2, J2, J4).

It was furthermore apparent that there were substantial disagreements regarding the authorities' potential duty to report any illegally residing migrant who reports a crime to immigration authorities. While two judges referred to a strict separation between criminal and administrative procedures (J2, J4) and therefore explained that they see no relevance in the victim's residence status for the purpose of criminal proceedings, a police officer explained that "*if a victim is residing in Germany illegally, the police is obliged to report them. Luckily. That is simply our statutory obligation*" (P2). Staff member of a victim support organisation and two judges acknowledged that a victim with an irregular residence status may be

reluctant to come forward due to a fear of being expelled (S1) or a lack of knowledge of the system (J1, J3, S1).

The most commonly quoted measure was the possibility to halt an expulsion for the duration of the proceedings. This measure is aimed at ensuring that the victim can act as a witness.⁹ Interviewees offered several accounts of the procedure behind such a decision ranging from an informal discussion between the office for foreigners and the public prosecutor's office (J4), to an officially issued 'release declaration' by the public prosecutor's office and the office for foreigners (J1). It was one of the judge's impression that the office for foreigners will react harshly and surprised. He spoke of cases where irregular migrants were expelled before getting the chance to testify (J2). A police officer explained that only 'hardship cases' can apply for legal residency (P3).¹⁰

A factor discussed as influential in the participation of irregular migrants was translation, with a lack of access discussed starting at lawyers offices, where migrants were reported to be sent away without a translator (J1), or participation in court being hindered due to inadequate translation (J2). It was furthermore argued that the impression of the victim may be distorted through inaccurate translation (S2). A staff member of a victim support organisation furthermore pointed out in-court situations where lawyers were unable to communicate with the victim while the offender gave a statement as only one translator was present (S2). Finally, it was mentioned that migrants with an irregular residence status will be seen with prejudice (S2).

5.1.6. To what extent did the interviewed practitioners, divided by professional groups, agree to the following statement?

Victims should be offered more opportunities to actively participate in the proceedings.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	1	3	1	0	0	5
P	0	0	5	0	0	5
J	0	1	4	2	0	7
L	3	1	0	0	0	4

⁹ See Residence Act **Section 60a** (2): '(...) The deportation of a foreigner shall also be suspended if the public prosecutor's office or the criminal court considers his or her temporary presence in the federal territory to be appropriate in connection with criminal proceedings relating to a criminal offence, because it would be more difficult to investigate the facts of the case without his or her information.'

¹⁰ See Residence Act **Section 23**: (4a) A foreigner who has been the victim of a criminal offence pursuant to Sections 232, 233 or 233a of the Criminal Code should also be granted a temporary residence permit for a temporary stay, even if he or she is enforceable required to leave the federal territory. The temporary residence permit may only be issued if

1. the public prosecutor's office or the criminal court considers his or her presence in the federal territory to be appropriate in connection with criminal proceedings relating to the said criminal offence, because it would be more difficult to investigate the facts of the case without his or her information,
2. he or she has broken off contact to the persons accused of having committed the criminal offence and
3. he or she has declared his or her willingness to testify as a witness in the criminal proceedings relating to the offence. After conclusion of the criminal proceedings, the temporary residence permit should be extended if humanitarian or personal reasons or public interests require the foreigner's further presence in the federal territory.

The answer to this question displayed a visible discrepancy in opinions. While support organisations and lawyers tend to agree that victims should be offered more opportunities to actively participate in proceedings, while police officers, judges and public prosecutors tended to disagree.

Two police officers argued that the current legal framework provides for sufficient opportunities for victims to participate, yet remarked that victims often do not make use of them (P2, P5), while two staff members of support organisations argued that, while they agreed that the legal framework as it currently stands provides for sufficient opportunities, access to these opportunities is limited (S2, S3). It was argued that professionals do not see or accept certain aspects of the victims' opportunities to participate (S2) and that decisions should be explained in more detailed as to allow for victims to understand (S3). The extent to which victims can and do make use of existing opportunities, and the extent to which the various actors accept participation by the victim was a recurring and contested topic throughout expert interviews. The following quote exemplifies an attitude suggested and displayed by several interviewees:

"I think, it is rather the case that, if victims exaggerate their involvement, it will lead to them being categorised as a 'trouble-maker'. Law enforcement authorities will react in a defensive manner. I believe the ideal witness role is someone open but passive (...) someone who will report a crime and make it clear that they will add to proceedings if the law enforcement authorities want them to, but otherwise doesn't get annoying by, for example, asking about developments in the proceedings." (J4)

J5 corroborated that engaged, driven victims can leave a negative impression with the judge. Another judge argued that private accessory prosecutors may generally be seen as disturbing:

"Many of my colleagues and I often feel that accessory prosecutors are quite disturbing, as sad as that is. That also depends on how accessory prosecution is practiced. Based on self-reflection, I would argue the other way around, say, no, that's totally ok and it is good that it exists. Nonetheless, there are other cases where it is disturbing and those draw a bad light on the others. What I find very important and decisive and I think I speak for many colleagues there too, is that in very severe cases, where victims cannot speak for themselves anymore, it brings them into the court, yes? They have a presence through the accessory prosecutor representatives, who says: "Yes, but if you look at it from the point of view from the victim..." And that's very important. But there are many colleagues who say that it doesn't help me in fulfilling my duties and so I don't want it." (J1)

By contrast, several practitioners suggested that active participation will lead to the system taking the victim and proceedings more seriously:

"Victims who are committed achieve more than victims who don't make noise. (...) I always recommend not letting them brush you aside." (P5)

It was furthermore suggested that victims are generally more satisfied with the outcome of proceedings if they are actively involved (L3).

Two regional court judges saw an explicit risk in extending the opportunities for victims to actively participate. One of these interviewees argued that victims who are not accessory prosecutors are like an extended public, and should accordingly not be allowed more rights than they already have:

“As soon as they (victims) decide not to be accessory prosecutors, claim adhesion or do not participate as witnesses, to me, they are an audience, the public. They should never be allowed to just scream from behind ‘I just thought of something’ (V5)

Another judge argued for a risk of touching upon the rights of the accused by way of allowing victims more influence in proceedings:

“There is a negative reciprocal effect (between the rights of the victim and the rights of the offender). You definitely have an additional factor in it, someone who attacks (...) although the criminal code does not foresee it, public prosecutors, de facto, take up that role anyways (...) So I wonder, if you already have an objective authority doing the work, would there be an additional value in having someone with a subjective basic attitude, maybe following different interests, namely their own, do the same? I would actually see a danger in that.” (J2)

Accessory private prosecution as a gateway to participatory rights

As there was a general consensus that accessory prosecution was the prerequisite for access to most participatory rights (see e.g. J1: accessory prosecution is the answer to everything), practitioners were asked to provide their view on current rules on access to accessory prosecution. Opinions were divergent. Two lawyers were of the opinion that the right to act as accessory prosecutor should be extended beyond current possibilities (L1, L2), while one of them explained that current thresholds are set too high, demanding unreasonable proof on the effects of the crime on the victim (L2). Two judges provided quite a contrasting opinion. Both were of the opinion that current regulations were sufficiently open and offer enough opportunities to participate. Both were furthermore concerned with the rights of the alleged offender. The following quotes summarise their concerns:

J2 was primarily concerned about shifting the balance in proceedings with a second party actively pursuing the offender’s conviction:

“The accessory prosecutor representative has a limited view on things, because they quite often have a clear goal to contribute to the conviction (of the offender). That is why I think it is good that we do not always have accessory private prosecutors and instead set priorities with crimes which the law sees as particularly damaging for the individual.” (J2)

The second judge who argued that the right to accessory prosecution should not be extended was more concerned with the system’s capacities to host the rights of the victim and the offender:

“(…) while it is justified for victim protection to cause us work, all of it has to stay in balance, and I think the way we have handled it is a justifiable middle way. If we would extend it (access to accessory prosecution) even more, it would cause more work for us and thereby also negatively impact the rights of the defendant, who, as I said, is innocent until proven guilty.” (J3)

Accessory private prosecutor representatives as the ‘voice’ of victims in proceedings

Accessory private prosecutor representatives were pointed out as essential actors in victim protection and representation during trial. As many practitioners suggested, most victims who decided to participate

as accessory prosecutors do not actively participate themselves, yet are represented by their lawyer who thereby becomes their voice in proceedings. This staff member of a victim support organization elaborates:

“Well, without a lawyer, I think opportunities to take influence exist in theory, but are not accessible in practice (...). If they have a lawyer they do have opportunities to take influence, a right to introduce evidence through accessory prosecution, and some use it, provided that the lawyers are specialised in accessory prosecution. (...) As I said, it depends on the lawyer, a good specialized lawyer can take a lot of influence.” (S2)

In view of this central role of the victim’s lawyer, several practitioners reflected on the quality of representation as they currently perceive it.

Two practitioners, including a judge and a staff member of a victim support organization were critical towards what they described as a rather passive attitude of individual lawyers acting as accessory prosecutor representatives:

“There are still those lawyers who are merely present because they think, accessory prosecution, I don’t need to do anything, I just need to join the applications made by the public prosecutor (...).” (S2)

This judge related these and other shortcomings in the work of accessory prosecutor representatives back to a lack of formal training and suggested that it would improve the standing of victims in criminal proceedings if the quality of their legal representation was ensured:

“If something about the rights of victims in criminal proceedings should be changed (...), ensuring more suitable representation through accessory prosecutor representatives by making the accessory prosecutor representative a specialist attorney; that would be a very practical approach. The training as a specialist attorney provides some kind of guarantee that they (lawyers) know what they are doing.” (J4)

5.2. Views of victims

5.2.1. According to the victims interviewed, were they heard during the proceedings at important stages or before decisions were taken?

Only one interviewee recalls being heard beyond the investigation at the police and their testimony in court, namely as the criminal investigation department at the police asked whether he would agree to a victim-offender mediation (V6). Apart from that, none of the interviewees recalled being heard during proceedings beyond the investigation at the police and their testimony in court. A victim of racist violence explained that his level of involvement was discouraging and disappointing (V8).

A victim of domestic violence who did not act as accessory prosecutor described her experience of being excluded from proceedings as she became emotional:

“The judge asked me to tell things from my point of view. I told everything (...) I started crying and I was asked to leave the court room for a short time to calm down (...) when we returned after only a few minutes, I was told the case

was closed. I didn't understand at all so I turned to my translator who said they were done. The lawyer and the judge had negotiated a settlement.” (V4)

This experience confirms the report of several practitioners who criticize that victims are rarely involved in deals between offender and court (see above).

5.2.2. During the investigation, were the interviewees informed that they could ask for the evidence the considered relevant to be secured?

