The implementation of European standards on crime victims in the Belgian criminal justice system

A piece of Belgian anticipation

Dissertation submitted to obtain the academic degree of Master of European Criminology and Criminal Justice Systems by Bert Vrelust (00905706)

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Preface

Being a lawyer the Master of European Criminology and Criminal Justice Systems was enriching in many ways. The first contact with criminology gave me the opportunity to learn to look at penal and criminal law from a different perspective.

I tried to continue on this perspective in underlying Dissertation: I made a serious attempt to make my approach not too legal. This however is no sinecure in regard of an implementation of a European instrument in the Belgian legislation.

The problematic of crime victims is a topic I have always been interested in, so I was glad I could dedicate my Master Dissertation to it.

Bert Vrelust
May 2010
1. Introduction

1.1 A growing European concern for crime victims

The victim – contrary to e.g. the suspect – is no necessary party in criminal proceedings; not all crimes necessarily result in a victim and even when they do the victim most of the time is not required to take part in the proceedings. The only exception to this are the cases which can only be started up after a complaint of the victim, but even then the prosecutor mostly can immediately take over the case (e.g. art. 2 Belgian Code of Criminal Procedure (hereafter: Criminal Code)).

Nevertheless the European level got more and more interested in crime victims. To a growing extent assisting victims had to be a concern on a par with the penal treatment of offenders. The Council of Europe’s concern for victims of crime started in the 1960s when various of its Member States started to set up schemes to compensate victims from public funds when compensation could not be obtained from any other source. This project eventually led to the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983 (hereafter: European Convention), the most important Council of Europe instrument in this field. In the following decades the Council of Europe however brought about some very useful recommendations concerning crime victims as well: Recommendation no. (85)11 of the Committee of Ministers to Member States on the position of the victim in the framework of criminal law and procedure of 28 June 1985 (hereafter: Recommendation (85)11), Recommendation no. (87)21 of the Committee of Ministers to Member States on assistance to victims and the prevention of victimisation of 17 September 1987 (hereafter: Recommendation (87)21) and Recommendation no. (2006)8 of the Committee of Ministers to Member States on assistance to crime victims of 14 June 2006 (hereafter: Recommendation (2006)8).

The European Union really started to focus on crime victims in 1999. On the 15th and 16th October of that year a special meeting of the European Council concerning the establishment of an Area of Freedom, Security and Justice was held in Tampere.

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2 Consultable on [http://www.coe.int/tcj](http://www.coe.int/tcj).
Point 32 of the Tampere conclusions (under title V: Better access to justice in Europe) states: “Having regard to the Commission's communication, minimum standards should be drawn up on the protection of the victims of crime, in particular on crime victims’ access to justice and on their rights to compensation for damages, including legal costs. In addition, national programmes should be set up to finance measures, public and non-governmental, for assistance to and protection of victims.”


Several reasons for this (growing) attention for crime victims can be found in the preliminary considerations of various European instruments:

- The principles of equity and social solidarity require this (European Convention).
- Criminal victimisation is a daily phenomenon affecting the lives of citizens throughout entire Europe (Recommendation no. (85)11; Recommendation (2006)8) and often has serious physical, psychological, social and financial consequences (Recommendation (87)21).
- It’s a fundamental function of criminal justice to meet the needs and to safeguard the interests of the victim (Recommendation (85)11).
- It is important to enhance the confidence of the victim in criminal justice and to encourage his co-operation, especially as a witness (Recommendation (85)11).

To explain in particular the European attention for crime victims is indicated that the intervention of the national criminal justice system often is not sufficient to ‘repair’ the harm and disturbance caused by the offence (Recommendation (87)21). In addition partial or inconsistent solutions may give rise to secondary victimisation (Framework Decision).

More in general the European victim-related rules, and especially the Framework Decision, are intended to approximate the European criminal justice systems in this field.  

5 All consultable on http://www.coe.int/tcj.
6 Throughout this Dissertation ‘he’ / ‘his’ can of course always be replaced by ‘she’ / ‘her’. 
7 In the Amsterdam-treaty ‘approximation’ - through Framework Decisions - is mentioned for the first time (art. 34b TEU).
Approximation - certainly in the field of criminal procedural law - is the most important instrument to increase the trust between different countries, which is insuperable as mutual trust is considered to be the cornerstone of judicial co-operation in criminal matters since the higher mentioned European Council in Tampere\(^8\).

1.2 Objective, research questions and methodology

The objective of underlying Dissertation consists in exploring the implementation of a selection of European standards on crime victims in the Belgian criminal justice system.

The central research questions are: did Belgium implement the investigated European victim-related rules correctly and in time? How did the Belgian authorities do this? Did they only implement the binding rules or did they go further than they had to\(^9\)? Can the implementation be called satisfactory on this moment in time?

To find an answer to these questions firstly is looked at the European definition of a crime victim. Secondly is focused on a selection\(^10\) of European standards on crime victims. As far as that’s concerned an attempt is made to combine the instruments of the European Union with the ones of the Council of Europe. Focused is only on European regulations about crime victims in general and no special attention is paid to victim-related rules concerning particular types of crime (e.g. child victims, victims of terrorism or victims of human trafficking).

Further is investigated how (well) both the European definition and the standards are implemented in the Belgian legislation. As implementation regulations are mainly considered the rules Belgium itself submitted to the European Commission as being implementation instruments. In hierarchical sequence is mainly looked at formal legislation, Royal Decrees and circulars from the Minister of Justice or from the college of prosecutors general. The latter sources are not directly applicable on the Belgian people and therefore are less powerful. Nevertheless they can play a role in the implementation process as they steer the Belgian criminal policy.

In no case is strived at an exhaustive enumeration of all implementation instruments.

Finally, the conclusion of this Dissertation is mainly dedicated to the evaluation of the implementation.

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\(^8\) Point 33 Tampere conclusions (consultable on http://www.consilium.europa.eu).
\(^9\) At least in regard of victim protection. Going further than necessary in this domain can of course be the consequence of binding rules in other fields.
\(^10\) Therefore will not be focused on communication safeguards, the right to mediation, the training of people who get in touch with crime victims, victim support organisations, etc.
1.3 Definition of a crime victim

a) European level

The European Union defines a crime victim as follows: “Victim means a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State” (art. 1a Framework Decision).

According to the Council of Europe the term ‘victim’ should also include “where appropriate, the immediate family or dependants of the direct victim” (art. 1 § 1, in fine Recommendation (2006)8). Though this is not explicitly mentioned in the higher displayed victim definition, the view can be taken that the victim’s family yet forms a part of the notion ‘victim’ in the EU as well (see for instance art. 8 § 1 Framework Decision).

In relation to the compensation of crime victims (cf. infra) the definition of a victim is - quite understandably - always narrowed to a victim of an intentional violent crime, except in the Framework Decision (art. 9). This inconsistency has to be corrected.

Further, the Court of Justice of the European Union decided that the concept of victim for the purposes of the Framework Decision does not include legal persons, having suffered direct harm by violations of the criminal law in a Member State11. According to the Court this can be deducted from the wording of articles 1a, 2 § 1, 2 § 2 and 8 § 1 Framework Decision that all clearly concern natural persons and there is no reason to believe that the European legislator intended to extend this notion12. However, a Hungarian judge recently asked the Court to explain and supplement this decision13. In the conclusion will be returned to this issue.

Finally may not be forgotten that the content of the victim notion is constantly in evolution. An example to illustrate this are victims of internet-related crime, the so-called “cybervictims”14. On the moment the EU developed the higher mentioned victim definition this type of victims was hardly known, whereas these days “cybervictimisation” has become a daily phenomenon, which cannot be excluded from the victim concept anymore.

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11 Court of Justice 28 June 2007, C-467/05, Dell’Orto, § 60, O.J. C. 25 August 2007, no. 199, 9.
12 § 53 - § 56.
b) Implementation in the Belgian criminal justice system

Most of the EU Member States just referred to existing national definitions instead of adopting new legislation to implement this article of the Framework Decision\(^{15}\). Belgium applied the same trick. More in particular the Belgian authorities referred to its ‘old’\(^{16}\) articles concerning the two qualities a crime victim (or its descendants) can adopt in the Belgian criminal justice system, namely that of “harmed person” (art. 5 bis Preliminary Title Criminal Code) or “civil party” (art. 63 and following Criminal Code)\(^{17}\). A “harmed person” can be anyone who declares to have suffered damage caused by an offence (art. 5 bis § 1 Criminal Code). The harmed person is no party in the criminal proceedings. His role especially consists in the supply and the receipt of information concerning the course of the proceedings. The status of harmed person can be obtained by a simple declaration at the secretary of the prosecutor’s office (art. 5 bis § 2 Criminal Code)\(^{18}\). If the person who suffered harm on the contrary adopts the status of “civil party” he becomes a party in the criminal proceedings. A victim is believed to be a civil party if it declares it explicitly or if it officially asks for compensation (art. 66 Criminal Code), which most of the time goes together\(^{19}\). The quality of civil party can be adopted in the inquiry phase (1) or before court (2)\(^{20}, 21\).

(1) In the first place the victim can file a civil action before the examining judge, by which it initiates both the civil and the criminal proceedings (art. 63 Criminal Code – the consignment of a sum of money is required as advance on the legal expenses (cf. infra)\(^{22}, 23\)). Secondly, the victim can also choose to adopt the status of civil party before the examining judge by joining the claim of the public prosecutor (art. 67 Criminal Code). Further, in this way the victim can also gain the quality of civil party before a court of inquiry (chambre du conseil and chambre d’accusation - art. 67 Criminal Code). It is important to remark that a victim can only become a

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\(^{16}\) Http://www.juridat.be.


\(^{19}\) Cf. infra for a more extensive explanation.

\(^{20}\) All the possibilities to become a civil party are brought together in an overview, consultable in attachment 1.

\(^{21}\) The exact general and specific conditions to become a civil party can be consulted in R. VERSTRAETEN, Handboek strafvordering, Antwerp-Apeldoorn, Maklu, 2007, 183-197.


\(^{23}\) Initiating both proceedings is not always possible (e.g. impossible for “crimes”, the heaviest offences in Belgium, or in regard of minors - C. VAN DEN WYNGAERT, Strafrecht, strafprocesrecht en internationaal strafrecht in hoofdlijnen, Antwerp, Maklu, 2006, 786).
civil party during the “instruction phase”, under the supervision of the examining judge and not during the “investigation phase”, under the supervision of the prosecutor.

