

## **Supporting Victims of Crime in Estonia**

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Crime victimization in Estonia has declined over the past two decades but remains still high in comparison to Western European countries. The crime reporting figures at the same time show that most of the volume crime victims don't turn to police. It is also known that many victims have no knowledge and information about victim support services and possibilities for compensation. Supporting victims of crime can be manifold and in Estonia, there are a few possibilities for victims of crime to receive support. An overview of the available services is given below along with some statistical findings. The present report consists of six chapters. First one gives an overview of victims in statistics. The second chapter covers national victim support system. Third section explains the restorative practices in Estonia. The role of the healthcare system in detecting crime victims is described in the fourth chapter. In the last two sections, authors bring out the shortcomings in the existing system and also discuss possible future developments.

### ***1. Victims in Statistics***

In addition to official crime statistics and data on perpetrators and victims in criminal proceedings, Estonia has participated in several rounds of International Crime Victim Survey and has gathered information on victimization also through regular commercial polls. Data on peoples' trust in justice and experiences as victims has been gathered through special studies.

#### ***1.1. Data on Crime Reporting***

In Estonia, as in many other post-communist countries the rates of crime victimisation are high in comparison to Western European countries but the reporting rates of crimes are low. As it will be demonstrated, during last two decades there have been positive improvements in both areas. The changes have also been supported by the fact that the principle of legality is applied in Estonian criminal justice system: when there is reason to believe that a crime has been committed, the authorities cannot decide not to initiate a proceeding<sup>1</sup>. This means that according to law the initiation of a criminal proceeding does not require a special statement from the victim. There have still been some shortcomings in this straightforward system, especially in cases of domestic violence where victims often wish to withdraw their complaints and therefore the police have not always initiated the proceeding before the victim has clearly outspoken the wish to start the investigation.<sup>2</sup>

Most recent data on crime victimisation and reporting in Estonia represents the year 2012.<sup>3</sup> It showed that the overall victimisation and victimisation by property crime have decreased in Estonia during last couple of years. Violent crime figures on the other hand rose in 2012. The same trend can be seen also in official criminal statistics.

According to Estonian people, 4% of them in 2012 were victims of personal property theft and victims of theft from car. The share of victims of other types of theft was lower (2-3%). When

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<sup>1</sup> The proceeding can still be terminated in principle of opportunity.

<sup>2</sup> Until 2004, the system of private accusation was in use.

<sup>3</sup> Data is based on a representative poll of 1100 people conducted by company TNS EMOR in November and December 2012.

being asked about the latest incident, 40% of victims reported themselves or asked someone else to report the theft to police. In 2% of cases the police found out about the theft some other way and in 58% of cases the police didn't find out about the theft.

In case of violent crime, 4% of people reported being a victim of a physical attack and 5% of a violent threat. When asked about the latest incident, 63% of victims said that the police did not find out about it.

The percentage of people not reporting the crime to police according to sex is slightly higher among men in case of violence and among women in case of theft. In comparison to other nationalities (mostly Russians), Estonians are a lot more willing to report thefts to police but there are fewer differences in case of violence that is more often reported by bystanders and other individuals. Non-reporting rates are also dependent on the education of the victim: more educated people tend to report crimes more frequently.

The last thorough data on crime reporting in Estonia was published in 2010 in the context of Estonian Security Survey<sup>4</sup>. The fieldwork for the study was conducted by Estonian Statistical Office mainly in 2009 and the data represents mainly the year 2008. The following data on crime reporting derives mostly from the report of Rannama and Salla (2010).

The summary indicator for crime reporting is according to International Crime Victim Survey formed by five types of crime: theft from a car, bicycle theft, theft from home, attempted theft from home and theft of personal property. Based on these indicators, the police reporting rate in Estonia in 2008 was 39% - most of the people did not report crime to police. The previous studies had shown an increase from the lowest recorded level in 1995 (28%) up to 43% by 2003. The 4 percentage point drop between 2003 and 2008 can somewhat be explained by the sharp decrease in property crime in this period.

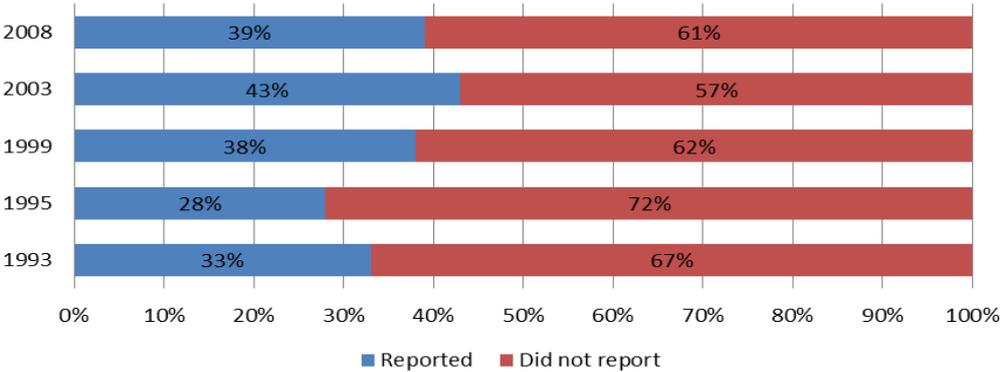


Figure 1. Overall rate of reporting the crimes to the police, based on 5 types of crime

In international comparison, Estonian people are passive when reporting crimes to the police. In 2003, Estonia was 27th among the 30 compared countries. The Estonian indicator – 43% in 2003 and 39% in 2008 – is similar, for example, to Bulgaria, Iceland and Poland. The highest number of crimes was reported in Austria, Belgium and Sweden where the police received information about 64-70% of crimes.

