

# Report of Various Size – Fieldwork research (FRANET)

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

### Country Report Austria 2017

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## Executive summary

Based on face-to-face interviews with 21 practitioners of different professional groups and 12 victims of violence, this report outlines the main findings for Austria. The findings show the following interconnected issues which affect the victims' active participation in the criminal proceedings and the effective implementation of their rights.

### Different perceptions on victims' role

The findings indicate two types of views concerning the role of the victim in criminal proceedings. The interviewed judges, prosecutors and police officers tend to conceive the victim mainly as a witness. Victims of violent crimes are considered as most important part of evidence by the law enforcement authorities. They point out that victims of violent crimes are OBLIGED rather than ENTITLED to have a say in the proceedings. Victims are thus perceived by law enforcement authorities as witnesses, whose statements help finding the truth and prosecuting crimes. They are not so much conceived as injured persons who need restitution or as active parties, who are entitled to have a say in the proceedings. Interviewed judges and prosecutors rather stated that victims should not have too strong an influence on the proceedings. In their opinion victims should not apply for evidence in the proceeding, ask questions or have a say during the trial as this would be too influencing.

Interviews with victims confirm this view: victims feel treated as witnesses only and not as victims. While law enforcement staff does not differentiate between a victim and a witness, victims do. For the police and court-staff this doesn't make so much of a difference, as they pay attention only to the victims' possibility to testify. For them, victim support services also have mainly the function to facilitate testifying.

Interviewed members of victim support services and lawyers acknowledge the traumatisation of victims. Particularly psychosocial victim support services sometimes focus on the traumatisation and therefore encourage victims to not participate too much in the proceedings – at least not more than absolutely needed. Legal victim support services take on a different approach in supporting victims of violent crime. Although they also aim at protecting the victim from being secondarily victimised, they ADDITIONALLY take on a strategic approach to proceeding – they want the case to be won and the offender to be prosecuted. Against this background, some legal support services might invite the victim to actively participate and testify in the court room (while the offender has to leave).

### Victims' active participation in the proceedings

The findings show that victims' active participation in the proceedings does not work as it is supposed to. Law enforcement personnel (judges, police and prosecutors) reject victims' active participation in the proceedings, because this would affect the offenders' rights negatively and also the reputation of the criminal justice system. For example, police officers say that a victim does not need any legal advice prior to reporting to the police. The victim (as well as a witness in the sense of a "bystander") is rather obliged to report to the police – criminal offences have to be reported to the police and there is no need for legal advice. Similarly, prosecutors and judges feel annoyed about too much active participation of victims, e.g. in the sense of asking questions or having a say during court trial. They argue that they indeed are sensitive towards victims' needs, but in the end it is the state – and not the victim – who has the right and the duty to prosecute criminal offences.

However, the legal and psychosocial supporters of victims interviewed do not want either a too active participation of the victims in the proceedings, or are at least sceptical about it. Yet, they argue differently by referring to the need to avoid secondary victimisation. A victim participating in the proceedings too actively might be, in the opinion of psychosocial support services, at risk of being secondarily victimised. Legal support services see this point too and additionally fear that a very active victim might appear not "sufficiently" victimised to the judge. However, the victim support services focus on compensating the lacking active participation of victims: they participate on behalf of the victims and inform them about every procedural step. Of course, they are aware of and respectful towards victims' needs, and if a victim insists on actively participating, they will support them in doing so.

The victims wish to actively participate in criminal proceedings can be reduced to two dimensions: 1) to be pro-actively informed and updated by the actors of the criminal justice system and 2) to have all their evidence considered (or at least explained why it is not considered).

### **Victims' rights are entitlements upon request**

Victims' participation rights are mainly rights upon request. A victim of violent crime is entitled to psychosocial support services UPON REQUEST; victims are entitled to ASK FOR securing and considering evidence they perceive as relevant – the decision lies with the court; victims are entitled to ASK for a contradictory interrogation, the decision lies with the court and so forth.

The fact that these victims' rights are entitlements upon request (and there is no effective remedy in case of denial) might explain failure in practical implementation– at least for victims without support services. In practice, victim support services care for the implementation of victims' rights (i.e. care to avoid unwanted encounters between victim and offender). The criminal justice system has no interest in providing these measures routinely, and does not provide them unless specifically requested to. Again – the fact that victims' rights are rights upon request and without underpinning legal enforcement mechanism might explain the difference between victims' rights in the law books and victims' rights in reality.

### **Protection from repeat victimisation**

Protection measures (such as banishing orders or prohibitions to return) against repeat victimisation in cases of domestic violence are considered effective, as equally pointed out by practitioners and victims. However, victims stated that financial punishment in the case of violation often does not deter repeat offences. Victims would prefer to have threats of jail as more effective deterrents. Protection does not work at all in the case of non-domestic violence, and neither practitioners nor victims have suggestions on how this could be improved.

### **Incomplete decisions on restitution and compensation at criminal courts**

Victims are effectively informed by the police about the possibility to join the proceeding as a private party and to seek restitution. However, the main problem reported by practitioners (and confirmed by victims) is that the criminal court does not adjudicate all civil law claims. , Victims have to file a claim at the civil court when the evidence gathered in the criminal proceedings is not sufficient. For this purpose, legal support services are not free of charge.

## Introduction

This report is based on face-to-face interviews with 21 practitioners of different professional groups and 12 victims of violence.<sup>1</sup> The interviews were conducted between 17 January and 12 July 2017 in Vienna, Graz and its surrounding areas and Linz. Initially, only the two regions of Graz (rural) and Vienna (urban) should have been included into the sample, but since there were some difficulties in achieving the requested number of interviewed victims of violence (which will be addressed below) the geographical scope was extended to Linz. The interviews lasted between half an hour (prosecutor) and more than two hours (victim of sexual violence). All interviews were audio-taped.

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

### The sample

The sample of 21 practitioners covers the following professional groups: Four interviews with members of victim support services (VSSs), including both specialised and generic ones; five interviews with police officers; eight interviews with judges (J1-J4) and prosecutors (J5-J8); and four interviews with lawyers specialised on representing victims of violence at court. The interviewees who are not members of public authorities, namely the VSS as well as the lawyers, were identified via online research. To identify possible interviewees for the fieldwork research among public authorities – judges, prosecutors and police officers – official letters were sent to the senior public prosecutor's office (*Oberstaatsanwaltschaft*) and to the presidents of the courts in the selected geographic regions of Graz, Leoben and Vienna asking the addressees for support through spreading our call for interviewees. Additionally, existing contacts to members of these authorities were used, and some interviewees were personally contacted and asked for support. The readiness of practitioners to participate in the study was very high and consequently the identification of interviewees was easy. All interviews with professionals took place at their workplaces.

The information provided by public authorities was quite heterogeneous, depending on interviewees' awareness for victims' rights. However, police officers, judges and prosecutors who are well aware of issues of victim support might be overrepresented, as there is a knowledge bias in the sample: The heads of the judiciary, who were contacted by us, named mainly actors who serve as role models regarding victim support. This selection was justified by referring to the competencies of the interviewees, stating that "they have more information to provide." This competence and awareness bias in the sample of practitioners has to be considered when reading the quantitative findings pointed out in the table sheets. Data retrieved from open questions were evaluated qualitatively and thereby this bias does not matter. This bias does not apply to the interviewed lawyers and members of victim support services, as they are aware of victims' rights and entitlements already by their role and professional function.

The Austrian team faced severe challenges in identifying victims of violence ready to talk about what happened to them and how they perceived the proceedings. The team reflected on the reasons for these challenges and also discussed them with experts. In the course evaluating the following possible reasons were found: particularly victims of gender-based violence (domestic violence and sexual violence) want to leave their experiences behind; they do not want to talk about them. A member of a victim support service specialised on victims of sexual violence explained that they had repeatedly tried to support scientific work on the issue and forwarded calls for interviewees to their clients. Since this never worked effectively she concluded that her clients are only interested in the direct

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benefit of services such as guidance and support, counselling and advice. Everything else (like giving an interview) has no room in their daily routines – even if they appreciate research from a socio-political point of view.

Data-protection concerns of victims are another possible reason for denying participation in the research. This was also confirmed by members of VSSs, who supported the team in identifying interviewees: victims had to be assured repeatedly that data would be used only anonymously.

The following strategies were applied repeatedly to identify victims:

- **Accessing victims via professionals<sup>2</sup>:** Interviewed VSS members and lawyers, and also VSSs, who had not participated in the research yet, were asked to distribute the call for interviewees among their clients. This was the only effective way of accessing victims for interviews. All other channels did not work. This strategy was the only one which yielded results; still it took a lot of time to identify the required number of interviewees.
- **Distribution of calls for interviewees** via Social Media, Website, Newsletter: did not work, either no reactions or only reactions of persons who did not meet the criteria.
- **Accessing victims via personal networks** and circles of acquaintances: did not work.
- **Extending the geographical scope** from Graz, Leoben and Vienna to Linz and Klagenfurt: Linz worked, Klagenfurt did not.
- **Extending the time-scope** of the fieldwork for one month: worked.

Finally the required sample of 12 victims of violence was reached. Out of those, six persons were victims of domestic violence (V1, V4, V6, V8, V10, V11), one was a victim of ex-partner stalking (V2). Apart from domestic violence, victims of the following offences are part of the sample: attempted murder (V3), bias-motivated attack with a car (V5), dangerous threat and bodily injury (V7), bodily injury (V8), police violence (V12). Eight victims are female (V1, V3, V4, V6, V8, V10, V11). Eight cases ended with conviction and in two cases (bias-motivated attack with a car and police violence), the prosecution terminated the proceeding before it came to a court trial. In both cases lack of evidence was the reason for termination. In the case of police violence, the victim challenged the decision of the prosecution and applied for a continuation of the proceeding – without success. The victim argued for shortcomings in the proceedings (Verfahrensfehler). In the end, the decision of the prosecution to terminate the proceeding was confirmed. One of these terminations was challenged by the victim, however without success – the termination of the proceeding was confirmed. The interviews with the victims took place either in the premises of the VSS, who organized the interviews, in public space (park, restaurant), or in the interviewer's office. Some victims were still traumatised at the time of the interview and several interruptions were needed.

As all interviewed victims were conveyed by VSSs, there's a selection bias in the victims' sample with victims, too: only victims, who were (well) supported by a VSS shared their story for this research. Consequently, the findings might show the situation more favourable than it is and the voice of not supported victims in this sample is quiet – almost inaudible.

## The guidelines

The application of the guidelines was not always easy since they mix qualitative and quantitative methods, and very general statements, particularly in the quantitative questions, were provided. The interviewed practitioners found it very difficult to answer these generalised statements, e.g. "Do victims report to the police or are they reluctant?" or "The police attach great importance to treating victims in a respectful and sympathetic manner", and they often felt uncomfortable to do so. The interviewed victims faced similar problems with these statements. It was impossible for them to generally agree or disagree with statements such as "Throughout the proceedings I had the support I needed". They would rather have differentiated their assessment, saying: "Yes, as regards the VSS, and no, as

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<sup>2</sup> The most supportive organisations were: Gewaltschutzzentrum Graz, Gewaltschutzzentrum Linz, Antidiskriminierungsstelle Steiermark.

regards the police and the prosecutor". All these difficulties are reported in the interview reporting templates as well as in this report.

Another issue emerged during the interviews with the practitioners: many questions dealt with tasks they are in fact not responsible for. E.g. it was difficult for lawyers to assess how the police work, and it was difficult for judges to assess the resources of victim support services, and so on.

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

## 1.1. Views of practitioners

1.1.1. How do practitioners of various professional groups view the primary role of victims in criminal proceedings and its significance (please refer to Question Pr 1.1)?

	S	P	J	L
As a witness testifying and thus providing evidence;	2	4	7	4
As a damaged party seeking restitution;	1	0	0	0
As a party to the criminal proceedings entitled to have a say in the proceedings;	1	1	0	0
Other, please specify below!	0	0	1	0
Don't know	0	0	0	0
TOTAL	4	5	8	4

The majority of interviewees in each professional group view the primary role of victims in criminal proceedings as witnesses testifying and therefore providing evidence. Only two interviewees perceive the victim as a party to the criminal proceedings entitled to have a say in the proceedings. Interviewees, who selected the option 'damaged party' or 'party to the criminal proceedings' point out that this is the case only by law (S1, S4, J7, P1). In practice, victims are not well informed about having this status and the connected entitlements. Particularly those who are not supported by lawyers or victim support services often drop these entitlements. An interpretation of this finding might be the fact that the legal reform which provides victims with the role of parties to the criminal proceedings was only implemented quite recently. Practitioners might not yet be used to perceiving victims in this manner. However, all interviewees report that victims **have a significant role in the proceedings** – as witnesses.

One interviewee selected the option "other" and specifies: "The victim is primarily a party to the criminal proceedings and therefore **basically obligated** (and not just entitled) **to** have a say in the proceedings".

1.1.2. How significant do practitioners assess the role of victims in criminal proceedings, apart from victims testifying as witnesses? (Question Pr 1.2)?

The assessments of the practitioners are homogenous: In practice, victims are treated by the criminal justice system **as witnesses** testifying and providing evidence. They are indeed perceived as the "most important part of evidence". As witnesses **they have a very significant role** which they do not have in other aspects.

A police woman reports on her views:

*You have to see the difference: we are a law enforcement authority, it is important to me to convict the offender and secondary, but with a similar relevance of course, to protect the victim. However, basically the main task of the prosecution is to prove and prosecute punishable actions which actually happened and to care bringing the offenders to justice and it is not to think permanently on which favour can I do the victim? But rather to think: how can I convict the offender without harming the victim? If I get raped by anybody, I also want to have him in prison. Of course, they [victims] play a central role [for the proceeding], because she is my witness, with [the help of] whom I can convict the offender.*

*Man muss immer einen Unterschied machen: Wir sind eine Strafverfolgungsbehörde, mir geht es darum, den Täter zu überführen und sekundär, aber mit einer ähnlichen Wertigkeit natürlich auch darum, das Opfer zu schützen. Aber grundsätzlich ist die Aufgabe einer Staatsanwaltschaft, strafbare Handlungen, die sich tatsächlich zugetragen haben, zu beweisen, anzuklagen und dafür zu sorgen, dass der Täter einer gerechten Strafe zugeführt wird und nicht permanent nur daran zu denken: Was kann ich dem Opfer Gutes tun? Sondern so zu denken: Wie kann ich den überführen, ohne dem Opfer zu schaden? Wenn mich einer vergewaltigt, will ich auch, dass der eingesperrt wird. Natürlich spielen sie eine zentrale Rolle, weil sie ja meine Zeugin ist, mit der ich das machen kann. (AT-P5)*

The **harm** done to victims is **not really an issue in criminal proceedings**. The victims may claim for their entitlements as private parties to the criminal proceeding and this is subsequently dealt with within the proceeding. But it does not matter for the actual work of the law enforcement authorities and the judges – it has no impact on their tasks.

An interviewed prosecutor explains his view on the role of victims in criminal proceedings:

*The required objectivity of the law enforcement authorities must remain the highest maxim in the criminal procedure to be able to balance the interests of both parties (the suspect offender and the victim) and I am a law enforcement authority and no victim protection service.*

*Das Objektivitätsgebot der Strafverfolgungsbehörden muss die oberste Maxime im Strafverfahren sein, um auch eine Abwägung zwischen den beiden Beteiligten machen zu können. Ich bin eine Strafverfolgungsbehörde und keine Opferschutzeinrichtung. (AT-J8).*

This quote clearly shows that the interviewee would perceive it as biased if the victim had a role in the criminal proceeding more important than the one of witness. He argues that this would work at the expense of the suspect offenders' rights and also at the expense of the required objectivity of the law enforcement authorities. Another interviewed prosecutor (J5) shares this opinion:

*The victim is a witness, it is both: victim and witness. However, we are a law enforcement authority and not a victim protection authority, thus the victim is relevant for us as a witness whom we need in order to convict the offender. The court will say the same, so I am sure that judges will share my opinion. But this does not mean that victim protection does not matter to us.*

*Das Opfer ist ein Zeuge, es ist beides: Opfer und Zeuge. Es ist aber so, dass wir eine Strafverfolgungsbehörde sind und keine Opferschutzbehörde, daher ist das Opfer für uns als Zeuge relevant, den wir brauchen um den Täter zu überführen. Dasselbe wird auch das Gericht sagen, also ich bin mir sicher, dass Richter das auch so sehen. Das heißt aber nicht, dass uns der Opferschutz egal ist. (AT-J5)*

However, all interviewed judges, prosecutors and police officers emphasise the importance of the victim's role as a witness- in criminal proceedings. **Victims are most important for criminal proceedings as witnesses**. Particularly the interviewed members of law enforcement authorities (police and prosecution) and the lawyers focus on this importance. The **victim** is perceived as the **most important "body of evidence"**, as also confirmed by the interviewed lawyers (L1-L4).

*Well, there wouldn't be a procedure without a victim. The victim is an essential precondition, the victim is the most important piece of evidence, particularly in cases without objectifiable evidence, the victim's evidence is very important. In the meantime, victims are handled with more care than before, but in principle the victim essentially remains a witness.*

*Na ja, das Verfahren würde nicht stattfinden ohne dem Opfer. Eine unabdingbare Voraussetzung ist das Opfer. Das Opfer ist ein wichtiges Beweismittel, v.a. in Fällen, wo es keine objektivierten Beweise gibt, ist die Aussage des Opfers ganz entscheidend. Man geht mittlerweile schon etwas sorgsamer um mit dem Opfer als früher, aber im Wesentlichen bleibt das Opfer Zeuge. (AT-L3)*

For the police (P1-P5) the victim is the most relevant actor to yield findings in the investigation of violent crimes. This relates not only to (verbal) testimony, as murder victims or victims of attempted murder also testify through police bodies (P4). In case the victims survive they are the (often only) ones who can tell the sequence of events and thus contribute to finding the truth. This assessment is also confirmed by the interviewed judges and prosecutors. It has been noticed by members of the L and the J group that the **presence of victims in the main trial may influence** lay judges, as it provides a counterbalance to the accused's testimony (L1, L2, L4, J5, J7). In case the victim is physically absent in the trial, they might appear as a "theoretic person" (J7) to lay judges, and consequently the offender may appear harmless. It's a particular concern of the interviewed lawyers that the victim's credibility might be doubted or the proceeding might lead to a milder punishment when the victim is not present in the court room (J1, J4). At the same time, interviewed lawyers are **well aware of the risk of secondary victimisation** of victims in the court room. It is a difficult decision for them whether to expose their clients to this burden for the sake of improving the probability of sentencing the offender, or to keep the clients in a safe environment at risk of acquittal for lacking evidence. An interviewed lawyer argues that for "strategic reasons" (for the purpose of convicting the offender) it would be better if the victim testified in a safe environment (in order to appear even more victimised) and, apart from that, didn't take part in the proceedings. According to the lawyer, the legal representatives of victims and also victim support services are here to actively participate in the proceedings on behalf of the victim (L1, L2, L4, J6).

*Some victims do not want to be in touch with the criminal justice system anymore, they testify and then disappear, they never respond again. Other victims, you really need to hold them back and say: please do not show up at the main trial, this will not work. I cannot say that we apply for the possibility of contradictory interrogation, the court protects you with the video [from encountering the offender] and then you want to sit in the main trial? Many judges do anyway not understand this annoying back and forth in terms of victim protection, the contradictory interrogation. They say to me: "Well, because of which article are you here? §66 [which is on special protection measures], no I do not know this article, what's the point of that?" Some victims are then in a way: "This is my right!" Well, this will not get you very far at court, to be polite and friendly will get you far, the judges then anyway do what we want. But as I said, some victims participate very actively and others do not and I really believe that we have to let the victims decide on this.*

*Manche Opfer wollen mit dem Gerichtssystem nichts mehr zu tun haben, die sagen aus und tauchen dann ab und melden sich nie mehr. Andere muss man richtig zurückhalten und sagen: Bitte kommt nicht in die Hauptverhandlung, das geht nicht. Ich kann nicht sagen: Wir machen kontradiktorisch, behüten Euch mit Video und ihr wollts dann in der HV drinnen sitzen? Viele Richter können das Geschichtschasti nicht nachvollziehen mit der kontradiktorischen Einvernahme, die sagen: „Na, Frau Doktor, wegen welchem Paragrafen sind Sie da? Der 66er, na den kenn ich nicht, was soll denn das? Manche Opfer sind dann so: das ist mein Recht! Und so, nur man kommt bei Gericht halt dann weiter, wenn man nett und höflich ist, die Richter tun dann eh, was wir wollen. Aber wie gesagt, manche Opfer sind dann sehr intensiv dabei und andere weniger und ich finde man sollte das dem Opfer überlassen. (AT-L1)*

S4 critically compares the role of the victim in the procedure with the one of the offender. She identifies an imbalance between the positions of (suspect) offenders and victims as witnesses: suspect offenders may lie, victims must not lie. Suspect offenders have a say in the proceedings, victims are obliged to testify as witnesses (apart from those who have a family relationship to the offenders).

Against the background that the victim's role as a witness is a burdensome one, **their information rights are perceived as very important** by the interviewed members of VSSs: the victim needs to be adequately informed about the proceeding. Informing the victim helps to understand the importance of their role and to effectively fulfil their role as witness. This way, VSSs surely have an instrumental function and serve the duty of the state to prosecute crimes. Still, victim support services not necessarily reinforce the role of a victim as a witness, but support the victim in overtaking this role (which is their duty, too). However, victims also get support by VSSs in actively participating in the proceedings if they do wish so (which is rather the case in victims of non-domestic violence than in cases of domestic violence).

On the other side, informing victims does not only help law enforcement in the sense of having well prepared witnesses, it is also of utmost importance for the victims themselves. VSSs explain to victims the judges' and prosecutors' approaches; they explain the questions to be expected, they inform victims on how to behave at court. The S group thereby understands their work as intermediary between the criminal justice system and the victim. But of course they also offer other services like trauma-therapy or psychosocial counselling (S1, S2, S3, S4).

## 1.2. Views of victims

### 1.2.1. How did the interviewed victims assess their role in the proceedings (Question V 1.1 – V 1.3)?

#### Domestic violence:

All interviewed victims of domestic violence report that their role in the proceeding was the one of a **witness** (V1, V4, V6, V8, V10, V11). They also sought material restitution in the sense of compensation of damages. This is important for them because of their expenses related to the violence, such as costs for psychological and physical therapy (V4, V1, V6, V8, V10, V11).

*Normally, I should have been compensated around €30,000 but for this I would have had to initiate a further proceeding [at civil court] and I did not have the energy to do this. But €11,000 is much too little for what he has done to me, this is really far too little. And with these €11,000 everything is paid, but I still have pain, headache, it will not stop. I have expenses; I think I have spent about €25,000 for hospitals, check-ups, CT.*

*Ich hätte normal so um die 30.000 kriegen sollen, dafür hätte ich aber weitermachen müssen und dafür hatte ich die Kraft nicht. Aber 11.000 Euro ist viel zu wenig für das, was er mir angetan hat, also das ist viel zu wenig. Und mit den 11.000 Euro ist jetzt alles abgeschlossen, das heißt, ich habe noch immer Schmerzen, Kopfschmerzen – die gehen nicht weg, ich habe Kosten, ich hab – glaube ich sicher um die 25.000 Euro ausgegeben, für Krankenhäuser, Untersuchungen, CT. (AT-V4)*

All victims of domestic violence reported that they would have **expected a stronger involvement into the proceeding**, meaning two specific aspects, namely a) being proactively informed and updated *by the court* and the police and b) having the evidence they suggest considered in the proceeding. An interviewee had the impression that the offender (and his lawyer) tried to redirect the attention to something other than the actual offence and that they were successful with that. V11 reported that she had sent evidence (a documentation of a chat on a mobile phone which proves sexual violence) to the police that was not only ignored, but the police also denied that they had received it.

V10 expected to be less involved into the proceeding. But also she would have expected to receive more information by the court and the police.

*I would have preferred to be less involved, but I would like to have more information. Until today I do not know where he is detained. I would really like to know this. But I was asked too many questions and I got to less information.*

*Aber ich wäre lieber weniger involviert gewesen, hätte aber gerne mehr Informationen gehabt, ich weiß bis heute nicht wo er untergebracht ist. Das hätte ich schon gerne gewusst. Ich habe aber zu viele Fragen bekommen und zu wenig Informationen. (AT-V10)*

In only one exceptional case – a victim of stalking by her ex-partner – the victim did not want to be involved into the proceeding at all; she just wanted the stalking to be stopped and only this was why she reported to the police. This person was also unable to tell what her role and contribution were; she only expected it to be over soon (V2).

The findings clearly show that **victims feel better if they are well and pro-actively informed and updated by the criminal justice system**. The VSS can compensate this information deficit only to a certain degree, as the victims really prefer being informed and updated by the criminal justice system's actors. Nevertheless, the work of the VSS is very important for the interviewed victims. VSSs facilitate the victims' role and influence in the

proceedings and take a lot of burdens from the victims. Furthermore, VSSs counsel on what to do and what makes sense to do. This counselling and guidance strengthens the interviewees' influence on the proceeding.

To sum up: victims of domestic violence expect a stronger role in the proceedings mainly through being proactively informed and updated and having their evidence considered (or at least explained why it is not considered). By this they do not necessarily mean being present in court room and asking questions.

### **Other forms of violence:**

All interviewed victims of crime other than domestic violence were obliged to testify as witnesses, and some of them additionally wanted to present their views on the offence (V3, V5, V7, V12). These interviewees **expected to be more involved into the proceedings and perceive their role as marginalised**.

The information provided by these victims indicates that they were treated like a means to the end of prosecution (or closing the case without prosecution). The reasons stated were: the interviewees felt neither informed nor updated about the proceedings; they did not hear anything from the authorities (V3, V12), the evidence they suggested was not considered (V12, V5) – they only received summons, if anything. A victim of a bias-motivated threat, whose proceeding was terminated, expected at least to be heard by the prosecutor before the decision to terminate was taken. However, this was not the case (V5).

Again here, the **VSSs can only compensate to a certain degree this lack of informing and updating** and thereby involve the victims, as the **victims expect to be addressed by the official justice system**. The victims interviewed were content with the work provided by the VSS and appreciate that they were informed and updated at least by them (V3, V9). **VSSs are perceived as facilitators of an active victim participation in the proceeding**. However, the victims perceive the VSS as not being part of the public criminal justice system.

Victims are indeed content if the task of informing them about their rights and helping them to enforce their rights is carried out by support services. The point is that they expect the members of the criminal justice system, not their supporters, to inform and support them. E.g. a victim of domestic violence reports that she would have liked to be updated on the consequences of her reporting by the police (e.g. on whether the offender has been interrogated, whether he has been brought to jail). But she did not receive any information in the sense of updates. The interviewee reports:

*Unfortunately not at all [have I been informed], but I would have wished for this, because I wanted to know: what's happening with the record, what's happening with the offender? Has he already been interrogated? I did not get any information.*

*Leider gar nicht, weil das hätte ich mir schon sehr gewünscht, weil ich wollte ja wissen: was ist mit dem Akt, was ist mit ihm? Ist er einvernommen worden? Da habe ich keine Informationen gekriegt. (AT-V10)*

Later on, this particular victim was indeed informed by a support service, but she would have expected to be informed by the police.

V3, who is a victim of non-domestic violence, reports that she did not feel to be taken seriously as a witness by the police. She was summoned by the police in order to identify a suspect. However, she was not sure if the suspect was actually the offender but believed that this was not the case. She urged the police to drop the accusation but without success until she got support from her supervisor at the VSS White Ring. Before, she was not taken seriously by the police who said: "You are not yet able to assess whether this person was the offender or not; you need more time to recover". She felt powerless on the one hand but also powerful on the other. When talking about the court trial and her role, she says:

*I have the impression that you really have a lot of power. I knew: if I manage to convince the members of the jury [that the suspect actually was the offender] then he will be removed immediately. You have a lot of power and you are not prepared for that in that moment. I was sure that he was the offender, but what would have been if I was not that sure, if I was not able to remember it for sure? It is a zero or one*

*principle: no involvement into the proceeding [as a victim] – total involvement into the proceeding [as a witness]. But what if he is released from detention one day and retaliates against me...*

*Ich habe das Gefühl, man hat sehr viel Macht. Ich habe gewusst: Wenn ich es schaffe, dass ich die Geschworenen überzeuge, dann ist der weg. Man hat sehr viel Macht in dem Moment und man ist nicht darauf vorbereitet. Ich war mir sicher, dass er es ist, aber was wäre gewesen, wenn ich mich nicht so 100%ig an den erinnern konnte? Es ist so ein 0/1 Prinzip: keine Involvierung, totale Involvierung. Was aber, wenn der mal frei kommt, der rächt sich an mir... (AT-V3)*

## 2. Victims reporting their victimisation to the police

### 2.1. Views of practitioners

#### 2.1.1. How do practitioners assess the impact of victims' reporting (or underreporting) on the criminal justice system's effectiveness (question Pr 2.1)?

Interviewees are well aware of the reasons for underreporting (fear of intimidation and retaliation, lacking trust towards the criminal justice system, fear that the police will not believe them). Having this in mind, particularly interviewed members of the criminal justice system (CJS) emphasise that the **victim's reporting or underreporting** does, not or **at least should not influence** the criminal justice system's effectiveness (J3, J2, J5, J8). They point out that all victims are treated and supported equally by the criminal justice system. The police, judges and prosecutors furthermore report that they are used to and experienced in dealing with victims who are reluctant to report (P2, P3, P4). These interviewees mention the option of an **adversary interrogation** to help particularly reluctant victims to report (P2, P3, P4, J6, J8). This measure prevents direct confrontation with the offenders and their legal representations in the court trial. The interviewed lawyers and members of VSS point out that the victim's reporting or underreporting has an influence on the CJS. A **reluctant victim** – whereby reluctance is most often a result of traumatisation, lacking trust or fear – **is disadvantaged in access to justice**. Particularly traumatisation causes victims to testify in a rather scatterbrained manner: they forget re-telling important aspects of the crime (S1, S2, S3, S4, P1, L1, L2, L3, L4, J1, J6). They confuse occurrences. L4 additionally refers to the language skills of a victim and how they impact on their ability to report:

*This is a human component. Some persons are able to report on facts and other persons are not able to – because of language barriers, or because they are not eloquent enough to tell what has happened to them. There are victims, who are listened to and then there are others, who are not taken seriously. This, I believe, strongly depends on the personality of the respective victim. They are disadvantaged insofar as of course a judge or prosecutor has to decide in advance if a victim is credible or not. If a victim contradicts herself in her testimony, which you cannot trace back to telling lies, but rather to being overstrained, I believe that they are disadvantaged. But this is not a conscious disadvantage through the justice system, it rather happens because of several personal characteristics.*

*Das ist eine menschliche Komponente. Es gibt Personen, die in der Lage sind, Sachverhalte zu schildern und es gibt Personen, die aufgrund von sprachlichen Barrieren oder überhaupt weil sie nicht redegewandt sind, nicht in der Lage sind, das zu schildern was ihnen passiert ist. Es gibt Opfer, die haben aufgrund ihre Aussage großes Gehör und dann gibt es welche, die man einfach nicht ernst nimmt. Das hängt glaube ich sehr von der Persönlichkeitsstruktur des jeweiligen Opfers ab. Die haben einen Nachteil insofern, als natürlich ein Richter/Staatsanwalt im Vorfeld zu entscheiden hat, ob ein Opfer glaubwürdig ist oder nicht. Wenn ein Opfer Widersprüchlichkeiten bei der Aussage hat, was aber nicht auf Lügen zurückzuführen ist, sondern auf Überforderung, glaube ich, dass die dann schon benachteiligt sind. Das ist aber nicht eine bewusste Benachteiligung durch die Justiz, sondern passiert aufgrund mehrerer persönlicher Komponenten. (AT-L4)*

According to interviewed members of victim support services, judges, prosecutors and the police are not always aware on how to interview traumatised victims of violence; they rather doubt the credibility of traumatised victims (S1, S2, S3, S4). An example mentioned by these interviewees is the delay in reporting to the police caused by traumatisation. The delayed reporting – which is *only* due to traumatisation – is a reason for the police to doubt the truth of the report:

*If I report to the police that my bike has been stolen, no one would call this into question although it happens frequently because of insurance and so on. But as soon as I report rape as a woman, it is*

doubted initially: "Why didn't you come earlier, the rape happened two days ago". We (members of VSSs) perceive this as deterrent (...)

*Wenn ich eine Anzeige mache, dass mir mein Fahrrad gestohlen wurde, dann wird das bei der Polizei niemand in Zweifel ziehen, obwohl das sehr oft vorkommt, wegen der Versicherung und so. Aber wenn ich als Frau eine Vergewaltigung anzeige, dann wird das erstmal in Zweifel gezogen: Warum kommen Sie erst jetzt, die Vergewaltigung war ja schon vorgestern und so. Also wir finden das sehr abschreckend (AT-S4)*

In **case of objective evidence** or further witnesses the **influence of a reluctant or traumatised victim is mitigated**. The objective evidence in these cases is sufficient for an effective proceeding. Objective evidence is also sufficient in cases where the offender does not confess. Here the statement of the victim stands against the statement of the offender and neither an adversary interrogation nor a victim, who is willing to report, will help for an effective proceeding (J2).

Particularly the interviewed members of the J-group emphasise that **victims of violence are obliged to report and testify**, as they are witnesses of officially prosecuted crimes (J1, J4, J5, J7, J8). Prosecution of crimes is not possible if the only witness who would be able to testify is not willing to do so. Still, it has been reported that victims as witnesses are not willing to testify and they – well aware of their duty to testify – will not say: "I am not willing to report" but rather "I do not remember anything". This influences the effectiveness of the proceeding negatively.

*It's the case that most criminal proceedings are criminal offences liable to public prosecution, that means the claim to prosecution lies with the state, so it is not in the hands of the victim whether or not something is investigated or not – it's not a civil proceeding. The victim must testify simply because it is a witness, it has the status of a witness – not more and not less. [...] If it is not made concrete, it cannot be verified whether the statement is true or false doesn't work. Because of course you can testify that you cannot remember anything. So you do have control over that a little bit. In that way, a certain form of cooperation does matter.*

*Es ist so, dass die allermeisten Strafverfahren ja Offizialdelikte sind, d.h. der Strafverfolgungsanspruch beim Staat liegt, d.h. das Opfer hat das nicht in der Hand ob da verfolgt wird oder nicht verfolgt wird – das ist kein Zivilprozess. Ein Opfer muss aussagen, weil es einfach Zeuge ist, es hat den Zeugenstatus – nicht mehr und nicht weniger. Verweigert ein Zeuge die Aussage, es gibt wenige Ausnahmen, oder macht jemand bewusst Falschaussagen, dann ist das strafbar. [...] Wenn das jetzt nicht sehr auf den Punkt gespielt wird, dann geht es halt nicht, die Nachweisbarkeit, ob seine Aussage jetzt richtig oder unrichtig ist. Weil man kann natürlich aussagen, dass man sich an nichts mehr erinnern kann. Also man hat das schon ein bisschen in der Hand. So gesehen ist eine gewisse Kooperation schon von Bedeutung. (AT-J4).*

**Victims who are willing to report** make the work of the law enforcement authorities easier and more effective. This was emphasised by interviewed prosecutors and police officers. In the professional groups of police and prosecutors it was also critically noticed that a victim who is "too willing" to report also provokes scepticism towards her/his credibility (J7). A police officer gives examples from his work:

*When you think about cases of rape. I have been involved in such cases for 12 years. When the woman sits down here – she has to go into detail. A rape is only completed [as a criminal offence] if certain actions occur. And when she talks about these actions, and likes to talk and then dramatizes them and adds to them, then you need to be careful. Another one– who was really raped – she won't want to talk about it because she wouldn't really want to re-live it again. But the one wants to tell it dramatically so that we believe it. When you realise that and listen, then you can already assess that.*

*Wenn man an Vergewaltigungen denkt. Ich habe 12 Jahre lang Vergewaltigungen gemacht, wenn die Frau da her sitzt – sie muss ja ins Detail gehen. Eine Vergewaltigung ist ja nur dann vollendet, wenn es*

*gewisse Handlungen gibt. Und wenn sie diese Handlungen erzählt und gern erzählt und dann noch ein bisschen dramatisiert und noch mehr dazu auch noch, dann muss man aufpassen. Eine andere – die wirklich vergewaltigt worden ist – die mag das nicht erzählen, weil die will das Ganze nicht unbedingt nochmal erleben. Aber die andere, die will es so dramatisch erzählen, damit wir es ja glauben. Wenn man das merkt und zuhört, dann kann man schon abschätzen. (AT-P3)*

Particularly the interviewed police officers underline this assessment with examples from their practical experience, when persons accused others of violent crime in order to hurt them (P3, P5).

