



# Justice and Compensation for Victims of Violent Crime

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# Overview

Compensation in the context of

- FRA project on Justice for Victims of Violent Crime
- FRA projects on Severe Labour Exploitation (SELEX I and II)

## FRA project on “Justice for victims of violent crime”

- Desk research on legal/institutional situation in 28 MS (2016)
- 231 in-depth face-to-face interviews conducted in 2017 in 7 MS (Austria, France, Germany, Netherlands, Poland, Portugal, UK)
- 148 expert interviews with practitioners
  - Staff of support services (35)
  - Lawyers advising victims (25)
  - Police (35)
  - Prosecutors and judges (53)
- 83 interviews with adult victims of violent crime, including 35 female victims of (‘intimate’) partner (or ex-partner) violence
- 4 reports published on 25 April 2019:
  - Part I: “Victims’ rights as standards of criminal justice”
  - Part II: “Proceedings that do justice” (procedural justice)
  - Part III: “Sanctions that do justice” (outcome justice)
  - Part IV: “Women as victims of partner violence”

# Criminal justice systems in transition from a traditional, state-centred to a human dignity and human rights based paradigm



## FRA opinion

„[...] Member States are encouraged to assess if their criminal procedural codes meet the standards of the Victims' Rights Directive, read in accordance with Article 47 of the Charter concerning victims of violent crime. Recognising victims of violent crime as parties to criminal proceedings should enhance fair trial rights. Where current codes fall short, a review of existing legislation is welcome, to enhance victims' rights.”

## Comparison of criminal justice systems of types 1, 2 and 3

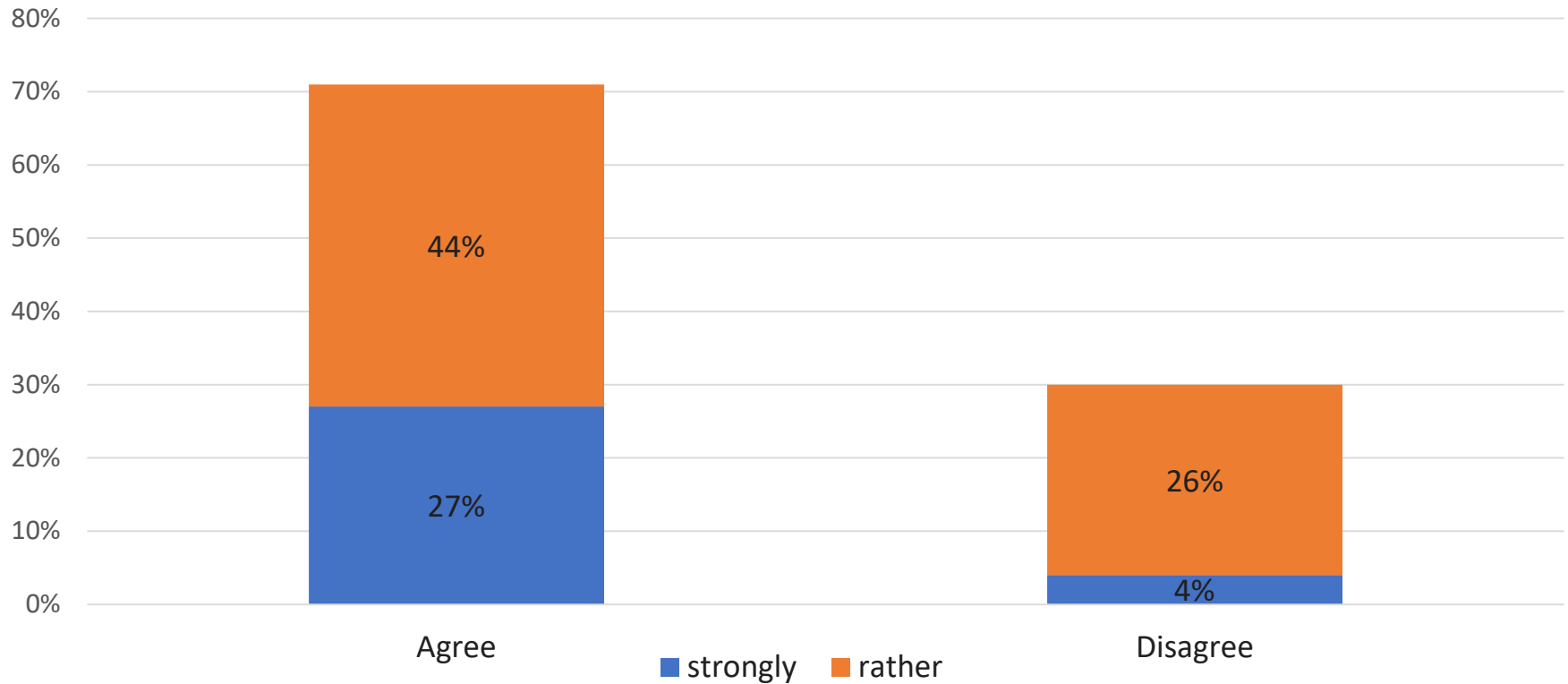
	Type 1	Type 2	Type 3
Objective of criminal law	Protect the rights of individuals	Protect public interests	Protect public interests
Concept of the victim of violent crime	The individual <b>wronged</b> , i.e. the individual whose rights were violated by the offender(s) (Verletzter, pokrzywdzony, ofendido)	The individual who has specific <b>needs</b> due to the <b>harm</b> suffered as a consequence of the violent offence	The individual who suffered <b>damage</b> as a consequence of the violent offence
Position of the victim in the proceedings	The victim is entitled to act as a <b>party</b> to the criminal proceedings	The victim can be called as a <b>witness</b>	The victim can act as a <b>civil claimant</b>
Countries covered by the research	Austria, Germany, Poland and Portugal	The Netherlands and the United Kingdom	France

# Acceptance

Questions to be asked here:

