

# Legal protection of victims in Germany

Dubrovnik 16. May 2013

# Overview

Protection of Victims in

Criminal law

Civil law

Public law

Substantive  
criminal law

Procedural  
rights

Claim for  
compensation

Claim for  
omission

Emergency  
law

Public  
compensation

Protection by criminal law

```
graph TD; A[Protection by criminal law] --> B[Substantive criminal law]; A --> C[Procedural rights of victims in criminal proceedings];
```

Substantive criminal law

Procedural rights of victims  
in criminal proceedings

# Substantive criminal law

## Section 238 german criminal code

### Stalking

(1) Who ever unlawfully stalks a person by

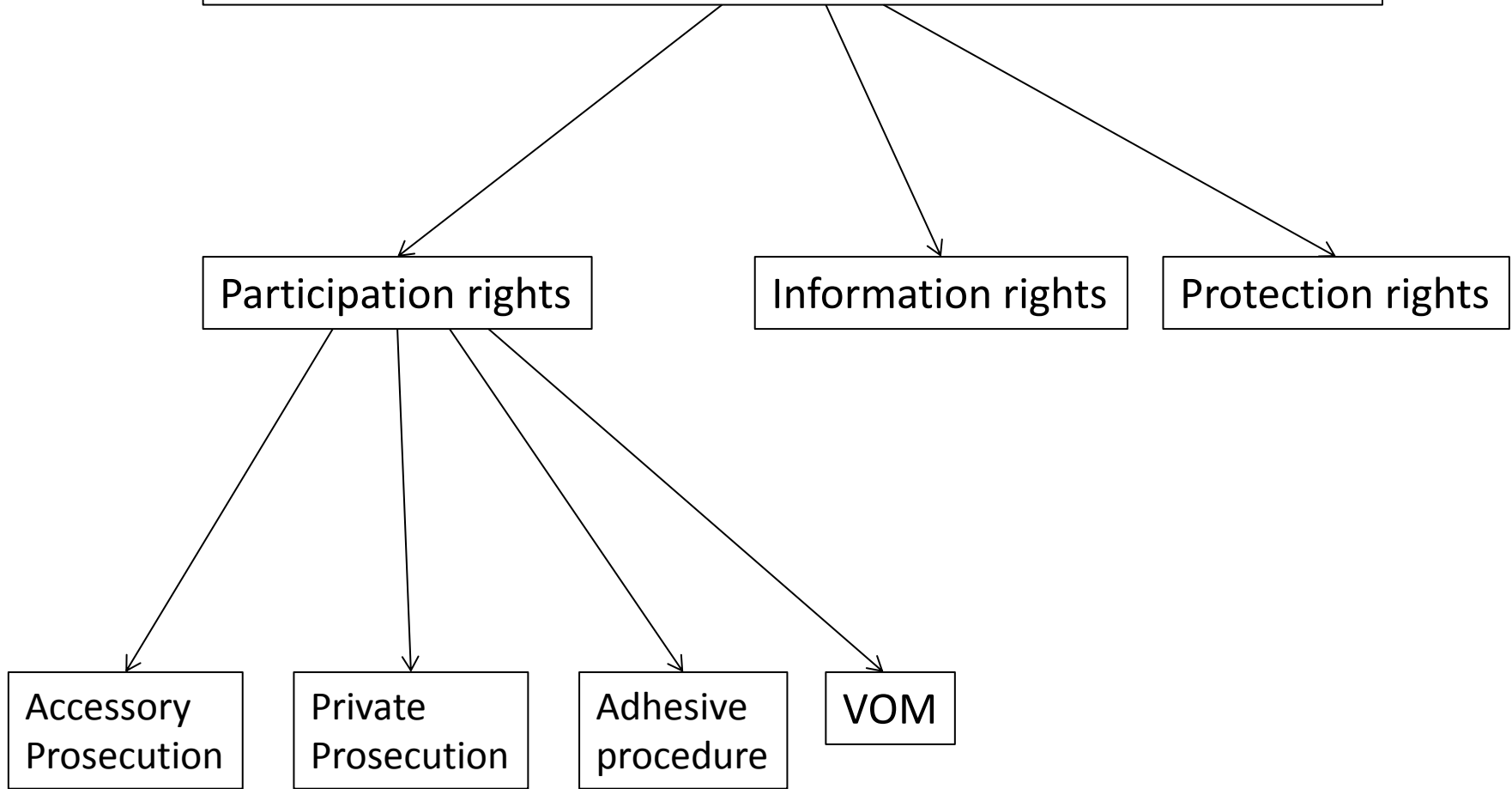
1. seeking his proximity,
2. trying to establish contact with him by means of telecommunications or other means of communication or through third persons,
3. abusing his personal data for the purpose of ordering goods or services for him or causing third persons to make contact with him,
4. threatening him or a person close to him with loss of life or limb, damage to health or deprivation of freedom, or
5. committing similar acts

