

# Developing Directive – compatible practices for the identification, assessment and referral of victims

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## Portugal Practices Report

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**APAV – Associação Portuguesa de Apoio à Vítima**

Rua José Estêvão, 135 – A

1150-201 Lisboa

Portugal

Phone: 00351 213 587 900

Fax: 00351 218 876 351

[apav.sede@apav.pt](mailto:apav.sede@apav.pt)

[www.apav.pt](http://www.apav.pt)

## **NATIONAL PRACTICES REPORT**

### **INTRODUCTION**

The present report was elaborated in the context of the Project "Developing Directive-compatible practices for the identification, assessment and referral of victims". It aims to present the current situation in Portugal regarding victims' rights – what is the legal framework and what is the reality of the entities and organizations working with crime victims, particularly in what concerns the identification, individual assessment and referral of victims. The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime had to be implemented in the European Member States until November 2015 and this report intends to analyse if that transposition has been successful in Portugal.

The information in this report was obtained through the analysis of the Portuguese legal framework, through research among other reports on victims and through interviews with professionals who directly work with victims. This report starts by presenting Portuguese legislation on victims' rights, mentioning the main steps of the national criminal procedure, the contents of the recently adopted Victims' Statute and analyzing the mistakes and omissions committed in the transposition of the Directive, or in other words, in the creation of the Victims' Statute. If we take a close look to the Law that transposes to the Portuguese legislation the analysed Directive, namely Law number 130/2015, September 4<sup>th</sup> which approves the Victim's Statute, we can conclude that this piece of legislation was far from what was expected. Even though the mentioned Law establishes a number of rights that are automatically attributed to the victim and an especially vulnerable victim's statute, representing a new path towards the recognition of all victims' rights, it only established the minimum standards concerning rights, support and victim's protection.

Specifically regarding the Directive's transposition to our legislation, this report also approaches several problems as well as gaps and insufficiencies in its effective implementation that reflects itself in vague dispositions. In addition to those problems and gaps that we just mentioned, Portuguese Law is omissive when compared with the Directive; those omissions are treated in this report as well. After that brief legislative analysis, this report makes an approach on the main "entry points" in the Portuguese criminal justice system, followed by a comparison between what is being done in Portugal and what the Directive truly demands. Then, the results of the interviews and the shared experiences of professionals about the reality on identification, assessment and referral of victims are presented and simultaneously compared to what the Directive predicted. Lastly, this report will try to synthesize all the steps previously analysed, systematizing all the achieved conclusions concerning the portuguese practices and the effective results of the directives' transposition. Finally, a small synthesis of what has been written will conclude the report.

## **1. LEGISLATION ON VICTIM'S RIGHTS**

### **1.1 Main steps of the Portuguese criminal procedure**

Depending on how criminal proceedings are initiated and some of their other features, crimes may be classified as:

- **Public crimes:** Examples of public crimes are murder, abduction, child sex abuse, domestic violence and robbery. It is sufficient that the Public Prosecution Service becomes aware of the crime in any way for criminal proceedings to be initiated. In other words, the case begins regardless whether or not the victim wishes to press charges and the crime may be reported by anyone.
- **Semi-public crimes:** Semi-public crimes include rape, theft and some offences against physical integrity. Criminal proceedings for these crimes only begin after the victim of the crime has filed a complaint. In other words, the public prosecutor may only initiate criminal proceedings if the victim indicates their intention to do so by filing a complaint within six months of the crime.

- Private crimes: Private crimes include defamation, libel and slander, among others. The procedure for initiating both private crimes and semi-public crimes begins in the same way: the Public Prosecution Service may initiate proceedings if the victim files a complaint. After the complaint is made, the victim has ten days to apply for the status of assistant and for a lawyer to be appointed. This is necessary so that if it is considered, at the end of the investigation stage, that there is sufficient evidence to send the defendant to trial, the victim may press charges. If he/she does not do so, the case will be closed.

The complaint or report can be filed with any of the following authorities:

- Public Prosecution Service
- Judiciary Police
- Public Security Police
- National Republican Guard

The complaint (unlike the report of the crime) may be withdrawn by the victim, that is to say, if for any reason the victim does not wish the proceedings to go ahead, he/she can withdraw the complaint, as long as the defendant is not against this. Once the crime is reported or the complaint filed, an inquiry is launched, which starts the investigation. The criminal investigation encompasses all the actions aimed at ascertaining whether there was a crime, who committed it and their liability and finding and gathering evidence. This is the first stage of criminal proceedings, which is also called the inquiry stage and is carried out by a criminal police force under the supervision of the Public Prosecutor.

The inquiry stage may last from a few weeks to several months, depending on the amount of evidence to be gathered and the complexity of the investigation. If there is a risk that the suspect might escape, or a danger to the gathering and preservation of evidence of the crime, a danger to public order and/or danger of the criminal activity continuing, then measures may be implemented. At the end of the investigation stage, the criminal police force sends all the gathered evidence to the Public Prosecution Service, which will decide whether or not there is enough evidence that the suspect committed the crime:

- If the Public Prosecutor believes that there is, the defendant is formally charged and will stand trial.
- If the Public Prosecutor considers that there is insufficient evidence, then the case is closed. Unfortunately, not all cases are solved. Sometimes it may not be possible to find out who committed the crime or there is not enough evidence for the Public Prosecutor to take the case to court. If the victim does not agree with the case being closed, he/she can file an application with the direct superior of the Public Prosecutor who decided to close the case, asking them to press charges against the defendant or to continue the investigation. In the latter case, the victim should submit new evidence to be taken into consideration. A closed case can be reopened if significant new evidence appears.
- There is also a third possible course of action, which is like an opportunity for the defendant: the provisional suspension of the case. For a certain period of time established by the Judge, the case is suspended and one or more obligations are imposed on the defendant— for example, to pay compensation to the victim, to donate a certain sum of money either to the State or to private charities, to provide a community-interest service, refrain from living in particular areas, or not to contact specific people, etc. If the suspect complies with these obligations during the suspension period, then the case is closed. Suspending the case temporarily only applies to crimes punishable with a term of imprisonment of not more than 5 years if the suspect agrees and, when the victim has the status of assistant, his/hers consent is also required.

In the case of a less serious crime – a private crime – the procedure is different. After filing the complaint, the victim has ten days to apply for the status of assistant. The assistant's role is to work with

the Public Prosecution Service and the fact of having this status allows the victim to participate more actively in the case. In order to be granted the status of assistant, the victim has to have a lawyer and pay the court fee of one Account Unit. If the victim cannot afford these expenses, they can request legal aid. When private crimes are involved, it is compulsory for the victim to have the status of assistant since, at the end of the inquiry stage, the Public Prosecution Service, rather than deciding whether to charge the suspect or not, will send the evidence gathered to the assistant to decide whether or not they wish to press charges against the suspect, that is, whether or not to take the defendant to court. For other kinds of crimes, the status of assistance is optional but this status may be very useful and effective, especially to have a say in deciding on the provisional suspension of the case, agreeing or otherwise to close the case or filing applications and lodging appeals. If, at the end of the inquiry stage, the victim, in their role as assistant in the proceedings does not agree with the case being closed or if the defendant does not agree with the decision to charge, they can request that an optional stage, where the investigation continues, takes place – the examination stage. The examination stage is therefore a stage where the grounds for the decision are discussed and where both the victim and the defendant can submit evidence which, for whatever reason, was not taken into account in the investigation stage, such as new witnesses or documents. In this stage, a Judge - called an examining Judge - will review the evidence gathered during the inquiry stage, any other evidence which they understand should be obtained or which is submitted at this stage and which they consider relevant. The examining Judge will question the victim and the defendant whenever he/she deems it necessary and whenever they request it. The examination stage ends with a discussion known as the examination discussion. This is managed by the Judge and involves the Public Prosecutor, the defendant and the defense lawyer, the victim in their role as assistant in the proceedings and the victim's lawyer.

At the end of this discussion, the Judge decides whether or not to confirm the Public Prosecutor's decision in the investigation stage:

- If the examining Judge decides to dismiss the case, the defendant will not go to trial. This decision is called a non-indictment decision and may be appealed by the Public Prosecutor and the victim, as long as he/she has the status of assistant.
- If the Judge decides to proceed with the case, the defendant will go to trial. This decision is called an indictment decision and, as a rule, may not be appealed.

In short, if the Public Prosecutor and the victim, as long as he/she has the status of assistant, do not agree with the examining Judge's decision, they may appeal it. So, as mentioned, if the defendant was charged at the end of the inquiry stage or indicted in the examination stage, the case moves on to the trial court. After receiving the case file, the Judge (who is not the same Judge as the examining Judge) schedules the trial date and a summons or notice is sent by letter to all the people who have to participate in it. All the evidence is presented at the trial to the Judge and to the other participants to make their experience with the evidence as direct as possible. The defendant is examined and the witnesses questioned even if they had already given evidence during the investigation. The expert witnesses may be asked to explain the exams they conducted and documents such as medical reports that can be reassessed. The defendant may be removed from the courtroom while some witnesses are testifying, particularly the victim, if the court considers that his/her presence may deter the victim from telling the truth or if he/she is under 16 and there are reasons to believe that testifying in the presence of the defendant may have a serious adverse effect. All the oral evidence given in court is recorded so that, if there is an appeal, the appeal court can listen to the recordings and does not need to have the participants called to testify again.

The judgment is the decision in the proceedings and includes the facts which the Judge considers proven, the unproven facts and the evidence on which it was based. If the defendant is convicted, the decision also includes the type of sentence and the information taken into account for deciding on the sentence. In cases tried before a collective court it is called a ruling. The participants in the proceedings are entitled to receive a copy of the judgment and should request it from the administrative office of the court. Anyone is entitled to read the judgment and should request it at the administrative office of the court if they wish to do so. If the defendant, the assistant or the civil parties disagree with the judgment,

they can lodge an appeal through their respective lawyers. The Public Prosecutor may also lodge an appeal. The appeal must be lodged in writing to the court where the trial took place within thirty days. Any parties to the proceedings who are affected by the lodging of the appeal are notified so that they may lodge their response within thirty days. The appeal and the responses to it, along with any other elements relevant to the case, are then sent by the trial court to the court of appeal. After the appeal is examined by the Judge and by the Public Prosecutor assigned to the appeal court, a hearing may be scheduled at which all the parties affected by the appeal will have the chance to present oral arguments about the same. Once the appeal hearing has ended, or a few days later, the appeal court makes its ruling. You can lodge an appeal not only against the judgment but also against other decisions made at different stages of the proceedings - for example, the final decision in the examination stage. When it is no longer possible to lodge an appeal, either because the time limit has expired or because the law does not allow further appeals, the decision becomes final or, in other words, the case has been judged.

## **2. STATUS AND SITUATION OF VICTIMS**

Law number 130/2015, September 4<sup>th</sup> intended to transpose to the Portuguese legislation the Directive 2012/29/EU, creating the Victim's Statute. This piece of legislation did not measure up to what was expected. In addition, we must add that following the process of transposing Directive 2012/29/EU into the Portuguese legal system, the Victim's Statute entered into force with the implementation of Law number 130/2015, of September 4<sup>th</sup>, and it has not undergone any legislative amendment or repeal so far. From this moment on, we are going to start by presenting the rights that were inserted in this Victim's Statute and at the end, we will make an analysis of rights when compared to what the Directive demanded.

The Law in question added to the Criminal Procedure Code a whole new article focused on the victim. It firstly defines victim as a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence and also as the family members of a person whose death was directly caused by a crime and that suffered harm in consequence of that death. Afterwards it defines "especially vulnerable victim" as the victim whose special vulnerability results namely from their age, health condition or disability, as well as from the damages with serious consequences in their psychological balance and in their social integration caused by the type, degree and duration of the victimisation. The victims of "violent crime" and "especially violent crime" – concepts defined in another article from the Criminal Procedure Code, respectively, as acts against life, physical integrity, personal freedom, sexual freedom or a public authority and that are punishable with a sentence equal or superior to five years of incarceration and these same acts but punishable with a sentence equal or superior to eight years of incarceration – are always considered "especially vulnerable victims". It also defines "family members": this expression stands for 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 dependents of the victim. Besides that, "child" means any person below eighteen years of age.