(2) Joining the prosecutor’s claim is also a means the victim can use before every criminal court to officially become a civil party (art. 67 Criminal Code). This is in any case the most common and least costly method\(^\footnote{Contribution of the European Judicial Network of 16 October 2006 on the compensation of crime victims in Belgium, consultable on \url{http://ec.europa.eu/civiljustice/comp_crime_victim/comp_crime_victim_bel_en.htm} (hereafter: EJN contribution).}^\footnote{C. VAN DEN WYNGAERT, Strafrecht, strafprocesrecht en internationaal strafrecht in hoofdlijnen, Antwerp, Maklu, 2006, 544.}^\footnote{Art. 1 Commission staff working document.}^\footnote{Approved by law on 11 April 1999 (B.S. 13 July 1999) and by decree of the Flemish Community on 15 December 1998 (B.S. 13 July 1999).}^\footnote{Art. 1 Commission staff working document.}^\footnote{B.S. 5 June 2007.}^\footnote{Art. 1 Commission staff working document.}^\footnote{The eventual (postponed) deadline for implementation of the Framework Decision was put on \textit{15 February 2008} (Commission report).} \footnote{24 Con}^\footnote{25 C. VAN DEN WYNGAERT, Strafrecht, strafprocesrecht en internationaal strafrecht in hoofdlijnen, Antwerp, Maklu, 2006, 544.}^\footnote{26 Art. 1 Commission staff working document.}^\footnote{27 Approved by law on 11 April 1999 (B.S. 13 July 1999) and by decree of the Flemish Community on 15 December 1998 (B.S. 13 July 1999).}^\footnote{28 Art. 1 Commission staff working document.}^\footnote{29 B.S. 5 June 2007.}^\footnote{30 Art. 1 Commission staff working document.}^\footnote{31 The eventual (postponed) deadline for implementation of the Framework Decision was put on \textit{15 February 2008} (Commission report).}^\footnote{27 and Ministerial Circular 4 May 2007 GPI 58 on police assistance to victims in the integrated, two level police service^\footnote{29 (in time implementation}\footnote{30 (in time implementation}}\footnote{31 (in time implementation}}\footnote{31 (in time implementation}}

The quality of civil party is (mostly) required to be awarded compensation (\textit{cf. infra}). Moreover the civil party is granted some additional rights, such as the right to have a look in the criminal file (art. 61 \textit{ter} Criminal Code) and the right to ask the examining judge for additional deeds of investigation (art. 61 \textit{quinquies} Criminal Code)\footnote{25 C. VAN DEN WYNGAERT, Strafrecht, strafprocesrecht en internationaal strafrecht in hoofdlijnen, Antwerp, Maklu, 2006, 544.}^\footnote{26 Art. 1 Commission staff working document.}^\footnote{27 Approved by law on 11 April 1999 (B.S. 13 July 1999) and by decree of the Flemish Community on 15 December 1998 (B.S. 13 July 1999).}^\footnote{28 Art. 1 Commission staff working document.}^\footnote{29 B.S. 5 June 2007.}^\footnote{30 Art. 1 Commission staff working document.}^\footnote{31 The eventual (postponed) deadline for implementation of the Framework Decision was put on \textit{15 February 2008} (Commission report).}. Nevertheless, it may be clear that the status of a victim in Belgium in the first place depends on its own choice\footnote{26 Art. 1 Commission staff working document.}. The Belgian Criminal Code however only focuses on the possible qualities of a victim and does not contain a general definition of a crime victim. This shortage is (partly) compensated by very good crime victim definitions (including their descendants) in Cooperation Agreement 7 April 1998 between the Belgian State and the Flemish Community on victim support (pre-Framework Decision period: no implementation)\footnote{27 and Ministerial Circular 4 May 2007 GPI 58 on police assistance to victims in the integrated, two level police service^\footnote{29 (in time implementation}}\footnote{30 (in time implementation}}\footnote{31 (in time implementation}}

\textit{The implementation of European standards on crime victims in the Belgian criminal justice system}\textit{}}
Further has to be remarked that the Belgian legislation also contains some victim definitions in *special criminal legislation*\(^{32}\), e.g. art. 31 Law 1 August 1985 on fiscal and other measures\(^{33}\) (pre-Framework Decision period - *cf. infra*: transposition of the European Convention). Such a special victim definition can however not take away the need for a general victim definition, just because they are only applicable to the specific law in question. So, the conclusion here is that despite different Belgian attempts a *comprehensive victim definition in the Criminal Code*, based on the European one and similar to the one laid down in Ministerial Circular 4 May 2007 GPI 58, is needed. This mainly for two reasons: the European definition is more detailed than the Belgian rules as regards the notion of ‘harm’ that makes someone to a crime victim, and secondly, this lack of a general definition blocks the European aim of approximation in the field of crime victims in criminal proceedings (*cf. supra*).

Finally, as will be clear later on the victim notion is also rightly narrowed to “victims of intentional violent crimes” in Belgium.

1.4 Figures on victimisation in Belgium

In attachment 2 a graph can be found on *overall victimisation rates* in Europe\(^{34}\). The data for this graph are taken from the International Crime Victim Survey (ICVS)\(^{35}\) and are based on ten crimes per country that were consistent over the last five sweeps\(^{36}\).

In the first place can be noticed that the overall victimisation in Belgium increased between 1989 and 2005 (from 13,4 % till 17,7 %). Secondly becomes clear that the overall victimisation rates in Belgium today belong to the higher ones in Europe: the Belgian rates passed the ones of some other countries comparing the different measurements. In addition, the latest Belgian numbers are higher than the average of the countries included in the graph (15,7 %). The same picture can moreover be derived from the police statistics in the European Sourcebook\(^{37}\).

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\(^{32}\) Art. 1 Commission staff working document.

\(^{33}\) B.S. 6 August 1985.

\(^{34}\) In its Council of Europe sense.


As is the case in most Western European countries\textsuperscript{38}, one has a much bigger chance to become the victim of \textit{property crime} than of \textit{violent crime} in Belgium\textsuperscript{39}. In general though the rates of property crime (e.g. total theft, theft of a car, theft of a motorcycle, burglary) are more tending towards a decrease, while some violent crime rates (e.g. assault, robbery, rape) seem to be increasing\textsuperscript{40}.

In particular, victimisation in Belgium is relatively often caused by \textit{theft} (e.g. from a car, of a bicycle or of other personal property), followed by \textit{assault} and (attempted) \textit{burglary}. Sexual offences against women for example appear much less frequently\textsuperscript{41}.

Finally is indicated that according to the ICVS\textsuperscript{42} in 2005 - based on 9 crimes - 63 % of the crime victims in Belgium reported the offence they experienced to the police. This rate is considerably higher than the average of all countries involved in the survey (51 %)\textsuperscript{43}. Nevertheless, this number actually is irrelevant as reporting an offence to the police will never appear to be a prerequisite for entitlement to the victim rights discussed in this Dissertation.

\section{Some European standards on crime victims}

\subsection{The right to respect and recognition}

a) European level

First of all the \textit{European Union} thinks it is very important that \textit{victims} have a \textit{real and appropriate role} in their criminal legal system (art. 2 § 1 Framework Decision). More in particular the EU wants to make sure that crime victims are treated with \textit{respect} and \textit{dignity} and that \textit{their rights and legitimate interests} are recognised during criminal proceedings (art. 2 § 1 Framework Decision). This requirement is a quite right starting point: without respect for victims and the recognition of their rights a policy on crime victims wouldn’t make sense. \textit{The Council of Europe} recommends in particular respect for \textit{the security, dignity, private life and family life of victims} and \textit{the recognition of the negative effects of crime on victims} (art. 2 § 1 Recommendation (2006)8). In addition these measures should be executed \textit{without}
discrimination (art. 2 § 2 Recommendation (2006)8) and independent on the identification, arrest, prosecution or conviction of the perpetrator (art. 2 § 3 Recommendation (2006)8). These recommendations are useful guidelines, except for the ban of discrimination, which is an unnecessary repeat of art. 14 ECHR. In addition a limited enumeration of aspects, which have to be respected (art. 2 § 1), entails the risk that in some other fields no respect will be shown. Therefore this would better never be made a binding rule.

A good example showing that respect and recognition for crime victims is anything but obvious these days is formed by following passage from the book Globalization and crime of K.F. Aas: “[...] The approaches to combat [human] trafficking tend to focus on trafficking as a form of illegal immigration and organized crime, [...] thus treating migrant women as illegal immigrants and criminals, rather than as victims entitled to protection. [...] The focus should be on protecting the trafficked victims’ rights rather than exposing them to additional hardship [...]. In the case of trafficking [...], it becomes particularly obvious how the concerns of crime control clash with those of victimology and the protection of victims.”

In other words, in a lot of countries these days there’s a huge lack of respect and recognition for human trafficking victims who’re rather considered as illegal immigrants than as victims. This of course has huge consequences for the way in which these people are treated: more in particular they are deprived from all the victim rights there are entitled to. They are seen as intruders against whom society has to be protected instead of people who themselves need protection.

The question moreover rises how far this respect for the rights of victims should go. Does this article for example obstruct family life disturbing penalties to be imposed upon an offender, being a family member of the victim?

Further, the EU wants each Member State to provide a specific treatment for those victims who are particularly vulnerable (art. 2 § 2 Framework Decision). Who exactly falls in this category has not been defined in the Framework Decision, but has to be judged in the concrete circumstances according to the Court of Justice (cf. infra). Some guidelines concerning the content of the notion “particularly vulnerable victims” would have been better.
here. Does this concept for instance concern age\textsuperscript{48}, physical health, psychological health, someone’s position in society, ... or a combination of all these matters? The consequence of an open norm is always - and thus here as well\textsuperscript{49} - that some Member States adopt a broader vision on the matter than others, which obstructs the pursued approximation.

b) Implementation in the Belgian criminal justice system

The already mentioned art. 5 bis Criminal Code (“harmed person”) and especially art. 63 and following Criminal Code (“civil party”)\textsuperscript{50,51} ensure the victim a real and appropriate role in the Belgian criminal legal system, as the European Union requires. This obligation is thus definitely fulfilled, though Belgium does not repeat the concerning phrase literally in its legislation as some other countries (e.g. the UK and Spain) do\textsuperscript{52}.

Further, the required respect and recognition for the rights and legitimate interests of crime victims in Belgium in general is imposed by art. 3 bis Preliminary Title Criminal Code\textsuperscript{53}, stating that crime victims and their families have to be treated rightfully and with care, in particular by the provision of the necessary information and by enabling contacts with specialised services and judicial assistants (cf. infra). This article however again existed already before the entry into force of the Framework Decision\textsuperscript{54} and can therefore not be seen as a new rule implementing it into the Belgian criminal justice system\textsuperscript{55}.

Next to this comprehensive provision the Belgian system also provides a number of rules specifically ensuring that police forces respect and recognise individual rights in general (the rights of victims included)\textsuperscript{56}, e.g. art. 123 Law 7 December 1998 on establishing an integrated police service, structured on two levels\textsuperscript{57} (pre-Framework Decision period). In addition art. 46 Law 5 August 1992 on the police (pre-Framework Decision period) obliges the Belgian police forces explicitly to respect the rights of crime victims\textsuperscript{58}.

