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The Right to Accompaniment by a Person of the Victim's Choice as a Key Right to Avoid Secondary Victimization: Exploratory Qualitative Research in Spain¹

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This paper explores the right of any victim of crime to be accompanied by any person of her choice from the first contact with the authorities. This right was formally acknowledged by the 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 (2012/29/EU Directive), and transposed to the 2015 Law 4/2015 of 27 April 2015 on the standing of victims of crime (2015 Law 4/2015), subject to exceptions on reasoned grounds. The rationale for this right is the persistent secondary victimisation of victims in the criminal justice system and the need for a procedural justice approach. This article draws on qualitative exploratory research conducted during September, October and November 2019 in the Basque Country (Spain), based on information collected from fieldwork observation, photos, questionnaires and interviews with victims and legal professionals, as well as secondary data on a Basque Government program that offers more comprehensive professional companionship to women victims of intimate partner violence. It analyses some aspects that emerge from the implementation of this right in Spain. Finally, it

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concludes that, even if relevant, the specific legal inclusion of this right in the Directive should be complemented with a more responsive perspective of human rights.

Keywords: *right to accompaniment, secondary victimisation, victims' rights, victims' needs, Spain.*

Introduction

The European Union (EU) has acknowledged the relevance of the adequate enforcement of the right of all victims in the EU to be accompanied by a person of choice other than a lawyer (European Commission, 2023). The EU understands that this is particularly important for child victims, victims with disability, victims of sexual violence, victims of trafficking, victims of hate crime or victims of core international crimes, among others. Moreover, according to the EU Commission, this right is not only connected to protection but also to more effective access to justice for victims and their participation rights. In practice, however, there is a very unequal enforcement of this right in member states of the EU (Varona, 2021).

Spain waited until April 2015 to transpose the 2012/29/EU Directive². It did so with the 2015 Law 4/2015 and, later in December of 2015, with the Royal Decree 1109/2015, of December 11, developing Law 4/2015, of April 27, on the Statute of the Victim of Crime, and regulating the Offices for Assistance to Victims of Crime (1109/2015 Royal Decree) that developed that Act and more specifically, the tasks of the public offices for victim assistance. For the first time, like in other European countries, this meant that any victim of any crime could count on a comprehensive set of rights concerning the criminal justice system.

Before the 2012/29/EU Directive and the previous Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings

² This transposition followed the previous transposition into Spanish law of other EU directives on specific victims, such as victims of human trafficking (Directive 2011/36/EU on Combating and Preventing Trafficking in Human Beings and Protecting its Victims) (2011/36/EU Directive), child victims of sexual exploitation and child pornography (Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA) (2011/93/EU Directive) and victims of terrorism (Directive 2017/541/EU of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA) (2017/541/EU Directive).

(2001/220/JHA) (Council Framework Decision 2001/220/JHA) were passed, public and private services for victims had already been created. They arose from the demands of some victim groups. Moreover, a victim in Spain could already take part in criminal proceedings as a witness or have a more active role as a private prosecutor and thus benefit from additional rights derived from being a party to the proceedings. Also, long before the Directive, a victim could claim civil liability within the criminal justice process in Spain. In addition, within a process of specification of international standards for some victims³, Spain developed specific victim legislation for certain crimes (Villacampa et al., 2019). That process of specification of rights started with the first national legislation on victim compensation at the end of the 1970s. It was fostered by the victims of terrorism movements, and followed by the adoption of the 35/1995 Act for the Provision of Aid and Assistance to Victims of Violent Crimes and Sexual Offences⁴ (Varona, 2022). Later, the 1/2004 Act on Integrated Protection Measures against Gender Violence and the Organic Law 10/2022 on the Comprehensive Guarantee of Sexual Freedom were passed and promoted by the feminist movement (Varona, 2022). In that decade, different human rights organizations for child protection contributed to the Organic Law 8/2021 (Varona, 2022). Finally, the 52/2007 so-called Historical Memory Act, currently substituted by the 2022 Democratic Memory Act, recognized some specific rights for victims of the civil war and Francoism (Varona, 2022).

Despite this specification of some victims' rights in Spain, the Directive brought to the Spanish legal system, and all Members, a general definition of victim⁵ and a comprehensive set of rights for victims of any kind of crime regarding information, protection, support, access to justice and reparation.

