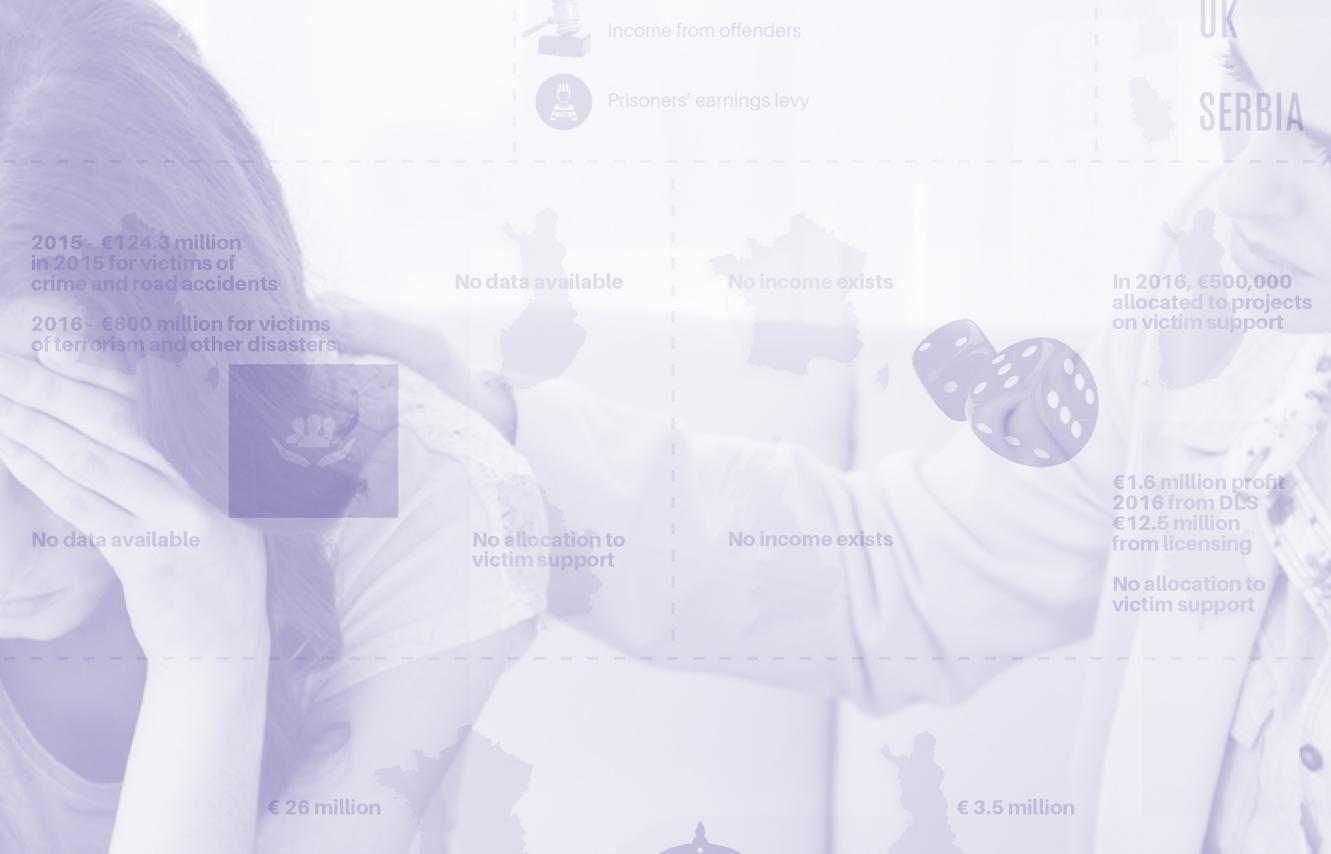
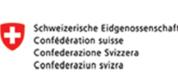


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Ensuring Funding for Victim Support Services

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EXECUTIVE SUMMARY

In ensuring financing for their functioning, States have at their disposal, and regularly use, a number of tools to raise funds. From taxation and loans to privatisation and soliciting donations from private individuals, States resorting to a number of different approaches to fund various aspects of their functioning. The selection of which particular tool will be used in any given situation is a matter of policy decisions that only States, within the framework of any national legal order, can make.

The present analysis was prepared in view of several considerations:

- Serbia is committed to comply with the requirements of the Victims' Rights Directive
- One of the main requirements of the Directive is providing comprehensive victim support services
- Victim support services need to be properly funded
- This funding can come from existing sources, or through introducing new funding streams

Funding for ensuring victims' rights can come from different sources, which can be grouped into **generic or specific victims' funding**. Generic funding comes straight from the State budget, without an attempt being made to correlate the source of funding with the purpose it is being used for. Specific funding, however, comes from streams of funding which are put into place for specific purposes. This funding can be used only for the benefit of victims, or for broader social causes.

In its first part, the present report analyses the experiences of Finland, France and the United Kingdom, to describe **how funding is ensured towards respect, protection and fulfilment of the rights of victims**, regardless of whether it concerns budgets from generic or specific sources. The three countries were selected due to their long experience in the use of different funding mechanisms and the success of those mechanisms in establishing stable funding sources for victim services.

The report describes the examples of: the **state monopoly on gambling in Finland**; income from charges on offenders – **the victim surcharge**, different **penalty notices** and **prisoners' earnings levy** in the UK; and the **surcharge on insurance contracts** in France. Furthermore, some other sources of funding are identified and mentioned, such as income from assets confiscated in criminal proceedings, the ‘tampon tax’ in the UK or the emergency funding available in France.

Each of the funding schemes operates in specific legal, political and social environment, which has a strong influence on their development and functioning. For example, a State monopoly on all gambling has been in place in Finland since the 1930s. That monopoly has evolved as the gambling industry itself evolved to cover now all forms of games of chance, from horsing bets and scratch lottery to online gambling and e-bingo. Similarly, the levy on insurance contracts has been in place in France since the 1950s, and has been evolving ever since. It now include surcharges on millions of insurance contracts on cars and property. Fundamental to the success of the schemes is that the funds are kept separate from the State budget and only used for victims purposes.

Whilst funds can be taken directly from the State budget, several approaches can be taken to ensure that **offenders participate in funding for victim support services**.

These include: a victim surcharge (additional payment when sentenced), penalty notices and levy on prisoners' earnings. With respect to a **victim surcharge**, it is particularly important to have in mind several factors: the legality of a surcharge according to national law; the legal mechanisms to establish the surcharge system; the scope of the surcharge – who will be subjected to a surcharge; the level of the surcharge, having in mind the different levels of income and circumstances of a case; enforcement of the surcharge and ensuring maximum efficiency; and disbursement and control of funds and services.

Moreover, with **different fixed penalties**, attention must be paid to avoid exclusion of the victim and victim's interests in proceedings. Where this is

the case, other avenues for their participation should be ensured. When determining whether to use a penalty system, the costs of collection and enforcement need to be considered. To ensure a viable system, they will need to be kept as low as is reasonable, while at the same time ensuring a high collection rate that justifies maintenance of the system.

Regarding **levies on prisoners' earnings**, considerations need to be made with respect of the human rights of prisoners. Furthermore, a balance should be struck between the incentives provided to prisoners through work, towards their rehabilitation, and the reduction in those benefits by imposing the levy.

Regarding income from **compulsory insurance schemes**, these have proven to be an important source of funding for compensation of victims of crimes and other incidents in France.

Regardless of whether funding for operational activities of victim support providers comes from a specific or generic source, mechanisms need to address a number of issues:

These issue include: ensuring strict rules governing funding allocations; establishing a strong decision making body with sufficient expertise; priorities for funding need to be determined and published well in advance, following consultations with stakeholders; administrative and formal requirements need to be minimised and known in advance; reasonable eligibility criteria need to be defined with precision and certainty; the platform for funding applications should be accessible and user friendly; the ongoing funding streams should be properly monitoring and evaluated; spending controls should be in place; and there should be effective responsibility and accountability of beneficiaries.

Budgets can be dispensed centrally, at the regional and/or local level, or in cooperation of different bodies at different levels, as in the example from France, where the central government, regional authorities and the judiciary enter into specific arrangements. Whichever system is adopted, strong co-ordination between funding streams greatly supports the efficiency of funding and outcomes.

The report looks into the funding mechanisms in the three countries observed **whilst also taking stock of the situation in Serbia**. In doing so, it identifies potential problems when seeking to implement a funding solution. It also explores the potential for altering some streams of funding that are already in place in Serbia, to direct them towards victim support.

In conclusion, when developing a financial scheme to fund victim support services a range of factors must be taken into account including:

- regard for the international legal environment and internal legal system;
- ensuring enforcement and making funding streams economically efficient;
- data gathering, combined with regular monitoring and evaluation of funding streams needs to be put into place;
- levels of funding available in each region should be proportionate;
- duplications need to be avoided and tools developed that can be shared between different regions;
- funding should provide a certain level of stability and continuity for services for example by providing funding for several years, providing sufficient advance notice about funding priorities and encouraging partnerships between the government and CSOs;
- procedures for deciding on applications for funding should be transparent and efficient;
- contingency funding mechanisms should be available and sufficient flexible to cater for different scenarios;
- Victims' associations should be consulted as part of the policy development process.

1. INTRODUCTION

- 1. Throughout Europe, many millions of people fall victim to crime every year.** The European Union has estimated that around 15% of a given population fall victim to serious crimes on an annual basis (covering both reported and unreported crime)¹.
- 2. The consequences for individuals can be devastating, and those consequences can further impact on our societies and our economies.** The physical and psychological trauma of a crime as well as financial losses, can lead to a wide range of health problems including depression and substance abuse. Victims may find their education or work is severely affected, reducing their ability to progress or even resulting in the loss of their job.
- 3. Victims may find themselves in debt as a direct result of the crime or as a long-term consequence of it.** These impacts can simultaneously affect family and social life and can for example lead to divorce and isolation more generally. This wide range of impacts imposes a significant social and economic toll on our countries. US research estimated that the annual cost of crime in the United States was reaching toward \$1.7 trillion². The EU developed a cost model based on a 2005 UK report (which arrived at a UK cost of crime of £32.6 billion), which estimated that costs in the EU were between £201 billion and 233 billion euros based on EU official rates as at February 2011³. However, a more recent UK report from 2012 has estimated the cost of crime in the UK at £124 billion⁴.

¹ Van Dijk, J., Manchin, J., van Kesteren, J., Nevala, S. & Hideg, G. The Burden of Crime in the EU: Research Report – A Comparative Analysis of the European Crime and Safety Survey (EU ICS) 2005, p. 19

² Economic and Social Effects of Crime - Growing Interest In The Costs Of Crime, Determining Costs, The High Cost Of Crime, Community Efforts To Avoid Crime Costs - JRank Articles, available at: <http://law.jrank.org/pages/12125/Economic-Social-Effects-Crime.html#ixzz4jJaG0cx7>

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:0580:FIN:EN:PDF>

⁴ Institute for Economics and Peace, UK Peace Index 2013, p. 28, available at: <http://visionofhumanity.org/app/uploads/2017/03/UK-Peace-Index-report-2013.pdf>

4. Importantly, these costs can be reduced. The State and civil society has the ability to reduce the harm to individuals, societies and our economies by ensuring that the five basic needs of all victims of crime are met. That is, that victims needs for respect and recognition, protection from further harm, support, access to justice, and compensation and restoration are met.

5. Recognising this, the European Union adopted in 2012, EU Directive (2012/29/EU) establishing minimum standards on the support, rights and protection of victims of crime (The Victims Directive). This important instrument, the requirements of which Serbia needs to fulfil as a part of the process of European integration, aims to ensure that in all EU Member States, the needs of victims are met through a coherent set of laws, policies and practices.

6. Of particular importance is the requirement to establish and maintain national generic and specialist victim support services through the territory of a State (to a sufficient geographical distribution). These services help implement other rights and assist victims in the recovery process.

7. The Victims Directive imposes on States a series of obligations, to be fulfilled by November 2015, or in the case of Serbia to be complied with as part of its EU Accession process. Yet these obligations will be met in paper alone – rights will not be accessible in reality – without sufficient financial resources to implement those changes.

