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Reshaping treatment  
approaches towards  
victims of sexual violence  
within criminal proceedings.

# COMPREHENSIVE REPORT

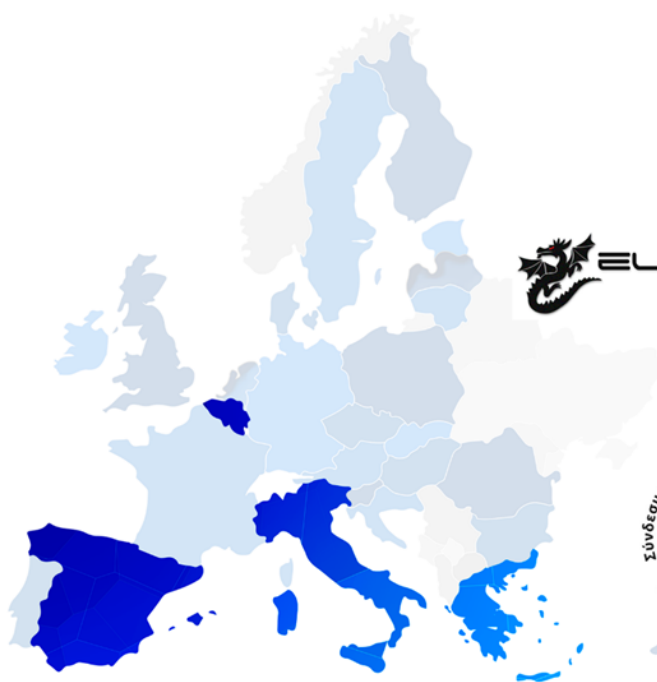
*Transnational Report: Greece, Italy and Spain*  
*Good Practices*



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The authors are deeply grateful to all those who have collaborated with RE-TREAT research activities and thereby made this study possible.

The report is dedicated to the victims and survivors of sexual violence who are or have been through the criminal justice system, as well as those who have not yet told their story.

# CHAPTER I: INTRODUCTION

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**CHAPTER I**  
**INTRODUCTION**

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## 1. OBJECT

This report is part of the European project RE-TREAT. The overall aim of the RE-TREAT project is to boost procedural and organisational changes in the criminal proceedings within the justice systems in Greece, Italy and Spain in order to improve their responsiveness to particular needs of victims of sexual crimes.

Thus, RE-TREAT will conduct a comprehensive study on the implementation of the Directive 2012/29/EU of 25<sup>th</sup> October 2012, on minimum standards on the rights, support and protection of victims of crime (VRD<sup>1</sup>). The Directive establishes the rule of an individual assessment for all victims of crime in all Member States (MMSS), considering personal characteristics of a victim and the nature and special characteristics of the crime, expressly mentioning sexual violence. However, victims of sexual crime are often re-victimised by justice systems that are not adapted to their rights and needs. Practitioners still lack capacity building and specialised training in dealing with victims of sexual crime.

In this scenario, RE-TREAT consortium will go through the question of how well do criminal justice systems treat survivors of sexual violence in these three MMSS because the answer is not only important to survivors, but it also sends a message to society on how should sexual violence be viewed. To this end, the project has planned several research and training activities. The Project has been built upon the following main phases.



- **Phase 1. RESEARCH:** *Context and country-specific analysis and identification of good practice*
- **Phase 2. EMPOWER:** *Development of the Code of conduct and training activities for justice systems practitioners*
- **Phase 3. COMMUNICATE:** *Raising awareness activities*

In fact, in strict terms, Phase 1 must lead to following deliverables. So, the Phase 1 includes two report blocks:

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<sup>1</sup> Hereafter, we will use the expression Victim's Rights Directive, as well as its abbreviation VRD.

- Three national analytical reports<sup>2</sup> on the results of the analysis of the national research groups identifying specific drawbacks faced by the victims of sexual crime at each stage of the criminal proceeding.
- One comprehensive report on general tendencies and country-specific characteristics on drawbacks<sup>3</sup> faced by the victims of sexual crime in three Mediterranean countries as well as best and promising practices practice in other countries<sup>4</sup>.

The present report is the comprehensive report and it concludes the Phase 1 of the Project.

## 2. STRUCTURE

In accordance with the previous section, this report is divided into two main Chapters (2 & 3):

- On the one hand, it includes an approach to the common and specific obstacles that victims of sexual crimes face when they resort to the criminal justice system in three MMSS: Italy, Greece and Spain; this chapter 2 necessarily takes as a starting point the three national reports presented by the research teams of the RE-TREAT Project during the first quarter of 2021.
- On the other hand, it contains a collection of best and promising practices with regard to the treatment of victims of sexual violence during the criminal process and an assessment framework based around eight key elements of effective practice (KEEPs) arranged in three topic clusters (chapter 3).

## 3. METHODOLOGY

This *Transnational Report* has been prepared following different methodologies according to the core of each chapter.

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<sup>2</sup> There will be two language versions of each one (Spanish, Italian or Greek, respectively, and another in English).

<sup>3</sup> SPOHN, C., & TELLIS, K. (2012). "The criminal justice system's response to sexual violence", *Violence against women*, 18(2), 2012, pp. 169-192.

<sup>4</sup> In English.

### **3.1. Comprehensive description of strengths and weaknesses of treatment approaches towards victims of sexual crimes in three Mediterranean countries**

The methodology for the first section of this report, the comprehensive description of the state of art in the three Mediterranean countries based on their initial respective national RE-TREAT reports, will first be described<sup>5</sup>.

As the national RE-TREAT reports show, the methodology followed by each country is different due to lots of circumstances. In fact, it has been very difficult to develop the first part of the Transnational Report. The integration of the information from each National Report was not always easy and, furthermore, sometimes the information obtained was not directly comparable.

Originally, the development of each national report would have included literature review, case law analysis, and file review. When possible, the analysis would have been carried out in the following levels: a) Analysis of police and prosecutor files; b) Analysis of judicial records; c) Case-law analysis; and d) Interview of victims and CJS professionals specialized in the treatment of victims of sexual crimes.

Due to COVID-19 pandemic, for the national research groups it was impossible to develop some of the planned research tasks; in particular, analysis of judicial records and police and prosecutors' files were not developed. According to the situation, RE-TREAT partnership agreed on changing the methodology of this task as well as the one concerning national analytical reports. In this regard, instead of analysing judicial records and police and prosecutors' files, partners –in charge of each national report– would try to increase the number of interviews on the topic of sexual victims' rights.

According to this, the interviews<sup>6</sup> should have covered different groups of professionals: Judges, public prosecutors, lawyers, NGOs, police officers, health personnel, as well as victims' services and victims of sexual violence.

Most of the interviews were conducted from June to September 2020. However, the number of interviews, the professional area of the interviewed, and the fruitfulness of the

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<sup>5</sup> For more detailed information see, Italian, Greek and Spanish RE-TREAT Reports.

<sup>6</sup> Ten interviews were originally planned for each participant group.



information obtained varied significantly from one country to another. See table 1 below containing a summary of this task in the three MMSS.

INTERVIEWS	Greece <sup>7</sup>	Italy	Spain
Judiciary	0	6	5
Public Prosecutor	0	4	5
Police	2	5	4
Lawyers	3	7	6
Health staff	1	0	7
Victims support Services	3	7	12
Victims	3	0	6
<b>Total</b>	<b>12</b>	<b>29</b>	<b>45</b>

*Table 1. Number of interviews for each group of project participants. Own elaboration*

To give some examples of this assortment<sup>8</sup>, in Spain the number of sexual violence victims interviewed was double of those in Greece; there were no victim interviews in Italy; and in Greece there were no judiciary or public prosecutor interviews. With regard to victim interviews, there were six in Spain; in five of them, no more than two years had elapsed since the sexual offence was committed. In Greece, three women were interviewed, but two of them alleged childhood victimisation of sexual abuse but the trial was not held due to a lack of incriminating evidence. More than 20 years have passed since then. The third victim was sexually assaulted when she was 20 years old, but 23 years have passed since then. In the latter case, the trial did take place, but one must be cautious with the information obtained in this regard, since over time there have been substantial changes in the treatment of victims in Greece. Regarding the aforementioned challenges in the recruitment of women victims of sexual violence to the interviews, it should be mentioned that in Greece, the vast majority of women victims referring to Victim Support Services are mainly victims of physical violence; whereas victims of sexual violence tend to refer to

<sup>7</sup> The Greek team in RET-TREAT, Union of Women Associations of Heraklion Prefecture (UWAH) conducted 9 interviews with professionals in the field of sexual crimes and 3 with victims. In the case of professionals, there was a criminologist specialised in child abuse and forensic interview (consider as law professional-lawyer- in this table) and 1 child psychologist specialised in minors, teenagers and young adult victims of sexual abuse (consider as health staff, here), 3 professionals working in victim support services (2 psychologists and 1 social worker/ mental health counsellor).

<sup>8</sup> Taking into account the above, throughout the report we will refer in brackets to the specific country, national report, interviews, etc. from which the information comes. E.g.: (Greece), (Italy), or (Spain). The national reports prepared by the research groups participating in this project. The Italian RE-TREAT partners are: EuroCrime and the University of Sassari (UNISS). The Greek partner is UAWH Union of Women Associations of Heraklion Prefecture (UWAH). The Spanish RE-TREAT partners are University Carlos III of Madrid (UC3M) and University Autonomous of Madrid (UAM). For further information on the authorship, check the single national RE-TREAT reports.

private psychologists for support. At the same time, in cases that women victims of physical violence who are being addressed by victim support services, and have also been sexually abused within their marriage; it is really hard for them to acknowledge it and reframe it as “rape”. The reason behind it, are the socially driven constructions of “marital obligations” and rape. As a result, it was difficult for their counsellors to recruit them and thus, participation in the interviews was avoided, in order to protect their fragile mental and psychological state and prevent possible re-traumatisation. Finally, in Italy no victims of sexual violence were interviewed.

Therefore, we only have first-hand data provided by the victims in Spain and for the other two countries –Greece and Italy–, the information comes from secondary sources. In Greece, the sources are police officers, lawyers or criminologist, professionals from victims support services; in Italy, information has been retrieved from police officers and carabinieri, prosecutors, lawyers and professionals of the assistance to victim services. In Spain, the field study has broadly covered all sectors: judiciary, prosecutors, police forces, health staff, victims support services and victims.

Taking that into consideration, all national research teams responsible of national RE-TREAT Reports made a huge effort to obtain relevant and realistic information about the situation of victims of sexual crimes in their countries from the interviews and other activities: official statistical data; other research data statistical sample; case-law on this topic, etc.

However, the three national RE-TREAT Reports<sup>9</sup> reveal lots of quantitative and qualitative differences across the case-law studies. The origin of this contrast is found in the accessibility to judicial decisions. While Spain has a public system to access the vast majority of the judicial decisions (CENDOJ), Italy and Greece do not have a similar system; so, they can only access the judicial decisions of some judicial bodies and with some considerable difficulty. The Italian RE-TREAT Report presents a tracking of 914 judgments and orders from the Italian Supreme Court, directly and immediately connected to the crime of sexual violence. Considering that many of them repeated the same legal principles, the detailed study involves a total of 25 resolutions of the Italian Supreme Court (14

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<sup>9</sup> For more detailed information see respective national RETREAT Reports (Italian, Greek, and Spanish).

judgements and 11 orders). The Greek RE-TREAT Report explores<sup>10</sup> 30 decisions issued by the Greek Supreme Court of Cassation (2014-2020) related to sexual crimes. In Spain, the analysed case law<sup>11</sup> was by far larger as it comprises 2.265 judgments sentenced between 2014-2018 by the majority of Spanish criminal judicial bodies, which includes the Spanish Supreme Court (540), the High Courts of Justice (209) and Provincial Courts (1.522).

All in all, we get a panoramic picture of the challenges and mistreatment that victims have to suffer along criminal procedure according to the standards of the VRD.

### **3.2. Best practices in support for victims of sexual and gender-based violence**

The methodology for the Chapter III of this report, the report on the process of identifying a number of best and promising practices with respect to working with and supporting victims of sexual and gender based violence, will now be described.

The process of identifying best and promising practices took place within an iterative research process which had three main, but interrelated, aspects. The first aspect involved designing an evaluation framework that could be used as a tool to assess programmes and practices. The framework contains factors that are considered to be important in the delivery of services, programmes and practices for women who have experienced sexual violence. These factors, or 'key elements of effective practice' (KEEPs) have been discerned following interrogation of relevant research findings, theoretical models, European level guidance and international legal instruments. This is complemented with specific examples of services, programmes or practices that also support these findings and decisions. The framework was formed through an iterative process and was adjusted as further information came to light following the interviews that were conducted during subsequent parts of the process, in order to include aspects from practice and from the field.

The second aspect involved carrying out a scoping exercise to identify a number of programmes and practices that were available for adult female sexual violence victims. In cases where the practice seemed to be particularly innovative or interesting, interviews were carried out with staff members in order to find out further information. Relevant

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<sup>10</sup> Through the *Nomos* Legal Database.

<sup>11</sup> The cases were selected randomly from the Judicial Documentation Centre (CENDOJ), respecting the segmentation by type of crime and Court. The simple quotas were calculated with a 95% confidence level, and assuming normality, the sub-samples obtained by the Court were representative with a sampling error of no more than 3% (approx.).

services, programmes and practices that had been identified during the first stage were also included here.

The third aspect of the research process involved using the evaluation framework to assess sexual violence programmes, in order to identify those that can be considered to be best or promising practices. Where relevant, information revealed at this stage was used to further develop the assessment framework.

## **CHAPTER II. TRANSNATIONAL REPORT: Criminal Justice Systems and sexual crimes in southern Europe**

**UAM & UC3M Units**

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**CHAPTER II**  
**TRANSNATIONAL REPORT**  
*Criminal Justice Systems and sexual crimes in southern Europe*

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## 1. APPROACHING SEXUAL VIOLENCE CRIMES: GREECE, ITALY AND SPAIN

### 1.1. General evolution of the regulation

Taking a transnational perspective on such a complex and culturally conditioned topic<sup>12</sup> makes it difficult to find common patterns in the evolution of domestic regulations<sup>13</sup>. Despite this, broadly speaking, the following trends can be identified.

#### *A. A paradigm shift: from the protection of the prevailing sexual morality in society to the effective protection of sexual freedom*

In Greece, Italy and Spain, criminal law has progressively dissociated itself from the protection of the prevailing moral sexuality within society to focus on the protection of individual sexual freedom. This radical change came, both in Italy and in Spain, mainly in the 90s (Law 66/1996, in the case of Italy - which stops considering these offences as "crimes against public morals" to consider them "crimes against the people" -, and Organic Law 3/1989, in the case of Spain - which forgets the label "crimes against honesty" to focus on the protection of "sexual freedom"). By contrast, in Greece, these developments have only taken place recently (with the newly adopted Law 4367/2019).

In any case, offences that were completely disrespectful of sexual freedom such as those punishing same-sex conduct (former art. 347 Greek CC), adultery (former art. 449-452 Spanish CC), or the so-called public scandal crimes (former art. 353 par. 1 Greek CC and 431-433 Spanish CC) have been completely removed. This implies that regulations have been adapted to a more open and diverse understanding of sexuality. Even so, it should be noted that, when compared to other European countries, this change has arrived in all three countries with some delay, a fact which can be explained by the combination of the political circumstances and the existence of a highly tabooed sexual education and expression, strongly linked to religion, in Southern European countries. For some time, this stopped these countries from reframing sexual criminal law to focus exclusively on the

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<sup>12</sup> From the best to the worst position in the EU on the Gender Equality Index (EIGE, 2020): Spain ranks 8<sup>th</sup> position with 72/100 points; Italy is the 14<sup>th</sup> place with 63.5/100 points; GR remains in the last position (28<sup>th</sup>, 52.2/100 points) since 2010. Italy progresses faster than other EEMM. However, Spain is the only of the three whose score is above the EU's media.

<sup>13</sup> Hereinafter, we will use the abbreviation CC for Criminal Code.



protection of sexual freedom (and, hence on its foundation, both of moral and physical integrity, as well as the right to privacy).

Despite the above, there are two aspects that should be pointed out. On the one hand, this transition seems to be incomplete in the case of the Greek country, since its criminal code still considers certain conducts to amount to a criminal offence such as sexual relations between relatives (art. 345 Greek CC – although in most cases, the behaviors may alternatively be punished with a penalty of fine-) or exhibitionism before adults (art. 337.1 Greek CC, which at least requires that the conduct "brutally insults the honor of another"). Only very remotely can these two criminalized behaviors relate to the protection of sexual freedom, a fact which suggests that, at least in relation to the sexuality, certain vestiges from the past can still be found in the Greek Criminal Code. On the other hand, in the three legal systems an incipient "remoralization" is observed in this field, especially in relation to the sexual criminal law of minors, in which some of the punished behaviors ultimately represent an offence to socially generalized feelings. The prime example is the punishment of various behaviors related to the creation of images of child sexual abuse, the latter also being understood as that in which sexual behaviors with minors are simulated -art. 384A' Greek CC; art. 600-ter Italian CC; art. 189 Spanish CC-, reaching the extreme in the Spanish case, where the creation of images of child sexual abuse is also considered to be that in which the participants simply appear to be minors or that in which "realistic images" of minors are used -although the latter is also understood by art. 600 quater.1 Italian CC<sup>14</sup>.

### ***B. Sexual consent as a central legal figure***

In all three legal systems, sexual consent is now considered a central legal concept. Insofar as the protected legal interest in these crimes is sexual freedom, consent of the parties involved is implicitly or explicitly considered to exclude the criminal nature of the conduct (see art. 336 Greek CC; art. 609-bis Italian CC; arts. 178-181 Spanish CC). In this sense, crimes are understood to have been committed when the victim does not consent to the sexual practice, regardless of whether violence or intimidation have taken place (since there may be a lack of consent even without them), and regardless of the relationship

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<sup>14</sup> In all these cases, it should be noted that this broad vision of the concept of 'child pornography' comes from the definition provided by art. 2.c of Directive 2011/92/EU, of the European Parliament and of the Council, of 13 December 2011 on the combating the sexual abuse and sexual exploitation of children and child pornography.

between the active and passive subjects. It is important to highlight the modification of art. 336 of the Greek CC which, until 2006, established a non-criminal sanction for rape within marriage<sup>15</sup>. This evolution implies, correspondingly, the recognition of the victimization of a specific person (the one whose sexual freedom is restricted by not consenting to a specific sexual act -usually a woman-) and the elimination of a kind of "victimization transference" (to the honor of the family of the victim, that of her husband,...), which, leaving aside the legal issues, represents an obvious improvement both in the treatment of victims and in the prevention of these behaviors.

### *C. The different protection of adults and children victims of sexual violence*

In the legal systems of these three countries sexual violence suffered by adults is regulated differently from that suffered by children. This is related to the relevance of the legal interest of sexual freedom in these crimes and to the importance of consent within sexual relations. This freedom (therefore, the possibility of validly consenting to engage in sexual relations) is not applicable to people under a certain age. Thus, in these cases, it is another legal interest that calls to be protected. In the case of Spain, it has been referred to as "sexual indemnity", and, in any case, it seems to have the adequate physical and mental development of children as its main objective.

The main divergence on this point among the three legal systems is the "age" that is established as relevant for the purposes of sexual consent; that is, the age from which it is recognized that a person can validly consent to a sexual relation in full exercise of his/her autonomy. With regard to this matter, the Spanish legal system stands out as the most conservative one by setting the age of valid sexual consent at 16 years old (arts. 183 et seq. Spanish CC). The Italian legal system sets the age of valid sexual consent at 14 years old (arts. 609 quater and quinquies Italian CC - although in relation to certain acts, a minimum age of 16 years is required, as for example in arts. 609 quater 2<sup>16</sup> and 609 undecies<sup>17</sup> CC). In Greece, the age of sexual consent is set at 15 years old (art. 339 Greek CC - its section 3,

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<sup>15</sup> Greek Law 3005/2006 for combating domestic violence. For an evolution of the Greek legislation on this topic up to 2017, see KOSYFOLOGOU, A., "The gendered aspects of the austerity regime in Greece: 2010 – 2017", *Studies Austerity, Gender inequality and Feminism after the crisis*, June, 2018, p. 17.

<sup>16</sup> Sexual acts, when the offender is the ascendant, the parent, even adoptive, or his/her cohabitant, the guardian, or another person whom, for reasons of care, education, instruction, supervision or custody, the minor is in custody or who has a cohabitation relationship with the latter.

<sup>17</sup> Solicitation of a minor.

which declared sexual crimes committed on children to be non-punishable as long as the perpetrator married the victims, has been abrogated-).

## **1.2. Common features of sexual criminal law**

When addressing the specific in force regulation of sexual crimes in these three legal systems, it becomes clear that the possibilities of carrying out an aggregated analysis are very small as the influence of the different historical and political events on the domestic regulation of sexual crimes must be taken into account. Nevertheless, insofar there is common ground which is closely linked to the protected legal interest, it is possible to identify some shared features in the regulation of sexual crimes in Greece, Italy and Spain.

### ***A. The weakening of the principle of legality***

A certain weakening of the principle of legality has been identified in the three legal systems, especially in relation to the determination of object the protection. The complex definition of these punished behaviours has led the legal systems to resort to broad and relatively vague concepts (e.g. “acts of equal weight” to sexual relation -art. 336.2 Greek CC -, “less serious cases” -art. 609-bis in fine Italian CC-, “attack against sexual freedom” -art. 178 and 181 Spanish CC-) that require an intense jurisprudential interpretation that is always linked to the sanction regulation to respect the principle of proportionality. As a result, an analysis of the Criminal Code articles which is limited to the letter of the law will only provide a partial view of those behaviours with a sexual character that may amount to a violation of sexual freedom, thus calling for a systematic reading which takes into account the relevant case-law.

### ***B. Violence or intimidation as a criterion to identify the offence/standard to differentiate the offence***

The three legal systems expressly distinguish between two types of attack towards the legal interest of sexual freedom, depending on whether violence and intimidation apply or not<sup>18</sup>.

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<sup>18</sup> Article 36 of the Istanbul Convention, ratified by the three countries, (Italy and Spain in 2014 and Greece in 2018) identifies the *absence of consent* as the triggering element for a conduct to amount to a crime of sexual violence. Hence, in crimes of sexual violence it is enough that the victim does not consent and it is not necessary for them to express opposition or resistance. This is an issue that has been stressed in the FRA and GREVIO reports. FRA, 2019, section 9.3.3.,

However, this distinction is more specific in Greece and Spain (see, in the cases where they apply, art. 336.1 Greek CC, arts. 178 and 179 Spanish CC and, when they do not apply, arts. 336.4 and 337 Greek CC, arts. 181 and 182 Spanish CC). In Italy, sexual crimes are only punished by the Criminal Code when they are perpetrated with violence, intimidation or abuse of authority<sup>19</sup> (art. 609 bis Italian CC). However, the case-law interpretation is quite extensive and it includes acts with sexual content that are performed in a surprising way, in such a way that the victim cannot resist<sup>20</sup>. From a purely nominal perspective, only the Spanish legal system chooses to regulate these two behaviors separately (referring to “sexual assault” when there is violence or intimidation, and to “sexual abuse” when this is absent). The Italian legal system uses the general category of “sexual violence” while the Greek law classifies conduct in which there is no violence or intimidation in some cases as “rape” (art. 336.4 Greek CC), and in others as “sexual dignity assault” (art. 337.1 Greek CC).

### *C. Disparity in the punishment of sexual crimes: aggravation or attenuation*

A considerate disparity has been observed among the three legal systems when it comes to aggravating or mitigating sexual crimes. In some cases, the three legislators have chosen to aggravate (e.g. group sexual assaults -arts. 336.3 Greek CC, 609-octies Italian CC, 180.1.2<sup>a</sup> Spanish CC), but in others, this consensus has not been found (e.g. both Italy and Spain have understood it necessary to aggravate these crimes when dangerous weapons are used in their commission -arts. 609-ter.2 Italian CC and 180.1.5<sup>a</sup> Spanish CC-, as opposed to the Greek position).

Additionally, for the purpose of punishment, Spain distinguishes between sexual crimes that imply vaginal, anal or oral carnal access, or inserting body parts or objects into either of the former two orifices and those that do not. Correspondingly, the sexual access entails a higher punishment (be they assaults or sexual abuse -arts. 179 and 181.4 Spanish CC,

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pp. 2010-211. GREVIO, Spain Report, 2020, specially sections, 221-222 y 224. GREVIO Italy Report, 2019, p. 63, specially section 191.

<sup>19</sup> Indeed, the GREVIO/Inf(2019)2 report, 13rd January 2020, urges Italy to modify the crime of sexual violence as regulated in the Italian CC in order to include the notion of voluntary consent as the result of a person’s free will, as required by article 36.1 of the Istanbul Convention.

<sup>20</sup> Acts considered sexual violence include: touching another passenger’s thigh on the bus (Supreme Court– Second Criminal Division– Sentence of 19.03.2008 n. 12157), and touching the breast (Supreme Court – Third Criminal Division– Sentence 5 April – 22 May 2007, n. 19718).

respectively-). This distinction cannot be found neither in the Greek Code<sup>21</sup> nor in the Italian Code, both having chosen to include acts that imply carnal access and acts that do not within the general category of crimes against sexual freedom.

It is remarkable that some circumstances can also be found to have an opposite effect within the different legal systems. While in Spain the so-called “chemical manipulation” acts as a mitigating factor by turning these cases into cases of sexual abuse (art. 181.2 Spanish CC), in Italy it operates as an aggravating factor (art. 609-ter 2 Italian CC). Other circumstances receive a radically different treatment (e.g., the performance of sexual acts carried out through abuse on people with intellectual or physical disabilities without resorting to violence or intimidation is considered by the Italian Criminal Code as an ordinary crime of sexual violence (art. 609-bis Italian CC), a specific crime by the Greek Code, although with an attenuated penalty in relation to the crime of rape (art. 338 Greek CC), and an ordinary crime of sexual abuse in the Spanish case (art. 181.2 Spanish CC).

#### ***D. The expansion of punishable behaviours related to child victims***

In the three legal systems under consideration, an expansion of the punishable behaviours related to sexual violence against children, which goes beyond what may in general and strictly speaking be considered sexual assault, has been identified. This is clear, for example, in the scope of punishment of crime related to child pornography (arts. 348 A 'Greek CC, 600-ter Italian CC, 189 Spanish CC) or to child grooming (arts. 337.3 Greek CC, 609-undecies Italian CC, 183 ter Spanish CC).

