THE ROLE OF THE VICTIM IN PROSECUTION.
COMPARATIVE ANALYSIS BETWEEN BELGIUM AND UK.

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INTRODUCTION

Criminal justice systems are changing over time. One of the report aspects change is the growing role of victims in a criminal justice system at all levels (from investigation to the enforcement of sanctions).

Throughout the criminal justice system, prosecutors have wide discretion to exercise their authority in determining what crimes should be prosecuted. This discretion has historic support through both constitutional separation of powers, doctrines and public policy. This discretion is based on a variety of factors, including the severity of the crime, the extent of the evidence, prosecutorial resources and other facts involved in the specific case.

Victim cooperation and participation in the investigation and prosecution of crime often is a key element in this analysis.

Historically, in the effective administration of the criminal justice system, the role of the victim in criminal prosecutions has been critical. Victim testimony often is the most important element of a successful prosecution. Moreover, a victim's cooperation in an investigation and prosecution often results in a prosecutor's exercise of discretion in favor of criminal prosecution.

Well into the nineteenth century the responsibility for the initiation of criminal prosecution lay with the victim rather as in civil litigation. It is still possible to initiate a private criminal prosecution. Readers may recall that in 1995 the family of the murdered black teenager Steven Lawrence, out of a frustration with the apparent lack of action by the authorities, took out a private criminal prosecution against those they suspected of his murder. This was the first private criminal prosecution for over 100 years.

This participation is therefore both critical and desirable. Accordingly, public policy, as embodied in statutes and extensive case law, is designed to encourage and support the role of victims in the prosecution of crime. Within this basic framework, actions that limit the victim's role in the criminal process in a significant way will make the criminal process less effective. Moreover, the broad discretion afforded to prosecutors in the criminal process notwithstanding still allows prosecutors to make use of victim information and resources in whatever way the prosecutor deems appropriate.

Victims and witnesses to crime are increasingly seen as having a central role with the criminal justice process either as sufferer of harm with a legitimate interest in proceedings or,

as live participant without whom there would be considerable difficulty in bringing crimes to
the attention of authorities, obtaining evidence or acting as a witness.\(^2\)

In short it is noted that, without the participation of victims as witnesses, many crimes would
in all probability remain undetected and unpunished. So from here we see that even though
the role of victims diminished at one point in time in most criminal justice system especially
at the level of prosecution, it was obvious that the criminal justice systems, be evolved to
bring back victim in the forefront.

On the practical level during the 1980’s and 1990’s many domestic justice landscapes in
western Europe, including Belgium and the UK, North America and beyond were
characterized by a proliferation of policy and practice initiatives which purported in some
way to further the interests of victims. These developments were however mirrored by the
interest of international institutions such as the United Nations, the council of Europe and the
European Union.

The council of Europe on its part has produced a range of hard and soft law measures to blind
and influence the practice of its member states in the areas of substantive and procedural
criminal law, these include a number of instruments relating to victims and witnesses.

The European Union’s locus in this area is more recent dating back to the 1997 Treaty of
Amsterdam and the creation of an area of freedom, security and Justice. The intention of
these European instruments can be characterized, to a greater or lesser degree, as enhancing
the functionality of victims and witnesses to the criminal justice process in addition to
reflecting more altruistic motivations concerned with their welfare.

Furthermore, the council of Europe also brought to light the growing role of the victim
participation in criminal proceedings. This is seen in the European council Framework
Decision on the standing of victims in criminal proceedings,\(^3\) which require member states to
recognize the rights and legitimate interests of victims with particular reference to criminal
proceedings and to safeguard the possibility for them to be heard during proceedings and to
supply evidence.

Another group which also brought back the role of victim in the criminal justice process was
the victim Support Europe. This is seen in its 2001 ‘Statement of victims’ rights in the

\(^2\) Cools, M., et al., Readings on Criminal Justice, Criminal Law and Policing, Governance of Security Research

\(^3\) Cools, M., et al, Readings on criminal justice, criminal law and policing, Governance of security Research
process of criminal justice organization highlights that victims should have the right to respect and recognition at all stages of criminal investigation and proceedings, be able to receive information and explanations about the progress of their case, provide information to assist with decision making, have access to legal advice (irrespective of income), be protected in relation to both physical safety and personal privacy and, have access to compensation from both the offender and the state. With its emphasis on victims’ rights to receive information and provide input in the criminal justice process, the document draws upon the notion of ‘procedural justice’ and the participation model of procedural fairness.

It is important to mention that the growing role of the victim in prosecution cannot be seen only in Belgium and England and Wales but also in almost all European countries and also at the level of the International Criminal Court (ICC). This is seen in the memorandum issued by the human right watch to the ICC, which sets out in detail a number of key issues in respect of victim participation(as officially designated) in the court’s proceedings and, requirements for their safety and protection arising from such participation.

The document is in principle, highly supportive of the ‘procedural justice’ and participation provisions set out within the Rome Statute and the ICC’s rules of procedure and evidence noting that they are of value per se, may assist with the prosecution process and (interestingly) may serve to enhance the legitimacy of the ICC as a judicial institution.

This evolution is what this dissertation is all about particularly at the prosecution level of the criminal justice system.

This dissertation will look to one level: victims and prosecution in Belgium and the UK (England and Wales). The method/focus to do this is comparative, taking a criminal justice system from civil law country (Belgium) and common law country (England and Wales). Not only comparative in space, but also in time, because I want to look for an evolution.

Method is literature review to conduct a functional comparative study. My method of research is structuring articles and I will also look at books and also internet but I will do most of the research in the library. But I will like to make some remarks about limitations of this approach which include-studying from abroad instead studying there or living there. The dissertation will be structured in 4 chapters. Chapter 1, introduction, chapter 2, victims and criminal justice: picture of what criminal justice is and (in general) about potential role of

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5 Ibid, p.130.
6 The ICC was established as an international judicial institution in 1998 with jurisdiction for crimes of genocide, crimes against humanity, among others.
Historically, victims once had an active participatory role in the criminal justice process all over the world including Belgium and UK and were responsible for not only initiating but also for prosecuting offenders. In most countries, victims were gradually sidelined and by the 20th century, their role was reduced to that of a witness to crime against the state. Criminal justice has been envisaged as a conflict between the individual (the defendant) and the state in which the only official function of the victim is to give evidence in court as a witness if necessary\(^7\). He or she may attend a trial as a member of the public but has no influence on the prosecution process and the decision of the court. During the 1980s, victim support groups developed which fought to reverse the marginalisation of the victim in the justice process. One result of their lobbying was the production of a victims’ charter which sets out the role of the victim in the justice system and the treatment which they can expect. In particular, the charter emphasises the need for better information on the decision-making process and the progress of cases so that victims know what is happening, when and why.

The crime victim once had a more prominent part in directing the progress of the criminal justice system. Today, Participation in the contemporary criminal process imposes numerous burdens on victims; many Feel victimized not only by the crime, but by the process as well, so that they increasingly fail to assist law enforcement agencies, to the detriment of the public at large. Even until the 1970s victims of crimes were often forgotten by the criminal justice system. As a result, victims sometimes came to believe that they had fewer rights than the criminals who had injured them. In addition, some victims became so alienated from the criminal justice process that prosecutors had difficulty persuading them to testify at trial. This environment began to change in the 1970s with the establishment of victim compensation funds in many jurisdictions.

The role of victims today is very different than in our earlier history. The changes in the criminal procedure in the past few centuries in both countries, and most importantly since the mid to late 19\(^{th}\) century, are most without exception changes that benefit the accused and not the victim. 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).

Not until the 1980s, however, did a national movement for "victims' rights" spark wholesale
changes in the criminal justice system. During this period, victim support groups developed
which fought to reverse the marginalization of the victim in the justice process especially at
the prosecution phase. One of their lobbying was the production of a victim’s charter which
sets out the role of the victim in the whole criminal justice system.

The introduction of victim impact statements at the end of the 20th century in most countries
was also another step in re-instating victims in the criminal justice process and more
especially at the prosecution phase.

The Victim Impact Statements generally give victims a very marginal role and only bring
them into the process after a determination of guilt by the court. The role of the victim in the
criminal justice system is growing in most countries including Belgium and England and
Wales.

In this piece of work, I will look into this growing role of the victim in the criminal justice
systems at the level of prosecution in civil law (Belgium) and common law (England and
Wales). I wish to see if the role is growing in the selected countries. Although prosecution is
universal all over the world, there are also some differences between systems as to the actors
involved.

I will compare the role victims play in prosecution in Belgium and England and Wales. The
aim of this work is to acquire knowledge and also to enlighten others of the situation in
different countries and in the second place to compare the situation in the different studied
countries and evaluate the findings of comparison in order to see if it is possible to come to a
conclusion on similar trends or illogical differences and explain these, that is, I will examine
and bring to light what is the difference in prosecution, who does what, I will compare the
criminal justice system and where the victim comes in in either case.

I will also examine what victim actually does in prosecution and the rights of victim in both
countries.
CHAPTER TWO: VICTIM AND PROSECUTION

2.1 VICTIM

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.”

