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# The EU Framework Decision for Victims of Crime: Does Hard Law Make a Difference?

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## 1. Introduction

On the 15th of March 2001 the *European Union Framework Decision on the standing of victims in criminal proceedings* was adopted.<sup>1</sup> This event is a milestone in more than one way. It is the first time that there is a so-called “hard-law instrument” concerning victims of crime available at the international level. The Framework Decision codifies rules at the supranational level concerning the legal position of victims that are binding concerning the domestic legal order of the member states. Prior to 2001 only soft-law instruments were on offer, like the resolution of the General Assembly of the United Nations and the Recommendation of the Council of Europe in this field.<sup>2</sup>

The Framework Decision not only approaches matters forcefully, but also speedily. For the largest part the provisions had to be implemented within one year. There are only a few exceptions to this rule, with articles 5 and 6 requiring implementation by 2004 and article 10 by 2006. This strict regime – the combination of binding norms and the short period for adaptation of national law – leads to a number of questions. Why did the EU choose this instrument to protect the interests of victims? And what factors determined its content? These questions are

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<sup>1</sup>) 2001/220/JHA.

<sup>2</sup>) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res. 40/34 of 29 November 1985; Recommendation (1985)11 on the Position of the Victim in the Framework of Criminal Law and Procedure, 28 June 1985; and of later date than the Framework Decision Recommendation (2006)8 on Assistance to Crime Victims, 14 June 2006.

the focus of section 2. Subsequently (in section 3) the results are discussed. Has the Framework Decision delivered what was expected? In section 4 the meaning of the concept of implementation is analysed in the context of this Framework Decision. This is followed by the results of a survey carried out in a number of member states, which serves to complement the information gathered by the European institutions themselves (section 5). In the conclusion (section 6) we will return to the distinction between hard law and soft law in an international legal context.

## **2. The Background and Context of the Framework Decision**

In recent years Europe has been flooded by a wave of Framework Decisions in the field of criminal justice. This is a marked difference with the situation well into the nineties. Then the EU held the opinion that it did not have the competence to interfere with the criminal justice affairs of the member states. This perspective also applied with respect to the position of victims of crime. When non-governmental organisations for victim assistance applied for possible financial support from Brussels, the answer was invariably negative. The reason given was that they were active in the field of criminal justice and that this was not “Europe’s business”. With this background in mind it is remarkable that the Framework Decision on victims eventually belonged to the first generation of Framework Decisions in the area of criminal justice.

How to explain this sudden advance of victims? The heart of the matter is the position of the so-called cross-border victims. At the end of the last century Swedish Euro-commissioner Anita Grodin was convinced that the fate of those victimized in another state than their country of residence differs from those who fall victim in their own country.<sup>3</sup> A cross-border victim does not always speak the language, does not understand the host country’s legal system and has often returned to his country of origin long before the trial. These specific problems of “foreign” victims were then linked with the classic European freedoms and in particular with the freedom of persons to travel without restrictions (without discrimination based upon nationality) within the European common space. This consideration has been the main driver for European competence in the protection of victims of crime.

But it is not practically feasible to regulate the position of cross-border victims, without paying attention to national victims as well. European standardization of the position of cross-border victims may lead to the situation that cross-border victims enjoy rights not open to nationals, which would again be at odds with

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<sup>3</sup>) See for Grodin’s role, as well as those of the Portuguese and French governments in the development of the Framework Decision, P. Rock, *Constructing Victims’ Rights; The Home Office, New Labour, and Victims* (Oxford, Oxford University Press, 2004) 513.

the freedoms relating to the European common space. This is the reason that the content of the Framework Decision, although it is in certain ways still explicitly inspired by the phenomenon of cross-border-victimization, ultimately applies to all victims of crime.

How does this background of the Framework Decision impact its provisions? We believe the content of the Framework Decision can be characterized in two ways. First: as to *the main theme*, the document is extremely similar to the other previously existing international instruments. Second: concerning the *details*, all the supranational texts differ. Where the differences in details may be mere coincidences in other surroundings, in the case of the Framework Decision they appear to be caused by deliberate choices that follow the national law of the member states. We will elaborate this observation below.