8. The MDTF JSS research on existing victims support services has shown that in Serbia, financing of victim support services is insufficient, unstructured and for the most part, unreliable⁵. The research reveals that the majority of services for victims of crimes in Serbia have so far been provided by civil society organisations (CSOs). Work of CSOs on

⁵ More information on this can be found in the report “Overview of Existing Victim Support Services in Serbia”, which is part of the partnership between World Bank, MDTF-JSS and VSE and is to be published in 2017. The report is available here http://www.mdtfjss.org.rs/en/mdtf_activities/2017/victims-access-to-support-services-in-serbia#.WXI42u4go2y

providing support to victims in Serbia is heavily dependent on projects and donations mostly from foreign sources, without stable and sustainable sources of financing. This can negatively affect the quality and permanence of services.

9. It is notoriously difficult to develop accurate estimates about the cost of crime or cost of victim support, largely due to a lack of data and large numbers of variables. The main reliable and verifiable data available for calculating the victim population is on the number of criminal convictions per territorial unit. However, a criminal conviction is not an accurate estimate of a victim population, as it does not take into consideration whether a person was convicted of only one crime with only one victim or for more than one crime with more than one victim. Importantly, a failure to convict does not necessarily mean that the person is not a victim – rather that the offender has not been found.

10. Moreover, it does not take into consideration the rate of unreported crime and there is no comprehensive research to indicate the reporting rate. Finally, not all crimes cost the same, so it would be important to know the structure of crimes to be able to estimate the cost of support for each victim.

11. Nevertheless, many of the necessary changes do not need to incur large costs, and in the long run, any cost in providing victim support should regarded as an investment. In time, through adequate victim support services, the State should see large returns on its investment through reduced health care costs, increased productivity and a more effective justice system. In view of this, upfront funding must be found to ensure effective services and rights.

12. Some of this funding can be obtained through prioritisation of State budgets. Historically, victims have been largely ignored and forgotten. In recent years, there has been increasing political recognition of the need to take action, but this has not been matched with sufficient and equivalent allocation of existing resources. Reallocation of resources would therefore help meet such needs. Nevertheless, recognising that

scarce resources must be divided between many equally important priorities, this report aims to identify alternative sources or methods for funding the implementation of victims' rights, in particular victim support services.

13. For services in Serbia to be adequate, appropriate and sustainable, the funding of services needs to be set up on three basic principles. Firstly, victim support services should be funded by the State to guarantee access to appropriate services by all victims of all crimes in all parts of the country. Secondly, funding needs to be specifically dedicated to the victim support services and under threat from other funding priorities. Thirdly, funding needs to be based on stable and reliable funding sources.

14. A 2016 analysis of victims' rights and services in Serbia and their alignment with EU Directive 2012/29/EU, produced in partnership of the MDTF JSS and Victim Support Europe looked into availability of victim support services in Serbia⁶. That report concluding *inter alia* that State funds could be used to help existing organisations to increase their services in a specific location or expand to others, or to establish new organisations. It suggested that that civil society organisations (CSOs) could be used to effectively deliver services in a cost-efficient manner. Moreover, the report suggested that a fund could be established to pay for delivery of victim support services.

15. The present report looks into different examples of funding for victim support services in Finland, France and the United Kingdom (England and Wales)⁷. These countries were chosen for research has they have a long experience of running different types of funding mechanisms in their countries, and have continued to develop and

⁶Analysis of victims' rights and services in Serbia and their alignment with EU Directive 2012/29/EU, available at: <http://documents.worldbank.org/curated/en/141201473857309462/pdf/108242-V1-WP-P121377-PUBLIC-ABSTRACT-SENT-VictimSupportServices.pdf>.

⁷ The report is based on national research conducted by Rikosuhripaivystys Suomessa (RIKU) Finland, Federation France Victimes (INAVEM) in France and Supporting Justice in the United Kingdom, complemented by VSE knowledge of European environment

improve them over time. It explores different approaches, including the Finnish gambling monopoly and the use of proceeds to advance the rights of, among others, victims of crimes, British victim surcharge and levy on prisoners' salaries and the French income from compulsory insurance schemes.

16. The report is presented through three main parts. The first part of the report looks into the ways different income schemes operate and how the income is collected, while the second part explores how the funds are dispersed to various users and looks into safeguards put into place to ensure transparency, efficiency and effectiveness of the use of funds. The final chapter draws conclusions from the findings and suggests recommendations which should govern policy makers in Serbia to examine different funding mechanisms. The report highlights the main characteristics of victim support services funding mechanisms and details a series of recommendations applicable in countries that wish to introduce comprehensive victim support system.

2. APPROACHES TO ENSURING BUDGET FOR VICTIM SUPPORT SERVICES

17. **There is no single best approach to financing victim support services.** It will depend on each State's legal system and priorities. However, there are two main approaches to funding. The first is reflected in a simple budgetary allocation from the general State budget, as for any other public spending. The second approach looks to identify and ensure specific streams of funding which will be used exclusively for financing of victim support services. The latter approach can be exclusive to victim support services, or can be a part of a larger funding scheme.

18. **Article 8(1) of the Victims' Rights Directive stipulates that 'Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings.'** Hence, it is a direct obligation of the State to ensure funding for victim support services, but it is left to the internal arrangements of each Member State to determine a stream of funding which will ensure provision of such services.

19. **In this report we identify several potential streams of funding for victim support services and/or victim compensation.** From the state monopoly on gambling in Finland, to collecting a victim surcharge and levy from prisoners' salaries in England and Wales⁸, to an insurance levy in France, this report aims to describe how each of the mechanisms function.

20. **Importantly, victim support funding evolves in time, as States try to ensure the most effective funding system for the best possible services.** The systems presented have been developed over time, and in specific political and cultural environments in each of the countries. For

⁸The complex legal and political system in the United Kingdom means that different schemes exist in Scotland and Northern Ireland, respectively. This report only examines situation in England and Wales, as these two countries are governed by the same rules.

example, in 2014 the United Kingdom shifted funding for victim support services from the centralised funding through the Ministry of Justice to local funding through Police and Crime Commissioners⁹. Not long afterwards, a major change was introduced in Finland in 2016 to shift funding from a specific scheme towards direct funding from the State budget through the Ministry of Justice.. It is, therefore, not expected that any of them can simply be copied into the Serbian environment. However, they offer both inspiration for sources of funding as well as years of experience in developing those schemes.

21. The first scheme entails the monopolisation of a certain activity by the state and the use of proceeds from the monopoly for the benefit of society. Whilst in the Finnish example, the State maintains a monopoly on gambling a range of other examples include State controlled sales of certain products, for example on alcohol (Sweden) or tobacco (Hungary).

22. A second set of examples looks into establishing a causal link between the perpetrator of a crime and income for victim support services. Hence, victim surcharges in the UK, France and Finland, and fines and levy on prisoners' earnings in the UK are explored.

23. Finally, the French approach to collecting a fixed amount on insurance contracts is an example of raising funding through a specific form of social solidarity. This solidarity, is also closely attached to recovering funding from actual offenders wherever possible.

2.1. STATE MONOPOLY ON GAMBLING - FINLAND

24. In Finland, a significant part of funding for victim support services, as well as for most other social services for vulnerable

⁹ The Ministry of Justice still retains commissioning and governance for a small number of key services nationally (low volume but high impact specialist services) which include support for: victims of trafficking; those bereaved by homicide; victims of rape and child sex abuse (through rape support centres); the Witness Service; victims of terrorism; victims and people bereaved through road crime. However, discussions are now taking place regarding the devolution of the above nationally commissioned services in line with the government's agenda around giving local people more control about the decisions which affect them.

categories, is provided through the proceeds from gambling. This is possible since the Finnish approach to gambling is based on the exclusive right principle. This means that the Finnish State holds a monopoly over gambling in the country with the purpose of operating games responsibly and mitigating the possible risks involved in gambling. The system aims at securing legal protection of those engaging in gambling and preventing gambling-related fraud¹⁰.

25. As early as 1933 Finland intervened in the gambling business and introduced limitations allowing only charities licenses to operate slot machines. However, in 1938 the State took over and set up the Raha-automaattiyhdisty (Finland's Slot Machine Association, RAY). The Finnish state has maintained its monopoly on slot machines and extended it to other parts of gaming, including more recently, to online gaming¹¹. Today, the Finnish gambling industry employs around 2,000 staff.

26. A state monopoly on gaming was established to ensure that proceeds of a socially questionable activity are returned to society for the benefit of everyone. The proceeds were thus used to finance activities and services for vulnerable parts of the society, and ultimately for the benefit of society as a whole. This philosophy of socially responsible gaming is not unknown in other jurisdictions, including in Serbia. However, the Finnish approach stands out since there is a total monopoly on all types of gambling. This ensures that the total income generated by gaming, which is indeed significant, is used for socially beneficial purposes.

27. As described below, the Finnish system recently underwent some changes in its operation. It had been noted that the monopoly system, which had been based on three gaming operators could no longer optimally respond to the demands of the gaming market, which was being digitalized and revised at a fast pace. The merger intended to facilitate the

¹⁰ About Veikkaus, available at: <https://www.veikkaus.fi/fi/yritys?lang=en>.

¹¹ Similar monopolies exist on the sales of alcohol in Scandinavia, Canada and some States in the USA, or sales of tobacco in China and, as of recently, in Hungary.

development of more interesting games and the provision of a better service. This in turn would generate an important level of income for social services.

28. Based on the Finnish experience, complemented by other examples from Europe, several conclusions can be drawn when considering the establishment and use of a state monopoly¹²:

- It must be ensured that any monopoly is in line with international legal obligations, in particular with the requirements of the free market (if in the EU);
- A strong legislative framework must be in place to govern the State approach to the monopoly;
- A framework within which the system operates needs to ensure a clear distinction between running the gambling business and dispersing the gambling profits;
- Transparency of the system must be ascertained;
- Cost efficiency needs to be guaranteed;
- Monitoring, measuring and ensuring best value for money in terms of social benefit from funding needs to be in place.

29. Free movement of goods and services is a heavily regulated activity, and one of the basic principles of functioning of the EU is their free movement. When setting up a state monopoly over a certain marketable activity, such as gambling or alcohol, States need to be careful of the requirements of national and international free market guarantees. Hence, in any limitation to freedom of trade, in particular in the EU context, particular attention needs to be given to the limitations that can be put into place¹³.

¹² These considerations are drawn from the perspective of victim support providers and their needs, and should be lined up with other relevant instruments which deal with political, economic or legal aspects of a State-run business.

¹³ The forms of monopoly present in the EU have been repeatedly questioned by the companies. Hence, in Sweden the state monopoly on sales of non-prescription medication was ended in 2010, following a ruling of the Court of Justice of the European Union, the Swedish pharmaceutical market was deregularised. Similarly, the European Commission has so far commented on gambling monopolies in some countries, finding that Swedish model was not in line with the EU treaties, while the Finnish had been – see e.g. European Commission, Commission requests Member States to comply with EU law when regulating gambling services, press release, 20 November 2013, available at: http://europa.eu/rapid/press-release_IP-13-1101_en.htm

30. Finland has well-developed legislation which regulates the generation and management of the proceeds from gambling. This includes the Lotteries Act, the Act on Discretionary Government Transfers, and a number of governmental decrees and other implementing regulations.

31. It is crucial that the business side of the activity, which generates profit, and the dispersion side, which governs spending of profits, are kept separate and managed as such. This may be done by establishing different legal entities, or putting into place other safeguards, such as an internal organisational division. Any division should minimise or avoid duplication of costs and should not impede the process which would reduce efficiency and effectiveness of the system.

32. Transparency of the system is paramount for any public spending in general, including for the management of state monopolies. In Serbia, this should be ensured through checks and balances in line with the accepted transparency and accountability standards in Serbia¹⁴.

33. The system needs to be cost efficient with the system being monitored and adjusted whenever inefficiencies arise. For example, one of the main reasons for the recent transformation of the Finnish system was the inefficiency of operating three separate legal entities.

34. The impact of funds from the monopoly must be monitored to demonstrate that the scheme's objectives are being met. In the case of Finland, this means measuring social impact and benefit. In particular, while they recognise that certain behaviours can hardly be eradicated, they should not be unnecessarily encouraged for the sake of ensuring a better business result or securing more funding for a cause.

