

WHY VICTIMS SHOULD BE AT THE CENTRE OF THE TRIAL?

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IC COMMITTEE OF THE PARTIES TO FINNISH GOVERNMENT 2020:

- Develop ... plan/strategy placing the rights of victims at the centre of all measures to implement the Istanbul Convention in its entirety (paragraph 22);



WHY SUSPECTS ARE AT THE CENTRE OF THE TRIAL?

FOUR STANDPOINTS ON THE ROLE OF THE (CRIME) VICTIM

1. Victim as a witness
2. Victim as a civil party
3. Victim in need of protection and help
4. Victims of human rights violations
5. Victim as a party in the proceedings

https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-justice-for-victims-of-violent-crime-part-1-standards_en.pdf



VICTIM AS WITNESS

- Anglo-Saxon tradition
- Victims are aluable witnesses in
 - reporting crime
 - giving evidence of crimes
- To prosecute and punish, we need victims ⇒
there is reason to treat them well

VICTIM AS A CIVIL CLAIMANT

- Victim may ask compensation
- Focuses on the economic aspects of the crime
- As quantifying suffering is difficult
 - ⇒ favours victims of property crime
- The Compensation Directive 2004/80/EC
- National Crime Compensation Funds

VICTIM'S NEEDS

- Needs based approach

- assistance
- information
- legal aid
- support
- therapy
- protection

⇒ Vulnerabilities acknowledged

EU VICTIM DIRECTIVE 2012/29/EU

- Art 1(1) The purpose
 - receive appropriate information,
 - support and
 - protection and
 - are able to participate in criminal proceedings.
- Protection as protection orders
 - EU crossborder recognition and enforcement
 - PO Dir 2011/99/EU – for criminal PO's
 - Protection Measure Reg 606/2013/EU for civil PO's

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VICTIMS VICTIMS OF HR VIOLATIONS

- Gross violations of human rights:
 - Disappearances in Latin America
 - Genocides in Ruanda and former Jugoslavia
 - ECtHR oppression of Kurds in Turkey (Aksoy 1996; Aydin, Menten 1997; Bilgin 2000)
 - Direct involvement or passivity of the state