Interviewed members of victim support services (VSSs) emphasise that the lacking willingness of victims to report is the result of traumatisation and lack of trust towards the police. They point out **the impact of the victim's level of information, support and preparation** on the effectiveness of the criminal justice system. This is perceived as **more important than the victim's willingness to report**. For example a lawyer points out:

*Here I see the purpose of victim support services, because the main problem of victims is that they have no idea of what will happen at the trial. Thus informing them is very important: this is how a court room looks like, who is who, and this is how it goes. If I am prepared, I am also in the position to present myself accordingly. You can notice that – unprepared victims face difficulties to tell what has happened to them.*

*Da sehe ich auch den Zweck von Opferschutzeinrichtungen, weil das größte Problem von Opfern ist, dass sie nicht wissen was auf sie zukommt. Da ist es wichtig, dass sie informiert werden: So sieht ein Gerichtssaal aus, der ist der so läuft das ab. Wenn ich vorbereitet bin, bin ich auch in der Lage, mich entsprechend auch zu präsentieren. Die – und das merkt man – die unvorbereitet in ein Verfahren kommt, sind oft schwerer in der Lage, das zu schildern, was ihnen passiert ist. (AT-L4)*

Interviewed victim supporters identify an advantage of victims who are well informed about the proceedings, compared to reluctant, unattended and uninformed victims (S1, S2, S3, S4). S1 tells how the willingness to report influences the proceeding:

*That's difficult to say, to be honest, because if they are willing to file a report and make use of certain support opportunities, then it does affect the proceeding: the more support the victim gets in a proceeding, the more successful the proceeding is for the victim. But nonetheless it can obviously also be the case that the proceedings are terminated or that it comes to an acquittal, in these cases the victim does not really have any influence on that.*

*Das ist schwer zu sagen, ehrlich gesagt, weil wenn sie anzeigewillig sind und gewisse Unterstützungsmöglichkeiten in Anspruch nehmen, dann ist es, wirkt das schon auf das Verfahren: Umso mehr Unterstützung das Opfer bekommt in einem Verfahren, umso erfolgreicher ist das Verfahren für das Opfer. Aber es kann natürlich genauso trotzdem sein, dass die Verfahren eingestellt werden oder dass es einen Freispruch gibt, da hat das Opfer dann doch nicht wirklich den Einfluss darauf. (AT-S1)*

This means that it is not necessarily the willingness to report to the that has an influence on the effectiveness of the criminal justice system, but rather the level of victims' support.

2.1.2. How do practitioners assess the potential of the following measures in terms of improving the situation of underreporting? Would the following measures make it significantly easier for victims to report (question Pr 2.2)?

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

Some **methodological notes**: Interviewees suggested measures in combination with each other (e.g. measure 1 would only work effectively in combination with measure 2) (J1). As regards measure 3, interviewees did not have any idea on how to effectively do this. These interviewees say: it is easy to agree, but the question remains of HOW exactly this can be achieved. (J1, J2, J5)

Ad 1) More services in the sense of longer operation hours, availability at night but not more in the sense of more institutions. An interviewee mentions that more institutions are needed only in rural areas- cities are quite well equipped (L3).

Ad 2) It has to be noted that it is not the main task of VSSs to make the victims “fit” for reporting to the police (L3). In fact, VSSs do not “empower” victims to report, they counsel them. Sometimes, victims decide after visiting a VSS to not report to the police.

Ad 4) This would work only in combination with informing victims about the specialised officers (J6). Contact persons would only work effectively if the victims could really reach these officers in their first contact with the police. Currently, **victims come to specialised officers only at a rather late stage in the proceeding** and not in the beginning, where they would need these officers most. Their first contact at the police is an “ordinary officer” (J6).

*Yes, I agree on this [setting up specialised police units]. But they need to be used earlier and not in a way that they come to the case later on. This is actually the problem: in practice, the police will be called in case of emergency and then you cannot send specially trained officers, you will rather have to send the ones who are on duty. And consequently the specially trained officers will attend the case only later on in the proceeding, whereby the main work – in the sense of building trust to the victim – is already done.*

*Ja, da bin ich dafür, aber die müssen dann gleich eingesetzt werden und nicht so, dass sie dann später dazu kommen. Das ist aber genau das Problem, im Normalfall wird es so sein, dass die Polizei im Notfall dort hin gerufen wird und dann kann ich wieder nicht speziell Geschulte dort hinschicken, sondern dann*

*muss ich die nehmen, die dann gerade Dienst haben. Und dementsprechend werde ich dann die speziell Geschulten erst zu einem späteren Zeitpunkt im Verfahren wieder haben, wo die Hauptarbeit schon getan ist, im Sinne von: wo man am meisten Vertrauen aufbauen kann zum Opfer. (AT-J6)*

A suggestion brought forward by an interviewed police officer is **setting up gender sensitive officers**. This person argues that the share of women in the police is still low, but a female officer is not automatically a gender-sensitive officer (AT-P1).

Ad 5 and 6) Interviewed professionals of the S, J and L group point out that these measures are needed because public trust in the police is low and discriminatory attitudes are present within the police (blaming victims of gender-based violence and discriminatory attitudes affecting persons with a low socio-economic background, drug consumers and victims, who are known to the police, migrant victims and victims of offenders with a high reputation or police members).

Interviewed **police** officers point out that the police are treated with disrespect and **affected by a negative image in Austria** (the punishing institution) (P2, P3). Only against this background, interviewed police officers are in favour of measures enhancing public trust and respect towards the police. According to these officers, the police would need more support from the general population and this would improve and facilitate victims' reporting as well.

## 2.2. Views of victims

### 2.2.1. Did the interviewees report their victimisation to the police (Question V 2.1)?

#### Domestic violence

Some victims reported their victimisation to the police themselves. In case of others, neighbours witnessed violence and reported to the police (V4, V1, V6). In one case violence was so severe that the victim had to go to hospital and was only able to report to the police months after the incident happened. This person was supported by a victim support service when she reported to the police (V8).

#### Other forms of violence

All except one: the offence happened in public sphere and the victim was severely injured (V3). Witnesses called the police and ambulance. A victim of police violence the course of an official act reported to the prosecution (V12). This person did not dare to report to the police, as he was afraid of secondary and repeat victimisation.

### 2.2.2. What are the factors identified by victims, who reported to the police, facilitating this reporting (Question V 2.2)?

#### Domestic violence:

The most important factor for not reporting to the police is **(acute) fear**. No interviewed victim of domestic violence reported the first incident of violence. Victims wait and hope that the situation will become better and that the aggressive behaviour will change. They reported to the police when an incident of severe violence happened, triggering their **fear of being heavily injured or even killed** (V1, V4, V6, V8, V10, V11).

*Well, we were in the flat normally and the neighbours then called the police, because they heard my cries for help, thank God, and they then called the police and the ambulance. The police then brought me to the hospital where I was taken care of, and on the third or fourth day the police came to the hospital and I had to make a statement there.*

*Ja, wir waren halt normal in der Wohnung und die Nachbarn haben dann die Polizei gerufen, weil die haben meine Hilfeschreie gehört Gott sei Dank und die haben dann Polizei und Rettung angerufen. Die Polizisten haben mich dann ins Krankenhaus gebracht und dort wurde ich versorgt und am dritten oder*

vierten Tag sind die Polizisten ins Krankenhaus gekommen und da habe ich eine Aussage machen müssen. (AT-V1)

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*I have had experiences with violence for longer time and also already had contact with the victim support service about how I can get out of there. But my husband and I had our grandchild as foster child and she was also traumatised when she came to us. Because of her I had to endure a lot. But that [the incident] was too much.*

*Ich habe ja schon länger Gewalterfahrungen und hatte auch schon Kontakt mit dem Gewaltschutzzentrum, wie ich da raus komme. Aber mein Mann und ich hatten unsere Enkelin als Pflegekind und die war auch traumatisiert, als sie zu uns gekommen ist. Wegen ihr habe ich viel geschluckt. Aber das [der Vorfall] war dann zu viel. (AT-V8)*

Basically the findings can be interpreted that seeking protection is the central motivator for victims of domestic violence to report to the police.

Apart from that, the following facilitators of reporting to the police were mentioned by victims of domestic violence: victim's trust in the police, the offender is already known by the police (V10, V6), the victim's mother empowers to report to the police (V10, V11) and the fact that the police came into the flat to take the report (V10).

#### **Other forms of violence:**

The majority of non-domestic violence victims did actually **not need facilitators** for their reporting to the police, as they did not perceive any barriers in this regard – the victim of police violence is the exception (V12). Still, victims of non-domestic violence name factors that played a role as facilitators of reporting: fear of repeated victimisation and significant persons (witnesses, relatives) who empower the victims and motivate them to report. V5 had no trust in the police and he did not want to report the case. However, his brother in law – a policeman – motivated him and his Austrian wife accompanied him to the police. According to the interviewee, this and the fact that he had experiences with interacting with authorities and basic legal knowledge facilitated his reporting. Without these factors going to the police would have intimidated him. Unlike victims of domestic violence victims of other forms of violence rather seek justice than protection when reporting to the police.

2.2.3. What are the factors identified by victims, who reported to the police, hindering this reporting (Question V 2.2)?

#### **Domestic violence:**

Victims of domestic violence mention that factors preventing victims from reporting to the police include **dependency** (care for a foster child, economic dependencies – V8), the hope that the situation would become better consequently the willingness to **give the offender another chance** (V1, V2, V4, V6, V10, V11) and the fear that the police will not believe them (V10) or that the problems can be solved otherwise. In one case **severe injury was the reason why the victim couldn't report to the police on her own** (V8).

#### **Other forms of violence:**

Three persons with migratory background (V5, V9) who became victims of non-domestic violence were interviewed. All three reported **lacking trust towards the police** and even **intimidation** (from the police) as having hindered them from reporting to the police. V5 stated that he had a lot of work and his days were full of duties, and these obligations made it more difficult for him to report. Furthermore, according to this interviewee the **police officer appeared reluctant to investigate the case** (hate-motivated dangerous threat and insult) and downplayed what had happened to the interviewee. He said:

*Then I went to the police with my wife, about 1,5 hours after the incident had happened. The police woman then said to me: But nothing has happened to you, why do you want to report? I said: that woman threatened me. Should I wait until she kills me and then report, when I am not alive anymore? So, the police woman was not very polite, and my wife, she is a Carinthian – so she is Austrian – also noticed that. And the proceeding itself (...) she did not take my report seriously.*

*Dann bin ich mit meiner Frau zur Polizei, ca. 1,5 Stunden, nachdem der Vorfall passiert ist. Die Polizistin hat dann gleich gesagt: Ihnen ist aber nichts passiert, warum wollen Sie eine Anzeige machen? Ich habe gesagt: Die Frau hat mich bedroht. Soll ich warten, bis sie mich wirklich tötet und dann anzeigen, wenn ich nicht mehr am Leben bin? Also die Polizistin war nicht sehr freundlich und meine Frau, die ist Kärntnerin – also schon Österreicherin – und die hat das auch bemerkt. Und der Ablauf ist auch (...) sie hat das nicht ernst genommen, was ich erzählt habe. (AT-V5)*

In the case of V9, the **victim was accused by the offenders and the police believed them**. Although he was willing to report in the beginning, being initially treated as an offender by the police made it difficult for him.

Three victims of non-domestic violence were native Austrians (V3, V7, V12); two of them did not mention any factors hindering their reporting (V3, V7). V12 was a victim of police violence and for him it was impossible to report to the police. He was not only afraid of secondary or repeat victimisation but also of being accused for defamation or resistance against the law enforcement authority. However, he reported to the prosecution.

2.2.4. What are the factors identified by victims, who did not report to the police, impeding this reporting (Question V 2.3)?

#### **Domestic violence:**

Only **seriously injured** victims were unable to report to the police (V4, V8). In acute cases of violence neighbours reported to the police –not the victims themselves as they rather tried to escape the situation or gather the attention of neighbours through cries for help (V4, V6). They reported later, either after recovery or in hospital.

#### **Other forms of violence:**

**Bodily injury:** driving to hospital and recovery are more important than reporting to the police. **Lacking trust in the police that reporting will not lead to anything** was also a factor impeding reporting to the police. However, the findings depicted above show that this factor was compensated by empowerment through key persons (wife, witnesses) (V5).

2.2.5. Would the victims, if they were victimised again, report to the police? What are the reasons given by interviewed victims for their responses (Question V 2.4)?

Except for V12 all interviewed victims – of domestic and non-domestic violence – say that they would report to the police in case of another offence (V1-V11). The main reason given by interviewed victims is that **there is no alternative to reporting to the police**. An interviewed victim of domestic violence, who has been bearing the violence for a long time, reported that reporting to the police and telling the whole story was liberating (V8). The victim of police violence reported that he would only report again if he had “objective evidence” like wounds or witnesses (V12).

*Immediately! There is no alternative. The police come immediately and take the report and they do believe the victim. [The interviewee mentions that as a victim, you have fear that the police will not believe the report. But as far as her experiences are concerned, this fear is not justified.] The police have a lot of experience and they know who is lying and who is speaking the truth.*

*Sofort! Geht gar nicht anders. Sofort, die sind auch sofort da, innerhalb von ein paar Minuten. Man hat dann auch oft Angst, dass einem die nicht glauben, aber [das ist nicht berechtigt], also auch wenn man nichts sieht, die glauben einem. Die hat schon Erfahrung, dass die erkennen, ob das jetzt der Wahrheit entspricht oder nicht. (AT-V11)*

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

#### a) Support and advice

##### 3.1. Views of practitioners

###### 3.1.1. How do practitioners assess the availability of victim support services to victims of crime (Question Pr 3.1)?

All interviewees mention that there are enough institutions in place. The assessments of their accessibility and their resources to be accessible are heterogeneous.

Interviewed members of VSSs point out that they do **not have enough resources** to adequately support victims of violent crime (S1-S4). They had to cut their services permanently in order to protect as many victims as possible and therefore to remain accessible to all victims of violent crime who need their services. For members of VSSs it is always an ambivalent decision of quality (intensity of service) and quantity (accessibility of service to many clients). Interviewed police officers share this assessment (P1, P2). Interviewed lawyers differentiate in terms of accessibility and resources of VSSs: VSSs in **cities are better accessible** than those in rural areas – if there are any in rural areas at all (L3). An interviewed lawyer reports that they are accessible indeed, but they **do not have enough resources in terms of dedicated service hours to offer adequate support** (L1).

Interviewed judges and prosecutors are rather cautious to assess the resources of VSSs. Yet they report that they do not get to hear any complaints and conclude that these services must be accessible to victims of violent crimes (J1, J2, J3, J4, J7, J8).

The accessibility assessments of S/P/J interviewees furthermore differ by **groups of victims**: the best-financed group is female victims of domestic violence (J2, J5, J8, P3, P4, P5, S1, S4). Victims of situational violence and male victims in general are supported rather poorly compared to victims of domestic violence. The respective support services are under-financed. An interviewed police officer calls for **more male employees in VSSs** (P1). This claim is supported by interviewees in the J-group. Male victims would be better addressed to use VSSs run by male employees. Currently almost 90% of VSS clients are female victims (J8, J2). However, J8 and J2 also argue that male victims and victims of situational violence might indeed need less support than victims of domestic violence or other types of dependent victims.

###### 3.1.2. In the view of the interviewed practitioners, are victims provided with information about the general support services available to them in an effective and timely way (Question Pr 3.2)?

The interviewees assess **timeliness** homogeneously: victims are informed about VSSs and their rights **at their first contact with the police**. They receive this information (and also information about their rights and entitlements) before the interrogation starts and they have to sign that they have understood it. An interviewed member of the J-group points out that there is a standardised procedure according to the Federal Security Police Act (Sicherheitspolizeigesetz). The police provide written information about VSSs to the victims in the course of their reporting. The victims may then decide to use these services or not. In case they do want to make use of these services, they have to contact the VSS out of their own initiative.

*We are obliged to inform victims about victim support services. But we are not allowed to recommend a victim support service to a victim, the victim needs to choose one on her own. If someone lives in Graz then they will probably look for something in Graz and in their district, right?*

*Wir sind verpflichtet, Opfer über Opferschutzeinrichtungen zu informieren. Wir geben einen Folder von Opferschutzeinrichtungen her, mit den Adressen z. B. für die Steiermark. Aber wir dürfen nicht dem Opfer eine Opferschutzeinrichtung empfehlen, da muss sich das Opfer dann eine aussuchen. Wenn jetzt jemand in Graz wohnt, dann sucht er sich wahrscheinlich was in Graz wohnt und wenn er in einem Bezirk ist, dann in dem Bezirk, nicht? (AT-P5)*

Interviewees doubt that “normal front-line officers” counsel and empower victims to go to a victim support service. The police are not obliged to do this, but still it would foster the accessibility of VSSs.

Interviewees mention different ways how police officers inform victims about VSSs. These different ways show varying degrees of **effectiveness**. The least effective practice reported is that **the police hands out an information sheet to victims**. This is a 3-page piece of paper that contains difficult to understand information on victims’ rights and entitlements including contact addresses of VSSs. The victims have to sign that they have understood everything and then have to pro-actively contact the VSS and ask for support. This is perceived as an ineffective way of informing victims, as traumatised victims usually are not receptive or do not read the paper or see the advantage of using victim support services. In shock and stress at the police station it is hardly possible to make use of the information provided (S1, S2, S3, S3, L1, L2, L3, P2).

*And then there is also, basically the standard sheet, on which the legal texts are simply written down, nobody understands that. So these are all legal terminologies and so on, so the information is still: we know, often victims come to use when everything is already over, they are neither informed about the outcome of the proceeding, they have not made any claims for compensation, nobody has informed them about the fact that they can make claims for compensation from the law on victims of crimes, and so on. Nobody has told them any of that, and it surely said so somewhere on a sheet that they got, but that’s not enough.*

*Und dann gibt es auch quasi der Standardzettel ist, da werden die Gesetzestexte einfach aufgeschrieben, das versteht niemand. Also das sind lauter juristische Terminologien usw. also die Information ist immer noch: Wir merken, zu uns kommen oft Opfer, wenn schon alles vorbei ist, sie sind weder informiert über den Verfahrensausgang, sie haben keine Schadensersatzansprüche geltend gemacht, niemand hat sie davon verständigt, dass sie Ansprüche auf Entschädigung aus dem Verbrechenopfergesetz machen können usw. Das hat ihnen alles niemand gesagt und es ist sicher irgendwo auf einem Zettel drauf gestanden, den sie bekommen haben, aber das reicht nicht. (AT-S1)*

Interviewed members of the police however reported that handing out paper sheets containing all information is sufficient support to victims (P1-P5).

A more effective method to inform victims about VSSs has been implemented in June 2016: the Federal Ministry of the Interior has implemented a **consent form allowing the police to forward the victims’ data** to a VSS. The VSS then pro-actively contacts victims. The Federal Ministry of the Interior obliged the police to distribute it among all victims who report a violent crime. Victims have to sign this template even if they do not allow the officers to forward their data, in order to provide evidence for the police having informed the victim (P3, P4, P5). However, S1, S3, S4 doubt that this obligation is known in police stations. Interviewed police officers who indeed distribute this consent form argue that the majority of victims do not allow the police to forward data to a VSS. They rather say: “Thank you for the information, I will think about the merit of VSSs and then call them on my own initiative.” (P3)

*Very varied, in my impression and very dependent on the individually acting police officers. Sometimes I have the feeling that they are not informed at all. They sign everything – a declaration, but in terms of content and their behaviour I often have the impression that they are actually not informed.*

*Sehr unterschiedlich habe ich den Eindruck und sehr abhängig von den individuell handelnden Polizeibeamten. Manchmal meine ich ja absolut, manchmal habe ich das Gefühl, dass sie gar nicht informiert werden. Sie unterschreiben zwar alles, eine Erklärung – also das hat man – aber so vom Inhalt und ihrem Auftreten, habe ich den Eindruck, dass sie eigentlich nicht informiert werden. (AT-J3)*

### 3.1.3. How do practitioners assess the availability of specialist victim support services to victims of sexual or gender-based (including domestic) violence (Question Pr 3.3)?

Interviewees **differentiate between victims of sexual violence and victims of domestic violence**. Specialised services are available for both types of victims. But specialised services for victims of domestic violence (including sexual violence carried out by the spouse) have fixed working contracts with the Federal Ministry of the Interior and are comparably well equipped, some also have access to additional funding (S3 and S4 are representatives of such VSSs). Victims of **domestic violence** are perceived as **comparably well-protected** and supported group of victims by interviewed practitioners of different professional groups. When thinking about Austria as best practice country in the sense of victim protection, then it mostly concerns the protection and support of victims of domestic violence (J1). The legal framework for offering these services is perceived as very positive by interviewed members of the S-group (the service providers decide about the provision of publicly funded services) (S3). An interviewed member of a VSS that is specialised on victims of domestic violence still mentions **practical problems and shortages**, e.g. they have the resources to offer an average of four hours of support per victim and year. Availability during night-hours is not ensured (S3).

Interviewees identify a **shortage of resources for victims of sexual violence** (exercised outside the domestic arena). The funding of support for these victims (similar to victims of situational violence) is insecure (annual contracts) and too little to offer adequate support. In the whole Province of Styria, one VSS is available for adult victims of sexual violence. An interviewed member of this VSS (S2) mentions that the psychosocial assistance hours are strictly limited and accounted for rigorously. Another shortage concerns traumatised victims of sexual violence – trauma-therapy cannot be offered due to the lack of resources.

An interviewed police officer argues against shortages of service hours. This person mentions that the specialised **VSSs are well networked**, and if one organisation has a shortage, they call another victim support organisation to take over the case or to support them. According to this officer, there is no real shortage of victim support (P5). Also interviewed members of the J-group assess the resources of the specialised VSSs as being very good. They rather notice a bottleneck in supporting male victims of (gender-based) violence (P3, J2, J5, J8).

### 3.1.4. In the view of the interviewed practitioners, how effectively and timely are victims of sexual or gender-based violence provided information about the specialist support services available to them (Question Pr 3.4)?

Interviewees are unanimously sure that an effective referral mechanism is implemented for women who are victims of violence by their men (partners, spouses), guaranteed by the law on the protection against violence (Gewaltschutzgesetz). Victims of domestic violence are **provided with information** about specialised support services available to them **in a timely and effective manner** (P1-P5, L1-L4, J1-J8, S1-S4). All cases of restraining orders (*Betreuungsverbote*) adopted by the police are automatically sent to the centres for the protection against violence / intervention centres (*Gewaltschutzzentren/Interventionsstellen*). This means that victims are referred to support services that then pro-actively offer support. Still, victims may refuse support.

The procedures for **victims of sexual violence** are similar to the ones mentioned in section 3.1.2. They are handed out an information sheet by the police at first contact. This sheet contains general information about VSSs and contact addresses. The victims themselves have to pro-actively contact VSSs and ask for support (S2, P2). The **assessments** concerning **effectiveness differ along professional groups**: the procedure is perceived as not effective by members of the S group (S1-S4), while members of the P and J groups tend to perceive it as effective (P3, P4, P5, J1, J2, J3, J4, J5, J6, J7, J8).

An interviewed prosecutor perceives the way of informing victims about support services as working very effectively:

*In Vienna the State Office of Criminal Investigations is specialised in the sexual area with excellently trained police officers. It [informing victims of gender-based and sexualized violence about support services] works admirably.*

*In Wien ist ja der Sexualbereich spezialisiert im Landeskriminalamt mit ausgezeichnet ausgebildeten Polizeibeamten und Polizeibeamtinnen. Das (die Informierung von Opfern geschlechtsbasierter und sexualisierter Gewalt über Unterstützungseinrichtungen) funktioniert ausgezeichnet. (AT-J8)*

An interviewed member of a VSS perceives it differently – in her view, a too engaged way of informing victims about their rights and particularly about their obligations might act as a deterrent or at least might intimidate victims:

*Furthermore, the victim immediately gets informed about the legal consequences of false testimony and defamation. The victim as a witness must not lie; the suspect offenders may lie to protect themselves. It is maybe important to inform the victim about these things, but the victim might perceive this as a deterrent, particularly if she is unattended. This proceeding might be legitimate from a formal legal point of view, but it is not a gentle treatment of the victim.*

*Das Opfer wird dann sofort darüber informiert, was die rechtlichen Konsequenzen einer Falschaussage oder Verleumdung sind. Das Opfer als Zeuge darf nicht lügen, der Beschuldigte darf lügen um sich zu schützen. Das ist vielleicht wichtig, aber das kann vom Opfer als einschüchternd wahrgenommen werden, v.a. dann, wenn es keine Begleitung hat. Diese Vorgangsweise ist vielleicht formaljuristisch in Ordnung, aber ist keine schonende Behandlung des Opfers. (AT-S4)*

### 3.1.5. How do practitioners assess victims' possibilities of being accompanied by a support person of their trust when they are interviewed by the police (Question Pr 3.5)?

Practitioners are **well aware about this right** of victims, but they **doubt** that victims are **sufficiently informed beforehand** about this possibility (S1-S4, J6, J4, J1, L1-L4). Some police officers **doubt that it is feasible to inform victims beforehand** about this right (P2) but they say that many victims are well aware about this right and are accompanied by a support person anyway (P1, P2 P3, P4, P5).

Some victims may automatically take somebody with them when reporting. Interviewed police officers **have concerns** that **victims who are attended by a support person are more likely to be influenced** by this person. The police “prefer” victims bringing a professional support person from a VSS – whilst being aware of the victims' right to have any support person who is not involved in the case (P5, J7). An interviewed lawyer confirms this preference of professional support persons (L2). This lawyer mentions that this right is more effectively implemented if VSS members are the trusted persons. The police perceive VSS members as being professional and not influencing the victim. VSSs inform their clients about the right to be attended when reporting to the police (L1, L2, S1-4). They also counsel victims to take advantage of it and to take a friend/relative with them when reporting to the police. However, the precondition is that the victim turns to a VSS before reporting to the police (S3, S4). This is not so unusual in the case of domestic violence. These types of victims are hesitant about reporting to the police and initially turn to a VSS to receive counselling about reporting to the police and the consequences of initiating a procedure.

Usually **victims are already at the police station for reporting when they receive information** about the possibility to be attended by a trusted person. In most of the cases a victim is interviewed by the police when they first show-up at the police. Self-evidently there is no possibility to inform victims beforehand that they have the right to be accompanied (S1-S4, L1-L4). In theory, the victim can be informed about this possibility, go away and come back with a trusted support person (P3). However, according to interviewed police officers, victims do not prefer this option (P3, P4, P5). Victims rather want to get rid of the burden to report. Those who do not dare to report to

the police take a support person with them anyway (P3, P5, L1, L4). The interviewed police officers assess the way of informing victims on their right to be supported as being effective and timely (P1-P5).

An interviewee suggests for the police to initially just ask the most important questions on the case, then to inform the victim about their rights and entitlements, and then to arrange an appointment for the interrogation. This way the victim would have enough time to understand their rights and to take a trusted person with them (S1, S4). This member of a VSS states that only in very few cases the immediate interrogation of the victim is reasonable (S4).

The answers provided by interviewed **judges and prosecutors are heterogeneous**. Some believe that victims are informed effectively and beforehand about this right (J5, J7, J8, J2, J1), others doubt that it is feasible to inform victims beforehand (J4, J6). Some interviewed members of the J group are in favour of developing measures to more effectively inform victims about this right (J4, J6). Others fear that a trusted support person will influence the victim's testimony – similarly to the concerns voiced by the police officers mentioned above (J7).

### 3.1.6. How do practitioners assess victims' possibilities of being accompanied by a support person of their trust during court trial (Question Pr 3.6)

The assessments are **unanimous within and between professional groups**. Interviewees are well aware that victims may be accompanied by a support person during court trials. The way of informing victims about this possibility works more effectively than it does in the case of police interviews. The court summons contain standardised information about this right. Furthermore, usually at that stage of the proceeding a victim support service is involved. The VSS informs victims about this right and/or accompany the victim as support person. Some interviewees – members of different professional groups – note that the person of trust must not be involved in the case in any manner (e.g. they must not be summoned to testify as witnesses themselves).

### 3.1.7. How do practitioners assess victims' possibilities of being legally advised when they are interviewed by the police (Question Pr 3.7)?

For practitioners it was **difficult to assess this possibility** of victims. The police officers themselves did not know so well which kind of legal advice was being referred to. They advise victims legally in the frame of the victim's instructions (*Opferbelehrung*). This is written information handed out to victims, which has to be signed by the victims before the interrogation can start (P1-P5). According to an interviewed police officer, the victim may say: "Aha, I am entitled to support services/legal advice and I would therefore like to have a new appointment for the interrogation for which I will bring a support person." (P 3) Basically, all witnesses (including victims) are obliged to give testimony, but there is no need to do so immediately. According to interviewed **police officers**, victims are informed about their rights and entitlements in a very detailed manner by the police – **there is no need for further legal advice** (P1-P5). Police officers additionally hand out cards for contact in case questions come up later on (P4, P5). Additionally police officers mention victims' possibility to visit the prosecutor and get legal counselling, before they report to the police (P3).

The assessments of the interviewed **lawyers** are homogenous: **victims can be legally advised when they are interviewed by the police, but they are not informed beforehand** that they have this right (L1-L4).

Interviewed lawyers argue that facilitating access to legal advice for the interviews of victims of violence at the police is very important in order to understand their rights as victims and to be able to sign the police record of the interview. According to lawyers, the police record is of utmost importance for the further proceeding and a traumatised victim is not able to understand or assess this (L1, L2, L3, L4). Particularly dependent victims and victims of repeated violence tend to give contradictory testimonies. **Legal advice before the report to the police** is also needed in order to clarify if the victim wants to report the most severe or the most recent incident only, or all experiences of violence (L2, L3). This clarification is important to have a consistent report and a credible victim. An interviewed lawyer points out that victims only benefit from legal support before the interview at the police and not

during the interview. During the interview at the police a lawyer should not be present to avoid influencing the situation in a negative way – the victim does not appear that victimised to the police (L1).

The assessments of **S-group members** differ from those of the interviewed police officers. They **do not believe that the police legally advise victims** and they doubt that the police is the right actor to do so. Victims may receive legal counselling at the VSS. However, they firstly would have to find their way to the VSS - this is not the case in practice as most of the time victims of violence initially turn to the police and not to a VSS (S1-S4).

*Legal counselling would be important to make the victim aware on the consequences of reporting to the police because this is not only an appointment at the police. There are many consequences. [...] However, the victims do not get informed about their rights at the police, because this victim's instruction is simply not enough. From a purely formal point of view: yes, according to the law, the victims get informed but it is not in a way that victims would understand. I was recently at the police with a victim and I needed to read it very carefully and think about it in order to explain it to the victim. This is written in a language which simply nobody who does not have anything to do with these issues on a regular basis understands and especially a person, who is aggravated and nervous and in a crisis because she will not understand - this cannot work. And the police officers are not bad guys, they are only overstrained with it.*

*Rechtliche Beratung wäre wichtig, damit die Menschen wissen, was die Folgen einer Anzeige sind, das ist ja nicht nur der eine Termin bei der Polizei, das hat ja ein Sammelsurium an Folgen. [...] Aber sonst werden die Opfer nicht effektiv bei der Polizei über ihre Rechte informiert, weil diese Opferbelehrung ist es einfach nicht. Rein formal: ja. Rein formal nach dem Gesetz machen sie das, aber es ist nicht so, dass die Menschen das verstehen können. Ich war selbst gerade mit einer Frau bei der Polizei und ich habe mir diese Sachen einmal durchgelesen, damit ich es ihr zusammenfassen kann und da habe ich selber gemerkt, na da muss ich jetzt einmal gescheit lesen und nachdenken, weil das ist einfach in einer Sprache, das kann jemand, der nie damit zu tun hat und der noch dazu aufgeregt ist und in einer Krise, nicht verstehen, das kann nicht funktionieren. Und die Polizisten sind ja nicht böse, die sind damit nur auch überfordert. (AT-S3)*

Again here, the assessments of the interviewed members of the J-group are varying. They also do not unanimously acknowledge this right. An interviewed member of the J-group says that **a victim is a witness at the police and as such they do not need legal advice** (J2, J8). The witness gets informed about their rights and duties and that's it. They should just tell the truth and nothing else. For this interviewee it would be problematic if a witness had legal advice, as this would impact the testimony (J8).

*The witness is informed about their rights and obligations, but there is no legal counselling for the witness. That would also be counterproductive. I want an unfiltered statement from the witness about their perceptions. They precisely shouldn't be able to speak with anyone else about what statement they will give before, but rather they should testify what they have seen. The witness does not need legal counselling.*

*Der Zeuge wird über seine Rechte und Pflichten belehrt, aber eine rechtliche Beratung für den Zeugen gibt es nicht. Das wäre auch kontraproduktiv. Weil ich will vom Zeugen eine ungefilterte Aussage über seine Wahrnehmungen haben. Der soll sich eben genau nicht vorher mit einem anderen darüber besprechen können, was er jetzt aussagt, sondern der soll aussagen, was er gesehen hat. Der Zeuge braucht keine rechtliche Beratung. (AT-J2)*

Some interviewed members of the J-group acknowledge this possibility but understand if it is denied by the police for reasons of criminal tactics (J6, J4). Again, other interviewed judges and prosecutors assess it similarly as members of the S-group: the law enforcement officials do not effectively inform victims about the (legal) consequences of reporting and are not able to advise them legally. An interviewed prosecutor refers to the records of police interrogations he receives. There are real differences in the way police officers inform victims about their

rights and a general answer is difficult to provide. He perceives the situation as even more problematic in rural areas than in urban ones (J6). Although VSSs are also available in rural areas, they are more difficult to access (a car is needed; victims are not aware that they have been victimised; they know the police officers personally).

### 3.1.8. How do practitioners assess victims' possibilities of being legally advised during court trial (Question Pr 3.8)?

