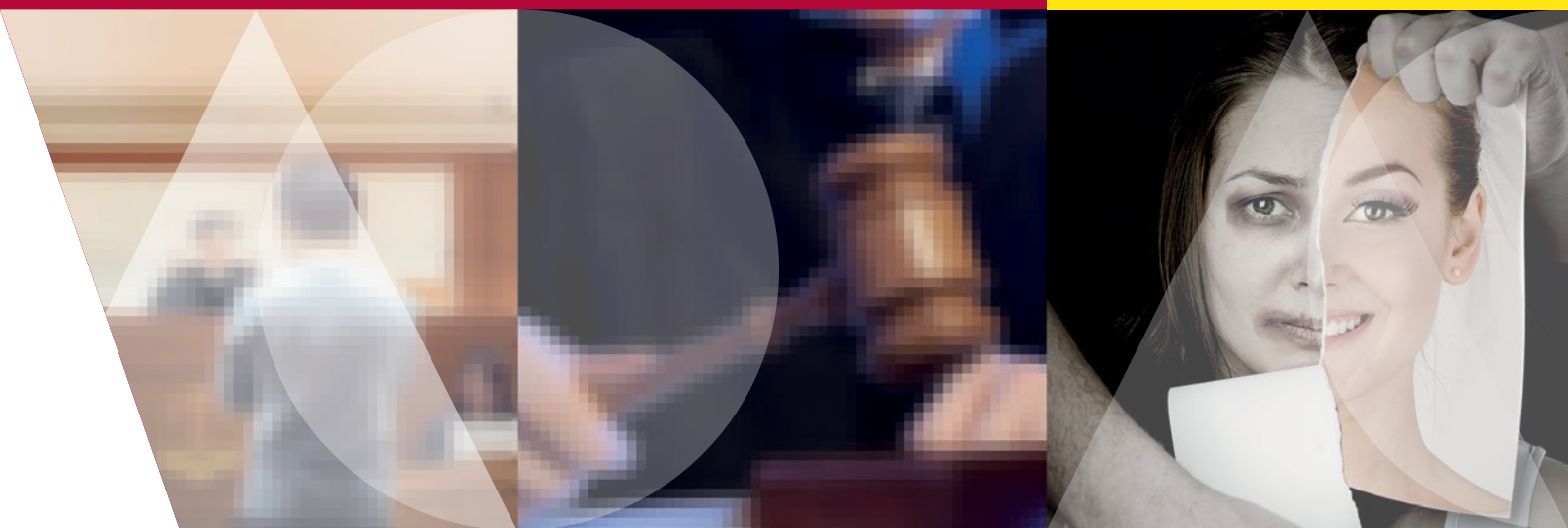


JUSTICE



Women as victims of partner violence

Justice for victims
of violent crime
Part IV



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Part IV

Foreword

Imagine you were brutally beaten or sexually assaulted, and someone was later charged with this crime. How would you feel if police officers, defence attorneys, prosecutors and judges barely registered your presence in the proceedings to follow – or even treated you like a nuisance?

It's an experience shared by all too many victims of violent crime. With crime primarily seen as an offence against the state, criminal proceedings are centred around prosecutors as representatives of the state and defendants. Victims risk being overlooked.

But violent crime is, of course, committed against people. It represents a severe violation of victims' dignity. This insight has prompted a shift. Increasingly, victims are seen as rights-holders – who are owed certain responses by the states in which they live. The European Convention on Human Rights, the EU Charter of Fundamental Rights, as well as the Victims' Rights Directive have all contributed to this change. They provide strong bases for victims' rights, including to access justice.

How are these rights playing out in practice? Are victims of violent crime properly seen, informed, empowered and heard? Do they tend to feel that justice has been done? Our four-part report series takes a closer look at these questions, based on conversations with victims, people working for victim support organisations, police officers, attorneys, prosecutors and judges.

This report – Part IV – zooms in on the experiences of one particular group of victims, namely women who endure partner violence. Taken together, the four reports reveal a wide gap between the law 'on the books' and the law in practice. Many victims still feel marginalised – often more so in countries with laws that accord them extensive rights. This underscores that delivering justice is about more than introducing the right legislation. Changing perceptions of victims' rights – and what these mean for victims' role in criminal justice processes – is equally vital.

We hope this series encourages policymakers to take steps to ensure that victims of violent crime receive the attention, support and consideration to which they are entitled – and so make good on states' promise to provide access to justice.

Michael O'Flaherty
Director

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Glossary

Charter	Charter of Fundamental Rights of the European Union
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
General support organisation	Organisation providing support services to all victims of crime
Istanbul Convention	Council of Europe Convention on preventing and combating violence against women and domestic violence
Partner violence	A form of gender-based violence directed from a male offender against a female intimate partner or ex-partner with a view to controlling her behaviour; partner violence is interpreted as a consequence and expression of as well as reinforcing an unequal societal distribution of power and status disadvantaging women.
Repeat victimisation	A victim's experience of suffering repeatedly human rights violations by criminal conduct
Secondary victimisation	Being treated in the aftermath of a victimisation in a manner that reinforces the experience of not being respected and in control of one's situation
Specialist support organisation	Organisation providing support services to a particular group of victims, for instance to women as victims of partner or domestic violence
Support organisation	Organisation providing support services to victims of crime
Type 1 country	A country that perceives the victim as the person whose rights are violated by the criminal offence and grants comprehensive participation rights ¹
Type 2 country	A country that perceives the victim as having been harmed as a consequence of the criminal offence and grants only limited or no participation rights
Type 3 country	A country that perceives the victim as having suffered damage as a consequence of the criminal offence and grants participation rights to the extent necessary to allow the victim to claim compensation
Support services	Services provided by support organisations to victims of crime, including information, advice as well as practical, financial, emotional and psychological support relevant to the rights of victims and their role in criminal proceedings
Victimisation	A person's experience of suffering a rights violation by a criminal offence; offences against the person are understood as violating individuals' rights protected by criminal law.
Victims' Rights Directive	Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA
Vulnerable victim	A victim in a disadvantaged societal position in terms of power or social status; the term 'vulnerable' refers to the situations and relations that people find themselves in and does not intend in any way to locate problems in victims.

¹ The concept is explained in more detail in Part I of this series of reports (see Chapter 3).

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Key findings and FRA opinions

When a woman is exposed to domestic violence at the hands of her partner and reports her victimisation to the police, she can legitimately expect the police to perform two tasks: firstly, to protect her against further violence; and, secondly, to start an investigation into the violence she has suffered. However, this report shows that the police too often fail on both counts: more often than not, the police leave women without any protection; and in many instances, the police downgrade violence occurring in the private sphere to a mere private dispute and family affair. They content themselves with settling the dispute and reconciling the family members concerned. Thus, they fail to acknowledge that violence is a public issue, even when it happens in private; and they fail to recognise the victim as a person entitled to the respect of her dignity and rights, including by her partner.

Hence, what is crucially important for the protection of women against partner violence is how the police react when they first learn about the situation. A chain of intervention needs to come into operation, involving support services, courts, youth welfare authorities and others. If the police do not accomplish their task of providing security and stopping the cycle of partner violence, that cannot happen. Victims will not benefit from support services, court protection orders or criminal proceedings. Therefore, it matters that the police take the first step and ensure that women are protected in their homes. The police should do so in a manner that unambiguously conveys some core messages to offenders, victims and others. It should clarify a number of issues: that there is a significant difference between a family dispute and violence; that violence is not tolerated, neither in public nor in private; that partner violence is a public concern; and that the offender is held to account and bears the consequences of his violent behaviour.

This report presents the findings from fieldwork in seven EU Member States (Austria, France, Germany, the Netherlands, Poland, Portugal and the United Kingdom). The research included interviewing practitioners working in criminal justice systems, and adult victims of crimes against the person, including 35 women who had been victims of partner violence in the seven EU Member States covered. Victims were asked about their experiences with support organisations, the police, public prosecutors' services and courts, but also about their protection against repeat victimisation.

The evidence and opinions from this research should be read in the context of the results and opinions from FRA's Violence against women survey, which consistently corroborate the findings from this research. On the

basis of more than 42,000 extensive face-to-face interviews with women in all EU Member States, FRA published a report in 2014 entitled *Violence against women: An EU-wide survey – Main results*. The report indicates that gender-based violence means widespread and severe violations of women's human rights, which the EU and its Member States cannot afford to overlook. It contains rich and detailed information concerning the situation of women exposed to partner violence.

There were too few interviews to generalise the findings. Still, the evidence from them tentatively points to the following:

- Women who are victims of partner violence lack effective protection, mainly for the following reasons:
 - inadequate responsiveness of the police;
 - shortcomings in the referral of victims to support services;
 - an incomplete network of support organisations;
 - insufficient implementation of court protection orders.
- The police, support organisations, healthcare institutions and courts should improve their contributions. Everyone involved in the institutional response to partner violence should cooperate better.
- Legislation and organisation need to improve. All state officials and others who are in contact with women who are victims of partner violence need comprehensive training programmes.

Enhancing the contribution of healthcare institutions

When women are victims of partner violence, they most often turn to 'healthcare providers' for help, as known from FRA's Violence against women survey. In line with this finding, many women interviewed as victims of partner violence reported contact with doctors or hospitals. However, criminal investigations seldom resulted. From the interviews, it appears that health professionals involved in treating victims sometimes did not acknowledge or respond appropriately to indications of partner violence. In particular, they failed to refer the victim to a support organisation and report any indications of the victim's exposure to partner violence to the police or the public prosecutor's office.

FRA opinion 1

EU Member States should consider adopting policies that ensure that professionals working in the healthcare system take action in situations where there are indications of partner violence. Healthcare professionals should be trained to recognise such indications and to respond by securing evidence, referring the victim to an appropriate support organisation, and informing the police or the public prosecutor's office. Member States should pass specific guidelines on how professionals working in healthcare services should respond to indications of partner violence.

accordingly, it is the offender – not the victim – who has to change his behaviour.

FRA opinion 2

In line with the victim's right to protection under Article 18 of the Victims' Rights Directive, EU Member States must ensure that, whenever the authorities learn of a situation where a woman is exposed to a real risk of partner violence, a competent law enforcement agency immediately adopts robust protection measures.

It is imperative that the police be trained to understand why they have to intervene in a situation of partner violence and what is expected of them.

Ending police inaction

Partner violence will often continue and intensify until the police put an end to the cycle. Inaction by the police is a main cause of violence, as many victims interviewed in the project reported. However, among the victims interviewed in this project, about two in three women who reported it to the police were left without any protection against repeat victimisation.

This situation urgently calls for measures at various levels, including legislative reform, enforcement of existing legislation, organisation and – very importantly – training. One can judge how seriously EU institutions and Member States' governments take the rights of women to dignity, life, physical and psychological integrity by the action they take to redress these deficiencies.

Once the police learn of a violent partner relationship, they cannot turn their back on the couple, as that would create an imminent risk of repeat victimisation. Hence, they can end the threat of violence in two ways. They can suggest to the victim that she should seek shelter from the violent offender and leave it to her to see to her security, or they can remove the offender from the victim's home, either by arresting him or by issuing an emergency barring order. Expecting the victim to leave and arrange for her security herself is neither fair nor a reliable means of protection, so the remaining options are arresting the offender and barring him from returning to the victim's home.

The police should be trained to understand why they have the task of intervening in cases of partner violence and why violence occurring in private is a public issue and not just a 'family affair' that can be left to individuals to sort out for themselves. In addition, the police should understand the importance of intervening in a manner that conveys key messages. Such messages should convey that violence is unacceptable both in private as in public, that the responsibility rests with the offender and not with the victim, and that,

Emergency barring orders

Article 22 of the Victims' Rights Directive requires that EU Member States pay due attention to the particular risk of repeat victimisation that "victims of gender-based violence" and victims of "violence in a close relationship" incur. Article 18 of the directive grants victims, in general terms, a right to protection of themselves and their family members against repeat victimisation. Article 18 specifies that, when necessary, "such measures shall also include procedures established under national law for the physical protection of victims and their family members".

To comply with their obligation under Article 18 of the Victims' Rights Directive, EU Member States must put in place legislation that empowers and obliges the police to issue emergency barring orders where appropriate, where other measures are either not effective or not proportionate.

This is all the more so in the light of Declaration 19, which EU Member States adopted when signing the Lisbon Treaty in December 2007. It envisages that in its various policies the Union will aim to combat all kinds of domestic violence, and the Member States will take all necessary measures to protect the victims. This promise is still pending.

EU Member States that are bound by the Istanbul Convention must comply with their obligations under Article 52 of the convention ('Emergency barring orders'), according to which the police must be able to react immediately to a situation of partner violence by issuing an emergency barring order.

Breaches of emergency barring orders should lead to sanctions that reflect the threat of violence that is perceived as a violation of the victim's dignity.

FRA opinion 3

Victims have a right to protection under Article 18 of the Victims' Rights Directive and the Istanbul Convention, and women who are victims of partner violence lack protection, as this research shows. Accordingly, EU Member States must enable the competent law enforcement agencies to issue emergency barring orders in situations where there is reason to suspect partner violence and where arresting the offender is not necessary. Member States should consider promising practices that exist in other Member States – including Austria and Germany – and they can replicate.

In accordance with Article 52 of the Istanbul Convention, emergency barring orders should comprise:

- *prohibiting the offender from entering the premises where the victim resides, and a surrounding area defined by the issuing law enforcement agency;*
- *prohibiting the offender from contacting the victim by approaching the victim in other places and from entering places where an encounter with the victim can be expected;*
- *prohibiting the offender from contacting the victim by any technical means.*

Emergency barring orders should not depend on the victim's consent and should remain valid for about two weeks. If within this period the victim applies for a court protection order, the emergency barring order should stay in place until the court has reached a decision.

The police should be obliged to continuously and rigorously monitor compliance with emergency barring orders.

Breaches by the offender of emergency barring orders that come to the notice of the authorities should prompt criminal or equally dissuasive administrative sanctions.

Effective referral from the police to a specialised support organisation

In about one in three cases, it was the police who established a first contact between the victim and the support organisation, according to the interviews with victims. The police referred fewer than half of the victims to a support organisation. As this referral is a crucially important link between the police intervention and ensuing court proceedings, the police should step up efforts to ensure effective referral of the victim to an appropriate support organisation.

In the immediate aftermath of the police intervention, victims are in urgent need of information, emotional support and practical advice, which will allow them to understand their situation, to restore a basic feeling of security and to learn what the next steps on the path out of the violent relationship could be. Therefore, it must be ensured that victims are quickly offered targeted and specialist support services.

Immediately after the violent incident, the victim should not be required to make complex decisions, let alone decisions that oppose the offender. Therefore, in a first phase of some two to four weeks, the police should be entitled to adopt the protection measures that they regard as necessary, including informing an appropriate organisation that will provide the victim with specialist support services.

FRA opinion 4

In line with the right of victims to have access to victim support services and with the obligation of EU Member States to facilitate the referral of victims (Article 8 (2) of the Victims' Rights Directive), the police should be empowered and obliged to inform a specialised support organisation to allow the organisation to follow up on the intervention of the police in a case of partner violence by contacting the victim and offering support.

A robust system of support organisations

There is a lack of appropriate and sufficiently funded specialist support organisations, the interviews with victims and with practitioners revealed. An appropriate support organisation must not only grant the victim effective access to the criminal proceedings but also protect her against repeat victimisation. Victim support services must be comprehensive enough to include social, emotional, psychological and financial support as well as practical and legal advice.

While the interviewed victims appreciated, in general, the support services they received, some victims were critical of support organisations. EU Member States will often rely on cooperation between authorities and private support organisations in granting victims protection and access to justice. Such cooperation will require a basis of mutual trust and respect. However, Member States are responsible for assessing whether private support organisations fulfil their tasks, independently of whether or not they are funded by the government.

FRA opinion 5

Articles 8 and 9 of the Victims' Rights Directive require EU Member States to ensure that all women who are victims of partner violence and their children have access to specialist support organisations that are sufficiently staffed and funded. However, the network of support organisations is still piecemeal and does not always abide by agreed standards, the interviews indicate. Therefore, Member States must systematically assess the performance of support organisations against defined performance indicators to ensure that support organisations contribute to victims' protection against repeat victimisation, to enhancing victims' access to criminal proceedings and, in general, to achieving the objectives defined in the Victims' Rights Directive.

Court orders

In all EU Member States researched, legislation enables courts to issue protection orders. However, victims observed that court orders were breached without any consequences. Therefore, Member States must assess the effective implementation of court orders.

FRA opinion 6

In light of the victim's right under Article 18 of the Victims' Rights Directive to effective protection against repeat victimisation, EU Member States – governments and/or judiciaries – should assess the effectiveness of court protection orders.

A protocol must be in place ensuring, in cases of breaches of court orders, their immediate enforcement and dissuasive sanctions.

Training of the police, of other officials in contact with victims and of staff from support organisations

- Several of the victims interviewed commented critically on the attitudes displayed by the authorities of EU Member States, including the police, social welfare institutions, health professionals and court practitioners.
- In particular, some victims of partner violence experienced comments made by police or other practitioners as inappropriate or sexist.

- More than two in three practitioners interviewed believed that improving professional attitudes and conduct in the police would improve victims' readiness to report their victimisation to the police. This includes two in three police officers agreeing that taking measures to improve the attitudes of the police would pay off in terms of encouraging more victims to report to the police.

The current state of training of practitioners leaves room for improvement, these findings suggest.

FRA opinion 7

In accordance with EU Member States' obligations under Article 25 of the Victims' Rights Directive, a comprehensive training programme should be drafted, implemented and sustained for all organisations dealing with women as victims of partner violence – including, but not limited to, the police, health professionals, staff members of support organisations, prosecutors and judges.

This programme must ensure that all professionals dealing with women as victims of partner violence are thoroughly trained to display:

- *respectful, professional and non-discriminatory attitudes towards victims;*
- *an understanding of the phenomena constituting partner violence and their repercussions on the situation, perceptions and behaviour of victims;*
- *a clear notion of the objectives of interventions in situations of partner violence;*
- *an understanding of cooperation between those involved in the response to partner violence and of the appropriate distribution of tasks and responsibilities among them.*

Protection of victims of partner violence against secondary victimisation caused by encountering the offender at court

An overwhelming majority of the victims of partner violence interviewed in the project had, at some stage, experienced the presence of the offender as intimidating, compared with only half of the other victims. This indicates the necessity to protect women more effectively who are victims of partner violence against encountering the offender in a situation where victims do not feel protected. The Victims' Rights Directive and the Istanbul Convention include obligations to do so.

FRA opinion 8

In accordance with their obligations under Articles 18 and 19 of the Victims' Rights Directive, EU Member States should step up their efforts to, throughout the investigation and the proceedings, protect victims of partner violence against secondary victimisation resulting from victims' encounters with offenders in situations where victims are not sufficiently prepared and protected to cope with this confrontation.

Criminal law definitions capturing the essential wrong of partner violence

Victims of partner violence conveyed a strong message of criticism in the interviews: that the findings of criminal proceedings, and the offences for which the perpetrator is held to account, fail to capture the reality that victims experience. This reality is shaped not by single, isolated acts of violence, but by the fact that victims have to live, sometimes for a long time, in a state of constant fear and helplessness and of being completely and utterly at the mercy of the offender.

The offender's entire behaviour threatens violence. By this threat, the offender establishes a relation of subordination, makes his partner submissive, controls her behaviour and denies the victim's autonomy, which is a core aspect of human dignity. If the police, prosecutors and criminal courts reduce domestic violence to a number of isolated incidents, but overlook the fact that, far beyond these single acts of violence, the victim had to live in constant fear of violence over a long time, they miss out on the essence of violent relationships in terms of both their human rights implications and how victims experience them.

FRA opinion 9

In accordance with their obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 46 (a) of the Istanbul Convention to acknowledge the specific and severe wrong of partner violence, EU Member States must ensure that the police, prosecutors and courts overlook neither the discriminatory nature of partner violence nor the elements of psychological violence inherent in it. Member States that have not done so already should enact criminal law provisions that specifically address partner violence and take the entirety of the rights violated by the offender into account.

Anti-aggression training and court protection orders as 'default sanctions' in cases of partner violence

Many victims wish for a sanction that supports the offender in changing his behaviour and enables him to refrain from resorting to violence, as they revealed in the interviews. In light of their right to protection against repeat victimisation, victims expect the court to impose sanctions that contribute to preventing further violence. Victims' tendency to appreciate sanctions that rehabilitate is not limited to victims of partner violence; see Section 1.3 of Part III of this report series.

This fits in with Article 16 of the Istanbul Convention, which obliges Parties to set up programmes aimed at teaching perpetrators of domestic violence to adopt non-violent behaviour in interpersonal relationships, with a view to preventing further violence and changing violent behavioural patterns.

In addition, victims expect criminal courts to issue restraining or protection orders if, at the time of the trial, such orders are not already in place.

FRA opinion 10

To protect the rights of victims and of others, EU Member States should concentrate on sanctions that support the offender in refraining from repeat offending. Hence, they should consider introducing anti-aggression training and court protection orders – if they are not already in place at the time of the trial – as regular sanctions in cases of partner violence.

Recognising victims who are of vulnerable social status

The social status of some victims is vulnerable. These include women who are victims of partner violence, but also other groups facing societal discrimination or abuse of power by state officials. There are considerable differences between them and 'other' victims. These concern, for example, a victim's interest in participating in the proceedings, assessing the work of the police or accepting the outcome of criminal proceedings. Overall, victims who are of vulnerable status are particularly keen on playing an active role in the proceedings and are demanding when it comes to assessing the performance of the criminal justice system. Thus, while a clear majority of the 'other' victims believe that the criminal justice system fulfils its purpose of conveying

a message to the victim, the offender and the public that justice is done, a clear majority of the victims who are of vulnerable social status disagree with this view.

All persons who professionally deal with victims of violence should understand the particular sensibilities of victims with a vulnerable social status.

All organisations engaging in the criminal justice system should have protocols in place that ensure that they assess a victim's vulnerability in terms of their exposed social status, in particular as concerns victims of sexual, partner and, in general, gender-based violence (Article 22 (3) of the Victims' Rights Directive).

In addition, the above analysis corroborates the assumption that criminal justice should serve to recognise victims, the wrong done to them and indirectly the respect owed to their rights. In this vein, Article 25 (5) of the Victims' Rights Directive stresses that training of professionals must "aim to enable the practitioners

to recognise victims, and to treat them in a respectful, professional and non-discriminatory manner".

FRA opinion 11

In accordance with Article 22 of the Victims' Rights Directive, EU Member States should ensure that the police, public prosecutors and criminal courts recognise the vulnerable status of victims of violent crime, including victims of partner violence, sexual violence, hate crimes and abuse of power.

In accordance with Article 25 of the Victims' Rights Directive, Member States should ensure that training curricula and training programmes make practitioners who deal with victims of violence aware of the particular sensitivity of victims whose status is vulnerable, including the particular risk of secondary victimisation in dealing with such victims. Professionals should be trained to treat victims who are of vulnerable social status in a respectful and non-discriminatory manner.



Introduction: rights to protection and justice of women who are victims of partner violence

This report as part of a series

This publication is the last of a series of four reports based on evidence from fieldwork in seven EU Member States (Austria, France, Germany, the Netherlands, Poland, Portugal and the United Kingdom). They assess

the operation of criminal justice systems from the perspectives of (adult) victims of violent crime and of practitioners working in criminal justice systems: staff members of support organisations, lawyers advising victims, police, public prosecutors and criminal judges.

Project on 'Justice for victims of violent crime'

Building on previous research on victims of crime and their access to justice,* in 2017, FRA's multidisciplinary research network, **FRANET**, conducted social fieldwork research into the situation of the rights of victims of violent crime in criminal justice systems in Austria, France, Germany, the Netherlands, Poland, Portugal and the United Kingdom. In the course of this project, FRANET conducted 231 semi-structured in-depth interviews:

- 148 with practitioners active in criminal proceedings – staff members of victim support organisations, lawyers advising victims, police, public prosecutors and criminal judges;
- 83 with adult victims of violent crimes, including two mothers of victims killed in November 2015 in the terrorist attacks in Paris.

These 83 interviews include 35 interviews with female victims of partner violence; these are the main source of information drawn on in this report. They allow comparisons between this group of victims and victims of other forms of violence. The last section of the introduction, on the terminology in this report, explains the category 'partner violence'.

Among other aspects, practitioners were asked about their views on the role of victims in criminal proceedings, what could be done to enhance victims' reporting to the police and participation in the proceedings, and how they assess victim compensation.

Victims were asked about:

- the information and support they received;
- their means of actively participating in the proceedings;
- whether or not they sensed that their participation made a difference;
- how content they were with the result of the proceedings in general and with compensation received in particular;
- importantly, whether or not they felt recognised and respected by how criminal proceedings considered and dealt with their concerns and rights.

The results of this project are presented in four reports.

- Part I is on 'Victims' rights as standards of criminal justice'. It puts the project in context by sketching the historical development of victims' rights in Europe and by bringing a consistent human rights perspective to the discussion of victims' rights. It clarifies and spells out the human rights standards applied by Parts II to IV in assessing victims' access to justice in the seven EU Member States researched. The tensions and contradictions that surface throughout this series of reports reflect the current transitional state of criminal justice systems. They are undergoing the difficult passage from upholding public interests and public order to protecting the human rights of individuals.
- Part II is on procedural justice. It applies the standards of victims' rights in assessing the procedural aspects of criminal justice. This project distinguishes between procedural and outcome justice. 'Procedural justice' in

general relates to such aspects as the fairness of proceedings, taking all available evidence into account and showing respect for the parties of the proceedings, their rights and their concerns. Hence, this report asks if authorities are committed to conducting effective proceedings, if victims have a voice in and can contribute to the proceedings, and if state organisations pay due attention to the contributions made by victims.

- Part III is on ‘sanctions’. It applies the standards of victims’ rights in evaluating whether or not the results of criminal proceedings deliver on the promise of criminal justice to victims of violent crime. That would mean convicting, sentencing and punishing offenders and ensuring that victims are compensated for the consequences of violent crimes.
- Part IV zooms in on one particular group of victims, namely women as victims of gender-based violence in general and of partner violence in particular. It analyses what criminal justice means to victims of forms of violence that express or reinforce societal discrimination on the ground of sex. In addition, while Parts II and III deal exclusively with the right of victims of violent crime to criminal justice, this report is concerned with the interplay of justice and a victim’s right to protection against repeat victimisation. The situation of women as victims of domestic partner violence is a good example.

* For a list of previous FRA publications, see the introduction to Part I, ‘Victims’ rights as standards of criminal justice’.

The fundamental rights basis of the rights of victims of violent crime

This report is founded on a human rights-based approach to criminal justice. It assumes that victims of human rights violations that are severe enough to constitute a crime against the person² have at least two fundamental rights:

- a right to protection against repeat victimisation;
- a right to justice.

The ECtHR uses the category of “crimes against the person” to denote the range of rights of victims to a criminal justice response. Doak (2008) distinguishes four rights: the right to protection, the right to participation, the right to justice and the right to reparation. Here the right to justice is conceptualised as encompassing the right to participation, as an aspect of procedural justice, and the right to reparation, as an aspect of outcome justice.

These two rights sit in a wider context. Crimes can be particularly severe human rights violations, and individuals have a right to protection against them. Such rights have two strands. Protection rights aim to *prevent* future crimes. Remedial rights aim to *defend* human rights. They invoke justice in response to a crime against the person, by reasserting human rights against their denial, minimising the destructive impact of the offence and reconfirming the status of the victim as a person and a holder of rights that are to be respected.

In **Figure 1**, the two specific rights of victims are presented in blue, while the rights to preventive measures to which all persons are equally entitled are presented in green. The diagram shows that criminal proceedings fulfil two functions. Firstly, the criminal code condemns the human rights violation and announces that the authorities will not allow offences to pass with impunity; criminal proceedings preserve the credibility of those messages, performing their preventive function. Secondly, as a matter of justice they redress the wrong done to the victim, exercising their responsive and remedial function.

After a violent crime has been committed, victims have, consequently, two specific rights: a right to concrete protection measures if there is a significant risk of repeat victimisation, and a right to justice.

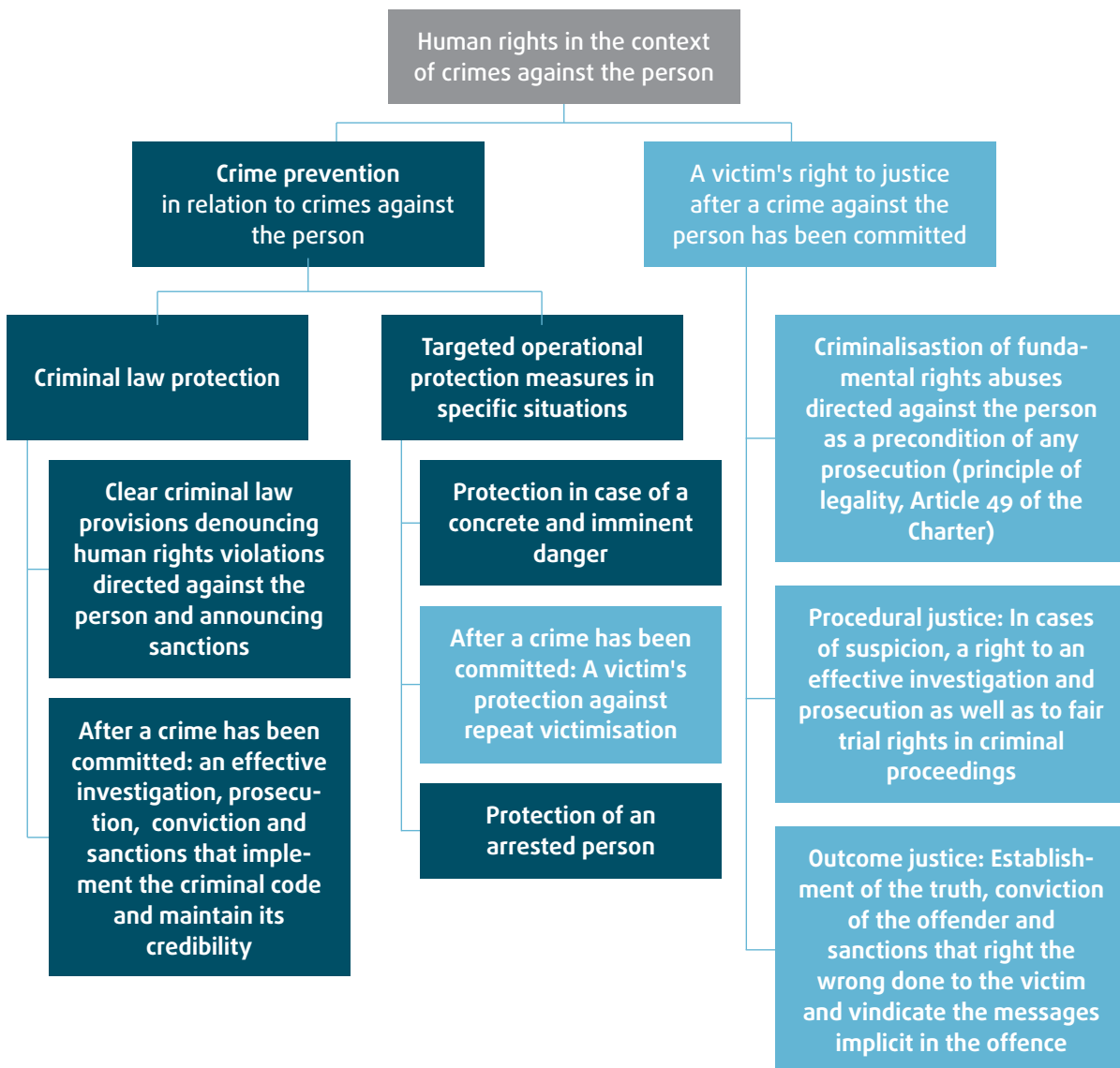
A victim’s right to security and to protection against repeat victimisation

Victims are entitled to security of the person and to protection against repeat victimisation. The fact that a crime against the person has been committed prompts the question of whether or not they are still at risk. That the violent offence was possible once may indicate – depending on the circumstances and the nature of the crime – that it is possible again. Therefore, victims of crimes against the person have a right to an assessment of any remaining risks of victimisation and to protection measures if such risks are established.

The ECtHR set out the relevant principles in the case of *Opuz v. Turkey* (see below) in relation to an individual’s right to life (Article 2 of the ECHR). However, similar considerations arise under other convention articles (including Articles 3, 4 and 8). In *Opuz*, the ECtHR stated:

² ECtHR, *K.U. v. Finland*, No. 2872/02, 2 December 2008, para. 46.

Figure 1: Human rights in the context of crimes against the person



Source: FRA, 2019

“The Court reiterates that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction [...]. This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions [...]. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual [...]. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. [...]

For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.”³

Hence, if a woman reports to the police or another competent authority that she is under threat of partner violence, and the authorities have no concrete reason to doubt this assertion, they are under an obligation to take operational measures to protect the victim against violence and to end the threat of violence.

³ ECtHR, *Opuz v. Turkey*, No. 33401/02, 9 June 2009, paras. 128–130.

The victim has a right to security and to protection measures by the competent authorities. In terms of the EU Charter of Fundamental Rights (the Charter), this right relates mainly, but not exclusively, to Articles 1 ('Human dignity'), 2 ('Right to life'), 3 ('Right to the integrity of the person'), 4 ('Prohibition of torture and inhuman or degrading treatment or punishment') and 7 ('Respect for private and family life').

A victim's right to criminal justice

Criminal justice redresses – 'rights' – the wrong to the victim and thus attests to the rights of the victim as well as, indirectly, to the equal rights of all others. If an offender, by committing a violent crime, calls the victim's rights into question, the victim can legitimately expect the community to come to the defence of the victim and of their rights. As an effective remedy within the meaning of Article 13 of the ECHR and Article 47 of the Charter, criminal proceedings assert the victim's rights as much as they, indirectly, preserve the identity and foundation of a community of law based on human dignity and human rights. Criminal proceedings confirm the victim's status and rights by, throughout the proceedings, recognising victims, treating them with respect and giving due consideration to their views and concerns – procedural aspects of criminal justice – as well as by effectively identifying, convicting, sentencing, and punishing offenders – outcome aspects of criminal justice.⁴ In the words of Recital 9 of the Victims' Rights Directive, because crime "is a wrong against society as well as a violation of the individual rights of victims [...] victims of crime should be recognised and treated in a respectful, sensitive and professional manner".

Article 13 of the European Convention on Human Rights

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

The case law of the European Court of Human Rights (ECtHR) further clarifies the fundamental rights-basis of criminal justice. The most relevant strand relates to Article 13 of the ECHR and maintains that, when an individual can argue that a violent offender severely abused their convention rights "Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable

of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigation procedure."⁵

This formula spans three elements:

- an investigation capable of leading to the identification and punishment of offenders;
- the payment of compensation where appropriate;
- effective access for the victim to the procedure.