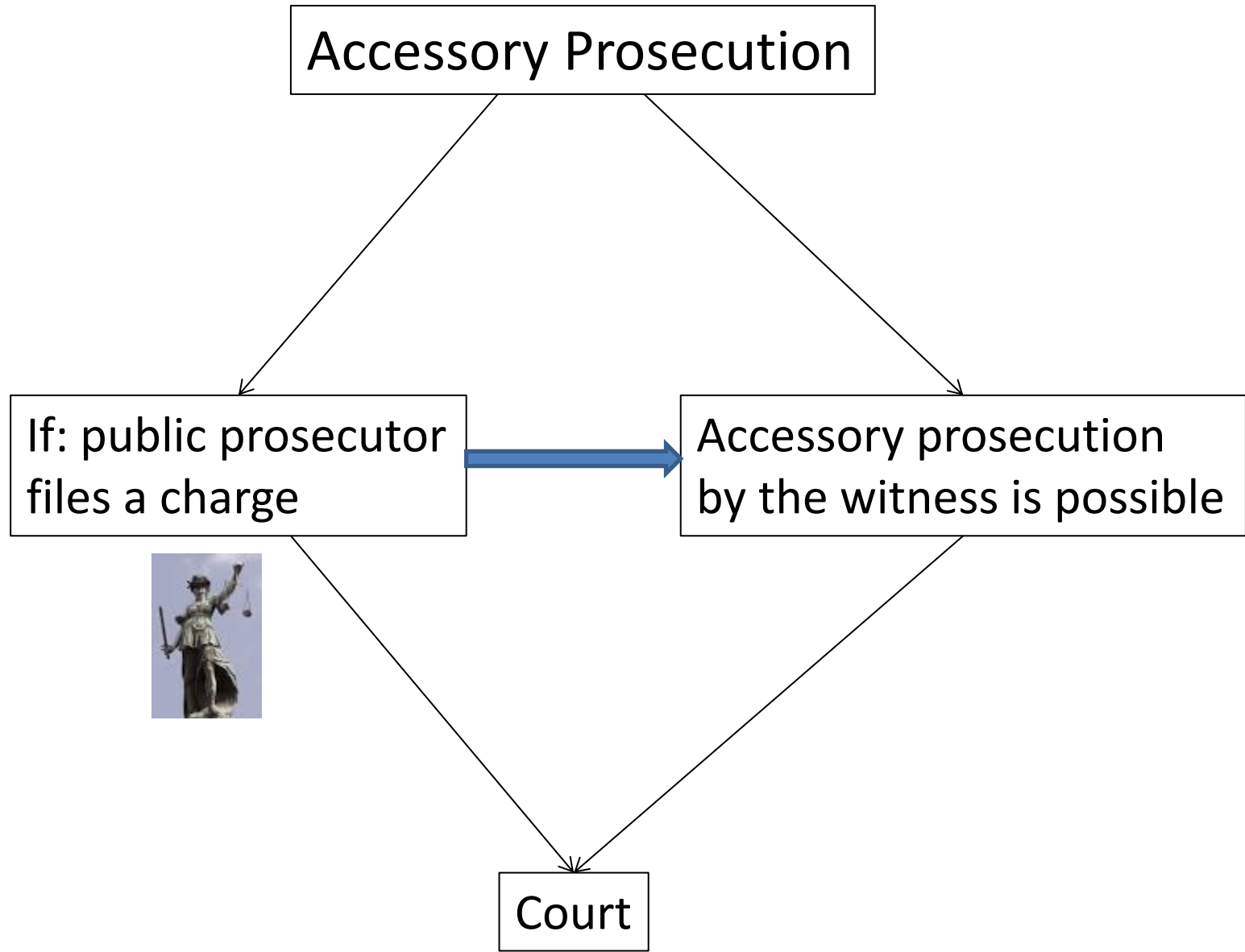
and thereby seriously infringes his lifestyle shall be liable to imprisonment not exceeding three years or a fine.