The Victim's Statute itself starts by presenting a set of main principles: principle of non-discrimination and equal opportunities, principle of respect for human dignity, principle of freedom of choice, principle of confidentiality, principle of consent, principle of information and principle of equal access to health care. The Victim's Statute proceeds to mention the right to information. According to the law, the victim has the right to be informed without unnecessary delay, from their first contact with the competent authorities and officials, including during the time prior to the filing of the complaint about: where to receive support, types of support available, where and how to report a crime, procedures following the complaint and role of the victims in those procedures, how and under what conditions they can obtain protection, how and under what conditions they can access legal advice, legal aid and any other sort of advice, how and under what conditions they can access compensation, how and under what conditions they are entitled to interpretation and translation, the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings, the available procedures to protect their interests in Portugal if they are resident in another Member State, how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed and under what conditions are they entitled

to the notification of judgements in criminal proceedings. The extension and details of the information provided may vary according to the specific needs and personal circumstances of the victim as well as according to the nature of the crime. The Statute states that the victim, when reporting the crime, has the right to free assistance. This is one of the rights in the Victim's Statute that fails to be explained, lacking any use. Additional information can be provided in later stages of the criminal proceedings according to the victims' needs and to the relevance of this information at each stage of the process. The victim has the right to consult the file and obtain copies of the pleadings. When the victim requests it to the competent authority, he/she has the right to receive information, without undue delay, about: what happens after the crime is reported (including the decision to close the case at the end of the investigation stage or of the examination stage as well as the decision to provisionally suspend the case and its substantiation and the decision to charge the defendant at the end of the investigation stage or the examination stage and its substantiation), the elements that allow him/her to know what is happening in the case, including the place and date of the trial, the procedural status of the defendant, except when giving this information might affect the progress of the case and the judgment and its substantiation. When informed of the possibility of receiving information about his/her case, the victim can declare that he/she wishes to receive such information. The victim should be notified, especially when the defendant is knowingly dangerous, about the decisions affecting the defendant's status, particularly about restrictive measures. Victims should 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. 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.

When the victim reports a crime or files a complaint, he/she is entitled to receive a certificate showing that the complaint was registered, that is, a document confirming that the complaint was made and stating the type of crime, along with the date and place, and the harm or damage caused. When the victim does not speak Portuguese, this certificate should be translated into a language that the victim understands. Law number 130/2015 goes on to foresee the right of 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. Communication with victims must be done in a simple and accessible language, taking into account their personal characteristics including any disability which may affect the capability to understand or to be understood. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, victims can 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. Entitled "Specific assistance to the victim" the Victim's Statute has a provision that refers to the law that foresees the right to free legal advice and legal aid, without adding anything new to what already existed. Victims who participate in criminal proceedings have the right to be reimbursed of expenses incurred as a result of that participation. The Victim's Statute foresees this right but it was already mentioned by the Criminal Procedure Code. So, the Statute did not bring anything new. The Victim's Statute foresees the right to protection in two separated articles and in one section dedicated to the rights of especially vulnerable victims. The first article concerning the right to protection states that victims and their family members have the right to protection, namely in what concerns security and protection of privacy, whenever competent authorities consider that there is a serious threat of retaliation, secondary and repeat victimisation or strong evidence that the victim's privacy can be disturbed. It also imposes that contact between victims and their family members and the offender within premises where criminal proceedings are conducted should be avoided, unless the criminal proceedings require such contact. This same norm establishes that the Judge, or during the investigation phase, the Prosecutor, may determine, whenever it is necessary to protect the victim, and given his/her consent, that he/she receives psychosocial support. One of the issues of this provision is that it is not defined in the Victim's Statute what is psychosocial support and who is in conditions to provide it. Law number 130/2015 states that in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time. This was already something that existed in portuguese legislation. What the Statute brought as novelty is that the Judge shall condemn the defendant to pay compensation to the especially vulnerable victim, even if the victim did not make a request for compensation, if there is a decision to convict. The Statute also foresees that recoverable property which is seized in the course of criminal proceedings shall be returned to victims without delay,

unless required for the purposes of criminal proceedings, something that was already part of the Portuguese Criminal Procedure Code.

Going back to the right to protection, the piece of legislation in analysis mentions that victims have the right to be interviewed in an informal and reserved setting in conditions that help prevent secondary victimisation and avoid external pressures. The same article states that interviews of victims and medical examinations shall be conducted without unjustified delay after the complaint only where strictly necessary for the purposes of the criminal investigation and their repetition should be avoided. The Victim's Statute imposes that police stations and Prosecutors' offices have service and information offices to receive victims equipped with appropriate conditions, including privacy. The Statute foresees that people who reside in Portugal, victims of crimes committed in other Member States have the right to report the crime to the Portuguese authorities when they have not had the chance to do it in the Member State where the crime was committed. In these cases, the Portuguese authorities shall promptly convey the necessary information to the competent authorities in the Member State where the crime was committed and the victim shall be informed of this. Citizens of other Member States, victims of crimes committed in Portugal have the right to be interviewed immediately after reporting the crime to the competent authority and if necessary through the use of appropriate communication technology like videoconferencing and teleconferencing. Going back once more to matters of protection, Law number 130/2015 fixates an especially vulnerable victims' statute. Once the report of a crime is made, if there is not strong evidence that the report is false, judicial authorities and police enforcement can, after individual assessment of the victim, assign him/her the especially vulnerable victims' status. In the same moment it should be delivered to the victim a document proof of the victim's especial vulnerability status, presenting his/her rights and duties. Especially vulnerable victims shall be individually assessed in order to determine if they should benefit of special protection measures.

The special protection measures referred are the following:

- All interviews with the victim shall be conducted by the same persons provided that the course of the criminal proceedings will not be prejudiced;
- All interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a Judge, shall be 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;
- Measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;
- Measures to record the victim's statement in the initial stages of the proceedings and present the recordings in trial avoiding that the victim has to repeat the statement;
- Measures allowing the trial to take place without the presence of the public.

Particularly concerning child victims, the Statute establishes that all children have the right to be heard during the criminal proceedings providing that their age and maturity are taken into consideration. If there is not a conflict of interests, the child may be accompanied by his/her parents, the legal representative or by the person that takes care of the child at the moment of the hearing. A special representative shall be appointed for the child victim when his/her parents, the legal representative or the person that takes care of the child are precluded from representing the child victim as a result of a conflict of interests between them and the child or when the child with proper maturity requests it to the court. Public dissemination of any information that could lead to the identification of a child victim shall be avoided, otherwise the person responsible can be charged with the crime of disobedience. These provisions apply to victims whose age is uncertain and there are reasons to believe that they are children.

Still on the especially vulnerable victims' rights, the Law number 130/2015 states that depositions and statements of especially vulnerable victims, when demanding the presence of the defendant, are made through videoconference or teleconference, by determination of the Prosecutor, on its own initiative or by the victim's request, during the investigation phase and by determination of the court, on its own initiative or by the victim's request, during the examination or trial phase, if that reveals to be necessary to guarantee that the victim gives evidence without any constraints. The especially vulnerable victim can be accompanied, when giving evidence, by a professional trained to accompany him/her, appointed by the Prosecutor or the court. The Judge, by request of the Prosecutor or of the victim, can interview the victim during the investigation phase in order for the deposition to be recorded audio or audiovisually and, if necessary, taken into consideration in the trial. The Prosecutor, the defendant and his/her lawyer and the other lawyers involved in the proceedings are notified of the date and place of the deposition in order to be there and ask any questions they wish. The presence of the Prosecutor and of the defendant's lawyer is mandatory. The victim shall be accompanied by a trained professional appointed by the court and shall only give evidence again in the trial if that reveals to be imperative for finding the truth and does not jeopardize the physical and mental health of the victim. Especially vulnerable victims can be temporarily received in shelter houses supported by the State, if as a result of the individual assessment that is considered necessary. These victims can be assisted by the health services integrated in the National Health System located in the area of the shelter facility, instead of the health services of the place of residence. Especially vulnerable victims are exempt of the user fees in the context of the National Health System. The media, when exposing situations concerning the commission of crimes against children or youngsters or other especially vulnerable victims, cannot disseminate any elements that can lead to the identification of the victims, otherwise the person or entity responsible can be charged with the crime of disobedience.

Finally, the Statute focuses on the training of professionals imposing that 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. The training center for future Prosecutors and Judges has to include in the syllabus contents on victimisation to increase their trainees' awareness of the needs of victims.

### **2.1 Problems and gaps in the legislative implementation**

Law number 130/2015 represents a new step in the path towards the recognition of all victims' rights. However, it fell short from what was expected from the piece of legislation that would transpose the Directive 2012/29/EU of the European Parliament and of the Council of 25<sup>th</sup> October 2012 establishing minimum standards on the rights, support and protection of victims of crime. The Portuguese Parliament only came up with a law proposal near the end of the deadline for transposition established by the Directive – 16th November 2015. Hence, the period of time available for collecting feedback on the proposal and making the necessary changes was too short. Moreover, before this proposal there was not a public discussion between all the relevant actors of the justice system about the way to really implement the Directive's rights in the Portuguese framework. This is inexplicable having in mind that the need to transpose the European norm has been known since October 2012. So, a merely formal implementation of the Directive took place. The legislative implementation is incomplete. But even if it was not, the transposition of the Directive would imply a lot more than passing a new law: it would imply creating coordinated practices between the professionals of the judicial system, procedures and convey due training to professionals. But, as mentioned, even the legal transposition itself is flawed. Looking at the Victim's Statute, there are many aspects that are not coherent to what is established in the Directive. We will try to present them next.

- **2.1.1 Vague Provisions**

The true implementation of the Directive requires the establishment of very concrete rights and mechanisms that allow victims to exercise them. Yet, the Victims' Statute is filled with principles and vague dispositions. We are not in a time for principles. Of course they are important but there is a reason why the Directive left them out. At this point, the principles should be internalized and the focus should be on trying to assure that the rights that result from them are respected in practice.

Besides the principles, other provisions of the Statute are unnecessary, not having any practical impact in the crime victims' situation. One of them is where it says that the victim, when reporting the crime, has the right to free assistance. Nothing is added to this statement throughout the law which will most likely result in its inapplicability. The article that refers to the law that foresees the right to free legal advice and legal aid, without adding anything new to what already existed, is another example of provisions of the Statute that are pretty much useless. Concerning the victim's right to obtain a decision on compensation by the offender, as previously mentioned the only novelty brought by the Statute is that the Judge shall condemn the defendant to pay compensation to the especially vulnerable victim, even if the victim did not make a request for compensation, if there is a decision to convict. Regarding number 2 of article 16 of the Directive - *Member States shall promote measures to encourage offenders to provide adequate compensation to victims* – nothing was mentioned or done. This could be a great opportunity to find innovative solutions that would guaranty victims a better chance of being compensated. It would not be necessary to invent anything new, but only to try to import some measures already adopted in other Member States, like a more frequent resource to criminal mediation, the prioritization of the victim's compensation as an injunction in the context of the provisional suspension of the case, the due information of the defendant about the positive procedural consequences of paying a compensation to the victim, the creation of a compensation fund, among others.

- **2.1.2 Omissions**

In some cases, the Victim's Statute is not only vague and devoid of content, but truly omissive. Concerning the right to information, the Statute neglects to establish that victims have the right to be informed about the contact details for communications about their case and about the available restorative justice services, aspects mentioned in paragraphs i) and j) of article 4, number 1 of the Directive. We can't find a justification to why the need to inform about these two aspects was left out of the article of the Statute about the right to information. The victim's right to be informed about the contact details for communications about his or her case derives from the need for communication between victims and judicial operators to be able to happen in an expedite way, increasing the trust victims have in the judicial system and their availability to cooperate in the investigation, being particularly relevant when victims have special protection needs. Information concerning restorative justice services should be conveyed only to those victims whose cases could be solved with resource to criminal mediation according to the Portuguese law and giving such information would aim to promote the use of this alternative means of solving less serious criminal cases which has proven its success in many countries, having a positive impact in all the participants, namely in victims' lives.

Still regarding restorative justice, it is important to mention that the Victim's Statute does not mention at all the contents of article 12 of the European Directive. As it has already been hinted there is a law in Portugal creating and regulating criminal mediation. However, not all conditions mentioned in the number 1 of this article of the Directive are contained in that law. For example, the conditions that imply that restorative justice services are used only if they are in the interest of the victim and that the offender acknowledges the basic facts of the case are not mentioned. But more important than making the necessary alterations in the Portuguese Criminal Mediation Law is implementing what is established in number 2 of article 12 of the Directive: 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. On this the Victim's Statute is completely omissive.

The right to interpretation and translation foreseen in article 7 of the Directive is not mentioned in the Victim's Statute. Even though the Criminal Procedure Code already states that an interpreter should be appointed in cases when someone who does not speak or understand Portuguese or is deaf or mute participates in the procedure, numbers 2 to 8 of article 7 have not been implemented in the Portuguese legal framework, namely in what concerns the written translation of essential documents as well as the possibility to dispute a decision not to translate a document.