<sup>4</sup> Report of the study is available also in English: <http://www.just.ee/victim>

The most frequently reported crime in Estonia, just like elsewhere in the world, is car theft (88% of victims), in case of which material damage is probably the biggest and the reporting to the police is often a precondition for getting insurance indemnity. Next were the motorcycle, motor scooter and moped thefts which were reported by only a few people. The police receives the least information on crimes committed by using violence and threatening with violence (19% of robberies and 23% of assaults and threats were reported).

Similar with the international trends, the main reason of not reporting a crime to the police in Estonia was also the fact that the crime was not considered being serious enough to turn to the police. For types of crimes compared in the survey, 49-79% of victims chose this to be the reason for not reporting. A victim solved the crime himself/herself in 5-23% of incidents; fear of revenge was the reason for not reporting in 1-8% of incidents and other reasons in case of 12-35% of victims.

Primarily victims of violence have started to solve the incidents themselves (robbery 23%; assault and threat 18%). Evidently the reason is that in their case the victim is directly exposed to the criminal offender while, for example, in case of crimes related to cars the victim has not seen the criminal offender in most occasions. Victims of assault and violent threat were the ones who most frequently did not turn to the police because of fear of revenge, which can be explained with people's actual concern about their health.

People who were victimised by a crime and also reported it to the police were asked to assess satisfaction with police actions. The highest satisfaction indicators were apparent in case of violence related crimes (rather satisfied 65-72% of victims who had reported the crime) and the lowest indicators in case of thefts from a summer cottage, country home or allotment (rather satisfied 34%).

The respondents who reported the crimes but were not satisfied with police actions were also asked about their reason for dissatisfaction. Victims most frequently mentioned as a reason for dissatisfaction that the police could not find stolen or robbed property (assessment of 66% of victims). On the average, for 51% of victims the reason for dissatisfaction was that the police did not apprehend a criminal offender. 37% of victims who had reported crimes to the police were not satisfied that the police did not inform them sufficiently of the course of investigation. 9% pointed out "other circumstances" as reasons for dissatisfaction.

### ***1.2. Repeat and Secondary Victimization***

In this section of the article both repeat victimisation and secondary victimisation are addressed. According to Estonian crime victim surveys the overall victimisation of crime has decreased in Estonia. Between 1999 and 2008 the percentage of people victimised within a year decreased from 33% of people to 26%. At the same time, number of crimes that victims suffered during a year fell even more, from average number of 72 per 100 respondents to 42. This means that as fewer people were victimised, the repeat victimisation decreased even more. (Ahven, 2010)

Over the years the highest number of repeat criminal offences has occurred in case of thefts committed from a summer cottage, country home or allotment. Usually, the absence of guard contributes to these criminal offences; at the same time the damage caused by one criminal offence is relatively small in most cases. In 2008 35% of victims were repeatedly victimised by these offences. (Ahven, 2010)

In case of violence, 27% of people who had suffered a threat with violence or an assault were repeatedly victimised; whereas 10% of these people were victimised three times or more. In

most cases these are younger people who spend quite a lot of spare time outside home. (Ahven, 2010)

Knowledge about secondary victimisation in Estonia can be obtained by a recent study conducted by the University of Tartu for the Ministry of Justice (RAKE, 2012). This study by evaluated the role and satisfaction of victims and witnesses in criminal proceedings.

There can be many sources of secondary victimisation. In Estonia, the main focus has been of diminishing the harm for more vulnerable victims such as children. The emphasis has been on the speed of criminal procedure, avoidance of giving statements repeatedly, educating the police and judicial staff etc. The study by RAKE showed that victims were in general satisfied with the treatment by police, prosecutor's office and courts. Evaluation indicated more positive results for victims of violent crimes in comparison to property crimes. Most often victims brought out positive experiences in connection to the speed, professionalism and good attitude by officials. They said that officials take the case and victim's statements seriously, are willing to explain the rights and procedure to the victim. One of the main reasons not to be satisfied with the police were the fact that criminal was not found. In 1 out of 5 respondents said that contact with the police made them feel that they themselves are criminals or they as victims are responsible for what had happened.

In general, the report indicated as the most severe problem in the aspect of secondary victimisation, lack of information about the proceeding and the time consumed in the proceeding. The evaluation was more negative among Russian-speaking population.

Report also addressed the question how knowledgeable are the victims about different compensation mechanisms and services. The study showed that:

- Most people do not ask for monetary compensation for their spending on participation in criminal proceeding (interrogations, court hearings etc) although  $\frac{3}{4}$  of the respondents had knowledge about the possibility as such. The main reasons for not asking the compensation were smallness of the expenses and bureaucratic nature of the compensation procedure.
- 56% of the respondents knew that the state provides free legal aid for those who cannot afford it.
- 50% of the victims had not heard about the victim support service, 17% had used it themselves and the rest had only heard about it. Best awareness was among those who had been victimized by violent crime. Most of those people who had had a contact with victim support, said that they were satisfied with the way their case was handled

## **2. Victim Support**

The Victim Support Act<sup>5</sup> first came into force in 2003, marking a twofold breakthrough. Firstly, it showed that the state had an interest in caring for victims and secondly, victims started to get much more attention and real practical, material help. It was also an important paradigmatic shift, which moved public opinion and state politics from a strongly retributive mind-set towards a more restorative approach. (Kangur, 2012)

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<sup>5</sup> The full text of the Estonian Victim Support Act in English can be found on the following link: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X80012K2&keel=en&pg=1&ptyyp=RT&tyyp=X&query=ohvriabi>.