...

Do you think whether criminal provisions are able to shy away potential perpetrators from committing a crime?

# Procedural rights of victims in criminal proceedings





# Cases of accessory prosecution

## Section 395 German code of criminal procedure

(1) Whoever is aggrieved by an unlawful act pursuant to

1. sections 174 to 182 of the Criminal Code (esp. **sexual abuse**),
2. sections 211 and 212 of the Criminal Code (**murder or manslaughter**)
3. sections 221, 223 to 226 and 340 of the Criminal Code (**bodily harm**),
4. sections 232 to 238, section 239 subsection (3), sections 239a and 239b, and section 240 subsection (4) of the Criminal Code, (**unlawful detention, stalking**)
5. ...

may join a public prosecution or an application in proceedings for preventive detention as private accessory prosecutor.

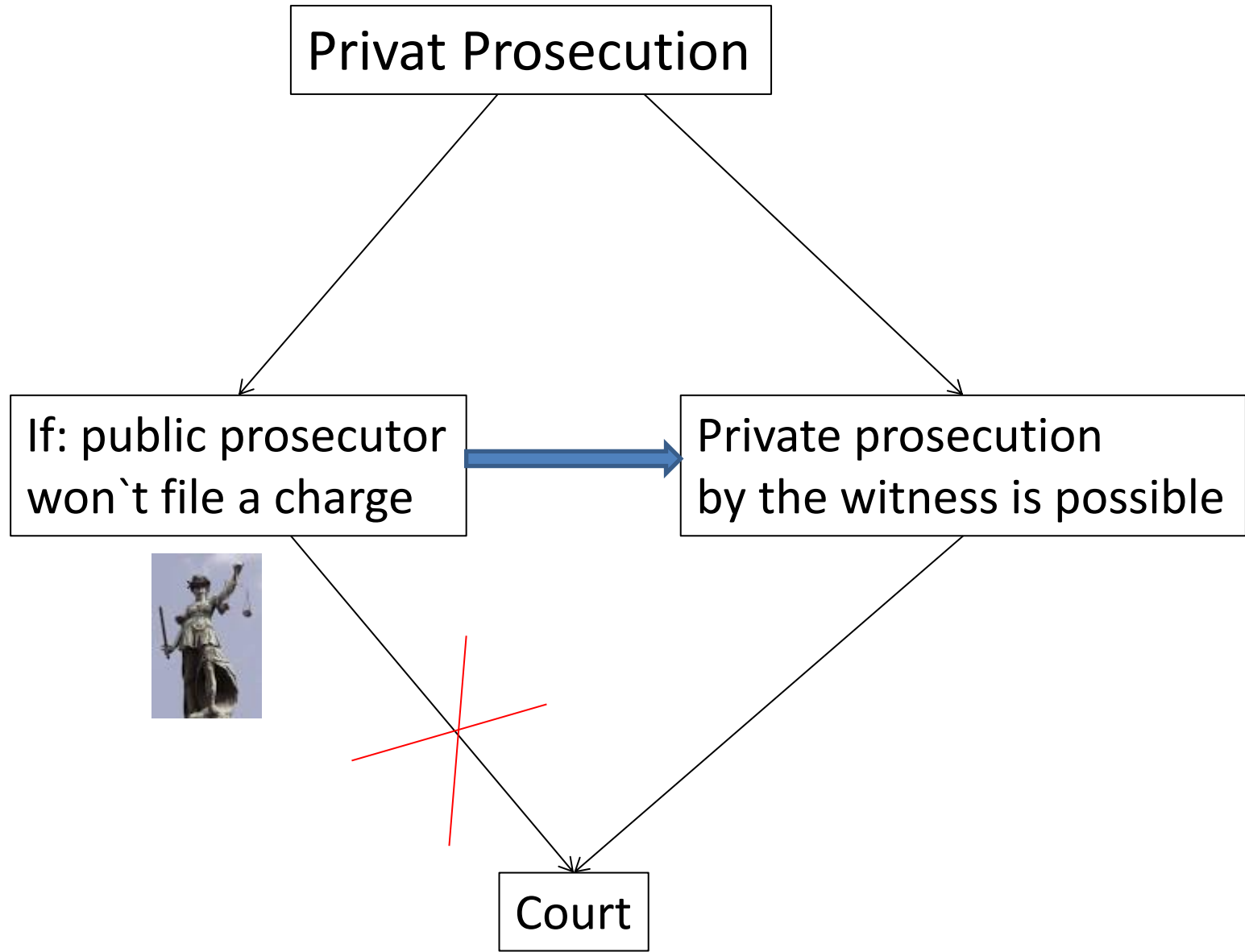
(2) The same right shall vest in persons