\textsuperscript{48} Underage children in any case can fall in this category (cf. infra).
\textsuperscript{49} Art. 2 Commission report.
\textsuperscript{50} Which, as mentioned higher up, existed already before the Framework Decision.
\textsuperscript{51} Art. 2 § 1 Commission staff working document.
\textsuperscript{52} Art. 2 Commission report.
\textsuperscript{53} Art. 2 § 1 Commission staff working document.
\textsuperscript{54} http://www.juridat.be.
\textsuperscript{55} The respect and recognition for a victim’s rights and interests were already recommended by the Council of Europe before the adoption of the Framework Decision: see the ‘spirit’ of Recommendation (85)11 and (87)21.
\textsuperscript{56} Art. 2 § 1 Commission staff working document.
\textsuperscript{57} B.S. 5 January 1999.
\textsuperscript{58} Art. 2 § 1 Commission staff working document.
Finally, the Belgian criminal law ensures descendants of a deceased victim a worthy farewell when an autopsy has to be conducted (see among others art. 44 last paragraph Criminal Code - pre-Framework Decision period)\(^{59}\). This is very nice to notice: Belgium goes further than it has to. It seems to take the Council of Europe approach\(^{60}\) in having special attention for the dignity and the family life of crime victims as well as for the negative effects of (lethal) crimes on their relatives.

In general in any case can be agreed with the European Commission on the fact that the obligation to respect and recognise a crime victim’s rights is well fulfilled in Belgium\(^{61}\).

Next, the Framework Decision requires a specific treatment for those victims who are particularly vulnerable. Despite the fact that the EU does not provide further information on this notion, except for the concrete circumstances approach of the Court of Justice, Belgium fulfils this obligation very well, though the European Commission states that some other countries even provide a broader protection\(^{62}\). In the first place Belgium has the articles 91 bis till 101 Criminal Code\(^{63}\) that all concern the questioning of minors who are the victim or the witness of e.g. a sexual offence (art. 372 till art. 377 Penal Code) or assault and battery (art. 398 and following Penal Code). More in particular is ensured that such minors have the possibility to be assisted by a major of their choice (art. 91 bis Criminal Code) and to have their interrogation audio-visually recorded (art. 92 Criminal Code).

In general (so in regard of majors as well) the Criminal Code also provides a treatment of the case behind closed doors when it is based on a sexual offence (art. 190, part 2 – in camera proceedings)\(^{64}\).

These rules provide a good victim protection, but it is important to remark that they all already existed before the EU Framework Decision\(^{65}\). In other words: they were no real implementation. The same can be said about the so-called sexual assault set\(^{66}\), which has to

\(^{59}\) Art. 2 § 1 Commission staff working document.

\(^{60}\) Although the higher mentioned 2006 recommendations were issued much later in time than the discussed Belgian rules, the Council of Europe already recommended to respect the victim’s dignity in 1985 (cf. art. 8 and art. 15 Recommendation (85)11).

\(^{61}\) Art. 2 Commission report.

\(^{62}\) Art. 2 Commission report.

\(^{63}\) Art. 2 § 2 Commission staff working document.

\(^{64}\) Art. 2 § 2 Commission staff working document.

\(^{65}\) Here also the special attention for those who are particularly vulnerable was already recommended by the Council of Europe before the adoption of the Framework Decision: see art. 4 and art. 14 Recommendation (87)21. The assistance of a trustworthy person for e.g. children was already recommended by art. 8 Recommendation (85)11.

\(^{66}\) Art. 2 § 2 Commission staff working document.
unify and facilitate the furnishing of proof in cases of sexual violence\textsuperscript{67, 68} and thus is another great initiative to protect “particularly vulnerable” victims: the set was used for the first time already in 1990\textsuperscript{69}, way before the Framework Decision arose.

Moreover, as will be discussed later on, the Belgian Centre of Judicial Assistance has the task to provide especially those who are socially the most vulnerable with the necessary information on judicial assistance (cf. infra).

Among the Belgian instruments adopted \textit{after} the entry into force of the Framework Decision – which thus can be seen as a real implementation of it – the following\textsuperscript{70} are worthy to be mentioned: art. 112 ter Criminal Code, which provides the audio-visual recording of the questioning of other persons than minors and for other offences than the ones mentioned higher up, Joint Circular COL 4/2006 1 March 2006 on domestic violence\textsuperscript{71} and Circular COL 3/2006 1 March 2006 on interfamilial violence and the extra familial mistreatment of children\textsuperscript{72}. Later on will also be talked about two other protection measures for vulnerable victims: the possibility to give testimony anonymously and to be protected additionally because one is threatened as a witness (cf. infra). All these instruments were issued in time, i.e. before 15 February 2008.

\section*{2.2 The right to be heard, to provide evidence and not to be questioned}
\textbf{a) European level}

Further, the European Union wants that the possibility is provided for victims \textit{to be heard} during criminal proceedings (art. 3, part 1 Framework Decision). The hearing of victims indeed is an essential step towards it being awarded compensation and the identification of the perpetrator. Besides, it can’t be too hard for a State to hear the victim \textit{at some point} during the proceedings\textsuperscript{73}, which doesn’t necessarily mean “\textit{in court}” as is confirmed by the Court of Justice in the \textit{Katz} case. In that case the Court decided that the described article (along with


\textsuperscript{68} Nowadays this set consists of two parts: a pre-packed set and some separate objects. The pre-packed set has a unique registration number and contains on one hand tips for the police and doctors and on the other hand information for the victim itself. The separate objects are e.g. hand gloves, disinfection substances and a mouth mask for conducting the on-the-spot inquiry (P. PONSAERS and J. MULKERS, \textit{Politieke rechretchetnicken: een praktijkoverzicht}, Antwerp, Maklu, 2001, 199 – 200).

\textsuperscript{69} And was eventually adopted by Circular COL 10/2005 15 September 2005 (P. PONSAERS and J. MULKERS, \textit{Politieke rechretchetnicken: een praktijkoverzicht}, Antwerp, Maklu, 2001, 199).

\textsuperscript{70} Art. 2 § 2 Commission staff working document.

\textsuperscript{71} Consultable on \url{http://www.caw.be/LinkClick.aspx?fileticket...tabid=290&stats=false}.

\textsuperscript{72} Consultable on \url{http://www.caw.be/LinkClick.aspx?fileticket...tabid=290&stats=false}.

\textsuperscript{73} This is indeed confirmed by the fact that most of the Member States comply with this obligation (art. 3 Commission report).
the higher mentioned art. 2) does not oblige the national courts to hear the victim as a witness\textsuperscript{74}, as the national authorities are left a large measure of discretion on that point\textsuperscript{75}. In the absence of such a possibility it must however be possible for the victim to give testimony in the course of the criminal proceedings, which can be taken into account as evidence\textsuperscript{76}. The reason for this is that the Framework Decision must be interpreted in such a way that fundamental rights, especially art. 6 ECHR (the right to a fair trial), are respected\textsuperscript{77}. In addition victims must be enabled to supply evidence if they wish to do so as well (art. 3, part 1 Framework Decision). This is a good rule, which cannot be insuperable for the Civil Law Member States\textsuperscript{78}. In the Common Law states however the victims are (mostly) no parties to the criminal proceedings, so they have to look for other solutions, which England for instance does by means of non-statutory victim statements\textsuperscript{79}.

Moreover Europe wants that victims are only questioned if that is necessary for the purpose of the criminal proceedings (art. 3, part 2 Framework Decision). This article again gives the Member States a lot of discretionary power, but that does not seem to be a problem here. For instance, Italy found a good solution in limiting the questioning to facts relevant to the charge\textsuperscript{80}.

b) Implementation in the Belgian criminal justice system

The obligation to enable victims to be heard at some point and to supply evidence during the criminal proceedings is well fulfilled in Belgium.

In the first place can be referred to art. 4 Preliminary Title Criminal Code\textsuperscript{81}. This article states that in Belgium the civil claim can be treated together with and by the same judge as the criminal claim. This means that the civil party in any case can address the criminal judge to ask for compensation. In addition the same article requires such a judge to hold the civil interests \textit{ex officio} as long as a civil party can present itself\textsuperscript{82}. So, even if a judge already ruled

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\textsuperscript{74} In this case the proceedings were instituted by the victim itself as a private prosecutor. Even though the conclusion may be extrapolated to other cases.

\textsuperscript{75} Court of Justice 9 October 2008, C-404/07, Katz, par. 46, \url{http://curia.europa.eu}.

\textsuperscript{76} Court of Justice 9 October 2008, C-404/07, Katz, par. 47, \url{http://curia.europa.eu}.

\textsuperscript{77} Court of Justice 16 June 2005, C-105/03, Pupino, par. 59, \url{http://curia.europa.eu}.

\textsuperscript{78} This is indeed confirmed by the fact that the most Member States comply with this obligation (art. 3 Commission report).

\textsuperscript{79} Art. 3 Commission report.

\textsuperscript{80} Art. 3 Commission report.

\textsuperscript{79} Art. 3 Commission staff working document.

\textsuperscript{81} Meaning that the judge ascertains that the offence in question (could have) caused damage to a third party (R. VERSTRAETEN, \textit{Handboek strafvordering}, Antwerp-Apeldoorn, Maklu, 2007, 1007).
on the criminal claim the victim can still apply for compensation with the same judge (up to five years after it heard from (the aggravation) of the damage\textsuperscript{83}). In other words, even in this late stage the victim still has to be heard by the judge and has to be given the opportunity to supply evidence. This regulation provides a very broad victim protection (more extended than required by the EU-rules and the \textit{Katz}-case).

Next to that, the Criminal Code generally enables the prosecutor (art. 28 \textit{quinquies} § 2: “investigation phase”\textsuperscript{84}) and the examining judge (art. 57 § 2: “instruction phase”\textsuperscript{85}), as well as the police forces (in both situations) to question persons of different qualities\textsuperscript{86}. Of course the victim is included in this category of persons. In addition it can come up with evidence here as well.

Further, as mentioned higher up already, a victim can adopt the status of “civil party” (art. 63 until art. 70 Criminal Code\textsuperscript{87}.\textsuperscript{88}) By doing so the victim gets extensive rights (\textit{cf. supra}) among which definitely the rights to be heard and to supply evidence.

Finally, in the contemporary Belgian criminal justice system crime victims dispose of several opportunities to be heard in the framework of the execution of the sentence of the offender (\textit{cf. infra}).

So, Belgium definitely complies with the European rules here and in fact it already did before the Framework Decision was issued: \textit{in casu} again all ‘implementing’ legislation that was submitted to the European Commission existed before already\textsuperscript{89}.

Next, the European Commission is also convinced of the fulfilment by Belgium of the rule that victims may only be questioned insofar this is necessary for the purpose of the criminal proceedings\textsuperscript{90}. This is true, though at this point again the Belgian rules the Commission’s report refers to are regulations dating from the period before the Framework Decision\textsuperscript{91}. So, here again cannot be spoken of a real ‘implementation’.