³ 1985 UN Resolution A/RES/40/34 on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34), and Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe to Member States on Assistance to Crime Victims (Rec(2006)8). This last Recommendation has been replaced by Recommendation Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime (Rec(2023)2).

⁴ After ratifying the 1983 Council of Europe Convention No. 116 on the Compensation of Victims of Violent Crimes (Council of Europe Convention 116).

⁵ The Directive only sets minimum standards that are mandatory for all countries. During the drafting of the Statute, as the result of the activism of the parents of a Basque student who disappeared and later was found dead, the 2015 Law 4/2015 specifies that the direct family members of disappeared people, under the suspicion of having suffered a crime, are also entitled to the rights granted to direct victims. For some notes on the EU legal comparison on the definition of a victim, see the EU portal at: https://e-justice.europa.eu/171/EN/victims__rights__by_country.

Within the right of protection, it was recognized the need to be accompanied during the judicial process, in a broad understanding. However, the specific legislation has not driven attention to the victims' right to be accompanied.⁶ Moreover, concerning the majority of rights recognised in the Directive and as it has been assessed in most EU countries (European Commission, 2023), a profound gap exists between the law in the books and the experienced law in Spain (Tamarit, Villacampa, 2019; Gómez et al., 2020). There are at least three reasons for this situation. First, passed during an economic crisis, the second additional provision of the 2015 Law 4/2015 deals with the question of resources. It clearly states that the measures included must not imply the provision of more staff or other staffing costs. This prevents improving training and coordination. Second, the professional culture of many criminal law scholars and practitioners makes them suspicious of the victims' interests (Holder, 2018), including being accompanied. They think that the entrance of those interests into the penal system might lead to a worse or more punitive justice. Third, there is a lack of empirical victimological data, despite the existence of long-standing criminological research and victimological studies.

Considering the results of those studies, this paper explores the European Union Directive and the 2015 Law 4/2015 acknowledgement to any victim of the right to be accompanied by any person of her choice from the first contact with the authorities and officials, subject to exceptions on reasoned grounds. A minor right, the basis of this new right (on the grounds of long practice) is the evidence of persistent secondary victimisation in the criminal justice system. After its definition, this article draws on qualitative exploratory research (Swedberg, 2020), based on fieldwork photos and interviews with experts and victims who went to the police or court, mainly with friends or relatives, as well as secondary data on a Basque Government program that offers professional companionship to women victims of intimate partner violence. Finally, this paper analyses to what extent this concrete legal provision on the right of accompaniment might have a significant effect in reducing secondary victimisation.

⁶ See, as an exception, Article 17.2 of the Organic Law 8/2021 for the comprehensive protection of children and adolescents against violence (Organic Law 8/2021).

Legal and conceptual framework of the right (and its exceptions) to be accompanied by a person of one's choice

Police stations, forensic offices and courts can be hostile places for victims, particularly if they are suffering traumatic shock or stress. Moreover, the rationale of the criminal process and protocols as well as the language used by legal professionals is not usually suitable for victims to understand but is rather a standardised and technical language that also implies power or legitimacy differentials. Accompanying persons chosen by the victim usually offer practical and emotional support and might favour victims' calmness so that information can be better retained and interpreted by them. Thus, secondary victimisation is reduced. Together with providing adequate information, access to justice, participation and protection, this right is conceived as a concrete vehicle for guaranteeing victims' right to understand and be understood under Article 3 of the 2012/29/EU Directive.

In practice, in a few member states, this right is legally provided for and even mandatory. However, in other member states, the right is limited to lawyers (European Commission, 2023) and, in many cases, victims are not aware of its existence and content (Ivanković et al., 2019). In 2010, the European Commission carried out research (Matrix Inside, 2010), where "the greatest need for action was identified concerning strengthening support services for victims, providing victims with the possibility to be accompanied by a trusted person during criminal proceedings, and improving practices in restorative justice and victim compensation" (European Parliament, 2017: 38). Accompaniment was specified in most member states except for Italy, Poland and Romania. The right to accompaniment varied from a right which allowed victims to nominate someone of their choice, to the right to accompaniment by a psycho-social counsellor but no guarantee for accompaniment by a relative, to the more limited right to be represented by the prosecutor⁷ bringing a civil action in place of the defendant. Psycho-social accompaniment of victims throughout the trial procedure was offered free of charge to victims in some

⁷ Law 50/1981, of December 30, 1981, which regulates the Organic Statute of the Public Prosecutor's Office (Law 50/1981) establishes the role of the Public Prosecutor's Office to protect victims by promoting the mechanisms provided for them to receive effective help and assistance during the penal procedure (Article 3).

countries, but sometimes only in some cities or regions of those countries (European Parliament, 2017: 52)⁸.