## **2.1. Victim Support Specialists**

To offer services to victims, Victim Support Department was created and the system launched on 1st of January 2005 when the corresponding chapter in Victim Support Act obtained legal validity. The aim of the Estonian National Victim Support Service is to maintain or enhance people's ability to cope after falling victim to negligence, mistreatment or physical, mental or sexual abuse. This public service is provided by the Estonian National Social Insurance Board (ENSIB) that operates under the Ministry of Social Affairs. Victim Support Department has 15 centres and 27 specialists employed across Estonia. Victim Support Centres are located in every county.

Victim support specialists mainly deal with cases of sexual, physical or mental abuse or mistreating, also neglect. Also, there are quite a few cases when specialists work with suicidal clients as well. Using different methods and involving specialists from different areas they preserve or improve the subsistence of victims. The main methods are listening, offering emotional support and empowering, sharing information about different possibilities and solutions to problems, and helping to communicate with different organisations. Crisis help is offered on an individual basis and in different collective bodies i.e. schools and other organisations.

According to the Estonian Code of Criminal Procedure, victim support specialists who among some other specialists have the right to participate when the police are interrogating children who have been exposed to domestic violence and sexual violence. This is done to ensure children's rights during interrogation.

Victim support specialists also provide initial help and counselling in crisis situations for the family of the victim or people who have witnessed a crime (i.e. homicide). Specialists also deliver information of someone's death to their family members. These situations also need initial crisis work. That can be considered as the most emotionally exhausting procedure. It takes more than empathy and compassion – it takes good training, delicacy, discretion and also lots of knowledge. Last, but not least, in these cases the specialist has to be aware of the effects this kind of procedure has on him- or herself and has to be able to take care of him- or herself afterwards.

Victim support specialists also organise seminars and trainings about gender based violence, dating violence for young people and child abuse to the partners (local officials – social workers, child protection specialists and other organizations who work with people and their problems) and also in schools and kindergartens etc. They also publish articles in media (newspapers, radio and at times, also TV shows). Due to this, the number of clients has increased every year. For example, in 2005 there were 3005 clients. In 2008, the number of victims increased to over 4000 and in 2012 there were 4510 clients. 1/3 of all the clients who have contacted victim support specialists had problems with gender based violence or child abuse.

In 2011, most people took initiative themselves to turn to a victim support specialist (57%), over a third were sent there by police (35%) and a few people were guided there by other authorities (8%), incl. shelters, hospitals, municipalities etc. (Leps, 2012).

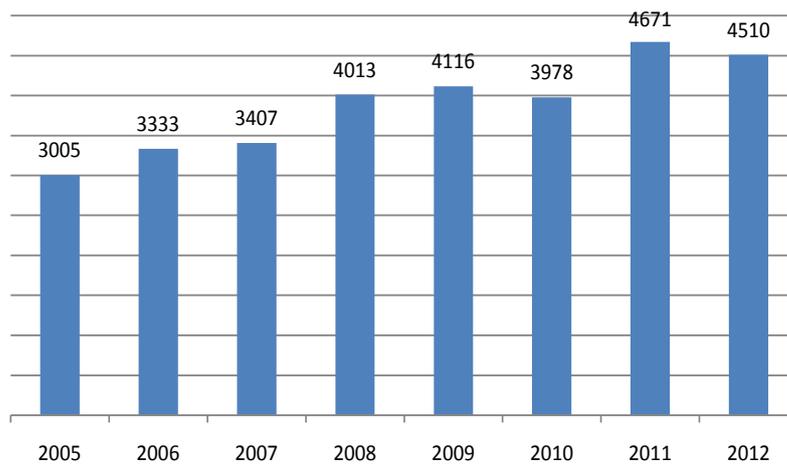


Figure 2. Clients of Victim Support Services 2005–2012

## 2.2. Cooperation with police and other authorities

Victim support specialists cooperate with the police, prosecutors, local government officials (including child protection specialists), medics, rescue service and other representatives of different organisations. The need for network members varies from the nature of the case. The main cooperation problem appears to be that not all network partners are interested in helping victims due to differences in their personal value system and therefore, clients do not get to know about possibilities to get help and assistance. Also, sometimes different specialists do not understand the core and consequences of victims' problems which lead to the same result – victims do not get help.

In 2004, a cooperation contract was signed by the head of ENSIB and Police and Border Guard Board which was renewed in 2012. According to that contract, police and victim support work together in cases of domestic violence, child abuse, murders etc. For example, when the police receive a call about domestic violence, officers on scene fill up an information report and ask for the victim's permission to forward his or her data to a victim support specialist. In that case, the specialist comes into contact with the victim.

Furthermore, the Victim Support Act states that the police are obligated to inform victims about their right to turn to a victim support specialist for further help and assistance. There are no boundaries about who can contact victim support specialists. By the Victim Support Act, anyone who feels that they have been somehow mistreated can come to the centre. Information about the service can be found in schools, ER, kindergartens, local municipalities etc. and on their websites.