\textsuperscript{83} Art. 2262 \textit{bis} § 1, part 2 Civil Code.
\textsuperscript{84} Which can be translated as ‘opsporingsonderzoek’ (term taken from the Commission staff working document).
\textsuperscript{85} Which can be translated as “gerechtelijk onderzoek” (term taken from the Commission staff working document).
\textsuperscript{86} Art. 3 Commission staff working document.
\textsuperscript{87} Art. 3 Commission staff working document.
\textsuperscript{88} Again, for an overview of the possibilities to become a civil party in Belgium: see attachment 1.
\textsuperscript{89} At that moment the hearing of victims was already referred to in e.g. art. 9 Recommendation (85)\textsuperscript{11}.
\textsuperscript{90} Art. 3 Commission report.
\textsuperscript{91} The questioning with respect for the dignity of the victim was already referred to in art. 8 Recommendation (85)\textsuperscript{11} before the adoption of the Framework Decision.
The articles 28 § 2 *quinquies*, 57 § 2, 47 *bis* and 70 *bis* Criminal Code discussed higher up indeed all concern interrogations in the framework of a certain investigation: they are definitely connected to the objective of specific proceedings. They are no superfluous questionings at all. Further, art. 190, part 3 Criminal Code⁹² enables the (attorney-at-law of the) civil party to explain / summarise the case at the beginning of the trial in own words. This is another initiative to hear the civil party and to avoid unnecessary interrogations. In addition, it may not be forgotten that even when victims are questioned, the ones who are “particularly vulnerable” can count on specific protection measures (*cf. supra*).

2.3 The right to information

a) European level
Next, the EU wants that crime victims are provided with the *information relevant to the protection of their interests* (art. 4 § 1 Framework Decision), among which information on the *outcome of their complaint* (art. 4 § 2 Framework Decision) and *a notification of the release of a prosecuted or sentenced person who can be dangerous* for them (art. 4.3 Framework Decision).

The content of the relevant information is extensively described in art. 4 Framework Decision (e.g. victim support, how to report offences, (legal) advice, compensation (*cf. infra*), etc.).

In any case, EU-countries shall ensure access to this information *from the first contact with law enforcement agencies* and as far as possible in *a language the victim understands* (art. 4 § 1 Framework Decision).

Without a doubt understandable information for victims is essential for it being assisted in the best possible way. That’s why the quite impressive list of information a victim must have access to isn’t evidence of any exaggeration.

b) Implementation in the Belgian criminal justice system
In Belgium crime victims are provided with the *necessary information* concerning their rights in the first place by the police (e.g. art. 5 Royal Decree 17 September 2001 establishing rules on organisation and functioning of local police⁹³).⁹⁴. This system is acceptable, as is confirmed by the European Commission⁹⁵, though the authorities responsible for giving information can

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⁹² Art. 3 Commission staff working document.
⁹⁴ Art. 4 § 1 Commission staff working document.
⁹⁵ Art. 4 Commission report.
for example be *prosecutors* or *judges* as well, as is the case in some other EU Member States.\(^{96}\)

Further, also art. 3 *bis* Preliminary Title Criminal Code\(^ {97}\) states - as said before already - that victims have to be supplied with the necessary information and that contact with judicial assistants (personnel of the Ministry of Justice) has to be stimulated. The article stresses that victims especially have to be informed about the possibilities to adopt the quality of harmed person or civil party.

Moreover, *the Centre for Judicial Assistance* is tasked with the spread of information about judicial assistance, especially in regard of the socially most vulnerable groups. This information has to be available on the place where the judicial assistance is granted, as well as at registrars, prosecutor’s offices, local authorities, etc. (art. 508/3, 3° Judicial Code\(^ {98}\)).

In general, practically, Belgium – like many other EU Member States\(^ {99}\) – has chosen for a system in which information leaflets are available on the Ministry of Justice's website ([http://www.just.fgov.be](http://www.just.fgov.be))\(^ {100}\). On the other hand it remains silent on the obligation to provide information *as far as possible in a language the victim understands*. This has to be improved: other countries (e.g. The Netherlands) do a better job here and have information available in several languages\(^ {101}\). Remarkable is moreover that all the legislation that was referred to – with exception of the Royal Decree 17 September 2001 – again existed already before the Framework Decision\(^ {102}\).

*Information about the outcome of a case* is available to victims to a satisfactory extent on this moment according to the European Commission\(^ {103}\). This opinion can be followed: as explained extensively before crime victims have the opportunity to adopt the status of “harmed person” (art. 5 *bis* Criminal Code\(^ {104}\) or “civil party” (art. 63 till 70 Criminal Code). In both situations the victim at least is kept informed about the course of the criminal proceedings and the outcome of the case.

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\(^{96}\) Art. 4 Commission report.

\(^{97}\) Art. 4 § 1 Commission staff working document.

\(^{98}\) Art. 4 § 1 Commission staff working document.

\(^{99}\) Art. 4 Commission report.

\(^{100}\) Art. 4 § 1 Commission staff working document.

\(^{101}\) Art. 4 Commission report.

\(^{102}\) General information to the victim was already mentioned in articles 2 and 9 Recommendation (85)11 and in articles 4 and 13 Recommendation (87)21 before the Framework Decision was adopted.

\(^{103}\) Art. 4 Commission report.

\(^{104}\) Art. 4 § 2 Commission staff working document.
Next, the Criminal Code also ensures the victim to be informed when the perpetrator agreed with the prosecutor’s proposal of mediation in penal matters (art. 216 ter; art. 553 § 2).  

Further, art. 182 Criminal Code contains the obligation for the prosecutor to notify all known victims concerning the moment the suspect will appear before court.

In addition the judge always has to motivate why he imposed a certain sentence. Further, he needs to inform the civil party specifically about the sentence execution conditions that can be imposed to protect it (art. 195 Criminal Code). So far the European obligation was respected by ‘old’ (pre-Framework Decision) legislation.

As far as the execution of the sentence imposed upon the perpetrator is concerned there are three ‘new’ (post-Framework Decision) instruments guaranteeing that the victim gets informed and can be heard concerning special conditions imposed in its favour: Law 17 May 2006 on the status of persons punished by a freedom sentence and on victims' rights, Law 21 April 2007 on interning persons suffering from mental health problems (execution of the sentence of an offender who was interned) and Law of 26 April 2007 on the availability of the court for applying sentences.

The first law was implemented well in time. The latter two laws unfortunately have not entered into force yet, which is really necessary. Nevertheless, the body of victim protection under this article can already be considered as being extensive enough.

Further, Belgium specifically had to make sure that crime victims are notified on the release of ‘their’ offenders. As to that the European Commission’s conclusion that this obligation was fulfilled “only partially since [the law] provides only for notification of information

105 Art. 4 § 2 Commission staff working document.
106 Art. 4 § 2 Commission staff working document.
107 Art. 4 § 2 Commission staff working document.
108 Information to the victim on the outcome of the case was already recommended by articles 3, 6 and 9 Recommendation (85) before the adoption of the Framework Decision.
109 Art. 4 § 3 Commission staff working document: mentions only the last two of them.
110 B.S. 15 June 2006. Information to the victim: articles 10 § 2, 13, 14, 17 § 2, 34 § 1, 44 § 2, 46 § 1, 52 § 1, 58 § 1, 61 § 2, 63 § 1, 63 § 4, 68 § 6, 74 § 3, 78 § 5, 89 § 1, 95, 95/5 § 2, 95/7 § 3, 95/14 § 4, 95/16 § 5, 95/23 and 95/30. Victim can be heard for conditions in its favour: articles 35 § 1, 44 § 3, 53, 61 § 4, 63 § 3, 68 § 3, 90 § 1 and 95/6.
111 B.S. 13 July 2007 (not yet in force). Information to the victim: articles 33, 42, 53 § 4, 56 § 1, 58 § 2, 65 § 4, 70 § 5, 81 § 1; 98 § 1. Victim can be heard for conditions in its favour: articles 35, 43, 53 § 5, 56 § 1, 65 § 1, 65 § 3, 65 § 4, 70 § 3 and 99.
112 B.S. 13 July 2007 (not yet in force). Information to the victim: art. 4 adapting articles 95/5 § 1, 95/7 § 3, 95 / 13 § 4, 95 / 16 § 5, 95 / 23 § 1 and 95/30 § 6 Law 17 May 2006. Victim can be heard for conditions in its favour: art. 4 adapting art. 95/5 § 2 Law 17 May 2006.
113 Http://www.juridat.be.
concerning the release of the offender on parole”\textsuperscript{114} can be followed. Indeed, surprisingly, the Belgian legislation does not contain provisions ensuring the victim to be informed about a definitive release of the offender (yet)\textsuperscript{115}, though this is the case for conditional releases from prison (\textit{cf. infra}). The higher mentioned Law 21 April 2007\textsuperscript{116}, which does plan the victim to be informed when the interned perpetrator is released definitively (art. 81 § 1) or when any other possibility for him to leave his institution is granted (art. 56 § 1), has not entered into force yet.

In addition, also Law 17 May 2006\textsuperscript{117} (\textit{cf. supra}, which did enter into force already) falls short in relation to victim information according to a definitive release. It only ensures the victim to be informed of a penitentiary leave of the offender (art. 10 § 1, art. 14 and 95/14 § 4\textsuperscript{118}), an interruption of the execution of the sentence (art. 17 § 2), a release for medical reasons (art. 74 § 3), a release under supervision (art. 95/7 § 3\textsuperscript{119}) or the perpetrator being enabled to leave prison provisionally in another way (limited detention, electronic surveillance, conditional release and provisional release in order to be removed from the territory – see general articles 46 and 58). Further, in regard of a (short) permission to go out (e.g. to attend a funeral) the victim does not have to be informed either under this law, which perhaps is understandable to some extent: it definitely is the least far-reaching way to leave prison. However, an ultimate victim-protection would require the victim to be notified of it too.

The partial compliance with the Framework Decision in this respect is built on two new (post-Framework Decision) instruments. However, as mentioned one of them unfortunately did not make the 15 February 2008 deadline.

2.4 The right to protection

a) European level

Further, the European Union pays special attention to the protection of victims.

To start with, the Union wants crime victims (including their families) to be protected on two major areas: on one hand the victim’s privacy\textsuperscript{120} has to be protected when being threatened (e.g. by the media - art. 8 § 1 Framework Decision). On the other hand the victim’s safety has

\textsuperscript{114} Art. 4 Commission report.
\textsuperscript{115} This is confirmed by the victim declaration that can be found on http://www.just.fgov.be.
\textsuperscript{116} Art. 4 § 3 Commission staff working document.
\textsuperscript{117} Art. 4 § 3 Commission staff working document.
\textsuperscript{118} Article changed by the mentioned Law 26 April 2007 (not yet in force).
\textsuperscript{119} Article changed by the mentioned Law 26 April 2007 (not yet in force).
\textsuperscript{120} Incl. photographic images of the victim and its family (\textit{cf.} art. 8.2 Framework Decision).
to be ensured when there is a risk of reprisals by the offender (art. 8 § 1 Framework Decision).

The EU is however also concerned about the psychological well-being of the victim: firstly, unless it’s required for the criminal proceedings, the Member States have to avoid unnecessary contact between the victim and the offender in the court premises (art. 8 § 3 Framework Decision), among others by the progressive provision of special waiting areas for victims (art. 8 § 3 Framework Decision). Secondly, the States have to protect the most vulnerable victims (cf. supra) from testifying in court and therefore provide another way of testifying (art. 8 § 4 Framework Decision).

