

# Victims' rights as fundamental rights: Evidence from EU-wide research



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## Victims' Rights framed as Fundamental Rights

- On-going process towards recognition
- From 2001 FD to 2012 Victims' Directive – from the standing of victims to the rights of victims
- Budapest Roadmap – 2011
- Preambles to legal and non-legal text on victims – at the level of the EU & MSs – increasingly refer to the Charter of Fundamental Rights of the EU, and to specific rights
- Recognition in law of specific victim groups under a FRs framework – trafficking; violence against women; children

## Victims of crime in the work of FRA

- Victims of crime introduced in FRA's multi-annual framework of thematic work areas – as of 2013
- FRA's work on victims:
- **Surveys** – hate crime (anti-Semitism; LGBT; ethnic minorities and immigrants); violence against women; general population?
- **In-depth research** – child-friendly justice; disabled children
- **Socio-legal research** – support for victims of crime (Victims' Directive); criminal law responses to severe labour exploitation
- **Handbooks** – guardianship for children (trafficking); access to justice

## FRA Report: Victims of crime in the EU



- Examines **support service provision** and other rights for victims across the 28 EU Member States
- Focus on making rights a reality
- Promising practices identified
- Challenges and gaps

**Articles 8 and 9 of the Victims' Directive, on support services, are central to the report**

- **Intro & Chapter 1: history and development** of victims' rights and victim support services across the EU, including analysis of the Victims' Directive;
- **2: aspects of victim support:** role of victims in various national legal frameworks; training of practitioners; referral;
- **3: various models of victim support:** how support is organised, coordinated and funded; role of volunteers and umbrella organisations;
- **4: support for specific groups of victims** and importance of the individual assessment (Art. 22 Victims' Directive);
- **5: performance standards and indicators;** improving quality & monitoring of victim support service provision.

# Promising practices

## Victim support onsite at police stations

- **Sweden:** the Swedish Association for Victim Support located at police stations – close cooperation with police & easy referral
- Similar practices in **Belgium, Estonia, Finland, France** and the **Netherlands**
- To be rolled out in **Ireland** (from 2015)

### Promising practice

#### Linking victim support work to police stations

In some EU Member States, victim support organisations operate either directly at police stations or in their immediate vicinity, which makes referral easier. One such example is the close cooperation between the police and Victim Support **Sweden** (Swedish Association for Victim Support, *Brottsofferjourernas Riksförbund, BOJ*). **Belgium, Estonia, Finland, France** and the **Netherlands** use similar models.

*Source: The information supplied is based on the FRA project on victims of crime, which involved fieldwork and desk research*

## Promising practices

### Victims of crime funds – contributions by convicted persons

- In place (or planned) in
- **Belgium, Denmark, Estonia, Finland, France, Lithuania, Poland, Portugal, Sweden and UK**
- **Finland:** to generate 4.5 million a year for victim support services

#### Promising practice

##### Victims of crime funds – contributions by convicted persons

In addition to other funding sources, several EU Member States generate money for victim support services through a "Victims of Crime fund" or the like, whereby persons convicted of an offence pay a fine to help the funding of services for victims of crime; for example, in **Belgium, Denmark, Lithuania, Poland, Portugal, Sweden and the United Kingdom**.

A 2014 bill in **Finland** (which follows a public consultation forum to gather information and expert input) proposes that penalties be paid by persons and legal entities convicted of crimes, which should go towards victim support services. The press release includes the following:

- some 85 % of costs are estimated to be covered by victims of crime;
- for crimes where the most severe punishment is 6 months imprisonment, the fine is € 40;
- for more severe crimes, € 80;
- for legal entities, € 800;
- the bulk of the revenues from this will come from more severe traffic violations;
- total annual revenue is expected to be € 5,000,000 after administrative costs have been deducted, this will be used for support services for victims of crime;
- the bill is planned to go to parliament in the second half of 2015 and to enter into force on 1 January 2016.

For more information on which Member States have introduced such systems, see: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/victim-support-services/funds>.