¹⁴ For some resources on accountability and transparency, see e.g. OECD, Accountability and Transparency: A Guide for State Ownership, 2010, available at: http://www.oecd-ilibrary.org/governance/accountability-and-transparency-a-guide-for-state-ownership_9789264056640-en or de Sousa, Luís; Marmour, Peter; Hindness, Barry, Governments, NGOs and Anti-Corruption. The new integrity warriors, Abingdon, Routledge, 2008.

35. The Finnish state-operated gambling business operates through a separate legal entity – Veikkaus Oy¹⁵. Veikkaus Oy is a limited liability company, fully owned and operated by the Finnish state. It operates all the gambling games that are offered in Finland, under the following principles: it offers entertaining and safe gaming experiences; takes gaming-related detriments seriously; holds the exclusive right to operate all gambling in Finland. Veikkaus generates more than 1 billion euros of income every year and employs 2000 gaming industry professionals.

36. Proceeds from gaming generated through Veikkaus are operated by the Funding Centre for Social Welfare and Health Organisations (STEA). This source of funding has for decades been the main source of funding for victim support services in Finland. However, as of 1 January 2016 the Finnish Government started ensuring funding victim support services directly through Ministry of Justice, from the state budget¹⁶. While funding from the budget now covers the majority of operational costs of the RIKU, additional funding for specific activities is still secured through projects with STEA.

SITUATION IN SERBIA

37. Serbia also holds a limited monopoly on organising games of chance. Serbia maintains a monopoly on ‘classic’ games of chance, such as: the lottery, instant lottery; sports forecast; lotto, keno and similar games; tombola, bingo and similar games; fonto, SMS lottery and other

¹⁵ Previously, Finnish gambling business was run through three separate business entities. Three companies were operational, and they covered strictly divided areas in the gambling market. Fintoto Oy was a limited company owned by Finland's national confederation of harness racing and horse breeding associations. Proceeds from the operations of Fintoto Oy were used to promote horse breeding and equestrian sports. Veikkaus Oy was a limited company fully owned by the Finnish state that had a monopoly on operating money lotteries as well as pools and betting. Proceeds from the operations of Veikkaus Oy were used to promote sports and physical education, science, the arts and youth work. Finally, Finland's Slot Machine Association was a public organisation the members of which included legally competent non-profit organisations and foundations that promote health and social welfare. Finland's Slot Machine Association had a monopoly on keeping slot machines available and on operating casino games and casinos. Proceeds from the operations of Finland's Slot Machine Association were used to promote health and social welfare.

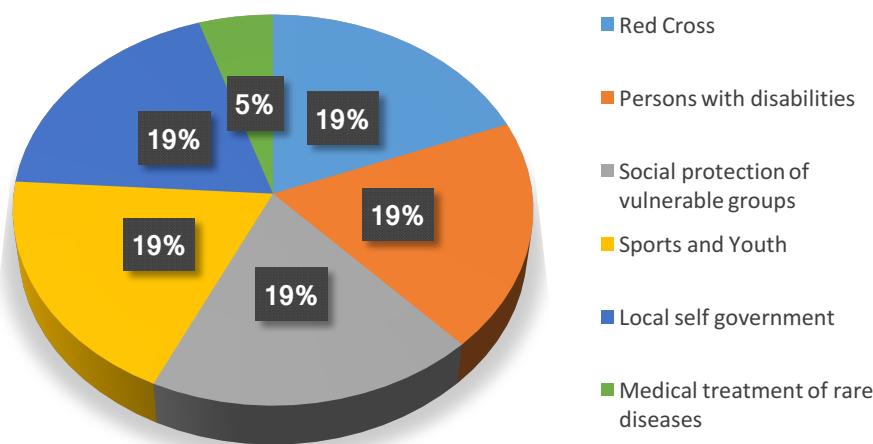
¹⁶ The main reason for such a change was understanding that financing directly from the budget would be more in the spirit of the Victims' Rights Directive, even though funding directly from the budget is not a requirement.

similar games¹⁷. Other games are subject to regulations and special permits, which are issued by the Government. However, only one part of the income from gaming is allocated to social causes.

38. The monopolised games are managed by a separate State entity – Državna lutrija Srbije (State Lottery of Serbia, DLS). The DLS is a separate legal entity, constituted as a limited liability company with the Government as the sole shareholder.

39. The DLS has been operating with varying results. It concluded the fiscal year 2012 with a total loss of RSD 150 million (around €1.25 million). However, in recent years the company operates with a profit, which in 2016 was €1.6 million. Of this, only 40% is reserved for specific purposes of social value and is distributed as designated by the law¹⁸ :

Distribution of profits for social value



¹⁷ Article 14 of the Games of Chance Act (Zakon o igrama na sreću).

¹⁸ Article 18 of the Games of Chance Act.

40. These funds are kept in separate accounts in the budget. The Ministry competent for each of the specific purposes decides how to allocate funds for each of the designated purposes.

41. **Apart from profits from monopolised games, Serbia also generates profit from gaming fees on freely marketed games.** Games that are not monopolised (e.g. sports bets or slot machines) can be organised by non-state actors. However, private legal entities pay a license to organise such games. The total income from licenses in 2015 was reported to be about € 12.5 million. This income is paid directly to the State budget by the game organisers and there is no requirement for any social allocation from these funds.

42. **According to one NGO interviewed, the major profits from gaming in Serbia does not come from the games organised by DLS, though it has not been more widely verified.** Reportedly sports bets are the best trading type of game. As noted above, this is left to the free market, but it would appear that there are some discussions about monopolising this type of games too.

2.2. INCOME FROM CHARGES ON OFFENDERS – ENGLAND AND WALES

43. **Obtaining funds from offenders is another potential source of income to ensure victims' rights.** Every country observed in this report already has a system of financial penalties with that income being used by governments for a variety of reasons.

44. **In England and Wales, income for victim services is obtained through three offender sources.** These are: the victim surcharge; allocation of income from fixed penalty notices (fines); and deductions from prisoners' earnings. Apart from England and Wales, the victim surcharge has recently been introduced in both Finland and France, but given the early days of its implementation, it was not possible to draw a comparative analysis of the three systems. The sections below outline

some of the key issues relevant to the use of such mechanisms as well as the approach taken in England and Wales.

VICTIM SURCHARGE

45. The Victim surcharge is a type of penalty applied in certain circumstances, in addition to other criminal sanctions pronounced. It is paid to the state in the same way as a fine, whether there is an identifiable victim or not. In the system applicable in England and Wales, it is ring-fenced to fund emotional and practical support services for victims of crime. Relatively small sums fund caseworkers and counselling services around the country¹⁹.

46. When considering whether to establish and how to establish a surcharge system, it is important to take into account a number of issues. In particular:

- The legality of a surcharge according to national law;
- The legal mechanisms to establish the surcharge system;
- The scope of the surcharge – who will be subjected to a surcharge;
- The level of the surcharge;
- Enforcement of the surcharge and ensuring maximum efficiency;
- Disbursement and control of funds and services.

47. As a first step, it will be important to determine whether the surcharge will be legally and morally acceptable. Some argue that the surcharge system is a second penalty on offenders who have already been punished for their crimes through either a financial penalty or through a custodial sentence. This can raise concerns about basic principles of justice. Despite these concerns the surcharge system has been adopted in a number of countries including for example England, Finland, and the USA.

48. However, others argue that the surcharge is simply one aspect of a single sentence. An alternative way of considering the surcharge would

¹⁹ J. Rozenberg, Victim surcharge: unintended consequences, *The Law Society Gazette*, 1 July 2013, available at: <https://www.lawgazette.co.uk/law/victim-surcharge-unintended-consequences-/71546.article>

be if a financial penalty were simply increased with part of the fine being allocated to victim services. Here there is no question of a double penalty.

49. It is argued that the surcharge should be considered in a similar light. However, there is value in operating a system of surcharge separate to the general fine system, since this allows for it to be adapted to a specific set of objectives.

50. For example, offenders should understand that the surcharge is specifically used for victim services. They should be made aware that they are paying in some way to recompense to victims for the crime they committed. Equally, it can allow for the enforcement of surcharges to be prioritised over enforcements of other sanctions. This can be relevant where an offender has insufficient means to pay all fines and costs at the same time. In such a situation, the surcharge can be enforced first, demonstrating the prioritisation of victims' services and victims themselves.

51. In terms of the legal mechanisms to establish the surcharge this will depend on each country. However, given that it is part of the sentencing system, it is likely to require changes to criminal law or criminal procedural laws. With details most likely established through secondary legislation, circulars and other forms of government and court controls.

52. With respect to the scope of the surcharge, a wide variety of options exist and are applied in different countries. Surcharges can be based on the type of crime, the seriousness of the crime, the level of sentence the offender receives, whether the offender is an adult or under 18, whether the offender is an individual or a corporation for example.

53. Of course, the wider the scope of the surcharge, the greater the income potential. However, care must be taken to find a balance between income generation and restorative justice principles whilst maintaining a fair and just system of sentencing. Those overriding principles should remain paramount.

54. **It should therefore be carefully considered whether and how the ability of an offender to pay is taken into account.** A series of questions should be explored in the respect including:

- what system is in place to assess financial circumstances of the offender, if any?
- should the level of fine be adjusted according to ability to pay, or should the time to pay be adjusted.
- what are the risks that poorer offenders pay less, and wealthier people or organisations pay proportionately more?
- Are there circumstances where an offender should not have to pay a surcharge?
- when considering fine levels, should a flat rate system be applied or should it be increased proportionate to the level of sentencing?

55. **Having determined who should pay, under what circumstances, and how much, it is also necessary to consider the enforcement mechanism.** There are two aspects to this. Firstly, how to physically ensure that the money is paid by the offender. Here it is assumed that the existing enforcement infrastructure will be used.

56. **When considering whether to establish a new surcharge, it would be important to have relevant data on the effectiveness and efficiency of the existing enforcement system.** If a relatively low percentage of fines are paid, and if enforcement is very costly, it may not make economic sense to introduce the surcharge – especially if costs are greater than the overall income from the charge. On the other hand, the surcharge might be considered as part of a wider review of enforcement processes.

57. **Finally having obtained the funds and earmarked them for victim support services, it will be important to establish an effective and efficient commissioning system.** Such a system should ensure the transparency and integrity of the decision making process, ensure the right services are successful and that they deliver according to their

contracts. Having in mind these six key issues, the English system of victim surcharge is described below.

58. In England, the victims surcharge was first introduced in April 2007 and similar approaches have been operational in e.g. USA, Canada and the UK and were recently also introduced in Finland²⁰ and France²¹. The UK Government has highlighted that it sees the surcharge as a way of ‘ensuring that offenders take greater responsibility for their crimes and do more to repair the harm caused by their offending.’²²

59. Since its introduction in 2007, the system has been subject to several changes. The current system is established under the Criminal Justice Act 2003, with details established under the Criminal Justice Act 2003 (Surcharge) Order 2012 and its subsequent amendments.²³

60. The surcharge is paid to Her Majesty’s Courts and Tribunals Service (HMCTS). According to the procedure, when a court sentences an offender, it is under a duty to order payment of a surcharge, that is, a specified sum of money varying according to the sentence given. This income is paid to the general budget, but is reserved for funding support services for victims of crime.

61. The sentences which attract payment of a victim surcharge and the amounts to be ordered are set out in the Criminal Justice Act 2003. The amounts of surcharge range from £15 to £170. The table below provides the breakdown of charges in detail. As can be seen, a range of factors influence the level of the fine. Surcharge levels differ depending on whether the offender is over or under 18 years of age (tables 1 and 2),

²⁰ Victim surcharge in Finland has operationally been in place only since December 2016. It is estimated that € 4 to 5 million will be collected from this system. Offenders who commit a crime where the maximum sentence is imprisonment have to pay a fee of 40 or 80 euros depending on the severity of the crime.