As far as this last aspect (along with the higher mentioned articles 2 and 3 of the Framework Decision) is concerned, the Court of Justice pointed out that under age children who claim to have been maltreated by a teacher must be enabled to give their testimony in appropriate circumstances, for instance outside the trial and before it taking place.\textsuperscript{121}

In addition the EU generally wants the creation of conditions preventing secondary victimisation and avoiding placing victims under unnecessary pressure to be supported (art. 15 § 1 Framework Decision).

This extensive protection of crime victims, vulnerable as they are, is very appropriate. However, the right of protection can clash with the higher mentioned right to respect and recognition. In particular it is for instance not clear what has to happen when the victim doesn’t want to be protected by the State, because the offender is a family member and the victim wants his right to family life to be respected.\textsuperscript{122}

b) Implementation in the Belgian criminal justice system

The protection of the victim’s privacy in Belgium in the first place is guaranteed by art. 22 Constitution\textsuperscript{123} containing the fundamental right to privacy. Further, Law 8 December 1992 on the protection of privacy in regard of the processing of personal data\textsuperscript{124} is an important Belgian instrument to protect privacy.

\textsuperscript{121} Court of Justice 16 June 2005, C-105/03, Pupino, par. 50, http://curia.europa.eu.
\textsuperscript{123} Art. 8 § 1 Commission staff working document.
\textsuperscript{124} B.S. 18 March 1993.
Next, the Criminal Code forces the prosecutor as well as attorneys-at-law to protect the victim’s privacy as much as possible (art. 28 quinquies § 3 and § 4; art. 57 § 3 and § 4 - both articles seen before already)\textsuperscript{125}.

Furthermore, art. 190, part 2 Criminal Code\textsuperscript{126}, which was mentioned higher up already too, enables the victim of a sexual offence to have his case treated behind closed doors (= \textit{in camera – proceeding}). This possibility is also provided in a lot of other EU Member States\textsuperscript{127}.

Additionally, Circular COL 7/99 3 May 1999\textsuperscript{128, 129} protects the victim’s privacy by regulating the information judicial authorities and the police can communicate to the press during the preliminary inquiry.

Finally, Ministerial Circular 1 July 2005\textsuperscript{130, 131} makes sure that search notices in the media and on the internet do not reveal too much personal information on the victim.

So, looking at these rules, together with the ones explained below, the privacy of the victim in Belgium is protected quite well.

However, the European rules don’t only ask to protect the victim’s privacy, but also its safety. To show the Belgian respect for this obligation in the first place must be referred to all other articles and instruments in this part. The protection of the victim’s privacy, separate waiting rooms for victims (\textit{cf. infra}) and minimising the contact between victim and offender in general (\textit{cf. infra}) namely all contribute to the victim’s safety.

Next, again must be pointed at the articles 28 quinquies § 3 and § 4 and 57 § 3 and § 4 Criminal Code. These provisions namely enable the prosecutor to refuse to provide a minor victim with a copy of the report of his questioning for safety reasons (the copy could be used against the child).

Moreover, the Belgian youth protection law\textsuperscript{132, 133} and the Coordinated Decree of the Flemish Parliament on special youth assistance\textsuperscript{134} protect minor victims in general.

\textsuperscript{125} Art. 8 § 1 Commission staff working document.
\textsuperscript{126} Art. 8 § 1 Commission staff working document.
\textsuperscript{127} A private hearing with the judge.
\textsuperscript{129} Art. 8 § 1 Commission staff working document.
\textsuperscript{130} Ministerial Circular 1 July 2005 on broadcasting search notices in the media and on the internet, B.S. 1 July 2005 (\textit{cf. e.g. art. 8.2}).
\textsuperscript{131} Art. 8 § 1 Commission staff working document.
\textsuperscript{132} Law 8 April 1965 on youth protection, B.S. 15 April 1965.
\textsuperscript{133} Art. 8 § 1 Commission staff working document.
\textsuperscript{134} B.S. 8 May 1990.
So, the protection of the victim’s safety already is acceptable in Belgium.

Moreover, as far as the entire privacy and safety part is concerned it has to be remarked that Belgium unfortunately did not mention protection for the family of the victim explicitly. Nevertheless can be agreed with the European Commission on the fact that article 8 § 1 Framework Decision can be considered to be ‘transposed’ in Belgium, though again – with exception of the Ministerial Circular of 1 July 2005 – all rules existed already before the Framework Decision.

As far as the protection of images of crime victims is concerned, Belgium even does a better job. Art. 378 bis Penal Code namely states that the publication and spread of texts, images, pictures or sound recordings, by means of books, the press, films, radio, television or in another way, which can reveal the identity of the victim, are forbidden, unless the victim, the prosecutor or examining judge gives his explicit permission for it. This article goes much further than photographic images of the victim only, which is very positive. A same rule can also be found in articles 6 § 2 and 6 § 3 of the already mentioned Circular COL 7/99 3 May 1999, It is clear that this obligation definitely is fulfilled, be it again by means of ‘old’ (pre-Framework Decision) legislation.

The separate waiting rooms are a completely different story: despite the fact that they are (progressively) required by the EU there are no legal provisions (yet) governing this matter in Belgium. A positive point is that in practice some courts yet do have separate waiting areas though. This however is not enough: new rules on this topic have to be adopted as soon as possible. The fact that most other EU-countries (only Germany, Italy and Spain excluded) neither meet this obligation, may be no excuse. In addition, due to the lack of legislation in this field the avoiding of unnecessary contact between victim and offender is not maximally

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135 Art. 8 Commission report.
136 Art. 8 Commission report.
137 Protection of the victim’s privacy was already mentioned in art. 15 Recommendation (85)11 and in art. 8 Recommendation (87)21 before the Framework Decision was adopted. Protection of its safety appeared already in art. 15 Recommendation (85)11 and art. 4 Recommendation (87)21.
138 Art. 8 § 2 Commission staff working document.
140 Art. 8 § 2 Commission staff working document.
141 Art. 8 Commission report.
142 Art. 8 § 3 Commission staff working document.
143 Art. 8 Commission report.
ensured either for the moment, though some other instruments already contribute to this purpose (cf. infra).

Finally, the commitment to allow victims to testify in a manner that respects their vulnerability is fulfilled by the higher discussed articles 92 (and following) and 112 ter Criminal Code\textsuperscript{144} (which regulate the audio-visual recording of the questioning of respectively minors and adults), by articles 86\textit{bis} and 86\textit{quinquies} Criminal Code\textsuperscript{145} (which permit victims to be anonymous witnesses), by articles 102 and 111 Criminal Code\textsuperscript{146} (which allow specific protection measures for threatened witnesses / victims) and by the mentioned possibility for victims of sexual offences to have their trial behind closed doors (art. 190, part 2 Criminal Code)\textsuperscript{147}. So, this obligation is also fulfilled. The first three groups of articles in addition also contribute to the avoiding of unnecessary contact between victim and offender. The articles on audio-visual recordings of interrogations and on the treatment of the case behind closed doors existed already before the Framework Decision though. The ones about anonymous and threatened witnesses were adopted after its entry into force, and well in time.

As far as the specific obligation to prevent secondary victimisation is concerned Belgium did not submit any transposing provisions to the European Commission\textsuperscript{148}. Nevertheless, it is not right to state that Belgium didn’t perform anything in this field. It on the contrary could have sent in all kinds of regulations concerning its law enforcement agencies (e.g. police, prosecutor, examining judge, judge), but probably simply neglected this.

In regard of the commitment to avoid placing the victim under unnecessary pressure Belgium only referred to the already mentioned Ministerial Circular 4 May 2007\textsuperscript{149}, \textsuperscript{150}, which provides police officers with subsidies to arrange facilities for victims of physical or sexual violence (in time implementation)\textsuperscript{151}. It could however have made reference to rules on all its victim reception agencies (e.g. prosecutor’s office, judicial / social assistants) as the country definitely isn’t evidence of serious shortcomings in regard of this issue.

\begin{flushleft}
\textsuperscript{144} Most of the other EU Member States also make use of some kind of audio-visual link-ups (articles 8 and 15 Commission report).
\textsuperscript{145} Art. 8 § 4 Commission staff working document.
\textsuperscript{146} Art. 8 § 4 Commission staff working document.
\textsuperscript{147} Art. 8 § 4 Commission staff working document.
\textsuperscript{148} Art. 15 § 1 Commission staff working document; Art. 15 Commission report.
\textsuperscript{149} Ministerial Circular 4 May 2007 GPI 58 on police assistance to victims in the integrated, two level police service, B.S. 5 June 2007.
\textsuperscript{150} Art. 15 § 1 Commission staff working document.
\textsuperscript{151} Art. 15 Commission report.
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2.5 The right to compensation

The award of compensation¹⁵² is probably the most important target a victim or his family wants to achieve. That’s why quite a large part of underlying Dissertation is dedicated to this topic.

Europe is also aware of the importance of victim compensation. This will be clear in the following part, but is also confirmed by the fact that the Council of Europe already in 1985 recommended that a decision to prosecute (art. 5 Recommendation (85)11) or to punish an offender (art. 12 Recommendation (85)11) should not be taken without taking into consideration the compensation of the victim and the efforts made thereto by the offender.

This reasoning can definitely still stand today. In addition these recommendations are taken into account in the Belgian practice (e.g. dismissal of the case by the prosecutor or more lenient punishment if the victim was compensated already by the offender, *cf.* infra).

Further, Europe wants victims in any case to be enabled to get information about (*cf.* supra) and prefers them to be assisted with (art 7 § 2 Recommendation (2006)8) obtaining compensation. The Belgian legislation on this matter was discussed higher up already (police, judicial assistants, etc.).

2.5.1 Who has the right to compensation?

a) European level

As became clear already the European level tends to¹⁵³ reserve the right to compensation for the victims of intentional violent crimes and their dependants (art. 1 and 12 Directive; art. 2 § 1a European Convention; art. 8 § 1 Recommendation 2006(8)). Important to remark moreover is that (State) compensation is not restricted to nationals of the State on whose territory the crime took place (art. 3a European Convention), but shall be paid to permanent residents – who are nationals of a Council of Europe Member State – as well (art. 3b European Convention)¹⁵⁴.

b) Implementation in the Belgian criminal justice system

In Belgium the possibility of compensation in principle indeed is limited to “individuals who have suffered physical or mental damage caused by a deliberate act of violence” (art. 31, 1° of the already discussed Law 1 August 1985 on fiscal and other measures¹⁵⁵, ¹⁵⁶ (hereafter:

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¹⁵² In 1985 the Council of Europe recommended compensation either to be a penal sanction, a substitute for a penal sanction or an addition to a penal sanction (art. 11 Recommendation (85)11). In Belgium was opted for the last option.
¹⁵³ *Cf.* the lack of a narrowed victim concept in art. 9 Framework Decision, unlike the other European instruments (*cf.* supra).
¹⁵⁴ *Cf.* art. 12 TEC.
¹⁵⁵ *B.S.* 6 August 1985.
Fiscal Law)\textsuperscript{157}, which is a good transposition of the higher described European rules. Less ideal is however the fact that the commission on financial assistance (art. 30 Fiscal Law) is free in its interpretation of the notion “deliberate act of violence”\textsuperscript{158}.