The main theme of the Framework Decision follows the international consensus also evidently expressed by other legal instruments. At its core it includes the following basic rights for victims of crime:

- A right to respect and recognition at all stages of the criminal proceedings (article 2);
- A right to receive information and information about the progress of the case (article 4);
- A right to provide information to officials responsible for decisions relating to the offender (article 3);
- A right to have legal advice available, regardless of the victims' means (article 6);
- A right to protection, for victims' privacy and their physical safety (article 8);
- A right to compensation, from the offender and the State (article 9);
- A right to receive victim support (article 13);
- The duty for governments to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure (article 10);
- The duty for the State to foster, develop and improve cooperation with foreign States in cases of cross border victimisation in order to facilitate more effective protection of victims' interests in criminal proceedings (article 12).

The shortest and most accurate summary of the general of the Framework Decision is probably the 8th article of its preamble. "The rules and practices as regards the standing and main rights of victims need to be approximated, with particular

regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have allowance made for the disadvantage of living in a different Member State from the one in which the crime was committed.”

As to the details of the different provisions the first point of interest is the phrasing of articles 5 through 7 of the Framework Decision. In these articles, which relate to safeguards for communication (translators), to legal assistance and to reimbursement of expenses incurred due to participation in the criminal procedure, the scope is restricted to “the victim having the status of witnesses or parties”. This is a meaningful restriction. The United Kingdom insisted on this particular phrasing. The background is that common law systems do not recognize the so-called “partie civile”. There is no possibility for the injured party to adhere a claim for compensation to the criminal justice procedure, which is a common legal figure on the continent. The way the Framework Decision is phrased means that every victim who is not heard as a witness in the court case is deprived of the three procedural rights mentioned. It seems evident that the government of the United Kingdom has insisted on this restriction, expecting that this would diminish the need for substantial changes in her national legislation.

This cautious approach is also evident in other aspects of the Framework Decision. Concerning “mediation” for example, the Framework confines itself to the rather vague instruction that member states “shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure.” That offers a lot of leeway. As to the delivery of victim support through non-governmental organisations the Framework Decision decrees that this should be promoted or encouraged (Art. 13). Encouragement is also called for in the case of professional education for those who come into contact with victims during the course of the criminal procedure (Art. 14). Meeting this criterion will not prove much of a challenge.

However the details of the Framework Decision can not be fully explained by the calculated reservations of the member states. There are also many provisions that will evidently necessitate extensive change in national legislations. A prime example is the ambitious basic requirement in article 2 that not only demands respect and recognition for all victims, but above all requests specific treatment for victims who are particularly vulnerable. This will involve changes in legislation almost everywhere in Europe.<sup>4</sup> The implications of the provisions relating to the

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<sup>4</sup> See M.S. Groenhuijsen, “Hervorming van het strafprocesrecht met het oog op belangen van het slachtoffer; ‘We ain’t seen nothing yet’”, (2001) *Delikt en delinkwent* 645-653

right to receive information are also far-reaching (Art. 4). None of the previous international victims' rights instruments contain such comprehensive requirements on this issue. In advance the question should have been raised whether the member states were prepared for the enormous logistic consequences implied by these provisions. The level of translation facilities for victims must be of the same level as those for suspects (Art. 5). Probably no member state met this requirement when the Framework Decision was adopted. The final example is the right to legal assistance and advice (free of charge) (Art. 6). Again it was clear from the outset that amendment of existing legislation and large financial investments was necessary in many member states if this provision was to be adequately implemented.

### **3. The Results: The Impact of the Framework Decision**

What were the consequences of the Framework Decision after its adoption? We emphasize that the time allowed for implementation was extremely tight. For most provisions transposal into national law was required by March 2002, exactly one year after adoption of the Framework Decision. Bearing in mind the sometimes far-reaching requirements of the Framework Decision, these tight deadlines may not have been very realistic. In any case none of the member states adopted an all-embracing statute in the period 2001-2002 to meet the requirements of the Framework Decision in a systematic fashion. Moreover, although Art. 18 of the Framework Decision specifically requires member states to supply a report of "the measures taken by Member States to comply with the provisions of this Framework Decision", within one year after its adoption, none of the member states had in fact done so. Only after repeated reminders and a year later did the Commission receive a series of national reports which varied widely in scope and content. The tone of the reports was invariably self-satisfied. All member states expressed the opinion that they met virtually all the requirements of the Framework Decision. The minor shortcomings that were recognized were accompanied by vague promises of further amendments to national legislation.