1. whose children, parents, siblings, spouse or civil partner were **killed** through an unlawful act, or
2. ...



# Rights of an accessory prosecutor

1. Right to be present at any time of the trial
2. Right to ask questions at any time
3. Right to reject judges or experts cause they are prejudice
4. Right to table an application for evidence, which must be followed by the court
5. Right of a closing argument, including proposals of concrete penalties
6. If the offender is not convicted he/she can appeal (normal only the right of the prosecutor)



# Cases of private prosecution

## Section 374 German code of criminal procedure

(1) An aggrieved person may bring a private prosecution in respect of the following offences without needing to have recourse to the public prosecution office first:

1. **trespass** (section 123 of the Criminal Code);
2. **defamation** (sections 185 to 189 of the Criminal Code) unless it is directed against one of the political bodies specified in section 194 subsection (4) of the Criminal Code;
3. violation of the **privacy of correspondence** (section 202 of the Criminal Code);
4. **bodily injury** (sections 223 and 229 of the Criminal Code);
5. **stalking** (section 238 subsection (1) of the Criminal Code) or **threat** (section 241 of the Criminal Code);

# Compensation for caused damages

if offender is not willing to pay, victim has the choice to

Raise a charge in a  
**separate** civil proceeding

File a charge **within**  
The criminal proceeding

Guilty/Penalty

Amount of  
compensation

## Advantages of adhesive procedure

1. No further suffering from examination in another court procedure
2. Avoidness of different judgement by civil court
3. One proceeding is simply faster than two (or more due to number of appeals)

# Victim-Offender-Mediation (VOM)

## Classic criminal procedure

- Only witness (passive role)
- Released after testimony

## Criminal procedure including VOM

- Victim actively involved
- Possibility to ask questions beyond matters of evidence
- Confront offender with affects of the crime
- Talk about desires/emotions
- Chance for offender to take responsibility of his crime

Section 155a German Code of Criminal Procedure  
[Perpetrator-Victim Mediation]

“At every stage of the proceedings the public prosecution office and the court **are to** examine whether it is possible to reach a mediated agreement between the accused and the aggrieved person.

In **appropriate cases** they **are to work** towards such mediation. ...”

Are there any crimes  
inappropriate for VOM?



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# Procedural rights of victims in criminal proceedings

Participation rights

Information rights

Protection rights

Accessory  
Prosecution

Private  
Prosecution

Adhesive  
procedure

VOM

# Victims rights to information

1. Whether and why criminal process set against accused
2. About process outcome, loosening prison rules, release
3. Access to criminal records (through attorney)
4. Victims must notified of these rights in understandable way