The EU Charter of Fundamental Rights incorporates the essence of Article 13 of the ECHR into EU primary law. The first paragraph of Article 47 of the Charter captures the contents of Article 13 of the ECHR.

Article 47 of the EU Charter of Fundamental Rights

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

In granting victims of crimes against the person rights to an effective remedy and to a fair trial, Article 47 of the Charter is the foundation of criminal justice for victims of violent crime.

The Istanbul Convention and EU law

The Istanbul Convention is a Council of Europe Convention. As long as the EU has not ratified the convention, it is not part of EU law. However, even before then, the Istanbul Convention can influence the interpretation of the Charter either directly or through the ECHR.

According to Article 52 of the Charter, when the Charter contains rights that correspond to rights guaranteed by the convention, the meaning and scope of Charter rights is (at least) the same as those laid down by the ECHR. However, the convention is not a static measure.

4 The significance of 'procedural justice' has been brought to the fore and elaborated by Tyler (2006); Tyler (2011); Tyler and Blader (2018); Tyler and Trinkner (2018).

5 ECtHR, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], No. 47848/08, 17 July 2014, para. 149.

When interpreting the provisions of the ECHR, the ECtHR applies the 'living instrument doctrine'. This means that the court takes into account developments at the level of the law of the States bound by the ECHR. Thus, in the case of *M.C. v. Bulgaria*, it noted that in interpreting definitions of rape "the Court must have regard to the changing conditions within Contracting States and respond, for example, to any evolving convergence as to the standards to be achieved".⁶ Therefore, in raising the level of standards that the States parties to both Council of Europe conventions respect, the Istanbul Convention has a potential to change over time the "meaning and scope" of relevant articles of the ECHR and consequently of the Charter.

FRA's Violence against women survey

In conceptualising partner violence, one must take into account empirical evidence that points to the fluid borders between various forms of controlling behaviour: violence occurring in the domestic sphere, violence taking place after the partnership has broken up, and stalking and sexual harassment of a previous partner.

On the basis of more than 42,000 extensive face-to-face interviews with women in all EU Member States, FRA published a report in 2014 entitled *Violence against women: An EU-wide survey – Main results* (the 'VAW survey'). It demonstrates that gender-based violence denotes widespread and severe violations of women's human rights, which the EU and its Member States cannot afford to overlook.

- Across the EU, one in three women (33 %) aged 15 or above has experienced physical and/or sexual violence, the VAW survey found.⁷
- One of the core survey findings was the high prevalence of partner violence. Of all interviewees with a partner at the time of the interview or previously, 22 % had experienced physical and/or sexual violence by a partner since the age of 15.⁸
- Partner violence often starts when offender and victim are living together and continues after their separation, the survey findings show. On the one

hand, 65 % of women victimised by a violent previous partner said that the first incident of physical or sexual violence took place when they were living together.⁹ On the other, one in six women (16 %) who had been victimised by a previous partner also experienced violence after the relationship had broken up.¹⁰

- Of all victims interviewed in the survey, 7 % had worried about the possibility of physical or sexual assault by a previous partner in the 12 months before the interview.¹¹
- A continuum stretches from domestic partner violence while cohabiting, to stalking committed after that situation has ended. Previous partners had stalked 9 % of women who had had a previous partner.¹² Therefore, stalking is often a continuation of domestic partner violence, and the victim experiences the persisting presence of her former partner as a lasting threat.
- Violence by a previous partner can also take the form of sexual harassment. For example, a person who forces a woman to watch pornographic material against her wish is often a previous partner (in 35 % of cases).¹³

In short, there is a significant risk that, after a violent partnership has 'ended', the violent relationship will continue. It can take various forms, including physical or sexual violence, sexual harassment or stalking. Hence, the borderline between a current and a previous partnership is fuzzy. The highest risk may be when the victim would prefer to conceive of the offender as a previous partner while the offender insists on maintaining their partnership. The many forms of violence committed by a 'previous' partner have this in common: they are attempts by the offender to maintain a relationship of dominance and control beyond the initial situation of two heterosexual partners living together under one roof. This attests to the importance of keeping the focus on dominating and controlling male behaviour, from which the threat of violence emanates, independently of whether or not victim and offender reside together and of the form in which the male offender expresses his claims to dominance and control.

6 ECtHR, *M.C. v. Bulgaria*, No. 39272/98, 4 December 2003, para. 155.

7 FRA (2014a), p. 21.

8 FRA (2014a), p. 21.

9 FRA (2014a), pp. 44-45.

10 FRA (2014a), p. 22.

11 FRA (2014a), p. 44.

12 FRA (2014a), pp. 85-86.

13 FRA (2014a), p. 112.

1

Partner violence: policies, legal framework and terminology



1.1 International human rights protection against partner violence

Since the early 1990s, the issues of violence against women in general and of domestic partner violence in particular have received increasing attention from policy- and law-makers. Within a few years, from 1992 to 1995, a widespread consensus emerged that partner violence should be recognised as ‘gender-based violence’, that is, as a form of violence that has deep and strong roots in its social and cultural context as one of many manifestations of large-scale discrimination encountered by women.

1.1.1 UN CEDAW Committee’s General Recommendation No. 19 (1992)

The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) adopted General Recommendation No. 19 on violence against women in 1992. The recommendation introduced to international discourse the notion that discrimination against women, as defined in Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) includes “gender-based violence”. The recommendation commences with the words:

CEDAW Committee – General Recommendation No. 19

1. Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.

The general comments note:

CEDAW Committee – General Recommendation No. 19

6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

The term ‘gender-based violence’ is powerful in bringing to the fore the essentially social nature of what women experience in their private and family lives. It establishes a link between the violence suffered by an individual woman and the particular structure of the society in which she lives, a structure that is shaped by an unequal distribution of social status and societal power. This imbalance is a root cause of partner violence, which is both a consequence of gender roles and a means of reinforcing them. Thus, the notion highlights the fact that male violence against women has a basis not only in physical differences but also in culture. Partner violence – which is the focus of this report – perpetuates women’s impaired enjoyment of their dignity and rights.

1.1.2 Vienna Declaration and Programme of Action (1993)

The World Conference on Human Rights in Vienna adopted the Vienna Declaration and Programme of Action on 25 June 1993. It was the first international conference to adopt the notion of gender-based violence. Paragraph 18 of the declaration maintains:

Vienna Declaration and Programme of Action

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated.

1.1.3 UN General Assembly Declaration on the Elimination of Violence against Women (1993)

In December 1993, the UN General Assembly adopted the Declaration on the Elimination of Violence against Women. Its content largely follows the lines of the CEDAW Committee’s General Recommendation No. 19.

Article 1 of the UN General Assembly Declaration on the Elimination of Violence against Women

For the purposes of this Declaration, the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 4 of the declaration calls on states to “pursue by all appropriate means and without delay a policy of eliminating violence against women”, including “sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies”. Thus, the declaration marks an emerging consensus at the level of the UN that a criminal justice response to partner violence is indispensable to “redress the wrongs caused to women who are subjected to violence”.

1.1.4 Convention of Belém do Pará (1994)

In September 1994, the General Assembly to the Organisation of American States adopted the Convention on the Prevention, Punishment and Eradication of Violence Against Women. The convention’s preamble acknowledges that “violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men.” Article 3 of the convention stipulates: “Every woman has the right to be free from violence in both the public and private spheres.”

1.1.5 Beijing Declaration and Platform for Action (1995)

In the following year, the Fourth UN World Conference on Women, meeting in Beijing, adopted a declaration and a comprehensive ‘Platform for Action’ to enhance women’s rights in all aspects of life. Chapter IV Section D of the platform for action addresses many forms of violence against women and calls on governments to take various measures. Paragraph 224 of the Platform for Action contends:

Beijing Declaration and Platform for Action

Violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms. [...] gender-based violence, such as battering and other domestic violence, sexual abuse, [is] incompatible with the dignity and the worth of the human person and must be combated and eliminated.



1.1.6 Sustainable Development Goal 5

In September 2015, the UN General Assembly adopted an Agenda for Sustainable Development.¹⁴ Sustainable Development Goal 5 aims to “[a]chieve gender equality and empower all women and girls”. Among others, it defines the following target and indicators:

Target	Indicators
5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation	5.2.1 Proportion of ever-partnered women and girls aged 15 years and older subjected to physical, sexual or psychological violence by a current or former intimate partner in the previous 12 months, by form of violence and by age
	5.2.2 Proportion of women and girls aged 15 years and older subjected to sexual violence by persons other than an intimate partner in the previous 12 months, by age and place of occurrence

1.2 Council of Europe: the Istanbul Convention

To date, the Council of Europe’s Istanbul Convention¹⁵ stands out as the most comprehensive international instrument on violence against women. The Council of Europe adopted it in 2011 and it entered into force in August 2014. The convention was signed by all 28 EU Member States and (as of 10 March 2019) has been ratified by 21 – excluding Bulgaria, Czechia, Hungary, Latvia, Lithuania, Slovakia and the United Kingdom; the EU itself signed it in June 2017.

The Istanbul Convention is far more comprehensive and concrete than the Belém do Pará Convention in defining the obligations incumbent on parties.

The preamble of the convention adopts, in clear terms, the concept of gender-based violence. It highlights the structural and discriminatory nature of violence against women in the following paragraphs:

Preamble of the Istanbul Convention

Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women;

Recognising the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men;

Recognising, with grave concern, that women and girls are often exposed to serious forms of violence such as domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called “honour” and genital mutilation, which constitute a serious violation of the human rights of women and girls and a major obstacle to the achievement of equality between women and men; [...]

Thus, the Istanbul Convention fits into the line of international documents sketched above.¹⁶

The following sections will relate to some of the core elements of the convention that are crucially important in combating partner violence, such as targeted criminal law protection against partner violence, an effective system of protection orders and specialised support organisations available to all women victimised by their violent partners or ex-partners.

1.3 EU policy framework and law relating to partner violence

1.3.1 Declaration 19 on Article 8 of the Treaty on the Functioning of the European Union

According to Article 8 of the TFEU, the Union shall, in all its activities, aim to eliminate gender inequality. This concerns activities of the Union, not only activities of EU Member States.

By means of Declaration 19,¹⁷ when signing the Lisbon Treaty in December 2007, the intergovernmental conference committed itself to combat all forms of domestic violence. That is one aspect of the Union’s struggle to eliminate gender inequalities.

¹⁴ General Assembly Resolution of 25 September 2015, A/RES/70/1, on Transforming our world: the 2030 Agenda for Sustainable Development.

¹⁵ Council of Europe Convention on preventing and combating violence against women and domestic violence, CETS No. 201, opened for signature in Istanbul on 11 May 2011, entry into force on 1 August 2014.

¹⁶ Ulrich and Rössl (2017); Greif and Ulrich (2017), pp. 76–78.

¹⁷ OJ C 202, 7.6.2016, p. 345.

Declaration 19 on Article 8 of the Treaty on the Functioning of the European Union

The Conference agrees that, in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.

This declaration addresses the following aspects that the sections below will deal with:

- the need for comprehensive criminal law definitions and sanctions covering all forms of domestic partner violence;
- protection of victims of domestic partner violence against repeat victimisation;
- appropriate support services available to all victims of domestic partner violence.

1.3.2 European Parliament resolutions calling for action against violence against women

In numerous resolutions, the European Parliament has called on the Commission and on EU Member States to step up their efforts in combating violence against women, including partner violence.¹⁸ In its Resolution of 25 February 2014, the European Parliament asked the Council to adopt a unanimous decision identifying violence against women and girls (and other forms of gender-based violence) as an area of crime listed in Article 83 (1) of the TFEU.

1.3.3 Council conclusions on combating violence against women

In June 2014, the Justice and Home Affairs Council adopted conclusions on ‘Preventing and combating all forms of violence against women and girls, including female genital mutilation’. Among many other recommendations, the conclusions called on Member States

and the European Commission, in accordance with their respective powers, to:

Council conclusions – Preventing and combating all forms of violence against women and girls, including female genital mutilation

1. develop and implement, and further improve where they already exist, comprehensive, multi-disciplinary and multi-agency coordinated action plans, programmes or strategies, as appropriate, to prevent and combat all forms of violence against women and girls, taking into account the results of the FRA survey, where appropriate [...]

1.3.4 EU accession to the Istanbul Convention

Article 75 of the Istanbul Convention provides that it is “open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Union”.

The European Parliament, by its Resolution of 24 November 2016 on the EU accession to the Istanbul Convention on preventing and combating violence against women, took a clear stance in favour of EU accession to the Istanbul Convention.¹⁹

While the Council Conclusions of June 2014 invited the EU Member States to “sign, ratify and implement the Council of Europe Convention on preventing and combating violence against women and domestic violence”, they did not address the issue of the accession of the EU to the Istanbul Convention. However, in May 2017, the Council adopted two decisions on the signing of the Istanbul Convention – limiting the scope of the signature to exclusive competence on judicial cooperation in criminal matters and on asylum and *non-refoulement* – and Commissioner Věra Jourová signed it on behalf of the EU, on 13 June 2017. The EU’s accession has thus reached a final stage. In opposition to the limited approach adopted by the Council, the European Parliament in September 2017 voted in favour of “a broad EU accession to the Convention without any limitations” and, on 4 April 2019, adopted a resolution seeking an opinion from the CJEU on the compatibility of the accession with the EU Treaties.²⁰

¹⁸ Among the many resolutions that the European Parliament has adopted relating to violence against women and calling for more action, the following stand out: the resolution of 26 November 2009 on the elimination of violence against women, OJ C 285E, 21.10.2010, p. 53–58; the resolution of 25 February 2014 with recommendations to the Commission on combating violence against women, OJ C 285, 29.8.2017, p. 2–10; and the resolution of 26 October 2017 on combating sexual harassment and abuse in the EU (2017/2897(RSP)), OJ C 346, 27.9.2018, p. 192–199.

¹⁹ OJ C 224, 27.6.2018, p. 96–100.

²⁰ European Parliament resolution of 12 September 2017 on the proposal for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence (COM(2016)0109 – 2016/0062(NLE)); European Parliament resolution of 4 April 2019 “Seeking an opinion from the Court of Justice relating to the EU accession to the Convention on preventing and combating violence against women and domestic violence” (2019/2678(RSP)).

1.4 The Council's Victims' Rights Roadmap and its implementation

On 10 June 2011, the Council of the European Union adopted a Resolution "on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings".²¹ Several of the measures envisaged are relevant to women as victims of partner violence. Measure D invited the Commission to review the Compensation Directive, but that is not dealt with here.²²

1.4.1 Measure A: the Victims' Rights Directive

The Victims' Rights Directive consistently highlights the need to pay particular attention to women as victims of gender-based violence in general (Recital 17) and of violence by a current or former partner in a close relationship in particular (Recital 18). Recital 17 provides:

Victims' Rights Directive, Recital 17

Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships [...] Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.

It is important to note that not only women who are victims of gender-based violence but also their children are entitled to special support and protection.

In addition, Recital 18 of the Victims' Rights Directive considers:

Victims' Rights Directive, Recital 18

Violence in close relationships is a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust. Victims of violence in close relationships may therefore be in need of special protection measures. Women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially or as regards her right to residence.

²¹ Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, OJ C 187, 28.6.2011, p. 1–5.
²² See Part III of this report series, covering sanctions.

These hints in Recitals 17 and 18 that victims of partner violence and their children may need special support and protection measures are rather general. The legally binding provisions of the directive do not elaborate them further, beyond lists that include victims of violence committed in close relationships as one vulnerable group among others (e.g. in Article 9 (3) and Article 22 (3) of the directive).

1.4.2 Measure C: Protection Order in Civil Matters

Directive 2011/99/EU on the European Protection Order (EPO) establishes a cross-border mechanism for the recognition of protection orders issued as criminal law measures.²³ To complement it, the Roadmap envisaged the conclusion of Regulation (EU) No. 606/2013 on mutual recognition of protection measures in civil matters, which sets up a mechanism for direct recognition of protection orders issued in civil matters.²⁴ Both instruments entered into force on 11 January 2015.²⁵

In April 2018, the European Parliament adopted a highly critical resolution on the implementation of the EPO Directive.²⁶ The Parliament referred to an assessment by the European Parliamentary Research Service in September 2017,²⁷ which had identified only seven EPOs issued over two and a half years: four in Spain, two in the United Kingdom and one in Romania. It is fair to say that the EPO Directive is not effective in protecting women against partner violence in cross-border situations.

1.4.3 Measure E and the specific needs of women as victims of partner violence

The Victims' Rights Directive establishes general rules that are applicable to all victims of crime. It cannot be expected to consider the specific situations and needs of all groups of victims. Hence, the Council's Roadmap of 2011 envisaged, as Measure E, specific directives that pay attention to the "specific needs" of certain categories of victims.

²³ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, OJ L 338, 21.12.2011, p. 2–18.

²⁴ Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, OJ L 181, 29.6.2013, p. 4–12.

²⁵ On the protection orders, see Van der Aa and Ouwerkerk (2011); Van der Aa (2012a).

²⁶ European Parliament resolution of 19 April 2018 on the implementation of Directive 2011/99/EU on the European Protection Order (2016/2329(INI)).

²⁷ The research is available on the European Parliament's [website](#).

Victims' Rights Roadmap

Measure E: Specific needs of victims

Some victims have specific needs based on the type or on the circumstances of crime they are victim of, given the social, physical and psychological repercussions of these crimes, such as victims of trafficking in human beings, children victims of sexual exploitation, victims of terrorism and victims of organised crime. Their special needs could be addressed in specific legislation dealing with the fight against these types of crime.

On the other hand, some victims of crime are in need of special support and assistance due to their personal characteristics, to be evaluated on a case-by-case basis. In this respect, children should always be considered particularly vulnerable.

The Commission is invited, in the context of its control of the implementation of the legislative instruments mentioned above and any others addressing specific areas of crime, and after having evaluated their practical operation once the period for implementation has expired, to propose through recommendations practical measures and suggest best practices to provide guidance to Member States in the process of dealing with the specific needs of victims.

The text on Measure E highlights victims of trafficking in human beings, child victims of sexual exploitation, victims of terrorism and victims of organised crime as examples ("such as"), but not to the exclusion of other groups. Arguably, women who victims of partner violence constitute a group of victims that have specific rights and protection needs and are sufficiently important to merit attention at policy and legislative levels. Declaration 19 and the Council conclusions and European Parliament resolutions referred to above may show that. However, to date there has been no directive addressing the specific rights and needs of women as victims of partner violence.

1.5 (Intimate) partner violence

This report uses 'partner violence' to mean various forms of physical, sexual and psychological violence by an adult male offender against an adult female victim within a close relationship. It includes current and previous partners, if the offender's violent conduct aims to subject the victim to his rule and control.

Hence, partner violence is a paradigm of gender-based violence and a form of discrimination. Intimate partner violence is both a consequence and an expression of a lasting and large-scale imbalance between men and

women in social status and societal power.²⁸ In a heterosexual relationship, the male offender's claim to domination replicates and reinforces a distinction that structures his society by the unequal distribution of social status and societal power.²⁹

There is a correlation between violence that individual women experience at the micro-level of their private and family life, and inequality persisting at the macro-scale in EU Member States. FRA's Violence against women survey highlights the link.³⁰ However, the sheer prevalence of partner violence against women³¹ attests to the significance and societal impact of gender-based violence.

From a human rights perspective, it is important to use an approach that takes into account the interrelation between individual behaviour and societal structure. The following chapter shows how governments have failed to adopt appropriate and effective measures to protect women against partner violence. That constitutes discrimination against women. As long as policies and legislation fail to pay due attention to the difference between partner violence and non-discriminatory forms of violence, they discriminate against women. Public policies and legislation are treating situations on an equal footing when, in terms of the human rights at stake, they are essentially different.³²

The term 'partner violence' in this report corresponds to the notion of violence by a partner "in a close relationship" in the Victims' Rights Directive. Recitals 17 and 18 of the directive shape this concept as a form of gender-based violence.

Considered in the terminology of the Istanbul Convention, the term 'partner violence' denotes a form of violence that is both violence against women and domestic violence. The Istanbul Convention is not a single-issue instrument. Its title is 'Convention on preventing and combating violence against women and domestic violence', and Articles 1 and 2, in setting out the purposes and scope of the convention throughout, relate to violence against women and domestic violence.

28 Beijing Declaration and Platform for Action, adopted by the Fourth UN World Conference on Women in Beijing on 15 September 1995, para. 118: "Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement."

29 On conceptualising discriminatory forms of violence, including hate crimes, see FRA (2012), pp. 18–24.

30 FRA (2014a), p. 32. On correlations between partner violence and societal structure, see Nevala (2017); Reichel (2017).

31 FRA (2014a), pp. 37–42.

32 ECtHR, *Thlimmenos v. Greece* [GC], No. 34369/97, 6 April 2000, para. 44; more recently *Khamtokhu and Aksenchik v. Russia* [GC], Nos. 60367/08 and 961/11, 24 January 2017, paras. 64 and 82.



Article 3 of the convention reflects this by defining ‘violence against women’ and ‘domestic violence’ as terms that are free-standing and not interrelated. Hence, the definition of ‘domestic violence’ is gender-neutral and also includes violence against a male person, for instance a mother abusing her son.

Article 3 of the Istanbul Convention – Definitions

For the purpose of this Convention:

- a “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence [...]
- b “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim; [...]
- d “gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately

While ‘violence against women’ means a form of discrimination against women, domestic violence carries no such connotation. If a woman assaults her mother, this is not a form of gender-based violence and hence not covered by the definition of ‘violence against women’. However, it is ‘domestic violence’, according to the definition in Article 3 (b) of the convention, as it is an act of physical violence occurring between family members, which is all that ‘domestic violence’ indicates.

The term ‘partner violence’, in this research, occupies the overlap of ‘violence against women’ and ‘domestic violence’. On the one hand, it relates to physical, sexual, moral or psychological violence between former or current spouses or partners, and hence constitutes a form of ‘domestic violence’; on the other, it is restricted to gender-based and hence discriminatory forms of violence committed by male persons against their female partners. Therefore, ‘partner violence’ – used here synonymously and interchangeably with ‘intimate partner violence’ and ‘domestic partner violence’ – always refers to a form of discrimination, in that the offender explicitly or implicitly claims dominance and attributes to the victim an inferior, subordinate societal position and status.

The Istanbul Convention defines ‘domestic violence’ rather vaguely. It does not require that the partners ever lived together, or that the violent act in question was at the victim’s home. If the offender assaults his partner at her workplace or stalks her, this, in the terminology of the Istanbul Convention, constitutes domestic

violence. Thus, the convention clearly departs from the ordinary usage of the term. In any case, any form of partner violence is domestic violence in the meaning of the convention.

In one way, the convention’s ‘deflation’ of the term ‘domestic’ is beneficial. Looking at some of the situations reported by victims in the interviews, at times any distinction between domestic violence – in the classical meaning of violence in the domestic sphere – and stalking would be difficult to implement. Several of the situations that the interviewees described concerned the critical and often lasting phase in which the victim attempts to break free from the offender, who refuses to let her go and insists on maintaining his position of domination and control. The high number of cases located in this grey area is not surprising, given that during this struggle there is a particularly high risk of violence, as FRA’s VAW survey shows.

In practice, domestic violence and partner – or ex-partner – stalking blend seamlessly into one another. That has consequences not only in theory but also for the intervention of state authorities. At times, policies and legislation drafted to protect women in their domestic sphere have focused primarily on physical violence. The Austrian legislation that first introduced powers of the police to ban the offender from the victim’s home has a strong focus on physical violence.³³ From this perspective, banning the perpetrator from the victim’s home seemed to be an effective means of preventing the offender from again abusing his partner at her home. However, in conceptualising domestic violence, in recent years the focus has moved from physical to psychological violence³⁴ and from the act to the threat of violence as a means of establishing and maintaining male dominance and control.³⁵ In this view, preventing physical violence by distancing the offender from the victim’s home is not sufficient, as it is not an effective means of ending the *threat* of violence. Given the current state of telecommunication, the offender will regularly use such means to continue this threat long after he has been removed from the victim’s home. Offenders even sustain their reign of terror from inside prison by repeatedly calling the victim, it emerged from some of the interviews. Hence, as a default protocol, it is necessary to complement an emergency barring order with prohibiting the offender from contacting the victim, as Article 52 of the Istanbul Convention requires. In this perspective, entering the home of the victim is just one way for the offender to establish contact. Thus, domestic violence and stalking converge. Tools

³³ Dearing (2017a).

³⁴ On the evidence from FRA’s VAW survey concerning psychological partner violence, see Goodey (2018), pp. 34–36.

³⁵ On coercive control as a core aspect of partner violence and its severe impacts, see Nevala (2017).

that have been developed to apply in stalking cases are just as relevant in ‘normal’ domestic violence situations.

The turn towards emphasising psychological forms of violence draws attention to subtler but no less effective techniques of domination. At times, victims internalise the offender’s claims to domination to the point that the domination established by the offender escapes the victim’s awareness and becomes invisible. A victim, interviewed in Portugal, turned to the police to report a case of theft. Her husband had taken her mobile phone, which she needed urgently because it contained banking information. During the ensuing conversation, the police officers realised – and made the victim aware of the fact – that she was a victim of violence, firmly entangled in a comprehensive net of psychological violence and coercive control. The victim commented that she had believed that domestic violence is only physical.

All of this indicates that some of the categories in common use may be less helpful than their popularity would suggest. At the heart of partner violence is the threat of

violence, used to establish and maintain a relationship of domination and control and motivated by a claim of male supremacy, as our interviews show. In that case, distinctions between partner and ex-partner violence, domestic and non-domestic violence, partner violence and stalking³⁶ or violence and sexual harassment by a partner or ex-partner lose some of their significance. In the end, they refer to various forms of partner violence. Arguably, one should pay less attention to these distinctions and more to a holistic understanding of a violent heterosexual relationship. Such an understanding combines the various forms of violence as all serving the same purpose of maintaining a relationship based on control and subjugation and denying the victim a life of dignity and autonomy.

In the research project, the interviews with practitioners sometimes used the notion ‘domestic violence’, as it is the most common way to refer to intimate violence committed in the private sphere. Using the term ‘partner violence’ could have led to lengthy and pointless terminological discussions, which this research thus avoided.

³⁶ On the interrelatedness of stalking and domestic violence, see Van der Aa (2012a).



2

Partner violence: protection against repeat victimisation



This chapter mainly reports the experiences of the 35 women that were interviewed. Because of violence by their partners, they turned to the police or another public institution for protection. This small number of interviewees is not representative and does not allow generalisation.

After providing some normative and evidential context, the chapter proceeds in chronological order from the victim reporting to the police or another institution, through the police's initial reaction and the victim's referral to support services, to, finally, courts issuing long-term protection orders.

This chapter relies partly on results of quantitative research – most prominently from FRA's Violence against women survey – and partly on the interviews with victims and practitioners in this research project, as the introduction explains.

2.1 The normative framework

2.1.1 EU Charter of Fundamental Rights

It was explained above that a victim's right to be protected against the continuation of partner violence has a firm basis in a number of Charter rights, including rights to human dignity (Article 1 of the Charter), to life (Article 2), to the integrity of the person (Article 3) and to respect for private and family life (Article 7), as well as in Article 4, which prohibits inhuman or degrading treatment.

2.1.2 Victims' Rights Directive

The authorities of EU Member States have a duty to ensure the protection of women who are victims of partner violence against further victimisation. The Victims' Rights Directive comprises some significant provisions on this.

Of fundamental importance is Article 18 of the directive, which grants every victim a "right to protection". EU Member States must ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation. This also relates to women who are victims of partner violence and requires that the necessary legislation and administrative procedures be in place so the police can take appropriate protection measures, prominently including emergency barring orders.

Article 22 is entitled 'Individual assessment of victims to identify specific protection needs'. It obliges EU Member States' authorities to assess protection needs and, if protection is required, determine the measures to adopt. Victims of "gender-based violence" and of "violence in a close relationship" must be duly considered, as they are very likely to have specific protection needs (Article 22 (3)).

2.1.3 Istanbul Convention

If a police service, a public prosecutor's office or another state authority becomes aware of indications that a woman is subject to partner violence, it must ensure that immediately effective and reliable protection measures are adopted. The Istanbul Convention makes it clear which authority is in charge: the responsible law enforcement agency that has to ensure the victim's immediate protection, such as the police or any other authority entitled to exert immediate coercive power.

Article 50 of the Istanbul Convention – Immediate response, prevention and protection

1 Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.

2 Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

To protect victims as the convention requires, the competent law enforcement agency has to proceed in two steps. It must immediately assess the risk of (repeat) violence, in accordance with Article 51 of the convention. On the basis of that risk assessment, it must adopt the necessary protection measures. However, the need to carry out a risk assessment does not qualify the obligation to ensure immediate protection, nor is the risk assessment conceived as a one-off activity. Rather the risk has to be assessed continuously and by all those involved. The focus of the convention is not on a risk assessment as an isolated exercise but on risk management as an ongoing process requiring the cooperation of all actors involved in responding to the risk of repeat victimisation.

Based on this risk assessment, the responsible law enforcement agency has to ensure immediate protection by adopting restraining or protection orders, according to Article 53 of the Istanbul Convention. Again, the emphasis is on immediate protection, which is also why no remedies available to the offender can suspend the order. If the offender breaches a restraining or protection order, effective criminal or equivalent other sanctions must back them up.

Article 53 of the Istanbul Convention – Restraining or protection orders

1 Parties shall take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention.

2 Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders referred to in paragraph 1 are:

- available for immediate protection and without undue financial or administrative burdens placed on the victim;
- issued for a specified period or until modified or discharged;
- where necessary, issued on an ex parte basis which has immediate effect;
- available irrespective of, or in addition to, other legal proceedings;
- allowed to be introduced in subsequent legal proceedings.

3 Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.

Article 52 of the Convention highlights one specific order, the “emergency barring order”.

Article 52 of the Istanbul Convention – Emergency barring orders

Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.

Article 52 has to be interpreted in the context of Article 50 of the convention. That means that an emergency barring order is a measure that the competent law enforcement agency adopts as an immediate response to the threat of repeat partner violence. The police cannot wait for another authority to act, such as the public prosecutor or a court, unless this other authority can reach a decision during the police intervention and while the presence of the police ensures the safety of the victim. Once the police know of a situation of



partner violence and until a court order becomes effective, the police must adopt and implement measures to protect the victim against repeat victimisation.

The emergency barring order must ensure protection for long enough to allow the victim to apply for a court order and for the court to decide. Such orders usually last between seven and 28 days or, after the victim has applied for a court order, simply stay in place until the court order enters into force, according to an overview of legislation enacted in the EU that FRA published in 2017.³⁷

An emergency barring order entails prohibiting the offender from contacting the victim, under Article 52. This reflects the growing awareness of the significance of psychological violence as a means of maintaining a dominant position. In this way, emergency barring orders must prevent the offender from pressurising or verbally abusing the victim.

2.2 Forms and prevalence of partner violence

This report draws on both quantitative research – the findings from FRA’s VAW survey – and qualitative research – the interviews with women who are victims of partner violence and with practitioners working in criminal justice systems.

Of all women aged 18–74 years who had a current or had had a previous partner, 22 % had experienced physical and/or sexual violence by a current and/or previous partner since the age of 15, the FRA VAW survey revealed.³⁸ Regarding sexual violence, 4 % of the interviewees said that a partner had forced them into sexual intercourse and 5 % indicated that they had acquiesced to sexual activity because they were afraid what might happen if they refused.

Numerous women who have experienced violence at the hands of a partner have suffered repeat incidents of many forms of violence. For example, of the interviewees who indicated that a current or previous partner had slapped them, 30 % said that the same partner had done so two to five times and 17 % said six times or more.³⁹

More than half of women whose current partner had raped or attempted to rape them, or who had taken part in sexual activity when they were unable to refuse, had experienced more than one such incident. For example,

of the women who stated that their current partner had forced them into sexual intercourse, 22 % indicated that this had happened two to five times and 31 % said six times or more.⁴⁰

2.3 Women seeking help and reporting to the authorities

Strong factors push women to report intimate partner violence, and powerful forces restrain them from doing so. Often the latter have the upper hand for a long time, until a certain development changes the balance, for instance the violence becomes more severe or the offender also targets children.

2.3.1 The important role of healthcare institutions

The majority of victims had contact with a hospital or a doctor (or both), it appears from the interviews with victims. A victim interviewed in Portugal came to hospital by ambulance with her face burned. The hospital informed the public prosecutor’s office and supported the victim in reporting the incident to the prosecutor. In other instances, it appears that the health professionals involved did not report any indications of the victim’s exposure to partner violence to the police or the public prosecutor’s office. Thus, a victim commented critically on the reluctance of healthcare professionals to acknowledge the real cause of physical and psychological traumas.

“I was in the doctor’s surgery and there was a poster up on the wall and it said, ‘Are you frightened to go home? Are you frightened of your partner? Do you walk on eggshells?’, and I looked at this poster and I thought, ‘How do they know, how do they know that’s me?’ I was absolutely shocked and that stuck in the back of my mind, [...] and I just kept remembering this when the assaults were getting worse, I just kept remembering this poster [...] so I phoned the doctor’s surgery and I said, ‘Can you give me the number?’, and she said, ‘No, come in and see the doctor’. I said, ‘No, I’ve been seeing a doctor for years and they just kept putting me on antidepressants’. They never treated the cause, it wasn’t like Women’s Aid, Women’s Aid said, ‘He’s a rapist, he’s an abuser, he’s going to hurt you or worse’, whereas the doctor just said, ‘Here’s some tablets’.” (Victim, United Kingdom)

More victims of partner violence had reported it to a healthcare institution than to the police, FRA’s VAW survey showed.⁴¹ It is, therefore, important that health-

37 FRA (2017a), p. 211. on emergency barring orders in situations of domestic violence, Council of Europe (2017).

38 FRA (2014a), pp. 28–29.

39 FRA (2014a), p. 43.

40 FRA (2014a), p. 44.

41 FRA (2014a), pp. 59–60; on these survey findings, see Goodey (2018), pp. 36–39.

care professionals report incidents of partner violence that come to their attention to the police or the public prosecutor. Rules of confidentiality should not prevent such reporting.

Article 28 of the Istanbul Convention – Reporting by professionals

Parties shall take the necessary measures to ensure that the confidentiality rules imposed by internal law on certain professionals do not constitute an obstacle to the possibility, under appropriate conditions, of their reporting to the competent organisations or authorities if they have reasonable grounds to believe that a serious act of violence covered by the scope of this Convention, has been committed and further serious acts of violence are to be expected.