However, given the increase in the age of sexual consent, the three legislators have had to adopt clauses excluding sexual relations between children from punishment, and each has done so in its own way. For example, the Greek Criminal Code chooses not to punish sexual relations between children under fifteen unless their age difference is above three years (art. 339.2 Greek CC); the Italian law does not punish sexual relations with persons over thirteen years provided that the age difference between the parties is not above four years (art. 609-quater Italian CC); and the Spanish legislator allows sexual relations with children

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<sup>21</sup> At least exactly, since one of the differences between the crimes regulated in articles 336 and 337 Greek CC is that in the first case a “sexual intercourse” or “acts of equal weight” -which may not imply access to the victim- are required, while this is not the case in the second provision.

under sixteen, provided that the other party is close in age and maturity to the first (art. 183 quater Spanish CC).

### 1.3. General features of penalties associated to sexual offences

The Greek, Italian and Spanish Criminal Codes<sup>22</sup> have different criminal scales and different systems for the establishment of penalties. It is thus complicated to make a comparison on this point. In any case, in recent years, it seems clear that there has been an upward increase the severity of the penalties imposed for this kind of offences (this is clear, for instance, in the reform of the Italian CC by Law 69/2019, or in the Spanish CC reform by Organic Laws 11/1999 and 5/2010).

PENALTIES	Greece	Italy	Spain
Most serious sexual offence (without aggravating circumstances)	Imprisonment of at least 10 years (art. 336.1 Greek CC)	Imprisonment from 6 to 12 years (art. 609-bis Italian CC)	Imprisonment from 6 to 12 years (art. 179 Spanish CC)
Most serious group sexual assault	Life imprisonment or imprisonment of at least 10 years (art. 336.3 Greek CC)	Imprisonment from 8 to 14 years (art. 609-octies Italian CC)	Imprisonment from 12 to 15 years (art. 180.1 Spanish CC)
Child grooming	Imprisonment of at least 3 years (art. 337.3 Greek CC)	Imprisonment from 1 to 3 years (art. 609-undecies Italian CC)	Imprisonment from 1 to 3 years or fine (art. 183 ter Spanish CC)

*Table 2. Examples of scales of penalties for the different types of sexual offences in Greece, Italy and Spain.  
Own elaboration.*

A fairly accurate idea of the severity with which legal systems treat these kind of felonies may be inferred from an analysis of three common offences: 1) the basic version of the most serious sexual offence regulated in each Criminal Code (without aggravating circumstances); 2) the former offence with the common aggravating circumstance of group assault included in the three Criminal Codes, and; 3) the child grooming offence.

These examples illustrate that, for these offences, the three legal systems almost exclusively resort to imprisonment. Only in the last example does the Spanish Criminal Code provide for the penalty of a serious fine (from 12 to 24 months) an alternative to imprisonment. The intensity with which these penalties are imposed is also quite similar in the three legal systems. Even in the case of Greece, which enjoys a more open system in terms of criminal scales, the penalty imposed in these offences is very similar: usually, the

<sup>22</sup> For further details, see national (Greek, Italian, Spanish) RE-TREAT Reports and in particular their Annexes.

most serious sexual offence is punished with the penalty of imprisonment from 6 to 12 years, group sexual assault is punished with the penalty of imprisonment from 8 and 15 years and child grooming is punished with penalty of imprisonment from 1 to 3 years.

On the other hand it should be noted that in the scope of sexual crimes, the different legal systems provide for additional penalties/security measures that may be imposed together with the penalty of imprisonment. They are usually related to the type of crime committed and aim to avoid recidivism. Among some of the clearest examples of the above the following may be cited: the accessory penalties provided for in arts. 600-septies.2 and 609-nonies of the Italian CC, which may vary and are closely linked to the specific perpetrated felony (for example, the removal of custody is foreseen when the paternal character of the perpetrator represents both one of its constituent elements and an aggravating circumstance), as well as the non-custodial security measure to be executed after the completion of the penalty provided for in the last paragraph of art. 609-nonies Italian CC (and which takes different forms: barring orders, prohibition of changing address without prior notice,...). Similarly, the Spanish legislator regulates various penalties that are accessory to imprisonment (generally in articles 54 to 57 Spanish CC, and more specifically in art. 192.3 Spanish CC, which, in certain cases, enable the removal of parental authority or disqualification from the performance of certain jobs), as well as the possibility of imposing a non-custodial security measure after having served the sentence (arts. 106 and 192.1 Spanish CC), which can take different forms (traceability obligations, obligation to notify changes of residence or work, barring orders and prohibition to communicate with the victim,...).

#### **1.4. Sexual offences as public or private crimes**

In practice, a particularly relevant issue in relation to these offences is whether or not they are considered public crimes. Although it is a classification that lies halfway between the procedural and the material categories, the truth is that knowing who may commence criminal proceedings for sexual offences is also a sign of the legal system's position on this matter. Generally speaking, in the three legal systems studied, sexual offences are configured as a sort of intermediate category between public crimes (that is, those that are prosecuted ex officio, without the need of the victim's participation) and private crimes

(those that are prosecuted at victim's request), being the former predominant over the latter. This halfway<sup>23</sup> option ultimately intends to avoid re-victimization as much as possible, enabling the victim to enjoy a certain decision-making capacity with regard to the proceedings (understanding whether he/she wants to start the proceedings, despite the fact that this may entail damages to their interests in terms of privacy, recalling the facts, etc., or if he/she prefers not to assume the burden of the process and not prosecute the crime), but whilst continuing to demonstrate a public interest in the effective repression of these crimes.

The Spanish case is perhaps the one most inclined towards the consideration of sexual crimes as public offences. Generally, they are all considered to be public offences, with a subtle exception included in art. 191.1 Spanish CC. This provision asserts that the prosecution of sexual crimes committed on adults can be carried out at the exclusive request of the Public Prosecutor's Office, but requiring it "balance the legitimate interests involved", which seems to be an opening, among others issues, towards the circumstances that the victim herself may manifest. In any case, that same provision considers totally public crimes those committed against minors, people with disabilities in need of special protection and disadvantaged people. On the other hand, and in all cases, art. 191.2 of the Spanish CC makes it clear that once the criminal prosecution of the crime has begun, the subsequent intervention of the victim in another sense has no effect either to paralyze the process or to extinguish the perpetrator's criminal responsibility.

Generally speaking, the Italian and Greek legal systems choose to consider sexual offences as private crimes, the victim's initiative thus being central to the prosecution. However, in both systems there are sexual crimes considered as public offences due to their special gravity. In the Greek case, rape or sexual abuse by a prison or police officer, educator, etc.; in the Italian case, for example, crimes committed against a child by a relative, guardian, etc. (art. 609-septies Italian CC). The biggest difference between these two legal systems lies in the effectiveness of an intervention by the victim after the start of the procedure: in the Italian case, the issued complaint is irrevocable, so that second intervention by the victim would no longer produce legal effects; in the Greek case, however, if the victim

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<sup>23</sup> SPOHN, C., RODRIGUEZ, N., & KOSS, M., *The 'victim declined to prosecute': Accounting for lack of cooperation in sexual assault cases*, Paper presented at the annual meeting of the American Society of Criminology, St. Louis, MO, November, 2008.



decides that he/she does not want to go ahead with the prosecution of the crime, the proceedings may be terminated.

## 2. DATA & PROFILE

### 2.1. The importance of data

Statistical data is key when it comes to designing and implementing public policies in the scope of victims' rights<sup>24</sup>; policymaking should be founded on objective data rather than perceptions. Data collection must be carried out systematically, adequately and on a regular basis. The importance of quantitative and qualitative studies can thus be inferred. The VRD requires Member States to communicate to the Commission relevant to the victims of these crimes. In fact, the European legislator even includes a list of the indicators to be collected and communicated by MMSS. This catalogue seems to implicitly differentiate between minimum data<sup>25</sup> to be sent in any case, and other important but secondary data<sup>26</sup> to be provided upon availability. In this way, the VRD somehow suggests the MMSS to introduce, develop and, eventually improve official data collection systems.

In the scope of the victims of sexual offences, the three national RE-TREAT<sup>27</sup> reports reveal important differences with regard to the development of official data. While Spain and Italy present official, public, regular and more or less complete reports on the topic, in Greece, official data is scarcer and more incomplete.

In Spain, the most important data on sexual crimes is periodically published by the Ministry of Interior, the General Council of the Judiciary and the National Institute of Statistics. This provides with valuable information which, though being relevant, is also generic. Consequently, for more detailed information it is necessary to examine decisions and/or

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<sup>24</sup> See recital 64 of the VRD.

<sup>25</sup> Statistical data is minimum only including number and type of reported crimes.

<sup>26</sup> Other data that should also be communicated, if available within each MS includes data recorded by the judicial authorities and by law enforcement agencies and, as far as possible, administrative data compiled by healthcare and social welfare services and by public and non-governmental victim support or restorative justice services and other organizations working with victims of crime. See, among others, number, age and gender of the victims, information about reported crime, the number of cases that are investigated and persons prosecuted and sentenced; data on how victims are using services provided by government agencies and public and private support organizations, such as the number of referrals by police to victim support services, the number of victims that request, receive or do not receive support or restorative justice.

<sup>27</sup> See, RE-TREAT Reports Italy, Greece and Spain.

judicial files; this field study is often carried out by research groups or single researchers, with a high cost in terms of time and effort, within the context of a research project.

In Italy, the Ministry of the Interior and the Ministry of Justice collect a data on many different parameters regarding sexual offences; this data is subsequently analyzed and published on an annual basis by the National Institute of Statistics (ISTAT).

According to the Greek State, deficits in this scope (which are currently being tackled) respond to legislative lacunas, deficiencies within the police and judicial organs' registration systems and to the systematic and periodical information exchange between the police and the judiciary, etc., that ultimately results in data that is fragmented both from an objective and a time-frame perspective. The lack of procedural management programs makes it often necessary to examine physical files to carry out information research. Solving this problem is one of the priorities of the European Institute for Gender Equality attached to the General Secretariat for Family Policy and Gender Equality. Between 2019-2020, some small progress in the collection of comparable data has been observed. In all, a general picture can be obtained from the legal databases "Nomos" and "Isokratis", information from the General Secretariat for Family Policy and Gender Equality and, especially, from other European organizations such as *Eurostat* and the *European Institute for Gender Equality* (EIGE).

In short, data collection within the justice sector is still a challenge in Greece. In Italy and Spain, official judicial statistical data has a periodical character and can be said to be consolidated, despite the fact that there is still room for improvement<sup>28</sup> (official data is often excessively generic and sometimes requires very costly quantitative and qualitative field studies).

## 2.2. An overview of sexual offences in Greece, Italy and Spain in figures

From the information available in EUROSTAT we can obtain an overview of sexual crimes in Greece, Italy and Spain. To do this, we analyse the figures related to sexual crimes,

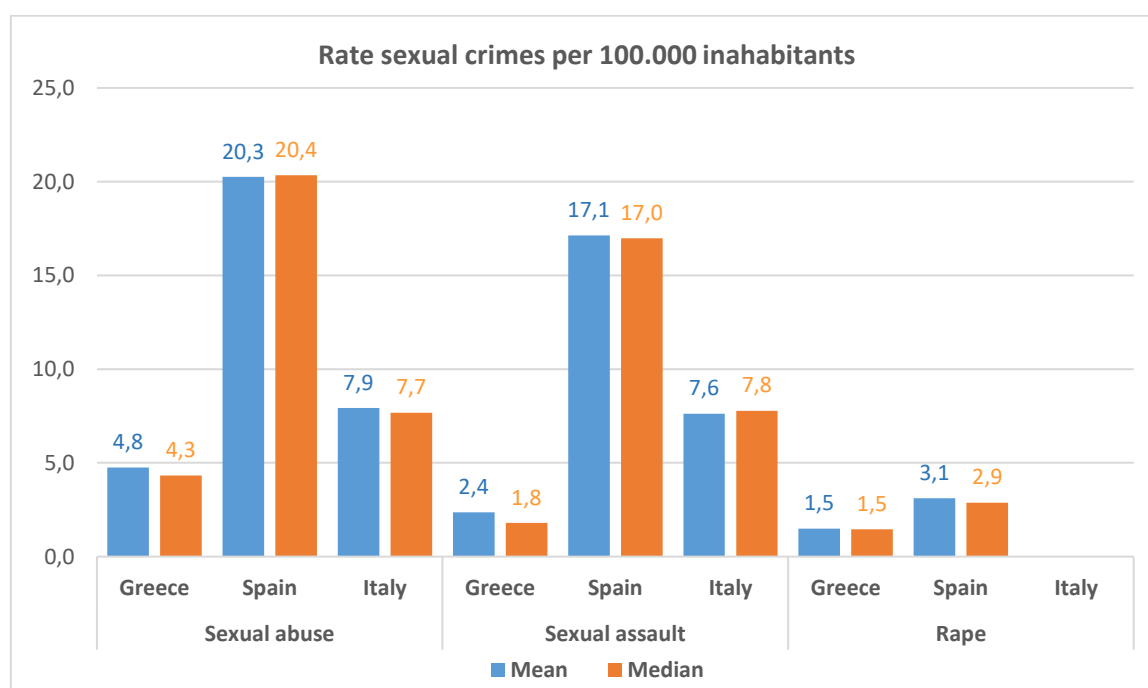
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<sup>28</sup> In the same direction, GREVIO's Recommendation, Committee of the Parties to Italy and Spain on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. See respectively, in the case of Italy, IC-CP/Inf(2020)2, Italy, 30 January 2020, in particular point 9, p. 4 (Baseline report on Italy, par. 79). In the case of Spain, IC-CP/Inf(2020)10, Spain, 15 December 2020, in particular, point 8, pp.3-4 (Baseline Report on Spain par. 57 and 63).

according to the type of crime (sexual abuse, assault, rape), the gender and the legal situation of the people involved in the crime (investigated, prosecuted, convicted, victim) and the people deprived of freedom for this type of crime. The study period includes the decade 2008-2018.

#### A. By type of crime

The number of reported sexual crimes (according to data reported by the police) in these three countries is highly irregular. In the case of sexual abuse, the average number of reported cases is 521 in Greece, 4,794 in Italy and 9,427 in Spain. In other words, the average number of cases reported in Spain is the double to those in Italy and 18 times more than those reported in Greece. In the case of sexual assaults, the mean values of reported cases are 259 in Greece, 4,547 in Italy and 7,974 in Spain.



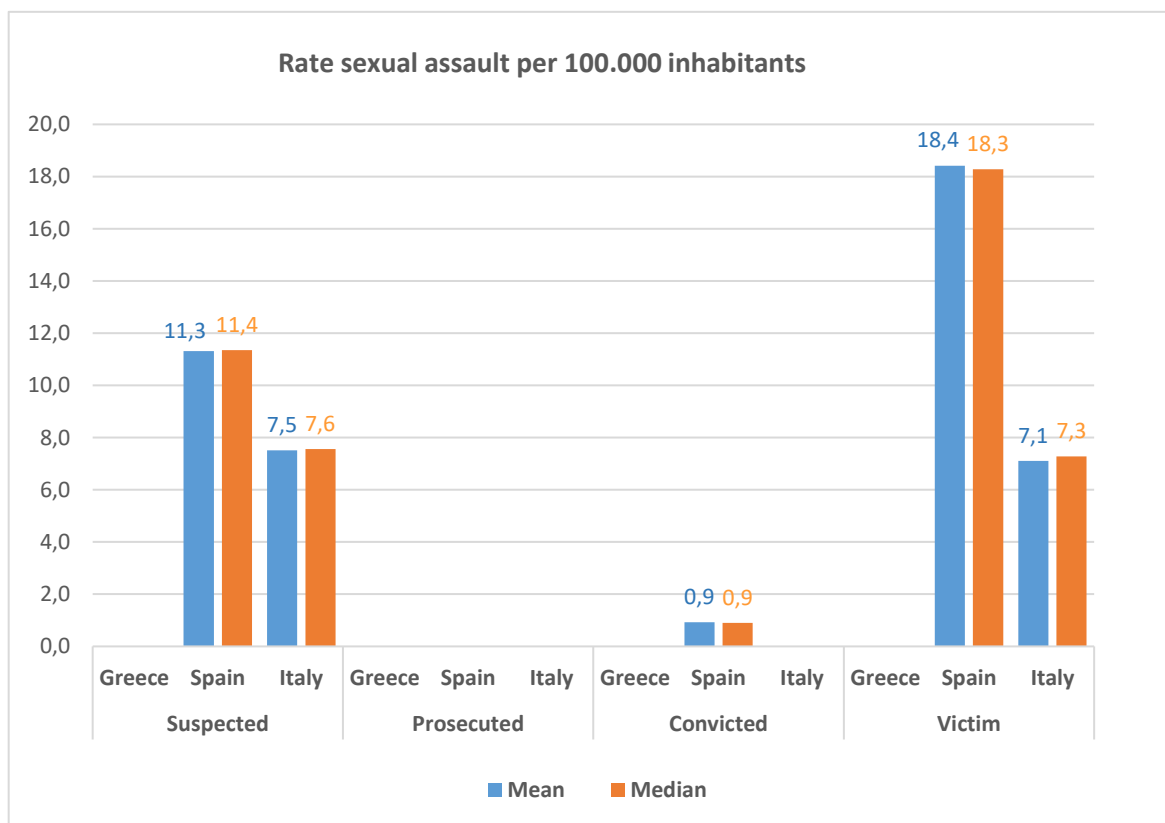
Again, we see that twice as many sexual assaults are reported in Spain with respect to Italy and 30 times more than in Greece. Finally, in the case of rape, in Spain the average number of reported cases is of 1,452 compared to 164 in Greece, which implies that there are almost 9 times more complaints in Spain than in Greece (no figures are available on reports of rape in Italy). In order to be able to compare these figures in a more reliable way, it is necessary to take into account each country's population size. For this reason, the following graph shows the mean and median values of the rates of this type of crime per 100,000 inhabitants. First, it is observed that the mean and median values are very similar,

suggesting the robustness of this data. Second, we see that, for each country, the rates of sexual abuse are the highest, followed by sexual assault and rape. Finally, when comparing the three countries, the previous trend observed with regard to complaints is confirmed, with rates in Spain now higher than those of Italy and Greece.

#### B. According to the legal situation of the people involved in the crime

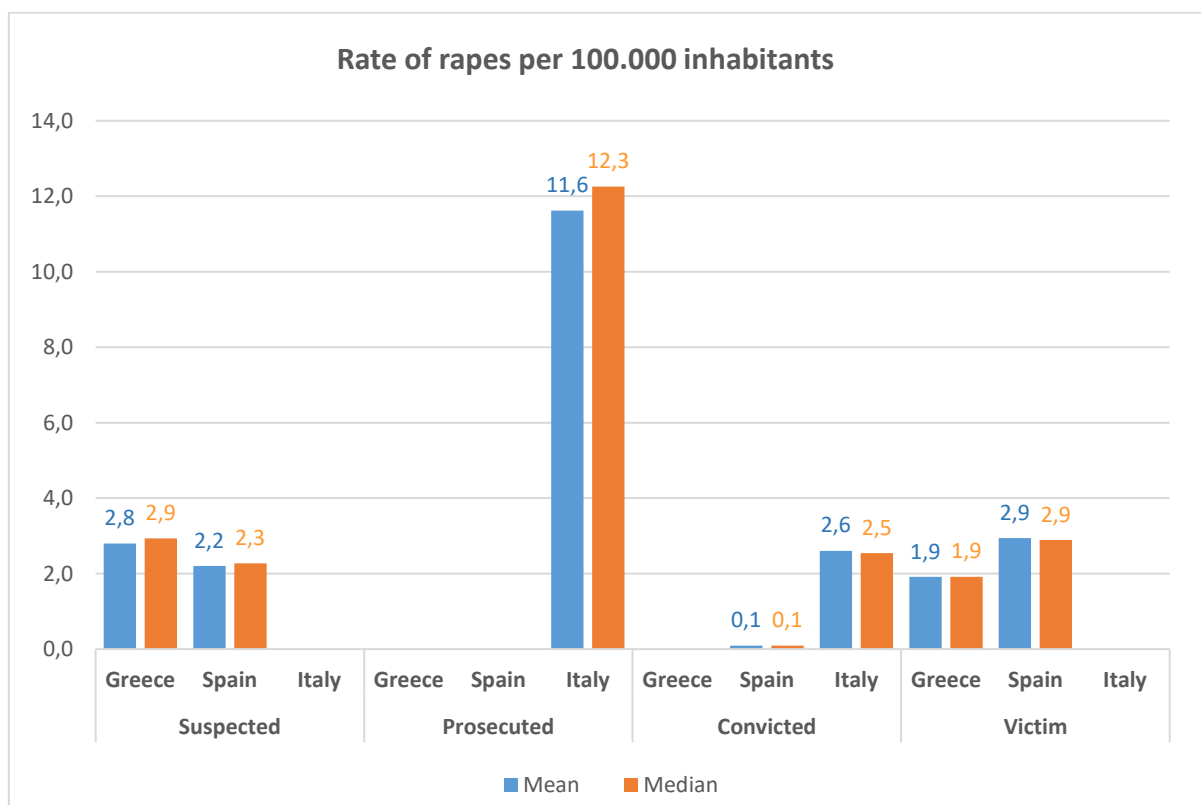
Again we notice a great irregularity in the figures registered in Eurostat by these three countries. For example, in the case of sexual assaults, no information is available for Greece, the number of people prosecuted for sexual assaults in the three examined countries is not listed, and information on convicted persons is very scarce.

Focusing on the people involved in sexual assaults, from the available information, we can assert that the average number of victims is 8,555 in Spain (being women in 84% of cases) compared to 4,230 in Italy (being women in the 91% of cases). In absolute figures, the number of victims in Spain doubles the number of victims in Italy. This information is not available for Greece.



As for the people investigated, the average number is 5,261 in Spain (being men in 92% of the cases) compared to 4,472 in Italy (being men in 98% of the cases). Again, in order to be able to compare these figures in a more adequate way, it is necessary to take into account the size of the population in each of these countries. Thus, the following graph shows the mean and median values of the rates of sexual assaults per 100,000 inhabitants, according to the legal situation of the people involved in the crime. In the first place, it is observed that the rates relative to victims are higher than those investigated. As has already been commented, there is no available information on prosecuted or convicted persons. Second, we observe that the trend shown by the absolute values is confirmed, that is, the rates are higher in Spain than in Italy, more than double for the rate of victims and 1.5 times for the rate of investigated.

The information available in EUROSTAT for people involved in rapes is also extremely scarce and irregular. For example, there is no information on suspected persons in Italy, on the prosecuted persons in Spain and Greece, on convicted persons in Greece or on the victims in Italy. From the available information, it can be asserted that the average number of victims is 1,366 in Spain (being women in 94% of the cases) compared to 210 in Greece (being women in 91% of the cases).



In absolute figures, the number of victims in Spain is 6.5 times higher than in Greece. This information is not available for Italy. In Spain, the average number of people investigated is of 1024 (being men in 98% of the cases) compared to 308 in Greece (being men in 75% of the cases).

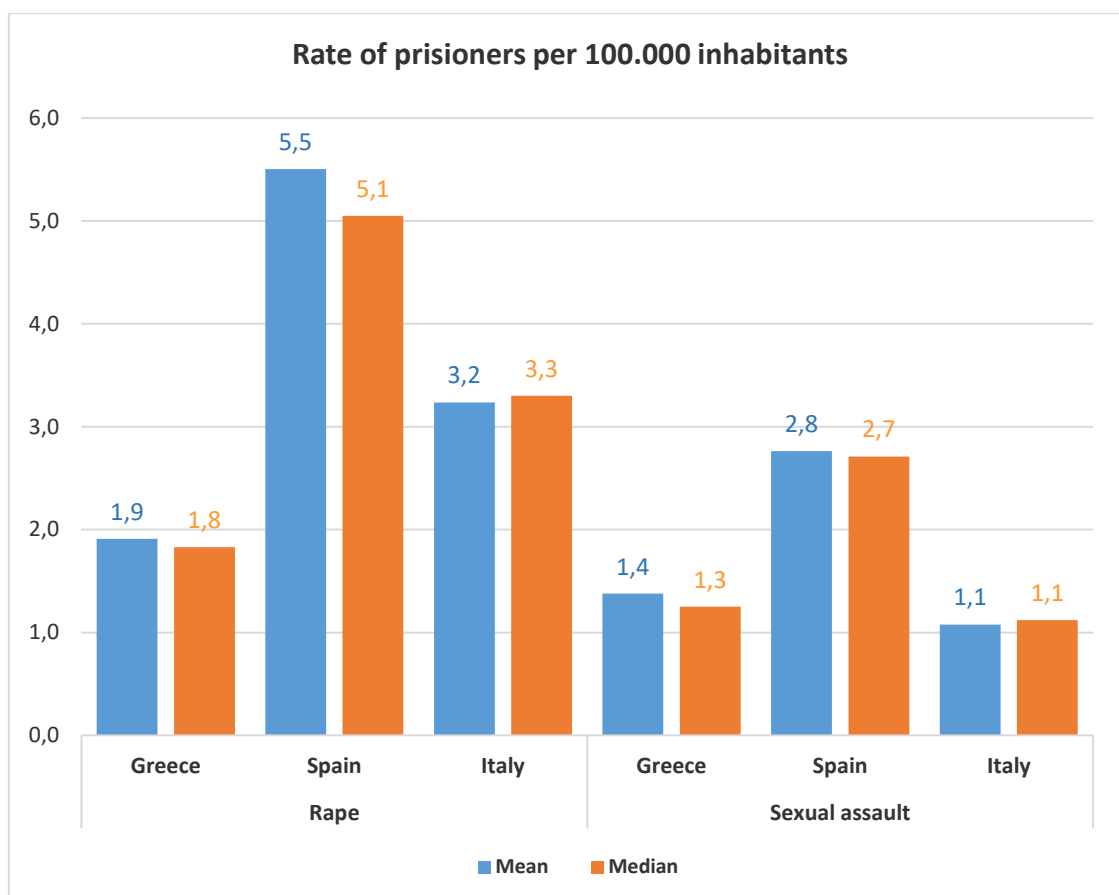
With respect to prosecuted persons, information is only available for Italy, where the figure reaches an average value of 6,931, being men in 97% of the cases. Regarding the figures of convicted persons, it must be highlighted that the complete series is not available (in Spain, data is only accessible for the period 2014-2018, while in Italy accessible data refers to the period 2008-2015) and the low average number of convicts in Spain is surprising, 43 (100% male) compared to 1,553 (99% men) in Italy.

As before, in order to be able to compare these figures in a more adequate way, it is necessary to consider the size of the population in each of these countries. Thus, the following graph shows the mean and median values of the rape rates per 100,000 inhabitants, according to the legal situation of the people involved in the crime. It is observed that the rate of suspected for rapes is slightly higher in Greece than in Spain, while the rate of victims is one point higher in Spain than in Greece. Regarding the conviction rate, we see that it is 2.5 points higher in Italy than in Spain. In the light of the insufficient information, these findings cannot be considered to be conclusive.

#### C. According to persons deprived of freedom

In the case of sexual assaults, the average number of people incarcerated is 150 (99% male) in Greece, 640 (92% male) in Italy and 1,284 (97% male) in Spain. When comparing these figures, we can observe that in Spain, the number of incarcerated people for this crime doubles that of Italy and is 8.5 times more than in Greece.