# Procedural rights of victims in criminal proceedings

Participation rights

Information rights

Protection rights

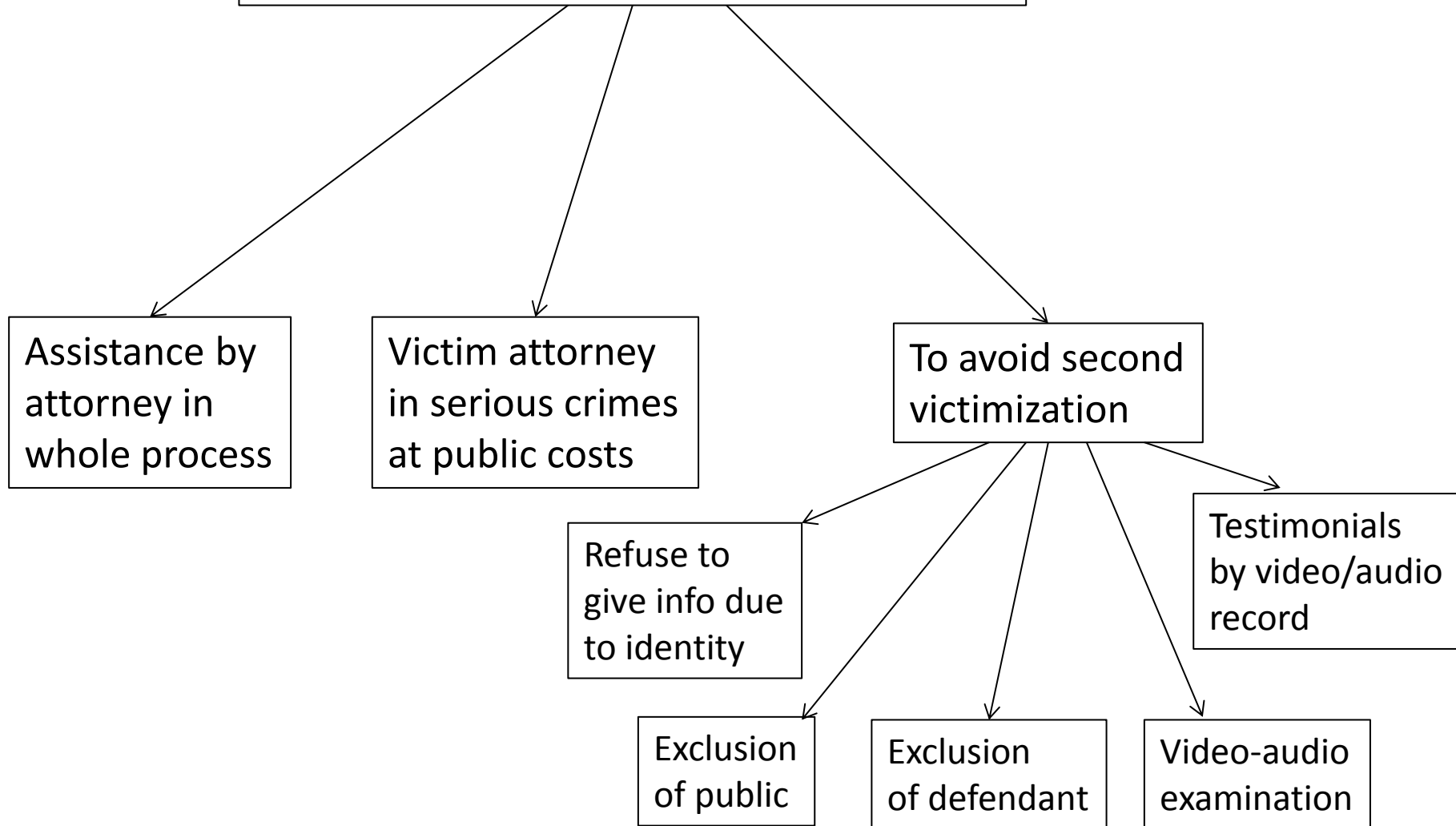
Accessory  
Prosecution

Private  
Prosecution

Adhesive  
procedure

VOM

# Victims rights of protection



# Protection in civil law

```
graph TD; A[Protection in civil law] --> B[Claims for compensation]; A --> C[Claims for omission];
```

Claims  
for  
compensation

Claims  
for  
omission

# Claims for Compensation

```
graph TD; A[Claims for Compensation] --> B[Intangible losses]; A --> C[Immaterial damage]
```