Since most of the victim support specialists are located in the same building as the police, police officers also may forward people straight to the victim support specialist or invite the specialist to participate when they are meeting with the victim(s). Victim support specialists sometimes also make home visits with the police or local social workers when there is reason to suspect domestic violence or child abuse.

Victim support specialists have an opportunity to have group supervision at least once a year. Also there is possibility of individual supervision in case of difficult cases. This is crucial for a specialist in order not to burn out and provide a qualified service.

Since June 2013, dealing with human trafficking victims on national level and providing/finding the best assistance for them is also a responsibility of the Estonian national victim support system.

### **2.3. State Compensation to Victims of Crime**

State compensation is paid to victims of crimes of violence committed in the territory of Estonia and to their dependants. Also, the compensation is paid to the victim of a crime of violence committed abroad if the victim is a permanent resident of Estonia or an Estonian citizen who does not reside permanently in Estonia and was abroad for reasons related to studies, employment or service duties or for other good reasons and if the victim is not entitled to similar compensation under the law of the country where the crime was committed. If the victim dies, compensation shall be paid to a dependant who was permanently residing in the Republic of Estonia at the time when the crime of violence was committed.

For the purposes of Victim Support Act, a crime of violence is an act committed against the life or health of a person which is punishable pursuant to criminal procedure and as a result of which the injured person dies, sustains serious damage to his or her health, or sustains a health disorder lasting for at least six months. Action which is taken by an injured person or a third party to prevent a criminal offence, apprehend a criminal offender or assist a victim of crime and which results in one of the above mentioned consequences is also deemed to be a crime of violence. Acts are deemed to be crimes of violence even if the offender is incapable of guilt, or the offender has not been identified or apprehended or if the offender cannot be convicted for other reasons but the evidence collected with regard to the criminal matter suggests that a crime of violence has been committed. Foreigners are also entitled to state compensation if he or she resides in Estonia on the basis of a residence permit or right of residence of a long-term resident or a temporary residence permit or right of residence, is a citizen of the European Union, is a citizen of a state which is a party to the European Convention on Compensation of Victims of Violent Crimes, or is a person enjoying international protection staying in Estonia.

*Table 1. Compensation designated to victims in 2008-2012*

	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Number of beneficiaries	171	191	171	197	207
Average compensation (EUR)	753	773	1021	1038	2000

The amount of compensation is determined on the basis of damage arising from incapacity for work, expenses for the medical treatment of the victim, damage arising from the death of the victim, damage caused to spectacles, dentures, contact lenses and other appliances substituting for bodily functions and to clothes, and the victim's funeral expenses. Expenses for the medical treatment of a victim are the essential expenses related to the medical treatment of the victim and acquisition of medicinal products and appliances substituting for bodily functions, alleviation of post-traumatic complications, teaching him or her a new speciality suitable for his or her state of health, and essential travel expenses related to the circumstances specified above. Up to ten sessions of psychological counselling or up to fifteen sessions of psychotherapy are also deemed to be expenses for medical treatment of a victim.

Table 2. Compensation designated to victims in 2012

Type of compensation	Number of recipients	Payment (EUR)
<b>Periodic payments</b>	<b>179</b>	<b>203 948,29</b>
1. Disability to work	40	59828,58
2. Temporary disability to work	9	7016,55
3. Compensation to dependants in the event of the victim's death	130	137103,16
<b>One-time payments</b>	<b>62</b>	<b>23 666,12</b>
4. One-time compensation due to disability to work	3	210,99
5. One-time compensation due to victim's death	11	4088,2
6. Victim's medical costs	21	7666,11
7. Victim's funeral costs	26	11622,18
8. Compensation to buy necessary equipment	1	78,64
<b>Total of beneficiaries *</b>	<b>207</b>	
<b>Total of compensation paid</b>		<b>227 614,41</b>
<b>Average compensation received</b>		<b>1 099,59</b>

\* "Total of beneficiaries" includes each person once

Compensation for expenses for the medical treatment of a victim shall be paid to the person bearing the expenses. Compensation for funeral expenses in the amount of 448 Euros shall be paid to the person who bears the expenses relating to the funeral of a victim of a crime of violence. Also, the dependants of a victim who dies as a result of a crime of violence shall receive compensation based on the victim's previous income as follows:

- 75 per cent of the income in the case of one dependant;
- 85 per cent in the case of two dependants;
- A total of 100 per cent in the case of three or more dependants.

The amount of compensation payable to one victim and all of his or her dependants on the basis of the Victim Support Act shall not exceed 9590 Euros. When applying for the state compensation, the victim should include a number of documents with the application, i.e. personal ID, residence permit for foreigners, birth certificate and documents to prove guardianship, if the applicant is a juvenile, end of employment certificate and a certificate from the preliminary investigation authority or court with details of the incident. When the victim is applying for compensation for temporary or permanent disability to work, the documentation should also include medical evidence and proof of disability. If some of the costs have already been born by the victims, these should also be documented and given to the victim support services for inspection.

When the incident took place abroad, documents should also include proof of travel, learning or work permit, if applicable; proof of entitlement to compensation in the country the incident took place at and a declaration form for receiving the necessary documents from authorities abroad. If compensation is to cover spectacles, dentures, contact lenses and other appliances damaged when the person fell victim of crime, proof should be provided of their cost either on purchase or repair, and documents stating these costs have been paid for.

Usually, the application has to be made within a year from the incident or from the victim's death unless the dependant became aware of the victim's death more than 6 months later or the applicant himself or herself suffered damages to health lasting more than 6 months and filing an

application was not possible earlier. For both cases, the application has to be made within a year either from becoming aware of the victim's death or from improvement of the victim's medical condition.