In March 2004 the European commission report on the compliance with the Framework Decision was published. The report was extremely negative in its assessment. It commences with the observation that member states have a considerable amount of discretion in the transposal of Framework Decision requirements. It is not necessary, for example, that national legislation adopts the same terminology as the Framework Decision. However, after this rather mild opening, the Commission points out serious shortcomings on a large scale. The overall conclusion is that: "No member state can claim to have transposed all the obligations arising from the Framework Decision, and no Member State has correctly transposed the First paragraph of Article 2". The latter is a particularly fundamental charge, because

the paragraph mentioned is more or less the root of all other concrete victims' rights: "Each Member State shall (...) make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings."

The Commission's overall judgement is then subsequently documented by a long list of more specific shortcomings. We will restrict ourselves to a number of rather typical examples. In many countries the possibility for the victim to be heard during the procedure or to supply evidence is contingent on the question whether or not the victim is party to the proceedings. According to the Commission only one country, Finland, has adequately transposed the requirement to inform the victim of the release of the suspect or the convicted offender. Nearly no member state has done enough to meet the requirement that victims should also have the right *not* to receive information (the so-called opt-out procedure). The requirement that victims should be reimbursed for expenses made during the procedure is inadequately implemented almost everywhere. The same is true concerning the Framework Decision article that prescribes mandatory training for all authorities including the judiciary who come into contact with victims within the criminal justice procedure.

We could add many other examples, but the point should be clear. According to the Commission the member states have not adequately complied with their obligations. Subsequently many governments sent in a reply to the critical report of the Commission. In their rebuttal most countries claim that the Commission has misjudged the situation. The member states are of the opinion that the existing legislation in fact bears closer resemblance to the Framework Decision than the Commission report suggested. Nevertheless most countries admitted that substantial changes are still required.

#### **4. The Concept "Implementation" of Framework Decisions**

The previous section has shown various differences of opinion between the member states on the one hand and the European Commission on the other, concerning the requirements that follow from the Framework Decision on the position of victims in the criminal procedure. At first glance this gap in perception is quite remarkable. After all, the legal status of Framework Decisions is clear. Member states are obliged to reach the result laid down in the Framework Decision. However, the way they reach this result is left to their own discretion. They can choose the means they consider appropriate to reach the prescribed goals. In addition there is the principle that the Framework Decisions should lead to minimum-harmonization. In any case this entails that member states can take national values and attainments into

account and that they are allowed to introduce provisions which textually depart from the exact jargon in the Framework Decision.

So far, so good. However in practice the concept of implementation has proved to be considerably more complicated. First of all, there is no clear, formalised fact-finding procedure in place, at the European level. The member states submit a report, but the Commission does not have the option to verify its veracity. In addition the Commission does not have the possibility to request follow-up information concerning the reports. As a consequence the Commission has a strong tendency to rely completely on the literal text of the formal legislative provisions the member states supply. This means that the Commission's evaluation more or less entirely focuses on transposal of Framework articles into national legislations. This implies that the Commission can not review the actual practice existing in the various countries. It may well occur that a certain country follows Framework requirements in practice, but gets ostracized because this practice has no formal legislative base.

A good example is Art. 8 paragraph 3 of the Framework Decision, which contains the requirement that courts of law will be constructed in such a way that prevents confrontations between the victim and the suspect/ offender or their respective families. Separate waiting rooms are obviously a preferred method to reach this goal. England is well known to be the most advanced country in the Union in this respect. However the Commission only recognizes Germany sufficiently implementing this requirement, which can only be explained by the circumstance that England does not have a legal requirement that prescribes these separate waiting rooms. The conclusion is then that in the described approach the Commission takes "implementation" to be synonymous with "transposal" while from the victims' perspective the emphasis should be on "compliance".<sup>5</sup>

A similar observation is applicable to the content of fixed administrative guidelines. In our own country (the Netherlands) victims' legal position is laid down, amongst others, in the so-called instructions of the prosecution service. The regulations contained in these instructions are publicized, have external effects and are acknowledged by our Supreme Court as being part of "the law of the land" in the sense of Art. 79 of the Judicial Organisation Act. If these "instructions" comply