²¹ Article 27 of LOI n° 2014-896 du 15 août 2014 relative à l'individualisation des peines et renforçant l'efficacité des sanctions pénales ; <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029362502&categorieLien=id>

²² Getting it right for victims and witnesses: the Government response - Response to consultation CP3/2012 carried out by the Ministry of Justice. Para 26; <https://consult.justice.gov.uk/digital-communications/victims-witnesses/results/a-gov-response-getting-right-victims-witnesses.pdf>

²³ <http://www.legislation.gov.uk/uksi/2012/1696/contents/made>

if the offender is a company table 3), when the offence was committed, the type of sentence imposed and the level of the sentence.²⁴

Table 1: Surcharge for Offenders over 18 years of Age

Disposal type	One or more offences committed before 8 April 2016	All offence(s) committed on or after 8 April 2016
Conditional discharge	£15	£20
Fine	10 per cent of the fine value. £20 minimum and £120 maximum	10 per cent of the fine value. £30 minimum and £170 maximum
Community sentence	£60	£85
Suspended sentence order	£80 (six months or less)	£115 (six months or less)
Immediate custody	£80 (six months or less) ²⁵	£115 (six months or less)

Table 2: Charges for offenders below the age of 18

Disposal type	One or more offences committed before 8 April 2016	All offence(s) committed on or after 8 April 2016
Conditional discharge	£10	£15
Fine, Youth Rehabilitation Order, Community Order, Referral Order	£15	£20
Suspended sentence order	£20	£30
Immediate custody	*£20	£30

²⁴ For an overview of surcharge, see <https://www.sentencingcouncil.org.uk/explanatory-material/item/fines-and-financial-orders/victim-surcharge/>

²⁵ Immediate custody sentences for offences committed before September 2014 are not subject to a surcharge

Table 3: Person who is not an individual (for example, a company or other legal person)

Disposal type	One or more offences committed before 8 April 2016	All offence(s) committed on or after 8 April 2016
Conditional discharge	£15	£20
Fine	10 per cent of the fine value £20 minimum and £120 maximum	10 per cent of the fine value. £30 minimum and £170 maximum

62. The most recent changes to the victim surcharge system took place in 2016. The legislative intervention was adopted to widen the types of offences that are covered by the surcharge. At the same time a wide range of scenarios have had to be taken into account. For example:

- Where an offender is dealt with in different ways only one surcharge (whichever attracts the higher sum) will be paid.
- Where more than one fine is ordered, the surcharge for the highest individual fine is assessed, not the total of all fines ordered.
- Where a custodial sentence is imposed, the surcharge is based upon the longest individual sentence, not the aggregate term imposed.

63. The system also tries to reduce the risk of unfair results. For example, the aim is not to fine offenders twice. As such, a second surcharge is not applied when dealing with breach of a community order, suspended sentence order or conditional discharge.

64. It also seeks to take into account the offender's financial situation. According to S162 of the Criminal Justice Act 2003, where an individual has been convicted of an offence, the court may, before sentencing him, make a financial circumstances order with respect to him.

65. Based on this information, according to the Sentencing Council guidance, where the offender has the means to pay the financial impositions of the court, there should be no reduction in compensation or fines whenever the surcharge is ordered. However, the court must

reduce (if necessary to zero) the surcharge where the offender must pay both a surcharge and compensation but can't pay both.²⁶

66. Given that a range of fines and costs are imposed on offenders, the UK system has also established a prioritisation for enforcement. Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, the order of priority is:

- compensation
- surcharge
- fine
- costs.

67. The result of these ongoing changes is that in 2015/16²⁷, £38 million of surcharges were ordered. This resulted in the Ministry of Justice receiving £31 million which equates to an 82% recovery rate.²⁸ This can be due to non-payment or because the offender may serve their custodial sentence before cash inflows are realised. It should be noted that the latest income figures for 2016/17 are not yet available, and as increases in the surcharge amounts occurred in 2016, the current total income from this funding is likely to be higher.

68. Despite or perhaps due to ongoing changes to the system, a number of concerns have been raised. In particular, it has been suggested that the surcharge disproportionately burdens low income offenders, since even a small charge can be significant where they have very low incomes. This compares with large corporations for whom the surcharge is a negligible sum.

69. Another example of an unforeseen consequence is the fact that courts can order parents of minor offenders to pay the surcharge on

²⁶ Criminal Justice Act 2003, s.161A(3) and s.164(4A).

²⁷ The data given is showed per tax year, which in the UK starts in April.

²⁸ Whilst data on the number of offenders ordered to pay the surcharge could not be obtained, according to a Ministry of Justice official, it is estimated that the surcharge will applies to around 43,000 individuals per year.

their behalf. However, legislation has not foreseen flexibility where the parents are actually the victims²⁹. In circumstances where e.g. a child steals from the parent, it is more harmful to the victims to force them to pay the charge.

70. Finally, it should be noted that non-payment of the surcharge can impact on the HMCTS enforcement workload and the costs of enforcement. Research by the Government in 2002, found that the overall cost of enforcement to the sample courts was equivalent to one-third of the total impositions they made in the period under review, although spending levels varied between courts from 55 per cent of their impositions to just 16 per cent.³⁰ Around 90% of those costs related to staff costs.³¹

71. This gives some indication of the importance of ensuring an effective enforcement mechanism. Whilst recognising that the figures are out of date and the Government has made a series of changes to improve enforcement whilst reducing costs, it still highlights how effective enforcement can make a difference in ensuring funding. Similarly, it must be recognised that where offenders have limited capacity to pay fines, compensation, surcharges and costs, income from fines and cost deductions will be reduced where enforcement of surcharges are prioritised.

MOTORING FIXED PENALTY NOTICES AND PENALTY NOTICES FOR DISORDER

72. In addition to the victims' surcharge, funds for victims' services are obtained through penalty notices (fines) on offenders. In England

²⁹ See e.g. J. Rozenberg, Victim surcharge: unintended consequences, *The Law Society Gazette*, 1 July 2013, available at: <https://www.lawgazette.co.uk/law/victim-surcharge-unintended-consequences/71546.fullarticle>.

³⁰ Fine enforcement in magistrates courts, Home Office Development and Practice Report, 2002 <http://library.college.police.uk/docs/hodpr/dpr1.pdf>

³¹ <http://library.college.police.uk/docs/hordslr/rdsolr0903.pdf>

and Wales, this applies to motoring fixed penalty notices (FPN) and penalty notices for disorder (PND).

73. Fixed Penalty Notices (FPNs) have existed in the UK since the 1950s. However, in 2013 changes were introduced to FPNs for motoring offences, which gave the police the power to issue fixed penalty notices for careless driving and allow them greater flexibility when dealing with less serious careless driving offences - such as tailgating or middle lane hogging - as well as freeing them from resource intensive court processes. The revenue generated from FPNs for motoring offences in 2015/16 was £102 million.

74. A PND is a type of fixed penalty notice that is available in England and Wales for a specified range of penalty offences, such as drunk and disorderly conduct, throwing fireworks etc.³². Penalty offences are divided into lower and upper tier offences depending on the seriousness of the crime. They attract penalties of £60 and £90, respectively. £10 from each of these sums is allocated to the victim support budget. Revenue from Penalty Notices for Disorder (PNDs) is a statutory disposal introduced by the Criminal Justice and Police Act 2001.

75. Giving a PND removes the possibility of the criminal court awarding a compensation order in favour of the victim though the victim can seek direct compensation from the offender in a civil court. Moreover, giving a PND to a person could save the victim from having to attend court to give evidence provided that the person does not request to be tried for the offence.

FIXED PENALTIES IN SERBIA

76. In Serbia, a range of similar ‘fixed penalties’ or mandatory sanctions also exist, within the framework of ‘minor offences’

³² For a full list of punishable offences and detailed information about the application of the scheme, see Ministry of Justice, Penalty Notice for Disorder (PND), available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403812/policy-note-disorder-police-guidance.pdf

(prekršaji). These include a wide array of illegal behaviours, including fines for violations of traffic, taxation and customs rules and breaches of public peace and order, to issues of labour relations, health protection and defence.

77. Currently, income from these penalties is distributed between the State budget, the budget of the autonomous province of Vojvodina and local self-governments. It is then distributed to final beneficiaries within the standard budgetary allocations. It would appear that the income from fines is not separated in the State budget from other types of ‘other non-taxation related income’ (*ostali neporeski prihodi*), such as concessions fees or fees for the use of airspace, for example.

78. Depending on whether the fine is defined in the law as a fixed amount or not, these various fines can be pronounced in two types of proceedings, the minor offence order and minor offence proceedings. The minor offence order is a straightforward procedure, with an order becoming final within eight days, unless contested. If contested, it enters the regular minor offence proceedings, as does any other offence which provides for any range of discretion in sanction.

79. Ensuring income from fines, however, is troubled by two major problems of the Serbian legal system – well documented delays in proceedings and shortcomings in enforcement. Delays in proceedings very often lead to the statute of limitations being missed. In 2015, more than 20% of all minor offence cases fell due to expiry of the statute of limitations. Four minor offence courts having had more than 30% of their cases falling under the statute of limitations³³.

80. To support enforcement, in 2016, a novelty was introduced in the form of the single registry of unpaid fines, run by the Ministry of Justice and minor offence courts. The Minor Offences Act aimed to prevent citizens who have unpaid traffic fines from registering their vehicles or

³³ 2015 Annual Report of minor offence courts in the Republic of Serbia, available at: <http://pkap.sud.rs/prekrasajni-apelacioni-sud-izvestajni-o-radu-lat.html>.

having their driver's licences renewed. However, the Constitutional Court of Serbia declared these provisions contrary to the Constitution and declared them null and void. Nonetheless, similar approaches in other countries have been highly successful. In other countries, such as in Belgium, for example, fines can be taken directly from salaries.

81. Currently, the only way to ensure enforcement of a fine is to substitute it with a prison sentence. However, this needs to take place within a two-year deadline since after this time, enforcement of the collection of a fine falls under the statute of limitations.

82. As with the UK system, these fines present an opportunity to strengthen any victim fund. Whilst this is not new income to the State and/or other levels of government, the use of some of the income from fines would not only help ensure victim services can operate, it would reduce impacts on any other budget streams, whilst also establishing a closer link between offenders and reparation. Moreover, where new fines are created or new behaviours subjected to fines, these could be directly earmarked for victim services and would not therefore represent a reduction in budget from elsewhere.

PRISONER EARNINGS LEVY

83. A third form of revenue is through deductions on Prisoner earnings as introduced by the Prisoners Earnings Act 1196 (PEA)³⁴ which came into force in 2011. Namely, while they are serving their sentence, prisoners in the UK have the possibility to receive minimum payments for certain productive activities in prison. These result in average earnings of £10 per week per prisoner working. However, these payments are not considered as employment and no levy is imposed on this income.

³⁴ The Act is not in force in Northern Ireland. See <http://origin-www.legislation.gov.uk/ukpga/1996/33/introduction>

84. A levy is only imposable on prisoners who are undertaking paid work in the community and earning in excess of £20 a week³⁵. These prisoners have been assessed as being of low risk of absconding or reoffending and allowed to work outside of prison on temporary licence, to prepare for their eventual release. The PEA defines “net weekly earnings” as weekly earnings after deduction of any of the following, as appropriate: income tax; national insurance contributions; payments required to be made by an order of a court; and payments required to be made by virtue of a maintenance assessment within the meaning of the Child Support Act 1991.

85. According to the PEA these prisoners may be made subject to the imposition of a levy amounting to up to (and including) 40% of their remaining earnings ('the excess'). So if a prisoner earns £25 per week net, the levy is made only from £5 per week, not the full £25.

86. In order to ensure transparency of the system and enable prisoners to check deductions, prisoners subject to the levy are supplied with a monthly statement. This shows the net earnings received by them from their employer, the amount levied, and the balance (which will be paid into their external bank account).

87. Employers are requested not to pay the wages directly to the prisoners. Instead, employers make the usual deductions for tax, National Insurance contributions etc. and then pay the balance to a Government department bank account. The levy is then deducted and the remainder is paid into the offender's bank account³⁶.

³⁵ Given that the average income in the UK was around £500 a week in June 2017, this amounts to 4% of the average weekly wage in the UK.

³⁶ An overview of the operating instructions for the PEA Levy can be found here: <http://www.justice.gov.uk/downloads/offenders/psipo/psi-2011/PSI-76-2011-PRISONERS-EARNINGS-ACT-1996-Revised-February-2016.doc>, on page 5-8. Appendix B of the operating instructions document outlines the exceptional circumstances when prison governors can decide not to impose the levy or reduce the amount paid.

