

# Chapter 1: Introduction

## 1.1 Introduction

In the eighteenth century the principal investigators and the key decision-makers in the prosecution process were the victims of crime. They could elect not to invoke the law and let the criminal act go unpunished; they could engage in personal settlement or private retribution; or, they could prosecute but shape the severity of the criminal charge. Conflicts therefore were the property of the parties personally affected. If victims did proceed with a prosecution, it was their energy, for the most part, that carried the case through the various stages. Victims engaged in fact-finding, gathered witnesses, prepared cases, presented evidence in court, and bore the costs involved (Vaughan and Kilcommins 2008: 46-47). In many instances the actions of victims were seen as vengeful, capricious and open to intimidation and blackmail 'resulting in the shameful perversion of the criminal trial for private ends' (quoted in Rock 2004: 338).

In contrast, the story of criminal justice for much of the nineteenth and twentieth centuries might best be told as the rise of institutionalised justice whereby the State gradually took over investigative and prosecutorial<sup>1</sup> functions. This entailed the steady development of an 'equality of arms' framework, designed to offset the power vested in an increasingly powerful State and offer some protections and safeguards to those accused of crime. Justice increasingly became institutionalised, centralised, and rule-bound, and decreasingly dependent on the victim's energy, needs, experiences or perspective as regards the alleged crime.

Within such a depersonalised, bureaucratised system, the victim was displaced, confined largely to the bit-part role of reporting crime and of adducing evidence in court as a witness, if needed (Rock, 2004: 331-354). The victim's space for negotiation and participation in pursuing his or her own interests was thus dismantled by an increasing focus on the roles of the State and the accused. From being a cornerstone in the regulation of relations concerning the conflict, victims increasingly

---

<sup>1</sup> In Ireland, for example, crown solicitors were appointed to prosecute criminal cases in each of the circuits in 1801 and by the mid nineteenth century sessional crown solicitors were appointed in each of the counties.

found their individual experiences (such a vital currency in the pursuit of justice in the pre-modern era) assimilated into the public interest. This public interest was determined by the State's decision whether or not to prosecute and the court's decision on the merits of the case. The individual experience of the victim was increasingly viewed as invalid knowledge given its partiality, subjectivity, emotiveness and unconstrained dimensions, all of which were filtered out by the operations of a justice system. This approach is now, however, beginning to strain. The justice system is, as a result, partially being reconstructed in Ireland as it demonstrates, among other things, an increased sensitivity to a range of standpoints, including that of the victim.

This chapter will provide a brief overview of key developments in European and international law, which focus on the needs of victims in relation to the criminal justice process. It will then provide a brief review of the challenges which victims continue to encounter in the Irish criminal justice process. Recent State responses to some of these challenges will then be mentioned. In conclusion, the origins and terms of reference of the current research will be outlined.

## **1.2 Recognition of the Rights of Victims: The European & International Context**

A number of key developments in the European Union have promoted recognition of the needs of victims within criminal justice systems. In 1999, the European Commission adopted a communication entitled *Crime Victims in the European Union – standards and actions*. In March 2001, the Council adopted a *Framework Decision on the Standing of Victims in Criminal Proceedings*, which provides for minimum rights (including the right to be heard and furnish evidence, access to relevant information, the opportunity to participate, and the right to compensation) to be ensured in all the territories of the EU. The European Commission also issued a proposal for a *Council Directive on Compensation to Crime Victims* to reduce the disparities in the compensation schemes of various member States. The Council adopted this Directive on the 29<sup>th</sup> of April, 2004. The Directive ensures that compensation is easily accessible in practice regardless of where in the EU a person becomes the victim of a crime. Similarly the Committee of Ministers of the Council of Europe adopted Recommendation Rec (2006)8 on assistance to victims of crime on the 14th June, 2006. It sets out various provisions and recommends that member