In addition, the same law also confirms the fact that compensation is not limited to people of the Belgian nationality: the habitual residence in Belgium is the determining factor (see e.g. art. 40 and art. 40 bis Fiscal Law)\textsuperscript{159}. This can be called satisfactory.

Moreover it has to be repeated that in Belgium - and if the offender is known (art. 31 bis, 3° Fiscal Law) - only a victim with the status of civil party can be awarded compensation\textsuperscript{160}. This however does not necessarily need to be understood negatively or discriminatory: the European Union asks the countries to enable crime victims to get compensation if they ask for it (not to provide every possible victim automatically with compensation – cf. infra), and that’s indeed what Belgium does. Moreover, as indicated higher up already, the claim for compensation can even take place after a judicial decision on the criminal claim (art. 4 Preliminary Title Criminal Code).

If the offender is unknown, compensation can also be awarded to an applicant, who adopted the quality of harmed person or filed a complaint (art. 31 bis, 3° Fiscal Law).

Content-wise the victim always just has to prove that it suffered damage caused by a violation of the law by the offender. It has to indicate the losses it sustained in detail\textsuperscript{161}.

Finally, also the obligation to enable close family (e.g. descendants) of the deceased victim to get compensation is well fulfilled in Belgium (art. 31, 2°- 4° Fiscal Law)\textsuperscript{162}.

2.5.2 Who has to award the compensation?

a) European level

In the first place the European Union wants that the victim can claim compensation by the offender during the criminal proceedings and get a decision about this matter within reasonable time limits (art. 9 § 1 Framework Decision)\textsuperscript{163}. The Union also wants measures to be taken to encourage offenders to compensate their victims (art. 9 § 2 Framework Decision). As to that the

\textsuperscript{156} So, Belgium did not need the repeat of this obligation in the 2004 Directive and the 2006 recommendation.
\textsuperscript{157} Question 2.2 EJN contribution.
\textsuperscript{158} Question 2.2 EJN contribution.
\textsuperscript{159} Question 2.5 EJN contribution.
\textsuperscript{160} Question 1.1 EJN contribution.
\textsuperscript{161} Question 1.4 EJN contribution.
\textsuperscript{162} Questions 2.3 and 2.4 EJN contribution.
Council of Europe recommended in 1985 already a system in which the criminal courts can order an offender to compensate his victim (art. 10 Recommendation (85)11).

If however the victim does not get full compensation of the offender (or any other source, e.g. insurance), the State\textsuperscript{164} – being a Member State of the Council of Europe – has to contribute in the compensation (art. 2 § 1 European Convention), even if the offender cannot be prosecuted or punished (art. 2 § 2 European Convention). This compensation has to be awarded - preferably without any delay and at a fair and appropriate level (art. 8 § 4 Recommendation (2006)8) - by the State on whose territory the crime has taken place (art. 3 European Convention).

b) Implementation in the Belgian criminal justice system

Belgium definitely meets the obligation to enable crime victims to be compensated by the offender by allowing them to become a civil party in the criminal proceedings (cf. supra).

The Belgian criminal justice system further does not contain a special provision ensuring that the judge decides upon the compensation within a reasonable time limit. In practice this make no difference since art. 6 ECHR requires the Belgian judges to do so in any case, but in principle the legislator should have confirmed this rule in the Belgian law.

It may be clear that Belgium applied these rules already in the 1980s – after the European Convention was issued – and so complied already with the Framework Decision in advance.

Next, as explained already, the criminal judge can force the offender to pay back the victim’s damage if a civil claim is made (art. 4 Preliminary Title Criminal Code). With this rule Belgium clearly follows the higher mentioned recommendation of the Council of Europe on this point. In addition, offenders are also encouraged to pay their victim by the fact that a(n early) compensation of the victim can lead to a dismissal of the case by the prosecutor or can be taken into account as extenuating circumstance\textsuperscript{165}, which in its turn can lead to a more lenient sentence being imposed (art. 79 – 85 Penal Code; Law 4 October 1867 on extenuating circumstances (more than a century before the Framework Decision was adopted\textsuperscript{166})). In any case, in Belgium the European reasoning is followed that the victim first needs to address the

\textsuperscript{163} The implementation of this article is not very difficult for countries with civil party proceedings. Common Law countries however don’t have this. Ireland for instance works with compensation schemes for certain categories of victims (articles 8, 9 and 15 Commission report).

\textsuperscript{164} Or at least the responsible authority within that State.

\textsuperscript{165} C. VAN DEN WYNGAERT, Strafrecht, strafprocesrecht en internationaal strafrecht in hoofdlijnen, Antwerp, Maklu, 2006, 248.

\textsuperscript{166} B.S. 5 October 1867.
offender for compensation (art. 31 bis, 4° Fiscal Law) before turning to the State (art. 31 bis, 5° Fiscal Law)\textsuperscript{167}. In other words, if the offender is unknown (art. 31 bis, 3° Fiscal Law)\textsuperscript{168} or if he cannot refund the victim (completely) the latter can ask the Belgian State – more particularly the commission of “the special fund for financial aid for victims of deliberate acts of violence and occasional rescuers” (chapter III, section II Fiscal Law)\textsuperscript{169} – for compensation. This fund gets his money from a fixed contribution (currently € 25) perpetrators of a violent offence, who are condemned to a ‘correctional’ or ‘criminal’ punishment, have to pay (art. 29 Fiscal Law). This compensation moreover requires the offence to have taken place on Belgian soil (art. 31 bis 1° Fiscal Law). In general these rules definitely are a very good transposition of the European Convention.

Finally, the time frame was talked about higher up already (cf. supra). The content and the level of the compensation will be discussed lower.

2.5.3 Why a system of (subsidiary) State compensation?
Several arguments for the State being involved in victim compensation can be put forward\textsuperscript{170}. One theory says that this is the case because the State failed to prevent the concerning crime by an effective criminal policy.
A second one states that the State is responsible for satisfying the victim because it can’t do so itself: personal vengeance is forbidden.
Further, a third theory bases the system of State compensation on social solidarity and equity: some citizens are more vulnerable than others and have to be helped by the entire society.
Finally, the last theory suggests that State compensation reduces the victim’s feelings of injustice so that a less repressive, but more efficient criminal policy can be applied.
The four mentioned theories can best be combined when looking for an acceptable reason for (subsidiary) State compensation. Anyway, this system needs recommendation because in many cases the offender cannot be identified or does not have the means to satisfy a judgement.

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\textsuperscript{167} Question 2.9 EJN contribution.
\textsuperscript{168} Question 2.10 EJN contribution.
\textsuperscript{169} Question 2.1 EJN contribution.
2.5.4 Compensation schemes

a) European level

Next, all European States have to provide schemes on (State) compensation, which ensure fair and appropriate compensation to victims of intentional violent crimes\textsuperscript{171} committed on their territory (European Convention; art. 12 § 2 Directive) or abroad (art. 12 § 1 Directive, cf. infra).

Such a compensation scheme may indicate a specific period in which the application for State compensation has to be made (art. 6 European Convention) and may also contain a minimum amount below which and a maximum amount above which a victim won’t be paid (art. 5 European Convention).

b) Implementation in the Belgian criminal justice system

The Belgian compensation scheme (embedded in the Fiscal Law)\textsuperscript{172} provides the amount of assistance to be equitably fixed by a commission chamber consisting of three members, whose chairman is a magistrate (articles 30 and 33 § 1 Fiscal Law)\textsuperscript{173}. The Commission can even decide to grant it when there was no definitive decision on the civil interests (art. 33 bis Fiscal Law)\textsuperscript{174}. There are three types of compensation. Firstly, emergency assistance can be granted already before the judicial procedure is over, when any delay would entail a serious disadvantage for the applicant’s financial situation (art. 36 Fiscal Law)\textsuperscript{175}. Secondly, there is the (main) financial assistance which is extensively discussed in this whole part (art. 31 Law 1 August 1985). Finally, supplementary assistance can be attributed when a new disadvantage appears after the main assistance has been awarded (art. 37 Fiscal Law).

In addition the Financial Law makes use of both possibilities the European level provides. The time limit for asking compensation has been put on three years, normally starting from the first day on which a decision condemning the offender cannot be appealed anymore (art. 31 bis, 3° and 4° Fiscal Law)\textsuperscript{176}. Further, the minimum compensation a crime victim can get from the State lies at € 500 for the three types of assistance (articles 33 § 2, 36 and 37 Fiscal Law). The maximum is € 15000 for the emergency help (art. 36 Fiscal Law) and € 62000 for the

\textsuperscript{171} Cf. supra: narrowed concept ‘victim’.
\textsuperscript{173} Question 2.13 EJN contribution.
\textsuperscript{174} Question 2.8 EJN contribution.
\textsuperscript{175} Question 2.8 EJN contribution.
\textsuperscript{176} Question 2.17 EJN contribution.
other two forms of assistance (articles 33 § 2 and 37 Fiscal Law)\textsuperscript{177}. These rules again unquestionably correspond with the European Convention.

2.5.5 Reduced or refused State compensation

a) European level

State compensation doesn’t stand absolutely. It may be reduced or refused under certain conditions, namely the applicant’s financial situation (art. 7 European Convention), his conduct in relation to the suffered injury or death, his behaviour before, during, or after the crime (art. 8 § 1 European Convention)\textsuperscript{178}, the sense of justice, the public policy (art. 8 § 3 European Convention)\textsuperscript{179} or finally, the applicant’s involvement in organised crime (art. 8 § 2 European Convention). These refusal grounds are very right, except for the last one, which is useless: a victim who commits crimes in an ‘unorganised’ way can be refused compensation too (cf. footnote 179).

In addition, State compensation can also be refused or reduced if the applicant already received (partial) assistance from any other source, such as social security or a private insurance (art. 9 European Convention).

b) Implementation in the Belgian criminal justice system

In Belgium gratefully use is being made of the possibilities provided by the European level. The financial commission can indeed refuse or reduce State compensation on the basis of the behaviour of the applicant (or the victim) contributing to the damage, the relationship between the applicant (or the victim) and the offender (art. 33 § 1 Law 1 August 1985)\textsuperscript{180}, and the financial situation of the applicant (art. 34 bis Fiscal Law). Next to these explicitly mentioned refusal grounds the commission can moreover come up with other ones – mentioned in the higher displayed European rules – as well.

Next, State compensation in Belgium can obviously also be refused or reduced if the applicant already got (partial) assistance from another source (art. 31 bis § 1, 5° Fiscal Law)\textsuperscript{181}. These regulations clearly comply with the requirements of the European level.

