

**Implementation of the EU Victim Rights Directive
2012/29 by the Netherlands and Ireland: A
Comparative Analysis**



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Introduction

*Crime is a wrong against society as well as a violation of the individual rights of victims...Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.*¹

This is one of many reasons why the European Union (EU) identified the need for and established minimum standards on victim rights.² This thesis analyses how victim rights are dealt with at the EU level and how two EU Member States, Ireland and the Netherlands, have developed and further implemented the minimum standards set by the EU in the Victim Rights Directive 2012/29.

We all hear about the criminal, but what about the victim? On November 13th, 2020, Peter Sutcliffe died in prison. The ‘Yorkshire ripper’, infamous in the United Kingdom (UK) for his crimes, and while his name is well known, the names of his thirteen victim’s names seem to have been forgotten by the media. The British Broadcasting Company (BBC) reported his death, and interviewed the son of his first victim, Richard McCann. McCann expressed the wish that Sutcliffe’s death should mark the end of his infamy, and the attention should now go to his victims. McCann alleges that the detectives on the case did not care about the victims because some of them were sex workers. McCann was essentially demanding awareness to victim rights by highlighting the focus so frequently placed on catching the villain, and much less so, on the actual victims.³

¹ Preamble, paragraph 9, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA 2012 [32012L0029].

² Preamble, paragraph 9, *ibid.*

³ Jennifer Meierhans, ‘Yorkshire Ripper Death: People “Should Focus on Victims”’ *BBC News* (13 November 2020) <<https://www.bbc.com/news/uk-england-54930118>> accessed 18 November 2020.

At the EU level victim rights have been addressed in the ‘Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.’⁴ This was designed to ensure all EU citizens, the safety and recognition deserved should they fall victim to crime. This Directive actually replaces Council Framework Decision 2001/220.⁵ Member States had insufficiently complied with the goals set in the Framework Decision and thus the EU passed Directive 2012/29. This ensured the working together to guarantee the deserved rights of victims.⁶ Directive 2012/29 was binding to all Member States (excluding Denmark who opted out), including the UK and Ireland who had opted in.⁷ The main concepts of this Directive intend to protect the victim throughout criminal proceedings, assuring the victims receive information regarding the case, guarantee the victim will be understood, heard and can understand what is going on, and also that they will receive sufficient compensation for any damages.⁸

The implementation of these rights can be impacted by the type of legal system the Member States have, and the existing safeguards already in place regarding victim rights. The Netherlands and Ireland differ greatly. The Netherlands is a civil law country, with an inquisitorial legal system,⁹ whilst Ireland is a common law country with an

⁴ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1).

⁵ ‘COUNCIL FRAMEWORK DECISION of 15 March 2001 on the Standing of Victims in Criminal Proceedings’ <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001F0220&from=EN>> accessed 5 November 2020.

⁶ European Commission, ‘Proposal for a Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, 2011/0129’; Preamble, paragraph 9, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1).

⁷ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1) 29.

⁸ Sławomir R Buczma, ‘An Overview of the Law Concerning Protection of Victims of Crime in the View of the Adoption of the Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime in the European Union’ (2013) 14 ERA Forum 235.

⁹ ‘Dutch Civil Law Legal System’ <<http://www.dutchcivillaw.com/content/legalsystem011.htm>> accessed 14 December 2020.

adversarial legal system.¹⁰ Due to the nature of both legal systems, the former focusing on codification, the latter on precedent, they implement directives quite differently.

Despite the differences in legal structure, the EU set the same requirements for both the Netherlands and Ireland: implement the Victim Rights Directive 2012/29 by the 15th of December 2015. This leads to the research question of this thesis: **How do the civil and common law systems in the Netherlands and Ireland impact the implementation of the EU directive on Victim Rights (2012/29)?**

The initial hypothesis is that the civil law and common law systems of the Netherlands and Ireland will impact the way Directive 2012/29 is implemented. The variety of codification in a civil law system, victim rights will likely be spread across different acts, whereas in a common law system the implementation will most likely be implemented in a single piece of legislation. This thesis answers this question by analysing and comparing the Netherlands and Ireland, and their respective implementation of the Victim Rights Directive (2012/29). This paper will provide a side-by-side breakdown of what laws the countries have implemented compared to the rights within the Directive, providing a clear visualisation of what each country has done to meet or exceed the EU's minimum standards. This will be accomplished through doctrinal and qualitative research, looking at sources of primary law from the EU, the Netherlands, Ireland, and the United States of America (USA).¹¹ Also analysed is some case law of the Court of Justice of the European Union (CJEU), commentary from academic journals and explanatory information published by national institutions.

In order to answer the research question of how the civil and common law systems of the Netherlands and Ireland impacted their implementation of the Directive, chapter one provides a deeper understanding of victim rights and examples of how the USA

¹⁰ Dr Noelle Higgins, 'The Lost Legal System: Pre-Common Law Ireland and the Brehon Law' [2014] School of Law and Government, Dublin City University, 11.

¹¹ The USA will be looked at to provide a different perspective of victim rights.

approach these rights. Chapter two will then provide an introduction to the EU and what its competences¹² are regarding the field of victim rights. Also discussed are the measures the EU have passed before the enactment of Directive 2012/29, and what Directive 2012/29 actually entails. Chapter three analyses the legal systems in the Netherlands and Ireland, the civil and common law systems, and the inquisitorial and adversarial systems, and the factors played in the implementation of the Directive. Chapters four and five will address the victim rights present in the Netherlands and Ireland before the enactment of Directive 2012/29, and how the Directive was implemented into national law. Finally, chapter six draws a direct comparison of the legal systems and their implementation methods before a conclusion of the research question is drawn.

¹² The right to legislate and adopt legally binding decisions.

Chapter one: Victim Rights

Crime, a daily occurrence,¹³ is a topic which people can be very nonchalant about, often leading to an unwillingness to come forward regarding the crime committed.¹⁴ This apprehension has been highlighted in the ‘#MeToo’ movement, which originated in the USA. This movement raised and continues to raise awareness about forms of sexual abuse and harassment, encouraging victims, many of whom have been long silent, to speak up about their trauma. It promotes a greater awareness for sexual abuse victims and gives them a voice also creating a community, promoting solidarity amongst victims and their rights.¹⁵

Another example of a victim rights movement, also originating in the USA is the #BlackLivesMatter movement (BLM). This movement is about freedom, liberation and justice. BLM began campaigning in 2013 after the exoneration of Trayvon Martin’s murderer. This acquittal caused an emergence in protests against discrimination upon blacks, particularly by law enforcement. BLM strives to dismantle white supremacy and bring justice to the black population.¹⁶

Criminal law is said to be the *Ultimum remedium*, translating to the last cure, meaning it should be used as the final means to solve a problem.¹⁷ Criminal law differs from state to state even though the ultimate goal is justice; to remedy the injustices people encounter and punish those who committed the injustice.¹⁸ Also covered within criminal law are victim rights which continually evolve.¹⁹

¹³ Hyeon-Woo Kang and Hang-Bong Kang, ‘Prediction of Crime Occurrence from Multi-Modal Data Using Deep Learning’ (2017) 12 PLOS ONE e0176244.

¹⁴ C V, ‘Victims’ Rights Are Important’ (*Victim Support Services*, 7 April 2014) <<https://victimssupportservices.org/victims-rights/>> accessed 30 October 2020.

¹⁵ ‘Our Work’ (*me too. Movement*) <<https://metoomvmt.org/the-work/>> accessed 30 October 2020.

¹⁶ ‘About’ (*Black Lives Matter*) <<https://blacklivesmatter.com/about/>> accessed 14 December 2020.

¹⁷ C Kelk and F de Jong, *Studieboek materieel strafrecht*, vol 7 (7th edn, Wolters Kluwer 2019).

¹⁸ George P Fletcher, *Basic Concepts of Criminal Law* (Oxford University Press 1998).

¹⁹ MR Hebly, JDM van Dongen and SD Lindenbergh, ‘Crime Victims’ Experiences with Seeking Compensation: A Qualitative Exploration’ (2014) 10 Utrecht Law Review 27.

When a crime has occurred, the victim can make a complaint to the police. Victim rights come into play with everything, that happens from that moment on.²⁰ Victim rights include inter alia, rights when making a complaint to the police, receiving information about their complaint from the investigating officers, voicing their experience and opinions and rights for protection.²¹ These rights are still relatively new, only in the past half century have they begun to be acknowledged and improved. Huge steps have been made worldwide, for example, the USA issued a Victim Rights Act in 2004²² and the EU issued Directive 2012/29.²³

As defined by the Cambridge dictionary, a victim is: “*someone or something that has been hurt, damaged, or killed or has suffered, either because of the actions of someone or something else, or because of illness or chance.*”²⁴ For this paper the term victim will be used as someone who has been impacted by the alleged criminal actions of someone else. A victim is defined differently in different legal systems, stemming from the same idea, victims are linked to crime, and most crime leaves a victim in its wake.²⁵

A person directly harmed by a crime is a primary victim,²⁶ but a victim is not necessarily the person directly harmed. A secondary victim can be a witness to the crime, or a parent or guardian of the primary victim (provided the primary victim is under

²⁰ GJM Corstens, MJ Borgers and T Kooijmans, *Het Nederlands Strafprocesrecht* (Negende druk, Wolters Kluwer 2018).

²¹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1).

²² Steve Chabot, ‘H.R.4342 - 108th Congress (2003-2004): Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims’ Rights Act’ (28 June 2004) <<https://www.congress.gov/bill/108th-congress/house-bill/4342>> accessed 21 November 2020.

²³ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1).

²⁴ ‘VICTIM | Meaning in the Cambridge English Dictionary’ <<https://dictionary.cambridge.org/dictionary/english/victim>> accessed 11 December 2020.

²⁵ ‘Slachtofferzorg’ Politie <<https://www.politie.nl/themas/slachtofferzorg.html>> accessed 1 November 2020.

²⁶ ‘Primary Victim | Victims of Crime Assistance Tribunal’ <<https://www.vocat.vic.gov.au/assistance-available/types-victims/primary-victim>> accessed 21 November 2020.

eighteen).²⁷ In addition to primary and secondary victims, there are also related victims, this term covers close family members, those who are dependent on the primary victim, or those with a close personal affiliation with the primary victim.²⁸ The concept of a victim covers those who are negatively impacted by a criminal offence, be it the one directly hurt, or those around the primary victim.

Some victims go unrecognised,²⁹ meaning they are essentially ignored or forgotten, such as the victims of the Yorkshire Ripper mentioned in the introduction. Often people on the outside of the criminal act become complacent, with the idea that they are safe from victimisation. This attitude is why protecting victims is so necessary. Through raising awareness attitudes are changing, as demonstrated in the #MeToo and BLM movements. Victims are increasingly seen as a more pivotal part of a crime instead of being overlooked or brushed aside.³⁰

Across the world victim rights are dealt with differently. A specific example of this is the USA and the journey to passing their act on the compensation fund. In 1934, a member of the Supreme Court of Justice in the USA,³¹ said, “*justice, though due to the accused, is due to the accuser also.*”³² This brought forward recognition that the victim is also a person, not just evidence in a case. In 1984, the USA took a monumental stride for their victims by passing the Victims of Crime Act.³³ This act was enacted for compensation for victims, funded by criminals themselves. When a convicted criminal

²⁷ ‘Secondary Victim | Victims of Crime Assistance Tribunal’ <<https://www.vocat.vic.gov.au/assistance-available/types-victims/secondary-victim>> accessed 21 November 2020.

²⁸ ‘Related Victim | Victims of Crime Assistance Tribunal’ <<https://www.vocat.vic.gov.au/assistance-available/types-victims/related-victim>> accessed 21 November 2020.

²⁹ M Cherif Bassiouni, ‘International Recognition of Victims’ Rights’ (2006) 6 Human Rights Law Review 203.

³⁰ Lorraine Wolhuter, Neil Olley and David Denham, *Victimology: Victimisation and Victims’ Rights* (Routledge 2008).

³¹ Frank Carrington and George Nicholson, ‘The Victims’ Movement: An Idea Whose Time Has Come’ (1986) 11 Pepperdine Law Review 15.

³² *Snyder v Massachusetts* (241AD) 291 US 97 (Supreme Court of the United States of America).

³³ ‘34 U.S. Code Chapter 201 - VICTIM RIGHTS, COMPENSATION, AND ASSISTANCE’ (*LII / Legal Information Institute*) <<https://www.law.cornell.edu/uscode/text/34/subtitle-II/chapter-201>> accessed 10 December 2020.

paid a fine or penalty, this was put into a fund to compensate future crime victims,³⁴ an approach other nations could implement to improve their victim rights.

In 1990, the USA passed another act regarding victim rights, the Victims Rights and Restitution Act.³⁵ This act established rights for victims regarding court proceedings and entitled treatment from the Federal Law Enforcement Agency.³⁶ Four years later, in 1994, The Violent Crime Control and Law Enforcement Act³⁷ was passed, allowing victims the right to voice their accounts of the crime in hearings.³⁸ This was then added to in 1997 with the Victim Rights Clarification Act, passed to further ensure that victims have the right to attend the hearing and trial of the case concerning the crime they had fallen victim to.³⁹

In 2004, the USA passed the ‘Crime Victims’ Rights Act.’⁴⁰ This reinforced previously passed acts and moved the rights from the Public Health and Welfare Code (title 42), to the Crimes and Criminal Procedure code (title 18).⁴¹ In July 2020, the USA introduced another piece of legislation for Victims, the ‘Crime Victims’ Rights Act’ of 2020, but this is yet to be passed.⁴² Some of the rights in the 2004 Crime Victim Rights Act are the following: the right to protection, being heard, restitution, privacy, receiving information, and the notification of any change of circumstance. The USA elaborate in

³⁴ ‘The History of Crime Victims’ Rights’ (*Texas District & County Attorneys Association*) <<https://www.tdcaa.com/journal/the-history-of-crime-victims-rights/>> accessed 20 November 2020.

³⁵ ‘Summary of H.R. 5368 (101st): Victims’ Rights and Restitution Act of 1990’ (*GovTrack.us*) <<https://www.govtrack.us/congress/bills/101/hr5368/summary>> accessed 21 November 2020.

³⁶ *ibid.*

³⁷ Jack B Brooks, ‘Text - H.R.3355 - 103rd Congress (1993-1994): Violent Crime Control and Law Enforcement Act of 1994’ (13 September 1994) <<https://www.congress.gov/bill/103rd-congress/house-bill/3355/text>> accessed 10 December 2020.

³⁸ Jack B Brooks, ‘H.R.3355 - 103rd Congress (1993-1994): Violent Crime Control and Law Enforcement Act of 1994’ (13 September 1994) <<https://www.congress.gov/bill/103rd-congress/house-bill/3355>> accessed 21 November 2020.

³⁹ Bill McCollum, ‘H.R.924 - 105th Congress (1997-1998): Victim Rights Clarification Act of 1997’ (19 March 1997) <<https://www.congress.gov/bill/105th-congress/house-bill/924>> accessed 21 November 2020.

⁴⁰ ‘Crime Victims’ Rights Act’ (18 November 2014) <<https://www.justice.gov/usao/resources/crime-victims-rights-ombudsman/victims-rights-act>> accessed 14 December 2020.

⁴¹ Chabot (n 21).

⁴² Debbie Wasserman Schultz, ‘Text - H.R.5658 - 116th Congress (2019-2020): Crime Victims’ Rights Act of 2020’ (7 February 2020) <<https://www.congress.gov/bill/116th-congress/house-bill/5658/text>> accessed 21 November 2020.

the same act as to how they plan on enforcing the rights. These rights are similar to the rights the EU have set in their own legislation.⁴³

The United Nation's Universal Declaration of Human Rights states the rights of all human beings and addresses the injustices which should never materialise.⁴⁴ It does not however, go into depth about what rights a victim should be guaranteed if a violation occurs. In the EU victim rights are established in the Victim Rights Directive (2012/29).⁴⁵ The EU Directive was developed by adopting the five categories of victim needs and outlining the minimum protection, rights and support needed for every person who falls victim.⁴⁶

Directive 2012/29 suggests that victim rights are about recognising the events an individual has experienced and help cope with the aftermath. These rights continually evolve. The smallest compassion can have a really positive impact on someone who has experienced trauma. Crime impacts victims in diverse ways, reinforcing the need for the establishment of minimum standards for victim rights, crucial for the development of criminal law. A nations approach to victim rights is influenced by the legal structure of the country, whether it be a civil or common law system, or an inquisitorial or adversarial system. The USA developed their victim rights over several decades, and in 2012 the EU issued a directive to establish their own minimum standards. Victim rights exist to ensure fair and just treatment.

⁴³ 'Crime Victims' Rights Act' (n 39).

⁴⁴ 'Universal Declaration of Human Rights' (6 October 2015) <<https://www.un.org/en/universal-declaration-human-rights/>> accessed 3 November 2020.

⁴⁵ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1).

⁴⁶ 'Victims' Rights in the EU' (*European Commission - European Commission*) <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en> accessed 3 November 2020.

8Chapter two: The EU approach to victim rights

The EU is a union of European nations, it unifies aspects from economics to politics⁴⁷ including criminal law. This chapter explores the competences the EU has in criminal law, and how the power is used to promote and enforce victim rights.

2.1. The EU and its competences

On March 25th, 1957, two treaties were signed establishing the European Economic Community (EEC) and the European Atomic Energy Community (EAEC), also known as the Rome treaties, with an effective date of January 1st, 1958. Initially they were signed by just six countries, Belgium, Germany, France, Italy, Luxembourg, and the Netherlands, all working together towards assimilation and economic growth, thus establishing what we now know as the European Union. The initial aim of the Rome treaty was to establish trade and cooperation between the countries,⁴⁸ creating a closer union of Europeans, and ensuring economic and social progress, including improved living and working conditions.⁴⁹ The preamble summarises the intentions of the treaty: to strengthen the unity between the signing parties and to remove any obstacles between the cooperation of the parties.

On February 7th, 1992, the Treaty of the European Union (TEU) was signed, establishing the official founding of the European Union consisting of twelve countries: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain and the UK. Though signed in early 1992, it only came into effect November 1st, 1993, allowing time for the signing parties to implement and adapt

⁴⁷ 'The EU in Brief | European Union' <https://europa.eu/european-union/about-eu/eu-in-brief_en> accessed 18 December 2020.

⁴⁸ 'VERDRAG tot oprichting van de Europese Economische Gemeenschap en bijbehorende documenten' <<https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:11957E/TXT&from=EN>> accessed 10 November 2020

⁴⁹ Preamble, 'The Treaty of Rome 1957, Translation' <https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf> accessed 10 November 2020.

to its conditions. Gradually other European countries applied and joined bringing the EU to its current twenty-seven Member States. The UK is the only country to ever leave the EU, taking effect January 31st, 2020.⁵⁰

The goals of the TEU are introduced in the preamble. The most prevailing goals the EU strives to promote are: peace, its values, sustainability, freedom, security, justice, solidarity, and to respect diversity amongst its Member States.⁵¹ Protecting the rights of its citizens, whilst ensuring everyone feels included and equal are values held highly by the EU.⁵² Since part of the EUs main goal is to ensure the dignity and rule of law, it is surprising that the Directive to protect the rights of victims was not signed until 2012.

The competences of the EU continue to grow since founding. Article 2 of the Treaty of the Functioning of the European Union (TFEU) address what competences the EU actually possess, stating that they only possess those established and agreed upon in the signed treaties. This means that the EU are unable to implement anything which Member States have not conferred on.⁵³ The EU have divided competences into three main categories; exclusive,⁵⁴ shared⁵⁵ and supporting⁵⁶ competences. Article 4 of the TFEU states that the EU shall have the capability to decide on anything stated in this article or anything not addressed in Article 3 or 6 of the TFEU.⁵⁷ This in turn covers the competence of criminal law, the field in which victim rights can be found.

To further understand what competence the EU has for victim rights law an understanding of the EUs competences of criminal law is required. Article 4 (2) (j) TFEU

⁵⁰ Anonymous, 'Countries' (*European Union*, 5 July 2016) <https://europa.eu/european-union/about-eu/countries_en> accessed 3 November 2020.

⁵¹ 'Consolidated Version of the Treaty on European Union' (2012) C 326 Official Journal of the European Union 34.

⁵² Anonymous, 'The EU in Brief' (*European Union*, 16 June 2016) <https://europa.eu/european-union/about-eu/eu-in-brief_en> accessed 3 November 2020.

⁵³ 'Consolidated Version of the Treaty on the Functioning of the European Union' [2012] C 326 Official Journal of the European Union 334.

⁵⁴ *ibid.*

⁵⁵ Article 4, *ibid.*

⁵⁶ Article 6, *ibid.*

⁵⁷ 'Division of Competences within the European Union' <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:ai0020&from=EN>> accessed 3 November 2020.

states that the EU is allowed a shared competence in the “area of freedom, security and justice”⁵⁸ which covers criminal law. Justice itself can be interpreted many ways, for this paper the term justice will be used in the same way as used in the EU. The EU sees justice to be protecting its citizens and securing its values. It also means upholding the rule of law, possibly one of the more important aspects of justice to the EU.⁵⁹ Article 82 of the TFEU also mentions the necessity of mutual cooperation and recognition of criminal matters. This article addresses the differences in legal traditions and systems, acknowledging that this should not interfere with the minimum rules set by the EU. Article 82 TFEU also specifically references victims of crimes, that their rights should not be interrupted between Member States.⁶⁰

The EU uses the rule of law to help enforce and protect both the freedom and justice of their citizens. It ensures the rights and values of the EU, and helps the application of EU directives, laws and regulations in Member States. The rule of law was established as a fundamental value of the EU, stated in Article 2 TEU.⁶¹ Upholding the rule of law is necessary for the protection of any other laws the EU wishes. The EU strive in the protection of the rule of law to establish effectual judicial fortification.⁶²

The EU has different ways in which it is able to achieve its goals. Article 288 of the TFEU states that secondary legal instruments⁶³ are regulations, directives, decisions, recommendations and opinions.⁶⁴ Each of these instruments have different functions. Directives are legislative acts, containing ideas and achievements which the Member States must achieve. As long as the goal is fulfilled, the individual nation can choose their own path. A decision, however, is binding to those addressed, this can range

⁵⁸ ‘Consolidated Version of the Treaty on the Functioning of the European Union’ (n 52).

⁵⁹ ‘Political-Guidelines-next-Commission_en_0.Pdf’ <https://ec.europa.eu/info/sites/info/files/political-guidelines-next-commission_en_0.pdf> accessed 12 November 2020.

⁶⁰ Article 82, ‘Consolidated Version of the Treaty on the Functioning of the European Union’ (n 52).

⁶¹ ‘Consolidated Version of the Treaty on European Union’ (n 50).

⁶² *ibid.*

⁶³ Primary legal instruments are EU treaties.

⁶⁴ Article 288, ‘Consolidated Version of the Treaty on the Functioning of the European Union’ (n 52).

from one institution, to the EU as a whole. Decisions generally cover specific cases rather than entire topics.⁶⁵

2.2. How the EU approaches Victim Rights

The European Commission's (EC) proposal for what would become Directive 2012/29 explained why the protection of victim rights is important to the EU. The EU set the goal of "maintaining and developing an area of freedom, security and justice."⁶⁶ This goal covers the field of victim rights, something the EU recognized as in need of improvement. Fundamentally, all Member States must cooperate to achieve this goal, as the implementation of minimum standards of victim rights was necessary to ensure all states have such standards, not just a few. Since Framework Decision 2001/220 was not as successful⁶⁷ as the EU had hoped, this led to the EU implementing and expanding it into Directive 2012/29.⁶⁸

15% of Europeans fall victim to crime every year.⁶⁹ The EC thus recognized the need to elaborate and implement a minimum standard of victim rights among their Member States. The EU is conscious that each victim has a different story, and developed five categories to provide a broader approach:⁷⁰

1. *[R]espectful treatment and recognition as victims*
2. *protection from intimidation, retaliation and further harm by the accused or suspected and from harm during criminal investigations and court proceedings*

⁶⁵ 'Regulations, Directives and Other Acts' (*European Union*, 16 June 2016) <https://europa.eu/european-union/law/legal-acts_en> accessed 5 November 2020.

⁶⁶ European Commission (n 6).

⁶⁷ The European Commission came to the conclusion that, although victim rights were improved across the EU, they did not make as much progress as desired, objectives from the Framework Decision were not fulfilled.

⁶⁸ European Commission (n 6).

⁶⁹ 'Victims' Rights in the EU' (n 45).

⁷⁰ These categories were found on the European Commission website. No date was provided as to when they were developed.

3. *support, including immediate assistance following a crime, longer-term physical and psychological assistance and practical assistance*
4. *access to justice to ensure that victims are aware of their rights and understand them, and are able to participate in proceedings*
5. *compensation and restoration, whether through financial damages paid by the state or by the offender or through mediation or other form of restorative justice.*⁷¹

This comprehensive framework ensures that all Member States have a clearer understanding of the victim needs and suffering, including the cross-border protection goal of the EU (Article 82 TFEU).

Again, when discussing Directive 2012/29 for Victim Rights, it is important to note that it is replacing Framework Decision 2001/220.⁷² This Framework Decision, was ground-breaking for its time, it was enforced by the EU for victims and was made to steer Member States into improving their citizen protection.⁷³ Some countries already had to some extent their own national regulations.

The Framework Decision 2001/220 was not designed to be a gradual and slow approach, but a fast acting one. It was made up of nineteen articles and a preamble. The first article covered the definitions, while Articles 2 to 5 started listing victim rights within the trial process, for example: respect, a voice in the trial, the right to receive information, and safeguards according to need. Articles 6 and 7 covered the financial and legal possibilities available to the victim, stating accessibility regardless of financial situation or crime. Article 8 ensured victim protection from anything concerning the crime, whilst Article 9 introduced the right to compensation from both state and offender. Article 10

⁷¹ 'Victims' Rights in the EU' (n 45).

⁷² See appendix 2 – Framework Decision 2001/220

⁷³ 'COUNCIL FRAMEWORK DECISION of 15 March 2001 on the Standing of Victims in Criminal Proceedings' <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001F0220&from=EN>> accessed 5 November 2020.

states the entitlement to mediation with offender if desired. Articles 11 and 12 cover the cooperation between states, and Articles 13 to 15 address the need for comprehensive training for professionals when dealing with victims. The final four articles cover the specifics and deadlines for implementation.

The first deadline of Framework Decision 2001/220 was set in 2002 allowing just one year for implementation. Some articles and provisions were granted an extension until 2004 and 2006, as mentioned in Article 17 of the decision.⁷⁴ This was a clear indication that the EU, by issuing a Framework Decision on victim rights, placed high importance on such rights.⁷⁵

In 2004, a different Directive was adopted regarding the rights of victims. This was the Council Directive regarding the compensation to crime victims, Directive 2004/80, which is still in force today. This Directive, signed on 29 April 2004, should have been implemented by the Member States as of 1st January 2006. This Directive, in comparison to the decision in 2001, goes into more depth covering the right to compensation for damages, be it material damage or immaterial.⁷⁶ Directive 2004/80 built upon Article 9 of Framework Decision 2001/220, the right to compensation.⁷⁷

Following the Framework Decision 2001/220 and Directive 2004/08, comes Directive 2012/29,⁷⁸ alternatively known as the ‘Victim Rights Directive’. Directive 2012/29 is another step towards protecting victim rights and was designed to replace Framework Decision 2001/220. The EU chose to implement Directive 2012/29 to replace its decision in order to expand and supplement its predecessor, which had become out of

⁷⁴ *ibid.*

⁷⁵ Groenhuijsen and Pemberton, ‘The EU Framework Decision for Victims of Crime: Does Hard Law Make a Difference?’ (2009) 17 *European Journal of Crime, Criminal Law and Criminal Justice* 43.

⁷⁶ ‘COUNCIL DIRECTIVE 2004/80/EC of 29 April 2004 Relating to Compensation to Crime Victims’ <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0080&from=EN>> accessed 5 November 2020.

⁷⁷ ‘COUNCIL FRAMEWORK DECISION of 15 March 2001 on the Standing of Victims in Criminal Proceedings’ (n 5).

⁷⁸ See appendix 1 – Directive 2012/29

date as there were more current mechanisms of protection not covered.⁷⁹ Directive 2012/29 moves towards more up to date victim rights, ensuring equality and freedom across Europe.⁸⁰

So, what does Directive 2012/29 actually entail? Its purpose is to establish the minimum rights EU Member States must implement to protect any victim of crime,⁸¹ meaning the signing parties are allowed to extend the rights, but no protection must be less than stated by the EU.⁸² Just like Framework Decision 2001/220, it protects the victim rights in the legal systems, and outlines the need for officials dealing with victims to be more thoroughly trained; to understand what victims may need depending on the crime or circumstances. The Directive is designed to help the victims feel part of the legal process that deals with the crime and to feel more human and understood. The EU recognises that victims need more support, and Member States need closer cooperation concerning victims.⁸³ The implementation of this Directive also means any reference to Framework Decision 2001/220 should be understood as references to the new Directive 2012/29 as it replaced the Framework Decision, as stated in Article 30 of Directive 2012/29.⁸⁴

Directive 2012/29 is made up of thirty-two articles, following a preamble of seventy-two paragraphs.⁸⁵ The long preamble covers who is considered a victim in terms of this Directive, and which victims may need special help (for example victims of terrorism, close relationship violence, discrimination, etc.). The opening section also goes

⁷⁹ Iemaïen, 'Europe in a Changing World - Inclusive, Innovative and Reflective Societies' (*Horizon 2020 - European Commission*, 14 November 2013) <<https://ec.europa.eu/programmes/horizon2020/en/h2020-section/europe-changing-world-inclusive-innovative-and-reflective-societies>> accessed 6 November 2020.

