

Support for victims of road crashes and road violence in justice institutions

Good practice guide



PREVENCIÓN
DE ACCIDENTES
DE TRÁFICO

desde
1968



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Introduction

Aware of road traffic and road violence victims' suffering, with this *Good Practice Guide*, we propose a set of guidelines with the aim of guaranteeing and promoting careful and respectful support to them throughout their legal processes.



This *Good Practice Guide* has been developed in agreement with various agents, within the framework of the Association for the Prevention of Traffic Accidents (P(A)T). Throughout several work sessions, in the form of a focus group, the experiences and proposals of different actors, experts and professionals involved in administrative, civil, and judicial processes that take place in cases of road crashes have been collected and discussed. In these sessions, the victims' voice has been given special prominence¹. Their testimonies and contributions are essential to improve the attention and support that they receive from the operators of justice institutions.

The experience of a traffic crash is a sudden and radical cut in the lives of those who suffer it and their families. After the shock, a series of different processes begins, which are necessary but unfortunately also a source of suffering.

1. Within the framework of this guide, "victim" is always understood as both direct victims (people who have suffered the damage or harm to their own person) and indirect victims, in accordance with the provisions of Law 4/2015, of 27 of April, on the statute of victims of crime.

The legal processes are very often marked by ignorance, uncertainty, hopelessness and, more often than not, by the feeling of being treated with indifference, or even contempt.

On some occasions, victims are prevented from exercising their rights, to begin with, due to lack of information and often also due to the absence of accompaniment and specialized support. Victims are not always listened to and cared for with dignity by competent and specialized professionals, nor are appropriate spaces and times respected. In addition, victims are not necessarily accustomed to the particularities of the processes that they have to face. Bureaucratic and judicial procedures must proceed with full technical and legal guarantees, but victims should also be able to feel involved, receiving the necessary explanations and appropriate support to their emotional situation.

4



The dynamics of legal procedures, and especially their temporality, are also identified as a cause of suffering. Processes due to road crashes or road violence can involve re-victimization and its excessive duration over time entails a regression in the grief process.

The victims' expectations concerning legal proceedings are also a source of unrest. Court rulings often lead to frustration and even a sense of injustice. In these cases, however, it should be considered that these expectations may be unrealistic. It is important to emphasize that civil resolutions, although they can compensate victims to some extent through adequate compensation, do not solve the psycho-social and moral needs arising from a traffic accident. Moreover, the main purpose of criminal proceedings is not to alleviate the victims' suffering, but to develop an impartial trial, determine and fix the scope of the responsibilities involved and achieve an adequate sentence.

This does not exclude, however, that the actors involved are as sensitive and attentive as possible to the suffering of the victims and facilitate, to the extent of their possibilities, a correct grief process.

Victims should be able to understand what the functions and objectives of justice are, but they also need areas to heal their wounds and restore, to the extent of their possibilities, their lives. This, in the field of judicial institutions, means strengthening restorative justice mechanisms in parallel with those of criminal justice.



It should be borne in mind that, in most traffic accidents, the people causing and responsible for it did not intend to cause the accident or cause any damage to the victims of their driving. However, even in these cases, it is necessary to bear in mind the extra responsibility that road driving entails with respect to other forms of mobility and in which it is required that people anticipate the potential and serious damages that their behaviour can cause, even involuntarily.

Most drivers who drive above the established speed limits, under the influence of alcohol or distracting their attention with mobile devices, do not intend to cause harm, but their actions are seriously irresponsible for the possible consequences that may arise.

In this context, processes demanding criminal and civil liability should also seek to redress the consequences derived from the accident, as well as raising awareness and effectively correcting the behaviour of offenders (which, in certain cases, may be related to disorders or pathologies that require appropriate treatment and rehabilitation processes), without being limited to a retributive dimension or encouraging attitudes of revenge.

Under no circumstances is this *Good Practice Guide* intended to interfere with the judicial task of filing sanctions and penalties. These must be applied according to strict legal criteria, but it is appropriate to remember that sentences involving loss of liberty do not necessarily have the effect of re-education of offenders or the consolation of victims.

6 These are some of the shortcomings identified in the treatment of road traffic or road violence victims in legal proceedings, which coincide with other published reports and studies.²



Inspired by the *Universal Declaration of Human Rights* (1948) (UDHR, Art. 1), we start from the principle that all victims must be treated with equity and dignity, regardless of their characteristics and the reason for their suffering. There are neither first-class nor second-class victims.

Respect for physical, mental, and moral integrity urges to protect victims from secondary and repeated victimization, as also recognized in the Statute of Victims of Crime³. The right to health cannot be forgotten either, since it is proven that road crashes cause serious, prolonged, and even permanent physical and mental consequences in the survivors directly involved and/or their families. In this sense, the treatment provided by legal professionals can contribute, even indirectly, to improving the situation of the victims, or at least, not worsening it.