Four interviewees explained that they were informed about the possibility to ask for evidence they considered relevant to be secured (V5, V3, V9, V10), while two interviewees explained that this option was not mentioned to them (V4, V2). The remaining three interviewees explained that there was no evidence to be secured, hence they were not informed (V7, V6, V1).

Interviewees offered several accounts of situations in which the police refused to accept evidence offered to them which included pictures taken of injuries (V2, V3) the offender's fingerprints and surveillance videos (V8). A victim of rape recalled the police asking her for relevant evidence at the crime scene with the offender still present in the room, which she describes as 'overwhelming'. She explained that she would have been able to offer more relevant evidence at a later point in time if she would have been asked (V9). By contrast, another victim of domestic violence in whose case the police intervened at the crime scene reported a very positive experience of the police securing all relevant evidence at the crime scene (V10).

5.2.3. During court trial, were the interviewees informed that they could call for any evidence that they considered relevant?

This question did not apply to two of the interviewees, as their main trial had not yet taken place (V2 and V10). Two interviewees did not act as private accessory prosecutors and were accordingly not entitled to call for evidence (V1, V3, V4). Of this latter group, a victim of domestic violence recalled the court refusing to accept transcripts of threatening phone calls which she had wanted to submit.

Of those acting as accessory prosecutors, an interviewee who had already gone through a trial stated that they had been informed about the possibility to call for evidence (V5) while four interviewees were not informed (V6, V9, V8, V7).

5.2.4. During court trial, were the interviewees informed that they could ask questions or have questions being put to witnesses?

This question did not apply to four of the interviewees, as their main trial had not taken place yet (V10) or they did not act as private accessory prosecutor (V1, V3, V4), while one interviewee did not remember whether she was informed (V5). One interviewee explained that he was informed about the possibility to ask questions or have questions being put to witnesses and, more specifically, that he could enter a psychological expert as a witness, as the damage he had suffered was mostly of psychological nature (V6). Two interviewees reported that they were not informed (V8, V7).

It was also reported that victims were refused to enter witnesses they perceived relevant (V2, V4, V9), were not allowed to ask questions (V8), or were not taken seriously by the court when asking questions (V7). This victim of racist violence recounts the court's reaction to her questions:

“They ended up laughing, the whole court (...) I asked them questions, nobody answered, they kept quiet.” (V7).

5.2.5. To what extent did the interviewed victims agree to the following statement?

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
Overall, I would have liked to have more opportunities to be involved in the proceedings.	3	4	4	0	0	11

Opinions were divided, while the group affirming that they would have liked to have more opportunities to be involved in the proceedings was bigger than those who disagreed. Those answering in the affirmative coincide with those who had recounted negative experiences in claiming their rights during proceedings, including a lack of information about their rights (V7, V8), the authorities refusing to accept evidence or witnesses suggested by the victim (V3, V4, V8, V9), not being taken seriously in court (V7) or asked to step outside when getting emotional (V4).

All interviewees who 'strongly agreed' that they would have liked to have more opportunities to be involved acted as accessory prosecutors during proceedings. This group included two victims who had expressed disappointment about their role during proceedings in open questions (V8, V9), as well as one interviewee who could not pin-point in what way she would have liked to be more involved (V10). A victim of rape in the context of domestic violence criticised the role of being an accessory prosecutor to be more of a 'nice word' rather than a real opportunity to participate:

“Accessory prosecution is important, you want to be there, be active, you want to see and be present. That is very important; on the other hand I cannot get the defence lawyer’s comment out of my mind: ‘It is not about you, you don’t play a role here.’ And somehow that is how it is. You are the damaged party, you are the victim and yet you are just a nice word: ‘accessory prosecutor’. Somehow that is wrong. Without the victim there would be no proceedings.”
(V9)

By contrast, two other victims acting as accessory prosecutors stated that they would not have liked more opportunities to be involved (V2, V6).

It is furthermore noticeable that all victims of domestic violence interviewed for the purpose of this study (two accessory prosecutors and two victim witnesses) either agreed or strongly agreed that they would have liked to have a more important role in proceedings.

6. Protection against secondary victimization

6.1. Views of practitioners

6.1.1. According to the practitioners interviewed, do the police on an individual basis assess whether measures need to be adopted in order to protect a victim of violent crime against secondary victimisation?

Despite recent changes in law, interviews with practitioners indicated that an assessment of a risk of secondary victimisation will depend on the individual police officers, their training and individual discretion at best.¹¹ Several staff members of victim support organisations and police officers argued that it largely depends on the individual police officer and his or her assessment of the situation if victims will be protected against secondary victimisation (S2, S5, P2, P3). A police officer elaborated:

“Depending on how empathetic the colleague is, or the individual case may concern them personally, they will of course try their best for the victim. They may refer them to victim support services or to a colleague with more specific expertise, there are several possibilities but that depends on the individual case, the type of crime, and the officer’s impression of the victim. There are no standardized procedures, we work individualised because we have to.”
(P2)

Four interviewees affirmed the question. (J3, J7, P1, P4), although only one of them spoke of official quality standards to avoid secondary victimization (P4). Others argued that police officers are trained and sensitized and reflect about the needs of victims (J3, J7, P1).

Ten of the practitioners negated the question (L1, L2, L3, S3, J1, J2, J4, J5, J6, P5). A public prosecutor was of the opinion that it is not the responsibility of the police to assess whether measures are needed to prevent secondary victimisation (J6).

6.1.2. According to interviewees, are measures adopted routinely in order to avoid that the victim is confronted with the offender

a) in the court building during the trial

Six interviewees mentioned the possibility for a victim to await the beginning of the trial in a separate room and thereby avoid meeting the offender (S1, S2, S4, S5, J5, J6, P3). However a staff member of a victim support organisation remarked this is only possible in exceptional cases (S2), while none of the interviewees stated that this was offered routinely.

Concerning a potential confrontation with the offender during trial, interviewees argued that it is the offender’s right to be present during court trial which collides with the option of banning her or him from the court room (L1, J3, J4). Only if certain conditions are met can offenders be excluded from the trial for

¹¹ According to the third amendment to the victim protection law (3 OpferRRG), authorities are obliged to assess whether particular vulnerabilities of the victims are to be considered during court trial, interviews and other procedures linked to proceedings (see Law on the strengthening of victim’s rights in criminal proceedings (December 2015) - amendments to § 48 StPO)

the duration of the victim's statement in accordance to §247 StPO.¹² As an unjustified banning of the offender may result in a revision of the case courts are reluctant to make use of this instrument and it is rarely being done (J3, J4, J5) and can therefore not be seen as routine (L1, S2, S3, J1, J2).

A lawyer who mostly represents victims of sexual violence said that from her experience nothing is done to prevent the victim from meeting the offender in the court building (L4). A police officer made a very clear and generalised statement in that regard:

"Public prosecutors and courts don't care. (...) (The judges) expect adult victims to get along and be able to testify in presence of the offender." (P5)

This was confirmed by one of the judges interviewed for the purpose of this study, who affirmed that banning the offender is an exception, rather than routine:

"Everybody is (...) supposed to be there, we don't care where they are.(...) (Actively avoiding a confrontation between victim and offender) will only happen if somebody asks for it. But it's not a routine" (J1).

By contrast, one judge was of the opinion that judges are trying to show as much empathy as possible when deciding whether or not the defendant will be present during the victim's statement in court (J5). (J5).

b) at other occasions?

Seven interviewees among them all police officers confirmed that victims and offenders will not be confronted with each other while they are being interviewed at the police station, as the interviews will not be scheduled at the same time. (S5, J3, P1, P2, P3, P4, P5) A judge added that it is generally the aim not to confront victims with the offender, except for the court trial (J4).

6.1.3. According to interviewees, do victims have a right to ask to be interviewed by or through a professional trained for that purpose?

The majority of the interviewees explained that victims are not entitled to be interviewed by someone with specific training for that purpose. (L1, L2, L3, L4, S1, S2, S3, J1, J3, J4, J6, J7, P1, P2, P3, P5). Although no interviewee was of the opinion that victims have a specific right, many elaborated that, in practice, serious and sensitive cases will mostly be taken care of by specially trained police officers. (L1, S3, J1, J4, P1, P2, P3, P4, P5)

A police officer pointed out why she finds specialised police units of great value:

"That (setting up specialised police units) is very important. Not everyone can know everything and you don't call a roofer to fix your plumbing. They are both craftsmen but they have their specific expertise, and the same is the case at the police." (P2)

A police officer who works as a commissioner for victim support elaborated on a lack of motivation of some police officers to interview victims in a sensitive manner:

"Sexual violence is a good example (for secondary victimisation). It starts with the interviews. Sometimes there is not an empathetic and compassionate police officer, but tough questions will be asked. These (questions) are important for criminal proceedings, but maybe not in the way they are asked.

¹² §247 StPO establishes in which cases offenders can be excluded from the court trial.

Sometimes it is not what you say, but how you say it (Der Ton macht die Musik.), and some colleagues who have been investigating (...) for 15 or 20 years (...) have seen it all and are dull and not very sensitive. We have had quite some complaints about this during the last months and years. It is just the way it is. This happens at all public authorities.” (P3)

6.1.4. Can victims ask to be interviewed before the court trial and to have their statement audio-video recorded and played during the court trial?

Two interviewees stated that, while the possibility exists, there is no such right in law (J1, J4, J5, P1). Four explained that an audio-video recorded statement is only used in exceptional cases, e.g. where it is likely that a victim's statement is lost due to an imminent threat to the victim's life. It is furthermore used with women who are traumatized or sexual violence (L2, L3, S2, J2). The frequency of audio video recorded witness statement appeared to have a regional dimension. While a judge from a larger city stated that in her federal state, statements of victims of sexual violence will categorically be audio-video taped and used as evidence in court (J3). By contrast, a judge from another federal state working in a smaller city explained that there are only two sets of technical equipment within the federal state, which will be handed from court to court. He also reported a lack of knowledge at his court on how to manage the technology (J1). Other interviewees confirmed that courts lack the necessary technical resources to offer audio-video recorded hearings (S1, S2, J2, P5).

A judge spoke critically regarding a recent decision of a regional administrative court concerning this matter (J1). The court interpreted legislation to only allow for the witness to be interviewed through a video conference, with the judge questioning them being present in the court room. The decision was based on the argument that the presiding judge, as a party to the proceedings, may not leave the court room during main proceedings.¹³ The judge pointed to this decision as an example for the criminal justice system having lost the victims out of its sight. He added that the court he works at does not have the technical expertise to handle the equipment:

“I think if the victims knew how unprofessional, like amateurs, the justice system works, they would be even more scared to be honest, because everything is very slow and everything which is different from how it was seen 100 years ago is, at least at first instance, difficult.” (J1)

6.1.5. According to the interviewed practitioners, do victims have a right to ask, during the court trial, to be heard without the presence of the public?

