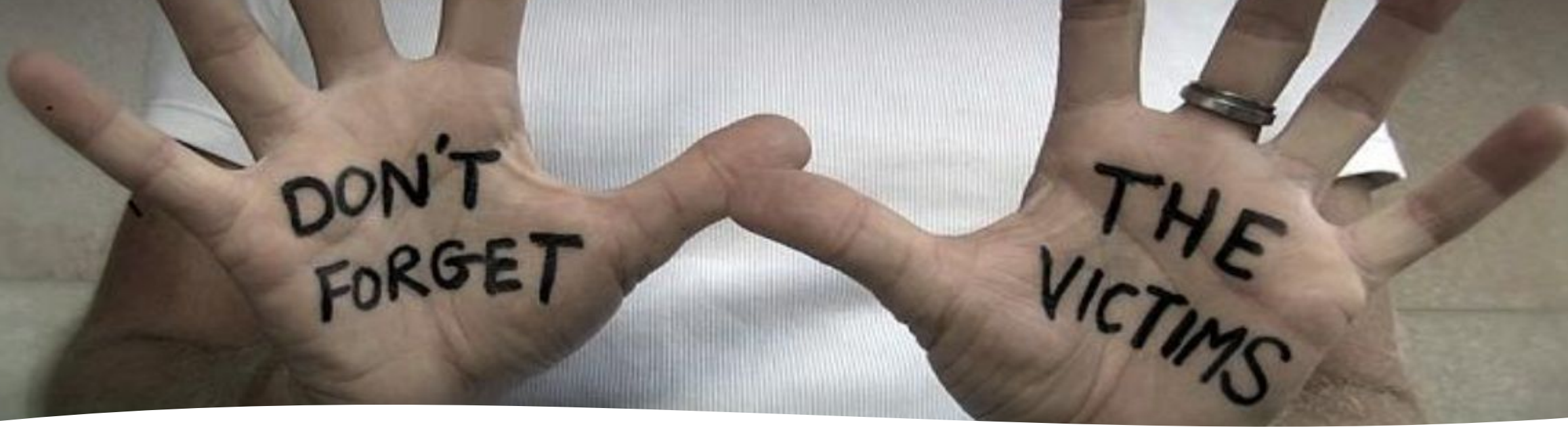


Secondary Victimization as the outcome of Data Protection Law application: A study of comparative analysis in the context of applying Data Protection Law concerning victim support

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Structure of the presentation:

- The objectives of the research study
- Data and victims
- Analysis of the personal data transfers in improving victim support services
- The Directive 2012/29/EU and its role in victim care and the role of the GDPR and data protection law in protecting victims of crimes: Can they work together?
- Secondary victimization as the outcome of Data Protection Law application
 - Discussion on the practical solutions