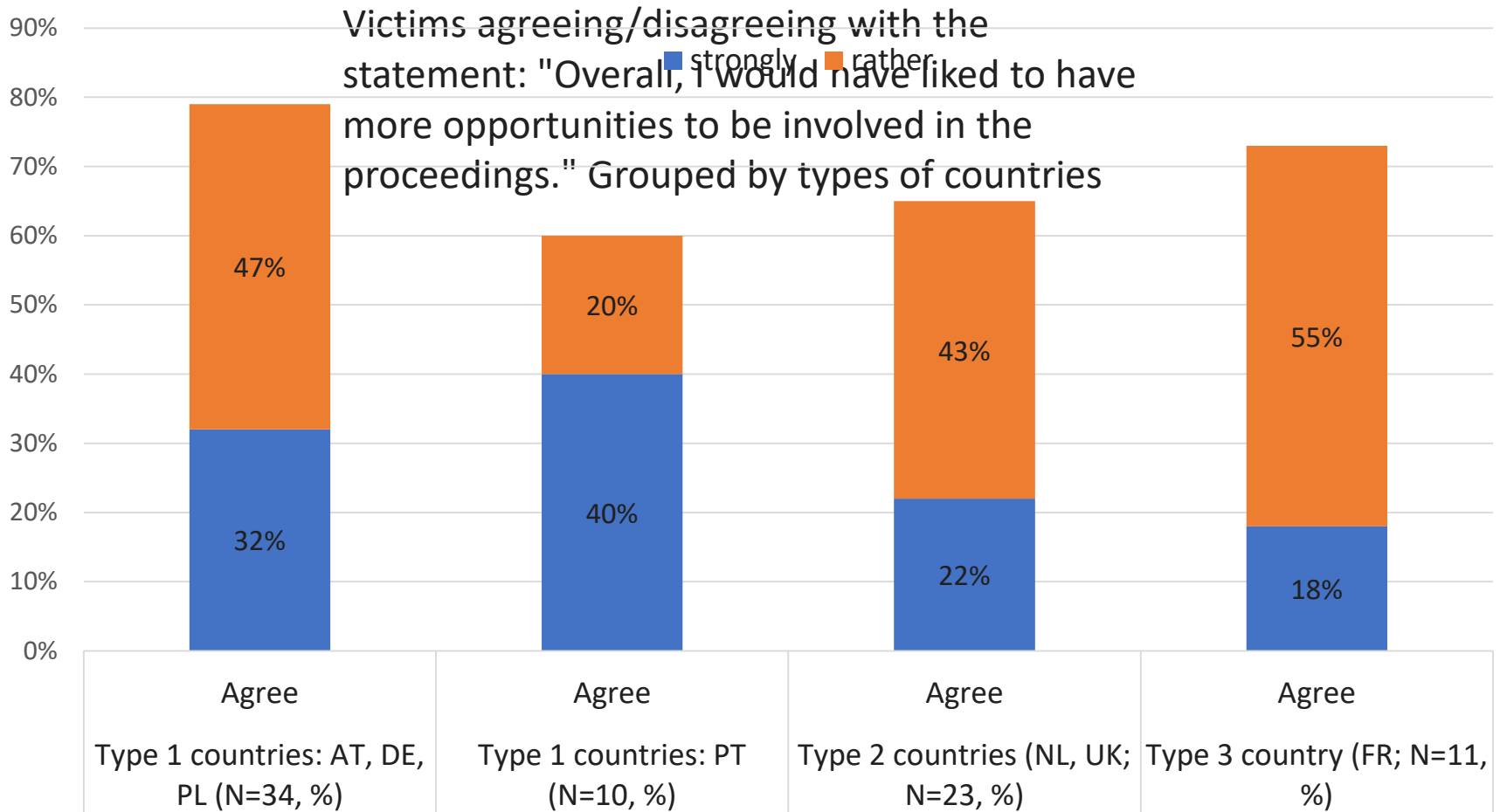
- Do victims expect to play a significant role in the proceedings?
- If so, do practitioners accept victims' claims?
- In those countries where legislation accepts victims as parties to the proceedings, do practitioners assimilate and identify with the legal victim concept?

Victims agreeing/disagreeing with the statement: "Overall, I would have liked to have more opportunities to be involved in the proceedings."  
(N=78, %)