Compensation shall not be paid if the victim caused or facilitated the crime or damage by his or her intentional or reckless behaviour; the victim fails to give notice of the crime within fifteen days, although he or she would have been capable of doing so, and the police have not become aware of the crime in any other way; the victim has been convicted of a crime of violence and information concerning his or her punishment has not been deleted from the punishment register; or payment of compensation would be unfair or unjustified for other reasons. These circumstances also apply to a dependant of the victim. However, regardless of the circumstances, compensation may be paid to a dependant whose monthly income is below the subsistence level established by the Estonian Government on the basis of the minimum consumption expenditure. Also, payment of compensation may be refused if the applicant for compensation has refused to co-operate with the law enforcement authorities in ascertaining the facts relating to the criminal offence, identifying or apprehending the criminal offender or proving the damages.

#### **2.4. Compensation for Cost of Psychological Care**

In 2007, the Victim Support Act was changed and since then a victim of an offence not resulting in death, serious damage to his or her health or disability lasting for at least six months, has the right to receive compensation for the cost of psychological care in an amount equal to up to one minimum monthly wage. In 2013, the sum is 320€ per person. The compensation can cover counselling, psychotherapy or attending a support group.

Children, parents and grandparents and other family members specified in subsection 22 of the Estonian Social Welfare Act<sup>6</sup> of a victim of any offence are also entitled to the compensation if their ability to cope has decreased due to an offence committed with regard to the victim. Compensation shall be paid in an amount equal to up to one minimum monthly wage per family member, however, not more than in an amount equal to up to three times the minimum monthly wage per family.

*Table 3. Compensation for psychological care in 2008–2011*

	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Number of beneficiaries	29	112	133	223
Total cost of compensation for psychological care (EUR)	281	1077	1520	2058

In reality, a victim comes into contact with the victim support specialist and there is a questionnaire that shows the need for psychological care. Then the victim support specialist seeks out the proper service provider. According to the Victim Support Act, the provider of the specified care needs to match up to certain standards:

- Is registered as an health care professional with the Health Board or as a clinical psychologist or a school psychologist in the register of professions;

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<sup>6</sup> The full text of the Estonian Social Welfare Act in English can be found on the following link: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X1043K11&keel=en&pg=1&ptyyp=RT&tyyp=X&query=hoolekande>

- Operates as a sole proprietor, is in employment or law of obligation relationship with a sole proprietor or legal person holding an activity licence for providing specialised psychiatric care;
- Whose activities as specified in the articles of association include provision of the psychological counselling, psychotherapy or support group services.

The problem with the providers is that not every specialist is qualified due to the above mentioned reasons. Therefore, there are areas in Estonia where there are no specialists who could provide the service to the victims. Since the victims are often in poor financial condition, travelling to the therapy takes extra money they may not have and also, it can be really time consuming.

The application for the compensation for cost of psychological care has to be filed within one year after the crime. However, the time during which the compensation has to be used, is not limited. When applying for the compensation of psychological care, it is essential to present a personal ID, a certificate from the preliminary investigation authority stating that criminal proceedings have been started, birth certificate and documents to prove guardianship, if the applicant is a juvenile. When the victim has died, a death certificate or proof from the preliminary investigation authority is needed.

### **3. Restorative Practices in Estonia**

Values underlying restorative practices stem from the belief that crime is not only breaking the law but also damaging people, relationships and communities. Therefore, sentencing someone to a punishment is not enough and other aspects must be considered which, with the consent of both/all parties, would bring resolution in a context of conflict. These include repairing the harm caused by crime, the parties' joint decision on a just solution, and changes in people, relationships and communities. One other important aim of restorative practices is crime prevention: focusing on repairs instead of punishments is a way to reduce future harm. Restorative practices require offenders to take responsibility for their actions and for the harm they have caused. For restorative practices to take effect it is important that communities join in a co-operative effort and the government support these developments.

In Estonia, restorative practices were first mentioned in 2000 when the Victim Support Act was discussed (Lummer et al. 2012). In 2007, a section on conciliation (mediation) in the Code of Criminal Procedure<sup>7</sup> came into force which allows for prosecutors and judges to refer a case to mediators and mediation (in detail, read below). If the mediation is successful, the criminal investigation will be terminated according to principle of opportunity and there will be no criminal record for the perpetrator. According to Juvenile Sanctions Act<sup>8</sup>, there is a possibility to mediate juveniles as part of the decision of a juvenile committee.

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<sup>7</sup> The full text of the Estonian Code of Criminal Procedure in English can be found on the following link: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X60027K6&keel=en&pg=1&ptyyp=RT&tyyp=X&query=kriminaalmene>

<sup>8</sup> The full text of the Estonian Juvenile Sanctions Act in English can be found on the following link: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X40090K5&keel=en&pg=1&ptyyp=RT&tyyp=X&query=m%F5jutus>

Table 4. Reconciliation in criminal cases and mediation for juveniles (based on Lummer et al, 2012)