The Victim's Statute does not make any references to the victim's right to access support services and to the type of support these services have to provide, mentioned in articles 8 and 9 of the Directive. Although the true implementation of this right is more about the adoption of public policies than about legislative measures, it is very important that number 2 of article 8 is mentioned in the law. That is, it should be foreseen in the Statute the mandatory referral of victims, by the competent authority that receives the complaint or report and by other relevant entities, to victim support services. The Statute states, in the context of the right to information, that victims have to be informed about where to receive support and about what types of support are available and, in the context of the right to protection, that the Judge or the prosecutor may determine that the victim receives psychosocial support. About this last part there are some particularly negative aspects to point out: first, this provision is inserted in the context of the right to protection and benefitting from victim support is not strictly connected to needs of protection; second, we can not understand why it is mentioned that the Judge or the prosecutor may determine instead of "may refer" and third, because the Statute does not foresee any more information about this "psychosocial support", which leads us to believe that as other past vague provisions this one will have no applicability. So, what is mentioned in the Statute is clearly not enough and does not comply with what the Directive imposes. Informing about victim services is not the same as referring for victim services, and besides the mention in the law it is important to create mechanisms of referral. This is essential to guaranty victims' access to victim support services. The Victim's Statute is omissive in what concerns many aspects related to the right to protection. But as there is a lot to be said regarding the way the Portuguese legislator chose to regulate this matter, we prefer to dedicate a whole chapter to it, where we will mention, namely, the existing omissions.

- **2.1.3 Right to protection and the especially vulnerable victims' statute**

Concerning the right to protection, the Victim's Statute has three main flaws: a confusing organization; omission of some aspects of the right to protection foreseen in the Directive and regulation on especially vulnerable victims' rights revealing of a faulty understanding of what the Directive establishes.

a) Organization

Concerning the organization of the articles of the Victim's Statute on protection, we find difficult to understand why this matter is treated in two separate provisions (15 and 17) and in a section dedicated to especially vulnerable victims (that begins in article 20). It would be more logical and simpler if all of this matter was regulated in consecutive provisions, instead of being intercalated by other rights. Also, rights and measures applicable to especially vulnerable victims would fit perfectly in the Witness Protection Law, in the section focused in especially vulnerable witnesses. We believe it would be better to congregate all measures to protect especially vulnerable victims and witnesses in one law.

b) Omissions and insufficiencies

There are several protection measures foreseen in the Directive that are not mentioned in the Victim's Statute and others that are not established with the due extent. Regarding the first article concerning the right to protection which states in its first number that victims and their family members have the right to protection, namely in what concerns security and protection of privacy, whenever competent authorities consider that there is a serious threat of retaliation, secondary and repeat victimisation or strong evidence that the victim's privacy can be disturbed, it should be noted that its content is much more restricted than the one of article 18 of the Directive. Focusing in the same article, but in its second number related to the victim's right to avoid contact between victim and offender, we have to point out that the Victim's Statute does not mention what is established in number 2 of article 19 of the Directive - new court premises have to have separate waiting areas for victims.

Concerning the measures established in article 20 of the Directive, the one foreseen in paragraph 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 - was not inserted in the Victim's Statute. This piece of legislation affirms the possibility of the victim being accompanied by a person of their choice in the first contact with a competent authority where the victim requires assistance to understand or to be

understood which is different from foreseeing the right to be accompanied in the context of the right to protection.

Another aspect that should be treated in the Statute with more detail is related to the protection of the victim's privacy. In the Directive, this right is applicable to all victims. However, in the Victim's Statute this right is foreseen only for especially vulnerable victims.

#### c) Especially vulnerable victims

Focusing on the especially vulnerable victim's statute, we would like to firstly criticize the terminology adopted by Law number 130/2015. The Directive uses the expression "victims with specific protection needs" and not "especially vulnerable victims". It would be better if the Portuguese law had adopted the term used by the Directive, as it is more objective and precise. In fact, the measures foreseen in the European norm and that the national legislator had to transpose aim to suppress specific protection needs that some victims can present, while vulnerability is a more subjective and vague concept. Also, that vulnerability may not be related to aspects concerning the victim's protection, resulting from other dimensions of the victimisation impact. The creation of the especially vulnerable victim's statute frustrates the aim of the European legislator. Once again, the Portuguese legislator establishes *a priori* different categories of victims which are treated differently. To create a group of measures applicable to the especially vulnerable victims and call it a statute, applying it all together to the especially vulnerable victims who were previously determined as such, shows a total misunderstanding of what the Directive's objective was regarding the right to protection.

The Directive's logic, concerning the right to protection, is based in the existence of two levels of protection: one, which we may call basic and which will encompass the great majority of victims, victims to whom the measures of protection foreseen in the articles 19 to 21 of the Directive will be applicable; and another one which should encompass those victims who reveal specific protection needs and that will benefit not only from the referred measures but also from the ones mentioned in articles 23 and 24 of the Directive. To distinguish between the levels of protection, the Directive uses an individual assessment that must be done to all the victims. This individual assessment, regulated in article 22 of the Directive, aims to identify any existing specific protection needs and to be used to decide which special measures of protection should be applicable to each victim. In other words, the catalogue of special measures is not supposed to be applied as a whole; instead, if specific needs of protection are diagnosed to the victim after the individual assessment, the measures shall be chosen carefully having in mind the characteristics of the situation. That is why speaking of a statute of the especially vulnerable victims does not make sense.

Having in mind that the special measures of protection should be selected according to the features of each case, we find it hard to understand what the content of the document that according to the Victim's Statute is delivered to the especially vulnerable victims is. The individual assessment of victims to identify specific protection needs, the most innovative and complex aspect of the Directive, is merely lightly addressed by the Victim's Statute. This matter demands that at least there is an article about it, mentioning the main ideas of the Directive: agility in the procedure, most important characteristics of the situation to take into account, need for the assessment to be updated throughout the criminal proceedings and for the victim's perspective to be had in mind.

Closely connected to this matter of the statute of the "especially vulnerable victim" is the definition of this concept foreseen in the Portuguese Criminal Procedure Code, introduced by Law number 130/2015. This definition collides with what the Directive aimed. The Directive's logic, by imposing the individual assessment that takes into account the specific circumstances of each case is to go against the *a priori* definition that assigns automatically to certain types of victims or to victims of certain crimes the status of victims with specific protection needs. This assessment of the protection needs should take into account the victim's characteristics, the severity and circumstances of the crime, as well as other aspects that can influence the risk of secondary and repeated victimisation, intimidation or retaliation. That is, there is more to take into account than just the nature of the crime. However, the Directive assumes that some victims, due to their characteristics or to the type of crime committed, have specific protection needs. So, the Directive establishes that 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, organized 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. This assumption is stronger when the victim is a child. These victims' vulnerability to secondary and repeated victimisation and intimidation should be assumed as a principle and the impact of the investigation and of the criminal proceedings should be avoided.

All in all, this is what the Directive establishes: individual assessment of all victims, special attention if in presence of some characteristics of the situation or types of crimes and a complete assumption of the child victims' specific protection needs.

Following what we have been saying, the definition of "especially vulnerable victim" adopted by the Victim's Statute suffers from three main flaws:

1. The adoption of a definition itself is senseless: the Directive does not define this concept in abstract; instead it provides the criteria that should be used to, case by case, determine if a victim has specific protection needs;
2. The definition adopted is more restrictive than what the Directive presupposes as it demands as a consequence of the victimisation the existence of damages with serious consequences in the victim's psychological balance and social integration, when the Directive merely mentions as a condition of the victim's situation that should evoke particular attention from authorities the causing of "considerable harm";
3. This definition also establishes that victims of violent and especially violent crime are necessarily especially vulnerable victims which completely collides with the text and spirit of the Directive since what it says is to pay special attention in the context of the individual assessment to the victims of certain types of crimes.

Concerning the special measures of protection, the Victim's Statute failed to transpose paragraphs a) and b) of number 2 of article 23 of the Directive: interviews with the victim being carried out in premises designed or adapted for that purpose and interviews with the victim being carried out by or through professionals trained for that purpose.

Regarding child victims, paragraph a) of number 1 of article 24 of the Directive - in criminal investigations, all interviews with the child victim may be audiovisual recorded and such recorded interviews may be used as evidence in criminal proceedings - wasn't implemented in the Portuguese framework. Right now, this is only mandatory for child victims of sexual abuse.

## **2.2 Desktop Research**

APAV's 2015 statistics reveal that 9612 victims of 23.326 crimes came to APAV searching for help during last year. Of these 9612 victims, 39% reported the crime to the authorities. 15% were referred to APAV by police enforcement. APAV referred 28 % of these victims to police enforcement and 15% to Social Security. The Internal Security Annual Report points out that 356.032 reports were made in 2015. The Directive 2012/29/EU and its implementation in the Portuguese framework, as well as the Victim's Statute, have not yet been the focus of academic research. However, some projects and documents developed by NGO's have been focusing in these matters. Project IVOR - Implementing victim-oriented reform of the criminal justice system in the European Union (2014-2016) - arose from the idea of providing a full overview of current research into victims' rights and services, identifying lacunas and offering a vision towards a victim-oriented reform connected with the experience, victimological knowledge and the backdrop of the societal ecology. Translated into a further understanding of the manner in which victim-oriented reform in the diverse countries in Europe could succeed, Project IVOR findings expected to contribute for the development of practical recommendations and measures to

promote the implementation of the EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime. Project IVOR was promoted by the Portuguese Association for Victim Support (APAV), co-financed by the European Commission under the Criminal Justice Programme of the European Union, and developed in partnership with the International Victimology Institute Tilburg (INTERVICT), the University of Leuven (KU Leuven) and Victim Support Europe. In the context of this project, a report with recommendations for the implementation of victim assistance and the Victims' Directive was prepared. This report presents an overview of the findings of the project about the position of victims in the EU Member States.

Next, we will briefly describe some of the findings of this report, concerning Portugal. The definition of victim is part of the Criminal Procedural Code, in result of Law number 130/2015, September 4<sup>th</sup> and is very similar to the definition used in the Victims' Directive. Before the implementation of a general definition for the term 'victim', several groups of victims, such as victims of gender-based violence, already enjoyed protection rights under specific laws. In Portugal, APAV is the only national non-governmental organisation in the country that provides support, free of charge, to victims of crime, their family and friends. Also in Portugal, there are non-governmental organizations providing support to women and children victims of violence and some municipalities developed locally specific offices for supporting victims of domestic violence. As is the case in some of the other Member States, local offices and networks of victim support in Portugal do not cover all the territory and some areas are not protected in terms of direct face-to-face support. Funding is also something problematic.

On provision of information: in Portugal, there are already in place legal provisions concerning information, but they are not being respected. There is no strategy to ensure that every victim of crime, regardless of the specific place in the country where he/she reports the crime, and of the authority with whom the victim gets in touch to make a complaint, receives the same package of information. A good practice would be to assure that criminal justice authorities, in cooperation with victim support and the government, ensure that this information is provided on a standardized basis. In 2010, the Portuguese Association for Victim Support applied to the Criminal Justice Programme of the European Union, with Project Infovictims in order to tackle the problem and mitigate the difficulty of victims to access information about the criminal justice system, its proceedings, the role expected from them and the services available to support them in the aftermath of crime. Project Infovictims was widely disseminated and rapidly the interest of other Member States grew to implement in its own countries the materials developed under the project. The Project reached Portugal, Germany, Poland, Scotland, Austria and Czech Republic and indirectly is contributing to increase the victims' confidence in the criminal justice system. There is a helpline working in Portugal since May 2015.

The report mentions the legislation in Portugal concerning complaints in MS of residency. In Portugal, article 154-A of the Law on International Judicial Co-operation in Criminal Matters states that "1 – Criminal police bodies and judicial authorities receive denunciations and complaints on the perpetration of criminal offences against residents in Portugal having been committed on the territory of another Member State of the European Union; 2 – The Public Prosecutor shall, without delay, send the denunciations and complaints received in accordance with paragraph 1 above to the competent authority of the Member State on whose territory the offence was committed, except where Portuguese courts are competent to try the offence; 3 – The Public Prosecutor receives from the competent authorities of Member States of the European Union any denunciations and complaints regarding criminal offences committed on Portuguese territory against residents in another Member State, for the purposes of prosecution." The IVOR report pointed out that the recently adopted Victim's Statute mentions the need for an individual needs assessment but does not expand on any details. Questions of how this is going to take place and who is responsible remain unanswered to a large extent, meaning that no helpful guidelines for implementation in practice are in place. Protection and identification mechanisms so far are only in place for victims of domestic violence. Legislation and practices involving victims of domestic violence will be used as an example for the individual assessment of other types of victims as well. In Portugal, the implementation of the individual needs assessment is regarded as problematic, not only because the law does not establish clear rules on how this is going to happen or who is responsible for this, but also because these demands a shift in police mentality who are not very open to start doing this on a regular basis. This will add a burden in work to which they do not feel equipped.