The assessments are homogenous between and within professional groups. Victims of violence are entitled to psychosocial and legal assistance services and in the course of this they may benefit from legal advice. Interviewees assess this as being very positive, because it is accessible in a low threshold manner; victims just have to say "Yes, I want it" and the service providers decide on service provision (not the Ministry, which funds the services). There is no application procedure. The Ministry of Finance has the duty to allocate the budget for VSSs (S2, S3, S4, L1-4).

### 3.1.9. How do practitioners assess victims' possibilities of being legally advised free of charge (Question Pr 3.9)?

The majority of interviewees say that free legal advice is possible within the frame of the legal assistance services (see section 3.1.8) available low-threshold and cost-free for all victims of violence (e.g. S1, S2, S3, S4, P1, P2, J6, J2, J1, J6). J1 says free legal advice is possible within the frame of the legal assistance services available low-threshold and cost-free for all victims of violence with special protection needs (J1). L3 adds that the legal assistance services are only free of charge for the criminal proceeding but not for the civil proceeding to enforce entitlements for the compensation of damage.

*This is part of the victim support services: they consist of legal assistance and psychosocial assistance. In the course of a criminal procedure (also for the civil claims demanded in the course of a criminal procedure) these services are accessible free of charge for victims of violence. These services are not free of charge for victims, who initiate a civil procedure in order to enforce their entitlements for damage compensation.*

*Das ist Teil der Prozessbegleitung. Insgesamt besteht eine kostenlose Beratung jedoch nur im Rahmen des Strafverfahrens und der zivilrechtlichen Ansprüche, die darin geltend gemacht werden können. Für angeschlossene Zivilrechtsverfahren gibt es keine Verfahrenshilfe. (AT-L3)*

## 3.2. Views of victims

### 3.2.1. Were the interviewees in contact with an organisation providing victim support services (Question V 3.1)?

All victims of **domestic violence** (V1, V2, V4, V6, V8, V10, V11) were in contact with an organisation providing victim support services. These organisations established the contact to the victims. They also organised the interviews for this study.

Three victims of **non-domestic violence** (V3, V7) were in contact with such an organisation. Two further victims reported (V12, V9) that the police did not provide information about these services, they organised the services on their own initiative – however, they got access to them only at a very late stage of the proceeding.

### 3.2.2. Those who were, how did they know about the service (Question V 3.2)?

#### **Domestic violence:**

Almost all victims of domestic violence were **referred** to the victim support service **by the police**. Some of them were aware of these services beforehand already. They got the information through the internet (V1), through acquaintances (V8) or through an adult education course (V10). A victim of stalking (V2) reported that the organisation providing VSSs pro-actively called her the day after she reported to the police.

### **Other forms of violence:**

The access of non-domestic violence victims worked differently: the **police informed the victim about VSSs and the victim then asked for support** (V3). In another case the **police asked the victim if they should contact a VSS on his behalf**. He confirmed and then the VSS pro-actively contacted the victim and offered support (V7). In two other cases **the police did not inform the interviewees**. In one case the victim researched on his own initiative and found information on the internet (V12), in the other case the victim was informed about VSSs by his psychologist (V9). Finally, another victim of non-domestic violence **had no access to a VSS** (V6).

The findings from the interviews clearly indicate **different personal engagement of police officers to refer victims of violence to victim support**. Some officers just hand out an information sheet, other officers are more committed and advise victims to use VSSs, and again others are even more committed and additionally offer to contact a VSS on behalf of the victim. The interviews do not reveal a standardised procedure.

3.2.3. Those interviewees who were in contact with an organisation providing support services, how did they assess the services provided (Question V 3.3)?

### **Domestic violence:**

The services are of utmost importance for the victims. All interviewed victims have a very **positive impression** of the services and report that they have received a lot of support. **No negative word or critical points have been spoken about these services**. The interviewed victims (V1, V2, V4, V6, V8, V10, V11) report that the services guided them through the whole procedure and cared for all victims' rights and entitlements. A very important aspect named by the interviewed victims is that the support services updated the victims as soon as there was something new to report regarding their cases. Interviewed victims perceive these services as competent, supportive and necessary. E.g. a victim of domestic violence blamed herself and sometimes felt guilty because she reported to the police. The VSS helped her to cope with these feelings and empowered her in doing the right thing, which was reporting to the police and going through the proceeding. They accompanied her in her appointments, carried out applications and paperwork together with her. Victims claim that services helped them a lot (V10, V2). Other interviewed victims reported that the member of the VSS always cared for the interviewee's interests at court, explained what was happening and cared for her (V2, V8). These interviewees mentioned that they would not have been able to go through the proceedings without the support of the VSS. The VSS also took care to avoid encounters with the offender at court. This was also very important for the interviewee (V8, but also V2, V4, V1, V6, V10, V11). Again another interviewed victim of domestic violence reported that it particularly helped her that she was allowed to call – within the frame of the opening hours – whenever she wanted and to get empowerment and support (V11).

### **Other forms of violence:**

The interviewed victims of other types of violence also reported how important the support services were for them, particularly in terms of **information, empowerment, preparing, explaining and caring**. These support activities were extremely important, because previously they were uninformed about the proceeding, they had no experience with the police or other actors of the criminal justice system, they needed (and got) support in terms of dealing with official letters and the procedural steps (V3, V9, V12). An interviewed victim with migratory background reported that he had a supervisor who spoke his mother tongue. This interviewee was sure that **without support by the**

**VSS he would not have come far in the proceedings** (V9). A victim of police violence reported that he asked for support at the White Ring, which is a generic VSS, but the White Ring refused to support him. The VSS argued that the proceeding would be terminated anyway. When the victim was summoned by a colonel for an interview he asked for accompaniment again – he did not dare to go to the police alone and – being a jurist – was well aware of this right. However, the White Ring then told him the appointment was too short notice. The victim then researched on the internet and found out that many police officers are engaged at the White Ring, and he took this as an explanation for being refused support. However, he finally got access to guidance and support by another VSS and was very satisfied with the support he received there. The other VSS prolonged the appointment with the colonel, accompanied him and supported him in asking for the consideration of evidence (V12).

3.2.4. Those interviewees who were in contact with an organisation providing support services, did they feel that the services provided encouraged and helped them to participate in the proceedings (V 3.4)?

### **Domestic violence:**

Yes. The interviewed victims name different ways how the VSS encouraged and helped them: the most important factor is **information, named by all victims of domestic violence**. VSSs inform victims about the proceedings thus influencing their ability to participate in the proceedings. They provide victims with information **on how to behave at court and which aspects of the offence are relevant to the court** (and which are not). Another very important aspect named by interviewed victims of domestic violence is that the VSSs **facilitate the implementation of victims' rights**, e.g. they apply for protection measures at court, they care to avoid encounters with the offenders and their relatives and they are "simply present" (V2, V4, V6, V8, V10, V11).

*So my role – the VSS, they really took pressure away from me. It was super. I had an influence in the proceeding: I discussed with the VSS everything that was important to me and they told me what makes sense and what does not, and they forwarded (implemented) what made sense. Without that much of help, one has surely no influence.*

*Also meine Rolle – durch die Einrichtung ist mir sehr viel abgenommen worden. Es war super. Einfluss habe ich dadurch gehabt: Iles was mir wichtig war, habe ich mit der Einrichtung gesprochen, die haben mir gesagt, was sinnvoll ist und was nicht und haben das Sinnvolle weitergegeben. Ohne so viel Hilfe hat man sicher keinen Einfluss (AT-V6)*

Interviewed victims of domestic violence report that **VSSs do not encourage them to participate in the proceeding as far as physical presence in the court room is concerned** (particularly V4). Rather their legal representatives are present in the court room on behalf of the victims.

### **Other forms of violence:**

Those interviewees feel that the VSSs **encouraged** and helped them to participate in the proceedings. They do it mainly through **preparing victims for the proceeding** and **informing them about each step** (how to behave at court; what are the criminally relevant aspects of the incident; which aspects are not important; paperwork).

*Yes, because they inform you about things, which as a normal person you do not know from a legal point of view. They really prepare you for the whole proceeding: starting from the statement to – I was accompanied by a lawyer and she posed questions in my favour. Also I got informed by the White Ring about the verdict, because otherwise you will not get any information, except if you remain in the court room, but this is actually unwanted.*

*Ja, weil man doch auf Sachen hingewiesen wird, die man als Normaler rechtlich nicht weiß. Die bereiten einen wirklich genau auf den Prozess vor: von der Aussage bis – ich wurde von der Rechtsanwältin*

*begleitet und die hat zu meinen Gunsten Fragen gestellt. Auch über das Urteil erfährt man vom Weißen Ring was, weil da kriegt man sonst ja auch keine Informationen, außer man bleibt drinnen im Verhandlungssaal sitzen, aber das wird ja auch nicht gewünscht. ( AT-V7)*

For some interviewed victims, this affected their involvement in the proceedings (V3, V9), for others not so much (V12). Furthermore, the VSSs helped victims to **enforce their entitlements and rights** which affected their involvement indeed. E.g. they supported them in asking for evidence to be secured and considered, they asked questions on behalf of them, etc (V6, V3). One interviewed victim even traced back the outcome of the proceeding to the support he received (V6). For him it was very difficult to fight for his rights and to receive access to his entitlements. Another interviewed victim of situational violence reported that she had the impression that the police did not take her seriously - however this changed, as soon as she was accompanied by a member of a VSS(V3). A victim of police violence reported that accompaniment by a VSS member was the precondition for his reporting to the police (V12).

3.2.5. In cases of domestic violence ('D'), were the interviewees supported in overcoming the risk of repeat victimisation (Question V 3.5)?

Some interviewed victims of domestic violence **did not need this support anymore either because they already ended the relationship with the offenders** (V1, V10) that time or because the offender was already in custody (V1, V4).

Those in need of this support report that the VSS supported them through an **assessment of endangerment** (in case V6 additionally forwarding the outcome to the prosecution which led to detention), **developing an exit strategy** in acute cases of violence (V8), counselling on self-protection through the usage of **pepper spray and pocket alarm** (V11). V10 and V11 reported that the VSS convinced her that the police would come as soon as she called them. This helped her to cope with her fear of retaliation.

3.2.6. When being interviewed by the police, were the interviewed victims accompanied by a support person of their trust? Were the interviewees informed beforehand that they would be entitled to such assistance (Question V 3.6)?

### **Domestic violence:**

The responses provided by the victims of domestic violence are **heterogeneous**: some say yes, they were informed and some say no, they were not. Some victims of domestic violence brought a person of trust with them, although they were not informed by the police that they have this right. For these victims the support person was necessary to facilitate reporting. Other victims were alone at the police but did not report any problems caused by this (V1, V2, V10). V2 reports that she cannot remember exactly if the police informed her about this or not. She also did not think about taking a support person with her in this challenging situation.

### **Other forms of violence:**

The victims report that they **were not informed by the police about this option**. Some brought a support person with them (V12, V5), the others reported to the police alone (V7). In one case the interrogation was in hospital (V3). A victim of police violence (V12) initially reported to the prosecution and later on – when he was interrogated by a colonel and a front-line officer – he was accompanied by a member of a VSS. He says that he was not at all informed about this right, neither by the prosecution nor by the police. However, as a jurist he was aware about this right anyway.

3.2.7. At the court trial, were the interviewees accompanied by a support person of their trust? Were the interviewees informed beforehand that they would be entitled to such assistance (Question V 3.7)?

**Domestic violence:**

All interviewed victims of domestic violence (V1, V2, V4, V6, V8, V10, V11) were accompanied by a person from the VSS as support person at the court. Some say that they were not informed beforehand that they would be entitled to such assistance, whereas others say that they were.

**Other forms of violence:**

All victims of other types of violence, who had a court trial, were accompanied by a support person of a VSS (V3, V7, V9). The information provided on how they were informed about this entitlement is **heterogeneous**: some victims report that they were not informed, but they were accompanied by a person from a VSS (V9). Others report that they were informed and accompanied (V3, V7). There were also victims reporting that they were not informed and there was no trial (V5).

3.2.8. When being interviewed by the police, were the victims accompanied or advised beforehand by a lawyer? Were the interviewees informed beforehand that they would be entitled to such assistance or advice (Question V 3.8)?

**Domestic violence:**

All victims of domestic violence report that they were not informed about this opportunity and that they were neither accompanied nor advised beforehand by a lawyer. An interviewed victim of stalking reports that she was informed about this entitlement (V2). One interviewee was, but she had legal protection insurance and asked because of this (V1).

**Other forms of violence:**

The information provided by the victims of non-domestic violence is contradicting: some report that they were informed about this entitlement (V3, V7), and others report that they were not (V5, V12). No interviewed victim was accompanied or advised beforehand by a lawyer. Only V12, who initially reported to the prosecution, was accompanied and advised by a lawyer from the VSS Neustart. This was of utmost importance for him, otherwise he would not have reported to the police. Although he is a jurist himself, this specialised lawyer counselled him on how to report in order to only focus on the facts, to not be self-contradictory and to not behave in a way that would create a risk of being accused for defamation.

3.2.9. During the court trial, were the interviewees accompanied or advised by a lawyer? Were the interviewees informed beforehand that they would be entitled to such assistance or advice (Question V 3.9)?

All victims of domestic violence were accompanied and advised by a lawyer and they were informed beforehand that they are entitled to such assistance and advice. In cases of non-domestic violence where a court trial took place all interviewees were accompanied and advised by a lawyer.

**b) Information**

**3.3. Views of practitioners**

3.3.1. In the view of the interviewed practitioners, how reliably, comprehensively and effectively are victims provided information about their potential role and their rights in proceedings, when they are first in contact with an authority, such as, in particular, the police (Question Pr 3.10)?

The only homogenous assessment is that informing victims **works effectively and timely in case of a security police intervention** (restraining order). Other than that, the assessments differ within and between professional groups.

Some interviewees mention that there are standardised and also effective procedures of informing victims about their rights, entitlements and duties (P1-P5, J1, J2, J3, J5, J7). Victims get this information in writing and the police officers explain it. The victims have to sign that they have understood their rights before the actual interrogation can start.

Other interviewees however mention that this way of informing victims by the police during the first contact does not work effectively (S1-S4, L1-L4, J6). They reason that victims in a challenging – even traumatic – situation might not understand what not even non-victims would not understand without having legal competence (J6, S1-4). These interviewees argue that the information on victims' rights and entitlements is written in professional language and full of technical terminology (particularly S3).

A third view on this issue is that it strongly depends on the kind of police officer who is the counterpart of the victim. While one criminal officer will do it in a way where s/he also explains what the information sheet says, another officer just might hand-out the sheet and say: "Please sign here". These interviewees see it **as a question of time and of personal commitment of the individual police officer**.

All S and L interviewees point out that **police officers** do not intentionally inform victims about their right ineffectively. **They do their job, which is not victim support**. The police are mainly tasked with and focused on taking the report and identifying the legal issues; they have too little knowledge on victims' rights and the possibilities and actions to implement them. It is not only about representing victims, it is rather about accompanying victims, which is not the task of the police. An interviewed lawyer underpins her assessment through the fact that almost all victims, who come to her for legal advice, have already reported to the police (L2). They are not informed about their rights, possibilities and entitlements. She acknowledges that this might be due to the victims' lacking ability to understand this information in their challenging situation. Still, she argues that it is the police's task, or even more the prosecution's task, to effectively inform victims about their rights and possibilities. Other interviewed lawyers have a different perception and doubt that the police are the right actor when it comes to informing victims comprehensively and effectively (L1, L3, L4) – this should be done by VSSs or lawyers. Therefore, victims should be effectively referred to VSSs or lawyers. This view is supported by some judges and prosecutors interviewed. They also argue that psychosocial and legal assistance services (*psychosoziale und juristische Prozessbegleitung*) have been installed for the purpose of effective support and counselling of victims of violence on their rights. Thus, these professions consistently should carry out their tasks.

Interviewed police officers tend to assess the fulfilment of their duty as positive (P1-P5). However, they also report that it is **difficult** – if not impossible – **to comprehensively inform a traumatised victim of violence** within the short time-frame. Additionally, **every person feels uncomfortable when being at the police** – not only offenders or suspects, but also victims (P2). Furthermore, fear of retaliation plays a role and affects the ability of a person to understand complex issues. Nevertheless, the police officers state that they try their best to inform victims but cannot influence how victims take up the information. According to an interviewed police officer, it proves successful to inform the victim again in the case of an additional hearing. Then the victims usually feel more secure and calm and thus they are better capable of benefitting from the information (P5).

Two different opinions were found among the interviewed members of the J-group: on the one hand, interviewed judges and prosecutors stated that victims are informed very well by the police. They justify their assessment

referring to the high share of victims who use VSSs and that they receive only very few complaints from victims (J1, J2, J3, J4; J7, J8). On the other hand, interviewed judges and prosecutors also acknowledge that **it is impossible for the police to inform traumatised victims of violence in an effective and reliable manner in the time-frame of a single appointment** (J5, J6). According to these interviewees, it depends on the individual officer to counsel a victim and explain the information. However, it also depends on the victim to request this explanation and it also depends on the health condition of the victim to understand it. Furthermore, interviewed judges and prosecutors also argue that the police officers' main task is different from victim support. Rather, it is emergency response and investigating crimes.

### 3.3.2. Are victims later informed about any significant progress of the proceedings and their potential role in various phases of the proceedings? If yes, on which occasions (Question Pr 3.11)?

Victims, who make use of VSSs, are updated by their legal representative and not by the CJS. Those, who do not use VSSs, are hardly updated – **they have to ask and probe**. Interviewed members of the J-group additionally mention that victims have **access to information only if they join the procedure as a private party** and assert a claim for damages (J7).

According to two interviewed lawyers, there is no standardised procedure of informing and updating victims: after the victims' report to the police, they either get summoned to a trial or get a notification about the termination of the proceeding (L2, L3). Both notifications are difficult to understand for a legal layperson or persons with little experience in dealing with authorities. For any other information victims have to probe and claim. The fact that victims have to apply to be updated is an unsatisfying situation according to interviewed members of the S-group (S1, S2, S3). They argue that **uninformed victims are unable to ask** for the relevant information/update. Interviewed members of VSSs identify the need to be informed pro-actively by the authorities and not only upon request. They perceive information of the victims as the state's duty.

The interviewed police officers mention, that they indeed offer victims an update and provide them with their contact data (P1). The victims may get in touch with the police officers whenever they want and ask for an update. The **police are only obliged to proactively inform a victim in case the offender is released from detention** (P3, P4, P5) to enable the victims to protect themselves. However, as long as the record is in the stage of investigation, victims may access the record. The precondition for access is not to disturb or influence the investigative procedure. The police do not inform the victim unless they have the obligation, i.e. they get an order from a criminal justice institution to do so.

### 3.3.3. How do the interviewed practitioners assess victims' possibilities of having access to the case file either personally or through a legal representative (Question Pr 3.12)?

The homogenous answer of interviewed S-group members is that **this access is given either personally or through a legal representative**. However, those who are legally represented are more likely to actually make use of this accessibility. This assessment is confirmed by the interviewed lawyers.

Interviewed members of the police report that victims (or their lawyers) **have access to their files as long as they are at the police**. Practically, it is the legal representation of the victim who accesses case files (also the defence lawyers of the offenders) and not the victims themselves. Some interviewed police officers report that victims may take a copy of their recorded statement with them, check it and claim for revisions or supplement it if necessary (P3). Other interviewed officers say that victims only may take a look at the file (P1, P2, P5). As soon as the report is signed by the victim, it is forwarded to the prosecution office where the victim/legal representative has access as well.

J7 mentions that victims have **access** (themselves or through their legal representation) **only if they join the procedure as a private party** and assert a claim for damages. .

### 3.4. Views of victims

- 3.4.1. When the interviewees first came into contact with the police, were they informed about
- their potential role and their rights in proceedings and
  - how they can access an appropriate support service (Question V 3.10)?

a. The assessments by victims of **domestic violence** are very heterogeneous (V1, V2, V4, V6, V8, V10, V11). Some report that the police took time and informed them very patiently until they understood all of their rights and their particular role (V2, V4, V8, and V10). Others reported that the police informed them quite well (V1). Still others report that the police did not inform them effectively, they just were handed an information sheet and got little explanation on the content, but had to sign (they did not understand their rights and role, but still signed that they understood) (V11, V6).

*He just gave me the information sheet that is part of the interrogation, and I could read and sign it. I did indeed read it, well at that point of time you are done with the world and simply sigh it, and then at home I did read it [properly]. He did go through parts of it with me, he said I have the right to refuse testimony, that I don't have to testify because he [the accused] is my husband. I renounced all of it and said I do want to testify, because I am simply sick of it and he should get a punishment for what he did to me.*

*Er hat mir ein Informationsblatt hingelegt, was da bei der Einvernahme dabei ist und das konnte ich lesen und unterschreiben. Ich habe es schon gelesen, ja in dem Zeitpunkt ist man natürlich fix und fertig und unterschreibt es einfach, aber dann daheim habe ich es schon durchgelesen. Er ist schon einen Teil mit mir durchgegangen, indem er gesagt hat, ich hab die Aussageverweigerung, dass ich nicht aussagen muss, weil er mein Ehemann ist. Ich habe dann auf alles verzichtet und habe gesagt, ich möchte aussagen, weil es mir einfach reicht und er eine Strafe kriegen soll für das, was er mir angetan hat. (AT-V10)*

The findings suggest very diverse practices applied by the police. What's more, the assessments of victims of **non-domestic violence** are heterogeneous: one victim reports that she had been informed by the police in a lot of detail and got the explicit offer from the police to contact them whenever she has additional questions (V3). Other victims report that they have not been informed by the police at all (V5, V9, V12).

*The police did not inform me at all. Only three months afterwards, after the crime and my report to the police I coincidentally got access to these services. I was in psychological care after the crime and my psychologist referred me to a victim support service, and through them, only about six months after it happened, I got legal support.*

*Die Polizei hat mich gar nicht informiert. Erst drei Monate später, nach der Tat und meiner Anzeige bei der Polizei bin ich durch Zufall in den Genuss dieser Dienstleistungen gekommen. Ich war nach der Tat in psychologischer Behandlung und meine Psychologin hat mich dann auf die Opferschutzeinrichtung verwiesen und über die ist das Ganze erst dann ca. 6 Monate, nachdem das passiert ist, habe ich dann rechtskundliche Unterstützung bekommen. (AT-V9)*

V7 has a lot of experience with the police in cases of violent crime. He repeatedly reported to the police about several incidents. He confirms the above: according to him, some police officers are very engaged and inform about all the issues in very detail, while others do not at all inform victims when they report.

b. Also on this question, the assessments of **victims of domestic violence** are very heterogeneous. A reported practice is that the police referred the case to a VSS and informed the victim that they would get in touch with them (V1, V11). Others reported that the police handed out a flyer containing information about VSSs and contact details (V10, V4, V6). The same heterogeneous assessments can be found with victims of **non-domestic violence**: some report that the police did not inform them about VSSs at all (V5, V12), others report that the police asked for their consent to call a VSS on their behalf (V3, V7).

### 3.4.2. Were interviewees continuously updated on how the case developed and on their potential role and relevant rights over the course of the proceedings (Question V 3.11)?

The majority of interviewees were updated on how the case developed and their potential role and relevant rights over the course of the proceedings **by the VSS, but not by the criminal justice system authorities.**

*By the Protection against Violence Centre, not by the court*

*Vom Gewaltschutzzentrum, nicht vom Gericht. (AT-V8)*

They would have expected to be updated by the actors of the criminal justice system (particularly by the prosecutor). However, they were content with the information and updates provided by the VSS. This is true for **victims of all types of violence**. An interviewed member of the non-domestic violence group reported that she would have liked to be **at least informed about the names of the prosecutor and the judge** who dealt with her case (V3).

*Every time there were discussions with the prosecutor I was told about them by the White Ring. Other than that the prosecutor did not communicate with me, only when it came to summons and the question of whether or not I would turn up. I was only ever contacted if I was relevant as a witness.*

*Immer wenn es Absprachen mit dem Staatsanwalt gegeben hat, bin ich darüber in Kenntnis gesetzt worden vom Weißen Ring. Ansonsten hat der Staatsanwalt mit mir nicht kommuniziert, nur wenn es um Vorladungen gegangen ist und die Frage, ob ich erscheinen werde. Ich bin immer nur dann kontaktiert worden, wenn ich als Zeugin relevant war. (AT-V3)*

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*That was also an issue: I never learned the names of those who negotiated my case, neither the names of the judge nor of the prosecutor. When I got the letter, I learned about the name of the prosecutor [...] I for example only learned very late about why my diagnoses from the hospital were in the files. I only learned the whole truth during the proceeding. Before that I did receive diagnoses, but I was not aware of how far-reaching it all was.*

*Das war auch so eine Sache: ich habe nie die Namen derer erfahren, die meinen Fall verhandeln, weder von der Richterin noch vom Staatsanwalt. Vom Staatsanwalt habe ich es dann aus dem Brief, den ich bekommen habe, erfahren. [...] Ich habe z. B. ganz spät erst erfahren, wie so meine Diagnosen waren im Krankenhaus in dem Akt. Die umfassende Wahrheit habe ich erst beim Verfahren mitgekriegt. Vorher kriegte ich schon Diagnosen, aber es war mir nicht bewusst, wie weitreichend das war. (AT-V3)*

This person was severely injured and did not even receive information about her medical diagnosis. Only at the very late stage during the main trial she got to know the exact injuries she had endured and was surprised about their severity.

### 3.4.3. Did interviewees, either personally or through a legal representative, have access to the case file? If yes, at which stages of the proceedings (Question V 3.12)?

The interviewed victims had personal access to the record of their report to the police, they had to read it and confirm it with a signature. Later on, they **had access to their case file and also to the testimony of the offender through their lawyer**. This was confirmed by all interviewed victims of all types of violence.

All victims of domestic violence reported that they were interested in their case-file, only the victim of stalking by her ex-partner did not want to see it. Some interviewed victims of non-domestic violence wanted to see it (V12, V7). A victim whose proceeding was terminated reported that he received a notification of the termination of the proceeding including detailed juristic information about legal remedies available (V5). A victim of police violence

felt victimised again when he was reading the testimonies of the offenders. It was difficult for him to bear it, still he wanted to know what they said (V12).

### c) General assessment

#### 3.5. Views of practitioners

3.5.1. To what extent have the interviewed practitioners, divided by professional groups, agreed with the following statements (Question Pr 3.13)?

3.3.4.1. More needs to be done to ensure that all victims have access to appropriate support services.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	2	2	0	0	0	4
<b>P</b>	1	1	3	0	0	5
<b>J</b>	0	3	5	0	0	8
<b>L</b>	1	2	1	0	0	4
3.3.4.2. Considering that victims, in criminal proceedings, mainly perform the role of witnesses, already too much is done to strengthen their position in criminal proceedings.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	0	0	1	3	0	4
<b>P</b>	0	0	3	2	0	5
<b>J</b>	0	2	5	2	0	9
<b>L</b>	0	0	3	1	0	4
3.3.4.3. More needs to be done to ensure that victims are informed in an effective manner about the proceedings and their potential role in them.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	3	1	0	0	0	4
<b>P</b>	0	1	3	1	0	5
<b>J</b>	0	3	4	1	0	8
<b>L</b>	1	2	1	0	0	4
3.3.4.4. Not much further action needs to be taken to improve the standing of victims in criminal justice proceedings as a lot has already been done in recent years.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	0	0	3	1	0	4

<b>P</b>	1	2	2	0	0	5
<b>J</b>	1	4	3	0	0	8
<b>L</b>	0	0	3	1	0	4

Ad 2) This is a difficult question for interviewed members of the J-group. Actually, the criminal procedure is on something different – it is an instrument to maintain public order, while victim support is located outside of the criminal justice system and restoration is a matter of civil proceedings. For an interviewed judge, **the active involvement of the victim is a step backwards in the criminal justice system**. This judge argues that it is an individualisation of a public responsibility (J4).

J4 ticked two boxes arguing that – different from a civil procedure – in a criminal procedure the individual must not take influence. If victims are provided with too much influence and possibilities to participate, it would cause a disadvantage for the suspect offender. According to her, recent developments in victims' protection constitute a backlash for the criminal justice system. However, she also acknowledges the need for victim support and protection. This is why she ticked two boxes; she says:

*Ad 2) This is a difficult question. The criminal procedure is actually on something different – it is an instrument to maintain public order. The active involvement of the victim into the criminal procedure is a step back from a criminal justice' point of view. It is an individualisation of a responsibility of the public – prosecution. Different from a civil procedure, in a criminal procedure the individual must not take influence on the procedure. The victim protection often does not see this: it has problems and disadvantages for the offender.*

*Das ist eine schwierige Frage. Beim Strafverfahren geht es eigentlich um etwas anderes – es ist ein Instrument zur Erhaltung der öffentlichen Ordnung. Die aktive Beteiligung des Opfers am Strafverfahren ist ein Rückschritt von einem strafrechtlichen Standpunkt aus. Es ist die Individualisierung einer staatlichen Verantwortung – Strafverfolgung. Das ist anders wie bei einem Zivilprozess, in einem Strafprozess darf das Individuum keinen Einfluss auf das Verfahren haben. Der Opferschutz sieht das oft nicht: Es bringt Probleme und Benachteiligungen für den Beschuldigten. (AT-J4)*

Other members of the J-group also stated that, differently from civil procedure, in criminal procedure the individual must not take influence, otherwise it would cause disadvantages for the suspect offender (J4, J5, J7).

Ad 4) Some interviewed judges believe that the standing of victims in criminal justice is already **very good, as far as the legal provisions are concerned** (e.g. J1). **When it comes to their practical implementation, further action would indeed be needed**. E.g. practical measures to avoid encounters between victim and suspect offender or measures to improve the availability of female police officers, etc. would be needed (e.g. J5). The law should remain unchanged. However, focusing too much on the victim may be at the expense of the criminal procedure. Interviewees argue again that the **criminal procedure is not about the victim, it is about the enforcement of the state's duty to prosecute**. In this context, the victim needs to be treated with respect; nevertheless, the focus is not on the victim and a too active participation of the victim would make the criminal procedure ineffective (e.g. J2).

### 3.6. Views of victims

3.6.1. To what extent did the interviewed victims agree with the following statements (Question V 3.13)?

	Strongly agree	Rather agree	Rather disagree	Strongly disagree	Don't know	TOTAL
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3.6.1.1 Throughout the proceedings I had the <b>support</b> I needed.	6	5	1	1	0	13 <sup>3</sup>
3.6.1.2 Overall, I wish I had more <b>legal advice</b> .	1	4	7	0	0	12
3.6.1.3 Throughout the proceedings I received sufficient <b>information</b> about the <b>progress of the case</b> .	2	4	5	0	1	12
3.6.1.4 At times, I would have wished for more <b>information</b> about my potential <b>role</b> in the proceedings.	1	7	3	1	0	12

Please provide an analysis and your own interpretation of the results:

It was **difficult** for almost all interviewees **to give a global assessment on these questions**, having in mind all actors. The victims' answers were **polarising and strongly differentiated between the public officials – the actors of the criminal justice system – and the victim support services**. This means that the victim would strongly agree to statement 3.6.1.1. having in mind the victim support service. But they would strongly disagree with the same statement having in mind the public officials (judge, prosecutor). The interviewer then asked the interviewees if the support provided by the VSS was able to compensate the missing support by the members of the judiciary. If the interviewee agreed, "strongly agree/rather agree" was selected and if the interviewee did not agree and said that the VSS could not compensate the lack of support by the judiciary, they disagreed. A similar situation occurred in relation to statement 3.6.1.2: victims rather disagree, but have in mind their legal support service (which offered them enough legal advice) and not the members of the judiciary, i.e. prosecutors and judges. Statement 3.6.1.4: The one, who strongly agrees and the seven, who rather agree, would have wished for more information about their potential role in the proceedings BY THE MEMBERS OF THE JUDICIARY (and not by the VSS).

All interviewees homogenously point out that they had received support, information and legal advice from the VSS only and not from the actors of the criminal justice system. Even if their information needs were satisfied by the VSS they still would have wished for more information and updates by the actors of the court or the police.

*At the beginning of the proceedings, yes [the interviewee would have wished for more legal advice indeed], but in the end, when I was supported by the lawyer, it was enough.*

*Am Anfang ja, aber zum Schluss, wie ich die Rechtsanwältin hatte, hat es schon gepasst (AT-V11)*

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*By the White Ring and not by the court and not by the police. From the court I only receive summons.*

*Vom Weißen Ring, nicht vom Gericht und nicht von der Polizei. Vom Gericht bekomme ich nur die Ladungen. (AT-V7).*

A similar comment on statements 2 and 4 from another victim of domestic violence:

*I would have expected more from the police, but I am really satisfied with the help from the support service.*

<sup>3</sup> One interviewed victim ticked two options: agrees in case of victim support services, disagrees in case of CJS actors.

*Von der Polizei hätte ich mir mehr erwartet, mit der Hilfe der Opferschutzeinrichtung bin ich vollauf zufrieden (AT-V1)*

A victim of police violence reports on statement 3.6.1.4:

*I never knew, am I a witness or a victim? Do I have to tell the truth or not? May I be punished for not telling the truth?*

*Ich wusste nie, bin ich Zeuge oder Opfer? Muss ich die Wahrheit sagen oder nicht? Kann ich belangt werden, wenn ich nicht die Wahrheit sage? (AT-V12)*

The uncertainty expressed in this last statement is surely uncommon, as it can be related to a specific aspect in the situation of this victim, which did not come up in the other interviews: the violence was exercised by the police in the frame of an official act. This interviewee was afraid of being held accountable for not telling the truth – not necessarily because he lied, but rather because he was afraid that the police (the perpetrators) give a distorted view of the facts in conflict with his testimony. Furthermore, he was afraid of being accused for resistance against the police. Here, information on his role as well as on the possible consequences of his reporting and statement would have particularly helped him. He got it later from a VSS.

## 4. Effective remedy

### 4.1. Views of practitioners

4.1.1. According to the interviewed practitioners, do the police view themselves as obliged to investigate whenever there is substantive suspicion that a crime has been committed or do they see themselves as enjoying a margin of discretion whether to investigate or not (Question Pr 4.1)?

The interviewed police officers clearly state that they are **obliged to take every report of a victim** and that there is **no margin of discretion** whether to investigate or not (P1-P5). They say that the police investigate whenever there are punishable facts; one interviewed police officer mentions that the police are obliged to investigate even if they believe that nothing criminally relevant has happened (P3). The interviewed police officers report the following procedure: The police prepare a description of the facts based on the victim's statement and forward it to the prosecution. The prosecution assesses the report from a criminal law perspective and then decides on whether to initiate a procedure or not.

The interviewed **judges, prosecutors and lawyers confirm** this assessment (J1-J6, L1-L4). Furthermore they report that the police is obliged to accept each report by a victim and to investigate whenever there is a suspicion that a crime has been committed (not even a substantive suspicion is needed). An interviewed prosecutor acknowledges that some police officers might not be aware that what is reported to them is actually a crime. He concretely refers to cases of rural police officers, who receive reports about rape within a marriage or rape at a party (J6). An interviewed lawyer mentions that some (traumatised, low-educated) victims are unable to tell what has happened to them in a way that the police are able to identify criminally relevant aspects (L4).

The interviewed members of the S-group take a slightly different point of view. According to them, there is **indeed a margin of discretion at the police – if not legally, then practically**. Interviewees mention that the police would not perceive it as margin of discretion because **it works unconsciously**. They trace this back to biased police officers. These interviewees emphasise that it is not "the police" who send some victims away but rather only individual officers (S1-S4).