Method	Mediation in criminal cases	Mediation for juveniles
Implementation	2007	1998
Voluntary Process	Yes	Yes
Stage	Pre-sentencing	Pre-sentencing
Referral	Prosecutor/Court	Juvenile Committee
Finances	State	State/Local Government
Target group	Juveniles/Adults	Juveniles
Type of offences	Minor	Minor
Exclusion criteria	Conciliation is not permitted - in first degree criminal offences; - committed by an adult person against a juvenile victim; - resulted in the death of a person; - against humanity and international security, the state, criminal official misconduct, crimes dangerous to the public or directed against the administration of justice; - second offense of the same type of crime; - violation of probation order	No specific exclusion criteria. Juvenile Committee needs to evaluate whether mediation would be effective.
Mediator/Facilitator	Victim support specialist, 160h training	Victim support specialist, voluntary mediators
Guidelines	National	-
Legal base	Code of Criminal Procedure	Juvenile Sanctions Act

Besides that, restorative justice is also represented in civic society, including publications and different projects carried out in prison, community and schools. For instance, an empathy training programme called „The Way” was initiated in prisons in 2007. Participants for this programme were chosen according to their individual plan of imprisonment and the chaplain’s recommendation. In this programme, instead of actual victims, surrogates were used in one of the modules and participation was voluntary. There were no exclusion criteria in this programme.

Victim impact statement procedures are not in use in Estonia.

### 3.1. Mediation Service

As noted earlier, a section on conciliation (mediation) came into force in 2007 in the Code of Criminal Procedure. Since 18.02.2007, it is also stated in the Victim Support Act’s Chapter 2<sup>2</sup> § 6<sup>3</sup> that specially trained victim support specialists also work as mediators (Estonian Victim Support Act refers to mediation as conciliation). Mediation service is a public service which consists of organising the mediation procedure provided for in § 203<sup>2</sup> of the Code of Criminal Procedure and monitoring of compliance with the requirements of a written agreement entered into as a result thereof.

Mediation Service was created as an alternative to the punishment in criminal justice. It can only be implemented when someone has committed a second degree criminal offence, the circumstances of the crime are clear and there is no doubt about the perpetrator(s). The ruling about the implementation of the mediation service is issued by the prosecutor or court and it has to be approved by both the victim and perpetrator. When the victim of crime is a juvenile and the perpetrator is an adult, mediation service cannot be implemented.

Because mediation today is used almost exclusively in criminal proceedings then the formal goal is to reach an agreement of conciliation and compensation of damages caused by crime between the suspect and victim. But there are still soft or social aims, e.g. peace-making, repairing harm and healing relationships. Mediation can also help in rehabilitation process and prevent reoffending, especially for juveniles. The main idea, though, is to give the perpetrator(s) a chance to compensate the consequences of the crime to a victim(s) so the victim(s) have a sense of justice and involvement. The motivation for the perpetrator to agree to go through mediation is that the investigation will end and the data will not be registered in the Punishment Register.

Another goal of mediation is to minimise the tension between victim and perpetrator and through that the tension in the community. This kind of process should reduce fear, anger and other destructive emotions. So through mediation, it is hoped to gain more honest and objective compensation of the damages and better protection of victims' rights.

The mediator meets with both parties and explains the mediation process. The interests of both the victim and offender are under consideration giving a chance for both sides to express their feelings about the committed offence. Each mediation procedure only focuses on a specific offence; all past occurrences cannot be mended at once. Mediators cooperate with psychologists, psychiatrists, debt counsellors, women shelters, child protection specialists and other specialists.

Victim gives his or her proposal(s) about the conditions of the mediation agreement and is therefore part of the decision making procedure. The conciliator explains the proposal(s) to the perpetrator(s). If both parties find these conditions acceptable, a written agreement will be signed. The most popular conditions set in a conciliation agreement are politeness (84%), pecuniary conditions (27%), restraining from alcohol/drug abuse (18%), treatment or therapy (14%) and promise to do certain things, e.g. housework (11%) (Klopets & Tamm, 2010).

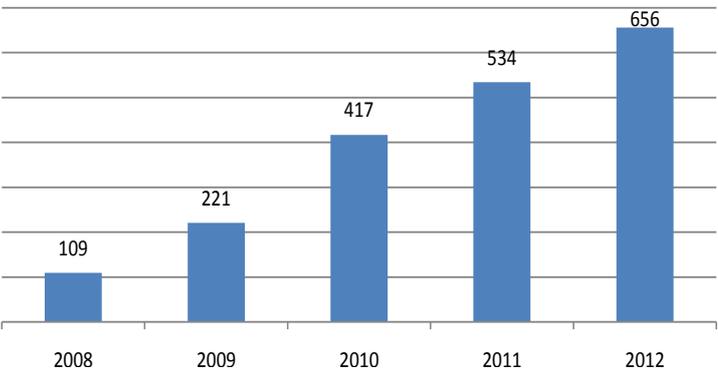


Figure 3. Number of cases sent to mediation 2008–2012

The duration of mediation agreement is six month during which the perpetrator(s) have to fulfil the agreement and the conciliator has the responsibility to monitor the fulfilment of the

agreement. In case of failure, the criminal case will be renewed. From 2007, when mediation in criminal proceedings was initiated, until 2010, 3% of cases were renewed (Klopets & Tamm, 2010). Sometimes the process itself is more important than the final result and the aim is for both parties to feel satisfied with the mediation process.