FRA’s VAW survey highlighted the “considerable potential for health professionals to identify violence, inform the police, secure forensic evidence and initiate intervention processes that set out to end violence”. It encouraged EU Member States to review their legislation and practitioner guidelines “with a view to ensuring that doctors and health institutions are obliged – under appropriate conditions – to inform the police when there is real suspicion that a woman has been subjected to violence.”⁴²

2.3.2 Victims reporting to the police

When women are victims of partner violence, their predominant motive to report it to a public institution is their wish to protect themselves and their children against their partner’s violence, according to our interviews with them. They want the violence to stop. When they report to the police, their security is their primary concern. Seeking justice is not a priority.

“Sheer terror that the man might come back and murder me. I had to have the police there to defend me basically, so, sheer terror.” (Victim, United Kingdom)

“I wanted to end all that suffering, both of myself and of my children. For me it was never an issue of seeking compensation, or convicting him, I simply wanted to break free from him, nothing else, and I knew that alone I could never do it. [...] The only way to get free from that nightmare was to be brave and to move ahead. To get out of there, to ask for help, since I couldn’t do it alone. I had no support. I needed someone to extend a hand to me.” (Victim, Portugal)

“I felt my life was in danger and it was a last resort that I needed the police to get this man away, so, safety was my most important.” (Victim, United Kingdom)

⁴² FRA (2014a), p. 69.

2.3.3 Counterforces: reasons for not reporting

Many women keep their experiences of violence to themselves without talking about the incident to anyone. In two thirds (66 %) of cases, the most serious incident of partner violence that the respondents experienced did not come to the attention of any service or organisation, including the police, healthcare institutions and support organisations, FRA’s VAW survey revealed. Only 39 % of women contacted one of those services as a result of the most serious incident of sexual violence by a current or previous partner.⁴³

One factor that makes it more difficult for women who are victims of partner violence to report it is their own emotional responses to their victimisation. Victims often feel responsible, guilty or ashamed. Of women who had experienced physical violence by a partner, 21 % said that the most serious incident left them feeling shame over what had happened, while the percentage goes up to 47 % among women victims of sexual violence. Furthermore, 32 % of victims of sexual violence said that they experienced feelings of guilt, 34 % felt embarrassed and close to two in three (64 %) were fearful following the incident. This points to the very real threat of repeat victimisation that women face.⁴⁴

Prominent among the reasons victims gave for not contacting the police following the most serious incident of physical partner violence are that they feared reprisal by the offender (11 %), did not want anyone to know and therefore kept it private (11 %), and experienced feelings of shame and embarrassment (11 %). Among victims of sexual partner violence, 20 % said they did not contact the police for fear of the offender, 21 % wanted to keep it private and 23 % felt shame or embarrassment.⁴⁵

The fear of retaliation often prevents victims of domestic partner violence from reporting to the police. The interviews showed over and over again how difficult it is for victims of intimate partner violence to report to the police, mainly for fear of the offender. Several interviewees observed that the offender had told them that he would kill them if they contacted the police. In fact, the question is whether a woman reporting her victimisation to the police should be seen as normal or exceptional, given the number of victims of partner violence who do not report to the police.⁴⁶

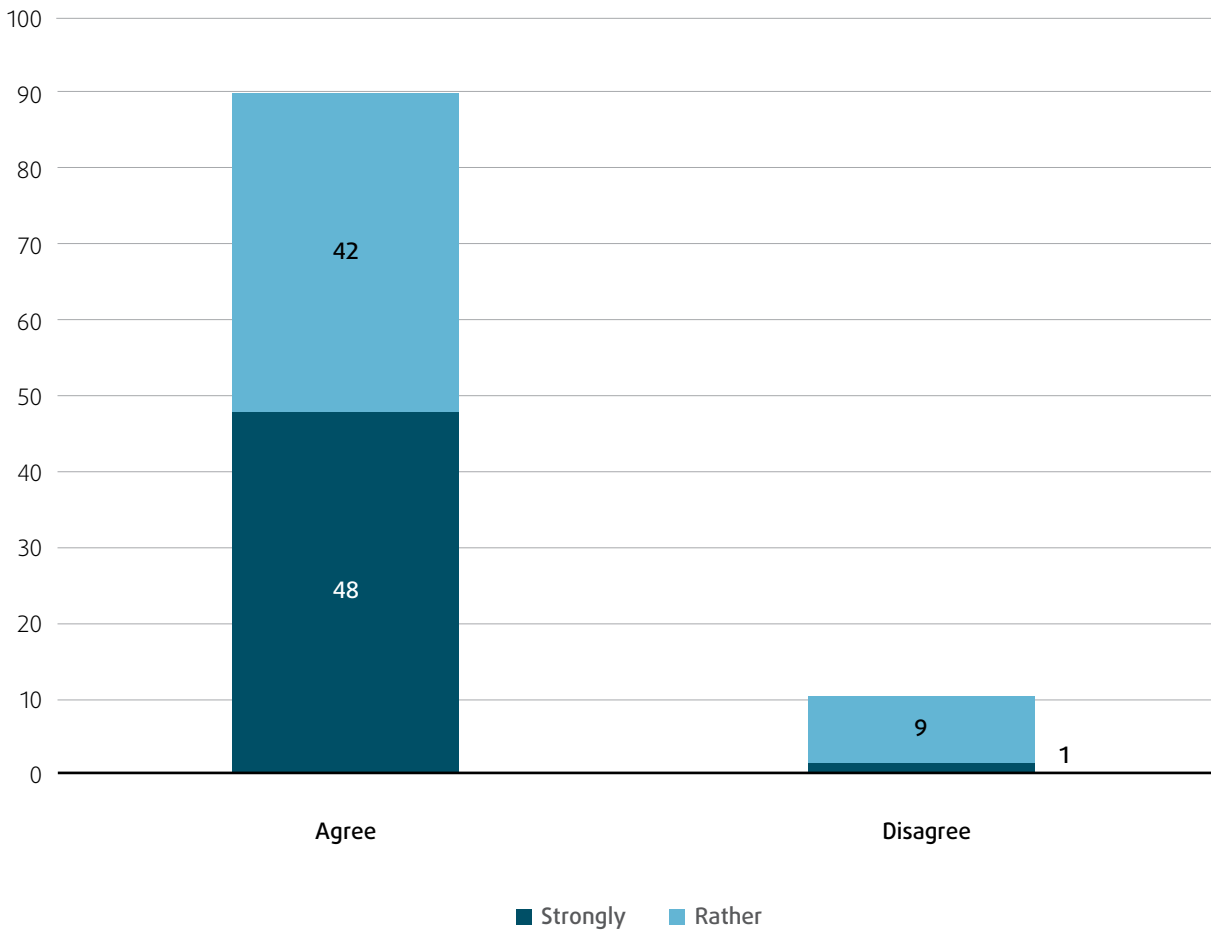
⁴³ FRA (2014a), p. 60.

⁴⁴ FRA (2014a), p. 56.

⁴⁵ FRA (2014a), p. 64.

⁴⁶ Goodey (2017), pp. 1778–1784.

Figure 2: Practitioners agreeing/disagreeing with the statement that better protection would make it easier for victims to report (%)



Source: FRA, 2019

Reporting the violent offence to the police places the victim at odds with the offender. Therefore, victims can report to the police only if they can rely on immediate protection against retaliation on the part of the offender, from the very moment they inform the police. Practitioners in all professional groups – staff from support organisations, lawyers, police, prosecutors and judges – and from seven EU Member States were asked if certain measures would make it significantly easier for victims to report. Those included better protection of victims against repeat victimisation and retaliation. The question was not limited to cases of partner violence, but such cases are typical of a situation in which fear

of repeat victimisation and retaliation by the offender can discourage a victim from reporting to the police.

The responses presented in Figure 2 clearly underline the importance of protecting victims against retaliation and repeat victimisation so that they can report. Four in five of the police officers agreed with the statement. In all the professional groups interviewed, a large number of interviewees agreed strongly.

Some victims recalled that they experienced reporting the offence as conflicting with their obligations towards their family and, most of all, with their duties as mothers.

Case study: Challenges in reporting and lasting fear

A woman interviewed in Poland had suffered physical and sexual abuse by her husband for some time, but did not report it to the police because she believed that her daughter “needed a father”. Only when she found out that her husband was also abusing her daughter did she call a number. She assumed that the operator would direct her to the Blue Line (*Niebieska Linia*), which provides victims of domestic violence with information and advice. However, the operator connected her directly to the police.

When the victim talked to the police, she refused to reveal her name and address. In the interview, she later explained that she believed that the offender would have killed her if he had found out that she had called the police. Nevertheless, the police were able to trace the call back to her. They interviewed the victim and her husband and, the same day, arrested the offender for child sex abuse.

The investigation and the ensuing criminal proceedings did not deal with the violence that the offender’s wife had experienced. Hence, the victim formally participated in the proceedings only as guardian of her daughter. At the time of the interview, the victim was in a state of constant fear, as the date of her husband’s release from prison was approaching. Although the victim had obtained a court order banning the offender from contacting their child and from the family home, she had also put her daughter in contact with a police officer and a priest, so that her daughter would know where to escape if “something happened” to her.

“It’s a train you cannot stop, and you are obliged to stay on. You are being heard over and over again, whether you want it or not. You have to appear in court. You have to listen to things you don’t want to hear. You have to realise all this before you start.” (Lawyer, Netherlands)

Victims will hardly ever realise all this before they report to the police. However, as Chapter 3 discusses, more often than not, victims become interested in criminal justice at a later stage. They want to perform an important role in the proceedings. Therefore, to a certain extent, the solution to the problem can be a matter of timing. The police should realise that what the victim felt was the right time to mobilise protection is not necessarily also the right time for the victim to trigger a criminal investigation. Only after the victim has had a chance to restore a basic feeling of security and, building on this foundation, been able to gain a better and clearer understanding of her situation will she be in a position and willing to help the police establish the truth.

2.4 Initial response by the police

Any effective protection of women against partner violence requires the cooperation of several bodies, including healthcare and support organisations as well as civil and criminal courts. It is the job of the police to adopt immediate protection measures. Therefore, the police have to take the first step and then allow others to follow up on their intervention. Hence, as soon as the police learn about a case of partner violence, the victim is entitled to a police response that immediately and reliably protects the victim against further violence, including threats.

2.3.4 Unforeseen consequences of reporting

Victims who turn to the police out of fear and seeking protection do not always realise that by informing the police they also set in motion a criminal investigation and potentially even a criminal trial. This is simply a consequence of the fact that the police have two tasks: protecting citizens and conducting criminal investigations.

Hence, in a way, victims face a dilemma. Filing a report to the police is the only way to claim protective measures and to be referred to appropriate support services. However, once a report is filed, a number of organisations that together constitute the criminal justice system get involved automatically and take over control. This can lead to the victim feeling disempowered and losing the authority to decide what steps should be taken next. By reporting to the police, victims mobilise state powers against the aggressor. At the same time, they risk passing control over their situation from the violent offender to the powerful forces they have called for help. A lawyer stressed this:

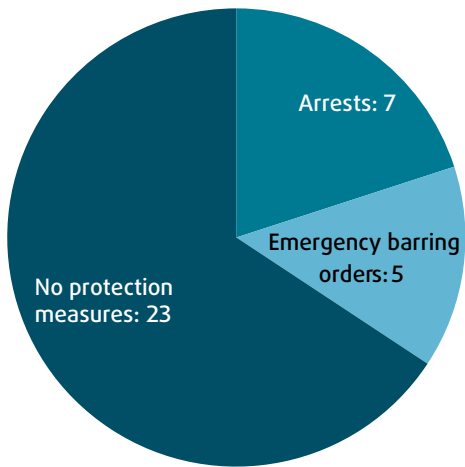
2.4.1 Protection measures

Victims were asked about the protection measures that the police adopted when they learned about the risk the victim faced. Answers can be grouped into three categories: the offender was arrested, the police issued an emergency barring order, or neither happened and the victim remained unprotected. Thus, the 35 cases of partner violence that this report deals with fall into three categories as follows (Figure 3):

- In seven cases, the offender was arrested. This does not include detention for less than 24 hours, as such short arrests are not to prevent violence but rather to serve the investigation. These seven cases are spread over five EU Member states. All that they have in common is that they concern particularly severe forms of violence, including attempted murder and rape. In one instance, the offender was arrested because the police suspected that he had abused his and the victim’s child.



Figure 3: Initial protection measures adopted by the police



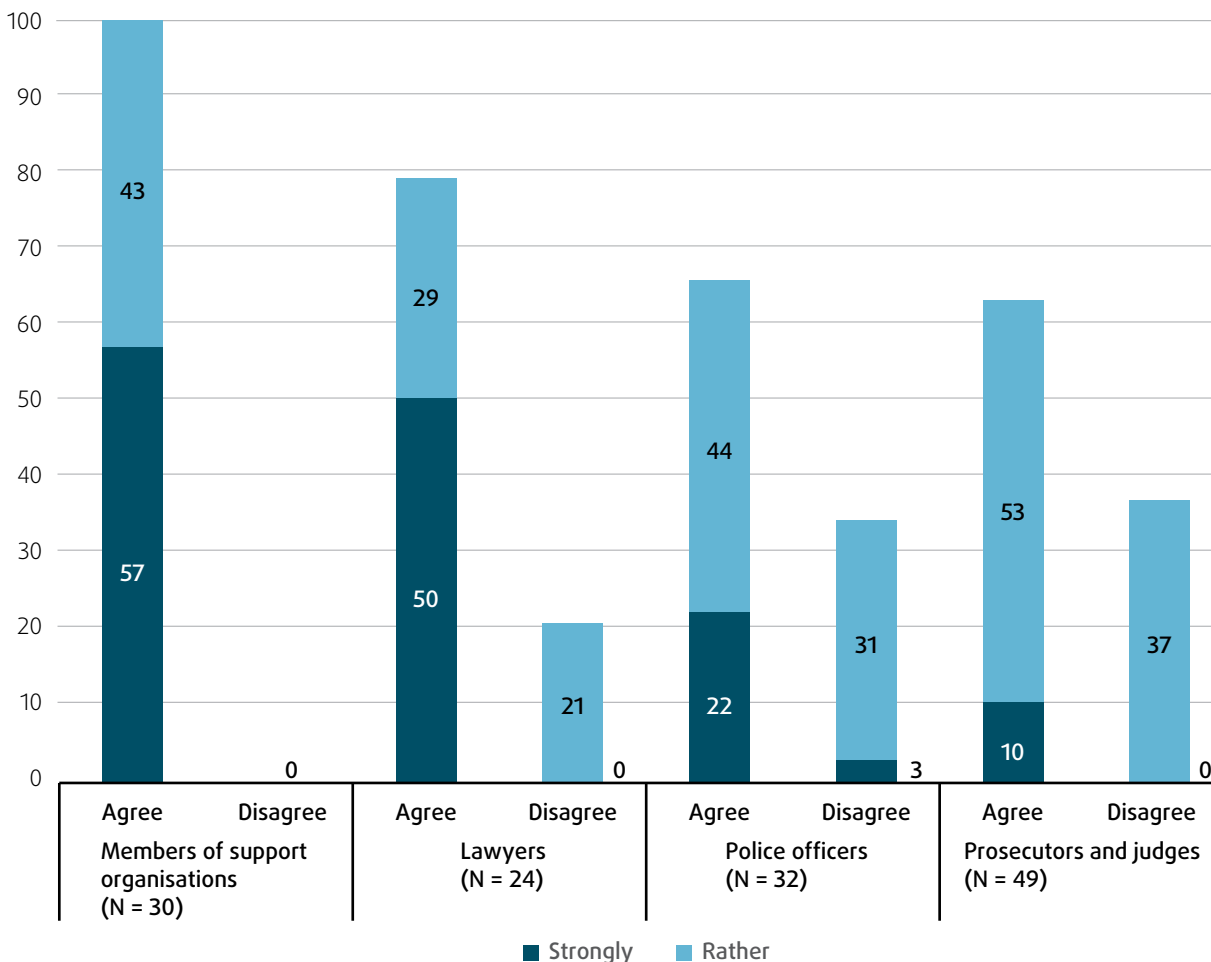
Note: N=35.
Source: FRA, 2019

- In five cases – three in Austria, one in Germany and one in the Netherlands – the police issued an emergency barring order.
- In 23 cases, the victim had no protection from the police. The victim was left with the choice of staying with the offender or leaving and seeking protection with her family, a friend or a shelter.

The small total number of cases is clearly not representative and cannot serve in itself as a basis for any generalisation. Still, it is unacceptable that in about two in three cases women who reported to the police that they were exposed to partner violence were left without any protection against repeat victimisation. That situation urgently calls for measures at various levels, including legislation, organisation and training.

In addition, practitioners were asked whether they agreed or disagreed with the statement that ‘More needs to be done to effectively protect victims of domestic violence against repeat victimisation’ (Figure 4).

Figure 4: Practitioners agreeing/disagreeing with the statement that more needs to be done to effectively protect victims of domestic violence against repeat victimisation (%)



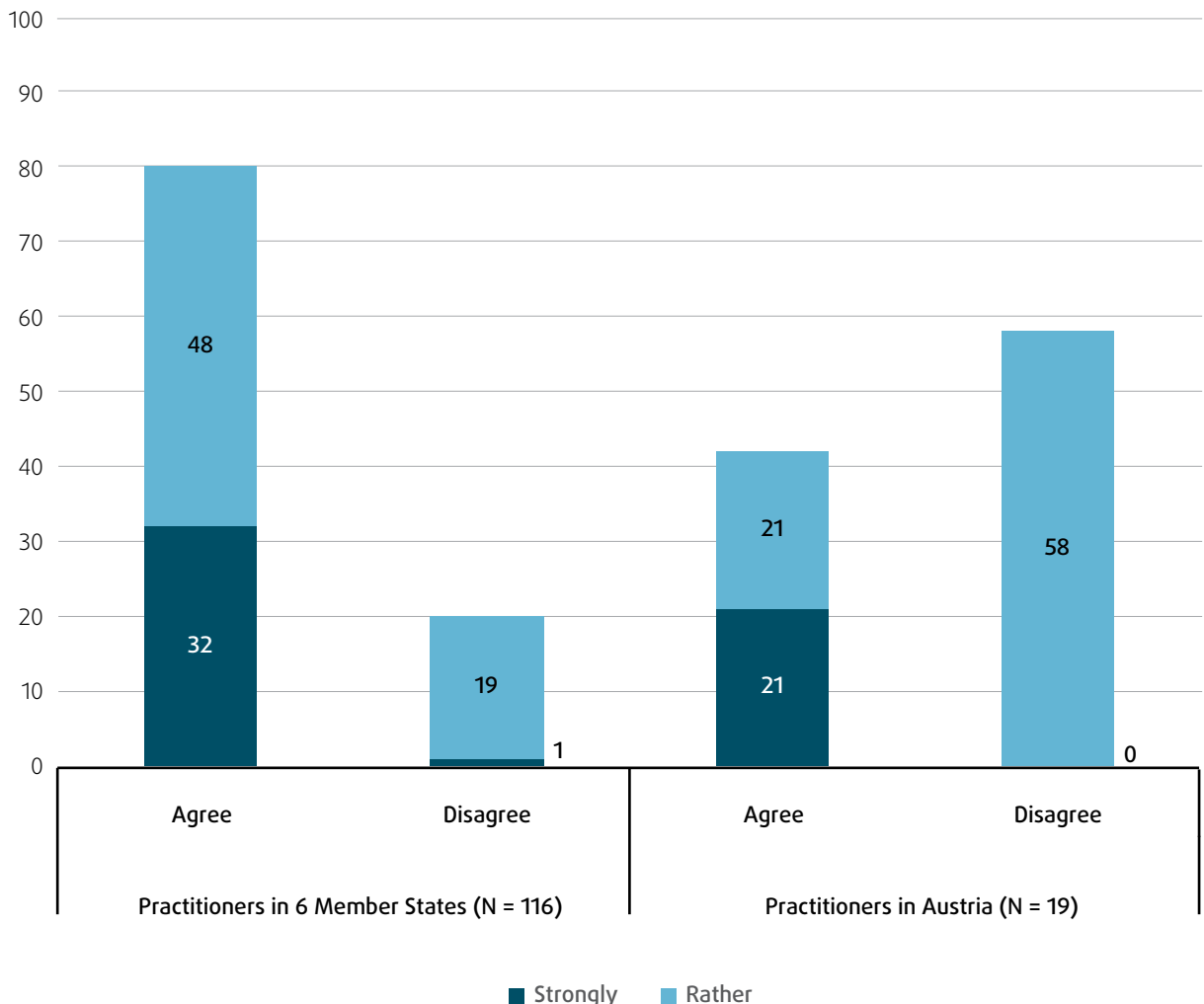
Note: N= 135.
Source: FRA, 2019

Across professional groups, more than 60 % of interviewees contend that more should be done to effectively protect victims of domestic violence against repeat victimisation. This includes 66 % of the police. The fact that 22 % of the police officers agreed strongly could point to a certain uneasiness among the police about how they deal with partner violence cases. Of the interviewees representing support organisations, not only did all agree that more should be done to protect victims against repeat victimisation, but 57 % agreed strongly.

It appears that the state of play in Austria differs from the situation in other EU Member States. Seven victims were interviewed in Austria. In three cases, the police issued an emergency barring order and in one they arrested the offender. Of the remaining three cases, one involved ex-partner stalking, but not acts of violence in the victim’s house. Austrian law does not allow the police to prohibit the offender from

contacting the victim, so the victim had to wait for that until a court issued an order. One case concerned a particularly severe incident of physical and sexual violence, which left the victim paralysed on one side and confined to a wheelchair. Immediately following the incident, the victim spent several weeks in hospital. When the offender started coming to the hospital, the social worker from the Centre for Protection against Violence (*Gewaltschutzzentrum*) saw to it that a court order banned the offender from the premises of the hospital. Hence, the circumstances were such that a police protection measure was not required. In the last of the seven cases, the victim came to the police station and reported her situation. When the police offered to issue an emergency barring order, the victim refused, as she had decided to leave the offender and to go straight to another apartment. This raises the question of whether or not the offender knew where to find the victim, in which case the police should probably have issued an emergency barring order with regard

Figure 5: Victims agreeing/disagreeing with the statement that more needs to be done to effectively protect victims of domestic violence from repeat victimisation (%)



Source: FRA, 2019

to the second apartment. However, in this case too, the police immediately informed the Centre for Protection against Violence, which contacted and advised the victim. Had the victim been in peril, it is likely that the Protection Centre would have informed the police. All in all, no clear gap in the system of immediate protection of victims against repeat victimisation emerged from the interviews with victims in Austria, except for the stalking case. In that respect, police legislation in Austria – contrary to Article 18 of the Victims’ Rights Directive and Article 50 of the Istanbul Convention – falls short of providing immediate protection to victims.

Again, practitioners’ views on the matter corroborate this assumption: Most practitioners interviewed in EU Member States other than Austria (N = 116) agreed that ‘more needs to be done to effectively protect victims of domestic violence against repeat victimisation’ (Figure 5).

While 80 % of practitioners interviewed in the other six EU Member States agreed that more must be done to protect victims – and 32 % agreed strongly – a clear majority of practitioners interviewed in Austria maintained that enough has been achieved already.

Interviewer: “Do you personally agree or disagree with the following statements? More needs to be done to effectively protect victims of domestic violence against repeat victimisation.”

Interviewee: “No, there is hardly anything more you can do, I actually don’t agree, no.” (Police officer, Austria)

Still, one in five respondents interviewed in Austria strongly agreed that more should be done to protect victims of domestic violence against repeat victimisation, which indicates that the Austrian situation too still leaves room for improvement.

2.4.2 Inaction of the police

When victims reported their victimisation to the police, they often found the police unresponsive. The police did not take the risk they faced seriously enough to take adequate action. At the time of the interviews, several of the victims still lived in fear of their partners. In Portugal, one of the interviews was conducted at a café to avoid encountering the offender, who on the day before had come to the victim’s home to offend and humiliate her, so that she had to call the police. During the interview, the victim was constantly looking around, as she was afraid that the offender could find her.

Police not listening well

Some victims made considerable efforts to explain the risk they faced to the police, but felt that the police did

not pay attention to what victims told them. Victims experienced this as a lack of recognition.

“There’s been a lot that I’ve reported to the police for the last few years, but nothing’s ever been done. I phoned the police and reported the malicious calls and the threats, and they came out, they took statements from me, they got me to fill in the domestic abuse form, they listened to the messages, they told me that the only advice they could give me was to change my phone number. They said they could go and have a word with him, but because he’s not carried out any of the threats there wasn’t really much they could do. And I felt, the most horrible feeling in the world, you feel like they don’t believe you any more. They’ve listened to the messages, they’ve seen the texts on your phone, you feel as if they just personally don’t care about you.” (Victim, United Kingdom)

“The police did not listen very well. They tried on several occasions to make me withdraw my complaint. I did not do that, I left it, but it was difficult.” (Victim, France)

The critical observations of practitioners confirm these personal accounts. For example, a member of a support organisation noted:

“What we can criticise in France is an absence of protection for victims ... even if the complaint is taken into account, there are still no protection measures. You really have to be hit very, very hard, have your life threatened, for the police to intervene. There really is work to do on that. There have been cases where the woman and the child were killed, although the woman had gone to lodge a complaint on several occasions.” (Support organisation, France)

The professionals interviewed in France gave one explanation repeatedly: that women would refuse protection measures. In a way, they blamed the victim for not being protected. In other EU Member States it was clear that, during the initial phase, victims cannot be expected to support police protection measures. In France, it seemed to be accepted that the victim must not be protected unless she wants to be. Interviewees also suggested that the victim may be reluctant to support protection measures against her partner because she feels she shares in the guilt.

“One cannot defend a victim against herself; that’s to say, the victim can refuse a protection measure; we cannot help her if she does not want us to. In this respect victims sometimes feel guilty. If she has suffered, it is at least partly her fault. So, a victim who believes she is partly to blame, may refuse a protection measure.” (Judge, France)

“Also, certain victims may feel guilty and think that they are perhaps responsible for the violence they have suffered. In those cases, there may be a reticence which results, in particular, in not taking the case to the endpoint, and for example not lodging a complaint but simply being satisfied with a police record [main courante] of the alleged incident.” (Judge, France)

“More should be done to protect victims of domestic violence against repeat victimisation. But then, it is necessary that the victim wants this. ‘The victim is her own worst enemy.’ The victim may feel guilty, that she may be partly responsible for the situation, having the impression that the situation is normal; consequently she is likely to refuse protection.” (Lawyer, France)

“What prevents victims from coming to see the police is that, while they do not like what they are experiencing, they feel partly responsible for the situation. So victims do not want to acknowledge to the police that they are partly responsible for what they are experiencing. These victims may feel that they deserve what is happening to them.” (Police officer, France)

These ‘explanations’ serve to seemingly justify the reluctance of the police to take action to protect victims of partner violence. They also display a lack of understanding of the psychological pressures that cause victims, as a coping strategy, to identify with the views and perceptions of offenders and to take the guilt upon themselves. This could indicate a lack of professional training.

Several victims found that the police discounted the facts presented by the victim. The police told them that they would not intervene on account of the violence that the victims had suffered already, but would do so only after another incident. From the victim’s perspective, such a reaction calls into question the significance of the violence they have experienced and the remaining, constant threat of violence. It pretends that, for some unknown reason, the next incident will be the first to count, at least if reported immediately.

“When I was phoning the police saying, ‘He’s doing this, he’s doing that, can you come and speak to him?’, nobody said to me, ‘You realise you’re in danger here?’ In fact, one [...] domestic abuse officer actually said, ‘Why don’t you wait until ..., draw a line under what he’s done so far and wait until he does something again, and then report it’. That’s what he actually said to me. So, I’m sitting thinking, at the time I’m thinking, ‘Maybe I should’, but looking back I’m thinking he could have killed me.” (Victim, United Kingdom)

“[B]ut the police ... ‘We can do nothing unless something happens’, I tell them, ‘So you won’t be coming unless he is running around with a hatchet? Is that what you’re saying?’” (Victim, Poland)

“The police approach was like ‘You should have come earlier, you should have done this or that’. [...] I thought that what I really shouldn’t have done was come to them for help because they won’t do anything about it anyway. Nothing will happen, nothing good for me, and he [the perpetrator] will go unpunished, he may always do something to me or my kid on the street, say take him away from me and give him back later.” (Victim, Poland)

Case study: Police inaction

A victim interviewed in Germany recalled that, when she returned from the women’s shelter, the offender was already waiting for her and abused her again. She went to the police and reported that he had violated the court protection order. The police told her that they could not do anything. If the offender came again to her apartment, they advised her to call them while the offender was there. She stressed that she was scared of the offender and that he was capable of doing “many things”.

The police insisted that there was nothing they could do. They advised her to contact the youth welfare organisation, which noted that her son was suffering from their stressful situation. The welfare organisation recommended that the victim should leave Germany and spend some time in Bulgaria, her country of origin, otherwise her son could be taken from her.

When the victim and her son returned to Germany from a stay in Bulgaria, her husband was again waiting for her at her apartment. She then decided not to report to the police again. At that point she had lost all faith in them, partly because the police had told her that they could help her only if she called while the offender was at her apartment, which she felt was impossible.

Although several victims recalled being told by the police that they should call immediately if the offender became violent, a victim said that the police would not come even when she managed to call them from her apartment while the offender was still aggressive.

“Even when he beat me at the house, I called the police for help, I was covered with bruises, with the baby who was crying and everything, ‘You come here, Madam, because we are not moving’. ‘Pardon? I cannot come, I am not well.’ No, they did not come!” (Victim, France)

A victim’s partner had abused her and her seven children for more than 13 years. She observed that when she called the police they would come and listen to both parties but otherwise would do nothing, because, as the victim saw it, they did not care. At most, they would give her advice such as that she should leave the offender and not talk to him. The victim assumed that the reason why the police did not react in an appropriate manner was that they to deal with cases of partner violence every day.

“They [the police] were so used to this that they only did their work and did not care about the rest. [...] They came here because they were obliged to [...] And then they would do nothing else. They came here, listened to me, listened to him, and then, if I wanted to file a complaint, I had to go to the police station. [...] It was not worth going there. It was no use.” (Victim, Portugal)

In the same vein, a victim observed:

“I think the police see so many of these things they become desensitised and I don’t even think they listen to what you’re saying, I think they’re just, ‘Well, you’re another one, you know, another domestic, right off to the police station [...]’. [...] they just minimise it and it’s just another day at the office for them, whereas, for people going through it, it’s horrific, absolutely horrific.” (Victim, United Kingdom)

However, the reluctance of the police to acknowledge the situation that victims report could stem from uncertainty about how they should react to that situation. By not recording the violence, the police avoid creating a discrepancy between the official record and their response. Possibly, it is reluctance to intervene that generates the reluctance to listen and to record properly. The crucial question then is why the police are unwilling to take action.

Police treating partner violence as a family affair

One factor explaining the police’s reluctance to intervene could be that the police are uncertain what will happen if they intervene in the domestic sphere. The police might not be willing to intervene if they cannot foresee the outcome. They may even fear that adopting measures against the offender could make things worse. In this vein, a victim suggested that the police purposely avoid registering formal complaints to prevent perpetrators from discovering that their partners have reported them – because they would not be able, or willing, to protect victims from the retaliation this might trigger.

“When you go to the police, they do incident reports. Why do they only do incident reports? Because they are afraid [...] that a formal complaint will have consequences, the husband learns about it or the family of the husband ... and later you will suffer the consequences, because, as soon as you return to the house, he kills you.” (Victim, France)

Arguably, the police view the private life of families as an unknown territory into which they hesitate to intrude. Not recording the violence suffered by the victim could reflect the police’s deep conviction that violence occurring in the household is none of their business and hence nothing they officially need to take notice of. Rather, they expect family members to sort out how to live together peacefully.

A victim who had suffered physical and psychological violence from her husband for 28 years repeatedly called the police, but for a long time the responding officers did not file a formal report. The victim recalled:

“When they came to my place, they didn’t record anything. They kept telling me that I couldn’t report all the time [...] ‘You are no longer children, you have to understand each other.’” (Victim, Portugal)

Another time, the police advised her to leave the offender. She could not do that, partly because her daughter was disabled and the victim feared that, if her daughter moved to another area, they would lose the support they received from an organisation that her daughter attended. One day, police officers patrolling the street saw that she had bruises on her face, asked her about it and recorded an official complaint. The officers who had previously failed to draft an official report were held to account, according to the interviewee. However, the first protection measure adopted was a court order, issued a long time after the police had finally initiated an investigation.

The police sometimes, rather than dealing with their situation as a public issue and intervening authoritatively, tend to advise victims how they should organise their private life, as this victim reported. A victim interviewed in Portugal recalled that the police had restricted themselves to advising her to be careful with the offender and to change the lock of the door to her apartment.

Case study: Partner violence – a public concern or a family affair?

A victim interviewed in Poland had repeatedly reported her victimisation to the police. They would tell her that they did not see sufficient reason to start an investigation and expected the offender to “calm down”. When she reported at a police station, an officer drafted a memo but refused to take any further action. The officer told the victim that a police intervention should precede any investigation. The victim should call the police from her apartment when the offender was violent.

So the victim called the police once or twice a week, whenever her partner was physically abusing her. Still, the responding officers kept saying that there was nothing that they could do. If they came, they would tell both the offender and the victim to “calm down”. They also informed the victim that the police would not deal with family matters and that she should turn to a family court.

After one of these police interventions, which had not prompted any protection measures, the offender retaliated by forcing her and their son out of the apartment. She then approached the police, who were still there, interviewing neighbours, who confirmed that the victim’s husband abused her. The officers told her that there was nothing they could do, but that she should turn to the public prosecutor’s office. The victim then contacted a friend, who found information about an emergency shelter – the crisis intervention centre – on the internet. The police had never informed the victim about available support services. When the victim arrived at the shelter, it did not accept her because the police had not referred her.

Only after the victim reported to the public prosecutor did the police start an investigation. However, it did not result in any protection measures. The victim was shocked because the investigating police officers contended that the offender had not beaten her hard enough for the police to bring charges against him. In addition, they were dissatisfied with her, as they wanted her to provide more witnesses. They also indirectly suggested that she should have attempted to solve the problem on her own. That is another way of blaming the victim for the violence she experiences. At the time of the interview, the victim was still at imminent risk of being abused.

Interviewees mentioned repeatedly that, if women decide to leave their family home, they are blamed for it, which makes it more difficult to escape. A police officer, interviewed in France, described the situation of a woman who reported her victimisation to the police, in the following terms:

“Victims of partner violence, once they have left here, after they have lodged a complaint, they are in trouble, because either they return home and it starts again, or it is they who have to leave. Victims are double victims.” (Police officer, France)

If victims have no protection against their partner’s violence and do not dare to attempt to escape, or they fear being blamed for leaving the family, the only remaining option is submission.