⁸⁰ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1).

⁸¹ Preamble, *ibid.*

⁸² Preamble, paragraph 11, *ibid.*

⁸³ *ibid.*

⁸⁴ *ibid.*

⁸⁵ See appendix 1 – Directive 2012/29

into depth about how this Directive replaces Framework Decision 2001/220,⁸⁶ and establishing minimum rights for victims. Member States who see fit to expand rights to victims may do so.⁸⁷ The rights of respect⁸⁸ and access to information are introduced,⁸⁹ along with access to support.⁹⁰ All the rights from the Framework Decision 2001/220 are covered in Directive 2012/29. The first two articles of the Directive define the objectives and definitions. This leads into chapter two, provision of information and support, containing the right to understand and be understood (Article 3), to receive information about their rights from the first contact (Articles 4), rights regarding making a complaint (Article 5), to receive information regarding their case (Article 6), interpretation and translation of the events of the case (Article 7), and their right to access support (Articles 8 and 9).

Following this are the rights during the criminal hearing. These include the right to be heard (Article 10), rights in the event of no prosecution (Article 11), any safeguard deemed necessary in terms of restorative justice (Article 12), right to any financial or legal aid or compensation (Articles 13 to 16), and victim rights in other Member States (Article 17). Directive 2012/29 also addresses the victim rights during trial: protection during the investigation and trial (Articles 18 to 24), specifically child victim protection (Article 24) and their right to avoid contact with the offender (Article 19). Articles 25 and 26 concern the training and cooperation of victim support services, and from Article 27 onward, the practicalities, deadlines, and tasks of the signing Member States.⁹¹

Member States had until the 16th November 2015 to implement the laws set in the Directive into their own legal systems. It is important to note that Ireland and the UK

⁸⁶ Preamble, paragraph 2, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1).

⁸⁷ Preamble, paragraph 11, *ibid.*

⁸⁸ Preamble, paragraph 9, *ibid.*

⁸⁹ Preamble, paragraph 15, *ibid.*

⁹⁰ Preamble, paragraph 16, *ibid.*

⁹¹ *ibid.*

decided to opt in on signing the Directive, which is shown in paragraph 70 of the preamble. This demonstrates that Ireland believe victim rights to be an issue of importance.⁹² This option to opt in was possible due to Article 3 of Protocol (21) on the position of the UK and Ireland in respect of the area of freedom, security and justice.⁹³ Denmark also has the possibility to opt in or out of EU legislation, as stated in Article 4 of protocol (no 22) on the position of Denmark.⁹⁴ Denmark did not take part in the implementation of Directive 2012/29, as stated in paragraph 71 of the preamble (Directive 2012/29).⁹⁵

Although the UK had opted into Directive 2012/29, after they withdraw from the EU, they are no longer bound to Directive 2012/29. They can and have started to form and implement their own victim rights, releasing a new Victims code on the 5th of March 2020.⁹⁶ Justice Minister, Alex Chalk MP, explained how the UK believe victim rights needed to be simplified, to allow victims to feel more comfortable coming forward. The process needs to be straightforward and clear to all parties involved. The UK have brought twelve primary rights together, making them clear and concise. This demonstrates that the UK concur with the EU on the importance of victim rights, by choosing to opt in on the Directive, and establishing a victim code after they left.⁹⁷

After the 2015 deadline passed, the European Parliament (EP) conducted a report in 2017 to see how the Member States incorporated the rules. They investigated what victim rights existed, if any, and what improvements or additional rights were added, after the publication of the Directive. Chapters 4 and 5 of this thesis discuss how the

⁹² *ibid.*

⁹³ ‘Article 3 of Protocol (21) on the Position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice.’ [2016] Official Journal of the European Union 295.

⁹⁴ ‘PROTOCOL (No 22) ON THE POSITION OF DENMARK’ [2012] Official Journal of the European Union 299.

⁹⁵ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1) 29.

⁹⁶ Code of Practice for Victims of Crime in England and Wales 2020 43.

⁹⁷ ‘New Set of Rights for Victims of Crime’ (*GOV.UK*) <<https://www.gov.uk/government/news/new-set-of-rights-for-victims-of-crime>> accessed 6 November 2020.

Netherlands and Ireland, respectively, implemented the Directive.⁹⁸ In 2020 a different report by the EC investigated the effects Directive 2012/29 had on victim rights.⁹⁹ This additional report, in contrast to the study in 2017, looked at the actual effectiveness of the Directive, as per condition stated in Article 28 of Directive 2012/29.¹⁰⁰ The EP report covered the scope of the work Member States had outstanding pertaining to the implementation of Directive 2012/29, and looked at which countries had and had not achieved full effectiveness of the Directive. Those with work outstanding received a formal infringement notice, effective until their successful implementation of the Directive, including the Netherlands and Ireland.¹⁰¹

In 2017, EC president at the time, Jean-Claude Juncker, appointed Joëlle Milquet to be special advisor for Victim Rights and their compensation for crime. She published a report, *'Strengthening victims' rights: from compensation to reparation'*,¹⁰² to which Jean-Claude Juncker replied with:

*This report shows clearly that we need to continue our work on victims' rights. Ensuring that every victim of crime in the European Union gets all the necessary support is important for the European Commission.*¹⁰³

Her report went into detail about how the EU could become more effective in its remedies available for victims of crimes, covering the types of compensation victims

⁹⁸ European Parliament. Directorate General for Parliamentary Research Services., *The Victims' Rights Directive 2012/29/EU*. (Publications Office 2017) <<https://data.europa.eu/doi/10.2861/921076>> accessed 23 October 2020.

⁹⁹ 'Implementation of Directive 2012/29/EU' <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0188&from=EN>> accessed 5 November 2020.

¹⁰⁰ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1) 29.

¹⁰¹ 'Implementation of Directive 2012/29/EU' (n 98).

¹⁰² 'Strengthening_victims_rights_-_from_compensation_to_reparation_rev.Pdf' <https://ec.europa.eu/info/sites/info/files/strengthening_victims_rights_-_from_compensation_to_reparation_rev.pdf> accessed 5 November 2020.

¹⁰³ 'European Commission Welcomes Report on Strengthening Victims' Rights in the European Union' (*European Commission - European Commission*) <https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1609> accessed 5 November 2020.

are entitled to, and how Member States could improve cooperation regarding victim reimbursement.¹⁰⁴

2.3. Victim Right cases in the Court of Justice of the European Union

Since the passing of this Directive only five cases mentioning the Directive have made it to the CJEU, of which two were appeals, one from Germany (C-702/19 P)¹⁰⁵ and one from Luxembourg (C-412/18 P).¹⁰⁶ There were also three requests for preliminary rulings two from Italy (C-38/18 P,¹⁰⁷ C-484/16 P)¹⁰⁸ and one from Slovakia (C-603/19 P).¹⁰⁹ Three out of the five cases, C-702/19 P,¹¹⁰ C-412/18 P,¹¹¹ and C-484/16 P,¹¹² were judged to be irrelevant or inadmissible, and therefore will not be looked into further. The remaining two cases, C-38/18 P and C-603/19 P, from Italy and Slovakia respectively, provide valuable insight into Directive 2012/29, as follows:

- The Italian case, C-38/18 P, involved more victim rights. Italy requested a preliminary ruling concerning fraud. The defence legal party brought into

¹⁰⁴ *ibid.*

¹⁰⁵ C-702/19 *Judgment of the Court (Ninth Chamber) of 22 October 2020 Silver Plastics GmbH & Co KG and Johannes Reifenhäuser Holding GmbH & Co KG v European Commission* [2020] Court of Justice of the European Union C-702/19.

¹⁰⁶ C-412/18 *Order of the Court (Seventh Chamber) of 22 November 2018 Anthony Andrew King v European Commission* [2018] Court of Justice of the European Union C-412/18.

¹⁰⁷ C-38/18 *Massimo Gambino and Shpetim Hyka v Procura della Repubblica presso il Tribunale di Bari and Others Request for a preliminary ruling from the Tribunale di Bari* [2019] Court of Justice of the European Union C-38/18.

¹⁰⁸ Case C-484/16 *Request for a preliminary ruling from the Giudice di Pace di Taranto (Italy) lodged on 8 September 2016 — Criminal proceedings against Antonio Semeraro* [2016] Court of Justice of the European Union Case C-484/16.

¹⁰⁹ C-603/19 *Judgment of the Court (Third Chamber) of 1 October 2020 (request for a preliminary ruling from the Špecializovaný trestný súd — Slovakia) — Criminal proceedings against TG, UF (Reference for a preliminary ruling — Protection of the financial interests of the European Union — Article 325 TFEU — Criminal proceedings concerning offences relating to subsidy fraud funded in part from the budget of the European Union — National law not allowing State bodies to obtain, in criminal proceedings, the recovery of subsidies by way of compensation for damage caused by the offences)* [2020] Court of Justice of the European Union C-603/19.

¹¹⁰ *Judgment of the Court (Ninth Chamber) of 22 October 2020. Silver Plastics GmbH & Co. KG and Johannes Reifenhäuser Holding GmbH & Co. KG v European Commission.* (n 105).

¹¹¹ *Order of the Court (Seventh Chamber) of 22 November 2018. Anthony Andrew King v European Commission.* (n 106).

¹¹² *Request for a preliminary ruling from the Giudice di Pace di Taranto (Italy) lodged on 8 September 2016 — Criminal proceedings against Antonio Semeraro* (n 108).

question the rights his client had with the changing of judge's part way through the trial. Italy requested clarification from the CJEU.¹¹³

- The Slovakian preliminary ruling request brought Article 2 (1) of Directive 2012/29 into question, specifically the definition of who qualifies as a victim. The CJEU concluded, the term is not to be applied to legal persons or to the state.¹¹⁴

The fact that there are only five cases regarding victim rights, have made it to the CJEU demonstrate that victim rights in Directive 2012/29 are reasonable and feasible to the Member States. Since the implementation of this Directive, little has been brought to the CJEU regarding victim rights, and the few cases of victim rights heard, were explanatory requests or mistaken references.

The EU took only three years to begin the just treatment of victims after the competence in the field of freedom, security and justice, was allocated, at the end of the 20th century. This makes the importance of victim rights evident within the justice system. Making use of the competences the EU had in criminal law, it established Framework Decision 2001/220, the beginning of victim rights across Europe. Unfortunately, the objectives of this decision were not all fulfilled, creating the need for a more binding, stricter piece of legislation, Directive 2012/29. The EU still recognise a need for more effective mechanisms to ensure victim rights, however, to date, Directive 2012/29 is still the latest act regarding victim rights.

¹¹³ *Massimo Gambino and Shpetim Hyka v Procura della Repubblica presso il Tribunale di Bari and Others. Request for a preliminary ruling from the Tribunale di Bari.* (n 107).

¹¹⁴ *Judgment of the Court (Third Chamber) of 1 October 2020 (request for a preliminary ruling from the Špecializovaný trestný súd — Slovakia) — Criminal proceedings against TG, UF (Reference for a preliminary ruling — Protection of the financial interests of the European Union — Article 325 TFEU — Criminal proceedings concerning offences relating to subsidy fraud funded in part from the budget of the European Union — National law not allowing State bodies to obtain, in criminal proceedings, the recovery of subsidies by way of compensation for damage caused by the offences)* (n 109).

Chapter three: The legal systems of the Member States examined

Directive 2012/29 is a minimum standard of victim rights set by the EU, implying states can implement them differently, provided they only add to the rights. Anything less than stated is forbidden.¹¹⁵ Since some Member States have different legal systems, civil or common,¹¹⁶ or inquisitorial or adversarial,¹¹⁷ the way Directive 2012/29 is implemented can differ, as can the time frame of transposition, therefore understanding the difference will provide insight into comprehending the application of Directive 2012/29.

The Netherlands is the first Member State investigated, which has a civil law system¹¹⁸ and an inquisitorial system.¹¹⁹ In comparison, Ireland, the second Member State investigated, uses a common law and adversarial system.¹²⁰

These two systems work together forming the legal procedure. The combination of these two systems is not pre-set, though the general assumption is most civil law countries use the inquisitorial, and common law countries use adversarial.¹²¹ This chapter thus outlines the legal systems present in the Netherlands and Ireland, and how the systems can impact the implementation of Directive 2012/29.

¹¹⁵ Preamble, paragraph 11, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1) 29.

¹¹⁶ barbrimarketing, 'Common Law vs. Civil Law: An Introduction to the Different Legal Systems' (*BARBRI QLTS*, 1 April 2019) <<https://barbriqlts.com/common-law-vs-civil-law-an-introduction-to-the-different-legal-systems/>> accessed 18 November 2020.

¹¹⁷ Hans FM Crombag, 'Adversarial or Inquisitorial' in Peter J van Koppen and Steven D Penrod (eds), *Adversarial versus Inquisitorial Justice: Psychological Perspectives on Criminal Justice Systems* (Springer US 2003) <https://doi.org/10.1007/978-1-4419-9196-6_2> accessed 17 November 2020.

¹¹⁸ 'European E-Justice Portal - Law' <https://e-justice.europa.eu/content_member_state_law-6-nl-en.do?member=1> accessed 15 November 2020.

¹¹⁹ Ruth Hoekstra and Marijke Malsch, 'The Principle of Open Justice in the Netherlands' in Peter J van Koppen and Steven D Penrod (eds), *Adversarial versus Inquisitorial Justice: Psychological Perspectives on Criminal Justice Systems* (Springer US 2003) <https://doi.org/10.1007/978-1-4419-9196-6_19> accessed 15 November 2020.

¹²⁰ 'An Introduction into the Irish Legal System' <<https://www.sesi.ie/resources/migrated/pdf/lawintroduction.pdf>> accessed 18 November 2020.

¹²¹ 'International Legal Systems - An Introduction' <<https://www.justice.gov/archives/nsd-ovt/page/file/934636/download>> accessed 15 November 2020.

3.1. The Civil Law legal system

The term civil law originates from Roman law, the *Lex Aquilia* and the Law of the twelve tables.¹²² These were statutes and legislation from that era. Every court-triable law was found within their legislation.¹²³ Like most law, it evolved over time, similar to modern civil law. Civil law is still based primarily on statutes and other legislation, instead of judge-based decisions.

Within the civil law system, laws are created at a national level, entrusting some power to government for the establishment of some laws. This is the case in the Netherlands.¹²⁴ A compact guide to most laws of the Netherlands is the '*College Bundels*' from Wolters Kluwer.¹²⁵ All civil law countries have codified laws, as their priority in law goes to those written statutes and not precedent like in common law. The judge's role, in civil law countries, is to examine the facts and decide which legal code fits, like a puzzle.¹²⁶

A civil law legal system, due to its experience codifying laws, has more familiarity when implementing a directive, thus making the deadline of Directive 2012/29 more achievable. Civil law countries constantly evolve, adding statutes when needed. The Netherlands has an eight-step procedure before a law is passed:

1. Preparation of proposal by the ministry,
2. Discussion of proposal in ministry council,
3. Council of state offers advice upon proposal,
4. Proposal is presented in the 'tweede kamer' (House of Representatives),
5. The 'tweede kamer' votes on the proposal,
6. Proposal then goes to the 'eerste kamer' (senate), to be voted on,

¹²² Peter G Stein, 'Roman Law, Common Law, and Civil Law' (1991) 66 *Tulane Law Review* 1591.

¹²³ R Lesaffer, 'European Legal History. A Cultural and Political Perspective' (Cambridge University Press 2009).

¹²⁴ 'International Legal Systems - An Introduction' (n 120).

¹²⁵ 'European E-Justice Portal - Law' (n 117).

¹²⁶ barbrimarketing (n 115).

7. The King and minister need to sign the proposal,
8. The law is then published and enacted.

This procedure ensures that, from proposal to enactment, a law passes through four systems: the ministry, the house of representatives, senate, and finally the King. The senate and the King, however, have no power to change the proposal, the senate can only vote to enact, and the King must sign the proposal should it reach that stage.¹²⁷

3.2. The Common Law legal system

Common law systems, as opposed to civil law systems, place more importance upon precedent. Codification is still evident in the common law system and focuses to a large extent on instance. In common law countries, judgements are also based upon previous cases and the specific facts of the case, alongside statutes. Common law arose in the UK in the 11th century. William the Conqueror made the first step towards establishing the common law system by amalgamating the laws and customs around the UK into one form of law, known then as customary law. This system then evolved into modern common law. Part of this transition was the Assize of Clarendon, where the use of a jury came into play. A jury is made up of one's own peers, a random selection of resident citizens, who analyse evidence presented to them in a room of court.¹²⁸ In Ireland the jury consists of twelve or fifteen people (depending on the expected length of the trial).¹²⁹ Henry II made it possible for more trials to be heard across the country, through

¹²⁷ Ministerie van Algemene Zaken, 'Hoe komt een wet tot stand? - Wetgeving - Rijksoverheid.nl' (4 August 2016) <<https://www.rijksoverheid.nl/onderwerpen/wetgeving/hoe-komt-een-wet-tot-stand>> accessed 4 December 2020.

¹²⁸ 'The Jury System' <<https://www.lawteacher.net/free-law-essays/criminal-law/the-jury-system.php>> accessed 24 November 2020.

¹²⁹ electronic Irish Statute Book (eISB), 'Amendment of Juries Act 1976' <<http://www.irishstatutebook.ie/eli/2013/act/32/section/23/enacted/en/html#sec23>> accessed 14 December 2020.

increasing the number of courts, which was a huge step in the development in common law.¹³⁰

Common law systems, although more based on previous cases, instance, and circumstances, than the civil law system, have codified laws too.¹³¹ For example, in Ireland, their legal system is based on common law, but they also have statutes. These are adopted by the house of *Oireachtas*, the house of parliament in Ireland.¹³²

In order to make a bill in Ireland, it must go through five stages, but in two different houses of the government, the Dáil and Seanad. Once the bill has reached the second house, the final stage comes into play. Once the bill has been signed into action, it has been through a total of ten stages¹³³ compared to the eight stages used by the Netherlands. The stages are as followed:

1. The bill is made,
2. The contents are discussed,
3. (Committee stage) The bill is thoroughly examined and amended per section,
4. (Report stage) Amendments are discussed and deliberated,
5. (Final stage) The bill is passed by the current house,
 - a. After this stage the proposal is sent to the second house,
6. The contents are discussed,
7. (Committee stage) The bill is thoroughly examined and amended per section,
8. (Report stage) Amendments are discussed and deliberated,

¹³⁰ Lesaffer (n 122).

¹³¹ barbrimarketing (n 115).

¹³² Houses of the Oireachtas, 'Bills & Acts of the Oireachtas – Houses of the Oireachtas' (17 November 2020) <<https://www.oireachtas.ie/en/bills>> accessed 18 November 2020.

¹³³ Houses of the Oireachtas, 'Houses of the Oireachtas - How Laws Are Made – Houses of the Oireachtas' (9 November 2020) <<https://www.oireachtas.ie/en/visit-and-learn/how-parliament-works/how-laws-are-made>> accessed 7 December 2020.

9. (Final stage) The bill is passed by the current house,
10. The bill is signed by the President of Ireland.¹³⁴

3.3. The Inquisitorial legal system

The inquisitorial legal system establishes the correct line of events through inquiry. The judge has the most control throughout the trial, taking an active role to determine actual events. Within the inquisitorial system the most prevalent way to document the trial process is on paper. Using this legal system, a lot of the argumentative work is already done before the trial in court begins. The plaintiff party and the defendant party have the responsibility to ensure the evidence is presented to the judge before trial, so the judge can use the trial time to further inquire.¹³⁵ The legal representatives of the two parties are also present to provide insight into any queries the court may have overlooked and protect their client's rights. This legal system is all about official documentation and the procedure.¹³⁶

3.4. The Adversarial legal system

In comparison to the inquisitorial legal system, the adversarial legal system allocates more emphasis on the lawyers representing the parties. It can be characterised as almost a competition or debate, where one party wins. The role of the judge ensures both parties act correctly and follow the law. The judge remains impartial towards the alleged offender. The responsibility to determine guilt is distributed among the jury of peers.¹³⁷ The judge then determines the potential punishment.¹³⁸

¹³⁴ *ibid.*

¹³⁵ Crombag (n 116).

¹³⁶ Franklin Strier, 'What Can the American Adversary System Learn from an Inquisitorial System of Justice' (1992) 76 *Judicature* 109.

¹³⁷ Citizensinformation.ie, 'Jury Service'

<https://www.citizensinformation.ie/en/justice/courtroom/jury_service.html> accessed 4 December 2020.

¹³⁸ fromiti, 'Organized Crime Module 9 Key Issues: Adversarial versus Inquisitorial Legal Systems' <<http://www.unodc.org>> accessed 17 November 2020.

3.5. What do these legal systems mean for the implementation of Directive 2012/29?

The two different legal systems mean that the Netherlands and Ireland will transpose the Directive in two very different ways. In common law countries, such as Ireland, Directive 2012/29 may be more difficult to realise because of the structure of their legislative forces. The Netherlands being a civil law country, might find it easier to implement the Directive into their legal system. The Netherlands has more familiarity adding and modifying their legislation, as this is how the civil law process evolved into what it is today. In comparison Ireland have a longer process to adopting a law, which can impact the timeframe and/or implementation of Directive 2012/29.

Inquisitorial and adversarial legal systems also impact the amount of contact a victim has in the trial. According to a study from Malini Laxminarayan,¹³⁹ the Netherlands showed a positive relationship between the amount of interaction with the judge and the psychological effects on the victim after trial. This is due to the judge taking a central role in the trial, allowing the victims to express themselves and tell their side of the events. In comparison, New South Wales (in Australia which has an adversarial legal system, similar to Ireland) demonstrated a negative relationship between judge interaction and victim's psychological state. Laxminarayan concluded that the psychological state of victims depends on the amount of presence a victim has during the trial. This reasoning can impact the way Ireland and the Netherlands enforce the transposed Directive 2012/29, as to how much contact they allow with the victim, and approach victim rights in their legal systems.

This demonstrates that the civil law legal systems provide the Netherlands with more experience for codification than the common law legal system does for Ireland, thus

¹³⁹ Malini Laxminarayan, 'Psychological Effects of Criminal Proceedings through Contact with the Judge: The Moderating Effect of Legal System Structure' (2014) 20 *Psychology, Crime & Law* 781.

implying that the Netherlands should take less time to implement new laws than Ireland. The inquisitorial and adversarial legal systems appear to have a larger impact on the enforcement of legislation than the actual implementation stage.

Chapter four: The Netherlands

The Netherlands is a civil law country, using an inquisitorial legal system, meaning they follow written statutes and laws¹⁴⁰ and the judge has the majority of the power in a court room. The judge's role is to determine whether the crime was committed, and if so, what the matching punishment is according to the law.¹⁴¹ The legal systems can impact the way Directive 2012/29 has been implemented into Dutch law. The Netherlands already had some rights for victims in their statutes, meaning after Directive 2012/29 was enacted, they had less to implement than other states may have,¹⁴² making the Netherlands an interesting case study for the adoption of the Directive. This chapter will firstly look at what victim rights measures the Netherlands existed before the passing of Directive 2012/29, followed by an investigation as to how the Netherlands implemented the Directive.

4.1. Victim rights in the Netherlands

Victim rights in the Netherlands only really accelerated in the 1970s, through more social and governmental awareness.¹⁴³ This led to the first official state service for crime victims,¹⁴⁴ called the Compensation Fund for victims of violent crimes.¹⁴⁵ Only a few years later in 1979, more institutions decided to combine forces and loosely form the National Victim Support Platform, which kept growing until 1984 when it turned into a

¹⁴⁰ Michael Graff, 'Law and Finance: Common Law and Civil Law Countries Compared—An Empirical Critique' (2008) 75 *Economica* 60.

¹⁴¹ Lesaffer (n 122).

¹⁴² 'REPORT on the Implementation of Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime' <https://www.europarl.europa.eu/doceo/document/A-8-2018-0168_EN.html> accessed 23 October 2020.

¹⁴³ MS Groenhuijsen, 'A New Perspective on Crime Victims' Rights to Participate in the Dutch Criminal Justice System' [2010] *Journal of the Japan-Netherlands Institute* 57.

¹⁴⁴ Sonja Leferink, 'The Development of Victim Support Services' [2013] *Slachtofferhulp Nederland* 13.

¹⁴⁵ 'Brochure-SchadefondsEN-0616.Pdf' <<https://curamortuorum.nl/wp-content/uploads/2017/10/Brochure-SchadefondsEN-0616.pdf>> accessed 25 November 2020.

national association. The National Victim Support Platform decided, in 1989, to extend their services to other forms of victims, such as victims of traffic accidents.¹⁴⁶

These steps in the history of Dutch victim rights led to the huge leap the Netherlands took when they enacted the Terwee Act of 1995.¹⁴⁷ This was the first establishment of law specifically for victims. This piece of legislation brought several new rights for victims of crime, including, as Groenhuijsen summarised in 2010, the removal of a maximum of €700 compensation, the opportunity to divide the claim of damages between the criminal and civil trial, the right to request damages in pre-trial, the possibility for the offender to pay compensation as a sentence, and a specific chapter on victim rights.¹⁴⁸ The idea behind this act was to help strengthen the standing victims have in trials concerning their offender.¹⁴⁹

4.2. The implementation of Directive 2012/29

In 2016, the EP issued an investigation into how Member States have transposed and implemented Directive 2012/29, published in December 2017. Within the report it mentioned that at the time of writing, twenty-three of the twenty-seven Member States had successfully implemented the Directive (Denmark opted out of Directive 2012/29). Four states still were in the process of implementing the Directive: Ireland, Slovenia, the Slovak Republic and the UK.¹⁵⁰ In its 2020 report, the EC confirmed that the Netherlands had sufficiently transposed Directive 2012/29.¹⁵¹

¹⁴⁶ Leferink (n 144).

¹⁴⁷ overig, ‘Richtlijn slachtofferzorg bij landelijke inwerkingtreding Wet-Terwee’ <<https://zoek.officielebekendmakingen.nl/stcrt-1995-65-p12-SC2277.html>> accessed 2 December 2020.

¹⁴⁸ Groenhuijsen (n 143).

¹⁴⁹ Hebly, van Dongen and Lindenbergh (n 18).

¹⁵⁰ The Department of Justice, ‘The Transposition of EU Crime Directive (2012/29/EU) and the Establishment of a Service to Allow Victims of Crime to Follow the Progress of Investigations’ (*The Department of Justice*) <<http://www.justice.ie/en/JELR/Pages/SP14000296>> accessed 20 November 2020.

¹⁵¹ ‘REPORT on the Implementation of Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’ (n 142).

In 2017, the EP first checked how Member States had incorporated the concept of ‘victim’, if they had defined it and recognised the importance of distinguishing who a victim is. In the case of the Netherlands, the word for victim is ‘*Slachtoffer*,’¹⁵² defined in Article 51a (1) (a) *Wetboek van Strafvordering* (Sv). The Netherlands defined the victim, family members of victims, and victims who are minors. Their definition of a victim is someone directly impacted by a criminal offence, be it bodily harm or another form of damage, and/or a family member of a deceased person, as a result of a criminal offence.¹⁵³ The Netherlands defined family members to be a registered partner, husband or blood relation to the victim, who are dependent on the victim, and a victim who is a minor is a victim under the age of eighteen,¹⁵⁴ portraying Article 2 of Directive 2012/29.

In Dutch law, an entire section, Articles 51a to 51h Sv, is dedicated to victim rights in addition to Articles 288a, 302, and 495b Sv.¹⁵⁵ Article 51aa Sv contain several victim rights, sub section 1 of this article mentions the way the victim is to be treated from the first contact with the police (Article 4, Directive 2012/29). Article 51aa (2) Sv, state the rights of victims regarding victim support, and how the police will help establish contact with said support, as seen in Articles 8 and 9 of Directive 2012/29. Article 51aa (3) Sv portray the transposition of the rights to protection from Articles 21-24 of Directive 2012/29. This article distinguishes the different protection rights victims have, including individual assessment of protection needs, specific protection, and child protection.

The victims right to information about their case (Article 6, Directive 2012/29) is mentioned in Articles 51ab and 51ac Sv. The Netherlands find it important to note in Article 51ac Sv, that the victim may not know about their right to receive and have access

¹⁵² ‘Final Report | Project IVOR – Implementing Victim-Oriented Reform of the Criminal Justice System in the European Union’ <https://www.apav.pt/apav_v3/index.php/en/1219-final-report-project-ivor-implementing-victim-oriented-reform-of-the-criminal-justice-system-in-the-european-union> accessed 24 November 2020.