88. £1 million was generated in 2015/16 via an average of 368 prisoners per month working out of prison on licence. This brings the total raised since October 2011 to £3.3 million. Levies are currently paid to voluntary organisations concerned with victim support and crime prevention.

89. Whilst the system clearly operates as an important revenue source, a range of issues should be taken into account when considering establishing such an approach. Firstly, a careful analysis of the legality of the system is required taking into account both international conventions and national laws. Arguably the deduction can be considered a new penalty since prisoners have legitimately earned the income.

90. This could risk being contrary to the European Convention on Human Rights (ECHR). For example, if such a deduction were to be considered a retroactive penalty issues under Article 7 of the ECHR could be raised.³⁷ It could also be considered an imposition of a penalty by a non-judicial body and as well as deprivation of property, contrary to Articles 6 and 1 of Protocol No. 1 to the ECHR, respectively. In order to reduce legal risks, a proportionality test could be included which would take into account the prisoner's individual income and unavoidable expenses.

91. In addition to these legal issues, the administration involved in collecting the levy, could reduce net income from the scheme. In particular, the various bank transfers involved might not justify the relatively small income from this levy. Steps are being taken to increase the amount of work the levy may apply to so the income stream may increase. However, increasing the scope of work also needs to take into account domestic and Convention laws. At present work carried out in prison is not regarded as employment. If prisoners were regarded as

³⁷ Council of Europe; Guide on Article 7 of the European Convention on Human Rights; p 10; http://www.echr.coe.int/Documents/Guide_Art_7_ENG.pdf

being ‘employed’, the government would have to make provision for paid holidays etc., as well as paying prisoners the minimum wage.

92. Others have raised concerns that the levy might act as a disincentive to prisoners looking to use the release on temporary license system. Given that the system was established in part to help prisoners train and prepare for release, it would be important not to impose a levy which negatively impacts on uptake. Despite these concerns, Her Majesty’s Inspectorate of Prisons did not find evidence of a reduction in the use of ROTL.³⁸

PRISONER SALARIES IN SERBIA

93. Prisoners in Serbia can perform limited work while in prison. Prisons are expected to organise profitable economic activity, and to involve prisoners therein, as a part of their rehabilitation and socialisation programme.

94. Research in Serbia has not revealed evidence that Prisoner salaries are currently subject to surcharges. Such as surcharge could present an opportunity for a new source of income to supplement a budget for victim support services. However, further analysis would be needed to determine the appropriateness of any charge, including risks to the work system in place, as well as the potential income from such a charge.

95. In terms of potential income, prisoners can be paid up to 20% of the average salary in the country. There is no data available regarding the number of prisoners currently engaged in paid work in Serbia. However, according to some reports, in 2012 the three biggest prisons in Serbia claimed to have been providing work to up to 1,500 prisoners³⁹.

³⁸ Life in Prison: Earning and spending money; A findings paper by HM Inspectorate of Prisons; <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2016/01/Earning-and-spending-money-findings-paper-final-draft.pdf>

³⁹ Helsinki committee for Human Rights in Serbia, The prison system in Serbia (*Zatvorski sistem u Srbiji*), 2012, p. 9, available at: <http://www.helsinki.org.rs-serbian/doc/zatvori%20mart%202012.pdf>

96. Given that the average salary in May 2017 was RSD 47,000 (€390), the maximum monthly income per prisoner would be €78 (or € 19.5 a week). If raised at the same level as in the UK, i.e. at 40% on the income in excess of the 4% minimum, the amount collectable per prisoner would be up to €30 per prisoner per month.

97. With the assumption that prisoners' participation in the workforce from 2012 remained the same, and that those prisoners would be earning maximum prisoner's wage, the four biggest prisons would be able to collect up to € 540,000 a year. However, as it has been reported, the prisoners' employment rate is very questionable, and their income is barely expected to reach the maximum 20% of the average wage in the majority of cases.

98. Despite uncertainties in calculating potential income levels, it can be seen that prisoner salaries may present a useful opportunity for generating new income for a victim support service budget. Nevertheless, a more detailed analysis of implications of such a charge as well as the costs of running the system would need to be carried out.

EXISTING INCOME FROM OFFENDERS IN SERBIA

99. There are two main sources of funding directly from offenders, in place in Serbia. However, at present none of them are used to finance victim support. One is confiscation of assets and the other is the principle of opportunity.

Confiscated Assets

100. Since 2007, property obtained through a crime may be confiscated by the order of the court or the prosecutor. In 2013, these laws were updated, in particular to improve the management of the confiscated assets. The Direkcija za upravljanje oduzetom imovinom (Directorate for Managing the Confiscated Assets) is responsible for managing the assets on behalf of the government and has been given

powers with respect to the disposal of both temporarily seized and permanently seized property.

101. After deduction of the costs of managing the confiscated property and settling any property damage claims, money deriving from either a seizure or sale of confiscated assets is stored in a special account and is ultimately transferred to the State budget. Nevertheless, according to the law, 30% of the income must be used for financing social and health needs in accordance with a decision of the Government. The legal opportunity therefore already exists to use income for victim services.

102. The Law also provides several other opportunities for confiscated assets to be used to the benefit of victims services. In particular, it highlights that movable property which is not sold within a period of one year may be donated for humanitarian purposes or destroyed. In addition, the government can determine the purpose of permanently seized property in order to perform socially useful business.

103. In 2014 the Directorate generated monthly income from rental of temporarily confiscated property of up to € 60,000. In addition, they were responsible for 54 companies, four hotels, five restaurants, a bus station and two thirds of a resort in Croatia. The Directorate also disposed of 442 vehicles, including 378 cars, 12 motorcycles and 20 trucks. In addition, certain assets were confiscated by final court decisions, including eight apartments, several houses at different locations in Serbia, more than € 100,000, several high-value cars, 11 kg of gold bars and 18 kg of gold jewelry, as well as 33 roman coins from 3rd and 4th century AD.

104. Importantly, not only does confiscation of assets generate income, but property of itself could also be used or provided to support services. For example, where a building or home is confiscated, this could potentially be leased or offered free to a victim support provider for use as offices and support facilities. Office equipment such as furniture, computers or printers could equally be used and could provide greater

value in this way than through the income generated by a sale. It was not possible to obtain information from the Directorate for the management of confiscated property as to the amount of funds being collected through this activity.

Offender payments based on postponement of prosecution

105. In accordance with the principle of opportunity, the public prosecutor may postpone the prosecution of a suspect, if they agree to mitigate the damage they have done. This can be through compensation of damages, payment of a certain amount to a charity or by doing community work.

106. By 2012, in more than 60% of cases, the opportunity principle was applied to impose payment of contribution to charitable purposes⁴⁰. Whilst on the surface, this approach appears beneficial to all parties, risks exist that the system benefits wealthy perpetrators who avoid criminal proceedings, whilst poorer perpetrators will be prosecuting, and where victims may prefer justice over payments.

107. The income generated through the implementation of this principle was managed by the Public Prosecutor's office that imposes the sanction. Different offices make different arrangements with some entering into specific agreements with local authorities to forward any payments collected to a specific purpose.

108. Most frequently, the amount imposed has been between RSD 10.000 and 50.000 (approximately €90 and 450). These amounts were pronounced in 67,75% of cases, while only in 1,47% of cases did the amount of fine exceed RSD 100.000 (approximately €900), as per the table below⁴¹:

⁴⁰ S. Bejatović, V. Đurđić, M. Škulić, G. Ilić, J. Kiurski, M. Matić, R. Lazić, S. Nenadić, V. Trninić, Primena načela oportuniteta u prakSI – izazovi i preporuke (*Applying the opportunity principle in practice – challenges and recommendations*), Belgrade 2012.

⁴¹ S. Bejatović, V. Đurđić, M. Škulić, G. Ilić, J. Kiurski, M. Matić, R. Lazić, S. Nenadić, V. Trninić, Primena načela oportuniteta u prakSI – izazovi i preporuke (*Applying the opportunity principle in practice – challenges and recommendations*), Belgrade 2012, p. 106.

<i>Amounts paid for humanitarian purposes</i>					
City	Amount				Total
	1.000 to 10.000 RSD	10.000 to 50.000 RSD	50.000 to 100.000 RSD	More than 100.000 RSD	
Belgrade	0.00%	67.50%	30.00%	2.50%	100%
Jagodina	12.00%	84.00%	4.00%	0.00%	100%
Kraljevo	20.69%	72.41%	0.00%	6.9%	100%
Pancevo	36.67%	63.33%	0.00%	0.00%	100%
Pirot	0.00%	100.00%	0.00%	0.00%	100%
Valjevo	45.45%	47.73%	6.82%	0.00%	100%
Vranje	40.00%	53.33%	6.67%	0.00%	100%
Total	22.55%	67.65%	8.33%	1.47%	100%

109. From 2014, the Ministry of Justice became competent to manage funds collected through principle of opportunity⁴². The Ministry of Justice publishes an open call for proposals and decides on allocation of funds collected through the principle of opportunity. In 2017, the funds available amounted to € 2.9 million, and the eligibility criteria were very broad.

⁴² Previously, it was the prosecutor's office which agreed the fine that decided on the allocation of funds.

110. Any projects in the field of public interest were eligible, submitted by any legal or physical person. The award criteria were: contribution to achieving the public interest (health, culture, education, humanitarian work etc.), number and category of beneficiaries, quality of the proposed project (methodology, expertise and qualifications of staff, ratio between planned costs and the project benefits etc.)⁴³.

111. Reportedly, a very small portion of this income is being distributed to projects proposed by the CSOs, and none towards victim support. In 2016, out of 67 projects that have been funded none was aimed at generic victim support, and only one for victims of trafficking in human beings⁴⁴. Only 5% of all projects came from SOs⁴⁵. Similarly, in 2017, the Ministry of Justice published a call for proposals for projects to award €2.9 million. However, reportedly, out of the 98 awarded projects, only 11 went to CSOs – five in the area of persons with disabilities, four for projects in culture and two for projects related to social protection. However, the 11 selected CSO projects only received 3% of the total budget.⁴⁶ In some respects, therefore, funding of victim services is largely a question of prioritisation of those services.

112. Notably, the Ministry of Justice does not appear to monitor the implementation of projects. In normal circumstances, there is a general financial control and an obligation to submit financial and narrative

⁴³ Ministry of Justice, Public call for award of funds collected on the basis of postponement of criminal prosecution (*Јавни конкурс за доделу средстава прикупљених по основу одлагања кривичног гоњења*), March 2017, available at: <http://www.mpravde.gov.rs/obavestenje/15221/javni-konkurs-za-dodelu-sredstava-prikupljenih-po-osnovu-odlaganja-krivicnog-gonjenja-.php>

⁴⁴ Almost one third of all the available funds of RSD 351 million, or €2.8 million, i.e. RSD 102 million, was awarded to a project of the Ministry of Health, to finance the purchase of ambulance vehicles. This project, in combination with one project of the Serbian Orthodox Church, and another one of the Institute for the Protection of Cultural Artefacts claimed around 60% of total funding available - Ministry of Justice, Draft decision on the allocation of funds (*Предлог решења о додели средстава*), May 2016, available at: <http://www.mpravde.gov.rs/files/Re%C5%A1enje.docx>

⁴⁵ Autonomni ženski centar, Press release regarding publication of results of the Ministry of Justice's call for proposals for the allocation of funds collected based on the postponement of criminal prosecution (Principle of opportunity) (*Saopštenje za javnost povodom rezultata konkursa Ministarstva pravde za dodelu sredstava prikupljenih po osnovu odlaganja krivičnog gonjenja*), May 2016, available at: <https://www.womenngo.org.rs/vesti/780-saopstenje-za-javnost-povodom-rezultata-konkursa-ministarstva-pravde-za-dodelu-sredstava-prikupljenih-po-osnovu-odlaganja-krivicnog-gonjenja>

⁴⁶ Stakeholder interview. Draft decision was not made available at the time of compiling the report.

reports, upon a project's closure. The general financial control is mostly exercised through the fact that project funds are not made automatically and immediately available to a project beneficiary.