Despite the different country practices, the law in the text seems clear. According to the 2012/29/EU Directive⁹, within the right to understand and be understood in the criminal justice system: "Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, member states shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood" (Article 3.3).

In the Directorate General Justice Guidance (European Commission, 2013) Document related to the transposition and implementation of the 2012/29/EU Directive, it can be read that paragraph 3 of article 3 of that Directive: gives victims the right to be accompanied by a person of their choice in their first contact with the authorities if they need assistance due to the impact of the crime or if the victim has difficulties understanding proceedings or being understood (European Commission, 2013). The purpose of this right is to practically assist the victim and to provide moral support when reporting a crime. This provision may also cover a person whom the victim has not explicitly chosen, but who has volunteered to help because of the victim's mental/physical state in relation to the crime (e.g., a taxi driver who finds a victim on

⁸ The Spanish Ministry of Justice has only published a report on the evaluation of the implementation of the 2012/29/EU Directive, dated in 2017. It contains no disaggregated data. See at: https://www.mjusticia.gob.es/es/Ciudadano/Victimas/Documents/1292430354955-I_Informe_Sistema_atencion_victimas_del_delito_2017.PDF. Recently, the EU Commission concluded that over the last decade, the 2012/29/EU Directive had greatly contributed to improving the lives of victims across the EU (European Commission, 2022). However, its evaluation also pointed out that there were situations where not all victims could fully rely on their rights due to a lack of clarity and precision in the drafting of some of the rights in the Directive. In particular, shortcomings were identified regarding victims' access to information, access to support services and protection of victims' individual needs. It recommended that victims should be able to take a more active role in the criminal proceedings and have easier access to compensation. For these reasons, the European Commission engaged in working on strengthening victims' rights and planned to propose a revision of the Victims' Rights Directive in 2023. No special focus on the right to be accompanied can be found in this evaluation. With no reference to a country in particular, only concerning the right to access support services, the Commission mentioned that minimum standards of support are not clear. Moreover: "Stakeholders said that there was scope for more involvement of support services, such as enabling NGOs to accompany or represent victims throughout criminal proceedings" (European Commission, 2022: 26). In other recent EU documents, as mentioned in the Introduction, the right of accompaniment has been more stressed (European Commission, 2023).

⁹ This is also stated in Article 4C of the 2015 Law 4/2015.

the street or a person helping a traumatised elderly victim after a robbery). This right is provided in addition to the right to be accompanied under Article 20c (European Commission, 2013: 12)

Later, according to the same Directive¹⁰, within the right to protection of victims during criminal investigations: “Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, member states shall ensure that during criminal investigations: victims may be accompanied by their legal representative and a person of their choice unless a reasoned decision has been made to the contrary” (Article 20). Moreover, the European Union stresses that: “The right to be accompanied by a person of choice in paragraph 2c of Article 20 applies to all victims (not just to vulnerable or child victims). If the victim has a legal representative, this lawyer should be present at interviews. In addition, the victim should be able to bring a trusted person for moral support. This should be a positive right, which can only be limited by a reasoned decision” (European Commission, 2013: 42). Accompaniment both by the victim’s representative and a person of the victim’s choice is possible¹¹, according to the law, but research indicates that victim support professionals believe that in more than 30% of cases, victims receive this form of support only sometimes, rarely, or never. Hence, one in three victims is at risk of being refused this important and indeed simple form of support in the process (Ivanković et al., 2019).