4.1.2. According to the interviewed practitioners, do public prosecutors view themselves as obliged to prosecute in any case where there are significant indications that a crime has been committed or do they see themselves as enjoying a margin of discretion in this regard (Question 4.2)?

According to interviewed prosecutors the prosecution office **is obliged to prosecute** in all cases where a conviction is more likely than an acquittal (J5, J6, J8).

Apart from this group of interviewees the assessments are heterogeneous within and between groups. Some interviewees indeed perceive a margin of discretion while others do not. The former argue that the **prosecution office** is the **leading authority** of prosecuting crimes and, precisely because of this position, have a margin of discretion (S1, S2, S3, S4, L1, L2, L3). Particularly interviewed police officers contrast this margin of discretion with their own duty to always investigate (P2, P3, P4). Another argument brought forward for the prosecution's margin of discretion is **different decisions in comparable cases**, e.g. if the statement of the victim stands against the statement of the suspect offender, the proceeding may be terminated by one prosecutor and may be not by another (S2, S3). Some prosecutors want to have a personal impression of the victim, thus initiate an adversary interrogation and only afterwards decide whether to terminate the proceeding. Other prosecutors terminate without hearing and meeting the victim personally (J6). Interviewed members of VSSs point out that they cannot see any systematic approach behind the termination of procedures (S2, S3). Thus they argue that there is a lot of margin

of discretion. Some even call the **prosecution** office a “**terminating institution**” rather than a “law enforcement institution” (S2). The termination of procedures is not foreseeable, does not follow transparent criteria or is in any way accessible for members of VSSs. This is also true when there are legal provisions and requirements for the termination of procedures. Indeed, the prosecution office may terminate a procedure before the public prosecutor heard the victim in the course of an adversary interrogation. Consequentially, the prosecution office may stop proceedings even if the police have not yet finished the interrogations or are still identifying witnesses. The possibilities for victims to participate in the procedure and e.g. to claim for evidence considered are missing as soon as the procedure is terminated (S1-4, L1-4, J7). What’s more, the **earlier the termination takes place** the lower the opportunities for victims to actively participate are (L4). Interviewees of different professional groups point out this problem. Also interviewed judges and one interviewed lawyer confirm this concern. They explain the problem by referring to the lack of resources at the prosecution as a motivation to terminate “hopeless cases” or to personal issues like the “style of work” (J7). These interviewees perceive the decision of whether to prosecute as a partly personal decision. Two lawyers e.g. refer to cases where the prosecution office treats a dangerous threat as a “statement of resentment made due to social milieu” or “statement of resentment made due to the situation” and terminate the procedures (L1, L3).

An interviewed lawyer states in this regard that **assessing the credibility is part of the consideration of evidence and this must be the responsibility of the court and not of the prosecutor** – as it is the case right now (L4). Many proceedings are terminated precisely because the prosecutor calls into question the credibility of a victim. Still, there is supervision and control.

Interviewees, who **do not confirm that the prosecution has a margin of discretion**, argue that a prosecutor is obliged to demand a more detailed investigation from the police in case of doubt. Otherwise, the prosecutor is obliged to prosecute in any case if there are significant indications for a criminal offence. The prosecutor is also bound by the criminal procedure code and they have to justify a termination. Only in case of very small crimes they have a margin of appreciation – except for violent crimes (J4, J5, J6, J7, J8). An interviewed lawyer additionally mentions that there is a four-eye-principle at the prosecution and junior prosecutors are supervised by senior prosecutors (L3).

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

This occurs	S	P	J	L
Often or very often	0	1	0	0
Occasionally	3	0	5	4
Only in exceptional cases or not at all	1	4	3	0
Don't know	0	0	0	0
TOTAL	4	5	8	4

The members of J, who selected “only in exceptional cases or not at all” emphasise that they mean “exceptional cases”, while “not at all” doesn’t apply (J6, J7, J3). An interviewed prosecutor states that most cases are terminated for lack of evidence and not because of a statute of limitation. Thus, in the opinion of interviewed members of the J-group, there is a different problem (J5).

4.1.4. According to the interviewed practitioners, if the police fail to carry out a thorough and effective investigation, does the victim have an effective means of challenging this failure (Question Pr 4.4)?

The interviewees report similar means to challenge this failure, but their assessments concerning the effectiveness of these means vary. The following means to challenge the police's failure in investigating a report have been mentioned:

- Complaining about the inactive officer at their superiors at the police headquarter (Aufsichtsbeschwerde). Then the headquarter officer (Offizier vom Tag) is obliged to deal with this complaint and – if justified – intervene. The headquarter officer will oblige the inactive officer to explain what has happened and to compose a statement. If suspicion is confirmed, the inactive officer will be affected by a disciplinary measure. However, this will only work in case of really inactive officers and not if missing evidence, missing traces and missing indications for an offence are the reasons for inactivity. Particularly according to interviewed police officers, the effectivity of this challenge depends on the individual officer in charge and on the evidence. In other words: **if it is justified, the means to challenge the failure will be effective.**
- Reporting to the prosecutor, who will intervene at the police. This option has been mentioned by interviewed members of the prosecution, the police and VSSs. Interviewed members of the S-group state that it is difficult to effectively make use of this option if the victim has no legal support. Additionally, traumatised victims do not want to mess with a public authority. Other victims are not aware that something went wrong; they may feel it, but cannot express it. Thus, reporting directly to the prosecutor is **not perceived as effective** by the interviewed members of the S-group. Interviewed members of the prosecution office however say that in case of a justified challenging of an inactive police reporting to the prosecutor will be an effective means.
- Use the services of a lawyer or VSS, who initiate a follow-up report to the police. However, victims must find their way to a VSS first, which then organises legal representation. Interviewees assume this way to challenge inactive police officers as **effectively** working, but at the same time perceive it as **burdening**. Victims get interviewed more often, altering the risk of secondary victimisation.
- Reporting to another police station or reporting in written form. These are actually no strategies to challenge inactive police officers but rather escape routes. Still, they have been reported by interviewed police officers and they are perceived as working effectively.

An interviewed prosecutor reports that it is the task of the prosecution office, not the task of the victim, to challenge the inaction of the police. The interviewee explains that the **police are not even allowed to investigate in all cases**. E.g. the police isn't allowed to compare DNA traces of the offender with DNA data in the crime database, they need a court approval (P3). Sometimes, the prosecution office does not permit such investigations because they are very expensive and often not successful. In these cases the police will remain inactive – at least the victim might have this impression (P3).

An interviewed lawyer reports that all means of challenging, e.g. complaining to their supervisors (*Aufsichtsbeschwerde*) or directly reporting to the prosecution office, do not work very effectively. According to his experience, **clerks do not want to be challenged** and supervisors may rather support their police officers than complaining citizens (L4). If there is a complaint about their work, they might become reluctant to investigate. According to this interviewed lawyer, it is often a matter of lacking communication between victim and police/prosecution: would police officers inform victims in more detail about the next steps and how long they take, misunderstandings (and victims' complaints) would be less likely (L4).

4.1.5. According to the interviewed practitioners, if the public prosecutor decides to discontinue prosecution, does the victim have an effective means of challenging this decision (Question Pr 4 5)?

Homogenous information has been provided on the means of challenging the decision of the prosecution. The procedure works as follows: The victim receives a notification by the prosecution office on the termination of the procedure. This notification includes information about their right to challenge the decision and the legal remedies. The victim may claim for reasoning for the termination and then apply for the continuation of the proceeding within two weeks after they have received the notification on the termination.

According to an interviewed member of the S-group, this procedure is standardised but not effective. She argues that the application for continuation costs €90 and **usually the termination of the procedure is confirmed in the end**. In practice, the procedure is continued for three reasons:

- a) an incorrect legal assessment;
- b) the evidence has been assessed wrongly in a grave manner;
- c) new evidence and facts or a new witness come up.

In all other cases the initial termination of the procedure will be confirmed. An interviewed lawyer mentions that challenging this decision is not effective if evidence is lacking. It is more effective if the prosecution terminates the procedure because the legal requirements for a criminal offence are not met.

Interviewees estimate the share of closed procedures and some state that only about 10% of the challenges are successful. Interviewed prosecutors perceive this as evidence for the high quality of their work (J7). Other interviewees estimate that a bit less than half of all applications for continuation effectively lead to a continuation (e.g. J5, L2).

Interviewed lawyers mention that this remedy only works effectively if the victim has a legal representative (L1, L2, L3, L4). The preconditions to successfully apply for continuation are only to be met with legal knowledge, as this is necessary to prove shortages in the investigation and their consequences for the proceeding.

A prosecutor is quoted on this issue:

*Although one has to be aware that on the one hand we have a suspect offender, who is involved into an investigative procedure. This can become public even if it has been terminated, something remains – “ah, the police started investigations against him” – even if it turned out that it was nothing criminally relevant. This is why you have to see it in connection with each other – victim’s rights are conflicting with suspect offender’s rights and of course it is important to find a certain balance, because the victim may also be someone, who has become obsessed or paranoid or maybe the victim is ill and when the police has to always drive there, and the neighbours always notice this. This is problematic because the suspect offender has to repeatedly justify and defend himself, even if the police already doubt that there is a criminal law base.*

*Wobei man ja auch da sehen muss, dass auf der anderen Seite ein Beschuldiger steht, der dann in ein Ermittlungsverfahren verwickelt wird, das kann ja dann publik werden und irgendwas bleibt ja dann doch oft hängen – „da hat ja die Polizei gegen den ermittelt“- obwohl es sich herausgestellt hat, dass das doch nichts Strafbares war. Deswegen muss man das natürlich auch immer im Zusammenhang sehen – Opferrechte stehen halt oft im Widerspruch zu Beschuldigtenrechten und da ist es natürlich auch wichtig, da ein bisschen den Ausgleich zu finden, weil es könnte ja jemand sein, der sich in etwas sehr hinein gesteigert hat, vielleicht ist er auch krank oder paranoid, und wenn die Polizei dann immer hin muss und das die Nachbarn dann immer sehen. Und das ist dann auch problematisch, wenn der Beschuldigte sich dann immer rechtfertigen muss für etwas, wo schon die Polizei findet, dass das keine Grundlage hat. (AT-J7)*

4.1.6. To what extent did the interviewed practitioners, divided by professional groups, agree to the following statement (Question Pr 4.6)?

When people fall victim to violent crime they can legitimately expect that the police conduct a thorough investigation with a view to identifying offenders.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	1	3	0	0	0	4
<b>P</b>	5	0	0	0	0	5
<b>J</b>	7	1	0	0	0	8
<b>L</b>	0	4	0	0	0	4

An interviewed member of the S-group points out that they at least may **EXPECT** it, if it then actually happens is a different story. Particularly in cases of violence exercised by unknown offenders, in public sphere without cameras and witnesses, the police investigation will not – and cannot – be very effective. This is independent from the police's commitment. An interviewee identifies vulnerable groups, who cannot expect much from the police. These are persons with a low socioeconomic status, who are victims of offenders with a good reputation, or who are police officers. Another vulnerable group of victims in this regard are victims of sexual violence.

Interviewed lawyers face difficulties in providing a general answer. They rather would have preferred the option "partly/partly" as this meets reality according to them: victims of violent crime may legitimately expect this from some officers and not from others (L1-L4).

## 4.2. Views of victims

### 4.2.1. According to the interviewed victims, what was the outcome of criminal proceedings in terms of offenders being convicted, of sanctions imposed and of compensation being awarded (Question V 4.1)?

In case of **domestic violence** almost all offenders were convicted and **detained in an institution for mentally disturbed offenders** (Anstalt für geistig abnorme Rechtsbrecher) (V1, V4, V6, V10). One case was acquittal for bodily injury with three months suspended sentence (V11). One case was **acquittal for lack of evidence**, whereby the prosecutor challenged the decision – there was no outcome available at the time of the interview (V8). V2 still waited for the judgement at the time of the interview. Some victims of domestic violence got compensation awarded while others did not (not all victims of domestic violence applied for it). Those who got **compensation** awarded got it in the context of an **execution title**, therefore they **do not expect that they will actually get the money** (V1, V11). Others got awarded a part of compensation within the criminal proceedings (V4). These women are aware that they would have to initiate a civil procedure for the rest of their compensation, but are unlikely to take this burden with the risk of encountering the offender (V4).

In case of **non-domestic violence**, two proceedings (V5, V12) have been **terminated by the prosecution, one of them** without interviewing the victim by the prosecutor (V5) and in the other case of termination the victim applied for a continuation of the proceeding, but the termination was finally confirmed. In one case, the **proceeding is still running** (V9) and there were **two convictions** (V3, V7). In terms of compensation awarded, three victims applied and in two cases these proceedings are still running. In one case, compensation was refused because the offender was a minor at the time of offence and poor due to his status as a school boy (V7). In this case, the criminal proceeding also involved drug offences, committed by the offender. He was found guilty for both: the drug offences and the dangerous threat against the interviewee. The total punishment of this offender was more severe than the

ones of his friends, who were only punished for drug crime. The interviewee got this information from his supervisor at the White Ring. However, the interviewee is sure that there would not have been a court trial if the dangerous threat had been the only offence and not combined with a drug crime.

#### 4.2.2. Do interviewees assess the outcome of the proceedings as appropriate and satisfactory? What were their observations and the reasons they gave to support their assessments (Question V 4.2)?

The victims of domestic violence, who were satisfied with the outcome, did not further comment. Those who were not satisfied and perceive the sentence as too mild or the granted compensation too low bring several reasons for this:

- Focus on less important aspects of the crime, while neglecting ones important for the victims (V1, V8, V11)

An interviewed victim of domestic violence noticed that there was too much focus on the bodily injuries (size of wounds, severity of bodily injuries, frequency of physical violence), while the emotional aspects were neglected. For the interviewee, however, the bodily injuries were not as important as the permanent fear, the emotional stress and the dangerous threats.

*Rather not satisfying. A few aspects were lacking for me during the proceeding, so obviously he had a list of paragraphs which he violated. But obviously it's always only about how the body was harmed, that's always what counts most, in the case of multiple things it's always the degree of physical violence. But the emotional pressure is considered too little, in my opinion. It's mainly always about these physical things but for me that was actually least important, I didn't care about it. But these severe threats, too little weight was given to that.*

*Eher nicht zufriedenstellend. Mir haben im Verfahren ein paar Aspekte gefehlt, also er hat natürlich so eine Liste gehabt an Paragraphen, gegen die er verstoßen hat. Aber es geht natürlich immer nur darum wie der Körper geschädigt ist, das zählt immer am meisten, bei verschiedenen Dingen zählt immer der Grad der körperlichen Gewalt. Aber der seelische Druck, der wird meiner Meinung nach zu wenig bewertet. Es geht hauptsächlich immer um diese Körpersachen und das war mir aber am wenigsten wichtig, das war mir egal. Aber diese schweren Drohungen, dem ist ein bisschen zu wenig Gewicht gegeben worden. (AT-V1)*

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*When thinking about this whole proceeding, I was solely witness at the main trial, that's it. I didn't really feel [treated, I.M.] like a victim. To my opinion, the whole proceeding is on facts and paragraphs and you get interviewed wrongly. It [the interview, I.M.] is always on times, days, how blue is the bruise, where did he hit and it is never on what it is all about, namely the fear you have. I mean, ok he was sentenced for severe threat, because he said things, which fall under [the definition of the criminal offence, I.M.], but for me this is not enough. This general act of scaring was neglected in my view. Only certain things are getting worked off there.*

*Weil bei dem Verfahren war ich reine Zeugin bei der Hauptverhandlung, das war es. So wirklich als Opfer bin ich mir nicht vorgekommen. Meiner Meinung nach geht es immer nur um Fakten, um Paragraphen und man wird falsch befragt. Es geht immer nur um Uhrzeiten, Tage, wie blau war der Fleck, wo hat er zugehaut und es geht nicht um das, was es meiner Meinung nach hauptsächlich ist: um die Angst, was man hat. Ich meine, ok, er hat eh die schwere Drohung gekriegt, weil er eben Aussagen getätigt hat, die da reinfallen, aber ich finde das ist zu wenig. Also diese generelle in Angst versetzen, das ist für mich zu wenig herausgekommen. Da werden nur gewisse Dinge abgearbeitet und fertig. (AT-V1)*

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*Also during the interrogation through the judge, somehow it was never an issue. For example it was also the burglary and it was always only about the door and what damage he caused. But ultimately that was not the point of the crime, but the root behind it was something else, and for me there was too little [focus] on that. It was an issue that he threatened me, but it was too little, because he then didn't manage anyway to be violent again.*

*Also auch bei der Befragung durch den Richter, das war irgendwie nie ein Thema. Z. B. es ist ja auch der Einbruch gewesen und da ist es immer nur gegangen um die Tür oder was hat er für einen Schaden angerichtet. Und im Endeffekt war das aber nicht der Punkt der Tat, denn der Kern dahinter war ja etwas anderes und es war mir ein bisschen zu wenig auf das gerichtet. Es war schon ein Thema, dass er mich bedroht hat, aber das war zu wenig, weil er hat es dann eh nicht geschafft, erneut Gewalt auszuüben. (AT-V1)*

The interviewee lived in the flat of a friend in order to protect herself from the offender's attacks. The offender broke into this flat and according to the interviewee, the court decision put too strong a focus on the damaged door and did not consider the fact that the interviewee's friend, her children and she herself were present and had to witness the break-in. The threat and the fear triggered constituted the core of the offence according to the interviewee, not the damaged door. The sentence was mild because the offender did not have the opportunity to exercise violence, as the police detained him just in time. However, according to the interviewee, the fear and the threat were not considered when sentencing.

In another case of domestic violence, the interviewee had the impression that the court put more focus on the question if she – the victim – had had an extramarital relationship than on the violence she experienced.

*So that was really horrible: always these unimportant things, I already said it 100 times: Mister X is a good friend, we have nothing going on, he is simply helping me. How should I have an affair with him when I am hooked up in the hospital and traumatised? He is helping me, he is really a true friend, one who supports me. My husband put everything on that relationship. I had the impression that it [the proceeding] was only about that, and not about what really happened.*

*Also das war so schlimm: immer diese unwesentlichen Dinge, ich habe schon 100 Mal gesagt: der Herr X ist ein guter Freund, der hat nichts mit mir, der hilft mir einfach. Wie soll ich mit ihm ein Verhältnis haben, wenn ich angeschossen bin im Krankenhaus und traumatisiert bin? Er hilft mir, er ist wirklich ein wahrer Freund, einer, der mir hilft. Mein Mann hat aber alles auf das Verhältnis hin gespielt. Mir ist vorgekommen, dass es nur um das gegangen ist und nicht um das, was es wirklich war. (AT-V8)*

The interviewee had the impression that the offender manipulated all family members (also her sister) to testify against her. Many family members were summoned as witnesses and all testified that they could not imagine that the offender was capable of doing something like that.

- Evidence brought by victims was not considered (V4, V5, V8, V11, V12)

This concerns two cases of sexual violence within a marriage. In both cases, the victims provided evidence for the sexual violence but were not considered by the criminal justice system. In one case the police even denied that they had received it. Furthermore, a victim of police violence reported that he suggested evidence, such as analysing a footprint on his backpack (whether or not it stems from an officer's boot), having a psychiatric assessment on whether his already diagnosed post-traumatic stress disorder was due to police violence or not, asking witnesses, interviewing all police officers involved, and not only three out of five. None of these suggestions was followed by the prosecution and the interviewee reports that he would at least have expected to be informed about the reasons for this.

- Payment cannot compensate expenses due to the crime (V4, V7, V12)

Victims, who perceive the monetary compensation awarded as too low, argue that the amount cannot compensate the expenses incurred on the basis of violence and injuries. Particularly psychological recovery was not covered, but in some cases the compensation awarded did not even cover the expenses due to the physical violence. A victim of non-domestic violence additionally reported that he was on sick-leave for a longer time because of the offence; the tax payers, the interviewee's employer and he himself had to bear the costs of the violence exercised against him. The offender would not bear the costs, as he was a school boy without money. The interviewee argued that he would be in favour of providing the state with access to social welfare payments or property of offenders or their close relatives for this purpose.

4.2.3. As concerns interviewees who found the outcome of proceedings at the court of first instance not satisfactory, were they informed of any means to challenge the decision taken by the court of first instance (Question V 4.3)?

All **victims of domestic violence** report that they were informed about possible remedies. Some took this opportunity; others did not – the latter simply because they wanted the proceeding to be over (V1, V2, V10, V11). All **victims of non-domestic violence** reported this as well – at least they thought they were. However, particularly victims of non-domestic violence were very reluctant to challenge the decision taken by the court. They did not deem it successful. The exception is V12, who applied for continuation of the proceeding, which was terminated by the prosecution. He is a jurist and additionally got support by a lawyer of a VSS when applying for this. They justified the application referring to various procedural shortcomings but in the end were not successful. The termination of the proceeding was confirmed by the panel of judges.

4.2.4. How did the interviewees assess their own influence on the outcome of the proceedings (Question V 4.4)?

The interviewed **victims of domestic violence** perceive their influence as low – particularly those whose evidence was not considered by the court and those who were not satisfied with the outcome. Neither did the interviewed victims of domestic violence feel treated like victims, although they were the reason for the proceeding. They rather felt treated like witnesses by the court, whereby attention focused on the **offender**, who was perceived as the **core centre of the proceeding** (V8, V11).

*I did have the impression that they rather very thoroughly analysed when he went to the police than when I went. In my case – I did have the feeling more would have had to happen until they [the police] would do something. Because he also filed a report against me and then immediately the criminal police was at my house at 10 at night. Because he downloaded child pornographic things on the Internet and said these were my children. And I thought, OK, this will be quick. But when I said he wanted to kill me, then it took longer. There I did feel treated unfairly, because it was actually very clear that he was delusional, and was always fantasising about different things.*

*Mir ist schon vorgekommen, dass sie eher gründlicher analysiert haben, wenn er zur Polizei gegangen ist, als wenn ich gehe. Bei mir – habe ich schon das Gefühl gehabt – muss mehr passieren, bis die was tun. Weil er hat mich auch angezeigt und dann ist sofort die KRIPO bei mir daheim gewesen, um 10 in der Nacht sind sie da gewesen. Weil er hat sich kinderpornografische Sachen im Internet runtergeladen und hat behauptet, das sind meine Kinder. Und ich hab mir gedacht, ok da geht das ganz schnell. Aber wie ich gesagt habe, dass er mich umbringen will, da hat das länger gedauert. Da habe ich mich schon ungerecht behandelt gefühlt, weil eigentlich schon klar war, dass der Wahnvorstellungen hat, und immer anderes phantasiert. (AT-V11)*

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*I testified twice. I still always had the feeling that a lot of weight was given to my husband. He portrayed himself as the victim and me as the offender. He was in a neighbouring room. I also had the feeling that I was being very well listened to. But still – I really can understand a lot of women today who do not want*

*to file reports and who do not go through with that – so much focus is put on the offender, you are not the victim there.*

*Ich habe zweimal ausgesagt. Ich habe trotzdem immer wieder das Gefühl gehabt, dass meinem Mann schon sehr viel Gewicht gegeben wurde. Er hat sich ja als Opfer dargestellt und ich wäre der Täter. Er war in einem Nebenraum. Dort hatte ich auch das Gefühl, man hört mir sehr gut zu. Aber trotzdem – ich kann heute schon viele Frauen verstehen, die nicht anzeigen und die sich das nicht antun – es wird so viel Merkmal auf den Täter gelegt, man ist dort nicht das Opfer. (AT-V8)*

An interviewed victim of domestic violence also discussed her influence on the outcome of the proceeding in relation to her adversary interrogation. On the one hand, this testifying in a separate room in front of the judge and a camera made it easier for her to speak freely without encountering the offender. On the other hand, it confused her that **she was unable to see anybody in the court while everybody saw her** (V11, see also V4.). Looking back, she would have preferred to have a small monitor in her room, whereby she could see the other actors who were watching and listening to her.

The assessments of the interviewed **victims of non-domestic violence** are extremely heterogeneous, ranging from **having a huge influence to no influence at all**. A victim of attempted murder assesses her influence as huge (V3). In the first place, her testimony led to dropping the accusation of an innocent person and accusing the real offender. The interviewee had the impression that the police would have liked to accuse the innocent person, because he was already known by the police as a criminal (drugs, physical violence). For the interviewee it looked as though the police just took the opportunity to detain this person. She however knew that he was not the offender and in the end it was her influence that excluded the innocent from the suspect offenders. As there was no evidence other than the interviewee's testimony, she perceives her influence as huge in this regard. Also another victim (V7) of dangerous threat and bodily injury assesses his influence on the outcome as high: the offender and two other young men were accused of drug offences, but the interviewee's offender got the most severe punishment (because of the interviewee's victimisation by the dangerous threat and his testimony). However, another interviewed victim of hate crime, whose proceeding had been terminated, assesses his influence on the outcome as not existent, as he was not even heard by the prosecutor. He had the impression that the police did not take the case seriously. However, they provided him with a lot of information on his legal possibilities and remedies (V5). The same was the case with an interviewed victim of police violence, whose procedure was terminated and whose suggested evidence was not considered: he also perceives his influence as very low, although he participated very actively (V12).

*Well, I had to participate because otherwise nothing would have happened. It was the case that Major X said that no proceeding was needed because the police could comment on that [the interviewee's accusations, I.M.].*

*Na ja, ich hab mich beteiligen müssen, weil sonst wäre ja gar nichts passiert. Es war ja so, dass der Herr Oberst X gesagt hat, dass es kein Verfahren braucht, weil sich die Polizei ja dazu äußern kann. (AT-V12)*

4.2.5. How did the interviewees assess the manner in which the police investigation was carried out; was it

a) thorough and effective?

The majority of the interviewed **victims of domestic violence perceived the work of the police as thorough and effective**. They had the impression that the police really cared for protecting them against repeat victimisation (V1, V4, V10, V11). They had the impression that the police really wanted to catch the offender (in case he was volatile) and they collected a lot of evidence. Yet, some interviewees – even those who perceive the work of the police as thorough and effective – are not satisfied with the outcome (V4). The interviewed victims of domestic violence, whose **evidence was not considered by the police, do not perceive the police investigation as being thorough and effective** (V8, V11).

The **assessments of victims of non-domestic violence are contrasting** – they do not perceive the work of the police as thorough and effective. A victim of a hate-motivated attack with a car and dangerous threat had the impression that the police did not take his report seriously:

*The police woman recorded everything. I had a picture and I had a note of the number plate of that car. I assume that this woman has been found, but I do not know, I assume it. But I am not sure because I have lost the record of my report to the police. Then my wife said: "It is Sunday afternoon, that woman is sitting [at the police station] alone, she is not motivated." That is what my wife said.*

*Aber sie hat alles aufgenommen. Ich hatte ja ein Foto und die Nummertafel von dem Auto habe ich mir auch notiert. Ich gehe davon aus, dass diese Frau ausgeforscht worden ist, ich weiß es nicht, aber ich gehe davon aus. Aber ich weiß es nicht mehr, ich habe das Protokoll meiner Anzeige bei der Polizei verloren. Das hat meine Frau gesagt: „Es ist Sonntagnachmittag, die Frau sitzt alleine dort und die ist nicht motiviert“, das hat meine Frau gesagt. (AT-V5)*

In another case, when the police was called to a crime scene with a volatile offender, the victim reports that she had informed the officers in which direction the offenders had run, but the officers did not pursue them (V3). This victim reported that she has this impression from the front-line officers only, not from the criminal police, who then carried out the interrogation. V5, who was affected by hate crime in public sphere, reported similar experiences: he had the impression that the **police did not take him seriously and appeared not engaged in investigating and pursuing the offender**.

Another victim of non-domestic violence reported that the **police did not take all the evidence she assumed as being relevant**.

*They were thorough I think I am sure about this. However, it disturbed me that my ex-partner stored original uniforms of the Cobra (special police squad) in his flat, original uniforms. And the police did not investigate where he got these uniforms from. I would have assumed that the offender has certain contacts, because it was an operational uniform. And in my opinion, the police investigated that by far not thoroughly enough.*

*Gründlich waren sie glaube ich sicher. Was mich gestört hat, war: Mein Ex-Lebensgefährte hatte Sachen von der Cobra daheim, das waren Originalsachen. Und da ist nicht weiter geschaut worden, wo er das her hat. Da hat sich die Polizei selber gewundert, wo er die her hat und da ist aber nicht weiter geschaut worden. Ich habe mir gedacht, wenn der schon zu dem Gewand hinkommt – was ja Einsatzgewand ist – muss der Kontakte haben. Da ist mir zu wenig geschaut worden. (AT-V6)*

This interviewed victim explains the reluctance of the police with the fact that she had already previously reported violence to the police and later on refused to testify to give the offender a second chance. As a result, the proceeding

was terminated. When she reported for the second time, she felt that she was not taken seriously by the police anymore. Against this background, the interviewee also explains the reluctance of the police to further investigate the operational uniform. The interviewee clearly points out that the police were very supportive and motivated for an effective investigation when she reported for the first time.

In another case, they also did not record who called the police, the offenders then said that they called the police (as victims). The police believed them and the interviewed victim was blamed for the offence. The interviewee was lucky that he had an audio-recording which was evidence that the interviewee was the one who called the police (V9).

*No, they were not thorough, no. [...] The police also missed that they wrote who called the police. Because the offenders said they had called the police. On the recording you could still hear me saying to my sister: call the police! But if it hadn't been for my sister and the recording, that would not have ended well.*

*Nein, die waren nicht gründlich, nein. [...] Die [Polizei] haben auch verabsäumt, dass sie geschrieben haben, wer die Polizei angerufen hat. Weil die Täter haben gesagt, sie hätten die Polizei angerufen. Aber am Tonband war noch drauf, dass ich zu meiner Schwester sage: Ruf die Polizei! Aber wenn meine Schwester und das Tonband nicht gewesen wären, wäre das schlecht aufgegangen. (AT-V9)*

b) timely and efficient?

The work of the police is perceived as timely and efficient by the victims who assessed this question. Two victims of domestic violence, in whose cases the police was called by neighbours, state that the police took too long to come, according to their opinions (V6, V4). However, many victims did not assess the timeliness and efficiency of the police's work. Victims of non-domestic violence criticised the work of the police in terms of timeliness. They argue that it **took them a lot of time to stop the threat or to arrange an appointment for the report.**

c) Any other observations (Question V 4.5)?

None

4.2.6. To what extent did the interviewed victims agree to the following statements (Question V 4.6)?

	Strongly agree	Rather agree	Rather disagree	Strongly disagree	Don't know	TOTAL
4.2.6.1 Overall, I would have expected to be given a more important role in the proceedings.	1	6	5	0	0	12
4.2.6.2 The police appeared to be committed to an effective investigation.	1	5	6	1	0	13

Please provide an analysis and your own interpretation of the results:

Victims of domestic violence rather tend to disagree that they would have expected to be given a more important role in the proceedings. When answering this way, they particularly think of being present in the court room to testify. There are some exceptions, who indeed thought about being present in court, but the general tendency for victims of domestic violence is different. One interviewee – who had a contradictory interrogation – reported that she would have liked to see the scene in the court room, while she was talking about what had happened to her: It was a bit unsatisfactory for her, to be broadcasted into the courtroom while unable to see anything herself. She says:

*Not directly, but that I can see it via video or something, that I can see his facial expressions, that I can see how he reacts, I would have expected that. I then immediately would have known if he is lying or not because I know him, and then I could have immediately said that to the lawyer, that she asks again or poses certain questions one more time.*

*Nicht direkt, aber dass ich das per Video oder so sehen kann, dass ich die Gesichtsausdrücke sehen kann von ihm, dass ich sehen kann, wie er jetzt drauf reagiert, das hätte ich mir schon erwartet. Ich hätte dann gleich gewusst, ob er lügt oder nicht, weil ich ihn kenne, und das hätte ich dann gleich sagen können der Rechtsanwältin, dass sie nachfragt oder bestimmte Fragen nochmal stellt. (AT-V11)*

When thinking of being given a more important role in the proceedings victims mainly think of a more important role as a witness. This kind of role is what victims of domestic violence usually do not want. They want the proceeding to be over soon. In terms of having an important role in the proceedings, the important thing for victims of domestic violence is being actively informed by the members of the judiciary – at least by the VSSs – and having their evidence considered. Consequently, the victims, who agree to this statement, saying they would have expected to play a more important role, state that their evidence was not considered by the court, that they were not informed by the court or the police about anything new.

*I would have rather expected that the evidence suggested by me was considered. I played my role myself: after a month of severe shock, I participated very actively in the proceedings.*

*Eher dass meine Vorbringen mehr gewürdigt werden, das hätte ich mir erwartet. Die Rolle habe ich mir eh selber gegeben, nach dem Schockmonat war ich gar nicht mehr passiv. (AT-V12)*

Some interviewees, who assess the situation as bad, argue that they did not feel treated as a victim at court, rather as a “case” that needs to be closed (V5, V8, V9, V12). An interviewed victim of domestic violence reported that she would have expected to be summoned to court and to have an interview with a judge (V8). But this was not the case.

However, also in this question some interviewees faced difficulties in providing a “one-and-all” assessment. They would have preferred ticking a category of “partly/partly”, as – e.g. in one case – the interviewee would agree in case of the criminal police and disagree in case of the patrol police (e.g. V3).

*Bad and surprisingly incomplete. It started with, so I called the ambulance and I said it's a stabbing wound, and due to the fact it was a stabbing would the police immediately come with us. And I then explained the case to the police and there was no immediate intervention. I saw where the offender ran off to and it was not considered by the police. And then there was a second victim, it was not severely injured or only realised later on that he was injured. He wanted to testify out of his own accord, so file a report. And he was rejected by the police with the words: this didn't happen in our district, please go to the other district. That was the front-line police; but as soon as the case went over to the criminal police, I have to say, they acted very efficiently and did a lot of public relations work so that witnesses could be found.*

*Schlecht und überraschend lückenhaft. Also es hat damit angefangen, also ich habe die Rettung gerufen und ich habe gesagt, es ist eine Stichverletzung und aufgrund dessen, dass es eine Stichverletzung war, ist sofort die Polizei mitgekommen. Und ich habe den Polizisten dann den Fall geschildert und es ist nicht interveniert worden sofort. Also ich habe gesehen, wohin der Täter geflüchtet ist und es ist nicht darauf eingegangen worden von der Polizei. Und es war dann ein zweites Opfer, der war nicht so schwer verletzt oder hat erst später gemerkt, dass er verletzt ist. Und der hat eigeninitiativ eine Zeugenaussage machen wollen, also eine Anzeige. Und der ist abgewiesen worden von der Polizei mit den Worten: das ist nicht in unserem Bezirk passiert, da gehen Sie bitte in den anderen Bezirk. Das war die Streifenpolizei, aber sobald der Fall dann zur Kriminalpolizei gewandert ist, muss ich sagen, die haben dann schon sehr effizient urgiert und gleich einmal Öffentlichkeitsarbeit betrieben, damit man Zeugen findet. (AT-V3)*

V6 reported to the police twice: she agrees that the police carried out a committed and effective investigation in case of the first report and disagrees in case of the second. When she reported for the first time, she withdrew her report in order to give the offender a second chance. She has the strong impression that exactly for this reason the police did not take her seriously anymore when she reported against the same offender for the second time.