This same report addresses the issue of how vulnerable victims are protected in Portugal describing the regimen created by the Victim's Statute (Law 130/2015). Training of professionals is also an issue analyzed by the IVOR report. Special efforts have been taken only recently to recognize the important role of police officers in avoiding secondary victimisation and to improve trainings provided to police officers having a first contact with victims of crime. Specific training on victims' needs and rights is provided to police officers as part of their general education to enter the police forces. In addition to a general educational program, some Member States provide additional training for further professional development.

In Portugal, APAV does not provide training on victim issues to the police on a compulsory basis, although it is frequently invited to educate policemen on victims-related issues. In Portugal, the judiciary is not obliged to attend training on victims' experiences and needs and lawyers do not receive regular training for dealing with victims of crime. APAV created its Training Centre in 2003, coordinated centrally at the Head Office and with Training Offices spread across the country in Lisbon, Oporto, the Algarve and the Azores. APAV has the accreditation of the Directorate General of Employment and Work Relations, an entity responsible for defining and publicizing the evaluation criteria for quality and the accreditation of training institutions in Portugal, which formally recognizes the technical and pedagogical capacity of APAV to provide professional training. Among the training available, APAV Training Centre and its Training Offices are responsible for managing and providing a mandatory Training Course in Support of Victims of Crime to all the new victim support officers and volunteers. About 3 training courses are being delivered every year in each APAV Training Office. Each training includes 90 hours of theory (38 hours) and practice (52 hours, e.g. observations and training on job). Details about the modules of the Training Course can be found online. A certificate is given to all participants only after they have completed the 6-months internship in APAV. During their work, victim support officers are expected to collect information about the case and give practical and/or emotional support to victims and then decide either to proceed with the case (specialized support) or refer it to other services (e.g. psychiatry). APAV elaborated a document in order to convey the organization's ideas about what the transposition of the Directive should consist on. In this document a lot of suggestions are made regarding the legislative implementation of the European norm but also examples of good practices are mentioned. In what concerns the right to information, for example, APAV believes that in the moment of their first contact with authorities, victims must be given information about all their rights, through the delivery of a written and complete document containing these rights. In that same moment, victims shall be able to pose any questions they want to authorities regarding their rights. Victims shall also receive an informative flyer or brochure, mentioning their rights and the way to exercise them and a small explanation on the functioning of the criminal proceedings, in language simple and easy to understand. APAV has designed a brochure in the context of Infovictims projects that serves exactly this aim and that has been getting a great feedback from victims and authorities. To the information given to those who report the crime it should be added the information conveyed through different materials and means in order to reach those victims who choose not to report the crimes but that equally have rights and have to be informed about them. Public campaigns shall disseminate the information. Also, flyers and brochures shall be handed out in hospitals, victim support organizations, municipalities, social security services, schools, embassies and in all places to which victims may resort to. Information about victims' rights also has to be present online. APAV also manifests its position regarding victim support services: general victim support services should be provided by national non-governmental organizations, with both paid and volunteer workers, cooperating with police and judicial authorities in the context of referral mechanisms that allow every victim to be referred to those authorities. APAV has been developing some pilot experiences with the Judiciary Police and the Public Security Police in which the victim is not only informed about the support services available but also asked if he/she wants to benefit from those services and if he/she does, the support services contact him/her in a short period of time.

APAV has a memorandum of understanding and cooperation with the Judiciary Police regarding a referral system in which the Judiciary Police informs APAV of the occurrence of crimes, especially homicides, in order to provide support to relatives and friends of the victim, with the prior consent of the parties concerned. For this purpose and in the specific cases of homicides, the Judiciary Police provides the families and friends of the victim the proper information about the existence of APAV and

the several types of support that the association can provide to this type of indirect victims of crime. The Judiciary Police then delivers a flyer, where there is included a brief description of APAV and its services, with an express reference regarding the gratuitousness and confidentiality of these. As we will see later in this report, APAV has specialized services and teams to support the families and friends of homicide victims throughout the country.

Besides this protocol, APAV has memorandums of understanding and cooperation with several other institutions including the Public Security Police. For example, we can mention the protocol that APAV concluded with the Public Security Police in which this entity must transmit information regarding the occurrence of crimes and their victims to APAV, after the victim's consent and for the purpose of APAV provide them the adequate support. Through this referral system (that only covers three police squads) when the victim files a complaint at the police station, the police authorities immediately inform the victim about the existence of APAV and the various types of support that the Association provides to the victims of any type of crime. A flyer is given to the victim where there is included a brief description of APAV and its services, with an express reference regarding the gratuitousness and confidentiality of these. If the police officers are called to the crime scene, they must also deliver the brochure to the victim and the procedure must be the same as the one used in the police station. If the victim wishes to be contacted by APAV, in order to be informed of the different types of support that he/she can obtain, the victim must sign a consent form.

### **3. 'ENTRY POINTS' OF VICTIMS TO THE CRIMINAL JUSTICE SYSTEM**

The main entry points in the Portuguese criminal justice system are:

#### **3.1 Police**

- National Republican Guard
- Public Security Police
- Judiciary Police
- Foreigners and Borders Service

#### **3.2 Judicial Operators**

- Public Prosecution's Office

#### **3.3 NGOs**

- Portuguese Association for Victim Support (APAV)
- Other victim support organizations (focused on specific types of crime)

#### **3.1.1 National Republican Guard**

The National Republican Guard is a security force of military nature composed by militaries organized in special troops, with administrative autonomy and jurisdiction throughout the national territory and naval territory. However, in some cases and as long as legally mandated, it can proceed its missions outside national territory. In Portugal, it is the only security force with military nature as well as military organization. The National Republican Guard was constituted as a joint institution between the Armed and Military Forces, Police Forces and Security Services. The Guards' mission in the context of national security and protection systems is ensuring legal democracy, protecting internal safety and citizens' rights as well as supporting the implementation of the national defense policy, within the terms of the Constitution and the Law. Besides, it is responsible for the preventive police and highway patrol in the countryside and small towns of the Portuguese mainland. In addition to these competences, the National Republican Guard also has obligations regarding customs enforcement, coast control, nature protection, search and rescue operations as well as state ceremonial guards of honor. Since 2000, this force has provides the detachments of some professionals in order to participate in international operations, for instance in Iraq and East Timor. It is considered to be a very capable force that can cover, permanently, all type of conflicts in any National Forces intervention modalities. Usually, it mainly

executes the typical police missions aside from other military missions regarding national security, in cooperation with other Armed Forces.

The National Republican Guard has many tasks, though in this report we only mention the competences directly connected with the Directive:

- Assure security conditions that allow citizens to exercise their rights and liberties as well as the respect for citizens' guarantees; secure the full functioning of democratic institutions, within the respect for legality and the principles of a democratic State;
- Ensure public order and public peace as well as security and protection of citizens and property;
- Prevent crime in general in coordination with other police and security services;
- Developing criminal investigation procedures that are assigned by law, delegated by judiciary authorities or requested by administrative authorities;
- Protect, rescue and help citizens to defend and preserve their goods in danger situations, caused by human or nature actions;
- Contribute to training and information about citizens' security.

### **3.1.2 Public Security Police**

The Public Security Police is an uniformed and armed national security force with public service nature and administrative autonomy. The main mission of Public Security Police is to ensure democratic legality, guarantee internal safety and citizens' rights, according to the Portuguese Constitution and Law. Usually, its activities are developed according objectives and purposes of internal security policies, always respecting the boundaries of its organic framework. Exceptionally, their competences result from national defense laws, state of siege and emergency state. The Public Security Police develops its competences throughout national territory, except areas and competences legally attributed to other forces and security services. However, in the Portuguese Islands (Azores and Madeira), those competences are exclusively prosecuted by this security force.

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Such as the National Republican Guard, the Public Security Police has wide range of tasks, though in this report we are going to mention only the competences directly connected with the Directive. And we must not forget that both these national forces share some competences regarding criminal investigation and victims' support:

- Assure security conditions that allow citizens to exercise their rights and liberties as well as the respect for citizens' guarantees; secure the full functioning of democratic institutions, within the respect for legality and the principles of a democratic State;
- Ensure public order and public peace as well as security and protection of citizens and property;
- Prevent crime in general in coordination with other police and security services;
- Developing criminal investigation procedures that are assigned by law, delegated by judiciary authorities or requested by administrative authorities;
- Protect, rescue and help citizens to defend and preserve their goods in danger situations, caused by human or nature actions;
- Contribute to training and information about citizens' security.

### **3.1.3 Judiciary Police**

The mission of Judiciary Police, under the terms of its organic law and the Organisation of Criminal Investigation Act, is to assist the judicial and prosecuting authorities in investigations, to develop and

foster preventive, detection and investigative actions, falling within their jurisdiction or the actions which the Judiciary Police is entrusted with by the competent judicial and prosecuting authorities. As a criminal body, it operates under the organic structure of the Ministry of Justice, with administrative autonomy, serving at the criminal investigation and respective inquiries under the authority of the Public Prosecution's Office.

Judiciary Police is the superior police body holding exclusive competencies to investigate the following crimes:

- Intentional crimes or aggravated by its result, such as those resulting in the death of a person;
- Slavery, abduction, kidnaping or hostage-taking;
- Crimes against cultural identity or a persons' integrity and those crimes provided for in the Criminal Law on International Human Rights Violation;
- Currency counterfeiting;
- Capture or attack to transport security by air, water, rail or road transport corresponding to, in abstract, a punished of 8 years' imprisonment or more;
- Participation in armed riot;
- Criminal association;
- Crimes against state security, except those related with the electoral process;
- Laundering;
- Crimes of corruption, embezzlement, traffic of influence or economic participation in business;
- Terrorist organizations and terrorism;
- Crimes against the President of the Republic, the President of the Parliament, the Prime Minister, the presidents of the superior courts and the General Prosecutor, while or in result of their duties;
- Maladministration or abuse of power by those holding public/political positions;
- Crimes of corruption or fraud in obtaining and diverting subsidies, subventions subsidized credit;
- Robbery in bank or credit institutions, offices of the Treasury or post offices.

#### **3.1.4 Foreigners and Borders Service**

Foreigners and Borders Service is a security service vertically organized under the authority of the Portuguese Ministry of Home Affairs. It has administrative autonomy and its fundamental objectives within the internal security policy include border control of persons, permanence and activities control regarding foreigners in Portugal, as well as the study, promotion, coordination and execution of measures and actions related to these activities and migratory flows. As a criminal police force and in the terms of Criminal Procedure Law, this security force intervenes under the direction and functional dependence of the competent judiciary authority, implementing the measures determined and the acts delegated by that same authority. Its main mission is to implement the Portuguese immigration and asylum policy, according to the provisions of the Constitution, the Law and Government guidelines. Finally, it is important to mention that Foreigners and Borders Service has internal and international responsibilities.

### **3.2 Public Prosecutions' Office**

In the organogram available at the Public Prosecutions' Office official internet site, the entry Public Prosecution Service gives access to information on the extent of its powers, procedural fields of intervention, the magistracy of the Public Prosecution Service and the complete text of its Organizational Law and Statute. Information on the composition of the bodies and their functions, as well as on the bodies which compose the Public Prosecution Service, is available by entering directly into the relevant field.

Hierarchically, the organogram presents a simple scheme which demonstrates Public Prosecution Service organization:

- The Attorney-General's Office is the highest body of the Public Prosecution Service;
- The Attorney-General's Office comprises the Attorney-General, the Superior Council of the Public Prosecution Service, the Consultative Council, and the Administrative Support Services;
- The District Deputy Attorneys General's Offices and the District Attorneys' Offices are also deemed bodies of the Public Prosecution Service;
- The Central Department of Investigation and Prosecution, the Bureau for Documentation and Comparative Law and Technical Advisory Unit operate under the dependence of the Attorney General's Office;
- The Attorney-General is assisted and supplied by the Vice Attorney-General;
- The Legal Auditors have a closer relationship with members of the government, and work in the Ministries;
- The structure of the Public Prosecution Service also comprises the District Deputy Attorney General placed at the seat of each judicial district, who is assisted by Magistrates with equal rank or by District Attorneys;
- The District Attorneys hold their offices in counties corresponding to the seat of the judicial districts;
- The base Magistrates of the Public Prosecution Service are the Deputy District Attorneys, who develop their activities in counties or groups of counties.

According to the Public Prosecutions' Office Statute, this Entity represents the Portuguese State, defends the interests that are determined and assigned by Law, participates in the execution of the criminal policy, carries out penal action according to the principle of legality and defends democratic legality, within the terms of the Constitution, the mentioned Statute and finally the Portuguese Law. It has autonomy regarding other organs of the central, regional and local organisation; its autonomy is characterized by criteria of legality and objectivity and by the exclusive subjugation of Prosecutors to the directives, orders and instructions of the Public Prosecutions' Office Statute.