¹⁵³ Article 51a (1) (a) *Collegebundel 2020-2021* (Wolters Kluwer 2020).

¹⁵⁴ *ibid.*

¹⁵⁵ *ibid.*

to information, so the police are obliged to inform the victim about this right. This almost cites Article 6 of the Directive verbatim.¹⁵⁶ Article 10 of Directive 2012/29 can be found in Article 51b Sv. This explains the right victims have to participate in the trial, voice their opinions and show evidence should they believe it to be beneficial. The following article, Article 51c and 51ca Sv, elaborates on the right for the victim to receive legal aid and support throughout a trial, including a translator if necessary, as mentioned in Article 7 of Directive 2012/29.

Article 7 and 17 of Directive 2012/29, covers the right to have information translated or have a translator present, and the rights victims hold in other Member States. Article 7 of the Directive is clearly incorporated in Dutch law; however, Article 17 is less straightforward. Briefly mentioned in Dutch law (Article 5 [g] Besluit slachtoffers van Strafbare Feiten), Article 17 of Directive 2012/29,¹⁵⁷ has to a certain extent been implemented,¹⁵⁸ through the European Network on Victim's Rights (ENVR).¹⁵⁹

In 2015, four Member States, Ireland, France, Slovakia, but primarily the Netherlands, came together to start the ENVR. This initiative is funded by the Netherlands and the EC, through the Action grant, up until May 2017.¹⁶⁰ As of the start of 2018, the ENVR is funded through the Operating Grant of the EC. This network works together with two appointed professionals from each Member state to keep cooperation within the EU,¹⁶¹ reinforcing Article 17 of Directive 2012/29. The ENVR aims to keep a

¹⁵⁶ Corstens, Borgers and Kooijmans (n 19).

¹⁵⁷ Article 17 – **Rights of victim's resident in another Member State**

This article is about the fact that Member States need to ensure appropriate measures and rights are present for a case when a victim is a resident of a Member State other than the location of the offence. See appendix 1 for the full article.

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1).

¹⁵⁸ 'Final Report | Project IVOR – Implementing Victim-Oriented Reform of the Criminal Justice System in the European Union' (n 152).

¹⁵⁹ Ivana Gážíová and Jan Kralík, 'The New European Network on Victims' Rights' (2016) 16 *International and Comparative Law Review* 83.

¹⁶⁰ *ibid.*

¹⁶¹ 'European Network on Victims' Rights | Be strong together for victims' <<https://envr.eu/>> accessed 25 November 2020.

smooth-running communication network between Member States when implementing and eventually exercising the rights stated in the EU Directive. This organisation is important for the realisation of Article 17 of Directive 2012/29. The article ensures Member States work together and victims receive their entitled rights no matter where they are in the EU. The ENVR also works together to support victims in the event of cross-border victimisation.¹⁶²

According to the EP's report on the implementation of Directive 2012/29, the Netherlands already had eleven measures for victim rights before the Directive became binding. Since the Directive was enacted, they have implemented three more. The Netherlands unlike some other Member States had been working towards protecting victim rights since the 1970s, and have an opt-out system, meaning their victims have the choice to opt-out of some of their rights. In order to do this, they have to specify this wish, it is not automatically assumed. The EP also took note of the fact that the Netherlands were lacking some procedural information regarding Articles 8 and 9 of Directive 2012/29. The rights were declared as sufficiently implemented, regardless of the missing procedural information.¹⁶³

On August 24th, 2016, after the enactment of Directive 2012/29, a decision was adopted by the government of the Netherlands, called, "Besluit slachtoffers van strafbare feiten,"¹⁶⁴ which translates to the *decision on victims of criminal offenses*. The Dutch government implemented this decision to modify the part of the law Sv concerning victim rights, and delegate some victim rights to administrative councils or ministerial

¹⁶² 'European Network on Victims' Rights | Victims' Rights' <<https://envr.eu/victims-rights/>> accessed 2 December 2020.

¹⁶³ 'REPORT on the Implementation of Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime' (n 142).

¹⁶⁴ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, Besluit slachtoffers van strafbare feiten 2016.

regulations following a council order.¹⁶⁵ This decision consists of twenty articles, each furthering the rights of victims in the Netherlands.¹⁶⁶ Each of these articles elaborate on Directive 2012/29, as seen in table 1.

Table 1: The matching of the Dutch Besluit Slachtoffers van Strafbare Feiten to Directive 2012/29

Besluit Slachtoffers van Strafbare Feiten	Directive 2012/29
Article 1	Article 2
Article 2 and 4	Articles 8, 9, and 21
Article 3	Articles 9, 14, 18, and 23
Article 5 – 8	Articles 3, 4, 6, 7, 13, 22, and 26
Article 9	Articles 5, 20 and 24
Article 10	Article 12
Article 11 – 12	Articles 10, and 19
Article 13 – 16	Article 24
Article 17 - 18	Articles 14, 15, and 16

Comparing each article of Dutch law concerning victim rights to Directive 2012/29 demonstrates that all of the rights have been transposed. The right that victims have to receive information regarding the release, escape or decision not to prosecute offenders, is not clearly depicted in Dutch law. Victims will receive this information in

¹⁶⁵ ‘Stb. 2016, 310 Besluit Slachtoffers Strafbare Feiten’ (*Nederlands Juristenblad*, 15 September 2016) <<https://www.njb.nl/wetgeving/staatsbladen/besluit-slachtoffers-strafbare-feiten/>> accessed 2 December 2020.

¹⁶⁶ See appendix 3 – Besluit slachtoffers van strafbare feiten

the form of a letter¹⁶⁷ from the Ministry of Security and Justice.¹⁶⁸ The victim does have the right to file a complaint should the offender be released; this is stated in Article 51ac (3) Sv.¹⁶⁹

Although by the time of writing the EP report of 2017, on Directive 2012/29, the Netherlands had complied with the requirements of the Directive, they, along with fifteen other Member States, received formal notice from the EC that it intended to initiate infringement procedures, due to failure to meet the 15 November 2015 deadline. However, since the Netherlands had complied with the implementation of Directive 2012/29 in the report, the EC closed the procedure.¹⁷⁰ This shows that the EU was warning its Member States there would be consequences should they not transpose the Directive.

The Netherlands had several measures already in place for its victims, which it has been developing since the 1970's. The legal system already incorporated many of the rights established in Directive 2012/29, resulting in less to implement for the deadline. Its legal system allowed the Netherlands to successfully implement Directive 2012/29. All rights were sufficiently implemented, even though the implementation lacked some procedural information covering Articles 8 and 9 for which they had received the aforementioned formal notice. Overall, the Netherlands met the standards set by the EU.

¹⁶⁷ This letter will be sent from “Ministerie van Veiligheid en Justitie Postbus 20301 | 2500 EH Den Haag”

¹⁶⁸ Ministerie van Veiligheid en Justitie, ‘Regeling van de Minister van Veiligheid en Justitie van 29 maart 2017, nr. 2045950 houdende regels voor de algemene informatievoorziening aan slachtoffers’ <<https://zoek.officielebekendmakingen.nl/stcrt-2017-18951.html>> accessed 25 November 2020.

¹⁶⁹ *Collegebundel 2020-2021* (n 153).

¹⁷⁰ ‘The EU Victims’ Directive on EU Day for Victims of Crime 2016: Infringement Cases Opened against 16 Member States’ (*Victim Support Europe, the voice of victims in europe*, 22 February 2016) <<https://victimsupport.eu/news/the-eu-victims-directive-on-eu-day-for-victims-of-crime-2016-infringement-cases-opened-against-16-member-states/>> accessed 25 November 2020.

Chapter five: Ireland

Ireland has a common law and adversarial legal system. This means that their approach and implementation of Directive 2012/29 differs. Their judge is present to arbitrate the two parties, as their trial is more a showcase of who can portray their side with more accuracy and conviction. Unlike the Netherlands, Ireland had fewer victim rights measures in place before the Directive was published, so in comparison to the Netherlands they started on the back foot. This chapter will first look at what measures on victim rights Ireland had in place before the passing of Directive 2012/29, followed by an investigation into how Ireland implemented the Directive.

5.1. Victim Rights in Ireland

It was approaching twenty years after the Netherlands, that Ireland began acknowledging victim rights. Before Directive 2012/29 was enacted by the EU, researchers had conducted field studies (in 2009 by Hanly, Healy, and Scriver, according to the literature review of Dr. Healy)¹⁷¹ to examine how victims perceived their treatment within the Irish system. This study concluded that victims were mostly positive about their contact with the police, but those positive impressions began to go downhill when the investigation started as they were not given access to the information gathered by the investigating officers.¹⁷²

The first reference to victim rights in Ireland was included in the Criminal Evidence Act of 1992¹⁷³, where in Article 5 (1)(b) states:

¹⁷¹ Deirdre Healy, 'Exploring Victims Interactions with the Criminal Justice System: A Literature Review' [2019] Department of Justice and Equality 119.

¹⁷² *ibid.*

¹⁷³ Criminal Evidence Act, 1992 1992 (Number 12 of 1992).

5 – (1) Subject to this Part, information contained in a document shall be admissible in any criminal proceedings as evidence of any fact therein of which direct oral evidence would be admissible if the information –

*(b) was supplied by a person (whether or not he so compiled it and is identifiable) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with.*¹⁷⁴

This article implies if victims have personal knowledge of the matter, they are able to supply admissible evidence to the court. This right to be heard in trial was thus already in existence in Ireland, prior to Article 10 (Directive 2012/29), the right to be heard in a trial.¹⁷⁵ However, the Irish act was more specifically directed towards victims of sexual or violent offences. These victims were given the right to make their statements remotely via video link, thus providing a sense of protection from their alleged offender by not having to come face to face (part III, Article 13, Criminal Evidence Act 1992). When comparing this right to Directive 2012/29, it identifies how this also is an early representation of Article 19 of the Directive.¹⁷⁶

Just the following year, in 1993, the next step for victim rights was made, the Criminal Justice Act was adopted. This act provided victims of specific offences the right to ‘victim impact statements.’ This is another example of the right to be heard, which the EU set in 2012. A victim impact statement allows the court and jury to hear the side of the victim. The statement is made after the jury’s verdict and before the judge issues the sentence. It allows the judge and jury to hear about what effects the crime has had on the

¹⁷⁴ *ibid.*

¹⁷⁵ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1) 29.

¹⁷⁶ *ibid.*

victim. Instead of just factual evidence, this right allows the victims to share their personal feelings and opinions about the case being heard.¹⁷⁷

The Minister for Justice and Equality, in 2005, set up the Commission for the Support of Victims of Crime (CSVC). The goal of this Commission is to provide compensation to help crime victims. This period of funding was to last three years from the establishment of the CSVC, yet it is still around today. The Commission was also responsible for research into improving Irish law, specifically victim rights and support, and to provide sufficient recommendations to achieve the developments. This ultimately led to the Minister for Justice and Equality establishing a new enterprise the 'Justice for Victims Initiative' in 2008. This was based on a framework document written by the SCVC, which contained nine main findings.¹⁷⁸ These were:

1. Victim support organisations are more common, however there are inadequacies for victim support present.
2. Concern regarding the stability and content of victim support.
3. Interaction with victims and support needs improvement, via advancements in the victim section of criminal justice.
4. Interviewees believe there should be a national organisation and enforceable mechanism to help victims.
5. Referring victims without consent causes violations of the legislation on data protection.
6. More training needed for parties who come into contact with victims, including the police.
7. The legal system needs to recognise a victim's role in the justice system.
8. Victims need more opportunities for compensation.

¹⁷⁷ Edna Erez and Australian Institute of Criminology, *Victim Impact Statements* (Australian Institute of Criminology 1991).

¹⁷⁸ The Department of Justice and Equality, 'History' (CSVC) <http://www.csvc.ie/en/csvc/Pages/History_of_the_CSVC> accessed 30 November 2020.

9. Victims often express the feeling of being assaulted (secondary victimisation) when communicating with the police.¹⁷⁹

This 2008 report demonstrates the need for the improvement of victim rights in Ireland and coincides with the ideas of the EU in Directive 2012/29. This shows that Ireland was aware of the improvements they had to make before the EC published its proposal for the EU Directive. As a result of the CSVC report, Mr. Dermot Ahern, the Minister for Justice, Equality and Law Reform at the time, released in 2009 a bill concerning Criminal Procedure. The aim of this bill was primarily set to improve the Victim Impact Statement procedure; but also contained the possibility that acquitted defendants, whom the victims know are guilty, can be tried once again.¹⁸⁰ This goes beyond the rule entailed in Article 11 of Directive 2012/29, the rights victims hold in the event of no prosecution.¹⁸¹

The first Victims Charter and Guide to the Criminal Justice System was published in 1999, later updated in 2010.¹⁸² A charter is a grant written to state the powers and rights those included hold. According to the website of the Department of Justice, the Victim Charter and Guide to the Criminal Justice System has eleven sections. These name individual organizations associated with victim rights, and information regarding victims, the law, and contact information. The charter is designed to help victims approach the legal system from a simpler angle. It is designed to be comprehensible for anyone and outlines all entitled victim rights.¹⁸³

¹⁷⁹ *ibid.*

¹⁸⁰ *"This will be welcomed by most people, especially by the victims, who feel affronted and scandalised by the knowledge that guilty persons were not being convicted for their crimes."* The Department of Justice, 'Criminal Procedure Bill 2009' (*The Department of Justice*) <<http://www.justice.ie/en/JELR/Pages/Criminal%20Procedure%20Bill%202009>> accessed 30 November 2020.

¹⁸¹ **Article 11 - Rights in the event of a decision not to prosecute**

This article introduces the rights victims hold in the events that their alleged offender is not prosecuted.

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1).

¹⁸² The Department of Justice, 'Victims Charter and Guide to the Criminal Justice System' (*The Department of Justice*) <<http://www.inis.gov.ie/en/JELR/Pages/Victims-Charter>> accessed 1 December 2020.

¹⁸³ *ibid.*

5.2. The Implementation of Directive 2012/29

Ireland had specifically chosen to opt into the adoption of Directive 2012/29, meaning they were then legally bound to apply all measures for improving victim rights.¹⁸⁴ Based on the 2017 report the EP released about Directive 2012/29 and its implementation, four Member States including Ireland still needed to transpose it fully. In 2016 Ireland had received a formal notice from the EC about the 16 November 2015 deadline of Directive 2012/29, stating that they were not complying, and warning that there would be consequences if they did not implement the Directive. The EU never pursued its formal notice against Ireland.¹⁸⁵ The EP acknowledged the missed deadline, but they still investigated what Ireland had done up until the inquiry.¹⁸⁶ By the time of the EC report in 2020, Ireland had sufficiently transposed Directive 2012/29, even though Articles 16, and 26 are not present in Irish law, and Articles 8 and 9 are unspecified in legislation.¹⁸⁷

Article 2 of Directive 2012/29 requires a Member State to acknowledge and define who a victim is. Some countries just define the term victim, like the Directive did; Ireland decided to see the victim as a witness instead of just a victim.¹⁸⁸ The 2017 report the EP issued recognised Ireland had begun to approach victim rights, even though the Directive's deadline was not met. In 2015, the Irish Government proposed a Criminal

¹⁸⁴ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1).

¹⁸⁵ 'The EU Victims' Directive on EU Day for Victims of Crime 2016: Infringement Cases Opened against 16 Member States' (n 170).

¹⁸⁶ 'REPORT on the Implementation of Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime' (n 142).

¹⁸⁷ *ibid.*

¹⁸⁸ 'Victims of Crime in the EU: The Extent and Nature of Support for Victims'
<<https://primarysources.brillonline.com/browse/human-rights-documents-online/victims-of-crime-in-the-eu-the-extent-and-nature-of-support-for-victims;hrdhrd99922015019>> accessed 1 December 2020.

Justice (Victims of Crime) Bill,¹⁸⁹ however it was not yet enacted, as it still needed to be discussed among all involved stakeholders.¹⁹⁰ The proposed bill was presented to the EP in their 2017 report, bringing attention to their efforts so far. In 2017 the proposal was passed and named the Victim Rights Act 2017,¹⁹¹ demonstrating Ireland have not ignored the Directive deadline, just taken longer to implement it.

Ireland, unlike the majority of the EU Member States, have adopted Directive 2012/29 into just one new act,¹⁹² the Victim Rights Act 2017.¹⁹³ This indicated that Ireland were creating a new set of rights, not adding to pre-existing ones. This act is made up of thirty-seven articles, covering preliminary information, rights to information, protection during investigations/criminal procedures, amendments and general information. The amendments (Articles 27-37) were modifying sections of previous acts, to maintain victim rights throughout their legal system. The Victim Right Act 2017,¹⁹⁴ came into force on November 5th, 2017, missing the deadline of Directive 2012/29. This is the final version of the Victim of Crime Bill of 2015. Two years later it was signed and legislated to amend previous regulations regarding victim rights.

¹⁸⁹ The Department of Justice, 'Criminal Justice (Victims of Crime) Bill' (*The Department of Justice*) <[http://www.justice.ie/en/JELR/Pages/Criminal_Justice_\(Victims_of_Crime\)_Bill](http://www.justice.ie/en/JELR/Pages/Criminal_Justice_(Victims_of_Crime)_Bill)> accessed 2 December 2020.

¹⁹⁰ *ibid.*

¹⁹¹ See appendix 4 – Victim Rights Act 2017

¹⁹² 'REPORT on the Implementation of Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime' (n 142).

¹⁹³ The Department of Justice, 'Criminal Justice (Victims of Crime) Act 2017' (*The Department of Justice*) <[http://www.justice.ie/en/JELR/Pages/Criminal_Justice_\(Victims_of_Crime\)_Act_2017](http://www.justice.ie/en/JELR/Pages/Criminal_Justice_(Victims_of_Crime)_Act_2017)> accessed 2 December 2020.

¹⁹⁴ *ibid.*

Table 2: The matching of the Irish Victim Rights Act 2017 to Directive 2012/29

Victim Rights Act 2017	Directive 2012/29
Article 2	Article 2
Article 7	Article 4, 13, 14, 15, 24
Article 8	Article 6, 7, 11,
Article 9	Article 6, 11,
Article 10	Article 11,
Article 12	Article 5, 13
Article 13	Article 17
Article 14	Article 25,
Article 15	Article 22
Article 16, 17, 19	Article 18, 19, 20, 23
Article 18	Article 22, 23, 24
Article 20	Article 12, 21,
Article 21	Article 21,
Article 22 - 25	Article 3, 7
Article 26	Article 12

As seen in table 2, this act covers all articles of Directive 2012/29, except for Article 8, 9, 16, and 26. The EP have acknowledged that Articles 8¹⁹⁵ and 9¹⁹⁶ were

¹⁹⁵ **Article 8 - Right to access victim support services**

This article covers the rights victims should receive regarding access to victim support. That they shall be presented with the opportunities communicate with services which can help the rehabilitation after the crime. See appendix 1 for the full article.

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (n 1).

¹⁹⁶ **Article 9 - Support from victim support services**

already in the legal system before Directive 2012/29 came into effect, but unspecified in legislation and both Articles 16¹⁹⁷ and 26¹⁹⁸ of the Directive were not present in the Criminal Justice (Victims of Crime) Act 2017.¹⁹⁹ In Article 30 of the Victim Rights Act, Ireland have also gone into more depth about the protection of child victims. They amended the Criminal Evidence Act 1992, to provide children with a calmer and normal experience throughout the investigation and criminal procedure.²⁰⁰ This goes beyond Directive 2012/29, as does the Irish approach to Article 11 (Directive 2012/29), when they elaborate on the time frame for the review of a judgement.²⁰¹

Ireland only started recently, in the early 1990s, safeguarding victim rights. They had not had the chance to develop them as much as the Netherlands had, meaning they had more work to do when the EU issued Directive 2012/29. The EP examined Ireland's approach to victim rights and deemed it sufficient.²⁰² Since Ireland had issued their Victim Rights Act (2017), the EU never pursued its formal notice regarding the deadline, illustrating, just like the Netherlands, it was a warning to accelerate their implementation.²⁰³ Overall, Ireland met the Directives requirements.

This article covers the type of support victims should be able to access. The various forms of support to aid recovery after the crime.

ibid.

¹⁹⁷ **Article 16 - Right to decision on compensation from the offender in the course of criminal proceedings**

This article concerns the possibility of compensation from the offender.

ibid.

¹⁹⁸ **Article 26 - Cooperation and coordination of services**

This article concerns the measures Member States must have to aid cooperation among Member States regarding victims.

ibid.

¹⁹⁹ Houses of the Oireachtas, 'Criminal Justice (Victims of Crime) Act 2017 – No. 28 of 2017 – Houses of the Oireachtas' (27 December 2016) <<https://www.oireachtas.ie/en/bills/bill/2016/121>> accessed 2 December 2020.

²⁰⁰ Justice, 'Criminal Justice (Victims of Crime) Act 2017' (n 193).

²⁰¹ ibid.

²⁰² 'REPORT on the Implementation of Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime' (n 142).

²⁰³ 'The EU Victims' Directive on EU Day for Victims of Crime 2016: Infringement Cases Opened against 16 Member States' (n 170).

Chapter six: Comparison

It can be a long process for EU Member States to implement a Directive into their legal systems. A problem faced by many is the time actually allocated for transposition.²⁰⁴ Before the 1990s implementation delays exceeded ten years, but this is no longer the case thanks to a more effective approach adopted by the EC, which has placed more focus on monitoring, and issuing more infringement policies. This brought the average delay down to five years or less.²⁰⁵

Bernard Steunenberg and Mark Rhinard hypothesised that Member States generally take longer implementing a Directive if the concept and aim is new, and that the awareness of being closely observed by the EC, can lead to a shorter time frame for transposition.²⁰⁶ These hypotheses coincided with both the Netherlands and Ireland's approach to the implementation of Directive 2012/29. The Netherlands national legal system already included the protection of victim rights, whereas for Ireland victim rights were relatively new. Incorporating new ideas into a legal system does not excuse the delay these two states encountered. Delays can result in the undermining of their citizens' confidence regarding their rights.²⁰⁷ Member States can receive infringement notices from the EC if they encounter delay in transcribing Directives,²⁰⁸ a consequence of this could result in Member States rushing to pass laws, resulting in incomplete or incorrect implementation. This can raise legal uncertainty within the national legal system²⁰⁹ as to which rights do victims actually have.

²⁰⁴ Bernard Steunenberg and Mark Rhinard, 'The Transposition of European Law in EU Member States: Between Process and Politics' (2010) 2 *European Political Science Review* 495.

²⁰⁵ *ibid.*

²⁰⁶ *ibid.*

²⁰⁷ 'Determinants of Transposition Delay in the European Union | Journal of Public Policy | Cambridge Core' <<https://www-cambridge-org.tilburguniversity.idm.oclc.org/core/journals/journal-of-public-policy/article/determinants-of-transposition-delay-in-the-european-union/0F69FC3708A478020D7D469C3B53FBD0>> accessed 12 December 2020.

²⁰⁸ 'Consolidated Version of the Treaty on the Functioning of the European Union' (n 52).

²⁰⁹ 'Determinants of Transposition Delay in the European Union | Journal of Public Policy | Cambridge Core' (n 207)..



Figure 1: A timeline illustrating relevant dates regarding the Netherland’s and Ireland’s implementation of Directive 2012/29

Illustrated in figure 1, the deadline of Directive 2012/29 had passed before both the Netherlands and Ireland completed their implementation, due to both experiencing delays. Therefore, as the previous two chapter have shown, both countries received a formal notice of infringement from the EC. Neither infringement procedure was pursued, as they reacted to the notice by complying, and enacting their implementation of Directive 2012/29.²¹⁰ The way the Directive was enacted differed between the two systems. The Netherlands chose to implement the Directive using different acts, whereas Ireland chose to adopt the rights into just one act. The Netherlands had a greater presence of victim rights than Ireland, resulting in it being easier for the Netherlands to adapt pre-existing laws spread through their codification than voiding existing laws and starting fresh. Ireland, with fewer measures for victims, took the opposite approach and started fresh, taking the easier and more straight forward option of passing one act. With Irelands fresh approach and common law system, found it feasible to pass a single act, instead of many,

²¹⁰ ‘The EU Victims’ Directive on EU Day for Victims of Crime 2016: Infringement Cases Opened against 16 Member States’ (n 170).

as codification is a longer process in Ireland²¹¹ than in the Netherlands.²¹² This implies that the different levels of victim rights coverage before the Directive was passed also impacts the implementation process.

The Netherlands due to its inquisitorial system allocates more power to judges during trial, resulting in a positive relationship with victim interaction, but in comparison the adversarial system of Ireland, resulting in a more negative relationship²¹³. Whether the country has an inquisitorial or adversarial legal system appears to have little impact on how the Member States implement Directive 2012/29, only the way in which it is enforced.

One of the differences between the two methods of implementation, is the right to be heard and in the event of no prosecution (Articles 10 and 11, Directive 2012/29). Ireland have been more specific in those rights²¹⁴ than the Netherlands.²¹⁵

Table 3 highlights the transposition of Directive 2012/29 in the Netherlands and Ireland, demonstrating that the Netherlands implemented every article, unlike Ireland (see below, Articles 8, 9, 16, and 26). The EP did not comment on why Ireland did not implement some articles (Articles 16 and 26), or if they need to further implement the two allegedly included but unspecified articles (Articles 8 and 9) to include the missing provisions.²¹⁶

²¹¹ Oireachtas, ‘Houses of the Oireachtas - How Laws Are Made – Houses of the Oireachtas’ (n 132).

²¹² Ministerie van Binnenlandse Zaken en Koninkrijksrelaties Besluit slachtoffers van strafbare feiten (n 164).

²¹³ Laxminarayan (n 139).

²¹⁴ Oireachtas, ‘Criminal Justice (Victims of Crime) Act 2017 – No. 28 of 2017 – Houses of the Oireachtas’ (n 199).

²¹⁵ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties Besluit slachtoffers van strafbare feiten (n 164).

²¹⁶ The Department of Justice and Equality, ‘The Transposition of EU Crime Directive (2012/29/EU) and the Establishment of a Service to Allow Victims of Crime to Follow the Progress of Investigations’ (*The Department of Justice and Equality*) <<http://www.justice.ie/en/JELR/Pages/SP14000296>> accessed 23 October 2020.

Table 3: The transposition of Directive 2012/29 in the Netherlands and Ireland²¹⁷

Directive 2012/29 articles	The Netherlands	Ireland
<i>2 – Definitions</i>	Fully transposed	Fully transposed
<i>3 – Right to understand and be understood</i>	Fully transposed	Fully transposed
<i>4 – Right to receive information from first contact</i>	Fully transposed	Fully transposed
<i>5 – Right when making a complaint</i>	Fully transposed	Fully transposed
<i>6 – Right to receive information on the case</i>	Fully transposed	Fully transposed and highly detailed
<i>7 – Right to interpretation and translation</i>	Fully transposed	Fully transposed
<i>8 – Right to access victim support</i>	Transposed, but missing procedural information	Not transposed , it was already present in the legal system
<i>9 – Right to victim support</i>	Transposed, but missing procedural information	Not transposed , it was already present in the legal system
<i>10 – Right to be heard</i>	Fully transposed	Fully transposed, for use through formal statements

²¹⁷ Table 3 is based upon the research from the Parliamentary report of the EU. ‘REPORT on the Implementation of Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’ (n 142).

Directive 2012/29 articles	The Netherlands	Ireland
<i>11 – Rights in event of no prosecution</i>	Fully transposed	Fully transposed, victim must file for review in 28 days
<i>12 – Safeguards in restorative justice</i>	Fully transposed	Transposed verbatim
<i>13 – Right to legal aid</i>	Fully transposed	Fully transposed
<i>14 – Right to reimbursement</i>	Fully transposed	Fully transposed
<i>15 – Right for property to be returned</i>	Fully transposed	Fully transposed
<i>16 – Right to chance of compensation from offender</i>	Fully transposed	Not transposed
<i>17 – Rights in other Member States</i>	Fully transposed	Fully transposed, and explicitly explained in a separate section
<i>18 – Right to protection</i>	Fully transposed	Fully transposed
<i>19 – Right to avoid contact with offender</i>	Fully transposed	Fully transposed
<i>20 – Right to protection during investigation</i>	Fully transposed	Fully transposed
<i>21 – Right to protection of privacy</i>	Fully transposed	Fully transposed
<i>22 – Right to individual assessment of protection needs</i>	Fully transposed	Fully transposed

Directive 2012/29 articles	The Netherlands	Ireland
<i>23 – Right to specific protection</i>	Fully transposed	Fully transposed
<i>24 – Right to protection for child victims</i>	Fully transposed	Fully transposed, however no reference is made to sub articles of the Directive
<i>25 – Training of professionals who contact victims</i>	Fully transposed	Fully transposed
<i>26 – Cooperation of services for victims</i>	Fully transposed	Not transposed
<i>27 - Transposition</i>	Fully transposed	Fully transposed
<i>28 – Provision of data and statistics</i>	An administrative requirement, therefore compliant	An administrative requirement, therefore compliant

The side-by-side analysis of the Netherlands’ and Ireland’s approach to implementing Directive 2012/29 raises the question as to why the EP came to the conclusion that Ireland did not transpose Articles 16 (right to chance of compensation from offender) and 26 (regarding the cooperation of services for victims), when the Netherlands did? Article 16 is a specific right the EU passed, yet no mention of it is present in the Irish system and the EP did not challenge this.²¹⁸ Article 26 on the other hand covers the cooperation of services for victims, which although not present in the Irish legal system, is to a certain extent covered by the ENVR, of which both Ireland and the Netherlands are members of, but primarily the initiative of the Netherlands,²¹⁹ as

²¹⁸ *ibid.*

²¹⁹ ‘European Network on Victims’ Rights | Victims’ Rights’ (n 162).

discussed in chapter four. The fact that the majority of the Member States were able to implement those articles into their legal systems, but Ireland could not, shows an area for further improvement and investigation. Since Ireland opted into the Directive, they chose to be bound by it, but have not yet fully implemented the content.