“He felt rejected. He had the right to respond with violence, I shouldn’t have informed anybody, [...] I should have talked to him more. [...] I tried, [...] after all, I don’t go to parties, don’t have actual friends, all I do is the washing, cleaning, that it’s always clean, children are taken care of, dinner is waiting for him, then what more does he want? [...] I’m a new person and I don’t know how long I’ll manage to be this new me, because, at the moment, I can say that it is good, right? But it is good because we spend a lot of time together, we talk, and we learn to know each other anew. But it’s also so that everything is the way he wants it to be. Maybe because the children are older, need less attention and I can devote more attention to him.” (Victim, Poland)

Police depending on a prosecutor or a court

Trying to make sense of the police’s inaction, some victims concluded that the police did not have the means to protect them but had to wait for the public prosecutor or the court to make a decision.

“I expected that I would be protected, but the police are not empowered to do so, except when the offender is arrested. Maybe this is in the purview of the prosecution service?” (Victim, Poland)

“You realise that the police are powerless. What they told me at the police station was: ‘Look, if there had been physical violence, I had the authority to get him, I could even detain him for one day. Since there never was any physical aggression, I can’t. I have to wait for the court’s decision.’” (Victim, Portugal)

“I don’t think they could’ve done any more. It’s not their job, it’s the courts’. The police can’t do anything [...] they need a protection order from the courts for them to uphold.” (Victim, United Kingdom)

However, waiting for the prosecution service or a court to seize the initiative is obviously not an option in a situation where an immediate response is required.

Focus on the investigation, not on the protection of victims

One possible reason why the police fail to adopt protection measures is that their primary focus is on the criminal investigation and not on protection. When responding to a situation of domestic partner violence, the police concentrate not on the risk of repeat victimisation but on whether or not they can initiate an investigation and would have sufficient evidence to prosecute and convict the offender, it appears from several victims’ accounts. In this view, the police perceive the victim primarily as the main supplier of evidence rather than as a person in need of protection. Because of this somewhat biased focus on potential criminal proceedings, the police can be at risk of neglecting their protective function and their obligation to secure the rights to life and to integrity of an individual (or individuals) at peril.⁴⁷

In a way, by primarily focusing on the investigation, the police put the cart before the horse. Firstly, protecting the victim’s life is more urgent than collecting the evidence needed in criminal proceedings. Secondly, the victim will often not be in a position to provide evidence against the offender as long as she is not protected. The victim can confront the offender only once she is sufficiently secure and independent of the offender, which she is not when the police first intervene.

Therefore, both from a human rights perspective and strategically, saving the victim’s life and integrity should have priority over commencing criminal proceedings. If the police come to the conclusion that there is a serious and imminent risk of *future* abuse, they must take action, whether or not there is sufficient evidence available to prove that violence has occurred in the *past*.

⁴⁷ This observation is not novel; see Dearing (1999), pp. 71–73.

2.4.3 Lack of a comprehensive and objective risk assessment

Article 22 of the Victims' Rights Directive obliges the police to assess and identify specific protection needs, so that they can meet a victim's right to protection against repeat victimisation under Article 18 of the directive.

However, several victims commented on the initial reluctance of the police to assess the risk of repeat victimisation comprehensively. A victim recalled:

"At first, the police assumed that it was a one-time thing, although I knew and had told them that he was severely mentally ill, I had even shown them a medical report, but they weren't of the opinion that there would be further violence." (Victim, Germany)

Victims recalled that, for an initial assessment of the situation, the police relied, to a great extent, on them. For example, a victim interviewed in the United Kingdom reported to the police on a number of occasions. The police informed her that they could take no action until she had made a formal statement.

Initially, victims will often not be in a position to unambiguously oppose the offender. To survive, victims of partner violence learn to identify with the offender's views and ideas. Turning against the offender is often too terrifying to be an option for victims of partner violence. At the same time, victims know that violence occurring in the domestic sphere is often still perceived as a family affair and of minor significance rather than as violent crime and a matter of public concern.

"What they needed was for me to give details of what he was doing to me, which was horrific and frightening to start with, before they'll then act. Because I'm not reporting a crime, so I suppose their hands are tied legally." (Victim, United Kingdom)

High numbers of women believe that the partner violence they experience is too minor an issue to justify reporting to the police and therefore decide to deal with it themselves, results from FRA's Violence against women survey revealed. This includes 21 % of victims of sexual partner violence, who felt that what they had endured was not serious enough to be reported to the police, or to whom it had never occurred that they could report it to the police.⁴⁸

If victims behave firmly and consistently, there is a better chance that the police will consider them reliable. However, victims of partner violence regularly struggle with emotional ambivalence towards the offender, towards themselves and towards the police. At times they are hostile when the police come to their rescue

and sympathetic when the police remain inactive. To the police, they appear undecided, inconsistent and unreliable. A victim who had endured 13 years of particularly severe abuse against herself and her seven children was highly critical about her own behaviour and sympathetic towards the police.

"When I filed the first complaints to the police, I should have continued till the end. First, I made the complaints and then I withdrew them, and I think that was one of the reasons why things got even worse. I was afraid of him and at the same time I liked him. [...] They [the police] already knew, the whole history, they had been there so many times, poor them. They were getting tired of that, too. And in a way they ended up not believing me. Because I filed the complaint and then I withdrew it. Then I kept calling them." (Victim, Portugal)

However, whether the police intervene or not should depend not on the victim's emotional state but on the level of risk and a professional risk assessment. If a victim is at risk of violence, she should receive protection, whatever her feelings towards the offender or the police. Police should be trained to understand that victims have difficulty in arriving at a clear and sober perception of their situation and an unambivalent attitude towards the offender and the police. That is a consequence of the victim's terrifying position, a complex trauma, powerful coping strategies distorting the victim's assessment of her situation, conflicting societal roles and so on. Therefore, if the police expect the victim to deliver a sound account of what the offender did to her, they systematically expect too much of her and, as a consequence, will fail to intervene. The same victim commented:

"They also tell me, 'Well Ms [...], we do our job, but you also decide to withdraw. What do you want us to tell you? This could all have been different if you hadn't gone back home, if you hadn't withdrawn.' Yes, I understand all that, but they are not in my shoes. They do their job, but they are not in my position. So they just let it go a little bit further, because there were so many incidents, they were called so many times." (Victim, Portugal)

Initially, before the victim has a chance to regain a realistic view of her situation, intervention to protect her must not depend on the victim's views and preferences. The police should be prepared to protect the victim even if she is ambivalent or averse to protection measures.

2.4.4 The victim leaving the offender

If a victim reports partner violence and the police allow the offender to stay in their home, the victim will often be forced to leave to seek protection. A victim and her children had to leave her apartment because the police did not remove her husband.

⁴⁸ FRA (2014a), p. 66.

“When the police came to my home [...] I thought that they were going to leave with my husband and detain him for at least a few hours, to interrogate him, not leave him where he was, so that it would not be me who had to leave. I questioned that. What I said was not taken into account [...] they said, ‘it is not serious’. In spite of the fact that I went to hospital [...] For me, things were not taken into account well enough.” (Victim, France)

Some victims felt that the police relied on them to protect themselves.

“If I had not gone to the crisis intervention centre [shelter] and if I hadn’t known that I could go there, I don’t know if anyone would have done anything.” (Victim, Poland)

The police or another public institution advised other victims to leave the offender and to live somewhere else, for instance with other family members, with friends or at a shelter. The public prosecutor’s office recommended that a victim, interviewed in Poland, and her daughter leave the offender. The victim managed to do that with support from friends who helped her find an apartment. The police then discussed a security plan with her. It included a teleassistance protection device and ‘proximity policing’, meaning that the police would regularly pass by her place. In addition, the police told the victim not to leave her home. However, all of this did not stop the offender from continuously threatening the victim, who therefore remained in constant fear.

Several victims sought protection in a shelter, either on their own initiative or because they were advised to do so. However, women reported that they found the situation at the shelter stressful. The police referred a victim in Portugal to a shelter, together with her seven children. They stayed there for three months. She commented on this experience very negatively. She felt like a prisoner and treated in a demeaning manner.

While at first glance, advice to steer clear of the offender seems plausible, suggesting that the victim to move to a shelter is often not appropriate to protect the victim against repeat victimisation. There are several reasons.

Firstly, when there is a real and imminent threat to the rights of women – and their children – to life and the integrity of the person, keeping them safe cannot be left to non-state actors. Relying on the victim to save herself by seeking refuge in a shelter is not a substitute for the police arresting the offender or ordering that he should stay away from the victim and not contact her. By their action, the police must demonstrate that they consider partner violence a public issue, not a private or family matter that individuals should handle on their own.

Secondly, there is the question of the victim’s security. Attempts by the victim to leave the offender increase

the risk of violence and therefore require strong police protection.⁴⁹ Suggesting that the victim move to a shelter is not a sufficiently reliable means of protecting her and her children. A victim observed:

“A shelter is not a solution. There always comes a point where you need to go back.” (Victim, Netherlands)

Even if the victim does not go back to the offender but, with the help of the shelter or others, moves on to other accommodation, the offender must understand that his violent behaviour is wrong and change his attitudes. Otherwise, wherever the victim goes, she will live in fear of the offender. A victim, interviewed in Poland, stayed with her children in a shelter for six months. She left the shelter to live in a house that she inherited from her parents. At the time of the interview, her ex-husband was still continuing to stalk and abuse her.

Thirdly, this scenario also raises questions of basic fairness. Given that the offender is the one committing a wrong, it seems inappropriate to expect the victim to leave her home, instead of the offender being ordered to stay away from the victim. It is as if the victim had done something wrong and therefore must profoundly change her way of living. Burdening the victim with solving the security problem at issue insinuates that she is responsible. That adds to the victim’s potential feelings of shame and guilt.⁵⁰

Fourthly, if the intervention of the public authorities suggests that the victim should stay away from the offender and not the offender from the victim, this conveys a wrong message not only to the victim but also to the offender, who is relieved of responsibility. For the sake of the victim’s protection, the offender, not the victim, should be challenged to change his behaviour and, as an initial step, steer clear of the victim.

What is undisputed is that women must be able to seek protection in a shelter whenever necessary and EU Member States need to fund shelters. Quite another question is if it is appropriate for state authorities to suggest that a victim of partner violence should turn to a shelter for protection against repeat victimisation. The answer is no. State authorities are obliged to protect the victim from repeat victimisation without requiring her to seek refuge in a shelter. Only in particular situations should State institutions advise the victim to go to a shelter. For example, the police may not be able to find the offender immediately to serve a barring order or arrest him; or the victim, in spite of the offender’s removal, may still feel that she cannot stay in her home, perhaps if the offender and the victim live in the house

49 FRA (2014a), pp. 44-45.

50 On victims of partner violence experiencing feelings of guilt and shame, see FRA (2014a), p. 56.



of the offender's parents, who do not support the victim and create an adverse atmosphere. Even in these situations, advising the victim to go to a shelter does not excuse the State authorities from securing the victims' rights. It can only complement the adoption of appropriate protection orders.

2.4.5 Arresting the offender

Arresting the offender is not necessarily aimed at protecting the victim. Even when the offender is arrested, detention does not always last for as long as protection is needed.

On the one hand, arresting the offender is a reliable means of providing the victim with security; and in certain high-risk situations there is no alternative to arresting the offender. In particular, an emergency barring order might not work, for instance because the offender has a high propensity to severe violence, for example involving firearms, or has breached a protection order. In that case, the police will have to arrest the offender.

On the other hand, an arrest interferes more with the offender's fundamental rights. Hence, it risks being disproportionate if banning the offender from the home of the victim would suffice. If so, a barring order would be the only proportionate measure.

One downside of arresting the offender to protect the victim is that an arrest will regularly rely on the legal basis of a procedural code and on rules governing criminal investigation rather than protection. It ties a security measure, aimed at preventing repeat victimisation, to the success of an investigation and proceedings in response to a current victimisation. If the proceedings are discontinued, for lack of evidence or any other reason, the arrest loses its legal basis. Therefore, the defendant must go free, regardless of whether or not the victim continues to be at risk of repeat victimisation. Accordingly, some victims were unsure whether an arrested defendant would remain in detention or not, and lived in constant fear of the defendant's release.

"I lived in panic until the judgment was passed, afraid that they would let him go. That affected me very, very much. I started to take pills to sleep again, pills I was no longer taking, anti-depressive medicines. I had to go to the doctor again, to start treatment against depression." (Victim, Portugal)

Some police services arrest people for less than 24 hours, as an instrument of criminal investigation, to allow them to interrogate the offender. Such short-term arrests are obviously not a means of protection. For a victim of partner violence, a short-term arrest can even be counter-productive. For example, a victim recalled that she called the police in a situation of acute danger. They arrested the offender for 24 hours. After

this police intervention, the interviewee sensed that she was in even greater danger.

"They arrested him, held him in jail for a day, and then let him go. This made everything even worse." (Victim, Netherlands)

A victim interviewed in Poland recalled that when the police arrived at their apartment her partner reacted in an aggressive and offensive manner, which is partly why he was immediately arrested. It was clear that the offender would not remain in police custody for long. Still, the victim was able to collect her private things and to leave the apartment to move back to her parents'. After the defendant's release, the victim did not feel safe. She had hoped for further protection measures, which were not applied.

2.4.6 Emergency barring orders

Austria has comprehensive and robust protocols and routines for responding to domestic partner violence. The interviews conducted with practitioners leave no doubt about that. When asked about the standard procedures followed in such cases, the responses by members of support organisations, police and lawyers matched.

Importantly, police officers interviewed in Austria had realistic expectations of what can be achieved and what is the risk that the victim will, in the end, stay with the offender. If the victim changes her mind, the police in other EU Member States will often be reluctant to help her again, it emerged from the interviews. Police interviewed in Austria accepted that leaving the offender is difficult for victims and a long process. If the victim decides to stay with the offender, this does not alter her right to be protected again the next time she asks the police for protection. An officer explained:

"Many offenders are very subdued when they are at the police station, with a bruised ego, and during the interrogation they would say, 'Five times she has banned me, do you have any idea how bad that is?', to which I would only say, 'Do you know how bad it is to get hurt every day?' [...] there are women who forgive their sweetheart and take them back after the seventh emergency barring order [...] It is something very new for them, that they can defend themselves. Sometimes it is surprising for me too: they have to learn about their rights, just like learning to tie your shoe laces." (Police officer, Austria)

After the police intervention, the victim will be anxious and confused. Therefore, she urgently needs support and advice. In particular, if the emergency barring order is to be followed by a longer-term court protection order, the victim needs advice and help in applying. A victim recalled:

“I didn’t know what to do. In the beginning, the police came and issued a restraining order for 10 days. I sat in my room, watched television, drank tea. They told me, ‘Go on! Where was I supposed to go? What was I supposed to do? How? I waited the whole time. Ten days were over, and I hadn’t done anything.” (Victim, Germany)

Therefore, the police must ensure that support services are offered to the victim within the next 24 – or, at the latest, 48 – hours.

The state authorities must provide the victim with complete and seamless protection against repeat victimisation from the first moment the police learned about the victim’s dangerous situation. If the police do not adopt an interim protection measure before a court issues a protection order, they will fail in that duty. For example, a victim interviewed in Portugal observed that the police informed the public prosecutor’s office that it needed to impose a restriction order. But this was only imposed some time later, after the victim had directly intervened at the public prosecutor’s office. Although the court order was then implemented effectively, the victim criticised how long it took until the court order was in place and the victim benefited from a protection measure. Hence, emergency barring orders are indispensable in the run-up to court protection orders.

To protect the victim, emergency barring orders must be rigorously monitored and implemented. The administrative sanctions for breaching barring orders are not severe enough to restrain offenders, judging from reports by victims in Austria. In addition, if an offender clearly cannot be relied to abide by an emergency barring order, it may be necessary to arrest him.

2.4.7 Messages conveyed by the authorities’ initial reactions

Both police and support organisations sometimes – knowingly or not – blame the victim. This can add yet another hurdle that abused women need to overcome.

At first, victims struggle to detach themselves from the offender and to establish an autonomous understanding of their situation. They need to overcome the offender’s suggestion, often firmly implanted in the victim’s mind, that the victim is responsible and to blame for the offender’s violence. That results in their feeling guilt and shame. Therefore, it is crucially important that the police, courts and those to whom the victim turns for support convey clear and unambiguous messages that the offender is responsible and the victim bears no blame. The victim has a right to be recognised as the person wronged and to be treated with respect and in a professional manner (Articles 1 and 25 of the Victims’ Rights Directive). During her stay at a crisis intervention centre, a victim interviewed in Poland was repeatedly told by the staff of the centre that her

partner’s behaviour was in response to her wrong conduct, including a lack of attention and affection to him.

Several victims found some police officers unsympathetic; they did not understand the situation of a victim caught in a cycle of partner violence:

“[T]he question that I have heard at least 15 times, ‘Why didn’t you report him the first time?’ It’s always this stupid question that I have heard everywhere[...] – I don’t know how these people are trained – [...]. But I was in contact with a police officer who was really kind, he never asked why I reported so late or tried in any other way to place the blame on me, he really did very well.” (Victim, Austria)

“On the whole, yes, there was a couple of flippant remarks. [...] I was trying to end a relationship, which is the most dangerous time for a woman, and this policeman says, ‘I don’t know what you’re still doing with him’. So, comments like that [...] I said, ‘This man’s been abusing me for 20 years’, the policeman says, ‘Well, if I go and speak to him he’ll say that you’ve been abusing him for 20 years’ [...] they just don’t get it, they just see you as a pain in the backside, you know, ‘What you still doing with him?’, well, ‘I’m still with him because he would kill me if I left him, and this is what happens when I try to leave him’.” (Victim, United Kingdom)

A police officer explained why he was sceptical when women reported partner violence:

“Nowadays, it is an inverse effect, women will soon be overprotected compared with men as regards violence. There is a tendency to believe a woman more than her husband. Which is why it is important to carry out investigations. Which is why it is important for magistrates not to let themselves be influenced.” (Police officer, France)

While victims find that the police and others do not believe them, they are surprised to what extent people take offenders’ promises at face value. A victim was involved in a Blue Card procedure in Poland (see [Section 2.4.8](#)). The director of the crisis intervention centre informed her that the police would not take action, as the offender had promised to refrain from further violence.

“[H]e would stick to the agreement because he said he would, because, as the director [of the crisis intervention centre] said, ‘He said in our presence he would not beat you any more’.” (Victim, Poland)

Victims recalled remarks by representatives of the authorities that they experienced as putting the blame on them. A victim who escaped to a shelter with her two small children was blamed for leaving her family:



“What I tried to do was to help myself and the children, but I turned out to be the bad guy [...] there’s the case in a family court, it’s really about limiting my parental rights. [...] as the guardian told me, the worst thing I did was leaving home. [...] That it was my fault. I really started to believe in this, and I started to change myself without realising that it wasn’t me who was at fault.” (Victim, Poland)

The same victim recalled that the staff of the shelter to which she turned for protection conveyed similar messages: that she was responsible for the well-being of her family, including her husband.

“Yes, that I should change myself so that he would not react that way. I heard he reacted this way because I didn’t show him enough affection, because I was busy with the children and didn’t kiss him when he came home.” (Victim, Poland)

In sum, the victim is in a vulnerable and difficult position. Everyone dealing with victims of partner violence should be aware of the necessity to act and communicate in a particularly gender-sensitive and careful manner and to refrain from comments that victims can understand as blaming them.

2.4.8 Cooperation between the police, support organisations, courts and others

No institution can tackle partner violence on its own. Any effective response will rely on cooperation between a number of institutions, including the police, healthcare institutions, support organisations and courts.

In general terms, the Istanbul Convention provides:

Article 18 (2) of the Istanbul Convention

Parties shall take the necessary legislative or other measures, in accordance with internal law, to ensure that there are appropriate mechanisms to provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims and witnesses of all forms of violence covered by the scope of this Convention, including by referring to general and specialist support services as detailed in Articles 20 and 22 of this Convention.

Several of the EU Member States researched, including Austria, Germany and Poland, have made – and continue to make – considerable efforts to establish and sustain close multi-agency cooperation between

law enforcement agencies, support organisations, health professionals, social welfare authorities, the courts and others.

The police need partners and close cooperation. Police officers will hesitate to intervene if they lack reliable partners who are prepared to follow up quickly on the initial police intervention by offering support services and long-term protection measures to victims. Partners that stand out are organisations providing specialist support services to women as victims of domestic partner violence, and the courts.

On the other hand, every institution must know its own role. It is for the police to respond rapidly if there are indications that a woman is at risk from her violent partner. The police must immediately adopt the necessary protection measures, such as an emergency barring order. Cooperation is not a way around this responsibility.

Poland’s Blue Card procedure is a multi-agency approach to domestic violence cases. It provides a framework for cooperation between the police, the Municipal Centres for Social Assistance (MSAC) and the crisis intervention centres.⁵¹ Interviews in Poland cast doubt upon its effectiveness. Victims interviewed mostly experienced the procedure as bureaucratic, with little practical benefit for them.

“It was a social worker, a lady, who came in a hurry, she asked me to quickly complete the card, I did it hastily, because she said she needed to have it on file, and that was it.” (Victim, Poland)

At times, the outcome of the procedure was to transfer the victim to a shelter. But no effective protection measures resulted from it. It appears that several victims remained essentially unprotected in spite of the implementation of a Blue Card procedure.

A victim observed that the interdisciplinary team tasked to deal with her situation met only once. Another victim commented:

“This interdisciplinary team, this is for me completely useless. They will talk to me but have no tools to do anything. [...] This has nothing to do with helping. They will ‘hear me out’. This for me is just doing something to get rid of it. [...] I was told that I [...] should leave. Where? To what? How?” (Victim, Poland)

A member of a support organisation suspected that the Blue Card procedure serves to divert the procedure away from formal proceedings and to allow the police to deal with domestic violence as a family affair.

⁵¹ The various forms (A, B, C and D) applied in the Blue Card Procedure are available on the Polish police’s [website](#).

“The police treat it a bit like a chance to delegate, that it is not a crime, so, go to the social care centre, they will take care of you. It is such an alternative procedure which is to take the responsibility of initiating proceedings from the police. For me, it is about treating it not as a crime, but some sort of a conflict within the family [...] This procedure has, in my opinion, fossilised such an approach.” (Support organisation, Poland)

Another interviewee maintained that the police are not entitled to adopt protection measures. They have to request authorisation from a public prosecutor but are reluctant to ask.

“I think that the police feel that they are servants of the prosecution service and that their position is weak. So police officers readily perform tasks ordered by the prosecutor and do what the prosecutor wants them to do. However, if they are to ask the prosecutor for something, then they feel extremely reluctant and do it very rarely.” (Support organisation, Poland)

Overall, it appears that the Blue Card procedure’s approach tends to translate domestic violence into a social, psychological or health issue but fails to recognise the victim as a person whose rights have been violated and who can expect from her society a reaction that reflects this fact.

2.4.9 Police training

Article 15 of the Istanbul Convention obliges Parties to ensure appropriate training for professionals, including the police. Parties are to encourage training on multi-agency cooperation, for instance by involving staff members of support organisations in police training.

Article 15 of the Istanbul Convention – Training of professionals

1 Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.

2 Parties shall encourage that the training referred to in paragraph 1 includes training on co-ordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases of violence covered by the scope of this Convention.

FRA’s research consistently points to the necessity of improving police training. FRA’s VAW survey asked women if they were satisfied with the assistance they had received following the most serious incident of violence since the age of 15. Victims of partner violence

were less satisfied with how the police responded to their situation than with any other services listed, including hospitals, lawyers, shelters and support organisations. Only 60 % of victims of physical partner violence and 49 % of victims of sexual partner violence said that they were satisfied with the assistance they received from the police.⁵²

When victims in the present research were asked what circumstances made it more difficult for them to report, they primarily mentioned the performance and attitudes of the police. Most frequently, victims referred to insensitivity displayed by police officers and their reluctance to take action.

This calls for improved police training. In fact, calls for a comprehensive revision of police training date from as long ago as the 1990s. New policies against partner violence emerged then in the EU, and fundamental criticism of how police conceptualised and reacted to partner violence was a crucial point of departure. People already observed that police conceive of domestic violence in terms that serve to justify policies of non-intervention or minimal intervention.⁵³

The interviewed practitioners shared victims’ concerns about police treatment. Practitioners were asked if measures strengthening professional, respectful and non-discriminatory attitudes and conduct in the police would make it significantly easier for victims to report to the police. An overwhelming majority of practitioners agreed (Figure 6).

Overall, an overwhelming majority of practitioners believed that improving professional attitudes and conduct in the police would increase victims’ readiness to report their victimisation to the police. One in three respondents agreed strongly. Two in three police officers agreed with the statement. There are hardly any differences between EU Member States, so strong is the consensus across Member States and professional groups.

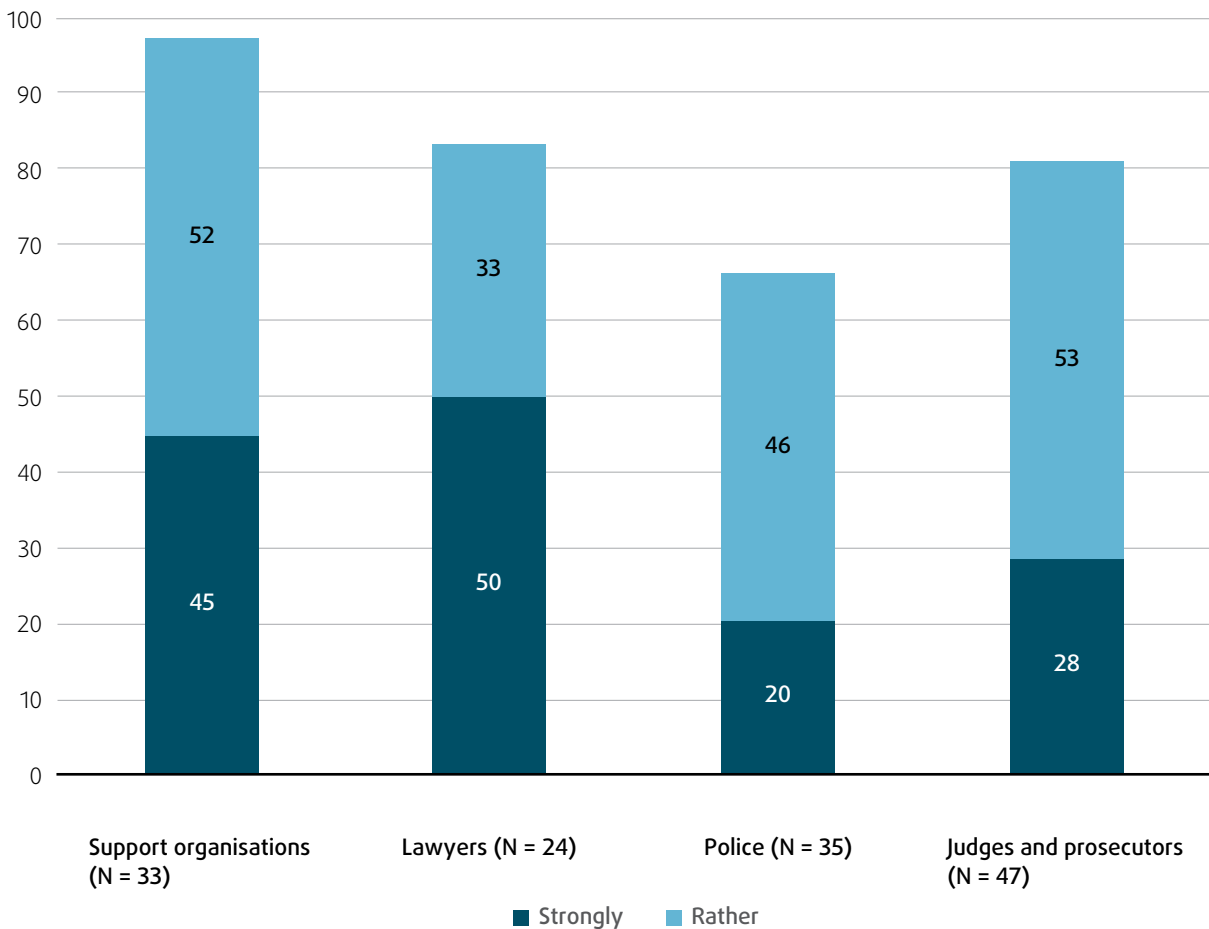
The only exception is France, where all police officers disagreed with the statement, while all but one respondent from the other professional groups agreed. This indicates that other groups take a critical view of the attitudes and conduct of the police in France but the police themselves do not.

Some victims observed that police attitudes have changed over recent decades. They take complaints of partner violence more seriously and are more willing to support victims.

⁵² FRA (2014a), p. 65.

⁵³ Schall and Schirrmacher (1995); Egger et al. (1995), pp. 202–218; Dearing (1999).

Figure 6: Professional groups agreeing with the statement that measures strengthening professional, respectful and non-discriminatory attitudes in the police would facilitate reporting by victims (%)



Source: FRA, 2019

"When I reported it to the police, I thought they would do nothing. [...] because it kind of happened in the pattern, decades ago, I kind of thought they would just say to me, 'Do you know what, have his dinner on the table on time and don't be so stupid, what are you phoning us for?'; that's what I thought would happen. And I was absolutely gobsmacked when they arrested him." (Victim, United Kingdom)

However, several victims felt that the intervening officers did not fully understand their situation, asking questions such as "Why did you not report much earlier?" or "Why don't you leave him?" Victims observed that they encountered police officers who did not have adequate experience and training to deal with victims of partner violence. Some victims observed explicitly that police needed better training.

"So, definitely more training, [...] you'd have thought that's the busiest, that's the most call outs they get, you'd think that would be the most training that goes into, but it's not." (Victim, United Kingdom)

"They asked stupid questions like, 'Why did you not report earlier?' or 'Why do you have such a husband?' These are typical questions, in my view. There, a bit of training would be indicated, how you treat a human being in such a situation, also because I think that this occurs more often." (Victim, Austria)

In addition, it is important to understand patterns of violent behaviour in order to arrive at a realistic assessment of the behaviour of offenders. For example, a victim recalled:

"They came to get him one morning, they put him in handcuffs, [...] the policewoman called me [...] in the evening and said, 'Listen, we could still keep him in police custody.' So, I said, 'Yes, that would be good, for him to learn his lesson'. She said, 'Oh, we are going to release him tonight, he'll be back tonight, he's crying so much, he says he's sorry, so we're going to let him go.' So he arrived even angrier." (Victim, France)

The police asked a victim if she believed she would be reconciled with the defendant the following week. She described this line of questioning as “painful and inappropriate”, given that her ex-husband had just tried to kill her and their daughter by pulling the steering wheel in the car she was driving.

“Don’t you think that you will be drinking coffee with him, sitting around the fireplace again by next week?” (Victim, Netherlands)

These qualitative findings correspond with results from FRA’s Violence against women survey. The survey stressed the need to change the culture of policing to encourage women to report violence: “Many women in the survey indicate that they did not report to the police because they had little faith that the police would be able to do anything. Therefore, initiatives to encourage victims to report to the police should concentrate their efforts on reviewing and changing police culture so that violence against women is responded to seriously and sensitively as a fundamental rights abuse.”⁵⁴

Police training must adopt a gender perspective, or simply recognise the gender implications that male partner violence has for female victims. For example, in one case four male police officers interrogated a victim in her apartment shortly after her victimisation, asking questions such as why she had not reported it earlier. She described it as uncomfortable in our interview. Police should understand how such a demonstration of male dominance has a potential to intimidate the person concerned and cause secondary victimisation.

2.5 Referral to a support organisation

According to Recital 40 and Article 8 of the Victims’ Rights Directive, EU Member States shall facilitate the referral of victims from the police and other authorities – such as the public prosecutor’s office – to victim support organisations.

Thirty-four interviews gave sufficient information to distinguish certain groups:

- Five victims heard about the support organisation from the police and contacted it on the basis of this information.
- In 11 cases, it was the police who established the first contact between the support organisation and the victim (five cases from Austria, three from the

United Kingdom, two from the Netherlands and one from Portugal).

- Four victims received relevant information from other institutions, including the public prosecutor’s office, welfare authorities and an ombudsman.
- However, the largest group comprises 14 victims, who, at some point and often only weeks after their victimisation and their first contact with the police, identified and contacted a support organisation on their own, by looking it up on the internet, by talking to a friend or by chance.

2.5.1 Referral from the police

While it will often be the police who need to make the first step, other institutions must be prepared to follow up on the police intervention. It is indispensable that organisations providing specialist support services be in place and that the police effectively refer victims to such organisations. They must not leave it to the victim to find her own way to a support organisation.

For this to happen, the police must understand and value the work of support organisations and be able to explain to victims the benefit of being supported. For example, a member of a support organisation was asked if the police would inform victims of partner violence in an effective and timely manner of specialist support services available to them. The interviewee observed:

“In the police stations in which we intervene now [...] it is a question of the person. Either the person has understood well what the association does and informs the victim [...] or they will tell us that they do not have time to explain, [...] even when we intervene at the police station, when we have a permanent presence, they still do not really understand what we do, so explaining and advising is not a big part of what they do ... it is not necessarily a priority.” (Support organisation, France)

Only in about half of the cases were the police in any way involved in the victim’s referral to a support organisation. This leaves considerable room for improvement. To leave the violent relationship, the victim needs psychological support, empowerment and practical advice. To protect the victim effectively against repeat victimisation, it matters that the victim is provided with support services. The police should see to it that a support organisation can explain to the victim what it offers.

2.5.2 Referral from health institutions

Several of the interviewed victims recounted various contacts with health professionals and hospitals. Hence, there is a significant role for medical professionals to perform in referring victims to support organisations. Women who are victims of violence most often contact

⁵⁴ FRA (2014a), p. 68.



doctors and healthcare professionals, according to the findings of the VAW survey. The survey concluded that there is considerable potential for health professionals to identify violence and to initiate intervention processes that set out to end violence.⁵⁵

2.6 Support services

Providing appropriate support services to victims of partner violence is a complex task. It has to fulfil three objectives: firstly, to help victims leave their situation of partner violence behind; secondly, to help victims seek justice for the violence suffered; thirdly, having established security and justice, to help victims start anew and re-enter social life. The focus shifts between objectives. In the initial phase, the victim's survival is at the forefront; only when the victim has achieved a sufficient level of safety and autonomy will she be able to oppose the offender and to actively participate in the proceedings; and then, once the victim has encountered justice, she may be in a position to start anew.

This section focuses on the initial phase, supporting victims in their struggle for safety and in their first contacts with the police and public prosecutors' offices.