Interviewees agreed that victims can ask to have the public expelled. Courts will approve if certain conditions (often in cases of sexual violence) are met (L1, L2, L3, L4, S1, S2, S3, S5, J1, J2, J3, J4, J5, J6, J7). Since the exclusion of the public from court can be reason for a revision, some interviewees prefer to be careful to make use of this measure (L4, S2, J2).

6.1.6. According to the interviewees, do victims of sexual or gender-based violence have a right to ask that they are interviewed by a person of their sex?

Interviewees agreed that victims do not have a concrete right to be interviewed by a person of their sex. Nonetheless, the police will generally try to have same-sex hearings especially in cases where victims

¹³ This option is called 'Englisches Modell'. The other option (called 'Mainzer Modell') would mean that judges leave the court room for a hearing of a witness (or victim) to be streamed to the court room.

ask for it. A police officer mentioned an internal regulation to have same-sex interviews in cases of sexual violence. (P4).

6.1.7. From their practical experience, did the interviewed practitioners believe that restraint is exercised ensuring that victims are not asked questions about their private or family life unless necessary?

None of the interviewees reported of police officers asking unnecessary questions.

Judges explained that hearings at court can be difficult for victims although certain questions need to be asked nonetheless (J2, J3, J4, J5). Some answers demonstrated the balancing act between protection against secondary victimization and successful criminal proceedings, whereas three judges were of the opinion that finding the truth enjoys precedence over the protection of the victim:

“If the choice is between resolving the issue or to practice restraint we will resolve the issue even if it will lead to tears by the victims.” (J2) It was furthermore elaborated that: *“In case of doubt, I prefer retraumatization of the victim over wrongful sentencing.”* (J4)

A lawyer shared a similar opinion: He stated that victims must be thoroughly interviewed in order to assess their credibility. This may however lead to cases of secondary victimisation (L2).

Many practitioners stressed the controversial role of criminal defence lawyers. These were harshly criticized for asking inappropriate questions aiming to reduce credibility of victims, to distract from the trial itself, or to provoke reasons for demanding a replacement of a judge due to conflict of interest (L4, S4, S5, J3, J5, J7). A lawyer reported an illustrating case:

“I once experienced that a criminal defence lawyer screamed at my client. She had said before that she was in fear of death during the rape. She was shaking during the hearing and he asked her if she was always in fear of death. (...) He really screamed at her and then I screamed back at him. I held a pen in my hand (...) (and said) if you keep asking this way I will complain at the lawyers’ association (...). He then said that I threatened him with the pen. (...) attempted grievous bodily harm, he immediately reported it and asked to put this in the record. (...) The judge then said, we should all calm down and that she was not going to do this, because that is nonsense. The criminal defence lawyer then demanded that the judge was replaced because of conflict of interest.” (L4)

She felt this tactic restrains judges from reprimanding the criminal defence lawyers:

“I often have the impression that (judges) are scared of the possibility that (criminal defence lawyers) demand that the judge is replaced, and therefore they accept (their behaviour). (...) It certainly does the case no good, it is totally subjective and unfair (...). In the end courts have a duty to care, also for the victims.” (L4)

A staff member of a victim support organization explained that victims are asked questions, which do not relate to the case to test the victim’s credibility. If a victim does not say the truth concerning an aspect he or she is asked about, other statements might also be untrue. The interviewee considered this tactic

as discriminatory towards victims (S5). A judge stressed the behaviour of defence lawyers can be extremely traumatizing for victims:

“We do have the possibility for minor victims to be questioned through the judge (and) I would like to have that option for adult victims of rape too. (...) The hearing at court can be worse than the rape itself and I really mean that. (...) I think that’s why in Germany one should think about it twice whether to report such a crime.” (J3)

She elaborated that defence lawyers have unlimited rights and sometimes completely destroy the victims, while judges have no possibilities to protect them (J3). She therefore argued for the judges’ authority to be extended in that regard. A judge from a different region did not share her impression. He argued that good defence lawyers would not want to have the entire chamber to be against them and therefore refrain from asking inappropriate questions. Nevertheless he confirmed that defence lawyers have the right to confrontational questioning because there are wrongful accusations and one cannot assume that the alleged victim is in fact a victim (J4). Another judge stated that, if a question is not relevant, judges will intervene. According to his view defence lawyers are sometimes more careful than would be appropriate and hesitate to ask about family life for instance (J1).

6.1.8. According to interviewees, can victims be subjected to a medical examination without their free consent?

None of the interviewees had made practical experiences in that regard, and most described this issue as a purely theoretical problem, either because victims, in their experience, would usually agree to a medical exam, or because those responsible to make the decision whether to force the victim to an exam would “not go that far” (L2, S5, J4, J7).

Of those practitioners who were able to elaborate, five of the interviewees clearly negated the question (L1, S3, J3, J5, P3), while ten interviewees explained that it would be possible under certain conditions, which reflects according legislation (L2, L3, J1, J4, J6, J7, P1, P2, P4, P5).¹⁴

¹⁴ Under German law, a medical examination without the victim’s free consent is possible if it is necessary for finding the truth, to determine whether evidence for the crime is to be found on the victim’s body. Judges or in exceptional cases public prosecutors need to order the examination. See Art. 81c StPO.

Did the interviewees agree to the following statements?

6.1.9.1 The police attach great importance to treating victims in a respectful and sympathetic manner.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	0	3	2	0	0	5
P	2	3	0	0	0	5
J	1	6	0	0	0	7
L	0	3	1	0	0	4
6.1.9.2. The police perceive the victim primarily as a witness and hence as a means to the end of a successful investigation.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	0	5	0	0	0	5
P	1	2	0	1	1	5
J	2	5	0	0	0	7
L	0	3	0	1	0	4
6.1.9.3. Public prosecutors and judges attach great importance to treating victims in a respectful and sympathetic manner.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	0	2	3	0	0	5
P	0	0	2	0	3	5
J	4	3	0	0	0	7
L	1	2	0	0	1	4
6.1.9.4. Public prosecutors and judges don't see the victim as playing a central role in criminal proceedings.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	0	4	1	0	0	5

P	0	1	2	0	2	5
J	0	1	5	1	0	7
L	0	4	0	0	0	4

Overall there was a slight but remarkable tendency of the groups of practitioners in state service (group J and P) two answer alike, while their views tended to oppose that of practitioners not working in state service (group S and L). As was mentioned before, it is arguable that the discrepancy in answers between this two groups is also related to the latter group's clear identification with and commitment to the interests of the victims, while the other group of professions is, by law, required to enter criminal proceedings with an impartial point of view..

Group P and J were quite affirmative of police officers' treatment of victims, whereas three interviewees from groups S and L gave critical evaluations of police officers' work. Answers reflected the answers given to Q. 1.1.1, while the expression 'means led to irritation resulting in some divergent answers by a police officer and a lawyer. *"I think it sounds degrading, means rather than humans"* (P4).

Q. 6.1.9.3 Practitioners from groups J and L generally affirmed the statement. Police officers were rather hesitant to give a clear answer as they argued that they mostly do not know how public prosecutors and judges treat victims, which resulted in three "don't know-answers". Two of these interviewees disagreed, while one added that "it differs from person to person" (P4) and the other expressed his frustration with the way defence lawyers treat victims without being interfered by judges or public prosecutors (P5). Opinions of group S were divided. A practitioner of group S who generally agreed that public prosecutors and judges treat victims with respect added that it is hard to generalise as it depends on their individual personality.(S2)

Q. 6.1.9.4 Staff members from victim support organizations and lawyers mostly affirmed the question, while most judges disagreed. The answers of police officers were inconclusive. Two interviewees within this group answered "don't know" as they argued they lack general experience on how public prosecutors and judges view victims.

6.2. Views of victims

6.2.1. According to the victims interviewed, did the police assess the need to protect them against secondary victimisation, in particular as concerns the risk of them being confronted with offenders in an unprotected manner or the risk of interviewees having to testify within a setting that is not sufficiently protective and sympathetic?

Ten interviewees clearly negated the question whether the police asked about protecting their needs during the proceedings (V1, V2, V3, V4, V5, V7, V8, V9, V10, V11). An interviewee who fell victim to hate crime explained that while the police generally respected his needs and spoke with him about possible uncomfortable situations, individual police officers made fun of him and implied that he had not really fallen victim to a crime when he reported the crime (V6).

6.2.2. Did the interviewed victims feel, at any time, exposed to a confrontation with the offender in a situation that the interviewee experienced as intimidating or stressful?

Seven interviewees (V1, V3, V4, V5, V7, V9) reported negative feelings caused by meeting the offender in court (V1, V3, V4, V5). Some also met the offender in other situations: they ran into the offender by accident (V1, V7) or met him regularly because of shared custody of a child (V4) or because the offender was waiting for her at her apartment (V9). Reported feelings included being scared (V4, V7, V9), being intimidated (V1, V3), and becoming furious (V5).

One interviewee from a larger city stated that the offender had followed his wife and his child to their new apartment, though an injunction to stay away had been issued. When he reported this to the police, they did not implement any counter-measures (V8).

A victim of domestic violence recalled a situation at family court where she went into a dissociative state due to the presence of the offender. She reported that she approached the victim support of the court asking to have the offender removed from the court room which was approved (V10).

Other interviewees explained that their victim support organisation made sure they would not meet the offender on the way or while waiting at the court for the proceedings to begin (V1, V3).

Some interviewees did not report any negative feeling about meeting the offender, explaining that did not mind meeting the offender in court or from a distance (V2) or found it reassuring to be able to face the offenders in court (V11).

6.2.3. When the police took the statement of the interviewees, did the latter experience the setting as safe and comfortable? How did the interviewees describe the situation?

Two interviewees described a positive experience as the police showed empathy and understanding (V1, V10).

A victim of hate crime differentiated between the officers at the police station where he reported the crime, and the officers from the criminal investigations department. While the former had not taken him very seriously, the latter were very accommodating and helpful (V6). This differentiation supports the impression mentioned in Q. 3.1.4, Q.3.1.7, and Q.3.3.1.

Six interviewees reported uncomfortable situations: Police didn't seem interested (V2, V4, V7), or the victim did not feel taken seriously (V6), communication was difficult as no translator was present (V3), hostile and racist behaviour of police officers (V8), or the police seemed more interested in gaining information in the interviewee's left-wing community than in the crime itself (V2). An interviewee who fell victim to rape in the context of domestic violence explained the offender was still present in the next room while she was being interviewed at home, which resulted in her having to stand up while the offender was seated on her couch. This situation was described as extremely stressful. Only when she had insisted to have the offender removed did the police followed her request (V9). This interviewee recalled another situation in which she felt treated inappropriately by a police officer:

“Once, a police officer told me that looking at me, he could understand the offender, that he reacted the way he did. At that moment, I didn't know if I should cry, or shout. Normally, I would have wanted his number, his name, but I didn't have the energy anymore to fight the various battles because somebody tells you he understands a rapist and thug because a woman – in his eyes – is attractive or nice, that isn't understandable for me.” (V9)

6.2.4. When the interviewees were heard during court trial, did this happen in a setting that they experienced as safe and comfortable? How did the interviewees describe the situation?