In the case of rape, the average number of people incarcerated is 209 (98% male) in Greece, 1,924 (99% male) in Italy and 2,557 (98% male) in Spain. When comparing the three countries, it can be inferred that the average number of incarcerated persons for this crime in Spain is 1.3 times higher than in Italy and 12 times more than in Greece. As before, we compare these figures also taking into account the size of the population in each of these countries.



The graph above shows the mean and median values of the incarceration rates per 100,000 inhabitants. In general, we observe coincidences between mean and median values, which again suggests the robustness of this data. We see that, for each country, the rates of incarcerated people for rapes are higher than those for sexual assaults. Finally, comparing the three countries, the trend observed within the absolute figures is confirmed, with rates in Spain now higher than in Italy (by 1.7 points for sexual assaults and 2.3 points for rapes) and higher than in Greece (at 1.4 for sexual assaults and 3.6 for rapes).

### 3. THEORY AND PRACTICE IN THE TREATMENT OF THE VICTIM OF SEXUAL VIOLENCE IN THE GREEK, ITALIAN AND SPANISH CRIMINAL JUSTICE SYSTEMS: A DIRECTIVE-BASED PERSPECTIVE

Specific or ad hoc criminal proceedings for sexual offences are not provided for in the three MMSS under examination. The applicable criteria to the sexual crimes proceedings are identical to that applicable to all other crimes. Despite the above, the three MMSS foresee some *special features* affecting specific procedures within criminal proceedings for sexual

offences. In fact, the three national RE-TREAT reports reveal that concern about this matter has led, in recent years, to some specific legal reforms<sup>29</sup>, legislative policies<sup>30</sup> and other public and/or private initiatives, which ultimately attempt to improve the treatment given to the victims of sexual crimes by the Criminal Justice System (CJS<sup>31</sup>). Nevertheless, in practice, the effective impact of the aforementioned reforms remains minimal, especially in Greece, as we will see below. The reasons explaining this limited effectiveness are complex. Sometimes they are closely related to national particular circumstances, others seems to repeat in these three MMSS; however the intensity of those common features this problem varies significantly from one country to another, as well as within the same national territory (e.g. between big and small cities, rich and poor regions, ...). So often, the regulation, being this hard law or soft law, does exist but it is not applied due to unawareness of the legal operators, due to lack of personal and material means, etc.

If the VRD is concerned about something it is the establishment and reinforcement of a common framework of victims' rights, support and protection in the MMSS. The Directive establishes a legal framework to which the victims are entitled and which binds authorities and legal and non-legal operators which come into contact with victims. The VRD ultimately aims to avoid and, eventually, protect victims of crime from secondary and repeat victimization in all circumstances: criminal proceedings, victim support services or restorative justice.

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<sup>29</sup> For example, in Italy: the Law 69/2019, of 19 July, known as Red Code, which aims at enhancing the effectiveness of judicial responses to violence against women and improving victims' protection; Law 119/2013, of 15 October, that recognised the authorities' duty to support and to promote a vast network of support services for victims; or Law 38/2009, of 23 April, on stalking. In Spain: Draft Organic Law for the comprehensive guarantee of sexual freedom. 2020. Organic Law 5/2018, of 28 December on urgent measures in application of the State Pact on gender violence; Law 4/2015, of 27 April, of the Victim Statute. Royal Decree 1109/2015, of 11 December, developing Law 4/2015, of 27 April. In Greece: Law 4604/2019 designed to enhance gender equality; Law 4531/2018 incorporated a significant number of guidelines and measures towards Domestic violence in the order of victims' rights and welfare maximization, including the protection of the secondary victimization by the CJS. Law 3216/2013 on Human Trafficking; Law 3896/2010 on Sexual Harassment in the workplace.

<sup>30</sup> Among others, Italian National strategy on gender-based violence or the 3<sup>rd</sup> Italian National action plan from 2017 to 2020. On march 2021, the Spanish Government (Delegation Gender based Violence) expands the Spanish telephone line (016) support, which previously was limited to gender violence in a partner or ex-partner, to all forms of gender violence according to the definition of the Istanbul Convention. Greek National Program on Preventing and Combating Violence against Women, as a part of National Action Plan on Gender Equality 2016-2020 (NAPGE).

<sup>31</sup> Hereinafter we will use the abbreviation CJS for Criminal Justice System.



### 3.1. Information and Support

The implementation of the VRD guidelines by the three countries on how to provide information and support to victims of sexual violence will be examined next<sup>32</sup> (see Chapter 2, arts. 3-9).

#### A. *Right to understand and to be understood*

The VRD stresses the need for MMSS to take appropriate measures to assist victims to *understand* and *to be understood* during the criminal proceedings. From the first contact with the competent authority information must be offered to victims to enable them to access their rights. Moreover, in order to ensure adequate communication the personal characteristics of the victim (age, gender, gender identity/expression, ethnicity, race religion, sexual orientation, health, including any disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience crime) must be taken into account.

Information must be offered in an effective way; that is, ensuring that the content effectively reaches the victim, avoiding the use of purely formal resources. Hence, it cannot consist of a merely formal procedure, but must be of a substantive nature in the sense that the victim must understand the content and scope of the information provided.

Despite progress made in recent years and a growing interest of the different operators (police, judges, prosecutors, lawyers, etc.) to make information on the dynamics of criminal procedures more accessible, this is an aspect that needs to be improved. In fact, victims interviewed (in Greece and Spain) consistently express confusion, a lack of understanding and great uncertainty during the process of the criminal proceedings. It is thus necessary to improve the communication techniques and tools used in the different phases of the proceedings.

Most likely, the lack of a fluid communication results – as noted both by the professional interviewed (in Greece, Italy and Spain) and victims (in Greece and Spain) - from an

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<sup>32</sup> Shortcomings of CJS to respond sexual violence, BUTT, D., “We are failing the community of sexual assault victims”, *The Globe and Mail*, 2017. JORDAN, J. “Justice for rape victims? The spirit may sound willing but the flesh remains weak”, in *Crime, victims and policy*, London, Palgrave Macmillan, 2015, pp. 84–106. DOE, J. *The Story of Jane Doe: A book about rape*. Toronto, Vintage Canada. 2004.

insufficient training of several professionals (police, prosecutors, judges, lawyers) involved in the criminal proceedings for sexual violence. Both victims and those professionals interviewed within the framework of the national reports highlight the need for specific training which focuses on the victim's interests which eliminates prejudices associated to this kind of crimes. Furthermore, the management of cases needs to be sped up.

### ***B. Right to be accompanied***

The VRD also provides that unless the course of proceedings would be prejudiced, victims should be allowed to be *accompanied* by a person of their choice throughout the process.

In Spain in practice, a civil servant of reference is assigned to the victim and provides that victim contact information including his/her name and telephone number. In the absence of circumstances of necessity, victims may either be accompanied or on their own, as preferred. The victim's trusted person may not be well accepted by the legal operators in intrafamily crimes, when the victim is a child or has an intellectual or development disability. It is sometimes noted by interviewed police officers that children or young victims prefer to be alone in order to avoid describing the events in front of their parents or relatives. However, in the case of child victims, some professionals establish the presence of the child victim's trusted person as a necessary requisite to carry out the examination. This leads us to the question of whether the right application of the figure of the legal counsel enshrined in article 26.2 of the Spanish Law 4/2015, of 27 April, on the standing of the victims of crime (LEVID)<sup>33</sup>, would enable us to distinguish the cases in which the child victim prefers to be on her own from the cases in which the presence of parents or legal tutor does not satisfy the victim's interests (arts. 8 and 24.1 VRD). On the other hand, some entities (e.g. associations, NGOs, ....) accompany the victim throughout the criminal proceedings, although their services cannot always be guaranteed because sometimes these take longer than the contracts or agreements they have with the Public Administration (they are usually funded through grants and public procurement contracts). As far as the victim's accompaniment during the statement is concerned, all professional groups interviewed in Spain agree on the fact that, although it is provided for in the LEVID,

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<sup>33</sup> Hereinafter, cited according to its Spanish abbreviation LEVID.

in practice the victim is not allowed to make her statement accompanied by the person of her choice, but by a Victim Support Office staff member.

In Italy, prosecutors point out that the victim may be accompanied by his/her lawyer or trusted person, unless that person holds information on the facts or could potentially act as a witness in the case. Moreover, if the victim is especially vulnerable or a child, he/she may be accompanied by a psychologist. If requested or admitted by the judge, the affective support of the persons indicated by the child is foreseen.

In Greece, child victims are usually accompanied by one of the parents or grandparents. The interviewed lawyers report acting differently: one of them meets with the child in presence of the accompanying adult while the other one speaks privately with the child victim. In order to ensure confidentiality, one of the police officers interviews the child privately, while the other police officer and the child psychologist emphasized the need of informing the parents, regardless of the victim's right to privacy. When the alleged perpetrator is one of the parents, the police officer 2 and child psychologist inform the other parent. Furthermore, when the victim is an adolescent, he/she is encouraged and supported by the psychologist to tell his/her parents what happened.

The victims interviewed in Spain assess very negatively the support and accompaniment received throughout the criminal proceedings because it rarely comes from the proceedings' structure and in the end it often comes from the victim's inner circle. The problem is that usually the trusted person accompanying the victim is not familiar with the criminal proceedings and the victim ends up either feeling lost in the system. Although victims demand a professional accompaniment, the Directive establishes that he/she can decide who goes with her. This situation reflects a clear departure from the victims' interests and well-being, especially if we consider that a victim of a sexual offence does not always have the support of his/her closest environment. The absence of this support has a dramatic impact on them. In fact, victims<sup>34</sup> interviewed in Spain who have received little

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<sup>34</sup> The key role of support or its lack, in VIDU, A., VALLS, R., PUIGVERT, L., MELGAR, P., JOANPERE, M., "Second Order of Sexual Harassment - SOSH", *Multidisciplinary Journal of Educational Research*, 7(1), 2017, pp. 1-26. ORCHOWSKI, L. M., UNTIED, A. S., & GIDYCZ, C. A., "Social reactions to disclosure of sexual victimization and adjustment among survivors of sexual assault", *Journal of Interpersonal Violence*, 28, 2013, pp. 2005-2023. AHRENS CE, STANSELL J, JENNINGS A. "To tell or not to tell: the impact of disclosure on sexual assault survivors' recovery", *Violence and Victims*, 2010; 25(5), pp. 631-48. STARZYNSKI, L. L., ULLMAN, S. E., FILIPAS, H. H., & TOWNSEND, S. M., "Correlates of women's sexual assault disclosure to informal and formal support sources", *Violence and Victims*, 20, 2005, pp. 417-432. FISHER, B. S., DAIGLE, L. E., CULLEN, F. T., & TURNER, M. G., "Reporting sexual victimization to the police and others: Results from a national level study of college women", *Criminal Justice and Behaviour*, 30, 2003, pp. 6-38.

or no support either from his/her family circle and/or from the public administration or other institutions admitted having had suicidal thoughts at some point.

***C. Right to receive information: from the first contact with the competent authority and about their case***

The different types of information that must be offered to the victims during the various stages of the proceedings (support services, procedures for making complaints, protection, legal advice, compensation, interpretation and translation, communications, restorative justice, reimbursement of expenses, time and place of the trial, final judgment, reasons for the decisions concerned, whether the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention) is fully detailed in the VRD (arts. 4 and 6).

There seems to be a great discrepancy between the way in which professionals claim to act in the three countries<sup>35</sup> and the first-hand opinion of the interviewed victims (Spanish RETREAT Report). However, we cannot draw any definitive conclusions about the validity of this divergence because it might depend on several variables: sample size, the type of professionals interviewed who are likely to be more engaged, etc.

In Italy, all interviewed professionals assert that the relevant information is offered to the victim (rights, access to compensation, steps to follow, support services, etc.), in Greece, opinions vary according to the type of professional. In particular, police officers hold that in public bodies, a person of reference that offers the victim the relevant information on the proceedings is absent. Thus, whether the victim receives the information or not depends on the good will of the particular police officer; by contrast, lawyers do inform the victims they represent of the rights and services to which they are entitled; mental health professionals do not assume this task because, according to them, offering this information to the victim does not fall within their duties.

In Spain, the professionals interviewed highlight that victims are formally swamped with information sheets on their rights but unfortunately, for various reasons and circumstances, they ignore the content of these rights. On one hand, the person who has

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<sup>35</sup> For more detailed information see respective national RETREAT Reports (Italian, Greek, and Spanish).

just been attacked by a stranger is not in the adequate physical and psychological state to understand the content of this information. On the other hand, in the cases of victims that have been considering the idea of making a complaint for a long time because usually these victims have already approached either directly or indirectly a CJS professional (a lawyer, an acquaintance, an association, a psychologist, etc.). The *amount* and *complexity* of the information given, that is, the technical specialization of the criminal proceedings, is also relevant to this end. As is the speed and haste with which events take place at the beginning of the proceedings, in the belief that time may be lost. Investing more time in offering the victim that information in a calm way and such as other procedures should be considered because that time impacts positively on the victim, making him/her stronger. Finally, the *responsibility to inform* and the *responsibility to control-supervise that the cited information* on rights has been offered also plays an essential role. Despite the above, both the Italian and the Spanish professionals interviewed admit that this step is, in practice, reduced to a mere formality of checking: has the victim been informed? The public officer then answers the question: “yes, we have informed her/him”. Unfortunately, it seems that in the end the victim only effectively received (understand) the information given by the competent authorities when he/she decides to act in a private prosecution because in that case he/she is assisted by a lawyer. In other words the information given is not information received unless there is a professional who cares about it. However, it is very common for the victims not to act in the proceedings as private prosecution as a result of not having being adequately informed of the implications this entails. Sometimes this resource is not used due to lack of means<sup>36</sup>.

In the case of Spain, where it has been possible to collect information from the victims themselves, if the victim is not acting as private prosecution he/she will not be updated on the proceedings or on the accused (e.g. whether he/she is remanded in custody). Generally, this lack of procedural information provokes great insecurity and uncertainty, although legal aid and advice improves considerably the victim’s opinion on this issue. For instance, four out six interviewed victims receive the legal advice from a lawyer from the victim’s support center in Madrid and they all declare to be satisfied with the information and

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<sup>36</sup> SOLETO MUÑOZ, H. y GRANÉ CHÁVEZ, A., estimate that private prosecution amounts to 35% in the Criminal Court and to 63% in the Provincial Courts.; in their view, this may prejudice the victim given that when there is private accusation, the quantity of the penalty is higher., See *La eficacia de la reparación a la víctima en el proceso penal a través de las indemnizaciones*, ob. cit., pp. 91-94.

treatment received. They had received legal advice from the lawyer, in a clear way, during all the phases of their criminal proceedings. This professional and specialized action has favored the understanding of the proceedings and reduced the victims' level of uncertainty. In short, the combined practical experience of the three countries evidence that there are still major shortcomings affecting the so-called "Informational Justice"<sup>37</sup>.

#### ***D. Rights of victims when making a complaint***

The European legislator provides that, when making a complaint, victims have the right to: i) receive written acknowledgement of their formal complaint; and, that victims who do not understand or speak the language of the competent authority shall be enabled to: ii) make the complaint in a language that they understand or by receiving the necessary linguistic assistance; and, if they so request, iii) receive translation, free of charge, of the written acknowledgement of their complaint.

Hence, art. 5 VRD only refers to *strictly formal* aspects regarding the victim's complaint. All three national RE-TREAT reports state that following the complaint, victims usually receive and sign this document.

However, no reference is made in this article to how victims *experience* this initial phase of the proceedings<sup>38</sup>, where significant discrepancies between victims' and police officers' perceptions have been observed<sup>39</sup>.

In Greece, only one of the interviewed victims suffered sexual violence as an adult and reported the crime herself. In this case, she describes her experience as very unpleasant,

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<sup>37</sup> On the violation of the victim's right to be informed in the case of rape committed against a woman with intellectual disability see ECHR, *E.B. v. Romania*, Judgement of the 29 March 2019.

<sup>38</sup> About dissatisfaction of sexual victims at the time of reporting, SPENCER, D., DODGE, A., RICCIARDELLI, R., DALE BALLUCCI, D., "I Think It's Re-Victimizing Victims Almost Every Time: Police Perceptions of Criminal Justice Responses to Sexual Violence", *Critical Criminology*, 26, 2018, pp. 189–209. MAIER, S. L. *Rape, victims, and investigations: Experiences and perceptions of law enforcement officers responding to reported rapes*, New York and London: Routledge, 2014. KOSTER, N.-S. N., KUIJPERS, K. F., KUNST, M. J. J., der LEUN, J. P. V. "Crime victims' perceptions of police behaviour, legitimacy, and cooperation: A review of the literature", *Victims & Offenders*, 11(3), 2016, pp. 392–435. PAGE, A. D., "Judging women and defining crime: Police officers' attitudes toward women and rape", *Sociological Spectrum*, 28(4), 2008, pp. 389–411.

<sup>39</sup> GRUBB, A. & TURNER E., "Attribution of blame in rape cases: a review of the impact of rape myth acceptance gender role conformity and substance use on victim blaming", *Aggression and Violent Behaviour*, 17, 2012, pp. 443–452. PATTERSON, D., "The linkage between secondary victimization by law enforcement and rape case outcomes", *Journal of interpersonal violence*, 26(2), 2011, pp. 328–347. MILLER, A.K., HANDLEY, I.M., MARKMAN, K.D. & MILLER, J.H., "Deconstructing self-blame following sexual assault: the critical roles of cognitive content and process", *Violence against Women*, 16, 2010, pp. 1120–1137. WEISS, K.G. "Too Ashamed to Report: Deconstructing the Shame of Sexual Victimization", *Feminist Criminology*, 5(3), July 2010, pp. 286–310.

since the police officers carried out a long interview and the questions focused on the details of the event and on her relationship with the offender. Later, at the trial, she had to testify in front of the accused, and she felt fear, outrage, and even guilt, as she was treated in a cold and distant way. It should be noted that this case took place more than 20 years ago and it probably does not represent the way in which victims of sexual violence are currently treated in Greece. All interviewed professionals in this country emphasize that some developments in recent years have been aimed at protecting the victim in this type of crime; e.g. the implementation of Victims' Rights Directive, a first step in gender training, etc.; however, the results in practice are still too slow and tiny.

In Spain, the interviewed victims (five out of six) assessed their experience very negatively as they were questioned and, in one case, was even discouraged from making the complaint<sup>40</sup>. This clearly diverges from the police officers' position, which aims to try to protect the victim when he/she makes the complaint.

With regard to the possibility of making the complaint in a language that the victim understands by receiving the necessary linguistic assistance, it should be noted that translation and interpretation services available to victims of sexual offences could be further improved. Professionals lack training on gender issues and use the wrong technical terms when communicating with the victims; in many languages and cultures, translators are usually male and may sometimes distort the story. One of the interviewed victims (Spain) was sexually assaulted while she was in the UK, visiting the country. The victim made a complaint in the cited country and was at all times (in the police office and during the forensic examination) granted linguistic assistance by staff fluent in Spanish. Furthermore, the situation was explained to her in a comprehensible way, step by step. However, she did not receive a written acknowledgement of the formal complaint so, when 24 hours after the event had occurred, she returned to Spain, she had to start the proceedings from the beginning and make a complaint in Spain (her country of origin). In this case, the translation services work well in the UK, but there was a bad transnational

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<sup>40</sup> A judicial body in Spain has expressly referred to this dissuasive role. Following the conviction of a tattoo artist for sexual abuse of three clients, a Spanish Criminal Court qualifies the actions of the police officers which discouraged one of the victims to the point of deciding not to make the complaint and look for other alternatives as inefficient and negligent. The Judge adds that "Any other victim, less aware or less belligerent or who felt guilty for what had happened would have abandoned the proceedings". SJP Valladolid, 41/2020 - ECLI:ES:JP:2020:41.

communication between English and Spanish police and she was severely questioned by the Spanish police officers.

### ***E. Rights of “access” and the “integral support” of the victim support services***

The VRD regulates the need of guaranteeing that victims have access to confidential victim support services (emotional, psychological and legal support), free of charge, during and/or at an appropriate time after criminal proceedings. If and when necessary, family members shall have access to victim support services. Victim support services may be set up as public or non-governmental organizations and may be organized on a professional or voluntary basis. Article 9 VRD underlines the importance of providing the victims with integrated support in the different requested areas in order to prevent secondary and repeat victimization, intimidation and retaliation.

There are victim support services, with a greater or lesser degree of specialization in sexual violence, in all three countries. Victims are informed of their existence so that they can access them. However, some aspects of these services are far<sup>41</sup> from meeting all the needs of a victim of sexual violence in all three countries<sup>42</sup>; furthermore, both in Italy, Greece and Spain significant differences in terms of access to support services and multidisciplinary nature of the support have been found between rural and urban<sup>43</sup>.

It can generally be asserted that services that are more specialized in sexual violence are desirable in all three countries. For instance, in Spain, support for victims of sexual violence is generally channeled through support services for victims of gender-based violence, but these are specifically aimed at violence practiced in the “family-domestic” context and not at the victims of sexual violence outside that space. Added to this is the fact that the waiting lists, especially to access psychological care, are excessive. On the other hand, there is a shortage of professional staff within these services, a fact which compromises the continuity of services. The fact that the victim is usually not assisted by the same specialist

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<sup>41</sup> The need of improvement is a common demand in other EM, see in Belgium PEETERS, L. VANDENBERGHE, A., BAVO HENDRIKS, B., GILLES, CH., ROELENS, K. AND KEYGNAERT, I., “Current care for victims of sexual violence and future sexual assault care centres in Belgium: the perspective of victims”, *BMC International Health and Human Rights*, 2019, pp. 19-21.

<sup>42</sup> For more detailed information see respective national RETREAT Reports (Italian, Greek, and Spanish).

<sup>43</sup> See, LOGAN, T., EVANS, L., STEVENSON, E., & JORDAN, C. E., “Barriers to services for rural and urban survivors of rape”, *Journal of Interpersonal Violence*, 20, 2005, pp. 591–616.



throughout the criminal proceedings represents a major obstacle, according to the interviewed victims. A new bond must be established with each new professional, this not always being easy, and it also implies repeating their stories again, which inevitably results in a certain re-victimization. In the case of psychological assistance, the victims interviewed emphasize that the interval between sessions is sometimes very long, so they do not experience the progress that they expect and need with regard to the damage suffered. Likewise, victims state that it would also be desirable that family members<sup>44</sup> had access to support services given that this would not only help them – often indirect victims of the aggression- but also the victims themselves. Furthermore, in addition to individual assistance, participation in support groups<sup>45</sup>, where victims of sexual violence are able to share their experience in facing the consequences of a sexual aggression, would also contribute to their recovery.

Victim support services often provide legal advice. Victims in Spain generally feel very satisfied with this advice and also claim to feel satisfied with the professionals that offer them psychological assistance, except for the issues that have been indicated (long waiting times before being assisted, change of specialists, etc.).

According to the above, it seems necessary that the three MMSS pay special attention to the victim support services by providing them with more and better economic and human resources so that they can offer the integrated support that both victims of sexual violence, and their close family members need and demand. With regard to human resources, it is important that these professionals do not only grow in number but that they are truly experts in victims of sexual violence. Last but not least, as mentioned by the VRD, it is important to grant victims access to support services even after criminal proceedings, as well as in the cases of non-reported and prescribed offences.

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<sup>44</sup> The VRD endorses the interpretation suggested here of indirect victims, when it establishes: “(i)t is possible that family members of victims are also harmed as a result of the crime (...). Such family members, who are indirect victims of the crime, should therefore also benefit from protection” under this VRD (recital 19). In particular, “(f)amily members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim”.

<sup>45</sup> For more information about victims’ participation and empowerment, see Chapter 2 about best and promising practices.

### 3.2. Participation in criminal proceedings

This section will examine the criminal proceedings in Italy, Greece and Spain, with a special focus on the participation of the victim of sexual violence, and more specifically on the effective fulfilment of the rights and guarantees set out in the VRD (see, arts. 10-17).

#### A. Right to legal aid and to the reimbursement of expenses

The three legal systems refer to the need of eliminating any obstacle hindering the victim's access to legal assistance throughout the criminal proceeding, from the beginning to the end. Furthermore, the importance of guaranteeing legal aid is also stressed.

Nevertheless, national reports present significant variations on this point. While Italy guarantees the right to legal aid<sup>46</sup> of victims of sexual crimes, this is not always the case in Spain.

According to the Italian RE-TREAT Report, victims of sexual violence are always granted access to legal aid, during the proceedings up to the appeal, even if they do not fall within the income categories that usually benefit from this right.

Unlike in Italy, in Spain the victim of sexual violence does not have an automatic right to legal aid because the Spanish legislator only recognizes this right to victims in the following situations: victims under a certain financial threshold and subjects that, regardless of their financial resources, are victims of one of the following crimes: i) human trafficking; or ii) gender violence in the strict sense used by the Spanish legislator that is only applicable to gender violence perpetrated by his/her partner or former partner<sup>47</sup>. If the victim is not in one of the aforementioned situations, he/she is not recognized, a priori, the right to legal aid. This deficit has triggered some criticism. In order to tackle this problem, some Bar Councils have signed agreements with the Autonomous Communities in order to extend their legal aid to the victims of sexual violence<sup>48</sup>, regardless of their financial situation. In this context, both legal operators and scholars demand a Reform of the Free Legal Aid Law

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<sup>46</sup> See, art. 76, par. 4 ter Presidential Italian Decree 115/2002.

<sup>47</sup> See article 2.g) of the Free Legal Aid Law 1/1996 of 10 January “Regardless of the availability of resources to litigate, the right to free legal aid is recognized and shall be immediately provided to victims of gender violence (...) and human trafficking in proceedings that are linked to, derive from or are a consequence of their victim status. The same applies to children and people with intellectual disability or mental disease when they have been victims of abuse or mistreatment”.

<sup>48</sup> See, for instance, the agreement between the Junta de Castilla and Leon and the Castilla and Leon's Bar Council in 2017, or the collaboration agreement between the Institute for Women and Castilla La Mancha's Bar Council in 2018.

so access to legal advice free of charge throughout the entire proceedings is granted to all victims of sexual crimes (whether children or adults). Legal aid plays a crucial role in avoiding or reducing re-victimization. In line with the above, most of the victims in Spain who have benefitted from personalized legal advice Autonomous Community of Madrid's support service have highlighted the high degree of satisfaction with the assistance received. Moreover, this reduces the level of uncertainty, it increases the quantity and accuracy of the information that the victim receives on the development of the proceedings and therefore its preparedness. So consequently a free and qualified legal aid contributes to reduce his/her re-victimization. According to the Greek RE-TREAT Report, the operators interviewed in this country also demanded legal aid for victims of sexual violence in order to overcome financial barriers.