2.6.1 Availability of specialist support services

According to Article 22 of the Istanbul Convention, women who are victims of partner violence and their children are entitled to have specialist support services available to them.

Article 22 of the Istanbul Convention – Specialist support services

- 1 Parties shall take the necessary legislative or other measures to provide or arrange for, in an adequate geographical distribution, immediate, short- and long-term specialist support services to any victim subjected to any of the acts of violence covered by the scope of this Convention.
- 2 Parties shall provide or arrange for specialist women's support services to all women victims of violence and their children.

This provision coincides with obligations on EU Member States under the Victims' Rights Directive, and does not go beyond them. Articles 8 and 9 of the directive entitle victims of gender-based violence and of violence in close relationships to have access to specialist support services, including trauma support and counselling.

Article 22 of the Istanbul Convention should be considered together with Article 26, which pays attention to the need to take the rights of children into account.

Article 26 of the Istanbul Convention – Protection and support for child witnesses

- 1 Parties shall take the necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the scope of this Convention.
- 2 Measures taken pursuant to this article shall include age-appropriate psychosocial counselling for child witnesses of all forms of violence covered by the scope of this Convention and shall give due regard to the best interests of the child.

Practitioners were asked whether they agreed or disagreed with the statement that 'more needs to be done to ensure that victims of domestic violence have access to specialist support services'. In all professional groups, an overwhelming majority of practitioners agreed with the statement (Figure 7). They attest to the need to increase the level of investment in establishing a robust net of specialist support services.

General and specialist support organisations are competing for public funding. It is important to know if practitioners maintain the above view if they are reminded of the limited resources available overall. Therefore, practitioners were asked whether they agreed or disagreed with the statement 'There are competing demands on resources for different groups of victims, and so sufficient resources are already dedicated to support victims of domestic violence' (Figure 8).

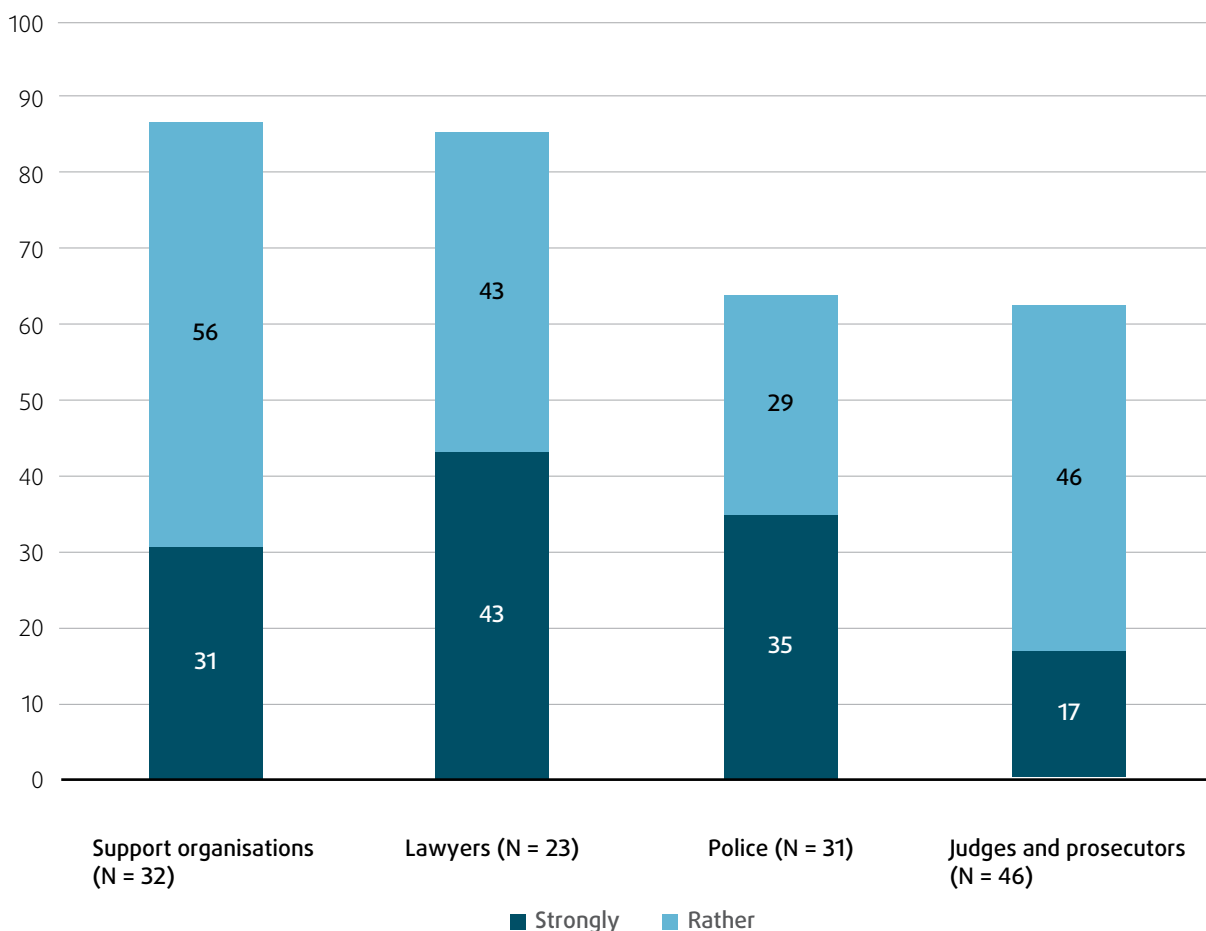
In every professional group, the largest number disagreed with the statement. They hold that, even given the limitations on available public funds, more resources should be dedicated to supporting victims of domestic violence. However, 38 % of respondents from the judiciary group answered 'don't know'. This indicates that prosecutors and judges may have limited information about how resources are distributed among support organisations.

At times, victims observed that the services they received were limited by support organisations' limited resources.

"Women's Aid were fantastic, they had my back, but my worker had 26 cases, so as soon as I was kind of on my feet, or what I thought was on my feet, she took me off her books, because she's so busy. She's just dealing with basically, you know, the initial stage." (Victim, United Kingdom)

55 FRA (2014a), p. 69.

Figure 7: Practitioners from various professional groups agreeing with the statement that more needs to be done to ensure that victims of domestic violence have access to support services (%)



Source: FRA, 2019

Few women contact victim support organisations or women’s shelters as a result of the most serious incident of physical and/or sexual violence, FRA’s Violence against women survey revealed. Only 4 % of victims or fewer did so, depending on the service. The survey concluded that, given the enhanced role for support organisations that the Victims’ Rights Directive envisages, much needs to be done to increase the capacity and use of these services to fulfil the requirements under the directive.⁵⁶

Hence, governments must ensure a level of funding that enables support organisations to fulfil their tasks, which form a cornerstone of protecting victims against repeat victimisation.

A clear majority of respondents in all professional groups held that more should be done to ensure that victims of domestic partner violence have access to specialist services. However, there is not a majority

in all countries (Figure 9). The situation in Austria is somewhat exceptional.

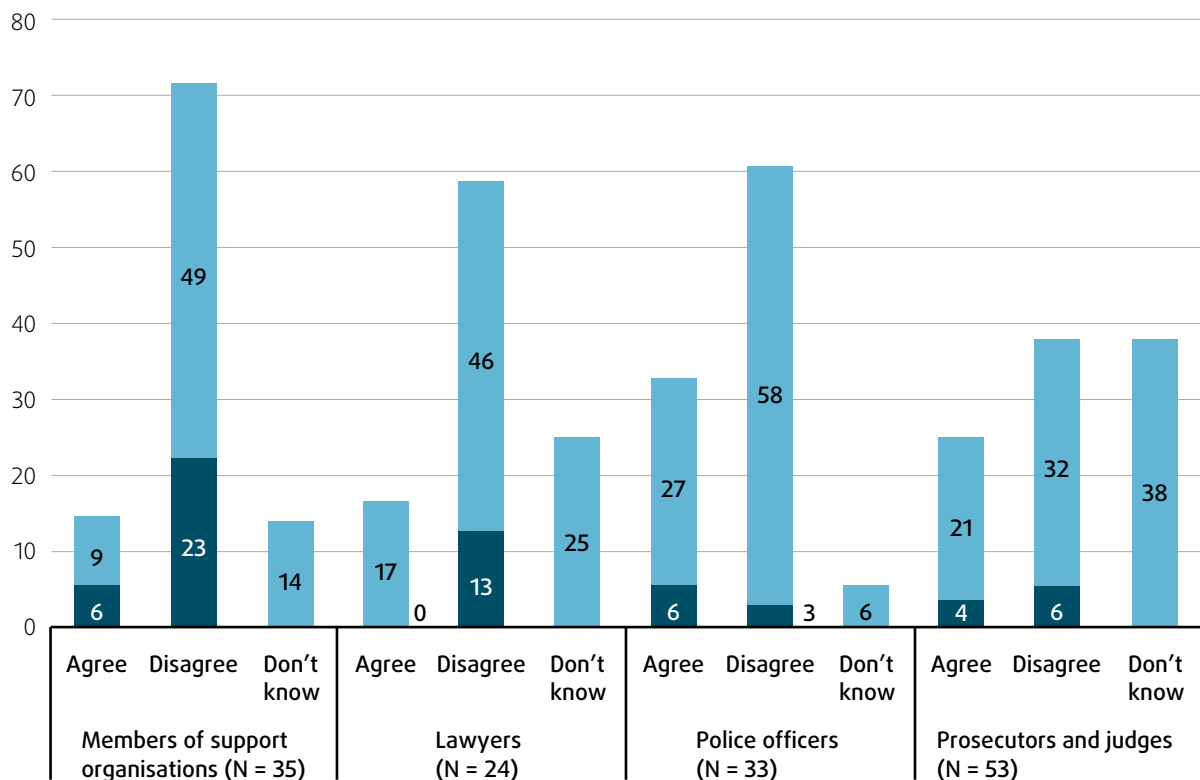
A similar picture emerges when practitioners are reminded about the limited resources (Figure 10).

In six EU Member States, a clear majority of respondents assert that, even in the light of competing demands, more needs to be done to ensure that victims of domestic partner violence have appropriate specialist services available to them. Contrarily, in Austria a very clear majority of practitioners maintain that enough has already been done.

Victims of partner violence interviewed in Austria were also highly appreciative of the comprehensive support services they received. In addition to being treated in a caring and sympathetic manner, victims valued help in asserting their rights when applying for court protection orders and during the criminal proceedings. Hence, it is worth looking more closely into the situation of specialist support organisations in Austria.

⁵⁶ FRA (2014a), p. 69.

Figure 8: Practitioners from various professional groups agreeing/disagreeing with the statement that, given the limited resources, enough are dedicated to supporting victims of domestic violence (%)



Note: N=129.

Source: FRA, 2019

The situation of women who are victims of partner violence in Austria benefits from at least three factors:

1. a robust, comprehensive and powerful network of specialist support services called Centres for Protection against Violence (Protection Centres, *Gewaltschutzzentren*, highlighted in the Promising practice box);
2. the system of psycho-social and legal procedural assistance (*Prozessbegleitung*) – which Part II of this report series, covering procedural justice, explains;⁵⁷
3. close and systematic cooperation between police and the Protection Centres on the basis of legal provisions in police law (Articles 25, 38a and 56 of the Austrian Police Law, *Sicherheitspolizeigesetz*).

Many practitioners in Austria consider its situation exceptional as regards support for victims and their protection against repeat victimisation, it became clear from the interviews. At the same time, how victims are treated in court is a rather different story, they observed.

“The Protection against Violence Act, psycho-social and legal procedural assistance, [...] so really a lot has been done, we must not devalue this, these things are very good. The way victims are dealt with by the criminal justice system is something different. [...] It is on the personal side, the gaps are there. But [...] Austria is certainly a pioneer in terms of psycho-social and legal procedural assistance for victims, which were first implemented in Austria.” (Support organisation, Austria)

“Sure, improvements are always possible, but really a lot has already been done. [...] I think that we already operate on a very high level here.” (Police officer, Austria)

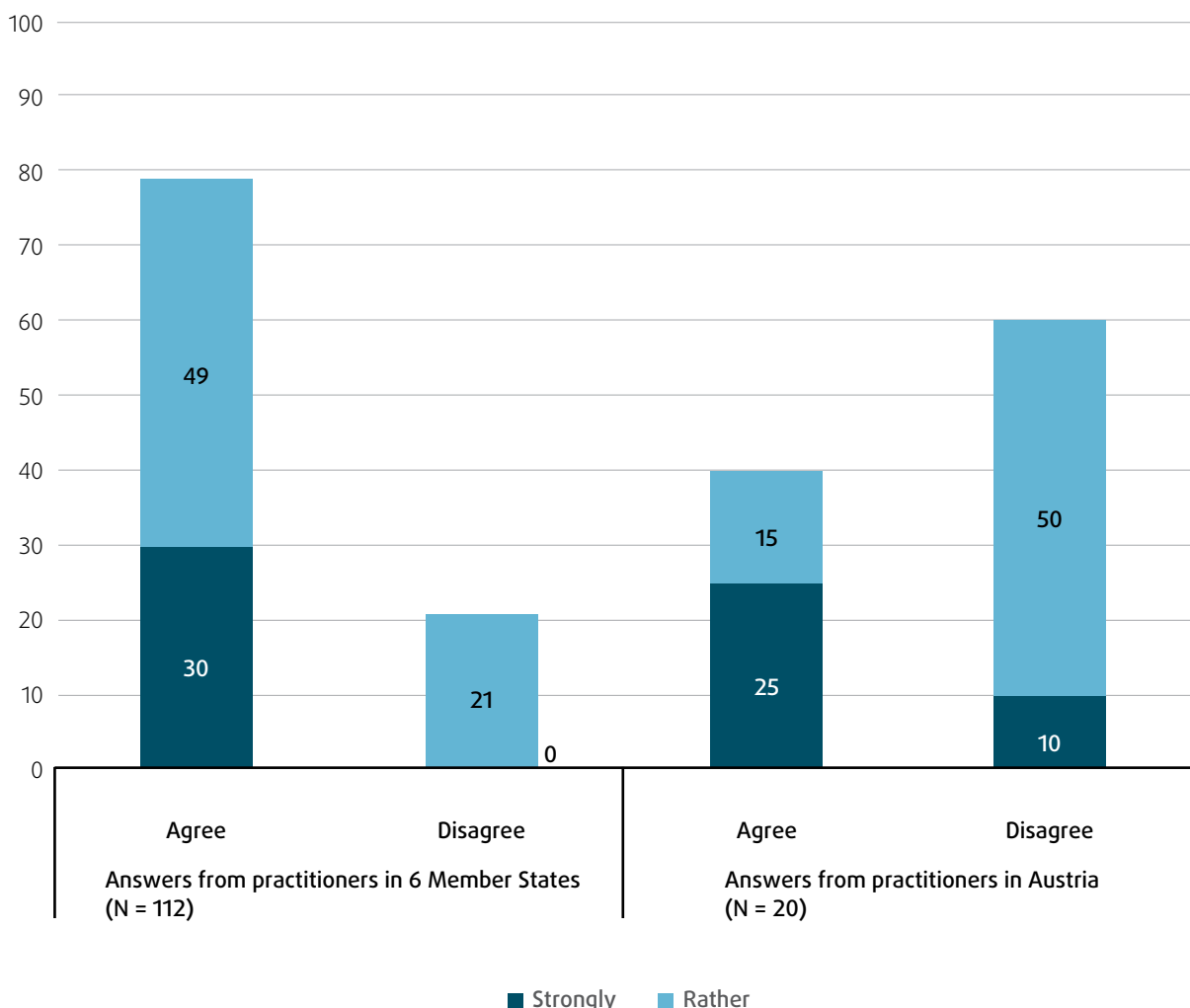
2.6.2 Quality of support services

Victims who had appropriate support services found it empowering.

“It was a sort of safety net for me. I thought that if my partner had known that I had some people behind me who were trying to help me, this would have stopped him.” (Victim, Poland)

⁵⁷ On procedural assistance specifically in the context of women as victims of partner violence, see Schwarz-Schlöglmann and Hojas (2006).

Figure 9: Practitioners agreeing/disagreeing with the statement that more needs to be done to ensure that victims of domestic violence have access to support services, by countries (%)



Note: N=132.
Source: FRA, 2019

“She [social worker] gave me so much strength. I came here and got everything off my chest with her, I cried, cried, and she always gave me strength and the courage [...] She encouraged me a lot, a lot. And I keep saying that this [the offender’s conviction] was not my victory, this was the victory of all those who helped me [...] It was very, very important to me, all the support I got. Otherwise, I wouldn’t have made it.” (Victim, Portugal)

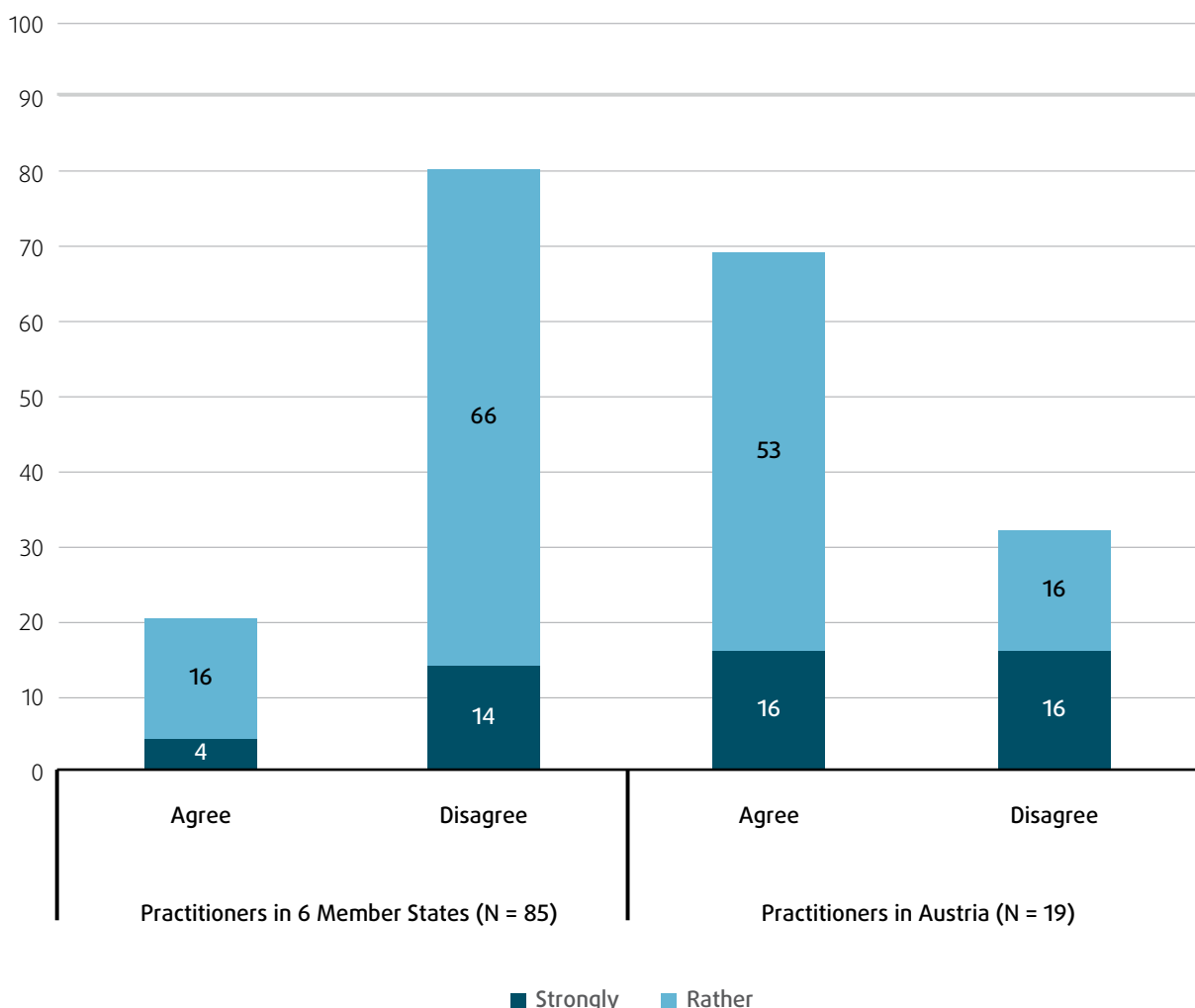
Victims of partner violence were overall less content with the support they received over the course of the proceedings than victims of other forms of violence. Asked whether they agreed or disagreed with the statement ‘throughout the proceedings I had the support I needed’, 44 % disagreed compared with 31 % of the other victims of violence.

In addition, women who were victims of partner violence were asked specifically whether they agreed or disagreed with the statement ‘I would have needed

more support in changing my situation with a view to overcoming the threat of violence’. A total of 69 % agreed with the statement, with 22 % agreeing strongly.

One cannot generalise from such small numbers of interviews. However, our results seem to suggest that there are important differences between the countries researched. In Austria and the United Kingdom, a majority of victims disagreed with the proposition and hence were content with the support they received in overcoming the threat of violence. In the other five countries, either all interviewees (in France and Germany) or all but one interviewee (in the Netherlands, Poland and Portugal) agreed with the statement and therefore needed more support. Discontent is particularly strong in France and Germany.

Figure 10: Practitioners agreeing/disagreeing with the statement ‘There are competing demands on resources for different groups of victims, and so sufficient resources are already dedicated to support victims of domestic violence’ (%)



Note: The graph excludes responses ‘don’t know’, hence N = 104.
 Source: FRA, 2019

Practitioners shared the view that the lack of support services has an impact on the victim’s ability to report to the police.

“More should be done to ensure that the victim has access to a support service. But it should be done in a targeted way, meaning for victims who chronically under-report offences, so in particular victims of family and/or sexual violence, which are offences for which victims do not lodge a complaint.” (Judge, France)

A core aspect of specialist support services is assessing the risk of repeat victimisation and setting up a safety plan for the victim.

“They go through a safety plan with you. So, it’s your locks, always park your car facing out so you can get away quickly, have triple 9 [the emergency services] on speed dial. Definitely Women’s Aid were looking out for me, looking after my safety. They actually had ..., I’ve still got a police marker on the house at home, they helped me get that, so if I had to phone 999 from my house phone the police would come to me first [...]” (Victim, United Kingdom)

A victim interviewed in Austria recalled that, when she first came to the Protection Centre, they carried out a thorough risk assessment jointly. They assessed the risk that the victim faced as high. The support organisation then sent the questionnaire to the prosecutor’s office. As a consequence, the offender was arrested. This shows that court practitioners have a high level of confidence in the work of the centres.

Promising practice

Providing centres for the protection against violence (*Gewaltschutzzentren*)

In the late 1990s, **Austria** established nine Centres for Protection against Violence (Protection Centres), one per province.* They were originally called *Interventionsstelle* (intervention agency). In 2006, except for in Vienna, the name changed to the more telling *Gewaltschutzzentrum*. Non-governmental organisations (NGOs) have open-ended contracts to run these centres. Governments fund them to safeguard the rights of victims of partner violence and to contribute to their protection by supporting and advising victims during and after criminal proceedings and by closely cooperating with the police. Protection Centres specialise in dealing exclusively with cases of domestic violence. Some of these organisations have a decentralised structure allowing them to better cover rural areas. The core staff members of the centres are paid professionals, not volunteers.

The law obliges the police to swiftly inform the local centre of any instance of domestic violence as soon as the police have issued an emergency barring order. The police can also inform the centre of other cases of partner violence in which, for whatever reason, they did not issue an emergency barring order. On the basis of the information from the police, the centre contacts the victim proactively, at the latest within 48 hours, but usually within one day following the police intervention. The centre offers comprehensive support free of charge, including psycho-social assistance in all contacts with the police or a court. One task of Protection Centres is to help victims apply for court orders. Thus they ensure that emergency barring orders, issued by the police, are followed by court orders, if the victim wishes. Overall, the emphasis on cooperation between Protection Centres, the police, criminal and family courts, and other agencies is a characteristic and crucially important element of the Austrian model.**

In 2017, the police in Austria informed Protection Centres in 10,697 instances of domestic violence, including 8,755 cases where the police had issued an emergency barring order and the Protection Centre was required to follow up quickly by establishing contact with the victim and offering support.***

* See *Mayrhofer and Schwarz-Schlöglmann (2017)*.

** See *Sorgo (2013)*.

*** See *Wiener Interventionsstelle gegen Gewalt in der Familie (2018)*, p. 59.

Victims appreciated the fact that support organisations encouraged them to report their victimisation to the police.

“They encouraged me to report him to the police because they knew I was going to get badly hurt.” (Victim, United Kingdom)

Another important function of support organisations is to mediate between the victim’s perception and understanding on the one hand and the – at times adverse and strange – legal and bureaucratic language and procedures on the other. In other words, support organisations aid the victim’s communication with the police and the public prosecutor’s office.

Because victims of partner violence are in a vulnerable and dangerous situation, deficient performance by a support organisation can have a very negative impact on the victim’s situation. For example, one victim strongly felt that the support organisation made things worse. For example, they incorrectly told her that the bail conditions on which her partner had been released had ended. That made her feel unsafe.

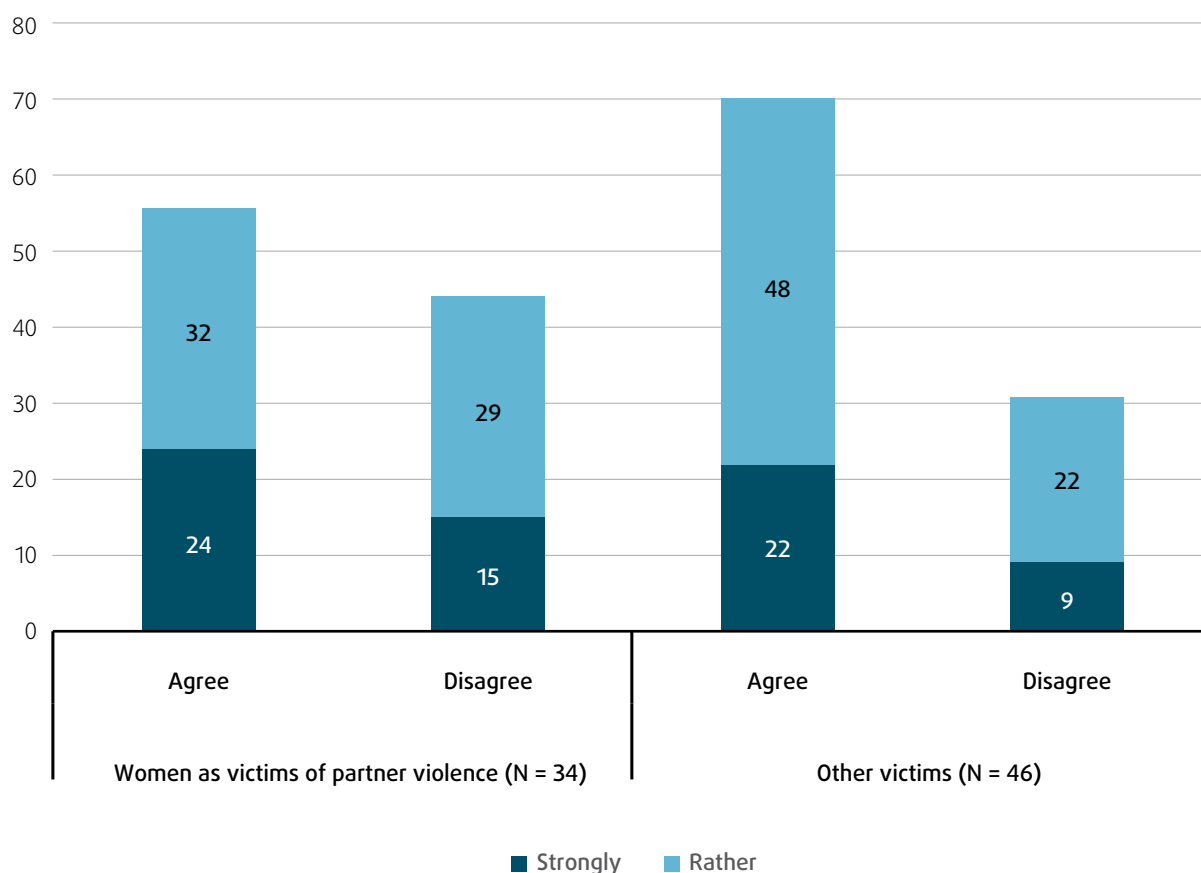
“I don’t know, they made the whole thing worse. They made me anxious. I was already on high alert and anxious and you get somebody phoning up saying his bail’s been lifted. [...] Do I stay in my house? Do I get to my mum’s? I’m really stressed, it’s awful, why do they employ people that would do that? [...] She has to understand the effects that saying that to somebody has. [...] And then they did it again, and that’s when I said, ‘Don’t ever contact me again, you’re making me ill and I need people who have got my back, and you don’t.’ So, after that they never contacted me again and I just dealt with the Crown Office myself.” (Victim, United Kingdom)

Another victim heavily criticised the attitudes of the staff of a support organisation that met her, not with empathy, but with an attitude of professional scepticism.

“‘[B]ut remember he’s innocent until proven guilty’, and that’s what they kept saying as well, which is shocking, absolutely shocking.” (Victim, United Kingdom)

In sum, more should be done to ensure that all staff involved in advising and supporting victims have sufficient training. This relates both to public services and to private victim support organisations. EU Member States have an obligation to ensure that appropriate support services are available to all victims. This is a public task.

Figure 11: Victims agreeing/disagreeing that they had the support they needed, by group of victims (%)



Note: N=80.
Source: FRA, 2019

Where the government, in fulfilling this task, relies on NGOs, there must be a system in place to assess their performance against defined indicators.

Some victims of partner violence interviewed in Poland were critical about how staff from the Municipal Centres for Social Assistance and from crisis intervention centres treated victims.

"I can say that the majority of people dealing with domestic violence in the Municipal Centre for Social Assistance aren't qualified to deal with this subject. [...] The centre can help, but the more human approach was missing there." (Victim, Poland)

Remarkably, the same interviewee observed that attitudes of staff members had changed and not for the better. As an example, she recalled:

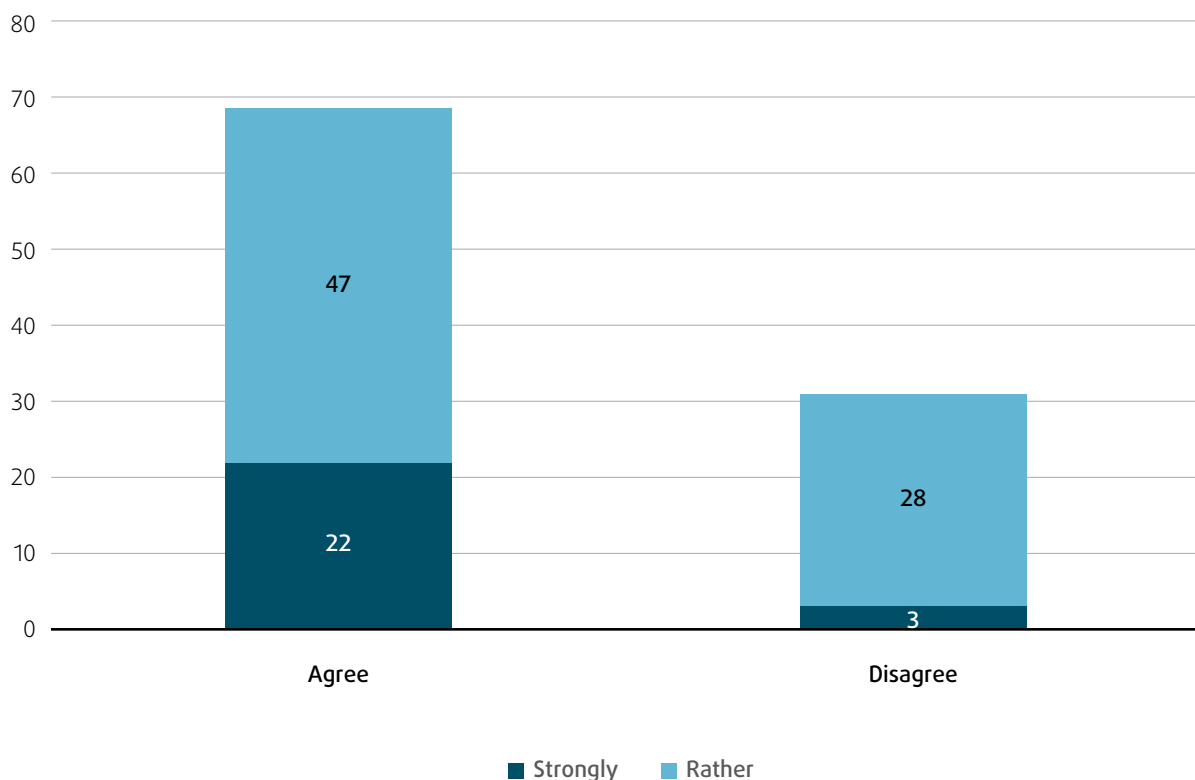
"The director of the crisis intervention centre said, 'How was a sick man supposed to react to this? Well, only with beating.' She dared to tell me this in front of all these people living at the centre. [...] She said I should give priority to my husband [...] this person in 2012 had told me something entirely different." (Victim, Poland)

2.7 Court protection orders

Judging from the experiences of the interviewed victims, court protection orders are an important component of the protection measures adopted. Alongside the initial protection measures by the police, and the response by support services following up on the police intervention, court protection orders form the third pillar on which victims' protection against repeat victimisation relies.

According to Article 53 of the Istanbul Convention ('Restraining or protection orders'), Parties must "ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention".

Figure 12: Women who are victims of partner violence agreeing/disagreeing that they needed more support in overcoming the threat of violence (%)



Note: N=32.
Source: FRA, 2019

As mentioned in the Introduction, EU law contains two measures to enable cross-border cooperation between courts of EU Member States in relation to court protection orders, namely Directive 2011/99/EU on the European Protection Order (EPO), which establishes a cross-border mechanism for the recognition of protection orders issued as criminal law measures,⁵⁸ and Regulation (EU) No. 606/2013 on mutual recognition of protection measures in civil matters.⁵⁹ Both have a poor reputation as ineffective.⁶⁰

Article 3 Regulation (EU) No. 606/2013 – Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) 'protection measure' means any decision, whatever it may be called, ordered by the issuing authority of the Member State of origin in accordance with its national law and imposing one or more of the following obligations on the person causing the risk with a view to protecting another person, when the latter person's physical or psychological integrity may be at risk:

(a) a prohibition or regulation on entering the place where the protected person resides, works, or regularly visits or stays;

(b) a prohibition or regulation of contact, in any form, with the protected person, including by telephone, electronic or ordinary mail, fax or any other means;

(c) a prohibition or regulation on approaching the protected person closer than a prescribed distance; [...]