Source: <http://www.finlex.fi/sivut/ai/tuella/luettelu/2014/09/alkivuosittaisuuksienkorotusmaksuilla-parannettavienpalvelustenrahoituslain.html>



## Promising practices

### Individual assessment

- **France:** piloted the VD concerning individual assessment of victims in 2014, nationwide from 2015
- **Victim support Scotland Assessment Toolbox Framework:** illustrates how to structure such an assessment in practice
- **Specialised support services:** many promising practices e.g. migrants; victims with a disability; child victims; domestic abuse victims; hate crime victims

#### Promising practice

##### Deploying special measures for migrant victims with an irregular status

In **Belgium**, the Centre for Equal Opportunities and Opposition to Racism can file a complaint before the criminal courts in the name of victims, while the NGOs *Payoke*, *Pagasa* and *Sūrya* can issue requests for a residence permit on behalf of victims who are irregular migrants.

In **Finland**, clients without legal immigration status are referred to the 'Paperless' services (*Paperittomat*) or to the Helsinki Deaconess Institute (*Diakonissalaitos/Diakoni-institut*).

In **Spain**, female victims of gender violence can obtain special residence independent of their spouse. In general, protective measures may be offered irrespective of the person's legal situation, depending on each case.

In **Sweden**, the Sisters' Shelter Somaya (*Systerjouren Somaya*) specifically provides services to migrant and Muslim women who are victims of violence and abuse.

Source: Centre for Equal Opportunities and Opposition to Racism, [www.diversiteit.be](http://www.diversiteit.be); Interview with Petra Kjällman, Executive Director of RIKU, 23 April 2013, see also: [www.paperittomat.fi/](http://www.paperittomat.fi/); and Sisters Shelter Somaya, [www.somaya.se/start/ditt-språk/english-5996417](http://www.somaya.se/start/ditt-språk/english-5996417)

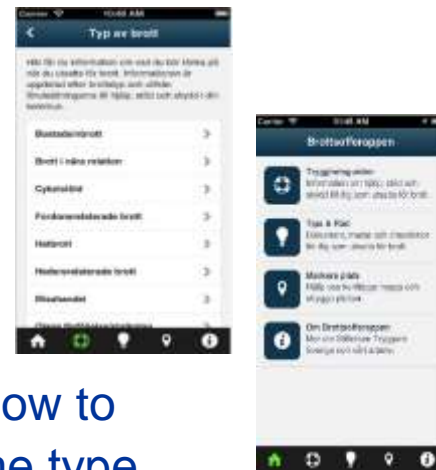


## Promising practices

### Supporting victims at court through apps

**Sweden** (<http://brottsofferappen.org/>):

provides victims with information on: closest police station and support services; checklist on how to report the crime and how to claim damages. Information specific to victim's location and crime type.