113. The beneficiary of a project is required to set up a subaccount in the state treasury, which then exercises payments on behalf of the beneficiary. These payments may either be made one by one for every small cost or the beneficiary can request the treasury to transfer all the funds to their account and manage the finances themselves.

114. The treasury performs no control whatsoever regarding the eligibility of any such payment. Moreover, the beneficiary does not have an opportunity to return any unspent funds to the treasury, as only state institutions can perform such payments.

115. Project implementation is not systematically monitored and there are few requirements for external audits or evaluation of projects. In contrast, the European Commission has different systems of control of both content and financial performance of a project, requiring engagement of external evaluators and auditors to look into projects. These are often in addition and in parallel requirements on beneficiaries to engage their own evaluators and auditors.

2.3. INCOME FROM INSURANCE - FRANCE

116. Whilst previous sections have focused on services controlled by the government or offender payments, a third possible income source is through the imposition of a levy on a compulsory national insurance scheme. This could relate to health insurance, housing insurance or car insurance, for example. In this respect, France has had since the 1950s, a scheme to apply a levy on certain insurance. This section provides a brief summary of this substantial scheme.

117. The French Fonds de Garantie (Guarantee Funds) are a source of funding for victims of crimes and incidents⁴⁷. They consist of two branches: Fonds de Garantie des Assurances Obligatoires de dommages (the Mandatory Third Party Liability Insurance Guarantee Fund, FGAO) and Fonds de Garantie des Victimes des actes de Terrorisme et d'autres Infractions (the Guarantee Fund for Victims of Terrorism and other Infractions, FGTI).

118. The ancestor of the Guarantee Fund, Le Fonds de Garantie Automobile (Car Insurance Fund) was established in 1951. It had a mission of general interest: to compensate victims of traffic accidents whose authors were not insured or were not identified. Whilst not covering victims of crime, the scheme is detailed below as potentially of interest.

119. Over the years, its areas of competence were gradually extended. These today include compensation for personal injury resulting from hunting or road traffic accidents, damage caused by a technological disaster, and damage or injury following collisions with wild animals, work in the mining industry or a default on the part of an insurance company. In 2003, it became the FGAO⁴⁸. The FGAO was additionally given responsibility for funding and managing increases in annuities paid to road traffic accidents victims and a competence to act as a compensation agency for international road traffic accidents⁴⁹.

120. The fund collects revenue from contributions from insured parties and insurers calculated according to the insurance contract. For the FGAO, these contributions represent 1.2% of the automobile third party liability premium for insured people and 1% of annual expenditure

⁴⁷ In this regard, it is important to note that, at present, funding ensured through Fonds de garantie are only dispersed to victims directly, and victim support services receive no funding whatsoever from this stream. This, of course, is only one way in which this budget can be handled.

⁴⁸ Code D'assurance L421-1;

<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006073984&idArticle=LEGIARTI00006801527&dateTexte=&categorieLien=cid>

⁴⁹ More information on the FGAO can be found here: <http://www.fondsdegarantie.fr/>

for insurers. In 2015, 124.3 million euros were disbursed, of which 105.1 million euros went to victims of road accidents.⁵⁰

121. In addition to the FGAO, the Guarantee Fund exists for victims of terrorism and crime. This began initially as a Terrorist Victims Guarantee Fund in 1986 following a wave of terrorist attacks in France. In 1990, compensation for the victims of terrorism and other criminal acts, which had previously been managed by the State, passed to a new Fund, the **Fonds de Garantie des Victimes des actes de Terrorisme et d'autres Infractions** (Guarantee Fund for Victims of Terrorism and Other Infractions, FGTI).

122. 75% of the FGTI's budget, comes from a flat-rate contribution⁵¹ levied on each property insurance contract in France, which in 2016 amounted to €600 million. The purpose of the fund is, in essence, to ensure that everyone gets compensated, regardless of the circumstances of victimisation. In 2015, the two funds compensated more than 32,000 victims of road accidents caused by uninsured drivers or those who fled the scene, and more than 75,000 victims of crime. A total of 453 million euros was disbursed with €124,3 million coming from the FGAO and €328,8 million from the FGTI.

123. At the same time, the Fund aims to retrieve money from perpetrators whenever possible. As a result, one fifth of the remaining 25% of FGTI's income comes from compensation obtained from the perpetrators by the Fund. The remaining Fund income is generated through investments.

124. Given the large sums of money being administered and managed, it is crucial that the Funds are properly established with clear and transparent organisational structures and procedures. Ministerial

⁵⁰ FGAO Annual Report 2015; http://www.fondsdegarantie.fr/images/RA_FG_2015-2016_complet.pdf

⁵¹ In 2016 the contribution was set at €4,30 per contract. As of January 2017, the amount of the tax on insurance contracts is increased to € 5.90 per contract, corresponding to expected €140 million of additional revenue for the FGTI.

Decrees require the funds to be administered and managed by a Management Board.⁵²

125. To this end, the FGAO is established by law as a legal entity under private law. It falls under the control of the Ministry of Economy and Finances, which determines the level of contributions to the fund as well as the laws which determine the fund's competences. The FGCI is a public service entity endowed with legal personality. As with the FGAO, its missions are defined by law.

126. Both the FGAO and FGCI are governed by a Board of Directors. The FGAO's board has 12 members, who are representatives of companies which offer compulsory indemnity insurance and a government commissioner. The FGCI's board is composed of 9 members, which include representatives of the Ministry of the Economy and Finance, Ministry of Justice, Ministry of Social Affairs and Health and the Ministry of the Interior, as well as three representatives of victims of terrorism, a representative of the insurance industry and a government commissioner.

127. At the same time, the Guarantee Fund has developed an extensive organisational structure to manage the large sums it receives and disburses. As of 2015, they consisted of 305 generalist and specialist staff of which 156 are charged specifically with compensation activities. Much of this structure has largely been established to facilitate the disbursement of funds in the form of compensation. Nevertheless, the structure may be of interest when considering approaches to funding services.

128. Staff operate in several units or departments. The settlement department is the largest entity in the Guarantee Fund. It relies on more than one hundred lawyers and managers, based in several locations across France. In addition, several services are put into place to support different elements.

⁵² See: <http://www.fondsdegarantie.fr/fonctionnement>

129. The Service of Assistance to the Recovery of Victims of Crime (SARVI) covers compensation paid by the Guarantee Fund and the indemnities awarded to victims by the courts. It thus involves perpetrators in discussions about the financial consequences of their actions. It is responsible for obtaining all relevant information about them, negotiating friendly settlements with them and implementing enforcement if necessary.

130. The contributions service covers the contributions due from the insured directly to the insurance companies and also collects contributions payable by the insurance companies themselves.

131. The department responsible for asset management (financial and real estate) enables the Guarantee Fund to cover its commitments to victims. There is also a Support Services (accounting, IT, logistics, HR, communication, and general services) office which supports the abovementioned units for optimal operation of the Guarantee Fund.

132. Beyond the organisational infrastructure, the Guarantee Fund moved towards a greater focus on quality management in the 2000s. As part of this, it has established a Charter for Victims, which sets out its victim oriented approach to service delivery. Under the Charter, the key values of the organisation are a right to information and protection of confidentiality and security. Namely, each victim may know the essential phases of their case and have clear and detailed information on the handling of their case and their rights. It is the task of the Guarantee Fund to ensure the strict confidentiality and security of personal data collected as part of the victim's case. At any moment, a victim may ask to have access to his data and to exercise his right to rectification or objection.

133. The Funds also regularly seek the views of victims. Their aim is to better understand victims' needs and their perception of the service, in order to improve those services.

134. Since 2011, the Guarantee Fund has also been broadening its corporate social responsibility (CSR) approach to reflect on its social and

environmental responsibility. Its aim has been to deepen and improve its relations with its stakeholders (victims, public authorities, associations of victims, insurers, service providers and collaborators, etc.) and to clarify its relationship with the perpetrators.

135. Finally, the Funds work on other aspects of a CSR policy, such as financial investments. As a body responsible for compensating victims, the Fund places a part of its financial resources into investments to guarantee long-term commitments. The financial part of these investments is analysed to better take into account certain environmental, social and governance criteria in connection with a Socially Responsible Investment (SRI) policy.

EXISTING COMPULSORY INSURANCE SCHEMES IN SERBIA

136. Serbia requires compulsory participation in the State health, pension and social insurance schemes, as well as insurance of vehicles. In 2013, more than 2 million motor vehicles were registered in Serbia and the number grows each year.

137. Registration of vehicles is renewed every year and insurance is not the only payment required. Apart from the insurance premium, which is the most important cost, owners are required to pay four other different fees and contributions: communal fee, vehicle tax and two different contributions for the registration sticker.

138. Payment of all the duties related to registration of a vehicle is necessary for the annual renewal of licence. Cars may not be driven without a valid licence and breech of this requirement is subject to a fine. As a result, the compliance rate with the registration requirement is very high.

139. Any of the above schemes could be used to contribute to the funding of victim support services following a similar approach to that of France.

3. BUDGET MANAGEMENT

140. **There are broadly two major ways to support victims of crimes:** by providing them with support services (counselling, healthcare, legal advice etc.) and paying them direct compensation. Both are equally important and are recognised and guaranteed by the Victims' Rights Directive.

141. **Probably the most common source of funding for victim support services is through direct budgetary allocations, where victim services and compensation to victims are paid from the State budget, from income streams which are general and common for all budgetary allocations.** Hence, as was mentioned previously, in France and, as of recently, in Finland, victim support services are funded directly from the budget of the Ministry of Justice.

142. **Alternatively specific income streams can be identified.** These can then be dedicated to either general charity causes, including victim support services, or aimed directly towards victim support services and/or compensation.

143. **States will often combine different streams of funding for different types of services and victim support.** Moreover, they will constantly look for ways to optimise funding and ensure the highest quality services are provided to victims of crimes⁵³.

144. **When it comes to collection of specific funds, States have different approaches. In some instances, collection will be ensured through general income collection means, as in the UK through HMPPS.** When using such an approach, it must be possible to track specific allocations through the budget and making sure that funds are used for the purposes they are reserved for. In other cases, there is a specific State

⁵³ Hence, as of 2016 in Finland, victim support services, which had for decades been financed directly through the income from gambling industry, have been taken over for financing of operational costs through the State budget by the Ministry of Justice. Nonetheless, some specific activities are still funded through Veikkaus Oy.

run entity, entrusted with collection of the funds, as is the case with the French Guarantee Fund.

145. Finally, States may also set up a State-run company, which acts as a business entity, generates profit. Those profits can then be allocated to specific issues of social importance, victim support only being one of those issues. In such cases, the company does not allocate the funding themselves. Rather a specific public entity is put into place to administer the funding and facilitate allocation, whilst the final decision on funding is made by the Government. Naturally, the list of possibilities presented in this report is not exhaustive and many other examples are known and available.

When devising a dispensing scheme for victim support funding, there are several considerations to be had in mind as described in the chart below:

Ensuring funding for victim support services

1) There should be strict rules governing funding allocations

- to ensure transparency and responsibility of anyone in charge of authorising spending of public money
- to ensure that potential users of funding are guided by clear rules and have certainty for their expectations

2) A strong decision making body with sufficient expertise should be established

- This governing structure can take the form of a board, a governing body, a commission or other body which will encompass expertise and authority for making decisions of consequence.

3) Priorities for funding need to be determined and published well in advance, following consultations with stakeholders

- Clearly articulated priorities, set in advance and provided to interested parties are necessary to give them the time to develop activities, create synergies and ensure action is well targeted and results optimised.
- If policies change often and priorities are unknown, unclear or uncertain, proper preparation will not be possible. Actions may be improperly planned, badly devised and poorly targeted, reducing quality of results

4) Administrative and formal requirements need to be minimised and known in advance;

- Processing time and effort need not be an excessive burden for applicants through the application process, nor on the part of the decision-makers.
- Yet they still need to ensure transparency and accountability for the funding allocated.

5) Reasonable eligibility criteria need to be defined with precision and certainty;

- Eligibility criteria need to be known in advance, reasonable and attainable. They will reflect:
- the legal environment of the country, priorities and rules of good governance e.g. clear eligibility and disqualification rules. If certain costs or activities will not be financed, these should be known in advance and retroactive changes should be avoided.