58 Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, OJ L 338, 21.12.2011, p. 2–18.

59 Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, OJ L 181, 29.6.2013, p. 4–12.

60 Van der Aa (2012a); Van der Aa et al. (2015).

Court protection orders far outnumber protection measures by the police, according to the interviews with victims. Fifteen victims reported that they had benefited from a court order, while 14 victims clearly had not. Austria and Portugal stand out as countries where victims reported larger numbers of court protection orders, four in each. Criminal, civil and family courts adopted protection orders.

However, in several of the EU Member States, victims were very critical about the implementation of court protection orders. The monitoring of offenders' compliance was weak, when they reported violations to the police this did not entail any consequences, and the sanctions imposed, if any, were not dissuasive, they observed.

In particular, victims perceived the police as reluctant to enforce the court protection order.

"The police did not take me seriously when I reported about this. They said, 'We cannot prove that he was there.' But for me it made things even worse. I did not dare to go out any more, not even with my children to the playground, for weeks. Leaving the flat was torture to me. He violated the preliminary injunction [the court protection order] about four or five times where I had evidence and many times more where I did not have evidence, but the police did not believe me." (Victim, Austria)

A victim interviewed in Germany said that, when she saw that the offender could violate the protection order without any consequences, she decided not to report him to the police again.

According to Article 53 (3) of the Istanbul Convention, Parties must ensure that breaches of restraining or protection orders must be "subject to effective, proportionate and dissuasive criminal or other legal sanctions". Victims perceive breaches of court orders as threatening and a means of resuming the violent relationship. Hence, criminal sanctions react to a real threat and are not disproportionate.

Court protection orders should put the safety of victims first and hence not allow for exceptions. For example, a victim recalled:

"The bail conditions [...] allowed him access to the back garden [...]. Because he stood up in court and said, 'I've got gardening equipment in the back garden, I need access to it.' So, instead of the bail conditions saying that 'You can send someone round on one occasion to collect it', the bail conditions allowed him to come in my back garden." (Victim, United Kingdom)

When the victim found the offender in her garden, she called the police for fear of repeat victimisation. But the police were not able to take any action.

At times, even when the offender was found guilty of partner violence, courts did not issue orders, and the victim was left at risk of the offender retaliating against her. For example, a victim recalled it as deeply distressing that the offender, despite being found guilty of assaulting her, was not issued with a non-harassment order. Rather, the bail conditions that had been in place during the proceedings to protect the victim were lifted.

"I had bail conditions for 17 months, then the court says, 'That man is a violent offender', and they lift my bail conditions. They wait until they tell me and agree with me, 'Yeah, he's a nasty and violent man', and then they lift the bail [...] It's like they give me a big stick and say, 'Poke the bear', so I'm poking the bear, and they open the cage door and walk away, and I'm left holding the stick. It was horrendous. And that's why I wouldn't go through it again, not a chance." (Victim, United Kingdom)

In conclusion

The findings from the 35 interviews with women who were victims of partner violence cannot be generalised. However, the interviews conducted with practitioners largely confirm their views. In sum, the evidence points to the following:

- There is a severe lack of effective protection of women as victims of partner violence, mainly due to:
 - inadequate responsiveness of the police;
 - shortcomings in the referral of victims to support services;
 - an incomplete network of support organisations;
 - insufficient implementation of court protection orders.
- As well as the individual contributions of the police, support organisations and courts, the cooperation between all actors involved in responding to partner violence should be improved.
- Legislation and organisation need improvement, and all state and non-state actors who are in contact with victims of partner violence need comprehensive training programmes.

Practitioners are highly critical of the insufficient protection provided to women who are victims of partner violence and of the lack of appropriate specialist support services for victims of partner violence. On the other hand, there is a strong consensus that new concepts and approaches are gradually emerging. Practitioners were asked about the statement 'A number of good practices

are already in place for victims of domestic violence.’ All the professional groups interviewed agreed overwhelmingly with the statement. Of 145 practitioners, 118 agreed. Hence, the situation can possibly best be described as piecemeal. For a woman subjected to partner violence, this is obviously not enough. If she cannot trust that once she reports her victimisation to the police she will receive protection, she will not dare come forward and provoke retaliation by the offender.

“[N]ot that I go and testify against my partner and then go back home where he lives. Or I go to court, say how bad he is and then we come back home together.” (Victim, Poland)

Therefore, a solid and powerful police response that women who are victims of partner violence can rely on to protect them effectively is needed.

It should also not be taken for granted that things develop in the right direction. A victim interviewed in Poland had repeatedly reported violent incidents to the police. She observed that the public authorities’ attitudes and reaction had deteriorated.

“There was another domestic abuse case in 2012. I was at the crisis intervention centre with my two children. The difference is that I was not the ‘perpetrator’ back then. I’ll call myself that because this is how I feel right now. I had help then, I felt I got it, I was supported by institutions, the MSAC, crisis intervention centre, even when I went to court this judge supported me. Right now, there’s nothing like that [...] I felt no support at all. I even felt that I was an intruder in all this, that it was all my fault.” (Victim, Poland)

A lack of responsiveness and a permissive attitude towards violence in the private sphere does not only mean that the authorities fail to provide adequate protection against violence. It can also amount to a structural form of sex discrimination in itself. The ECtHR highlighted that in the case of *Opuz v. Turkey*. The court concluded that, because “the general and discriminatory judicial passivity in Turkey, albeit unintentional, mainly affected women, the Court considers that the violence suffered by the applicant and her mother may be regarded as gender-based violence which is a form of discrimination against women”.⁶¹

Potential role of healthcare institutions

Health professionals involved in treatment of victims at times did not acknowledge and respond appropriately to indications of partner violence, it appears from the interviews with victims. In particular, they failed to refer the victim to a support organisation and to report to the police or the public prosecutor’s office any indications of the victim’s exposure to partner violence.

⁶¹ ECtHR, *Opuz v. Turkey*, No. 33401/02, 9 June 2009, paras. 128–130.

Inaction of the police

Inaction of the police is a main cause of partner violence, as many victims reported. The cycle will often continue and intensify until the police put an end to it. However, of the victims interviewed, about two in three women who reported partner violence to the police were left without any protection against repeat victimisation. The police interviewees corroborated this finding. Thirty-three police officers were asked if they agreed that more needs to be done to effectively protect victims of domestic violence against repeat victimisation. Twenty-one agreed, and seven agreed strongly. Of the 23 police interviewees in France, Germany, Poland, Portugal and the United Kingdom, 18 agreed with the statement – six of them strongly – and only five disagreed.

This situation urgently calls for measures at various levels, including legislative reform, enforcement of existing legislation, organisation and – very importantly – training. One can judge how seriously EU institutions and Member States’ governments take the rights of women to dignity, life, and physical and psychological integrity by the action they take to redress these deficiencies.

Once the police learn of a violent partner relationship, they cannot turn their back on the couple. That would create an imminent risk of repeat victimisation. They can end the threat of violence by suggesting to the victim that she should seek shelter from the violent offender and then leave it to her to see to her security; or they can remove the offender from the victim’s home, either by an arrest or by an emergency barring order. Expecting the victim to leave and to arrange for her security herself is neither fair nor a reliable means of protection. The remaining options are arresting the offender and barring him from returning to the victim’s home.

The police should be trained to understand why it is their job to intervene in cases of partner violence and why violence occurring in private is a public issue and not just a ‘family affair’ that they can leave to individuals to sort out for themselves. In addition, the police should understand the importance of intervening in a manner that conveys key messages such as that violence is as unacceptable in private as in the public sphere; that the responsibility rests with the offender and not with the victim; and that, accordingly, the offender – and not the victim – has to change his behaviour.

Emergency barring orders

EU Member States that are bound by the Istanbul Convention must also comply with their obligations under Article 52 of the convention (‘Emergency barring orders’). It says the police must be able to react immediately to a situation of partner violence by issuing an emergency barring order.

Moreover, the EU law background should be recalled. Article 22 of the Victims' Rights Directive requires that Member States pay due attention to the particular risk of repeat victimisation that victims of "victims of gender-based violence" and victims of "violence in a close relationship" incur. Article 18 of the directive grants victims, in general terms, a right to protection of themselves and their family members against repeat victimisation. Article 18 specifies that, when "necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members."

That means that EU Member States must put in place legislation that empowers and obliges the police to issue emergency barring orders in situations where they are appropriate, because other measures are either not effective or not proportionate.

This is all the more so given that Declaration 19, which EU Member States adopted when signing the Lisbon Treaty in December 2007, envisages that the Union will aim in its different policies to combat all kinds of domestic violence and the Member States will take all necessary measures to protect the victims. This promise is still pending.

Breaches of emergency barring orders should lead to sanctions that reflect the threat emanating from the offender's presence in the victim's private sphere. That threat is per se a violation of the victim's fundamental rights.

Effective referral from the police to a specialised support organisation

In about one in three cases, it was the police who established a first contact between the victim and the support organisation, according to the interviews with victims.

From a practical point of view, it might be preferable to allow the police to transfer the victim's contacts to a relevant organisation together with a brief account of the police intervention. That is the protocol in Austria. The police should inform the victim that they will transfer personal data to the support organisation, but should not have to ask for the victim's permission. In the immediate aftermath of a violent incident, the victim should not be required to make complex decisions, let alone decisions that oppose the offender. Therefore, in a first phase of some two to four weeks, the police should be entitled to adopt the protection measures that they regard as necessary, without asking for the victim's consent. That includes referring the victim to an appropriate organisation that will provide the victim with specialist support services. It is equally important that, after this first phase, nothing that concerns the victim happens without her consent. It is vital to fully

restore the victim's sense of autonomy so that she may regain control of her situation.

A robust system of support organisations

There is a lack of appropriate and sufficiently funded specialist support organisations, the interviews with victims and practitioners reveal. Access to an appropriate support organisation not only grants the victim effective access to the criminal proceedings but also protects her against repeat victimisation.

The victims in general appreciated the support and empowerment they received from support organisations, but some victims were critical of support organisations. EU Member States will need to rely on cooperation between authorities and support organisations in granting victims protection and access to justice, but the governments remain responsible for assessing if private organisations fulfil their tasks. This applies whether or not private support organisations receive government funding.

Court orders

All EU Member States researched have legislation in place enabling courts to issue protection orders. However, offenders breached court orders without any consequences, victims observed. Therefore, the effective implementation of court orders must be assessed by the judiciary or justice ministries.

Training of the police, of other officials in contact with victims and of staff from support organisations

- Several of the victims interviewed commented critically on the attitudes of the authorities of EU Member States, including the police, social welfare institutions, health professionals and court practitioners.
- In particular, some victims of partner violence considered that the police made inappropriate or sexist comments.
- More than two in three practitioners interviewed, including two in three police officers, believed that improving professional attitudes and conduct in the police would encourage victims to report their victimisation to the police.

In everything they do, the police, other authorities and support organisations must be trained to intervene in cases of partner violence in a manner that unambiguously conveys certain messages to offenders and victims:

- The victim is a full member of her community. Hence, she can expect to be recognised as the victim whose rights have been violated and to be treated with respect by all those who respond when she reports the offence.
- Violence remains a matter of criminal law and public concern, even when committed in a partner relationship. Partner violence is a public issue, not private or a family affair.
- It is the offender who is challenged and held to account. The victim is not to blame. This is important to disburden the victim of any feelings of responsibility. Women who are victims of partner violence are likely to experience feelings of shame or guilt, especially if sexual violence is involved, according to the VAW survey findings. A clear signal sent by

the police can start the lengthy process of relieving the victim of such feelings and enabling her to regain a more realistic understanding of her situation.

- The offender has to stay away from the victim and refrain from contacting her, and it is the police, not the victim, who make this decision.

Effective protection of women against partner violence needs a strong alliance of the police, support organisations, the courts and other organisations. Such close cooperation will succeed only if all actors share a common understanding of the phenomenon and of the objectives of their intervention, including a strong commitment to defending the rights of victims.



3

Doing justice to women as victims of partner violence



3.1 Procedural justice

3.1.1 Victims of partner violence being particularly interested in an active role

Women, as victims of partner violence, are significantly more discontent with the limited role that they are allowed to perform in the proceedings. This level of discontent is significantly higher than among other victims of violent crime who were interviewed. Victims were asked whether they agreed or disagreed with the statement 'Overall, I would have liked to have more opportunities to be involved in the proceedings.' **Figure 13** shows the percentages of the responses, divided between victims of partner violence and other forms of violence.

A similar pattern shows regarding the question of whether or not victims would have liked more information about their potential role in the proceedings (**Figure 14**). Of all victims interviewed, two in three agreed that they would have liked more information about their potential role. The group of victims of partner violence was particularly frustrated at the lack of information. One in three strongly agreed with the statement, compared with one in five victims of other forms of violence.

Given that all interviewees in the group of victims of partner violence are female, one might suspect a difference between the sexes. In that case, a similar difference would also show within the group of victims of other forms of violence, if divided by sex. However, the opposite is the case. Among the victims of other forms of violence, more male than female victims asserted that they would have appreciated more opportunities to participate.

Hence, the differences above between victims of partner violence, on the one hand, and victims of other forms of violence, on the other, cannot be explained as simply a matter of their sex. What really is behind these differences will be analysed in **Section 4.3**.

3.1.2 Reluctance of public prosecutors

In Poland, practitioners commented on the reluctance of some public prosecutors to charge violent partners. A representative of a support organisation in Poland, who is a member of an interdisciplinary team active in Blue Card procedures, observed:

"However, there are prosecutors' offices [...] which don't accept any cases concerning domestic violence. Over the last five years, not a single investigation has been initiated in the cases submitted to the prosecutor's office by our interdisciplinary team. None! We are famous for preparing complaints against a refusal to initiate an investigation even before we officially notify the prosecutor's office of the crime." (Support organisation, Poland)

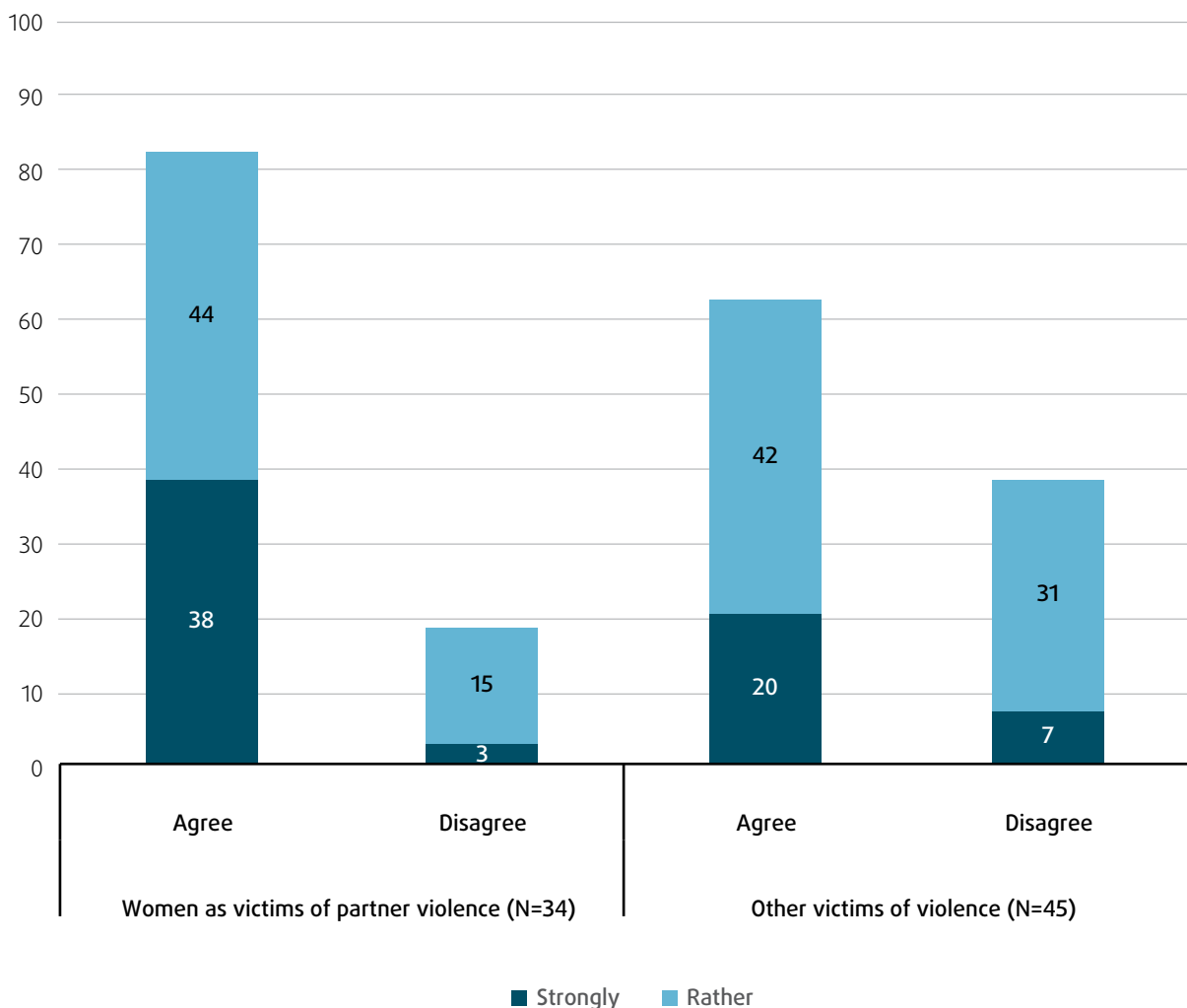
A lawyer interviewed in France had some doubts about public prosecutors' determination to prosecute cases of domestic or sexual violence.

"Depending on the directives of the public prosecutor's office, depending on the year. I think that they sometimes have directives, sometimes not. I think at the moment they are working more on acts of terrorism than on domestic violence." (Lawyer, France)

3.1.3 Inappropriateness of victim-offender mediation in cases of partner violence

According to Article 12 of the Victims' Rights Directive, restorative justice services can be used only on the basis of the victim's free and informed consent, which may be

Figure 13: Victims agreeing/disagreeing with the statement that they would have liked to be more involved in the proceedings, by category of victims (%)



Source: FRA, 2019

withdrawn at any time. In addition, such services should be suggested to the victim only if those organising the service are convinced that it is in the victim’s interest.

In the Netherlands, it appears that some cases of partner violence, involving children, were dealt with using a form of mediation. It is protocol to start with mediation and to get together “around a table” with the offender, victims of partner violence observed. This is for the sake of the children involved. Practitioners interviewed in the Netherlands confirmed this. In cases of domestic partner violence, the professionals involved often opt for mediation as the primary solution, they reported. This creates an unsafe situation for the victim, according to some practitioners, who described it as a step “back into the cage the victim is trying to escape from”.

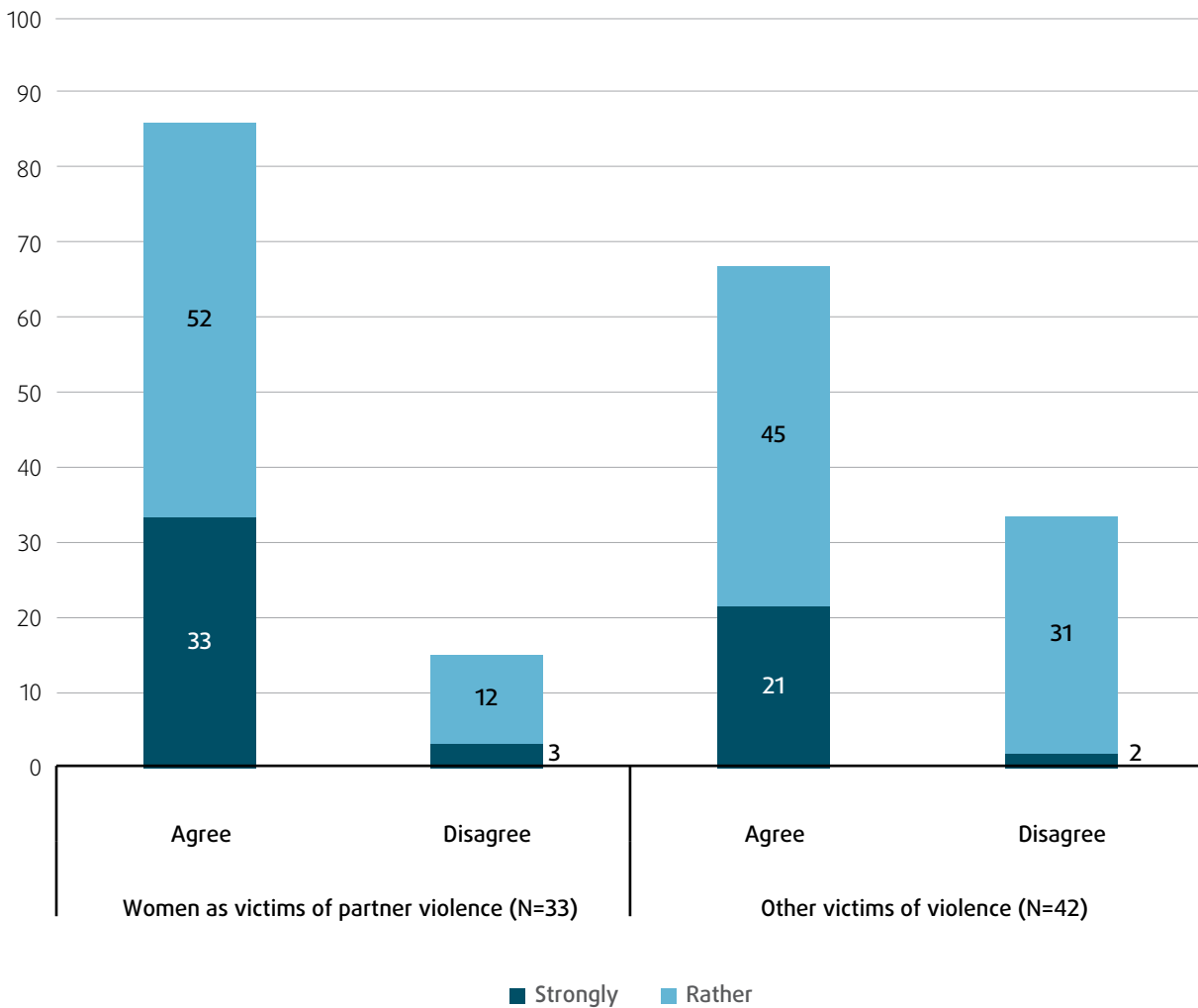
Victims more than confirmed this critical view on the part of practitioners. They felt that they were under pressure to cooperate in mediation and forced back into

face-to-face contact with the offender. This had the adverse effect of giving perpetrators the opportunity to re-enter the abusive relationship. Victims of partner violence, struggling to break free from the offender, experienced mediation as counter-productive, challenging and potentially retraumatising.

Similarly, as part of a Blue Card procedure, a victim interviewed in Poland was asked to meet the offender at the crisis intervention centre for some form of mediation. She did not find it helpful.

There are two reasons to question if mediation is appropriate in cases of partner violence. Firstly, what is important for victims of domestic partner violence and stalking is their decision that the offender should not be part of their private life in future. This decision is an expression of their autonomy regarding how and with whom they choose to spend their family life. An essential aspect of overcoming the situation of partner

Figure 14: Victims agreeing/disagreeing with the statement that they would have liked to know more about their potential role, by category (%)



Source: FRA, 2019

violence is not having to endure the presence of the offender in their private life. Requiring them to meet and communicate with the offender disrespects and undermines this decision. It drives victims into situations where offenders can continue to perform techniques of manipulation and control and where victims cannot avoid the risk of reliving experiences of victimisation.

Secondly, if the criminal justice system opts to respond to partner violence in a manner that involves the victim, it could suggest that the victim has to shoulder part of the responsibility for the crime. Bear in mind that victims of partner violence often experience strong feelings of guilt and shame. This is because offenders in violent partner relationships make victims believe that the offender’s violent conduct is only a consequence of the victim’s misbehaviour. Overcoming the trauma of partner violence entails learning to overcome these feelings of guilt and shame and to understand that it is the offender – and

the offender alone, not the victim – who did wrong and therefore has to account for his behaviour.

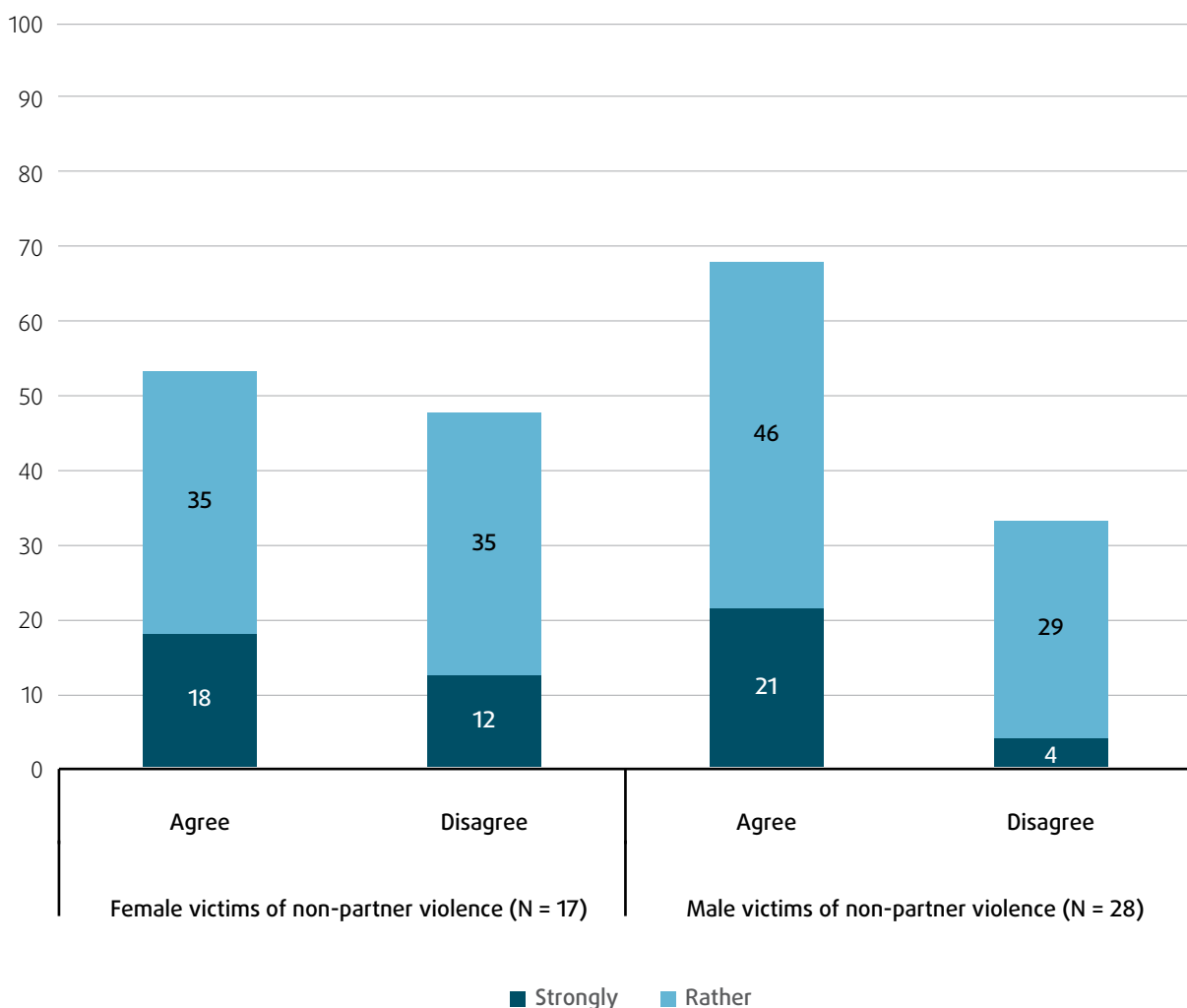
Finally, formal criminal procedures offer to establish the truth, authoritatively define the wrong and place responsibility with the offender. That should not be underestimated. The messages that the formal proceedings convey should not be diminished by forms of dispute resolution that fail to authoritatively recognise the victim.

3.1.4 Court proceedings and risks of secondary victimisation

Length of court proceedings

A victim, interviewed in Portugal, had reported to the police in August 2015. Her next contact with the authorities was in early 2017, when she received a letter from the court.

Figure 15: Victims of other forms of violence ('non-partner violence') agreeing/disagreeing with the statement that they would have liked to be more involved in the proceedings, by sex (%)



Source: FRA, 2019

Many victims of violence find it stressful to wait for the conclusion of the proceedings. This is even more so for victims of partner violence. The conviction of the offender is a crucially important stepping stone for them to come to terms with their present and past. Therefore, victims of partner violence at times found the length of the proceedings severely burdensome and exhausting. Another victim observed:

“I have been holding on, but I feel that I am running out of strength. This does not move forward, and I don’t have the case in my hands, and I have to say, ‘it’s this, it’s that’. [...] this makes me think, see how it will all end, what will happen or not. And the depression is arriving.” (Victim, Portugal)

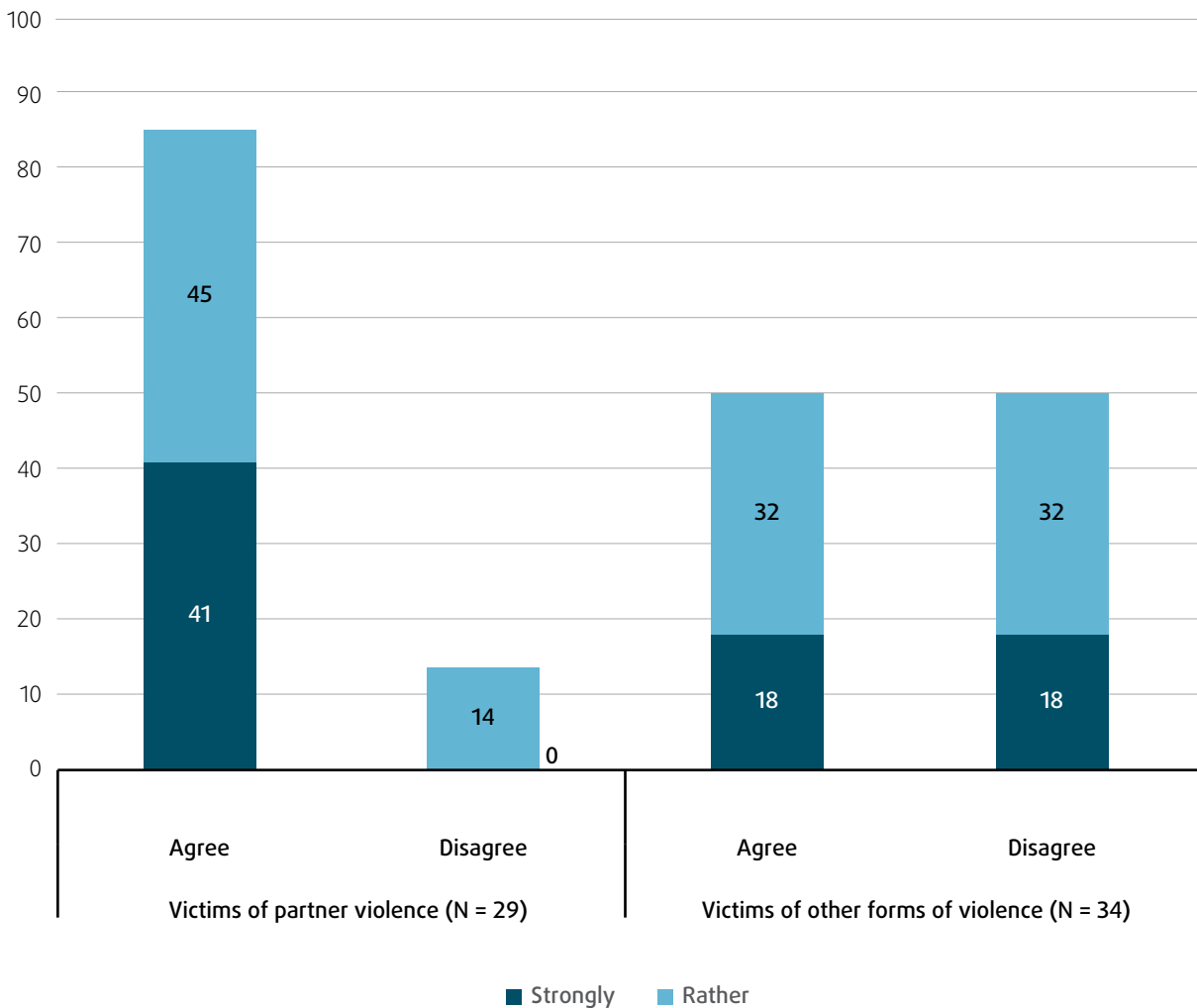
The victim’s feeling that the case is out of her hands means that an important aspect of her life is beyond her control. Victims can experience the length of proceedings and bureaucratic inertia as victimising them again. Instead of having an important role and influence in the

proceedings, the victim experiences the proceedings as controlling her. She has to say, ‘it’s this, it’s that’, without the proceedings moving forward. This points to the importance of making proceedings transparent and not overly bureaucratic or time-consuming.

Intimidation by the offender

According to the Victims’ Rights Directive, EU Member States should have in place measures that protect victims from secondary victimisation. They can include separate entrances and waiting areas for victims in court buildings and police stations, summoning victims and offenders to hearings at different times, or using video testimonies. Under Article 18 of the directive, victims have a right to protection against secondary victimisation, and under Article 19 victims have a specific right to avoid contact with the offender. In addition, vulnerable victims with specific protection needs should have available to them “measures to avoid visual contact

Figure 16: Victims agreeing/disagreeing that they had experienced the presence of the offender as intimidating, by form of violence (%)



Source: FRA, 2019

between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology" (Article 23 (3) (a)).

However, fear of meeting the offender is one of the main issues for victims of partner violence, findings from this research show. This concerns confrontation inside as well as outside the courtroom.

"I never saw him, but I was constantly afraid of seeing him. To me it was most important that I would not see him."
(Victim, Austria)

If a victim of partner violence is exposed to the offender without warning and heavy protection, that is a clear form of secondary victimisation. It should be avoided by all means as the numbers of victims who feel intimidated by the offender are very high. Victims were asked

whether they agreed or disagreed with the statement 'If I look back at the proceedings, there were moments when I experienced the presence of the offender as intimidating' (Figure 16).

At some stage, 86 % of the victims of partner violence interviewed had experienced the presence of the offender as intimidating, compared with only half of the other victims. This indicates the need to protect women who are victims of partner violence from encountering the offender.