### **3.3 Portuguese Association for Victim Support**

The Portuguese Association for Victim Support was founded in 1990 and is a non-profit and a charitable organisation. Its objective and primary statutory activity is to provide confidential and free services to victims of crime, namely information, counselling and emotional, legal, psychological and social support, at a national level. APAV has a national network of fifteen local victim support schemes, two shelters for battered women and children and one unit for the support to migrant victims and victims of racial and social discrimination as well as one protection centre for women and children victims of Trafficking of Human Beings. It is also a voluntary organisation supported by a national network of more than 250

volunteers. The team of professionals and volunteers working in APAV offers assistance and personal support to victims of crime. These services are provided within a multi-disciplinary approach involving different areas as law, psychology and social work. In addition, services are provided from a network perspective, where various entities collaborate in dealing with each specific case, such as the police, hospitals and health care centres, social security, and both governmental and non-governmental organisations. APAV is a very active member of several European and international Forums, like Victim Support Europe and the European Forum for Restorative Justice (in which APAV was represented in the Executive Committee), the World Society of Victimology, the International Association for Volunteer Effort, the Fundamental Rights Agency Platform and the European Network against Racism. In relation to forms of financing, APAV has a Memorandum of understanding and cooperation with the Ministry of Justice, Ministry of Internal Affairs, Ministry of Employment and Social Security, Ministry of Health and the Presidency of the Council of Ministries. In addition, APAV also provides training, consultancy and advisory services, establishes protocols with local political authorities and has financing from the Social Security and from a rising number of associates.

#### **4. VICTIM-RELATED PRACTICES IN NATIONAL SYSTEMS**

##### **4.1) Identification of victims**

###### **4.1.1 National Republican Guard**

The guards interviewed were both male and one of them was 36 years old and the other was 28. These professionals assume that every person that reports being victim of a crime is in fact a victim. The professional who identifies the victim is the guard that is on duty either receiving the public at the police station, either attending to callings to the crime scene. The identification consists in asking for the victim's data and for the documents that can prove the victim's identity and takes place in the first moment of contact between the guard and the victim, that is, when the victim is reporting the crime at the police station or at place of the crime. There are not any instructions, concrete steps or checklists in use and there is not any special training available to the professionals involved. All the guards receive initial training that covers generally the criminal procedure and victimology. Professionals at the Investigation and Support Core for Specific Victims (NIAVE) work mainly with victims of domestic violence; therefore, they receive specific training in order to work with victims of such nature. However, we must not forget that the Directive that we have been analyzing and was transposed to the Portuguese Law applies to victims in general, and not only to domestic violence victims. Personal characteristics of victims are taken into account, essentially, depending on the guard's good Judgement. However the language barrier is overcome through the intervention of interpreters. The guards have a list of contacts of interpreters to call in case the victim does not speak Portuguese. But it can happen that none of the interpreters are available at the moment. When the victim reports the crime, the same guard who does the identification of the victim tries to collect as much information about the crime as possible. During the inquiry stage more information about the crime is collected. The two guards interviewed believe that the procedure is effective.

###### **Vulnerable groups**

The guards do not take into account any special rules concerning vulnerable groups, including children.

###### **4.1.2 Public Security Police**

The agents interviewed were both male and one of them was 48 years old and the other was 43. The agents assume that every person that reports being victim of a crime is a victim. The professional who identifies the victim is the agent that is on duty either receiving the public at the police station, either attending to callings to the crime scene. The identification consists in verbally asking for the victim's data and for the documents that can prove the victim's identity and takes place in the first moment of contact between the agent and the victim, that is, when the victim, at the police station or at place of the crime, is reporting the crime. The agent tries to do this giving the victim privacy. There are not any instructions, concrete steps or checklists in use and there is not any special training available to the professionals involved. All the guards receive initial training that covers generally the criminal procedure. Personal characteristics of victims are taken into account, essentially, depending on the agent's good Judgement. However the language barrier is overcome through the intervention of interpreters. When the victim reports the crime, the same guard who does the identification of the

victim tries to collect as much information about the crime as possible. During the inquiry stage more information about the crime is collected. The two agents interviewed believe that the procedure is effective.

#### **Vulnerable groups**

The agents do not take into account any special rules concerning vulnerable groups, including children.

#### **4.1.3 Judiciary Police**

Even though APAV tried, in several ways, to arrange a second interview with an agent from the Judiciary Police, we were unable to schedule a second interview, reason why there is only data from one interview in this report.

The person interviewed was a male with 47 years old. The professional who makes the victims' identification is the Inspector responsible for the investigation in a specific criminal case. According to the Judiciary Police, the identification of the victim consists in asking for the victim's data and documents that can certify the victim's identity and it takes place in the first moment of contact between the Inspector and the victim, that is when the victim is reporting the crime or being surveyed about the crime. However there is prior conversation between Inspector and victim, with the aim of creating empathy among the interested parts; after this, the identification of the victim comes up in the act of formalizing the situation. Usually, oral identification is not enough, reason why the Inspector asks to see any identification document. There are not any instructions, concrete steps, or checklists in use and there is not any special training available to the professionals involved, regarding victim's identification; the professional makes the victim's identification according to common sense, always attending the victim's specific characteristics, for instance he adapts his language if the victim is a child or young person, or even if the victim has some kind of disability. Therefore, we can conclude that the personal characteristics of the victim are taken into account, essentially depending on the professionals' good judgement. For instance, if the victim requests for a female Inspector, the Judiciary Police always tries to respect that request, according to inspectors' availability – in some specific crimes (for example crimes with a sexual nature) there are information that a female victim only feels comfortable to report to a female Inspector. The same can happen with male victims. Regarding foreigners victims of any type of crime, the language barrier is overcome through the intervention of interpreters and translators, depending on the specifics of the case. The Judiciary Police resorts to the Consulate in order to obtain translation services. The interviewee professional mentioned the initial training that all Inspectors receive and that covers generally the Portuguese criminal procedure as well as victimology. When the victim reports the crime, the same Inspector who does the identification of the victim, tries to collect as much information about the crime as possible. The professional who was interviewed believes that the procedure is effective.

#### **4.1.4 Foreigners and Borders Service**

Even though APAV tried, for several times, to contact a couple of professionals from the Foreigners and Borders Service, we were unable to schedule an interview with those professionals, reason why there is not, in this report, any data concerning their work with victims.

#### **4.1.5 Public Prosecution's Office**

The victim support professionals interviewed were both female and one of them was 41 years old and the other one was 38. Usually the victims report the crime to the police. But if they go to the Prosecutor's Office, their first contact is with the court officer. So, it is the court officer who identifies the victim asking him/her for his/her personal information and personal documents. A person who says he/she is a victim of crime is presumed to be one. Court officers do not have specific training to deal with victims of crime. Prosecutors receive basic training about the criminal procedure but not about victims specifically. However, training sessions mostly focused on domestic violence have been organized recently. Personal characteristics are considered not because of any procedures but merely because of the good judgement of professionals. The interviewees referred that it is not easy to find interpreters. The fees that courts can pay interpreters are low and so there are not many who are

willing to do this type of work. Also, in what concerns the number of languages spoken, there is not much variety. However, if the diligence to which the interpreter is needed is scheduled with time, the situation looks a little brighter and interpreters are usually available. There is not an official list that professionals can use. The information about the characteristics of the crime is usually collected by the police or by the court officer when the victim reports the crime. The report containing information is delivered in writing to the Prosecutor. Afterwards, most of the times, the Prosecutor talks to the victim during the inquiry phase and asks the victim to give more information about the crime.

#### **4.1.6 Portuguese Association for Victim Support (APAV)**

The victim support professionals interviewed were both female and one of them was 36 years old and the other one was 25. The professional who identifies the victim is the victim support worker that conducts the support session personally - in one of APAV's victim support offices - or through the phone. If the person that searches for APAV's help affirms being victim of a crime or being a friend or relative of a victim of a homicide, he/she is treated as a victim and receives APAV's support. The victim support worker asks for the victim's name but it is possible that he/she chooses to remain anonymous. So, the victim support worker can obtain the victim's personal information not necessarily in the first support session, but in the second, third or fourth, accordingly to the situation and the victim's will. There are not any instructions, concrete steps or checklists in use. Victim support workers in APAV, besides having graduated in Law, Psychology or Social Service, all receive before starting to work with victims the basic and specialized training to do it. Regarding personal characteristics, victim support workers have these in consideration when adapting the room to make it more comfortable for victims if necessary or adapting the language. To overcome the language barrier, it is common to use in APAV's victim support offices the Telephone Translation Services of the Portuguese High Commissariat for Migrants. In a room with a phone on speakerphone, that victim support worker and the victim communicate with each other with the help of the interpreter on the other side of the line. The characteristics of the crime are collected during the support sessions, but the victim only tells what he/she wants. Everything is registered in written. The interviewees agreed that the methods followed are effective. However, when the victim chooses not give their telephone number, it is hard to follow up on his/her case.

#### **Vulnerable groups**

If the victims are especially vulnerable, the victim support worker accompanies the victim to the police station to report the crime or make a complaint (with the victim's permission) or if the crime can be reported by anyone, the professional can report the crime him/herself. When the victim is a child, the victim support worker uses a simpler language, uses different methods in the support session, provides toys to the victim for him/her to feel more comfortable and immediately reports the crime or alerts the Children and Youth Protection Commission.

- **Conclusions**

At this point, we must emphasize that although in the Portuguese judicial system the Public Security Police, the Republican National Guard and the Judiciary Police are considered criminal police agencies, due to the fact that they have different material and territorial competencies, as well as distinct intervention procedures and methods, they should be considered as different entry points.

In the Portuguese legal system and bearing in mind their geographical representation, there is a greater tendency and easiness for victims to resort to the services of the Public Security Police and the National Republican Guard when there is a need for protection or to denounce a crime. In what concerns these two institutions, the interviewees, as mentioned, considered the methods used for the identification of victims effective. However, several flaws are identifiable in the identification of victims, even though the Directive and the Victims' Statute do not require a particular procedure to accomplish this step. First of all, it should be mentioned that the place where the guards and agents receive the victims at the police station are not usually prepared to protect victims' privacy. Although one agent has mentioned that they try to isolate the victim when he or she is reporting a crime, our experience and contact with victims shows us that most of the time this does not happen. Although these entities assume competencies of a different nature, there are some areas in which there is an overlapping of competencies, being an example the ability to receive complaints that result from the practice of a

crime. Besides that, there are several failures concerning the interdisciplinary performance of the different entities, once in the Portuguese legal system there is still not a system of information sharing that allows the various judicial and police operators to share and have access to the available information, regarding a particular victim. There are internal systems of information sharing of each entity, but they are not used, in an interdisciplinary way, by the several judiciary and police operators.

After the interview with the Judiciary Police Inspector, we can conclude for the existence of rooms where victims can be interviewed. Also there are a few places where the Inspector can interview a child victim of a crime – rooms specifically created to interview victims of a young age, even though the Inspector recognized that in some cases, those rooms create distractions for the child and therefore they have to move the child to a more controlled environment. Second of all, guards and agents who deal with victims on a daily basis do not receive training especially focused on victims' rights and needs and so, for example, they do not know how to properly speak to victims and ask them questions, avoiding secondary victimisation. One of the other practical results that this lack of training has is that the special vulnerability and needs of protection of victims are only considered if the good judgement of the guard or agent allows it. They are not prepared to dully protect these victims. The fact that there is not a procedure imposing the individual assessment of victims only contributes to this. Translators and interpreters are not available in due time and in all the languages necessary. Regarding victim support in APAV, we would like to highlight the importance of the due training of professionals before they start their work with victims of crime. Using the Telephone Translation Services is considered a good practice to overcome the language barrier while the perfect solution is not reached: to have a list of translators and interpreters in enough languages and number that all the actors of the judicial system can access and contact easily. Concerning the work of Prosecutors, the same problems found in the experience of the National Republican Guard and of the Public Security Police can be pointed out: the victims are received by court officers that usually do not worry about giving the victim privacy to make the report and that do not receive specialized training to deal with victims; Prosecutors do not receive specialized training as well; the inexistence of an individual assessment of needs results in an inadequate protection of victims because it is not possible to expect that all professionals have good Judgement and finally the problem with finding interpreters is also a reality to these professionals.

## **4.2 Individualised assessment of needs**

### **4.2.1) National Republican Guard**

The guards interviewed were both male and one of them was 36 years old and the other was 28. There is not a legal procedure for individual assessment of all the victims' needs. There is a risk assessment applicable to victims of domestic violence only. This procedure is applied by the guard on duty at the police station when the victim reports the crime. The needs assessment is recorded. If the procedure is not applied at the due moment, it shall be applied as soon as someone notices the mistake.