states be guided by them in their domestic legislation. These provisions relate to the role of public services and victim support services, the provision of information to victims, the right to effective access to other remedies, state compensation, insurance, protection of physical and psychological integrity, confidentiality, and training. There are also other pieces of EU law facilitating the provision of compensation to crime victims from the offender. The Regulation on *Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters*, for example, provides that the victim may sue the offender for damages in the same court that deals with the criminal proceedings, if this is possible under national law. The same Regulation also lays down how a crime victim can enforce a judgment for damages against the offender in another member State. Internationally, the General Assembly of the United Nations adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* in 1985. The document is not legally binding but does set out the minimum standards for the treatment of victims of crime. It has been described as providing “a benchmark for victim-friendly legislation and policies.” (Van Dijk 2005: 202).

### **1.3 The Rights of Victims in Ireland: Developments and Continuing Difficulties**

Victims are becoming more visible in the justice system. In Ireland, for example, the Victim’s Charter marked an important development by firmly establishing that throughout the system victims have needs and these needs have to be addressed. This Charter was produced by the Department of Justice, Equality and Law Reform in September 1999, reflecting the ‘commitment to giving victims of crime a central place in the criminal justice system.’ As such it amalgamates for the first time ‘all the elements of the criminal justice system from the victim’s perspective’ (1999: 3). In addition the Department, and since 2005 the Commission for the Support of Victims of Crime, have been funding voluntary sector organisations to support and assist victims of crime.

More recently, the Office of the Director of Public Prosecutions has published four documents which have implications for victims’ experiences of criminal justice organisations: *The Role of the D.P.P; Attending Court as a Witness; Statement of General Guidelines for Prosecutors*; and, *Prosecution Policy on the Giving of Reasons for Decisions* (Office of the Director of Public Prosecutions, 2006: para

2.12; Rogan, 2006b: 151-155). The Courts Service has also issued a number of publications including a guide to going to court for child and young witnesses as well as parents and guardians. The Gardaí have also given a number of commitments to victims of crime including an assurance regarding the provision of information on the progress of a case and on the prosecution process, as set out in its Charter for Victims of Crime.

The Irish courts,<sup>2</sup> legislature and politicians are also beginning to take more account of the interests of victims of crime and there has been an expansion in service (welfare) and procedural (participatory) rights. This 'mainstreaming of victim-centred justice' (Goodey, 2005: 35) in Ireland is evident in the following: the employment of intermediaries, live television links and video testimony for witnesses and victims of crime; the abolition of the mandatory requirement on judges to warn juries of the dangers of convicting on the basis of uncorroborated or unsworn victim/witness testimony; the removal of wigs and gowns when conducting an examination-in-chief or cross-examination of a child witnesses; restrictions on the admissibility of the prior sexual history of victims; the protection of the identity of victims in sexual offence cases; separate legal representation for rape victims where an application is made to admit previous sexual history; the reduction of victim alienation through the use of victim impact statements; the ability of the DPP to appeal unduly lenient sentences; and provisions for the payment of compensation to victims in respect of any personal injury or loss caused by a crime.

In more recent years the system has also witnessed a far less rigid approach to the circumstances in which the spouse of an accused is competent to testify for the prosecution in criminal proceedings; a greater awareness of the reasons why a complainant may not have made a complaint of a sexual offence at first reasonable opportunity but still avail of the doctrine of recent complaint; a relaxation of the exclusionary rules on opinion evidence in certain circumstances; the introduction of a provision which makes it clear that the absence of resistance by a victim in a rape case does not equate with consent; and a less prejudiced approach to the determination of certain witnesses' competence to testify at the trial of an accused. (Kilcommins et al.,

---

<sup>2</sup> See, for example, *DPP v Cash* [2008] ILRM 443.

2004: 150-153; Rogan, 2006a: 202-208; Fennell 2010:250-260; Vaughan and Kilcommins forthcoming).