Four interviewees stated that the judge was being respectful and friendly which made them feel safe (V1, V3, V5, V6). A victim of bodily injury remembered:

“Who really disturbed this, the (..) (offender’s father). Because he was sitting in the back in the audience area and was always yelling, [,] what about that wording, everything is a lie, everything is a lie, everything is a lie.[”] This interrupted the judge several times und he was about to be thrown out by the judge. [...] Madame [the offender] messed with me while I was testifying, but the judge immediately interfered here, and the public prosecutor, so I found that quite impressive, right?” (V1)

The remaining interviewees made challenging experiences: interviewees didn’t feel taken seriously (V7, V8), their questions weren’t answered (V7) and they felt the court was empathetic with (V8) or protecting the offenders (V7). Three victims of domestic violence described an emotionally challenging and dramatic experience: offender’s family being present and expressly supporting him, being questioned for four hours (V9), or “feeling grilled” for 90 minutes (V10). A victim of domestic violence described feeling intimidated by the offender and his family at court:

“I wanted to say everything, know everything that happened, how it happened, I told the whole truth, that day was a very very good day, and a bad day, stressful, I felt like I was dead, I think I was dead from speaking, and very very sad (...) His family laughed as I entered the room, he did too, they had dressed up. But I was alone, only the support organisation was there (...).”(V3)

Another interviewee from this group reported she was only stable enough to make her statement because her trauma therapist was accompanying her (V10). She also referred to how she felt treated by the defence lawyer and the judge:

“I have experienced two figures, the layer who was not respectful, quite the opposite, he was put in his place, and the judge, who was completely unknown to me, who was quite fair towards me. She recognised me as a victim, a woman who was harmed.” (V10)

Another victim of domestic violence who didn’t appear as joint plaintiff reported that she started to cry during her statement and was asked outside to calm down. When she returned a decision was already made and she couldn’t finish her statement (V4).

6.2.5. Were the interviewees asked questions about their private or family life that they considered inappropriate or unnecessary?

There were two victims of domestic violence who affirmed the question. They reported irritating questions by the judge (V9) and one stated that she felt grilled by the defence lawyer:

“(..) at first he really tried to bring me down, until the judge intervened and said that he should stop, that there was no doubt in my credibility (...) in the end, he basically didn’t ask me anything anymore, only the judge. I felt I was being attacked the defence lawyer. I know the defence lawyer has to act that way, it is his job, but I still thought it was outrageous.” (V10)

A victim of battery explained the judge asked unnecessary questions about his apartment which had been destroyed during an attack:

“This was clearly an unnecessary question. (...) because of the flat. It is completely irrelevant (V8)”.

An interviewee who had been attacked by right-wing activists during a left-wing demonstration added that she was asked by the police about her political activities and names of companions:

“I had the impression that crimes within the so called right wing and left wing crime (‘Rechts- Linkskriminalität’) are stigmatised. I was not perceived as a classical victim, but I had to watch out not to say anything that could put a burden on others” (V2).

Another interviewee stated that his wife had been asked inappropriate questions, but decided not to give an example (V11).

A victim of coercion he felt there were unnecessary but not inappropriate questions (V6). The remaining interviewees said all questions (if there were questions at all concerning their private life) were acceptable.

6.2.6. To what extent did the interviewed victims agree to the following statements?

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
6.2.6.1 Overall, it was difficult to understand and follow the course of the proceedings.	2	4	2	2	1	11
6.2.6.2 The police treated me in a respectful and sympathetic manner.	3	2	2	3	1	11
6.2.6.3 During the court trial I was treated in a respectful and sympathetic manner.	1	4	2	2	2	11
6.2.6.4 If I look back at the proceedings, there were moments when I experienced the presence of the offender as intimidating.	5	1	3	1	0	10 (not applicable for V10)

Opinions were generally divided due to the diversity of cases and individual perceptions.

Q.6.2.6.1 Six interviewees agreed or strongly agreed when they were asked if they had difficulties to understand and follow the course of the proceedings. Five of them are not German native speakers, which could be an indication for a language barrier at court, even though some of them were accompanied by a translator (V3, V4, V5, V7, V8).

Q.6.2.6.2 As elaborated in Q.6.2.3 experiences of the interviewees varied greatly. While some said police showed empathy, other victims reported uninterested, hostile and racist behaviour of police officers. A victim of domestic violence reported feeling left alone when police officers had brought her to her medical examination just after she had been raped. When the examination was over, the interviewee stepped out of the room, expecting the police officers to take her home. They were gone. She elaborated:

“You come out of the treatment room, naturally thinking, of course it’s a feeling of safety when the police is still there: You will have to be driven back to the crime scene (her flat), which is completely shattered and covered in blood. And all of a sudden the officers are gone. You find yourself standing there without a penny and you don’t know how you will get home. It doesn’t seem right to me.”(V9)

Q.6.2.6.3 Two victims of domestic violence strongly disagreed when they were asked if they were treated in a respectful manner at court. As described in Q.6.2.4 they were unable to finish their statement (V4) and were questioned for hours (V9). Other interviewees who disagreed stated that their questions were not answered and that they felt the court was protecting or being empathetic with the offenders (V7, V8). One interviewee who strongly agreed described that the judge was making sure she could make her statement when the offender was trying to interfere her (V1).

Q.6.2.6.4 All victims of domestic violence (except for V10 for whom the question was not applicable) agreed or strongly agreed that they felt intimidated by the presence of the offender. As elaborated in Q.6.2.2 other interviewees also expressed negative feelings like becoming furious, scared or intimidated when they met the offender at court.

7. Protection against repeat victimization

7a) Cases not involving domestic violence

7.1. Views of practitioners

7.1.1. According to the practitioners interviewed, do the police on a regular basis assess whether measures need to be adopted in order to protect the victim against repeat victimisation?

Police officers gave widely differing accounts of practice at the police. Interviews with practitioners did not provide an insight on existing 'standard' measures, yet indicated that practitioners implement or have heard of a wide range of practices. Only one police officer explained that an analysis of the risk for repeat victimisation is standard in cases of severe violence (P1). Others mentioned that it is done, yet only in individual cases (P2) and should be paid more attention to, as individual police officers prioritise solving the crime at hand (P4). Two police officers interpreted the question as to relate to advice potentially given to the victims on how to behave to prevent repeat victimisation (P3, P5).

Interviews with other practitioners proved similar levels of disagreement.

Lawyers stated that they are not aware of assessments (L2, L3, L4) or saw the assessment lacking thoroughness (L1). Insufficient depth of the assessments was also pointed out by a staff member of a victim support organisation (S2), while another interviewee expressed concern that protective measures, in her experience, are only implemented where victims vehemently ask for them (S3). Two interviewees in this group were aware of assessments. While one saw this practice limited to cases where there was a threat to life (S1), another assessed the practice as "quite well done".(S5)

Judges pointed out that they lack concrete insights whether such an assessment is being done at the police, yet mentioned the police's role as a preventive authority, which would oblige the police to make an assessment. It was a general impression that the police do what they can within the scope of their capacities. Similarly, both public prosecutors assumed that an assessment is being done, while one pointed out that it depends on the case (J7).

7.1.2. Apart from domestic violence, are there other areas of crime where the police routinely focus on protecting the victim against repeat victimisation?

Types of crime mentioned in the interviewees' responses were attempted murder, aggravated assault, organised crime, human trafficking, sexual violence and several types of severe violence. As was the case with the previous question, several police officers referred to preventive measures as a synonym for advice to adjust the victims' future behaviour.

7.2. Views of victims

7.2.1. When the interviewed victims first talked to the police, did the police assess whether they were in need of protection against repeat victimisation or retaliation?

None of the interviewees were aware of an assessment of a risk for repeat victimisation. Five interviewees, including victims of bodily harm, rape, and racist violence, explained that they informed the police of being scared of further incidents, yet their request was met with inactivity by the police (V1, V2,

V5, V7, V8). In two cases, police responded by telling the interviewee to call them or a support organisation in case something happened again (V5, V7). A victim of rape recalls:

“I still fear that he will hurt me again today, I told the police, they told me to call the police or the support organisation in case anything happens.” (V5)

In a case of racist violence, the victim recalls being told that the police was too busy to offer protection (V8). Asked whether the police assessed a potential need for protection, he recalls:

“No, quite the opposite. I asked them to protect us. They simply said that they do not have the time to do so.” (V8)

7.2.2. In cases where the police found that the interviewee was in need of protection measures, which measures were adopted by the police? How did victims assess the effectiveness of these measures?

Two interviewees reported measures implemented by the police, including the blackening of the victim's address in the case file to prevent the offender from seeking her out (V2), and being escorted the victim home after having reported to the police (V6).

A particularly grave case of a lack of protection options was recounted by a victim of racist violence, whose apartment had been demolished during the attack. According to the interviewee, he was unable to move to protected housing with his wife and child due to his residence status. Despite the fact that the interviewee and his wife had been in Germany for more than fifteen years at the time of the incident, according to his account of events, the only option offered by the regional government was housing in an asylum centre:

“The police had confirmed that our apartment was no longer habitable. The front door was broken. Everything destroyed. My wife was hurt. We were in danger and no longer safe. The state did not really offer any services, they did not want to help us. The only thing they offered was to move to an asylum centre...after 15 years ...or I should separate from my wife, in writing, so that my wife and child would be offered mother-child protection.” (V8)

7b) Domestic violence

7.2. Views of practitioners

7.2.1. As concerns cases of domestic violence, what are the standard procedures followed by the police in such cases in order to assess the need for immediate protection measures?

Police officers held importance to their impression that cases of domestic violence are not “standard” and demand an individual assessment of the situation, i.e. no standard procedures are recommended or implemented. Nonetheless, expert interviews provided an overview of measures which were argued to be used frequently:

Practitioners most frequently mentioned the victim and offender being questioned separately (S2, J1, J4). Victims are asked whether help or protection is needed. It was furthermore pointed out that decisions will be made in cooperation with the victim (P4), although a police officer explained that the police may prohibit the offender from returning for a limited period of time even if the victim her/himself does not express a

specific wish for this measure (P2). Police furthermore assess whether an injunction to return to the apartment (*Wohnungsverweis*) is necessary. Measures which were named less frequently were the police compiling a concrete prediction of future danger, ensuring the victim's examination by medical professionals, or involving youth welfare services where children are involved.