\textsuperscript{177} Question 2.14 EJN contribution.
\textsuperscript{178} E.g. the victim behaving exceptionally provocatively or aggressively (Art. 8 § 1 Explanatory Report on the European Convention on the Compensation of Victims of Violent Crimes, 1996, consultable on http://conventions.coe.int).
\textsuperscript{179} E.g. a known criminal who was the victim of a crime of violence in his turn could be refused compensation, even if the crime was not related to his own criminal behaviour (Art. 8 § 3 Explanatory Report on the European Convention on the Compensation of Victims of Violent Crimes, 1996, consultable on http://conventions.coe.int).
\textsuperscript{180} Question 2.16 EJN contribution.
\textsuperscript{181} Question 2.15 EJN contribution.
2.5.6 Content of the compensation

a) European level

The awarded (State) compensation has to cover at least, according to the concrete circumstances of the case: a loss of earnings, medical expenses, and, when the direct victim died, funeral costs and maintenance costs of its dependants (art. 4 European Convention). As far as the medical expenses is concerned, the Council of Europe recommends in particular a compensation for treatment and rehabilitation as a consequence of physical and psychological injuries (art. 8 § 6 Recommendation (2006)8). This however adds few to the binding rule.

The Council of Europe also recommends to think about compensation for pain and suffering in itself (art. 8 § 7 Recommendation (2006)8). This is an admirable initiative, but very difficult to apply in practice: how to estimate the amount of pain or suffering?

b) Implementation in the Belgian criminal justice system

In Belgium the compensation for the victim itself indeed contains the loss or reduction of earnings resulting from temporary or permanent inability to work (art. 32 § 1, 4° Law 1 August 1985), medical and hospitalisation expenses, including prosthesis expenses (art. 32 § 1, 2° Law 1 August 1985). Next to that, the victim can however claim compensation for suffered mental damage (art. 32 § 1, 1° Fiscal Law), temporary or permanent disability (art. 32 § 1, 3° Fiscal Law), cosmetic damage (art. 32 § 1, 5° Fiscal Law), material expenses of up to € 1250 (art. 32 § 1, 7° Fiscal Law) and damage arising from the loss of one or more years of schooling (art. 32 § 1, 8° Fiscal Law)\(^{182}\). So, Belgium goes much further here than required by the European Convention.

Further, as far as the descendants (art. 31, 2° Fiscal Law) of the victim is concerned indeed compensation of the funeral costs of up to € 2000 (art. 32 § 2, 4° Fiscal Law) and maintenance costs for persons who were dependent on the deceased victim (art. 32 § 2, 3° Fiscal Law) can be claimed. In addition descendants can be compensated for mental damage (art. 32 § 2, 1° Fiscal Law), medical and hospitalisation expenses (art. 32 § 2, 2° Fiscal Law) and damage arising from the loss of one or more years of schooling (art. 32 § 2, 6° Fiscal Law) as well\(^{183}\). This means that Belgium in this respect also offers more protection than necessary. As a consequence the European Convention is very well transposed as regards the content of the compensation.

\(^{182}\) Question 2.12 EJN contribution.

\(^{183}\) Question 2.12 EJN contribution.
Belgium even already complied with the higher mentioned 2006 recommendations of the Council of Europe to provide compensation for both *physical* and *mental damage* in 1985.

Finally, the guidelines concerning *pain* and *suffering* seem impossible to be applied in practice. So, it’s not illogical that they haven’t been copied into Belgian law.

2.5.7 Compensation for victims who are resident in another Member State

a) European level

From the beginning of the previous century until now, our world has been the subject of an ever-growing *globalisation* compressing time and space. Travelling for both leisure and professional activities therefore was very much facilitated. So, because a growing number of people regularly stays in another Member State than the one of their habitual residence, European rules about *cross-border victimisation* became necessary. As to that it is important to remark that when *the community law guarantees* to a person *the freedom to move* (temporarily or not) to another Member State *the protection from harm* in that State, on the same basis as nationals (art. 12 TEC), is a *corollary* of that freedom.

With regard to *cross-border compensation* (*cf. infra* for other rules) this means that a victim in one country, habitually residing in another – irrespective of its nationality – keeps its right to compensation. However a victim doesn’t need to go the authorities of the Member State where he is victimised. Each EU Member State nowadays has to make sure that its *habitual residents*, who are violently victimised in another Member State, have *the right to submit their application for compensation in their home country* (art. 1 Directive). In this case the compensation however has to be paid by the responsible authority (art. 3 Directive) of the *Member State on whose territory the crime was committed* (art. 2 Directive).

Similar to the compensation in a national context (*cf. supra*) the compensation in cross-border situations must operate on the basis of the Member States’ *schemes on compensation* (art. 12 Directive). This is a very victim-friendly system.

b) Implementation in the Belgian criminal justice system

As required, the Belgian compensation scheme also provides a regulation for *cross-border* victimisation\(^\text{187}\). A person habitually residing in Belgium, who was victimised abroad, indeed has the possibility to *ask for assistance in his own country*. More in particular *the financial commission* can *assist* such a person in the request for compensation from the competent authority *in the EU Member State where the crime took place* (art. 40 Fiscal Law, introduced on 13 January 2006).

By providing this possibility Belgium also fulfils her European obligations in this respect. The *deadline* for implementation (1 January 2006\(^\text{188}\)) was however exceeded with a few days.

2.5.8 Consequences of State compensation

a) European level

Finally, after compensation has been paid, *the State may be subrogated to the rights of the person compensated* for the amount of the compensation awarded (art. 10 European Convention). This means that the concerning State can *reclaim* the spent amount of money from the offender or an insurance company.

In addition, *to avoid double compensation* the State in question can *reclaim (a part of) the awarded amount of money* as soon as the applicant receives (partial) compensation from the offender or any other source (art. 9 European Convention).

b) Implementation in the Belgian criminal justice system

In Belgium these rule have been transposed correctly. As soon as State assistance is awarded the State legally *subrogates* to the rights of the victim against the offender or responsible party for the amount of money paid (art. 39 § 1 Fiscal Law).

Secondly, the State can also completely or partially *reclaim* the granted amount of compensation if the applicant got a redress from another source (art. 39 § 2 Fiscal Law).

2.5.9 Other forms of compensation

a) European level

Finally, two other forms of compensation *sensu lato* are regulated on a European level.

Firstly, the European Union insists on the fact that *recoverable property* of crime victims, which was *seized* during the criminal proceedings but is not urgently required for its purpose,
is returned to them without delay (art. 9 § 3 Framework Decision). This is a rule the fulfilment of which is difficult to check. “Without delay” is an indirect and flexible concept.

Secondly, the EU forces its Member States to ensure a possibility of reimbursement of crime victims (with the status of witness or party) as regards the expenses they made to participate in criminal proceedings (art. 7 Framework Decision). The reasoning behind this article is quite right: the victim was caused enough harm already by the offence, so that all costs concerning criminal proceedings following that offence should be refunded.

b) Implementation in the Belgian criminal justice system

In Belgium both “other forms of compensation” are respected well.

Firstly, the Penal Code provides that property (or its equivalent) of the civil party, that was confiscated according to a judicial decision, has to be returned to its owner (art. 43 bis, part 3)\(^{189}\). Further, everyone who suffered damage in regard of his goods consequent upon a measure of investigation, can ask the prosecutor (art. 28 sexies Criminal Code) or the examining judge (art. 61 quater Criminal Code) to cancel this measure\(^{190}\).

Secondly, the reimbursement of crime victims’ (and their descendants’) legal expenses\(^{191}\) functions in two steps, similar to what’s the case for compensation in general (\textit{cf. supra}).

In the first place they have to be reimbursed by the condemned offender(s) (articles 162 part 1, 194, 211 and 350 Criminal Code)\(^{192}\). Lawyers’ expenses are included in these costs (articles 162 \textit{bis} part 1, 194, 211 and 351 Criminal Code), like in most EU Member States\(^{193}\).

If the offender however hasn’t got the appropriate means to refund the victim (completely), the latter (and its descendants) can ask the State to pay its legal expenses (partially) (articles 32 § 1, 6° and 32 § 2, 5° Fiscal Law, limited to € 4000)\(^{194}\), after which the State is subrogated to the rights of the victim against the offender (\textit{cf. supra}).

On the other hand, if the victim wrongfully started up criminal proceedings against someone, it can be obliged to bear the legal expenses – lawyers’ expenses included (articles 128, part 2,
162 *bis*, 194 and 211 Criminal Code) – in its turn (articles 162, 194 and 211 Criminal Code)\(^{195, 196}\).

Further, some victims even don’t need to claim a refund of their lawyers’ expenses as they can get legal assistance of an attorney-at-law (partially) for free (book III *bis* Judicial Code)\(^{197}\).

Finally, victims who served as *witnesses* can claim compensation for this too (articles 36 till 39 Royal Decree 27 April 2007\(^{198, 199}\)).

In addition, all these instruments – with exception of the rules about lawyers’ expenses – existed already before the Framework Decision was issued. So, Belgium was well in time again in this field.

### 2.7 Victimisation in another Member State

#### a) European level

Next to the higher displayed rules concerning cross-border compensation, there are some more *border crossing victim-related regulations*, which are all based on the higher displayed *Cowan* decision of the Court of Justice.

The EU wants suitable measures to be taken, especially in relation to the proceedings, to *minimise the difficulties* in situations in which someone is *resident in another Member State* than the one where the offence occurred. More in particular the competent national authorities among others have to *enable as far as possible the use of video and telephone conferencing* as laid down in articles 10 and 11 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 (art. 11 § 1 Framework Decision). As one could expect however not *all* EU Member States (e.g. Italy, Ireland, Luxembourg) are a party to this Convention\(^{200}\). As a consequence they will interpret “as far possible” immediately as ‘impossible’. On the other hand *the vast majority* of the Member States *is* a party to the Convention, so this formulation of art. 11 can be maintained. Yet, a considerably large number of EU Member States seems to have something to hide in this field.

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\(^{196}\) In this case the consigned amount of money, if the proceedings were started up by a complaint before the examining judge (*cf. supra*), are kept.

\(^{197}\) Art. 9 § 3 Commission staff working document.


\(^{199}\) Art. 9 Commission staff working document.

\(^{200}\) Art. 11 Commission report.
as they did not submit any implementing provisions to the European Commission or merely describe their system without referring to legislative sources\textsuperscript{201}.

b) Implementation in the Belgian criminal justice system

Belgium however did a good job in this area. The MLA Convention was approved by Law on 11 May 2005\textsuperscript{202}. Further, the Criminal Code enables the prosecutor and the examining judge to hear witnesses (e.g. victims), experts and suspects residing abroad by means of a video (art. 112) – or teleconference (art. 112 bis) if they assent to this\textsuperscript{203}. This implementation moreover took place well in time.

3. Conclusions and look at the future

In this Dissertation was shown that victim protection has become \textit{one of the most important European concerns}. This attention resulted in a \textit{nice European body} of some binding instruments, supplemented by some non-binding ones. Nevertheless some improvements can be made to them, as was demonstrated (e.g. inconsistency in regard of the narrowed victim definition for the award of compensation). A more general question moreover is whether \textit{excluding legal persons} completely from the field of application of the mentioned European standards was a good thing to do. Legal persons indeed cannot suffer morally and therefore for instance don’t need to be helped psychologically, but they on the other hand definitely need to have the right to recognition, privacy protection, information, compensation, etc. too.