6) Set up an accessible and user friendly platform for funding applications

- An easy to use, accessible system for gathering and managing files can reduce the cost of running a system.
- e.g. in Finland, the entire application and reporting system is digitalised, easing the burden of gathering paper copies (which are costly to prepare and post) whilst facilitating storage and file access.

7) A monitoring and evaluation system for the ongoing funding streams needs to be established;

- ensures that service providers maintain their social relevance, provide services in an efficient and effective manner, while exercising responsibility towards public funding.
- can be ensured through internal/external evaluations, accountancy and audit rules, standards for services, for staff and on training, good governance etc.
- Monitoring systems must be used e.g. in France, monitoring and evaluation tools exist but aren't widely used

8) A system of control of spending needs to be put into place.

- The Finnish STEA has a system which combines reporting, evaluation and on-site inspections to ensure proper administration of funds. In Stea inspections examine:
- Eligibility, reasonableness, appropriateness and acceptability of costs charged on a project;
- Accountancy, compliance with procurement requirements and auditor's reports, memoranda;
- Level of beneficiary's internal control;
- General economic situation of the beneficiary.

9) Responsibility and accountability of beneficiaries needs to be ensured

- Any spending needs to be in accordance with domestic legislation, specific requirements of the funder, and in line with agreed priorities and lines of action. Sanctions should be place, and implemented, in case of irregularities e.g. STEA can set a payment ban on the organization and recover subsidies already paid out.

146. States will, naturally, have different approaches to providing victim support services. They can decide to provide these services themselves, or entrust provision of services to external actors, usually CSOs, which have the experience, infrastructure and ethics that enable them to safely and competently ensure that all victims of all crimes receive necessary support. The most usual approach is a combination of the two approaches, where state structures provide some services and CSOs provide other forms of support.

147. In France, for example, the State ensures that victims are accompanied during criminal proceedings in courts of appeals. At the same time, the courts of appeals enter into partnerships with CSOs which provide accompaniment for victims in those proceedings.

148. Financing for services provided by the state is carried out in accordance with the State's specific rules on budgeting. On the other hand, funding of services by external providers is usually implemented via a public competitive call for proposals, open to any organisation which meets strict formal criteria for providing services to victims of crimes. Even in Finland, where funding is ensured in close cooperation with the Ministry of Justice, a system of open calls for funding is soon to be introduced, to ensure transparency.

149. Funding is provided at least on an annual basis. However, CSOs providing victim support can be put into precarious situations where funding is competitive, is allocated on an annual basis and where there is no certainty that the funding will be available from one year to the next. This lack of certainty in terms of mid to long term funding can seriously affect an organisations ability to plan, develop and of course to deliver services. It can result in unsatisfactory staff conditions and consequently in a high rate of staff turnover. Organisations in such situations spend much of their time seeking new sources of funding rather than being able to devote that time to service delivery.

150. In the absence of necessary safeguards, financing for victim support providers can become unstable. In such circumstances,

providers cannot plan their action and ensure continuous support to victims. Due to the past ‘erratic character of funding’, France has experienced great variations in financing of certain services, which have resulted in inadequate support to victims. Hence, for example, one provider experienced the following fluctuations in their budget⁵⁴:

Source of funding	2010	2013	2016
Council of the department	55 000 €	0	0
Council of the region	53 000 €	0	53 000 €
Metropolis ⁵⁵	88 000 €	0	22 000 €
Ministry of Justice	110 000 €	75 000 €	162 000 €
State/FIPD	50 000 €	0	7 000 €
Total	356 000 €	75 000 €	252 000 €

151. An additional problem, identified in France, but a common challenge to be aware of in any administration, is the necessity for a swift and efficient administration of funding requests. Since CSOs depend on external funding and rarely have reserve funds to fall onto, belated or cancelled funding can have a significant impact on the service. Thus, organisations are made additionally fragile with any delay in decision on the allocation of funds, or actual transfer of funds. Moreover, given formal and inflexible procedures, often organisations cannot be

⁵⁴ These are actual movements in the budget of a service provider in Nice. La structuration de la politique publique d'aide aux victimes – Rapport, Tome I, November 2016, available at : http://www.modernisation.gouv.fr/sites/default/files/epp/epp_aide-victimes_tome1_rapport.pdf

⁵⁵ Since 2014 France recognises metropolis as a form of administration of intercommunalities, neighbouring cities organised into an administrative union. As of 1 January 2016, there are 13 metropoles with a combined population of 15 million inhabitants. This is not to be confused with the metropolitan France, which is a term used to describe European French territories, to exclude the French overseas regions.

highly responsive to new challenges and emerging situations, unless emergency funding is made available.

152. The present report aims to showcase several different approaches to raising funds to ensure that victims' rights are respected, protected and fulfilled. Some streams of funding can of course be used to finance activities other than just victim support, like the Finnish gambling monopoly, or to provide direct compensation to victims of crimes and other victims, like the French insurance income⁵⁶. Equally this report only examines mechanisms to ensure funding of victim support operational activities⁵⁷. Whilst a range of safeguards and mechanisms also exist with other aspects of victim support e.g. payment of psychologists, best practices when handling compensation cases, these are not treated in this report⁵⁸.

3.1. FUNDING AT STATE LEVEL

153. Profits from the Finnish gambling business are operated by the Funding Centre for Social Welfare and Health Organisations (STEA). STEA is a standalone state-aid authority operating in connection with the Ministry of Social Affairs and Health. It is responsible for the preparation, payment, monitoring, and impact evaluation of funds granted to social and health organisations from gaming income. It is the most significant

⁵⁶ In this regard, it should be noted that direct compensation is still not guaranteed by Serbian legislation. It is for that reason that at ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), Serbia made a reservation on Article 30(2) of the Convention (which guarantees right to compensation), pending the alignment of its national criminal legislation with the said provisions of the Convention.

⁵⁷ Operational activities, in this context, are seen to be activities aimed at maintaining a sustainable system of providing necessary victim support, in terms of having access to adequate premises, human and other resources to provide necessary support (psychological, legal, social etc.) and ensuring access to victims, whether in country, or if necessary and applicable, abroad.

⁵⁸ For example, in processing compensation requests, the French Guarantee Fund commits to: providing a personalised treatment through: a dedicated contact person - a compensation professional who can be contacted by direct line; compliance with time limits - each victim eligible for compensation receives an offer and settlement within the deadlines fixed by law; a privileged approach - for each victim, the Guarantee Fund constantly seeks an amicable agreement with a view to fair compensation; etc.

funding operator for organisational operations within the social and health services in Finland.

154. The funds are distributed to the beneficiaries by the relevant ministries. Specifically concerning social and health care organizations, the responsibility lies within the Ministry of Social Affairs and Health. Thus, it is the Ministry of Social Affairs, which makes the final decision on the granted funds based on the preparatory work and proposal of STEA.

155. STEA makes periodic calls for contributions and processes about 2500 applications for funding each year, out of which approximately one third is unsuccessful. The applicants have to use a web based application system for submitting applications. All reporting is also made in the web based system. There are normally two rounds of calls per year and any reports must be submitted by the end of May of the following year. STEA also requires a regular (normally every two years) impact analysis of the activities they fund. STEA prepares a funding proposal to the Ministry of Social Affairs and Health.

156. The Ministry of Justice and the Ministry of Finance work together to prepare their respective budgets. The Ministry of Finance pre-approves budgets of other ministries and their representative is involved in the decision on funding for general victim services.

157. The operational funding, which now comes from the State budget is run by the Department of Criminal Policy at the Ministry of Justice and is ensured through a partnership between the Finnish victim support organisation, RIKU, and the Ministry⁵⁹. RIKU and the Department work in direct partnership to agree on the next year's funding and priorities. RIKU then makes an application for funding, which is approved by the Ministry.

⁵⁹ The division of labour between the Ministry of Justice and Ministry of Finance in Finland is clearly set out. The Ministry of Justice cooperates with the Ministry of Finance in preparing their budget. The Ministry of Finance goes through all the proposed budgets of all the ministries and then consolidates them in the final budget proposal. A member of the Ministry of Finance was also involved in the Committee which worked on ensuring funding for victim support services, hence ensuring that the Ministry of Finance is involved and well aware of the issues.

158. The representative of the Department is a member of RIKU's Board. This makes it possible for the Ministry to regularly follow RIKU's work and finances. RIKU's financial regulation has been approved by the Ministry to ensure compliance with the Act on Discretionary Government Transfers.

159. However, as a consequence of the significant growth in funding for victim support services, the Ministry of Justice is in the process of preparing a Services of General Economic Interest (SGEI) decision for allocating funding for general victim services in Finland. Such a decision is necessary to remain in conformity with EU free market rules and to effectively allow for State subsidies.

160. An SGEI is an EU mechanism which allows funding by the State of services of particular importance to citizens that would not be supplied if there were no public intervention. In an SGEI procedure, funding for general victim services will be made public and competitive so that all interested service providers who meet the requirements for providing victim support services will be given an opportunity to apply for funding.

161. In France, state level funding for victim support services comes through an annual budget managed by the Ministry of Justice. One part of this budget is distributed between French organisations which provide services to victims. This includes INAVEM as principal provider of general victim support services, but also other organisations, such as SOS phone lines. The allocations are made based on a call for proposals to which organisations respond via a centralised application system.

162. Another part of the Ministry of Justice's budget is redirected to courts of appeals to support access to justice. This funding is complemented by funding from the regions, and is used to cover the costs of victim support in court proceedings. It is also used for the accompaniment of juvenile delinquents or those with integration problems, and the reintegration of offenders and prevention of recidivism.

STATE FUNDING IN SERBIA

163. In Serbia, the Ministry of Justice is from 2014 competent to manage funds that are collected through the principle of opportunity. However, the system of allocation of collected funds has not been very clear. Reportedly, until at least 2014, some of the funds were allocated by direct agreements between the prosecutor's office and selected beneficiaries, with very little control of what the funding has been spent on⁶⁰. Furthermore, while in March 2017 the Ministry of Justice set aside € 2.9 million for projects from the income collected based on the principle of opportunity, as discussed above, it appears that only a small proportion of this funding is allocated to CSO projects.

3.2. FUNDING AT THE LOCAL/REGIONAL LEVEL

164. Funding in England and Wales is centrally collected by the Ministry of Justice. However, since 2014, the responsibility for managing this funding and making allocations to victim support providers has been transferred from the Ministry of Justice to PCCs. In 2016/17, the Ministry of Justice gave a total of £63 million to PCCs to provide victim support core services (including restorative justice), and an extra £4.7 million to PCCs for services to child sexual abuse victims.

165. The main principle behind the change to local commissioning was the Government's belief that competitive commissioning of services at a local level would ensure value for money. However, concerns have been raised over the feasibility and efficiency of this approach. Some of the main objections are that running multiple PCCs increases administrative costs and that economies of scale when commissioning services from multiple providers at the local level cannot be achieved effectively.

⁶⁰ Hence, an instance was reported where funding was allocated to a hospital, which informed the prosecutor's office that it had been used to enable staff to attend a conference in Brazil. See Pravni portal, Nacelo oportunitet u krivicnom postupku, 2014, available at: <http://www.pravniportal.com/nacelo-oportuniteta-u-krivicnom-postupku/>

166. In mitigation, the Government states that as PCCs also have devolved responsibilities around policing and crime services. It emphasizes that the administrative infrastructure in place allows commissioning of victims' services to be achieved at minimal cost. Costs for commissioning come from the PCC victims' services grant. However, local commissioning does duplicate work, for example, each PCC had to develop its own victim referral procedures and mechanisms. Time taken to commission and evaluate an increased number of different service providers is also a feasibility consideration.

167. In France, funding for victim support services is ensured in part from state funds with an important part also provided through regional funding. In particular, support to victims involved in court proceedings is ensured through a partnership between the Ministry of Justice and the regions. The terms of any partnership are defined by means of a contract signed by the Ministry of Justice, representatives of regional authorities, and representatives of courts of appeal operating on the territory of the region. The contract is signed for a four year period, and the Ministry and the regions commit to dedicate specific sums for specified purposes. Each court of appeal is then allocated a specific sum to ensure support to victims.