2. "Impact of road death and injury. Research into the principal causes of the decline in quality of life and living standard suffered by road crash victims and victim families." Study by the European Federation of Road Traffic Victims (February 1995); "Pilot study on the impact of road crashes on victims and those affected." P(A)T – Traffic Accident Prevention (2010).

3. Law 4/2015, of 27 of April, on the Statute of Victims of Crime (which transposes Directive 2012/29/EU of the European Parliament and of the Council, of 25 October 2012, establishing minimum standards on the rights, support, and protection of victims of crime, into the internal legal system of the Spanish State).

The right to equal protection of the law (UDHR, articles 6 and 7) cannot be undermined by the lack of adequate information and/or support for the personal situation and needs of victims, who, also in accordance with Directive 2012/29/EU, must be able to make decisions about their participation in judicial processes knowingly and in an environment that supports and treats them with dignity, respect and sensitivity.

To achieve these goals, it is necessary to be very attentive and facilitate the administrative, bureaucratic, and judicial processes in which the victims are involved as much as possible, from the very beginning to their resolution.

7



All actors involved in these processes can develop attitudes that guarantee the recognition of the victims (including, of course, those who have lost their lives) and that facilitate grief. This *Guide* is aimed at legal operators, but many of the guidelines set out can be extended to other professionals in the world of road safety and medical emergencies.

We demand respect, empathy, and a humane and dignified, caring and sensitive treatment towards each of the victims. For this reason, the guidelines set out below are behavioural and attitudinal, and can be integrated into usual practices if the actors involved become aware of their role and the tragedy suffered by their recipients.

Guidelines for the support of victims of road crashes and road violence

8



1. It is essential to guarantee accompaniment and psychological (emotional) support when family members and close people (who we also consider victims) receive the news of the tragic event in order to process all the information and assume the magnitude of the event.

2. It is necessary to encourage victims to have unique references, or in any case, with the greatest possible stability and continuity, both in psychological support and in the advice and information on legal processes.

3. Victims need to be accompanied from the very beginning and, in many cases, beyond court rulings. The processes of personal reconstruction, of grief, as well as the processes of reparative justice, where appropriate, need different times, rhythms and supports that do not necessarily correspond to the tempos of civil/criminal justice.

4. It is essential that all the agents involved (police, health services, insurance companies, legal operators, and judicial agents) provide information from the outset about non-profit associations that offer specialized support and advice to victims of traffic crashes and road violence.

5. It is necessary for the legal actors involved to become aware of the power of language, of its devastating (and, therefore, also healing) potential in all the procedures and processes involved, however technical and protocolized they may be.

6. The attitudes, behaviour, and language of all the agents involved must always express scrupulous respect for the victims. This includes avoiding language that is offensive or merely indifferent to the suffering of victims and the dignity of absentees. It is necessary to ensure the humanization of processes, among others, referring to the victims by their names, or, in any case, in a way that does not imply contempt or objectification.

9



7. It is very important that victims receive relevant information in an accessible format and with understandable language, and continuously throughout the legal process. This includes pedagogical practice so that affected people can get an idea of all the procedures and phases of the process, their function, the role played by the victims, as well as the prospects of outcome.

8. "Relevant information" must be considered as anything that has a significant impact on the emotional suffering of the victims, rather than just technically or legally important information.

9. Special care must be taken to transmit everything that refers to the type and degree of participation of victims in the processes, their duration, and the expectations of resolution, preventing the technical and strategic needs of judicial processes from being detrimental to the victims' grief processes.

10. The language used must in all cases be understandable to the recipients, adapted to their cultural and cognitive abilities and their emotional state, avoiding technicalities or, in any case, explaining them properly.

I1. It is necessary to offer the communication supports necessary to understand information: translation and interpretation for foreigners, sign language for the hearing impaired, transcriptions for the visually impaired, support measures or alternatives to oral communication (plain texts, pictograms, etc.).

10

I2. We must ensure that victims can identify, at each stage of the process, the people and functions involved, and that they adequately understand the type and degree of participation they may have at any given time.



I3. It is essential that victims receive clear and understandable explanations in cases where the technical-legal requirements make it inadvisable or do not allow their participation in certain spaces or procedures.

I4. Victims should be able to feel part of court proceedings, even when they cannot intervene directly. Judicial operators must welcome victims' claims understandingly and empathetically, even if they must be dismissed for justified reasons.

I5. It is essential that victims receive information in appropriate places and times, that is: offering spaces that guarantee privacy and tranquillity, and with enough time to understand the information, raise doubts and solve any arising issues.

I6. It is necessary to promote an adequate pedagogy on the function and objectives of the legal processes, preventing the victims from generating unfeasible expectations or demands. In particular, it must be duly explained that criminal proceedings do not necessarily have a restorative nature for victims. In return, however, resources and channels for mediation and restorative justice processes must be promoted.