*Table 5. Offenders sent to mediation according to crime committed in 2012*

<b>Offence</b>	<b>Number</b>
Physical abuse	584
Threat	31
Violation of obligation to provide maintenance to child	14
Theft	13
Illegal entry	5
Unauthorised use of thing	3
Others	20
<b>Total</b>	<b>670</b>

Approximately 95% of all offences sent to mediation are physical abuse cases, nearly 60% linked to domestic violence. Of all domestic violence cases reaching criminal proceedings, about a fifth ends in conciliation. It is believed that with this option, the victim has the most say in which sanctions are put on the perpetrator, i.e. with the conditions set in the conciliation agreement (Salla & Surva, 2011). Although mediation in domestic violence cases is forbidden in many European countries, in Estonia, domestic violence makes the majority. Analysis on rates of recidivism show that 15% of DV perpetrators commit some illegal acts within a year after their conciliation agreement (according to Klopets and Tamm (2010), the average for all mediation cases is 12%); this, however, is much lower than people punished with incarceration (24%), community sanction (21%) or people on parole (17%). (Salla & Surva, 2012) Mediation is rarely used in cases involving crimes against property and also for juveniles, although there are no such limitations in the legislation apart from the fact that mediation between adult perpetrator and juvenile victim is forbidden. Furthermore, mediation is not used in cases where the victim is a legal person/corporate body.

#### **4. The Role of the Healthcare System in Detecting Crime Victims**

Healthcare specialists have a major role in detecting victims of physical violence and preventing further violence. Different studies carried out in Estonia have shown that albeit healthcare institutions have frequent contacts with victims of violence, their knowledge and know-how in detecting, informing and helping victims are lacking and can vary according to specialisation. Also, there is a lack of custom to cooperate with other specialists, e.g. police, victim support, social workers etc. There are signs of more regulated steps of action when children are involved and this is mainly due to § 59 in the Child Protection Act<sup>9</sup> which states that every person is required to immediately notify the social services departments, police or some other body providing assistance if the person knows of a child who is in need of protection or assistance. But even so, almost 2/3 of specialists in contact with children fail to inform child protection specialists of possible child victims due to insecurity, poor know-how and alleged confusion in interpreting stated roles and responsibilities in different legal acts (Soo et al, 2009). Furthermore, there have been studies carried out to see how healthcare workers sense their role in violence against women and although they see it as a major concern, they sometimes tend to

<sup>9</sup> The full text of the Estonian Child Protection Act in English can be found on the following link: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X1038K2&keel=en&pg=1&ptyyp=RT&tyyp=X&query=lastekaitse>

hold the victim responsible for the harm caused to her. A study from a decade ago showed that 9 out of 10 medics seek causes of violence in the victim's behaviour (Kase & Pettai, 2003).

Healthcare specialists' response to victims of violence, in Estonia, is largely unspecified. The only clearly defined responsibility lies on ambulance paramedics who are obliged by Estonian Government Decree<sup>10</sup> to notify the police of any victims of violence. For others, there is no such clear assignment. In some other countries, for example Finland, France, United Kingdom, USA, there are clear rules and guidelines (incl. evaluation instruments, forms and questionnaires) to detect victims of violence, domestic violence in particular. These guidelines also specify how to talk to a victim of violence about their experience and possible ways of assisting him or her (e.g. see Basile et al, 2007). Questions concerning the event are asked during a routine health examination and as neutrally as possible, using screening questionnaires, for instance. To ensure that medics would not accidentally insult a patient or stigmatise him or her in any way, specific guidelines are used that suggest when and how to approach the victim with questions concerning victimisation.

Because of lack of knowledge on Estonian healthcare specialists' contact with domestic violence victims, a short study was conducted in 2012 with the aim of mapping the current practice in treating victims of domestic violence: what kind of violence do these victims suffer from, what kind of help and services are provided to them and what are the possibilities for healthcare institutions to support victims of domestic violence. The study showed that almost 30% of healthcare workers come into contact with victims of violence at least twice a year (Surva & Tamm, 2012). They suspect victimisation due to bruising, slash marks, bone fractures etc.

As noted earlier, there is no clear line of action medics should take when coming into contact with victims of violence (except ambulance staff) but there are institutions where in-house rules dictate that the social worker in the hospital should be notified first. He or she then decides whether calling the police is in order. In some hospitals, there are so-called crisis workers whose task is to counsel victims of violence. In most cases, victims are encouraged to turn to the police or they are given emotional support by just talking to them. One out of 10 specialists gave advice on where the victim could turn to by handing out leaflets or information on websites. Even fewer people suggested the victim to turn to the local social worker or victim support specialist. Hence, their knowledge on who would be most appropriate to continue supporting the victim is low and needs improvement. What is somewhat worrying is that 4% of respondents said that helping victims is not a part of their working instruction, they only heal wounds and everything else should be done by other specialists, e.g. social worker or psychologist (*ibid.*). There have been statements like holding a victim's hand should be left to the social, not the medical sector.

This, however, is not a victim-friendly way of working because it is not rare for victims to be emotionally incapable to seek for assistance from different specialists. If they tell their story to a medic once and receive no assistance then they might give up and accept their situation of low-assistance. That is why healthcare workers should be more willing to take initiative in helping victims. They could be the link from the medical system to the victim support services. In order for this to happen, trainings and info seminars are needed where information on the importance of healthcare workers' ability to detect, diagnose and document violence and act accordingly is discussed.

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<sup>10</sup> Estonian Government Decree No. 44 from 23.01.2002 „Kiirabi, haiglata ning päästeasutuste ja politsei kiirabialase koostöö kord“ (*Procedure For Cooperation Amongst Ambulance, Hospitals, Rescue Service and The Police*) ,RT I, 29.12.2011, 196.