The comparison of the Netherlands to Ireland demonstrate that the civil or common law system impacts the country's ability to implement the victim rights Directive 2012/29. The Netherlands, a civil law country, was already familiar with the rights and were able to adapt their pre-existing codification. This system mostly based upon statutes has the structure for various laws to be added, whereas the common law system of Ireland, places more focus on precedent, resulting in less codification. This led to just one act stemming from Directive 2012/29.

The implementation of Directive 2012/29 demonstrates a reasonably successful process. Victim rights hold an important part of criminal law, and the EU approach is a good start towards a fair and just system of protection for victims. Directive 2012/29 highlights valuable and necessary victim rights, these ensure that the Universal Declaration of Human Rights is also being upheld. Victims are beginning to receive the respect and recognition needed to feel safe in their community and find the courage to speak out. More work, however, could be done for victim rights in the EU. The USA approach towards victim rights differs from the EU and could offer a lesson. The USA brought in a victim compensation fund, funded by the offenders themselves. This is briefly mentioned in Article 16 of Directive 2012/29 but initiating a similar system in the EU, would lead to an improved network of victim rights. This would provide victims with a furthered sense of justice knowing that their offenders are the ones who are reimbursing and compensating their damages.

Conclusion

Chapter one demonstrated that victim rights are a continuous evolving part of the criminal justice system. It is crucial for them to evolve with us and remain up to date, to avoid injustice. As discussed in chapter two, the EU started to protect victim rights soon after their founding. This illustrated the importance in which they were held. By making use of their criminal law competences, the EU released a Framework Decision on victim rights (2001/220). This protection scheme, not being as successful as the EU had hoped, was ultimately replaced by the Victim Rights Directive (2012/29). All Member States with the exception of Denmark, had till November 2015 to implement the minimum standards into their existing legal systems.

Chapter three introduced the diverse legal systems. The Netherlands and Ireland both illustrate different ways of implementing Directive 2012/29. Common law countries (such as Ireland) have fewer codified laws than civil law countries (such as the Netherlands), due to their focus on precedent. The further developed and experienced codification process of the Netherlands present a more direct approach to implementing a Directive than Ireland. The total eight step legislative process of the Netherlands, paralleled to the ten-step legislative process of Ireland, cause disparities in the implementation timeframe. These Member States also have different legal systems for the trial procedure; the Netherlands has an inquisitorial system, allocating most power to the judge, resulting in a positive relationship with the psychological standing of victims. Ireland has an adversarial system, allocating more power upon the two parties and the jury, resulting in a negative relationship with the psychological standing of victims. Laxminarayan, concluded this finding, in the 2013 study, that the psychological standing of the victim is dependent on the allocated amount of contact with the victim.

Chapters four and five discussed the previous existing victim rights in the Netherlands and Ireland, and ways in which they implemented Directive 2012/29. The

Netherlands illustrated that prior to the EU Framework Decision 2001/220 and subsequently Directive 2012/29, they already had safeguards in place for their victims. These rights have continually developed since the 1970s, resulting in less to implement from the victim rights Directive. Ireland on the other hand started their victim rights movement in the 1990s and could therefore not keep pace with the Netherlands. They had a greater number of rights to transpose in order to successfully implement the Directive.

Both Member States have successfully implemented Directive 2012/29 but in different ways. The Netherlands passed various forms of legislation, by modifying their Sv laws and passing the *Besluit Slachtoffers van Strafbare Feiten* (2016). Ireland, having nothing to compare to that of the Netherlands, passed just the one piece of legislation, the Victim Rights Act 2017. The Netherlands were able, due to their civil law legal structure (with lots of codification), to implement multiple forms of legislation. In comparison Ireland with a common law system (with less codification), had the structure more suited for the implementation of a single act.

As discussed in chapter six, the deadline set by directives, in general, is the most common condition not met by Member States. In this case neither the Netherlands nor Ireland met the deadline of 16 November 2015, both were late and therefore received formal infringement notices. Both countries went on to demonstrate improvement in this field, Ireland more so due to their lack of existing victim rights before the enactment of Directive 2012/29. Ireland did not transpose all articles unlike the Netherlands, Articles 8, 9, 16, and 26 are missing from Irish legislation. Regardless of this, the EU still approved their efforts. The Netherlands transposed all articles but lacked procedural information for Articles 8 and 9 of Directive 2012/29. Ultimately both met the requirements of Directive 2012/29, and the EU never pursued the infringements, illustrating successful implementation.

Upon comparing the two Member States it is evident that, the Netherlands did more than Ireland to implement Directive 2012/29. The Netherlands successfully implemented all articles, whilst Ireland failed to do so. It is also clear that the Netherlands, having taken the most initiative to start the ENVR have gone beyond the minimum standards.

Referring back to the research question of how do the civil and common law systems in the Netherlands and Ireland impact the implementation of the EU directive on Victim Rights (2012/29), the civil and common law legal systems of the Netherlands and Ireland have to a certain extent had an impact on the implementation of the Victim Rights Directive 2012/29. The Netherlands already had an extensive plan of victim rights, whilst Ireland were still in their infancy stage. The experience of codifying laws demonstrates the Netherlands were able implement various laws, to ensure victim rights, namely the laws of Sv and the Besluit Slachtoffers van Strafbare Feiten, whilst Ireland passed just the one act. Ireland demonstrated interest in developing their victim rights, by beginning the process protecting victim rights, before the EU had even passed their legislation. Directive 2012/29 provided incentive to Ireland to further progress with victim rights, a possible reason why Ireland initially opted into the Directive.

In short to answer the research question, the civil and common law systems clearly impact the amount of legislation codified to achieve the minimum standards of the Victim Rights Directive (2012/29), although I conclude, the legal systems were not the largest influential factor, but the history of victim rights prior to the passing of Directive 2012/29.

References:

Primary Sources:

EU legislation

‘The Treaty of Rome 1957, Translation’

<https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf> accessed 10 November 2020

‘VERDRAG tot oprichting van de Europese Economische Gemeenschap en bijbehorende documenten’ [1962] <<https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:11957E/TXT&from=EN>>

‘COUNCIL FRAMEWORK DECISION of 15 March 2001 on the Standing of Victims in Criminal Proceedings’ <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001F0220&from=EN>> accessed 5 November 2020

‘COUNCIL DIRECTIVE 2004/80/EC of 29 April 2004 Relating to Compensation to Crime Victims’ <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0080&from=EN>> accessed 5 November 2020

European Commission, ‘Proposal for a Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, 2011/0129’

‘Consolidated Version of the Treaty on European Union’ (2012) C 326 Official Journal of the European Union 34

‘Consolidated Version of the Treaty on the Functioning of the European Union’ (2012) C 326 Official Journal of the European Union 334

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA 2012 [32012L0029]

‘PROTOCOL (No 22) ON THE POSITION OF DENMARK’ [2012] Official Journal of the European Union 299

‘Article 3 of Protocol (21) on the Position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice.’ [2016] Official Journal of the European Union 295

Request for a preliminary ruling from the Giudice di Pace di Taranto (Italy) lodged on 8 September 2016 — Criminal proceedings against Antonio Semeraro [2016] Court of Justice of the European Union Case C-484/16

Order of the Court (Seventh Chamber) of 22 November 2018 Anthony Andrew King v European Commission [2018] Court of Justice of the European Union C-412/18

Massimo Gambino and Shpetim Hyka v Procura della Repubblica presso il Tribunale di Bari and Others Request for a preliminary ruling from the Tribunale di Bari [2019] Court of Justice of the European Union C-38/18

Judgment of the Court (Ninth Chamber) of 22 October 2020 Silver Plastics GmbH & Co KG and Johannes Reifenhäuser Holding GmbH & Co KG v European Commission [2020] Court of Justice of the European Union C-702/19

Judgment of the Court (Third Chamber) of 1 October 2020 (request for a preliminary ruling from the Špecializovaný trestný súd — Slovakia) — Criminal proceedings against TG, UF (Reference for a preliminary ruling — Protection of the financial interests of the European Union — Article 325 TFEU — Criminal proceedings concerning offences relating to subsidy fraud funded in part from the budget of the European Union — National law not allowing State bodies to obtain, in criminal proceedings, the recovery of subsidies by way of compensation for damage caused by the offences) [2020] Court of Justice of the European Union C-603/19

Irish legislation

Book (eISB) electronic IS, ‘Amendment of Juries Act 1976’

<<http://www.irishstatutebook.ie/eli/2013/act/32/section/23/enacted/en/html#sec23>>
accessed 14 December 2020

Criminal Evidence Act, 1992 1992 (Number 12 of 1992)

‘Criminal Procedure Bill 2009’ (*The Department of Justice*)

<<http://www.justice.ie/en/JELR/Pages/Criminal%20Procedure%20Bill%202009>>
accessed 30 November 2020

‘Crime Victims’ Rights Act’ (18 November 2014)

<<https://www.justice.gov/usao/resources/crime-victims-rights-ombudsman/victims-rights-act>> accessed 14 December 2020

‘Criminal Justice (Victims of Crime) Bill’ (*The Department of Justice*)

<[http://www.justice.ie/en/JELR/Pages/Criminal_Justice_\(Victims_of_Crime\)_Bill](http://www.justice.ie/en/JELR/Pages/Criminal_Justice_(Victims_of_Crime)_Bill)>
accessed 2 December 2020

Oireachtas H of the, ‘Criminal Justice (Victims of Crime) Act 2017 – No. 28 of 2017 – Houses of the Oireachtas’ (27 December 2016)

<<https://www.oireachtas.ie/en/bills/bill/2016/121>> accessed 2 December 2020

Netherlands legislation

Wetboek van Strafvordering *Collegebundel 2020-2021* (Wolters Kluwer 2020)

Koninkrijksrelaties M van BZ en, Besluit slachtoffers van strafbare feiten 2016

USA legislation

‘34 U.S. Code Chapter 201 - VICTIM RIGHTS, COMPENSATION, AND ASSISTANCE’ (*LII / Legal Information Institute*)

<<https://www.law.cornell.edu/uscode/text/34/subtitle-II/chapter-201>> accessed 10 December 2020

‘Summary of H.R. 5368 (101st): Victims’ Rights and Restitution Act of 1990’

(*GovTrack.us*) <<https://www.govtrack.us/congress/bills/101/hr5368/summary>>
accessed 21 November 2020

Brooks JB, ‘H.R.3355 - 103rd Congress (1993-1994): Violent Crime Control and Law Enforcement Act of 1994’ (13 September 1994) <<https://www.congress.gov/bill/103rd-congress/house-bill/3355>> accessed 21 November 2020

‘Text - H.R.3355 - 103rd Congress (1993-1994): Violent Crime Control and Law Enforcement Act of 1994’ (13 September 1994) <<https://www.congress.gov/bill/103rd-congress/house-bill/3355/text>> accessed 10 December 2020

Snyder v Massachusetts (241AD) 291 US 97 (Supreme Court)

McCollum B, ‘H.R.924 - 105th Congress (1997-1998): Victim Rights Clarification Act of 1997’ (19 March 1997) <<https://www.congress.gov/bill/105th-congress/house-bill/924>> accessed 21 November 2020

Chabot S, ‘H.R.4342 - 108th Congress (2003-2004): Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims’ Rights Act’ (28 June 2004) <<https://www.congress.gov/bill/108th-congress/house-bill/4342>> accessed 21 November 2020

Wasserman Schultz D, ‘Text - H.R.5658 - 116th Congress (2019-2020): Crime Victims’ Rights Act of 2020’ (7 February 2020) <<https://www.congress.gov/bill/116th-congress/house-bill/5658/text>> accessed 21 November 2020

United Nations

‘Universal Declaration of Human Rights’ (6 October 1948)
<<https://www.un.org/en/universal-declaration-human-rights/>> accessed 3 November 2020

Secondary Sources:

Books

Corstens GJM, Borgers MJ and Kooijmans T, *Het Nederlands Strafprocesrecht* (Negende druk, Wolters Kluwer 2018)

Fletcher GP, *Basic Concepts of Criminal Law* (Oxford University Press 1998)

Kelk C and Jong F de, *Studieboek materieel strafrecht*, vol 7 (7th edn, Wolters Kluwer 2019)

Lesaffer R, ‘European Legal History. A Cultural and Political Perspective’ (Cambridge University Press 2009)

Articles

barbrimarketing, 'Common Law vs. Civil Law: An Introduction to the Different Legal Systems' (*BARBRI QLTS*, 1 April 2019) <<https://barbriqlts.com/common-law-vs-civil-law-an-introduction-to-the-different-legal-systems/>> accessed 18 November 2020

Bassiouni MC, 'International Recognition of Victims' Rights' (2006) 6 *Human Rights Law Review* 203

Buczma SR, 'An Overview of the Law Concerning Protection of Victims of Crime in the View of the Adoption of the Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime in the European Union' (2013) 14 *ERA Forum* 235

Carrington F and Nicholson G, 'The Victims' Movement: An Idea Whose Time Has Come' (1986) 11 *Pepperdine Law Review* 15

Crombag HFM, 'Adversarial or Inquisitorial' in Peter J van Koppen and Steven D Penrod (eds), *Adversarial versus Inquisitorial Justice: Psychological Perspectives on Criminal*

'Determinants of Transposition Delay in the European Union | Journal of Public Policy | Cambridge Core' <<https://www-cambridge-org.tilburguniversity.idm.oclc.org/core/journals/journal-of-public-policy/article/determinants-of-transposition-delay-in-the-european-union/0F69FC3708A478020D7D469C3B53FBD0>> accessed 12 December 2020

Justice Systems (Springer US 2003) <https://doi.org/10.1007/978-1-4419-9196-6_2> accessed 17 November 2020

Gážiová I and Kralik J, 'The New European Network on Victims' Rights' (2016) 16 *International and Comparative Law Review* 83

Graff M, 'Law and Finance: Common Law and Civil Law Countries Compared—An Empirical Critique' (2008) 75 *Economica* 60

Groenhuijsen MS, 'A New Perspective on Crime Victims' Rights to Participate in the Dutch Criminal Justice System' [2010] *Journal of the Japan-Netherlands Institute* 57

-- -- and Pemberton, 'The EU Framework Decision for Victims of Crime: Does Hard Law Make a Difference?' (2009) 17 *European Journal of Crime, Criminal Law and Criminal Justice* 43

Healy D, 'Exploring Victims Interactions with the Criminal Justice System: A Literature Review' [2019] Department of Justice and Equality 119

Hebly MR, van Dongen JDM and Lindenbergh SD, 'Crime Victims' Experiences with Seeking Compensation: A Qualitative Exploration' (2014) 10 *Utrecht Law Review* 27

Higgins DN, 'The Lost Legal System: Pre-Common Law Ireland and the Brehon Law' [2014] School of Law and Government, Dublin City University, 11

Hoekstra R and Malsch M, 'The Principle of Open Justice in the Netherlands' in Peter J van Koppen and Steven D Penrod (eds), *Adversarial versus Inquisitorial Justice: Psychological Perspectives on Criminal Justice Systems* (Springer US 2003) <https://doi.org/10.1007/978-1-4419-9196-6_19> accessed 15 November 2020

'Implementation of Directive 2012/29/EU' <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0188&from=EN>> accessed 5 November 2020

Kang H-W and Kang H-B, 'Prediction of Crime Occurrence from Multi-Modal Data Using Deep Learning' (2017) 12 *PLOS ONE* e0176244

Laxminarayan M, 'Psychological Effects of Criminal Proceedings through Contact with the Judge: The Moderating Effect of Legal System Structure' (2014) 20 *Psychology, Crime & Law* 781

Leferink S, 'The Development of Victim Support Services' [2013] *Slachtofferhulp Nederland* 13

Stein PG, 'Roman Law, Common Law, and Civil Law' (1991) 66 *Tulane Law Review* 1591

Steunenberg B and Rhinard M, 'The Transposition of European Law in EU Member States: Between Process and Politics' (2010) 2 *European Political Science Review* 495

Strier F, 'What Can the American Adversary System Learn from an Inquisitional System of Justice' (1992) 76 *Judicature* 109

Wolhuter L, Olley N and Denham D, *Victimology: Victimisation and Victims' Rights* (Routledge 2008)

Other

'About' (*Black Lives Matter*) <<https://blacklivesmatter.com/about/>> accessed 14 December 2020

'An Introduction into the Irish Legal System'
<<https://www.scsi.ie/resources/migrated/pdf/lawintroduction.pdf>> accessed 18 November 2020

Anonymous, 'Regulations, Directives and Other Acts' (*European Union*, 16 June 2016)
<https://europa.eu/european-union/law/legal-acts_en> accessed 5 November 2020

'Bills & Acts of the Oireachtas – Houses of the Oireachtas' (17 November 2020)
<<https://www.oireachtas.ie/en/bills>> accessed 18 November 2020

'Brochure-SchadefondsEN-0616.Pdf' <<https://curamortuorum.nl/wp-content/uploads/2017/10/Brochure-SchadefondsEN-0616.pdf>> accessed 25 November 2020

'Countries' (*European Union*, 5 July 2016) <https://europa.eu/european-union/about-eu/countries_en> accessed 3 November 2020

Citizensinformation.ie, 'Jury Service'
<https://www.citizensinformation.ie/en/justice/courtroom/jury_service.html> accessed 4 December 2020

'Division of Competences within the European Union' <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:ai0020&from=EN>> accessed 3 November 2020

'Dutch Civil Law Legal System'
<<http://www.dutchcivillaw.com/content/legalsystem011.htm>> accessed 14 December 2020

Equality TD of J and, ‘History’ (*CSVC*)

<http://www.csvc.ie/en/csvc/Pages/History_of_the_CSVC> accessed 30 November 2020

‘European Commission Welcomes Report on Strengthening Victims’ Rights in the European Union’ (*European Commission - European Commission*)

<https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1609> accessed 5 November 2020

‘European E-Justice Portal - Law’ <[https://e-](https://e-justice.europa.eu/content_member_state_law-6-nl-en.do?member=1)

[justice.europa.eu/content_member_state_law-6-nl-en.do?member=1](https://e-justice.europa.eu/content_member_state_law-6-nl-en.do?member=1)> accessed 15 November 2020

‘European Network on Victims’ Rights | Be strong together for victims’

<<https://envr.eu/>> accessed 25 November 2020

‘European Network on Victims’ Rights | Victims’ Rights’ <<https://envr.eu/victims-rights/>> accessed 2 December 2020

‘Final Report | Project IVOR – Implementing Victim-Oriented Reform of the Criminal Justice System in the European Union’

<https://www.apav.pt/apav_v3/index.php/en/1219-final-report-project-ivor-implementing-victim-oriented-reform-of-the-criminal-justice-system-in-the-european-union> accessed 24 November 2020

Erez E and Australian Institute of Criminology, *Victim Impact Statements* (Australian Institute of Criminology 1991) ‘European Commission Welcomes Report on

Strengthening Victims’ Rights in the European Union’ (*European Commission - European Commission*)

<https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1609> accessed 5 November 2020

fromiti, ‘Organized Crime Module 9 Key Issues: Adversarial versus Inquisitorial Legal Systems’ <<http://www.unodc.org>> accessed 17 November 2020

‘Houses of the Oireachtas - How Laws Are Made – Houses of the Oireachtas’ (9

November 2020) <<https://www.oireachtas.ie/en/visit-and-learn/how-parliament-works/how-laws-are-made>> accessed 7 December 2020

‘International Legal Systems - An Introduction’ <<https://www.justice.gov/archives/nsd-ovt/page/file/934636/download>> accessed 15 November 2020

Justice TD of, ‘Criminal Justice (Victims of Crime) Act 2017’ (*The Department of Justice*)

<[http://www.justice.ie/en/JELR/Pages/Criminal_Justice_\(Victims_of_Crime\)_Act_2017](http://www.justice.ie/en/JELR/Pages/Criminal_Justice_(Victims_of_Crime)_Act_2017)> accessed 2 December 2020

Justitie M van V en, ‘Regeling van de Minister van Veiligheid en Justitie van 29 maart 2017, nr. 2045950 houdende regels voor de algemene informatievoorziening aan slachtoffers’ <<https://zoek.officielebekendmakingen.nl/stcrt-2017-18951.html>> accessed 25 November 2020

lemaicn, ‘Europe in a Changing World - Inclusive, Innovative and Reflective Societies’ (*Horizon 2020 - European Commission*, 14 November 2013)

<<https://ec.europa.eu/programmes/horizon2020/en/h2020-section/europe-changing-world-inclusive-innovative-and-reflective-societies>> accessed 6 November 2020

Meierhans J, ‘Yorkshire Ripper Death: People “Should Focus on Victims”’ *BBC News* (13 November 2020) <<https://www.bbc.com/news/uk-england-54930118>> accessed 18 November 2020

‘New Set of Rights for Victims of Crime’ (*GOV.UK*)

<<https://www.gov.uk/government/news/new-set-of-rights-for-victims-of-crime>> accessed 6 November 2020

‘Our Work’ (*me too. Movement*) <<https://metoomvmt.org/the-work/>> accessed 30 October 2020

overig, ‘Richtlijn slachtofferzorg bij landelijke inwerkingtreding Wet-Terwee’

<<https://zoek.officielebekendmakingen.nl/stcrt-1995-65-p12-SC2277.html>> accessed 2 December 2020

‘Political-Guidelines-next-Commission_en_0.Pdf’

<https://ec.europa.eu/info/sites/info/files/political-guidelines-next-commission_en_0.pdf> accessed 12 November 2020

‘Primary Victim | Victims of Crime Assistance Tribunal’

<<https://www.vocat.vic.gov.au/assistance-available/types-victims/primary-victim>>

accessed 21 November 2020

‘Related Victim | Victims of Crime Assistance Tribunal’

<<https://www.vocat.vic.gov.au/assistance-available/types-victims/related-victim>>

accessed 21 November 2020

‘REPORT on the Implementation of Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’

<https://www.europarl.europa.eu/doceo/document/A-8-2018-0168_EN.html> accessed

23 October 2020

‘Secondary Victim | Victims of Crime Assistance Tribunal’

<<https://www.vocat.vic.gov.au/assistance-available/types-victims/secondary-victim>>

accessed 21 November 2020

‘Slachtofferzorg’ <<https://www.politie.nl/themas/slachtofferzorg.html>> accessed 1

November 2020

‘Stb. 2016, 310 Besluit Slachtoffers Strafbare Feiten’ (*Nederlands Juristenblad*, 15

September 2016) <[https://www.njb.nl/wetgeving/staatsbladen/besluit-slachtoffers-](https://www.njb.nl/wetgeving/staatsbladen/besluit-slachtoffers-strafbare-feiten/)

[strafbare-feiten/](https://www.njb.nl/wetgeving/staatsbladen/besluit-slachtoffers-strafbare-feiten/)> accessed 2 December 2020

‘Strengthening_victims_rights_-_from_compensation_to_reparation_rev.Pdf’

<[https://ec.europa.eu/info/sites/info/files/strengthening_victims_rights_-](https://ec.europa.eu/info/sites/info/files/strengthening_victims_rights_-_from_compensation_to_reparation_rev.pdf)

[_from_compensation_to_reparation_rev.pdf](https://ec.europa.eu/info/sites/info/files/strengthening_victims_rights_-_from_compensation_to_reparation_rev.pdf)> accessed 5 November 2020

‘The EU in Brief’ (*European Union*, 16 June 2016) <[https://europa.eu/european-](https://europa.eu/european-union/about-eu/eu-in-brief_en)

[union/about-eu/eu-in-brief_en](https://europa.eu/european-union/about-eu/eu-in-brief_en)> accessed 3 November 2020

‘The EU Victims’ Directive on EU Day for Victims of Crime 2016: Infringement Cases

Opened against 16 Member States’ (*Victim Support Europe, the voice of victims in*

europe, 22 February 2016) <[https://victimsupport.eu/news/the-eu-victims-directive-on-](https://victimsupport.eu/news/the-eu-victims-directive-on-eu-day-for-victims-of-crime-2016-infringement-cases-opened-against-16-member-states/)

[eu-day-for-victims-of-crime-2016-infringement-cases-opened-against-16-member-](https://victimsupport.eu/news/the-eu-victims-directive-on-eu-day-for-victims-of-crime-2016-infringement-cases-opened-against-16-member-states/)

[states/](https://victimsupport.eu/news/the-eu-victims-directive-on-eu-day-for-victims-of-crime-2016-infringement-cases-opened-against-16-member-states/)> accessed 25 November 2020

‘The History of Crime Victims’ Rights’ (*Texas District & County Attorneys Association*) <<https://www.tdcaa.com/journal/the-history-of-crime-victims-rights/>> accessed 20 November 2020

‘The Jury System’ <<https://www.lawteacher.net/free-law-essays/criminal-law/the-jury-system.php>> accessed 24 November 2020 ‘The Treaty of Rome 1957, Translation’ <https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf> accessed 10 November 2020

‘The Transposition of EU Crime Directive (2012/29/EU) and the Establishment of a Service to Allow Victims of Crime to Follow the Progress of Investigations’ (*The Department of Justice and Equality*) <<http://www.justice.ie/en/JELR/Pages/SP14000296>> accessed 23 October 2020

‘The Transposition of EU Crime Directive (2012/29/EU) and the Establishment of a Service to Allow Victims of Crime to Follow the Progress of Investigations’ (*The Department of Justice*) <<http://www.justice.ie/en/JELR/Pages/SP14000296>> accessed 20 November 2020

‘VICTIM | Meaning in the Cambridge English Dictionary’ <<https://dictionary.cambridge.org/dictionary/english/victim>> accessed 11 December 2020

‘Victims Charter and Guide to the Criminal Justice System’ (*The Department of Justice*) <<http://www.inis.gov.ie/en/JELR/Pages/Victims-Charter>> accessed 1 December 2020

‘Victims of Crime in the EU: The Extent and Nature of Support for Victims’ <<https://primarysources.brillonline.com/browse/human-rights-documents-online/victims-of-crime-in-the-eu-the-extent-and-nature-of-support-for-victims;hrdhrd99922015019>> accessed 1 December 2020

‘Victims’ Rights in the EU’ (*European Commission - European Commission*) <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en> accessed 3 November 2020

V C, ‘Victims’ Rights Are Important’ (*Victim Support Services*, 7 April 2014) <<https://victimssupportservices.org/victims-rights/>> accessed 30 October 2020

Zaken M van A, 'Hoe komt een wet tot stand? - Wetgeving - Rijksoverheid.nl' (4 August 2016) <<https://www.rijksoverheid.nl/onderwerpen/wetgeving/hoe-komt-een-wet-tot-stand>> accessed 4 December 2020

Appendix one – Directive 2012/29

Quoted from:

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA 2012 [32012L0029]

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DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2012

establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Having regard to the opinion of the Committee of the Regions⁽²⁾,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

Whereas:

(1)The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, the cornerstone of which is the mutual recognition of judicial decisions in civil and criminal matters.

(2)The Union is committed to the protection of, and to the establishment of minimum standards in regard to, victims of crime and the Council has adopted Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings⁽⁴⁾. Under the Stockholm Programme – An open and secure Europe serving and protecting citizens⁽⁵⁾, adopted by the European Council at its meeting on 10 and 11 December 2009, the Commission and the Member States were asked to examine how to improve legislation and practical support measures for the protection of victims, with particular attention paid to, support for and recognition of, all victims, including for victims of terrorism, as a priority.

- (3) Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) provides for the establishment of minimum rules applicable in the Member States to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, in particular with regard to the rights of victims of crime.
- (4) In its resolution of 10 June 2011 on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings⁽⁶⁾ ('the Budapest roadmap'), the Council stated that action should be taken at Union level in order to strengthen the rights of, support for, and protection of victims of crime. To that end and in accordance with that resolution, this Directive aims to revise and supplement the principles set out in Framework Decision 2001/220/JHA and to take significant steps forward in the level of protection of victims throughout the Union, in particular within the framework of criminal proceedings.
- (5) The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women⁽⁷⁾ called on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures, and called on the Union to guarantee the right to assistance and support for all victims of violence.
- (6) In its resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women⁽⁸⁾ the European Parliament proposed a strategy to combat violence against women, domestic violence and female genital mutilation as a basis for future legislative criminal-law instruments against gender-based violence including a framework to fight violence against women (policy, prevention, protection, prosecution, provision and partnership) to be followed up by a Union action plan. International regulation within this area includes the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted on 18 December 1979, the CEDAW Committee's recommendations and decisions, and the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted on 7 April 2011.
- (7) Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order⁽⁹⁾ establishes a mechanism for the mutual recognition of protection measures in criminal matters between Member States. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims⁽¹⁰⁾ and Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography⁽¹¹⁾ address, inter alia, the specific needs of the particular categories of victims of human trafficking, child sexual abuse, sexual exploitation and child pornography.
- (8) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism⁽¹²⁾ recognises that terrorism constitutes one of the most serious violations of the principles on which the Union is based, including the principle of democracy, and confirms that it constitutes, inter alia, a threat to the free exercise of human rights.