## 5. Victims' active participation

### 5.1. Views of practitioners

5.1.1. According to the interviewed practitioners, are victims heard during the proceedings at important stages or before decisions are taken (Question Pr 5.1)?

The assessments are homogenous among the interviewed public officials (P1-5, J1-8): victims of violence are **heard at least two times during the investigative procedure**: a) at the police in the course of the first interrogation and b) at court – either in the court room or in the frame of an adversary interrogation. According to interviewed police officers, the victim can always be summoned as long as the case is in the stage of being investigated, and as long as there are open questions. The victim may also contact the police in case they have something additional to report. According to interviewed judges and prosecutors, victims may rise to speak again before the judgement is given. Apart from that, they are only contacted by the authorities if their interests are affected, e.g. in the case of a diversion (out-of-court solution) or releasing the offender.

Interviewed members of **VSSs** have a different perception. According to them **victims are not heard apart from testifying as a witness at the police**, they do not have a say in the proceeding and they may only speak through their legal representation (S1-4).

Victims with special protection needs, such as victims of sexual violence, are not even present in the court room; they cannot be heard in the main trial. In order to **prevent secondary victimisation**, these victims' statements are heard in court through a video-tape. According to an interviewed lawyer (L4) some judges are satisfied if the victim confirms the content of the police record, then there is no second interview (be it in the court room or not). **Should a victim insist on being present in the court room during court trial** in order to ask questions or have a say, **they may have a disadvantage because they would not appear very victimised to the judge** (L1, L2). Thus, "too active" participation in the proceeding might influence the outcome negatively.

An interviewed lawyer points out that the **victim's lawyer is present in the trial and she may be heard or say something or ask questions**. She may also request that the victim is heard again or invite the victim to be physically present in the main trial. This lawyer acknowledges that an active participation in the sense of being present in the court room during the trial depends on the victim, not on the criminal justice system. According to her the judiciary offers the victim the possibility not to be present in the court room **ONLY** to avoid secondary victimisation or confrontation with the offender, not because they want to exclude the victim (L2).

*One thing implies the other: you testify as a witness, that's what it's called, right? And when should I listen to you again? A judge, or who shall listen to you? Also the victim is not part of the main proceeding. A victim in the classical sense is listened to at the police and then at the adversary interrogation. This video story. And in the main proceeding I am alone and the video is played, that means the opportunity to hear the victim again does not even exist, unless I say I want the victim to be heard again. And if they want that, then they are asked again by the judge, she [the victim] came back again but after the testimony she was gone again immediately!*

*Das eine impliziert ja das andere: Sie machen eine Zeugenaussage, das nennt sich so, ja? Und wann soll ich Sie sonst noch anhören? Als Richter oder wer soll Sie dann noch anhören? Außerdem ist das Opfer ja nicht dabei bei der Hauptverhandlung. Ein Opfer im klassischen Sinne wird angehört bei der Polizei und dann bei der kontradiktorischen Einvernahme. Diese Videogeschichte. Und in der Hauptverhandlung bin ich alleine und da wird das Video vorgespielt, d.h. da besteht gar nicht die Gelegenheit, das Opfer nochmal anzuhören, es sei denn ich sage, ich möchte dass das Opfer nochmal angehört wird. Und wenn sie es will, dann wird sie schon vom Richter befragt, die ist dann nochmal gekommen, aber nach der Aussage war die sofort weg! (AT-L1)*

This assessment was confirmed by another interviewed lawyer, who states that victims should always be asked if they want to testify at court (even if the offender's defender is satisfied with reading out the police record). Currently it is a decision of the court (L2, L3, also L1).

Hence, the active participation of victims in the proceedings at important stages or before decisions are taken might cause the risk of secondary victimisation. Or vice versa: measures to prevent secondary victimisation also prevent victims from having a say in the proceeding/court trial. These victims still may speak through their legal representation.

However, **the main problem mentioned by interviewees of different professional groups is that the prosecutor terminates procedures without interviewing the victim.** In these cases all active participation is prevented (S1-S4, L4).

5.1.2. During the investigation, are victims entitled to ask that relevant evidence is secured (Question Pr 5.2)?

Interviewees **homogenously confirm that victims have an entitlement to ask that relevant evidence is secured.** The decision on whether or not to use evidence must be taken by the court, respectively by the prosecutor – thus, there is no right to have the evidence secured.

5.1.3. Are victims entitled, during court trial, to call for any evidence they view as relevant (Question Pr 5.3)?

Interviewees of all professional groups **homogenously confirm this entitlement.** According to the Criminal Procedure Code (*Strafprozessordnung*) victims are entitled to file a request for taking evidence. Again here, they have no influence on whether or not it is considered as relevant by the prosecutor.

*In principle, yes. So they are entitled. I am a bit hesitant because victims often come with issues that cannot be used as evidence. So – as I said – the people inform themselves through TV and TV series and there are the things that in reality are not evidence, which are brought in by the victim, and which could not be considered as evidence because it was manipulated, and so on. So in principle, of course they are entitled to ask, but it could be the case that it is explained to them that securing it and archiving it won't be of much help, because it will not be authorised in court.*

*An sich ja. Also berechtigt sind sie. Ich zögere ein bisschen, weil Opfer oft mit Dingen daher kommen, die kein Beweis sein können. Eben – wie gesagt – die Menschen informieren sich über Fernsehen und Fernsehserien und da gibt es halt die Dinge, die in Wahrheit keine Spureträger sind und die vom Opfer gebracht werden und das deswegen kein Beweis sein kann, weil das manipuliert wurde und so weiter. Also prinzipiell ja, natürlich sind sie berechtigt, kann aber sein, dass ihnen erklärt wird, das bringt nicht viel das jetzt sicher zu stellen oder zu archivieren, weil das bei Gericht dann nicht zugelassen wird. (AT-P1)*

Two interviewed lawyers mention that victims only have this entitlement if they join the proceeding as a private party (L2, L3). An interviewed lawyer mentions that many victims join the proceedings only for this reason (L2). However, in this case also victims (and their legal representatives) may only apply for considering this evidence.

Interviewed members of VSSs (S1, S2, S3, S4) point out that there are practically too few opportunities to make use of this right in case the procedure is terminated by the prosecution at a very early stage (see section 4.1.2).

5.1.4. According to the interviewed practitioners, are victims entitled, during court trial, to ask questions or have questions being put to witnesses (Question Pr 5.4)?

All interviewees are aware of the right of victims to ask questions during the court trial. The interviewed lawyers homogenously confirm that in practice the victims' lawyers ask these questions on behalf of the victims. Consequently, an un-represented victim cannot make use of this right. This is because the victims are not allowed to be present in the court room before they are heard. After their interrogation, they are actually allowed to take a seat in the court room (and to pose questions if needed), but they are not actively invited to do so (L3, L4).

*Yes, through their legal representation. If victims of domestic violence would be present in the main trial and ask questions, the judge would immediately become doubtful and call the victimisation or the victim's credibility into question.*

*Durch die Vertretung, ja. Auch Personen in Selbstvertretung könnten dies machen, aber es findet nicht statt. In dem Bereich der Opfer von Gewalt im sozialen Nahraum würden die Richter skeptisch werden, wenn ein Opfer zu forsich auftritt und Fragen stellt, sie würden die Viktimisierung/Glaubwürdigkeit des Opfers in Frage stellen.. (AT-L3)*

Measures to prevent secondary victimisation also exclude victims from the court trial. Still – if a victim insists on attending the trial s/he is allowed to be present in the court trial and pose questions. If victims of violence – particularly those with special protection needs – would be present in the main trial and ask questions, judges would become doubtful and call the victimisation or the victim's credibility into question. Thus, VSSs advise their clients against being present in the main trial. They rather recommend victims to let their legal representatives ask their questions (S1-S4). Interviewed judges and prosecutors confirm that according to their experience usually not the victims but their legal representatives ask questions. An interviewed judge says that victims are not allowed to ask questions (J8). An interviewed judge reports that only the legal representative of the victim may ask questions (not the victims themselves) and this is also only possible if the victim is a party to the proceeding (J6).

*No. [the interviewee thinks about it, I.M.] no. So the (...) no, so neither to the accused person (...), the only exception is the detour via the legal representative or the legal support service, who participates in the proceeding, in the sense of a right to pose questions – just like the prosecutor or the defence lawyer. But the victim themselves – this does not occur in practice.*

*Nein. [der Interviewpartner denkt nach, I.M.] nein. Also die (...) nein, also weder an den Beschuldigten (...), also die einzige Ausnahme ist der Umweg über die juristische Prozessbegleitung oder über den Opfervertreter, der eben dann als Verfahrensbeteiligter dabei ist, im Sinne von Fragerecht – genauso wie der Verteidiger oder der Staatsanwalt. Aber das Opfer selbst – kommt in der Praxis nicht vor. (AT-J6)*

No questions have to be put to witnesses except those which have to be posed in the course of victims' instructions, such as: asking if they want to join the proceeding as a private party or if relatives of offenders want to refuse to testify. Other than that, interviewees homogenously confirm that there are no questions which have to be put to witnesses during court trial.

#### 5.1.5. Which safeguards are implemented, if any, ensuring that victims' participation in proceedings is not impeded or rendered impossible by the victim's irregular status of residence (Question Pr 5.5)?

Safeguards are implemented **only for victims of human trafficking** who have an irregular status of residence: **they may stay in the country**. If the victims' participation as witness is needed for the criminal procedure, they may stay for the proceeding. However, these victims have to apply for it at the foreign police, e.g. telling them that they are obliged to testify as a witness in a criminal proceeding. Then they have the possibility to a temporary settlement for the proceeding. This is no victim's right but an option in favour of the functioning of the criminal proceedings. An interviewed prosecutor (J7) mentions that this option is only used in case the court needs a personal impression of the victim/witness, which is usually the case in human trafficking or forced prostitution. However, this can also be achieved through an **adversary interrogation before the court trial takes place**. Then the hearing is carried out by the court and the following actors are present: a member of the prosecution office, the

defence lawyer, the suspect offender and the victim (in a separate room). The suspect offender has the right to pose questions on the witness (victim). Similar to the adversary interrogation, in order to prevent secondary victimisation, the victim's statement is audio-video recorded and played during the court trial. The victim might already be deported at that time.

The interviewed police officers emphasise that this issue is outside their area of responsibility and competence (P1-P5). The competent authority is the Federal Ministry of the Interior and the law enforcement authority is the foreign police, not the criminal police. **Criminal police officers are obliged to inform the foreign police in case of a criminal offence when a victim with an irregular status of residence is involved.** Then the foreign police procedure runs parallel with the criminal procedure. Interviewed police officers note that victims with an irregular residence status are treated like other victims. Thus, they have victims' rights and entitlements until the proceeding has commenced. (P1, P2). Interviewed officers also mention the possibility of a deportation but acknowledge that it is almost never used in practice. The victims rather stay in the country and are supported, for example in a women's shelter, until the end of the proceeding (P3). An interviewed police officer notes **that asylum seekers usually have a support person with them when they report, while unaccompanied victims, who are staying in the country illegally, simply do not report (P5).**

Judges and prosecutors point out that the court aims at letting the victim stay in Austria until the procedure has ended, but it is the decision of the Federal Ministry of Interior and respectively the foreign police (J4, J1, J3).

Interviewed members of VSSs support the assessment that safeguards are implemented only for victims of human trafficking (S1-S4). Only this group of irregularly staying victims may always remain in the country to participate in the proceeding.

According to interviewed members of VSSs, irregularly residing victims of violence who have not been trafficked may be deported before the procedure ends. S1, S3, S4 also notice that underreporting might play an important role when it comes to violence exercised against persons who have an irregular status of residence. These victims will neither go to the police nor to a victim support service and thus are very vulnerable victims without access to support.

*That surely happens, that people don't file a report because of that, I'm very sure about that. But the criminal proceeding actually shouldn't have any influence on that. It shouldn't be about the residency status or the residency, but I am very sure about the fact that people are scared. We also sometimes have that in the case of asylum seekers, that they are scared to file a report. They are not in the country illegally, but they often have reservations about that having a negative impact on their asylum proceedings.*

*Das kommt sicher vor, dass Leute deswegen nicht anzeigen, da bin ich mir sehr sicher. Aber das Strafverfahren sollte eigentlich keinen Einfluss haben darauf. Da sollte es nicht um den Aufenthaltstitel oder den Aufenthalt gehen, aber dass Leute Angst haben, da bin ich mir ganz sicher. Wir haben das auch manchmal bei Asylwerbern, dass die auch sogar die eine Angst haben, eine Anzeige zu machen. Die sind ja nicht illegal im Land, aber haben auch oft Bedenken, dass das sich negativ auswirkt auf ihr Asylverfahren. (AT-S1)*

5.1.6. To what extent did the interviewed practitioners, divided by professional groups, agree to the following statement (Question Pr 5.6)?

Victims should be offered more opportunities to actively participate in the proceedings.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	3	1	0	0	0	4

P	0	2	3	0	0	5
J	0	0	6	2	0	8
L	0	1	2	1	0	4

S1 points out that **for victims it is difficult to understand that they are not the main person in the proceeding**. For victims, the procedure takes place only because of them, because of the harm done to them. However, **during the procedure they realise that it is actually not about them, but rather about the offender**. This is perceived as particular problem for victims who seek restoration through the criminal proceeding as such – they can hardly find it.

*Victims have a very subordinated role in the proceedings, they don't have very many rights and those who are party to the proceedings are not always taken into account that much by the judiciary, or perceived as good. So witness later the injured, is what it was called before. For the victim it's very difficult to understand that they are not the main person in the proceeding, because something was done to them, they were injured and now suddenly it's not about them, and they can't find this form of restoration that they seek in a criminal proceeding.*

*Opfer haben eine sehr untergeordnete Rolle im Verfahren, sie haben nicht sehr viele Rechte und eigentlich eine Verfahrensbeteiligte, das wird von der Justiz nicht immer wahnsinnig beachtet oder wahrgenommen oder als gut empfunden. Also Zeuge, der halt dann Geschädigter haben sie früher geheißten. Für das Opfer ist es ganz schwer verständlich, dass sie nicht die Hauptpersonen sind im Verfahren, weil ihnen wurde was angetan, sie wurden verletzt und jetzt plötzlich geht es nicht mehr um sie und sie finden nicht diese Art von Restauration, die sie suchen im Strafverfahren. (AT-S1)*

The interviewed lawyers perceive it heterogeneously: L1 and L4 disagree, as they see enough opportunities for victims to participate in the proceeding in the current legal and practical situation.

*Strongly disagree, we already have it, we already can it, we can everything.*

*Stimme ich überhaupt nicht zu, hamma ja, können wir ja, können wir ja alles (AT-L1).*

L2 and L3 expressed an opinion similar to that of the interviewed members of VSSs. However, when discussing the active participation of victims in criminal proceedings, they put a stronger focus on legal issues than the interviewed members of the S-group, who are not lawyers all of them but also social pedagogues. Accordingly, these two interviewed lawyers agree that victims should be offered more opportunities to actively participate in the proceedings. Concretely they claim for a stronger **legitimation of remedies** (which would also be a form of participation) to exercise the right to active participation in practice, too (L2, L3). Interviewed prosecutors and judges mention that **they would disagree in the sense of giving victims more rights to actively participate, but would agree in the sense of better informing the victims about their rights and possibilities** to participate actively in the proceedings (e.g. J1, J2, J4, J7).

Prosecutor J6 agrees only partly:

*Here, I have to say it depends again: I agree in the sense of more possibilities to facilitating access to their rights to actively participate; I disagree in the sense of giving them more rights. I say disagree, as I am most likely expected to position myself. I indeed believe that victims should participate more actively, but I also believe, that we already have implemented many possibilities to participate. The problem is only, that victims make use of these possibilities – keyword information.*

*Da muss ich schon wieder kommt darauf an sagen: mehr Möglichkeiten im Sinne eines Zugangs, sich zu beteiligen: ja, mehr Möglichkeiten im Sinne von mehr Rechten: nein. Ich sage einmal, ich stimme nicht zu, nachdem ich mich wahrscheinlich festlegen muss. Ich finde schon, dass sich die Opfer mehr*

*beteiligen sollen, finde aber auch, dass es bereits sehr viele Möglichkeiten gibt, sich zu beteiligen. Es hapert nur daran, dass die Opfer diese Möglichkeiten auch wahrnehmen – Stichwort Informierung. (AT-J6)*

Prosecutor J5 disagrees, as there are already enough possibilities for the active participation of victims in criminal proceedings and prosecutor J7 even argues that more participation would entail “private investigations” which is perceived as problematic for the rule of law. J1, J2, J3 disagree as well holding the opinion that victims already have these possibilities, although some acknowledge that they might not be informed about them.

## 5.2. Views of victims

5.2.1. According to the victims interviewed, were they heard during the proceedings at important stages or before decisions were taken (Question V 5.1)?

### Domestic violence:

The interviewed victims of domestic violence reported that they **only testified as a witness**, mostly in the frame of an **adversary interrogation**. Some of them reported that they felt somehow isolated in this separate room, although they acknowledge that otherwise they would have been unable to stand the confrontation with the offender (V4, V11). At the same time it was a bit disturbing for them that everybody (offender included) could see them in the video and they themselves see nothing. Thus, interviewees suggested that they **would have preferred to have also a small video-monitor in their room in order to see the scene in the courtroom** (and the offender’s reactions on their statements). Some victims of domestic violence **had expected to be heard by the prosecutor** (V10, V1, V4), others not. E.g. a victim of stalking reports that she was not interested in being heard other than her testimony or asking questions to the offender. She just wanted to get over it (V2). All interviewees reported that they would have expected to be updated by the prosecutor and the court. They expected it from the court, but received it from the VSSs.

### Other forms of violence:

The victims of other kinds than domestic violence homogenously report that they **were not heard during important stages of the proceedings or before decisions were taken**. They only testified as witnesses at the police and at court. An interviewee, whose **proceedings were terminated** by the prosecution, **had not been heard by the prosecutor before he took this decision** (V5). He only received the notification about the termination of the procedure. The findings indicate that victims indeed would have liked to be heard or involved to a larger degree, and they were disappointed that this was not the case.

5.2.2. During the investigation, were the interviewees informed that they could ask for the evidence they considered relevant to be secured (Question V 5.2)?

### Domestic violence:

The answers provided by the interviewees are **heterogeneous**. Some report that they have been informed about this, others refuse. Again others **knew about this option and asked for evidence, but it was not considered or the police even denied that they received the evidence from the victims**. Those, who were informed about this option, were informed by VSSs and not by the actors of the criminal justice system. Others cannot remember correctly but believe that this was not the case (V2).

### Other forms of violence:

The answers by victims of other types of violent crimes are also heterogeneous: two **cannot remember correctly** but do not believe that this was the case (V1). These interviewees did not want to be involved into the proceeding too strongly. In one case, **the victim’s legal representative informed her** and also applied for the consideration of evidence. In two cases, the victims asked the police to consider evidence, they **knew about this right on their**

**own or at least believed that this would be possible anyhow** (as it helps the police). However, interviewees reported that the police did not use this evidence (V9, V12). One person named a witness who saw the offence, but this person was not contacted by the police (V5); in the same case the aggressor sat in a car and the interviewee noted the license plate but had the impression that the police also ignored it.

To sum up: It does not help the victims to be informed that they may ask for the evidence to be secured, if this evidence is not considered in the procedure and if they are not informed about the reasons for non-consideration.

### 5.2.3. During court trial, were the interviewees informed that they could call for any evidence that they considered relevant (Question V 5.3)?

The answers are of **domestic violence victims** are homogenous: the interviewees report that they were not informed about this (V1, V4, V6, V8, V10, V11); others say that their legal representation called for this evidence (V2). One interviewee reports, that she would have made use of this option if provided. She would have recommended hearing witnesses. She actually suggested witnesses at court, but they were not considered (V8). She says:

*What I would improve next time is: I had witnesses [...] I said this at court indeed, but I was not granted this opportunity. They said to me that this is the last trial and it is on the core of the incident and new witnesses are not necessary. But then, the trial was not on the core of the incident. Because those witnesses, who paraded into the court room, they did not know anything on how it is at our home. They were relatives; I have the impression that our social worker should have been invited as a witness. But I thought that my lawyer is responsible for this [calling for evidence, I.M.].*

*Was ich beim nächsten Mal besser machen würde, ist: ich habe ja auch Zeugen. [...] Ich habe es zwar bei Gericht gesagt, aber die Möglichkeit habe ich nicht bekommen. Es hat dann geheißen: Es geht bei der letzten Verhandlung ums Wesentliche und da sind diese Zeuginnen nicht notwendig. Aber es ist dann bei der Verhandlung aber nicht um das Wesentliche gegangen. Weil die Zeugen, die da alle aufmarschiert sind, die wussten ja nichts, wie es bei uns zu Hause aussieht. Es waren zu viele Verwandte, mir kommt vor, es hätte mal unsere Sozialarbeiterin aussagen sollen als Zeugin. Aber ich habe gedacht, dass da die Rechtsanwältin zuständig ist. (AT-V8)*

The interviewed **victims of non-domestic violence** provide heterogeneous assessments: some say yes (V1, V7), others say no (V12, V5), and others say that their legal representation called for this evidence (V9).

The question what accounts for these differences in victims of non-domestic violence cannot be seriously answered with the findings of the interviews with victims. A possible reason could be that not all victims joined the criminal proceeding as a private party, which is the precondition for having the possibility to call for evidence. Non-parties to the proceeding do not have this possibility and thus do not get informed about this. Furthermore, victims, who testified in the frame of a contradictory interrogation and who were not present in the court trial, might have assigned their lawyers with this. However, it could also be the case that they were informed indeed (at least by their legal representative) but cannot remember.

### 5.2.4. During court trial, were the interviewees informed that they could ask questions or have questions being put to witnesses (Question V 5.4)?

#### **Domestic violence**

The majority of victims of domestic violence state that they were **not informed about this option**. One interviewee stated that she was aware of this option already before the proceedings. At the same time, the majority of victims **had these questions posed by their legal representatives**. Those who did not use this option did not want to do so.

#### **Other forms of violence**

The assessments of the victims of non-domestic violence, who had access to a court trial, differ: **some say yes** (V3, V7), **others say no** (V9). Some of these interviewees, who were not informed about this option, stated that they had nothing to say or ask anyway. One victim was informed about this option and asked questions indeed (V7).

#### 5.2.5. To what extent did the interviewed victims agree to the following statement (Question V 5.5)?

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
Overall, I would have liked to have more opportunities to be involved in the proceedings.	4	5	3	0	0	12

Please provide an analysis and your own interpretation of the results:

Explanation for (strong) agreement in cases of domestic violence: V4 reported that **in retrospective she regrets that she has used an adversary interrogation without presence in the courtroom**. Her supervisor from the VSS recommended her to avoid an encounter with the offender and she followed this recommendation. Looking back, the interviewee would have insisted to testify directly in the main trial, facing the judge and the prosecutor. She criticizes that the prosecutor had never seen her and for this reason calls into question his ability to judge.

*It's not like they didn't try to talk me out of joining. The woman from the Centre for Victim Protection and the lawyer said that it's not good for me to join. My mum also said that I shouldn't go in. But if I could turn back time then I would have persisted to make the testimony in the room. In front of the judge, in front of everyone in the room. That maybe would have been better. It probably would have also helped a lot more than having me extra and him extra. The prosecutor never saw me and I think that a prosecutor cannot judge as well if he doesn't face the victim and talks to her.*

*Dass sie mir das nicht ausgedreht hätten, dass ich mitgehen soll. Die vom Gewaltschutzzentrum und der Rechtsanwältin haben gesagt, dass es nicht gut ist, wenn ich mitgehe. Meine Mama hat auch gesagt, dass ich nicht reingehen soll. Aber wenn ich die Zeit zurückdrehen könnte, dann hätte ich darauf bestanden, dass ich die Aussage im Raum mache. Vor dem Richter, vor allen im Raum. Das wär vielleicht besser gewesen. Es hätte mir sicher auch viel mehr geholfen, als wie dass ich extra und er extra. Der Staatsanwalt hat mich nie gesehen und ich glaube, dass ein Staatsanwalt nicht so gut urteilen kann, wenn er einem Opfer nicht gegenübersteht und mit ihm redet. (AT-V4)*

Another victim of non-domestic violence strongly agrees and reports that he police treated him as an offender in the beginning. Consequently, in the beginning of the proceeding he was not at all involved as a victim. Later on, at the stage of a court trial, this changed.

*At the court trial, more active involvement is not possible, I would say. But earlier, it was torture until my report was acknowledged by the police.*

*Beim Gerichtsverfahren geht net mehr, sage ich. Aber vorher, bis die Anzeige aufgenommen wurde, das war wirklich eine Tortur. (AT-V9)*

Other interviewees, who agreed, state that they would have preferred to be pro-actively updated by the authorities. Those whose proceedings were terminated because of lack of evidence reported stated that they would have liked to be heard by the prosecutor first. Again, others say they would have liked their evidence considered or at least to get an explanation why the evidence was not considered.

## 6. Protection against secondary victimisation

### 6.1. Views of practitioners

6.1.1. According to the practitioners interviewed, do the police on an individual basis assess whether measures need to be adopted in order to protect a victim of violent crime against secondary victimisation (Question Pr 6.1)?

The assessments differ within and between professional groups. Interviewed members of victim support services mention a new regulation in Austrian law which was set up in the course of implementing EU Directive 2012/29/EU. This regulation foresees an individual assessment of “special protection needs” in order to prevent secondary victimisation and tasks the criminal police with it. The criminal police are obliged to assess if protection measures to prevent secondary victimisation are necessary or not.

**Members of VSSs and lawyers homogenously believe that the police do not meet this obligation routinely.** Only individual police officers do. Different reasons are identified for this: lack of awareness on the issue of secondary victimisation, lack of awareness on the duty to assess the need for special protection measures, lack of competence to assess this or personal issues in the respective police officer. Furthermore, it was stated by the members of the professional groups L and S that secondary victimisation mostly happens on the job unintentionally. Police officers ask questions, scrutinise and call into question what the victim said. Victims then have the impression that they are not credible, the police calls into question what has happened to them and therefore feel victimised.

Some interviewed police officers support the assessment of the VSS members and lawyers (P1, P5):

*Too little [is the risk of secondary victimisation assessed], it depends on the training and the engagement of the individual police officer, because secondary victimisation already happens during the interrogation, it concerns the ability to empathise and the experience of every individual officer, how far they can take responsibility for that [secondary victimisation] simply not occurring. And there we simply lack the training. A lot more should be done.*

*Zu wenig, kommt auf die Ausbildung und das Engagement des individuellen Polizisten an, weil eine sekundäre Viktimisierung passiert ja schon bei der Einvernahme, beim Einfühlungsvermögen und der Erfahrung des einzelnen Beamten, wie weit er dafür Sorge tragen kann, dass das einfach nicht passiert. Und da fehlt es bei uns einfach in der Ausbildung. Da müsste man viel mehr tun (AT-P1)*

\* \*\*\*\*\*

*The police assess this (...) uhm, I believe not at all or only a little – unfortunately. At least we here do not.*

*Das beurteilt die Polizei, ah, ich glaube, nicht, bzw. wenig leider. Also von uns aus da nicht. (AT-P5)*

Others (P3, P4, P2) say that the police indeed meet this obligation to assess the risk of secondary victimisation. They point out that they do assess and explain the procedure as follows: **victims receive information about basic possible protection measures and the requirements for getting them granted. Then the victim selects the measures needed.**

*Yes, we are even obliged to assess this. If it is a victim with special protection needs, this is quite new, we are obliged to assess this before each interrogation and this also happens.*

*Ja, das müssen wir sogar. Ob es ein besonders schutzwürdiges Opfer ist, das ist neu bei uns, das müssen wir vor jeder Einvernahme abklären und das passiert auch. (AT-P2)*

The officers bring examples for such measures and thereby refer to the rule of interviewing victims of violence as little as possible. E.g. victims of sexual violence are interviewed three times in the whole procedure: the first

interview is carried out at the police inspection where the victim is identified; the second interview takes place in the department for sexual offences and is carried out by specially trained officers. Finally the third (and last) hearing happens at court in the context of an adversary interrogation without personal contact to the suspect offender and their legal representative. In all hearings only a few and always the same persons are present. Victims are entitled to interrogations by same-sex officers (P2, P5).

**Other interviewed police officers** however perceive it differently and thus support the assessment of the VSSs. They **say that the police do nothing in this regard** (P3, P4) or they do not do it effectively (P1). According to these officers neither is there a need for such measures because all police officers are trained to treat victims of violence in a respectful manner. These officers deny that secondary victimisation may happen in the course of the proceedings. According to them, secondary victimisation through the proceedings is a problem of the past. According to them there is no separate assessment (needed) to prevent secondary victimisation (P3, P4). A third type of assessment found in the group of interviewed police officers is based on the lack of knowledge and experience. This officer states that they neither know whether this is assessed, nor which measures should be adopted in such cases (P5).

The information provided by the interviewed prosecutors and judges is also heterogeneous, one states no (J5), others say yes (J7, J1, J8, J3). Some judges/prosecutors also provide a differentiated assessment of the practice, saying that some officers indeed assess this, while others do not (J6) and some do not know (J2) or do not know how (J8). The judges, who confirm that the police assess the need for special protection measures, also explain how the police do it. The same judges also state that it is working effectively (J7, J1, J3).

*Yes. They inform the victims about the special protection measures available (contradictory interrogation, female officers, etc.). The victim then may select. This works well. Certain adult victims have the rights to special protection measures, such as long-term abuse, human trafficking, "Fritzl-case" and the like.*

*Ja. Die informieren die Opfer über die verfügbaren Schutzmaßnahmen, z. B. kontradiktorische Einvernahme, Einvernahme durch weibliche Beamte. Das Opfer kann dann aussuchen und das funktioniert gut. Gewisse auch erwachsene Opfer haben diesen Anspruch auf besondere Schutzmaßnahmen, z. B. Opfer von langjährigem Missbrauch, Menschenhandel, wie beim Fritzl-Fall (AT-J3)*

At the same time, judges confess that officers in rural inspections are not so aware about the duty to assess the need for special protection measures (J6).

Similarly to the police, there were also judges and prosecutors who **deny the need for such measures**. These interviewees are not aware that secondary victimisation still plays a role and argue that prevention measures are adopted routinely and there is no need for an individual assessment. They rather refer to positive developments regarding the awareness of the CJS-actors. If secondary victimisation still takes place, it is in individual cases only and takes place unintentionally.

Interviewed members of **VSSs homogenously suggest tasking victim support services with the assessment and not the police** (S1-S4). They argue that they are more competent and aware of secondary victimisation and victims' needs. Furthermore, they argue that the police have a lot of duties and obligations, their work is case-related and (suspect) offender related rather than victim-related, while VSSs follow a victim-related approach and thus have the qualification to assess these needs. Thus, they suggest that the police should immediately refer the victim to a VSS, who then should assess the need for protection measures. This proactive approach is already applied in cases of restraining orders adopted by the police in case of domestic violence, and should be extended to other cases of vulnerable victims of violence.

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

- a) in the court building during the trial or
- b) at other occasions (e.g. an identity parade or the recording of the victim's statement; Question Pr 6.2)?

Ad a) **Measures are adopted, but not routinely applied.** They are applied only upon request of the victim and they do not work effectively in practice.

The assessments differ in the group of judges and prosecutors. Some say that this happens routinely, others say that it happens but not routinely – the victim (or their legal representative) have to ask for it. Separate waiting rooms for witnesses are available at court but not offered routinely. Again others just mention the measures: separate hearings and counselling of victim and suspect offender in the court building, **adversary interrogation** (*kontradiktorische Einvernahme*) prior to the main trial and **gentle interrogation** (*schonende Einvernahme*) during the main trial, whereby the offender has to leave the room while the victim is interviewed, but do not provide information about the concrete ways of adopting these measures. Only the adversary interrogation is identified as an effective measure to avoid such encounters at court. Thereby, victim and offenders are interviewed separately in the frame of different appointments or at least in different rooms (during the same appointment). Even if the suspect offender and the victim are routinely summoned in a time-delayed manner, encounters cannot be avoided in the court building during the trial.

The adversary interrogation is applied in the majority of cases of sexual and domestic violence. Here the victims are interviewed before the trial and their statement is audio-video recorded and played during the court trial. Interviewed judges and prosecutors however mention that the **suspect offender also has the right to pose questions to victims**. The adversary interrogation is not perceived as effective from the perspective of suspect offender's rights. In order to solve this practically the victim is present in the main trial and the offender leaves the room while the victim testifies – the gentle interrogation is applied. Thereby the offenders wait in another room, can hear what is said and pose questions to the victim via their legal representative. The victim does not see the suspect offenders while they testify. According to interviewed members of the J-group, the gentle interrogation ensures the suspect offender's rights and prevents the victim from encountering offenders.

This assessment is confirmed by the interviewed lawyers and the interviewed members of VSSs (S3, S4). They say that judges are not in favour of separating the victim from the court room. Judges rather want to see how the victims react when being confronted with the suspect offender. Thus, judges do not routinely adopt such measures, they rather wait until victims (or more likely their legal representatives) apply for these measures. The court does not offer this possibility to victims, the victim support services have to apply for it (S1, S2).

In case of denial, judges justify this referring to the rights of the suspect offender: they must be able to listen what the main prosecution witness says and they must be able to pose questions on them. Furthermore, they notice that there are no separate entrances in the criminal court building for victims and suspect offenders.

*Many things that are laid out in the law have not been implemented in our case – it's still rather new and there are different degrees to which they have been implemented. But I do think that for example when it comes to small things, victims have the right to be treated rather carefully so that influences or inconvenient encounters at court can be prevented. Logistically seen that is not possible and I would approve of such possibilities being created so that these encounters don't happen anymore.*

*Viele Dinge, die im Gesetz vorgeschrieben wurden, sind bei uns noch nicht umgesetzt worden – das ist ja noch recht jung bzw. gibt es unterschiedliche Grade der Umsetzung. Also ich glaub schon, dass z. B. in puncto – was ist ein gutes Beispiel – so Kleinigkeiten, die Opfer haben ja das Recht möglichst schonend behandelt zu werden, dass man möglichst hintanhält, dass Beeinflussungen oder unangenehme Begegnungen vor Gericht vermieden werden. Jetzt ist das räumlich gesehen nicht möglich und da wäre ich schon dafür, dass man solche Möglichkeiten schafft, dass das nicht mehr passiert – dieses Zusammentreffen. (AT-J4)*

The civil court does not at all care for this although certain protection measures (e.g. preliminary injunction, divorce) need to be applied at civil court.

To sum up: in practice victim support services and victims' lawyers routinely care for the effective implementation of these measures (S1, S2, L1-L4). The **CJS do not have an interest to provide these measures routinely (J3, J5, J7) – they offer this possibility only this upon request (S1, S2, L1, L2).**

Ad b) The interviewees homogenously report that the **police routinely adopt such measures**. They argue that the police have an interest in avoiding contacts between offender and victim, just because they must not influence each other. In the case of identity parades encounters are definitely avoided, and in case of a police interrogation the two parties are never summoned at the same time. Victims are always heard days before offenders are heard. They are very aware on this – because of the need to avoid a mutual influencing between offender and victim.

6.1.3. According to interviewees, do victims have a right to ask to be interviewed by or through a professional trained for that purpose (Question Pr 6.3)?

The answer is clear and provided homogenously: **victims may ask for, but it is not a right**. Professionals trained for that purpose are only available for interviewing minor victims of violence, and not for adult victims.