Looking at the Council of Europe, the term victim should also include “where appropriate, the immediate family or dependants of the direct victim.” 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. Except as otherwise provided by the general statutes, "victim of crime" or "crime victim" means an individual who suffers direct or threatened physical, emotional or financial harm as a result of a crime and includes immediate family members of a minor, incompetent individual or homicide victim and a person designated by a homicide. A victim can also be defined as a person, other than the perpetrator or accomplice, who suffers direct or threatened physical, emotional, or financial harm as a result of the commission or attempted commission of a crime.

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 State. 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 who have suffered harm directly caused by conduct which infringes the criminal law of a Member State and there is no reason to believe that the European legislator intended to extend this notion. However, a Hungarian judge, Szombathelyi Városi Bíróság who wished to know, in connection with the criminal proceedings pending before it, whether ‘a person other than a natural person’ falls within the

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9 Council of Europe Committee of Ministers, Recommendation Rec (2006)8 of the Committee of Ministers to member states on assistance to crime victims, (Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies), art. 1 (1) Available from: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1011109&Site=CM
10 Council Framework Decision, art. 8 (1), note 8 above.
12 Ibid, Para. 53.
definition of ‘victim’ in Article 1(a) of Council Framework Decision, recently asked the Court of Justice to explain and supplement its judgment\(^{13}\).

However, it should be noted that not only the role but also the content of the victim notion is constantly in evolution. An example to illustrate this is 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. Crime victims are those people most directly affected by the crime because it was their body that was hurt or their property that was taken or damaged\(^{15}\).

Witnesses are those people who are able to see or hear the crime when it is happening. Witnesses may also feel badly about witnessing a crime against someone, and they may need assistance as well as the victim.

Sometimes, other people are also hurt by a crime, even if they were not a direct victim or witness. Family members, friends or others who care about the victim may be very upset when someone they care about is hurt by crime. They may also need information and support.

Even if an offender is never found, the person who is the crime victim should still be considered a victim. Some people think that if no offender is found, then there is no victim. That is not true. A person is still a "victim" if he or she was harmed in some way by an offender.

### 2.1.1 VICTIMS AS FORGOTTEN PARTY IN THE CRIMINAL JUSTICE PROCESS

In 1970s, victimologists began to draw attention to the plight of crime victims, describing them as the ‘forgotten party’ in the criminal justice system. Once an active participant, common law systems had successfully managed to completely remove victims from the criminal justice process. All that remained of their role was the role of witness to a crime against the state. 900 years earlier, in the eleventh century, the victim occupied a key position in common law and was responsible for the apprehension, charge and prosecution of


offenders. This was known as private prosecution and victims controlled every aspect of the judicial process including punishment Stephan Schafer\textsuperscript{16} and Kirchengast,\textsuperscript{17} refer to this period as the “golden age” of the victim because victims exercised such an important role in the criminal justice process, which centered on the reparation of the victim. Interestingly, reparation of the victim was, according to Schafer, an indication of how evolved a society was. For example, the Saxons and the Germans introduced the use of “wergeld”, which effectively meant that they renounced a vendetta after a murder or serious bodily injury, provided that the offender compensated the victim or his family.\textsuperscript{18} The agreement between the victim (or the victim’s clan) and the offender put an end to any further violence.\textsuperscript{19}

From the 13th century onward, the absolute power of the victim to initiate a prosecution began to diminish with the rise of monarchical structures.\textsuperscript{20} The idea that crime is a threat to the social or public order rather than a private matter involving the victim can be traced back to this era.\textsuperscript{21} The King’s peace and the development of offences against the security of the realm in terms of treason, and later, public order offences, marked changes that impacted the role of victims.\textsuperscript{22} As Kirchengast writes, “[T]he gradual introduction of communal and then social concerns into the common law displaced the victim from their orthodox position as private prosecutor, opening up the new jurisdiction of civil law for the enforcement of distinctly personal rights.”\textsuperscript{23} As to why this change occurred, no one really knows, however, it is commonly believed to be because it gave the king more money and more power and not because of any legal argument.\textsuperscript{24} Instead of paying compensation to the victim, offenders were ordered to pay compensation to the state.\textsuperscript{25} This practice still exists today and is referred to as a fine. Gradually, the state and its offices and institutions replaced the King but power was never returned to the victim. From the seventeenth century onwards, parliamentary sovereignty grew and the King became less influential personally. Instead he was seen merely

\begin{itemize}
  \item \textsuperscript{17} Kirchengast, T., \textit{The Victim in Criminal Law and Justice}. Hampshire: Palgrave Macmillan, 2006, quoted in Wemmers, J., \textit{Ibid.}
  \item \textsuperscript{18} Schafer, S., note 16 above.
  \item \textsuperscript{20} Kirchengast, T., note 17 above.
  \item \textsuperscript{22} Kirchengast, T., note 17 above.
  \item \textsuperscript{23} \textit{Ibid.}
  \item \textsuperscript{25} Schafer, S., note 16 above.
\end{itemize}
as a figure of sovereignty. Laws were passed by the legislature and were no longer passed by
the King alone. As a result, crimes ceased to be considered a violation of the King’s peace
and instead were viewed as threats to civil society and social interests.
This trend was further consolidated in the late eighteenth century with the introduction of
criminological perspectives, which further moved criminal justice away from the victim to
the security of society.\(^\text{26}\)
This historic overview shows us that it was not offenders or the accused and their legal
representatives who pushed victims out of the criminal justice system and took away their
rights. While victims’ rights are sometimes presented as though they are in constant conflict
or tension with the rights of the accused,\(^\text{27}\) it is in fact the State that shut out the victim and
not the defendant.
The absence of the victim was not even noticed by authors until well into the second half of
the twentieth century. The first scholars to draw attention to the plight of the victim were
people like the late Margery Fry for example, emphasized the financial needs of crime
victims and advocated for the compensation of crime victims by the state. This resulted in the
introduction of state compensation programs in many developed countries: the first being
New Zealand, which did so in 1963. The exclusion of victims from the criminal justice
system was not questioned at the time. The fact that victims were unlikely to receive
compensation from the offender was not considered a reason to address victims’ needs in
criminal justice system but was used as a reason to introduce compensation by the state
outside and by-in-large independent of the criminal justice system.
Victims’ status in the criminal justice process was not considered an issue until the 1970s
when, under influence of the women’s movement, researchers began to look at crimes against
women such as rape.

2.2 PROSECUTION

Prosecution is one of the aspects of the criminal justice system. Prosecution and trial are in
many senses the core of the criminal justice system. The whole purpose of police activity in
tracking offenders is to bring them to trial in court. All the issues concerning disposal, what
to do with those convicted, and what form punishment should take, are decided in court.
Without the court and the prosecution of offenders the criminal justice system does not exist.
Policing, from this point of view, is secondary to prosecution. In many jurisdictions the

\(^{26}\) Kirchengast, T., note 17 above.
\(^{27}\) Roach, K., \textit{Due Process and Victims’ Rights: The new law and politics of criminal justice}, Toronto:
University of Toronto Press, 1999.
origins of police forces lie in the fact that as society became more complex, as more crimes took place between strangers, the courts required an additional organisation to ensure that offenders, their victims and accusers, were brought or 'delivered' before the courts.\footnote{Lea, J., The prosecution of Crime, 2006. Available from: http://www.bunker8.pwp.blueyonder.co.uk/cjs/26904.htm.}

In most jurisdictions the legal official who prosecutes the crime in court is the public prosecutor (sometimes known as the Procurator). The office of public prosecutor is frequently an office much older than the police. In many countries in Continental Europe for example the prosecutor originated as the King's representative sent out to investigate violations of the Kings authority. The police, as they developed, worked, when they were investigating criminal matters, under the direction of the Prosecutor. Thus in Scotland, which in judicial matters was more closely aligned to France than to England until the Union of 1708, the office of Procurator Fiscal dates from the 16th century. The police came later. In the United States the office of District Attorney dates from the way in which the English legal system was imported into America during colonial times. The 'DA' plays a major part in the investigation and prosecution of crimes. Prosecution also is the institution and carrying on of a suit in a court of law or equity, to obtain some right, or to redress and punish some wrong; the carrying on of a judicial proceeding in behalf of a complaining party, as distinguished from defense.\footnote{Brainy Quote, 'Definition of Prosecution.' Available from: http://www.brainyquote.com/words/pr/prosecution207538.html#ixzz1LiKhhjZ1}

Again, prosecution is the institution, or commencement, and continuance of a criminal suit; the process of exhibiting formal charges against an offender before a legal tribunal, and pursuing them to final judgment on behalf of the state or government, as by indictment or information. It is also the institution and conduct of legal proceedings against a defendant for criminal behavior\footnote{Collins English Dictionary- Complete and Unabridged, HarperCollins Publishers, 2003} Prosecutions are carried on in the name of the government, and have for their principal object the security and happiness of the people in general. The modes most usually employed to carry them on, are by indictment; presentment of a grand jury; coroner's inquest; and by an information.\footnote{Definition by the ‘Lectric’ Law library. Available from: www.lectlaw.com/def2/p189.htm}
CHAPTER THREE: CRIMININAL JUSTICE SYSTEMS

3.1 The Belgian criminal Justice System

The Belgian criminal justice system can be considered as one of the typical continental criminal justice systems. It resulted from the French justice system, as Belgium became independent in 1930, and most of the Napoleonic codes remained into force including the old code d’instruction criminelle (1808), which is still applicable today.