- (9) Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.
- (10) This Directive does not address the conditions of the residence of victims of crime in the territory of the Member States. Member States should take the necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality. Reporting a crime and participating in criminal proceedings do not create any rights regarding the residence status of the victim.
- (11) This Directive lays down minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection.
- (12) The rights set out in this Directive are without prejudice to the rights of the offender. The term 'offender' refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence.
- (13) This Directive applies in relation to criminal offences committed in the Union and to criminal proceedings that take place in the Union. It confers rights on victims of extra-territorial offences only in relation to criminal proceedings that take place in the Union. Complaints made to competent authorities outside the Union, such as embassies, do not trigger the obligations set out in this Directive.
- (14) In applying this Directive, children's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child adopted on 20 November 1989. Child victims should be considered and treated as the full bearers of rights set out in this Directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views.
- (15) In applying this Directive, Member States should ensure that victims with disabilities are able to benefit fully from the rights set out in this Directive, on an equal basis with others, including by facilitating the accessibility to premises where criminal proceedings are conducted and access to information.

- (16) Victims of terrorism have suffered attacks that are intended ultimately to harm society. They may therefore need special attention, support and protection due to the particular nature of the crime that has been committed against them. Victims of terrorism can be under significant public scrutiny and often need social recognition and respectful treatment by society. Member States should therefore take particular account of the needs of victims of terrorism, and should seek to protect their dignity and security.
- (17) Violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence. It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crimes'. Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.
- (18) Where violence is committed in a close relationship, it is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. Such violence could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss. Violence in close relationships is a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust. Victims of violence in close relationships may therefore be in need of special protection measures. Women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially or as regards her right to residence.
- (19) A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them. It is possible that family members of victims are also harmed as a result of the crime. In particular, family members of a person whose death has been directly caused by a criminal offence could be harmed as a result of the crime. Such family members, who are indirect victims of the crime, should therefore also benefit from protection under this Directive. However, Member States should be able to establish procedures to limit the number of family members who can benefit from the rights set out in this Directive. In the case of a child, the child or, unless this is not in the best interests of the child, the holder of parental responsibility on behalf of the child, should be entitled to exercise the rights set out in this Directive. This Directive is without prejudice to any national administrative procedures required to establish that a person is a victim.

- (20) The role of victims in the criminal justice system and whether they can participate actively in criminal proceedings vary across Member States, depending on the national system, and is determined by one or more of the following criteria: whether the national system provides for a legal status as a party to criminal proceedings; whether the victim is under a legal requirement or is requested to participate actively in criminal proceedings, for example as a witness; and/or whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, where the national system does not provide that victims have the legal status of a party to the criminal proceedings. Member States should determine which of those criteria apply to determine the scope of rights set out in this Directive where there are references to the role of the victim in the relevant criminal justice system.
- (21) Information and advice provided by competent authorities, victim support services and restorative justice services should, as far as possible, be given by means of a range of media and in a manner which can be understood by the victim. Such information and advice should be provided in simple and accessible language. It should also be ensured that the victim can be understood during proceedings. In this respect, the victim's knowledge of the language used to provide information, age, maturity, intellectual and emotional capacity, literacy and any mental or physical impairment should be taken into account. Particular account should be taken of difficulties in understanding or communicating which may be due to a disability of some kind, such as hearing or speech impediments. Equally, limitations on a victim's ability to communicate information should be taken into account during criminal proceedings.
- (22) The moment when a complaint is made should, for the purposes of this Directive, be considered as falling within the context of the criminal proceedings. This should also include situations where authorities initiate criminal proceedings *ex officio* as a result of a criminal offence suffered by a victim.
- (23) Information about reimbursement of expenses should be provided, from the time of the first contact with a competent authority, for example in a leaflet stating the basic conditions for such reimbursement of expenses. Member States should not be required, at this early stage of the criminal proceedings, to decide on whether the victim concerned fulfils the conditions for reimbursement of expenses.
- (24) When reporting a crime, victims should receive a written acknowledgement of their complaint from the police, stating the basic elements of the crime, such as the type of crime, the time and place, and any damage or harm caused by the crime. This acknowledgement should include a file number and the time and place for reporting of the crime in order to serve as evidence that the crime has been reported, for example in relation to insurance claims.
- (25) Without prejudice to rules relating to limitation periods, the delayed reporting of a criminal offence due to fear of retaliation, humiliation or stigmatisation should not result in refusing acknowledgement of the victim's complaint.

- (26) When providing information, sufficient detail should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings. In this respect, information allowing the victim to know about the current status of any proceedings is particularly important. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute. Unless otherwise required, it should be possible to provide the information communicated to the victim orally or in writing, including through electronic means.
- (27) Information to a victim should be provided to the last known correspondence address or electronic contact details given to the competent authority by the victim. In exceptional cases, for example due to the high number of victims involved in a case, it should be possible to provide information through the press, through an official website of the competent authority or through a similar communication channel.
- (28) Member States should not be obliged to provide information where disclosure of that information could affect the proper handling of a case or harm a given case or person, or if they consider it contrary to the essential interests of their security.
- (29) Competent authorities should ensure that victims receive updated contact details for communication about their case unless the victim has expressed a wish not to receive such information.
- (30) A reference to a ‘decision’ in the context of the right to information, interpretation and translation, should be understood only as a reference to the finding of guilt or otherwise ending criminal proceedings. The reasons for that decision should be provided to the victim through a copy of the document which contains that decision or through a brief summary of them.
- (31) The right to information about the time and place of a trial resulting from the complaint with regard to a criminal offence suffered by the victim should also apply to information about the time and place of a hearing related to an appeal of a judgment in the case.
- (32) Specific information about the release or the escape of the offender should be given to victims, upon request, at least in cases where there might be a danger or an identified risk of harm to the victims, unless there is an identified risk of harm to the offender which would result from the notification. Where there is an identified risk of harm to the offender which would result from the notification, the competent authority should take into account all other risks when determining an appropriate action. The reference to ‘identified risk of harm to the victims’ should cover such factors as the nature and severity of the crime and the risk of retaliation. Therefore, it should not be applied to those situations where minor offences were committed and thus where there is only a slight risk of harm to the victim.
- (33) Victims should receive information about any right to appeal of a decision to release the offender, if such a right exists in national law.
- (34) Justice cannot be effectively achieved unless victims can properly explain the circumstances of the crime and provide their evidence in a manner understandable to

the competent authorities. It is equally important to ensure that victims are treated in a respectful manner and that they are able to access their rights. Interpretation should therefore be made available, free of charge, during questioning of the victim and in order to enable them to participate actively in court hearings, in accordance with the role of the victim in the relevant criminal justice system. For other aspects of criminal proceedings, the need for interpretation and translation can vary depending on specific issues, the role of the victim in the relevant criminal justice system and his or her involvement in proceedings and any specific rights they have. As such, interpretation and translation for these other cases need only be provided to the extent necessary for victims to exercise their rights.

- (35) The victim should have the right to challenge a decision finding that there is no need for interpretation or translation, in accordance with procedures in national law. That right does not entail the obligation for Member States to provide for a separate mechanism or complaint procedure in which such decision may be challenged and should not unreasonably prolong the criminal proceedings. An internal review of the decision in accordance with existing national procedures would suffice.
- (36) The fact that a victim speaks a language which is not widely spoken should not, in itself, be grounds to decide that interpretation or translation would unreasonably prolong the criminal proceedings.
- (37) Support should be available from the moment the competent authorities are aware of the victim and throughout criminal proceedings and for an appropriate time after such proceedings in accordance with the needs of the victim and the rights set out in this Directive. Support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution across the Member State to allow all victims the opportunity to access such services. Victims who have suffered considerable harm due to the severity of the crime could require specialist support services.
- (38) Persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection. Specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment. A main task of these services and their staff, which play an important role in supporting the victim to recover from and overcome potential harm or trauma as a result of a criminal offence, should be to inform victims about the rights set out in this Directive so that they can take decisions in a supportive environment that treats them with dignity, respect and sensitivity. The types of support that such specialist support services should offer could include providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination for evidence in cases of rape or sexual

assault, short and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims.

- (39)Victim support services are not required to provide extensive specialist and professional expertise themselves. If necessary, victim support services should assist victims in calling on existing professional support, such as psychologists.
- (40)Although the provision of support should not be dependent on victims making a complaint with regard to a criminal offence to a competent authority such as the police, such authorities are often best placed to inform victims of the possibility of support. Member States are therefore encouraged to establish appropriate conditions to enable the referral of victims to victim support services, including by ensuring that data protection requirements can be and are adhered to. Repeat referrals should be avoided.
- (41)The right of victims to be heard should be considered to have been fulfilled where victims are permitted to make statements or explanations in writing.
- (42)The right of child victims to be heard in criminal proceedings should not be precluded solely on the basis that the victim is a child or on the basis of that victim's age.
- (43)The right to a review of a decision not to prosecute should be understood as referring to decisions taken by prosecutors and investigative judges or law enforcement authorities such as police officers, but not to the decisions taken by courts. Any review of a decision not to prosecute should be carried out by a different person or authority to that which made the original decision, unless the initial decision not to prosecute was taken by the highest prosecuting authority, against whose decision no review can be made, in which case the review may be carried out by that same authority. The right to a review of a decision not to prosecute does not concern special procedures, such as proceedings against members of parliament or government, in relation to the exercise of their official position.
- (44)A decision ending criminal proceedings should include situations where a prosecutor decides to withdraw charges or discontinue proceedings.
- (45)A decision of the prosecutor resulting in an out-of-court settlement and thus ending criminal proceedings, excludes victims from the right to a review of a decision of the prosecutor not to prosecute, only if the settlement imposes a warning or an obligation.
- (46)Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. Factors such as the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to the restorative justice services and in conducting a restorative justice process. Restorative justice processes should, in principle, be

confidential, unless agreed otherwise by the parties, or as required by national law due to an overriding public interest. Factors such as threats made or any forms of violence committed during the process may be considered as requiring disclosure in the public interest.

- (47) Victims should not be expected to incur expenses in relation to their participation in criminal proceedings. Member States should be required to reimburse only necessary expenses of victims in relation to their participation in criminal proceedings and should not be required to reimburse victims' legal fees. Member States should be able to impose conditions in regard to the reimbursement of expenses in national law, such as time limits for claiming reimbursement, standard rates for subsistence and travel costs and maximum daily amounts for loss of earnings. The right to reimbursement of expenses in criminal proceedings should not arise in a situation where a victim makes a statement on a criminal offence. Expenses should only be covered to the extent that the victim is obliged or requested by the competent authorities to be present and actively participate in the criminal proceedings.
- (48) Recoverable property which is seized in criminal proceedings should be returned as soon as possible to the victim of the crime, subject to exceptional circumstances, such as in a dispute concerning the ownership or where the possession of the property or the property itself is illegal. The right to have property returned should be without prejudice to its legitimate retention for the purposes of other legal proceedings.
- (49) The right to a decision on compensation from the offender and the relevant applicable procedure should also apply to victims resident in a Member State other than the Member State where the criminal offence was committed.
- (50) The obligation set out in this Directive to transmit complaints should not affect Member States' competence to institute proceedings and is without prejudice to the rules of conflict relating to the exercise of jurisdiction, as laid down in Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings ⁽¹³⁾.
- (51) If the victim has left the territory of the Member State where the criminal offence was committed, that Member State should no longer be obliged to provide assistance, support and protection except for what is directly related to any criminal proceedings it is conducting regarding the criminal offence concerned, such as special protection measures during court proceedings. The Member State of the victim's residence should provide assistance, support and protection required for the victim's need to recover.
- (52) Measures should be available to protect the safety and dignity of victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, such as interim injunctions or protection or restraining orders.
- (53) The risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a coordinated and respectful manner, enabling victims to establish trust in authorities. Interaction with competent authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has

with them through, for example, video recording of interviews and allowing its use in court proceedings. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his or her family, associates or members of the public. To that end, Member States should be encouraged to introduce, especially in relation to court buildings and police stations, feasible and practical measures enabling the facilities to include amenities such as separate entrances and waiting areas for victims. In addition, Member States should, to the extent possible, plan the criminal proceedings so that contacts between victims and their family members and offenders are avoided, such as by summoning victims and offenders to hearings at different times.

- (54) Protecting the privacy of the victim can be an important means of preventing secondary and repeat victimisation, intimidation and retaliation and can be achieved through a range of measures including non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim. Such protection is particularly important for child victims, and includes non-disclosure of the name of the child. However, there might be cases where, exceptionally, the child can benefit from the disclosure or even widespread publication of information, for example where a child has been abducted. Measures to protect the privacy and images of victims and of their family members should always be consistent with the right to a fair trial and freedom of expression, as recognised in Articles 6 and 10, respectively, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (55) Some victims are particularly at risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender during criminal proceedings. It is possible that such a risk derives from the personal characteristics of the victim or the type, nature or circumstances of the crime. Only through individual assessments, carried out at the earliest opportunity, can such a risk be effectively identified. Such assessments should be carried out for all victims to determine whether they are at risk of secondary and repeat victimisation, of intimidation and of retaliation and what special protection measures they require.
- (56) Individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed.
- (57) Victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary

and repeat victimisation, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures.

- (58) Victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment, taking into account the wish of the victim. The extent of any such measure should be determined without prejudice to the rights of the defence and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure.
- (59) Immediate operational needs and constraints may make it impossible to ensure, for example, that the same police officer consistently interview the victim; illness, maternity or parental leave are examples of such constraints. Furthermore, premises specially designed for interviews with victims may not be available due, for example, to renovation. In the event of such operational or practical constraints, a special measure envisaged following an individual assessment may not be possible to provide on a case-by-case basis.
- (60) Where, in accordance with this Directive, a guardian or a representative is to be appointed for a child, those roles could be performed by the same person or by a legal person, an institution or an authority.
- (61) Any officials involved in criminal proceedings who are likely to come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner. Persons who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. Member States should ensure such training for police services and court staff. Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support or restorative justice services. This requirement should include training on the specific support services to which victims should be referred or specialist training where their work focuses on victims with specific needs and specific psychological training, as appropriate. Where relevant, such training should be gender sensitive. Member States' actions on training should be complemented by guidelines, recommendations and exchange of best practices in accordance with the Budapest roadmap.
- (62) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policymaking initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime. For victims of crime to receive the proper degree of assistance,

support and protection, public services should work in a coordinated manner and should be involved at all administrative levels — at Union level, and at national, regional and local level. Victims should be assisted in finding and addressing the competent authorities in order to avoid repeat referrals. Member States should consider developing ‘sole points of access’ or ‘one-stop shops’, that address victims' multiple needs when involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation.

- (63) In order to encourage and facilitate reporting of crimes and to allow victims to break the cycle of repeat victimisation, it is essential that reliable support services are available to victims and that competent authorities are prepared to respond to victims' reports in a respectful, sensitive, professional and non-discriminatory manner. This could increase victims' confidence in the criminal justice systems of Member States and reduce the number of unreported crimes. Practitioners who are likely to receive complaints from victims with regard to criminal offences should be appropriately trained to facilitate reporting of crimes, and measures should be put in place to enable third-party reporting, including by civil society organisations. It should be possible to make use of communication technology, such as e-mail, video recordings or online electronic forms for making complaints.
- (64) Systematic and adequate statistical data collection is recognised as an essential component of effective policymaking in the field of rights set out in this Directive. In order to facilitate evaluation of the application of this Directive, Member States should communicate to the Commission relevant statistical data related to the application of national procedures on victims of crime, including at least the number and type of the reported crimes and, as far as such data are known and are available, the number and age and gender of the victims. Relevant statistical data can include data recorded by the judicial authorities and by law enforcement agencies and, as far as possible, administrative data compiled by healthcare and social welfare services and by public and non-governmental victim support or restorative justice services and other organisations working with victims of crime. Judicial data can include information about reported crime, the number of cases that are investigated and persons prosecuted and sentenced. Service-based administrative data can include, as far as possible, data on how victims are using services provided by government agencies and public and private support organisations, such as the number of referrals by police to victim support services, the number of victims that request, receive or do not receive support or restorative justice.
- (65) This Directive aims to amend and expand the provisions of Framework Decision 2001/220/JHA. Since the amendments to be made are substantial in number and nature, that Framework Decision should, in the interests of clarity, be replaced in its entirety in relation to Member States participating in the adoption of this Directive.
- (66) This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-

discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial.

- (67) Since the objective of this Directive, namely to establish minimum standards on the rights, support and protection of victims of crime, cannot be sufficiently achieved by the Member States, and can therefore, by reason of its scale and potential effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (68) Personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters⁽¹⁴⁾ and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.
- (69) This Directive does not affect more far reaching provisions contained in other Union acts which address the specific needs of particular categories of victims, such as victims of human trafficking and victims of child sexual abuse, sexual exploitation and child pornography, in a more targeted manner.
- (70) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Directive.
- (71) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (72) The European Data Protection Supervisor delivered an opinion on 17 October 2011⁽¹⁵⁾ based on Article 41(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽¹⁶⁾,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Objectives

1. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

2. Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.

Article 2

Definitions

1. For the purposes of this Directive the following definitions shall apply:

(a) 'victim' means:

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

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

(b) 'family members' means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim;

(c) 'child' means any person below 18 years of age;

(d) 'restorative justice' means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.

2. Member States may establish procedures:

(a) to limit the number of family members who may benefit from the rights set out in this Directive taking into account the individual circumstances of each case; and

(b) in relation to paragraph (1)(a)(ii), to determine which family members have priority in relation to the exercise of the rights set out in this Directive.

CHAPTER 2

PROVISION OF INFORMATION AND SUPPORT

Article 3

Right to understand and to be understood

1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.
2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.
3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

Article 4

Right to receive information from the first contact with a competent authority

1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:
 - (a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;
 - (b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;
 - (c) how and under what conditions they can obtain protection, including protection measures;
 - (d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;
 - (e) how and under what conditions they can access compensation;
 - (f) how and under what conditions they are entitled to interpretation and translation;
 - (g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;
 - (h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;
 - (i) the contact details for communications about their case;
 - (j) the available restorative justice services;
 - (k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

2. The extent or detail of information referred to in paragraph 1 may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.

Article 5

Right of victims when making a complaint

1. Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.
2. Member States shall ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.
3. Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of their complaint provided for in paragraph 1, if they so request, in a language that they understand.

Article 6

Right to receive information about their case

1. Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information:
 - (a) any decision not to proceed with or to end an investigation or not to prosecute the offender;
 - (b) the time and place of the trial, and the nature of the charges against the offender.
2. Member States shall ensure that, in accordance with their role in the relevant criminal justice system, victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by them and that, upon request, they receive such information:
 - (a) any final judgment in a trial;
 - (b) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.
3. Information provided for under paragraph 1(a) and paragraph 2(a) shall include reasons or a brief summary of reasons for the decision concerned, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. The wish of victims as to whether or not to receive information shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.

5. Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender.

6. Victims shall, upon request, receive the information provided for in paragraph 5 at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

Article 7

Right to interpretation and translation

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.

2. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.

3. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. Member States shall ensure that victims who are entitled to information about the time and place of the trial in accordance with Article 6(1)(b) and who do not understand the language of the competent authority, are provided with a translation of the information to which they are entitled, upon request.

5. Victims may submit a reasoned request to consider a document as essential. There shall be no requirement to translate passages of essential documents which are not

relevant for the purpose of enabling victims to actively participate in the criminal proceedings.

6. Notwithstanding paragraphs 1 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

7. Member States shall ensure that the competent authority assesses whether victims need interpretation or translation as provided for under paragraphs 1 and 3. Victims may challenge a decision not to provide interpretation or translation. The procedural rules for such a challenge shall be determined by national law.

8. Interpretation and translation and any consideration of a challenge of a decision not to provide interpretation or translation under this Article shall not unreasonably prolong the criminal proceedings.

Article 8

Right to access victim support services

1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.

3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

4. Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.

5. Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

Article 9

Support from victim support services

1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:

- (a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;
 - (b) information about or direct referral to any relevant specialist support services in place;
 - (c) emotional and, where available, psychological support;
 - (d) advice relating to financial and practical issues arising from the crime;
 - (e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.
2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.
3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:
- (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
 - (b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

CHAPTER 3

PARTICIPATION IN CRIMINAL PROCEEDINGS

Article 10

Right to be heard

1. Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.
2. The procedural rules under which victims may be heard during criminal proceedings and may provide evidence shall be determined by national law.

Article 11

Rights in the event of a decision not to prosecute

1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.
2. Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been

taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

3. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.

4. Where the decision not to prosecute is taken by the highest prosecuting authority against whose decision no review may be carried out under national law, the review may be carried out by the same authority.

5. Paragraphs 1, 3 and 4 shall not apply to a decision of the prosecutor not to prosecute, if such a decision results in an out-of-court settlement, in so far as national law makes such provision.

Article 12

Right to safeguards in the context of restorative justice services

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

- (a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;
- (b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;
- (c) the offender has acknowledged the basic facts of the case;
- (d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;
- (e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

2. Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

Article 13

Right to legal aid

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

Article 14

Right to reimbursement of expenses

Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system. The conditions or procedural rules under which victims may be reimbursed shall be determined by national law.

Article 15

Right to the return of property

Member States shall ensure that, following a decision by a competent authority, recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings. The conditions or procedural rules under which such property is returned to the victims shall be determined by national law.

Article 16

Right to decision on compensation from the offender in the course of criminal proceedings

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.
2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

Article 17

Rights of victims resident in another Member State

1. Member States shall ensure that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed, particularly with regard to the organisation of the proceedings. For this purpose, the authorities of the Member State where the criminal offence was committed shall, in particular, be in a position:
 - (a) to take a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority;
 - (b) to have recourse to the extent possible to the provisions on video conferencing and telephone conference calls laid down in the Convention on Mutual Assistance in

Criminal Matters between the Member States of the European Union of 29 May 2000⁽¹⁷⁾ for the purpose of hearing victims who are resident abroad.

2. Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.

3. Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.

CHAPTER 4

PROTECTION OF VICTIMS AND RECOGNITION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS

Article 18

Right to protection

Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

Article 19

Right to avoid contact between victim and offender

1. Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.

2. Member States shall ensure that new court premises have separate waiting areas for victims.

Article 20

Right to protection of victims during criminal investigations

Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that during criminal investigations:

(a) interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority;

- (b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;
- (c) victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary;
- (d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

Article 21

Right to protection of privacy

1. Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.
2. In order to protect the privacy, personal integrity and personal data of victims, Member States shall, with respect for freedom of expression and information and freedom and pluralism of the media, encourage the media to take self-regulatory measures.

Article 22

Individual assessment of victims to identify specific protection needs

1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.
2. The individual assessment shall, in particular, take into account:
 - (a) the personal characteristics of the victim;
 - (b) the type or nature of the crime; and
 - (c) the circumstances of the crime.
3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under Articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article.
5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.
6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.
7. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.

Article 23

Right to protection of victims with specific protection needs during criminal proceedings

1. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in Article 22(1), may benefit from the measures provided for in paragraphs 2 and 3 of this Article. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.
2. The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with Article 22(1):
 - (a) interviews with the victim being carried out in premises designed or adapted for that purpose;
 - (b) interviews with the victim being carried out by or through professionals trained for that purpose;
 - (c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;
 - (d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.
3. The following measures shall be available for victims with specific protection needs identified in accordance with Article 22(1) during court proceedings:

- (a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;
- (b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;
- (c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and
- (d) measures allowing a hearing to take place without the presence of the public.

Article 24

Right to protection of child victims during criminal proceedings

1. In addition to the measures provided for in Article 23, Member States shall ensure that where the victim is a child:

- (a) in criminal investigations, all interviews with the child victim may be audiovisually recorded and such recorded interviews may be used as evidence in criminal proceedings;
- (b) in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family;
- (c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

The procedural rules for the audiovisual recordings referred to in point (a) of the first subparagraph and the use thereof shall be determined by national law.

2. Where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child.

CHAPTER 5 OTHER PROVISIONS

Article 25

Training of practitioners

1. Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of

victims and to enable them to deal with victims in an impartial, respectful and professional manner.

2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase the awareness of judges and prosecutors of the needs of victims.

3. With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims.

4. Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

5. In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

Article 26

Cooperation and coordination of services

1. Member States shall take appropriate action to facilitate cooperation between Member States to improve the access of victims to the rights set out in this Directive and under national law. Such cooperation shall be aimed at least at:

- (a) the exchange of best practices;
- (b) consultation in individual cases; and
- (c) assistance to European networks working on matters directly relevant to victims' rights.

2. Member States shall take appropriate action, including through the internet, aimed at raising awareness of the rights set out in this Directive, reducing the risk of victimisation, and minimising the negative impact of crime and the risks of secondary and repeat victimisation, of intimidation and of retaliation, in particular by targeting groups at risk such as children, victims of gender-based violence and violence in close relationships. Such action may include information and awareness raising campaigns and research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders.

CHAPTER 6

FINAL PROVISIONS

Article 27

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 November 2015.
2. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

Article 28

Provision of data and statistics

Member States shall, by 16 November 2017 and every three years thereafter, communicate to the Commission available data showing how victims have accessed the rights set out in this Directive.

Article 29

Report

The Commission shall, by 16 November 2017, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of action taken under Articles 8, 9 and 23, accompanied, if necessary, by legislative proposals.

Article 30

Replacement of Framework Decision 2001/220/JHA

Framework Decision 2001/220/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law.

In relation to Member States participating in the adoption of this Directive, references to that Framework Decision shall be construed as references to this Directive.

Article 31

Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 32

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 25 October 2012.

For the European Parliament

The President
M. SCHULZ
For the Council
The President
A. D. MAVROYIANNIS

(¹) OJ C 43, 15.2.2012, p. 39.

(²) OJ C 113, 18.4.2012, p. 56.

(³) Position of the European Parliament of 12 September 2012 (not yet published in the Official Journal) and decision of the Council of 4 October 2012.

(⁴) OJ L 82, 22.3.2001, p. 1.

(⁵) OJ C 115, 4.5.2010, p. 1.

(⁶) OJ C 187, 28.6.2011, p. 1.

(⁷) OJ C 285 E, 21.10.2010, p. 53.

(⁸) OJ C 296 E, 2.10.2012, p. 26.

(⁹) OJ L 338, 21.12.2011, p. 2.

(¹⁰) OJ L 101, 15.4.2011, p. 1.

(¹¹) OJ L 335, 17.12.2011, p. 1.

(¹²) OJ L 164, 22.6.2002, p. 3.

(¹³) OJ L 328, 15.12.2009, p. 42.

(¹⁴) OJ L 350, 30.12.2008, p. 60.

(¹⁵) OJ C 35, 9.2.2012, p. 10.

(¹⁶) OJ L 8, 12.1.2001, p. 1.

(¹⁷) OJ C 197, 12.7.2000, p. 3.

Appendix two – Framework Decision 2001/220

Quoted from:

‘COUNCIL FRAMEWORK DECISION of 15 March 2001 on the Standing of Victims in Criminal Proceedings’ <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001F0220&from=EN>> accessed 5 November 2020

Council Framework Decision
of 15 March 2001
on the standing of victims in criminal proceedings
(2001/220/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31 and Article 34(2)(b) thereof,

Having regard to the initiative by the Portuguese Republic(1),

Having regard to the opinion of the European Parliament(2),

Whereas:

- (1) In accordance with the Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, in particular points 19 and 51(c), within five years following entry into force of the Treaty, the question of victim support should be addressed, by making a comparative survey of victim compensation schemes and by assessing the feasibility of taking action within the European Union.
- (2) The Commission submitted a communication to the European Parliament, the Council and the Economic and Social Committee on 14 July 1999 entitled "Crime victims in the European Union: reflections on standards and action". The European Parliament adopted a Resolution on the Commission communication on 15 June 2000.
- (3) The conclusions of the European Council meeting in Tampere on 15 and 16 October 1999, in particular point 32 thereof, stipulate that minimum standards should be drawn up on the protection of the victims of crimes, in particular on crime victims' access to justice and on their right to compensation for damages, including legal costs. In addition, national programmes should be set up to finance measures, public and non-governmental, for assistance to and protection of victims.
- (4) Member States should approximate their laws and regulations to the extent necessary to attain the objective of affording victims of crime a high level of protection, irrespective of the Member State in which they are present.
- (5) Victims' needs should be considered and addressed in a comprehensive, coordinated manner, avoiding partial or inconsistent solutions which may give rise to secondary victimisation.