### *C. Right to be heard*

MMSS shall guarantee the victim's right to be heard. The VRD splits this right in two: on one side, this implies ensuring that the victim is heard during the proceedings, regardless of his/her age; when a child victim is to be heard, due account shall be taken of the child's age and maturity. On the other side, it comprises the victim's right to provide evidence. These rights will be regulated in the corresponding procedural laws, following the proceedings provided for by each national law.

#### *C.1. During the pre-trial or investigative phase*

On this point, the police officers interviewed in the three countries highlight the importance of the listening capacity of the officer interviewing the victim, as he/she is often the first person to be officially informed of the events. An active listening attitude will enable the victim to feel heard, listened and he/she will probably be able to provide more easily the relevant information.

In particular, according to the interviewed police officers, the questions posed to victims while they are making the complaint are mainly aimed at getting the victim to describe the event, without establishing beforehand the duration of the interview. The rhythm and dynamics of the complaint may be adapted to the victim's specific needs, avoiding leading questions at all times. All this aimed at making the victim feel heard and listened to.

In Italy, the victim's statement is sometimes recorded in order to avoid repeating the questions and to make the victim feel listened to because in this way, not having to take notes, the operator is able to show more empathy, and, should it be necessary, comfort the victim.

Interviews conducted show a striking divergence between the interviewed police officers' perspective and that of the victims (Spain), the majority of whom felt questioned when making their complaints. Therefore victims felt quite often frustrated by the treatment received from the police and investigative judge (even women sometimes). Moreover, with regard to the type of questions they were asked, they underline that they were numerous, direct and specific and that they were often prevented from expressing the details in their own words and at their pace. However, the sample<sup>49</sup> as limited so we cannot reach definitive conclusion about this divergence because it could be falsifiable. In these type of studies participants are often motivated to take part because they have an experience at the extreme end of the scale. So, professionals are likely to be very 'good' and thoughtful about their work and victims perhaps have had a difficult time and want to share.

During the pre-trial or investigative phase, the judge listens to the victim's statement. In doing so, focus on the victim's personal features is avoided and the questions formulated are exclusively aimed at checking the facts. In this phase, an effort is made to make the victim feel listened to by the judge.

Significant discrepancies between the judicial operators and the victims' experiences have been found with regard to this aspect. Four of the victims felt very frustrated and disappointed by the treatment received from the investigative judge who, in their view, rather than listening actively, questioned the victims. Hence, they did not feel listened to and struggled to understand the situation especially given that the judge was also a woman.

### *C.2. During the trial*

The judiciary emphasizes the need to be very careful about the treatment given to victims during the trial when they have to testify, so that they can express themselves and be heard.

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<sup>49</sup> See the Introduction of this Report, in particular Methodology.

In the case of the victims interviewed in Spain, the oral hearing was only held in one of the cases, and the victim's experience was positive, she felt heard by all the operators present there. She felt only felt interrogated to a certain extent by the direct questions posed by the defence lawyer, although she interpreted this as part of his role at trial. This is an important point because it shows that an understanding of the roles of the different actors can greatly improve the victim's experience.

### 3.3. General protection and specific protection needs

Chapters 4 and 5 of the VRD contain a broad set of rights and measures that seek to guarantee the protection of victims, which require keeping them *safe*, *avoiding contact* with their offender, protecting their *privacy* and respecting their *dignity*. In addition, victims' *special protection needs* and *functional diversity* shall also be taken into account.

This unique protection spectrum/range of protection requires firstly the victim's *individual assessment* in order to establish whether they are *particularly vulnerable* to secondary and repeat victimization, intimidation or retaliation. Among other parameters, this assessment will consider the victim's personal characteristics and the type, nature and circumstances of the crime. Despite the outcome of the analysis of the cited elements, the VRD establishes a list of victims to whom special attention shall be paid, explicitly citing, among them the victims of sexual violence. Moreover, the European legislator recalls that in the context of this individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. Notwithstanding the specific characteristics of the given case, victims of sexual violence usually find themselves in these circumstances<sup>50</sup>.

Hence, ultimately, victims of sexual violence would not only fall within the general protection framework provided for in the VRD (arts. 18-21), but also to the special protection framework (arts. 23-25). Guaranteeing the protection of the victims implies

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<sup>50</sup> See Chapter 2, section 1 of this report containing an overview of the sexual crimes in the three countries.

taking into account numerous factors throughout the criminal proceedings. Those which have emerged during the interviews to professionals and victims will be examined below.

#### ***A. Right to the minimum number of interviews and medical examinations***

Having to repeat the facts and relive the ordeal are amongst the factors that most seriously violates the victim's rights, contributing to re-victimization. Women interviewed (in Greece and Spain) consistently highlight the devastating effect of several steps and attitudes. For example, narrating the events over and over again; trying to answer a large number of specific questions for which they do not always have an answer; and feeling questioned when they do not meet the demands because they do not remember a detail or they are confused. The negative effect of these factors is also stressed by professionals.

Often, the repeated statements respond to a lack of cooperation and coordination among operators and/or institutions<sup>51</sup>. Victims interviewed underline this aspect and demand more and better *inter* and *intra*-professional communication because with each step of the proceedings the victim is requested to repeat his/her story. Even when the change in shift only affects one of the professionals interviewing the victim in a given entity where the victim has already narrated the event, she/he is asked to repeat it.

In order to eliminate these harmful multiple-statements a fluid inter-professional inter-authority communication is required. It is also advisable to record the victim's statement at the beginning of the proceedings and that the complaint is made before a professional with an expertise in sexual crimes. Furthermore, if it were possible for the victim to make the statement with all the parties present (i.e. through a closed-circuit system), the accused's procedural guarantees would also be granted. That is, applying a *pre-constituted evidence* procedure adapted to adult victims, wherever the applicable legislation allows so. Were this not possible, the number of statements should be reduced to those strictly necessary and they should be taken as soon as possible in order to ensure the information does not become lost or deteriorated, which would negatively influence the case. This would also avoid compromising the quality of the statement as a result of forgetfulness or involuntary distortions or (unintentional) leads that derive from the formulated questions

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<sup>51</sup> See, Chapter 3 section 'Coordination and cooperation' in next chapter about 'Best and promising practices'.

and from the victim's effort not to forget the details of the event, in case this must be repeated.

Professionals from different fields (police, forensic, healthcare, judiciary) describe the scarcity of widely applicable standardized protocols within the national territory as a deficiency. For example, in Italy, the *Codice Rosa* is a standardized protocol to speed up the taking of biological samples and the victim's access to psychological and gynecological assistance in cases of sexual violence. In Spain, the UFAM assumes the function of accelerating all of these proceedings.

However, from victims interviewed in Spain, it can be observed that there is variation across different procedures, despite being all victims of sexual violence. This seems to depend on the police station where the complaint is made, even within the same region.

It is therefore necessary to agree on standardized protocols and guarantee their widespread application so that all victims are equally granted their right to an integrated protection.

#### ***B. Right to report to a person of the same sex***

Within its protection framework, the VRD expressly provides that all *interviews<sup>52</sup> with victims of sexual violence will be conducted by a person of the same sex as the victim, if the victim so wishes*. However, this protection provision is not applicable under the following circumstances: i) when the interview is conducted by a prosecutor or a judge; ii) if the victim does not express this wish; iii) *when the course of the criminal proceedings may be prejudiced*. In practice, the last two limits may be problematic because an excessively wide or flexible interpretation may, de facto, turn the exception into a general rule, i.e. when the victim's expressed wish is not respected because the proceedings may be prejudiced; or that the victim does not express this wish simply because she/has not been informed of a possibility that she/he is not expected to know beforehand.

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<sup>52</sup> Though not expressly stated, this provision seems to be addressed to all of the statements received by the police during the investigation of a sexual crime. The article refers to "all" the statements, which seem to be in contradiction with the provision to keep the number of interviews to a minimum.

The three reports drafted within the framework of the RE-TREAT<sup>53</sup> project a mixed picture of the effective protection of this right, as well as very heterogeneous opinions. Among the police officers (in Italy and Spain) and among the interviewed victims (Spain) discrepancies on the need of making the complaint before a woman have been observed; victims and police officers do agree on the fact that the most important thing is the active listening of the professional interviewing them, so that the victims feel listened to, respected and consequently, protected.

In practice, in Greece and Italy, a victim of sexual violence cannot exercise the right to have his/her interview conducted by a police officer of the same sex as the victim. In Italy, most interviews are conducted by two different police officers. In Spain, the victim's right to have her interview conducted by a person of his/her same sex is granted in practice.

Now, it is not only a matter of how effective this right is in practice. The *need* of asking the victim about this issue may be inferred from the VRD since he/she will hardly be able to express their position if they are not informed. According to the reports, the victim does not seem to receive information on this right in Italy and Greece; some incidents have also been observed in Spain when some interviewed police officers assert that “almost no victim has expressly asked to make her statement with a woman. However, *when they are expressly consulted on their preferences, they almost always declare to prefer a woman*” (italics are ours).

Police officers both in Italy and Spain downplay the role that the police officer having the same sex as the victim may play on the better treatment of the victim<sup>54</sup>; in their opinion, an adequate treatment of the victim during her interview depends on the welcoming, listening, empathy and support skills, which do not depend on the interviewer's gender but on his/her personal capabilities and especially on training and specialization. There was no unanimity with respect gender preference of the police officer among the victims interviewed in Spain. While some recalled having had the opportunity of choosing between a man or a woman, others referred to active listening, responsiveness and the ability to

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<sup>53</sup> For more detailed information see respective national RE-TREAT Reports (Italy, Greece, and Spain).

<sup>54</sup> Interestingly, police officers interviewed in Italy assume that in the cases of young or child victims, the interview will necessarily be conducted by a woman.



adapt to the different circumstances as the most important characteristics of the person interviewing the victim.

The difference between the opinions of professionals about the right to be medical examined or to be heard by a police officer of the same sex as the victim. While no one questions that medical examination of victims of sexual violence is to be carried out by a person of the same sex as the victim, the same question provokes a debate when it comes to police interviewing of victims of sexual violence. Perhaps the clarity of the VRD should be brought to attention here. The statement of a victim of sexual violence refers to a traumatic experience which requires verbalizing direct and serious aggressions against the person's most intimate sphere. Hence, *a priori*, it seems prudent and appropriate to grant victims the right to be interviewed by a person of his/her same sex<sup>55</sup>.

### ***C. Right to trained professionals***

The VRD provides that victims with special protection need, such as victims of sexual violence, will be interviewed by or through professionals trained for that purpose.

The European legislator provides two possibilities, both requiring staff that has been specifically trained on sexual violence. On one hand, the interview may be *conducted directly by professionals trained for that purpose* (police officers with an expertise on sexual violence); on the other hand, the interview may be conducted by untrained police officers with the *support* of other trained colleagues or other trained professionals.

The European Union Handbook of best police practices on gender violence<sup>56</sup> calls upon MMSS to ensure that all police officers receive *complete and sufficient training in the subject by setting up and implementing specific training curricula providing the officers with legal expertise and setting standards of professional conduct and procedures for police intervention*.

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<sup>55</sup> In relation to the relevance of female police officers and interpreters, some of the conclusions of the European Project (JUST/2014/RDAP/AG/HARM/) "EU FEM Roadmap forced/early marriage" should be highlighted, particularly, its "Forced/Early Marriage (FEM) Roadmap for Frontline Professionals", 2017, [http://femroadmap.eu/FEM\\_roadmap\\_ES.pdf](http://femroadmap.eu/FEM_roadmap_ES.pdf)

<sup>56</sup> See European Union Handbook of best police practices on tackling violence against women, available at <https://data.consilium.europa.eu/doc/document/ST%207488%202010%20REV%202/EN/pdf>

The three national RE-TREAT Reports<sup>57</sup> suggest that, in general, police officer training needs improvement in this regard. Security forces try to overcome this deficit with good will and responsiveness, but unfortunately this cannot replace an adequate training, nor does it avoid episodes of re-victimization. In fact, training and expertise is one of the common demands among most of the interviewees in the three Mediterranean countries, especially with respect to police forces, lawyers, victims (in Spain) and victim assistance services.

Despite the above, the lack of training varies significantly from one country to another. In any case, in the recent years the three MMSS have experienced some developments in this context, although the lack of human resources and the work load is consistently highlighted as the cause of not being able to assist victims adequately<sup>58</sup>.

Along these lines, police officers interviewed in Greece demand the establishment of specific units for sexual crimes within the police stations. All professionals criticized the lack of expert training among police officers, but they also revealed certain hopes in the new Units for Domestic Violence, which will be in charge, among other things, of improving police training. However, the Greek RE-TREAT report identifies insufficient human resources and training deficiencies affecting other support professionals (i.e. mental health) to whom victims make complaints.

Police training both in Spain and Italy seems to be a little better but significant differences have been observed in both countries depending on the territory. In Italy, not all members of Law Enforcement Agencies have specific training on victims of sexual violence. Usually, police officers who do not have enough training are assisted by a more expert colleague when conducting the interview with the victim. In those police stations with units specialized in *gender violence*<sup>59</sup>, police officers attached to them are usually trained. However, in smaller municipalities, there is no trained staff available. Even in the cases in which there is a trained police officer, a specialized service for victims of sexual violence at any time of the day cannot be granted. In any case, a considerable improvement of the training activities has taken place in recent years.

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<sup>57</sup> For more detailed information see respective national RETREAT Reports (Italian, Greek, and Spanish).

<sup>58</sup> MONROE, L. M., KINNEY, L. M., WEIST, M. D., DAFEAMEKPOR, D. S., DANTZLER, J., & REYNOLDS, M. W., "The experience of sexual assault: Findings from a state-wide victim needs assessment", *Journal of Interpersonal Violence*, 20, 2005, pp. 767-777.

<sup>59</sup> Understood in a broad sense as specialisation in any sexual offense against a woman.

In Spain, national Law Enforcement Agencies are organized in special units. On one hand, the National Police Forces have *Family and Woman Assistance Units* (172) spread throughout Spain and a central unit in Madrid. On the other side, the Guardia Civil relies on *Women-Child Teams*, which are responsible for investigating crimes against sexual freedoms, among others. This Agency acts in all of the country through Guardia Civil Judicial Police's *Specialized Care Points*. Victims interviewed in Spain after having resorted to these Units declare that they feel more satisfied with the police officer's treatment than those who did not go to these special units. However, the training of police officers attached to these units is partial and insufficient. It is *partial* because training is not even mandatory for bodies specialized in women and it is *insufficient* in terms of content, extension and format. Most of the times, it does not include training on sexual victimization, communication techniques and skills to approach this type of victim<sup>60</sup>. It usually lasts between 5 days and 2 months and in many cases the training is either entirely online or blended. Fully on-site training is very rare.

The interviewed professionals (police officers, judges, magistrates, lawyers, mental health professionals, etc.) demand a higher degree of expertise because, despite the fact that some degree of training exists in all three countries, it is theoretical, brief and it is not equally available to all professionals. In the same vein, at some point of the proceedings all of the interviewed victims have had to face-to-face contact with professionals who have not provided them with adequate assistance because they lacked the appropriate training. It should be noted that currently, a higher expertise does not depend on public funding but relies mostly on the professional's personal decision to enroll in master degrees, PhD studies, long-term courses, etc.

In all three countries, there are some regions and police stations that have units specialized in/or orientated towards victims of sexual violence, but these units are not currently implemented in the whole national territory. This lead to an unfair treatment of the victims, depending on where the complaint is made given that not all specialized services and staff will be available. In order to guarantee that all victims of sexual violence receive equal specialized treatment it is of the utmost importance to standardize the services available

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<sup>60</sup> RE-TREAT project will focus on these issues during 'training' work package.

to these victims in the territory of each country, regardless of the place where the complaint is made.

#### *D. Right to an adequate and/or adapted environment*

The European legislator provides that premises designed or adapted for the purpose of interviewing the victim should be available to victims with specific protection needs during criminal proceedings. The VRD expressly uses the alternative conjunction “or”, and according to the wording of the provision, it seems to be thinking of infrastructures that have been designed for this purpose or that, alternatively, have been adapted to this end.

With regard to the judicial bodies, the VRD also requires courtrooms to adopt architectural or design measures that ensure the protection of victims with specific protection needs (i.e. victims of sexual violence) in order to avoid visual contact between victims and offenders and/or to enable the victim to be heard in the courtroom without being present.

The DG Justice Guidance document<sup>61</sup> related to the transposition and implementation of the VRD suggests Member States to introduce the aforementioned measures, ensuring its ordinary application within the criminal proceedings and during their operators’ work routines. This purpose requires, among other things, i) adapting and modernizing the facilities; ensure that all professionals working with victims with special protection needs receive appropriate training on the impact of these crimes on the victims, on strategies to identify risks of re-victimization and strategies to limit and overcome its impact.

##### *D.1. Police stations and hospitals*

In broad terms, police stations are not adequately prepared to receive victims of sexual violence. Police facilities are not welcoming and do not include spaces specifically prepared to assist the victims. Often the complaint is made in an open office, together with other people who are issuing complaints and where witnesses, police officers and administrative staff keep coming in and out, with a high level of noise, etc. In addition to this, the police officer conducting the interview might not even be specialized in sexual violence.

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<sup>61</sup> DG Justice Guidance document related to the transposition and implementation of Directive 2012/29/EU. Ref. Ares(2013)3763804 - 19/12/2013.

Equally, when victims arrive to hospitals and health care centers to request a physical examination, private rooms where the victim can present his/her situation are not available, a fact which compromises seriously the victim's privacy and dignity. In addition, this reporting situation might deter women from coming forward.

#### *D.2. Judicial organs*

The VRD also foresees that during court proceedings measures to: a) avoid visual contact<sup>62</sup> between victims and offenders; b) ensure that the victim may be heard in the courtroom without being present, shall be available for victims with specific protection needs.

Significant discrepancies have been observed among the national RE-TREAT<sup>63</sup> Reports with respect to measures to avoid visual contact between victims and offenders, to ensure that the victims may be heard without being in the courtroom and to allow hearings to take place without the presence of the public. In all three countries, there is an important gap between the law and the practical reality. In most cases, this situation, which may be associated to a lack of resources and insufficient training, proves ineffective to protect the victims of sexual crimes with specific protection needs. In the following section each one of them will be examined in depth.

The three Mediterranean countries have measures to avoid visual contact between victims and offenders, to ensure that the victims may be heard without being in the courtroom and to allow hearings to take place without the presence of the public. While these measures are generally applied to child victims, with some differences, their application to adult victims of sexual violence is still rare.

The situation in practice is very different. Spain and Italy seem to be at a similar better level than Greece. However, a significant *ad intra* territorial disparity has been observed also in Italy and Spain which implies that from a technological and design perspective, most infrastructures are either outdated or obsolete. Measures to avoid visual contact between victims and offenders during the court proceedings are generally applied in both countries (Italy and Spain). Most victims of sexual violence have to testify as witnesses during the oral hearing in the courtroom. However, in both countries they will be heard behind closed doors adopting simple physical protection measures rather than resorting to technological

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<sup>62</sup> Through any means, including technology, and even during his/her cross examination at the trial.

<sup>63</sup> For more detailed information see respective national RETREAT Reports (Italy, Greece, and Spain).

solutions such as a videoconference from another room. In other words, pre-constituted evidence is very rarely used in the case of adult victims in the three countries (Greece, Italy and Spain). Adult victims of sexual violence usually testify during the oral hearing in the same courtroom as the accused, behind a separating screen that avoids visual contact with the accused. Magistrates interviewed in Spain argued that the principle of immediacy requires the victim's statement be in person instead of through telematic means. Occasionally, some judges adopt special measures in order to grant the victim an adequate treatment such as allowing the statement to be made seated in front of a table to generate a greater sense of protection.

Despite the above, only a few judicial bodies in Italy and Spain have adequate infrastructures and sufficient technology to grant the measures provided for in the VRD. This is especially true with regard to the measures to avoid visual contact between the victim and the accused by enabling the victim to make her statement without being present in the courtroom, through a videoconference from another adjacent room. Their number is still small in both countries, which means that their use, except for exceptional cases, is limited to child victims (and not all of them). In Rome, there is a small room known as "Sala Aurora", connected to the courtrooms where child and vulnerable victims can make their statement. In Spain, big cities such as Madrid, Barcelona, Malaga, etc. have more appropriate and technologically advanced facilities and investment is being made to extend them throughout the Spanish national territory, at a very slow pace. Once they are more widespread, it is advisable to assess their performance in practice.

Greece still seems very far away from the Italian or the Spanish reality in terms of the existence and effectiveness of the measures avoiding visual contact between the victim and the offender, infrastructure and technologies that enable the victim to make his/her statement outside the courtroom, etc. Despite the limitations, a joint and integrated reading of the interviews to victims and professionals in Greece unfortunately suggests that these measures are not only inexistent or useless, but that on many occasions victims testify in the oral hearing in front of the accused with no physical protection whatsoever, without even benefitting from a seating position that avoids a physical confrontation. The situation is different when it comes to child victims. In this case, just like Italy and Spain,

Greece resorts to the pre-constituted evidence, which can even be practiced in the office of the child psychologist in the presence of the competent operator.

## ***E. Protection of the victim's dignity and privacy***

### *E.1. Right to avoid unnecessary questioning concerning the victim's private life*

The VRD also states that measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence under investigation shall be available to victims with specific protection needs<sup>64</sup>.

The three national RE-TREAT<sup>65</sup> Reports reflect a very similar situation in this regard. A positive evolution has been observed in the three countries. Unfortunately the victim, both in the distant and recent past, has had to face an array of questions regarding her/his private life and other issues (i.e. the clothes he/she was wearing when the assault took place, private life, etc.). This unnecessarily blamed her for the offence. Currently the questions seem to be, little by little, more circumscribed to the key elements of the criminal offence. To this effect, the national legislator in all three countries has introduced some amendments: see, art. 472 of the Italian Criminal Procedural Code or art. 709 of the Spanish Rules of Criminal Procedure.

This progress does not avoid this kind of questions to be still formulated in practice. In fact, the three Reports present exceptional examples in which this guarantee is not directly or indirectly respected. For example, in Greece the field study on the Supreme Court's case-law identifies a judgement in which the victim had been blamed due to her lifestyle. In Spain, in the case of a group sexual assault on a young woman which had a wide media coverage, the defence lawyer presented a private detective report on the victim's private life after the aggression containing pictures, private communications and statements such as "the victim smokes, parties and drinks coffee with her friends", which was admitted by the court.

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<sup>64</sup> It is striking that the VRD limits this measure to victims with special protection needs instead of applying it to all victims. Neither is the handbook on good practices for the implementation of the VRD inclined towards a widespread application of this measure. However, it does pronounce itself in favour of a widespread implementation of two other measures: ensuring that the statement is made in premises designed or adapted for that purpose and that it is carried out by or through professionals trained for that purpose.

<sup>65</sup> For more detailed information see respective national RETREAT Reports (Italian, Greek, and Spanish).

This problem depends, both on the adequate training of the professionals responsible for “asking” the questions in each of the phases of the proceedings and on the professionals in charge of “controlling” the interview. Despite the problems that may arise during the investigative or pre-trial phase with regard to the victim’s statement (questions from the police, from the Prosecutor’s Office, etc.), during the oral hearing, the questions are mainly posed by the parties (mainly the Prosecutor’s Office and the defence counsel), and the debate is led by the judge or judges. The way in which the questioning and control actions are carried out depends on personal abilities but professionals generally consider the trial to take place adequately. However, this is not always the case because although the procedural parties are fully aware of the limits to the questions presented to the victim, these parties sometimes voluntarily decide to exceed them. An example of the above can be found among lawyers. From all of the parties involved in the oral hearing, the different operators (judges, lawyers, prosecutors) interviewed in the three countries<sup>66</sup> identify the defence lawyer as the one usually responsible for this kind of inappropriate questions. According to the interviews carried out in Spain, when making their statement, victims unfortunately tend to assume that this is the role they are supposed to play in the accused’s defence proceeding. Lawyers generally seem to resort to this kind of self-justification.

The judge is responsible for controlling the questions but, as explained in the Italian RE-TREAT Report, the problem is sometimes previous. That is, the Judge controls the question’s admissibility but, from a victim perspective, once the question is presented the damage is inflicted, regardless of whether he/she is required to answer the question; in fact, one of the lawyers interviewed in Italy even suggested the abusive use of this mechanism, curiously associated to an effective defence model, specialized in this type of crimes. In particular, he/she asserts that “a good defence lawyer, with a specialized training in this kind of crimes, knows that these questions bring the victim down”.

The Spanish RE-TREAT Report highlights that the Prosecutor’s Office may and should play an important role in requesting the inadmissibility of rude, useless or disrespectful questions or, in case that they are admitted, that their purpose is explained by the party formulating it (this mechanism may prove that the only purpose behind the question is to delve into wrong stereotypes which imply blaming the victim for the offence).

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<sup>66</sup> For more detailed information see respective national RETREAT Reports (Italian, Greek, and Spanish).



The members of the judiciary interviewed in Italy and Spain make a very positive self-assessment of their control of questions during the oral hearing; in Spain, according to the judiciary, control during the oral hearing is stricter than in the pre-trial phase. In this sense, some of the victims interviewed (in Spain) admitted to have felt unprotected and interrogated when issuing their statement during the pre-trial or investigative phase. Conversely, the only victim that was heard during the oral hearing affirmed to have felt protected, safe and to have seen her dignity respected.

When other CJS professionals are asked about the control of questions during the oral hearing, the opinion is not as unanimously positive as in the judiciary. Accordingly, a part of the Prosecutor's Office (in Spain), of the lawyers (in Italy and Spain) and of victims' associations (in Italy and Spain) hold that sometimes the judge or the court react with flexibility when faced with dubious questions posed by the defence lawyer, in order to avoid the accused claiming a violation of his defence rights with the consequent annulment of the judgment on appeal.

Together with the control of the questions carried out by the judge or the tribunal during the oral hearing, prevention before the hearing might be considered as a good practice, i.e. in a recent case of group sexual assault of a child victim in Spain, the Provincial Court of Burgos issued an order inviting the parties to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence, unless the Judge or the Court exceptionally considers that these (questions) must be answered in order to guarantee an adequate assessment of the facts or the credibility of the victim's statement.

### *E.2. The victim's right to privacy*

The VRD also underlines the importance of protecting the privacy of the victim. Hence, national legislation should enable the competent authorities to adopt appropriate measures during the criminal proceedings to protect the victim's privacy, personal characteristics and image. In fact, it also provides that, in order to protect the privacy, personal integrity and personal data of victims, Member States shall, with respect for freedom of expression and information and freedom and pluralism of the media<sup>67</sup>, encourage the media to take self-regulatory measures.

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<sup>67</sup> Recommendations (2006)8, of the Council of Europe on assistance to crime victims, 14 June 2006.