A staff members of victim support organisations mentioned that, in her experience, individual police officers lack sensitivity for the needs of victims (S3), while another spoke highly of the police's work, pointing out that police officers are generally "thoroughly sensitized" and "well-trained" in that regard (S5).

7.2.2. In cases of domestic violence, what are the standard procedures followed by the police when there is a need for immediate protection measures (e.g. advising the victim to move to a shelter, arresting or banishing the offender)? From the point of view of the practitioners interviewed, how effectively are these protection measures implemented?

As was the case with regard to the assessment of a risk for repeat victimisation, police officers stressed that 'standard' procedures would not meet the protection needs of individual cases. This police officer specialised in domestic violence exemplifies this opinion:

"I am a little reluctant regarding 'standard' procedures, because no case of domestic violence is standard. Every case of domestic violence is different, some victims want protection and others do not. (...) That is why it depends to a large degree on the individual case and the victim." (P2)

Nonetheless, interviews gave the impression that the usual measures include banning the offender from the shared living situation and informing the victim about the availability of more longer-term protection under the protection against violence act (see below), as well as to advise to move into women's shelters or to go sleep at a friend's place. Other measures mentioned by the interviewees included taking the offender into pre-trial custody, or warning the offender off, installing surveillance cameras or a special emergency service on the victim's cell-phone.

Asked whether these measures are effective, expert opinion offered a wide spectrum of answers, ranging from a lawyer expressing his impression that more should be done to protect victims (L1), over several practitioners stating that, although the police is doing the best they can according to their capacities, their work does not offer sufficient protection (e.g. S4), to practitioners assessing protection measures as mostly effective (see e.g. L2, J3, S1).

Many practitioners pointed out that it will be decisive whether the offender takes measures seriously, as the police cannot provide permanent protection (S1, J4, P2). A police officer explained:

"[...] Evicting the offender, well, at first he will be gone, but the police will not stay at the door and make sure he does not return." (P1)

A staff member of a victim support organisation elaborated on her own impression:

"Well there won't be big consequences for him (the offender) following his removal. He will have to repeat the crime. And then she has to react in a timely manner. And everything has to go smoothly." (S5)

A staff member of another victim support organisation shared her observations, pointing out that it will depend on the individual police officer whether the offender will take measures seriously:

“(...) this instrument of addressing the offender is a very important, good one, especially if it’s a person’s first offence, in order to warn somebody off. But the problem is the implementation, it must be done seriously, and enforce clear norms. Police officers need be trained to do this, there should be more training provided to enable them to successfully implement this.”(S2)

Other practitioners spoke of police officers being skilled (S5) and well-trained (J4) in the matter, and furthermore sensitive to the situation and able to give adequate information (S2).

A staff member of a victim support organisation described protection measures being ‘no more than a piece of paper’ and reported on the victims’ experiences in cases offenders did not abide by the police’s eviction:

“So they ask themselves: ‘why should I report to the police, get naked, report, tell and so on, and he will still pass by my building every hour and call’.” (S4).

It was a recurring topic in interviews that the victim’s decision to let the offender back in is a frequent barrier to the effectiveness of measures which reportedly causes frustration amongst police officers. This judge discussed the victims’ role in ensuring the effectiveness of protection measures:

“The problem is that many of the victims do not manage to follow through (...) I mean, in the end one cannot protect the victims from themselves, they are usually adults, I think if the victim does not play along and does not want to separate from the offender, the measures we can take are limited (...) in those cases the central factor is not the police, in many situations the police are frustrated as in ‘we have tried everything but she did not want it.’” (J4).

Based on these observations, the judge was of the opinion that effective protection against repeat victimisation for victims of domestic violence is not necessarily limited to the work of the justice system but would first and foremost involve counselling regarding the relationship, and according psychological support in ending that relationship (J4).

It was furthermore pointed out that women’s shelters are overcrowded (L2, P3, P4) and that there are no shelters for men (P4).

Practitioners mentioned the option to change one’s identity for extreme cases, yet indicated that this option takes a considerable influence on the victim’s life and may be especially challenging where children are involved (J6).

7.2.3. If the police learn of a case of domestic violence, do they routinely inform a victim support service? If yes, would it be a generic or a specialist support service?

Legislation varies between individual regional governments in Germany. While some have established a duty for the police to contact support organisations, others expressly prohibit forwarding personal details of victims to support organisations unless the victim agrees to it. Police interviewed for this study were exclusively from federal states where it is prohibited to forward information without the victim's consent. Police and other practitioners referred to an established practice to ask victims for their written consent for the police to contact victim support services for them (P1, P2, P3, P4). Another expert mentioned the same practice with regard to women's shelters (S2). Furthermore, one of the practitioners explained that youth welfare services are contacted and informed in every situation of domestic violence where children are involved. It was otherwise referred to as common practice to inform the victim about possibilities to contact support.

7.2.4. In routine cases of domestic violence, are the protection measures adopted by the police followed up by court orders? If yes, which courts adopt such orders and for which time span? How do the interviewed practitioners assess the effectiveness of these orders?

Practitioners pointed to options at criminal courts and the family court. The latter refers primarily to the option to file an application for a decision under the protection against violence act at the family court, which allows for an extension of the police's decision ordering the offender to keep a distance to the victim.¹⁵ This protection measure is not adopted in routine cases and demands for the victim to actively approach the court. Most practitioners focused on this option at the family court as, as some practitioners pointed out, criminal proceedings following domestic violence are rare, as victims often do not press charges.

Some practitioners pointed to a fragmented protection system, expressing doubts in the transparency of procedures (S2, P4), and the extent of information provided to victims (S3). The following quote by a police officer specialised in domestic violence summarises the challenges in accessing meaningful protection:

"In many cases, the procedures are simply not transparent for the victims. They usually assume that they will be taken care of once they have approached the police. What they usually don't know is that they may also have to talk to the youth welfare office, the family court, the housing associations (...). And quite often civil law is mixed with criminal law which can also be confusing. Everyone is quite focused, the police sees criminal law, the court sees civil law, youth welfare offices see their part of the story behind it. Victim support organizations sometimes don't have the legal background to explain all this, they employ social workers, trauma therapists, and so on."
(P2)

Interviewees disagreed on the chances of family courts deciding in the victim's favour. A police officer specialised in victim support argued that a decision by the family court does not require any evidence except for the victim's statement, and is usually made within two hours (P5). Other practitioners listed several potential obstacles to a court's decision in favour of the victim.

¹⁵ See § 1 Protection against Violence Act (GewSchG)

First, practitioners pointed to challenging procedures with victims having to testify by way of a detailed account of the crime, which bears the risk of secondary victimisation. This challenge was confirmed in several interviews with victims (see below). A 'good practice' is mentioned in a region, where the police interview is used for family court (S2). Otherwise it is suggested to use a lawyer or support organisation who can formulate the statement for the victim (S2).

Having a lawyer, support organisation or the youth welfare service as support for an application at the family court is generally seen as essential by three practitioners (S2, P5, J1). A judge explained that, while decisions by the family court are theoretically possible without support, it happens rarely (J1). A staff member of a victim support organisation criticised that it may take a public prosecutor to declare public interest at stake to initiate proceedings (S3).

Other challenges mentioned included a high burden of proof, including medical attests, as well as short deadlines upon which applications need to be submitted (S2). Practitioners also explained that it is common for victims to change their mind after an initial application at the family court (L2, L3, J5, J6).

A recurring topic throughout discussions about decisions under the protection against violence act was the communication between the police and the courts. Two police officers expressed their frustration about 'not being in charge' of further protection following their initial protection measures. This police officer specialised in domestic violence talks about her frustration regarding protection orders:

"It is quite often the case that there is a big gap between what the officers see in the situation they are called into and what the judge decides, which can be frustrating for police officers, but also for victims who tend to see the fault with the police. The police tries a lot but for some measures we are simply not the ones making the decisions." (P2).

This observation has confirmed by another police officer who explained that there are judges who say "as long as there is no blood I will not make such a decision" (P5). In his opinion, courts make it difficult for victims to prove their need for protection without witnesses, and that he would prefer for courts to put more effort into gathering information where it is missing (P5). In a similarly critical manner, a lawyer expressed his opinion that family courts show little interest in investigating the background to an application at the court (L4). He furthermore explained that courts, where unsure, often hold hearings which usually end in an unrealistic and ineffective agreement between victim and offender (L4).

Police officers furthermore disagreed on whether or not the police are informed of the court's decision under the Protection Against Violence Act (see P1 and P3, P4).

In view of this discussion, it is a notable result that, while police officers, lawyers and support organisations agreed to a need for more effective measures of protection for victims of domestic violence, none of judges or public prosecutors who were interviewed confirmed such a need. (see below).

Communication of-, and about protection orders was also a topic in interviews with victims of violent crime, which reported a lack of communication between the police, courts and other actors (see below).

Only few practitioners were able to make a concrete statement on the effectiveness of protection orders issued by family courts, while most pointed to the fact that it would depend on the case (L2, S2, L3), and was furthermore reliant on both, the offender, and the victims. Many report on frequent experiences with victims changing their mind, withdrawing their statement or allowing the offender back into their home

(L4, S1, P1, J5, J6). It was furthermore pointed out that a victim failing to report offenses against a protection order to the police, would be taken less seriously by the police (L1).

A positive remark regarding the effectiveness of decisions of family courts was the fact that, other than the police's initial sending-off, an offense against a court order constitutes a crime in itself and can therefore derive legal consequences in criminal and civil law (L1, L4, J7, P2). Whether these consequences will be felt by the offender will rely on the victim reporting such offenses.

“No matter how you turn it, it remains a piece of paper (...) chances are high that offenders adhere to the prohibition, but not 100%. Every violation is a crime in itself, so the offender has to be careful. The victim can report the offender's offence against the measure as a crime, or one can request for the offender to be fined by the family court.” (L1)

7.2.5. Did the interviewees agree to the following statements?

7.3.4.1 More needs to be done to effectively protect victims of domestic violence against repeat victimisation.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	2	2	0	0	1	5
P	0	4	0	1	0	5
J	1	1	5	0	0	7
L	2	2	0	0	0	4
7.3.4.2. A number of good practices are already in place for victims of domestic violence.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	2	1	0	0	2	5
P	3	2	0	0	0	5
J	1	6	0	0	0	7
L	0	4	0	0	0	4
7.3.4.3. More needs to be done to ensure that victims of domestic violence have access to specialist support services.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	1	3	0	0	1	5
P	2	0	2	0	1	5
J	2	1	3	0	1	7
L	2	1	0	0	1	4
7.3.4.4. There are competing demands on resources for different groups of victims, and so sufficient resources are already dedicated to support victims of domestic violence.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	1	0	2	0	2	5
P	0	2	2	1	0	5

J	0	1	2	0	4	7
L	0	1	3	0	0	4

Asked whether more needs to be done to protect victims of domestic violence from repeat victimisation, group J (namely three judges and two public prosecutors) tended to disagree with the statement, while other groups of practitioners tended to agree or strongly agree.