The questions of the risk assessment are:

- Has the offender ever used physical violence against the victim? Please specify: How many years ago was the 1st episode?
- Has the offender ever used physical violence against other members of the household? Against whom?
- Has the offender ever tried to strangle, suffocate or drown the victim or other family member? (Including acts of "physical torture" - eg burn, throw acid)
- Has the offender exercised sexual violence against the victim or other family member?
- Did the victim require medical attention after any of the aggressions and / or did the injuries affect the daily normal activities of the victim or of other family members?
- Has the number of violent episodes and / or its severity been increasing in the last month?
- Has the offender ever threatened to use or used some kind of weapon against the victim or other family members or has access to firearms?

- Do you believe that the offender is capable of killing you or of having you killed?
- Has the offender ever tried or threatened to kill the victim or other family member?
- Does the offender chase, intimidate, show excessive jealousy and try to control everything the victim does?
- Does the offender reveal emotional / psychological instability and is not being accompanied by a health professional or does not take the medication prescribed?
- Has the offender ever tried or threatened to commit suicide?
- Does the offender have problems with alcohol or drugs?
- Has the offender been the subject of previous criminal complaints?
- Has the offender violated a court order to protect the victim?
- Does the offender have significant financial problems or difficulties maintaining a job?
- Is there some dispute over custody / contact with the children?
- Has the victim separated from to offender or tried to do it or expressed the intention to do so in the last six months?
- Does the victim or someone in the household have special needs (eg, due to physical or mental illness, old age, disability, addiction to alcohol / drugs ...) and / or does not have third-party support (family, friends, neighbors, colleagues, support institution ...)?
- Is the victim pregnant or had a baby in the last 18 months?

After the risk assessment, a security plan is made accordingly to the result obtained and explained to the victim. In this plan, several safety measures are mentioned to avoid further victimisation. When the procedure was implemented the guards received training to apply it. The guards have to contact the victims following the risk assessment to re-evaluate the risk in a certain number days following the risk assessment according to its result. The guards convey the information to the Prosecutor's Office.

The guard who does the risk assessment may adopt some of the following measures:

- Suggest the Prosecutor a restrictive measure;
- Check if the requisites to detain the offender are met;
- Talk to the victim and mention the importance of considering the possibility of moving away from the offender, using for example a home-shelter, the house of friends, family or colleagues (when the offender has not been arrested);
- Mention the importance of respecting the safety plan;
- Refer the victim to a support structure that can refer the victim to a shelter;
- Refer the victim to victim support organizations;
- Seizure weapons (if they exist and have not yet been seized);
- Transmit the risk assessment sheet to the professionals in charge of the criminal investigation;

- Inform the children and Youth Protection Commission;
- Promote the removal of children;
- Transmit the risk assessment sheet to patrols;
- Establish regular contact with the victim;
- Strengthen patrols along the site of the occurrence / residence of the victim / place of work;
- Accompany the victim to remove household goods;
- Accompany the victim, upon request, to places like court, hospital, sec. social;
- Reassess the risk level in \_\_\_\_\_ days after this evaluation.

If the assessment reveals that the victim of domestic violence is in imminent danger the guard removes the victim from the presence of the offender or detains the offender. Concerning victims in general and their protection needs, as has been mentioned, there is not a procedure that allows their evaluation.

#### **Vulnerable groups**

According to the interviewed guards' description, they try to pay special attention to some types of victims like the ones with disabilities, children and elderly. In these cases, they try, namely, to adapt the language used. If children are in danger the Children and Youth Protection Commission is informed of the child's situation and in case of imminent danger to the child's life or physical integrity the guards can take any measures necessary to remove the danger.

#### **4.2.2 Public Security Police**

The agents interviewed were both male and one of them was 48 years old and the other was 43. There is not a legal procedure for individual assessment of all the victims' needs. There is a risk assessment applicable to victims of domestic violence only. This procedure is applied by the agent on duty at the police station when the victim reports the crime. The needs assessment is recorded. If the procedure is not applied at the due moment, it shall be applied as soon as someone notices the mistake.

The questions of the risk assessment are:

- Has the offender ever used physical violence against the victim? Please specify: How many years ago was the 1st episode?
- Has the offender ever used physical violence against other members of the household? Against whom?
- Has the offender ever tried to strangle, suffocate or drown the victim or other family member? (Including acts of "physical torture" - eg burn, throw acid)
- Has the offender exercised sexual violence against the victim or other family member?
- Did the victim require medical attention after any of the aggressions and / or did the injuries affect the daily normal activities of the victim or of other family members?
- Has the number of violent episodes and / or its severity been increasing in the last month?

- Has the offender ever threatened to use or used some kind of weapon against the victim or other family members or has access to firearms?
- Do you believe that the offender is capable of killing you or of having you killed?
- Has the offender ever tried or threatened to kill the victim or other family member?
- Does the offender chase, intimidate, show excessive jealousy and try to control everything the victim does?
- Does the offender reveal emotional / psychological instability and is not being accompanied by a health professional or does not take the medication prescribed?
- Has the offender ever tried or threatened to commit suicide?
- Does the offender have problems with alcohol or drugs?
- Has the offender been the subject of previous criminal complaints?
- Has the offender violated a court order to protect the victim?
- Does the offender have significant financial problems or difficulties maintaining a job?
- Is there some dispute over custody / contact with the children?
- Has the victim separated from to offender or tried to do it or expressed the intention to do so?
- Does the victim or someone in the household have special needs (eg, due to physical or mental illness, old age, disability, addiction to alcohol / drugs ...) and / or does not have third-party support (family, friends, neighbors, colleagues, support institution ...)?
- Is the victim pregnant or had a baby in the last 18 months?

After the risk assessment, a security plan is made accordingly to the result obtained and explained to the victim. In this plan, several safety measures are mentioned to avoid further victimisation. When the procedure was implemented the agents received training to apply it. The agents have to contact the victims following the risk assessment to re-evaluate the risk in a certain number of days following the risk assessment according to its result. The agents convey the information to the Prosecutor's Office.

The guard responsible for the risk assessment may adopt some of the following measures:

- Suggest the Prosecutor a restrictive measure;
- Check if the requisites to detain the offender are met;
- Talk to the victim and mention the importance of considering the possibility of moving away from the offender, using for example a home-shelter, the house of friends, family or colleagues (when the offender has not been arrested);
- Mention the importance of respecting the safety plan;
- Refer the victim to a support structure that can refer the victim to a shelter;
- Refer the victim to victim support organizations;
- Seizure weapons (if they exist and have not yet been seized);

- Transmit the risk assessment sheet to the professionals in charge of the criminal investigation;
- Inform the children and Youth Protection Commission;
- Promote the removal of children;
- Transmit the risk assessment sheet to patrols;
- Establish regular contact with the victim;
- Strengthen patrols along the site of the occurrence / residence of the victim / place of work;
- Accompany the victim to remove household goods;
- Accompany the victim, upon request, to places like court, hospital, sec. social;
- Reassess the risk level in \_\_\_\_\_ days after this evaluation.

If the assessment reveals that the victim of domestic violence is in imminent danger the guard removes the victim from the presence of the offender or detains the offender. Concerning victims in general and their protection needs, as has been mentioned, there is not a procedure that allows their evaluation. The agents mentioned that when they identify certain protection needs, they suggest restrictive measures to the Prosecutor responsible for the case.

#### **Vulnerable groups**

However, according to the interviewed agents' description, they try to pay special attention to some types of victims like the ones with disabilities, children and elderly. In these cases, they try, namely, to adapt the language used. If children are in danger the Children and Youth Protection Commission is informed of the child's situation and in case of imminent danger to the child's life or physical integrity the agents can take any measures necessary to remove the danger.

#### **4.2.3 Judiciary Police**

The professional interviewed was a male with 47 years old. According to his words, there is not a legal procedure or specific guidelines for individual assessment of all the victims' needs. Once more, individualised assessment of needs is a procedure that should take the specific characteristics of the victim into account; it all depends on the concrete situation and the good judgment as well as the background of the professional. This procedure is applied by the Inspector in charge of the case and usually this is the same person that speaks to the victim in a prior moment. The needs assessment is not recorded in video or audio. The professional responsible for this evaluation writes on his report all the information regarding the individualised needs of the victim and later he passes that same information to the document that will be referred to the Public Prosecutor. There is a specific problem regarding the Judiciary Police and the follow-up that is given to the victim: since the main function of the Judiciary Police is the crime investigation and Inspectors have to deal with the victim and the accused, later if these professionals attempt to contact the victims in order to see how they are coping with the situation, they can be accused of lack of impartiality, one of the essential characteristics in their professional activity. The Judiciary Police deals with the victim at an early stage of the criminal investigation, which is why Inspectors have no idea what happens to them later. Usually they only have more information concerning the victim if there is a new attack by the offender against that same victim. We can conclude that after the close of the criminal investigation by the Judiciary Police, the victim is very exposed unless the Inspector does the proper referral according to the victims' specific needs, including legal, psychological and social needs. If this assessment is not made at an early stage, it is delayed and adapted to the specific characteristics of the situation. As mentioned before, there are not guidelines for risk assessment; however, the Judiciary Police has a Psychology Office that gives continuous formation to Inspectors so that they know how to intervene in cases that involve particularly vulnerable victims. Nevertheless, there remains a need for Inspectors to appeal to common sense, to

their sensitivity as well as their professional background. According to the interviewee professional, the risk assessment from the Judiciary Police is effective.

#### **Vulnerable groups**

In the specific cases of sexual crimes against children and young persons, if the victim still remains in the same house as the aggressor, the Judiciary Police triggers the necessary mechanisms so that the child is removed from that house and placed in a safe place, away from the aggressor.

#### **4.2.4 Public Prosecution's Office**

There is not a procedure for individual assessment of the victims' needs. There is only the risk assessment for victims of domestic violence that has already been explained. The police informs the prosecutor about the result of the risk assessment and the latter adopts measures accordingly, namely restrictive measures that can include probation. The prosecutor listens to the victim before adopting restrictive measures and takes his/her opinion in consideration, although sometimes the need to protect the victim is viewed as more important than respecting his/her will. Prosecutors pay special attention to some victims with special protection needs, again, not because of any assessment, but because of their good Judgement. Other victims with special protection needs are already considered as so by law, very specifically, as we mentioned previously. Those are the victims of "violent crime" and "especially violent crime" (concepts defined in the Criminal Procedure Code, respectively, as acts against life, physical integrity, personal freedom, sexual freedom or a public authority and that are punishable with a sentence equal or superior to five years of incarceration and these same acts but punishable with a sentence equal or superior to 8 years of incarceration"). However, not nearly all professionals are aware of the alterations introduced by the Victim's Statute. One of the interviewees works only with this type of crimes and was able to tell us that in these cases, even without an individual assessment, measures to protect the victims are adopted. Victims of sex crimes are heard in the Prosecutor's office. If they are children, they can be heard in a special room with toys. The prosecutor tries to diminish to the least the number of people present when hearing the victim of a sex crime. The victim is heard during the inquiry stage in the presence of the defendant's lawyer, the prosecutor and the Judge. The hearing is recorded to avoid if possible that the victim has to repeat her statement in trial. The prosecutor, before this hearing, talks informally to the victim to leave him/her more comfortable. In case of child victims of sex crimes Prosecutors also try to hear the victims as soon as possible. The prosecutor uses simple language and resorts to different methods of collecting information, namely through drawings. The defendant is not present in the hearing referred and contact is avoided, inclusively in court. It is also possible that victims of sex crimes can be interviewed by Prosecutors of the same sex. If the victim is particularly vulnerable to revictimization, police officers accompany him/her to the police station, prosecutor's office and court if necessary.

#### **Vulnerable groups**

When the victim is a child, the prosecutor avoids interviewing the victim alone in order to minimize the secondary victimisation.

#### **4.2.5 Portuguese Association for Victim Support (APAV)**

There is not a legal procedure for individual assessment of every victim's protection needs. There is a risk assessment applicable in cases of domestic violence between heterosexual couples. This is applied at the end of the first support session if the victim in question is a woman victim of domestic violence in a heterosexual relationship, by the victim support worker at the victim support office or on the phone. The assessment is registered in writing. If the victim support worker does not apply the risk assessment because, for example, the victim is not emotionally capable of answering the questions or if the victim appears not to have the cognitive abilities necessary to answer them, the victim support professional shall justify his/her option.

The questions asked in the risk assessment are:

- Has physical violence increased in severity or frequency in the last year?
- Does he have a gun?