The Belgian criminal justice system is primarily based on the French (Napoleonic) Penal and Criminal Procedure Codes. At its founding in 1830 the Belgian constitution meant to revise all codes, including the Penal Code (PC) and Criminal Procedure Code (CPC). This ambitious plan was only executed at the level of the substantive penal law: in 1967 a new Penal Code was introduced. The Criminal Procedure Code however is still the same as the old Napoleonic Code of 1808.

In this historic tradition the criminal justice system in Belgium contains two stages, the pre-trial stage and the trial stage. The pre-trial stage is conducted either by the public prosecutor, or by the investigating judge whereas the pre-trial proceedings are mainly inquisitorial, the trial is usually considered as accusatorial.

Since 1998 a number of radical reforms have been made. Some of these legislative changes have been inspired directly by specific cases or social issues which have caused huge public disturbance, such as trafficking in persons, the series of non-solved murders committed by the Nijvel gang and the Dutroux-Nihoul case. The public commotion on the insufficient operation of the judicial authorities formed the incentive for a series of special reforms. A first reform concerns the organization of the pre-trial investigation and aimed at improving the position of the suspect and victim and to create a greater transparency. This was achieved by the Franchimont Law.

3.1.2 CHARACTERISTICS OF THE BELGIAN CRIMINAL JUSTICE SYSTEM

32 According to Nijboer, the so called ‘inquisitorial’ tradition is in practice probably the strongest in countries like France, Spain, Belgium and the Netherlands (Nijboer, J.F., “Common law tradition in evidence scholarship observed from a continental perspective,” Am. J. Comp. L., 1993, pp. 303, 311).

33 The Dutch rule from 1815 to 1830 was very short and did not mark deeply the Belgian criminal justice System.

34 Cf. the former article 139 Constitution that was only repealed from the Constitution in 1970.

35 On this issue and the general characteristics of the Belgian criminal justice system, see Wyngaert, C.V.D., Criminal procedure systems in the European Community, London, Butterworth’s, 1993, pp. 1-49.

36 The Law of 12 March 1998
The (continental) inquisitorial criminal procedure was spread throughout Europe (and beyond) under the influence of the French Code d’Instruction Criminelle of 1808. This Code is still in effect in Belgium. Although it does no longer appear in its pure form, the procedure of many West-European countries, including Belgium, still has many inquisitorial characteristics.

The Belgian criminal justice system consists of two main stages. The pre-trial phase (investigation phase) is said to be inquisitorial because the investigation is in writing, secret and non-accusatorial.

The pre-trial investigation is not executed autonomously by the police but is led by a magistrate, the public prosecutor. For issuing enforcement orders (arrest warrant, telephone tap, house search,) a specially competent investigating magistrate is foreseen, the investigating judge which, in many cases, actively leads the investigation. In this stage, the suspect is not expected to actively participate in the evidence gathering. Using private detectives for tasks which are normally assigned (exclusively) to the police is even forbidden. The investigative proceedings are put in writing and are bundled in a criminal file which will serve as the basis for the second stage, the trial stage. The trial stage is said to be accusatorial because its proceedings are public, oral and accusatorial. The judge plays a more passive role than during the pre-trial stage and the equality of arms is guaranteed to a large extent.

Nevertheless, the trial proceedings still have considerable inquisitorial characteristics. The trial stage is based mainly on the investigative proceedings executed during the pre-trial stage and bundled in the criminal file.

The judge will usually already have prepared the case on the basis of the file: on this basis the judge will lead the trial and will determine if certain additional inquiries are necessary. As a result, the information gathered during the pre-trial stage will weigh considerably at the trial stage.

Compared to the judge in a purely accusatorial procedure, the Belgian judge will be more active during the trial stage then his common law colleagues. He will usually lead the (trial) investigation him/herself and can order additional inquiries ex officio. The defendant will not have the right to interrogate witnesses him/herself: it is the judge who does this. Belgium does not know a genuine cross-examination in the Anglo-Saxon meaning. Especially in Assise case, the President of the court has far-stretching competence: the law gives him the

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power to do whatever he deems useful for finding the truth. As a result of the ECTHR jurisprudence, Belgium has been obliged to adjust some aspects of its inquisitorial system.

3.1.3 PROSECUTION AND VICTIMS IN BELGIUM

The Belgian criminal justice system has recently gone through a period of unprecedented legislative reform. One of the major innovations has been the establishment of the role of victim in the criminal justice process. Certain categories of victims of crime came to be included in the new regulation.

During the past decade, the Belgian criminal justice system has gone through a period of unprecedented reform. In November 2003, on the occasion of a well-attended conference devoted to the discussion and critical examination of some of these reform proposals, the criminal law specialist Lieven DuPont argued that at no point in the history of Belgian criminal law had a newly appointed Minister of Justice been confronted with such a large quantity of texts which were, almost simultaneously, being prepared in order to redesign major aspects of the architecture of the Belgian criminal justice system. In the meantime this reform activity has resulted in the enactment of five major pieces of legislation: among which was the Law of 22 June 2005 on victim-offender mediation. Which broaden the role of the victim in prosecution and this aspect will be elaborated in this chapter.

A “harmened person” can be anyone who declares to have suffered damage caused by an offence. 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. 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. This aspect and more will be examined under the position of the victim in prosecution.

38 See Art. 268 of the CPC
41 Quoted in Daems, T., Ibid.
42 Preliminary Title of the Code of Criminal Procedure, art. 5 bis.
43 Ibid, Art. 5 (2).
44 Ibid, Art. 66.
Victims do not have the chance to bring actual prosecutions before the courts. Private prosecution does not exist in Belgium. However, the victim may bring a civil action for compensation for the damages caused by the offence before a criminal court and may ask for material and moral damages. If this step, which is called constitution de partie civile, is taken when the public prosecutor has already decided to prosecute the crime, then the victim will become a party to the pending criminal proceedings so that the trial court can oblige the convicted offender to compensate the victim.

A victim can only become a 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.

Joining the prosecutor’s claim is also a means the victim can use before every criminal court to officially become a civil party. This is in any case the most common and least costly method. Next to this possibility however the quality of civil party can also be gained by summoning the offender directly before the police court, the correctional court or the court of appeal ruling in first instance. By using this method, the victim also initiates both the civil and the criminal proceedings. In appeal the quality of civil party cannot be adopted in Belgium. If however, the public prosecutor has already decided to drop the case, the victim can still choose for the constitution of partie civile by summoning the offender directly before the trial court or by seizing the investigating judge, in this situation, the case can only be closed with a formal judicial decision.

The quality of civil party is (mostly) required to be awarded compensation. Moreover the civil party is granted some additional rights, such as the right to have a look in the criminal file and the right to ask the examining judge for additional deeds of investigation. Nevertheless, it may be clear that the status of a victim in Belgium in the first place depends on its own choice; 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 ex officio as long as a civil party can present itself. So, even if a judge already ruled on the criminal claim, the victim can still apply for compensation with the same judge (up to

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46 Ibid, Art. 67
47 Ibid, Art.145
48 Ibid, Art. 182
49 Art. 61 ter Criminal Code
50 Art. 61 quinquies Criminal Code.
five years after it heard from (the aggravation) of the damage). 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 role of the victim in the prosecution phase.

There is an ambiguous relationship with the victim. The victim is usually the first with the criminal justice dispensation in contact the police. Often this contact is very direct and always shortly after the events. It is from this first contact that features of the ambiguous relationship between the criminal justice and the victim is expressed.  

On the one hand, the person is found or a victim himself as such presents itself, as a needy man. Police have in this view of a man as becoming a victim. On the other hand, the victim, the object of a crime including the initial starting point of investigation and prosecution.

Victims are often needed in police investigative work as a step leading to prosecution. Even though the victim direct altruistic or character of this activity is much less evident.

The criminal justice system in general and the investigation and prosecution in particular is not only intended to give satisfaction to the victim, it is also meant for tracking down and bringing to justice perpetrators of crimes and also broader the objectives, such as maintaining the social order-making.

In helping victims into account of detection, the political policy of recent years in Belgium took some steps forward both at the level of aid to victims and at the level of actual investigation and prosecution, but a greater role for the victim needs.

3.1.4 WHO DOES PROSECUTION IN BELGIUM?

3.1.4.1 PUBLIC PROSECUTOR

Until the mid-1990s, the local public prosecutor’s offices were largely independent from the executive power, functioned nearly autonomously and their policy was nontransparent.

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This was highly criticized and a number of parliamentary investigative commissions formulated a series of reform proposals (which resulted in the Laws of 22 December 1998)\textsuperscript{52}. The execution of these initiatives was far from easy to accomplish: the Higher Judicial Council was installed and the federal prosecutor was introduced; the horizontal integration was not realised and the vertical integration only in a weakened form.

The Public Prosecutor’s Office (PPO) is competent for the general application of the criminal law. It is in charge of the pre-trial investigation and decides whether or not to start criminal prosecution. It is responsible for evidence gathering once the case has been brought before the trial judge and it is responsible for the execution of the judgments.