It should be considered that the law states that exceptions to this right should be justified and the opportunity to be accompanied by another person should be offered. According to the European Commission: “Only in exceptional circumstances should the possibility to be accompanied by a person of the victim’s choice be limited, and then only in relation to a specific person. If this happens, the victim should be able to choose another person. A typical example of refusal would be that the person chosen has a conflict of interests in the proceedings (e.g., being the offender in cases of domestic violence or child abuse family members may also be the perpetrators) or

¹⁰ The same provision is gathered in Article 21c of the 2015 Law 4/2015.

¹¹ There might be other professionals accompanying the victim, like the facilitators for disabled victims (Martorell, Alemany, 2017). Facilitators are professionals trained in various subjects who provide the necessary support to the victim and make visible the needs she/he may have during the process (e.g., concerning the environment, statements etc.); facilitate effective communication between the victim and the legal professionals; ensure that the information that other professionals will provide to the victim is understood by the victim; and advise the legal professionals (Plena Inclusión, 2020).

confidentiality concerns. Experience from member states where victims have this right has shown that the practice is beneficial for the quality of evidence, and the conclusion of the cases and also lightens the burden on police and lawyers. The support person is bound by confidentiality rules like anybody else (European Commission, 2013: 42).

Yet, due to abstract notions of the victim's interests or fears of the impairment of their testimony on many occasions victims are refused this right. Ivanković and associates (2019) indicate that in Slovenia authorities usually do not allow family members or friends of the victim. In other countries, like Austria or France, victims or witnesses are often influenced by police so that they waive their right to be accompanied by a person of their choice, sometimes a family member and at other times a professional. In Sweden, this right is limited to the first contact with the police (Ivanković et al., 2019). In concrete, "Lithuania and Romania are two particular cases that concern the right to be accompanied during the first contact with authorities ...The research indicates that victims are not regularly given the opportunity to be accompanied by a person of their choice, as is required by Article 3 of the Directive. Only 6.2% of victim support professionals estimate that victims are always accompanied by a person of their choice." (Ivanković et al., 2019: 22-23).

Finally, the 2012/29/EU Directive mentions specific rights for professional representation of victims in relation to Article 24 on the right to protection of child victims during criminal proceedings, in particular for unaccompanied children¹².

¹² In the case of Spain, like in other countries and according to international standards on children's rights, minors should be accompanied by their legal guardians and, sometimes, by a lawyer as well. In the Basque Country, there is also a specific service for judicial accompaniment for victims of domestic violence. See also Article 26. 2(c) of the 2015 Law 4/2015 about the concrete issue on the appointment of a legal defender for some minors. Considering the impact of Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims and Directive 2011/92/EU on Combating Sexual Abuse, in many member states, authorities conducting criminal investigations and/or proceedings have already appointed special representatives to children who were unaccompanied or whose holders of parental responsibility were found to be in conflict of interest (European Commission, 2013: 47).

Public versus private support (being professional or not): The lack of legal provision of public service for accompaniment in the Directive and its provision in the 2015 Law 4/2015

The 2012/29/EU Directive does not refer to specific accompaniment by public services. It only provides that public support services should be provided and within them, emotional and psychological support should be included (Articles 8 and 9 of the Directive). In comparison, the 2015 Law 4/2015 (Article 28.2b) mentions the accompaniment to court¹³ as a special task for the public offices for victims¹⁴. The 1109/2015 Royal Decree envisages that right throughout the whole criminal process, although it seems to state that it will carry out that accompaniment if the victim does not have anyone of her choice (Articles 19, 22 and 28). Moreover, in Article 31.2b of the Royal Decree, personnel of those public services can recommend, in the mandatory individual assessment of vulnerable victims, that the victim be accompanied by a

¹³ Even if the Directive refers only to a “person” of their choice, there are programs with animals as companions in court. Based on the work of the Courthouse Dogs Foundation in the US, founded in 2012 (Kelly, 2022), Victim Support Europe has led the first European project (FYDO – Facility Dogs in Europe) to train and deploy dogs in Belgium, Italy and France to support vulnerable victims during criminal proceedings. For more on the project see: <https://victim-support.eu/whatwe-do/our-projects/ongoing/prjct-fydo>. Following the US example, with the help of the public offices for victims, Madrid courts started working with dogs in 2014. The program has been extended to other Autonomous Communities like Galicia in 2019. Some adult victims underline that they do not feel judged.