Interviewed police officers mention that the **police are only obliged to offer victims of gender-based violence access to a same-sex-officer**. Other than that, the police are not obliged to offer another officer upon request of a victim. Some police officers still offer another officer upon victims' request, others do not. Those who do offer another officer argue that they do this for reasons of "criminal tactics", for the benefit of a victim willing, not reluctant to talk. Police officers who do not offer another officer if the victim feels uncomfortable argue that there is no need for specialised officers, as all police officers are professionally trained for interviewing victims (P3-P5). In any case it would be impossible to have all victims interviewed by specialised officers. This assessment is shared by interviewed judges and prosecutors.

Interviewed judges confirm that a victim can claim, but has no right to be interviewed by a specialised person, the court then decides upon the request. Severely traumatised victims are however likely to be granted being interviewed by a specially trained person.

Three out of four interviewed **lawyers state that victims have no right to be interviewed by a specially trained officer**. The remaining lawyer does not know (L4).

6.1.4. Can victims ask to be interviewed before the court trial and to have their statement audio-video recorded and played during the court trial (Question Pr 6.4)?

In Austria this type of interviewing is called adversary interrogation. According to interviewed practitioners of P 1-5, J 1-8 and S 1-4 **victims of sexual violence, domestic violence or dependent victims are likely to have it granted by the court**. However, they have to ask for it, it is **not granted routinely**. E.g. J5, who is a prosecutor, says with regard to victims of gender-based violence:

*The majority is interrogated in an adversary manner anyway, so that they don't need to come to the proceeding anymore. The video is then played during the proceeding.*

*Der Großteil wird kontradiktorisch eh schon vor der Verhandlung vernommen, dass sie zur Verhandlung nicht mehr kommen müssen, das Video wird vorgespielt dann in der Verhandlung. (AT-J5)*

Some interviewed police officers, lawyers and judges believe that **all victims of violence may ask for it and it is very likely to be granted**.

S1 and S3 mention that if a victim applies for adversary interrogation, it will not be directly refused, but may not be granted. Authorities may respond saying: "Oh please, don't put that on me, this is so complicated." And then victims' lawyers have to insist that this is granted – and indeed it is granted. However, this procedure causes disadvantages

for unattended and unrepresented victims, as they have no lawyer who insists for them. (L1) A victim not wanting to cause problems with law enforcement authorities would be hesitant to insist. They would rather say: ok, then I will accept being present in the trial. S1-S4 and L1-L3 state that **victims who are accompanied and guided by victim support services are likely to have this possibility granted.**

In this regard an interviewed lawyer emphasises that – also from the perspective of the offender’s rights – the court has an interest in having the victim in the courtroom. There is a principle of immediacy (L4). The lawyer also mentions that it is easier for the judge to assess the victim’s credibility if present. However, he acknowledges that victim’s protection against secondary victimisation is still a legitimate goal for an exception of this principle in particular cases. For this interviewee it is the main role of victim support organisations to facilitate this possibility of protection. Information and preparation for the trial are important (What does a courtroom look like? Who is who?). Prepared victims are better able to present themselves and to tell what happened than unprepared victims. Another lawyer interviewed is not fully convinced that the option of adversary interrogation is always good for victims of violence. It is a good option for victims of sexual violence. However, the negative side of the adversary interrogation is that the victim is not available in the main trial because the adversary interrogation usually takes place in the context of another appointment than the main trial. And a victim who testifies in the context of an adversary interrogation is not obliged to testify in the main trial again. Victims may take part in the main trial, too, but according to the experience of a lawyer (L1) the vast majority of victims do not want to.

*The one thing implies the other: you testify as a witness, that’s what it’s called, right? And when should I listen to you again? A judge, or who shall listen to you? Also the victim is not part of the main proceeding. A victim in the classical sense is listened to at the police and then at the adversary interrogation. And in the main proceeding I am alone and the video is played, that means the opportunity to hear the victim again does not even exist, unless I say I want the victim to be heard again or the victim is willing, if it’s really a 50:50 story. In these cases I say: yes, my [victim] is available again, she will come. She also really came, just she immediately left again after her testimony. After all, she is asked again – if she wants, she will be asked again.*

*Das eine bedingt ja das andere: Sie machen eine Zeugenaussage, das nennt sich so, ja? Und wann soll ich Sie sonst noch anhören als Richter oder wer soll Sie dann noch anhören? Das Opfer ist ja nicht dabei in der Hauptverhandlung. Ein Opfer im klassischen Sinne wird angehört bei der Polizei, wo es die Anzeige macht und bei der kontradiktorischen Einvernahme, ja? Und in der Hauptverhandlung bin ich [als Anwältin] alleine und da wird das Video vorgespielt, ja? D. h. da besteht gar nicht die Gelegenheit, dieses Opfer noch einmal anzuhören. Es sei denn ich sage, ich möchte dass das Opfer nochmal angehört wird oder das Opfer ist bereit, wenn es wirklich so eine 50:50-Geschichte ist. Da sage ich: ja, meine steht nochmal zur Verfügung, die kommt. Die kam auch wirklich, nur die ist sofort nach ihrer Aussage wieder weg. Sie wird ja befragt noch einmal – wenn sie es will, wird sie noch einmal befragt. (AT-L1)*

Of course, these victims would have the option to be present in the court trial indeed. They are also asked in the context of the contradictory interrogation if they want to be present in the main trial and testify again. However, the vast majority of victims do not want this (L1), as the adversary interrogation has exactly the purpose to prevent the presence of the victim in the court trial. Some victims however want to, in which cases L1 advises them not to:

*Some victims I really have to prevent from showing up at the main proceeding. Because I cannot say: we will do adversary [interrogations], protect you with a video and then you want to sit in the main proceeding and listen to everything? I tell them: that’s bad – I think, also towards the court. Because the judges, particularly the older ones, cannot understand this fuss with the victims: what is it with you and your victims?*

*Manche Opfer muss ich wirklich zurückhalten davor, dass sie in der HV auftauchen. Weil ich kann nicht sagen: Wir machen kontradiktorisch, behüten euch mit Video und ihr wollts dann in der Hauptverhandlung drinnsitzen und euch das anhören? Sag ich: Das ist schlecht – finde ich, auch gegenüber dem Gericht.*

*Weil die Richter ja sowieso, die älteren, dieses Geschichtsgeschäft mit den Opfern nicht nachvollziehen haben können: Was habts ihr mit euren Opfern? (AT-L3)*

The fact that the adversary interrogation is not carried out in parallel to the court trial (Hauptverhandlung) is not perceived as very good by an interviewed lawyer. She knows that also the prosecution is aware on this:

*Recently a prosecutor told me that they don't want to do adversary interrogations anymore. You can also interrogate in an adversary manner during the main proceeding, there you have the victim there. Because otherwise you often have the contradiction that you have the main proceeding, you see the victim in the video and then say: great, now I cannot ask them anymore, because they don't need to come. Then it is my responsibility as lawyer of the victim to bring her to come again, if she can. Then I would call the social support and say: listen, in my opinion it would lead to an acquittal if she didn't come, so in my 20 years of experience. And then they do come.*

*Mir hat jetzt mal eine Staatsanwältin gesagt, dass sie diese kontradiktorischen Einvernahmen gar nicht mehr machen wollen. Man kann ja auch in der HV kontradiktorisch einvernehmen, da hat man das Opfer da. Weil sonst hat man oft den Widerspruch, dass man die HV hat, das Opfer im Video sieht und dann sagt: Ja super, jetzt kann ich es nicht mehr fragen, weil es muss ja nicht mehr kommen. Dann ist es meine Aufgabe als Opferanwalt, sie dazu zu bringen, dass sie nochmal kommt, wenn sie es kann. Dann rufe ich halt diese soziale Begleitung an und sage: du, meiner Meinung nach ist das ein Freispruch, wenn sie nicht mehr kommt, also in meiner 20-jährigen Erfahrung. Und dann kommen sie schon. (AT-L1)*

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*It is very important for the court to get a personal impression of the victim. Adversary interrogations were invented so that the victim does not have to be confronted with the offender. The victim is asked before the main proceeding and it is taped on video. The video is then played during the main proceeding, so that in particular the lay judges have an impression of the victim. And sometimes – I currently have a case like this – I still let the victim come to the main proceeding, because this DVD does not give the highest personal impression of the victim. But you cannot force the victim to do this, right? Some of them are ready to do so, if you can make them believe that this is vital for the outcome of the trial if they present themselves. In my practice I work with sexual violence, sexual crimes and in those cases it's statement against statement. The victims are often very traumatised, so as lawyer you need to assess – do you confront the victim with these burdens or not, thereby risking an acquittal because the personal impression is not there.*

*Es ist sehr wichtig, dass sich das Gericht einen persönlichen Eindruck vom Opfer verschaffen kann. Man hat zwar die kontradiktorischen Einvernahmen erfunden, wo das Opfer nicht mit dem Täter konfrontiert wird. Da wird das Opfer vor der HV befragt und das wird mittels Video aufgenommen. Das Video wird dann bei der HV abgespielt, damit vor allem die Schöffen einen Eindruck vom Opfer haben. Und manchmal – ich habe jetzt so einen Fall – lasse ich das Opfer dann trotzdem nochmal in die Hauptverhandlung kommen, weil eben diese DVD nicht den höchstpersönlichen Eindruck vom Opfer verschafft. Dazu kann man das Opfer aber nicht zwingen, gell? Manche erklären sich aber dazu bereit, wenn man ihnen glaubhaft machen kann, dass es ganz wichtig für den Ausgang des Falls ist, wenn sie sich eben präsentieren. In meiner Praxis geht es ja um sexuelle Gewalt, Sexualdelikte und da ist Aussage gegen Aussage. Die Opfer sind sehr oft traumatisiert, da muss man als Anwalt abwägen – setzt man das Opfer diesen Belastungen aus oder nicht, riskiert dann aber einen Freispruch, weil eben der unmittelbare Eindruck nicht ist. (AT-L1)*

Sometimes, the lawyer of the accused brings forward new evidence or a new witness, and the interviewee - as the victim's legal representative - would like to pose a question, but the victims are not accessible anymore. The probability of sentencing the offender increases when the victim is present in the main trial. This is valid for domestic violence and violence in the public sphere, but not for severe cases of sexual violence. The prosecutors usually

apply for adversary interrogation (victim is interviewed before the main trial takes place, the statement is played in the main trial) or for gentle interrogation (victim is present in the main trial, but in another room). The victims often do not want to be separated from the main trial; they do not want to be isolated.

6.1.5. According to the interviewed practitioners, do victims have a right to ask, during the court trial, to be heard without the presence of the public (Question Pr 6.5)

Interviewed lawyers homogenously confirm that **victims of violence have the right to post a claim for a non-public trial and for getting a decision by the court**. Granting the application is a matter of balancing rights, namely victim protection against the public interest in accessing criminal procedures. The application of **adversary interrogation prevents the need for exclusion of the public**, as victims are not present during the main trial anyway (see section 6.1.4). Still, they have the right to apply for the exclusion of the public. The court finally decides and there is no immediate remedy if the court denies the requested exclusion of the public.

Interviewed professionals mention that in the case of sexual offences the exclusion of the public is often requested by victims/VSSs and often granted by the court. In practice, not the victims themselves, but rather their psychosocial and legal assistance services apply for exclusion of the public (S, L, J). Professionals understand the need for the exclusion of the public in case of sexual violence: often there are school classes in the trial (S1). The interviewed professionals understand that this is uncomfortable for the victim – but also for the suspect offender, who may also apply for an exclusion of the public.

Interviewed **judges and prosecutors** discuss this more critically. Also they acknowledge that victims of violence may claim for it. However, they mention that the **public has an interest in having access to court proceedings** (J4, J8, J7, J2). In practice, when judges decide on such claims, they weigh the interests of the victim (or the suspect offender) against the interests of the public and the media to have access to such trials (J7, J4). They grant the exclusion of the public in severe cases of violence or cases in which the victims' testimony touches their intimate lives. In other cases and more generally, the legislator has a great interest in involving the public.

6.1.6. According to the interviewees, do victims of sexual or gender-based violence have a right to ask that they are interviewed by a person of their sex (Question Pr 6.6)?

The homogenous answer of all interviewees is: yes, they do. Interviewed members of the S-group discuss critical issues that affect the effectiveness of this possibility:

1. There is **no female officer available** in the acute case. In such cases the victim has to say: I want a new appointment with a female officer. Then the male officer might say: Then you will have to wait for hours or you do it immediately with me. This means that victims have to decide whether they immediately report to a man, or whether they leave the police station again and come back later when a woman is available. (S1-4, L1-4, P3)
2. It is **not always better to have a female officer**: female officers are not necessarily more aware of victims' concerns and needs.

6.1.7. From their practical experience, did the interviewed practitioners believe that restraint is exercised ensuring that victims are not asked questions about their private or family life unless necessary (Question Pr 6.7)?

According to the interviewees' homogenous experience, no such restraint is exercised, but victims do not need to answer such questions – neither at the hearing at the police nor at the court trial. Victims are informed about this possibility to **refuse answering private questions** when they report to the police. It is part of the police's instructions of victims.

In practice, interviewed practitioners of different professional groups try to convince victims to answer such questions nevertheless, as this is important for assessing the offence (e.g. whether it is rape or sexual coercion).

An interviewed member of a VSS e.g. knows from experience that in the case answering is refused, judges say: I need these answers to assess your credibility and if you refuse to answer, your credibility might be called into question. Generally, it is the judges who decide on which questions are necessary for the proceeding, and they may ask what they want. Thus, practically it **depends on the awareness of the individual judge**. Interviewed judges confirm this and say that this restraint is exercised by them (personally).

Interviewed prosecutors argue that **private questions** are asked because they are necessary for the case indeed (J5).

*Private questions are not asked because someone wants to get off on them or wants to victimise the victim [through asking them, I.M.], but because the state of evidence calls for it, or the responsibility of the offender does. So you cannot generally exclude it – not when it comes to the area of sex. A victim of a burglary will not be asked about their sex life.*

*Private Fragen werden nicht gestellt, weil jemand sich daran begehnen will oder das Opfer dadurch viktimsieren will, sondern weil es die Beweislage einfach erfordert oder die Verantwortung des Angeklagten erfordert. Also generell ausschließen kann man sowas nicht – nicht in dem Sexualbereich. Ein Opfer eines Raubüberfalls wird nicht gefragt werden nach seinem Sexuelleben. (AT-J5)*

Particularly in case of sexual violence it may be **necessary** to have information about the victim's sexual activities, in order **to assess the victim's credibility**. J5 brings an example for the need of such intimate questions in rape cases. The victim was a waitress in a pub and reports being raped by a customer. As usual, the suspect offender confesses sex but denies rape. According to this interviewed prosecutor, you have nothing more than two conflicting statements. Then it is necessary to assess the credibility of the two. For this she asks the victim if it occurs often that she takes guests from the pub with her for sex. According to this prosecutor, it is important to find out how easy it is to have sex with this person. It is the right of the suspect offender to have this clarified in the proceeding, because it is important for the clarification of whether this was consensual sex or not. Another interviewed judge has the opinion that a victim of rape during the course of a marriage is justifiably asked about extramarital affairs, while a victim of rape in a club is not (J7).

6.1.8. According to interviewees, can victims be subjected to a medical examination without their free consent (Question Pr 6.8)?

The homogenous answer of interviewees of all professional groups is: **No**, they cannot. Only one interviewed lawyer confesses that he does not know, but also believes that this is not the case. However, if they deny the medical examination, the case will lead to nothing due to lacking evidence. The victims' refusal to be examined by a doctor will even nourish the suspicion that the person is only pretending to be a victim. Thus, victims, who refuse the medical examination will have a disadvantage in the proceeding (acquittal or termination will be more likely), but they cannot be subjected to a medical examination. An interviewed member of a VSS notices a tendency that judges and prosecutors increasingly rely on expert opinions, also medical expert opinions.

The interviewed judges and prosecutors confirm that an **examination against the victim's will is not possible**, only an examination of the oral cavity would be possible (J7). The interviewed judges and prosecutors also confirm that the victim risks an acquittal in case of refusing a medical examination (J5, J8, J1).

6.1.9. Did the interviewees agree to the following statements (Question Pr 6.9)?

6.1.9.1 The police attach great importance to treating victims in a respectful and sympathetic manner.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	0	1	3	0	0	4
<b>P</b>	5	0	0	0	0	5
<b>J</b>	2	6	0	0	0	8
<b>L</b>	0	3	1	0	0	4
6.1.9.2. The police perceive the victim primarily as a witness and hence as a means to the end of a successful investigation.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	1	3	0	0	0	4
<b>P</b>	2	3	0	0	0	5
<b>J</b>	1	5	2	0	0	8
<b>L</b>	1	2	1	0	0	4
6.1.9.3. Public prosecutors and judges attach great importance to treating victims in a respectful and sympathetic manner.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	0	0	3	0	1	4
<b>P</b>	3	2	0	0	0	5
<b>J</b>	2	6	1	0	0	9
<b>L</b>	0	1	3	0	0	4
6.1.9.4. Public prosecutors and judges don't see the victim as playing a central role in criminal proceedings.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	1	3	0	0	0	4
<b>P</b>	0	0	4	1	0	5
<b>J</b>	1	2	4	1	0	8
<b>L</b>	1	1	2	0	0	4

Interviewees faced difficulties in answering these questions as the statements are too general. The majority of the interviewees would have preferred an answer which sounds like: some police officers, prosecutors and judges

attach great importance to the victims, and others do not. These would be the right answers. The interviewees who voiced these concerns ticked both options.

An interviewed lawyer mentions that it is not the victim that is important for the criminal justice system, it is the offence that is important (L1).

*[Statement 6.1.9.3] I disagree, it is not about the victim, it is about the offence.*

*[Statement 6.1.9.3] Stimme ich nicht zu, es geht nicht um das Opfer, es geht um die Tat*

An interviewed prosecutor confirms this, saying:

*We are a law enforcement agency: for me it is about convicting the offender and secondarily, or with equal weight, protecting the victim. But fundamentally it is the task of the prosecution to prove punishable activities that have actually happened, to sue for them and to make sure that the offender is given a just punishment. And not only to permanently think: how can I do something nice for the victim? But rather think like this: how can I convict them without damaging the victim?*

*Wir sind eine Strafverfolgungsbehörde: Mir geht es darum den Täter zu überführen und sekundär oder mit einer ähnlichen Wertigkeit auch das Opfer zu schützen. Aber grundsätzlich ist es die Aufgabe der Staatsanwaltschaft, strafbare Handlungen, die sich tatsächlich zugetragen haben, zu beweisen, anzuklagen und dafür zu sorgen, dass der Täter einer gerechten Strafe zugeführt wird. Und nicht permanent nur daran zu denken: Was kann ich dem Opfer Gutes tun? Sondern so zu denken: Wie kann ich den überführen, ohne dem Opfer zu schaden? (AT-J5)*

S3 and S4 state that the police, prosecutors and judges themselves might indeed believe that they attach great importance to treating victims in a respectful and sympathetic manner. In fact, they do not always. An interviewed criminal judge points out that “sympathetic treatment” has a problematic connotation: If police, public prosecutors and judges would treat the victim in a sympathetic manner, they would be biased - however they have to be objective. According to this person, they indeed **treat the victim respectfully, but not sympathetically**. These actors have to assume that the suspect offender is not guilty until he/she has been convicted. They need to treat the victim and the offender as if the case did not happen, or at least neutrally, until the offender’s guilt has been proven by evidence (J4).

The assessments between S and L and P and J are conflicting because the former adopt a victim-centred approach and the latter adopt an offence-centred approach. The main tasks of the law enforcement authorities is to punish crime, rather than protecting victims from secondary victimisation– this is confirmed by interviewees (J3, J5, quoted above). Against this background, they would perceive it as biased if they treated the victim in a sympathetic manner – that they will do it respectfully, is clear. Victim support services and lawyers of victims on the other hand perceive it differently; the victim is the centre of their work. While interviewed lawyers are particularly aware of the judiciary’s approach and try to intermediate between the interests of the victims and those of the judiciary, the members of VSSs are exclusively oriented towards the direct interests of the victim.

To bring the differences between S and L to the point: the psychosocial victim support services (S) do not want to influence the (outcome of the) proceeding, they only want to support and guide the victim. The legal victim support services, as carried out by lawyers (L) do want to support and guide the victim AND ADDITIONALLY they want to influence the (outcome of the) proceedings, as they are the legal representatives of victims. As legal representatives of victims and as lawyers, they are more aware of how to deal with the judiciary than the psychosocial victim support services. The different views between L and S can be ascribed to these different functions.

## 6.2. Views of victims

6.2.1. According to the victims interviewed, did the police assess the need to protect them against secondary victimisation, in particular as concerns the risk of them being

confronted with offenders in an unprotected manner or the risk of interviewees having to testify within a setting that is not sufficiently protective and sympathetic (Question V 6.1)?

### **Domestic violence**

The interviewed victims of domestic violence report **that the police did not, but the VSS did**. The exception is in one case, where the victim was offered personal security by the police until the trial started, in case the offender was released from prison (V10).

Prevention from encountering the offender was of extreme importance for almost all victims of domestic violence. Some stated that they would not testify in case they had to fear such an encounter (V4, V8, V10). One interviewee had the impression that the police were very reluctant in protecting her and in investigating the case. She explains this with the fact that she had already reported domestic violence to the police before, but later on refused to testify at court and went back to her boyfriend. The interviewee had the strong feeling that they did not take her seriously anymore or assumed that she would refuse to testify anyway (V6).

### **Other forms of violence**

The interviewed victims of non-domestic violence report that the need for protection **was not assessed by the police**, but they were also not afraid of an encounter (as the offender is captivated and escorted by the police anyway). In some cases the legal representative of the victim asked them if they should apply for a “gentle interrogation”. Thereby the offender had to leave the court room while the victim testifies (V3, V7).

V9 reports that the police treated him like an offender, because the “real offenders” gave wrong testimony at the police and accused him of being the aggressor (and not the self-defender). The way the police treated him can be seen as **secondary victimisation**. The interviewee said that he was burdened by this treatment. V12 reported that he had to take care of contacting the VSS on his own and also for being accompanied by a lawyer when being interviewed by the police. This man reported that the colonel and the uniformed officer who took his statement called the information provided by him into question, e.g. through saying: but you were lying on the ground, you could not have seen anything. This person did not have the impression that the police officers treated him in a sympathetic manner.

6.2.2. Did the interviewed victims feel, at any time, exposed to a confrontation with the offender in a situation that the interviewee experienced as intimidating or stressful (Question V 6.2)?

### **Domestic violence**

The interviewed victims report that either there was **no confrontation with the offender** (V2) or they were at risk of this happening, but in the end the VSS successfully protected them against any confrontation. The interviewed victims emphasised that the **court did nothing to avoid a confrontation**. Those, who were at risk of being confronted with the offender, report that even if the offender had been escorted by police officers and handcuffed and consequently not dangerous, they did not want to see him and were very glad that the prevention of the encounter was successful. These interviewees emphasise that this was only possible thanks to their legal representative (V1, V6, V10), thus pointing out that the actors at court did nothing to avoid an encounter (as they would have expected). Interviewed victims of domestic violence are indeed aware that judges want them to testify in the court room under the presence of the offender to be able to see the victims’ reactions and the way they talk in front of the offenders. Still, victims believe that they would not have been ready to testify in the presence of the offender. In one case, a **mistake at court led to a confrontation** (V8).

*The (employees) from the Centre for Victim Protection accompanied me to the police, then they went with me to the proceeding. At the beginning I had an adversary interrogation and I was not in the room*

*my husband was in, and Ms X always sat by my side and saw to the fact I wouldn't see him, because that would have been awful. It once briefly happened that I saw him from a distance. Also before that I talked to Ms X a lot and because of that it was easier for me. They supported me really well. They picked me up from in front of the court, brought me to the courtroom with my wheelchair, they even put my blood pressure measuring device in their bag.*

*Die vom Gewaltschutzzentrum sind zur Polizei mitgegangen, dann haben sie mich begleitet zu der Gerichtsverhandlung. Am Anfang hatte ich eine kontradiktorische Einvernahme und da war ich nicht in dem Raum, wo mein Mann war und die Frau X ist immer an meiner Seite gesessen und hat geschaut, dass ich ihn nicht sehe, weil das wäre furchtbar gewesen. Einmal ist es ja passiert, dass ich ihn kurz von der Ferne aus gesehen habe. Auch davor habe ich mit der Frau X viel gesprochen und dadurch ist es mir schon leichter gefallen. Da haben sie mich sehr gut begleitet. Die haben mich vor dem Gericht abgeholt, haben mich in den Saal mit dem Rollstuhl gefahren, haben sogar meinen Blutdruckmesser in ihre Tasche getan. Die waren super. (AT-V8)*

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*But you do have slight paranoia when you leave the room, that he will be somewhere outside, you are tense. Hopefully I will not see or hear him.*

*Man hat dann aber leichte Paranoia, wenn man aus dem Raum rausgeht, dass der dann irgendwo draußen steht, man ist angespannt. Hoffentlich sehe oder höre ich ihn nicht. (AT-V10)*

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*So the fact that I didn't see or hear him, that is the sole achievement of the Centre for Victim Protection. Because I did almost see him. They made it happen that we got an extra room, because otherwise it would have been the case that you get there, you wait in front of the courtroom and he will also go there, obviously handcuffed and with an officer, he can't do anything to me, but I would definitely have seen him. So that he leaves while I testify, that would have worked anyway, but I would definitely have met him, because that was (...) the officers did walk past with him and Ms X then somehow managed that I didn't see him. But that was the sole achievement of the Centre for Victim Protection, it wouldn't have worked just like that. It would be very important to be informed about that: you can wait here. Because not everyone will have such a great lawyer. So this should be informed about.*

*Also dass ich den gar nicht gesehen habe, das ist eine reine Leistung vom Gewaltschutzzentrum gewesen. Weil ich hätte ihn schon fast gesehen. Die haben das gemacht, dass wir einen extra Raum haben, sonst wäre das ja so gewesen, dass man hinkommt, vor dem Saal wartet und der kommt ja auch hin, natürlich gefesselt und mit einem Beamten, der kann mir ja nichts tun, aber ich hätte ihn definitiv gesehen. Also dass er rausgeht, während ich aussage, das wäre trotzdem gegangen, aber getroffen hätte ich ihn sicher, weil das war (...) die Beamten sind ja dann mit ihm vorbeigegangen und die Frau X hat das dann irgendwie geschafft, dass ich ihn nicht sehe. Aber das war rein der Verdienst vom Gewaltschutzzentrum, wäre so nicht gegangen. Das wäre schon wichtig, dass man darüber informiert wird: Sie können da warten. Weil es wird ja nicht jeder eine so super Anwältin haben. Also das gehört schon informiert. (AT-V1)*

The affected victim immediately started crying and was not ready to testify for an hour, and the trial had to be interrupted. Two other interviewed victims of domestic violence saw the offender in passing or from a long distance, but it was not intimidating for them (V10, V1).

### **Other forms of violence**

The interviewed victims of non-domestic violence provide heterogeneous information. Some of them had such an encounter (V3, V9, V7) and others had not (V8, V13).

*Yes, he was in the court room when I was testifying and it was not pleasant, because he remembers my face. From a legal point of view I would have preferred, if he had been escorted outside. But from the point of a satisfaction I would not have preferred him waiting outside. Because this way I was able to see: he hurt me and now I hurt him with my testimony. That is satisfaction indeed.*

*Ja freilich. Angenehm ist es nicht, weil er merkt sich ja mein Gesicht. Vom rechtlichen her wäre es mir schon angenehmer gewesen, wenn er hinausgeführt worden wäre. Aber von der Genugtuung her nicht: Weil da sehe ich: Er hat mir was angetan und ich tue ihm jetzt mit meiner Aussage was an. Das ist schon Genugtuung. (AT-V7)*

Some out of those who had the confrontation did not perceive this as problematic, because they were prepared for this situation by the VSS. A victim reported that she was aware about the presence of the offender in the courtroom, but she did not really notice him – she tried to fade it out and concentrated on the judge and her lawyer. **The psychosocial support of the VSS was very important for her in order to cope with the situation (V3).** Another victim was in a similar situation and he adopted a similar strategy to bear it; he also reported that it was hard for him although he has been prepared for this encounter by the VSS (V9). Again another victim who encountered the offender in the court room said that this encounter was not so problematic for him, because it was a “normal” offender. A “normal offender” is somebody, who is likely to have a “normal life” again sooner or later. However, had the offender been a homeless person, a severe drug addict or one with an expressive or even aggressive behaviour, it would have been more difficult to bear for him. This person also reports that he **felt satisfaction when he saw that what he said hurt the offender** (just like he had been hurt by the offender) (V7).

V3 reports that she saw the (suspect) offender in the context of a confrontation at the police. She was absolutely unprepared for this. She was in the same room with the suspect and the suspect was not in custody or chained. However, officers were present. Then the judge requested her to go as close to the man as possible, to stand next to him shoulder to shoulder, in order to validate the body height of the suspect. The interviewee reports that in the situation she was calm and it did not really affect her, but when looking back she perceives it as deeply problematic. Furthermore, she wanted to be attended by her supervisor from the VSS. And she was not informed that she should have announced the attendance of this supervisor beforehand. For the interviewee it was the first confrontation of this kind in her life and she would have needed the attendance of the VSS. This is why she suggests to at least inform victims beforehand that they have to call their attendants from the VSS.

To sum up: VSSs help to bear encounters with offenders in non-domestic violence by preparing the victims and being present during proceedings. In cases of domestic violence, this does not help – encounters need to be avoided.

6.2.3. When the police took the statement of the interviewees, did the latter experience the setting as safe and comfortable? How did the interviewees describe the situation (Question V 6.3)?

### **Domestic violence**

The majority of interviewed victims perceived the setting as **safe and comfortable**. A victim of stalking by an ex-partner had a very positive experience. She arrived at the police station and briefly told the police what had happened. Then immediately a female police officer said to her: come back with me. Then the two were separated from the rest and the interviewee felt comfortable (V2). Other victims of domestic violence also argue that they always had the same officer, who took time when taking their statement. Some victims were in a separate room, others were not. However, it bothered victims if officers entered the room frequently and the interrogating police officer did not stop the interrogation while the other officers were in the room (V11, V6). One of the two additionally reported that the **police officer** who took her statement **appeared to be in a hurry** and the **interrogation was interrupted** repeatedly. This person also said that she was not even offered a seat in the beginning (V11).

## Other forms of violence

The assessments of victims of non-domestic violence range **from very good, supportive and respectful (V3, V7) to not comfortable at all (V9, V12)**. Other victims also reported that it was respectful and comfortable and also very discreet. Those who assessed it negatively mention that the surrounding was ok, but the **police officer was disrespectful** and reluctant in fulfilling her duty (V5). Another interviewee reported that the surrounding at the police was ok, but it disturbed him that the police do not show their telephone number when calling. Thus, the interviewee is unable to call back. He acknowledges that it makes sense when calling offenders, but not in case of witnesses (V7). Another interviewed victim **had to wait for a very long time until he was interrogated** and this was very uncomfortable for him (V9). He felt treated like an offender rather than like a victim and he was not at all informed about victim's rights or his entitlement to victim support services. V12 reported that it was **only the fact that a VSS-member accompanied him made him feel safe**.

6.2.4. When the interviewees were heard during court trial, did this happen in a setting that they experienced as safe and comfortable? How did the interviewees describe the situation (Question V 6.4)?

## Domestic violence

Almost all interviewed members of domestic violence testified in a separate room in the context of an **adversary interrogation** under the presence of a judge and a camera (V4, V6, V11, V10). Almost all of these victims were aware of the camera and the fact that the offender was indeed able to see them. One victim tried to appear stronger because of this (V4). Two victims would have preferred to also have a video-monitor in their interrogation room, which broadcasts the scene of the courtroom (V4, V11).

The victims of domestic violence who testified in the court room did so in the context of a so called "gentle interrogation" (*schonende Einvernahme*), whereby the offender leaves the room while the victim testifies (V1, V2, V6, V8).

V2 with a **migratory background was positively surprised about the respect** she received in court, because in her country of origin it works differently. Still, in the course of her hearing at court she felt as though she was going through the violence again. Against this background it was of great importance that she was treated respectfully and that she had her psychosocial assistant with her.

One of the interviewees reports that the public's presence was the main problem for her: as a traumatised person she had to testify about very personal issues in front of many unknown persons as well as the offender's relatives; she perceived this as very inappropriate. Even apart from that the situation at the court trial was uncomfortable for the interviewees: they had to concentrate in order to remember everything correctly, as there were usually many incidents of domestic violence. They felt a lot of shame, their names were mentioned, pictures of wounds were shown and described, and these things were very embarrassing for them (V1, V8).

## Other forms of violence

Some victims were excited about the setting at court; they compared it with TV-shows (V3). They had a **positive impression of the actors at court and felt treated respectfully**. Media presence in court rooms can unsettle victims, also victims of non-domestic violence. One interviewee criticised that the judge sits on a high position compared to the position of the victim/witness (V7). The interviewee can imagine that this construction of hierarchy makes sense for the suspect offender's seat, but for him as a victim it was inappropriate. The interviewees who assessed the environment at court negatively (V9) emphasised that the **VSS was an important support for them**.

6.2.5. Were the interviewees asked questions about their private or family life that they considered inappropriate or unnecessary (Question V 6.5)?

## Domestic violence

Half of the victims of domestic violence say no. Those who confirm they were asked such questions, mention that the questions addressed **issues from the past** and made them feel uncomfortable (V1, V6, V10, V8).

### Other forms of violence

At court the interviewed victims of non-domestic violence felt treated with respect and they did not get asked unreasonable questions.

V5 with a migratory background reports a problematic experience: when taking the report, the police officer asked him if he is able to speak and read in German. For the interviewee this was a provocative question (he speaks German fluently with a very slight accent) particularly considering that the police officer appeared reluctant in taking his report seriously anyway. He showed his ID-cards and his employee card from the University of [Austrian city].

Other victims interviewed reported that the police posed inappropriate and – in their opinion also unnecessary – questions. E.g. V3's **family has been asked if there were problems with drugs, violence or mental illnesses**. She was embarrassed about that. Furthermore, this interviewee accused either healthcare staff or the police of **forwarding very personal data of hers (including the diagnosis) to the media**. The interviewee had actually blocked the access to this data, and yet the media was aware of it. She was informed by the newspaper and not by the criminal justice system that a main trial would take place. The interviewee states that if possible she would initiate a legal procedure against the person who forwarded her data. However, she could not identify the responsible person.

#### 6.2.6. To what extent did the interviewed victims agree to the following statements (Question V 6.6)?

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
6.2.6.1 Overall, it was difficult to understand and follow the course of the proceedings.	2	4	4	1	1	12
6.2.6.2 The police treated me in a respectful and sympathetic manner.	2	4	5	1	0	12
6.2.6.3 During the court trial I was treated in a respectful and sympathetic manner.	4	4	2	0	0	10 <sup>4</sup>
6.2.6.4 If I look back at the proceedings, there were moments when I experienced the presence of the offender as intimidating.	3	4	3	0	0	10 <sup>5</sup>

Please provide an analysis and your own interpretation of the results:

Interviewees who agree that they were treated in a respectful manner did not further comment on it. Those who did not agree mention several reasons for this: a victim of domestic violence **felt flouted by the court** when she compared the attention the court drew to her with the attention given to the offender (V10). Another victim of domestic violence criticised that a victim (or her legal representative) had to **apply directly at court for adversary interrogation**. As a consequence, they did not know in advance whether it would be granted or not (V6). This

<sup>4</sup> 10 answers as in 2 cases, there was no court trial (termination of proceedings).