Members of the PPO are appointed and dismissed by the King. Due to the fact that they are dismissible and relocatable and that they are part of a hierarchic corps, they are less independent than judges who according to article 152 of the Constitution are appointed for life and non-relocatable.

Members of the PPO are obliged to follow the orders and instructions of the Minister of Justice. The hierarchic accountability of members of the PPO towards their superiors is limited to their superiors’ written instructions. At trial, they are free and request the application of the law conscientiously (“The pen is slave, the word is free”)\textsuperscript{53}.

In practice this means that the hierarchical dependency of the prosecuting magistrate is most present during the pre-trial stage (where all requests have to be made in writing). The function of the PPO is said to be “one and indivisible”: its members can replace each other during the course of a criminal procedure (this is different from the judge who has to be the same during the whole trial). In practice, a different assistant public prosecutor will be responsible for the qualification, the treatment of the case before the investigative court and the treatment at trial.

There is a prosecutor’s department for each judicial district (27) which is led by a prosecutor. For each of the five court of appeals, there is a prosecutor-general which is assisted by a number of advocates-general and assistants-prosecutor-general (which fulfill the role of public prosecutor during trial at the court of appeal). Together they form the Prosecutor General’s Office (PGO). The prosecutor-general leads all prosecuting magistrates of his operational area and is also responsible for the general management of the prosecution.

\textsuperscript{52} S.B. of 10 February 1999 and S.B. of 2 February 1999

department within this area (such as the coherent execution and coordination of the criminal policy, the integral quality care and overall support).

Since 1 May 2002, Belgium has a federal prosecutor who, together with his federal magistrates, forms the Federal Prosecutor’s Office (FPO). The federal prosecutor is competent for prosecution in certain cases (see articles 144ter and 144quater Judicial Code), coordinating the prosecution and facilitating international cooperation, and supervising the federal police. He is competent for the entire Belgian territory.

3.1.4.2 HOW (LARGE DISCRETION)

The prosecutor decides which evidence is to be produced, although the defense has the right to submit evidence of its own (which is then added to the criminal file). The defendant (as well as the civil party) has the right to ask additional inquiries to the Public Prosecutor (after the pre-trial stage has been closed but before the court hearing) or to the court itself. The court decides freely whether it orders the Public Prosecutor to execute the additional inquiry. If the court does not accept the request, the defendant has no possibility to appeal.

Since criminal law aims at protecting public order, the right to react to an offence – i.e. the right to prosecute – is not left to the individual, but attributed to the public prosecution service (Sect. 1 Preliminary Title CCP). This service decides whether in a certain case further investigations should be made, whether it is necessary to summon suspects before the criminal court, and – in more serious or complicated cases – whether it is necessary to defer the matter to an investigating judge. However, the public prosecution service has no complete monopoly over the prosecution, as the victim and other services\(^{54}\) also have a role in prosecution.

3.1.4.3 THE ROLE OF THE VICTIM IN PROSECUTION IN BELGIUM

Victims can facilitate the prosecution of the offender in two ways in the Belgian criminal justice system\(^{55}\) depending on the applicable legislation. Some jurisdiction requires for certain crimes that, the presses charges against the offender before the latter can be prosecuted. The role victims play in the prosecution process in Belgium can be seen in the case of civil party, which the victim must explicitly declares so or ask for compensation,

\(^{54}\) Specific legislation can attribute a right to prosecute to certain administrations such as the treasury, EU member states country report, Belgium. The relationship between the public prosecutor and the minister of justice.

make the judge aware of the facts that he (the victim) is a civil party. Which most of the time goes together. The quality of civil party can be adopted in the prosecution phase or before court.

In the first place the role of the victim is that he or she can file a civil action before the examining judge or investigating magistrate(juge d’instuction/ondeszoeksstrechter) by which it initiates both the civil and the criminal proceedings (art. 63 Criminal Code). This procedure is mandatory in case of a crime. The victim also has the liberty to directly assign the perpetrator before the police court or the criminal court by way of a write of summons. By choosing one of these two alternatives, the victim not only pursues his claim for damages but also initiates the criminal proceedings against the perpetrator since these were not yet pending. Here the role of the victim is that he or she is place in direct contact with the judge.

The consignment of a sum of money is required as advance on the legal expenses. the civil party has the right to ask additional inquiries to the Public Prosecutor (after the pre-trial stage has been closed but before the court hearing) or to the court itself. The victim as a partie civile can bring a civil action for compensation for the damage caused by the offence before the criminal courts (Sect. 4 Preliminary Title CCP). If the public prosecutor has already brought the case before a judicial authority – i.e. either the investigating judge in the judicial inquiry or the criminal courts – the only effect of the civil action of the partie civile will be that the victim becomes a party in the pending criminal procedure. However, if the public prosecutor has not yet brought the case before a judicial authority, the victim by constituting himself partie civile has the role to either request the investigating judge to start a judicial inquiry in the given case or by summoning the suspect directly before the trial court – actually launches the prosecution and institutes the public action at law.

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 Further, in this way the victim can also gain the quality of civil party before a court of inquiry. It is worthy to note that a victim can

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56 Verstraeten, R., Handboek strafvordering, Antwerp-Apeldoorn, Maklu, 2007, 183-197. The exact general and specific conditions to become a civil party
only become a 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.

Joining the prosecutor’s claim is also a means the victim can use before every criminal court to officially become a civil party. This is in any case the most common and least costly method. Next to this possibility however the quality of civil party can also be gained by summoning the offender directly before the police court the correctional court Criminal or the court of appeal ruling in first instance. By using this method, the victim also initiates both the civil and the criminal proceedings. However In appeal, the quality of civil party cannot be adopted in Belgium. Also being a civil party, the victim has the right in prosecution to be awarded compensation. Moreover the civil party is granted some additional rights, such as the right to have a look in the criminal file and the right to ask the examining judge for additional deeds of investigation. Nevertheless, it may be clear that the status role of a victim in Belgium in the first place depends on its own choice. Another role of victim in prosecution is that, victims have the role to be heard at some point and to supply evidence during the criminal proceeding. This is seen in art.4 Preliminary Title Criminal Code. 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 ex officio as long as a civil party can present itself. So, even if a judge already ruled 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). 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.

Next to this, the Criminal Code generally enables the prosecutor (art. 28 quinquies § 2: “investigation phase”) and the examining judge (art. 57 § 2: ‘instruction phase’), as well as
the police forces (in both situations) to question persons of different qualities\textsuperscript{66}. Of course the victim is included in this category of persons. In addition he or she can come up with evidence here as well.

Article 5 bis Criminal Code (“harmed person”) and especially art. 63 and following Criminal Code (“civil part”)\textsuperscript{67} ensure the victim a real and appropriate role in the Belgian criminal legal system especially in the prosecution phase.

Civil law jurisdictions as the case of Belgium, generally also recognize the victim’s right to report a crime, although the public prosecutor’s office can institute proceedings against the offender of its own accord. But in many cases in Belgium, the victim’s report of the crime will induce the criminal justice authorities to prosecute the offender. So we notice that the victim come in the criminal justice system of Belgium as soon as the crime is committed against him and thus plays the role of an in format by bringing the crime to the knowledge of the public prosecutor who may begin the prosecution.

In Belgium also being a civil-law country, it uses victim offender mediation as part of regular court proceedings. Since the early nineties the idea of restorative justice has found its way into Belgian legislation. Instead of diversion for the sake of the offenders, the victim came more into the picture. The dialogue between victims and offenders and the material and moral compensation and restitution became the new paradigm. Diversion mechanisms in this respect entrust the public prosecutor with powers to initiate and supervise the victim-offender relationship\textsuperscript{68}.

Various mediation programmes are used throughout the country, both law-based and project based. Victim-offender mediation in Belgium manifests itself during various stages of criminal justice proceedings. This follow from article 553, paragraph 1 of the code of criminal procedure (wetboek van strafvordering, WVSV), which reads that all parties interested can request their case be referred to mediation at any time during criminal prosecution.

Furthermore, in Belgium, victims of some crimes are being allowed to initiate the offender’s prosecution themselves and apply directly to the criminal court.(Burgerlijke partijstelling). If

\textsuperscript{66} Art. 3 Commission staff working document.
\textsuperscript{67} Art. 2 § 1 Commission staff working document.
the victim privately prosecutes the offender, the requested court is required to give it ruling on the case. The position of victims who directly apply to the court partly resembles that of the injured party. They have similar opportunities for advancing information in court to substantiate their claim in a prosecution for financial compensation.

Additionally, private prosecution as one of the role of victim in prosecution in Belgium provides victims with some extra powers. This extra power focus on the position of the victims during the hearing of the case in court and on their opportunities to furnish mediation information as evidence in prosecution. The relevant powers in this context are interrogating the offenders, and making a statement reacting to the evidence presented in favour of the offender.

Furthermore, the role of the victim in prosecution can be seen in mediation. Mediation is one of the initiatives which were recently introduced into the Belgian criminal justice system, aimed at the development of creative answers to crime. Under this initiative in the criminal justice system; we see once more the act role of the victim in the prosecution process.