- Have you separated from him after living together in the last year?
- He is unemployed?
- Has he ever used a weapon against you or have threatened you with a lethal weapon?
- Does he threaten to kill you?
- Has he managed to avoid police action for domestic violence?
- Do you have any child that is not his?
- Has he ever forced you to have sex against your will?
- Has he ever tried to strangle you?
- Does he use illegal drugs?
- Is he an alcoholic or does he have a problem with alcohol?
- Does he control most or all of your daily activities?
- Is he jealous in a violent and constant way?
- Have you ever been physically assaulted by him when you were pregnant?
- Has he threatened or tried to commit suicide?
- Does he threaten to harm your children?
- Do you believe he is capable of killing?
- Does he follow you or spy on you, leaves you tickets or threatening messages, destroys your property or calls when you do not want to talk to him?
- Have you ever threatened to kill yourself or attempted to commit suicide?

After the risk assessment, a safety plan is made containing advices that vary according to the result of the assessment. If the risk assessment indicates that the risk is high, the result of the assessment is sent to the court. The victim is asked to collaborate with reporting the crime and also asked about the possible influence that reporting the crime may have in the risk level. However, if the situation is severe, the crime is reported by the victim support workers without the victim's consent. They are, nevertheless, always informed of the reporting of the crime. Also, accordingly to the result of the assessment it is possible to receive the victim in a shelter. There is a follow-up of the victim's case to update the information obtained through the risk assessment. This follow-up may happen in 24/48 hours to 60 days, depending on the risk level identified. In what concerns other crimes besides domestic violence, there are some questions established as part of the support procedure to evaluate the risk that the victim is in and some correspondent advices to give the victim.

In what concerns the National Republican Guard and the Public Security Police, the interviewees were not aware of the demands of the victims' Directive or of the Victims' Statute concerning the individual assessment of victims. As we said previously, the Victims' statute makes brief references to the necessary existence of an individual assessment but not at all in a complete way. There is not a procedure to do the individual assessment of all the victims' protection needs. Unfortunately the special

protection needs of victims are not diagnosed through a consistent method and consequently the special protection measures are not applicable when necessary. Victims of domestic violence are privileged in this sense, as their rights to be protected during the proceedings and against retaliation and re-victimisation are more rooted in the way of thinking and acting of police enforcement, result of great media's attention and consequent Government's attention in the last years. The risk assessment seems to work effectively. Regarding the effectiveness of the risk assessment, the same happens with the Judiciary Police: even though there are not guidelines that can help the professional in this procedure, the procedure is considered effective and the victims is safeguarded. In what victim support in APAV is concerned, as well as in what regards police enforcement, the risk assessment applicable in cases of domestic violence appears to work well. However, victim support does not do an individual assessment of all victims' protection needs either. It has to be clarified in law and established through procedures which entity should take on this task of diagnosing victims' special protection needs and deciding what measures should be applied to protect them, patent in articles 22 and 23 of the Directive. But it will probably be the role of police. Still, the victim support workers interviewed agreed that a needs assessment should also be done with victims of stalking, children and elderly people. Concerning the Prosecutors' work, the problem continues to be that there is not an individual assessment of victims according to which the Prosecutors can apply the necessary protective measures. Still, in cases where the victim is considered especially vulnerable by law and the professionals are aware of that, measures are adopted. The interviewee who works closely with violent crimes' victims identified two main problems besides the inexistence of the assessment which are the fact that the hearing of child victims is not recorded on video yet and the fact that many Prosecutors insist on hearing the victim alone, and also with the lawyer and Judge, multiplying beyond necessary the number of times victims have to repeat their story.

### **4.3 Referral mechanisms**

#### **4.3.1 National Republican Guard**

The guards interviewed were both male and one of them was 36 years old and the other was 28. There is not a procedure for referral. The guards interviewed mentioned that when victims report the crime they inform them of the possibility of resorting to the Social Security Services or to the Red Cross in cases where they have financial difficulties and in cases where the victims show emotional distress, particularly in situations of domestic violence, they inform victims of their right to receive help from victim support services and where to look for them. There are not any electronic tools or databases to support referrals. The guards only contact with victim support organizations to exchange information about the victims in cases of domestic violence, namely to do the re-evaluation of the risk and check on the victims' situation. They also provide information about the case to victim support organizations who request for it. In most cases, guards merely inform victims about the possibility of contacting the services mentioned, not playing any role in the referral. When the victim needs shelter, however, guards usually contact directly the social security or the organization that runs the shelter houses. In some regions, the National Republican Guard has a partnership with APAV that results in the existence of a referral mechanism. When the victim reports the crime, if the victim authorizes the referral, the guard fills a sheet with the victim's personal information, namely, his/her contacts, address, crime committed, description of the situation and some special observations like when is it safe to contact the victim or the level of risk he/she is in. A victim support worker from APAV goes to the police station from once in a while and collects the sheets. Afterwards a victim support worker uses the sheet to contact the victim by phone or through mail.

#### **4.3.2 Public Security Police**

The agents interviewed were both male and one of them was 48 years old and the other was 43. There is not a procedure for referral. The agents interviewed mentioned that when victims report the crime they inform them of the possibility of resorting to the Social Security Services or to the Red Cross in cases where they have financial difficulties and in cases where the victims show emotional distress, particularly in situations of domestic violence, they inform victims of their right to receive help from victim support services and where to look for them. There are not any electronic tools or databases to support referrals. The agents only contact with victim support organizations to exchange information about the victims in cases of domestic violence, namely to do the re-evaluation of the risk and check on

the victims' situation. They also provide information about the case to victim support organizations who request for it. In most cases, agents merely inform victims about the possibility of contacting the services mentioned, not playing any role in the referral. When the victim needs shelter, however, agents usually contact directly the social security or the organization that runs the shelter houses. In some regions, the Public Security Police has a partnership with APAV that results in the existence of a referral mechanism. When the victim reports the crime, if the victim authorizes the referral, the agent fills a sheet with the victim's personal information, namely, his/her contacts, address, crime committed, description of the situation and some special observations like when is it safe to contact the victim or the level of risk he/she is in. A victim support worker from APAV goes to the police station from once in a while and collects the sheets. Afterwards a victim support worker uses the sheet to contact the victim by phone or through mail.

#### **4.3.3 Judiciary Police**

Just like what we described regarding the risk assessment, there are also no guidelines for victims' referral. Everything is done according to the victims' special needs and the specific characteristics of the situation, as well as the Inspectors' good judgement. Normally, the Judiciary Police references the victims to the Portuguese Association for Victim Support so that they can receive the appropriate legal, psychological and social support, completely free of charge. In cases where the victims show emotional distress, the Inspector informs the victims of their right to receive help from victim support services and where they can look for them. According to the specific circumstances of the crime, the Inspector responsible for the investigation also directs the victim to the Social Emergency. And if the victim needs shelter, Inspectors usually refer the victim to an organization that has shelter houses. During the procedure of referral, Inspectors can not give many informations regarding the victim and the crime itself, due the Portuguese Law that establishes the Principle of secret Justice. Also in the referral procedure, it is important that Inspectors act according with their good judgment, the mandatory impartiality of their professional activity and the specific characteristics of the situation. Regarding foreigners victims of any type of crime, the Judiciary Police always informs the Embassy so that the victim receives adequate support. As previously mentioned regarding the National Republican Guard, also the Judiciary Police has no electronic tool or databases to help with the referral to other entities. The referral process is usually done by the Inspector responsible for the investigation of that particular crime and it only takes place when it is necessary according to the victims' specific needs. It is also important to mention that the referral made by the Judiciary Police is always reported to the Public Prosecution's Office. This referral process is not recorded on video or audio; however it is written in the Inspector report that later will be sent to the Public Prosecutions' Office. Once again, due to the impartiality required to the Police Judiciary Inspectors, there is no follow-up with the victim, after the referral process. In this process, the Inspector responsible for the referral always tries to collect the consent of the victim and the Inspector informs the victim about what is going to be made. If there is the need to remove the victims from their house in order to keep them away from the abuser, it is preferable that these victims stay with a family member or a close person (neighbor, friend, amongst others) who can give the victims the proper comfort. Only then, if this possibility is nonexistent, the Judiciary Police makes the referral to the Social Emergency. However, according to the interviewee professional, referral mechanisms do not work at all situations due to a lack of a close contact with the various entities. If the victim does not want to be referred to the entity suggested by the Judiciary Police, the Inspector tries to contact a social worker in order to arrange another place for the victim to stay. Only then the Judiciary Police accompanies the victim to the place where she/he is going to stay.

#### **4.3.4 Public Prosecution's Office**

The victim who receives the document mentioning his/her rights as victim also receives the contact of victim support organizations, according to one of the interviewees. There is an informal cooperation agreement between the City Council of the region where the interviewees work, Social Security, Public Security Police, National Republican Guard, Prosecutor's Office, Health facilities, schools, victim support organizations and Children and the Youth Protection Commission that allow victims to be referred from one institution to another more easily, as people in these entities have points of contact in other entities. In spite of the good intentions, this "network" does not work very well and is mainly aimed at domestic violence cases.

#### **4.3.5 Portuguese Association for Victim Support (APAV)**

APAV has a partnership with the main psychiatric hospital in Lisbon that allowed the creation of a referral mechanism between the two entities. If the victim support worker notices signs of a mental disease, he/she fills a sheet with the name and date of birth of the victim and with its consent, the sheet is forwarded to the hospital. Afterwards, the hospital contacts APAV to book an appointment and APAV informs the victim. The technical staff of the victim support office in Lisbon fills the sheet and coordinates the procedure. The sheet also contains a description of the situation, the psychiatric disease in question, the medication that the victim uses and if whether or not the victim is already being psychologically monitored. If the person came to APAV but has not been a victim of a crime, he/she is referred to the psychiatric hospital in the first session. If he/she was a victim of a crime, then she is referred after the number of sessions necessary to identify his/her mental disease. All this procedure is registered. There is not follow-up on APAV's side. Any special protection needs that the victim may have are mentioned in the sheet. Generally what happens regarding referral by APAV to other entity is that one of the victim support workers in APAV knows someone who works in the other entity and contacts directly that person. APAV refers victims to institutions that can provide financial support to victims, normally in the context of Social Security or municipalities, to facilities that provide support to elderlies, mentally ill people, children, to police to make a report of the crime and to shelter houses. Usually there is direct contact between victim support workers and the other entities when the victim has special protection needs. Otherwise, victim support workers only give the victim information about the possibility of contacting such services. In cases where the victim may have the right to legal aid, the victim support worker helps the victim to fill out the necessary form and advises him/her to go to a Social Security center.

#### **i) APAV's specialised network for supporting of children and youngsters victims of sexual violence**

The main objective of what is called "Care Network" ("Support network for the children and the youngsters victims of sexual violence") is to develop an implementation, functioning and supervising model of a support and referral network of cases that involve children and young person's victims of sexual violence. It was created in partnership with the Portuguese Judiciary Police and the National Institute of Legal Medicine and Forensic Sciences. This network has several specific objectives, such as the need to increase knowledge about the impact of sexual violence, particularly the one arising from the passage of children and young persons through the interinstitutional circuit, systematize answers and good practices of intervention with children and young victims of sexual violence, their families and friends, specialized training of Human resources from partner organizations in order to intervene in cases of children and young victims of sexual violence and perform external evaluation of intervention methods used with children and young victims of sexual violence.

In addition to the previously mentioned objectives, Care Network has a big diversity of activities to perform:

- Analyse the state of the art about good practices of specialized intervention with children and young person's victims of crimes with a sexual nature, their relatives and friends;
- Development and production of a manual of procedures for intervention in the specialized support network;
- Structuring the intervention model, training and supervision;
- Performing initial and continuous training activities in order to specialization of the technical professionals;
- Children and young person's referral to APAV by the Judiciary Police and the National Institute for Legal Medicine and Forensic Sciences;
- Development and distribution of materials with information for the general community;
- Development of training contents and the implementation of specialization and intervention trainings with children and young victims of sexual violence, intended to professionals from the different partner organizations;
- Development of a manual of procedures to intervene and support children and young victims of sexual violence;

- Creation as well as establishment of a support network to children and young victims of crimes with sexual nature.