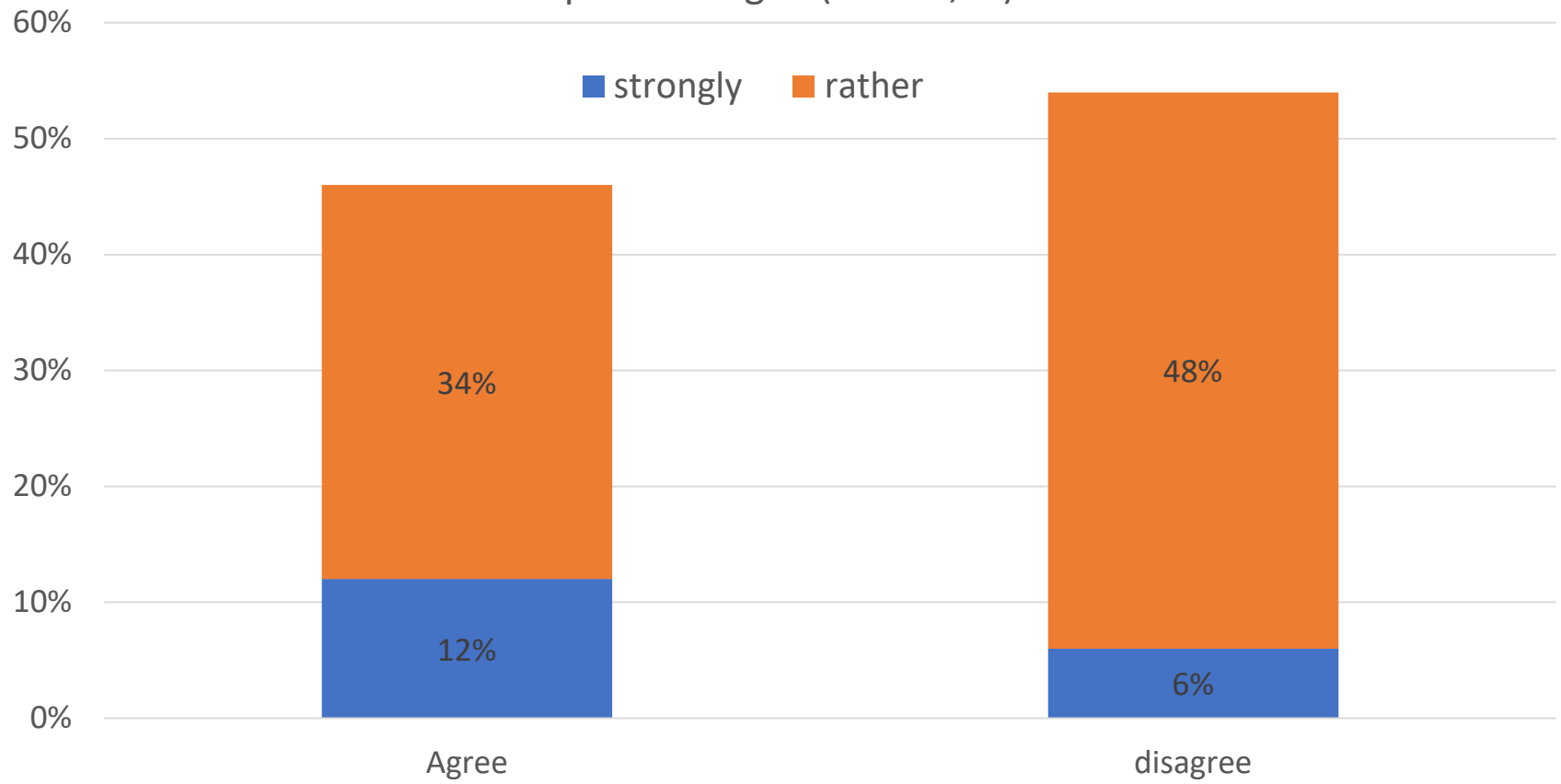




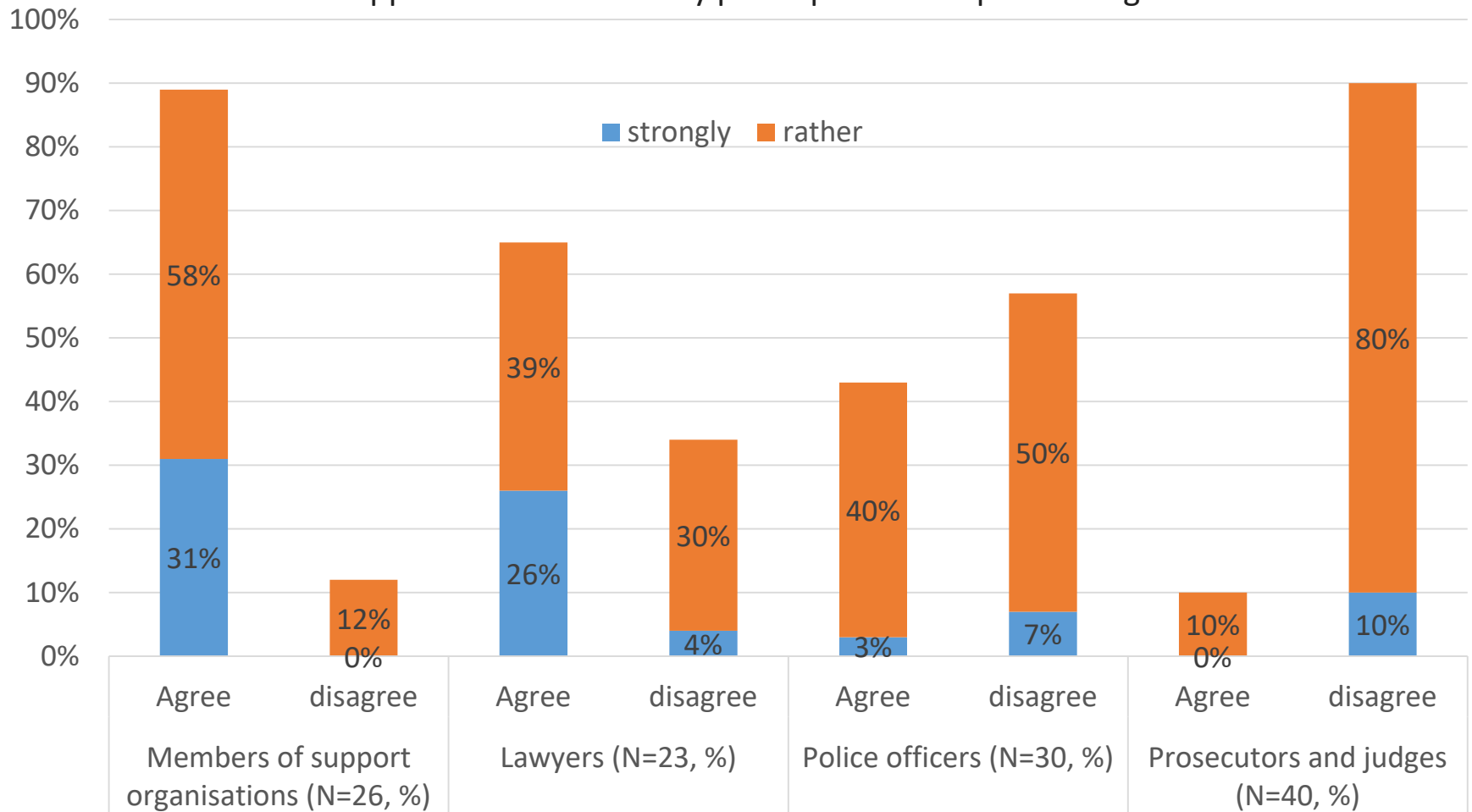
Victims assessing whether they would have liked to have more opportunities to be involved in the proceedings, grouped by types of countries



Practitioners agreeing/disagreeing with the statement “Victims should be offered more opportunities to actively participate in the proceedings.” (N=138, %)



Practitioners from 6 Member States (without the UK), divided by professional groups, agreeing/disagreeing with the statement: "Victims should be offered more opportunities to actively participate in the proceedings."