After the experimental period and on a proposal by the federal government, the Belgian parliament voted in February 1994 for the ‘Law holding the regulation of a procedure for mediation in penal matters’. The law of 10 February 1994, creates a procedure for criminal mediation which exists in the shadow of a procedure permitting the offence to be compounded. This mediation procedure allows the procureur du Roi to summon the offender and the victim, and organizes mediation regarding the compensation as well as how it is to be carried out. It should be noted that the objective of mediation thus lies in compensation and its modalities. Mediation as a problem-solving intervention has to be considered in direct relation to the discussion of the purpose of the criminal justice system. By putting the emphasis on the dialogue between the victim and the offender, a common solution is worked out with the help of a mediator.

3.1.4.4 RIGHTS OF THE VICTIM IN BELGIUM.

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69 Aertsen, I., and Tony, P., Mediation and Restorative Justice in Belgium
70 Belgisch Staatsblad, April 27, 1994.
The 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 Code⁷², stating that crime victim 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 specialized services and judicial assistants (cf. infra)

The national policy forum for victims worked with the federal justice on the drafting of a brochure containing victims’ right, that is, rights as a victim of a crime. The judicial assistant in carrying out its tasks also tries to realize the rights of victims. These rights are examined in the proceeding paragraphs’.

3.1.4.4.1 THE RIGHT TO A RESPECTFUL AND FAIR TREATMENT

The victim has the right to a friendly, accurate and tactful treatment, regardless of the situation. This principle applies as having introduced the facts, and in case of other interventions (medical, social). The nationality, social origin, political opinions, religion or sexual orientation is not a factor. The relatives of a deceased victim are entitled to respect of their grief.

3.1.4.4.2 THE RIGHT TO OBTAIN INFORMATION

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). Though, the authorities responsible for giving information can for example be prosecutors or judges as well.

Further, also art. 3 bis Preliminary Title Criminal Code⁷⁴ 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.

The victim has the right to all information on the conduct of court proceedings, the assistance of a lawyer, the means for compensation or financial assistance. The victims also have to

⁷² Art. 2 § 1 Commission staff working document
⁷³ Art. 4 § 1 Commission staff working document
⁷⁴ Art. 4 § 1 Commission staff working document
fully inform within a reasonable time as possible about the content and progress of the file in a prosecution.

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). Information about the outcome of a case is available to victims to a satisfactory extent.

Again, 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)\textsuperscript{75}. 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.

3.1.4.4.3 THE PROTECTION OF THE VICTIM’S PRIVACY

This right of the victim 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{76} is an important Belgian instrument to protect victim’s privacy. 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). Furthermore, art. 190, part 2 Criminal Code too, enables the victim of a sexual offence to have his case treated behind closed doors (in camera – proceeding).

Additionally, Circular COL 7/99 3 May 1999\textsuperscript{77} protects the victim’s privacy by regulating the information judicial authorities and the police can communicate to the press during the preliminary inquiry.

Lastly, 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.

3.1.4.4.4 THE RIGHT TO DISCLOSE

\textsuperscript{75}Art. 4 § 2 Commission staff working document
\textsuperscript{76}S.B. 18 March 1993.
The victim has the right to be heard. This means that all elements needed to assess the damage must be communicated. It is also important for the investigation that the victim give all the facts and information on the impact of the crime.

3.1.4.4.5 THE RIGHT TO FINANCIAL RECOVERY

The award of compensation is probably the most important target a victim or his family wants to achieve. Belgian criminal justice systems enable crime victims to be compensated by the offender by allowing them to become a civil party in the criminal proceedings (cf. supra). 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). The victim has the right to be defended by a lawyer in any prosecution regardless of financial means. The victim is entitled to compensation for the damage within a reasonable time. Based on the damage, compensation is calculated. If the effective recovery of the damage is not possible, then the victim of deliberate violence can make a state financial aid request.

In Belgium the compensation for the victim itself indeed contains the loss or reduction of earnings resulting from temporary or permanent inability to work, medical and hospitalization expenses, including prosthesis expenses art. 32 and 1, 2° Law 1 August 1985. Next to that, the victim can however claim compensation for suffered mental damage temporary or permanent disability material expenses of up to € 1250 and damage arising from the loss of one or more years of schooling.

Further, as far as the descendants of the victim is concerned indeed compensation of the funeral costs of up to € 2000 and maintenance costs for persons who were dependent on the deceased victim can be claimed. In addition descendants can be compensated for mental damage medical and hospitalization expenses and damage arising from the loss of one or more years of.

One can see that, victims’ role in prosecution and their rights is quiet glaring in Belgium because it’s well spelled out in some legislation and their criminal code, and also visible in practice. This is seen in the extent where, the Belgian criminal law ensures descendants of a deceased victim a worthy farewell when an autopsy has to be conducted (see among others

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78 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. 44 last paragraphs Criminal Code. One can rightly concludes that the role of crime victim in prosecution and its rights is well fulfilled in Belgium.  

In the contemporary Belgian criminal justice system crime victims dispose of several opportunities to be heard and seen not only in prosecution phase but also in the framework of the execution of the sentence of the offender.

So, looking also at rights of victim, one can rightly conclude without any fear of contradiction that the rights of victims is well protected especially when one looks at the privacy of the victim in Belgium which is protected quite well as seen above.

Even with the large discretion given to the public prosecutor in Belgium, we still notice the glaring role of the victim in prosecution. This is seen as while confirming the principle of discretion, it was stipulated in 1998 that the public prosecutor has to give reasons for any decision to dismiss a case this decision should also be communicated to the person who has made a so-called declaration of being harmed by the facts concerned.

3.2 THE CRIMINAL JUSTICE SYSTEM OF ENGLAND AND WALES

As a historic heritage, England and Wales own an adversarial criminal justice system, in contrast to the continental inquisitorial system. Through the years, the tradition of a conflict-solving fair contest between two equal parties, or the search for a common ‘truth’ during an oral public hearing in the presence of a passive and impartial judge, has been fading. The same counts for the horizontal division and limitation of power by interdependent and independent agencies, all checking and restricting the activities of the others. Although some of the characteristics are still present today, many practices from the inquisitorial system have been adopted.

Unlike many others, England and Wales have no written penal code or definitive statement of the principles of the criminal justice. Nevertheless, some important principles guide criminal justice procedure. A crucial feature of the criminal justice system in England and Wales is the

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79 Art. 2 Commission report.
80 Sect. 28quater CCP.
81 EU member states country report, Belgium. The relationship between the public prosecutor and the minister of justice.
adversarial principle. A central aspect of this is that the individual has rights, whether as a suspect, a defendant or convicted person. The ideas of the burden of proof and the standard of proof are vital in this criminal justice system. The police and the prosecutors will not continue with a case—even if they are convinced that they know the offender—until they have sufficient evidence to show beyond reasonable doubt that the person accused of the crime did it. Without a penal code, the principles that govern criminal justice evolve from the system of parliamentary sovereignty and the principles of the rule of law. The first aspect refers to the parliament as the supreme authority and the final arbiter of legality as defined by the enacted laws of the land. The basic principles of the rule of law were articulated by Dicey in 1959. A primary principle of the law is that, everyone is subject to the law including those who enforce it.

3.2.1 CHARACTERISTICS OF THE CRIMINAL JUSTICE SYSTEM OF ENGLAND AND WALES.

There are two kinds of criminal trial in England and Wales: 'summary' and 'on' indictment'. For an adult, summary trials take place in a magistrate court, while trials on indictment take place in the Crown court. Despite the possibility of two venues for trial, almost all criminal cases, however serious, commence in the magistrates' courts. Offences may also be deemed 'either way', depending on the seriousness of the individual offence. This means they may be tried in either the Magistrates or Crown Court depending on the circumstances. A person may even be convicted by the Magistrates court and sent to the Crown for sentence (where the magistrates feel they do not have adequate sentencing powers). Furthermore, even if the Magistrates retain the jurisdiction of an offence, the defendant has the right to elect a Crown Court trial by jury.

The trial before judge and jury in the Crown Court is regarded as the pinnacle of the English system of criminal justice and the characteristics of the English trial system are frequently seen as the very definition of due process. This is a bit strange considering that very few cases actually get to the stages of not-guilty pleas in the Crown Court. The vast majority of cases (in England and Wales) are dealt with entirely by the lower, Magistrates, courts. Basically, there are three categories of offences: those that can be entirely dispensed with in Magistrates courts (summary offences), those that must be committed to the Crown Courts.

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84 Ibid, pp. 16-17.
(indictable offences) and those in which the defendant can choose either to have the case tried by the Magistrate or to go to Jury trial at the Crown Court (either-way offences). All cases begin with a Magistrates Court hearing (known as committal). Around 2 percent of cases actually go to Crown Court trial and there over 60 percent pleaded guilty. The acquittal rate (around the mid-1990s) for not-guilty pleas was around 40 percent. There are several features of the English system which are worthy of note.

The English trial is adversarial. That is to say it takes the form of a sort of battle between two (supposedly) equal parties: the prosecution, which attempts to prove its case beyond reasonable doubt, and the defence which seeks to undermine the prosecution's case and to create reasonable doubt. It should be noted that the task of the defence is not to prove the innocence of the defendant but to prevent the prosecution from proving guilt.