<sup>5</sup> 10 answers as in 2 cases, there was no court trial (termination of proceedings).

person states that this insecurity makes a victim permanently afraid of seeing the offender. Even if it is very likely to be granted in the case of domestic violence, being a victim you do not know.

A victim of non-domestic violence testified in the court room under the presence of the offender. She reports that she was only able to bear the presence of the offender in the court room with a lot of self-discipline and a detailed initial counselling by the VSS. For her, it would have been much better to not have the offender in the room while she reported. This person was also confronted with the offender in the frame of an identity parade (V3).

*At an identity parade and already in the beginning it was clear to me that this time it is the right one, because I have seen a photo beforehand. And I have really insisted and emphasised that I do not want to have direct contact with him, I wanted to be physically separated from him, through a Venetian mirror or so. But there is no Venetian mirror, it exists only on TV. And there was only little understanding of the authorities, they rather perceived it as bothering that I need these extra measures. Routinely, I would have been in the same room with him again. But I really demanded for this separate room, also with the help of the White Ring and then I was granted it, so that there would be at least a physical separation. But he was able to see me. I would have perceived a Venetian mirror as reasonable in such cases.*

*Bei einer Gegenüberstellung – wo für mich schon klar war, dass es der ist, weil ich vorher schon ein Foto gesehen habe – da habe ich mit Nachdruck betont: Dass ich will, dass man den separiert und ich physisch getrennt bin von dem, einen venezianischen Spiegel oder so. Aber sowas gibt es nicht, das gibt es nur im Film. Und da ist wenig Verständnis gewesen, also das ist als lästig empfunden worden, dass ich da Sondermaßnahmen brauche. Standardmäßig wäre das wieder so vorgesehen gewesen, dass wir im gleichen Raum sind. Aber ich habe das mit Nachdruck gefordert, auch mit Hilfe des Weißen Rings und dann hat man mir das gewährt, dass da zumindest eine physische Trennung ist. Aber er hat mich gesehen. Also ich hätte es ganz angemessen gefunden, für solche Fälle, da gehört ein venezianischer Spiegel her. (AT-V3)*

## 7. Protection against repeat victimisation

### 7a) Cases not involving domestic violence

#### 7.1. Views of practitioners

7.1.1. According to the practitioners interviewed, do the police on a regular basis assess whether measures need to be adopted in order to protect the victim against repeat victimisation (Question Pr 7.1)?

Some interviewees (P, S, J) mention that the police do routinely assess this protection necessity; others say that the police do not. The **police** reported that they do not have the competence to decide on adopting such measures; they **may only recommend for the prosecutor** to do so. They say that they are only allowed to immediately adopt a restraining order. They may also adopt this in cases of non-domestic violence, e.g. in case the offender is a neighbour. A **restraining order** is valid for 14 days and only for the flat of the victim. Within this period the victim would have to apply for a preliminary injunction at civil court.

One interviewed prosecutor however points out that such assessments are indeed routinely carried out by the police. According to him it is a standard procedure for the police to ask the victim if they have special protection needs. He corroborates this assessment by saying that he can see the documentation of the assessments made in the case files. Judges mention that they don't know whether and how the police assess special protection needs. They think that the police are not doing this.

Interviewed lawyers and members of VSSs say that there is **no regulation**. It either **depends on different factors** such as the awareness level of the individual officer, the type of offence (apart from domestic violence only in case of human trafficking) or the legal representation of the victim. In case a victim is legally represented, the need for such measures will be assessed as the lawyer will then apply for such an assessment at the relevant law enforcement body.

7.1.2. Apart from domestic violence, are there other areas of crime where the police routinely focus on protecting the victim against repeat victimisation (Question Pr 7.2)?

In case of hate crimes, stalking, human trafficking and labour exploitation **this focus should routinely be taken by the police**. But this does not work very effectively, as assessed by the interviewed practitioners. They, however, do not blame the police for the lacking success but rather the circumstances of the cases. They state that the **influence of the police on preventing future crimes is limited in cases other than domestic violence**. The officers explain it using the metaphor of a glass dome in which they would have to put the victims in order to protect them effectively from repeat victimisation. They underline this assessment with different examples from their work, e.g. in case of Muslim victims of hate crimes, victims *and* offenders are mostly very deeply rooted in their communities (P1-P5). Thus, information about reporting to the police by single members of migrant communities quickly spread in the communities. Interviewees state that they cannot take these persons out of their communities (i.e. J5, J2). Neither can victims of stalking be effectively protected from repeat victimisation according to interviewees of different professions. Only personal security or a witness protection programme would effectively help but can only be adopted in exceptional cases (e.g. in case of principal witnesses or to witnesses of severe crimes whose life is threatened). Two prosecutors who dealt a lot with cases of labour exploitation report that victims of human trafficking, forced begging and prostitution, whom the police saved from their exploitative life, will sooner or later be found by another person who takes their money and exploits them again. These two – J2 and J5 – state their experience with such cases: You can refer the victims to a shelter and offer them all victim support services and exempt them successfully from their offenders and the relationship of dependence – still, they will sooner or later sit on the street begging again. One reason is that many of these victims get mentally ill (e.g. drug addicts) in

the time of exploitation and they are not cured automatically from their illnesses when rescued from exploitation. Shelters prohibit the consumption of alcohol or drugs, and consequently the rescued victims do prefer sitting on the street and drinking again rather than sitting in the shelter without access to alcohol or drugs and being permanently controlled (J5)

As a result of the ineffectiveness of measures to protect victims from repeat victimisation interviewees of different professional groups (P, J) also point out that **victims have to adopt strategies to protect themselves**. Strategies named are moving to another address or stopping to use social media (in case of online-hate crime). If it comes to repeat victimisation the offenders will be imprisoned anyway. But the police have no effective means to prevent that.

## 7.2. Views of victims

7.2.1. When the interviewed victims first talked to the police, did the police assess whether they were in need of protection against repeat victimisation or retaliation (Question V 7.1)?

The interviewed victims homogenously deny this by stating that the police did not assess whether they were in need of protection against repeat victimisation or retaliation. Police just took the interviewees' reports, informed them about VSSs and told them that they had to call the police immediately if something happened again. Furthermore, the police advise victims about means to protect themselves, e.g. to take pepper spray or to move to another place (V10). Victims were also informed about not being allowed to carry weapons for self-defence purposes (V9).

At the same time, the police have no idea on how to protect them against repeat victimisation or retaliation, particularly in case the offender is unknown. For one victim interviewed (V3) it was clear that the police somehow hoped that the offender would become violent again because there was no evidence in the case apart from the interviewee's testimony (and her injury). She made the experience that police officers commented on her injuries and said: "Oh, it was not that severe." Healthcare staff also downplayed her injuries because she looked fit and conscious. The actual severity of her injuries only came up later during the course of the proceeding.

Another interviewed victim expects at the very least for his address to be deleted from the case file and not to be read out in trial in order to prevent the offender from hearing about the victim's residence and address. (V7).

7.2.2. In cases where the police found that the interviewee was in need of protection measures, which measures were adopted by the police? How did victims assess the effectiveness of these measures (Question V 7.2)?

No protection measures were adopted by the police in these cases.

## 7b) Domestic violence

### 7.3. Views of practitioners

7.3.1. As concerns cases of domestic violence, what are the standard procedures followed by the police in such cases in order to assess the need for immediate protection measures (Question Pr 7.3)?

Knowledge and awareness differs within and between professional groups. **Interviewees do not know about standard procedures**. Those who do know report that the **police carry out a prognosis of endangerment** based on the victim's report. Interviewees cannot provide detailed information on the standards or the indicators for such an assessment. However, they refer to the experience and knowledge of the police. According to interviewed

professionals the police officers will notice danger in each particular situation. Police officers e.g. assess the offender's reaction on imposing the restraining order: some offenders accept that they did something wrong, others provoke the feeling that they will be back in five minutes. If the officers have the feeling that the violence was particularly severe, the victim is totally dependent on the aggressor or the victim is really scared, they also refer the victim to a women's shelter as an additional immediate protection measure.

An interviewed lawyer mentions factors which make the police impose a restraining order. These are weapons and visible injuries of the victim. Other than that the police assess individually and intuitively. According to this lawyer the police rather try to de-escalate instead of issuing a restraining order.

*In response to an emergency call, the police drive to the victim's home and assess the situation. In case the violence has already been exercised, the police adopts a restraining order (banishing the offender); in case the violence has not yet been exercised, the police interview the victim separated from the offender, they also have a questionnaire for the assessment of endangerment, but the interviewees are not sure whether they are applied in practice or not.*

*Die Anzeige des Opfers, durch den Notruf, dann fahren sie vor Ort, machen sich dort ein Bild und schätzen das ein (befragen die beiden getrennt in Fällen von drohender Gewalt) und initiieren darauf aufbauend Maßnahmen. Wenn ein Angriff gerade passiert, sprechen sie das Betretungsverbot immer aus. Sie haben dazu einen Fragebogen, aber ob der angewendet wird, wissen die IPs nicht. Die verlassen sich da auf ihren Instinkt. (AT-L3)*

The police tell the offender: take a hotel for this night, calm down and come back tomorrow. Another lawyer shares this opinion and additionally mentions that in case violence has not yet been exercised, the police interview the victim separated from the offender. **For this assessment of endangerment, the police have a questionnaire. The lawyer is not sure whether these questionnaires are used in practice or not.** (L1, L3)

Other lawyers interviewed say that as soon as there is a report of **domestic violence a banishing order is routinely adopted** (L2, L4). This assessment is confirmed by interviewed judges who also report that the police routinely adopt banishing orders in cases of domestic violence (J1, J2, J5, J4).

Again other interviewed **judges are not aware of any standard procedures** followed by the police in such cases (J8, J3). They rather believe that this is an assessment on an individual basis. An interviewed prosecutor, who has experience with cases of domestic violence, states that there are no standardised procedures issued by e.g. the Federal Ministry of the Interior (J6).

7.3.2. In cases of domestic violence, what are the standard procedures followed by the police when there is a need for immediate protection measures (e.g. advising the victim to move to a shelter, arresting or banishing the offender)? From the point of view of the practitioners interviewed, how effectively are these protection measures implemented (Question Pr 7.4)?

According to an interviewed judge protection measures are applied but not standard procedures. Still, the measure most likely to be applied is a restraining order for the offender while the victim remains in the flat. The Austrian concept of dealing with cases of domestic violence foresees it this way: **the offender has to leave and is banned, while the victim remains**. Other less frequently applied protection measures in domestic violence are: preliminary injunction, arresting the offender and referring the victim to a women's shelter. Victims must not claim for such measures, it is the decision of the police. In case of violence in apartments the restraining order lasts for six months. The accused have a remedy to challenge a non-justified imposition of a banishing order or a preliminary injunction at the civil court.

*So the standard procedure is that every restraining order and every stalking report or complaint that's about violence in the domestic area is also dealt with in crime prevention, and we look at every file Vienna-*

*wide, and most files stay in the districts and where we have the feeling that more has to be done immediately, we take it over ourselves and in any case, contact with the victim definitely has to be initiated and as soon as somehow possible, to see: did they understand the legal instructions?*

*Also das Standardverfahren ist, dass jedes Betretungsverbot und jede Stalking-Anzeige oder Anzeige wo es um Gewalt im häuslichen Bereich geht, in der Kriminalprävention auch verwickelt wird und wir uns wienweit jeden Akt anschauen und die meisten Akten bleiben in den Bezirken und wo wir das Gefühl haben, da gehört sofort mehr getan, übernehmen wir das selber und es muss in jedem Fall mit dem Opfer Kontakt aufgenommen werden, so zeitnah als irgend möglich, eben um nachzuschauen: hat die die rechtlichen Belehrungen verstanden? (AT-P1)*

An interviewed **violence prevention officer** (P1) reports a standard procedure: the police department of crime prevention deals with every restraining order and every report on stalking or domestic violence. According to the interviewee in severe cases of domestic violence (repeat violence; unreasonable offender) the victims immediately get referred to a women's shelter.

*So in the case our colleagues then inform us about where they have the feeling that domestic violence might have occurred before, or the offender is unreasonable, then we immediately advise them to go to a women's shelter, and bring them there. The colleagues are trained, so for example if the aggressor is a related caregiver and the victim might be someone who is dependent on the care of the aggressor, so that they know where they can then go, that [the aggressor] can still be sent away and that the victim isn't left alone by themselves and that support comes.*

*Also wo uns die Kollegen dann informieren, wo sie das Gefühl haben, da gab es schon öfter häusliche Gewalt oder der Täter ist sehr uneinsichtig, da raten wir sofort in ein Frauenhaus zu gehen, sie dorthin zu bringen. Die Kollegen sind ausgebildet, wenn z. B. der Gefährder jetzt ein pflegender Angehöriger ist und das Opfer möglicherweise jetzt jemand ist, der auf die Pflege des Gefährders angewiesen ist, also wo sie sich da hinwenden können, dass man den trotzdem wegweisen kann und das Opfer nicht alleine zurückbleiben muss und eine Betreuung bekommt. (AT-P1)*

The violence prevention officers are trained to notice dependencies, e.g. if the victim is dependent on the care of the aggressor or if they are economically dependent. These officers know how to protect such vulnerable victims, namely through referring them to shelters. The police are also aware and informed about all injunctions and offenders, who violate the protective orders. They may receive an administrative penalty. The interviewees' **assessments of the effectiveness of the measures implemented to protect victims of domestic violence are heterogeneous**. Some judges and prosecutors perceive these measures as working well and as effectively protecting victims of domestic violence from repeat victimisation.

*I do think that it protects, right? Because simply the fact that such a measure was sentenced has a certain deterring effect.*

*Ich glaube schon, dass es schützt, ja? Weil allein schon die Tatsache, dass eine solche Maßnahme ausgesprochen wurde, eine gewisse Abschreckung hat. (AT-J2)*

They argue that they do not have a lot of cases of repeated violence against women and children. According to these interviewees, such measures only fail if the women take their husbands back (J2). They **trace back the failure of protection measures to family-internal issues and vulnerabilities**, e.g. the mother remains with the father, who is abusive or violent against her and their children. The interviewees justify their assessment referring to cases of domestic violence in which up to 4 or 5 restraining orders were spoken against the same offender during the time-frame of a few years. The interviewees mention that the court cannot compensate the "weakness" of these victimised women through long-term surveillance.

*If I have a woman, who does not speak a word of German, is illiterate, has a Turkish husband, who is 30 years older than her and hits her repeatedly, attacks her with a knife. How concretely to protect her*

*effectively against repeat victimisation? Sure, you can bring her to a women's shelter, but this only works short-term and it is no life concept: to be a victim in a women's shelter.*

*Wenn ich jetzt eine Frau habe, die kein Wort Deutsch versteht, Analphabetin, sie hat einen türkischen Mann, der ist 30 Jahre älter als sie und er schlägt sie wiederholt. Was genau soll ich tun, um diese Frau effektiv vor wiederholter Viktimisierung zu beschützen? Sicher kann ich sie in ein Frauenhaus bringen, aber das ist nur eine kurzfristige Lösung und auch kein Lebenskonzept: als Opfer in einem Frauenhaus. (AT-J2)*

Interviewees, who do not perceive these measures as being effective, argue that if a person really wants to hurt or even kill, they will do so successfully, even if they are banished from the victim by a banishing order or an injunction.

*But if someone now really – there are enough cases – wants to harm another person, then he will manage to do so regardless if a measure was imposed or not. Also if he was imprisoned for five years and then he is released, if he still wants to do something to her, then he will manage to do so. You will not be able to prevent that, unless you throw her into a life-long dungeon and throw away the key, right? That's how it is.*

*Wenn jetzt aber jemand tatsächlich – gibt ja genug Fälle – einer anderen Person etwas antun möchte, dann wird er das schaffen, wurscht ob die Maßnahme verhängt wurde oder nicht. Auch wenn der 5 Jahre in Haft war und dann kommt der raus und wenn er ihr dann noch immer was antun will, dann schafft der das. Das wird man nicht verhindern können, außer man wirft sie in einen lebenslangen Kerker und schmeißt den Schlüssel weg, ja? Es ist so. (AT-J4)*

Furthermore, these interviewees point out that there are no specific controls by the police and the offender may come back. The police can only intervene if the victim calls and says: "The offender is here again". But then it might sometimes already be too late. According to these interviewees, **failure is also due to the social position of the offender**. Particularly if police officers or persons with a high influence and a high socio-economic status are offenders, the police will be reluctant to adopt such protection measures (L3).

An interviewed criminal judge points out that the **banishing measures are problematic for the affected men**. According to his experience the orders ruin the reputation of these men, even if they became violent "only once". Usually, the men immediately lose their job and social existence and they are not provided an alternative accommodation for the time of expulsion and prohibition to return (J2)

7.3.3. If the police learn of a case of domestic violence, do they routinely inform a victim support service? If yes, would it be a generic or a specialist support service (Question Pr 7.5)?

**Yes**, the homogenous assessment is: the Protection against Violence Centre (*Gewaltschutzzentrum*) or Domestic Abuse Intervention Centre Vienna (*Wiener Interventionsstelle gegen Gewalt in der Familie*) is routinely informed. **These are support services specialised on cases of domestic violence and stalking**. According to the criminal code it is mandatory for the police to inform these centres in case restraining orders are adopted. The centres then proactively approach the victim and offer their help. However, it is the victim who decides on whether or not to make use of the offered help.

Only a few interviewees **do not know** whether a victim support service is informed by the police routinely, but they believe that this is the case. Only one lawyer does not believe that a victim support service is informed by the police (L4). It is similar with a police officer. He says that a victim of domestic violence is only referred to a VSS if they want:

*In the course of the interrogation, victims of violence get informed that the police will get in touch with a VSS – usually this is the Protection against Violence centre in Graz – and establish the contact to the victim. This is also part of the interrogation record because we then forward the victim's data. We then*

also ask the victims: “We offer this and that kind of help. Would you agree if we forward your data to them and they will get in touch with you?” This is standard at our department. If the victim does not want this support, we are not allowed to forward the data. Also the help by the crisis intervention may only be offered by us if the victim wants. Often it is also the case that the victim refuses help in the interrogation but a few days later, they call and ask for help. Then the police forward data to the VSS and the crisis intervention centre upon telephonically obtained consent.

Im Zuge der Einvernahme werden die Opfer von Gewaltverbrechen darauf aufmerksam gemacht, dass die Polizei mit einer Opferschutzeinrichtung – meistens ist das das Gewaltschutzzentrum in Graz – Kontakt aufnehmen wird und den Kontakt herstellen wird. Das wird dann auch in der Niederschrift festgeschrieben, weil wir ja ihre Daten dort weitergeben werden. Wir fragen die Opfer auch: „Wir bieten Ihnen diese und jene Hilfe an. Sind Sie einverstanden wenn wir Ihre Daten dort bekannt geben und ein Mitarbeiter von dort wird sich dann mit Ihnen in Verbindung bringen?“ Bei uns ist das Standard. Wenn das Opfer nicht will, dann dürfen wir auch keine Daten weitergeben. Auch die Hilfe durch das Kriseninterventionsteam dürfen wir nur anbieten, wenn das Opfer will. Oft ist es auch so, dass sie bei der Einvernahme „nein“ sagen und dann 2 Tage später anrufen und sagen, sie bräuchten doch eine Hilfe und könnten Sie es mir bitte doch machen. Dann reicht es wenn sie am Telefon zustimmt, dass ich ihre Daten weitergebe. (AT-P4)

7.3.4. In routine cases of domestic violence, are the protection measures adopted by the police followed up by court orders? If yes, which courts adopt such orders and for which time span? How do the interviewed practitioners assess the effectiveness of these orders (Question Pr 7.6)?

Many interviewed practitioners refuse answering this question because they are not in charge of cases of domestic violence and thus they simply do not know. Interviewees with more awareness and knowledge say that **the victim has to apply for a preliminary injunction at the family court**, which is a civil court. This measure is valid for **two months** and may be prolonged again. Only in severe cases of violence a witness protection programme is adopted by the criminal court. Sometimes, the victim is additionally referred to a women’s shelter.

The effectiveness is assessed heterogeneously. Interviewees from different professional groups (P, L, J) assess it as being effective. Those who assess it critically in terms of effectiveness name the following reasons:

- “Easy” to violate – no deterrent

Interviewed members of the judiciary and lawyers say that if the offender really wants to hurt the victim, s/he will be able to – despite of the preliminary injunction. There is no 24h surveillance (possible) and in case of violation, the victim must call the police. The police impose a monetary sanction. Neither is a (repeated) infringement of the banishing order a justification of an arrest, only the danger of an offence is. Although in practice – as the interviewed officers know from their experiences – the infringement of the banishing order and danger of an offence are connected. An interviewed police officer mentions that the **police really would like to have more support from the court** in protecting victims of domestic violence from repeat victimisation. Particularly aggressors perceive acquittal (in case of doubt) or termination of the proceedings as a free-pass to continue violence - sometimes even worse than before. These officers suggest measures like extending the temporary restraining order if the offender is violating the conditions of probation. Anti-violence trainings for offenders are suggested by the police, too. According to them, the anti-violence trainings would at least send the signal: we are keeping an eye on you (even in case of acquittal) and it indeed matters what you do. Other interviewed professionals do not share this opinion and believe the already implemented measures work effectively for the protection of victims of domestic violence.

*Rarely. So we really would like to have more support from the court, because often there is an acquittal and the aggressor sees it as a free-pass – also acquittals in case of doubt – and then it continues and sometimes even worse than before. And there some measures or support would make sense, such as*

extending the temporary restraining order if he is violating the conditions of probation, there some violence trainings would be helpful, simply to send the signal: we are keeping an eye on you and it does matter what you do.

Selten. Also da hätten wir schon gerne mehr Unterstützung vom Gericht, weil oftmals es kommt zu einem Freispruch und da wird das vom Gefährder als Freibrief gesehen – auch Freispruch im Zweifel – und da geht das dann weiter und teilweise ärger als vorher. Und da wären irgendwelche Maßnahmen und Auflagen sinnvoll, wie einstweilige Verfügung verlängern, wie wenn er gegen Bewährungsauflagen verstößt, da wären Gewalttrainings hilfreich, einfach um das Signal zu setzen: wir behalten Dich im Auge und es ist nicht egal was du tust. (AT-P1)

- Not accessible to dependent victims

The preliminary injunction is not perceived as effective protection measure in case the female-victims are forced to take back their husbands, because **they and their children are economically dependent** on them. Some victims do not want a preliminary injunction or a restraining order, because the offender is the only one who earns the family income. Basically the same here: if somebody really has the intention to hurt, he/she will and the public authorities cannot prevent him.

#### 7.3.5. Did the interviewees agree to the following statements (Question Pr 7.7)?

7.3.4.1 More needs to be done to effectively protect victims of domestic violence against repeat victimisation.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	2	0	0	0	2	4
<b>P</b>	1	1	3	0	0	5
<b>J</b>	0	3	5	0	0	8
<b>L</b>	1	0	3	0	0	4
7.3.4.2. A number of good practices are already in place for victims of domestic violence.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	2	2	0	0	0	4
<b>P</b>	1	4	0	0	0	5
<b>J</b>	1	7	0	0	0	8
<b>L</b>	1	3	0	0	0	4
7.3.4.3. More needs to be done to ensure that victims of domestic violence have access to specialist support services.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	1	1	1	0	1	4
<b>P</b>	2	1	1	1	0	5
<b>J</b>	1	0	6	1	0	8

<b>L</b>	1	1	2	0	0	4
7.3.4.4. There are competing demands on resources for different groups of victims, and so sufficient resources are already dedicated to support victims of domestic violence.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	0	1	1	2	0	4
<b>P</b>	1	2	2	0	0	5
<b>J</b>	2	5	0	0	1	8
<b>L</b>	0	2	0	1	1	4

Ad 1) Explanations for agreement: interviewees point out that banishing the offender is not always the best measure to protect the victim. In repeated cases of violence and in case of a violation of the banishing order, custody would be a more effective way of protecting the victim. However, custody is rarely applied to immediately protect victims of domestic violence, according to the interviewees' experience. Repeated banishing orders are more likely to be applied, but do not work effectively in cases of repeated violation.

An interviewed judge agrees that "more" needs to be done for the reason as such a statement calls for agreement per se. However, the question is rather: "WHAT CONCRETELY should be done to protect the victims, having in mind what realistically can be done". This interviewee wanted to agree on this statement just in order to show how superficial it is in his opinion.

An interviewed lawyer agrees, but states that this agreement is only valid for victims who have not yet reported.

Ad 3) The access is basically good for "ordinary victims". More needs to be done for victims refusing support, e.g. they have fear because their residence status is irregular, because the offender belongs to the police force or holds any other powerful position or in case of intimidated victims. Furthermore, access to support is perceived as difficult for victims of domestic violence with disabilities.

Ad 4) interviewees strongly speak against playing off groups of victims against each other. These interviewees mention that considering that resources for victims of domestic violence are already insufficient, also no additional resources are made available – rather they are merely re-allocated. These interviewees (particularly S and L group) call for a general improvement of the resources for victim support.

## 7.4. Views of victims

7.4.1. How did the police learn about the interviewees' situation: were they called to the interviewees' homes or did the interviewees call them or turn to a police station (Question V 7.3)?

All three options are reported by the interviewees. Four interviewed victims of domestic violence themselves reported the offence to the police (V1, V2, V6, V10, V11). Some called the police in an emergency case, and others arranged an appointment and reported at the police station (V2). One interviewee arranged an appointment to report in her home because she did not dare to leave the house (V10). In two cases, the neighbours recognised the acute violence and called the police to the interviewee's home (V4, V6). In one case, the interviewee was only able to report months after the attack had happened; she first had to recover in hospital (V8). This person arranged an appointment at the police station and went there together with a member of a VSS.

7.4.2. When the police first learned about the interviewees' situation, did they thoroughly assess whether measures were needed to protect the victims against repeat victimisation or retaliation (Question V 7.4)?

Some interviewees confirm that the police thoroughly assessed the necessity of protection against repeat victimisation (V1, V2, V4, V10, V11). In other cases the interviewees do not perceive that the police assessed it thoroughly. In one case (V6) the neighbours called the police and when they arrived, they remained outside the garden fence. The victim went out of the house and clearly signalled to the police that she needs help. However, the officers kept staying outside until she explicitly asked the police officers to go into the house. She explains this with the fact that she had already reported to the police before, but then stopped the proceeding and gave the offender a second chance. This interviewee is sure that the police have not taken her seriously as a victim of violence since then. Another victim of domestic violence, who reported for the first time, also had the impression that the police were a bit reluctant in applying the banishing order. The offender was present at that time, too, and convinced of his innocence. Finally, the police officers told him to leave and prohibited him to return (V10).

7.4.3. When the police learned about the interviewees' situation, what concrete measures did they adopt in order to immediately protect victims against repeat victimisation? How did the interviewees assess the effectiveness of the measures adopted by the police (Question V 7.5)?

In all cases where protection measures have been adopted, it was a banishing order or imprisonment of the offender. Furthermore, the police counselled the victims about self-protection (e.g. on the usage of pepper spray) and they repeatedly invited them to call the police in case the offender does not obey the orders. Almost all victims who "benefited" from these protection orders perceive them as effective. Only in cases where the offender (repeatedly) violated the order, the effectiveness was not confirmed (V8, V11).

*I had to adopt my own measures (to hire a security person), because I knew already what will happen: When he comes and I call the police, it takes time until they are here. He was sitting in the meadow in the opposite of the house when I came home from hospital; he was able to hear every word that I spoke. The police then came and told me that they cannot do anything, because he is allowed to come until the property line.*

*Ich habe schon eigene Maßnahmen ergreifen müssen (einen Security engagieren und selbst bezahlen), weil ich habe ja gewusst, was dort möglich ist. Weil wenn er kommt und ich rufe an, das dauert, bis die da sind. Er ist auch in der Wiese gesessen gegenüber vom Haus und er hat jedes Wort mithören können. Die Polizei ist gekommen und haben nichts machen können, weil er darf bis zur Grundstücksgrenze kommen. (ATV8)*

One interview is on a case where the victim already had reported to the police earlier and then stopped the proceeding in order to give the offender a second chance (V6). This interviewee reports that when she reported the violence for the first time, the police were very supportive and did their best to protect her: they kept her in the police station until they caught the offender. He was then imprisoned immediately. Afterwards she refused to testify at court and gave the offender a second chance. When she became victimized by the same offender again the neighbours informed the police and they did nothing other than interrogating the victim and (upon request) bringing her to hospital. The VSS carried out an endangerment assessment together with the victim and forwarded the outcome to the prosecutor. The prosecutor then imposed jail. However, two weeks passed between the neighbours' report and the imprisonment of the offender. In the meantime, the offender aggressively tried to get in touch with the interviewee again.

*At the second time, he was not imprisoned, because at the first time, I had refused to testify at court. Then they have assumed that I will refuse to testify again. This is why they did not bring him into custody.*

*The judge decided it that way. But this was really dangerous for me, because he tried to hack my accounts, forced my mother to call at the telephone company, saying she was me and he tried almost everything to get in touch with me.*

*Beim zweiten Mal haben sie ihn nicht inhaftiert und zwar aufgrund dessen, weil ich beim ersten Mal meine Aussage bei Gericht verweigert habe, jetzt sind sie davon ausgegangen, dass ich das wieder tu. Somit ist er aber nicht in U-Haft kommen. Das hat die Richterin so entschieden. Das war aber für mich ziemlich gefährlich, weil er hat mich gesucht, hat versucht mich zu hacken, hat meine Mutter dazu gezwungen, dass sie bei A1 anruft und sich als mich ausgibt. Der hat wirklich alles versucht, um einen Kontakt mit mir herzustellen und mich zu finden. (AT-V6)*

7.4.4. When the police learned about the interviewees' situation, did they inform the victims of support services available to them or did the police contact a support service themselves (Question V 7.6)?

Yes, the police forwarded the cases to a protection against violence centre which then pro-actively got in touch with the victims and offered support. In addition, they informed the victims about these services through handing-out an information sheet. Some police officers also announced that the VSS would get in touch with the victims, others did not. E.g. in one case, where the offender was not present when the police learned about the situation, the police did not notify the victim that they would forward the case to a VSS. The offender was volatile at that time, and the victim was very afraid of repeat victimisation. She would have preferred to be brought to a shelter until the police caught the offender. This interviewee searched and found the VSS on the Internet and called them on her own initiative. Then she was surprised as they told her that they are already aware of her case. This procedure was not transparent for the interviewee.

In two cases the interviewees already had contact to a VSS at the time the police learned about their respective situations (V10, V8).

7.4.5. In cases where victims were in contact with a support service, how did they assess the services provided in terms of supporting them in coming to terms with their victimisation or in finding a way out of a violent relationship (Question V 7.7)?

All interviewed victims of domestic violence are very satisfied with this support. They felt treated with respect and had the impression that the VSS was always there for them. Some supporters also informed the victims on how to get psychotherapy funded (as this is not part of the cost-free services of VSS) (V4, V11, V10).

All interviewed victims of domestic violence had already terminated the relationship with the perpetrators when they called the police/the police was called by witnesses. Thus, they did not need any more support to find a way out of the relationship.

7.4.6. According to the interviewed victims, did a court issue at any time a protection order with a view to protect the victim against repeat victimisation? If yes, which court, and how do interviewees assess the effectiveness of these court orders (Question V 7.8)?

Some victims applied for a preliminary injunction at the district court (*Bezirksgericht*). They did this with support of their legal representatives of the VSS (V1, V2, V8, V10, V11). Some of the victims were informed by the police about this possibility, others by the VSS, and still others were already aware of this possibility.

In cases without preliminary injunction this was not needed in the first place, as the offender was put into jail (V4, V6). But in these cases the police also informed the victims that they would need to apply for a preliminary injunction as soon as the offender was released from detention (or in case a preliminary injunction was the precondition for this release).

Victims whose offenders violated the preliminary injunction (V8, V19, V10) do not assess it as effective, while others do. Victims, who were affected by a violation of protection measures, argue that the monetary sanctions in case of violation are too weak as deterrent. V10 also reported that she used the emergency call in an acute case. She had the impression that the officer was more engaged to write her name correctly than to come to her (V10).

*It did not work with the emergency call: I was at kindergarten and he was already waiting for me and he took my son and went away with him and I called the emergency. Of course, you get hysteric and you are afraid and I only wanted to tell the address, to make them come immediately. But then, the officer said slowly: "calm down, what is your name, please spell it". And then: "where was that again?" And then I thought by myself: that cannot be serious, there are important seconds to loose. And then I have managed it by myself, I went to him and caught my son back so to say. But that was such a bored guy [at the emergency call]; he was unable to work with my report.*

*Der Notruf hat nicht gepasst: Einmal bin ich beim Kindergarten gewesen und da hat er mich abgepasst und meinen Sohn genommen und ist mit ihm davon gegangen und ich hab den Notruf gewählt. Da wird man halt hysterisch und hat Angst und ich wollte nur die Adresse sagen, dass die sofort kommen. Und dann (gedehnt) mal langsam, wie ist Ihr Name und da habe ich müssen meinen Namen sagen und buchstabieren und dann: „Jo wo wor des jetzt?“ Und da habe ich mir gedacht, das gibt's ja nicht, das sind wichtige Sekunden, die man da verlieren kann und dann habe ich das selbst irgendwie ganz schnell hinbekommen und bin ihm nach und habe meinen Sohn wieder zurückgerissen quasi. Aber das war so ein gelangweilter Typ und der konnte nichts mit mir anfangen. (AT-V10)*

In case of repeat violation, the offender can indeed be imprisoned. The victims perceive the level of protection as weak, also for the reason that it can already be "too late" after the first violation. And an offender who violates the preliminary injunction is very unlikely to do this "just to talk" (V10). Another victim whose offender had a preliminary injunction reports that the offender repeatedly stalked her outside the margin of contact border. He was just standing there and watching her, but did not actively get in touch with her. She perceived this as very intimidating and thus called the police. The police came and informed her that they could not do anything as the offender was outside the margin of the preliminary injunction (V8).

7.4.7. To what extent did the interviewees agree to the following statements (Question V 7.9)?

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
7.4.7.1 Overall, the police made all possible efforts to protect me.	0	6	4	3	0	13 <sup>6</sup>
7.4.7.2 I would have needed more support in changing my situation with a view to overcoming the threat of violence.	1	5	6	0	0	12

Please provide an analysis and your own interpretation of the results:

The disagreements of two interviewees with statement 7.4.7.1 have to be understood in the sense that there was no reason for the police to protect them, as they had already adopted their own measures to protect themselves (V1, V10). These victims most often had already moved to another place (mother, friend). Additionally, they carried pepper spray or pocket alarm devices with them and have the police's emergency number in their speed button.