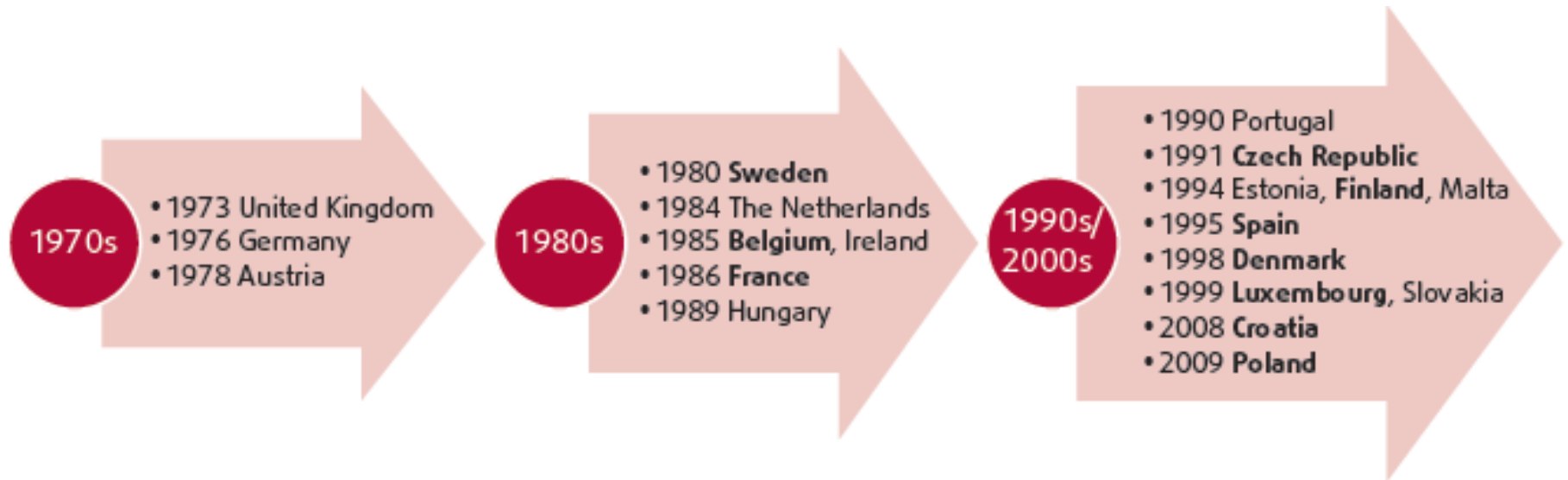


**Spain** (<https://itunes.apple.com/es/app/ciudad-de-la-justicia/id642741128?mt=8>):

provides the location of a new court complex in Zaragoza and gives details about hearings. It issues alerts to let people know when court cases have finished.



## Year of origin of generic victim support services in European Union Member States



## Year of first national legislation referring to the rights and/or support and protection of victims of crime in EU Member States

1970s/  
1980s

- Austria
- Belgium
- Finland
- France
- Germany
- Greece
- Ireland
- Luxembourg
- Netherlands
- Portugal
- Sweden

1990s

- Cyprus
- Czech Republic
- Denmark
- Estonia
- Italy
- Poland
- Slovenia
- Spain

2000s

- Bulgaria
- Croatia
- Hungary
- Latvia
- Lithuania
- Malta
- Romania
- Slovakia
- United Kingdom

# The ‘place’ of victims – art. 47 of the Charter of FR

‘Euro-victims’: Offences violate a right or freedom guaranteed by EU law

83(1) TFEU, e.g. victim of trafficking

83(2) TFEU, e.g. victim of racist hate crime or of severe labour exploitation

Criminal offence protecting a right guaranteed by EU law

Right to have access to **criminal justice**

Rights guaranteed by the VD

Right to understand and to be understood (Art. 3 VD)

Right to receive information (Art. 4 VD)

Right to interpretation and translation (Art. 7 VD)

Right to access victim support services (Art. 8 VD)

Right to be heard (Art. 10 VD)

Right to legal aid (Art. 13 VD)

Right to decision on compensation (Art. 16 VD)

Right to have access to **judicial review**

FRA opinion

*EU Member States must ensure the effective provision of and access to support services in order to comply with the Victims' Directive and to meet their obligations under Article 47 of the Charter. When implementing the Victims' Directive, EU Member States should take into account Article 47 and relevant ECtHR case-law to assess the rights of victims to actively participate in criminal proceedings, such as the right to be heard and the right to provide evidence.*

## Who is a victim? In Member States, there's more than one answer ('paradigm')

Paradigm	Role in criminal proceedings
A) The victim as witness	Witness

Criminal justice a matter between a state and offenders  
The victim is obliged to support the state

## Who is a victim?

Paradigms	Role in criminal proceedings
A) The victim as witness	Witness
B) The harmed victim	Witness + impact statement (sentencing)

The victim is a witness who suffered harm caused by a criminal offence

## Who is a victim?

Paradigms	Role in criminal proceedings
A) The victim as witness	Witness
B) The harmed victim	Witness + impact statement
C) The damaged victim	1) Civil party or even 2) Civil party and subsidiary prosecutor