The origins of the system go way back into feudal times and the very local and decentralised nature of English justice. This latter is in turn in no small measure due to the fact that power of the King had been restricted by Magna Carta in 1215. Which had concluded the conflict between the King and the great Barons during the 13th century? The organisation of justice in England, unlike several other European states, reflected a decentralised and local and popular element. The community remained the focus both of law (The Common Law) and of the trial. The latter, even if it took place in front of the King's judges, was based on the right of the individual to directly confront their accuser. The trial was the method of proof of guilt.

The supposed equality, albeit fleeting, of the prosecution and the defence has been seen as an important guarantee of liberty in a system in which there is no written constitution to guarantee in advance the rights of the accused.

In an adversarial system the trial is governed by rules of evidence and cross examination which are there to ensure the day in court is fair to the defendant. So for example certain types of evidence are inadmissible. An example would be hearsay evidence for which there is no witness to testify and therefore which cannot be cross-examined by the defence. Another example would be the restrictions on the right of the defence to question the sexual history of the victim in rape trials.

Nevertheless there is an important imbalance at the heart of the trial. In the days before the existence of a professional police force and when it was up to the individual victim to initiate

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85 Magna Carta is an English Charter, originally issued in the year 1215.
a prosecution it might be said that defence and prosecution were, roughly, equal parties to the 'trial by battle.' But it is quite obvious that in the modern criminal justice system, by contrast, the prosecution has far more resources at its disposal (police investigators, forensic scientists etc.) than the defence.

3.2.2 PROSECUTION AND VICTIMS IN THE UK (ENGLAND AND WALES)

The main principle that underpins the system of criminal justice in England and Wales is adversarial justice. The idea of the burden of proof and the standard of proof are vital. The adversarial system requires the police and prosecutor to identify a person called a suspect.

Victims should seek immediate medical attention for their physical injuries, even if they seem minor. Most importantly, medical examination and treatment help victims heal physically and may give them some peace of mind about their health and wellbeing.

In addition, medical records with documentation of injuries are also an excellent source of evidence that corroborates the victim’s memory of events.

Sexual assault victims should seek medical attention even if they do not sustain any visible physical injuries. The hospital can take samples of evidence from the victim’s body and a narrative of the crime even if the victim has not yet decided whether to prosecute or not.

Victim participation therefore is critical to an effective law enforcement process. The law enforcement system often depends on the voluntary participation of crime victims in order to investigate and prosecute criminals successfully.86 This is because approximately 95% of all reported crimes involving specific victims are discovered from citizen complaints, usually from the victims themselves.87

Willingness of victims to come forward is vital to the successful prosecution of criminals. Without this assistance in reporting crime, more crime effectively will go unpunished, as the criminal justice system is "absolutely dependent" on victim cooperation. Karen L. Kennard, The Victim's Veto: a way to Increase Victim Impact on Criminal Case Dispositions, 77 Cal. L. Rev. 417, 425 n.42 (1989) (quoting President's Task Force on Victims of Crime, Final Report V (Dec. 1982).

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87 Ibid.
And while this cooperation is desirable, the Supreme Court also has stated that victim concerns must be considered in the criminal process.

In the administration of criminal justice, courts may not ignore the concerns of victims. Apart from all other factors, such a course would hardly encourage victims to report violations to the proper authorities; this is especially so when the crime is one calling for public testimony about a humiliating and degrading experience such as was involved here. Precisely what weight should be given to the ordeal of reliving such an experience for the third time need not be decided now; but that factor is not to be ignored by the courts.\(^{88}\)

Therefore, prosecutors are required to consider the victim's rights and interests, and are not in any way required to keep the victim at arm's length in investigating and prosecuting victim related crimes.

### 3.2.3 WHO DOES PROSECUTION IN ENGLAND AND WALES?

Before the creation of the crown prosecution service in the 1980s, the police and the director of public prosecution (DPP) were responsible for prosecution. The office of the director of public prosecution was set up by the prosecution of offences act 1879, and its task was to institute, undertake or carry on criminal prosecution. Before this Act, there was no public prosecutor to take criminal cases to court\(^{89}\) people had to find their own lawyers or present the prosecution case themselves. The Home Secretary appointed Sir John Maule in 1819 as the first Director of public prosecutions (DPP) as part of the Home Office. He dealt only with a small number of important, sensitive or difficult cases. The police continued to have responsibility for most prosecutions until 1986. The police were responsible for the prosecution of routine offences in magistrates’ courts and there were 43 prosecution authorities in England and Wales.

The great majority of the prosecutions in England and Wales are commenced by the police in the sense that the accused is either charged at a police station or information is laid against him by a police officer in the course of his duty. Prior to commencing a prosecution, the

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police will, of course, have been responsible for investigating and obtaining evidence about the alleged offence.\textsuperscript{90}

In addition, 25 per cent of prosecutions not commenced by the police are brought by a wide variety of prosecutors for instance, the Inland Revenue prosecute for tax offences; customs and Excise for VAT offences and also for illegal import of drugs. As apparent, most non-police prosecutions are commenced by a government or quasi-government authority. However, a minority are still brought by individuals acting in a purely private capacity.\textsuperscript{91} Thus, it is not unusual for trouble between neighbours to result in the parties cross-summoning each other for assault.

In 1978, a Royal Commission on Criminal Procedure was set up under Sir Cyril Philips. Its report was published in 1981 and thus had \textit{three main criticisms} of the Criminal Justice system in England and Wales. The first one refers to the situation that the police should not investigate offences and decide whether to prosecute or not. The officer who investigated a case could not be relied on to make a fair decision whether to prosecute. Secondly, different police forces around the country used different standards to decide whether to prosecute. And lastly, the police were seen as allowing too many weak cases to go to court. This however, led to a high percentage of judge-directed acquittals. Following this report, the Crown Prosecution Service (CPS), was established by the Prosecution of Offences Act 1985 and is divided into 42 areas, with the DPP as its chief prosecutor. The CPS started working in 1986.

The vast majority of prosecutions are undertaken by the crown prosecution service, but a number of other agencies also have responsibility for undertaking criminal prosecutions, for example the agencies responsible for enforcing laws regulating many aspects of business, trade and commerce. Individuals and private organisations may also prosecute, but this account for only a very small number of prosecutions.\textsuperscript{92}

The right to start a private prosecution is subject to limitations: the magistrates may refuse to issue proceedings; the Attorney General can stop what are called ‘vexatious litigations’ from bringing cases and the DPP has the power to take over prosecutions and end them. Many of the prosecuted cases by regulatory agencies are not included in the criminal statistics, and

\textsuperscript{90} Spark, J., \textit{Emmins On Criminal Procedure}, Blackstone Press Limited, 2000, p. 56
\textsuperscript{91} \textit{Ibid} p.62
statistics on how many offences are prosecuted in relation to known offences are not generally available.

Despite this lack of statistics, researchers are stating that these regulatory agencies prosecute only a very minimal proportion of known offenders. They see prosecution only as a last resort\textsuperscript{93}. Many see themselves not as police officers, but as agencies responsible for improving standards of business, trade or commerce by ensuring that business comply with regulations. Prosecution is only one of many tools to achieve it\textsuperscript{94}.

The crown prosecution service is the most important actor for prosecution, 75 per cent of all prosecution in the magistrates court and 95 per cent in the Crown Court are carried out by the CPS. The head of the CPS is the DPP, Ken Macdonald QC, was appointed in November 2003\textsuperscript{95}.

The crown prosecution service as the Attorney General is answerable in parliament for the crown prosecution service which is headed by the director of public prosecutions, a senior lawyer. The crown prosecution service completes approximately 1.4 million cases a year in the magistrates’ court and 125,000 in the crown court.

The process of prosecution is formally started either following the arrest and charge of a suspect by the police, or after a summons has been issued by a magistrates’ court. The court issues a summons after receiving information from the police, or other prosecuting bodies or from the individual victim about an alleged offence; this is referred to as ‘laying and information’.\textsuperscript{96} There are many more summonses issued than people arrested and charged. We see that the police retain complete discretion whether or not to charge, thus whether or not to initiate prosecutions.

### 3.2.4 HOW (LARGE DISCRETION)

The high level of discretion which the police must exercise in relation to their powers to stop and search, arrest, detain and investigate crime does not stop at the point of charging. Once a person has been charged, it is not automatic that he or she will be prosecuted and there has

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\textsuperscript{94} Davies, M., \textit{et al.}, p. 199.


\textsuperscript{96} \textit{Ibid} 87
never been a legal obligation to bring an offender to court. The police also have a very discretionary hand in dealing with offender. If police officers think there is insufficient evidence, action would be contrary to ‘the public interest’, or a person is innocent altogether, they decide not to charge (or prosecute) and to take no formal or no further action. Of course, this decision may become problematic in determining whether the evidential basis is really too weak or other considerations are intervening in the decision (e.g. in the police interest). The decision to prosecute rather than to issue a caution or to drop the case involves another important discretion of the crown prosecution service.

English law imposes a requirement of consent to prosecute, mostly from the director of public prosecutions and a few from the attorney general, for a lengthy and ragged list of offences.