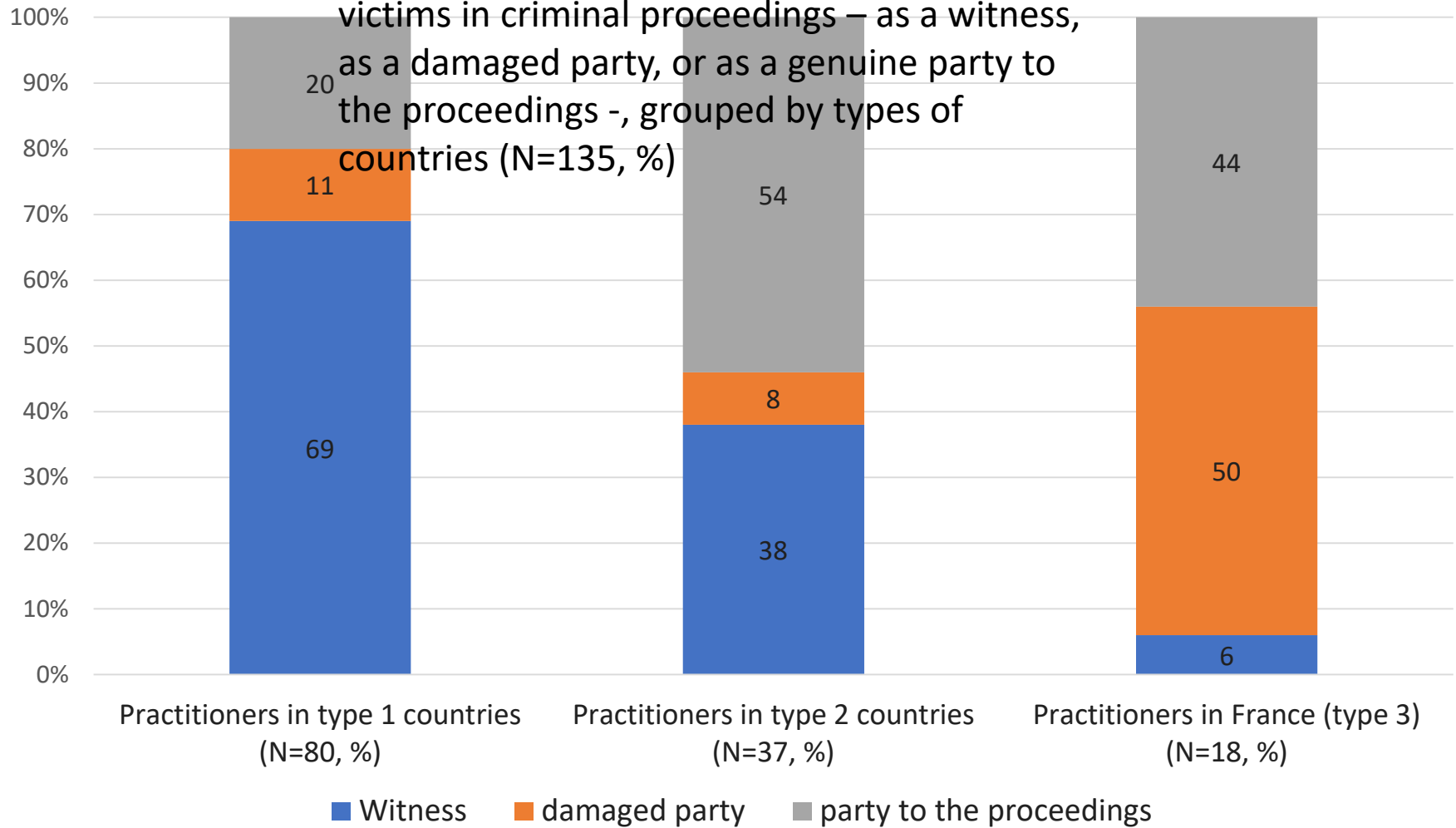


Practitioners assessing the primary role of victims in criminal proceedings,

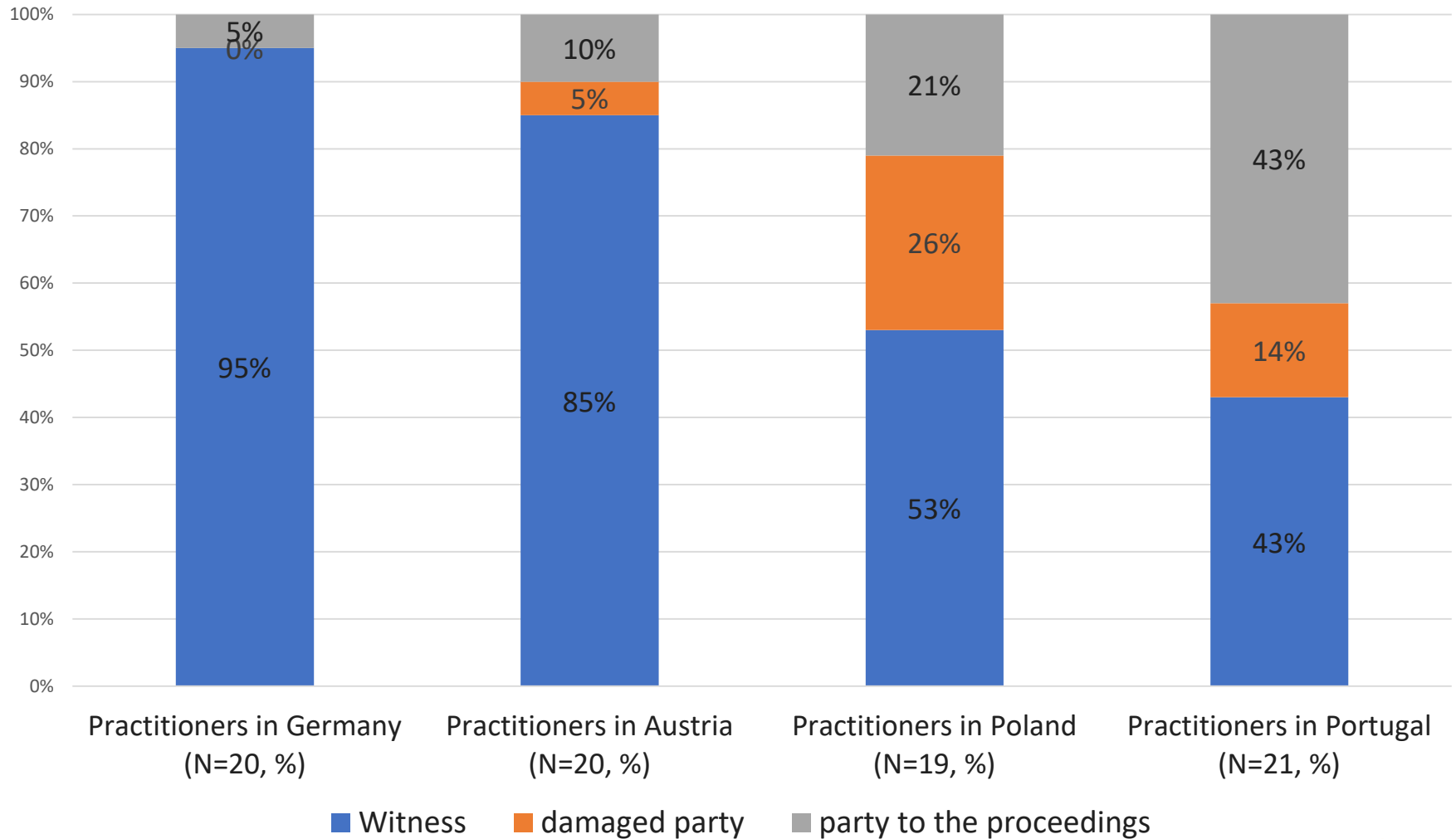
Practitioners assessing the primary role of victims in criminal proceedings – as a witness,

as a damaged party, or as a genuine party to the proceedings -, grouped by types of