In general, the three Member States have tackled these issues in recent years. However, in practice, victims of sexual violence still suffer serious attacks on their privacy. In Greece, according to some of the interviewed operators, it is not uncommon for the names of the victims to appear in the media. In general, in Spain, the protection of data from judicial decisions is not generally a problem. However, this did occur in the so-called “La Manada” case in Pamplona, triggering an internal investigation of the General Council of the Judiciary (CGPJ). In its report, the CGPJ’s permanent commission arrived to the conclusion that the leakage was caused, among other things, by: urgency in communicating the sentence; lack of technical means to facilitate data dissociation; and absence of additional security measures preventing access to the full content of the decision<sup>68</sup>. The Spanish Agency for Data Protection<sup>69</sup> fined the responsible corporation with 50.000€ for publishing the victim’s personal data.

Along this constant path of improving the protection of the victim's privacy, the guide to good practices in the implementation of the Directive suggested the MMSS to pay special attention to the victim’s information collected in the case file, to ensure that only victim information that is relevant for the case is disclosed to the accused and to the adoption of guidelines to guide professionals<sup>70</sup> in close contact with the victim, the crime scene or the case file in their interaction with the media. Also General Data Protection Regulation 2016/679 of 27 April 2016 (GDPR) states that only relevant info should be collected and stored (see, data and storage limitation principles, art. 5 GDPR), so this is also relevant and strengthens the victim’s protection on some levels.

#### ***F. Victims’ rights and the tempos of the proceedings: delay and duration***

Time is another variable that negatively affects the protection, safety and dignity of the victim, and leads to unavoidable re-victimization. Unfortunately, in all three countries, criminal proceedings can last for years, and during that time victims are not always provided with the support and information that they need to avoid feeling a high degree of uncertainty and defenselessness.

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<sup>68</sup> Report Spanish General Council of the Judiciary, 11 November 2018.

<sup>69</sup> Spanish Data Protection Authority, Proceeding PS/00139/2019.

<sup>70</sup> Police officers, court medical experts, emergency medical staff, etc.

Considering the various factors that threaten one or more of the elements included under the *protection of the victim* umbrella (safety, dignity and non-confrontation), the need to adopt certain measures to guarantee that protection seems clear:

- Reduce the length of criminal proceedings, which necessarily requires investing in qualified human resources and in training the different operators involved in cases of sexual violence (police officers, judges, magistrates, lawyers, prosecutors, doctors, psychologists, social workers, etc.).
- Set up specialized units where the different aspects present in crimes of sexual violence are tackled in a multidisciplinary and integrated manner: legal (police, judicial and forensic), medical, psychological and assistance in the different areas in which victims require counselling (i.e. financial aid, bureaucratic management, etc.).
- Draft standardized protocols that are applied at country level.
- Guarantee the anonymity of the victims.
- Provide the adequate material means to guarantee the victim's privacy.
- Prioritize investigations for sexual crimes, especially in the case of more vulnerable victims (young and child victims, people with functional diversity, migrants, etc.).
- Regulation of the procedural treatment of sexual crimes analogously to that of gender-based violence between partners or ex-partners: arrest and bringing to justice, specialized police and prosecutorial jurisdiction, etc.

### **3.4. Compensation from the offender or compensation from the State**

#### **A. General aspects**

The VRD establishes the victim's right to a decision on compensation from the offender in the course of criminal proceedings (art. 16). This is an important provision both for its content and form.

With regard to the substance, and as far as victims of sexual crimes are concerned, the European legislator affirms that, generally, during the course of the criminal proceedings for the cited offences, victims are entitled to obtain a decision on compensation by the

offender, unless national legislation provides for that decision to be made in other legal proceedings.

However, the *terms* used by the legislator should also be highlighted; it is not only a question of rights recognition but of the MMSS obligations to “guarantee” and “promote”. According to the wording of the VRD, MMSS are *responsible* for ensuring that their legislations *guarantee* the victim’s right to obtain a decision on compensation in the course of criminal proceedings, except where national law provides for that decision to be made in other legal proceedings. Furthermore, the European legislator suggests, more or less explicitly, an active policy for MMSS by indicating that they will “promote measures” to encourage offenders to provide “adequate” compensation to victims.

According to the national RE-TREAT Reports, the practical reality of victim compensation for sexual crimes in the three countries seems far from the standard set by the European legislator<sup>71</sup>.

In the three MMSS, victims of sexual violence may request compensation by the offender. However, while in Spain and Italy victims of sexual violence may obtain this compensation in the course of the criminal proceedings, in Greece access to compensation, in practice, requires resorting to an autonomous civil proceeding given the fact that the offender has been convicted in the course of criminal proceedings. It follows from the above that the Italian and Spanish procedural structures for obtaining compensation in sexual crimes are better adjusted to the model conceived by the European legislator than the Greek one. It should be recalled that DG Justice Guidance related to the VRD explicitly invites MMSS to develop formulas<sup>72</sup> to apply the adhesion procedure in criminal proceedings for compensation matters, instead of referring the compensation claim to civil proceedings.

Nevertheless, significant differences have been observed between Italy and Spain with regard to the possibility of filing a civil complaint as part of the criminal trial. In Italy, the victim may only file the civil complaint as a civil party, while in Spain, the criminal<sup>73</sup> and civil actions may be filed both by the victim and by the Prosecutor’s Office. The uniqueness of

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<sup>71</sup> A common problem in other EEMM, see FAIRCOM, Reports. *Fair and Appropriate? Compensation of Victims of Sexual Violence in EU Member States: Greece, Italy, Latvia, the Netherlands and Spain*. Part I. Part I: A survey of State and Offender Compensation. Part. II. State and Offender Compensation: Survey, Good Practices and Recommendations, 2020.

<sup>72</sup> Footnote 39, § 56 of the DG Justice Guidance, 19<sup>th</sup> December 2013 related to the transposition and implementation of the VRD.

<sup>73</sup> The victim may act as private and autonomous prosecution accusation, not subordinated to the Prosecutor’s Office.

the Spanish criminal proceeding with regard to the civil action relies on the fact that it will be generally exercised by the Prosecutor's Office, together with the criminal action unless i) the victim has renounced to the civil action; or ii) has decided to exercise it later in a civil proceeding.

Having said this, according to the interviews, the *adequate compensation* of victims of sexual crimes does not appear to be *effective*. Surveys and interviews conducted within the RETREAT project framework reveal a very negative opinion on this point. In Spain, 61 professionals<sup>74</sup> involved in the criminal justice system in this scope revealed an unsatisfactory opinion of 2.29 on the Likert scale of 5 points<sup>75</sup> when asked about compensation of victims of sexual crimes. Important variations can be observed in this result when this information is disaggregated on the basis of the interviewee's affiliation. Interestingly, lawyers and victims' associations have a worse opinion (1.8 on the Likert scale) on the compensation of victims than police officers, judges, the Prosecutor's Office (2.59 on the Likert scale) or doctors that assist the victim of a sexual crime in the initial stage (2.89 on the Likert scale). In the absence of a broader research study, a possible reading of the variations among the opinions may be that the negative perception of the compensation of the victim is intensified among professionals (lawyers, assistance services and associations) which have a closer and more regular contact with the victim, as opposed to those who have a more distant (judges or prosecutors) and occasional contact which is less connected to the final outcome (police officers and doctors). In Greece, the interviewed operators were also critical of compensation for victims of sexual violence, ranging from completely unsatisfied to slightly satisfied. The reason seems that is not implemented sufficiently in Greece.

There are many and varied problems<sup>76</sup> underlying compensation of victims of sexual violence. Some of the *general* problems, are closely linked to the factors<sup>77</sup> that define this type of crimes (for instance, unreported crime figures, low conviction rates, etc.). There are

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<sup>74</sup> Vid. Judiciary, Prosecutors, Lawyers, Polices forces, Health Staff, Victims' services and victims' associations.

<sup>75</sup> The survey among professionals used the Likert scale (from 1 to 5 points) with these options: 1 - Very unsatisfactory; 2 – Unsatisfactory; 3 - Not very satisfactory, 4 – Satisfactory; and 5 - Very satisfactory. There was also, a last one for 'no answer/no opinion'.

<sup>76</sup> For more information see, the Report 'Strengthening victims' rights: from compensation to reparation' by Joëlle Milquet, March 2019, *FRA Reports on Justice for victims of violent crime*, April 2019. VOCIARE synthesis Report by Victim Support Europe, June 2019.

<sup>77</sup> See Chapter 2, section 2 of this Report, which illustrates the data on the state of art in the three countries.

other more specific circumstances, related to the procedural particularities of each MS (i.e. in Greece, where victims must resort to a specific civil procedure).

### ***B. Compensation from the offender***

Leaving aside the question of the channels available to the victim to obtain compensation from the offender, either in criminal proceedings or in a separate optional or mandatory civil action, compensation of the victim from the offender raises other problems. On one side, the question of the *sum*, or more specifically, the parameters and formulas used to establish it, must be highlighted. On the other side, attention must be paid to the obstacles to *effectively collect* the established compensation.

There is no official data on the amount and effective collection of the compensation in neither of the three countries. However, in the last decade, within the scope of different projects, field research showing very interesting data on this issue has been conducted in Spain. No representative studies on this issue have been identified in Italy and Greece<sup>78</sup>.

The field research conducted in Spain in the scope of the RETREAT<sup>79</sup> project on a sample of 2,265 decisions (years 2014-2018) on sexual offences led to the following results: on one side, judicial decisions award compensation to victims of sexual crimes in more cases and for a slightly higher amount when the victim is a child. Still, the figures are fairly similar. While compensation to child victims of sexual crimes is granted in 70% of the cases for an average sum of 16,507 euros, when the victim is an adult, compensation is only granted in 64% of the cases for an average sum of 16,330 euros. Another study carried out by SOLETO MUÑOZ and GRANÉ on a larger sample of 2,763 decisions from a previous time frame (2012-2015) evidences an average compensation sum slightly under 13,700 euros. An older field research by TAMARIT<sup>80</sup> and others on a sample of 2,421 cases (years 2011-2014) of sexual crimes against children shows an average compensation of 13,532 euros.

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<sup>78</sup> In the case of Greece, the II FAIRCOM Report refers to a very tiny sample of 7 civil sentences from 2011 to 2016. It shows a disparate amount of compensation; e.g. 3,000€ for sexual harassment in the workplace; or, 250,000 € for a child victim of sexual crimes by his parent. The Greek national RE-TREAT Report mentioned that there was only one case that has been awarded a compensation of 70,000€ by the offender for non-pecuniary damages (Supreme Court Decision nr. 801/2016).

<sup>79</sup> Vid. Spanish RE-TREAT Report.

<sup>80</sup> TAMARIT, J.P.; GUARDIOLA, M.J.; HERNANDEZ- HIALGO, P.; PADRO-SOLANET, A., “La victimización sexual de menores de edad: un estudio de sentencias”, *Revista Española de Investigación Criminológica*, n. 12, 2014.

However, as anticipated, the decision on compensation from the offender in favor of the victim does not guarantee the victim effectively obtaining it. Far from that, victims from the three MMSS that obtain this compensation on paper face, in most cases, offenders who do not pay voluntarily, who resist payment, who hide their assets and/or those who are simply insolvent. This way, the victim begins a new procedural journey in search of those goods which may be used to pay for the due sum. In theory, the MS is entitled to pursue the offender if he/she does not pay the compensation. In practice, this burden falls on the victim, who is almost required to search for those offender's goods which may serve to execute the compensation. A different question is whether those victims might be able to obtain compensation within a restorative justice context<sup>81</sup>.

As a result, the victim does not receive the compensation, or when receiving it, this is only partial, late and following a great effort on the victim's behalf. Some of the previously cited studies conducted in Spain suggest that 1/3 of the victims did not receive any compensation and another 1/3 only received part of it<sup>82</sup>. According to this same study, the victim barely receives 1,2% of the granted compensation; that is, an average of 166 euros out of an average compensation of 13.700 euros<sup>83</sup>. In many cases, the Court adapts the payment of the compensation to the financial capacity of offender by introducing payments by instalments of very small amounts (i.e. 10 euros per month) and thus facilitating the offender's periodical compliance. However, various legal operators interviewed underline the impact that this kind of payment has on the victim, required to periodically return to the Court and the bank to withdraw a very low amount of money and remember everything.

Ultimately, compensation ends up becoming another element of re-victimization throughout the proceedings, from the application, the examination and the calculation, to the actual collection. Firstly, the victim is fairly often accused, by the defence and by some sectors of society of seeking a spurious purpose, money. In fact, in Spain, some of the

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<sup>81</sup> An opportunity advanced in the DG Justice Guidance, 19<sup>th</sup> December 2013 related to the transposition and implementation of the VRD; see, recommendations foreseen in §46 related to art. 12 and recital 49, pp. 33-34: *In fact, the use of restorative justice services has an important link to offender compensation to the victim (as an alternative or complement to financial compensation).*

<sup>82</sup> SOLETO MUÑOZ, H. et al, GRANÉ CHÁVEZ, A., *La eficacia de la reparación a la víctima en el proceso penal a través de las indemnizaciones: Un estudio de campo en la Comunidad de Madrid*, Madrid, Dykinson, 2018. According to the study, 33% did receive compensation.

<sup>83</sup> I FAIRCOM Report FAIRCOM Report. *Fair and Appropriate? Compensation of Victims of Sexual Violence in EU Member States: Greece, Italy, Latvia, the Netherlands and Spain*. Part I. A survey of State and Offender Compensation, p.4.

victims' lawyers explained that in order to avoid such criticism they do not make an autonomous request through a civil action, but rather adhere to the Public Prosecutor's Office request; something that some interviewed prosecutors also confirmed. On the other hand, the assessment and calculation of this compensation is not easy for the Court; and finally, for many victims collecting the compensation they are entitled to becomes an ordeal.

### *C. Possibility of accessing compensation from the State*

The three countries (Greece, Italy and Spain) envisage the possibility for victims of sexual crimes to request compensation from the State as a *subsidiary* route in those cases in which the offender is not able to pay the compensation. In practice, this possibility is extremely exceptional for different reasons:

On one side, attention should be given to the subsidiary nature of this mechanism which seems to emerge as a last opportunity and only after a series of successive long and complex proceedings (once the criminal proceedings have been concluded with a ruling on that matter, which tends to arrive after a conviction, there is usually an attempt to enforce that compensation against the assets of the civilly liable person -usually the convicted person- , which is finally followed by the specific request for that compensation from the State, which will open an administrative procedure, ultimately issuing a ruling which can be appealed in court).

On the other hand the sum of compensation paid by the State, whether variable or fixed, is different from one country to another (Italy and Spain). In either case, most of the time the sum is undoubtedly too small to compensate in any way the victim of sexual crime for the loss suffered. In Spain, state compensation is capped at 2,689 euros and only covers therapeutic treatment. In Italy, a reform in 2020 raised it from 4,800 euros to 25,000 euros.

The recent judgement of the Gran Chamber of the CJEU of 16 July 2020 specifically addresses the compensation from the State in a crime of sexual assault<sup>84</sup>. In this decision,

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<sup>84</sup> See CJUE, Judgement: ECLI:EU:C:2020:566, and the opinion of the Advocate General Bobek, 14 May 2020, in the case C-129/19, *Presidenza del Consiglio dei Ministri v BV, joined parties*, ECLI:EU:C:2020:375 which issued a preliminary ruling requested by the Italian Supreme Court of Cassation, with regard to Council Directive 2004/80/CE of 19 April 2004, relating to compensation to crime victims. And specifically, with regard to two aspects that were collaterally raised. Firstly, on the *subjective scope* of the Directive and in particular, whether it is applicable to victims of "purely internal" violent



the Court ruled on whether the compensation sum paid by the Italian State could be considered a *fair and appropriate compensation* for the purposes of Directive 2004/80. The CJEU recalled that *fair and appropriate compensation* paid by the State is not necessarily required to correspond to damages and interest that may be awarded to the victim of a crime that is a violent and intentional crime, which are to be paid by the perpetrator of that crime. In other words, State compensation is not necessarily required to ensure the complete reparation of material and non-material loss suffered by that victim. And on the other hand, the Luxembourg Court affirmed that it ultimately for the national court to ensure, with regard to the national provisions establishing the compensation scheme concerned, that the sum awarded to the victim of a violent intentional crime pursuant to that scheme constitutes "fair and appropriate compensation".

Moreover, the CJUE also made some statements that may be viewed as useful guidelines to interpret both the aforementioned Directive and those laws from Member States that provide for national compensation. Thus: i) a MS would exceed its discretion under the Directive if the national provisions provided *compensation to victims of violent intentional crime that was purely symbolic or manifestly insufficient having regard to the seriousness of the consequences*; and ii) the compensation granted to such victims represents a *contribution to the reparation of material and non-material losses suffered by them*. Such a contribution may be regarded as "fair and appropriate" *if it compensates, to an appropriate extent, the suffering to which those victims have been exposed*. With regard to the Italian regime on compensation to victims of violent intentional crimes (prior to the 2020 reform), the Court held that a fixed amount may be granted as long as it is capable of being varied in accordance with the nature of violence suffered. Nevertheless, a MS that has opted for such a compensation scheme must ensure that the compensation scale is sufficiently detailed so as to avoid the possibility that, having regard to the circumstances of a particular case, the fixed rate of compensation provided for a specific type of violence proves to be manifestly insufficient. And concluded, on what is relevant to us here that: sexual violence is likely to give rise to the most serious consequences of violent intentional crime. Consequently, subject to the verification which is for the referring court to carry out,

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intentional crimes; and secondly, on the concept of *fair and appropriate compensation*. The CJEU expressly ruled on the first and only implicitly on the second.

a fixed rate of 4.800 euros for the compensation of a victim of sexual violence<sup>85</sup> does not appear, at first sight, to correspond to a fair and appropriate compensation. Six months prior to the cited judgement from the CJEU (February 2020), Italy had adopted a reform establishing a fixed rate of 25.000<sup>86</sup> euros for the State compensation of victims of sexual violence, except for less serious crimes.

In addition to the problem of the sum the insufficient knowledge or even ignorance of this matter, which affects many legal professionals that work or collaborate with the criminal justice system, must be noted. That is, in the interviews within the judiciary conducted in Italy, the vast majority of the *interviewed judges openly admitted to be unaware of the possibility of compensation from the State*. In this scenario, one wonders how the right of victims to receive information from the first contact with a competent authority is to be guaranteed; it should be recalled that information on rights is the logical first step for the victim to exercise them; and that those rights include the manner and conditions to access compensation (see letter e, art. 4.1).

For one reason or another, most victims do not request such compensation from the State and, when they do, the dismissal rate is extremely high. For example, according to the FAIRCOM Report, to date the Greek State has not granted any such compensation<sup>87</sup>; in particular, in 2019, all of the 10 requests of this kind of compensation made by the victims were rejected. In Spain, the estimated rate of State compensation to victims of sexual crimes is low and, depending on the source, may vary from 13-20%. According to the Ministry of the Economy, during the two decades 1998-2018, a total of 1.356 requests from victims were registered and only 20% were granted (total, 272 requests); In other words, annually an average of 67 victims of sexual crimes request compensation from the State and it is only granted in 13 of these cases. However, a recent field research by SOLETO MUÑOZ<sup>88</sup> highlights a somewhat higher rejection rate, around 87%. Along the same lines, an Italian lawyer with extensive experience in this field recognized that she had never had

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<sup>85</sup> Decree of the Ministry of Interior, 31 August 2017.

<sup>86</sup> Up to 10.000 euros may be added to this sum for medical expenses.

<sup>87</sup> II Report FAIRCOM, *Fair and Appropriate? Compensation of Victims of Sexual Violence in EU Member States: Greece, Italy, Latvia, the Netherlands and Spain*. State and Offender Compensation: Survey, Good Practices and Recommendations, 2020, p. 29

<sup>88</sup> According to the field study, out of the 85 requests made in 2018, only 11 were granted. SOLETO MUÑOZ, H., "La ineficacia del sistema de justicia español para reparar económicamente a las víctimas de violencia sexual: un espacio para la justicia restaurativa", *Teoría y Derecho*, n.26, 2019, p. 330.

a victim who had obtained compensation from the Italian State; and recognized that the procedure was designed in a dissuasive way, and that in the end, victims did not even attempt that possibility because being the criteria and parameters so strict, in the best of cases, if the request was admitted, the fixed amount was so low (at least until the 2020 reform), that it was not worth requesting.

#### 4.5. Absence of restorative justice

For the purpose of the VRD, restorative justice<sup>89</sup> refers to any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party. The VRD opts for a broad definition (see “any process...”), instead of restricting or confining it to a specific formula of restorative justice. Restorative justice can adopt different formulas: victim-offender mediation, family group conferencing and sentencing circles are cited, among others.

The European legislator, while acknowledging that restorative justice can be of great benefit for the victim, is also conscious of the risks of re-victimization, intimidation and retaliation that it may entail. Thus, restorative justice services should have as a primary consideration: i) the interests and needs of the victims; ii) repairing the harm done to the victim; and iii) avoiding further harm.

There are different ways to tackle the risks of re-victimization and other harm. For instance, through *specialized training* of the authorities and other legal and non-legal operators in direct contact with the victims (judges, lawyers, prosecutors, restorative facilitators, mediators, other professionals assisting the victims or working within restorative justice services). On the other side, the VRD provides an open list of examples of *factors* to be considered before referring<sup>90</sup> a given case to a restorative justice service, or initiating a restorative justice process, in case it could reduce the victim’s ability to make an informed choice or could prejudice a positive outcome for the victim. These factors can include the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim’s physical, sexual or psychological integrity, power imbalances, and the age, maturity

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<sup>89</sup> See, Recital 9, 21, 46, 61, 64 of the VRD.

<sup>90</sup> The VRD provides that Member States shall facilitate, as appropriate, the referral of cases to the restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

or intellectual capacity of the victim. A very well equipped Restorative Justice service will be able to make this decision about the suitability of the Restorative Justice case and may be more specialised to do this (have more specialism, more time, more expertise with respect to how to communicate to the victim...). So perhaps the referral decision should be done in partnership with justice professionals and Restorative Justice professionals, particularly when the victim expresses an interest in participating in a Restorative Justice process.

In addition to this, the VRD refers specifically to the victim's right to *safeguards* in the context of restorative justice services. For these to be guaranteed, the following conditions must be observed: firstly, restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations; and hence are based on the victim's free and informed consent, which may be withdrawn at any time. For this reason, before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process, the potential outcomes and the potential risks, as well as information about the procedures for supervising the implementation of any agreement. The VRD also requires that the offender has acknowledged the *basic facts* of the case and that obviously any agreement is arrived at voluntarily<sup>91</sup>.

The national (Greek, Italian and Spanish) RE-TREAT Reports also explored the level of knowledge that professionals working in the CJS have of restorative justice, as well as the existence or not of restorative justice programs in their country and, and specifically, their opinion on the possible application in the field of sexual crimes; in Spain, the victims were also interviewed.

Unfortunately, a systematic implementation of restorative justice programs has not been identified neither in Italy or Greece, most cases being limited to the area of juvenile delinquency. In fact, the theoretical and practical knowledge of restorative justice among Italian and Greek professionals is rather low and deficient; but there is some interest in the topic (especially in Italy). In Spain, operators seem to have a higher level of knowledge of restorative justice, at least in theoretical terms.

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<sup>91</sup> And may be taken into account in any further criminal proceedings.

In Italy, except for lawyers, all interviewed operators (carabinieri, prosecutors, judges and even victim services) acknowledged their ignorance on restorative justice and their unawareness on the existence of specific programs. Along these lines, for example, the prosecutors stressed that in general terms the concept of restorative justice is an absolute unknown, the carabinieri identified in limited terms restorative justice exclusively with criminal mediation, the judges stressed that there was no regulation in this regard, suggesting that this mechanism was not covered by the law. Only lawyers proved to have some notions, and even some experience, on restorative justice. However, they highlighted that in practice, this was limited to the area of juvenile criminal justice. In fact, when asked about its potential in other areas, they all stressed that, in their opinion, restorative justice<sup>92</sup> should be prohibited in certain areas, gender violence, violence against woman and sexual crimes among them.

In Greece, the level of knowledge of restorative justice and, where appropriate, implementation of a specific program, is no better. A recent research study (Artemis 2020<sup>93</sup>) confirms that criminal mediation is still in a very embryonic stage in Greece. In fact, the qualitative study shows opinions that differ significantly. E.g. While one lawyer affirms that it is applied very seldom and that there are no protocols on restorative justice, another one holds that it is frequent for the CJS to resort to different forms of restorative justice, usually upon the victim's request, acknowledging, in this case, the existence of instructions on its application.

In Spain, operators seem to have a higher level of knowledge of restorative justice, at least in theoretical terms. In practice, its implementation varies significantly depending on the age of the accused. In criminal proceedings of minors, mediation is a widely applied and consolidated instrument. However, in criminal proceedings against adults, there is a more limited development of restorative justice; however, experiences, projects and initiatives seem to be increasingly frequent and successful. This is specially so following the introduction of some specific references by the legislator in 2015 (see compliance with the agreement reached by the parties under mediation as a condition for the suspension of the

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<sup>92</sup> One of the lawyers' responses is very illustrative: "I would oppose tooth and nails to this kind of uncontrolled intervention with a victim who is not sufficiently prepared".

<sup>93</sup> Greece Research Report, ARTEMIS, 2020, *The Application of the EC Directive 2011/99/EU and The European Protection Order*, p.40. Available at: [https://www.artemis-europa.eu/wp-content/uploads/2020/09/ARTEMIS-Research-Report\\_Greece.pdf](https://www.artemis-europa.eu/wp-content/uploads/2020/09/ARTEMIS-Research-Report_Greece.pdf)

execution of the sentence regulated in art. 84.1 of the Spanish CC; or art. 15 of the Spanish law of the Victim Statute that provides that the objective of restorative justice is for the victim to obtain adequate material and non-material reparation). However, in general practice, as is the case in Italy and Greece, Spanish *legal* operators (judges, prosecutors, lawyers, etc.) also seem quite disconnected or far from the reality of restorative justice. Perhaps, among all, lawyers stand out as having a more a more open and/or favorable attitude towards restorative justice, especially during the enforcement (of the judgement) phase; however, in most cases, lawyers admit to inform the victim about restorative justice instruments only upon request.

The possibility of establishing restorative justice programs in the area of sexual crimes under consideration seems very unlikely in the three countries; rather, according to national reports, victims seem to resort to this type of program only exceptionally. In fact, none of the interviewed victims (Spain) has participated in a *restorative justice* program, nor were they aware of its existence.