For a victim to receive a good quality service from healthcare specialists all over the country, unified guidelines should be adopted. These should, in addition to rules on how to heal wounds and communicate with a victim, include a section on how to cooperate with other instances. For example, victims can be referred to a victim support specialist, psychological counselling or the local social worker for assistance. It should be the goal of not only the victim support services but also the medical sector to ensure that victims receive sufficient support. This can sometimes be provided only when specialists from different sectors work together. The main goal should be that the victim has as few bureaucratic obstacles as possible when seeking for assistance. And since there are victims whose knowledge on different opportunities is low, the medical worker's role of informing and guiding the victim is crucial. The victim should never have sole responsibility for seeking help because in many cases, victims are devastated and hence, unable to fight for their rights.

### **5. Shortcomings in the System**

There are some shortcomings in providing support to victims. Starting from the broadest, we can notice prejudices about mediation and restorative justice in the general public as well as some professionals; it is often seen as a soft way of dealing with crime (Lummer et al, 2012). The general mind-set can be rather punitive and the public, at times, state their dissatisfaction with too lenient sentences and when someone is diverted from criminal proceedings, i.e. enter the mediation process, it is seen in a very critical manner as letting the offender go without a punishment. This leads to another possible pitfall – using mediation in domestic violence cases. Although Estonian experience shows that rates of recidivism in mediation are lower, there are still doubts being expressed whether using mediation is appropriate in a situation where one party is noticeably more dominant than the other. The solution is choosing very carefully which cases can be diverted to mediation. Obviously, there are couples who can benefit from it and will continue peacefully. But on the downside, there probably are cases where the mediation process could be a process of re-victimisation. Hence, the mediators assigned to domestic violence cases should get special training to detect power relations between the parties.

One other problem is that even though mediation could be used with juvenile offenders it is rarely used. The reason, firstly, is probably misinterpretation of legal acts resulting in the false assumption that the Juvenile Committees cannot send a case to mediation in the ENSIB. Secondly, a number of people have been trained to be mediators for juveniles but for some reason the Committees, for a long time, failed to send juveniles to mediation resulting in resignation of voluntary mediators. Hence, they are not available anymore to provide the service. Thirdly, because of procedural rules, sending the case to mediation can take up to 3 months meaning that once the case reaches the mediator, it has been too long from the incident for mediation to have any effect either on the juvenile or the victim.

The problem with the state compensation system is that the application process is very bureaucratic and therefore not very victim friendly. There have been cases where compensation has been denied in the beginning because the victim failed to notify the police in time (15 days rule). After a long process of petitions and official inquiries, the victim was able to prove he was unable to notify the police because of his injuries and hospitalisation. In essence, it could be possible to make the procedure easier for the victim by, for example, acquiring available data from official registries and save the victim from gathering all the official documents and look past from police notification in certain cases. For instance, it can be emotionally extremely difficult for a victim of sexual assault notify anyone about the incident, let alone anonymous law enforcement officers.

Lummer et al (2012) have noted that victims in Estonia would need more direct emotional and informational support during the criminal case minimising the risk of re-victimisation, and possibilities to participate from an early stage. They also say that „restorative justice must be promoted more effectively in Estonia, so that victims are aware of the possibilities of this alternative. This would be mostly in the interest of victims and would more likely create satisfaction with the procedure, which is painful for the victims anyway” (Lummer et al. 2012).

Lastly, there are no official broad-coverage satisfaction surveys carried out to measure victims' views on services offered to them. These could give valuable input to designing and refining services offered to victims of crime either in parallel to criminal proceedings or separately, e.g. to victims who have not turned to the police but who are in need of assistance nonetheless.

## **6. Possible Future Developments**

To start off, funding of victim support services could be revised so that compensation levies would be used to partly fund victim support services, i.e. base funding for ENSIB specialists' salaries would remain in the state budget as it is today but services could be funded directly from compensation levies paid upon a judgment of conviction. That way, there would be a more direct link between harm caused and reparations.

Also, using voluntary mediators in addition to ENSIB victim support specialists is an option not used today. They could be way of reducing the workload of ENSIB specialists who today are at times overloaded with mediation cases. Voluntary mediators could be used in cases where official proceedings have not been started and maybe the victim is reluctant to turn to the police at all. It would be beneficial for victims to have alternative ways to come to terms with what has happened and if possible, the state should support having different options available. There already are trained voluntary mediators available who today are in a way forced into otiosity.

Furthermore, Estonia could enlarge the use of restorative practices. In addition to victim offender meditation which is quick, inexpensive and practical, there is room for development for restorative conferencing and peacemaking circles. The advantages of the first are involvement of community/supporters, emotional support before, during and after the process and opportunity for participants to exchange their ideas and views on what has happened. Advantages of the second are involvement of legal professionals, and the greatest amount of ideas, input and variety gained through the process. From mediation to peacemaking circles, the control over the process goes from private to secondary to community control. Each alternative have their own setting they work best, e.g. organising big community circles in a prison would be too difficult, so victim offender mediation should be chosen instead. Then again, when there are many parts of a conflict in a community, a conference or peacemaking circle might suit best to give everyone a chance to speak their mind.

Estonia could also benefit from taking advantage of more stages of referral to restorative practices, i.e. from police level, prosecutor's level (before accusation as a diversionary measure), after accusation before the main court hearing, during main court hearing (with the possibility of suspension of procedure), after main court hearing (as court order or conditional sentence), or during a prison sentence. These practices can run parallel to the criminal proceedings or be a way of pausing official proceedings until the conflict has been solved.

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