*I always have pepper spray with me and also a pocket alarm, I always had them with me and they [the police] always said: if he is there, immediately call the police. You can defend yourself with pepper spray and the pocket alarm; I just had to make sure the children were not harmed. I knew the police would immediately be there if something came up and I could always call them if I was scared, so they did always help me with my fears.*

*Ich habe immer Pfefferspray mit dabei und auch den Taschenalarm habe ich immer mitgebracht und sie [Polizei] haben immer gesagt: wenn der da ist: sofort die Polizei anrufen. Sie können sich verteidigen mit Pfefferspray und Taschenalarm, ich sollte nur schauen, dass die Kinder nichts abkriegen. Ich habe gewusst, dass die Polizei sofort da ist, wenn was ist und ich konnte sie auch immer anrufen, wenn ich Angst gehabt habe, also die haben mir schon geholfen mit meinen Ängsten. (AT-V10)*

One interviewee disagrees with this statement because she did not feel safe when she came home after a long stay in the hospital. Although a banishing order was adopted, she hired a private security person for her first night. She did this because she was aware that if the offender showed up and even if she immediately called the police, it would take the police too long to arrive at her place (V8).

*I did have to take my own measures (hire a security guard and pay for him herself), because I knew that if he comes and I call the police, it would take time until they arrive. The police also didn't accompany when I got back home from rehabilitation, even though they said they would accompany me. He also sat in the grass opposite my house and could hear every word that was being said. The police came and they could not do anything because he was allowed to come to the border of the property. He said to the police that he is very poor and has no money and nowhere to sleep, that he has to sleep in the car. That was not true. (AT-V8)*

<sup>6</sup> One interviewee ticked two options: this is the case, where the interviewee had already reported domestic violence at the police and then stopped the proceeding in order to give the offender a second chance. This failed and the offender became violent again and then in an even more severe manner. This person says: the police did everything to support her when she reported for the first time, the second time they did not take her seriously anymore and thus, she disagrees.

*Ich habe schon eigene Maßnahmen ergreifen müssen (einen Security engagieren und selbst bezahlen), weil ich habe ja gewusst, wenn er kommt und ich rufe die Polizei an, das dauert, bis die da sind. Die Polizisten haben mich auch nicht begleitet, als ich von der Reha heimgekommen bin, obwohl sie gesagt haben, dass sie mich begleiten. Er ist auch in der Wiese gesessen gegenüber vom Haus und er hat jedes Wort mithören können. Die Polizei ist gekommen und haben nichts machen können, weil er darf bis zur Grundstücksgrenze kommen. Der hat ja zur Polizei gesagt, dass er so arm ist und kein Geld hat und nirgends schlafen kann, dass er im Auto schlafen muss. Das hat ja nicht gestimmt. (AT-V8)*

One interviewee disagrees with the statement 7.4.7.2. because there is no way for her to overcome the threat of violence. Thus, nothing can be done to support her in this regard (V4).

*What happens when he gets out (of prison)? I am 1000% sure that he will look for me when he gets out. I mean, I have a baseball bat next to my bed and run around my house with a knife.*

*Was ist, wenn er rauskommt? Ich bin mir zu 1000% sicher, dass er mich suchen wird, wenn er rauskommt. Ich mein, ich habe einen Baseballschläger neben dem Bett und ich laufe zu Hause mit dem Messer herum. (AT-V4)*

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*You cannot do anything against it, you cannot get over it. You can only try to not think about it.*

*Dagegen kann man nichts tun, man kann es nicht überwinden. Man kann nur versuchen, nicht daran zu denken. (AT-V4)*

## 8. Civil law claims: compensation and restitution

### 8.1. Views of practitioners

8.1.1. According to the practitioners interviewed, do the police routinely inform victims about their entitlement to state compensation (Question Pr 8.1)?

The **answers are heterogeneous** in all professional groups: some say yes (J6, P5, S3, J5, J1, P2, L1, S4), some say no (L2, J7, P4, S2, J3), some say yes, but not effectively (L3, J8, J2, P1) and others state that they do not know (P3, J4). State compensation for victims is regulated in the law regulating compensation for crime victims (*Verbrechensopfergesetz*<sup>7</sup>). According to this law only EU citizens are entitled to state compensation.

Some interviewees say: yes, the police inform victims routinely about these rights in the frame of the victim instructions (*Opferbelehrung*) prior to the interrogation. The police are obliged to inform victims and to document the fulfilment of this duty. Some interviewed judges underline this assessment referring to their access to the crime record. Through this access they can see that a high share of victims of violence indeed do apply for state compensation. Other interviewees have a different perception. They say that the way the police inform victims about their entitlement to state compensation does not work effectively. According to them, victims only receive a sheet of paper and they clearly doubt that victims understand what it says (particularly in their traumatised situation). Still other interviewees say that the police do not at all inform victims about compensation, and again others do not know.

An interviewed prosecutor believes that informing victims about their rights and entitlements should not be the task of the police. This prosecutor at first hand justifies his opinion by referring to the workload of the police. A second

<sup>7</sup> Bundesgesetz vom 9. Juli 1972 über die Gewährung von Hilfeleistungen an Opfer von Verbrechen (Verbrechensopfergesetz - VOG), BGBl. I Nr. 18/2017.

and even stronger argument for him is that the police should not be a supporter of victims, that they must not be biased towards victims. The VSSs are in place to support victims. He acknowledges that the police still do it indirectly through informing victims about VSSs. But then, VSSs – and not the police – should inform victims about their rights (J7). Members of VSSs confirm the prosecutor’s assessment (S1-S4).

8.1.2. Do the police routinely inform victims about the possibilities to obtain restitution within the framework of criminal proceedings (Question Pr 8.2)?

Here the answers are **homogenous**: Yes, the police routinely inform victims about the possibility to obtain restitution. Only one interviewed lawyer denies this. The most common answer is: This information is part of the victim instructions and the fulfilment of this duty (as well as the victim’s decision) is documented by the police in the interrogation record. In practice, the police ask victims in the course of their first report if they want to join the proceeding as a private party. According to interviewed police officers the police also explain to victims that it means the claim for compensation and restitution.

Interviewed members of victim support services and lawyers confirm that the police inform victims about these rights, but deny that the way of informing victims about this works effectively. According to them this information does not reach victims for several reasons, e.g. being traumatised; but this is not the police’s fault. The police have too many tasks according to the interviewees, therefore they should not be in charge of tasks regarding victim support (S1-4, L1-4). According to interviewed members of different professional groups victim support services should be charged with all tasks related to victim support and they should be funded adequately for their efforts (e.g. J1, J4, J7, S1-4, L1-4). An interviewed prosecutor supports this point of view and additionally argues that the police should not be tasked with too many victim support issues, they rather should remain neutral (J7).

8.1.3. As concerns proceedings in cases of violent crimes and judging by your practical experiences, how often does the criminal court adjudicate on the victim’s civil law claims (Question Pr 8.3)? According to the interviewees, does this happen

	S	P	J	L
Often or very often	1	NA	8	3
Occasionally	2	0	0	1
Only in exceptional cases or not at all	1	0	0	0
Don't know	0	0	0	0
TOTAL	4	0	8	4

According to an interviewed prosecutor it is a standard procedure that the **criminal court adjudicates** on the victim’s civil law claims in case the victim joined the proceeding as a private party. However, in practice – and this is important – **not about the full amount of civil law claims**. For the remaining claims the victims additionally have to file a claim at the civil court, in which legal support services are not for free. This assessment is confirmed by several members of different professional groups (J5).

An interviewed lawyer states that the criminal court in practice only decides whether or not the claim is justified but does not adjudicate the restitution amount. Another interviewed lawyer reports that it would be possible for the criminal court to deal with the whole civil law claims of the victim but explains that the **criminal court is not interested in dealing with civil law issues**. (L2)

*It is a challenge to find a balance of on the one hand not using the criminal procedure to determine the compensation for the victim, but still on the other hand, taking the victim’s rights seriously. This is difficult*

*and I have no idea how to improve it. I would assess the German system with the joint plaintiff as not so bad. However, this broadens the criminal procedure to a large extent and it is thus not very practical.*

*Es ist einfach schwierig eine Balance zu finden, dass eben das Strafverfahren nicht dient der Entschädigungsfestsetzung oder so – dass das nicht unwillkürlich ausgedehnt wird – das Strafverfahren und aber doch die Opferrechte entsprechend wahrzunehmen. Das ist recht schwierig, aber wie man das verbessert, wüsste ich auch nicht. Ich finde es so ein bissl, wie es im deutschen System ist, mit dem Nebenkläger nicht so schlecht. Das verbreitert das Strafverfahren halt auch sehr. Ich weiß nicht ob das letztlich wirklich sehr praktikabel ist. (AT-J3)*

## **8.2. Views of victims**

8.2.1. Did the interviewees apply for state compensation? If yes, what was the result (Question V 8.1)?

### **Domestic violence:**

One victim of domestic violence and one victim of stalking (V2) did not (V10), the remaining five did. In two cases there is no a result so far (V8, V6) and in two cases the victims got compensation: one victim got awarded an amount of €2,500 (V4), one got €500 (V11). The remaining victim was refused compensation because the fracture of the nasal bone was straight and so was the nose. Thus, the violence did not cause any long-term blemishes and therefore was considered as minor bodily harm. Otherwise she would have been rewarded an amount of €3,000 (V1).

### **Other forms of violence:**

No, the victims were neither informed about this nor did they apply for state compensation. A victim of police violence who is a jurist knew about this possibility and talked about it with his legal representative from the VSS. However, they decided to not apply for state compensation as the proceeding was terminated by the prosecution (V12).

8.2.2. Did the interviewees raise civil law claims within the framework of criminal proceedings? If yes, what was the result (Question V 8.2)?

### **Domestic violence:**

Some victims of domestic violence raised civil law claims within the framework of criminal proceedings, others did not. Those who did got awarded compensation between €500 (partial amount) to €11,000. Two cases are pending. One interviewed victim of domestic violence was thinking about claiming compensation, but finally decided not to claim for damages within the framework of the criminal proceedings. She did not want to get involved into the proceeding that much (V10). She also decided against seeking restitution in the frame of a civil proceeding (she did not want to take the burdens of another proceeding, to pay for the lawyer herself and to encounter the offender again).

*No, because when I join the proceeding as a private party, then his defence lawyer is allowed to pose questions to me and then I would have been involved again and I did not want that. For the civil proceeding, I have to finance my lawyer on my own and then maybe I would have seen him at all.*

*Nein, weil wenn ich mich als Privatbeteiligte anschließe, dann kann mir der Verteidiger von ihm ja schon wieder Fragen stellen und da wäre ich schon wieder eingebunden und das wollte ich nicht. Für das Zivilverfahren muss ich wieder selber einen Anwalt finanzieren und dann hätte ich ihn vielleicht auch noch gesehen (AT-V16)*

### **Other forms of violence:**

Victims were informed, but did not apply. They argue that there would not be a chance anyway.

8.2.3. To what extent did the interviewees agree to the following statement (Question V 8.3)?

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
Criminal courts should ensure that victims receive compensation from the offender.	7	4	0	0	1	12

Please provide an analysis and your own interpretation of the results:

A second proceeding at the civil court is not only a burden for the victim and bears the risk of secondary victimisation, they also have no entitlement to legal support services anymore and they have to bear the cost-risk. An interviewed victim of domestic violence suggests that either the civil law claims are covered by the criminal proceeding or the Federal Ministry for Social Affairs claims for her entitlements at the Civil Court. The way it is organised now rather prevents from claiming for civil law entitlements.

## 9. General assessment of victims' situation in accessing justice

### 9.1. Views of practitioners

9.1.1. To what extent did the interviewed practitioners, divided by professional groups, agree to the following statements (Question Pr 9.1)?

9.1.1.1 Criminal justice is mainly a matter between the public and offenders; hence victims' role in criminal proceedings is necessarily peripheral.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	1	0	2	1	0	4
<b>P</b>	0	1	3	1	0	5
<b>J</b>	3	3	1	1	0	8
<b>L</b>	1	0	2	1	0	4
9.1.1.2 If victims became influential in criminal proceedings, this would come with a risk of unsettling the fragile balance between public prosecution and the rights of defendants.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	0	1	2	1	0	4
<b>P</b>	0	1	3	1	0	5
<b>J</b>	2	4	2	0	0	8
<b>L</b>	0	1	3	0	0	4
9.1.1.3 Generally speaking, practitioners working in the criminal justice system take the rights and concerns of victims very seriously.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	0	0	4	0	0	4
<b>P</b>	4	1	1	0	0	6 <sup>8</sup>
<b>J</b>	3	5	1	0	0	9 <sup>9</sup>
<b>L</b>	0	1	3	0	0	4
9.1.1.4 In the past, the criminal justice system has not paid due attention to the concerns and rights of victims. It is about time that victims' concerns are taken more seriously.	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
<b>S</b>	2	1	0	1	0	4
<b>P</b>	0	0	3	1	1	5
<b>J</b>	0	1	7	0	0	8

<sup>8</sup> One interviewee ticked two options, as she agrees for some practitioners and disagrees for others.

<sup>9</sup> One interviewee ticked two options, as she agrees for some practitioners and disagrees for others.

L	0	1	3	0	0	4
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Ad 1) J1 disagrees having in mind the current situation and says: the victim is very important as a witness.

*I don't agree. The victim is important – as a witness. I can also say that the changes in laws in the past 20 years have brought the victim into a very prominent position between perpetrator and public and therefore the criminal courts have received many tasks when it comes to dealing with victims and their entitlements.*

*Stimme nicht zu. Das Opfer ist wichtig – als Zeugin. Auch kann ich nur sagen, dass die Gesetzesänderungen der letzten 20 Jahre das Opfer in eine sehr prominente Position zwischen Täter und Öffentlichkeit gebracht haben und den Strafgerichten vielfältige Aufgaben zuweist im Umgang mit Opfern und ihren Ansprüchen. (AT-J1)*

An interviewed police officer also disagrees, but has in mind the situation she wishes for:

*I don't agree, because I think that the victims should definitely be lent more of an ear and that the situation of victims should be gone into more. So that often victims who make use of the right to refuse testimony who maybe don't testify everything in court that they explained to the police. That should really be looked at: is she scared or what is she scared of? I think that it is too factual and not human enough.*

*Stimme ich nicht zu, weil ich glaube, dass den Opfern da wesentlich mehr Gehör geschenkt werden sollte und wesentlich besser auf die Situation der Opfer eingegangen werden müsste. Dass also vielfach Opfer, die vom Entschlagungsrecht Gebrauch machen, die bei der gerichtlichen Aussage vielleicht nicht alles erzählen, was sie der Polizei erzählt haben. Dass man sich sehr wohl anschauen sollte: Hat die jetzt Angst oder wovor fürchtet sie sich? Ich glaube, dass das einfach zu sehr auf Fakten hingeht und nicht auf die menschliche Seite. (AT-P1)*

Other interviewed practitioners discussed the question of involving the public into criminal procedures in violent crimes in the course of thinking about statement 9.1.1.1. in the questionnaire. Thereby, some professionals are in favour of involving the public into all criminal procedures. They argue as follows: the public have a right to access procedures and the criminal procedure is about the offence and not about restoring the victim - rather the civil procedure is about restoring the victim (e.g. J4, J5, J78, L4). These interviewees say that the victim is a witness only and the procedure is on prosecution and punishment rather than restoration.

Other professionals interviewed are in favour of excluding the public and argue with the need to prevent secondary victimisation. According to them, the public needs to be excluded from all procedures dealing with violent crimes. They argue that informing the public about the extent of punishment is enough to meet the public's right to access criminal procedures. They furthermore argue that only the prosecution and judgement should be "public", but not the trial. On a more general level these interviewees argue that an intimidated victim, who does not feel secure and well-treated by the police, will not effectively help the state in prosecuting crimes. Thus, the actors of the criminal justice system need to care for victims that they feel comfortable.

*In my opinion it's not an issue between public and perpetrator, because without the victim we would not have a criminal proceeding. The fact that this happened to the victim is the reason the whole thing (the proceeding) is taking place. And in reality the victim is often the only person who has something to say about it, in our cases at least – and the state wants to prosecute. And that's why – in my opinion – it has a high status, the victim. And the more intimidated the victim is, the more uncomfortable it is for the victim to testify, the less it will contribute to the proof of the truth. And that's common sense: if I am scared in a situation, if I don't know who is who, then I will not be able to speak as well and as clearly than when the framework conditions were alright. That needs to be understood at court and at the police.*

*Es ist meiner Meinung nach keine Sache zwischen Öffentlichkeit und Tätern, weil ohne das Opfer hätten wir kein Strafverfahren. Dass dem Opfer das passiert ist, deswegen passiert das Ganze. Also sonst hätten wir*

das Strafverfahren nicht. Und in Wirklichkeit ist das Opfer oft die einzige Person, die da was dazu sagen kann, in unseren Fällen zumindest, und der Staat will ja Sstrafverfolgen. Und deswegen – meiner Ansicht nach – hat es einen hohen Stellenwert, das Opfer. Und je verschreckter ein Opfer ist und je unangenehmer es für ein Opfer ist, auszusagen, desto weniger wird es zu einem Wahrheitsbeweis beitragen können. Und das ist Hausverstand: wenn ich mich fürchte in einer Situation, wenn ich nicht weiß, wer wer ist, dann werde ich nicht so frei und gut reden können, als wenn die Rahmenbedingungen gut passen. Das müsste man verstehen bei Gericht und Polizei (AT-S3).

Ad 2) An interviewed prosecutor comments on his agreement.

*I agree – the risk is there. I mean obviously dependent on the scope, but I mean the criminal procedure is simply a battle and if you change something on one side it has an influence on the other side and that's why I think the risk is there. But dependent on the change, how big I see this risk. But that doesn't mean that I don't want any changes, but I only want them to happen carefully.*

*Stimme ich zu, das Risiko ist da. Ich meine natürlich abhängig vom Ausmaß, aber ich mein, der Strafprozess ist einfach ein Geflecht und wenn man da an einer Seite zieht oder was ändert, hat das einen Einfluss auf die andere Seite und von daher denke ich eben, das Risiko ist da. Aber eben abhängig von der Änderung, wie groß ich dieses Risiko sehe. Das heißt aber nicht, dass ich keine Änderungen haben möchte, aber ich möchte nur, dass es sehr behutsam erfolgt. (AT-J6)*

An interviewed lawyer holds the opinion that implementing all victims' rights in practice would be more burdening for the authorities, but it would not "unsettle" the fragile balance between public prosecution and the rights of defendants (L3).

Ad 3) For some interviewees it is very important to differentiate between the rights and the concerns of victims: victims' rights are taken seriously by the practitioners working in the criminal justice system but not victims' concerns (e.g. J1).

*Very different – so in the middle, undecided, some definitely, some not. So I am not decided there.*

*Sehr unterschiedlich – also in der Mitte, unentschieden, manche sicher, andere nicht. Also da bin ich unentschieden. (AT-J4)*

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*Am I a part of the criminal justice system? Or does that only include judges and prosecutors [meaning authorities]. OK, I don't agree, because not agreeing would be mean, right?*

*Bin ich ein Teil des Strafjustizsystems? Oder meint man damit nur die Richter und die Staatsanwälte? [die Behörden sind gemeint]. Ok, stimme ich nicht zu, weil gar nicht zustimmen wär gemein, gell? (AT-L1)*

Ad 4) An interviewed lawyer disagrees about the sentence: "In the past, the criminal justice system has not paid due attention to the concerns and rights of victims", but agrees to the sentence: "It is about time that victims' concerns are taken more seriously" (L3).

*What does that mean – in the past? Until now, or what? 15 years ago it was surely the case that there was not an adequate amount of attention given to the victims. Today, and with that I mean since 2008, I do believe that victims are given adequate attention. But that is also the past.*

*In der Vergangenheit heißt was? Bis heute oder wie? Vor 15 Jahren war es sicher so, dass den Opfern keine gebührende Aufmerksamkeit geschenkt ist. Heute, damit meine ich seit 2008, finde ich schon, dass Opfern eine gebührende Aufmerksamkeit geschenkt. Aber das ist auch Vergangenheit. (AT-J6)*

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*There once was a time, where many victims' rights were implemented, so that some people think that victims' rights are now overpowering. But they are not effective and that's the problem. So it is correct: the victims' rights, they are all set down in the law, but they are not effective. And the criminal justice system still sees the Procedural Support as an annoying burden.*

*Es hat einmal eine Zeit gegeben, wo ganz viele Opferrechte umgesetzt worden sind, so dass manche Leute glauben, dass Opferrechte mittlerweile überbordend sind. Aber sie sind halt nicht effektiv und das ist das Problem. Also es stimmt: es gibt sie, die Opferrechte, sie stehen alle im Gesetz drinnen, aber sie sind nicht effektiv. Und das Strafjustizsystem befindet das Institut der Prozessbegleitung immer noch als lästiges Übel. (AT-S1)*

## 9.2. Views of victims

9.2.1. Did the experience of the interviewed victims in the course of the investigation and the ensuing proceedings rather add to the harm done by the offender(s) or support them in coming to terms with the experience of victimisation (Question V 9.1)?

Overall, what I experienced during the investigation and the court proceedings	rather added to the harm done by the offender;	4
	mitigated the harm done by the offender;	2
	I couldn't tell/don't know.	6

Please provide an analysis and your own interpretation of the results:

The majority of interviewees selected the option "couldn't tell/don't know". These persons reported that what they experienced during the investigation and the proceeding **neither added to nor mitigated** the harm done by the offender. They perceive the two things (offence and proceeding) as separated from each other. The fact that not more victims believe that the proceedings rather added to the harm suffered can be traced back to the fact that all interviewed victims were supported by a VSS. As already pointed out in the report, the VSS are the ones who care for the implementation of measures to prevent secondary victimisation. Furthermore, they explain the behaviour of the authorities towards the victims and they provide the victims with information. Maybe these actors compensate problematic behaviour of authorities, which might have caused secondary victimisation or more harm throughout the proceeding. However, the fact that half of the interviewed persons ticked "couldn't tell/don't know" can be explained with the fact that some interviewees also faced difficulties in understanding this question and the answer options. Even if the interviewer explained it to them, they still ticked "do not know". It appeared that this was a too abstract question for some of the interviewees.

9.2.2. To what extent did the interviewees agree to the following statements (Question V 9.2)?

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	TOTAL
1. During the investigation, I had the impression that my concerns and rights were taken seriously by the police and were given due attention.	1	5	5	1	0	12

2. At the court trial, I had the impression that my concerns and rights were taken seriously and were given due attention by the court.	0	7	3	0	0	10 <sup>10</sup>
3. Overall, the investigation and the following proceedings conveyed a strong message that justice is done.	0	3	7	1	1	12

Please provide an analysis and your own interpretation of the results:

Ad 1) Interviewed victims faced problems with the police: their reports were not taken seriously, the environment of the report was not comfortable, they were not offered a seat and other persons permanently came in. After the report they heard nothing, were neither reported nor updated. Another problem reported is that the evidence considered by victims was not taken into account by the police, and this was not explained to them. These are the reasons why these persons disagreed. Those, who agreed or strongly agreed, said that the police took a lot of time, treated them respectfully, and they were in contact.

An interviewed victim of attempted murder (V3) needed to confirm at the police, whether the man the police found was the offender or not. This was very embarrassing for her, because it was a lot of responsibility to decide on this – she was one of only two witnesses. The interviewee had the impression that she as victim/witness had a lot of power. In the main trial, she knew that if she convinced the jury, the suspect would be sent to jail – no matter if he was the offender or not. There was no evidence apart from the victim’s testimony. The interviewee reported that she was not prepared for this feeling of having total power. She was glad that she was able to remember everything but wonders what would have been if that had not been case.

*I have the feeling you have a lot of power. I knew: if I manage to convince the jury, then he would be gone. You have a lot of power in that moment and you are not prepared for that. I was sure it was him, but what would have been the case if I didn't remember him 100%? It's a kind of 0/1 principle: no involvement, total involvement. What if he ever is set free, he will take revenge on me.*

*Ich habe das Gefühl, man hat sehr viel Macht. Ich habe gewusst: Wenn ich es schaffe, dass ich die Geschworenen überzeuge, dann ist der weg. Man hat sehr viel Macht in dem Moment und man ist nicht darauf vorbereitet. Ich war mir sicher, dass er es ist, aber was wäre gewesen, wenn ich mich nicht so 100%ig an den erinnern konnte? Es ist so ein 0/1 Prinzip: keine Involvierung, totale Involvierung. Was aber, wenn der mal frei kommt, der rächt sich an mir (AT-V3)*

Ad 3) Only very few persons disagreed, even though they brought in critical points. E.g. V5 says he felt treated as he should have been treated. However, he would have expected more. Another interviewee (V8) says that too much attention was drawn to the offender. Both however ticked “agree”. It is difficult to find out the reasons for this, maybe it is respect towards the court – an interpretation, which is also suggested by interviewed members of L and S, who say that victims are unable to be active in a court proceeding without legal representation.

*It went according to protocol: therefore, I agree. You need to stay factual. Emotions don't help us. I also always tell that to my fellow countrymen: you need to stay factual.*

*Es ist nach Protokoll gelaufen, daher: stimme zu. Man muss sachlich bleiben, Emotionen helfen uns nicht weiter. Das sage ich auch meinen Landsleuten immer: man muss sachlich bleiben. (AT-V5)*

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*I did not understand why they drew so much attention to the offender.*

<sup>10</sup> 10 answers as in 2 cases there was no court trial

*Ich habe halt nicht verstanden, warum so viel Augenmerk auf den Täter gelenkt wird. (AT-V8)*

## Conclusions

This section addresses observations and a general assessment of the interviews. It contains contextual information that derives from the interviewees themselves and is not necessarily subject of the study. Nevertheless, this information is important because the interviewees use it to frame their information on the Austrian practices, their views and assessments. The logics and narratives between experts and victims differ, therefore they are depicted separately.

When experts talk about their own work and thereby identify room for future improvement or not satisfying outcomes, they try to justify their assessment (with their restricted responsibility) or relativize it (through referring to success in the past or in some other issues). These issues are dealt with in section A.

A central finding of this report is that the participation of victims in the procedures is not fully implemented yet as it should be. Interviewees find interesting explanations for this that are depicted and summarised in this conclusions in section B.

Finally, part C of the conclusions point out two concrete problems identified by the experts: on the one hand: victims' rights are there but not enforceable. It does not lead to anything if they are not granted (and this has no influence on the outcome of the proceeding). The second critical point is that the study clearly shows the importance of the victim as a witness in violent crimes. However, there is lacking awareness in the actors of the criminal justice system on how traumatised impedes the victims' ability to testify as a witness.

### A Relativizing the need for improvement

Being asked critically about aspects of their work experts tend to relativize the scope of their work and discuss the boundaries of their responsibility. Thereby two rhetoric strategies have been identified in the interviews with the professionals explaining their work and its boundaries. They may be perceived as strategies to justify still existing problems in Austria when it comes to protecting victims from repeat and secondary victimisation and to their access to justice. They built the frame of the interviewees' assessments of the Austrian practice. The first strategy points out that it has been worse in the past; the second refers to issues located outside their area of competence.

#### 1) The situation has improved a lot in the last 20 years

This assessment has been used by interviewed senior and junior practitioners. They refer to what amounts of work have already been done to protect victims of violent crimes and to improve their standing in their access to justice. Different questions and opinions to assess deal with the message "More needs to be done". And interviewees usually tend to answer this question referring initially to what has already been done in the past. Some senior interviewees tell "horror stories" on how it was working in the past, and at the same time use this past as foil to explain how good it is now for victims of violent crimes.

#### 2) The criminal justice system cannot solve all problems

When talking about their work and what they cannot achieve, interviewees refer to the boundaries of the criminal justice system: the root of failure is located outside the criminal justice system, e.g. in the victims and their dependencies, in the victims' poverty, in social problems, in the victims' healthcare condition, drug abuse, etc. This is often attended by examples of particularly problematic cases of e.g. labour exploitation, human trafficking or forced begging. These are cases which are in no way solved by sentencing the offenders - the problems in the victims, which might have led to victimisation, remain the same.

Thus, the reasons for failure of the criminal justice system in protecting and restoring victims are either in the victim's psychological condition (domestic violence, going back to the offender) or in socio-economic circumstances of the victims (labour exploitation) or in the dependency of the victim (dependent victims). These factors expose them to

again becoming victims of violence (exercised by other perpetrators or the same in domestic violence). In case of domestic violence, interviewees repeatedly refer to women, who move back to their violent husbands.

### **B Justifying a lack of participation of victims in criminal procedures**

- 3) The victim needs to participate as a witness and only as such they are important

When it comes to the role of victim in the criminal procedure, particularly the members of the criminal justice system point out that victims are witnesses and are treated as such. As witnesses they are very, very important for the procedure – but other than that, victims are not important for the *criminal* procedure. These interviewees are aware that the victim in practice does not really participate actively in the proceedings. However, they either do not perceive it as problematic or they do not have an idea on how to change that.

- 4) More participation is at the expense of offenders rights

The interviewee perceives it as problematic for the criminal justice system (and for the suspect offender's rights) to give the victim a more important and active role in the proceeding than the one of a witness.

The interviewee argues against a too strong involvement of victims into the criminal procedures as this would constitute too much influence and would be in conflict with suspect offenders' rights. Still, victims' protection and also protection against secondary and repeated victimisation is important for her.

Law enforcement does not have the purpose of retaliation, it rather has the purpose of crime prevention and maintaining the stability of the law and legal relations. Against this background, the interviewee as a prosecutor indirectly fears that too much victim's participation in the criminal procedure might disrupt this purpose and act as a backlash towards law enforcement for the purpose of retaliation.

The interviewee believes that victims have enough rights and enough possibilities to participate actively in the proceedings. If they were to participate more actively, the criminal justice system would not be objective anymore.

- 5) Not all victims are credible

The key point is that provability in case of sexual violence is the main challenge in accessing justice for victims. The majority of cases lead to a termination of procedures, as there is one person's word against the other, doubt benefits the accused, or the offender is unknown in the first place.

The interviewee recognises a turn to commissioning external experts for opinions in the judiciary. The interviewee perceives this as particularly problematic as far as the victim's credibility is assessed by external experts. She argues that the victim as a witness is prohibited to give false testimony anyway, while the suspect offenders may lie to protect themselves.

The actors at court often justify this referring to the outcome: "one testimony against the other". However, a comparison between the suspect offender's and the victim's testimony is problematic for the interviewee, because they are provided under completely different circumstances. The interviewee rather wonders why the credibility of the victims' testimonies is called into question against this background.

### **C Critical issues and recommendations**

- 6) Victim's rights are not enforceable

A key point of the interview is the gap between legal provisions and their practical implementation. From a formal point of view legal obligations are met in terms of victim support and victim protection, but in practice this is not carried out in an effective way.

The interviewee repeatedly emphasises that there are a lot of victims' rights in criminal proceedings, but they are not enforceable. Victims may request for their rights to be enacted and they may be granted this by the judiciary -

or not. A denial of victims' rights has no influence on the proceedings and the victims' remedies are not effective, they are rather "soft" instruments. In fact, victims may only complain. According to the interviewee, it was a purposeful decision to regulate victims' rights this way in order to avoid providing the victim with a too strong (and influential) position in the criminal proceeding.

#### 7) Traumatization impedes victims' participation and assessed credibility

The interviewees repeatedly point out the consequences of traumatization for criminal procedures in violent crimes. Traumatization affects the victim's ability to testify, to understand their rights (even if they sign that they have understood their rights) and to absorb information. Traumatization also provokes contradictory testimonies. Still it is not recognized by the authorities (police, prosecution) yet. Thus, the interviewees claim for a specific responsibility for domestic violence at court.

#### 8) The police is no victim support service

Interviewed practitioners of different professional groups point out that the police should not be tasked with issues related to victim support. In this regard, they particularly refer to two tasks of the police, namely:

- Victims' instruction prior to the interrogation (*Opferbelehrung*)
- Individual assessment of special protection needs

They bring in several arguments for this: the police do not have the competence for this, the police have enough other tasks and thus lack the resources to perform this task (effectively), the police should remain neutral, the police have a focus on the offender and the crime and not on the victim. These interviewees suggest tasking victim support services with informing victims about their rights and assessing their special protection needs (and fund them adequately).

### **Conclusions from VICTIMS' VIEWS**

Those victims who perceived their active participation in the proceedings as not being sufficient bring the following arguments:

#### **A Public authorities do not inform and update victims pro-actively**

This problem has been reported by victims of different types of violence under different circumstances. It seems to be a real problem. The fact that these persons report that VSSs indeed pro-actively inform and update them, does not fully compensate this, because the victims EXPECTED it from the COURT and POLICE. It has been reported that not even the names of judge and prosecutor are known to victims.

#### **B Public authorities do not consider evidence (and do not explain the reasons)**

Another factor related to a lacking active participation of victims in the proceeding is that the law enforcement authorities do not consider the evidence victims bring in. Such evidence includes: documented chats indicating (sexual) violence, beddings indicating sexual violence, shoes or video surveillance in the public sphere. Interviewed victims reported that they have brought this evidence to the police or later on to the court and it has not been considered. Furthermore it was not explained to the victims why this evidence was not considered. In this regard, victims also have noted that they would have liked to directly talk to the prosecutor, which was not the case.

Victims of domestic violence, who already reported to the police, but then refused testimony in order to give the offender a second chance, were not taken seriously when reporting again. This is a striking example that came up in one interview whereby the police was reluctant in protecting her and investigating the case, when she reported for the second time. She is quite sure that the police did not take her seriously anymore, because she had refused to testify the first time. They also did not adopt any protection measures, the VSS had to intervene. This striking example has been confirmed by the assessments of some interviewed professionals (lawyer, police and judge). They mentioned that cases of domestic violence are frustrating, because the victims always go back to the

perpetrators. Lawyers who have the choice take on such cases particularly in the beginnings of their careers and then focus on other areas. Interviewed members of VSSs, however, report that it sometimes needs several attempts until the victim is ready to push the proceeding through and to go until the end.

### **C The court emphasises aspects of the offence which are not important for victims and neglects others**

In interviews with victims of domestic violence it came up that the fear, emotional stress and psychological violence are not adequately considered by the court when it comes to investigating the case or sentencing the offender. On the other hand, the physical aspects of the violence (size of wounds, etc.) are considered too strongly in the view of victims. For victims, the psychological violence and the fear harms them more than the physical wounds.

### **D Persons who are already known to the police are likelier to be prosecuted than others**

This experience was reported by interviewed victims and professionals. An interviewed victim of attempted murder reported that she was surprised about the power she had with her testimony. She got the impression that the police wanted to arrest a person whom they already knew as a criminal and who fitted the picture (drug addict, violent). However, the interviewee was almost sure that this person was not the offender and it was hard for her to convince the police. The police did not take her seriously and said that she was too stressed and traumatised to provide correct information. She was only successful in convincing the police that they have the wrong man when she was supported by the VSS. Some interviewed professionals confirm this assessment when it comes to identifying groups of persons who are likely to be discriminated by the police: drug addicts, criminals, persons with mental illnesses.

### **E Exposing the victim**

Particularly in case of domestic violence an adversary interrogation is most likely to be granted. Thereby, the victim is physically excluded from the trial and testifies via video-broadcasting. Everybody in the court room then sees the victim and the victim sees nobody (except for the judge who poses the questions). For some interviewed victims this is an imbalance; they would have preferred to see the scene in court via video, too. One victim of domestic violence did not want the offender to see her, because in order to protect herself she changed her hairstyle. This change would not make any sense if the offender saw it (and mostly it takes a lot of time between incident and trial). Also including the public into the proceedings traumatises victims. Thus, some victims and also interviewed professionals suggest for cases of violence to include the public only when the judgement is pronounced.