Among the legal professionals (judges, prosecutors, lawyers) interviewed in the three countries, the simple question becomes a very controversial issue. However, from an abstract point of view, some of the characteristics of sexual victimization suggest that victims might benefit from resorting to restorative justice in this area<sup>94</sup>, but there are also very important risks that advice against it. Among the circumstances that could make the case for restorative justice, the following can be found: the important volume of cases that do not reach the traditional judicial system for different reasons; the important number of cases in respect of which a judicial decision that, for various reasons, does not satisfy the victim's interests, is issued; that are resolved by conventional justice, but for different reasons does not satisfy the interests of the victims; the configuration of the restorative justice procedure, which does not question the credibility of the victim's account and in

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<sup>94</sup> An overview of the increasing literature on this topic, OLALDE ALTAREJOS, A. J., "Caminares restaurativos en victimización grave", in Varona Martínez, G. (Ed.), *Caminando restaurativamente. Pasos para diseñar proyectos transformadores alrededor de la justicia penal*. Madrid: Dykinson, 2020, pp. 135-146. TAMARIT SUMALLA, J.M., "Abusos sexuales en la Iglesia Católica: ¿cómo responder a las demandas de justicia?", *Nuevo Foro Penal*, 91, 2018, pp. 11-42. ZINSSTAG, E., & KEENAN, M. (Eds.), *Restorative responses to sexual violence*. New York: Routledge, 2017. MARSH, F., & WAGER, N. M., "Restorative justice in cases of sexual violence: Exploring the views of the public and survivors", *Probation Journal*, 62(4), 2015, 336-356. MERCER, V., & STEN MADSEN, K., *Doing restorative justice in cases of sexual violence: A practice guide*, Leuven: Leuven Institute of Criminology, 2015. KEENAN, M., ZINSSTAG, E., "Restorative Justice and Sexual Offences: Can 'changing lenses' be appropriate in this case too?", *Monatsschrift für kriminologie und strafrecht*, 97(1), 2014, dedicated to Developing Sexual Offender Laws and Treatment in Europe. Legal trends and new paths in treatment strategies for sexual offender, pp. 93-106.

which her feelings and interests can be better addressed. However, these benefits cannot ignore the potential cost of the risks derived from this mechanism and, especially, re-victimization, manipulation, pressure and instrumentalization of the victim. Sexual offences committed within the family environment deserve special attention in this regard due to their particular dynamics, the imbalances inherent to the crime, the manipulative attitude of the aggressor, the seriousness and time-length of this type of crime, etc.

The answer as to whether restorative justice can play a positive role in sexual crimes cannot be unique or absolute; it will depend on the specific case and its circumstances. Its potential application should always meet the following requirements: i) professionals who intervene in this restorative procedure must have sufficient training, extensive experience and a specialization in sexual victimization, as required by the UN Manual of Restorative Justice<sup>95</sup>; ii) the victim must be an adult; iii) that sufficient time has elapsed after the assault.

Therefore, there is an urgent need of specialization on sexual victimization<sup>96</sup> among the restorative justice services. It is important not to overlook this type of service, since all the victims interviewed (in Greece and Spain) emphasize that they feel socially sanctioned. The victim of sexual violence feels the burden of a social stigma; despite knowing that objectively they are not guilty of what has happened to them, they cannot avoid that feeling. That is why they hide their status as a victim of sexual violence and, when they decide or are compelled to share their account they tend to justify themselves so that their interlocutor (be it a professional, or a family member, or a close friend) does not attribute responsibility to them from what has occurred. In general, victims and legal operators complain about the lack of education and social awareness regarding women victims of sexual violence. They demand the need to put an end to stereotypes and to the use of punitive and questioning language (both by professionals and society), and to give visibility

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<sup>95</sup> See the 2nd edition of the Handbook on Restorative Justice Programmes, 2020. [https://www.unodc.org/documents/justice-and-prison-reform/20-01146\\_Handbook\\_on\\_Restorative\\_Justice\\_Programmes.pdf](https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf). Scholarly opinion also agrees on the specialization requisite, see, among others, VARONA MARTÍNEZ, G., “Adecuación de los procesos restaurativos en delitos de carácter sexual”, *Justicia restaurativa y terapéutica: Hacia innovadores modelos de justicia*, (Dir. de la Cuesta and Subijana), Valencia: Tirant, 2017, pp. 368-389; STUBBS, J. “Relations of Domination and Subordination: Challenges for Restorative Justice in Responding to Domestic Violence”. *UNSW Law Journal* 33, n.3, 2010, pp. 970-986; SOLETO MUÑOZ, H., “La ineficacia del sistema de justicia español para reparar económicamente a las víctimas de violencia sexual: un espacio para la justicia restaurativa”, *Teoría y Derecho*, n.26, 2019, pp. 320-341.

<sup>96</sup> Those interested in Restorative Justice, we encourage them to consult the activities and report of RE-JUSTICE a project promoting, through training, a sustainable way to the process of raising awareness, building knowledge and developing skills and attitudes amongst the judges and public prosecutors. ANDERSON et al., 2022 – forthcoming’.

to crimes of sexual violence, while guaranteeing their privacy. In Spain, victims of sexual crimes also complain of a certain invisibility compared to victims of gender-based violence.



### Structure and summary of Directive 2021/29/UE

Chapter	Art.	Content
General provisions	1-2	<i>Objective and definitions</i>
Information & Support	3	<i>Right to understand &amp; to be understood</i>
	4	<i>Right to receive information from the 1st contact with the competent authority</i>
	5	<i>Right when making complaint</i>
	6	<i>Right to receive information about their case</i>
	7	<i>Right to interpretation &amp; translation</i>
	8-9	<i>Right to access and support from victim support services</i>
Participation in criminal proceedings	10	<i>Right to be heard</i>
	11	<i>Rights in the event of a decision not to prosecute</i>
	12	<i>Right to safeguards of restorative justice services</i>
	13	<i>Right to legal aid</i>
	14	<i>Right to reimbursement of expenses</i>
	15	<i>Right to return of property</i>
	16	<i>Right to decision on compensation from the offender in the course of criminal proceedings</i>
	17	<i>Rights of victim resident in another EM</i>
Protection and recognition of victims with specific protection needs	18	<i>Right to protection</i>
	19	<i>Right to avoid contact between victim and offender</i>
	20	<i>Right to protection during criminal investigation</i>
	21	<i>Right to protection of privacy</i>
	22	<i>Individual assessment of victims to identify specific protection needs</i>
	23	<i>Right to protection of victims with specific protection needs during criminal proceedings</i>
	24	<i>Right to protection of child victims during criminal proceedings</i>
Other provisions	25	<i>Training of practitioners</i>
	26	<i>Cooperation and coordination of services</i>
Final provisions	27	<i>Transposition</i>
	28	<i>Provision of data and statistics</i>

## Abbreviations

CC	<i>Criminal Code</i>
CENDOJ	<i>Spanish Judicial Documentation Centre</i>
CJS	<i>Criminal Justice System</i>
ECHR	<i>European Court of Human Rights</i>
EIGE	<i>European Institute for Gender Equality</i>
EU	<i>European Union</i>
EUROSTAT	<i>European Statistics</i>
ISTAT	<i>Italian National Institute of Statistics</i>
KEEPS	<i>key elements of effective practice</i>
MMSS	<i>Member States</i>
VRD	<i>Victim's Rights Directive</i>

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## CHAPTER III

### *Best practices in support for victims of sexual and gender-based violence*



**KU Leuven Unit**

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## CHAPTER III

### *Best practices in support for victims of sexual and gender-based violence*

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## Best practices in support for victims of sexual and gender-based violence

This report reflects a process of identifying a number of best and promising practices with respect to working with and supporting victims<sup>97</sup> of sexual and gender based violence (SGBV). This process will inform the compilation of a training programme for professionals who work with such victims. The concept of violence used here encompasses crimes such as the sex trafficking of human beings and also non-contact harms (United Nations, 1993)<sup>98</sup> such as image based sexual abuse. Whilst men and children are also SGBV victims, it is widely recognised that women and girls are disproportionately subjected to this type of interpersonal violence (WHO, 2016). For the purpose of this study attention is exclusively given to the provision of services and programmes to adult women victims.<sup>99</sup>

### 1. Methodology

The process of identifying best and promising practices took place within an iterative research process which had three main, but interrelated, aspects. The first aspect involved designing an evaluation framework that could be used as a tool to assess programmes and practices. The second aspect involved carrying out a scoping exercise to identify a number of programmes and practices that were available for adult female SGBV victims. In cases where the practice seemed to be particularly innovative or interesting, interviews were carried out with staff members in order to find out further information. Relevant services, programmes and practices that had been identified during the first stage were also included here. The third aspect of the research process involved using the evaluation framework to assess SGBV programmes, in order to identify those that can be considered to be best or promising practices. Where relevant, information revealed at this stage was used to further develop the assessment framework (see appendix ii for examples of how to apply the framework). The details of the aspects of the research process will be further elaborated below.

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<sup>97</sup> The authors recognise and fully accept that the term ‘victim’ is problematic in many ways. However, it is used here because it remains the term most commonly used in and recognised in the legal sphere, within which this project sits. The use of this term is in no way intended to minimise, deny or exclude those women who have experienced sexual violence who exert their right to refuse to identify with the term victim preferring, for example, to be known as survivors.

<sup>98</sup> According to Article 2 of the 1993 Declaration on the Elimination of Violence Against Women: Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

<sup>99</sup> Consequently, the needs of transsexual and intersex women are considered here. The researcher acknowledges, however, that such women may have additional and specific needs that are not covered here in detail.

## 1.1. Designing the evaluation framework

In order to be able to identify the relevant services, programmes and practices, an evaluation framework was developed. The framework contains factors that are considered to be important in the delivery of services, programmes and practices for women who have experienced SGBV. These factors, or 'key elements of effective practice' (KEEPS) have been discerned following interrogation of relevant research findings, theoretical models, European level guidance and international legal instruments. This is complemented with specific examples of services, programmes or practices that also support these findings and decisions. The framework was formed through an iterative process and was adjusted as further information came to light following the interviews that were conducted during the third aspect of the process (see '1.3. evaluation of services, programmes and practices'). That way a practical approach is included as much as possible. This overview is intended to motivate the inclusion of the KEEPS that are part of the framework, but is not exhaustive (see annex I for an overview of the KEEPS and examples from practice).

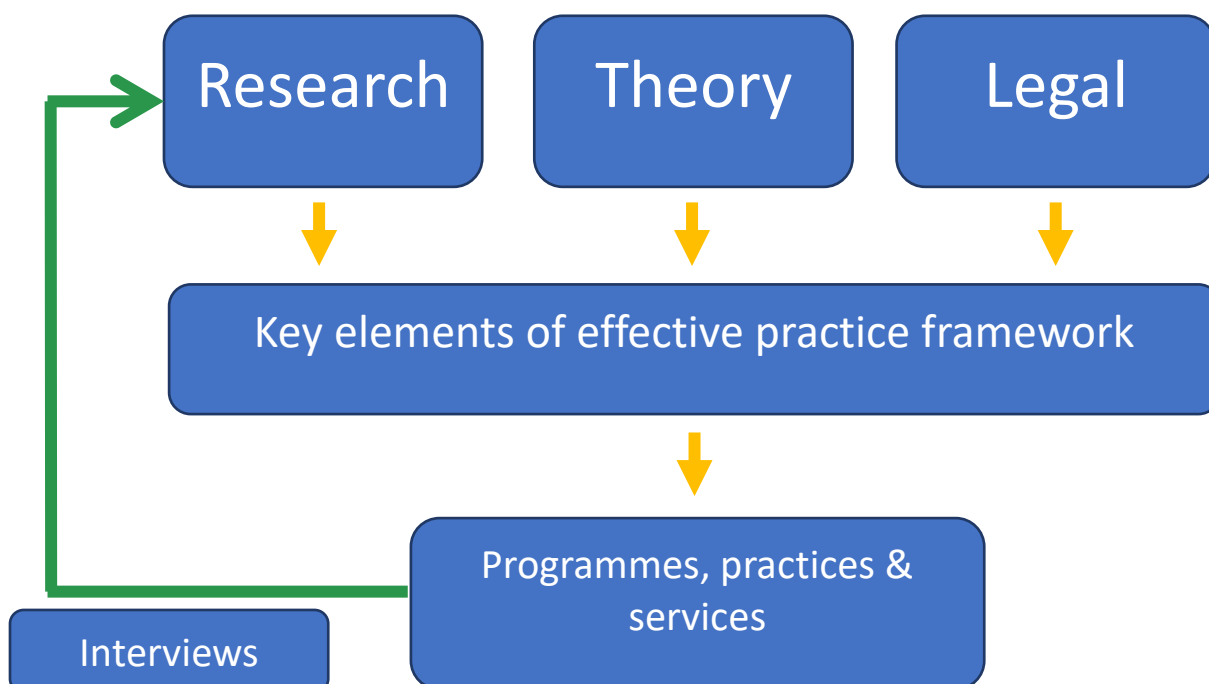
With respect to research findings, searches were conducted using the KU Leuven search database, LIMO, and also Google Scholar. Published articles and reports were sought that evaluated and described services, programmes and practices conducted with this group of victims, but also more general information was sought about the factors that are important when working with this particular group of victims more broadly. Of particular relevance here are European level studies by the Fundamental Rights Agency (FRA). With respect to theory, the model of victims' interests defined by Daly (2014; 2017) is of particular relevance. The concept of justice interests, sometimes also called justice needs, is concerned with the legitimacy of justice or legal elements. The term relates to the integrity of both justice procedures and justice outcomes. Daly describes five elements that are important to victims with respect to what they can expect from a justice response: participation, voice, validation, vindication and perpetrator accountability. According to Daly's model, the concept of justice, therefore, is broader than a particular outcome in a formal justice process. Finally, relevant European level guidance and international legal instruments was consulted. The main frame of reference was the 2012 EU Victims' Directive<sup>100</sup>. Additional sources that were drawn upon included the first EU Strategy on victims' rights<sup>101</sup>, and the 2014 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention (see figure 1).

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<sup>100</sup> 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, and replacing Council Framework Decision 2001/220/JHA. (Hereafter: Victims' Directive (2012)).

<sup>101</sup> This guidance frames the European Commission's work for the period 2020-2025.

Figure 1: Process leading to the development of the Key Elements of Effective Practice Assessment Framework



### 1.2. Scoping exercise to identify relevant services, programmes and practices

A scoping exercise was carried out to identify services, programmes and practices providing services to victims of sexual assault, and they were compared against the framework. In cases where further information was deemed to be relevant, such as where practices seemed particularly innovative or there was a lack of information, in-depth, semi-structured interviews were carried out with staff members or other actors having a particular good insight in these practices. This information was then used to inform and further develop the framework for assessing best and promising practice.

An important consideration to make when identifying relevant services, programmes and practices is the context in which the practice operates. Since the literature review looks at practices worldwide, important differences may occur regarding for instance the legal system (e.g. inquisitorial vs. adversarial system) and the situation in a country/region/community (e.g. conflict, history). It is important to take these differences into consideration when looking into the possibility of transferring a best or promising practice to other countries, which is one of the aims of the research. Best practices have the potential to be applied in different countries and contexts. However, it is likely that these practices need to be adapted to be functional in another context. In order to incorporate these considerations into the research, attention is drawn to events, situations, contexts and other relevant factors of a region but also more worldwide trends that contribute to the experience, prevalence,

consequences and needs of (victims of) SGBV (see '1. Types of sexual victimisation'; '2. Context of sexual victimisation' and '3. Global crisis').

Furthermore, during the scoping exercise it should be considered that practices might be linked especially to one stage of the criminal justice process (CJP) or to one of the actors in the criminal justice system (CJS). Therefore it is not likely that they meet all KEEPs included in the Assessment Framework at the same time but rather contributes to an appropriate response of the CJS.

### 1.3. Evaluation of services, programmes and practices - best or promising practices

Relevant services, programmes and practices identified in aspects one and two were analysed using the assessment framework to determine the extent to which they contained the key elements of effective practice. These services, programmes and practices then were classified as a best or promising practice.

The concept of best practice is often associated or related to evidence-based practice. Whether a service, programme or practice can be seen as best or promising will determine whether it is considered 'effective'. A program is effective if it meets its aims (Federal-Provincial-Territorial Meeting of Ministers Responsible for Justice and Public Safety, 2018). The assessment framework was developed to evaluate practices as best or promising. The framework was built using evidence regarding what works with respect to delivering justice to SGBV victims.

However, caution must be exercised because the evidence base regarding effective responses to SGBV victims is limited. This model of 'evidence-based practices' is rooted in medical research and there are challenges with its application to the social sciences. Many practices or elements that can contribute to a good response towards SGBV victims are not evaluated and if these practices are evaluated, little research opted for (quasi-) experimental design or systematic reviews, which is often meant by evidence-based research due to the more objective and controlled circumstances. More research was done in this area on a knowledge-based or practice-based approach. This includes expert opinions, service users opinions and government reviews (Glasby and Beresford, 2006). For the development of the assessment framework evidence-base was included when available, but knowledge-based research was the largest source of information. When little or no information was available, interviews were conducted by the researchers themselves with someone considered as expert regarding the relevant service, programme or practice.

Based on this, the following definitions drawn from the EC funded European Judicial Training project, "Study on Best Practices in training of judges and prosecutors" (European Judicial Training Network, 2014) are considered applicable to the current research:

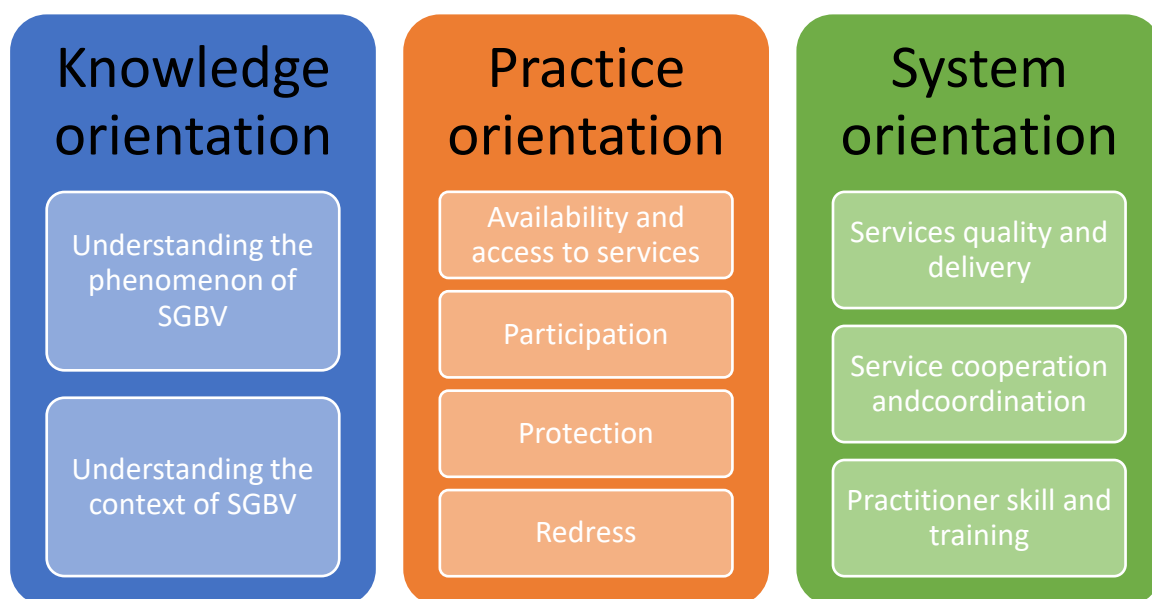
1. A **best practice** is a program or practice having the highest degree of proven effectiveness supported by objective and comprehensive research and evaluation.
2. A **promising (sometimes only experimental) practice** is a practice with at least preliminary evidence of effectiveness or for which there is potential for generating data that will be useful in determining its potential to become a best practice for transfer to wider, more diverse environments (EJTN, 2014, p. 19).

## 2. Assessment framework

Eight key elements of effective practice (KEEPs) were identified through desk research, and these were distributed across three clusters (see figure 2). Cluster A is 'knowledge orientation', and contains two elements: understanding the phenomenon of SGBV and understanding the context of SGBV. Cluster B is 'practice orientation', and contains three elements: participation, protection and redress. Cluster C is 'system orientation', and contains three elements: service quality and delivery, service cooperation and coordination and practitioner skill and training. The three clusters correspond with, although do not perfectly reproduce, different chapters of the 2012 Victims' Directive (see appendix ii for examples of how to apply the framework).

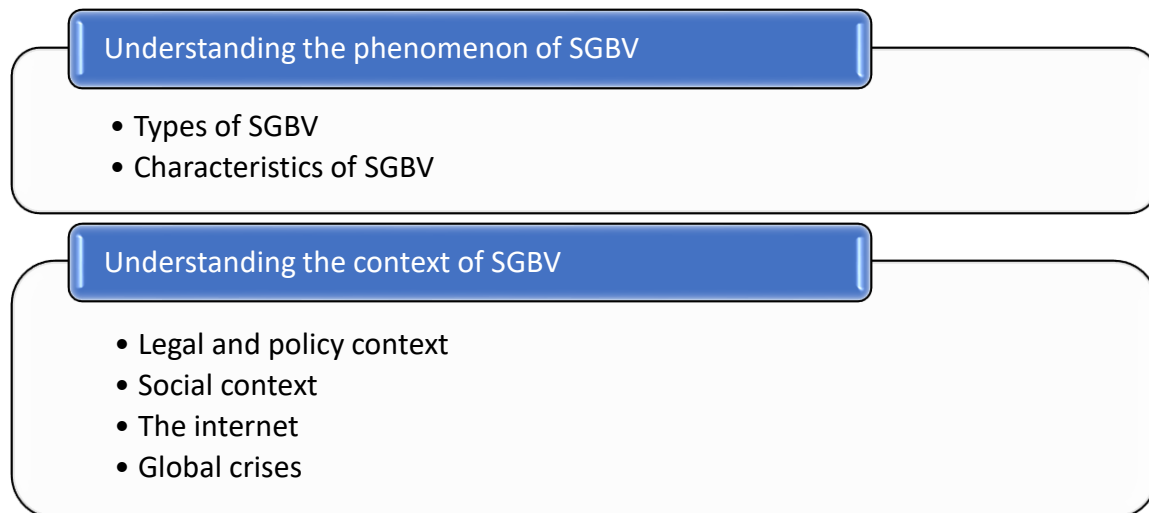
The KEEP framework draws on research, theory and legal guidance. At the centre of the three clusters victims' justice interests can be found, emphasising the importance of having a victim-centred approach. In many places the provisions indicated in the Victims' Directive that are aimed at criminal justice systems are equally relevant for victim support services, programmes and practices. The different clusters will be further elaborated below.

**Figure 2: Key elements of effective practice assessment framework**



## Cluster A: knowledge orientation

This cluster contains two central topics (1) understanding the phenomenon of SGBV, which contains: types of SGBV; and characteristics of SGBV and (2) understanding the context of SGBV, which contains: legal and policy context; social context; the internet; and global crises.



### 3. Understanding the phenomenon of sexual and gender-based violence

The two key elements of effective practice regarding understanding the phenomenon of SGBV contained in this cluster are: types of SGBV; and characteristics of SGBV.

#### 3.1. Types of sexual and gender-based violence victimisation

SGBV<sup>102</sup> takes many forms and it is important that the breadth and complexity of the victimisation experience is understood. In addition to the more well understood ‘contact’ behaviours such as rape and sexual assault, SGBV also includes ‘non-contact’ behaviours, without direct physical contact between the victim and the perpetrator. Such acts include sharing, and threats to share, sexual images without consent. The issue of consent is frequently prominent and often pivotal in SGBV. The phenomenon of non-consensual condom removal<sup>103</sup>, is one such example (see ‘legal and policy contexts’). SGBV can be perpetuated by known individuals, such as within family, personal or other trusting relationships. In recent years there has, for example, been increased attention for non-recent abuse committed against children by people within institutions such as the Catholic church and sporting organisations. Perpetrators can be unknown strangers or victimisation can be organised by criminal gangs, such as in the case of human trafficking and exploitation. In this latter situation the

<sup>102</sup> For the purpose of this paper attention is exclusively given to situations in which women are victimised.

<sup>103</sup> Sometimes known as ‘stealthing’.



SGBV often takes place within the framework of other illicit behaviours. SGBV can be associated with particular places, such as sexual harassment within the workplace. Sexual violence can also be used systematically and/or weaponised, for example, when used as a tool of war during armed conflicts. Conflict-related sexual violence is sometimes a push factor for migration to and within Europe.

Some groups in society are more vulnerable in the context of SGBV than others, such as members of

### Spotlight on practice

Native American Women's Health Education Resource Center (NAWHERC) try to raise awareness about the fact that this minority group is at a high risk of becoming a victim of sexual violence (9 out of 10 girls) and is not protected by the government because they fail to investigate and prosecute these cases. The NAWHERC raises awareness by engaging in media advocacy, addressing these issues to the government but also by raising awareness amongst Native American women. They published a book for instance called 'What to do when you're raped – an ABC handbook for Native girls'. In this book short and clear messages are distributed, such as:

*"Get emergency contraceptive. There is a pill that will help; it will make sure you won't get pregnant, and take that weight off your shoulders. It is called plan B. Thanks to the efforts of the many people working for Reproductive Justice, by law you should be able to get it over the counter without any restrictions, at all clinics and pharmacies, including the Indian Health Service."*

*"Other women are with you. There are many Women who are here to help. They have been through it themselves, been through it with a friend, and will be there for you."*

*"Don't be scared – tell someone."*

<https://www.nativeshop.org/resources.html>

LGBTQI+ communities, women in prostitution and people with disabilities (Curtiss & Kammes, 2020; Deering et al., 2014; Brown & Herman, 2015). This vulnerability may be linked to a higher risk of becoming a victim. For example, children and more frequently targeted because of their elevated dependency on adults. Vulnerability can also be increased because of situational factors. For example, elderly women living in care homes cannot easily leave that environment where they may be easily accessible to an abusive visitor to the home, staff member or other resident (Corbi et al., 2015). Other situational factors are linked to positions of disadvantage, such a financial dependence. Additionally, vulnerability can be temporarily

increased, such as in cases of drug facilitated sexual assault when, for example, the victim is drugged without her consent. Further, members of certain groups can also be vulnerable to having a higher risk of experiencing secondary victimisation when seeking support and justice. This can be caused by for example rape myths<sup>104</sup> (Mortimer, Powell & Sandy, 2019), a lack of knowledge and training (Campbell, 2008; Campbell & Raja, 1999) and intersectionality.

<sup>104</sup> Rape myths are false beliefs about rape. See section 'social contexts' below.