#### **ii) Network to support Relatives and Friends of Homicide Victims**

Homicide might be considered one of the most traumatic deaths that can lead to an intense suffering and significant alterations in the lives of relatives and friends. The death by homicide is always a violent death and it can arouse extreme negative reactions such as fear, anger and horror. Relatives and friends have to adjust to a new reality; therefore, it is preferable that each person has, from an early stage of the process, a specialized support from professionals who know how to guide them through mourning with safety, confidence and hope. Relatives and friends of a homicide victim are considered “hidden victims” or “the other victims” since they were not the ones who suffered the crime but they also suffer the negative consequences caused by a crime of such nature. If a relative or a friend was victim of a homicide, these “other victims” suffer the impact of the victimisation, caused by the criminal action that took place. APAV believes that, with the adequate support, recovering the daily routines might be easier even though relatives and friends will never forget the crime; but the mentioned support can grant a social and psychological recovery which allows relatives and friends to regain their normal routine. This was the context that led to the promotion and development of Project CARONTE “Support to Relatives and Friends of Homicide Victims”. As the other projects from APAV, this project was developed throughout two years, appealing to international partnerships that allowed an exchanged of experiences and know-how and culminated with the development and implementation of a sub-network – “Network to support relatives and friends of homicide victims”. This sub-network (created in an exclusively partnership with the Judiciary Police) combines increased powers to APAV Victims’ Support Offices and Victim Support Technicians, the creation of a specialized network as well as a referral system with the Judiciary Police and the National Institute of Legal Medicine and Forensic Sciences. Support for families and friends of a homicide victim is conducted in APAV Victims’ Support Offices by Victim Support Technicians with general formation and by Specialized Victim Support Technicians that belong to the previously mentioned sub-network. The base training course includes several references that allows all Victim Support Technicians to accomplish a primary intervention to family and friends. The sub-network to support relatives and friends of homicide victims is composed by Victims’ Support Offices local managers and Specialized Technicians, selected and training with that purpose. Relatives and friends can directly request the mentioned support or it can be referenced by the Judiciary Police or the National Institute of Legal Medicine and Forensic Sciences, under the referral system for victims of crime, protocolled between Judiciary Police and APAV, National Institute of Legal Medicine and Forensic Sciences and APAV. The primary intervention is performed by any Victim Support Technicians and is based on emotional stabilization, information gathering, first needs assessment, activation of the sub-network to support relatives and friends of homicide victims and finally initiation of the online support process.

The specialized intervention is conducted by a specialist Victim Support Technician of the network and is based on:

- Every previous points, if the first contact is realized by the specialist victim support technician;
- Support in planning ceremonies or funerals, namely explaining the process and facilitating contacts;
- Supporting Judiciary Police when family notification is necessary, regarding the death of a relative;
- Supporting the medical-legal procedures, namely in the corpse recognition, according the sub-network availability. This specific type of support must be coordinated with the National Institute of Legal Medicine and Forensic Sciences;
- Daily routines support, throughout pedagogical strategies;
- Legal, social and psychological support, according to APAVs’ models and depending on the identified needs;

- Contact with the liaison officer from Judiciary Police that directly works with the family, throughout the support process;
- Explaining the mourning process to relatives and friends;
- Support in school integration, if there are children or young people among relatives and friends. This specific support is characterized by the explanation to teachers and students about trauma effects and mourning process and about the best way to interact and support the mourning child or young person;
- Referral of the case to other institutions or specialized support, particularly in cases of pathological mourning with needs of psychiatric intervention or long term psychotherapy;
- Monitoring and information about the legal process, namely through the explanation of criminal process functioning;
- Detailed filling of the Online Support Process.

The duration of the intervention depends on the relatives and friends return to their daily routine or the conclusion of the criminal procedures. Support concentration during the crisis phase, happens essentially from the first three to six months until one year after the homicide. Support can be focused on the emotional stabilization and establishing routines just like the ones that existed prior to the crime; this kind of intervention pretends to put family and friends in an autonomous functioning or socially supported, as long as it is psychologically comfortable to them. Relatives and friends risk assessment should be evaluated in order to elaborate personal safety plans. The continued support might extend for over a year, depending on the criminal procedures duration even though this support can be more focused throughout the most decisive stages of the criminal procedures or relevant events such as homicide anniversary, important property changes or other situations that involve family and friends security. The process conclusion is achieved with the end of the criminal procedures and the persons' autonomy in daily routines. Sometimes, it implies the context of peoples' lives is changing and social support framework by other institutions can also be considered as the conclusion of the process. Obviously, the end of the process can also happen based on relatives and friends decision, which must be communicated to APAV.

### **iii) Victim Support Helpline (116 006)**

In November of 1998, APAV created a helpline as a way to facilitate access to the network of Victim Support Offices, by all those who, directly or indirectly, are faced with a situation of victimization. This is a way of bringing citizens to all the services that APAV has. Given a social environment marked by the impoverishment of the Portuguese society, and noting the growing difficulties of victims of any type of crime, their relatives and friends in appealing to APAV support services in person and assuming the characterizing isolation of some regions in Portugal, it became urgent the development of a set of proximity services. Therefore, APAV tried to create an authentic and modern helpline whose purposes were the support (in crisis situations) of victims of any kind of crime, to forward to APAV network or partner networks and to inform the victims according to the best and standardized support procedures. Nowadays, this Victim Support Helpline has an extended schedule and it constitutes the operationalization of the European number of support to victims of crime – 116 006.

#### **• Conclusions**

In the majority of the situations, there is not a procedure available for police enforcement to refer victims to victim support organizations or others. On top of that, the National Republican Guard and the Public Security Police, generally, only inform victims of the possibility of trying to find help in a victim support organization in cases of domestic violence or, in some cases, if the victim is visibly emotionally upset. Regarding the Judiciary Police, the Inspector tries to refer the victim to an entity that is able to give the victim the adequate support, according to the specific characteristics of the situation. The partnership between APAV and the National Republican Guard and the Public Security Police in some regions is considered a good practice as it allows all the victims who want to, to resort to victim support

services. Having in mind the very small percentage of victims who need support and who actually receive it, it is essential that new referral procedures are created. The partnership between APAV and the Judiciary Police and the National Institute for Legal Medicine and Forensic Sciences concerning a specific group of crimes, is also considered a good practice once it allows victims to receive multidisciplinary support, useful in a situation where they might feel more vulnerable regarding the crime that affected them. Another good practice is the one implemented by APAV and Lisbon's Psychiatric Hospital as it facilitates the referral and consequently the road to cure of the mentally ill, whether or not they are victims. There should be other mechanisms allowing an easy referral from victim support to other entities, as it is very risky to rely on the possible acquaintances that victim support workers have in other services to guaranty that the passage of the victim through the various entities occurs with no major problems. The Prosecutors interviewed affirmed that usually they only inform victims of the possibility of searching for support. So there is not a procedure available for referral of victims involving the Prosecutor's office, situation which has to change as mentioned previously.

#### **5. Synthesis: good practice, gaps and challenges**

The present report aimed to demonstrate how the Directive 2012/29/UE was transposed to the Portuguese law as well as its effectiveness regarding victims' rights and protection. In conclusion, it pretended to evidence how victims' protection works in practice on a daily basis. As previously said, the Portuguese report aimed to present the current situation in Portugal through the analysis of the legal framework, the reality of several entities and organizations that directly deal with victims of crime, their identification, individual assessment and consequent referral to the proper authorities. Law number 130/2015, September 4<sup>th</sup> transposed the mentioned Directive to the Portuguese legal system. However, it fell short from what was expected: there are many flaws and gaps when we compare the Portuguese Statute with the Directive itself.

As we mentioned earlier, after the transposition, the Portuguese Victim's Statute has three main flaws regarding the right to protection:

1. It has a different organization from what it is presented by the Directive, which makes it very confusing. The chosen systematization is confused and, in some cases, even incoherent. The completion of the transposition felt short from what was desirable due to the omission of the several rights that are foreseen in the Directive. According to APAV, the Victims Crime Statute should have been fully inserted in the Portuguese Criminal Procedure Code instead of dividing the transposition of the Directive by more than one law. There are several reasons for this choice, but mainly for reasons of simplicity, consistency, certainty and finally, legal security. As previously mentioned, APAV defends the existence of a Statute without any rights' prioritization.
2. Some specific characteristics of the right to protection fixed by the Directive were completely omitted in the transposing process.
3. Deficient understanding of what the Directive specific establishes regarding especially vulnerable victims' rights. Concerning to this specific question, the Portuguese law did not adopted the terminology of the Directive and instead of using the expression "victims with specific protection needs", Law number 130/2015, September 4<sup>th</sup> refers to these victims as "especially vulnerable victims". This variation of the expression may eventually cause some confusion once the term used by the Directive is much more objective, precise and less restrictive; instead, "vulnerable" is a much more subjective and vague term and we must not forget that in some cases, the vulnerability may not be directly related with the victims' protection but it can be an outcome from other dimensions of the victimisations' impact.

Unfortunately, the transposing was nothing more than a purely formal implementation of the Directive which made it incomplete, omissive and with multiple gaps. As we mentioned before, the implementation of the Directive should not only be a mere approval of a new law; instead, it should embrace coordinated practices between the several professionals that embody the national judicial

system as well as the creation of appropriate procedures and due training to professionals. There should have been a planned and coordinated effort in order of a proper implementation strategy for ensuring the practical conditions for an effective exercise by victims of their rights, but also in terms of procedures and training of the professionals that work with victims on a daily basis. Besides what we said in the previous statement, in order to a proper transposition of the Directive is not enough the mere declarations of intent, composed by general principles or vague dispositions. What is intended is that victims of any crime have at their disposal a very specific set of rights as well as practical mechanisms to effectively exercise those same rights.

Despite the Directive contains no mention to principles, the Portuguese Victim's Statute is filled with them, having left out some of the main questions addressed by the Directive. As we mentioned in a previous section, the focus should be on the assurance that the rights withdrawn from those principles are respected. If we resort to the Directive itself (article 1), the main purpose is to ensure that victims of crime have the possibility to receive suitable information, support and protection and that they are able to participate in criminal proceedings regarding their specific legal circumstances. After this, the Directive has a complete systematization of victims' right that should have been transposed to national laws. Nevertheless, if we take a close look to the Portuguese Statute, the main concern are the principles that guides the victims' support, and only after the national law directly refers to their rights as victims.

The individual needs assessment, as one of the main concerns of the Directive, presents itself as problematic in our country: the Portuguese law does not have clear rules regarding how the assessment works in practice but a change of mentalities is also required to the professionals that work with these victims on a daily basis. The Directive defends an individual assessment of each victim and based on this personal evaluation, professionals may be able to understand what are the victims' specific needs regarding his or her protection as well as the measurements that should be adopted in order to cease or minimize those needs. Therefore, those measures are not supposed to be applied as one but they should be carefully selected according to the specific characteristics of the situation. Unfortunately, in daily practice, when the victim seeks the support of the judiciary system, there is a different treatment between a "domestic violence victims" and "the other victims", which reflects a victims' hierarchy that APAV considers unacceptable. There should be no differences based on the type of crime and every victim should be treated according to their specific needs, even though APAV defends that should exist a positive discrimination regarding victims of domestic violence, concerning the specific characteristics of this type of crime. Also, due to the current financial situation in Portugal, APAV believes that it will not be easy to achieve all the goals fixed by the Directive, since the adoption of some measures requires substantial costs.

All the entities mentioned in our report do not have any standardized procedure to identify the victim. All the professionals interviewed mentioned that there are no instructions, concrete steps or even checklists that could guide their work during the victim's identification. Even though there are no specific procedures to identify a victim, almost every entity takes into account the personal characteristics of the victim according to the professional's good judgement. As to "features of the crime", all the involved get access to the information of the crime according to the description made by the victim, and the professionals always try to collect as much information as possible in the first contact with the victim. Regarding the process of identifying a victim, we can conclude that the lack of standardized procedures may not establish a homogeneous performance among the various entities once each professional evaluates the situation and identifies the victim according to his/her good judgement.

In what concerns the individualised assessment of needs, and as it happens with the identification of the victim process, there is no legal procedure or specific guidelines for this stage – we can conclude that the lack of procedure is common to every entity mentioned in the report. Once there is no standardized procedure, the criteria for decision making, special protection needs and measures are based on the specific characteristics of the victim as well as the crime itself and what is reported by the victim. However, all the professionals mentioned that they pay – or try to pay – special attention to the personal characteristics of the victim in order to determine what measures are more effective concerning the specific situation reported by the victim. Regarding special groups of victims such as

children, elderly or even adults with some kind of disability, almost every professional said that they try to give special attention to these types of victims.

Finally, concerning the existence, procedure and effectiveness of referral mechanisms, all entities (except APAV) refer that there are no legal or internal standardized procedure, not even any guidelines for victim's referral. Everything should be adapted, once more, to the specific characteristics of the victim, professional's good judgement as well as the situation and type of crime. With regard to the entities in which was possible to collect this information, when the data are communicated to another entity, there is the need to a prior consent of the victim for the necessary referral.

In conclusion, we must add that concerning these three stages of intervention, there is always an attempt by the professional to involve the victim in the whole process, in order to avoid any type of revictimization.

However, besides all the problems, gaps and misconceptions that are addressed in this report, APAV believes that this Directive presents us as a chance to move from a preclusion paradigm to a sense of inclusion, respect and non-discrimination towards the victim. Therefore, in a near future, Portuguese law should be complemented by a serious effort towards the adoption of standardized and uniform practices to ensure the proper respect for the victims' rights.