- (6) The provisions of this framework Decision are therefore not confined to attending to the victim's interests under criminal proceedings proper. They also cover certain measures to assist victims before or after criminal proceedings, which might mitigate the effects of the crime.
- (7) Measures to assist victims of crime, and in particular the provisions regarding compensation and mediation do not concern arrangements under civil procedure.
- (8) The rules and practices as regards the standing and main rights of victims need to be approximated, with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have allowance made for the disadvantage of living in a different Member State from the one in which the crime was committed.
- (9) The provisions of this Framework Decision do not, however, impose an obligation on Member States to ensure that victims will be treated in a manner equivalent to that of a party to proceedings.
- (10) The involvement of specialised services and victim support groups before, during and after criminal proceedings is important.
- (11) Suitable and adequate training should be given to persons coming into contact with victims, as this is essential both for victims and for achieving the purposes of proceedings.
- (12) Use should be made of existing contact point networking arrangements in Member States, whether under the judicial system or based on victim support group networks,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this Framework Decision:

- (a) "victim" shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State;
- (b) "victim support organisation" shall mean a non-governmental organisation, legally established in a Member State, whose support to victims of crime is provided free of charge and, conducted under appropriate conditions, complements the action of the State in this area;
- (c) "criminal proceedings" shall be understood in accordance with the national law applicable;
- (d) "proceedings" shall be broadly construed to include, in addition to criminal proceedings, all contacts of victims as such with any authority, public service or victim support organisation in connection with their case, before, during, or after criminal process;
- (e) "mediation in criminal cases" shall be understood as the search, prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person.

Article 2

Respect and recognition

1. Each Member State shall ensure that victims have a real and appropriate role in its criminal legal system. It shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.
2. Each Member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances.

Article 3

Hearings, and provision of evidence

Each Member State shall safeguard the possibility for victims to be heard during proceedings and to supply evidence.

Each Member State shall take appropriate measures to ensure that its authorities question victims only insofar as necessary for the purpose of criminal proceedings.

Article 4

Right to receive information

1. Each Member State shall ensure that victims in particular have access, as from their first contact with law enforcement agencies, by any means it deems appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interests. Such information shall be at least as follows:
 - (a) the type of services or organisations to which they can turn for support;
 - (b) the type of support which they can obtain;
 - (c) where and how they can report an offence;
 - (d) procedures following such a report and their role in connection with such procedures;
 - (e) how and under what conditions they can obtain protection;
 - (f) to what extent and on what terms they have access to:
 - (i) legal advice or
 - (ii) legal aid, or
 - (iii) any other sort of advice,if, in the cases envisaged in point (i) and (ii), they are entitled to receive it;
 - (g) requirements for them to be entitled to compensation;
 - (h) if they are resident in another State, any special arrangements available to them in order to protect their interests.
2. Each Member State shall ensure that victims who have expressed a wish to this effect are kept informed of:
 - (a) the outcome of their complaint;

(b) relevant factors enabling them, in the event of prosecution, to know the conduct of the criminal proceedings regarding the person prosecuted for offences concerning them, except in exceptional cases where the proper handling of the case may be adversely affected;

(c) the court's sentence.

3. Member States shall take the necessary measures to ensure that, at least in cases where there might be danger to the victims, when the person prosecuted or sentenced for an offence is released, a decision may be taken to notify the victim if necessary.
4. In so far as a Member State forwards on its own initiative the information referred to in paragraphs 2 and 3, it must ensure that victims have the right not to receive it, unless communication thereof is compulsory under the terms of the relevant criminal proceedings.

Article 5

Communication safeguards

Each Member State shall, in respect of victims having the status of witnesses or parties to the proceedings, take the necessary measures to minimise as far as possible communication difficulties as regards their understanding of, or involvement in, the relevant steps of the criminal proceedings in question, to an extent comparable with the measures of this type which it takes in respect of defendants.

Article 6

Specific assistance to the victim

Each Member State shall ensure that victims have access to advice as referred to in Article 4(1)(f)(iii), provided free of charge where warranted, concerning their role in the proceedings and, where appropriate, legal aid as referred to in Article 4(1)(f)(ii), when it is possible for them to have the status of parties to criminal proceedings.

Article 7

Victims' expenses with respect to criminal proceedings

Each Member State shall, according to the applicable national provisions, afford victims who have the status of parties or witnesses the possibility of reimbursement of expenses incurred as a result of their legitimate participation in criminal proceedings.

Article 8

Right to protection

1. Each Member State shall ensure a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of their privacy, where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy.
2. To that end, and without prejudice to paragraph 4, each Member State shall guarantee that it is possible to adopt, if necessary, as part of the court proceedings, appropriate measures to protect the privacy and photographic image of victims and their families or persons in a similar position.
3. Each Member State shall further ensure that contact between victims and offenders within court premises may be avoided, unless criminal proceedings require such

contact. Where appropriate for that purpose, each Member State shall progressively provide that court premises have special waiting areas for victims.

4. Each Member State shall ensure that, where there is a need to protect victims - particularly those most vulnerable - from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles.

Article 9

Right to compensation in the course of criminal proceedings

1. Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.
2. Each Member State shall take appropriate measures to encourage the offender to provide adequate compensation to victims.
3. Unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay.

Article 10

Penal mediation in the course of criminal proceedings

1. Each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure.
2. Each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account.

Article 11

Victims resident in another Member State

1. Each Member State shall ensure that its competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a State other than the one where the offence has occurred, particularly with regard to the organisation of the proceedings. For this purpose, its authorities should, in particular, be in a position:
 - to be able to decide whether the victim may make a statement immediately after the commission of an offence,
 - to have recourse as far as possible to the provisions on video conferencing and telephone conference calls laid down in Articles 10 and 11 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000(3) for the purpose of hearing victims resident abroad.
2. Each Member State shall ensure that the victim of an offence in a Member State other than the one where he resides may make a complaint before the competent authorities of his State of residence if he was unable to do so in the Member State where the offence was committed or, in the event of a serious offence, if he did not wish to do so.

The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the national law of the State in which the offence was committed.

Article 12

Cooperation between Member States

Each Member State shall foster, develop and improve cooperation between Member States in order to facilitate the more effective protection of victims' interests in criminal proceedings, whether in the form of networks directly linked to the judicial system or of links between victim support organisations.

Article 13

Specialist services and victim support organisations

1. Each Member State shall, in the context of proceedings, promote the involvement of victim support systems responsible for organising the initial reception of victims and for victim support and assistance thereafter, whether through the provision of specially trained personnel within its public services or through recognition and funding of victim support organisations.
2. Each Member State shall encourage action taken in proceedings by such personnel or by victim support organisations, particularly as regards:
 - (a) providing victims with information;
 - (b) assisting victims according to their immediate needs;
 - (c) accompanying victims, if necessary and possible during criminal proceedings;
 - (d) assisting victims, at their request, after criminal proceedings have ended.

Article 14

Training for personnel involved in proceedings or otherwise in contact with victims

1. Through its public services or by funding victim support organisations, each Member State shall encourage initiatives enabling personnel involved in proceedings or otherwise in contact with victims to receive suitable training with particular reference to the needs of the most vulnerable groups.
2. Paragraph 1 shall apply in particular to police officers and legal practitioners.

Article 15

Practical conditions regarding the position of victims in proceedings

1. Each Member State shall support the progressive creation, in respect of proceedings in general, and particularly in venues where criminal proceedings may be initiated, of the necessary conditions for attempting to prevent secondary victimisation and avoiding placing victims under unnecessary pressure. This shall apply particularly as regards proper initial reception of victims, and the establishment of conditions appropriate to their situation in the venues in question.
2. For the purposes of paragraph 1, each Member State shall in particular have regard to facilities within courts, police stations, public services and victim support organisations.

Article 16

Territorial scope

This Framework Decision shall apply to Gibraltar.

Article 17

Implementation

Each Member State shall bring into force the laws, regulations and administrative provisions necessary to comply with this Framework Decision:

- regarding Article 10, 22 March 2006,
- regarding Articles 5 and 6, 22 March 2004,
- regarding the other provisions, 22 March 2002.

Article 18

Assessment

As from the dates referred to in Article 17, each Member State shall forward to the General Secretariat of the Council and to the Commission the text of the provisions enacting into national law the requirements laid down by this Framework Decision. The Council shall assess, within one year following each of these dates, the measures taken by Member States to comply with the provisions of this Framework Decision, by means of a report drawn up by the General Secretariat on the basis of the information received from Member States and a report in writing submitted by the Commission.

Article 19

Entry into force

This Framework Decision shall enter into force on the date of its publication in the Official Journal of the European Communities.

Done at Brussels, 15 March 2001.

For the Council

The President

M-I. Klingvall

(1) OJ C 243, 24.8.2000, p. 4.

(2) Opinion delivered on 12.12.2000 (not yet published in the Official Journal).

(3) OJ C 197, 12.7.2000, p. 1.

Appendix three – Besluit Slachtoffers van Strafbare Feiten

Quoted from:

Koninkrijksrelaties M van BZ en, Besluit slachtoffers van strafbare feiten 2016

Besluit slachtoffers van strafbare feiten

Besluit van 24 augustus 2016, houdende regels voor de rechten, de ondersteuning en de bescherming van slachtoffers van strafbare feiten (Besluit slachtoffers van strafbare feiten)

Wij Willem-Alexander, bij de gratie Gods, Koning der Nederlanden, Prins van Oranje-Nassau, enz. enz. enz.

Op de voordracht van Onze Minister van Veiligheid en Justitie van 6 juni 2016, nr. 768965, directie Wetgeving en Juridische Zaken;

Gelet op de artikelen 51aa, derde lid, 51ab, tweede lid en 51h, vierde lid, van het Wetboek van Strafvordering;

De Afdeling advisering van de Raad van State gehoord (advies van 20 juli 2016, nr. W03.16.0144/II);

Gezien het nader rapport van Onze Minister van Veiligheid en Justitie van 12 augustus 2016, nr. 791601;

Hebben goedgevonden en verstaan:

Hoofdstuk 1. Definities

Artikel 1

In deze regeling wordt verstaan onder:

- a) *de wet*: het Wetboek van Strafvordering;
- b) *slachtoffer*: de persoon als bedoeld in artikel 51a, eerste lid, onder a, van de wet;
- c) *familieleden*: de personen als bedoeld in artikel 51a, eerste lid, onder b, van de wet;
- d) *de opsporingsambtenaar*: een ambtenaar als bedoeld in artikel 141 van de wet;
- e) *slachtofferhulporganisaties*: de coördinerende rechtspersoon en de instellingen voor slachtofferhulp aangesloten bij die rechtspersoon, bedoeld in artikel 7 van de Wet Justitie-subsidies;
- f) *gespecialiseerde hulporganisaties*: instellingen die op een specifiek terrein hulp en voorzieningen aan slachtoffers kunnen bieden.

Hoofdstuk 2. Instellingen voor slachtofferhulp

Artikel 2

1. Het slachtoffer heeft, rekening houdend met zijn behoeften, voor, tijdens en gedurende een passende termijn na het strafproces kosteloos toegang tot slachtofferhulporganisaties.
2. De slachtofferhulporganisaties handelen in het belang van het slachtoffer, met inachtneming van passende bescherming van de persoonlijke levenssfeer.
3. De familieleden van het slachtoffer hebben toegang tot slachtofferhulporganisaties, rekening houdend met hun behoeften en de mate waarin zij schade hebben geleden als gevolg van het tegen het slachtoffer gepleegde strafbare feit.
4. De beschikbaarheid van slachtofferhulp, bedoeld in artikel 3, eerste lid, is niet afhankelijk van het doen van aangifte door het slachtoffer van een strafbaar feit.

Artikel 3

1. De slachtofferhulporganisaties zorgen ten minste voor:
 - a) informatie, advies en ondersteuning die relevant is voor de rechten van het slachtoffer, onder meer inzake toegang tot procedures voor vergoeding van schade als gevolg van strafbare feiten, en over de rol van het slachtoffer in het strafproces, onder meer ter voorbereiding op het bijwonen van de terechtzitting;
 - b) informatie over of rechtstreekse doorverwijzing naar relevante bestaande gespecialiseerde hulporganisaties;
 - c) emotionele en, waar beschikbaar, psychologische ondersteuning;
 - d) advies over financiële en praktische kwesties naar aanleiding van het strafbare feit;
 - e) advies over het risico en het voorkomen van secundaire en herhaalde victimisatie, van intimidatie en van vergelding, tenzij anderszins verstrekt door andere openbare of particuliere organisaties.
2. De slachtofferhulporganisaties schenken bijzondere aandacht aan de specifieke behoeften van slachtoffers die aanzienlijke schade hebben geleden als gevolg van de ernst van het strafbare feit.
3. De slachtofferhulporganisaties voeren de taken, bedoeld in artikel 6 van de Wet Justitie-subsidies, uit overeenkomstig de bepalingen van de artikelen 2 en 3 van dit besluit.

Artikel 4

Bij ministeriële regeling kunnen nadere voorschriften worden gegeven betreffende de toegang bedoeld in artikel 2, eerste lid van slachtoffers en hun familieleden tot instellingen voor slachtofferhulp, de voorwaarden voor deze toegang, organisatie en werkzaamheden van instellingen voor slachtofferhulp.

Hoofdstuk 3. Informatie over rechten en voorzieningen

Artikel 5

De opsporingsambtenaar of andere ambtenaar van een organisatie die opsporing van strafbare feiten tot taak heeft, verstrekt het slachtoffer bij zijn eerste contact met de betrokken opsporingsambtenaar onverwijld informatie betreffende:

- a) het soort ondersteuning dat het slachtoffer kan krijgen en van wie hij deze kan krijgen, waaronder, indien van belang, basisinformatie over de toegang tot medische zorg, gespecialiseerde ondersteuning, waaronder psychologische zorg en alternatieve huisvesting;
- b) het verloop van de procedures omtrent de aangifte van een strafbaar feit en de rol die het slachtoffer in die procedures heeft;
- c) de wijze waarop het slachtoffer bescherming kan krijgen, waaronder beschermingsmaatregelen en de hiervoor geldende voorwaarden;
- d) de wijze waarop het slachtoffer toegang krijgt tot juridisch advies, rechtsbijstand en andere vormen van advies en de hiervoor geldende voorwaarden;
- e) de wijze waarop het slachtoffer schadevergoeding kan verkrijgen en de hiervoor geldende voorwaarden;
- f) de wijze waarop het slachtoffer aanspraak kan maken op vertolking en vertaling en de hiervoor geldende voorwaarden;
- g) de beschikbare bijzondere maatregelen, procedures of regelingen om de belangen van het slachtoffer te beschermen in de lidstaat waar het eerste contact met de bevoegde autoriteit plaatsvindt, indien het slachtoffer woonachtig is in een andere lidstaat dan die waarin het strafbare feit werd gepleegd;
- h) de beschikbare procedures om klachten in te dienen als de bevoegde autoriteit, die in het kader van het strafproces optreedt, zijn rechten niet eerbiedigt;
- i) de contactgegevens voor communicatie over zijn zaak;
- j) de beschikbare herstelrechtvoorzieningen;
- k) de wijze waarop het slachtoffer de kosten als gevolg van zijn deelname aan de strafprocedure vergoed kan krijgen en de hierbij geldende voorwaarden.

Artikel 6

1. De omvang en gedetailleerdheid van de informatie, bedoeld in artikel 5, kan verschillen afhankelijk van de specifieke behoeften en persoonlijke omstandigheden van het slachtoffer en de aard van het strafbare feit.
2. Afhankelijk van de behoeften van het slachtoffer en het belang van dergelijke informatie in iedere fase van het strafproces, kan de opsporingsambtenaar in een later stadium meer gedetailleerde informatie dan genoemd in artikel 5, aan het slachtoffer verstrekken.

Artikel 7

1. Er worden passende maatregelen genomen om het slachtoffer bij zijn contacten met autoriteiten in het kader van het strafproces, indien nodig, te helpen om deze autoriteiten te begrijpen en zelf als slachtoffer te worden begrepen.
2. Indien de informatie als bedoeld in artikel 5 wordt verstrekt en het slachtoffer de Nederlandse taal niet of onvoldoende begrijpt, dan wordt op verzoek van het slachtoffer deze informatie verstrekt in een taal die het slachtoffer begrijpt of wordt hem de nodige taalkundige bijstand geboden.

Artikel 8

Bij ministeriële regeling worden nadere voorschriften gegeven betreffende de inhoud en wijze van verstrekking van de informatie, bedoeld in artikel 5, de omvang en gedetailleerdheid van de informatie, bedoeld in artikel 6 en de maatregelen, bedoeld in artikel 7.

Hoofdstuk 4. Maatregelen tot bescherming

Artikel 9

1. Tijdens het voorbereidend onderzoek en het onderzoek ter terechtzitting:
 - a) loopt de ondervraging van het slachtoffer geen onnodige vertraging op nadat aangifte van het strafbare feit is gedaan;
 - b) wordt het aantal ondervragingen van het slachtoffer tot het minimum beperkt en vindt ondervraging alleen plaats als dat strikt noodzakelijk is met het oog op het strafrechtelijk onderzoek;
 - c) worden er over het privéleven van het slachtoffer alleen vragen gesteld die nodig zijn en verband houden met het strafbare feit;
 - d) worden medische onderzoeken tot een minimum beperkt en alleen uitgevoerd indien dat strikt noodzakelijk is met het oog op het strafrechtelijk onderzoek.
2. Bij ministeriële regeling kunnen voorschriften worden gegeven betreffende:
 - a) maatregelen tot bescherming van slachtoffers, waaronder in het bijzonder minderjarige slachtoffers, en hun familieleden;
 - b) de voorwaarden waaronder contact tussen het slachtoffer en, zo nodig, zijn familieleden, en de verdachte of veroordeelde kan worden vermeden in gebouwen waar het strafproces plaats heeft, tenzij het strafproces dit vereist;
 - c) het voorzien in afzonderlijke wachtruimten voor slachtoffers in nieuwe gerechtsgebouwen.

Hoofdstuk 5. Individuele beoordeling, specifieke beschermingsbehoeften, bijzondere maatregelen en minderjarigen

Artikel 10

1. De opsporingsambtenaar, of andere ambtenaar van een organisatie die opsporing van strafbare feiten tot taak heeft, zorgt ervoor dat het slachtoffer, tijdens of zo spoedig mogelijk na het eerste contact, een tijdige en individuele beoordeling krijgt om specifieke beschermingsbehoeften te onderkennen en om te bepalen of en in welke mate het slachtoffer tijdens het strafproces en de tenuitvoerlegging van strafrechtelijke beslissingen van bijzondere maatregelen gebruik moet kunnen maken, gelet op zijn bijzondere kwetsbaarheid voor secundaire en herhaalde victimisatie, voor intimidatie en voor vergelding.

2. De individuele beoordeling houdt in het bijzonder rekening met:
 - a) de persoonlijke kenmerken van het slachtoffer;
 - b) het soort strafbaar feit of de aard van het strafbare feit, en
 - c) de omstandigheden van het strafbare feit.
3. Bij de individuele beoordeling wordt bijzondere aandacht besteed aan:
 - a) slachtoffers die aanzienlijke schade hebben geleden als gevolg van de ernst van het strafbare feit;
 - b) slachtoffers van strafbare feiten die zijn ingegeven door vooroordelen of discriminatie die in het bijzonder verband kunnen houden met hun persoonlijke kenmerken;
 - c) slachtoffers wier relatie met en afhankelijkheid van de verdachte of veroordeelde hen bijzonder kwetsbaar maken.
4. De omvang en gedetailleerdheid van de individuele beoordeling is afhankelijk van de ernst van het strafbare feit en de schade die het slachtoffer kennelijk heeft geleden.
5. Het slachtoffer wordt nauw bij de individuele beoordeling betrokken. Tevens worden zijn wensen in overweging genomen, waaronder de wens om geen aanspraak te maken op bijzondere maatregelen, als bedoeld in artikel 11, 12 en 14.
6. De individuele beoordeling wordt gedurende het strafproces en de tenuitvoerlegging van strafrechtelijke beslissingen zo nodig aangepast aan de actuele situatie.
7. Bij ministeriële regeling kunnen nadere voorschriften worden gegeven betreffende de toepassing van de individuele beoordeling.

Artikel 11

Tijdens het voorbereidend onderzoek en het onderzoek ter terechtzitting kunnen de volgende maatregelen worden genomen voor het overeenkomstig artikel 10, eerste lid, geïdentificeerde slachtoffer met specifieke beschermingsbehoeften:

- a) het verhoor van het slachtoffer wordt gedaan in een daarvoor ontworpen of aangepaste ruimte;
- b) het verhoor van het slachtoffer wordt gedaan door of via personen die daarvoor professioneel zijn opgeleid;
- c) alle verhoren van het slachtoffer worden gedaan door dezelfde personen, tenzij dit indruist tegen de goede rechtsbedeling;
- d) alle verhoren van het slachtoffer van seksueel geweld, gender-gerelateerd geweld of geweld in hechte relaties worden, tenzij hij door een officier van justitie of een rechter wordt ondervraagd, indien het slachtoffer dat wenst, gedaan door een persoon van hetzelfde geslacht als het slachtoffer, mits dit geen

afbreuk doet aan het verloop van het voorbereidend onderzoek en het onderzoek ter terechtzitting.

Artikel 12

Tijdens het onderzoek ter terechtzitting kunnen de volgende maatregelen worden genomen voor het overeenkomstig artikel 10, eerste lid, geïdentificeerde slachtoffer met specifieke beschermingsbehoeften:

- a) tussen slachtoffer en verdachten, onder meer tijdens het afleggen van een getuigenverklaring, kan geen oogcontact plaatsvinden, doordat gebruik wordt gemaakt van passende middelen, waaronder communicatietechnologie overeenkomstig artikel 131a van de wet en artikel 78a van het Wetboek van Strafrecht;
- b) het slachtoffer kan in de rechtszaal worden gehoord zonder daar aanwezig te zijn, in het bijzonder door middel van geschikte communicatietechnologie overeenkomstig artikel 131a van de wet en artikel 78a van het Wetboek van Strafrecht;
- c) de rechter beveelt behandeling met gesloten deuren overeenkomstig artikel 269 van de wet.

Artikel 13

1. Minderjarige slachtoffers worden beschouwd als slachtoffers met specifieke beschermingsbehoeften. Zij krijgen een individuele beoordeling als bedoeld in artikel 10, eerste lid, teneinde te bepalen of en in welke mate zij in aanmerking komen voor bijzondere maatregelen, als bedoeld in de artikelen 11, 12 en 14.
2. Indien er onzekerheid bestaat over de leeftijd van een slachtoffer en er voldoende reden is om aan te nemen dat het slachtoffer minderjarig is, dan wordt het slachtoffer voor de toepassing van dit besluit verondersteld minderjarig te zijn.

Artikel 14

Als het slachtoffer minderjarig is dan kunnen, naast de maatregelen bedoeld in artikel 11, de volgende maatregelen worden getroffen, voor het voorbereidend onderzoek en het onderzoek ter terechtzitting:

- a) van elke ondervraging van het minderjarige slachtoffer wordt een audiovisuele opname gemaakt, die overeenkomstig de wet, in het bijzonder de artikelen 338 tot en met 344a, in het strafproces als bewijsmiddel kan worden gebruikt;
- b) indien er een belangenconflict is tussen de uitoefenaren van het ouderlijk gezag of de voogdij en het minderjarige slachtoffer wordt artikel 250 in samenhang met artikel 247, tweede lid, van Boek 1 van het Burgerlijk Wetboek overeenkomstig toegepast;
- c) indien er een belangenconflict is of kan bestaan tussen het minderjarige slachtoffer en de personen die het ouderlijk gezag of de voogdij uitoefenen, komt het recht op bijstand en op vertegenwoordiging door een advocaat toe aan het minderjarige slachtoffer, overeenkomstig artikel 51c, tweede en derde lid van de wet.

Artikel 15

1. Bij het horen van een minderjarig slachtoffer worden de leeftijd en het ontwikkelingsniveau van de minderjarige op passende wijze in aanmerking genomen.
2. Het minderjarige slachtoffer of zijn wettelijk vertegenwoordiger of bijzondere curator, als bedoeld in artikel 250 van Boek 1 van het Burgerlijk Wetboek, worden geïnformeerd over alle rechten en maatregelen die specifiek verband houden met het minderjarige slachtoffer.

Artikel 16

1. De maatregelen bedoeld in de artikelen 11, 12 en 14 worden alleen genomen indien hierdoor de rechten van de verdediging niet worden geschaad.
2. Van een maatregel bedoeld in de artikelen 11 en 12, onder a en b, kan worden afgezien als:
 - a) deze wegens operationele of praktische beperkingen niet realiseerbaar is, of
 - b) het noodzakelijk is het slachtoffer dringend te ondervragen en
het slachtoffer zelf of een derde schade kan lijden of afbreuk kan worden gedaan aan de rechtsgang, indien het ondervragen wordt uitgesteld of achterwege blijft.
3. De maatregelen bedoeld in de artikelen 11, 12 en 14 kunnen worden genomen, naast andere beschikbare maatregelen.

Hoofdstuk 6. Herstelrechtvoorzieningen

Artikel 17

Bij de toepassing van herstelrechtvoorzieningen, bedoeld in artikel 51h van de wet, worden maatregelen getroffen om slachtoffers te vrijwaren van secundaire en herhaalde victimisatie, van intimidatie en van vergelding.

Artikel 18

1. De herstelrechtvoorzieningen, bedoeld in artikel 51h van de wet, worden toegepast onder de volgende voorwaarden:
 - a) van de herstelrechtvoorzieningen wordt alleen gebruik gemaakt in het belang van het slachtoffer, na afweging van de veiligheidsaspecten, en met diens vrijwillige en met kennis van zaken gegeven toestemming die te allen tijde mag worden ingetrokken;
 - b) alvorens toe te stemmen in deelname aan herstelrechtvoorzieningen, ontvangt het slachtoffer volledige en objectieve informatie over dat proces en de mogelijke resultaten ervan, alsook informatie over de procedures volgens welke erop zal worden toegezien dat een eventuele overeenkomst wordt uitgevoerd;
 - c) de verdachte of veroordeelde heeft de feiten die aan de zaak ten grondslag liggen, erkend;
 - d) de overeenkomst, als bedoeld in artikel 51h, tweede lid, van de wet komt vrijwillig tot stand;

- e) hetgeen in het kader van de toepassing artikel 51h van de wet buiten de openbaarheid wordt behandeld, is vertrouwelijk en wordt niet bekendgemaakt, tenzij de partijen daarin toestemmen.
2. Bij ministeriële regeling kunnen nadere regels worden gesteld betreffende de toepassing van herstelrechtvoorzieningen.

Hoofdstuk 7. Inwerkingtreding en citeertitel

Artikel 19

Deze regeling treedt in werking op een bij koninklijk besluit te bepalen tijdstip dat voor de verschillende artikelen of onderdelen daarvan verschillend kan worden vastgesteld.

Artikel 20

Deze regeling wordt aangehaald als: Besluit slachtoffers van strafbare feiten.

Lasten en bevelen dat dit besluit met de daarbij behorende nota van toelichting in het Staatsblad zal worden geplaatst.

Wassenaar, 24 augustus 2016

Willem-Alexander

De Minister van Veiligheid en Justitie,

G.A. van der Steur

Uitgegeven de vijfde september 2016

De Minister van Veiligheid en Justitie,

G.A. van der Steur

Appendix four – Victims of Crime Act 2017

Quoted from:

Oireachtas H of the, ‘Criminal Justice (Victims of Crime) Act 2017 – No. 28 of 2017 –

Houses of the Oireachtas’ (27 December 2016)

<<https://www.oireachtas.ie/en/bills/bill/2016/121>> accessed 2 December 2020

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CRIMINAL JUSTICE (VICTIMS OF CRIME) ACT 2017

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CRIMINAL JUSTICE (VICTIMS OF CRIME) ACT 2017

An Act to give effect to provisions of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012¹ establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; for that purpose to amend the Criminal Justice Act 1951, the Criminal Procedure Act 1967, the Criminal Law (Rape) Act 1981, the Criminal Evidence Act 1992, the Criminal Justice Act 1993, the Bail Act 1997, the Courts Service Act 1998, the Children Act 2001, the Criminal Justice (Female Genital Mutilation) Act 2012 and the Criminal Law (Sexual Offences) Act 2017; and to provide for related matters.

[5th November, 2017]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY

Short title and commencement

- 1.(1) This Act may be cited as the Criminal Justice (Victims of Crime) Act 2017.
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions; and, in particular, *paragraph (b)(ii)* and *paragraph (d)* of *section 30* may be brought into operation on different days for different courts and for different circuits and different district court districts.