As it was apparent from several interviews, those practitioners which did not answer in the affirmative were aware that the protection currently offered cannot always guarantee security, yet explained that the justice system is doing everything in its power, and were unsure how to further improve current practices. This judge's account of the current system exemplifies this reasoning:

"I would not know how to do this in practice. To be honest, it has become clear that real protection in the context of domestic violence can only be provided through women's shelters (...) If the woman stays at home then we can only ban them from the apartment (...) and he will be back. And then the question is will the woman open the door or not. How the state should react to such situations more effectively, I would not know. I have no idea." (J3)

In a similar manner, the police officer who chose to 'strongly disagree' shared her impression that victims of domestic violence often do not make use of existing protection measures, and that help beyond the victim's free will would be 'alien' to her (P2). Another judge furthermore explained that he is of the opinion that domestic violence currently receive the most extensive attention in terms of preventive work through the justice system (J4). The impression that efforts are being made was confirmed by the fact that all practitioners agreed that a number of good practices are already in place for victims of domestic violence.

Nonetheless, the majority of respondents were of the opinion that more measures to offer protection against repeat victimisation need to be implemented. Two staff members of victim support services pointed to a need for more active engagement with the offender in order to prevent repeat victimisation, which should be offered in parallel to the care for the victim (S2, S3).

Asked whether more needs to be done to ensure access to support services, the majority of interviewees answered in the affirmative. Only in group P and J did individual interviewees divert from this overall agreement.

The last closed question within this chapter, addressing the distribution of resources, did not provide any clear results.

7.3. Views of victims

7.3.1. How did the police learn about the interviewees' situation: were they called to the interviewees' homes or did the interviewees call them or turn to a police station?

Three of the four interviewees who experienced domestic violence approached the police themselves. Of those, one called the police immediately after the first attack had taken place (V10). Two interviewees reported that they were scared to contact the police and only filed an official report with the police after they had been attacked repeatedly and had sought help from a victim support organisation which advised to go to the police (V3 and V4). In the case of V3, the violence was repeatedly reported to the police by

the victim's son and neighbours, yet she was too scared of her attacker to give a statement once the police arrived. The fourth victim of domestic violence was unable to call the police in the midst of the attack. Her neighbours heard noises and called the police. She stresses that while she was physically unable to make the call to the police, she was willing to give a statement when the police arrived (V9).

7.3.2. When the police first learned about the interviewees' situation, did they thoroughly assess whether measures were needed to protect the victims against repeat victimisation or retaliation?

All four interviewees had the impression that the police did not assess whether they were in danger of repeat victimisation, all four were told that there was nothing that the police could do, either because no serious harm had been done, or because the police assumed that there was no danger of future harm. An interviewee described the discrepancy between the police's and her own impression:

“At first, the police seemed to assume that it was a one-time thing, although I knew and had told them that he was severely mentally ill. I had even shown them a written medical result, but they were not of the opinion that there would be continued violence (...) They became much harsher after there was continued hard stalking and they had to come over and over and met him repeatedly. (...) Then the police took it very very serious, in that condition, but their reaction in the beginning was to take us out of the house. They saw him, how he was raging, bleeding, but I think they were unable to foresee how things would develop.” (V10)

One interviewee recalls the police asking her separately from her husband whether she would like him to leave (V3).

7.3.3. When the police learned about the interviewees' situation, what concrete measures did they adopt in order to immediately protect victims against repeat victimisation? How did the interviewees assess the effectiveness of the measures adopted by the police?

In two out of the four cases, the violence was reported in the immediate aftermath and the offender was taken into custody which, as the interviewees explained, offered immediate, yet short relieve (V9, V10). Three out of the four interviewees were advised to move into women's' shelters (V3, V9, V10), two of them accepted the proposal (V3, V10).

Two interviewees explained that their husbands were banned from approaching them, however, did not see this measure as effective, as the husbands did not adhere to the police's order and the police seemed unable to enforce it (V3, V4). In two cases, the police approached the offender to warn them about repeating the violence (V3, V9); one of those interviewees explained that the police only did so after she had asked them to repeatedly (V9). V3 explained that the police approaching the offender was not effective as he had no concept of the consequences of his actions. In her case, the police also notified the youth welfare office which she described as very helpful, as a staff member of the office visited regularly, took records of repeated offenses, and pushed her to report to the police (V3).

As offenses in the case of one of the interviewees were quite severe, the police offered video surveillance and passed by her house in irregular rhythm (V10). Asked about the effectiveness of the measures, she explained:

“(The measures) are very effective for my or our psychological stability, we feel more safe, although the repeated disregard towards the order for protection against violence makes me doubt a little, simply because I say, well regular drive-byes does not mean that a police officer is constantly in from of my house. (...) It takes the police an estimated 15 minutes to arrive. My husband knows those 15 minutes as well. He always adjusted his crimes so that the police was too late.”(V10)

This interviewee was furthermore offered and advised anonymity, yet did not accept the measure as she would have had to break contact with two of her adult children and furthermore felt she would lose the protection and support of her close surroundings (V10).

Interviewee V4 explains that the police did not take any measures to protect her.

7.3.4. When the police learned about the interviewees’ situation, did they inform the victims of support services available to them or did the police contact a support service themselves?

Three out of four interviewees gave an answer to this question (V4, V9, V10). Two interviewees confirmed that the police informed them about available support services when they first learned about their situation (V4, V10). The third interviewee was only informed after physical harm had been done (V10).

7.3.5. In cases where victims were in contact with a support service, how did they assess the services provided in terms of supporting them in coming to terms with their victimisation or in finding a way out of a violent relationship?

Two interviewees described the support organisations as essential in offering emotional support to come to terms with the violence they had suffered (V3, V4). The other interviewees did not approach the organisation to ask for support in coming to terms with the violence suffered; the organisations therefore did not play a role in this respect, and both interviewees sought psychological support independent of the organisations (V9, V10). Nonetheless, the support organisation offered V10 to pay for psychological support.

Three out of four interviewees had already ended their relationship when they approached a victim support organisation. V3 felt the organisation was essential in assisting her to end the relationship, as they reminded her not to trust the offender, and assisted in finding protection and managing every-day aspects of the separation, including finding a lawyer for the divorce and accompanying the victim to public offices.

7.3.6. According to the interviewed victims, did a court issue at any time a protection order with a view to protect the victim against repeat victimisation? If yes, which court, and how do interviewees assess the effectiveness of these court orders?

All four victims of domestic violence interviewed for the purpose of this study were under the protection of protection orders issued by a family court at some point during criminal proceedings.

The interviewees confirmed the practitioners’ impressions that applications at the family court are complex and psychologically challenging. One interviewee recalled that she was provided a form to be filled in, in order to file an application for protection at the family court, which included a section where she was asked to describe what had happened to her:

“One was supposed to elaborate on the details of the attack. I tried for three days until I really broke down. Then I went to my lawyer (...) As a victim, someone who does not have a lawyer like me, who would have had to elaborate all by themselves, I think a lot of victims would have said, no, I cannot do that (...).” (V9)

Communication and a lack thereof was a central aspect to the interviewee’s accounts.

First, it was remarked that information on procedures and the victim’s role in the same was insufficient. This interviewee recalls that she was not informed about having to go to a court to extend her protection and therefore missed the deadline to do so:

“I did not know what to do. In the beginning, the police came and issued a ten send-off (...) they told me: Go, go (...) where was I supposed to go? What was I supposed to do? How? I waited that whole time, ten days went by and I had not done anything. I did not know where to go until I came here (support organisation)” (V3)

Another interviewee explained that the offender was not informed about the court’s decision until she repeatedly reminded the court to do so (V9).

A third interviewee reported a lack of communication between the police and judges responsible for deciding whether her husband should be held after an arrest; or be able to be in her close proximity. She reports of a situation where the police arrested her husband in front of her house and brought him to a psychiatric clinic. The next day the police found out a judge had released her husband from custody based on the case files without notifying her or the police and without discussing the case with the police before making a decision:

“I feel sorry for the police, the many times they arrested my ex-husband and some judge, who had only viewed the file, he was free and had committed the next crime.” (V10).

All interviewees expressed dissatisfaction with the implementation of protection orders, in particular as violations reported to the police usually did not seem to have any consequences for the offender. Reporting to the police, the interviewees were told that the police could only act if they called them while the offender was still present (V4), if they were able to prove they had been threatened (V3), or when serious damage was done (V9). Two interviewees gave up on reporting to the police as they ‘lost faith’ in the police’s work. One of them described giving up on reporting the offender’s violations of the court decision:

“You get the feeling that you are crazy and that you are just harassing the police. At some point you give up on calling the police (...) even when the lawyer says, it has to be noted down (...) you do not want to report your fait to a new police officer over and over again. And then you stop calling, and note things down yourself: Film, photograph, note down witnesses and tell the lawyer (...).” (V9)

7.3.7. To what extent did the interviewees agree to the following statements?

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
7.4.7.1 Overall, the police made all possible efforts to protect me.	0	1	1	2	0	4
7.4.7.2 I would have needed more support in changing my situation with a view to overcoming the threat of violence.	3	1	0	0	0	4

The one person who agreed that the police had done enough saw the fault with the courts/judges who had disagreed with the police, or reversed decisions taken in order to protect her. The remaining three interviewees felt their own assessment of the risk for repeated victimization was not taken seriously or heard by the police and/or the courts.

8. Civil law claims: compensation and restitution

8.1. Views of practitioners

8.1.1. According to the practitioners interviewed, do the police routinely inform victims about their entitlement to state compensation?

Responses to this question did not generate a clear picture on routine practices, as practitioners seemed to have varying impressions and experiences.

Two interviewees confirmed that the police routinely inform victims about their entitlement under the 'victim compensation law' OEG¹⁶ (L1, J3), while six interviewees, including exclusively support organisations and judges, negated the question (S4, L2, J4, J6, S3, S5). The largest group explained that victims are informed about the possibility to claim compensation through the victim compensation law through brochures (S2, J5, J7, P1, P2, P3, P4).

Opinion amongst police officers was divided. While all agreed that victims may be informed about their options, two police officers explained that it is not routine to inform. Of those, one police officer argued that chances of victims being informed would rise with the severity of the crime, while another police officer explained that victims would have to ask concrete questions. All but one police officer mentioned a brochure/leaflet which is handed to the victims and includes information on the OEG. It was furthermore discussed that it may be up to the individual police officer's discretion whether or not to provide further information (P1). One police officer and a judge questioned whether police officers have the knowledge to provide relevant information (P3, J2).