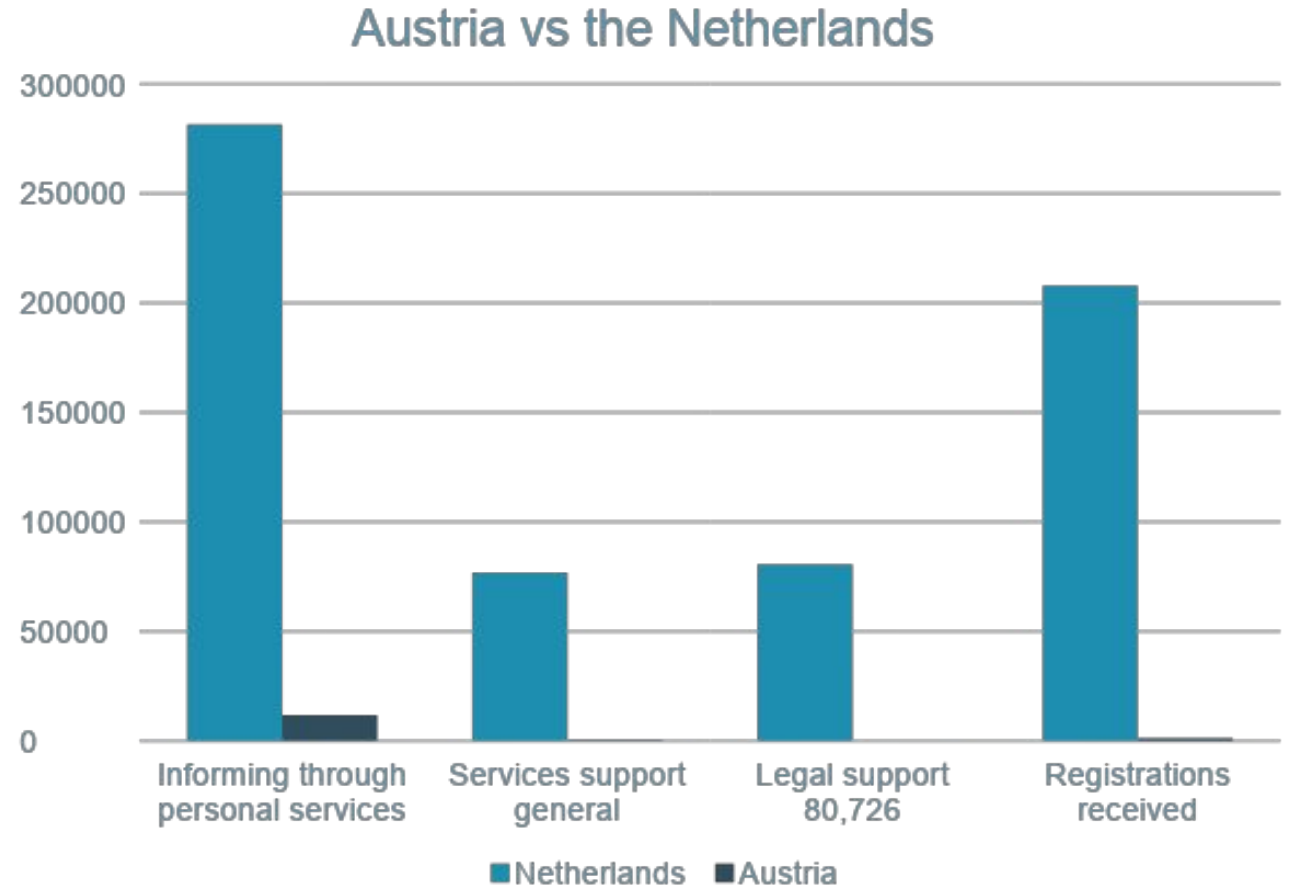
The objectives of the research

- The interplay between the GDPR and victim care proceedings
- The importance of Victim Support services inside the EU
- The applicable legal framework
- The legal bases for personal data processing
- The importance of cross border data transfers



Data and victims

- Data relates to research, evaluation, and program planning
- Data:
 - observed (i.e., describing what people were doing or what was happening for every line of the interview, which allowed the analyst to detect processes that may be occurring during the interactions)
 - reviewed (i.e., data engaged with additional documentation to identify relationships between data within and across the prosecuted and non prosecuted groups in order to improve the services)
- Sharing personal data and the support for victims during pre-trial and trial phases of criminal proceedings
- Example of Netherlands (17,44 mil) and Austria (8,917 mil)



Analysis of the international personal data transfers in improving victim support services

- According to the Chapter V of the GDPR, when data transfers need to occur from the EU to third countries, these shall be predicated on one of the following grounds:
 - ✓ An “adequacy decision” by the EC in respect of the country in question
 - ✓ A data-transfer agreement containing EC standard contractual clauses giving effect to EU data protection law
 - ✓ Binding corporate rules covering both sender and recipient and approved by a national supervisory authority
 - ✓ Specific derogations including the explicit consent of the data subject (which requires them to be informed in advance of any such a transfer), performance of a contract, public interest, establishment/exercise or defence of legal claims, vital interests , etc.

Important: specific derogations. – only when such transfers no-repetitive, limited number of data subjects, compelling legitimate interests, and suitable safeguards.

Essential for victim support: Analysis of the data on the global level for improving the services on national level (the EU is the global player for data protection regime, but there are states outside of the EU with quite different legal orders)

The Directive 2012/29/EU and its role in victim care and the role of the GDPR and data protection law in protecting victims of crimes: Can they work together?

- Directive 2012/29 EU:

- Establishes minimum standards on the rights, support and protection of victims within EU
- The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

- The GDPR:

- Imposes obligations onto organizations anywhere, so long as they target or collect data related to people in the EU
- It is based on EUCFR
- It provides the legal bases for personal data processing
 - 'Consent' requirements oblige police officers to explain to all victims that their personal will be passed to victim support services unless they ask the police not to pass and thus to process their personal data (Art 4 and 9 GDPR)


✓ **Problem:** the difference between the GDPR and Directive inside the EU

✓ **Problem:** Consent must be opt-in option, and not opt-out, since an 'opt-out' is not be seen as offering a genuine choice (FRA 2014: consent is often accepted as the principal legal basis for data processing, including in the standard police practice for personal data processing inside the EU)

□ **London Independent Victim's Commissioner:** "a significant issue raised by response officers was the need to obtain 'explicit' consent from victims for a referral to a support service since the introduction of GDPR. In some cases, officers were making difficult judgement calls on whether or not to refer, this echoes our own engagement on the issue"

Secondary victimization as the outcome of Data Protection Law application

- Informed consent is the accepted as the principal legal basis for data processing, including in the standard police practice for personal data processing inside the EU (FRA 2014)
- ✓ Consenting to take up the provision of a service and the consent for the sharing of personal data
- ✓ Consent is a legal basis that must be documented
- **Problem:** Getting informed consent from the victims can lead to a new traumatic experience for victims due to the manner in which institutions and other individuals deal with the victim (i.e., informed consent as an instance of secondary victimization of victims)
- ✓ Informed consent is the barrier to sharing information to protect people (i.e., no automatic referral mechanisms like in the past)
- **Problem:** Is it feasible to expect victims under trauma to understand the questions about informed consent?
- ✓ Informed consent as the barrier to safe referral mechanisms (i.e., collecting and transferring personal data from police offices to victim support organisations directly)
- **Problem:** Is it fair not to support the victim because there is no informed consent in the background with reference to personal data processing?

A hand is shown holding a glowing lightbulb, symbolizing an idea or solution. Below the lightbulb, several wooden blocks are arranged to spell out the word 'SOLUTIONS'. The background is a soft, out-of-focus blue and white gradient.

Discussion on the practical solutions

- The mechanisms that support victim support are coming from the different corners:
- On the level of the EU
 - Stressing the importance of other legal bases instead of informed consent as the only one available
 - Stressing the importance of ethical issues (i.e., misuse of data)
- On the national level
 - Referral mechanisms as the outcome of automatic data transfer in a case of victim care
 - Extension of the rights guaranteed by the legal acts on the EU level through national legislation
 - Introducing the practical solutions regarding referral mechanisms through the national legal acts (e.g., clarifications for the processing of the personal data during referral process)

Thank you for your attention!
Questions?

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