From the interviews conducted with practitioners, it emerged that either there is no effective protocol for assessing a victim's risk of secondary victimisation or it is not implemented effectively. A member of a specialist support service commented:

“The assessment of victims came from the European Directive of 2012, I believe. It is something that we are supposed to assess. We do not have any guidance on this provision. I think that the police, the gendarmerie are not even aware of the existence of this provision, and so nothing is really done. If we support the victim, we can try to prepare certain things, such as avoiding meeting the accused, [...] but it is on a case by case basis, and it is upon the request of the person concerned and because we are aware of it and we feel that it can be beneficial for them. The police, the gendarmerie, I do not think that they even think of it.” (Support organisation, France)

Asked if the police assess the necessity to adopt measures to protect victims against secondary victimisation, a police officer in France responded:

“The police are not doctors. So the police cannot make statements about this kind of things. The victim may have a psychological examination. If the doctor thinks that things can be put in place to help the victim, the doctor will inform the police. The doctor’s medical report describes the state of the victim and their need for assistance or not.” (Police officer, France)

Several victims complained that at the court building they were not protected against the violent offender. One victim complained to the Scottish Public Services Ombudsman.

“They [...] basically forced me to go to court, and then, as far as I am concerned, they’re responsible for my safety. Then they allow this man to wait for me outside and stalk me round the building [...] If they’re going to make women go to court, they should ensure our safety, and if they can’t ensure our safety, they should be up front and say, ‘We cannot ensure your safety, so, if I was you, I would get a video link to a different building, where he doesn’t know where you’re going to be.’” (Victim, United Kingdom)

A victim, interviewed in Austria, was spared coming to the trial because her statement was video-recorded in advance. Only her legal representative attended court. The victim greatly appreciated that.

Therefore, EU Member States should pay much more attention to protecting victims of partner violence against secondary victimisation resulting from contact between the offender and the victim. Member States bound by the Istanbul Convention would thus take seriously not only their obligations under the Victims’ Rights Directive, but also their obligations under Article 56 of the convention.

3.2 Outcome justice

3.2.1. The particular severity of partner violence

One aspect of a victim’s right to have access to justice requires that the conviction and sentencing of offenders should faithfully reflect the wrong done to the victim. It must take into account the entirety of the victim’s violated rights. This draws attention to the substantive criminal law basis of convicting and punishing offenders in cases of partner violence. The question goes to the heart of why partner violence is wrong and how criminal law definitions can capture it. The wrong that justice should reflect is that the violent partner violated the victim’s human rights.

The Istanbul Convention makes this issue even more relevant. It obliges Parties to treat it as an aggravating factor if a former or current spouse or partner or a person cohabiting with the victim committed an act of violence.

They can do this in two ways. They can require courts to take the partner relationship into account as an aggravating circumstance when sentencing; or they can create a more severe offence, of which the close relationship between the offender and the victim “form[s] part of the constituent elements”.

Article 46 of the Istanbul Convention – Aggravating circumstances

Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

a the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority; [...]

Partner violence as gender-based violence

Article 46 of the Istanbul Convention claims that partner violence is a particularly grave wrong compared with violence that is not committed within a partner relationship. This is plausible as partner violence is a form of gender-based violence and hence of discrimination.



If the offender not only acted in a violent manner but also discriminated against his victim, that constitutes an additional wrong for which he can be held accountable, and more severe punishment is justified.

The concept of gender-based violence spans two sub-categories: violence directed against a woman because she is a woman; and violence that affects women disproportionately. Note that these two subcategories use the term 'violence' in different ways. In the first instance, it refers to a concrete act that one individual commits against another because she is a woman. In the second, it refers to an entire form of violence that can be comprehensively analysed to establish whether or not it affects women significantly more than men. However, the individual offender can hardly be blamed for acting in a manner that, looked at from the distance of social analysis, fits into a certain pattern and is an example of a form of violence that, in its entirety, affects women disproportionately.

If the second subcategory does not lend itself to assessing an individual act as discriminatory or not, how is it relevant? Obviously, it matters to state policies and legislation. If the police refrain from intervening in cases of domestic violence – for example, because they believe that they should not interfere with private matters or a family affair – then this failure has a more severe impact on those family members who have a lower status and less power, such as women, children and the elderly.

CEDAW (in Article 1 and throughout the convention), the International Covenant on Civil and Political Rights (in Article 26) and the ECHR (in Article 14) do not draw a clear distinction between equality before the law and non-discrimination. However, the Charter does. While Article 20 grants equality before the law, Article 21 prohibits discrimination. One obvious difference between these two rights concerns those who have a duty to uphold them. Equality before the law and equal protection by it fall within the responsibility of those who create or implement laws, namely state actors. An individual's right not to be discriminated against concerns both state and private – non-state – actors.

In these terms, the two subcategories relate to discrimination and inequality. The first – misogynist violence targeted at a woman because she is a woman – constitutes a form of discrimination. The second addresses a matter of equality before the law. If state actors ignore the fact that women have a higher risk than men of falling victim to domestic violence – or forced marriages or trafficking for sexual exploitation – they fail to grant the rights of men and women equal protection by the law. This is what the ECtHR found in the case of *Opuz v. Turkey*. The general judicial passivity in domestic violence cases and the ineffectiveness of domestic remedies, albeit

unintentional, mainly affected women; therefore, the Turkish authorities failed to provide equal protection of law to women who were victims of domestic violence. That failure constitutes a form of gender-based violence and a violation of Article 14 of the ECHR.⁶²

However, this judicial passivity cannot be blamed on the offender. Therefore, if partner violence deserves to be punished more severely because it is gender based, it should qualify as misogynist violence directed against a woman because she is a woman.

That is the case if the offender exploits and reinforces a given situation of social inequality – in terms of differences in status and societal power – between men and women. By establishing a relationship of dominance and control and by subjugating his partner, the offender takes advantage of and acts on the chauvinist suggestion, inherent in patriarchal societies, of male superiority. Interestingly, Nevala (2017) has revealed a correlation between the prevalence of coercive control as a form of intimate partner violence and the overall level of gender equality attained by a society. This makes it more plausible that an offender who establishes a system of dominant and controlling behaviour is exploiting and reproducing the inequality and patriarchalism prevalent in his society.

Hence, partner violence comes to signify the offender exerting male supremacy over his partner. This implies that the offender attributes to his partner an inferior position and diminished status. The offender's dominant and controlling behaviour conveys the demeaning message that, because the victim is a woman, her dignity, autonomy and rights count for less. That accounts, at least in part, for the violence against her.

Obviously, any violence disregards the victim's dignity and rights. But misogynist violence is particularly detrimental to the rights of women because it reinforces, and is reinforced by, a traditional distinction that can impair the status of women in general. Misogynist violence claims, explicitly or implicitly, that differences in sex can justify differences in status. Reichel verifies the often assumed link between patriarchal attitudes and partner violence. A "certain understanding of gender relations and masculinity" is linked to partner violence, often referred to as "a patriarchal, traditional, hegemonic, or dominant representation of masculinity".⁶³

62 ECtHR, *Opuz v. Turkey*, No. 33401/02, 9 June 2009, para. 191–201. More recently, the ECtHR found in *Bâlşan v. Romania*, 23 May 2017, No. 49645/09, para. 88, that "the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors, as found in the instant case [...], indicated that there was an insufficient commitment to take appropriate action to address domestic violence".

63 Reichel (2017), p. 1869.

Misogynist violence is degrading treatment in that it imposes on the victim a demeaning notion of what it means to be a woman.⁶⁴ By assigning his partner a subordinate position, the offender implicitly denies her a right to equal status and equal enjoyment of her rights. That is almost the definition of discrimination.

The interpretation of partner violence as discrimination is premised on certain factual circumstances as pre-conditions. The concept of partner violence should be limited to behaviour that aims to establish a relationship marked by superiority and subordination.

Partner violence as inhuman and degrading treatment in the meaning of Article 4 of the Charter (Article 3 of the ECHR)

There is another reason why the Istanbul Convention's assumption that partner violence is a particular severe form of violence is plausible. In terms of the human rights violated, a violent act within a partner relationship has more impact on the rights of the victim than the same act committed against an unrelated person, because in a partner relationship the offender's violent behaviour amounts to a permanent threat of violence. If the offender was violent once, he can be violent again, unless the power imbalance that underlies partner violence is redressed. As a consequence, in a violent relationship the victim is more or less constantly exposed to a potentially violent partner. Therefore, to do justice to partner violence one must take seriously the fact that the victim had to live in permanent fear for an extended time.

The particular quality of partner violence is confirmed by evidence from FRA's VAW survey. Of women currently in a relationship, 7 % indicated that they had experienced four or more different forms of psychological violence, such as controlling or abusive behaviour, economic violence or blackmail using children. Hence, the survey evidence underlines the importance of taking psychological partner violence seriously, including multiple and repetitive forms of such violence. Overall, 35 % of women in the EU have experienced their partner being controlling, such as limiting where she can go, 32 % have experienced psychologically abusive acts by the partner and 12 % have had their economic independence limited by the partner.⁶⁵

The ECtHR has adopted a novel approach to conceptualising partner violence.⁶⁶ The court has repeatedly held that incidents of domestic violence are to be assessed not just as violations of the right to respect for private

and family life under Article 8 of the ECHR but as "inhuman or degrading treatment" in the meaning of Article 3 of the convention ('Prohibition of torture'). The court has reasoned that in violent relationships women are forced to live, as long as the relationship lasts, under permanent threat of violence. That situation is in itself debasing and therefore can amount to inhuman or degrading treatment.

In *Valiulienė v. Lithuania*, the ECtHR adopted a comprehensive and holistic approach to assessing the violent partner relationship:

"As far as the applicant was concerned, contrary to the Government's perception of events, the ill-treatment she was subjected to had not just consisted of attacks on her physical integrity. It also comprised mental suffering, humiliation, fear and anguish, constant terror, threats and verbal abuse. On this issue the applicant submitted that at one point she had also been threatened by J.H.L. that he would 'dispose of' her if she refused to live with him or burn the apartment down with her in it. [...] As concerns the duration of her ill-treatment, the applicant maintained that, contrary to what had been suggested by the Government [...], the five incidents of violence could not be perceived as 'separate episodes'. She contended that the incidents, which had occurred within a one-month period from 3 January to 4 February 2001, had constituted a continuing situation. She also submitted that the ill-treatment by J.H.L. had not consisted of those five episodes alone and that his violent behaviour, both physical and psychological, had continued until the end of March 2001."⁶⁷

On this basis, the ECtHR reached the conclusion that the partner violence that the victim suffered amounted to inhuman and degrading treatment in the meaning of Article 3 of the ECHR:

"[T]he Court considers that the five instances of ill-treatment stretched over a period of time. Accordingly, it will examine those acts as a continuing situation, which it finds to be an aggravating circumstance. [T]he Court cannot turn a blind eye to the psychological aspect of the alleged ill-treatment. It observes that the applicant made credible assertions that over a certain period of time she had been exposed to threats to her physical integrity and had actually been harassed or attacked on five occasions. [...] In the light of the foregoing, the Court considers that the ill-treatment of the applicant, which on five occasions caused her physical injuries, combined with her feelings of fear and helplessness, was sufficiently serious to reach the level of severity under of Article 3 of the Convention."⁶⁸

64 FRA (2012), p. 21.

65 FRA (2014a), pp. 72-77.

66 For a comprehensive account of the ECtHR's case law, see the [Factsheet – Domestic violence](#), issued by the court's press unit in January 2018.

67 ECtHR, *Valiulienė v. Lithuania*, No. 33234/07, 26 March 2013, paras. 48-49.

68 *Ibid.*, paras. 68-70.

Therefore, acts of ill-treatment, occurring in the context of a partner relationship, must be assessed not in isolation but as building blocks of an entire and complex violent relationship. As long as the offender maintains and reinforces this relationship, the victim will experience inhuman and degrading “feelings of fear and helplessness”.⁶⁹

In other words, severe psychological violence is characteristic of domestic partner violence: women being threatened with further violence, treated in a debasing manner and overall coerced into a subordinate position. Partner violence is not about acts of physical violence viewed in isolation, but about a complex relationship in which a woman is permanently exposed to the potentially violent behaviour of her partner.

One can see what living in constant fear can mean from the victim’s perspective in the report of a woman whose abusive husband was a police officer. The offender made a complaint against her, which resulted in the victim’s arrest. Paradoxically, that allowed the victim to, for once, escape from the threat of her partner’s violence.

“And then when they put me in a cell, for the first time in a long time I actually felt safe in that cell, I’ve never been in a cell in my life. The cell doors shut, and I just lay down on that silly mat that they give you and I was so exhausted with the whole thing. But for the first time in a long time I thought, ‘He can’t touch me here!’” (Victim, United Kingdom)

Partner violence is essentially a form of establishing and maintaining domination and control over another person by means of coercion, fear, humiliation, demeaning treatment, isolation, indoctrination and other techniques. Consequently, ending a violent relationship is not only about preventing physical violence from happening in the future, but about ending the threat of violence and enabling the victim to live an autonomous life free of fear and humiliation. In the same vein, in certain circumstances, gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment, including in cases of rape and domestic violence, the CEDAW Committee observed.⁷⁰

Victims’ views: partner violence as more than the sum of violent acts

One reason for victims to be critical of the outcome of proceedings is when they feel that the court did not understand and take into account the entire wrong they experienced. This frequently happens to victims of partner violence. They often sense that the court looked at

only one incident or a small number of violent acts in isolation without considering the wider context of their victimisation, including the fact that they had to live in constant fear and helplessness over a longer time.

This translates into criminal proceedings that do not allow victims to tell the story of a violent relationship comprehensively, because the authorities insist that the proceedings are about only certain acts of violence. Hence, they do not fully recognise the victim’s reality of having to live in subordination and under the permanent control of the offender for an extended period.

“When you give evidence, it’s only on that particular incident night, so, when I went on to stand the first time I just lost it [...] I started rambling a bit, how he did this and how he did that, and the sheriff said, ‘Mrs [...], you cannot speak about anything other than the incident that you’re here for.’” (Victim, United Kingdom)

The proceedings concentrate on certain incidents in isolation, so they miss out on the larger picture. One victim explained:

“In my opinion it [the procedure] is always on facts, paragraphs and one gets interviewed wrongly. The interview is always on times, days, the colour of the bruise, where he hit me, and it is not about the – in my opinion – most important aspect: the fear one has. [...] these generally frightening aspects were not considered enough. Only some aspects of the crime are dealt with and that’s it. The same concerns the break-in, which he attempted when I was staying at my friend’s place. In the trial, only the damage of the door was an issue and not the fact that children were present, that my friend was scared and that I was scared. This did not matter to them, but only: ‘Did he manage to do it? No – ok, then it does not matter.’ But in my opinion, this is wrong, because, for me, there would not be a lot of difference between the way it was and if he had been able to enter the flat and become violent again. But it is always on facts, times, durations and it is not about the actual problem.” (Victim, Austria)

Victims highlight the feelings of fear that they experienced, but they consider the authorities likely to regard that aspect of their violent relationship as merely subjective and be reluctant to pay due attention to it. One victim interviewed in Poland had been abused by her partner countless times. Recalling her situation during the interview, she started to cry and said that “being scared” is “the worst thing”. At the same time, victims wonder what their situation of having to live in fear will count for at the police station.

“I reported to the police, but I didn’t expect it to be taken to court. Because I wasn’t seriously injured, right? But the fear was tremendous.” (Victim, Netherlands)

Violent relationships will often leave little room for women to refuse to have sexual intercourse with their violent partner. Still, victims made little mention of

69 See also *E.M. v. Romania*, No. 43994/05, 30 October 2012, para. 57; *Bălşan v. Romania*, 23 May 2017, No. 49645/09, para. 60; and *R.B. v. Hungary*, No. 64602/12, 12 April 2016, para. 44.

70 UN CEDAW Committee (2017), para. 16.

sexual violence in our interviews. Apparently victims find it too shameful to talk about. Except in cases where the proceedings were focused on sexual violence, sexual violence only rarely surfaced in the interviews.

“I went and got a civil interdict, which was horrendous, absolutely horrendous, and worse than the criminal court case. [...] To get a civil interdict you obviously have to give an affidavit, you give an affidavit and you detail quite horrific abuse. So, I wrote about all the stuff he had done. So, he gets to read your affidavit, through his solicitor, he takes the affidavit and he shows it to our son. [...] Could you imagine your son reading that? Thirty years I kept my mouth shut when I was being raped, so I wouldn't wake my son, made excuses for his father's behaviour, had a lock on my bedroom door, I would let my husband in when he started to get loud, so my son wouldn't see it. I tried to cover all these years for that horrific abuse, I put it in an affidavit [...] and he takes it and shows it to our son. Who does that? So, that is what you are up against.” (Victim, United Kingdom)

However, in one case a victim reported physical abuse to the police, and also that her husband had repeatedly forced her into sexual intercourse. When the police first asked her if she believed that the sexual coercion she had experienced constituted a criminal offence, she said she did not because he was her husband. Later, she thought about it and wanted to be acknowledged as a victim of sexual violence. However, she did not succeed. The offender was convicted for bodily injury and sentenced to a suspended prison term of three months.

“They asked how often we had consensual sex and how often we had sex without my consent. And then, out of all cases of sex without consent, how often was there an assault? Such detailed questions were really exhausting for me [...] I then said it was sexual abuse, this amount within this time period, and then they asked again about the percentages and I only thought, ‘No, please, stop it.’” (Victim, Austria)

One wonders why the police would ask a victim to assess whether or not the violence she experienced would constitute a criminal offence.

Overall, the victims interviewed in the project conveyed a strong message. The authorities tend to focus on certain particular incidents instead of adopting a more holistic approach to assessing the partner violence they experienced. That misunderstands their situation and fails to fully assess the wrong done to them. Results from FRA's Violence against women survey corroborate this. Partner violence takes various forms and is highly repetitive, it finds.⁷¹

Several of the victims interviewed highlighted the impact of partner violence on children who

witness such violence. They stressed the trauma their children suffered.

“[T]he children were so much harmed, as they had seen everything he had done to me.” (Victim, Austria)

However, there is no indication that the authorities assess the offender's behaviour in terms of violating the rights of children by such abusive and cruel treatment. To capture the entirety of the wrong that violent partners do, the criminal victimisation of psychologically abused children should also be taken into account.

3.2.2 Rehabilitation

Alongside the question ‘how much punishment?’, the question ‘what kind of sanction?’ matters to women who are victims of partner violence. Victims want a sanction that helps the offender change his behaviour. Interviewees often used medical language to advocate such treatment. A victim of a long-lasting violent relationship criticised the performance of the criminal justice system for not being able – or caring – to stop violent offenders.

“There isn't really a redress through the criminal courts. Once they've done and dealt with, they don't seem to think that if somebody has behaved for 30 years in such an appalling way, that they're not going to carry on. It's almost as if, ‘Right, you know, he's been convicted, he's got his compensation order, bye, we'll see you next time.’ They just don't understand that the likelihood is, this is just going to keep repeating itself. [...] women go to court, they give evidence against their husbands, and I've heard stories where they just both go home together. Because [...] after this is all over the courts aren't interested. The police don't seem to be interested either until he does it. When he was at the bottom of the street three weeks after the bail was lifted, they more or less said, ‘Well, you need to wait until he batters you again.’ [...] They don't understand the mental torture that you go through as well.” (Victim, United Kingdom)

A woman who had been severely abused for 13 years was critical of the fact that her husband had been sentenced to four years of imprisonment. She would have preferred him to be sentenced to hospitalisation and psychiatric treatment.

“What I wanted the court to do was [...] oblige him to do a psychiatric treatment, or to compulsorily hospitalise him. I wanted them to do something different. I don't think that putting him in jail will be the solution. I think that arresting him for all that period will not be of any use, it will not compensate for any of the things he did to me or for what he did to my children.” (Victim, Portugal)

Another victim noted that the court conditionally discontinued the proceedings and placed the offender under the supervision of a court guardian for two years.

⁷¹ FRA (2014a), pp. 42–46.

She also recalled that the court explained this decision to her in some detail. She commented:

“This was exactly what I needed. I didn’t want him to be punished or to go to jail, but I wanted him to change. I wanted some institution to influence him so that he undergoes treatment.” (Victim, Poland)

Victims have an interest in rehabilitative treatment that increases the likelihood that the offender will refrain from further violence. This fits with the obligation of Parties to the Istanbul Convention to establish treatment programmes aimed at preventing offenders from reoffending.

Article 16 of the Istanbul Convention – Preventive intervention and treatment programmes

- 1 Parties shall take the necessary legislative or other measures to set up or support programmes aimed at teaching perpetrators of domestic violence to adopt non-violent behaviour in interpersonal relationships with a view to preventing further violence and changing violent behavioural patterns.
- 2 Parties shall take the necessary legislative or other measures to set up or support treatment programmes aimed at preventing perpetrators, in particular sex offenders, from re-offending.
- 3 In taking the measures referred to in paragraphs 1 and 2, Parties shall ensure that the safety of, support for and the human rights of victims are of primary concern and that, where appropriate, these programmes are set up and implemented in close co-ordination with specialist support services for victims.

To prevent repeat victimisation, court could order such treatment either as a sanction or as a condition of suspending the sentence or its execution. In combination with forms of court-ordered supervision such as probation services and electronic monitoring, anti-violence training programmes could develop into a default sanction in cases of partner violence.⁷²

3.2.3 Protection orders issued by the criminal court

Court protection orders are one cornerstone of an effective system of protection against repeat victimisation (Chapter 1). This can include protection orders issued by both civil and criminal courts.

⁷² On perpetrator programmes, see Council of Europe (2014); on the effectiveness of training programmes, see Gloor and Meier (2002); Flood (2015).

However, for some victims the most important result from the criminal proceedings was or would have been a court protection order preventing the offender from approaching or contacting the victim. This fits the general pattern of what makes sense for victims. They want sanctions that protect them and help the offender refrain from patterns of violent behaviour.

“All I wanted through all of this was a non-harassment order so that man could not come near me, that’s all I wanted. At the time, I wasn’t really caring if they put him in jail, if they fined him, but they didn’t give me a non-harassment order, so that meant he could leave that court building, get in his car, drive back and come straight up the driveway and in the front door, and there’s nothing the law can do to stop that. That’s why every time, every intermediate diet, I asked for a non-harassment order, and the Sheriff denied it to me.” (Victim, United Kingdom)

Like anti-aggression training, court orders should be a default sanction in cases of partner violence, where they are not already in place at the time of the court trial.

3.3 Victims with a vulnerable social status who need criminal justice

As shown above, women who are victims of partner violence are significantly more dissatisfied than other victims of violent crime with their limited role in the proceedings and with the limited information about their potential role available to them. Both findings indicate that women as victims of partner violence have a particular interest in what they believe criminal justice offers them.

To explain why, one must recall two assumptions:

1. This projects suggests, throughout the four reports, that criminal justice for victims is mainly about recognising their status and their rights. Criminal justice reconfirms and re-establishes the victim’s status as a person and rights holder, which the violent offence has challenged.
2. It has been proposed that partner violence is a form of discrimination. The offender reproduces, in a close relationship, an inequality of status and power that, for reasons of history, shapes the society in which the offender and the victim live.

In other words, a society that attributes different levels of power and status to individuals can base it on distinctions such as those between male and female, between white and other skin colours, between citizens and non-citizens or between state officials and their subjects. Violent offences that reference such markers

are powerful means of demonstrating and reinforcing the victim's lower standing. Any act of violence calls into question the status of the victim as a person and rights holder.⁷³ Discriminatory acts of violence bolster this message by referencing a characteristic that supposedly explains the violent act. They target a particular vulnerability in the victim's status, a vulnerability that the offender highlights. The offender draws on a distinction and inequality that is well known and relevant in their society. The offender only 'reminds' the victim of their unequal status and of the victim's place in society, as perceived by the offender. The offence attacks the victim's status at a point where tradition makes it weak.

Gender-based violence demonstrates an aspect of being a woman in society. It explicitly or implicitly references a distinction on which European societies base an imbalance and inequality that are still prevalent. A man who rapes a woman targets her as a woman and thus explicitly subjects her to violence because she is a woman. A husband who abuses his wife implicitly acts on and reinforces a traditional patriarchal view that a husband is entitled to a dominant position, which corresponds to a wider concept of male supremacy. Whether they are aware of this implication or not, both the rapist and the abusive husband reinforce a difference in status and power that to date structures their societies. Acts of gender-based violence benefit from the leverage of the patriarchal tradition they invoke. That tradition still has far-reaching consequences.

What has been said about gender-based violence can be extended to other violent crimes that reference a characteristic that signals an inequality of societal power and social status. Examples include racist, xenophobic or homophobic violence, but also abuses of power that officials commit against individuals subject to their authority. Such abuses are reminiscent of authoritarian structures characteristic of feudal and aristocratic societies. In a democracy, state officials should understand that they serve their people. In reality, their behaviour does not always demonstrate this understanding. At times it is reminiscent of a more stratified and authoritarian society.

If these theoretical assumptions hold, they should show in the attitudes of the victims interviewed in this project. If it is true that more is at stake for victims of violent acts that reinforce power imbalances and status differences than it is for other victims of violent crimes, then victims of discriminatory violence should be more interested in participating in criminal proceedings and, overall, in having access to criminal justice.

73 On victims' rights as human rights and the importance of recognising victims as persons, see for example Doak (2008); Wemmers (2012); Dearing (2017b).

To test these assumptions, the victims were divided into two groups. The first group experienced discriminatory violence, a violent offence that can reinforce a status inequality. It comprises:

- seven female victims of sexual violence;
- 35 female victims of partner violence;
- 15 male and two female victims of racist, xenophobic or homophobic violence or of abuse of power committed by officials (the police, municipal guards, the mayor of a village).

This group is referred to as 'victims of vulnerable status' for short.

The remaining 24 victims suffered assault, attempted murder, armed robbery, kidnapping, violence in the private sphere not committed by a heterosexual male partner, etc. This report refers to them simply as 'other victims'.

3.3.1 Empowerment

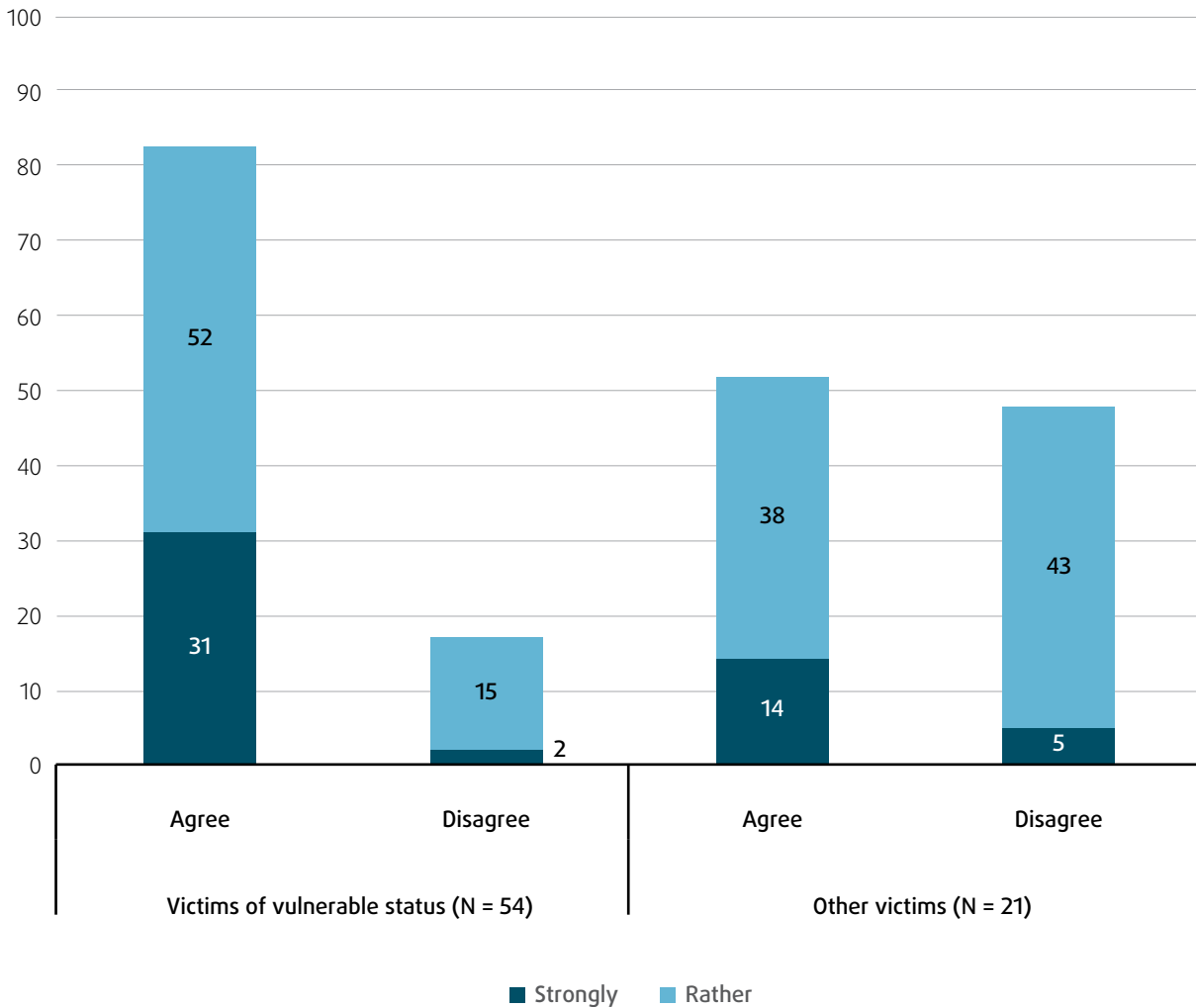
A clear difference shows between the groups in their responses to the statement that they would have liked to have more information about their potential role in the criminal proceedings (Figure 17). As many as 83 % of victims of vulnerable status agree, compared with 52 % of the other victims. The difference is even greater in the percentages of interviewees strongly agreeing with the statement. Victims' primary sources of information about their role in the proceedings are support organisations and lawyers, and it is not likely that members of support organisations or lawyers treat victims of vulnerable status significantly worse than other victims. Therefore, one can assume that the differences relate to victims' priorities. Their potential role in the proceedings is more important for victims of vulnerable status than other victims.

As one might expect, a very similar pattern shows in response to the question of whether or not victims would have liked more legal advice (Figure 18).

3.3.2 Accessibility

One of the most significant and telling differences between the two groups concerns their level of agreement with the statement that they would have preferred more opportunity to participate in the proceedings (Figure 19). A very clear majority of victims of vulnerable status agree with the statement. In contrast, a clear majority of the other victims disagree. Their rights to participate in the proceedings are clearly more important to victims whose societal status is challenged, including prominently women as victims of gender-based violence.

Figure 17: Victims agreeing/disagreeing with the statement that they would have preferred to have more information about their potential role in the proceedings (%)



Source: FRA, 2019

A high percentage of victims of vulnerable status emphatically agree with the statement (36%). This reflects, on the one hand, their stronger wish to participate and, on the other, their frustration over factors beyond their control having prevented such participation. Those factors include a lack of information about their participation rights and potential role.

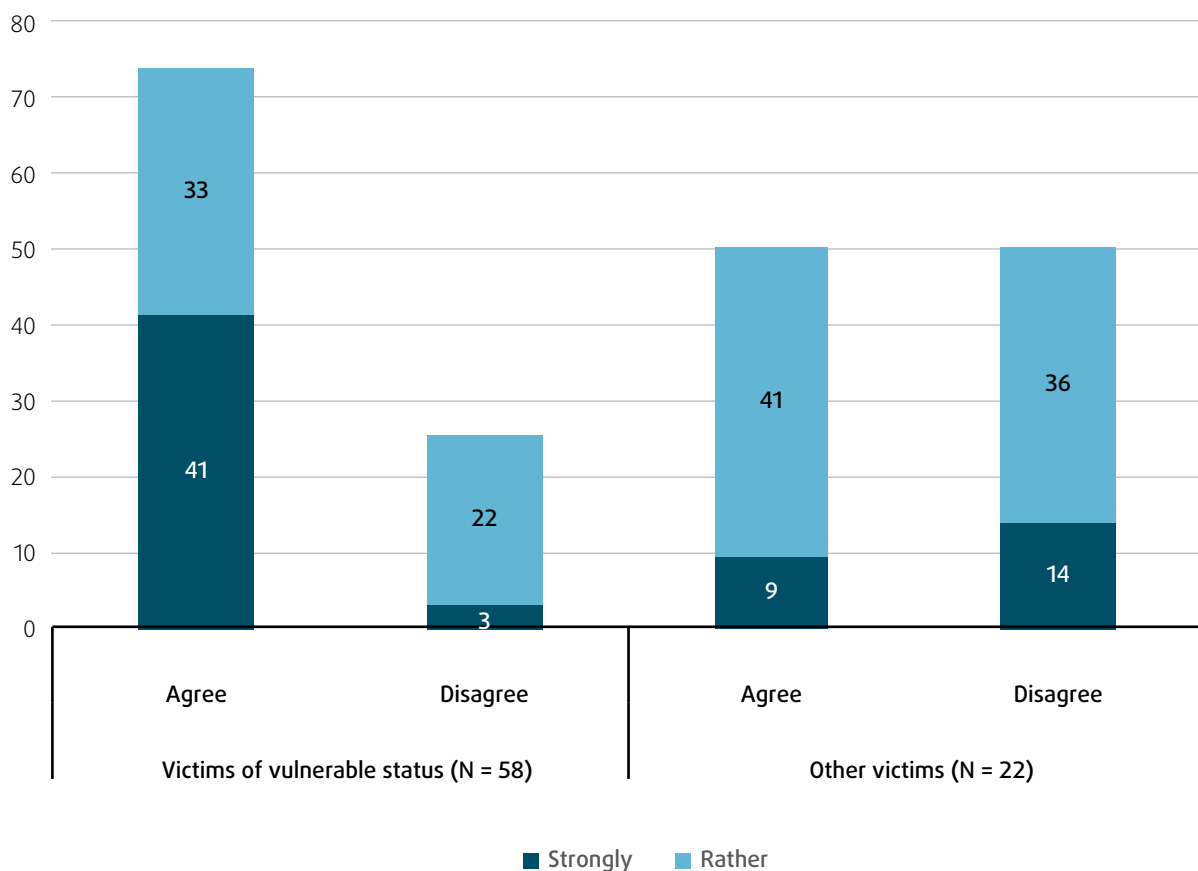
The picture is very similar as regards victims' agreement or disagreement with the statement that they had expected a more important role in the proceedings (Figure 20).