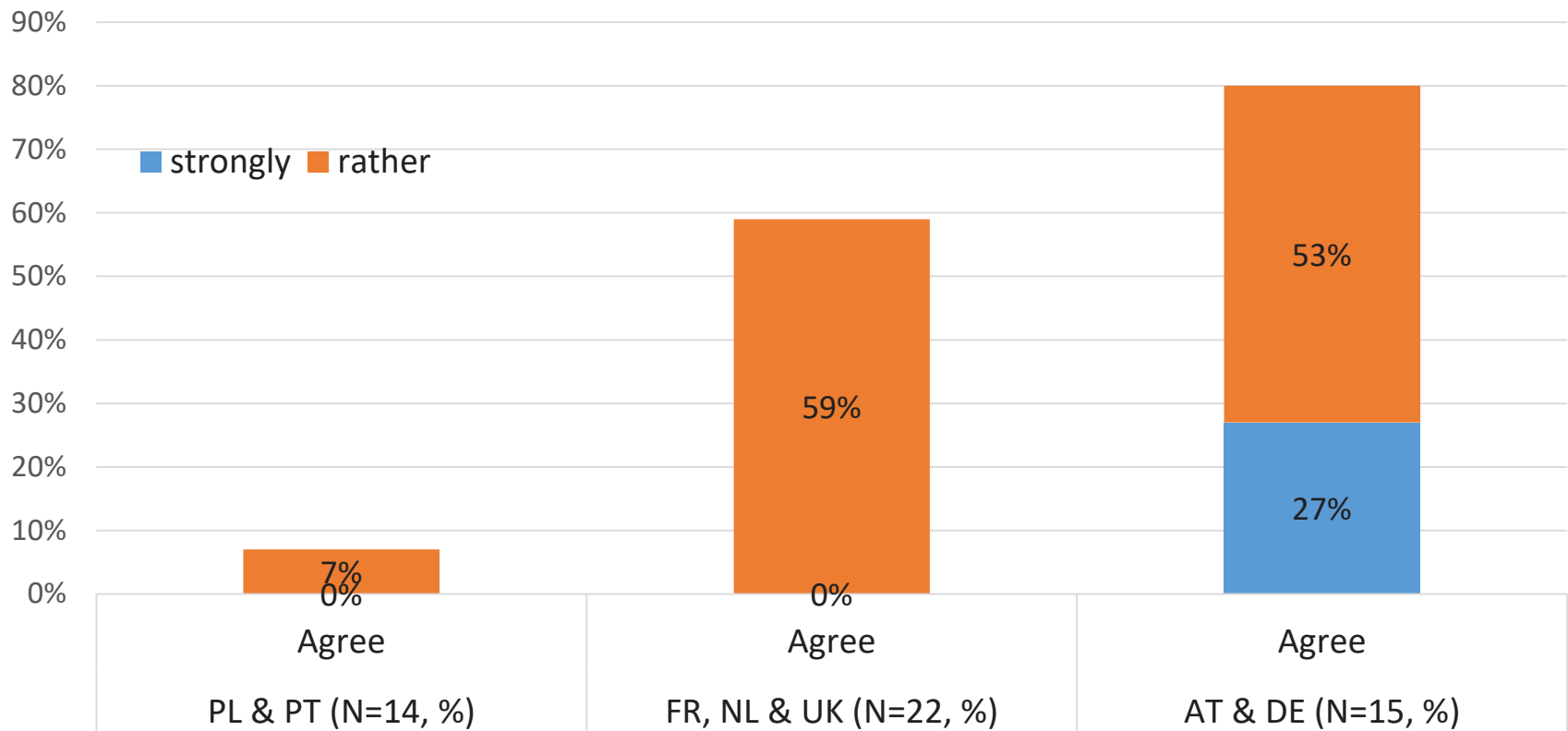
countries (N=135, %)



“How do practitioners view the primary role of victims in criminal proceedings?”  
Answers from practitioners in type 1 countries



Prosecutors and judges from 7 Member States divided by groups of countries agreeing with: "Criminal justice is mainly a matter between the public and offenders; hence victims' role in criminal proceedings is necessarily peripheral"



## Practitioners: The victim is a witness – a means to the ends of the state

“The victim is a witness, both – victim and witness. However, we are a prosecution authority, not a victim protection authority, thus the victim is relevant for us as a witness, whom we need in order to convict the offender.” (Public prosecutor, Austria)

“Police, public prosecutors and judges alike view the victim as a witness, as part of the evidence, a possibility to further criminal proceedings. The needs of the victims are not their priority, rather how can we use this person purposefully to further the proceedings [...] I think it has become the norm for victims to be reduced to an object or instrument by the several actors involved [...].” (Support organisation, Germany)

“For the judge what is important is the testimony, the credible statement and the delivering of evidence by the victim, for the judge. Otherwise, the victim – actually, they couldn’t care less.” (Police officer, Austria)

A leitmotif:  
Victims' wish for and right to  
respect and recognition

the public prosecutor had a case.  
I do nothing, ask nothing, say  
e. They said we had nothing to do

with this case

"So, I'm the  
happened  
why a photo  
It's not about  
(Victim, U)

"That's what  
[...] you are  
[Testifying  
possibility  
imaginarily  
but you are

"Throughout this study, one theme has been apparent in the responses of these victims of violent crime to their experiences with the criminal justice system. This is their wish for respect and appreciation – their wish for recognition as an important and necessary participant in the criminal justice system. It is not an appeal for help or for charity, because they have suffered, but a desire that those who are running the criminal justice system – a system that, in general, they support and admire – should take notice of their right to be involved and to continue to be involved throughout the operation of the system."

Shapland, Willmore, Duff, Victims in the Criminal Justice System  
(1985)