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<sup>5</sup> See W. van Genugten, M.S. Groenhuijsen, R. van Gestel, & R.M. Letschert, "Loopholes, Risks, Ambivalences in International Lawmaking: The Case of the Framework Convention on Victims' Rights", (2006) *Netherlands Yearbook of International Law*, 37, 109-154, and also D. Shelton, "Introduction, Law, Non-law and the Problem of 'Soft-law'", in D. Shelton (ed.), *Commitment and Compliance; the Role of Non-Binding Norms in the International Legal System* (Oxford, Oxford University Press).



with the Framework Decision requirements, then we do not see any reason to question the sufficiency of implementation.

We observe another problem relating to implementation and compliance. The content of many of the norms are phrased in such an “open” fashion that it is hard to ascertain whether a member state fulfils the obligation or not. This is easily illustrated with two different examples. Art 8 paragraph 1 of the Framework Decision ensures “a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of their privacy, where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy.” But what level of protection of the victims’ physical safety meets the standard of being suitable? Again this requirement seems to be focused on the development of formal legislation. And its background seems to relate to threatening situations of organized crime. A legal provision protecting threatened witnesses will probably lead to the conclusion that the implementation meets Framework Decision requirements. However this means that the actual safety of victims is not ascertained at all. Consider for example the large group of victims of domestic violence who regularly contact the police because of imminent and serious threats by their partners (compare Groenhuijsen, 2006).<sup>6</sup>

The second example of the difficulty of gauging actual compliance with this Framework Decision relates to article 4, in which the victim is granted the right to receive information concerning a long range of subjects. It is not difficult to determine whether legislation of the member states allows such information rights. But research has shown that even in the countries where the legislation meets all Framework requirements, large groups of victims do not get the information to which they are entitled. Estimates show that even in the countries with the best performance (like Ireland, the Netherlands and the UK) around 30% of victims do not receive the required information.<sup>7</sup> That brings up the question: how low must the compliance rate be, before Brussels recognizes an actual compliance deficit?

The final problem concerning implementation is due to the peculiar character of this Framework Decision. If one reviews the current list of Framework Decisions in the field of criminal justice it is quite obvious that most of their topics are relatively

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<sup>6</sup> Compare M.S. Groenhuijsen, “De kaderbesluiten van de Europese Unie op het gebied van het strafrecht; stand van zaken en een blik op de toekomst”, in M.J. Borgers et al. (eds.), 2006, p. 225-241

<sup>7</sup> See M.E.I. Brienen, E.H. Hoegen, *Victims of Crime in 22 European Criminal Justice Systems* (Nijmegen, Wolf Legal Publishers, 2000) 995-1055. J.J.M Van Dijk, R. Manchin, J. van Kesteren, et al., *The Burden of Crime in the EU* (Brussels, Gallup Europe, 2007).

small, confined subjects.<sup>8</sup> Notwithstanding their importance, their content is clearly demarcated, which allows member states to meet their requirements with the introduction of a small number of legislative provisions, which mostly have a clearly prescribed content. See for example the Framework Decisions regarding protection against euro-counterfeiting (2000/383/JBZ), on money laundering (2001/500/JBZ), on combating trafficking in human beings (2002/629/JBZ) and even in the case of the European Arrest Warrant (2002/584/JBZ).

The Framework Decision on victims is of a completely different nature. It contains provisions that affect large portions of the Code of Criminal Procedure. Implementation therefore does not only require the introduction of a number of legislative provisions, but also careful reflection on the entire criminal procedure. Considering this background, especially with the benefit of hindsight, it was evidently unwise to include such extremely short implementation deadlines in article 17. It would have been more advisable to allow member states to have more time to review the sections of their national legislation that needed adapting.