It is also worth noting that the victims of vulnerable status valued participation more in retrospect, whereas the group of others did not. Within the group of victims of vulnerable status, 13% of interviewees agree that, looking back at the proceedings, they would have liked to be offered more opportunities to participate, although before the proceedings they had not expected

a more important role. It is only by experiencing the reality of a marginalised position in the proceedings that they learned to value participation. Victims from the other group did not learn that lesson. The experience of not having an important role in the proceedings had no impact on them, other than confirming their prior expectations.

One possible explanation is that, if victims have experienced a form of violence that demonstrates their lower social status and calls their position as a full member of their legal community into question, they are more sensitive to treatment that again marginalises them. Several victims contended that the proceedings took the rights of offenders more seriously than theirs.

Figure 18: Victims agreeing/disagreeing with the statement that they would have preferred to have more legal advice (%)



Source: FRA, 2019

“The justice system did not listen to me, the procedure lasted nine years. [...] You are not listened to at all [...], they listened to him more. They don’t listen to the victims, they listen to the offenders, they have more rights than us.”
(Victim, France)

Currently, criminal proceedings give more attention to the rights of defendants in criminal courts than to the participation rights of victims. That is not necessarily true at the level of legislation, but it happens in practice throughout the EU Member States covered by this research. Unsurprisingly, when proceedings give the rights of defendants precedence over the victims’ rights, victims experience it as unfair and as violating the fundamental right to equality before the law.⁷⁴ The concept of a fair trial requires that the rights of all parties have the same importance. Hence, that inequality denies victims a fair trial, and victims of vulnerable status are more sensitive to the element of unfairness and inequality that is systemic in contemporary criminal justice systems. The 36 % of victims of vulnerable status who strongly agree that they would have liked more opportunities to participate in the proceedings – compared with only 9 % of interviewees from the group

of other victims – thus express their frustration and discontent with criminal proceedings that discriminate against them. In short, those who most need treatment that refutes the derogatory attitudes of offenders and reassures them of their equal status are at risk of secondary victimisation by treatment that they experience as degrading them again.

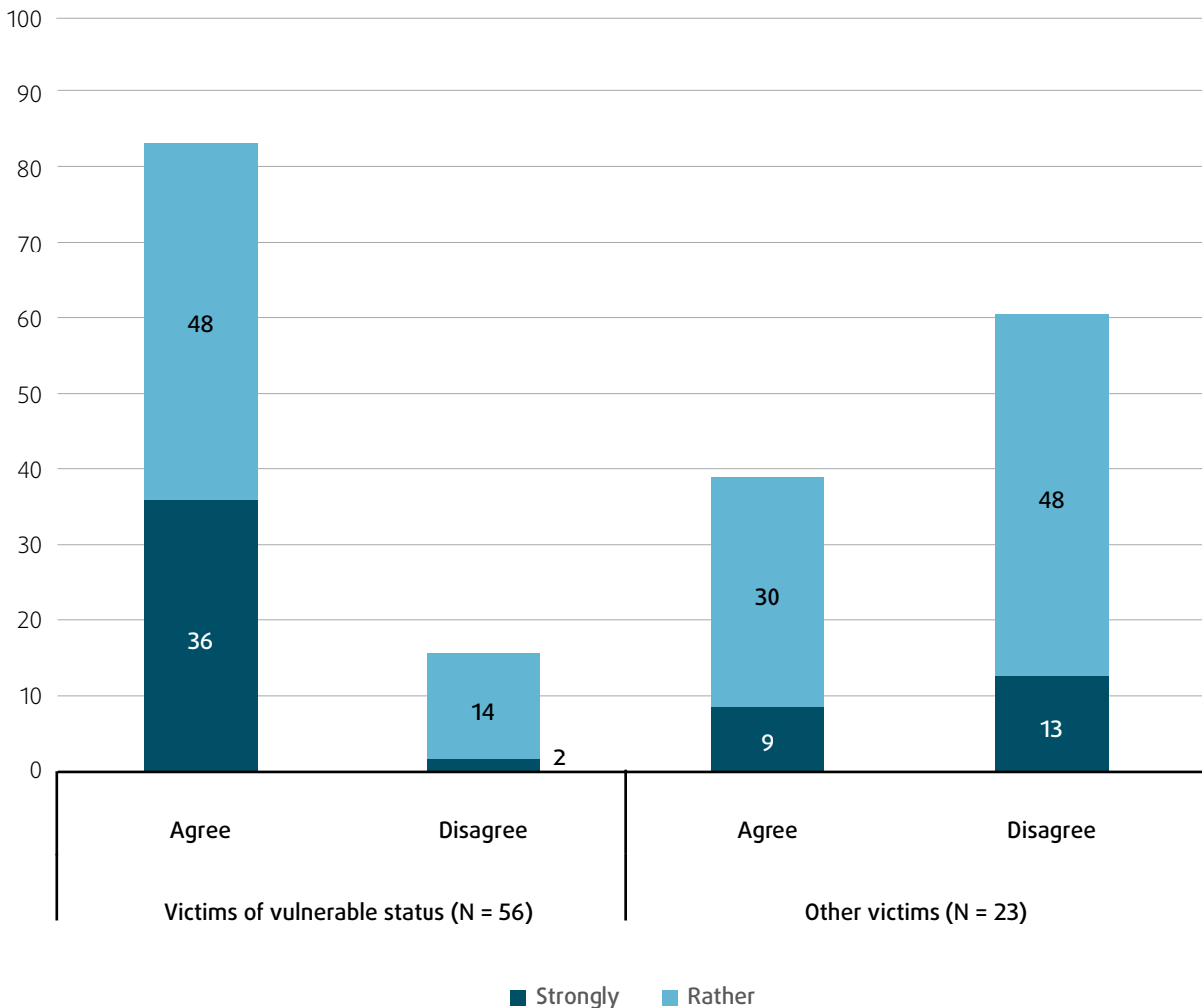
3.3.3 Receptivity

That explanation would accord with another striking difference: how victims assess their treatment by the police. A clear majority of vulnerable victims (56 %) disagree with the statement that the police took their rights and concerns seriously. In contrast, 87 % of the other victims agree.

Victims’ sense of unfair treatment could relate to behaviour by individual police officers, as well as their marginalisation by how proceedings are organised. This concerns women who are victims of gender-based violence, who complain about sexist remarks or gender-insensitive treatment, as well as victims of racist and xenophobic violence, who experience the police as reinforcing their experience of discrimination. This

74 Holder (2018), pp. 167–168.

Figure 19: Victims agreeing/disagreeing with the statement that they would have liked more opportunity to participate in the proceedings (%)



Source: FRA, 2019

will be discussed in the next subsection as a matter of victims’ secondary victimisation.

Interestingly, precisely the same picture emerges from victims’ responses about police commitment to carrying out an effective investigation. This simply indicates that victims will not recognise the police as paying attention to all relevant aspects of the crime unless the police also take the victims’ concerns seriously. This also suggests that victims’ right to an effective investigation is linked to their right to active participation in it. Victims will value an investigation as effective only if they find that they can participate and contribute their views and concerns (‘accessibility’) and if the police take these concerns seriously (‘receptivity’).

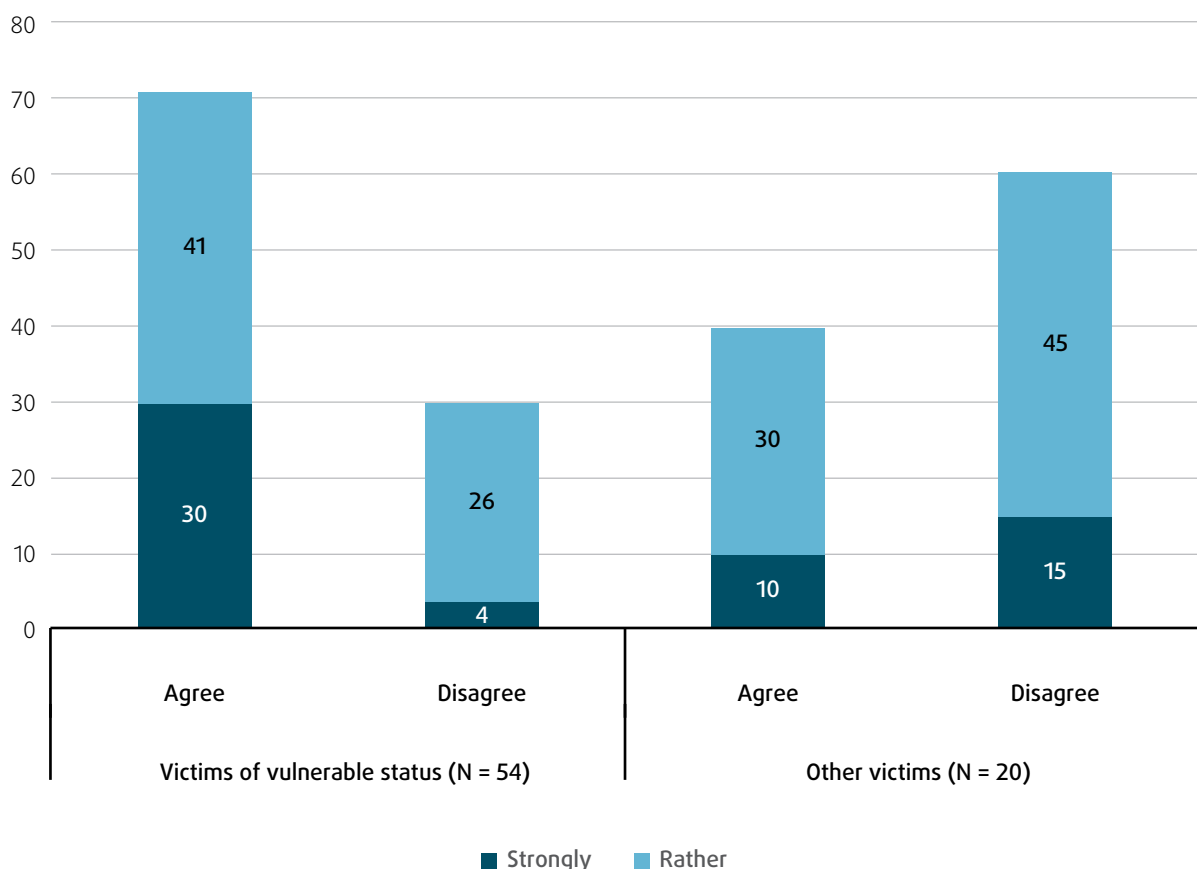
3.3.4 Protection against secondary victimisation

Victims of vulnerable status being intimidated by the offender

Asked if at some time in the course of the proceedings they experienced the offender’s presence as intimidating, relatively high percentages of victims answered ‘don’t know’. In many of these cases, the court trial was still pending when the interview was conducted, so victims believed that it was too early for them to judge this aspect.

There is a strong risk that the criminal proceedings were conducted in a manner that made victims of vulnerable status feel the very inferiority that their offenders asserted. Obviously, this risks secondary victimisation.

Figure 20: Victims agreeing/disagreeing with the statement that they had expected a more important role in the proceedings (%)



Source: FRA, 2019

Victims of vulnerable status being treated in a discriminatory manner

The authorities sometimes discriminate against victims in a way that reinforces the discrimination inherent in the violent offence. That is another form of secondary victimisation. Examples are racist treatment of victims of racist violence and sexist treatment of victims of sexual violence.

When a victim of racist hate violence reported his victimisation to the police, they told him that he would be deported, he recalled.

“I was surprised because when the police came, one of them said to me, ‘You will be deported.’ [...] And I was injured. I was bleeding, and he did not ask anything. They called Straż Miejska [road traffic police] and told them that I was disturbing traffic.” (Victim, Poland)

At times, male police officers made comments that victims of sexual violence experienced as inappropriate or sexist. That is particularly relevant in the context of gender-based violence, as sexist remarks have a potential to reinforce the gender aspect inherent in the victimisation.

“[O]ne of them, who I know from my primary school. He said, ‘Such a pretty girl and couldn’t find a younger and nicer guy.’” (Victim, Poland)

A victim of rape recalled:

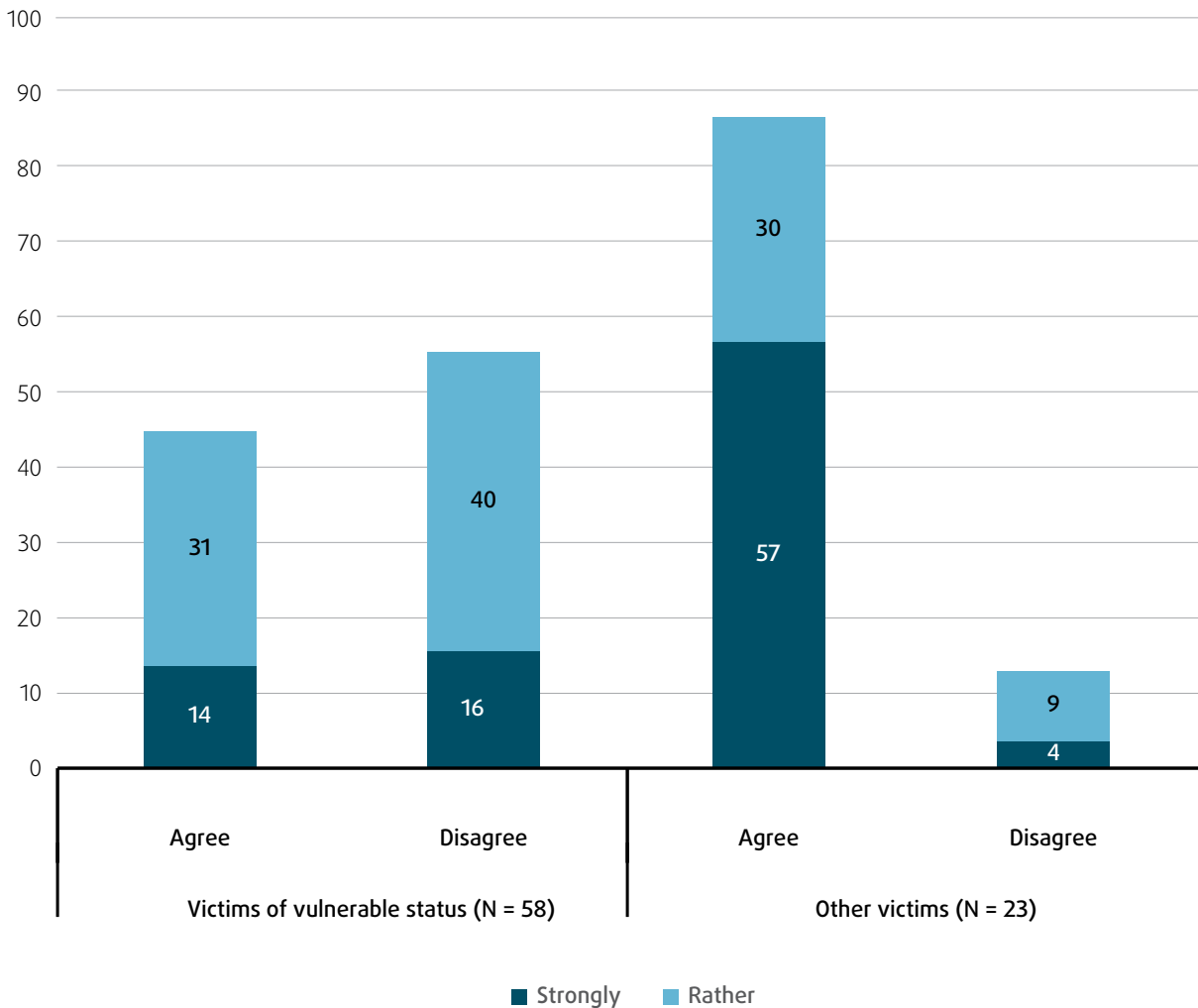
“Once, a police officer told me that, looking at me, he could understand the offender and why he reacted the way he did. At that moment, I didn’t know whether I should cry or shout.” (Victim, Germany)

Some victims of sexual violence, interviewed in the project, sensed that male police officers took the side of the male offender and condoned his behaviour.

“I have the impression that the judicial police department rather took the side of the offender; he must feel really good, and the remarks made by police officers justified what he did, so he can do whatever he wants.” (Victim, France)

In contrast, a victim interviewed in Austria had for a long time not been able to report the violence. She called the police and asked if she could report in her apartment. Two female police officers came to her apartment, took her statement and issued an emergency barring order against the offender.

Figure 21: Victims agreeing/disagreeing with the statement that their rights and concerns were taken seriously by the police (%)



Source: FRA, 2019

Court trials reinforce the sexism inherent in sexual violence when the victim is asked about her sexual life, as if it would explain the violence she experienced.

“Victims of rape are asked about their sexual life. How many partners did they have and how did they make love with them? These things are completely unrelated, but this I supposed to show some sort of a pattern that leads to the conclusion that this woman was raped because she had many sexual partners.” (Support organisation, Poland)

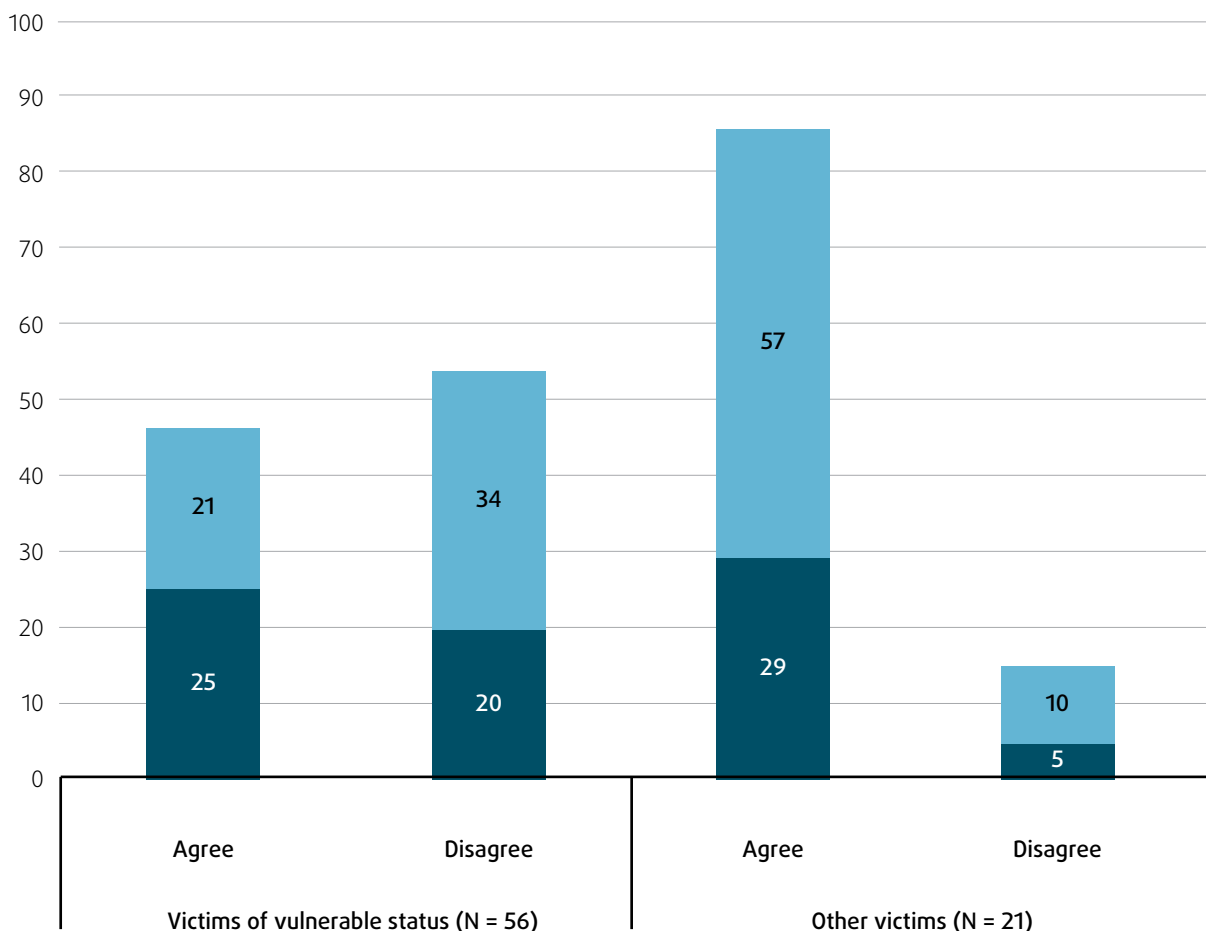
“There was a young woman [...] I think, I actually counted. She had to repeat seven times how deep and where exactly the man had penetrated her underwear. And what is meant by panties. [...] I was like, ‘I don’t believe it. He is not asking the same question again?’ Yet he asks again. And asks again.” (Support organisation, Germany)

3.3.5 Outcome justice

Significant differences have been traced between the two groups with regard to several aspects of the proceedings. It does not come as a surprise that differences also show in how victims assess how well the criminal justice system overall fulfils its core task of conveying a message that justice is done.

A clear majority of the ‘other’ victims believe that the criminal justice system fulfils its purpose of conveying a message to the victim, the offender and the public that justice is done. However, a majority of the victims of vulnerable status disagree. In short, while criminal justice, as it stands, works for two in three victims from the ‘other’ group, for a majority of vulnerable victims it does not. The reason is that, from the perspective of vulnerable victims, the criminal proceedings fail to authoritatively and convincingly vindicate the victim’s official status as a person fully entitled to respect and

Figure 22: Victims agreeing/disagreeing with the statement that the police were committed to carrying out an effective investigation (%)



Source: FRA, 2019

holding rights that are equal to those of all others. In other words, if vulnerable victims expect criminal proceedings to forcefully repudiate the discriminatory message that the offender conveyed, they are disappointed more often than not.

In conclusion

Protecting victims of partner violence against secondary victimisation caused by encountering the offender at court

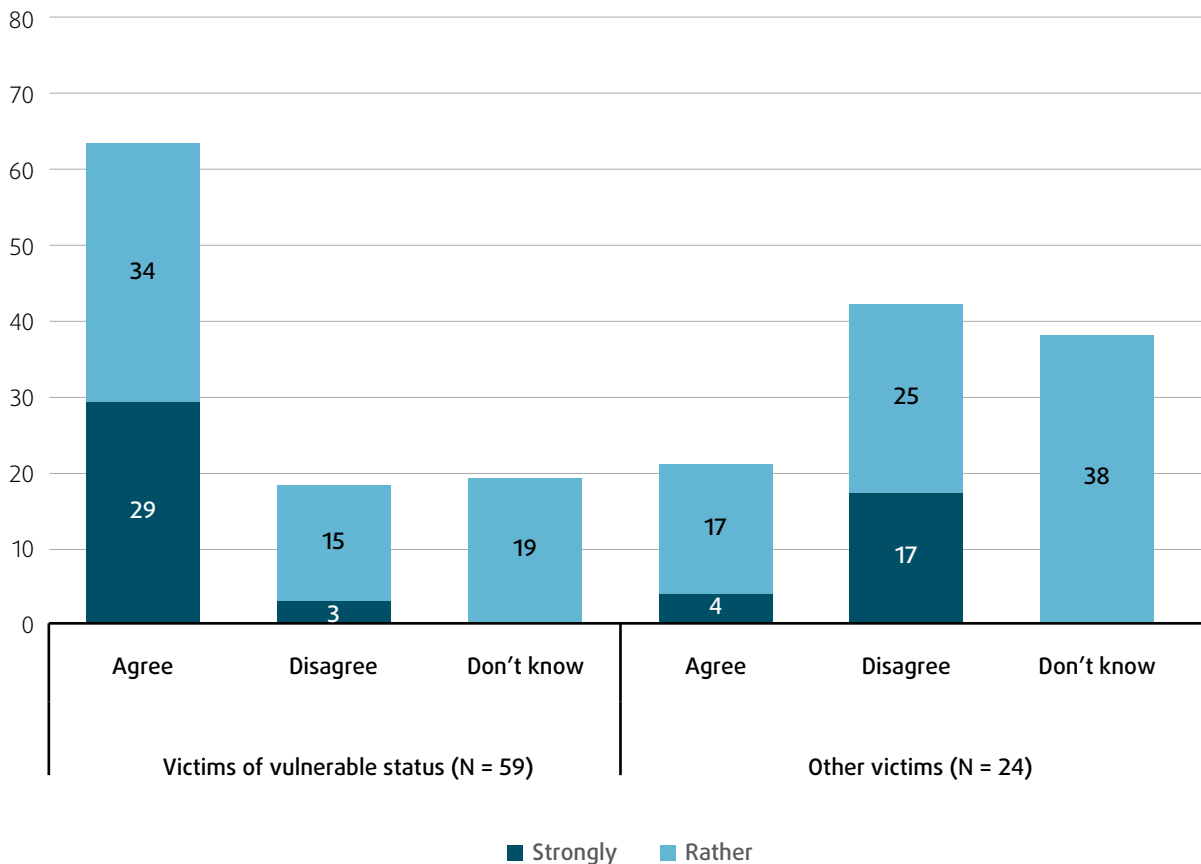
At some stage, 86 % of the victims of partner violence interviewed had experienced the presence of the offender as intimidating, compared with only half of the other victims. This indicates the necessity to protect women who are victims of partner violence against encountering the offender. That is in line with obligations under the Victims' Rights Directive and the Istanbul Convention.

Criminal law definitions that capture the essential wrong of partner violence

In the interviews, victims of partner violence conveyed a strong critical message. What criminal proceedings establish as the truth, and the offences for which they hold the perpetrator to account, do not correspond to victims' experience. They suffer not single, isolated acts of violence, but having to live in a state of constant fear and helplessness, a situation in which the victim is completely and utterly at the mercy of the offender.

The offender's entire behaviour threatens violence. By this threat, the offender subordinates his partner, makes her submissive, controls her behaviour and denies her autonomy, which is a core aspect of human dignity. If the police, prosecutors and criminal courts reduce domestic violence to a number of isolated incidents, but overlook the fact that, far beyond these single acts of violence, the victim was forced to live for an extended period in constant fear of further acts of violence, they

Figure 23: Victims agreeing/disagreeing with the statement that they experienced the offender’s presence as intimidating (%)



Source: FRA, 2019

overlook the specific wrong of domestic partner violence and the essence of violent relationships. They need to acknowledge both the human rights implications of partner violence and how victims experience it.

EU Member States have an obligation to recognise the victim as wronged and the victim’s rights that the offender has violated. They must ensure that the police, prosecutors and courts overlook neither the discriminatory nature of domestic partner violence nor the elements of psychological violence inherent in it. Treating human rights violations alike when they are essentially different constitutes a form of unequal treatment.⁷⁵

Anti-aggression training and court protection orders as ‘default sanctions’ in cases of partner violence

Many victims want a sanction that helps the offender change his behaviour and enables him to refrain from violence, the interviews revealed. In the light of the victims’ right to protection against repeat victimisation,

they expect the court to look for sanctions that help prevent further violence. This fits with Article 16 of the Istanbul Convention, which obliges Parties to set up programmes aimed at teaching perpetrators of domestic violence to adopt non-violent behaviour in interpersonal relationships with a view to preventing further violence and changing violent behavioural patterns.

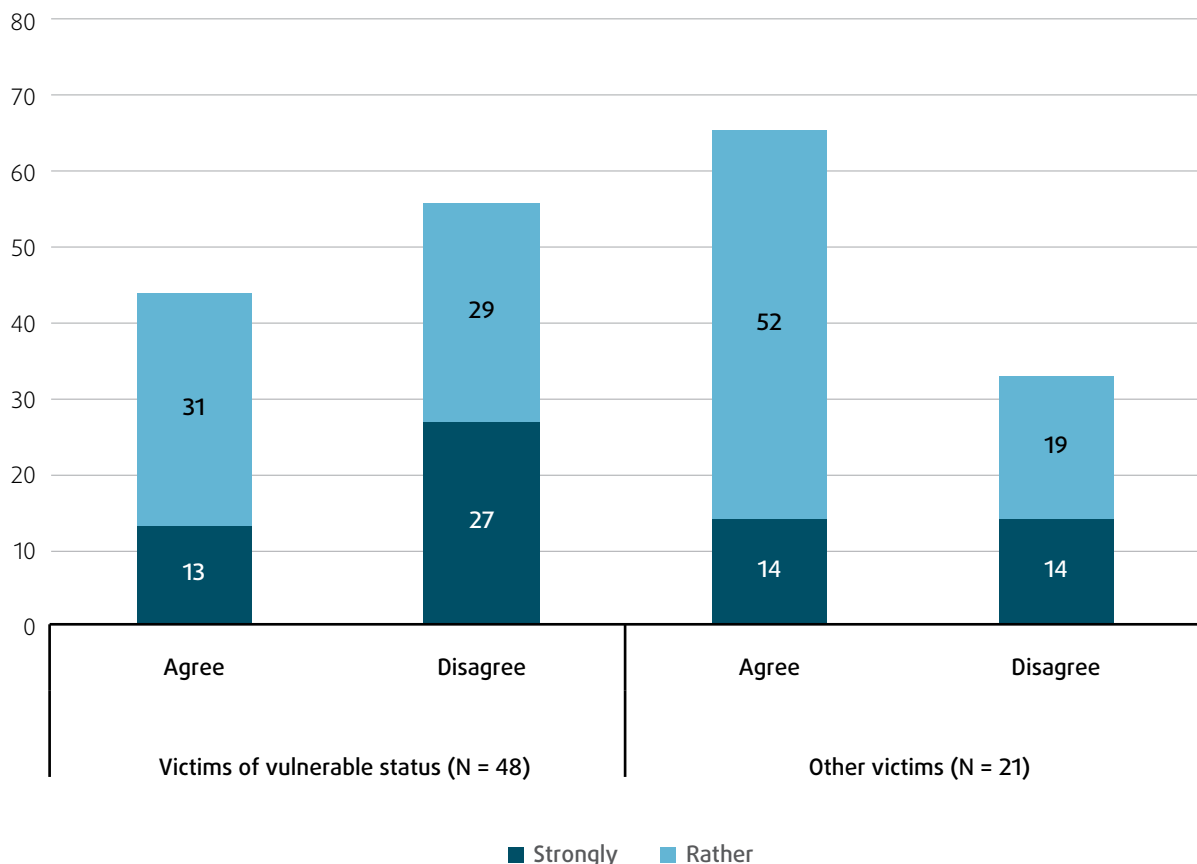
In addition, victims expect criminal courts to issue restraining or protection orders if such orders are not already in place at the time of the court trial.

Recognising victims of vulnerable status

All persons who deal professionally with victims of violence should understand the particular sensibilities of victims whose social status is challenged. They include women who are victims of partner violence, but also other groups facing discrimination or subjected to abuse of power by state officials.

⁷⁵ ECtHR, *Thlimmenos v. Greece* [GC], No. 34369/97, 6 April 2000, para. 44.

Figure 24: Victims agreeing/disagreeing with the statement that the proceedings conveyed a strong message that justice is done (%)



Source: FRA, 2019

In line with Article 22 of the Victims’ Rights Directive, all organisations engaging in the criminal justice system should have protocols in place that ensure an assessment of a victim’s vulnerability in terms of their exposed social status, in particular for victims of sexual, partner and gender-based violence (Article 22(3)).

The above analysis also corroborates the assumption that criminal justice serves to recognise victims, the wrong done to them and, indirectly, the respect owed to their rights. In this vein, Article 25 (5) of the Victims’ Rights Directive stresses that training of professionals must “aim to enable the practitioners to recognise victims, and to treat them in a respectful, professional and non-discriminatory manner”.



Conclusion

Two in three women interviewed for this project were left without any protection after they brought their victimisation to the attention of the police. The police neither arrested the offender nor issued an emergency barring order. Clear majorities of the interviewed practitioners corroborate this finding. They say that more needs to be done to protect women who are victims of partner violence against repeat victimisation.

If a woman reports her victimisation to the police and still has no protection against further violence, that tells her that her rights are not important enough to merit police protection. This message conveys a lack of recognition and respect for the victim as a person and rights holder.

Hence, this report, in line with the other reports from this project, emphasises the crucial importance of recognition. Crimes against the person target the individual's dignity and core rights. They have a potential to call into question the very social status of a person as a member of a community of law and rights. Holder emphasises the importance of recognising victims, and of the "quality of interpersonal treatment", as a matter of criminal justice.⁷⁶ In this precarious situation, victims need affirmation by their community as full members, holding rights that others are to respect. Protection measures against repeat victimisation are one way for society to do that. Another is criminal proceedings that reflect the significance of the violence that the victim suffered.

More than other victims, victims of discriminatory violence need criminal justice as their polity's authoritative

response to the violent crime. For all victims of violence, criminal justice promises to recognise them as persons. For victims of discriminatory violence, this recognition takes on a particular significance in the light of their challenged social position.⁷⁷ Officially, all have equal rights; in reality, social status is unequal. That is, the personhood and rights of some are robust and strong, while the personhood and rights of others, in certain respects, remain delicate and vulnerable. This gap impairs the situation of victims of discriminatory violence. Because "personhood is initially constituted by others in terms of language," all people remain vulnerable to symbolic interaction; however, some are more vulnerable than others.⁷⁸

For individuals of vulnerable status, the authoritative message of being recognised and affirmed as a person holding rights that are not second to the rights of any other human being is crucial. If their polity fails to reject the offender's claim of superiority, a victim's initial sense of anger and indignation over the violent offence can turn into lasting debilitating and self-destructive emotions, such as shame, a sense of degradation and humiliation, and a loss of self-esteem.⁷⁹ Contrarily, if the criminal justice system stands by the victim and authoritatively refutes the implications of the offender's conduct, it supports the victim in overcoming their disadvantaged societal position and in developing a robust sense of being a full member of their society. It is when a violent victimisation challenges the victim as a person that society shows most clearly what the victim's rights and status as a rights holder are worth in reality.

76 Holder (2018), pp. 159–169.

77 On the particular meaning of bias-motivated offences and the importance of paying attention to discriminatory motives and rendering them visible, see FRA (2012).

78 FRA (2012), p. 20.

79 Landwehr (2016).

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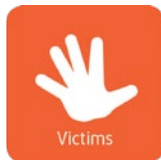
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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Victims of violent crime have various rights, including to protection and to access justice. But how are these rights playing out in practice? Are victims of violent crime properly seen, informed, empowered and heard? Do they tend to feel that justice has been done? Our four-part report series takes a closer look at these questions, based on interviews with victims, people working for victim support organisations, police officers, attorneys, prosecutors and judges.

This report – Part IV – zooms in on the experiences of one particular group of victims, namely women who endure partner violence. Taken together, the four reports reveal a wide gap between the law ‘on the books’ and the law in practice, showing that many victims still feel marginalised. We hope this series encourages policymakers to take steps to ensure that victims of violent crime receive the attention, support and consideration to which they are entitled.



SUSTAINABLE DEVELOPMENT GOALS

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