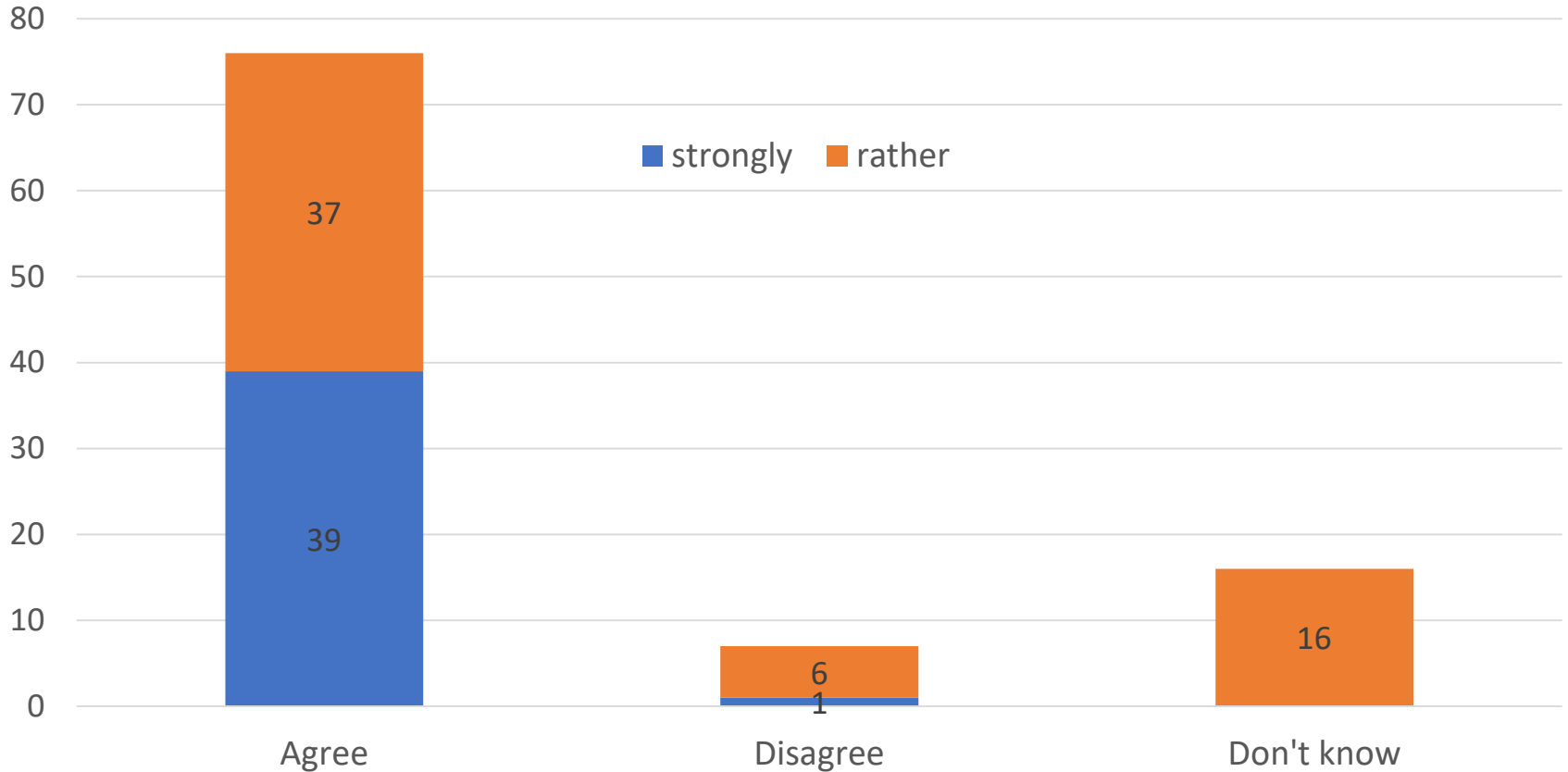
# Outcomes of proceedings

Are victims allowed to experience that

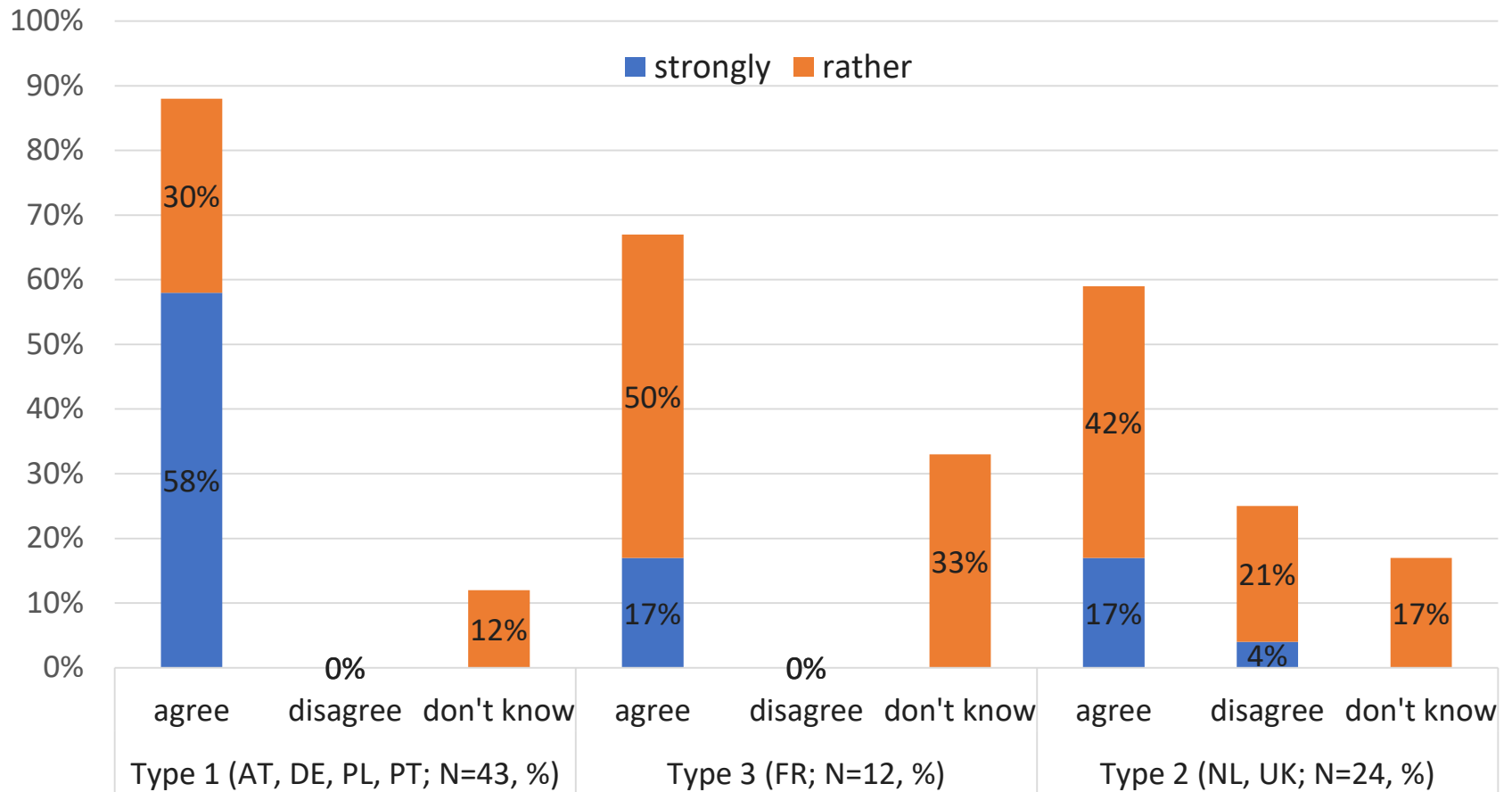
- The truth is established?
- The offender is held to account?
- They are compensated by the offender?
- Sanctions are imposed that undo the wrong suffered by the victim?