In the last decade the EU took over the task to issue binding instruments in the field of crime victims from the Council of Europe. Nevertheless, ensuring an \textit{effective application} of the binding European rules was difficult for both organisations. The European Convention was only ratified by 24 out of 47 Council of Europe Members (17 EU Members), while 7 of them (3 EU Members) signed the Convention without having ratified it so far\textsuperscript{204}. Further, the implementation of the Framework Decision neither can be called satisfactory until now, blocking the pursued approximation (\textit{cf. supra})\textsuperscript{205}.

So, for the moment only the Directive is quite well applied in practice as all EU Member States, except for Greece\textsuperscript{206}, more or less implemented it in a satisfactory way\textsuperscript{207}.

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\textsuperscript{201} Art. 11 Commission report.
\textsuperscript{203} Art. 11 § 1 Commission staff working document.
\textsuperscript{204} \url{http://conventions.coe.int}.
\textsuperscript{205} Conclusion Commission report.
Particularly the lack of effective application of the first two instruments needs to be addressed (which is planned, cf. infra). Furthermore, if necessary new instruments have to be adopted. This Dissertation however particularly focused on the implementation of these European victim-related rules in Belgium. It is important to remark that when studying this implementation the (final) report and staff working document of the European Commission cannot be regarded as impeccable and clear sources of information: they sometimes refer to non-existing articles or the wrong Code, they sometimes mention instruments on irrelevant places and they often repeat legislation unnecessarily.

A schematic overview of this Dissertation’s major findings on the investigated implementation can be found in the table in attachment 3. In general the contemporary Belgian legislation complies very well with the European victim-related instruments. The implementation thus can be called satisfactory. Especially in regard of the Framework Decision, Belgium mostly even could refer to legislation that already existed before. In other words, the Belgian criminal justice system in many ways was victim-friendly already before it was obligated to be so by the European level. That’s why this Dissertation bears the subtitle “A piece of Belgian anticipation”. It would therefore not be surprising if the Belgian legislation at some points served as a model for the adoption of the Framework Decision. Further, this tendency of anticipation not being ascertained as regards the European Convention doesn’t have to surprise as this is a much older instrument. Moreover, as underlying Dissertation revealed, the ‘real’ implementing instruments were mostly adopted in time and the Belgian legislator sometimes even went further than he had to, confirming the positive image.

However, some downsides were discovered as well. The most significant ones appeared to be the lack of a general crime victim definition in the Criminal Code, the lack of legislation about notifying the victim on a definitive release of the offender, no law existing on separate waiting rooms for crime victims and the absence of regulations concerning the provision of information in a language crime victims understand. Some less far-reaching shortcomings discovered were crime victims not being notified of the offender’s permission to leave prison for a short time, the laws of 21 and 26 April 2007 not having entered into force yet, the victim’s family not explicitly being included in the Belgian safety and privacy protecting...

\[207 \text{ Although four of them were late (Report from the Commission 20 April 2009 [COM(2009)170 final] on the application of Directive 2004/80/EC, consultable on http://ec.europa.eu).} \]
rules, and the financial commission being free in its interpretation of “deliberate acts of violence”, for which compensation can be awarded.

Moreover also became clear that the ECHR can correct ‘oblivions’ of a national legislator (no Belgian provision on reasonable time limits for the award of compensation, in practice corrected by art. 6 ECHR).

Nevertheless, in general Belgium definitely is not the reason the pursued approximation in this field cannot find its way through. Though, this doesn’t mean that the country now can rest on its laurels. Further EU action will namely require Belgium to constantly modify its system.

As to that the EU recently has shown itself willing to improve the position of crime victims. The EU’s Justice Ministers namely outlined a common strategy on the support of crime victims. This strategy has to improve the current system and the co-operation between the Member States and the Commission. Further, because of the bad practical application the European Commission will propose to amend the Framework Decision in the near future. Next, despite a good overall implementation of the Directive the European Commission thinks its procedure to apply for compensation in cross-border situations is too complex. Therefore this instrument needs some modifications too.

In addition, the position of crime victims is taken into account in the EU Stockholm programme (2010 – 2014). This programme plans a better protection of vulnerable groups such as crime victims. In particular it strives at an extension of the principle of mutual recognition (“it could extend to all types of judgements and decisions of a judicial nature”), so that hopefully one day all kinds of victim protection measures can apply from one Member State to the next. In addition it intends to improve e-justice, for instance videoconferencing.

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209 Council of the European Union 1 July 2009, 11647/09, Draft conclusions concerning a strategy for the application of victim rights and an improved victim support within the EU, 2, consultable on http://www.europa-nu.nl.

210 A proposal for an amendment and update of the Framework Decision in the field of mediation was already made by the European Forum for Restorative Justice, see: http://www.euforumrj.org.

211 Council of the European Union 1 July 2009, 11647/09, Draft conclusions concerning a strategy for the application of victim rights and an improved victim support within the EU, 2, consultable on http://www.europa-nu.nl.

212 2.3.3 and 2.3.4 Council of the European Union 2 December 2009, 17024/09, The Stockholm Programme – An open and secure Europe serving the citizen, 16-17, consultable on http://www.se2009.eu.


Moreover it also plans to improve the implementation of the existing instruments (cf. supra) and to make better the legislation on the protection of victims in general\textsuperscript{215}.

Finally, article 82(2)c of the new Treaty on the Functioning of the EU (TFEU), which replaced art. 31 TEU, explicitly mentions that the Council and the European Parliament should ‘adopt’ (= improve the existing) minimum standards on the rights of crime victims in the framework of judicial co-operation (cf. supra: European Council in Tampere).

\textsuperscript{215} 2.3.4 Council of the European Union 2 December 2009, 17024/09, The Stockholm Programme – An open and secure Europe serving the citizen, 17, consultable on \url{http://www.se2009.eu}. 
Attachment 1: Scheme on adopting the quality of civil party in Belgium

1. PRELIMINARY INQUIRY

- Investigation phase (art. 28 bis a.f. CC*)

   - Impossible to adopt quality of civil party

   - Before examining judge

      - Adopt quality of civil party by filing a civil action (art. 63 CC)

      - Adopt quality of civil party by joining the claim of the prosecutor (art. 67 CC)

- Instruction phase (art. 55 a.f. CC)

   - Adopt quality of civil party by joining the prosecutor’s claim before court of inquiry (art. 67 CC)

2. TRIAL PHASE

- First instance

   - Police Court (art. 137 a.f. CC)

   - Correctional Court (art. 179 a.f. CC)

   - Court of Assises (art. 291 a.f. CC)

   - Court of Appeal (art. 215 CC, 479 CC, 103 Constitution or 125 Constitution)

- Appeal

   - Impossible to adopt quality of civil party

   - Adopt quality of civil party by joining the claim of the prosecutor (art. 67 CC)

   - Adopt quality of civil party by direct summons (art. 145 CC)

   - Adopt quality of civil party by joining the claim of the prosecutor (art. 67 CC)

   - Adopt quality of civil party by direct summons (art. 182 CC)

   - Adopt quality of civil party by joining the claim of the prosecutor (art. 67 CC)

   - Adopt quality of civil party by direct summons

* Criminal Code
Attachment 2: Graph on overall victimisation in Europe (in %)

Source: ICVS
### Attachment 3: Schematic overview summarising this Dissertation

<table>
<thead>
<tr>
<th>European obligation</th>
<th>Implementation in the Belgian criminal justice system</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Old legislation</td>
</tr>
<tr>
<td>General definition of a crime victim</td>
<td>No</td>
</tr>
<tr>
<td>Right to respect and recognition</td>
<td></td>
</tr>
<tr>
<td>Real and appropriate role</td>
<td>Yes</td>
</tr>
<tr>
<td>Respect and recognition</td>
<td>Yes</td>
</tr>
<tr>
<td>Specific treatment for particularly vulnerable victims</td>
<td>Yes</td>
</tr>
<tr>
<td>Right to be heard, to provide evidence and not to be questioned</td>
<td></td>
</tr>
<tr>
<td>Right to be heard and to provide evidence</td>
<td>Yes</td>
</tr>
<tr>
<td>Right not to be questioned</td>
<td>Yes</td>
</tr>
<tr>
<td>Right to receive information</td>
<td></td>
</tr>
<tr>
<td>Right to necessary information from first contact with law enforcement agencies</td>
<td>Yes</td>
</tr>
<tr>
<td>Information in an understandable language</td>
<td>No</td>
</tr>
<tr>
<td>Information about outcome complaint</td>
<td>Yes</td>
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<tr>
<td>Notification on release</td>
<td>No</td>
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<tr>
<td>Right to protection</td>
<td>Yes</td>
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<tr>
<td>-------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Privacy</td>
<td>Yes</td>
</tr>
<tr>
<td>Safety</td>
<td>Yes</td>
</tr>
<tr>
<td>Protection of images</td>
<td>Yes</td>
</tr>
<tr>
<td>Separate waiting rooms</td>
<td>No</td>
</tr>
<tr>
<td>Avoiding unnecessary contact</td>
<td>Yes</td>
</tr>
<tr>
<td>Allowing testimony respecting vulnerability</td>
<td>Yes</td>
</tr>
<tr>
<td>Right to compensation</td>
<td></td>
</tr>
<tr>
<td>Who has the right? (narrowed definition, not restricted to nationals, family included)</td>
<td>No</td>
</tr>
<tr>
<td>Offender</td>
<td>Yes</td>
</tr>
<tr>
<td>Reasonable time limit</td>
<td>No</td>
</tr>
<tr>
<td>Encouraging offender</td>
<td>Yes</td>
</tr>
<tr>
<td>Subsidiary State compensation</td>
<td>No</td>
</tr>
<tr>
<td>State where offence took place</td>
<td>No</td>
</tr>
<tr>
<td>Compensation schemes (time limit, minimum and maximum)</td>
<td>No</td>
</tr>
<tr>
<td>Reduced or refused State compensation</td>
<td>No</td>
</tr>
<tr>
<td>Content of compensation (descendants incl.)</td>
<td>No</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>----</td>
</tr>
<tr>
<td>Victims resident in another Member State</td>
<td>No</td>
</tr>
<tr>
<td>(application for compensation in home country, award by MS where crime happened)</td>
<td></td>
</tr>
<tr>
<td>Consequences of compensation</td>
<td>No</td>
</tr>
<tr>
<td>(State subrogation and possible reclaim)</td>
<td></td>
</tr>
<tr>
<td>Other forms of compensation</td>
<td></td>
</tr>
<tr>
<td>Recovery property</td>
<td>Yes</td>
</tr>
<tr>
<td>Reimbursement legal expenses</td>
<td>Yes</td>
</tr>
<tr>
<td>Victimisation in another Member State</td>
<td></td>
</tr>
<tr>
<td>Video – and teleconference</td>
<td>No</td>
</tr>
</tbody>
</table>
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2) **Belgian sources**

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