¹⁴ In these public offices, run by the Ministry of Justice of Spain or the Justice Department of several Autonomous Communities, there is usually a team of a lawyer, a psychologist and a social worker, with technical support for organising the agenda and doing the paperwork. See <https://www.mjusticia.gob.es/es/ciudadania/victimas/oficinas-asistencia-victimas#> and the European Union Portal on victims’ rights: https://e-justice.europa.eu/171/EN/victims__rights__by_country. In Article 33.2c of the Royal Decree 1109/2015, there is a specific mention of the accompanying task in court for personnel of the National Office for Victims of Terrorism (terrorism and organised crimes are under the central jurisdiction of the National Court). Victims of terrorism can also count on public support offices in some Autonomous Communities, like the Basque Country. As an example of coordinated public/private additional support for victims during criminal proceedings for large-scale attacks, The EU Centre of Expertise for Victims of Terrorism (2021) refers to the trial of the 2004 Madrid attacks. The trial took place in Madrid in July 2007. The trial was attended by 300 witnesses, 60 experts, three victims’ associations and 15 private attorneys, who joined the public prosecutor, and 150 media representatives. To ensure the support of victims attending the trial, a pavilion was set up where social workers, psychologists and members of associations accompanied the victims, providing them with emotional and practical support.

person of her own choice, which might avoid the use of exceptions in relation to this right.

In recent years, in relation to intimate partner violence of men against women, some specific public support projects have been developed to accompany women victims throughout the whole process. This is the case of the program in the Basque Country called *Zurekin* (With You). There are similar programs in Catalonia. The 17/2020 Catalanian Act, amending Law 5/2008, on the right of women to eradicate gender-based violence (Act 17/2020), mentions this right within Article 3 regarding the right of reparation. Despite the lack of available resources, the notion of public accompaniment is becoming more relevant in recent legislation, for example, in the Spanish 10/2022 Act on the Comprehensive Guarantee of Sexual Freedom (Act 10/2022), where the right to accompaniment by public services is envisaged 24 hours a day (see articles 35, 49 and 51), and in the Organic Law 8/2021 for the Comprehensive Protection of Children and Adolescents against Violence (8/2021 Law) (see articles 12.1h, 17.2 and 41). Some private services for victims, usually run by NGOs, also might offer this kind of accompaniment throughout the whole justice process.

Methodology of the exploratory research developed in the Basque Country (Spain) on the specific right of accompaniment by a person of the victim's choice

Because this specific topic has not been researched before, this article provides a tentative and limited content analysis through qualitative exploratory research (Swedberg, 2020) to identify key issues for future, more profound, studies on the right of accompaniment by the person of the victim's choice. Phenomenological analysis has been used to provide an exploration of personal experiences (Smith, 2019). Open-ended questions to participants led to an analysis of their understanding of the right to be accompanied.

Because of the limitations of this exploratory qualitative study, no quantitative study was attempted. By using a qualitative methodology, within constructivist grounded theory, transcripts were analysed within a hybrid thematic analysis (Swain, 2018). Hybridity allows for systematic flexibility and is defined by a basic initial top-down, deductive and theoretical process (in line

with the research aims and the semi-structured questionnaire used) and, later, a bottom-up, inductive, data-driven process for the thematic analysis (Boyatzis, 1998) to be read, in the end, in comparison to other research in the field (Varona et al., in press).

Due to the large variety of experiences, there is a very limited use of literal quotations. Systematisation was done using individual sheets notes and text processors (Basit, 2003). To respect methodological integrity, reading and re-reading of transcripts was carried out to consider implicit or explicit units of analysis related to the aims of the research and the basic literature review. A priori themes departed from the topics considered in the semi-structured interview or questionnaire. A posteriori or emerging themes are commented on below, in the section on findings, and were extracted by considering the repetition of topics in the narratives captured in the transcriptions. This has been done by finding patterns of meaning-making used by the interviewed victims and experts (Charmaz, 2014).

Temporal and geographical contextualization of the fieldwork

Most fieldwork was developed during September, October and November 2019 in Donostia/San Sebastián, a city in the Basque Country, Spain. It entailed observation, taking photos and questionnaires and interviews with experts and victims who went to the police or court, as well as secondary data on a Basque Government program that offered professional companionship to victims of gender violence.