The Crown Prosecution Service only takes over once a prosecution is initiated by the police, although then the CPS has discretion to continue with the case or to discontinue it. The evidential test is a crucial criterion in the CPS decision to prosecute. Crown prosecutors must be satisfied that there is enough evidence to provide a ‘realistic prospect of conviction’ against each defendant on each charge. They must discuss whether the evidence can be used and is reliable. They must also consider what the defence case may be and how that is likely to affect the prosecution case. A ‘realistic prospect of conviction’ is an objective test. It means that, a jury or a bench or a bench of magistrates, properly directed in accordance with the law, will be more likely than not to convict the defendant of the charge alleged. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. It is evident that in many cases the director of the crown prosecution service has considerable power of de facto. A concordance rate, of 96 per cent between magistrates’ decisions and prosecutions could include a number of cases where these prosecutors are merely trying to anticipate magistrates’ decisions rather than influenced them, but the likelihood is that magistrates are(at least sometimes) influenced by what prosecutors have say. However, it is important to mention that English prosecutors have more subtle ways of influencing prosecution through decisions on the charge(s) to be brought in a particular case.

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Traditionally, once started, prosecution could only be stopped at the leave of the court. Under the Prosecution of Offences Act, the Crown Prosecution Service may discontinue a case without leave of the court (only where the police initiated the prosecution and the Crown Prosecution Service has control of a case). The difference between discontinuance and withdrawal of a case is that the former may be started again later.98

3.2.5 THE ROLE OF VICTIM IN PROSECUTION IN ENGLAND AND WALES.

Even though, the police and the crown prosecution service has a wide discretion of whether to prosecute a crime or not to do so, the victim now has a great role in influencing these decision in either way. This is seen within this exercise of discretion; prosecutors often rely on crime victims as crucial sources of information and may choose to make use of victim information and resources in making prosecutorial decisions99. Indeed, while prosecutors represent the government, not the crime victims per se, prosecutors are encouraged and often required to consider the victim's interests as well. Any efforts to require a wall of separation between prosecutors and victims should be rejected, as counterproductive and unnecessary for any public policy or constitutional reason.

In all kinds of cases, ranging from the most serious to the "smallest," law enforcement relies on cooperation from the public. In a typical assault case, a victim must first contact the police to report the crime, relay the details of the incident, often participate in perpetrator identification (through police line-ups), testify at trial and, if the defendant is convicted, make a victim impact statement at sentencing. Costs involved in this process are ordinarily incurred by the victim, eventhough the benefit of the victim's participation accrues to the State.

Cooperation from an assault victim usually only entails small costs that do not appear to directly benefit law enforcement officials or relieve them of any budget burdens. However, consider the cooperation store owners give to police in routine shoplifting cases. Shoplifters are caught almost exclusively by private security officers working for the victimized retailer. The private security officers must observe the crime, investigate it if necessary, apprehend and detain the suspect, report it to the local law enforcement authority, and then testify at the defendant's trial. All of these costs are directly underwritten by the victimized corporation. If this cooperation was not allowed between these crime victims and law enforcement,

98 Sanders, A., above note 96, p. 62.
99 Nahra, K.J., above note 1.
shoplifters could either steal with impunity, or law enforcement would be forced to shift resources away from higher-priority areas to combat shoplifting. Either of these scenarios clearly undermines sound public policy. Victim participation therefore is critical to an effective law enforcement process. The law enforcement system often depends on the voluntary participation of crime victims in order to investigate and prosecute criminals successfully. See R. Elias, The Politics of Victimization 134(1986) (estimating that approximately 95% of all reported crimes involving specific victims are discovered from citizen complaints, usually from the victims themselves). The willingness of victims to come forward is vital to the successful prosecution of criminals. Without this assistance in reporting crime, more crime effectively will go unpunished, as the criminal justice system is "absolutely dependent" on victim cooperation. Karen L. Kennard, The Victim's Veto: A Way to Increase Victim Impact on Criminal Case Dispositions, 77 Cal. L. Rev. 417, 425 n.42(1989) (quoting President's Task Force on Victims of Crime, Final Report V (Dec. 1982).

And while this cooperation is desirable, the Supreme Court also has stated that victim concerns must be considered in the criminal process. In the administration of criminal justice, courts may not ignore the concerns of victims.

Apart from all other factors, such a course would hardly encourage victims to report violations to the proper authorities; this is especially so when the crime is one calling for public testimony about a humiliating and degrading experience such as was involved here. Precisely what weight should be given to the ordeal of reliving such an experience for the third time need not be decided now; but that factor is not to be ignored by the courts. Therefore, prosecutors are required to consider the victim's rights and interests, and are not in any way required to keep the victim at arm's length in in prosecuting victim related crimes.

Also in the common law system of England and Wales, without victims to act as willing witnesses the successful prosecution of the criminals is difficult. The burden and the standard of proof tilt the system of justice in favour of the defendant. It is not as in the civil where the judge has to decide which side to believe. In criminal cases, the defendant do not have to explain themselves, as they are presumed innocent, and therefore the active role in the case is given to the prosecution to explain what happened, to identify who was culpable and to demonstrate this beyond reasonable doubt. This is very difficult and in many impossible without victims willing to act as witness in court, which means the role of the victim to prosecute an offender in adversarial system is inevitable.
Crown prosecutors are likely to meet victims as part of the review process of the criminal justice system, and are therefore reliant on what is contained in the paper. There are research findings from the early years of the crown prosecution service suggesting that it is willing to defer to the wishes of ‘important’ victims such as local businesses, at least to the extent of not discontinuing cases that appear to fulfill the criteria. Recent research by Moxon and Crisp shows that some 13 per cent of discontinuances were attributable to the victim’s reluctance to proceed, which usually makes it difficult to pursue the case, since the victim’s evidence is likely to be crucial, and that a further 6 per cent of discontinuances of prosecution stemmed from the offender’s agreement to compensate the victim, of which if the victim refuse compensation, the offender is likely to be prosecuted.

Even in the Code of crown prosecutors the role of the victim in prosecution is also recognized. Paragraph 6.7 of this code states that, the crown prosecution service ‘acts in the public interest, not just in the interests of anyone individual’. However, it goes on to emphasize that’ crown prosecutors must always think very carefully about the interests of the victim, which are an important factor when deciding where the public interest lies’. The use of the word ‘interests’ rather than wishes is deliberate, and Crown prosecutors are expected to make themselves aware of the victim’s views but to take account only of their interests.

Crown prosecutors are expected to make themselves aware of the victim’s views and also to take account of victim’s interest. This is however the correct approach in theory but in practice actually, research shows that the crown prosecution service always neglect the interest of victims even after the evolution of victims role in criminal justice process in general and prosecution in particular.

One sphere of victim’s interests is whether they are likely to receive compensation from the offender: on the one hand it is not possible to have an enforceable right to compensation unless the case is prosecuted, and this may be taken as a further indication of the difficulty in reconciling elements of reparative justice with the English system.

Again in one type of case, the victim’s wishes are highly likely to prevail, and that is where the victim if declines to give evidence because he or she wants the prosecution dropped, the crown prosecution has no other choice than to drop the prosecution as intended by such a

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victim. Many of such cases simply cannot proceed without the victim-complainant’s evidence, and so have to be dropped. Particularly of such cases are sensitive cases like ‘domestic’ violence, where the complainant later wishes to withdraw her complaint. Among the reasons are that she wishes to be reconciled to her partner, fear of losing children or a desire to keep the family together, or fear of reprisals. The victim’s charter makes certain promises about how the crown prosecution service will respond to victims. The role of the victim in prosecution has also been evolved even in cases where death has been caused. The crown prosecution will (on request) meet the victim’s family in order to explain its decision on prosecution. The crown prosecution service representative has to introduce herself or himself to the victim before evidence is given in court, should give an explanation of procedures (unless the witness service is able to do that), and should explain any delays for prosecution to the victim or family. This however in practice is not the case because the flow of information to victims is very slow.

It is worthy to note that victims play role not only in prosecution in England and Wales, but also throughout the criminal justice process. This is seen as in October 2001, the Home office introduced the victim personal statement scheme as set out in the 1996 victims’ charter. Here, victims has the role to submit a statement to the police and can also submit a further statement prior to the trial describing the effect the crime has had on them. This statement has a role to play in the sentencing process as can influence the magistrates’ judgments.

The role of victims today is very different than in our earlier history. The crime victim once had a more prominent part in directing the progress of the criminal justice system. And later became the forgotten party in the criminal justice system especially in prosecution because of the large discretion given to the crown prosecution service in handling prosecution, Today, participation in the contemporary criminal process brought back the victim in an active position in prosecuting an offender. This notwithstanding the criminal justice system of England and Wales still imposes numerous burdens on victims; which make them feel victimized not only by the crime, but by the process as well, so that they increasingly fail to assist law enforcement agencies, to the detriment of the public at large.

102 Ibid p. 198.
104 Ibid
The criminal justice system's current response to the interests of beleaguered crime victims is no better than timely, and possibly very late. A sense of alienation with the criminal justice system has reached such heights that many pieces of literature now discuss the problem in terms descriptive of a crisis. Surveys of crime victims reveal intense displeasure with the criminal justice system. Victims often do not report to the police the crimes that have been committed against them, prompting [one commentator] to blame the "decline of faith" in the criminal justice system for this corrosive effect: «Victims report few crimes to the authorities because they do not expect them to be responsive." 105

3.2.6 RIGHTS OF VICTIM IN ENGLAND AND WALES.

In recent years the rights of victims within the justice systems of the United Kingdom have been considerably extended, with the creation of new organizations and procedures and the provision of greater funds. The amount of information available to victims has grown and more research, statistics and good practice published about victims.