Intersectionality occurs when people simultaneously experience different forms of inequality that exists within a certain society (e.g. gender, race, immigration status, nationality) that intersect with each other. This interaction causes an exacerbation in the experience of these inequalities, leading these woman to a position of extreme vulnerability (Crenshaw, 1990). For example female migrant women in prostitution are not only disadvantaged through their participation in prostitution, but also through their residence status in the country and reduced access to health services (TAMPEP, 2019). When they become victim to SGBV<sup>105</sup> the interaction between all of the vectors of inequality can amplify the position of difficulty. Most existing responses to SGBV are “best suited for White, middle-class, heterosexual, cisgender women and fail to address the needs and concerns of those that do not fit within this identity box” (McCauley, Campbell, Buchanan & Moylan, 2019, p. 1912). The same can be found in case of ‘elder abuse’.<sup>106</sup> As with sexual abuse more generally, the risk of victimisation in this population is increased for people who have high support needs, such as those with disabilities or the elderly (WHO, 2011).<sup>107</sup> This previous emphasises the varied needs of victims/survivors which actors that work with victims of SGBV should consider and incorporate into their work. Every experience of SGBV is unique and takes place in a unique context of multiple intersecting identities in a certain social, cultural and legal context. A one-size-fits-all approach is therefore not something to pursue (Page, Sundaram, Phipps & Shannon, 2019). For women with chaotic lifestyles, for example, a sexual attack may be only one of a number of important needs, and may not even be the most pressing concern for the victim (Angiolini, 2015). Therefore, holistic approach needs to be adopted.

### 3.2. Characteristics of sexual and gender-based violence

Many of the characteristics of SGBV victimisation are associated with the contexts within which the victimisation occurs, however some specific characteristics will be highlighted here. Whilst a commonly held ideas regarding sexual violence and rape is that stranger attacks are the most frequent, the vast majority of victims know their attacker (Koss, Dinero, Seibel & Cox, 1988; Tjaden & Thoennes, 2000). The phenomenon of SGBV is highly gendered and disproportionately impacts the lives of women and girls (WHO,2016). According to a 2014 report of a European survey, one in ten women in Europe has experienced SGBV since the age of 15 and a similar proportion report being subjected to sexually inappropriate behaviour by an adult before they were aged 15 (FRA, 2014). One woman in 20

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<sup>105</sup> It is important to recognise that while sex workers can be sexually victimised and are often at an elevated risk of such victimisation, not all sex workers are SGBV victims (TAMPEP, 2019).

<sup>106</sup> As a specific type of sexual violence, ‘elder abuse’ is commonly defined as abuse to persons aged 60 or over (WHO, 2011).

<sup>107</sup> A 2011 WHO report estimated that in the previous year, 1 million people aged 60 or over experienced sexual abuse in Europe. Despite the relatively high numbers, elderly abuse receives much less research attention than the abuse of children (Corbi et al., 2015) and the sexual victimisation of older people is sometimes excluded from national crime statistics (Bows, 2018).

reported being a victim of rape (FRA, 2014). It is estimated that in the 12 months prior to the survey some 3.7 million women in the EU had experienced SGBV (FRA, 2014).

Underreporting is extremely common in cases of SGBV. Only 13% of women who had experienced non-partner violence had reported the most serious incident to the police (FRA, 2014). There are variety of reasons for this. The term ‘rape’ is not neutral and carries a social stigma. Many rape victims experience a sense of shame and self-blame that is not associated with other types of victimisation (Angiolini, 2015). Whilst the #metoo movement (see below) has encouraged many women to speak about their experiences of sexual abuse, the social taboo remains and many women are discouraged from speaking about their abuse, and that included reporting to authorities, because of this. Indeed, silencing is a common characteristic of the experience of SGBV. Sexual violence is sometimes reported to authorities with a time delay. Such cases of non-recent SGBV, which can pose a challenge for authorities because of the diminishment of evidence over time, should not be viewed as any less credible because of the delay (Angiolini, 2015). Whilst acts of SGBV are ostensibly about sexual acts, they are often underscored by dynamics of power and control which are amplified by gender imbalances within society. This is further explored in the discussion of the social contexts of SGBV below.

#### Spotlight on case

Callisto is an online reporting system that gives victims of SGBV on university campuses in the USA the opportunity to report such crime online and anonymously if preferred. The victim can also decide what will happen with the reporting, so no official complaint is required but can be submitted at any later time when the victim is ready for it. The system also matches cases where the same perpetrators was reported earlier in the system so repeat offenders are identified. In addition, the website navigates the victim towards support and other options available.

*“Our technology empowers survivors, providing options and allowing disclosure in a way that feels safe. Our unique Matching system securely connects victims of the same perpetrator to identify repeat offenders”*

<https://mycallisto.org/>.

## 4. Understanding the contexts of sexual and gender-based violence

Acts of SGBV against women do not take place in a vacuum, but are set against a legal and social landscape. All harms take place within a particular context, but with SGBV, these factors are particularly salient with respect to how women understand and experience their own victimisation, and how their experience is understood and responded to by others. Crucially, knowledge of how best to support SGBV victims requires a nuanced understanding of their needs and experiences, and also an understanding of the context in which those needs and experiences are situated. The factors that underpin, support and contribute to the sexual victimisation of women are too numerous to detail,

but a few illustrative factors will be mentioned in the following sections of the report, as examples of the types of factors that training for judicial professionals should be aware when working with this group. The four key elements of effective practice regarding understanding the context of SGBV contained in this cluster are: legal and policy context; social context; the internet; and global crises.

#### 4.1. Legal and policy contexts

With respect to the legal context, there is an interaction between laws and social norms. On one hand laws reflect societal norms and yet on the other hand laws can be used to prompt attitudinal and behavioural change within communities. Laws define transgressions and where laws regarding sexual harms are narrow, this has an impact on the possible redress that a woman is able to seek. More fundamentally, however, the status of an act being illegal conveys censure and even delineates a certain act as problematic. Therefore, the framework provided by the law conveys a message regarding how she should interpret her experience, the legitimacy of the behaviour that she was subjected to and the likely response of the community around her. For example, the introduction of Law 3500/2006 on Domestic Violence in Greece in 2006 that criminalised rape within marriage for the first time was important in communicating the wrongness of the act, providing protection for victims and increasing visibility of SGBV against women (Kosyfologou, 2018). The introduction of this law challenged the idea that a married woman's duty was to always be available for sex. The following section touches upon some of the ways that legislation and policy influence the experience of sexual harm that professionals working with this group should be familiar with.

An important aspect of law in this regard is the whether the element of consent is a requirement for an act to legally be considered as sexual violence, which is addressed by Article 36 of the Istanbul convention<sup>108</sup>. According to this article it is the absence of an expression of the victim's voluntarily given consent, as an expression of free will, for the sexual act which renders that act punishable. The legality of an act does not, therefore, depend on a victim's expression of opposition during the act of sexual violence. Article 336 of the Greek penal code was amended in 2019 in line with this aspect of the Istanbul convention. Despite the Istanbul Convention being in force in Italy and Spain<sup>109</sup>, both countries currently lack legislation criminalising sex without consent (FRA, 2019; GREVIO, 2020) (see 'reflections on a case', below).

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<sup>108</sup> Istanbul Convention (2014), article 36. Committee of the UN Convention on the Elimination of All forms of Discrimination against Women, Chapter V.

<sup>109</sup> The Istanbul Convention entered into force in Greece, Italy and Spain in 2018, 2014 and 2014 respectively.

Legal frameworks are not always sensitive to the full range of sexual victimisation experiences. The act of non-consensual condom removal is a case in point. It is neither a new nor an uncommon phenomenon. Research is limited, but it appears to be relatively common, with 19% of women in a national US sample of 18-25 year olds reporting having been the victim of the practice (Bonar et al., 2019). This so-called 'stealthing' has only recently started to become recognised in legal frameworks. Despite the fact that article

#### Spotlight on case

Under the Tasmania's Evidence Act (also called 'victims gag law') victims were not allowed to speak up about their experience of sexual abuse in their own name. This in order to protect the victim and their family. But since the #metoo movement victims in Tasmania were not able to come forward with their story as other victims around the world were able to, this because of this law. This led to another movement in the country called '#LetHerSpeak', that was led by a journalist and a sexual abuse survivor. They fought for the right of the victim to tell their story and make it public if the survivor wants to.

See: <https://www.justice.tas.gov.au/publications2/fact-sheet-on-changes-to-the-tasmanian-evidence-act-2001-section-194k>

36 of the Istanbul Convention states that all non-consensual sexual acts should be considered as criminal, not all Member States where the convention has been ratified already comply with this condition. The few prosecutions that have occurred have been in a small number of European countries, and where the notion of conditional consent<sup>110</sup> is recognised in the law<sup>111</sup>.

The absence of clear legal censure for these acts should not be interpreted as a low level of resulting harm to and negative consequences for victims. Women who experience this report feeling that their bodily autonomy and also the trust that they had in their sexual partner had been violated, and having fears regarding the risk of unwanted pregnancy and of sexually transmitted infections (Brodsky, 2017; Ebrahim, 2019). However, the absence of a concrete legal framework may cause some women to question their victim status, despite having a deep sense that they have experienced harm.

<sup>110</sup> See, for example, <https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-3-consent>.

<sup>111</sup> Successful convictions for non-consensual condom removal have been brought in Switzerland, Germany (see: [https://edition.cnn.com/2018/12/20/health/stealthing-germany-sexual-assault-scli-intl/index.html#:~:text=\(CNN\)%20A%20German%20police%20officer,to%20be%20prosecuted%20in%20Germany](https://edition.cnn.com/2018/12/20/health/stealthing-germany-sexual-assault-scli-intl/index.html#:~:text=(CNN)%20A%20German%20police%20officer,to%20be%20prosecuted%20in%20Germany)) and the UK (see: <https://www.independent.co.uk/news/uk/crime/rape-condom-sex-worker-unprotected-lee-hogben-guilty-bournemouth-a8884726.html>).

### Reflection on case

In July 2016 an 18 year old woman reported that she had been raped by a gang of five men whilst attending the San Fermín festival in Pamplona, Spain. The perpetrators, who were a group of friends, were quickly arrested by police. The attack had been recorded and the footage was distributed amongst the friends within a WhatsApp group, where they referred to themselves as '*la manada*' or 'the wolf pack'. In April 2018 the men were sentenced to 9 years in prison following being convicted of sexual abuse rather than the more serious charge of rape. The Spanish court found no evidence of the intimidation or violence required by Spanish law to establish a rape verdict. The recording, which showed the victim with her eyes closed and unmoving, was taken as proof of this. Critics cite this as the failure of judges to recognise the 'freeze' response to trauma. The judgement was seen by some as a reflection of patriarchal attitudes and the insensitivity of the justice system in SGBV cases. The legal process drew wide condemnation, because of the poor treatment of the victim, including judges allowing a report from a private detective who had been hired by the defence, which reported that the victim had been seen smiling with her friends following the incident. A final ruling by the Supreme Court in 2019 increased the sentences to 15 years of imprisonment after finding the men guilty of the more serious charge.

Abrisketa & Abrisketa, 2020; Vidu & Tomás Martínez, 2019; <https://confilegal.com/20190621-el-supremo-condena-a-la-manada-por-violacion-y-eleva-su-condena-a-15-anos-de-carcel/>.

The legal status of prostitution is one example of how the law influences the experience of SGBV. Where prostitution is illegal, women in prostitution are often reluctant to report their victimisation to police for fear of punishment or penalisation (ICRSE , 2020). Non-citizens are in a more precarious situation. Given the high numbers of migrant women in Europe who are involved in prostitution, legislation and policy should serve to protect such women and enable them to seek recourse within the criminal justice system (CJS) without fear of criminalisation or deportation (TAMPEP, 2019). European legislation and policies are such that the migrant status of women is a common factor that prevents them from accessing services for sexual and gender-based violence (SGBV) victims (Keygnaert & Guieu, 2015). A report on the experiences of migrant women in prostitution from European countries including Greece and Italy states that, "prostitution and migration policies often compromise sex workers abilities to protect themselves from violence and contribute to increase their vulnerabilities to violence, exploitation and human trafficking" (ICRSE, 2020, p. 22). Keygnaert and Guieu (2015) argue that the EU's asylum and policies cause migrant women to remain an unseen and marginalised group. They urge the EU to move beyond its "tunnel vision" and to "acknowledge the true magnitude, nature and determinants of sexual violence in vulnerable migrants in the EU..." (p. 52). A step in the right direction in this regard was taken by the EU PROTECT-project, which was implemented in 12 Member States including Spain, Italy and Greece. The project aimed to "strengthen and adapt existing national support services for sexual and gender-based violence to coordinate better

and include refugees and migrants”, “build capacity for professionals who work with and for refugees and migrants with the aim of identifying and addressing the needs of survivors of SGBV more effectively” and “empower and inform refugee and migrant communities about SGBV and its prevention through a regional awareness-raising campaign” (in ‘t Zandt, Macquestiau & Palmero, 2019, p. 3).

It is not only the black letter law that impacts on the experience for victims, but how the CJS processes operate. Aside from the underreporting mentioned above, there is a high attrition rate for SGBV cases, and rape cases in particular, that are reported to criminal justice systems. Recent figures from England and Wales illustrate this. Of the 58,657 rape allegations made to authorities in the year ending March 2019, 3,034 led to prosecution, of which only 1,925 resulted in a conviction. In response to this the Chief Inspector of prosecution services stated, “something must be wrong” (HMCPSI, 2019, p. 7). The following year the number of rape convictions fell by a quarter to 1,439, which is less than half of the number of convictions for 2017-2018.<sup>112</sup> The UK Victims’ Commissioner (2020) criticised a policy change from the Crown Prosecution Service (CPS) of

England and Wales for the high number of rape cases that remain unprosecuted by the CPS,

*“For the sake of getting a higher rate of convictions the CPS have cut the volume of cases they charge leaving thousands of rape complainants without the chance of justice, even in cases when they appear to have a strong evidential case. The bowing to rape myths must end”.*<sup>113</sup>

#### Spotlight on practice

The Revenge Porn Helpline supports victims of online image based sexual abuse by facilitating and supporting the removal of the images and signposting victims to other support services. An interview with the service manager revealed that in many cases images are posted alongside identifying information such as names, telephone numbers and even locations of the victims. In some cases access to the images is not only publicly available but deliberately sent to friends, family members and associates of the victim, for example by sharing the images to all Facebook ‘friends’ or Instagram followers. This is an area in which laws not keeping up with the harms. In England and Wales, the jurisdiction of the service, the current law requires the intention to cause distress before the sharing of an image can be prosecuted. Further, the law in England and Wales does not recognise threats to share such images, although the law in Scotland does. In some cases such threats are part of a larger pattern of coercive control. Finally, in many cases where prosecution can be brought this is as a communication, rather than a sexual, offence and so anonymity cannot be guaranteed for victims.

<https://revengepornhelpline.org.uk/>

<sup>112</sup> 3,044 defendants were convicted of rape in 2017-2018.

[https://www.cps.gov.uk/sites/default/files/documents/data/case\\_outcomes/17-18-Q2/sexual.pdf](https://www.cps.gov.uk/sites/default/files/documents/data/case_outcomes/17-18-Q2/sexual.pdf).

<sup>113</sup> See <https://victimscommissioner.org.uk/news/victims-commissioner-brands-rape-prosecution-rate-utterly-shameful-and-urges-cps-to-change-its-policy-immediately/>.

A change in policy, therefore, can have a huge impact on a victim's ability to access justice and can be the difference between a woman being legally considered as a SGBV complainant or a SGBV victim. This effectively delegitimises her ability considered by herself, and be considered by others, as a victim. Further, the Victim Commissioner's claim that even policy level decisions are not immune from being influenced by rape myths illustrates that societal contexts surrounding SGBV are powerful drivers behind the phenomenon. This idea will be further elaborated in the following section.

## 4.2. Social contexts

Social norms create and contribute to the climate within which SGBV is perpetrated and experienced, indeed. It is important for professionals who work with victims and survivors to appreciate that SGBV is a social and not an individual problem (UNODC, 2019). Many social factors that contribute to SGBV are associated with the subordinate role of women in our societies. In some communities the idea that wives are the property of their husbands persists and when a woman complains about SGBV the

### Spotlight on practice

The *Šutnja nije zlato* (silence is not golden) campaign was an awareness-raising campaign carried out in Croatia in 2007-2008. The strength of this campaign was its evidence-base. Prior to the campaign, research was carried out about the prevalence and attitudes towards SGBV in the Croatian society. Based on these findings they developed a national multimedia campaign (e.g. TV spots, printed materials, billboards, magazine advertisements, information sessions in schools) that was well-targeted at the Croatian population and their common attitudes towards SGBV (e.g. rape myths, different types of SGBV such as 'date rape'). In addition, the campaign was evaluated successfully. A representative sample of 400 15-18 year olds were surveyed and asked about whether or not they noticed the campaign and understood the message. 91% indicated that they saw the connection and understood different forms of SGBV (violence in the family, date rape and trafficking).

<https://eige.europa.eu/gender-based-violence/good-practices/croatia/using-creative-techniques-change-attitudes-violence>

perceived shame that she is said to bring on the family is viewed more negatively than the behaviour of the perpetrator (Angiolini, 2015). One survey found that professionals who work with SGBV in Greece highlighted this as "a leading cause of gender-based violence in the Greek society" (Chliaoutakis, Papadakaki & Angelopoulou, 2012, p. 3). Indeed, Greece was the lowest ranked country in the 2020 gender equality index, and has occupied this last place since 2010 despite an overall increase in score of 3.6 points since that date (EIGE, 2020a).

Scarpati and Pina (2017, p. 116) argue that social norms which justify victim blaming attitudes contribute to and encourage SGBV because "they may serve to make sexually violent behaviors morally justifiable (e.g. the normative belief that men ought to behave in certain way towards women in order to prove themselves as 'real men')". An example is the belief that women need to be sexually



dominated by men. 7.2% of those surveyed in Italy agreed that when a woman says 'no' to an offer of sex she actually means 'yes' (Istat, 2018).

The phenomenon of 'slut shaming'<sup>114</sup> in Italy is illustrative. Dragotto, Giomi and Melchiorre (2020) claim that such behaviours are "a normalised communication practice in Italy, instrumental in the delegitimisation of prominent female politicians and public figures, and performed not only by ordinary people, but by politicians – mostly male – in the first place" (p. 47). The case is described in which Matteo Salvini, the then leader of the Northern League party, compared Laura Boldrini, the Lower House Speaker, to a blow-up doll and then refused to apologise. Rather than being shunned for such behaviour, Salvini went on to serve as Deputy Prime Minister of Italy and Minister of the Interior.

Social beliefs create the context in which SGBV occurs. For example, the belief in heteronormativity contributes to 'corrective rape', which is perpetuated against lesbian, bisexual, trans women, and gender diverse people, with the aim of 'curing' them of their sexual and/or gender orientation. In social climates that are permissive to sexual victimisations the existence of false beliefs regarding SGBV victimisation are common. Such false beliefs include rape myths (Burt, 1980, p. 27), which are "prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists". Such ideas include assertions that sexual assault victims are in some way responsible for their victimisation because of, for example, the clothes that they wear. In a survey of 15,034 18-74 year olds living in Italy (Istat, 2018) 23.9% of people believed strongly or somewhat that what a woman wears can incite SGBV. In the same survey 15.1% of respondents felt that being under the influence of drugs or alcohol makes a woman at least partly responsible if she is subjected to SGBV. In addition to women being blamed because of their intoxication, women are also judged as responsible for their attack because they did not resist the attack forcefully enough.

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<sup>114</sup> Slut shaming has been defined as "the act of attacking a woman's character based upon her perceived or real sexual activity" (Papp et al., 2015, p. 58).

#### Reflection on case

In 2009 John Worboys was imprisoned for 19 attacks on 12 women. His sentence was increased in 2019 following further convictions for sexually assaulting 4 additional women. Police believe he is responsible for as many as 105 sexual offences. He used his position as a driver of a black taxi in London to carry out the sexually assaults. Such taxis are licenced and women are encouraged by government and police campaigns to use this mode of transport, giving an illusion of safety. Worboys carried out his attacks at night, primarily targeting women who had been out drinking. He told them that he had recently won a large sum of money, and sometimes had a bag filled with cash to convince them. He would ask them if they wanted to join him in a celebratory drink. If they agreed he would offer them alcohol spiked with drugs that would render them unconscious. He would then carry out his attacks. Women would often have little or no memory of the attacks but would often suspect that something was wrong, one victim reporting being anxious and having a “feeling of dread something bad had happened”. She went to the police station but just stood outside because she was unsure of how to explain the situation to officers. Despite this distinctive modus operandi and numerous victims there were many police failings that allowed Worboys to continue his attacks. A number of commentators, including researchers and legal representatives of some of the victims, claim that victims were too often doubted because of they had often consumed alcohol and did not have clear memories. Subsequently physical evidence was ignored and forensic evidence was not gathered. Additionally, the strongly held perception that black taxi drivers are trustworthy influenced police officers, leading them to more easily doubt the victims.

See: <https://www.theguardian.com/uk-news/2019/dec/17/john-worboys-jailed-for-life-over-attacks-on-four-more-victims>.

Continuing with examples from Italy, and similar to in other countries, it seems that rape myth supporting attitudes are not uncommon in the general population. 39.3% strongly or somewhat agreed that if women really don't want to have sex they can avoid having sexual intercourse. Overall this statement is more commonly supported by men (41.9%) but is also supported by women (36.7%). This indicates that rape myth beliefs are common in society and confirms that such ideas are also held and expressed by women (Dragotto, Giomi & Melchiorre, 2020). People with a low or moderate educational achievement were the greatest supporters of this sentiment, but university graduates were also found to hold this belief in high percentages (37.9% male and 28.9% female). As with those who have received a higher education, professionals who work with SGBV victims are not immune from

holding false beliefs about SGBV. For example, some police officers were shown to believe that women in prostitution deserved their sexual victimisation (ICRSE, 2020).

Following interviews with UK police officers, McMillian (2018, p. 19) concluded, “...the persistence of high levels of belief in false allegations among criminal justice personnel serves to reinforce a culture that both supports and reproduces gender inequality and its manifestation in the form of sexual violence”. Perhaps it is not surprising that police officers hold such beliefs when the general public also generally overestimates the prevalence of false rape allegations. In a survey of people in Italy (Istat,

2018) found that 12.7% of men and 7.9% of the women surveyed believed that reports of SGBV are often fabricated. Societal attitudes will often also predominate the attitudes of professional groups, unless specialised training is given. Therefore, attitudes that do not encourage and support victims, lead to underreporting (Chliaoutakis, Papadakaki & Angelopoulou, 2012).

Societal attitudes and beliefs help to create the context within which the act will be reported. Further, professionals' attitudes towards SGBV victims influence how those victims are treated (ICRSE, 2020) if they do ever seek help and, therefore, how victims access and experience services. For example, professionals who represented SGBV victims in Greece reported that young victims were reluctant to seek medical treatment following victimisation when healthcare professionals displayed discriminatory attitudes (Chliaoutakis, Papadakaki & Angelopoulou, 2012). Professionals need to have a nuanced understanding of SGBV and how victims may present themselves. Rape myths, victim-blaming and insensitive treatment of such victims by professionals are predominantly due to a lack of both awareness and training (Campbell, 2008; Campbell & Raja, 1999).

The significance here is that false beliefs about sexual assault influence how people interpret situations of SGBV. Nguyen, Weeks, & Stenstrom, (2020) point out that “[a] sizable body of research on rape perception has consistently found that the more an assault incident deviates from the prototypical rape schema, the less likely it is perceived as rape. For instance, date rape, acquaintance rape, and marital rape are often treated with scepticism by the general population..., legal authorities..., and sometimes even victims themselves” (p. 2-3). Additionally, being part of a marginalised group in society also seems to affect the credibility of SGBV victims because presumptions about this group are not consistent with the perception of the ‘ideal victim’ and ‘real rape’ (Randall, 2010). A Canadian study analysing how victims of adult sexual violence were

### Spotlight on practice

Some countries have developed media guidelines in order to report in a sensitive, ethical and responsible way about SGBV. In Canada for example the guideline ‘Use the Right Words’ was developed. This guideline includes for instance a ‘language checklist’ in which examples are given on promising practices for reporting on sexual violence such as:

“DO Use the descriptor that an interviewee prefers, such as “survivor,” or “person who experienced sexual assault. DON’T Default to the descriptor “victim” unless this is the wording an interviewee prefers”

“DO Use language that places the accountability for rape or other forms of sexual assault with the perpetrator. DON’T Describe sexual assault as belonging to the survivor (i.e. “her (the survivor’s) rape”)”

“DO Use language that accurately conveys the gravity of sexual assault. DON’T Downplay the violence of sexual assault, or suggest some forms of assault are more serious (e.g.: “The survivor was unharmed.”)”

<http://www.femifesto.ca/wp-content/uploads/2015/12/UseTheRightWords-Single-Dec3.pdf>.

treated in the criminal trial process found for instance that black and aboriginal woman victims were subjected more often to defence questioning regarding their alcohol and drug use, lying and casual sexual relationships. Socio-economic status seems to have a similar impact (Cossins, 2003; Randall, 2010). This is in line with what Christie already stated in 1986, that the reasons behind perceiving a victim as credible are related to specific characteristics of the victim and the relation between victim and offender (Christie, 1986). As previously mentioned, the feeling that their experience does not fit a stereotypical portrayal of SGBV leads victims to assume they will not be believed and discourages them from reporting SGBV (Angiolini, 2015). For example, women who identify as lesbian, bisexual or transsexual should not be made to feel that their sexual victimisation is less damaging or should be taken less seriously where they have been victimised by another woman. The social atmosphere not only shapes how victims are understood and responded to by others but also how victims understand and experience their own victimisation.

One such aspect relates to the sense of shame associated with sexual abuse. Many women do not talk about their victimisation within their social circles because of the stigma linked to sexual assault (Angiolini, 2015). Further, because the topics of rape and SGBV often make people feel uncomfortable, if they do ever find out about the rape friends and family often struggle with how to relate to the victim and victims are sometimes shunned (Angiolini, 2015). In this way, many SGBV victims often miss out on the social support from people within their networks that other victims may have access to. Professionals who offer support to SGBV victims should appreciate that some victims may feel socially isolated. Training for professionals who work with SGBV victims should contain such elements, and professionals should be encouraged to reflect on their role (UNODC, 2019).

These misunderstandings about SGBV and the presence of rape myths in society are also fed by media coverage about such crimes. Research done in the US shows that news articles about sexual assault “often still use euphemisms, portray stereotypes, favour the perpetrator, show scepticism towards the survivors, and unnecessarily sensationalise the crimes” (Aroustamian, 2020). A similar study was conducted in Australia about a high profile case of an actor who was accused of sexual violence. This showed that:

*“... the majority of reporting still perpetuated limited and binary understandings of sexual violence. Much reporting constructed pressure and coercion as the normal and acceptable “reality” of (hetero)sex, failing to acknowledge coercion as potentially harmful and problematic, as well as failing to consider the possibilities for doing consent differently. Reporting also (re)produced narrow and stereotypical understandings of gender roles, with*

*women primarily seen as bearing the onus of gatekeeping sexual experiences, and men seen as “naturally” aggressive pursuers of sex.” (Hindes & Fileborn, 2020, p. 639).*

Although, some countries have developed a media guideline when reporting about SGBV (Sutherland et al., 2016) and after the Wienstein case and the #metoo movement there seems to be a slight change in this matter (Aroustamian, 2020).