The needs of crime victims are also addressed by a wide variety of victims' organisations. These operate both at the national and local level. Whilst a significant proportion are specialised in nature dealing with specific types of victim or services, there are also some key national groups. For example, a Crime Victims Helpline, which represents a proactive initiative to support crime victims, was launched in 2005. It is funded by the Commission for the Support of Victims of Crime and is a national helpline offering support to victims of crime in Ireland. Furthermore, as far back as 1974, a Criminal Injuries Compensation Tribunal was established by the then Government to administer a scheme designed to alleviate some of the financial difficulties experienced by victims of violent crime and their families. The purpose of this scheme was to compensate individuals for losses arising from personal injuries as a result of violent crime or acquired while assisting another individual in preventing a crime or saving a human life. Individuals eligible to apply for compensation under this scheme include the injured person(s), the immediate family of the injured person(s) if the victim has died as a result of the crime, or those responsible for looking after the injured party.

#### **1.4. Recent Developments**

The Minister for Justice, Equality and Law Reform, Mr. Dermot Ahern, T. D., announced a Justice for Victims Initiative in June 2008. This includes new legislative proposals such as:

- Reform of the victim impact statement mechanism.
- New mechanisms to deal with acquittals when compelling evidence emerges after the acquittal, or the acquittal arises from an error of law made by a Judge.
- Provision for new prosecutions where there is evidence that the original acquittal was tainted by interference with the trial process.
- Measures to restrict unjustified imputations at trial against the character of a deceased or incapacitated victim or witness.

At the time of writing a legislative proposal covering these points had passed all stages in the Seanad and was being debated in the Dáil. Along with these legislative proposals, a number of administrative moves to increase the level of support to victims of crime were planned, including:

- The establishment of a new executive office of the Department of Justice to support crime victims (established September, 2008).
- A reconstituted Commission for the Support of Victims of Crime with an expanded role (reconstituted September, 2008).
- A Victims of Crime Consultative Forum, to afford a channel of communications to the Commission and the policy making process by victim groups funded by it (first met January, 2009).

The Irish criminal process is thus gradually becoming more effective in accommodating the previously excluded voices of victims of crime. In the last three decades the status of the crime victim has gradually altered from being perceived as a ‘non-entity’ or ‘hidden casualty’ to a stakeholder whose interests and opinions matter (Christie, 1977: 1-15; O’Hara, 2005: 229-247). Crime victims are being anchored once again as key constituents in the criminal justice landscape and criminal justice agencies have to rework their relationships with them.

Notwithstanding the increased recognition of victims in the criminal process, it remains the case, however, that many of the needs of victims continue to be unmet. A lack of knowledge among criminal justice agencies and actors about the needs of victims of crime is a key issue. For example, a study by Anthony McGrath, who completed a Ph.D. at the Centre for Criminal Justice and Human Rights at UCC, showed that 51% of members of the legal profession were unfamiliar with the provisions of the Victims Charter (2009). There are also many reported difficulties with the provision of information to victims. The European Commission suggested in 2004, for example, that the provision of information was not secured by ‘simply issuing information booklets or setting up websites, without the authorities actively providing individual victims with information’ (2004: 5). The Irish Council for Civil Liberties (2008: 21) takes a similar position noting the ‘lack of initiation on the part of the State actors in their role as information-providers’ to victims of crime.

Similarly the SAVI (Sexual Abuse and Violence in Ireland) Report (2002) identified barriers for accessing law enforcement, medical and therapeutic services for those abused and their families. Lack of information from the Gardaí and medical personnel was the main source of dissatisfaction with the services provided. Specifically, Gardaí were seen to provide inadequate explanations of procedures being undertaken, and medical personnel were seen as needing to provide more information regarding other available services and options. In relation to counselling services, time waiting to get an appointment was the major source of dissatisfaction. There also remains a problem with the under-reporting of crime, as is more fully documented in chapter 2 of this study. Other issues that cause concern to victims include harassment, intimidation by the process (Kelleher et al 1999); attrition rates (Leane et al 2001; Hanly et al 2009; O'Mahony 2009); the lack of private areas in courts; difficulties with procedural rules and legal definitions (e.g. consent in rape cases) (Bacik et al 1998); delays in the system (Hanly et al 2009); the lack of opportunity to participate fully in the criminal process; and inadequate support services.<sup>3</sup>