At the start of the 21st century, the UK has one of the most developed arrangements for victim’s protection and compensation 106. It also has a growing corpus of research, statistics and good practice on victims that includes large ongoing studies of victimisation in successive British Crime Surveys and the Offending Crime and Justice Survey.

3.2.6.1 RIGHT TO A VICTIM IMPACT STATEMENT

All victims have the legal right to make a VIS provided, of course, that they meet legally defined criteria for who is a victim. VIS allows victims to play an active role. Unlike testifying which put victims in a passive role, answering only questions that are put to them and unable to offer new information that is not requested of them, the VIS allows victims to say what they feel is important for the court to know.

3.2.6.2 RIGHT TO COMPENSATION

Victims whose property has been damaged or stolen as a result of a crime may be able to get compensation in a number of different ways.


3.2.6.2.1 COMPENSATION FROM THE GOVERNMENT
A victim of violent crime could be eligible to receive compensation from the Criminal Injuries Compensation Authority (CICA).
It is a government organisation that pays money to people who were physically or mentally injured as innocent crime victims. The dependent of someone, who has died because of a crime, may receive compensation from CICA as well.

3.2.6.2.2 COMPENSATION FROM THE CRIMINAL
If someone is caught and convicted for the crime, the criminal court may order them to pay compensation for any injury, loss or damage suffered by a because of the crime.
He or she can apply for a compensation order; let the police know if he would like to receive compensation.
The police will then pass this information on to the Crown Prosecution Service who will make sure that the court knows about it.

3.2.6.2.3 FILING SUIT IN CIVIL COURT
The victim also has the right to sue the person who committed the crime against him in civil court. If injured, or if his property was damaged or stolen, he may be able to win compensation. If he thinks he may sue, it would be a good idea to keep track of receipts for the same expenses listed above.
CHAPTER FOUR: CONCLUSION

4.1 CONCLUSION

To what extent the flow of information to victims has improved, and victims’ needs at prosecution are better met, remains to be evaluated. There is no doubt that the possibilities of victim participation in prosecution continues to grow in both Belgium criminal justice system and that of England and Wales. Practice and changes in legal framework are giving structural form to the role of victim not only in prosecution but in the whole process of the criminal justice system.

It is also important to note that Belgium and England and Wales are among top six jurisdictions that have improved best and have passed victim-oriented reforms but though in practice it is not very effective.

If we truly want to address the plight of victims then we must stop excluding victims and start including them not only in the prosecution process but also in the criminal justice system as a whole. The introduction of victim impact statements in victims participate in the criminal justice process is also important. Common law systems such as that of UK was an important first step in that regard. But it is not enough, because how victims participate in the criminal justice process is also important. We need to open up the criminal justice process to include victims especially at the prosecution level where they are almost forgotten because of the ever increasing power of the public prosecutor in both countries which is the order of the day in Europe.

Looking at the facts above, one can see that, the England and wales legal system in theory is broader than that of Belgium, as it recognizes the right of the victim (and indeed of any citizen) to seize the courts directly while that of Belgium give such rights only to victims’ heirs or assignees to the claim, when the police or the crown prosecution service refuse to prosecute themselves. But in practice, is not the case as the crown prosecution service is charge with among other duties to stop such prosecution at any given time.

In England and Wales, the victim is given the widest rights to initiate a private prosecution, but virtually no rights during a public one, and no right as such to claim compensation.

Contrary to Belgium where the evolution of victims’ role also covers the public prosecution and the victim has the right to claim compensation as seen above in the civil party action and
also under the role of the victim in mediation which has as sole objective compensation to victims.

Again in my findings, I realized that, in England and Wales, the recognition of an active role for the victim in the initiation of proceedings is not reflected by a parallel recognition of rights during a prosecution initiated by the police, while as to the position of victim-actors in Belgium this is clearly reflected if the victim constitutes himself civil party by joining the prosecutor’s claim. He thus acquires greater role of intervention.

Furthermore in relation to my finding, I discovered that, even though the victim was described in most criminal justice system as the unknown or forgotten person, the evolution of their role brought them back to the fore front of the criminal justice system and prosecution in particular. On this point, due to the evolution, and if one were to consider only the officially recognized powers that the victim possesses to institute proceedings, one would get the impression that the role of the victim is of great importance in England\(^{107}\), where as in practice, only a tiny proportion of proceedings are instituted by private individuals there, and the legal status accorded to the victim during prosecution is negligible. On the other hand in the case of Belgium is the reverse as the victim can go to the investigating judge and ask him to prosecute his or her case.

Obviously, one can see in both countries that, in a modern urban society a system of private prosecution by victims is totally impractical. But as private prosecution declined during the nineteenth century it was not replaced by a system of public prosecution. Rather, the new public police forces began themselves to fill the vacuum and to take over prosecutions in a de facto way. The increasing dependence of the victim on the police to track down the suspect and gather evidence for evidence meant that effectively the police were taking over prosecutions. Besides, if police had put in work tracking down an offender then they would regard their time as having been wasted if the victim then decided not to prosecute.

From the above finding we can rightly see the evolution of the role of the victim in prosecution is greater in Belgium than that of England as Wales, as such role is seen in theory and in practice while in England and Wales, it’s only seen in theory and not I practice. So in my view, England and Wales should try to follow the little practical example of Belgium for it is known since time immemorial that even if the victim is not given its place in prosecution

as it ought to be, the criminal justice system cannot function properly meeting its objectives without the participation of the victim not only in the prosecution phase but at all level of the criminal justice system.

In the Belgian model, all victims are repeatedly offered the possibility of participating in mediation with the offender, regardless of the offender or offence characteristics, then there is relatively little protection of victims. The only way in which victims are protected is that victims who do not wish to participate in mediation can say no and they will not be forced to do so. But it should be noted in comparison to the criminal justice system of England and Wales where victims can be and sometimes are forced to testify. The approach according to mediation as in Belgium is more responsive to victims’ wishes.

To add, in my opinion Belgium should also accorded more visible role to the victim in prosecution than what is the situation now, and other European countries too.

Again it should be noted that from the above analysis it is clear that, the role of the victim in prosecution is more clear and visible in Belgium than England and Wales. this can be justify also by the fact that, in England and Wales, one of the limitation of private prosecution by victims of a crime is that the magistrate can refuse to issue proceedings concerning a case brought up by a victim. While in Belgium, magistrate cannot do so if such a victim declares his or herself as a civil party. So evolution of victims’ role in prosecution is more in theory and practice than in England and Wales.

In my opinion, regarding the findings, I recommend that England Wales being a typical example of a common law jurisdiction, should not only copy the civil law system of criminal justice of Belgium as both systems are fast converging but should particularly copy the place the victim occupies in prosecution both theoretical and practical. As we cannot deny the fact that even though victims are sideline from most criminal justice systems, they do and will always have a great role not just in prosecution, but the whole of criminal justice system. As without victims the criminal justice system and prosecution in particular cannot function properly, hence the need for more evolution on this aspect.

Furthermore, it can be concluded from the above findings that, Victims in common law jurisdictions have traditionally been unable to participate in criminal trials for a number of structural and normative reasons. They are widely perceived as 'private parties' whose role should be confined to that of witnesses, and participatory rights for such third parties are
rejected as a threat to the objective and public nature of the criminal justice system. However, recent years have witnessed both a major shift in attitude in relation to the role of victims within the criminal justice system and a breakdown in the public/private divide in criminal justice discourse, but not in practice, while those of civil law jurisdiction are able to participate practically. Hence, there is greater evolution of victim’s role in Belgium than England and Wales.

Additionally, it was notice from the findings, that, even though the evolution of the role of victim in prosecution is more in Belgium than England and Wales in practice as seen above, but it will be an overstatement if it is note mention that, in theory the role of victim is more expanded in England and Wales not only in prosecution but also very clear in the sentencing face of the criminal justice system. This is seen in the most recent edition of the Victim’s Charter, published in 1996, provides for victims to “explain how the crime has affected [them]”, and for their “interests to be taken into account”108. The “Victim Personal Statement” is part of this initiative and can be made when completing an evidential statement, and at any time before the defendant appears in court, detailing longer term effects.109 This statement most at times may or may not aggravate the sentence of the offenders.

To add, I also noticed from my findings, that, repeatedly, research has shown that restorative justice programs such as mediation is associated with greater victim satisfaction than the conventional criminal justice system.110 In my opinion, I recommend both countries, to develop more of such programs which do not only speed the criminal justice system as a fast track, but also reduce the prison population which is in a constant increase in both countries and thus satisfy both offender and victim.

It should however be noted that over thirty years after the birth of the victims’ movement and the discovery of the plight of the victim, by giving them a role in the criminal justice system not just in both countries but the world at large, victims are still essentially witnesses to a crime against the state with few rights as seen above.

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