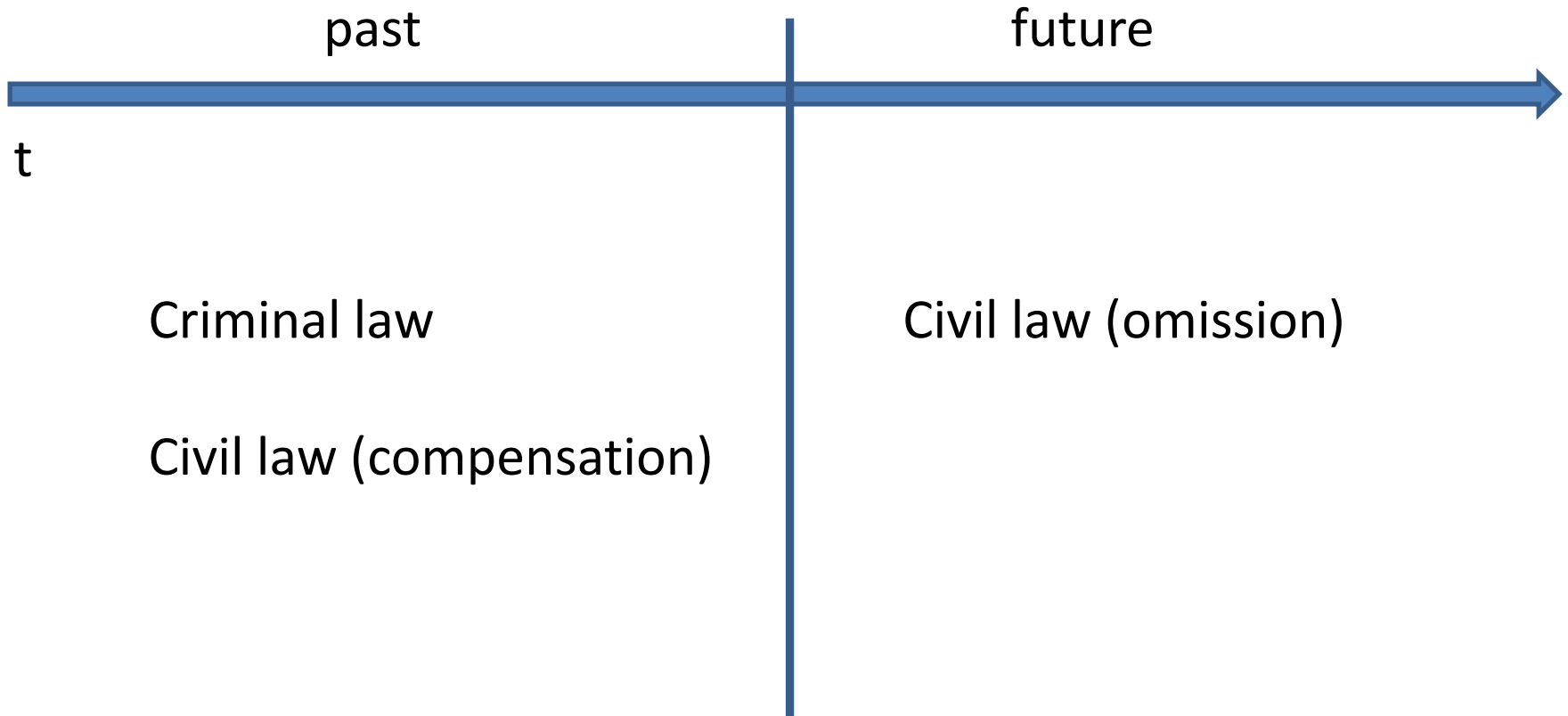
Intangible losses

Immaterial damage

## Supported by:

- 30 years limitation
- If sexual offence no run until victims` age of 21
- Seize perpetrators income to greater extend
- Priority access to perpetrators income from selling his story of the crime