## 5. Reviewing the Results: A Comparative Survey

To review the consequences of the Framework Decision for the actual implementation in the member states we have undertaken a survey of the situation in a number of the member states. To this end we cooperated with the European Forum for Victim Services, the European umbrella-organisation of victim service organisations.<sup>9</sup> In 2006 members of this organisation, which currently covers 22 non-governmental organisations in 19 different European countries, were asked to fill out a questionnaire concerning the implementation of the Framework Decision in their respective countries. Of the 19 represented countries we received information on 13.<sup>10</sup>

The questionnaire covers the whole of the Framework Decision.<sup>11</sup> The question wording is based on Brienens and Hoegen's standard work *Victims of Crime in 22 European Countries* from 2000. Their research was based on Recommendation

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<sup>8</sup>) E.g., M.J. Borgers, F.G.H. Kristen, et al., *Implementatie van kaderbesluiten* (Nijmegen, Wolf Legal Publishers, 2006).

<sup>9</sup>) Following a restructuring of the organization the EFVS renamed herself Victim Support Europe from October 2007 onward.

<sup>10</sup>) We are indebted to the EFVS and in particular those responsible for filling out the questionnaires for their cooperation. We received answers from Portugal, Germany, Czech Republic, Slovakia, Hungary, the Netherlands, Finland, Scotland, Belgium, Austria, England and Wales, Malta and Serbia.

<sup>11</sup>) The questionnaire is available from the second author on request.

R85(II) of the Council of Europe, that to a large extent covers the same subjects as the Framework Decision. It should be noted though that it offers more possibilities for the defining coherent and unambiguous standards and relevant classifications. These classifications constitute the analytical framework in Brienen and Hoegen's work and we adopt the same fruitful approach. Added advantage of this approach is that it offers the opportunity to compare the findings from the current survey with Brienen and Hoegen's results. As they completed their research in 1999, just before the adoption of the Framework Decision, this comparison reveals the changes in national legislation in the period of its implementation. Some caution is needed in interpreting the comparison though. Changes in national legislation may have other root causes than the adoption of the Framework Decision, even when they happened simultaneously. In addition we have to note that our research methods differ from Brienen and Hoegen's and that although the group of countries surveyed show great overlap with Brienen and Hoegen's, they are not entirely identical.

We will not discuss all the results of the survey in this article, but have restricted ourselves to a number of issues related to harmonization (the position of cross-border victims and the ambiguity in the interpretation of key notions) and some typical matters relating to the impact of the Framework Decision on the position of victims (the dissemination of information, the training of criminal justice officials and victim services).

### *5.1. The Position of Cross-border Victims*

The improvement and harmonization of the position of cross-border victims is a central element of the Framework Decision on the standing of victims in criminal justice. As we have noted it is the initial reason that the European Commission is competent to address the position of victims of crime. Framework Decision articles 11 (Victims resident in another Member State) and also 5 (Communication safeguards) specifically relate to this group. Are the added disadvantages of being victimized in another European country effectively tackled by the Framework Decision?

This does not seem to be the case in most member state countries. According to Article 5 "Every Member State ... takes the necessary measures to minimise as far as possible communication difficulties as regards their understanding of, or involvement in, the relevant steps of the criminal proceedings in question, to an extent comparable with the measures of this type which it takes in respect of defendants." This means that translators should at least be available for the interrogation of victims and for the translation of relevant documents. All of the countries surveyed have translation facilities in place for victims. In eight of the countries this is not (yet) comparable to the measures taken in respect of defendants. It is quite possible that this is due to the fact that the provision not only applies to

victims as witnesses but also to victims with the status of parties to the proceedings. In at least some of the member states the options for translation free of charge open to the former category are more extensive than to the latter.

Article 11 deals with the organisation of the process and the possibility that the victim was not able, or in the case of severe crimes, unwilling to report the crime in the country where it was committed. The Framework Decision specifically mentions three alternatives. In the first place it allows the victim to make a statement immediately after the commission of an offence. This offers victims the possibility to report the offence before returning home. This avenue is open to victims in 11 of the 13 countries. However it is mostly a specific instance of a more general provision which also applies to residents of the countries themselves.

Secondly member states should have recourse as far as possible to the provisions on video conferencing and telephone conference calls for hearing victims abroad. Implementing this measure will prevent the victim from being obliged to return to the country where the offence was committed to testify in the court case. In seven of the thirteen countries the hearing of cross-border victims is allowed to take place in this fashion.