# Compensation from the offender within the framework of criminal proceedings

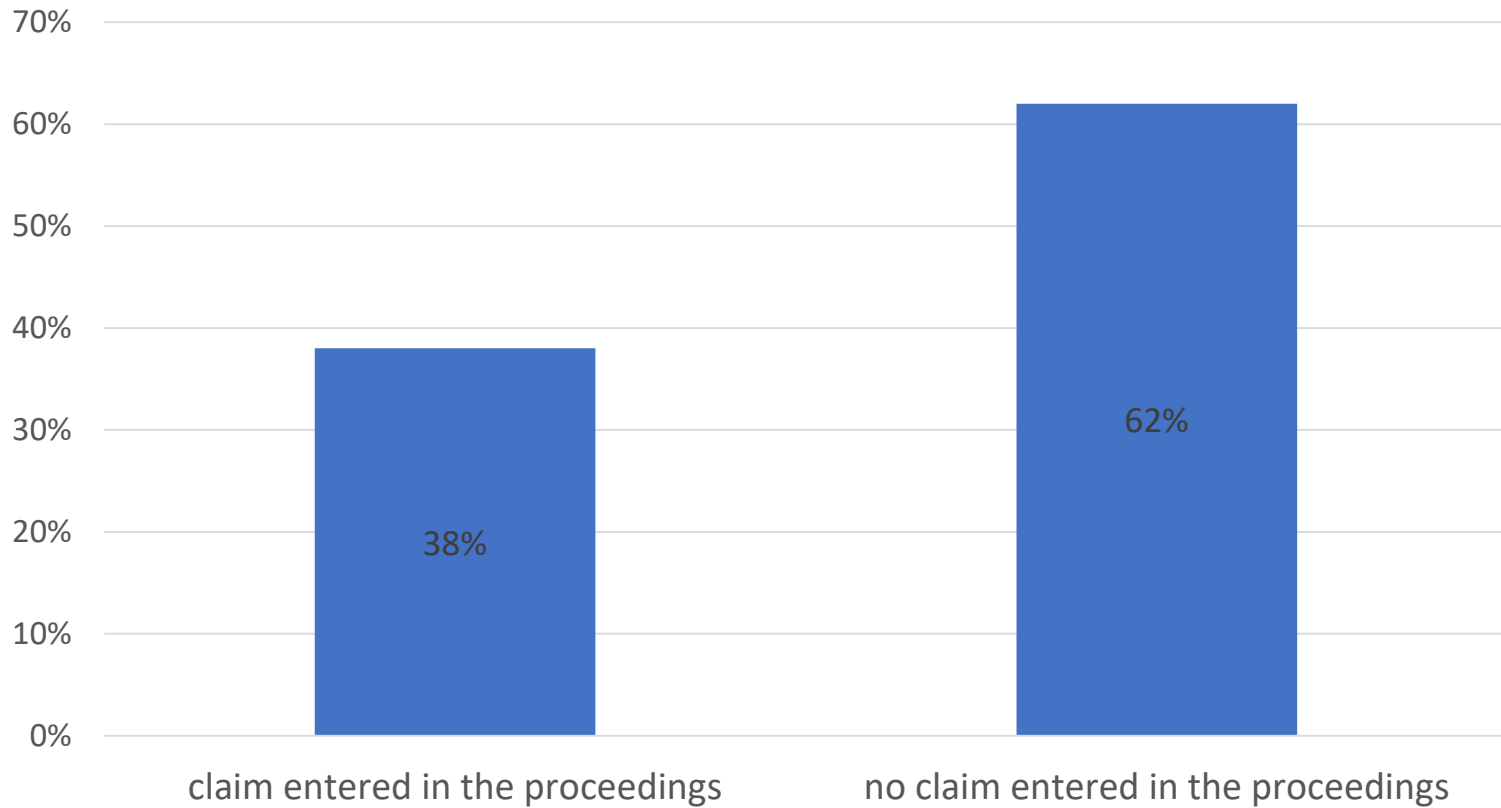
Victims agreeing/disagreeing with the statement: "Criminal courts should ensure that victims receive compensation from the offender." (N=79, %)



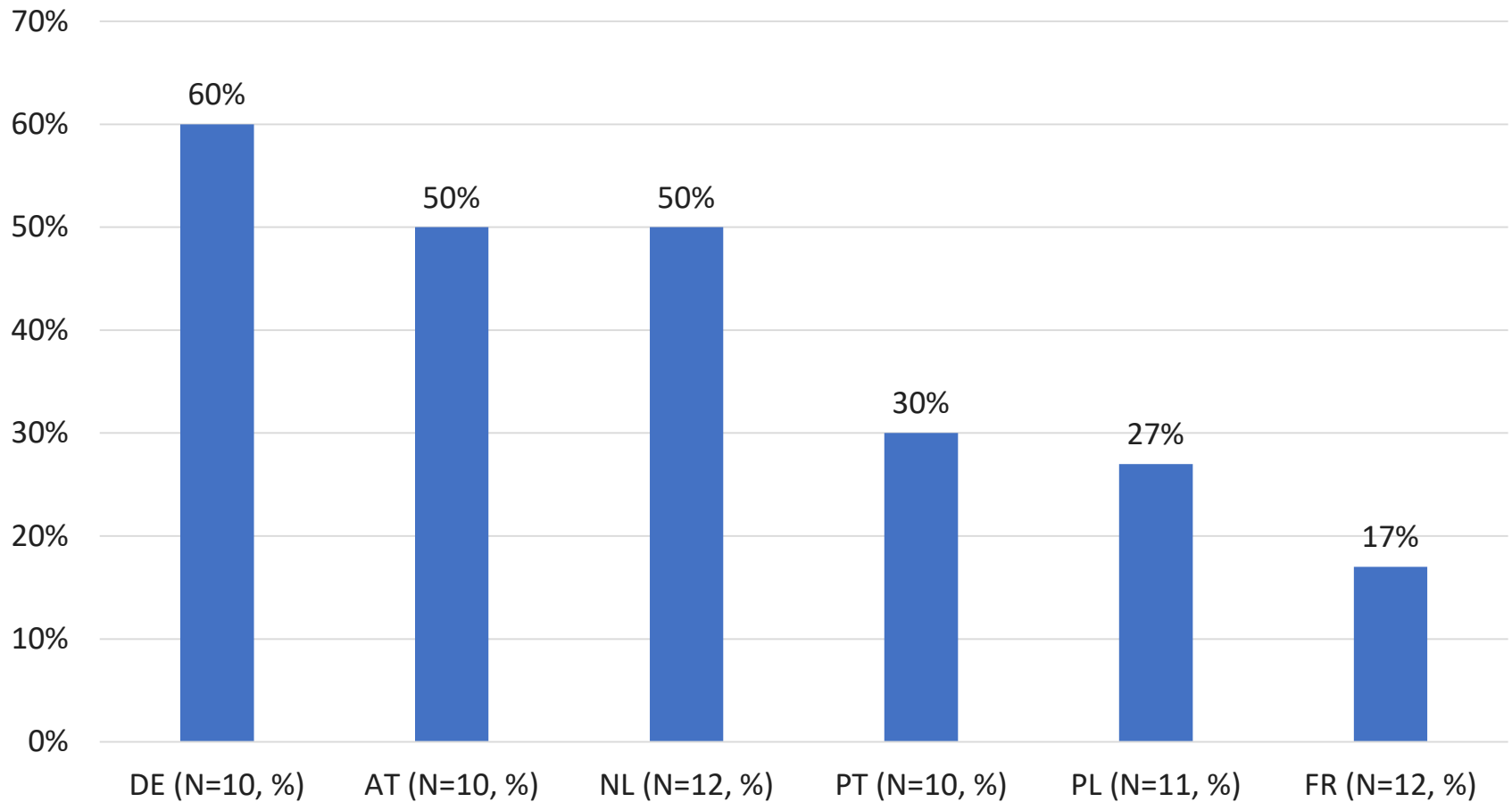
## Victims demanding that courts should ensure offender compensation



### Victims claiming offender compensation in criminal proceedings (N=65, %)



## Claims for offender compensation in criminal proceedings



## Main reasons for not claiming compensation

- Victims had not been informed (effectively) about their right to claim compensation;
- Victims believed that their claims would not be successful, at times discouraged by their lawyers (offender not having the means to pay compensation; victim not in a position to demonstrate their damages; bureaucracy chilling)

# Compensation should be ordered by the court ex officio with the victim's consent

Interviewee: “I didn't ask the judge for any compensation. [...] The judge thought I should [...] she ordered 5,000 € for me and 4,000 € for my daughter. [...]