# Claims for omission





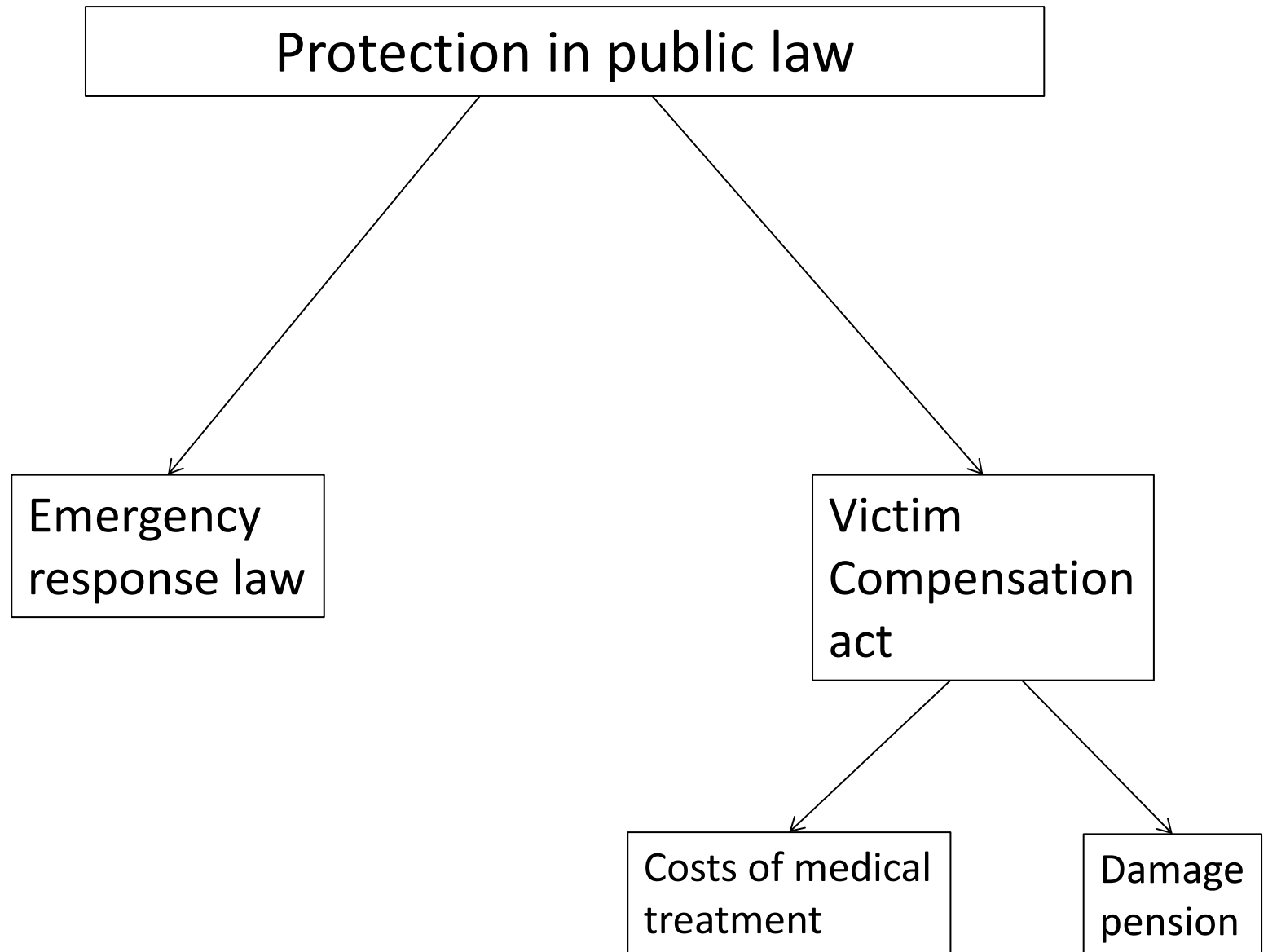
# Claims for omission

```
graph TD; A[Claims for omission] --> B[Protection orders (refrain to):]; A --> C[Assign of the home];
```

## Protection orders (refrain to):

- entering victims home
- be within a radius of the home
- Visit places where victims uses to be
- Connect victim by phone, internet etc.
- Meet victim

## Assign of the home



# Legal protection of victims