Finally the Framework Decision states: “Each Member State shall ensure that the victim of an offence in a Member State other than the one where he resides may make a complaint before the competent authorities of his State of residence if he was unable to do so in the Member State where the offence was committed or, in the event of a serious offence, if he did not wish to do so.” This method, whereby a victim reports the offence once he returns home, is only available in five of the thirteen countries surveyed. This is particularly remarkable in the light of the clarity of the Framework Decision on this point. Moreover according to the survey participants of the countries that allow this, it is largely unknown to most people that this is the case. In practice then this provision will not have much impact.

Of the four items mentioned specifically relating to cross-border victims, only one of the countries in our survey (the Czech Republic) fulfilled all the Framework requirements. On the issue of cross-border victims therefore most member states have not sufficiently complied with the Framework Decision requirements.

### *5.2. Use of Vague Language and Harmonisation*

We have already emphasized that the Framework Decision, in part due its use of vague language, offers the member states a lot of room for interpretation. This can hamper the harmonisation of the victims’ position. After all: when member states interpret key concepts differently, this will have a subsequent impact on the practice in countries. An example is the concept “particularly vulnerable victim” in article 2 paragraph 2. According to the article this type of victim is entitled “to specific treatment best suited to his or her circumstances”. This may well impact

the whole process of victim assistance for these victims. It is therefore remarkable that the Framework Decision does not breathe a word about the criteria by which a victim may be considered particularly vulnerable. It is completely up to the member states' discretion to define this concept.

However, the degree of unanimity is large. In all of the thirteen countries child and juvenile victims are explicitly considered to be particularly vulnerable. In nine countries the same is true for victims of sexual or domestic violence. In the four countries where the latter is not the case, special measures are in place for the treatment and questioning for this type of victim, so that in practice they do have a special status. Victims of sexual and domestic violence are therefore either explicitly or implicitly considered to be vulnerable in all jurisdictions surveyed.

A similar phenomenon is visible when reviewing article 10 that deals with penal mediation. As stated above, this article is extremely vague. Our survey showed more variability than was the case with the vulnerable victim. For example seven countries in principle consider all types of offences appropriate for penal mediation, while five others have defined explicit criteria. It is however interesting to note that the criteria all relate to the scene of the crime, with only offences of lesser severity being deemed appropriate for penal mediation. This phenomenon is also visible in countries without explicit criteria. In their overview Miers and Willemsens show that across Europe the average penal mediation case concerns an offence of lesser severity, most often committed by a juvenile offender.<sup>12</sup> Again the practice shows more similarity than may be presumed on the basis of the equivocal provision.

### 5.3. *Receiving Information*

Receiving relevant and timely information, which is of good quality, is an important predictor of victim satisfaction.<sup>13</sup> Article 4 of the Framework Decision refers to this subject. Amongst others victims have the right to receive information at various points in the course of the criminal justice process of their case.

As remarked above the article is far-reaching. To illustrate the developments we will restrict our comparison with Brienen and Hoegen's survey to the degree to which victims are informed of the time and place of the court hearing of their case and to what extent they are informed concerning the release of the offender. In Brienen and Hoegen's study 22 countries were surveyed. In fourteen of these

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<sup>12</sup> D. Miers, J. Willemsens (eds.), *Mapping Restorative Justice; Developments in 25 European Countries* (Leuven, European Forum for Restorative Justice, 2004) 178. See also J. Willemsens, & L. Walgrave, "Regional Reviews: C: Europe", in G. Johnstone, & D.W. van Ness, (eds.), *Handbook of Restorative Justice* (Cullumpton, Willan Publishing, 2007).

<sup>13</sup> See J. Shapland, P. Duff & J. Wilmore, *Victims in the Criminal Justice System* (Aldershot, Gower, 1985). J.J.M. Wemmers, *Victims in the Criminal Justice System* (The Hague, Kugler/WODC, 1996).

*Table 1: Dissemination of Information to Victims*

	<i>Current survey (n=13)</i>	<i>Brienen and Hoegen (n=22)*</i>
Only those victims who are also witnesses are informed of the time and place of the court case	3 (23%)	14 (63%)
Information concerning the release of the offender is <i>not</i> provided to victims	4 (30%)	19 (86%)

\* Results derived from Brienen en Hoegen, 2000, pp. 1011-1026

countries only victims who were called to witness in the case were provided with information concerning the time and place of the trial. This is a minimum option of course; witnesses are always informed of the time and place of the trial, regardless whether or not they were victimized. In the current survey the proportion of countries that restrict information provision to victims as witnesses is markedly lower (see Table 1 above). Of the 13 countries surveyed ten countries provide information concerning date and place of the trial to other victims as well, as is prescribed by the Framework Decision. Only three countries restrict provision of information to victims as witnesses. Similarly there are more countries that provide certain types of victims with information concerning the release of the offender. In Brienen and Hoegen's survey most countries did not allow information concerning the release to be provided to victims. This was the case in 19 of the 22 countries they reviewed. In the current survey however, nine countries provide at least some types of victims with information concerning the release of the offender.