Interpretation

2. (1) In this Act—
 - “Act of 1960” means the Criminal Justice Act 1960;
 - “Act of 1993” means the Criminal Justice Act 1993;
 - “Act of 2001” means the Children Act 2001;
 - “Act of 2005” means the Garda Síochána Act 2005;

[1] OJ No. L315, 14.11.2012, p.57

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- “Act of 2006” means the Criminal Law (Insanity) Act 2006;
- “Act of 2010” means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;
- “assessment” has the meaning assigned to it by *section 15*;
- “child”, other than in the definition of family member, means a person under the age of 18 years;
- “children detention school” has the same meaning as it has in section 3 of the Act of 2001;
- “civil partner” means a person in a civil partnership or legal relationship to which section 3 of the Act of 2010 applies;
- “clinical director” has the meaning assigned to it in section 1 of the Act of 2006;
- “cohabitant” means a cohabitant within the meaning of section 172(1) of the Act of 2010;
- “complaint”, other than in *section 7(1)(l)*, means a statement made by a person orally or in writing, including by electronic means, to a member of the Garda Síochána or an officer of the Ombudsman Commission alleging that the person, or another person, has been the victim of an offence;
- “designated centre” shall be construed in accordance with section 3 of the Act of 2006;
- “director of a children detention school” means a person who has been appointed under section 180 of the Act of 2001 and who is responsible for the immediate control and supervision of a children detention school;
- “enactment” has the same meaning as it has in the Interpretation Act 2005;
- “family member”, in relation to a victim, means—
- (a) a spouse, civil partner or cohabitant of the victim,
 - (b) a child or step-child of the victim,
 - (c) a parent or grandparent of the victim,
 - (d) a brother, sister, half brother or half sister of the victim,
 - (e) a grandchild of the victim,
 - (f) an aunt, uncle, nephew or niece of the victim, and (g) any other person—
 - (i) who is or, where the victim is deceased, was dependent on the victim, or
 - (ii) who a court, a member of the Garda Síochána, an officer of the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, a director of a children detention school or a clinical director of a designated centre, as the case may be, considers has or, where the victim is deceased,

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had a sufficiently close connection with the victim as to warrant his or her being treated as a family member;

“Irish Prison Service” means the prison service of the Department of Justice and Equality, which is charged with the management of prisons within the meaning of section 2 of the Prisons Act 2007;

“member of staff of a children detention school” means—

- (a) a person who is appointed as a member of staff of a children detention school under section 181 of the Act of 2001, and
- (b) a person who became such a member of staff pursuant to section 182 of that Act;

“member of the Garda Síochána” has the same meaning as it has in section 3 of the Act of 2005;

“Minister” means the Minister for Justice and Equality;

“officer of the Ombudsman Commission” means—

- (a) a person who is appointed, or becomes an officer of the Ombudsman Commission, under section 71 of the Act of 2005, and
- (b) a person who is engaged by the Ombudsman Commission pursuant to an arrangement under section 74 of that Act;

“officer of the Director of Public Prosecutions” means a person who is appointed to be an officer or servant of the Director of Public Prosecutions under section 2(11) of the Prosecution of Offences Act 1974;

“Ombudsman Commission” means the Garda Síochána Ombudsman Commission

established under section 64 of the Act of 2005;

“protection measure” means a measure which is intended to safeguard the safety and welfare of a victim by limiting or preventing contact with, or repeat victimisation, retaliation or intimidation of, the victim by an alleged offender or any other person on his or her behalf and includes:

- (a) advice regarding the personal safety of the victim;
- (b) advice regarding the protection of the property of the victim;
- (c) advice regarding safety orders, barring orders, interim barring orders and protection orders within the meaning of the Domestic Violence Act 1996;
- (d) advice regarding orders made under section 10 of the Non-Fatal Offences Against the Person Act 1997, section 101 of the Criminal Justice Act 2006 and section 26 or 26A of the Criminal Justice Act 2007;
- (e) an application to remand the alleged offender in custody; and
- (f) an application that any admission of an alleged offender to bail be subject to conditions;

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“restorative justice scheme” means any scheme administered for the time being under which, with the consent of each of them, a victim and an offender or alleged offender engage with each other to resolve, with the assistance of an impartial third party, matters arising from the offence or alleged offence;

“secondary victimisation” means victimisation that occurs indirectly through the response of institutions and individuals to the victim;

“special measure” means a measure referred to in *section 17* or *19*;

“specific protection need” means a particular need of a victim which is identified by an assessment;

“victim” means a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by an offence.

- (2) Subject to *section 3*, a reference to a victim in this Act shall, where the death of a victim is caused directly by an offence, be construed as a reference to a family member provided that the family member concerned has not been charged with, or is not under investigation for, an offence in connection with the death of the victim.
- (3) Where the age of a victim is uncertain but there is reason to believe that the victim is a child, he or she shall be presumed to be a child for the purposes of this Act, unless the contrary is proved.
- (4) For convenience of expression, where, in this Act, a reference is made to “Garda Síochána” (and the context is the whole or part of that police force) a construction employing the singular form is used.

Nomination of family members

3. Where the death of a victim is caused directly by an offence and more than one family member of the victim seeks to avail himself or herself of a right under this Act in respect of the offence, the Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, the director of a children detention school or the clinical director of a designated centre, as the case may be, may—
 - (a) request that the family members concerned nominate a family member to avail himself or herself of the right, or
 - (b) where the family members are unable to reach agreement in respect of a nomination under *paragraph (a)*, nominate one or more family members for the purposes of availing of the right concerned, having regard to the degree of relationship between the family members and the victim.

Application of Act

4. (1) The provisions of this Act shall not apply to a decision referred to in *section 8(2)(c), (d), (e) or (f)* which is made before the commencement of the provisions concerned.

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- (2) The application of this Act is not dependent on the commission of an offence having to be established (nor is it dependent on establishing whether the person concerned suffered any harm caused by an offence).

Expenses

5. The expenses incurred by—
- (a) the Minister,
 - (b) the Garda Síochána,
 - (c) the Director of Public Prosecutions,
 - (d) the Courts Service,
 - (e) the Minister for Children and Youth Affairs, and
 - (f) the Minister for Health, in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Repeal of provisions of Criminal Law (Sexual Offences) Act 2017

6. The following provisions of the Criminal Law (Sexual Offences) Act 2017 are repealed:
- (a) section 36, save in so far as it inserts section 14C in the Criminal Evidence Act 1992;
 - (b) section 38.

PART 2
RIGHT TO INFORMATION

Information on first contact

7. (1) Subject to *subsection (2)*, where a victim first contacts or is contacted by the Garda Síochána or the Ombudsman Commission in relation to an alleged offence, the Garda Síochána or the Ombudsman Commission, as the case may be, shall offer the victim information relating to the following:
- (a) services providing support for victims including, where relevant, appropriate specialist services (which may include psychological support services) and services providing alternative accommodation;
 - (b) the procedure for making a complaint in relation to an offence;
 - (c) where any enquiries by a victim relating to a complaint which he or she has made may be addressed

- (d) the circumstances in which a victim may be entitled to assistance in the form of interpretation and translation;
 - (e) the role of the victim in the criminal justice process;
 - (f) any particular measures, procedures or arrangements which are available to victims who are resident in a Member State other than the Member State where the alleged offence was committed;
 - (g) any particular measures, procedures or arrangements which are available to a victim who is a child;
 - (h) how and under what conditions a victim may obtain protection including by way of protection measures;
 - (i) any scheme relating to compensation for injuries suffered as a result of a crime;
 - (j) the power of a court to make a compensation order under section 6 of the Act of 1993;
 - (k) a victim's right to give evidence or make submissions under section 5 of the Act of 1993;
 - (l) the procedures for making a complaint to the Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions, the Courts Service, the Irish Prison Service, the director of a children detention school or the clinical director of a designated centre, as the case may be, in respect of any alleged breach of rights or obligations arising under this Act;
 - (m) restorative justice schemes, where available;
 - (n) the types of cases in which legal advice and legal aid may be available to a victim;
 - (o) any entitlement to expenses arising from the participation of a victim in any proceedings relating to an offence.
- (2) The extent and detail of information offered to a victim under *subsection (1)* shall be determined by the Garda Síochána or the Ombudsman Commission, as the case may be, by reference to the type or nature of the alleged offence and any specific needs and personal circumstances of the victim which are identified.
- (3) Where a victim requests any information which is offered to him or her under *subsection (1)*—
- (a) he or she may specify in his or her request whether the information is to be provided orally or in writing, including by electronic means, and (b) he or she shall be provided with such information—

- (i) as soon as practicable, and
 - (ii) in so far as is practicable, in the manner specified in his or her request.
- (4) Subject to *subsection (5)*, a victim may be accompanied by a person or persons of his or her choice, including his or her legal representative, when contacting the Garda

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Síochána or the Ombudsman Commission for the first time in respect of an alleged offence.

- (5) Where a member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, reasonably believes that the presence of a person referred to in *subsection (4)*, including a legal representative, would be contrary to the best interests of the victim or would prejudice any investigation or criminal proceedings regarding the alleged offence, the member of the Garda Síochána or officer of the Ombudsman Commission, as the case may be, may require that the person absent himself or herself prior to the member or officer concerned engaging further with the victim.
- (6) Where a member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, decides to exclude a person from accompanying a victim pursuant to *subsection (5)*, the member or officer, as the case may be, shall inform the victim that *subsection (4)* continues to apply and he or she may be accompanied by another person under that subsection and may make such arrangements as are necessary to be so accompanied.
- (7) A record shall be kept by the Garda Síochána and the Ombudsman Commission of any decision to exclude a person under *subsection (5)* and such record shall include the reasons for that decision.
- (8) A member of the Garda Síochána or an officer of the Ombudsman Commission who engages with a victim under this section shall ensure that matters in respect of any information offered to and requested by a victim are recorded in accordance with any procedure specified by the Garda Síochána or the Ombudsman Commission, as the case may be.
- (9) A member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, may, where a victim consents, arrange for the victim to be referred to an appropriate, and where relevant specialist, service which provides support for victims.

Information regarding investigations and criminal proceedings

8. (1) Where the Garda Síochána or the Ombudsman Commission is investigating an alleged offence, a member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, shall, where a victim of the alleged offence is identified—

- (a) inform the victim of his or her right to— (i) make a request under *subsection (2)*, and
 - (ii) amend a request referred to in *subparagraph (i)* at any time (in this section referred to as an “amended request”),
- and
- (b) inform the victim of the relevant procedures for making a request or an amended request under this section.

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- (2) A victim of an alleged offence may, during the course, or at the conclusion, of an investigation of the alleged offence or following any subsequent criminal proceedings relating to the offence concerned, request the following information from the Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, the director of a children detention school or the clinical director of a designated centre, as the case may be:
 - (a) information relating to any significant developments in the investigation of the alleged offence, including:
 - (i) the arrest of a person;
 - (ii) the charging of a person;
 - (iii) the release on bail of a person and, where a person has entered into a recognisance admitting him or her to bail, any conditions of such recognisance which relate to the victim;
 - (iv) the remand in custody of a person who has been charged; (b) a copy of any statement or submission made by the victim—
 - (i) during the course of the investigation, or
 - (ii) under section 5 of the Act of 1993;
 - (c) information regarding a decision not to proceed with, or to discontinue, the investigation and a summary of the reasons for the decision; (d) information regarding—
 - (i) a decision not to prosecute a person for the alleged offence and a summary of the reasons for the decision,
 - (ii) the victim’s right to request a review of a decision referred to in *subparagraph (i)* and the procedure for requesting the review;
 - (e) information regarding a decision to discontinue the prosecution of a person for the alleged offence and a summary of the reasons for the decision;

- (f) information regarding a decision to deal with a person otherwise than by trial of the person in respect of the alleged offence and a summary of the reasons for the decision;
- (g) where a person is charged in respect of the alleged offence, information regarding—
 - (i) the nature of the offence with which he or she is charged, and
 - (ii) the date and place of his or her trial;
- (h) where a person is convicted in respect of the alleged offence, information regarding—
 - (i) the date of sentencing, where applicable, and

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- (ii) the date and place of any appeal by him or her or the prosecution, as the case may be, arising from the trial;
- (i) information regarding any determination made under section 4 of the Act of 2006 in respect of a person;
- (j) information regarding a final judgment in any trial of a person in respect of the alleged offence (and, as the case may be, any further judgment on appeal), including:
 - (i) where such trial is not a trial by jury, a summary of the reasons given for the judgment;
 - (ii) where the person is convicted of the offence, the sentence imposed on the person, if any;
 - (iii) any orders made by the court related to, or ancillary to, the judgment;
- (k) where a person is arrested and is detained in custody by the Garda Síochána, information regarding any release or escape of the person from custody;
- (l) where a person has been remanded in custody, information regarding any release or escape of the person from custody while on remand;
- (m) where a person is convicted of an offence and a sentence of imprisonment is imposed on him or her, information regarding—
 - (i) the year and month in which the person is expected to be released from prison,
 - (ii) any temporary release of the person under section 2 or 3 of the Act of 1960 and any conditions attached to such release which relate to the victim,
 - (iii) any transfer of the person while in custody to or from a prison, designated centre, court, hospital or any other place,

- (iv) any escape by the person from custody and any measures which are put in place for the victim's protection as a result of such escape,
- (v) the death of the person concerned while in custody or on temporary release from prison under section 2 or 3 of the Act of 1960;
- (n) where, pursuant to section 4(3)(b), 4(5)(c)(i), 4(6)(a), 5(2) or 5(3) of the Act of 2006, a person is committed to a designated centre by a court, other than a court martial, information regarding—
 - (i) the year and month in which the person is expected to be discharged from the designated centre and whether or not his or her discharge will be subject to conditions,
 - (ii) any temporary release of the person under section 14 of that Act,
 - (iii) any transfer of the person to or from a designated centre, prison, court, hospital or any other place,

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- (iv) any conditions attached to a discharge referred to in *subparagraph (i)* or a release referred to in *subparagraph (ii)*, which relate to the victim,
- (v) the revocation of any conditional discharge of the person under section 13B of that Act,
- (vi) any escape by the person from a designated centre, prison, court, hospital or any other place and any measures which are put in place for the victim's protection as a result of such escape, and
- (vii) the death of the person concerned during a period of committal to, temporary release or conditional discharge from, the designated centre;
- (o) where a person, who is a child, has been ordered to be detained in a children detention school, information regarding—
 - (i) the year and month in which the person is expected to be released from the children detention school,
 - (ii) the transfer of the person from a children detention school to another children detention school or to a prison, court, hospital or any other place,
 - (iii) any temporary leave granted to the person under section 205 of the Act of 2001,
 - (iv) any placing out in the community of the person under section 207 of the Act of 2001,
 - (v) any release of the person under section 209 of the Act of 2001,

- (vi) any early discharge of the person under section 210 of the Act of 2001,
 - (vii) any escape of the person from a children detention school or any other place while in custody, and
 - (viii) the death of the person concerned during the period of his or her detention.
- (3) A victim may submit an amended request in relation to information referred to in *subsection (2)* to the Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, the director of a children detention school or the clinical director of a designated centre, as the case may be.
- (4) Subject to *section 11*, where the Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, the director of a children detention school or the clinical director of a designated centre receives a request or an amended request for information referred to in *subsection (2)*, the Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, the director of a children detention school or the clinical director of a designated centre, as the case may be, shall— (a) make a record of the information requested, and
- (b) provide the information, or arrange for the information concerned to be provided, to the victim as soon as practicable.

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- (5) Subject to *section 23*, the Garda Síochána, the Ombudsman Commission or the Director of Public Prosecutions, as the case may be, shall—
- (a) where a request or an amended request referred to in *subsection (4)* relates to information referred to in *paragraph (g)(ii)* or *paragraph (j)* of *subsection (2)*, and
 - (b) a victim requests, or it appears to the Garda Síochána, the Ombudsman Commission or the Director of Public Prosecutions, as the case may be, that the victim requires assistance to understand or be understood,
- arrange for a translation of the information concerned to be provided, as soon as practicable and free of charge, to the victim either orally or in writing, including by electronic means.
- (6) Subject to *subsection (7)* and *section 11*, the following may be transferred between the Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, a children detention school or a designated centre, as the case may be:
- (a) details of any request or amended request received from a victim;
 - (b) information which is the subject of a request or an amended request.

- (7) Details of a request or an amended request and information which is the subject of the request or the amended request may only be transferred between the Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, a children detention school or a designated centre, as the case may be, for the purposes of providing information which is the subject of the request concerned to the victim and shall not be used for any other purpose.
- (8) *Subsections (6) and (7)* are without prejudice to any power or duty which the Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, the director of a children detention school or the clinical director of a designated centre may have to provide information to each other under any other enactment or rule of law.

Decisions regarding prosecution of offences

9. Where, pursuant to *section 8(2)(d)*, a victim of an alleged offence receives information from the Garda Síochána or the Director of Public Prosecutions, as the case may be, regarding a decision not to prosecute a person for an alleged offence, he or she shall be informed by the Garda Síochána or the Director of Public Prosecutions, as the case may be, of—
- (a) his or her right to request a review of the decision,
- and (b) the procedure for requesting the review concerned.

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Review of decisions in relation to prosecutions

10. (1) Where a victim is informed of a decision referred to in *section 9*, he or she may, within 28 days after receiving the information, submit a request to the Garda Síochána or the Director of Public Prosecutions, as the case may be, for a review of the decision concerned.
- (2) The period referred to in *subsection (1)* may be extended where the Garda Síochána or the Director of Public Prosecutions, as the case may be, is satisfied that circumstances exist that warrant the extension.
- (3) A request for a review under this section shall be made in such form and shall contain such information as the Garda Síochána or the Director of Public Prosecutions, as the case may be, may specify.
- (4) Where the Garda Síochána receives a request for a review under this section, it shall arrange for the review to be carried out by a member of the Garda Síochána who is independent of the decision which is the subject of the review.
- (5) Where the Director of Public Prosecutions receives a request for a review under this section, the Director of Public Prosecutions shall carry out the review or arrange for the review to be carried out.
- (6) The Garda Síochána or the Director of Public Prosecutions, as the case may be, shall notify the victim, or arrange for the victim to be notified, in writing of the outcome of the review as soon as practicable.
- (7) A written notification referred to in *subsection (6)* may be provided to a victim by electronic means.

Limitation on provision of information

11. (1) Nothing in this Act shall be construed as requiring the Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, the director of a children detention school or a clinical director of a designated centre to disclose any information the disclosure of which could—
- (a) interfere with the investigation of an alleged offence,
- (b) prejudice ongoing or future criminal proceedings in respect of an alleged offence,
- (c) endanger the personal safety of any person, or (d) endanger the security of the State.
- (2) A decision not to provide information to a victim which has been requested by the victim under *section 8*, shall be made by—
- (a) a member of the Garda Síochána not below the rank of superintendent,

- (b) an officer of the Ombudsman Commission authorised for that purpose,
- (c) an officer of the Director of Public Prosecutions authorised for that purpose,
- (d) an officer of the Irish Prison Service authorised for that purpose,

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- (e) a member of staff of the children detention school in which a person is detained who has been authorised for that purpose by the director of the children detention school concerned, or
 - (f) the clinical director of the designated centre to which an alleged offender has been committed under the Act of 2006,
- as the case may be.
- (3) Where information is not provided to a victim pursuant to *subsection (1)*, a record of the reasons for not providing the information shall be kept by the Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, the director of the children detention school or the clinical director of the designated centre concerned, as the case may be.

PART 3
PROTECTION OF VICTIMS DURING INVESTIGATIONS AND CRIMINAL
PROCEEDINGS

Complaints

12. (1) Subject to *subsection (2)*, a victim may be accompanied by a person or persons of his or her choice, including his or her legal representative, when making a complaint.
- (2) Where a member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, reasonably believes that the presence of a person referred to in *subsection (1)*, including a victim's legal representative, would be contrary to the best interests of the victim or would prejudice any investigation or criminal proceedings regarding an alleged offence, the member or officer, as the case may be, may require that the person concerned absent himself or herself prior to the member or officer engaging further with the victim in respect of the complaint concerned.
- (3) Where a member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, decides to exclude a person from accompanying a victim pursuant to *subsection (2)*, the member or officer, as the case may be, shall inform the victim that *subsection (1)* continues to apply and he or she may be accompanied by another person under that subsection and may make such arrangements as are necessary to be so accompanied.

- (4) A record shall be kept by the Garda Síochána and the Ombudsman Commission of any decision to exclude a person from accompanying a victim pursuant to *subsection (2)* and such record shall include the reasons for that decision.
- (5) The member of the Garda Síochána or the officer of the Ombudsman Commission to whom a complaint is made shall arrange for the victim to be provided with a written acknowledgement of his or her complaint.

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- (6) A written acknowledgement referred to in *subsection (5)* shall include the basic elements of any alleged offence and information on where enquiries by a victim relating to the complaint may be addressed.
- (7) Where a victim does not understand the language in which the acknowledgement of a complaint is written, the victim may request a translation of the written acknowledgement in a language that he or she understands.
- (8) A translation referred to in *subsection (7)*—
 - (a) shall be provided by the Garda Síochána or the Ombudsman Commission, as the case may be, as soon as practicable and free of charge to the victim, and
 - (b) may be provided orally or in writing, including by electronic means.

Offence occurring outside State

13. Where a victim makes a complaint to a member of the Garda Síochána in relation to an offence which is alleged to have occurred in a Member State other than the State, the member concerned shall, unless the State has jurisdiction in respect of the alleged offence and proposes to exercise that jurisdiction, arrange for the details of the complaint to be transmitted as soon as practicable to the competent authority in the Member State in which the offence is alleged to have been committed.

Conduct of interviews and medical examinations

14. (1) A member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, in charge of investigating an alleged offence shall, in addition to any special measures relating to interviews under *section 17* which he or she may be directed to implement in respect of a victim pursuant to *section 15(8)(b)*, ensure that—
 - (a) where a victim of an alleged offence which is the subject of a complaint is a resident of a Member State other than the State, the victim may make a statement immediately after the complaint is made or at such other time as may be agreed with the victim,

- (b) any interviews of a victim that may be required in respect of a complaint are carried out as soon as practicable after the complaint is made, and
 - (c) interviews of the victim are carried out only where necessary for the purpose of investigating the alleged offence.
- (2) Subject to *subsection (3)*, a victim may be accompanied by a person or persons of his or her choice, including his or her legal representative, during an interview with the Garda Síochána or the Ombudsman Commission, as the case may be.
- (3) Where a member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, reasonably believes that the presence at an interview of a person referred to in *subsection (2)*, including a victim's legal representative, would be contrary to the best interests of the victim or would prejudice any investigation or criminal proceedings regarding an alleged offence, the member or

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officer, as the case may be, may require that the person concerned absent himself or herself prior to the member or officer engaging further with the victim for the purpose of the interview concerned.

- (4) Where a member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, decides to exclude a person from accompanying a victim pursuant to *subsection (3)*, the member or officer, as the case may be, shall inform the victim that *subsection (2)* continues to apply and he or she may be accompanied by another person under that subsection and may make such arrangements as are necessary to be so accompanied.
- (5) A record shall be kept by the Garda Síochána and the Ombudsman Commission of any decision to exclude a person from an interview pursuant to *subsection (3)* and such record shall include the reasons for that decision.
- (6) A member of the Garda Síochána or an officer of the Ombudsman Commission in charge of the investigation of an alleged offence shall ensure that any medical examinations of a victim that are arranged by the Garda Síochána or the Ombudsman Commission, as the case may be, are limited to those which are strictly necessary for the purpose of the investigation concerned.

Assessment of victim

15. (1) The Garda Síochána or the Ombudsman Commission, as the case may be, shall, when

investigating an alleged offence, carry out an assessment of a victim (in this Act referred to as an “assessment”) for the purpose of— (a) identifying the protection needs, if any, of the victim,

(b) ascertaining whether and to what extent the victim might benefit from protection measures, and

(c) ascertaining whether and to what extent the victim might, due to his or her particular vulnerability to secondary and repeat victimisation, intimidation and retaliation, benefit from—

(i) special measures during the course of an investigation of the alleged offence, and

(ii) special measures during the course of any criminal proceedings relating to the alleged offence.

- (2) A member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, shall, when carrying out an assessment, have regard to the following matters:
- (a) the type and nature of the alleged offence;
 - (b) the circumstances of the commission of the alleged offence;
 - (c) whether the victim has suffered considerable harm due to the severity of the alleged offence;

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- (d) the personal characteristics of the victim, including his or her age, gender, gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, communications difficulties, relationship to, or dependence on, the alleged offender and any previous experience of crime;
 - (e) whether the alleged offence appears to have been committed with a bias or discriminatory motive, which may be related to the personal characteristics of the victim, including such characteristics as are referred to in *paragraph (d)*;
 - (f) the particular vulnerability of victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence or exploitation and victims with disabilities.
- (3) The extent of an assessment may be adapted having regard to the severity of an alleged offence and any apparent harm suffered by a victim.
- (4) Where, having considered the matters referred to in *subsection (2)*, a member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, assesses that a victim has specific protection needs and that in order to protect the victim from any secondary or repeat victimisation, intimidation or retaliation—
- (a) the victim would benefit from protection measures, (b) the victim would benefit from any special measure, the member or officer, as the case may be, carrying out the assessment shall—
 - (i) consult with the victim in relation to that assessment, and
 - (ii) take into account the views of the victim in relation to any protection measures or special measures identified further to the assessment concerned.
- (5) A member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, shall report the results of an assessment referred to in *subsection (4)* to a member of the Garda Síochána not below the rank of superintendent or an officer of the Ombudsman Commission authorised for that purpose by the Ombudsman Commission, as the case may be.

- (6) Subject to *subsection (7)*, a report under *subsection (5)* shall not be required where, further to an assessment of a victim under this section, no specific protection needs are identified in respect of the victim.
- (7) For the purposes of an assessment, where a victim is a child—
 - (a) the child shall be presumed to have protection needs, and
 - (b) a member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, shall, when carrying out an assessment, have regard to the following matters when determining whether and to what extent the child might benefit from protection measures or special measures:
 - (i) the best interests of the child;
 - (ii) any views and concerns raised by the child taking into account his or her age and level of maturity;

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- (iii) any views and concerns raised by a parent or guardian of the child or any other person duly authorised to act on his or her behalf provided that such parent, guardian or other person has not been charged with, or is not under investigation for, an alleged offence relating to the child.
- (8) The member of the Garda Síochána or the officer of the Ombudsman Commission to whom a report under *subsection (5)* is submitted shall—
 - (a) notify the member of the Garda Síochána or the officer of the Ombudsman Commission, as the case may be, in charge of the investigation of the alleged offence concerned of the content of the report, and
 - (b) direct the member of the Garda Síochána or the officer of the Ombudsman Commission in charge of the investigation of the alleged offence—
 - (i) to implement or arrange for the implementation of all or part of any protection measures (other than any protection measure which consists of advice which has been provided to the victim by another member of the Garda Síochána or another officer of the Ombudsman Commission, as the case may be) and special measures that are identified in the report during the course of the investigation of the alleged offence, and (ii) to provide a copy of the report and the direction—
 - (I) in the case of an investigation of the alleged offence by the Garda Síochána—
 - (A) to the member of the Garda Síochána who is responsible for instituting and conducting a prosecution of the alleged offence in the name of the Director of Public Prosecutions, or

(B) to the Director of Public Prosecutions, as the case may be, and

(II) in the case of an investigation of the alleged offence by the Ombudsman Commission, to the Director of Public Prosecutions.

- (9) A record shall be kept by the Garda Síochána and the Ombudsman Commission of any assessments or reports made, or directions or notifications given, under this section.

Application of protection measures and special measures during investigations

- 16.** (1) A member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, in charge of an investigation of an alleged offence shall—
- (a) subject to *subsection (2)*, comply with a direction under *section 15(8)(b)*, and
 - (b) provide information to the victim on any protection measures and special measures specified in the direction to be implemented during the course of the investigation.

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- (2) Where a member of the Garda Síochána or an officer of the Ombudsman Commission in charge of the investigation of an alleged offence receives a direction under *section 15(8)(b)* and is unable, due to considerations of a legal, practical or operational nature, to comply with the direction or any part of it, he or she shall, as soon as practicable, notify the member of the Garda Síochána or the officer of the Ombudsman Commission, as the case may be, who gave the direction of that fact and the reasons why the direction or any part of it cannot be complied with.
- (3) A notification referred to in *subsection (2)* shall be in writing.
- (4) Where during the course of an investigation of an alleged offence, the member of the Garda Síochána or the officer of the Ombudsman Commission in charge of the investigation becomes aware that any of the matters referred to in *section 15(2)* in respect of the victim of the alleged offence have changed significantly, the member or officer concerned shall arrange for a further assessment under *section 15* to be carried out in respect of the victim in order to determine—
- (a) where no specific protection needs were previously identified in respect of the victim during the course of an assessment, whether the needs of the victim are such that he or she might benefit from particular protection measures or special measures during the course of the investigation of, or any criminal proceedings relating to, the alleged offence, or

- (b) where specific protection needs were previously identified in respect of the victim during the course of an assessment—
 - (i) whether any protection measure or special measure identified during the course of the assessment is no longer required, and
 - (ii) whether the needs of the victim are such that he or she might benefit from further protection measures or special measures during the course of the investigation of, or any criminal proceedings relating to, the alleged offence.
- (5) *Section 15* shall apply with necessary modifications to an assessment referred to in *subsection (4)*.
- (6) An officer of the Ombudsman Commission in charge of an investigation of an alleged offence may—
 - (a) where a report under *section 15(5)* provides that a victim would benefit from a protection measure during the course of the investigation, and
 - (b) where the Ombudsman Commission is unable, due to considerations of a legal, practical or operational nature, to implement the protection measure, request that the protection measure concerned be implemented by the Garda Síochána.
- (7) Where the Garda Síochána receives a request under *subsection (6)* from the Ombudsman Commission, the Garda Síochána shall—
 - (a) subject to *subsection (8)*, implement the protection measure which is the subject of the request, and

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- (b) as soon as practicable, notify the Ombudsman Commission of the steps that are being, or will be, taken to implement the protection measure which is the subject of the request.
- (8) Where the Garda Síochána receives a request under *subsection (6)* and is unable, due to legal, operational or practical constraints, to implement the protection measure concerned or any part of it, the Garda Síochána shall, as soon as practicable, notify the Ombudsman Commission in writing of that fact and the reasons why the protection measure concerned or any part of it cannot be implemented.
- (9) A record shall be kept by the Garda Síochána and the Ombudsman Commission of—
 - (a) any information provided to a victim under *subsection (1)(b)*,
 and (b) any requests made, or notifications given, under this section.