Profile of participants and kind of data sets

Criminal justice professionals

The sixteen interviewee experts¹⁵ were recruited for in-depth interviews from their participation in previous activities with the Basque Institute of Criminology, University of the Basque Country. Convenience sampling was used with no representativeness aim as a non-probability sampling method. Thus, experts were selected for inclusion because they were easiest for the

¹⁵ All of them working in Donostia/San Sebastián, except for two prosecutors who had worked and lived there during many years, but were working at that moment in another Spanish city. These interviews were online, the rest took place face to face.

researcher to access due to the limitation of resources for the exploratory research. The only inclusion criteria were to reach a variety of professions in contact with victims during the criminal justice process. All those contacted experts accepted to participate and answered open questions related to their knowledge and experience on the right to accompaniment. In addition, they were asked about the justification of potential exceptions for granting this right, according to the Spanish legislation.

Monitoring of the offices where they worked included observing trials of different crimes (such as property crime, sexual crime, and attempted homicide), and taking notes and photographs. We interviewed three local police agents - one forensic doctor; one forensic psychologist; one lawyer; three prosecutors; one magistrate; three employees of the public support offices for victims, and three employees of the public office for restorative justice.

Victims

As for the questionnaires for victims, they were administered in the local police station of the city of Donostia/San Sebastián. Again, with no representativeness aim, victims were given a short questionnaire after they had reported a crime to the police. Most of the crimes were petty property offences. With the collaboration of the local police, the interviewer spent three complete mornings on that fieldwork, which also included taking pictures of the police spaces. Most victims agreed to participate, so 62 questionnaires were completed.¹⁶ Two in-depth interviews were added in two more severe cases involving violence against women (intimate partner violence). These two victims suffered the crime between 2018 and 2019 and were recruited because they had also participated in previous activities with the Basque Institute of Criminology.

Semi-structured protocols were used to collect the data. The victims were asked if they went accompanied or not and which was the reason for their decision. Another question was whether that accompaniment helped them or, if not having come accompanied, whether they would like to be next time. Finally, they were asked about their knowledge and information about this right and its complementariness with accompaniment provided by public

¹⁶ No significant socio-demographic variable can be highlighted. Most interviewees were middle-aged men and women.

services. The testimonies of victims who participated in the specific *Zurekin* program, part of the public office services in the Basque Country, were collected during a seminar in Bilbao in October 2021 (IRSE, 2021). Their testimonies had been previously recorded to be part of the evaluation of the public services that developed as part of a European Union project. They were used to be compared with the accompaniment offered by a private (non-professional) person of the choice of the victim.

Ethical considerations

All data protocols ended with an open question in case participants wanted to add something else. All data was anonymous and non-traceable, and the study was carried out in conformity with general ethics in social research (European Federation of Academies of Sciences and Humanities, 2017) and the deontological code of the Spanish Society for Criminological Research (2016) which included victimological training for interviews and giving information on victim support services.

Findings

None of the victims who participated in the study knew anything about the provision of the right of accompaniment by a person of their choice. Even after they had their first contact with the police, they did not know. Police in Spain, as well as the public victim services and the court, are obliged to provide victims with information on their rights, including this one. This is done in practice, but perhaps in a way that is not satisfactory because victims are just given a piece of paper that states what is in the relevant 2015 Law 4/2015 with no further explanation or examples. There is no visual aid on the webpage of the local police either and this usually is the case for other public services websites within the criminal justice system. From an intersectional point of view, this will have a different impact depending on the victim's socio-demographic profile and the kind of victimisation suffered.

In any case, most of the victims (around 80%) did not go accompanied and said they did not need to be, mainly because they considered it was not a serious case or that it did not impact them emotionally or physically. Other

reasons mentioned were they just preferred to go alone and not bother relatives or friends. This was not the case for the two victims who suffered intimate partner violence. They declared that they needed the accompaniment that was initially not available in the criminal justice system where they suffered secondary victimisation. No victim said that she had received public support at the time of the questionnaire or interview.

When victims were accompanied, they were so by their partner or other relatives, followed by friends. Some foreigners pointed out that they did not know anyone to ask to come with them. They also underlined the relevance of professional accompaniment by interpreters. All interviewees indicated that they would like to be accompanied by a person of their choice in a future crime that could be more severe, but they took for granted they could do so.