#### 5.4. *Training of Criminal Justice Personnel*

A respectful treatment of victims in the criminal justice system in practice requires that personnel working with victims have received adequate training to understand victims' reactions.<sup>14</sup> Article 14 of the Framework Decision concerns this subject. A novel feature of this article is that it not only relates to police personnel, but also to other professionals in the criminal justice system like the prosecutors and the judiciary.

<sup>14</sup> See, e.g., M. Reissig & R. Parks, *Satisfaction with Police: What Matters?* (Washington, DC, National Institute of Justice, U.S. Department of Justice, 2002); W. Skogan, "Citizen Satisfaction with Police Encounters" (2005) *Police Quarterly*, 8(3) 298-321; T. Tyler, "Enhancing Police Legitimacy" (2004) *Annals of the American Academy of Political & Social Science*, 593, 84-99.

Table 2: *Training of Personnel in Criminal Justice*

	<i>Current survey (n=13)</i>	<i>Brienen and Hoegen (n=22)*</i>
Training for police personnel	11 (84%)	13 (59%)
Training for other criminal justice professionals	9 (69%)	2 (9%)

\* Results derived from Brienen and Hoegen, 2000, p. 1107.

Table 2 shows that the number of countries which train criminal justice personnel has increased. This is particularly evident concerning the proportion which provides education to judiciary personnel other than the police. Where training for this group was all but non-existent in 1999, training modules have been implemented in nine of the 13 countries in the current survey. We should note however that the survey also shows most training programmes to be of modest design. The number of countries that provides extensive training, along with follow-up courses is considerably smaller. In addition, notwithstanding the encouraging results, we must also observe that in a number of countries there is no training at all, which implies that the Framework Decision requirements are not fulfilled.

### 5.5. *Victim Support*

Framework Decision article 13 is about victim support organisations. Brienen and Hoegen reviewed five aspects of these organisations in their research:

- the existence of national victim support organisations;
- the extent to which the organisations has achieved national coverage;
- the degree to which the organisation offers specialised services for various target groups;
- the extent to which the victim support organisations have an outreaching pro-active approach. This entails actively contacting victims who have reported a crime to offer them the possibility to access services;
- the degree to which the government consults victim support in the policy development for victims of crime.

There are a number of conclusions to be drawn from Table 3. In the first place it shows that the position of victim support organisations has improved since 1999. However this development is clearly more pronounced for the last three indicators than for the first two. The increase in the number of countries with a national victim

Table 3: *The Position of Victim Support Organizations*

	Current survey (n=13)	Brienen & Hoegen (n=22)*
National victim support organisation	10 (76%)	12 (55%)
National coverage	9 (69%)	12 (55%)
Specialised services	9 (69%)	4 (18%)
Outreaching approach to victims	7 (53%)	2 (9%)
Consulted in governmental policy developmental	9 (69%)	3 (14%)

\* Results derived from Brienen and Hoegen, 2000, pp. 999-1000.

support organisation is less pronounced than the strengthening of the position of victim support in the countries in which it operates. A (far) larger proportion offers specialised services, uses an outreaching approach to contact victims and is consulted in the development of policy for victims of crime.

At the same time the results in Table 3 also show that not all countries have a national victim support organisation yet. This is particularly significant because the countries included in the survey are all members of the European Forum for Victim Services. At a minimum therefore they do have an organisation that fulfils the criteria for membership of this organisation. Outside the countries covered by the Forum the proportion with a national victim support organisation should be expected to be lower.