### **1.5 This Research Project**

The Commission for the Support of Victims of Crime was established in March 2005 to devise an appropriate support framework for victims of crime into the future and to disburse funding for victim support and assistance measures. It presented its Framework Document Recommendations for Future Structures and Services for Victims of Crime to the Minister for Justice, Equality and Law Reform in June 2008 and one of its recommendations was that further research should be undertaken which focused directly on victims themselves rather than the organisations and services that supported them.

The Commission has already commissioned research work on groups that work with and support victims of crime. In December 2007, Bacik *et al* produced a factual report on the services currently provided in Ireland by non-governmental organisations and other groups to victims of crime. An additional objective was to provide the Commission with a selective comparative review and analysis of supports available in

---

<sup>3</sup> See also Mul Kerrins (2003), Deane (2007), Irish Council for Civil Liberties (2008) and Cooper (2008).

other jurisdictions which might usefully be applied in Ireland. The main finding was that while there are more and more organisations/services supporting victims, the perception of the victims groups was that little had been done for victims and victims' rights.

As part of a follow up study, the Commission published a request for tender in April 2008 inviting interested parties to carry out research and produce a short factual report on the views of crime victims.<sup>4</sup> It specifically sought information on:

- The needs of victims of crime and their families from the victims' points of view
- How victims inform themselves of the support services available
- The extent to which victims of crime seek support from the services available
- The extent to which in the opinion of the victim those needs are met by the criminal justice agencies and the organisations which provide support to victims of crime

This Report represents the product of that research, carried out by the authors as the successful tenderers, and commissioned by the Commission for the Support of Victims of Crime. As dictated by the terms of the study, this research foregrounds the perspectives of victims and their assessments of how well the criminal justice system and support organisations meet their needs.

The views of other agencies involved in the criminal justice system such the Gardaí, DPP, Courts Service, or the judiciary were not the focus of this work, which deals exclusively with the perspectives of victims. The study is thus anchored in the standpoint of victims only and does not attempt to accommodate or synthesise the views of other stakeholders. The DPP, for example, may suggest that the Office needs to be circumspect about the communication of decisions (particularly having regard to the danger of casting doubt on the presumption of innocence of persons who are merely suspected of committing crime, and undermining the reputation and good

---

<sup>4</sup> The Bacik *et al* study for the Commission for the Support of Victims of Crime had focused on support organisations; this study focuses on the clients of the support organisations.

names of witnesses);<sup>5</sup> and court staff may argue that, in the interests of fairness, they need to adopt a neutral stance between victims and those accused of crime. However, in this study none of the statutory players in the criminal justice system have been consulted.

It should also be noted that this study does not purport to represent the views of all victims of crime given that it focuses exclusively on victims who accessed the services of support organisations. Moreover, the offences that victims experienced in this study do not mirror the spread of criminal offences more generally. The respondents in our survey are over-representative of particular types of crime (domestic violence, for example) reflecting the type of crimes which victims are likely to seek help for, and/or the type of crimes for which organised help is available, rather than the pattern of crime more generally.

The Report commences with a chapter outlining the methodology and research design which underpinned the study. This is followed by specific chapters, which present findings relating to the victims' experiences of and views on various aspects of criminal justice, namely An Garda Síochána, the Crime Victims Helpline, organisations supporting victims of crime, and Court Procedures. The report concludes with a chapter on findings and recommendations.

---

<sup>5</sup> The Office of the Director of Public Prosecutions produced a discussion paper on prosecution policy on the giving of reasons for decisions in 2008.