168. Courts of appeal engage CSOs to provide actual support to victims through proceedings. A recent survey has shown that amount of funding available can significantly depend between regions and local authorities⁶¹. Importantly, no correlation has been identified between the funding received and the number of victims supported.

LOCAL/REGIONAL FUNDING IN SERBIA

169. Similarly, it can be seen that in Serbia, certain services such as victim support or legal aid, have different levels of provision or budget depending on the region examined. For example, based on the mapping

⁶¹ So, for example, for every €1 received in Ile-de-France, €3 are available at Auvergne-Rhône-Alpes region.

carried out through the multi-donor trust fund, it has been shown that ‘some regions, notably the far South (Pirot), Eastern Serbia (Zaječar), the far North (Subotica), as well as the western parts of the country show a worrying absence of any services’.⁶² In the case of legal aid, a report by the World Bank⁶³ showed that whilst all 138 municipalities in Serbia are required to deliver free legal aid, in reality only 1/3 or so actually do so.

4. CONCLUSIONS AND RECOMMENDATIONS⁶⁴

170. When considering different sources of funding, it is important to bear in mind that there are many different means for states to ensure funding for victim support services and victims’ compensation. The present report showcases several examples from different legal systems, which have so far proven to be mostly effective, despite certain criticisms and shortcomings.

171. In establishing new funding mechanisms, States’ often seek to establish a link between the funding system and the fact that it will be used for victim services. Most commonly this is achieved by ensuring a causal link between the funding system and victimisation, by focusing on socially questionable behaviour or alternatively by relying on social solidarity.

172. When relying on a causal link with victimisation, this does not necessarily rely on a direct link between the perpetrator and the victim. The levy on prisoners’ salaries and the victim surcharge rather rely on a general link between offenders and payment for victim services. With

⁶² Overview of existing victim support services in Serbia, p5;
http://www.mdtfjss.org.rs/en/mdtf_activities/2017/victims-access-to-support-services-in-serbia#.WZq1hWqxXbM

⁶³ Serbian Free Legal Aid Fiscal Impact Analysis Volume, Costs and Alternatives World Bank Multi-Donor Trust Fund for Justice Sector Support 12/26/20, p15;
<http://www.mdtfjss.org.rs/archive//file/resources/Serbian%20Free%20Legal%20Aid%20Fiscal%20Impact%20Analysis.pdf>

⁶⁴ Operational activities, in this context, are seen to be activities aimed at maintaining a sustainable system of providing necessary victim support, in terms of having access to adequate premises, suitable policies, financial and practical resources as well as trained staff and volunteers to provide qualitative support (psychological, legal, social etc.) and ensure access to all victims of crime, irrelevant of their residence status.

respect to socially questionable behaviour, such as gambling, any profits from such behaviours are directed towards a good cause to offset any social imbalance. The Finnish monopoly on gambling is one such example.

173. With respect to social solidarity, the French system of contributions from insurance is a successful example. Those contributions ensure compensation to victims of terrorism and other crimes, as well as victims of other incidents. In this situation, there is no causal link between the source of funding and the purpose it is used for, apart from social solidarity.

174. As long as a funding stream ensures a stable and sufficient funding for victim support services, it is a matter of political priority and social consensus to decide which approach to take. Any approach, however, should ensure compliance with the requirement of the Victims' Rights Directive to 'ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings'.

175. It is clear that there is already significant income collected from various sources in Serbia. This income could be fully or partially dedicated to funding comprehensive victim support services. At the same time, opportunities also exist to create new funding sources. Whilst a range of factors must be considered when determining what funding source to use, fundamentally, this is a question of prioritisation of victims' services by the Serbian State.

176. The recommendations below, are built on the assumption (based on government obligations, action plans and statements), that the government is committed to ensuring victim support services exist across Serbia, in line with EU legal requirements.

177. To facilitate any decisions in this respect, it is recommended that the government carries out a detailed review or impact assessment to determine:

- i) **what support service requirements there are in Serbia** – i.e. what would be the cost of meeting obligations to provide generic and specialist victim support services across Serbia in line with the EU Victims Directive. Ideally, such an assessment would include an analysis of potential benefits and impacts of those services. It should also take into account that some regions have no generic support and will require set up costs whilst in others, services exist but may not be sufficient;
- ii) **which schemes that result in income to the State can already be used to fund victim support services with legal or structural changes.** In particular, what is the annual income of those schemes and what measures are required to ensure that some of the income could be marked for a victims' services fund? When examining individual schemes, difficulties and benefits of schemes such as efficiency of enforcement, should also be considered – including whether improvements can be implemented;
- iii) **what opportunities exist to create new income sources for the State that can be designated for a victim services fund.**

178. The management system for funds should be explored. Alongside a review of needs, potential costs and potential funding sources, it is recommended that the mechanism for managing a victim services fund including collection of funds, profit making from funds, disbursement of funds and monitoring and evaluation of funds should be explored.

179. Based on the situation in Serbia – with a number of potential applicants for funding, a wide range of funding sources that could be used , it is possible that a system similar to the French compensation authority would be an effective means of managing and dispersing funds. Alternatively, if a network of support organisations is developed with a co-ordinating office, this might be delegated responsibility for management and disbursement of funds.

180. When carrying out a detailed review, the following factors should be taken into account:

- ✓ The State already collects significant monies through the gambling monopoly, compulsory insurance schemes and the principle of opportunity, with more income deriving from confiscated property and minor offences. It should be explored how and to what extent such income could be diverted towards victim services. Equally, it should be considered whether new income using similar mechanisms could be generated, or at the point where new income streams are being developed, these could be earmarked for victim services.
- ✓ It is of particular concern that no funds collected through the principle of opportunity have been allocated to victim support services⁶⁵. Moreover, the high number of minor offence proceedings failing where the statute of limitations deadlines are missed represents a wasted opportunity for collection of additional funds. Better enforcement and implementation of existing funding streams as well as creation of new funding streams, are both options for creating new funding for victim services. Nevertheless, the timeline for implementing changes to systems should be taken into account.
- ✓ When deciding on introducing a funding stream, European and international rules as well as human rights law, should be complied with. This can be particularly relevant with respect to new charges on offenders and where the State intends to fund external entities. The funding scheme will also need to be supported by a strong legal framework including detailed rules on the constitutional set-up of the mechanism. Moreover, in exploring some funding streams, such as the principle of opportunity, particular attention should be paid to ensure that use

⁶⁵ Even if this can be attributed to the absence of project applications on this matter, it may be assumed that organisations are discouraged to dedicate some of their already overstretched resources to prepare applications if they estimate that they have very little prospect of success and are aware that majority of funding goes to state institutions.

of the scheme or participation of the offender in the scheme does not lead to secondary victimisation;

- ✓ To ensure transparency and legitimacy, victims' associations and other relevant actors should be consulted during any review of sources of funding and their allocation.
- ✓ Funding competition between victim support services and large public purchases, such as the purchase of medical vehicles or investments in educational infrastructure⁶⁶, should be avoided. Recognising those are also national priorities, a starting point could be the establishment of a specific priority on support services with an allocated budget;
- ✓ Any funding collected for financing victim support services should be ring-fenced for this purpose, either by establishing a separate entity to collect and manage such funds, or by ensuring budget coding is in place so that State funds are allocated appropriately. Moreover, any allocation needs to be conducted in line with clear rules, according to clear priorities, which are set in advance in communication and consultation with victim support providers. Clear reporting, monitoring and evaluation criteria should be put in place to maintain strict financial discipline and ensure best value for money;
- ✓ Transparent and efficient procedures for deciding on funding applications should be established. These will ensure that recipients are given sufficient notice to develop meaningful funding applications. They will also ensure that successful applicants receive confirmation of funding sufficiently in advance to prepare for the upcoming period;
- ✓ Similarly, with respect to delivery of services, transparent procedures for allocation of funds should be put in place and carefully scrutinised, to ensure that services meet established priorities and benefit all victims of all crimes in Serbia;

⁶⁶ The type of projects that had been awarded in 2016.

- ✓ To ensure viability of penalty schemes, effective enforcement mechanisms must be in place whilst the systems must be cost efficient. Given that Serbia has already been criticised for failures in its enforcement mechanisms⁶⁷, any effort to raise additional funds for example by imposing a levy on insurance or prisoners' income, needs to be estimated against the relative cost and expected performance of enforcement. At the same time, new approaches to enforcement may also be adopted;
- ✓ The lack of data relevant for victim support in Serbia should be resolved to facilitate decisions about funding and budget allocations. The lack of data is attributable to a number of factors. For example, the specific notion of victim does not exist in domestic legislation; before an investigation is officially launched by the prosecutor, the victim is regarded only as a citizen informing the police about an alleged crime and is therefore not identifiable in police statistics; there is no research to estimate the level of reported crime. In such circumstances, it is difficult to know what support will be needed, what would be the cost of supporting the victims, and what is the total estimated cost of crime.
- ✓ Data gathering, through State authorities such as the police, prosecution and courts should be strengthened. As a minimum, this should identify the number of victims ideally broken down according to characteristics such as location, gender, age, type of crime etc. Equally, other forms of data gathering such as victim and victim service surveys could also be carried out to understand a wider range of issues including the extent of unreported crime.

⁶⁷ For a long period of time Serbia had been notorious at the European Court of Human Rights statistics, for its lack of effective mechanisms to enforce domestic judgments, for a number of years being by far the country with the largest number of cases per capita, mostly due to the complaints of non-enforcement. See e.g. European Court of Human Rights, Analysis of Statistics 2015, available at: http://www.echr.coe.int/Documents/Stats_analysis_2015_ENG.pdf. This has not gone unnoticed by the European Commission, either. The 2016 Serbia Report of the European Commission notes that the national backlog reduction programme is in place but has led to only limited results. However, as the new enforcement legislation has just entered into force in 2016 it will be important to monitor any improvements and reflect any further action thereupon. See, Commission Staff Working Document, Serbia 2016 Report, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf

- ✓ Data gathering should be combined with regular monitoring and evaluation of funding streams to facilitate continuous review of the systems and ensure that improvements are made when necessary;
- ✓ If funding is made available locally or regionally, rather than at a central level, the level of funding available in each region should be proportionately equal. This could be achieved by matching funds according to an agreed ratio based for example on the number of victims in each region and the available funding. Funds collected through the principle of opportunity would be one convenient source of funding for victim support at the State level, though this would entail a redistribution of funding from other areas;
- ✓ If funding is decentralised, precautions should be in place to avoid duplication of activities. Tools should be developed to facilitate the sharing of activities between different regions to make the procedure financially and operationally viable, and to maximise the opportunity for economies of scale. To facilitate consistent standards and delivery of service nationwide as well as stable funding, a large proportion of core funding would ideally come from a reliable central source;
- ✓ While recognising the importance of ensuring competition in the provision of victim support services, a certain standard of security and stability should be ensured preferably through negotiating contracts or partnerships lasting several years. Sufficient advance notice about funding priorities should be provided. The criteria for the award of funding must be well elaborated and eligibility criteria set at an appropriate level to enable realistic access to funds from amongst the target organisations. Highly detailed and extensive requirements more fitting of e.g. large-scale public infrastructure projects would unnecessarily exclude most organisations able to deliver victim services.
- ✓ Partnerships between government and CSOs should be encouraged within this to better cater to the needs of victims A

pre-funding procedure should also be explored to determine the amount of funding needed and the potential beneficiaries of funding, prior to making final decisions;

- ✓ Flexible contingency funding and emergency funding should be available for service providers where there is exceptional need and for unforeseen circumstances. This is paramount for organisations to be able to provide necessary support to all victims of all crimes at all times;

181. Overall, it can be seen that a wide range of opportunities exist to make funding available for victim services in a consistent, predictable and long term manner. A number of these opportunities reflect the prioritisation of existing income streams towards support services. However, by spreading contributions across many different streams, the impact of re-prioritisation on other budgets can be minimised.

182. Opportunities also exist to establish new income streams which would minimise impacts on other parts of the State budget. Any new mechanisms would require thorough analysis, but systems in other European countries have demonstrated the viability and success of those schemes.