All interviewed experts underlined the importance of the right, although, at the same time, they showed an understanding of the need for restrictions or exceptions, in particular some police, forensic doctors, prosecutors and the magistrate, to protect the victim or secure due process in relation to their testimony and the testimony of potential witnesses that could accompany the victim. In certain responses, it might be assumed that some criminal justice professionals prefer not to have companions present during their work because they are not used to it. The lawyer stressed that accompanying persons should be reminded that their function is not intervening. Experts also stressed the complementary character of this right with the accompaniment by public and private professionals, for example, on the role of facilitators for disabled victims, particularly considering the different needs of diverse victims concerning the multiple criminal justice agencies and the long journey throughout the penal system.

In the open section at the end of the data protocol, some experts specified some particularities. For example, facilitators at the public restorative justice service highlight the importance of this right if we consider that the community of conflict is of utmost importance for a restorative process. Even if restorative circles or conferences are not developed, victims used to come accompanied to the restorative justice service to be informed and to be supported during the preparatory sessions. At the same time, some facilitators see themselves as professional companions in the process of victim restoration.

Additionally, on cyber-victimisation, some prosecutors indicated that here some victims prefer to go alone because of feeling shame in front of

family members and friends, particularly in image-based sexual victimisation. Secondary victimisation justifies envisioning this non-important right, but, at the same time, secondary victimisation in court and out of court favours that a high number of victims prefer not to be accompanied because they feel ashamed if they have to describe their victimisation before their relatives or friends. It is not only that a person known to the victim might be involved as an offender, but, sometimes, victims prefer to avoid being judged, or sometimes they prefer to avoid the pain of talking in front of their loved ones.

One judge, also, made the observation of the possibility of letting victims testify during the trial by someone who supports them. They can usually do it in other moments and spaces but not during the trial. Observation of the offices and spaces of the criminal justice system also reveals some specific needs. Even though improvement in avoiding contact with offenders has been made, victims usually have to spend a lot of time in court, and sometimes at police stations too, and some might have specific needs. There was one case of an interviewed victim who did not come accompanied but had to come with her little child, a baby¹⁷.

To recap, just as it has been described for other countries, and not only concerning police, in the case of Spain: "...even though the victim's right to be accompanied by a person of choice is prescribed by law, difficulties in guaranteeing such right in practice were identified. These difficulties are mostly related to, on one hand, the victims' unfamiliarity with this right and, on the other hand, the reluctance of police authorities to allow the presence of the accompanying person due to fears that the victim's statement might be impaired, or in some way altered, in the presence of this third person." (Ivanković et al., 2019: 22-23)

At the same time, all professionals underline that this right is related to dealing with the consequences of the traumatic impact and trying to avoid secondary victimisation, also in the interest of the criminal justice system. For that reason, complementary professional accompaniment might offer guidance to explain the different steps in the process, the provision of adequate information on what is going to happen and how in every moment, with information adapted to every person and moment in the process; supporting the victim so she does not feel alone, nervous or ashamed (listening to

¹⁷ A picture of a police station with toys for little children was taken. The Basque Country has started to implement a pilot project on the Barnahus model (Andersen, 2022).

emotions of fear and other emotions caused by the traumatic event, encouraging calm-normalising reactions and feelings, and helping expressing and naming them); and identifying and facilitating access to other resources.

Concerning the benefits of a public service of accompaniment by professionals, like *Zurekin*¹⁸, some victims stated:

"Your mother tells you: be calm and do as much as you can... but at Zurekin they are used to working in the criminal justice system." (E1)

"You are not just a case like you are for your lawyer." (E2)

"When I reported I did not have that accompaniment... Then at court, I had it, and it made me feel calmer which helps the court work." (E3)

Issues of coordination have also emerged in the interviews of both victims and professionals. These could be solved, according to one interviewee by the appointment of a reference person for the victim throughout the whole criminal process. One psychologist at the public office for victims indicated that this should include the execution of the penalty because victims are also recognised rights in this phase of the process, particularly in the Spanish legislation (Muñoz de Morales, 2018). Finally, some experts pointed out that what has been learned (in terms of mistakes and success) in some fields where more resources have been deployed, like intimate partner violence, could be applied to other kinds of victimisation.