Recent research shows the level of coverage of victim support within the European Union to be low (see also Van Dijk & Groenhuijsen, 2007).<sup>15</sup> According to the International Crime Victim Survey (ICVS) 7% of the victims of robbery, burglary or (sexual) assault receive help from this type of organisation. The percentage of victims that would have welcomed such help is about six times this amount, namely 42%.<sup>16</sup> Moreover a comparison of the results of the ICS in 2005 with the International Crime Victim Survey (Van Kesteren et al, 2000) from 2000 leads to

<sup>15</sup> J.J.M. van Dijk & M.S. Groenhuijsen, "Benchmarking Victim Policies in the Framework of European Union Law", in S.Walklate (ed.), *Handbook of Victims and Victimology* (Cullumpton, Willan Publishing, 2007).

<sup>16</sup> See van Dijk, Manchin et al., *The Burden of Crime in the EU* (Brussels, Gallup Europe, 2007).



the somewhat unsettling conclusion that the number of victims reached by victim support has not increased in this five year period.<sup>17</sup>

Overall our review of the developments concerning information provision to victims, training of criminal justice personnel and victim support implies a two-pronged conclusion. On the one hand we must conclude that the countries surveyed do not unanimously meet framework requirements on any of the issues discussed. However, on the other hand, progress has been made. Information on the criminal justice process is provided to victims in a larger proportion of the countries. Criminal justice personnel receive education on victim issues in more European countries as well. Moreover the position of victim support has improved across Europe. The Framework Decision has definitely had an impact. In spite of this, the case of victim support shows that there is still a gap between improvements in law and policy and actual advances in the position of victims. A large proportion of victims still do not receive the support they need.

## **6. Concluding Observations: Soft Law and Hard Law**

From 1985 onward a whole range of international protocols have been published containing catalogues of rights and competences that should be granted to victims of crime within the criminal justice system (Groenhuijsen and Letschert, 2006).<sup>18</sup> It is noteworthy that the content of all these different instruments is largely similar. In the years following 1985 many countries have adjusted their national legislation to a lesser or a larger extent to adhere to international standards. Subsequently in 2001 the European Union Framework Decision concerning victims was adopted. This document contained similar provisions, the most important distinction being that the Framework is a legally binding instrument for all member states of the European Union. The other, older, instruments only had the status of so-called soft law. In the previous sections the implementation of the Framework Decision has been analysed. This analysis has revealed a number of significant findings.

In the first place there is no theoretically grounded notion of what a Framework-worthy level of implementation implies. Moreover – different to what one would expect – there is no well-considered procedure in place for fact-finding. This is compounded by the fact that the provisions of the Framework Decision are sometimes formulated in such an open fashion, that it is not easy to decide

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<sup>17</sup> See J. van Kesteren, P. Mayhew and P. Nieuwebeerta, *Criminal Victimization in Seventeen Industrialized Countries* (Ministry of Justice, The Netherlands, 2000).

<sup>18</sup> M.S. Groenhuijsen, R.M. Letschert, “Reflections on the Development and Legal Status of Victims’ Rights Instruments”, in M.S. Groenhuijsen, R.M. Letschert (eds.), *Compilation of International Victims’ Rights Instruments* (Nijmegen, Wolf Legal Publishers, 2006).

whether a member state complies with them or not. This background explains why considerable differences of opinion exist between the European Commission on the one hand and various member states on the other concerning the assessment of the developments in the position of the victims within the member states legislations.

However the analysis also shows that in the six years since the adoption of the Framework Decision many countries have succeeded in the implementation of improvements in the rights of victims. These reforms are very similar to the improvements discernible in other parts of the world, which are largely the consequence of the non-binding supranational resolutions. The impact of the Framework Decision is not qualitatively different than the earlier instruments but has proved to be an additional impulse.

This state of affairs brings us to a twofold conclusion. First of all: the past twenty years have seen a gradual but steady development of victim emancipation within the criminal justice system. Although this sometimes meets with criticism, the end of this structural reorientation does not appear to be in sight. Second: due to the experiences with the EU- Framework Decision, we conclude that the adoption of a hard-law instrument only leads to slightly different results than the soft-law instruments (Groenhuijsen and Letschert, 2006). Both types of standards provide a level of aspiration – a benchmark – on which most if not all members of the international community agree. The binding character, which often implies at least an external mechanism for monitoring compliance, has definitely had some added value, but this addition should not be overestimated or made absolute.