- Impunity

VAW IS SEEN A HUMAN RIGHTS VIOLATION

- UNDVAV 1993 – CEDAW 1993 – Istanbul Convention 2011
- ECtHR Opuz v Turkey 2009

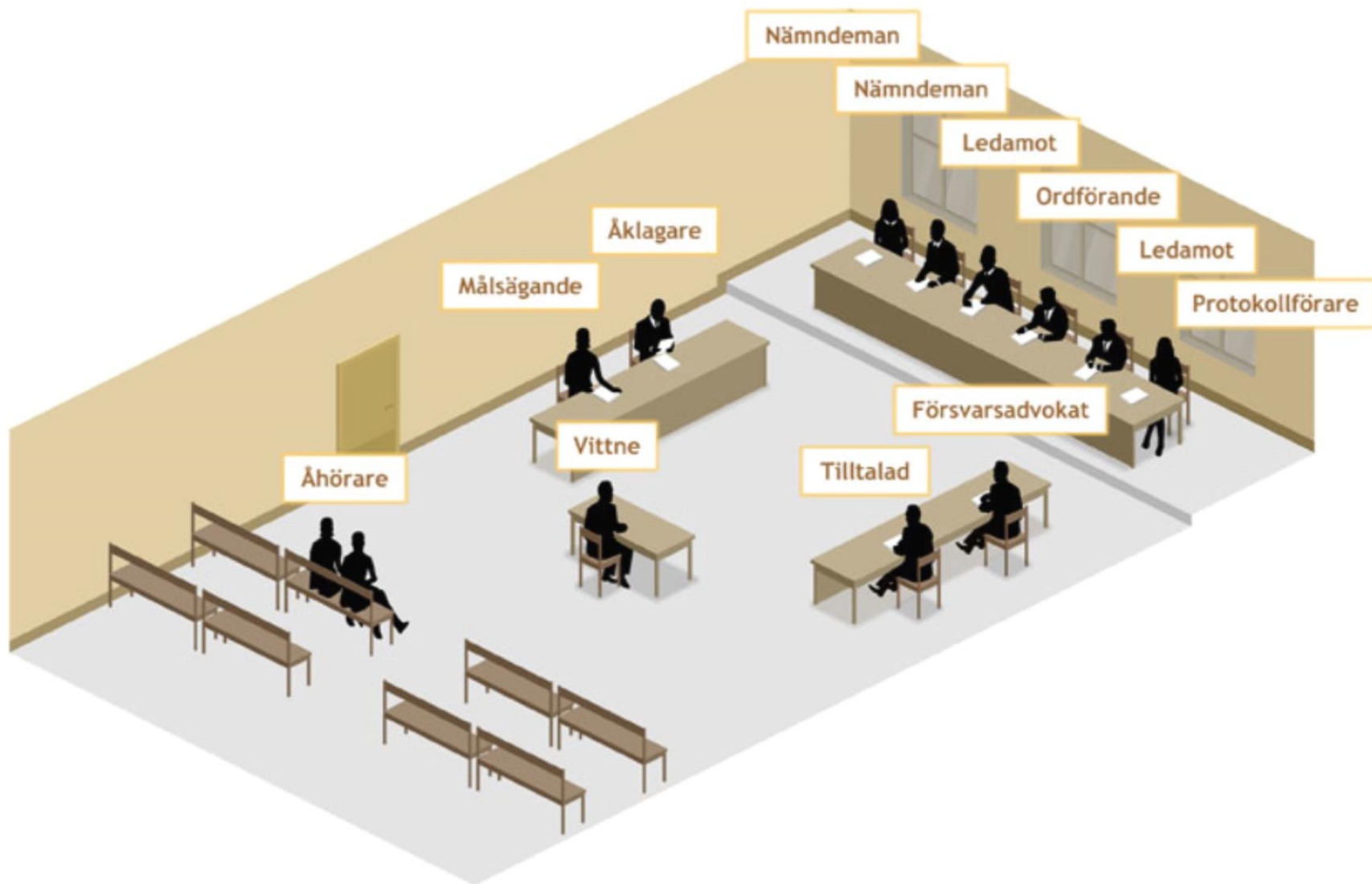
- E.g. Opuz criteria for state liability for HR violation
 - Adequate legislation in place
 - Adequate processes in place
 - State action if state representatives knew about an immediate risk
 - Modified in Talpis 2017

VICTIM AS A PARTY

- Grounded in FRC art 47
 - right to an effective remedy before a tribunal
 - Fair trial rights
 - Limited to right according to EU law
 - Silent on civil / criminal remedy

EXPERIENCE WITH VICTIM AS A PARTY

- Historical tradition in Finland and Sweden
- Victim is a party in criminal trial has a right to:
 - be heard
 - demand punishment for a crime, different from the claim of the prosecutor
 - private prosecution if prosecutor drops the case
 - demand compensation
 - appeal a verdict
- Some changes in 1997 towards opposite direction
 - If victim has no claims, they is no longer party





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DISCUSSION

- Good:
 - Own rights, not totally dependent on prosecutor
 - Defence lawyers play a role in case law
 - Some high profile cases
- Problematic:
 - Individualization of the problem of crime
 - Favours strong victims
 - Recognition of vulnerabilities difficult
 - Protection should be for all
 - Political power of strong victims

WHAT DO VICTIMS WANT?

- Justice
- DV victims: violence and abuse to stop – they do not want to die
- DV victims: help to the abuser
- Sex harassment: recognition of the harm and violation
- Feminists do not want hard penalties: there is no carceral feminism

CONCLUSION

- All for victim rights
- Victim as a party is to be recommended

- But crime is a problem of the society
- Protection for all victims, particularly vulnerable victims