Special measures during investigations

17. (1) The special measures which may be implemented in respect of a victim during the course of an investigation of an alleged offence include the following:
(a) that any interview with the victim—

(i) be carried out in premises designed or adapted for that purpose,

(ii) be carried out by or through persons who have been trained for that purpose, and

(iii) where there is more than one interview, be carried out, where possible, by the same member or members of the Garda Síochána or the same officer or officers of the Ombudsman Commission, as the case may be;

(b) where the alleged offence involves sexual violence, gender-based violence or violence in a close relationship, that the victim be informed of his or her right to request that interviews are carried out by a person of the same sex as him or her.

(2) A special measure which is the subject of a direction under *section 15(8)(b)* shall be made available to a victim unless—

(a) legal, operational or practical constraints render it impossible to do so,

(b) during the course of an investigation of an alleged offence by the Garda Síochána or the Ombudsman Commission, as the case may be, there is an urgent need to interview the victim and there are reasonable grounds for believing that a failure to do so may result in harm to the victim or another person,

(c) the application of a special measure would be prejudicial to a criminal investigation or criminal proceedings, or

(d) the application of the special measure would be otherwise contrary to the administration of justice.

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Appropriate persons

18. (1) Where—

- (a) a victim is a child, and
- (b) a parent, guardian or any other person duly authorised to act on the victim's behalf—
 - (i) has been charged with, or is under investigation for, an offence in connection with the victim,
 - (ii) is, for any other reason, precluded from accompanying the victim,
 - (iii) is unavailable or cannot be contacted,

(iv) indicates that he or she does not wish to accompany the victim, or

(v) cannot be identified, the Garda Síochána or the Ombudsman Commission, as the case may be, shall arrange for the victim to be accompanied by an appropriate person when attending any interviews and court proceedings at which the victim is required to be present.

- (2) A member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, shall, in determining who is to be the appropriate person to accompany a child to an interview or court proceedings pursuant to *subsection (1)*, have regard to any views expressed by the child taking into account his or her age and level of maturity.
- (3) Where an appropriate person is appointed to accompany a victim, he or she shall be entitled to remain in court during the whole of any hearing.
- (4) In this section, “appropriate person” means—
 - (a) a relative of the child,
 - or (b) any other person,who is 18 years or over.

Special measures during criminal proceedings

19. (1) Where a victim of an alleged offence has been assessed under *section 15* and the Garda Síochána or the Ombudsman Commission have identified specific protection needs in relation to the victim, the Garda Síochána or the Director of Public Prosecutions, as the case may be, shall, in determining whether to make an application to the court for a special measure specified in *subsection (2)* during the course of any criminal proceedings related to the alleged offence, have regard to the specific protection needs identified under *section 15* in relation to the victim concerned.

- (2) The special measures referred to in *subsection (1)* are—
- (a) the exclusion of the public, any portion of the public or any particular person or persons from the court during such criminal proceedings pursuant to *section 20*,

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- (b) directions under *section 21* regarding the questioning of the victim in respect of his or her private life,
- (c) measures under Part III of the Criminal Evidence Act 1992 enabling the victim to give evidence through a live television link or an intermediary or enabling a screen or other similar device to be used in the giving of evidence.

Power to exclude public

- 20.(1)** In any proceedings relating to an offence, where a court is satisfied—
- (a) that the nature or circumstances of the case are such that there is a need to protect a victim of the offence from secondary and repeat victimisation, intimidation or retaliation, and
 - (b) it would not be contrary to the interests of justice in the case, the court may, on the application of the prosecution, exclude from the court during such proceedings—
 - (i) the public or any portion of the public, or (ii) any particular person or persons, except officers of the court and *bona fide* representatives of the Press.
- (2) *Subsection (1)* is without prejudice to—
- (a) the right of—
 - (i) a parent, relative or friend of the victim,
 - (ii) a support worker of the victim’s choice,
 - (iii) where the accused person is under the age of 18 years, a parent, relative or friend of the accused person, or
 - (iv) an appropriate person under *section 18*, to remain in court, and
 - (b) the power of a court to exclude the public or any person from the court under any other enactment or rule of law.
- (3) In this section, “support worker” means a volunteer of, or an individual employed under a contract of service or under a contract for services by, an organisation which provides support to victims of crime.

Questioning in respect of private life of victim

21. In any proceedings relating to an offence, where a court is satisfied that—
- (a) the nature or circumstances of the case are such that there is a need to protect a victim of the offence from secondary and repeat victimisation, intimidation or retaliation, and

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- (b) it would not be contrary to the interests of justice in the case, the court may give such directions as it considers just and proper regarding any evidence adduced or sought to be adduced and any question asked in cross-examination at the trial, which relates to the private life of a victim and is unrelated to the offence.

Communication, interpretation and translation

22. (1) The Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions, the Courts Service, the Irish Prison Service, the director of a children detention school and the clinical director of a designated centre, as the case may be, shall, when dealing with a victim ensure that any oral or written communications with the victim are in simple and accessible language and take into account the personal characteristics of the victim including any disability, which may affect the ability of the victim to understand them or be understood.
- (2) Subject to *section 23*, where a complaint is being made, or before or during an interview with a victim in relation to the investigation of an alleged offence—
- (a) the victim requests, or
 - (b) it appears to a member of the Garda Síochána or an officer of the Ombudsman Commission, as the case may be, that a victim requires, assistance by way of interpretation, the member or officer concerned shall arrange for interpretation to be provided to the victim.
- (3) Subject to *section 23*, where, before or during the course of any proceedings in respect of an offence in which a victim of the alleged offence is a witness or is giving evidence under section 5(3) of the Act of 1993—
- (a) the victim requests,
 - (b) it appears to a member of the Garda Síochána or the Director of Public Prosecutions, as the case may be, that the victim requires, or
 - (c) a court directs that the victim be given, assistance to understand the proceedings, or to be understood, by way of—
 - (i) interpretation during any examination or cross-examination of the victim as a witness or when giving evidence under section 5(3) of the Act of 1993, or
 - (ii) translation of any information which would ordinarily be provided to a witness during the course of a trial or to a person giving evidence under section 5(3) of the Act of 1993, the Garda Síochána, the Director of Public

Prosecutions or the Courts Service, as the case may be, shall make such arrangements regarding interpretation and translation as are considered appropriate in the circumstances or as directed by the court, as the case may be.

- (4) Subject to *section 23*, assistance by way of interpretation and translation referred to in *subsections (2) and (3)* shall be provided to a victim as soon as practicable.

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- (5) Assistance by way of interpretation referred to in *subsections (2) and (3)* may be provided to a victim in person or by such other means of communication as may be determined by the Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions or the court, as the case may be.
- (6) Assistance by way of translation referred to in *subsection (3)* may be provided to a victim orally or in writing, including by electronic means.

Refusal of request for interpretation or translation

- 23.** (1) A request by a victim for assistance by way of interpretation or translation referred to in *section 22(2)(a) or (3)(a)* or for a translation of information referred to in *section 8(5)* may be refused—
- (a) where it appears to the Garda Síochána, the Ombudsman Commission or the Director of Public Prosecutions, as the case may be, that, during the course of an investigation of an alleged offence or any criminal proceedings relating to that offence, the victim does not require such assistance in order to understand them or to be understood, or
- (b) where it relates to information of a kind referred to in *section 11(1)*.
- (2) Where the Garda Síochána, the Ombudsman Commission or the Director of Public Prosecutions, as the case may be, refuses a request for assistance by way of interpretation or translation under *section 22(2)(a) or (3)(a)* or for a translation of information referred to in *section 8(5)*—
- (a) the decision and the reasons for it shall be recorded, and
- (b) the victim shall be notified in writing of the decision and provided with a summary of the reasons for that decision as soon as practicable.
- (3) A notification referred to in *subsection (2)(b)* may be provided to the victim by electronic means.

Review of decision to refuse request for interpretation or translation

- 24.** (1) Where a victim receives a notification under *section 23(2)(b)* from the Garda Síochána, the Ombudsman Commission or the Director of Public Prosecutions, he or she may, within 7 days after the receipt of the notification, submit a

request to the Garda Síochána, the Ombudsman Commission or the Director of Public Prosecutions, as the case may be, for a review of the decision which is the subject of the notification.

- (2) The period referred to in *subsection (1)* may be extended where the Garda Síochána, the Ombudsman Commission or the Director of Public Prosecutions, as the case may be, is satisfied that circumstances exist that warrant the extension.
- (3) A request for a review under this section shall be made in such form and shall contain such information as the Garda Síochána, the Ombudsman Commission or the Director of Public Prosecutions, as the case may be, may specify.

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- (4) Where the Garda Síochána receives a request for a review referred to in *subsection (1)*, it shall arrange for the review to be carried out by a member of the Garda Síochána who is independent of the decision which is the subject of the review.
- (5) Where the Ombudsman Commission receives a request for a review referred to in *subsection (1)*, it shall arrange for the review to be carried out by an officer of the Ombudsman Commission who is independent of the decision which is the subject of the review.
- (6) Where the Director of Public Prosecutions receives a request for a review referred to in *subsection (1)*, the Director of Public Prosecutions shall arrange for the review to be carried out.
- (7) Where the Garda Síochána, the Ombudsman Commission or the Director of Public Prosecutions, as the case may be, carries out a review under this section—
 - (a) a record of the outcome of the review shall be made, and
 - (b) the victim shall be notified in writing of the outcome of that review as soon as practicable.
- (8) A notification referred to in *subsection (7)(b)* may be provided to the victim by electronic means.

Effect of refusal of interpretation and translation

25. A refusal by the Garda Síochána, the Ombudsman Commission or the Director of Public Prosecutions of a request from a victim of an alleged offence for assistance by way of interpretation or translation under *section 22(2)(a)* or *(3)(a)* shall not operate to prevent, or provide a basis for delaying, the commencement or continuation of any criminal proceedings in respect of the alleged offence.

Restorative justice

26. (1) In respect of any offence or alleged offence, a body or other person shall administer a restorative justice scheme (in this section referred to as a “scheme”) only if the requirements of this section are complied with.
- (2) The offender or alleged offender shall—
- (a) acknowledge the basic facts of the offence committed or offence alleged to have been committed, as the case may be, against the victim, and
 - (b) give his or her free and informed consent to participating in the scheme.
- (3) The victim shall—
- (a) receive full and unbiased information about—
 - (i) the scheme and the potential outcomes of participating in the scheme,
 - (ii) the procedures for supervising and implementing any agreement that may be reached between the parties in the context of the scheme, and

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- (iii) his or her right to withdraw at any time his or her consent to participating in the scheme, and
 - (b) having received such information, give his or her free and informed consent to participating in the scheme.
- (4) Where a scheme is administered—
- (a) any agreement between the parties reached in the context of the scheme shall only be so reached on the basis of the free and informed consent of each of the parties,
 - (b) an agreement reached in the manner referred to in *paragraph (a)* may, with the consent of both parties, be taken into account by a court in any criminal proceedings relating to the offence or alleged offence which is the subject of the parties’ participation in the scheme, and
 - (c) any discussions between the parties which form part of their participation in the scheme and which are not conducted in public shall not be disclosed, save with the agreement of the parties or as required by law.
- (5) The body or person which or who administers a scheme shall—
- (a) prior to the commencement of the parties’ participation in the scheme inform them of each of the matters referred to in *subsection (4)*,
 - (b) be satisfied that the victim’s participation in the scheme is in the interests of the victim, and
 - (c) in administering the scheme, have regard to the need to safeguard the victim from secondary and repeat victimisation, intimidation or retaliation.

- (6) Nothing in this section shall affect the operation of Parts 4 and 8 of the Act of 2001.

PART 4

AMENDMENTS

Amendment of section 20 of Criminal Justice Act 1951

27. Section 20 of the Criminal Justice Act 1951 is amended—

- (a) in subsection (4), by the substitution of “of that person or a support worker chosen by a person referred to in paragraph (b)” for “of that person”, and (b) by the insertion of the following subsection after subsection (6):

“(7) In this section, ‘support worker’ means a volunteer of, or an individual employed under a contract of service or under a contract for services by, an organisation which provides support to victims of crime.”.

Amendment of section 4I of Criminal Procedure Act 1967

28. Section 4I of the Criminal Procedure Act 1967 is amended—

(a) by the substitution of the following subsection for subsection

(3): “(3) Subsection (2) is without prejudice to the right of—

(a) a parent, relative or friend of the accused or of an injured party, or

(b) a support worker chosen by an injured party, to remain in court in any case to which section 20(4) of the Criminal Justice Act 1951, section 6 of the Criminal Law (Rape) Act 1981, section 8 of the Criminal Justice (Female Genital Mutilation) Act 2012 or *section 20 of the Criminal Justice (Victims of Crime) Act 2017* applies.”,

and

(b) by the insertion of the following subsection after subsection (3):

“(4) In this section, ‘support worker’ means a volunteer of, or an individual employed under a contract of service or under a contract for services by, an organisation which provides support to victims of crime.”.

Amendment of section 6 of Criminal Law (Rape) Act 1981

29. Section 6 of the Criminal Law (Rape) Act 1981 is amended—

(a) by the substitution of the following subsection for subsection (3):

“(3) Subsections (1) and (2) are without prejudice to the right of—

(a) a parent, relative or friend of the complainant or, where the accused is not of full age, of the accused, or

(b) a support worker chosen by the complainant, to remain in court.”,

and

(b) by the insertion of the following subsection after subsection (4):

“(5) In this section, ‘support worker’ means a volunteer of, or an individual employed under a contract of service or under a contract for services by, an organisation which provides support to victims of crime.”.

Amendment of Criminal Evidence Act 1992

30. The Criminal Evidence Act 1992 is amended—

(a) by the substitution of the following section for section 12:

“Interpretation and application - Part III

12. (1) In this Part—

‘family member’, in relation to a victim, means—

- (a) a spouse, civil partner or cohabitant of the victim,
- (b) a child or step-child of the victim,
- (c) a parent or grandparent of the victim,
- (d) a brother, sister, half brother or half sister of the victim,
- (e) a grandchild of the victim,
- (f) an aunt, uncle, nephew or niece of the victim, and
- (g) any other person—
 - (i) who is or, where the victim is deceased, was dependent on the victim, or
 - (ii) who a court considers has or, where the victim is deceased, had a sufficiently close connection with the victim as to warrant his or her being treated as a family member;

‘relevant offence’ means—

- (a) a sexual offence;
- (b) an offence involving violence or the threat of violence to a person;
- (c) an offence under section 3, 4, 5 or 6 of the Child Trafficking and Pornography Act 1998;
- (d) an offence under section 2, 4 or 7 of the Criminal Law (Human Trafficking) Act 2008;
- (e) an offence consisting of attempting or conspiring to commit, or of aiding or abetting, counselling, procuring or inciting the commission of, an offence mentioned in paragraph (a), (b), (c) or (d);

‘victim’ means—

- (a) a natural person, other than an accused, who has suffered harm, including physical, mental or emotional harm, or economic loss, which was directly caused by an offence, and
- (b) where the death of a person referred to in paragraph (a) is caused directly by the offence, a family member, provided that

the family member concerned has not been charged with, or is not under investigation for, an offence in connection with the death of the person.

- (2) The application of this Part is not dependent on the commission of an offence having to be established (nor is it dependent on establishing whether the person concerned suffered any harm caused by an offence).”,

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(b) in section 13—

- (i) in subsection (1), by the substitution of “a relevant offence” for “an offence to which this Part applies”,
- (ii) by the insertion of the following subsection after subsection (1):

“(1A) In any proceedings (including proceedings under section 4E or 4F of the Criminal Procedure Act 1967) relating to an offence, other than a relevant offence, a court may, subject to section 14AA, grant leave for a victim of the offence to give evidence, whether from within or outside the State, through a live television link.”, and

- (iii) in subsection (2), by the insertion of “or (1A)” after “subsection (1)”,

(c) in section 14—

- (i) in subsection (1)(a), by the substitution of “a relevant offence” for “an offence to which this Part applies”,
- (ii) by the insertion of the following subsection after subsection (1):

“(1A) Subject to section 14AA, where—

(a) a person is accused of an offence, other than a relevant offence, and

(b) a victim of the offence who is under 18 years of age, is giving, or is to give, evidence through a live television link, the court may, on the application of the prosecution or the accused, if satisfied that the interests of justice require that any questions to be put to the victim be put through an intermediary, direct that any such questions be so put.”,

and

(iii) in subsection (3), by the insertion of “or (1A)” after “subsection

(1)”, (d) by the insertion of the following section after section 14:

“Placement of screen etc. for giving of evidence

14A. (1) Where a person who is under 18 years of age is to give evidence other than through a live television link in respect of a relevant offence, the court may, on the application of the prosecution or

the accused, direct that a screen or other similar device be positioned, in an appropriate place, so as to prevent the witness from seeing the accused when giving evidence, unless the court is satisfied that in all the circumstances of the case such a direction would be contrary to the interests of justice.

(2) Subject to section 14AA, where—

(a) a person who is a victim of an offence, other than a relevant offence, is under 18 years of age and the person is to give evidence, other than through a live television link, in respect of the offence, or

(b) a person who is a victim of any offence has attained the age of 18 years and the person is to give evidence, other than through a live television link, in respect of such an offence,

the court may, on the application of the prosecution or the accused, if satisfied that the interests of justice so require, direct that a screen or other similar device be positioned, in an appropriate place, so as to prevent the victim from seeing the accused when giving evidence.

(3) A witness giving evidence under subsection (1) or (2) shall be capable of seeing and hearing and being seen and heard by—

(a) the judge and jury (if any),

(b) legal representatives acting in the proceedings,

(c) any interpreter, intermediary appointed under section 14 or any other person appointed to assist the witness,

and shall be capable of being heard by the

accused.”, (e) by the insertion of the following section after

section 14A:

“Matters to be taken into account under sections 13, 14 and 14A regarding victims

14AA. The court, in deciding—

(a) whether to grant leave under section 13(1A) for a victim to give evidence through a live television link,

(b) whether, under section 14(1A), the interests of justice require that it direct that questions be put to the victim through an intermediary, or

(c) whether, under section 14A(2), the interests of justice require that it direct that a screen or other similar device be positioned,

in an appropriate place, so as to prevent the victim from seeing the accused when giving evidence,

shall have regard to the need to protect the victim from secondary and repeat victimisation, intimidation or retaliation, taking into account—

- (i) the nature and circumstances of the case, and
- (ii) the personal characteristics of the victim.”,

(f) by the insertion of the following section after section 14AA:

“Wigs and gowns

14B. Where a person who is under 18 years of age—

(a) is giving evidence in respect of a relevant offence, or

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(b) is giving evidence in respect of any other offence of which he or she is a victim,

neither the judge nor the barrister or solicitor concerned in the examination of the witness shall wear a wig or gown.”,

(g) in paragraph (a) of section 14C(1), by the substitution of “a relevant offence” for “an offence to which this Part applies”, (h) in section 15(1)—

(i) in paragraph (a), by the deletion of “who is charged with an offence to which this Part applies”,

(ii) in paragraph (b)—

(I) by the deletion of “the person in respect of whom the offence is alleged to have been committed, or” and

(II) by the substitution of “section 16(1)(b)” for “section 16(1)(b)(ii)”, (i) in section 16(1)—

(i) in paragraph (a), by the substitution of “a relevant offence” for “an offence to which this Part applies”, and

(ii) in paragraph (b), by the substitution of the following subparagraph for subparagraph (i):

“(i) by a person who is under 18 years of age in relation to an offence of which he or she is a victim, or”,

(j) in section 17—

(i) by the deletion of “to which this Part applies”, and

(ii) by the substitution of “through a live television link or by means of a videorecording or that a screen or other similar device be used in the

giving of evidence” for “through a live television link or by means of a videorecording”,

(k) by the substitution of the following section for section 18:

“Identification evidence

18. Where a person (in this section referred to as ‘the witness’)—

(a) gives evidence in respect of a relevant offence, or

(b) gives evidence in respect of any other offence of which he or she is a victim,

through a live television link pursuant to section 13(1) or (1A) or using a screen or other similar device pursuant to section 14A, then—

(i) in case evidence is given that the accused was known to the witness before the date on which the offence is alleged to have been committed, the witness shall not be required to identify the accused

at the trial of the offence, unless the court in the interests of justice directs otherwise, and

(ii) in any other case, evidence by a person other than the witness that the witness identified the accused at an identification parade as being the offender shall be admissible as evidence that the accused was so identified.”, (l) in section 19—

(i) by the substitution of “sections 14, 14B, 15 and 16” for “sections 13(1)(a), 14(1)(b), 15(1)(b) and 16(1)(a) and (b)(ii)”,

(ii) by the deletion of “and the reference in section 16(1)(b)(i) to a person under 14 years of age”, and

(iii) by the substitution of “a mental disorder, within the meaning of section 5 of the Criminal Justice Act 1993,” for “mental handicap”,

(m) in section 19A(13), by the substitution of “subsection (11)” for “subsection (12)”, and

(n) in section 29, by the substitution of “section 13(1) and (1A)” for “section 13(1)”.

Amendment of section 5 of Criminal Justice Act 1993

31. The Act of 1993 is amended in section 5—

(a) by the substitution of the following for subsection (1):

“(1) This section applies to an offence where a natural person in respect of whom the offence has been committed, has suffered harm, including physical, mental or emotional harm, or economic loss, which was directly caused by that offence.”,

- and
- (b) in subsection (6)—
- (i) by the substitution of the following definition for the definition of “family member”:
- “ ‘family member’, in relation to a person in respect of whom an offence is committed, means—
- (a) a spouse, civil partner or cohabitant of the person,
 - (b) a child or step-child of the person,
 - (c) a parent or grandparent of the person,
 - (d) a brother, sister, half brother or half sister of the person,
 - (e) a grandchild of the person,
 - (f) an aunt, uncle, nephew or niece of the person, and

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- (g) any other person—
- (i) who is or, where the person is deceased, was dependent on the person, or
 - (ii) who a court considers has or, where the person is deceased, had a sufficiently close connection with that person as to warrant his or her being treated as a family member;”

- and
- (ii) by the insertion of the following definitions:
- “ ‘Act of 2010’ means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;
‘civil partner’ means a person in a civil partnership or legal relationship to which section 3 of the Act of 2010 applies;
‘cohabitant’ means a cohabitant within the meaning of section 172(1) of the Act of 2010;”.

Amendment of section 4 of Bail Act 1997

32. Section 4 of the Bail Act 1997 is amended—

- (a) by the insertion of the following subsection after subsection (2): “(2A)

Subsection (2) is without prejudice to the right of—

- (a) a parent, relative or friend of a person in respect of whom the offence is alleged to have been committed (in this subsection referred to as ‘the relevant person’), or

(b) a support worker chosen by the relevant person, to remain in court, where the relevant person gives evidence pursuant to section 9A, for the duration of such evidence.”.

(b) in subsection (5), by the insertion of the following definition:

“ ‘support worker’ means a volunteer of, or an individual employed under a contract of service or under a contract for services by, an organisation which provides support to victims of crime.”.

Amendment of Courts Service Act 1998

33. The Courts Service Act 1998 is amended—

(a) in section 2 by the insertion of the following definition:

“ ‘victim’ has the same meaning as it has in *section 2* of the *Criminal Justice (Victims of Crime) Act 2017*;”, and

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(b) by the insertion of the following section after section 5:

“Victims of crime

5A. In carrying out its functions under paragraphs (d) and (e) of section 5, the Service shall ensure that—

- (a) in so far as is practicable, provision is made during the course of criminal proceedings which are conducted in a court building referred to in section 5(d) for the separation of an offender or an alleged offender and his or her parents, relatives and friends from a victim and his or her parents, relatives and friends such that contact between the parties may be avoided except where necessary for the purposes of the criminal proceedings concerned, and
- (b) a separate waiting area for victims who are involved in criminal proceedings is provided in any building which—
 - (i) is built after the commencement of this section, and
 - (ii) at the time that it is built, is intended to be used as a court building.”.

Amendment of Children Act 2001

34. (1) The Act of 2001 is amended—

(a) in section 3(1), by the insertion of the following definition:

“ ‘secondary victimisation’ has the same meaning as it has in the *Criminal Justice (Victims of Crime) Act 2017*;”,

(b) in section 26—

(i) by the insertion of the following subsection after subsection (1):

“(1A) Where the Director invites a victim to be present at the administration of a formal caution pursuant to subsection (1), he or she shall ensure that the victim—

- (a) is provided with full and unbiased information about the process of administering a formal caution and the potential outcomes of the process under this Act, and
- (b) is informed that he or she may withdraw at any time his or her consent to being so present.”,

and

(ii) by the insertion of the following subsection after subsection (2):

“(2A) The member of the Garda Síochána administering the formal caution shall, where a victim is present at the administration of the caution, have regard to the need to safeguard the victim from secondary and

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repeat victimisation, intimidation or retaliation while the victim is so present.”,

(c) by the insertion of the following section after section 32:

“Attendance at conference by victim

32A. (1) Where the facilitator invites a victim to be present at a conference pursuant to section 32(4), he or she shall ensure that the victim— (a) is provided with full and unbiased information about—

(i) the process relating to a conference,

(ii) the potential outcomes of the process under this Act, and

(iii) the procedures for monitoring the implementation of, and compliance with, an action plan,

and

(b) is informed that he or she may withdraw at any time his or her consent to being so present.

(2) The facilitator shall, where a victim is present at a conference, have regard to the need to safeguard the victim from secondary and repeat victimisation, intimidation or retaliation while the victim is so present.”,

and

(d) in section 85, by the substitution of “32, 32A,” for “32,”.

Amendment of section 8 of Criminal Justice (Female Genital Mutilation) Act 2012 35.

Section 8 of the Criminal Justice (Female Genital Mutilation) Act 2012 is amended— (a) by the substitution of the following subsection for subsection (2): “(2) Subsection (1) is without prejudice to the right of—

(a) a parent, relative or friend of the girl or woman in respect of whom the offence is alleged to have been committed or, where the accused person is not of full age, of the accused person, or

(b) a support worker chosen by the girl or woman referred to in paragraph (a),

to remain in court.”,

and

(b) by the insertion of the following subsection after subsection (3):

“(4) In this section, ‘support worker’ means a volunteer of, or an individual employed under a contract of service or under a contract for services by, an organisation which provides support to victims of crime.”.

[No. 28.]

PART 5

GENERAL

Statistics

36. (1) The Garda Síochána, the Ombudsman Commission and the Courts Service shall— (a) compile and store statistical information relating to the operation of this Act, and
- (b) provide that statistical information to the Minister, in such manner and at such intervals as may be specified by the Minister.
- (2) The director of a children detention school shall—
- (a) compile and store statistical information relating to the operation of this Act, and
- (b) provide that statistical information to the Minister for Children and Youth Affairs, in such manner and at such intervals as may be specified by the Minister for Children and Youth Affairs.
- (3) The clinical director of a designated centre shall—
- (a) compile and store statistical information relating to the operation of this Act, and
- (b) provide that statistical information to the Minister for Health, in such manner and at such intervals as may be specified by the Minister for Health.
- (4) *Subsections (1), (2) and (3)* are without prejudice to any obligations that the Garda Síochána, the Ombudsman Commission, the Courts Service, the director of a children detention school and the clinical director of a designated centre may have to compile, store and provide statistical information to the Central Statistics Office, the Minister, the Minister for Children and Youth Affairs or the Minister for Health under any other enactment.

Non-compliance with Act

- 37.(1) A failure by an individual to observe any provision of this Act shall not of itself—
- (a) render him or her liable to any criminal or civil proceedings,
- (b) prevent any criminal or civil proceedings relating to an offence from being instituted or prosecuted, or (c) affect the lawfulness of—
- (i) the custody of a person in relation to an offence, or

- (ii) the admissibility of any evidence in a trial of a person for an offence.
- (2) For the purposes of *subsection (1)*, “criminal or civil proceedings” does not include disciplinary proceedings.