It is acknowledged that the offence concerns the victim but only when the victim has suffered damage, civil-law paradigm



## Who is a victim?

Paradigms	Role in criminal proceedings
A) The victim as witness	Witness
B) The harmed victim	Witness + impact statement
C) The damaged victim	1) Civil party or even 2) Civil party and subsidiary prosecutor
D) The one whose rights are protected by criminal law and were violated by the offence	Party to the criminal proceedings

What is defining is the rights-violation suffered, not harm or damage

## The rights approach to crimes and victims

- The starting point is the definition of ‘crime’
  - Crime as a violation of the laws of a state (paradigms A-C)
  - Crime as a wrong against society as well as a **violation of the rights of an individual (the victim)** (paradigm D)
    - **As such**, victims of crime should be recognised and treated in a respectful, sensitive and professional manner ...  
(Recital 9 of the Victims’ Rights Directive)
  - **However – many victims never report crime or seek access to justice; therefore – we also need to look outside our focus on criminal justice remedies**

## FRA Report: Violence against Women



- 42,000 women interviewed face-to-face
- Experiences of physical, sexual & psychological violence
- Experiences since age 15 and last 12 mths
- Experiences of violence in childhood
- Opinions at end of each chapter
- **Context of international human rights law**

**Article 28 Victims' Directive  
on provision of data and statistics**

## Who was contacted after most serious incident of sexual violence

SINCE AGE 15, %	By any partner (current and/or previous)	By someone else (not a partner)
Police	15	14
<b>Hospital</b>	<b>12</b>	<b>12</b>
<b>Doctor, health centre or other health care institution</b>	<b>22</b>	<b>16</b>
Social services	7	2
Women's shelter	6	1
Victim support organisation	4	4
Church/faith-based organisation	4	2
Legal service/ lawyer	15	6
Another service/ organisation	5	3
<b>Any of the above</b>	<b>39</b>	<b>30</b>

## Reasons for not contacting any organisation (other than police) following the most serious incident of violence

	Any partner (current and/or previous)		By someone else (not a partner)	
	Physical violence	Sexual violence	Physical violence	Sexual violence
	%	%	%	%
Dealt with it myself / involved a friend / family matter	55	47	49	37
Never occurred to me / too minor / not serious enough	34	21	40	20
Did not believe that anyone could help	8	15	7	15
Shame, embarrassment	9	22	4	23
Didn't want anyone to know/kept it private	9	21	4	20

## Needs for assistance following the most serious incident of violence

	Any partner		Non-partner	
	Physical violence	Sexual violence	Physical violence	Sexual violence
	%	%	%	%
Practical help	14	21	13	16
Someone to talk to/moral support	39	54	33	51
Protection from further victimisation/harassment	15	25	12	21
Help in reporting the incident/dealing with the police	5	13	5	12
Medical help	5	10	4	10
<b>None of these/did not want any support</b>	<b>38</b>	<b>24</b>	<b>39</b>	<b>27</b>

## **FRA findings – specialist victim support**

- Very few women contact specialist services
- Requirements of Victims Directive difficult to meet
- Need for enhanced resources for specialist services – particularly to reach out to significant numbers of women who don't report abuse



## FRA findings – policing

- Reporting rates to the police are low
- Having reported - victim satisfaction lower for police than for other groups
- Lack of satisfaction with police needs addressing by applying and monitoring in practice the provisions for victims under the Victims' Directive (& CoE Istanbul Convention)
- Different police intervention models need reviewing to see if they serve victims in practice; particularly as VSS being placed in police stations

## **Victims' rights as fundamental rights?**

### Evidence needed

- Assess the benefits of a FR framework for all victims – on paper & in practice (moving beyond the 'ideal' or 'deserving' victim?)
- Assess the experiences of & responses to different groups of victims – within a rights holder and duty bearer framework
- What are the rights afforded to victims who don't report to the police and don't enter the criminal justice system?
- Understand the 'place' of victims in different countries



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