Several actors were named as alternative sources of information, including victim support organisations (S3) and lawyers (S5, J2), courts (S3, J2) and public prosecutors (J1, J2). It was noticeable that only one interviewee, a staff member of a victim support organisation, saw himself as responsible for providing information on the OEG, while all other interviewees saw the responsibility with other actors in the system.

8.1.2. Do the police routinely inform victims about the possibilities to obtain restitution within the framework of criminal proceedings?

Twelve practitioners responded that the police do not routinely inform the victim about obtaining restitution in criminal proceedings (L1, L2, L3, S2, S3, J1, J2, J4, J7, J6, P1, P5), while six interviewees saw the responsibility with other actors, including public prosecutors (J1, J4, J6, L3), and lawyers (J7, S4).

As adhesive procedures were mentioned as central to the recent improvements regarding the rights to participation for victims (S4, J5), interviewees were asked whether they see adhesive procedure as a worthwhile instrument and whether they would recommend it to clients.¹⁷

As factors in favour of an adhesive procedure, practitioners referred to reduced efforts and time, as the procedure replaces proceedings at civil court (L4, S2, J1, J2, P3, L1) as well as that it was easier for victims to generate evidence (J2, P3). As a potential negative effect on victims, a lawyer and a police officer mentioned that failed adhesive procedures may generate additional costs, as the victim will be held to pay for the opposing lawyer's fee in case their claim is not successful (L4, P2). Two staff members of support organisations pointed out that they would only recommend to file for an adhesive procedure in

¹⁶ See Federal Ministry of Labour and Social Affairs Act on compensation to victims of violent crime (Crime victims compensation Act – OEG)

¹⁷ § 403 StPO

cases where it is clear that the court will decide in favour of the victim (S5, S2), while support organisations and a judge discussed it not being unusual that the offender is unable to pay (J3, S1).

It was a popular opinion amongst interviewees of all professions that judges in criminal courts dislike adhesion procedures as they do not feel comfortable or trained to address civil law, or because it means an additional work effort (S2, J1, J2, J3, J4, P2, L2, L3, S3)

In light of these statements, it was noticeable that four out of five judges interviewed for the purpose of this study explained that they themselves were in favour of adhesive procedures while aware that colleagues were of a different opinion (J1, J2, J3, J4). A judge at a higher regional court explained that she sees adhesive procedures as a misdirected instrument, creating an additional and unmanageable burden for judges. She furthermore expressed doubts whether damage from violent crime was calculable in financial terms, and that judges specialised in criminal law were not trained in addressing civil law claims:

“I find it confusing and it has little to do with our profession as criminal law judges (...). We are by now being trained for that (adhesive procedures), there are scripts. And we can deny an adhesive procedures in individual cases if it is not manageable to combine it with criminal cases. But it is not a nice procedure (...) you have two completely different situation regarding evidence (...) and it is difficult to determine the amount to be paid (...). The law maker cannot simply determine that a rape is worth a specific amount. That makes the victim an object. Which rape is like another? I find that difficult.” (J5)

8.1.3. As concerns proceedings in cases of violent crimes and judging by your practical experiences, how often does the criminal court adjudicate on the victim’s civil law claims? According to the interviewees, does this happen

	S	P	J	L
Often or very often	0	0	0	2
Occasionally	3	0	6	0
Only in exceptional cases or not at all	0	0	1	2
Don't know	2	0	0	0
TOTAL	5	0	7	4

The practitioners’ answers confirmed statistics which indicate that adhesion procedures are rare in criminal proceedings.¹⁸ Most practitioners answered that this happens occasionally, while only few chose other answers. Some practitioners pointed to lawyers being the reason for a tendency for adhesion procedures to rarely be used as they do not recommend it to clients (S2, J4, L2).

8.2. Views of victims

¹⁸ According to statistics published by the German Federal Statistical Office, in 2015, 5% of proceedings finalized at district courts contained an adhesive procedure (https://www.destatis.de/DE/Publikationen/Thematisch/Rechtspflege/GerichtePersonal/Strafgerichte2100230157004.pdf?__blob=publicationFile).

8.2.1. Did the interviewees apply for state compensation? If yes, what was the result?

None of the interviewees had applied for state compensation at the time of the interviews. Interviewee V5 received a larger payment of 6000 Euro once and is receiving regular payments since yet was unable to say whether this was state compensation or compensation provided by the offender. Interviewee V2 was not yet at a point when she could apply, yet expressed the wish to do so if she could. Interviewee V4 did not know state compensation existed (yet would also not have been eligible for it).

One interviewee had read that she could do it, but had not done it because she was unsure what to apply for:

“I’ve worked my way through such an application procedure, but I am not entirely sure how. It would certainly help me if it was recognised that a lot of harm has been done to me, but since the criminal proceedings have not been finalized, and I have nothing to show for, I would not know how that would be possible.” (V10)

8.2.2. Did the interviewees raise civil law claims within the framework of criminal proceedings? If yes, what was the result?

Six interviewees made civil law claims within the framework of criminal proceedings, four of which were successful and resulted in monthly- or larger one-time payments (V3, V5, V6, V7, V8, V9). These cases included bodily harm and rape in the context of domestic violence, rape, coercion and grievous bodily harm. In two cases, victims did not receive the payments expected as the offender was unable to pay (V3), or (as the interviewee assumed) had lodged an appeal (V7). The sixth interviewee who raised civil law claims within the framework of criminal proceedings did not succeed as the court found the offender not guilty of assault/bodily harm (V8).

Two interviewees actively decided not to raise civil law claims within the framework of criminal proceedings. A victim of bodily injury explains that she assumed her injuries were not severe enough, and that financial compensation would not have been able to compensate her on-going fear *“how do you want to pay for fear?”* (V1). A victim of domestic violence who had suffered grievous bodily injury was advised by her lawyer that, while she had good chances of being successful it was not worth the effort as the offender was unemployed, i.e. would not be able to pay (V10).

Two interviewees stated that they were unaware of the possibility to make civil law claims (V2, V4).

8.2.3. To what extent did the interviewees agree to the following statement?

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL

Criminal courts should ensure that victims receive compensation from the offender.	5	2	0	0	2	9
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All interviewees who were able to answer this question agreed that criminal courts should ensure that victims receive compensation from the offender.

9. General assessment of victims' situation in accessing justice

9.1. Views of practitioners

9.1.1. To what extent did the interviewed practitioners, divided by professional groups, agree to the following statements?

9.1.1.1 Criminal justice is mainly a matter between the public and offenders; hence victims' role in criminal proceedings is necessarily peripheral.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	2	1	2	0	0	5
P	0	1	3	1	0	5
J	1	5	1	0	0	7
L	0	1	3	0	0	4
9.1.1.2 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.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	0	0	2	1	2	5
P	1	1	1	1	1	5
J	2	0	3	1	1	7
L	0	0	3	1	0	4
9.1.1.3 Generally speaking, practitioners working in the criminal justice system take the rights and concerns of victims very seriously.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	0	1	3	0	1	5
P	1	1	1	1	1	5
J	2	5	0	0	0	7
L	0	1	2	0	1	4
9.1.1.4 In the past, the criminal justice system has not paid due attention to the concerns and rights of victims. It is about time that victims' concerns are taken more seriously.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
S	2	0	2	0	1	5

P	2	2	1	0	0	5
J	1	0	5	1	0	7
L	1	2	1	0	0	4

Answers to this question were widely spread and did not show an overall tendency towards either agreement or disagreement. A reason for this division is arguably the fact that the statement contains two separate premises, and answers depended on the focus set by individual interviewees. A judge explained:

“Yes, I do see it that way. Although the reasoning is not quite how I would put it, I would sign off on the last premise, namely that the role of the victim is necessarily peripheral. However, my reasoning would be that it (criminal proceedings) is mainly about finding the truth. In a way, one could argue that this makes it a matter between state and the accused. Hence, I would cautiously agree.” (J4)

A tendency could nonetheless be seen for judges to agree or strongly agree with this statement, while lawyers tended to disagree. This division mirrors a recurring discussion throughout this report, which addresses a tendency of actors whose profession demands to represent the interests of victims (namely group L and S) and those practitioners whose profession demands neutrality (group J).

The majority of practitioners disagreed with the statement that victims becoming influential in criminal proceedings would come with a risk of unsettling the balance between public prosecution and the rights of the defendants. Two police officers argued that the influence of victims does not necessarily compete with the rights of the offender (P1,P5) while a judge and a public prosecutor argued that victims already have a role in proceedings, and that this role does not affect the rights of the defendant (J4, J6). Contrasting opinions of those practitioners who answered in the affirmative, mainly based on the concern that granting too much power to victims may outbalance the presumption that the accused is innocent until proven guilty, were discussed in-depth under Chapter 1 and 5.

Judges and public prosecutors mostly agreed or strongly agreed that practitioners take rights and concerns of victims seriously, while the opinion of other practitioners was divided.

Interviewees were asked to give their view on the statement that the criminal justice system has not paid due attention to the concerns and rights of victims in the past and should accordingly take the concerns of victims more seriously. The practitioners’ answers were widely spread and inconsistent within professional groups, which may be linked to the fact that the statement in question was made up of two independent statements and that answers may therefore have been based on either of the two depending on the individual expert’s priorities. This is exemplified by this statement by a staff member of a victim support organisation:

“That sounds a bit like: ‘Nothing good ever happens for victims’, and I do not agree with that, that is not the case. (...) That is why I do not like the sentence as it is and yet, I find that more has to be done.” (S2)

Despite these methodical challenges it stood out that all judges and one of the public prosecutors disagreed with this statement. Two judges argued that further victim protection is impossible within the system’s current capacities:

“Victim protection is important and good and right, but the system also has to function and be practical. The more victim protection we offer, the more work

we all have and since we (criminal justice system) are all at the limit of our capacities, we cannot just decide to offer more victim protection and act as if that would not have an impact. While it is justified for victim protection to cause us work, all of it has to stay in balance, and I think the way we have handled it is a justifiable middle way. If we would extend it even more, it would cause more work for us and thereby also negatively impact the rights of the defendant, who, as I said, is innocent until proven guilty.” (J3)

A second judge explained:

“It is all very nice, but if we don’t have the capacities to implement it (...). A well-supplied justice system, with proper work material would surely be able to implement existing rights. Every judge in this building does his/her best, as I said, when victims come by we offer a glass of water. We don’t have fresh water, so we get it from the sink, or we don’t have a cup, you know? These little things lead to us failing (...) Trying to do right by the situation by providing breaks, offering a sip of water, or go into specific parts of the questioning. That’s what you can do on a personal level, but apart from personal engagement it is really difficult.” (J5)

Furthermore, it was a popular notion amongst practitioners, as discussed in depth in Chapter 5, that rights as they are provided by law are extensive, yet lack practical implementation. The following quote by a staff member of a victim support organisation summarises this point of view:

“I don’t think that a lot of legislation is necessarily to enhance the situation for victims. It is really about small things in the implementation. That witnesses are greeted, that parties to the proceedings are introduced, that victims are kept updated about developments in proceedings. That is the practical implementation. That gets lost in every-day work life of judges, public prosecutors and the police. Everything becomes a routine and they get numb because they hear so many horrible things. (...) interdisciplinary cooperation, not everyone for themselves, joint proceedings, not the legal practitioners and police leading the proceedings, and social workers then pick up the pieces. Acceptance of the different professions and learning from each other.” (S3)

9.2. Views of victims

9.2.1. Did the experience of the interviewed victims in the course of the investigation and the ensuing proceedings rather add to the harm done by the offender(s) or support them in coming to terms with the experience of victimisation?