I7. Victims must receive comprehensive and accurate information on the specialised mediation services they can go to, and judicial operators must promote their activation.

I8. It is necessary to accompany the victims in mediation processes aimed at seeking reconciliation between the affected parties. This can have a very positive impact on the victims' grief process, but, for this, it is essential to give the necessary and adequate time for the offender to repent and for the victim to forgive. Under the right conditions, and always with specialized advice, it is necessary to study the feasibility of developing these processes through the mediation of a "surrogate victim"⁴.

11



I9. Legal and judicial operators must have a proactive attitude in everything that can influence the relief of the victims' suffering. In particular, by ensuring, whenever possible, a reduction in the number, complexity, and time of proceedings.

20. It is necessary to promote the greatest possible speed and diligence in proceedings, preventing neglect or administrative automatism from causing an unnecessary extension. As a particular example: when insurance companies provide compensation, we must ensure that they are delivered to the victims as soon as possible. Likewise, in cases where the consigning entity does not specify whether the compensation can be delivered, it is necessary to be proactive in obtaining this information.

4. This is the figure who can intervene in a restorative justice process when the "direct victim" cannot participate because they do not exist or because they are not prepared to face it (but consent to the substitution). In the context at hand, it should be emphasized that the "surrogate victim" is not an alternative that exclusively benefits offenders (allowing them to develop the process of repentance and reparation). The surrogate victim can be a beneficial intermediation for the direct victim when they are not prepared to meet the offender but can achieve reparative effects through communication with the surrogate victim.

21. It is necessary to guarantee the rights of the victims and pay special attention to the aspects that have the greatest impact on grief processes. In particular, the integrity of the essential technical processes (for example, health or forensic actions) cannot be detrimental to the victims' emotional needs. With the appropriate measures and devices, it is necessary to guarantee the accompaniment of injured victims and the vigil and farewell of the deceased victims.

12



22. It is necessary to promote that judicial rulings prioritize, through adequate sanctions and community work, an effective change of behaviour and the promotion of road safety education for those people whose recklessness has caused the accident, also making society aware of the consequences that certain attitudes, distractions and lack of respect for road safety regulations can cause. However, it is important to note that, in many cases, especially when there are repeated behaviours associated with certain psycho-social and/or health factors, court rulings are just one link in a chain of elements that can enhance rehabilitation and/or effective change in behaviours.

23. It is necessary for insurance companies, within their areas of competence, to be jointly responsible for everything that can prevent or minimize suffering or improper treatment towards victims.

24. It is essential for insurance companies to activate specific action protocols in cases of claims with fatalities or serious consequences. The actions (both in terms of time and in terms of the channels and forms of communication) must be carried out under criteria that guarantee respectful and adequate treatment of the victims. These protocols must be effective, have specialized and properly trained professionals, and have evaluable indicators.

25. It is absolutely necessary that the procedures concerning financial compensation are carried out with consideration, respect and empathy, preventing people who have lost loved ones from receiving cold and dehumanized communications about economic amounts. Also, due to its importance for the physical and emotional recovery of victims, the payment of compensation on account must be encouraged.

26. The agents involved in the pre-procedural phases (for example, when the insurance company makes a reasoned offer) must promote mediation processes and the most emotionally restorative formats and mechanisms for the victims. This means promoting face-to-face events (rather than telematic communications) that have adequate time and environments and where, together with technical or administrative requirements, the pain of the victims is recognized.

27. All legal and judicial operators must ensure that revictimization is avoided as far as possible. Certain proceedings, such as medical or forensic examinations, are sometimes unnecessarily duplicated or tripled.

28. The Judicial School needs to reinforce training on the specificities of traffic crashes and road violence processes. Together with the technical and procedural particularities of these cases, it is essential to offer an approach focused on communication competences and skills for the appropriate treatment of victims (as offered, for example, in cases involving minors or people with disabilities). In this sense, it is important to promote training based on the direct testimony of victims and people affected.



29. It is necessary to prevent the understandable need for emotional protection of professionals who face daily situations of suffering from leading to desensitization, which can even show in the use of derogatory or inappropriate terms.

30. It is necessary to ensure the care of professionals in the judicial sector, by becoming aware of the emotional burden involved in their work and offering the appropriate respite care and/or support measures.



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5. <https://www.pat-apat.org>

6. <https://www.url.edu/en/research-and-innovation/url-research-chairs/ethos-url-chair>

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16

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"Existentially, victims feel their finitude, the wound of death. They expect humanitarian support from justice operators, who are present at a stage of his grief"

Joan Puig-Pey

"We demand respect, empathy, and a humane and dignified, caring and sensitive treatment towards each of the victims of traffic crashes and road violence. With this aim we present this *Good Practices Guide*"

Francesc Torralba i Roselló

"Going through the consequences of a traumatic event – such as a road crash – depends on the support and care received subsequently. Justice institutions play a key role in avoiding secondary retraumatization"

Yolanda Domenech Moral



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