Interviewer: “The judge decreed it, right?”

Interviewee: “Yes, she did. [...] It was great, and that's it! It was great because I had never mentioned any compensation and I think this judge gave the right sentence for me. It was a correct sentence.” (Victim, Portugal)

“One solution already exists: a suspended sentence with a probationary period for which one of the obligations is that the offender compensates the victim.” (Judge, France)



## **FRA opinion**

As concerns crimes against the person, Member States should recognise compensation as part of justice owed to victims. Avenues should be explored to allow criminal courts, to the widest extent possible, to decide on the compensation of victims of crimes against the person in the framework of criminal proceedings. If necessary, criminal judges should be able to draw on the expertise of judges dealing with civil law cases.

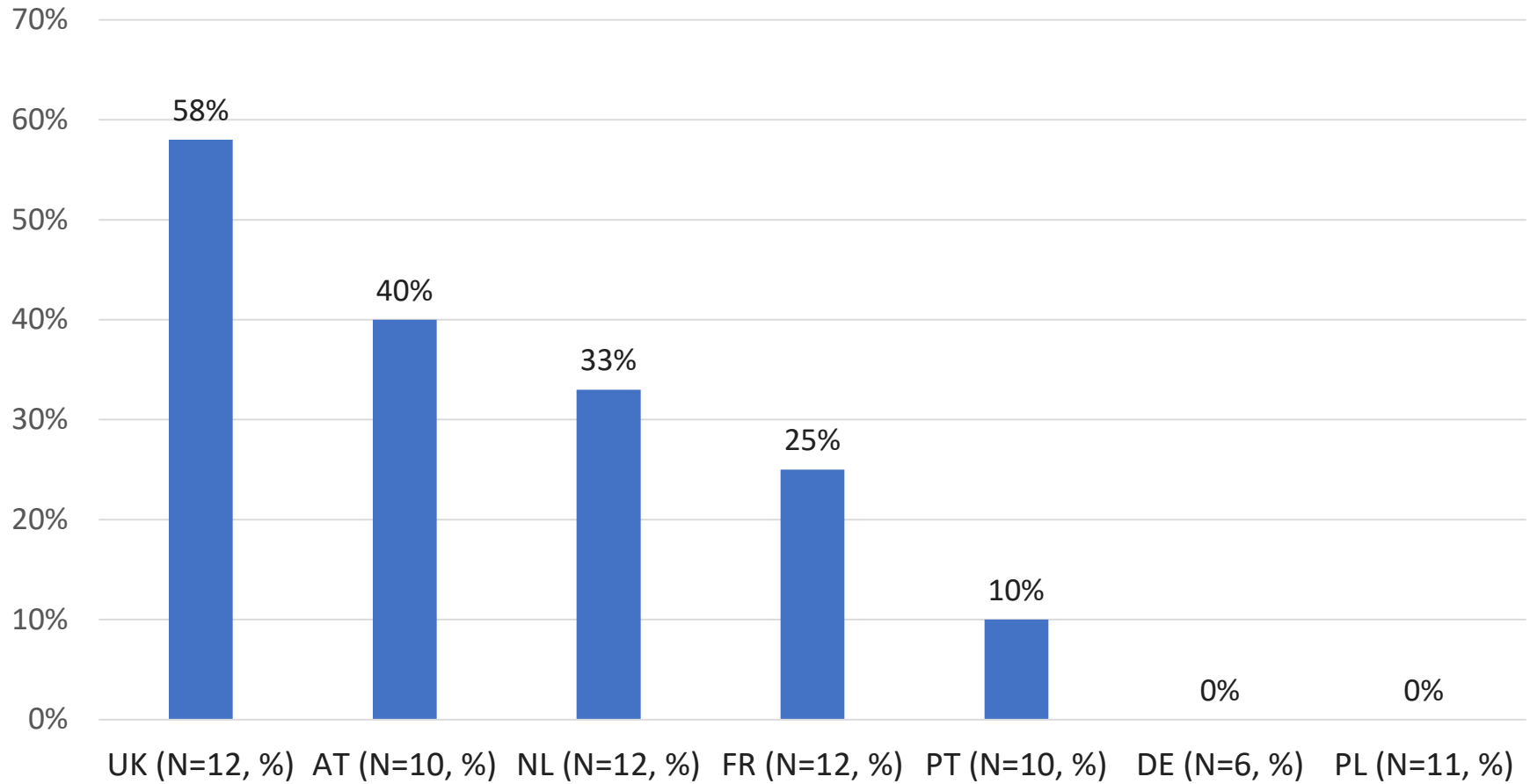
Member States should consider introducing compensation orders issued of the court's own accord with the victim's consent. Provisions of substantive law should make it easier for courts to include the moral damage suffered by the victim or an element of punitive damages.

Member States should step up efforts to ensure that victims are informed and advised, in an effective manner, about offender compensation.

Institutions involved in the training of prosecutors and judges should offer training that promotes an understanding of compensation as an element of criminal justice and enables prosecutors and criminal judges to deal with civil law aspects of offender compensation.

# State compensation

## Victims applying for state compensation



# Reasons why victims don't apply for state compensation

- Lack of effective information
- Lengthy and bureaucratic procedures
- Narrow preconditions

### **FRA opinion**

Member States should ensure an effective and unbureaucratic system of state compensation that swiftly grants victims advances covering the compensation they are to receive from offenders.

Where offenders fail to comply with their obligations as defined by the criminal court, the state should step in to compensate the victim on the offender's behalf, entitling the state to recourse against the offender.

# FRA's work on Severe Labour Exploitation

- SELEX I:
  - 616 semi-structured expert interviews in 21 MS with 9 groups of professionals;
  - 217 case studies were collected and analysed;
  - 24 focus group discussions were implemented
  - Report published in 2015
- SELEX II:
  - 237 interviews with individuals who had experienced exploitative labour conditions;
  - 3 reports:
    - Out of sight: migrant women exploited in domestic work (June 2018)
    - Protecting migrant workers from exploitation in the EU: boosting workplace inspections (September 2018)
    - Main report Is this the Europe we want? (launch 25 June 2019)

# Compensation and back-payments in the SELEX context

- Compensation and back-payments made by the offender should be recognised as elements of criminal justice that are to be established and dealt with ex officio by the criminal court, e.g. by means of compensation orders (Article 6 Employer Sanctions Directive, ‘Back payments to be made by employers’).
- Court orders etc. must be enforced by the state.
- Victim-offender-mediation should be used as a means of encouraging offenders to pay, however after the offenders’ conviction.
- If orders cannot be enforced – or not immediately –, the state is under an obligation to step in to swiftly compensate the victim and recourse from the offender (Recital 14 of the Employer Sanctions Directive should be amended).
- State compensation funds have to be in place covering all forms of severe labour exploitation; they must be equally accessible to victims in an irregular migration status.



Thank you

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