Discussion and conclusions

This paper has offered an exploration of an under-researched right that presents several difficulties in its implementation and coordination with other victims' rights. This article has also related Spanish literature on the matter with European research. The inquiry on this specific right could be included in different victim surveys and professional and coordination protocols and training. Besides, future research could be developed with specific groups of victims, such as children and adolescents, elderly people, people with disabilities, migrants, refugees, and victims of certain crime categories.

¹⁸ For more on *Zurekin*, see IRSE (2020).

However, any further research will have to consider a common structural issue underlined throughout this paper, which is the persistent secondary victimisation inherent to all criminal justice systems (Cox, Walklate, 2022). Secondary victimisation can be related to other concepts like epistemic injustice (Fricker, 2007), ethical loneliness (Stauffer, 2015) or an absent audience (Caruth, 2016), well documented in cases of severe violations of human rights, and also with the notions of procedural justice (Thibaut, Walker, 1975; Wemmers et al., 1995; Tyler, 2003; Fernández et al., 2022).

For this very reason, the use of intermediaries to contend with the harsh effects of adversarialism is needed (Kilcommins et al., 2020). At the same time, there is a claim for an interpretation of criminal process fairness which unites the public interest with victims' and offenders' rights. Those intermediaries can be public or private professionals (Elbers et al., 2022), as well as ordinary people trusted by victims.

The justice system is regarded to be a hostile environment with a high risk of secondary victimisation as empirical research has shown in all countries. This is even clearer with victims of violent crimes where victimisation the Fundamental Rights Agency of the European Union (2021) has documented the evidence of secondary victimisation. Again, there is a need to combine the ethics of care with a human rights perspective, particularly for professional public accompaniment which clashes with some legal professions' identity. Here we can think of the vulnerability theory (Fineman, 2008) that reflects on the human being as a vulnerable subject, not only an individual subject of rights that have to be granted, but the human being as the embodiment of morals and the state as a source and arbiter of rights and morals. It is important to consider the jurisprudence of the European Court of Human Rights on the positive obligations of the states towards victims, but this more comprehensive due process must avoid simultaneously secondary victimisation and antagonism in victimhood (Svensson, Gallo, 2021).

In some cases, there might be difficulties in separating formal and informal accompaniment, particularly in long criminal justice processes. Katz, Pugach and Ramon (2022), regarding the lawyers, underline the requirement to develop social justice professionalism balanced between legal and therapeutic abilities, including the caring skills needed to work with victims.

At the structural level, accompanying professionals and non-professionals have to manage within structures of accompaniment where, beyond

proclaimed rights, we can wonder whether victims' well-being is a priority (Ministerio de Justicia, 2021). An initial step could be substituting control for curiosity as suggested by Hardinam and Allen for journalist professionals in terms of restorative justice to avoid instrumentalization. Acting with an attitude of superiority or just looking for information can alienate people, particularly those with less power in society (Hardinam, Allen, 2022: 12)

In Milquet's work (2019: 14) a 'human rights-based concept of victimisation' is proposed, which goes beyond a diffuse therapeutic notion of victims' needs and addresses a balanced approach to offenders' human rights. In other research (Varona, 2022), we have concluded that that concept is not possible unless non-essentialist, non-pathological, and non-antagonistic notions of victim and offender are embedded in criminal and victim policy. This would allow a real interdependent and indivisible vision of human rights in society independently of whether the person concerned happens to be or is legally considered to be a victim and/or an offender. Only if society considers the human rights of every person as a common good, might this become a reality given the challenges faced in ever more polarised societies (Paz et al., 2021).

Study limitations

The main limitations of this study are potential social desirability effects in relation to the small number of interviews, particularly about the victims who went to a specific local police station in the city of Donostia/San Sebastián. Furthermore, this study has not considered important variables like the gender of the experts or the nationality or the ethnic origin of the victims, even if recorded when this variable was relevant to the answers. There were no interviews with other key agents like companions or private services for victims. Finally, this study only considers recorded crimes, but most victims do not reach the criminal justice system, contributing to the so-called hidden victimisation.

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