Overall, what I experienced during the investigation and the court proceedings	rather added to the harm done by the offender;	4
	mitigated the harm done by the offender;	3
	I couldn't tell/don't know.	4

Opinions were divided. Factors named to have added to the harm done by the offender, included long waiting periods (V9), a lack of opportunities to get involved (V9), feeling powerless (V9), old traumas (from other crimes) being brought back to the surface (V1), no feeling of security (V1), (V8), a judge seeming to only accept evidence for the offender (V8) and a verdict of not guilty (V8).

Factors named to have mitigated the harm done were being able to confront the offenders in court (V11) and proceedings reinforcing faith that justice will be served (V6). This victim of domestic violence reflects on her experience:

“Generally the proceedings put even more psychological pressure on me [...] but I am still satisfied there were proceedings. At least, the offender now knows at least that I defended myself. [...] I was [...] scared to take this path. [...] I experienced myself as [if I was being] pushed into a corner and I couldn't do anything [...]. Helpless and unprotected. The outcome is not [what I had wished for] [...] but the fact that there were proceedings was encouraging.”
(V4)

A victim who did not choose either of the answers explained that she still suffered a lot, yet was relieved that she won the case (V5). An interviewee in whose case proceedings had not been finalised at the time of the interview explained that she was hoping for some sort of compensation or gratification (V10).

9.2.2. To what extent did the interviewees agree to the following statements?

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
1. During the investigation, I had the impression that my concerns and rights were taken seriously by the police and were given due attention.	3	2	2	3	1	11
2. At the court trial, I had the impression that my concerns and rights were taken seriously and were given due attention by the court.	3	1	2	2	3	11
3. Overall, the investigation and the following proceedings conveyed a strong message that justice is done.	1	5	2	1	2	11

Overall, half of the respondents were of the opinion that their rights and concerns were taken seriously and given due attention by the police and during court trial. None of the interviewees' answers regarding trial did significantly differed from those regarding the police, which indicates that victims felt equally well or badly treated in both stages of proceedings. The only interviewees who answered with a strong affirmative in both questions were those who also indicated that they were satisfied with the outcome of proceedings (V5, V6).

Conclusions

Over the past years, amendments in law, primarily in the criminal procedure code (Strafprozessordnung, StPO), have aimed to provide victims of violent crime with opportunities to participate in and contribute to criminal proceedings, and to reduce the risk for secondary victimisation. This study aimed to explore access to these rights based on the experience of practitioners and victims. While the small sample prohibits any generalisation, the following gives an overall impression of themes, consensus and discussion which stood out throughout the research.

Amongst practitioners interviewed for the purpose of this study, the rights and role of victims in the context of criminal proceedings was a well-known subject. This was either because practitioners were in favour of extending victims' rights, or because they were of the opinion that protection and participation may enable the victim to better 'function' as a witness. While several practitioners were critical of specific aspects of the extensions made to victims' rights, only few were generally critical of the concepts of participation and protection against secondary victimisation.

Overall, despite a reported shift from victims being perceived as a passive object, to a potentially active subject in criminal proceedings, in practice, the victims' primary role in the eyes of professionals remains that of a witness, a means to an end to hold successful proceedings and to 'determine the truth'. The interviews held for the purpose of this study suggest that access to many of the rights linked to protection against secondary victimisation or participation beyond a witness statement remain bound to a pro-active victim, preferably supported by a lawyer or a support organisation, as they will not be made easily accessible by the justice system as such. Many of the aspects of victim protection and participation discussed in this study are perceived as informal options reliant on the assessment, good-will and capacities of the institutions or individuals responsible, rather than concrete rights which are guaranteed to the victims. This includes for example victims having a trusted person present during the police interview or the hearing at court, or an individual assessment of a risk for repeated or secondary victimisation.

According to practitioners and victims interviewed for the purpose of this study, information provided to victims of violent crime regarding their rights and potential role in criminal proceedings remains general and is often communicated exclusively through leaflets provided by the federal and/or regional government. With a view to the central role of this initial information in enabling access to protection, participation and justice for victims in criminal proceedings, interviewees from all four groups of practitioners saw an urgent need to improve information mechanisms aimed at ensuring more comprehensive and personalised communication.

The offer of support organisations was generally presumed to be sufficient, and victims felt well-supported by the organisations they were in contact with. In fact, victims reported respective support organisations as crucial in the decision to report a crime, act as accessory prosecutor, or in enabling them to go through proceedings with minimal additional emotional harm. In rural contexts and smaller cities, specialised police units and support services were reported to be rare and insufficient.

Practitioners disagreed on the extent to which victims should be able to participate and play a major part in proceedings. While some practitioners pointed to a reserved victim being a potential barrier to

successful proceedings, others suggested that active victims can be perceived as 'trouble-makers' with ulterior motives. It was furthermore apparent that some practitioners regard accessory prosecutors as a disturbance to effective proceedings. Most victims viewed it as essential to participate in proceedings and would have wished for further opportunities to do so, yet several interviewees felt their active engagement in proceedings was perceived to be disturbing by relevant actors and rather hurt their case. Many of the victims interviewed did not feel heard or taken seriously, with information for and communication with victims insufficient, generalised and distanced, and largely provided through lawyers or support organisations. Both, practitioners and victims, reported that the emotional and subjective perspective of the victim is an uninvited guest in criminal proceedings.

Participation beyond a witness statement is reserved for victims eligible to act as accessory prosecutors in law and in practice. If practiced to the fullest of its extent, accessory prosecution can enable the victim to play a central role in proceedings, which practitioners compare to the level of influence of public prosecutors. Accessory prosecutors contributing to proceedings are perceived as a well-established practice, while other instruments aimed at furthering the victim's interests in criminal proceedings, including the victim compensation law and adhesion procedures were generally described to remain a blunt sword in the eyes of professionals.

Accessory prosecutor representatives were identified as the voice of victims in criminal proceedings and the victim's active participation without legal representation assessed to be extremely challenging or close to impossible. Based on this assessment, several experts, including staff members of victim support organisations as well as judges, called for extended efforts to ensure the quality of legal representation, as for example through requiring additional certification for lawyers practicing criminal law to act as accessory prosecutor representative.

Seeing this pivotal role of legal representation, it was furthermore perceived as an essential consideration for victims whether legal aid will be available. Lawyers and staff members of victims support organisations criticised what they perceived as complex application procedures for legal aid, an administrative challenge causing uncertainty amongst victims and thereby presenting a considerable barrier for victims in accessing support in claiming their rights. Several victims interviewed for the purpose of this study found themselves unable to finance legal representation.

Interviews reproduced the central arguments of an on-going debate on increasingly restrictive jurisprudence regarding the victim's right to view the files in cases based exclusively on the victim's witness statement. While judges pointed to the risk of damaging the procedural goal to uphold the victim's credibility, lawyers and staff members of victim support organisations made an urgent call not to neglect the essential role of the right to view the case file in enabling the effective practice of accessory prosecution.

With the exception of victim support organisations and lawyers, most practitioners were of the opinion that it was not their responsibility or outside their capacities to protect against secondary victimisation. Accordingly, practitioners and victims perceived it to be highly dependent on the individual actor whether victims will be provided with adequate sensitivity, pro-active protection or information. In combination with an apparent lack of capacities and resources, practitioners were clear about the fact that priorities often leave no room for protection of the victims' needs and feelings. In practice, protection against secondary victimisation largely remains in the hands of victim support organisations and sometimes lawyers.

Interviews furthermore pointed to several contentious aspects of victim protection viewed to be mutually exclusive with effective proceedings or the rights of the accused. Examples named were victims having

a person of trust present at a police interview, consulting psychological support prior to the court hearing, or providing alleged victims with information on developments regarding their case. Several judges made a strong mark on the issue of defence lawyers overstepping boundaries during questioning. Interviews showed dissent amongst judges regarding their own means and authority to bring a halt to invasive questioning and were furthermore divided on the question whether such an intervention would be appropriate and purposeful to the general aim of criminal proceedings. Authorities being cautious of granting above stated rights and opportunities impacted the experiences of victims interviewed for this study, who reported having to push for the offender being banned from court during their testimony, or having to argue with the police to have a person of trust present at the interview.

Interviews with victims of racist violence highlighted that victims felt that their suggestion for the offenders' actions to be qualified as a 'hate crime' was ignored or neglected by authorities, an impression which significantly diminished their trust in the criminal justice system.

It was apparent that practitioners lacked experience and disagreed on essential aspects of the treatment of violent crime involving victims with an irregular status of residence, including the question whether police or the courts have an obligation to report the victims' presence to immigration authorities, as well as regarding available options to secure residency for the purpose of criminal proceedings.

Protection against repeat victimisation for victims of domestic violence remains a futile instrument in the eyes of victims – procedures following an initial intervention in domestic violence as they stand demand contact and dealing with a multitude of authorities linked to both criminal and civil law – and are viewed as intransparent by both, practitioners and victims. It was suggested that victims should receive more in-depth information on their options, and that actors involved in the proceedings need to find more effective ways to communicate.

As the interviews held for the purpose of this study suggest, the legislator's idea to allow for the victim to participate as an active party to proceedings and to offer extensive protection against secondary victimisation has yet to arrive in every-day practice within the criminal justice system. Interviews suggest that a main cause for this discrepancy between law and practice can be linked back to the practitioners' struggle to balance victims' rights with what they interpret to be the purpose and aims of criminal proceedings. Unsurprisingly, the view that victims' rights, at times, appear incommensurable with the aims of the criminal justice system, is suggested to be particularly prevalent amongst those practitioners whose profession, as defined by law, demands impartiality. While both groups seemed aware of the concerns and challenges of the other, those practitioners whose profession presumes to speak for the victim's rights highlighted a need to further the implementation of the victim's right to be heard and protected in criminal proceedings. The results of this study therefore highlight an on-going and unresolved debate on the gradual evolvement of the law protecting the rights and stance of victims in within the criminal justice system.