The ‘me too’ movement can be considered a turning point in many ways. It was launched in 2006 by African American civil rights activist Tarana Burke and popularised in 2017 when the #metoo twitter hashtag, used by the Italian actress Alyssa Milano, went viral (Camus, 2019). The fact that this was only 11 years later may be linked to intersectionality discussed earlier. The impact of the movement only became global when a prominent white woman came forward with her experience of SGBV (Leung & Williams, 2019). However, other causes might have also contributed to this, for example a more prominent place in society of social media. The viral Twitter hashtag #YesAllWhiteWomen was intended to address the ignorance of race and other intersectional factors in the discussion and activism of sexual violence (Rodino-Colocino, 2014), and is another example that emphasises the importance of intersectionality taken into account in the context of sexual violence but so far this is not the case.

The #metoo, which encouraged women to share their experiences of sexual victimisation, brought attention to the sexual abuses of women, and in particular to the dynamics of power that often lie behind them. This grass roots social movement has been credited with bringing attention to the overlooked issue of SGBV against women, and personalising and humanising the concept of sexual assault victim (Corsi, Thissen & Zacchia, 2019) and providing a support structure for women victims. Country specific variations evolved, including #BalanceTonPorc (#denounceyourpig) in France, #Ichauch (#metoo) in Germany, #quellavoltache (#thattimewhen) in Italy, and #YoTambien (metoo) in Spain.<sup>115</sup> Another variant is #Mosquemetoo, which is used by Muslim women to raise attention of sexual violence that they experience during the Hajj religious pilgrimage to Mecca. There has been an association between #metoo and an increase in reports of sexual harassment and rape in France (Corsi, Thissen & Zacchia, 2019; Levy & Mattsson, 2019). Further, #metoo has been credited with initiating social and political change (Newins, Wilson & Kanefsky, 2020). In January 2021 a new variant of the hashtag was introduced in France. #Metooinceste was a response to *La Familia Grande*, a book by lawyer Camille Kouchner in which she accuses her step-father, a well-known political scientist and television personality of incest against a child (Hotterbeekx, 2021). Then thousands of victims came

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<sup>115</sup> It has been noted, however, that the movement did not seem to gain much traction in Greece. See <https://blogs.lse.ac.uk/greeceatlse/2018/05/29/the-metoo-movement-and-the-greek-silence/>

out with their similar stories of incest on Twitter because of this. These are amongst many examples of how the experience of SGBV has been impacted by technology and the expansion of the internet and social media. In the following section this impact is been further elaborated in terms of the challenges and benefits that it brings.

### **4.3. The internet**

The internet has spawned new forms of and opportunities for violence. Much of this online violence is sexual in its nature or tone. Such acts can include doxing<sup>116</sup>, sextortion<sup>117</sup>, image based sexual abuse<sup>118</sup>, the publication of sexualised images (real or digitally manipulated) for the purposes of shaming, and the use of technology to facilitate acts of forced prostitution. Sex traffickers, for example, make use of technology “during every phase of sexual exploitation” (Europol, 2020, p. 1). Further, in recent years the buying and selling of sex has been dramatically shifted away from street corners and onto online spaces (Europol, 2020). It can be seen, therefore, that internet technology has allowed new forms of victimisation patterns to develop. However, just as with other forms of SGBV, compared to men and boys, women and girls are disproportionally subjected to online violence and are also disproportionality negatively impacted by those experiences (Šimonovic, 2018).

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<sup>116</sup> Publicising personal information and contact details without consent and for malicious intent, often under the pretext that the named individual is soliciting for sex.

<sup>117</sup> Attempts to blackmail the victim, often with the threat of releasing sexually explicit materials that feature the victim.

<sup>118</sup> The release, or threats to release, of sexually compromising materials without permission. Often such photographs or videos have been made without consent, sometimes within the context of a consensual sexual relationship. See McGlynn & Rackley, 2017.

The web is a space where damaging ideas such as rape myths can be spread (Aurrekoetxea-Casaus, 2020) and anonymous perpetrators to remotely and persistently target victims. The resulting harm incident can potentially be witnessed across the world, 'go viral', can remain searchable and can be a source of secondary trauma (Šimonovic, 2018).

People, and particularly the young, are facilitated and encouraged to engage in sexualised exchanges, often with unknown others, in ways that can lead to sexual abuse (Chliaoutakis, Papadakaki & Angelopoulou, 2012). Indeed, the amount of 'self-generated'<sup>119</sup> child sexual abuse content online has been increasing (IWF, 2020). This reflects the more general trend with respect to child sexual abuse content that is available online (IWF, 2020; Revenge Porn Helpline, 2020).<sup>120</sup> Women and girls are overwhelmingly the victims of online child abuse images.

In 2019, 92% of the online child sex abuse pictures and videos assessed by the Internet Watch Foundation (IWF) were images of girls, and an additional 3% were of both girls and boys (IWF, 2020). The current research is only concerned with the experiences of adult SGBV victims, but the implication is that there are increasing numbers of adult women who will have experienced, and may still be experiencing, this form of sexual victimisation based on sexual images of them that were taken in the past.

The online sharing of sexual imagery is becoming increasingly problematic. To illustrate the size of

the issue, the Pornhub website, which is the tenth most visited website in the world, receives 3.5 billion visits each month and has approximately 6.8 million new videos added to it annually (Kristof, 2020).

### Spotlight on practice

Project 'unbreakable' is an online space in which survivors of sexual and gender based violence post selfies that contain some text that conveys a message about their experience of sexual abuse. In many cases survivors post quotes from their abuser, often words that were spoken during the abuse. Sometimes additional information is posted, such as the thoughts of the survivors themselves or information about the abuse such as the relationship with the abuser, the age at which the abuse took place or reactions of friends or family members. Some survivors include a picture of their face and others only part of their face or body. Often hashtags are also included, such as #projectunbreakable or #sexualassault. Examples of posted text include:

"You fight me during sex because you don't want it and forcing me to take it is your way of making it ok in your head.' My husband of 13 years who raped me regularly"

"YOU have provoked ME when YOU'VE got YOUR LEGS SPREAD WIDE as I was changing YOUR DIAPERS'. The beginning"

"It's just a game, don't tell anyone or I'll get in trouble' my grandfather who molested me for 7 years, starting at age 4. I didn't tell. I thought it was a game and I didn't want him to get in trouble."

<https://projectunbreakable.tumblr.com/>.

<sup>119</sup> This content is "created using webcams and then shared online. In some cases, children are groomed, deceived or extorted into producing and sharing a sexual image or video of themselves... this imagery is frequently being produced through live streaming services and is then captured and distributed widely across other sites" (IWF, 2020, p. 57).

<sup>120</sup> Interview with Sophie Mortimer from the Revenge Porn Helpline on 17.11.2020.

Campaigners insist that some videos contain images of rape, including the rape of minors. In December 2020 Pornhub, and due to financial sanctions threatened by credit card companies, removed 9million videos from its site because consent could not be established (Paul, 2020). Despite efforts from the Internet Watch Foundation (IWF), the Revenge Porn Helpline and other such organisations to remove such material, once uploaded images are permanently out of the victim's control. With image-based sexual abuse, for example, one key element is the constancy (McGlynn et al., 2019) or enduring nature of the victimisation experience. This is quite different to more 'traditional' types of sexual victimisation. One study participant who had experienced image-based sexual abuse explained "[t]here is no end to it, there is no stop, there is no finale ... It's like I'm quite aware that if I was to go on the internet or the porn websites now, I would ... find the videos of me ... it's a crime that doesn't just happen and then that's done, it's something that is continual, and this could continue for I don't know how long. It could go on for bloody ever" (McGlynn et al., 2019. p. 7). Such victims also describe living with a constant fear of being recognised through those images (McGlynn et al., 2019). The fact of the sexual victimisation taking place in a virtual environment does not make the experience of harm any less real. In recognition of the damage caused by online abuse, the United Nations Human Rights Council <sup>121</sup> deemed that human rights in the online sphere should be protected as equally as those in the offline environment (Human Rights Council, 2012).

The internet is not an entirely negative force in the experiences of SGBV victims. As previously discussed, #metoo and similar movements have been a force for positive changes for sexual abuse victims. In Spain, the internet is considered to be a contributing factor to a growing feminist movement which not only consists of virtual solidarity amongst women and SGBV victims through hashtags such as #HermanaYoSíTeCreo (Sister, I believe you), #Juntas (Together) or #Sororidad (Sisterhood), but has also led to public street demonstrations (Abrisketa & Abrisketa, 2020). Importantly, social media facilitated the momentum which helped to galvanise a public outcry in Spain regarding the 'wolf pack' case (Abrisketa & Abrisketa, 2020; Vidu & Tomás Martínez, 2019) (see 'reflections on a case', above).

#### Spotlight on practice

The Belgian national website 'Stop Geweld' ('Stop Violence') started as a pilot project to inform people of interest about sexual violence and to offer support by for instance offering a chat function in order to talk anonymously to a trained professional. Since the COVID pandemic the service 'chat after sexual violence' function is more elaborated by raising awareness of the availability of it and by offering this service in the three languages spoken in Belgium (Dutch, French and German).

<https://www.seksueelgeweld.be/>

<sup>121</sup> United Nations Human Rights Council (2012), Resolution 20/8.

The promotion, protection and enjoyment of human rights on the Internet. Accessed at: <https://daccess-ods.un.org/TMP/6394969.22492981.html>.



The internet has created many opportunities for victims to come together in support groups, which often take the shape of moderated forums, many of which are closed groups, including message boards and chat rooms. When accessing online communities women are often looking for a supportive network, for advice and/or for a place for sharing narratives (O'Neill, 2018). The popularity of #metoo and other online support illustrates a need amongst survivors for showing and receiving solidarity.

#### 4.4. Global crises

Three global crises will be explained in the context of sexual violence. These are: the COVID-19 pandemic; the migrant crisis; and the global financial shutdown.

##### 4.4.1. COVID-19 pandemic

At the time of writing, the world is in the midst of the COVID-19 pandemic. This health crisis, and the associated impacts on the social and economic lives of citizens, also has consequences with respect to the experience of women generally and for violence against women more specifically. Whilst men seem to be at greater risk of contracting COVID-19 and to have higher fatality rates (OECD, 2020), the COVID crisis has disproportionately impacted women in other senses. The pre-existing gender-based work inequalities within the home have been exacerbated by the pandemic as women, for example, take on increased childcare responsibilities due to the lockdown related school and creche closures (OECD, 2020). Further, 70% of healthcare workers are female and consequently such women have high levels of exposition to the virus. Women are also likely to be employment that is being hard hit by the crisis, such as retail, hospitality or tourism industries, and/or in temporary employment (OECD, 2020).

The COVID-19 situation has increased violence against women and girls in what the UN terms 'the shadow pandemic' (UN Women, 2020a). Reports of domestic violence have increased globally. In April 2020 a UK based 'revenge porn helpline'<sup>122</sup> service reported a 98% rise in cases compared with April 2019.<sup>123</sup> In August 2020 reported cases were 63% higher than in August 2019. Whilst an increase in reported cases does not necessarily confirm a rise in victimisation, evidence from a number of sources indicates that the COVID-19 pandemic is increasing the vulnerability of women and girls to many forms of SGBV. For example, cases of intimate partner violence, a proportion of which will be SGBV, have dramatically risen during the COVID crisis (Bradbury-Jones & Isham, 2020; Gosangi et al., 2020; WHO, 2020). Further, human trafficking for the purpose of sexual exploitation has also increased during the crisis (OSCE, ODIHR & UN Women 2020). The lockdowns and movement restrictions have drastically limited opportunities to provide sex services through street prostitution and establishments

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<sup>122</sup> 'Revenge porn' is a colloquial term for image based sexual abuse in which sexually explicit photographs or videos are shared on websites, or threats are made to do this, without the consent of the person in the image.

<sup>123</sup> UK Safer Internet Centre. Accessed at: <https://www.saferinternet.org.uk/blog/revenge-porn-pandemic-rise-reports-shows-no-sign-slowing-even-lockdown-eases>.

such as sex clubs and massage parlours. Consequently, such services have largely moved online, limiting the possibilities for regulation and/or detection by law enforcement (Europol, 2020). Finally, therapeutic and counselling services for (potential) perpetrators of SGBV are also restricted by the COVID rules (Carvalo & Pascoal, 2020). This may decrease effective prevention and, therefore, increase victimisation.

Many groups of victims are particularly impacted by the COVID-19 crisis but, as a group, migrant women have been particularly vulnerable to sexual victimisation during the COVID crisis (Giammarinaro, 2020; UN Woman, 2020b; Ramos, 2020). In their study of forced migrant survivors of sexual and gender-based violence, Pertek, Phillimore and McKnight (2020) found that the COVID situation compounded existing needs, including mental health conditions and financial pressures, “undermining their coping, recovery, ability to integrate in countries of resettlement and potentially increasing their vulnerability to further abuse and exploitation” (p. 14), all effects that are likely to extend and influence SGBV victims beyond the pandemic. This is particularly relevant in the European context because of the migrant crisis (see ‘migrant crisis’ below). Indeed, Europol (2020) have warned about a possible increase in women’s vulnerability to sexual exploitation even after the COVID-19 crisis has subsided. A financial downturn would increase the number of women in financial difficulties, which would increase their risk of becoming victim to sex trafficking (see also ‘global financial downturn’). Additionally, they highlight that a demand for cheap labour in the EU following the pandemic could become a pull factor and subsequently increase the trafficking. Services that work with SGBV victims should be aware of and able to respond to these complexities.

#### Spotlight on practice

The EU project on preventing sexual and gender-based violence against migrants and strengthening support to victims (PROTECT) developed information materials especially for migrant victims of SGBV and training materials for actors who get into contact with migrant victims of SGBV.

<https://eea.iom.int/PROTECT-project#PROTECT-mapping>

In addition to a direct effect on SGBV victims the COVID rules and fears about catching the virus have discouraged some SGBV victims from seeking medical help and other support (Pertek, Phillimore & McKnight, 2020; Barbara et al., 2020). In the first six weeks of the lockdown Sexual Assault Referral Centres (SARCs) in the UK saw a 50% decrease in the number of referrals for forensic examinations. The pandemic has also been a barrier to accessing essential support services (OSCE, ODIHR & UN Women 2020; Johnson et al., 2020; UN Women 2020b) because victims were not able to access new services or because COVID rules have disrupted existing support structures that victims had in place. Due to the health guidelines SARCs in London, for example, had to limit victim access to a forensic medical examination. The service was limited to cases of stranger and intrafamilial assault. In cases of

acquaintance or partner assault, for example, the service was only offered on a case-by-case basis (Johnson et al., 2020). Indeed, the COVID situation meant the needs increasing for many victims of gender-based violence whilst, concurrently, many services had to reduce their capacity in compliance with the COVID and lockdown rules (Pertek, Phillimore & McKnight, 2020). Responses to service users should be able to negotiate and make provision for the needs of victims despite the restraints and pressures of COVID. These obstacles in accessing help or reporting the crime could even lead to victims never reporting the crime after a substantial time. The latter concern was expressed by INTERPOL in the context of child sexual exploitation and abuse (INTERPOL, 2020).

#### 4.4.2. Migrant crisis

The COVID-19 pandemic has followed a migrant crisis in the European Union. In 2019 alone, by mid-November it is estimated that almost 101,000 people had found their way to European Union borders (Human Rights Watch, 2020). According to the United Nations High Commissioner for Refugees, between 2014 and October 2020 Greece, Italy and Spain had respectively received 1,257,400<sup>124</sup>, 42,309<sup>125</sup> and 184,337<sup>126</sup> refugees and migrants via land or sea. As a group, migrant populations have an elevated exposure to SGBV victimisation. For some, sexual abuse is a push factor that compels them to leave their home country. SGBV is also a phenomenon that many migrants experience *en route* to the host country (Keygnaerts et al., 2014; Chauvin, Simonnot, Vanbiervliet, Vicart & Vuillermoz, 2015). When they arrive in the host country, asylum seekers, refugees and undocumented migrants are also at a heightened risk of SGBV than European citizens (Keygnaert, Vettenburg & Temmerman, 2012; Keygnaert et al., 2015; FRA, 2014). Intersectionality (see above) is a key factor here. Migrant women, and in particular those who are undocumented and have refugee status often have unstable housing and face other social disadvantages. A study of female Sub-Saharan migrants living in the Paris region found that these social and economic challenges increase their exposure to SGBV and their risk of contracting HIV (Pannetier et al., 2018). Migrant women in general, and migrant women in prostitution in particular, face many barriers to justice (ICRSE 2020; Morales, 2018).

Many migrants are unaccompanied minors. These children are likely to be fleeing sexual abuse in their home countries, to have experienced SGBV during their migration journey and/or to experience SGBV in their destination country (IOM, 2019). Additionally, increasing numbers of children are being subjected to trafficking (IOM, 2019). There are several implications of this phenomenon for services

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<sup>124</sup> UNHCR Operational Portal (Refugee situations). Accessed at: <https://data2.unhcr.org/en/situations/mediterranean/location/5179>

<sup>125</sup> UNHCR Operational Portal (Refugee situations). Accessed at: <https://data2.unhcr.org/en/situations/mediterranean/location/5205>

<sup>126</sup> UNHCR Operational Portal (Refugee situations). Accessed at: <https://data2.unhcr.org/en/situations/mediterranean/location/5226>

that provide help to SGBV victims. As is the case for victims of image based sexual abuse, services that assist adults should be aware that, in future years, increasing numbers of service users will have had such experiences in their childhood.

#### 4.4.3. Global financial downturn

The refugee crisis in Europe followed the 2008 global financial downturn. This had far reaching consequences that continue to resonate today. For example, at the end of 2016 youth unemployment in the EU was 18%, and stood at approximately 40 % in Greece, Spain and Italy (European Commission, 2017 p. 8). As previously mentioned, economic hardship increases women's vulnerability to SGBV which apparently "flourishes" in times of austerity (Kosyfologou, 2018, p. 32). The financial crisis has increased individuals' dependence on family support and financial hardship makes it more challenging for women to leave abusive relationships (Europol, 2020). The crisis contributed to job losses and the associated financial instability for families, which led to women and children being placed in a more precarious position (Breiding, Basile, Klevens & Smith, 2017). Additionally, public sector spending

#### Spotlight on practice

A Village Savings and Loan Association (VSLA) is a scheme allowing members of a community to save money and take small loans. The CARE NGO facilitates such a micro-savings scheme in the Democratic Republic of the Congo (DRC) for women who have experienced SGBV as part of a holistic socio-economic approach to assisting survivors. Help is provided to women at the individual, group and community level, and the VSLA forms part of the middle tier of support. The VSLA is not only a financial scheme but the group provides a safe space and supportive social environment, and the benefits of membership go beyond the economic advantages. Women report increased self-belief and self-confidence, increased mental health stemming from the social support, increased agency, and the ability to contribute to the household income.

[https://www.svri.org/sites/default/files/attachments/2016-01-15/CARE%20DRC%20Socio\\_Economic%20SGBV\\_Final.pdf](https://www.svri.org/sites/default/files/attachments/2016-01-15/CARE%20DRC%20Socio_Economic%20SGBV_Final.pdf)

decreased with the inevitable negative impacted on services available for SGBV victims. In Greece between 2014 and 2017, for example, gender based violence increased against a backdrop of austerity measures "record unemployment, poverty, suicide and depravation" (Malgesini, Cesarini Sforza, & Babović, 2019, p. 34). A 2018 International Federation of the Red Cross (IFRC) report on Greece encapsulates the impact of the financial crisis on the situation for SGBV victims,

*"Greece also suffers from significant risk factors in terms of the ongoing austerity environment. Financial strain, upheaval of traditional gender roles, and erosion of public services necessary for a robust response to GBV are all known risk factors for either greater prevalence of GBV, or greater harm resulting when it occurs" (IFRC, 2018, p. 13).*

A lack of funding for Greek sexual assault NGO services has been noted as problematic by Greek professionals who work with sexual abuse survivors (Chliaoutakis, Papadakaki & Angelopoulou, 2012) and limits the impact of such services (Kosyfologou, 2018). Greece is not alone in experiencing the challenging economic climate. In Italy, for example, insufficient funding from state and local governments led to the closure of a number of Anti-Violence Centres in Italy (Carrano 2017, cited in Pomicino, Beltramini and Romito, 2019) and a lack of funds causes challenges for womens' support services (IOM, 2019).

## Cluster B: practice orientation

This cluster contains four central topics (1) availability and access to services, which contains: individual barriers; interpersonal barriers; sociocultural barriers; and organisational barriers (2) participation, which contains: receiving and understanding information; participation, agency, empowerment and independence; and being heard and understood (3) protection, which contains: protection of safety and security; privacy; and dignity (4) redress, which contains: health and well-being; vindication and validation; and compensation.



## 5. Availability and access to services

- Articles 4 (right to receive information from the first contact with a competent authority), 7 (right to interpretation and translation), 8 (right to access victim support services), 13 (right to legal aid), 14 (right to reimbursement of expenses), and 15 (right to the return of property) and 17 (rights of victims resident in another Member State).

The accessibility of justice is a marker of the quality of effective justice systems (Hauser, 2017). However, in order for services and programmes to be accessible, they must first be available and well-known in society (see also ‘receiving information and understanding’). Victim support and legal services should exist in sufficient numbers and well enough resourced to provide sufficient capacity to meet victim needs (FRA, 2014). In Italy, for example, it has been highlighted that there is great variability in the provision of services for SGBV victims both within and between geographic areas (IOM, 2019), meaning that services are not equally available to all victims. The concept of availability is closely tied with that of accessibility because if a service is not accessible to (that is, it cannot be used by) particular victims than it is effectively unavailable. The following section will give attention to a number of common barriers to accessing services divided into individual barriers, interpersonal barriers and sociocultural barriers.

### Spotlight on practice

In 2019 the first one-stop centres in the world specialised in providing “holistic, accessible, trauma-informed services to adult crime victims with disabilities” were established in Ohio, USA. These Adult Advocacy Centres are equipped to conduct, amongst other services, (mobile) forensic interviews, forensic medical examination, mental health screening, advocacy and support regarding the CJS. To ensure specialised help for victims with different disabilities they have created a wide network of specific agencies and organisations which can be consulted for specialised help.

“People with disabilities have always had a voice. We’re just teaching the world different ways to listen.”

<https://www.adultadvocacycenters.org/>

### 5.1. Individual barriers

SGBV is a particular form of victimisation that comes with additional challenges for the victim, such as shame, (self-)blame and doubting the victimisation itself. The latter can occur for instance when the phenomenon is not corresponding to the more ‘typical’ forms of SGBV. For example non-consensual condom removal is less known as a form of

victimisation and is not always recognised in legal frameworks as an offence. The victim might therefore also doubt herself whether or not she was victim of a sexual offence. Also when SGBV occur in the context of drinking, the victim might doubt their experience of SGBV. This might also relate to self-blame, often experienced by victims of SGBV. This refers to victims who blame the victimisation

to their own behaviour (e.g. drinking) or to certain personal characteristics (e.g. being gullible) (Peter-Hagene & Ullman, 2018). When self-blame is present, the victim will be less likely to report the crime and seek for help (Campbell et al., 2009; Sit & Schuller, 2018). Due to the nature of the crime, the taboo and stigma that comes with it and the possible self-blame, experiencing shame is extremely common in cases of SGBV. Research show that victims who experience shame are less likely to enter support services because of the fear that others might find (Carson, Babad, Brown, Brumbaugh, Castillo & Nikulina, 2020; Stoner & Cramer, 2019).

Certain individual characteristics may also cause challenges and barriers for accessing services. International guidance provides indicators of some of the barriers that victims may face when accessing services. The access that victims have to services, programmes and justice provisions should not be limited by, amongst others, any physical disability<sup>127</sup> or mental health condition, because of financial factors<sup>128</sup> or because of their migration status<sup>129</sup>. In practice, however, many difficulties persist. In countries where the enforcement of immigration rules are prioritised this can discourage women working in prostitution without a regular residence status from reporting SGBV, accessing support and receiving protection (ICRSE 2020; TAMPEP, 2019). In Greece, for example, there are challenges with respect to how migrant women who are illegal and do not want to apply for asylum can access some national support services (IOM, 2019). A 2019 report noted that migrant women in Greece were less likely to access support services and highlighted that women from this group were less aware of SGBV victimisation and/or were less aware of the available services (IOM, 2019).

A decreased likelihood to access services is not reserved for new arrivals. Victims from certain groups, such as those who are lesbian, gay, bisexual or transgender (LGBT), or those from and black and minority ethnic (BME) communities, are less likely to access victim support services (Love et al., 2017; Harvey, Mitchell, Keeble, McNaughton Nicholls & Rahim, 2014). Similarly, people with disabilities and older people are also less likely to access services (Bows, 2018; Fraser-Barbour, Crocker & Walker, 2018). For older SGBV victims physical challenges, such as hearing and mobility needs, can limit access to services (Bows, 2018). Difficulties with vision can also impact on the ability of older people to access written information about services. However reasons for this lack of engagement from particular groups are often complex and nuanced. The reduced participation of people from minoritized groups in services is particularly worrying because the risk of becoming a victim of SGBV is higher amongst people with these backgrounds (Hester et al., 2012; Walters, Chen & Breiding, 2011; Basile, Breiding & Smith, 2016). Additionally, issues of intersectionality may mean that people from these groups have a

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<sup>127</sup> Victims' Directive (2012), preamble 15.

<sup>128</sup> Victims' Directive (2012), article 7, article 8.

<sup>129</sup> Istanbul Convention (2014), article 4. Committee of the UN Convention on the Elimination of All forms of Discrimination against Women, General Recommendation 35 (para. 29).

number of interacting needs and interests (see also ‘types of SGBV’). Steps should be taken to ensure equity of access to services, and this may require particular groups to be targeted for engagement.

## 5.2. Interpersonal barriers

The response to the victimisation by others around the victim seems to be an important factor when seeking for help. When family members or friends do not validate the experience of the victim, by for example not taking it seriously or not believing the victim, the victim is more likely to also question their experience and therefore not participate in support services (see also ‘validation and vindication’) (Carretta, Burgess & DeMarcos, 2016). Even when the victim does not experience negative reactions from others, there is still a fear of negative responses, stigma and judgement. This might be a reason to keep quiet about the victimisation and for not accessing services (Kennedy & Prock, 2018; Ullman, O’Callegan, Shepp & Harris, 2018).

### Spotlight on practice

The Pennsylvania Coalition Against Rape (PCAR) developed a guide for family members and friends in order to inform them about SGBV and provide them with practical tips on how to treat their loved ones who were sexually victimised, for example “Believe the victim”, “Give the victim control” and “maintain confidentiality”. Information about SGBV that is considered to be important for family members are for instance effects and possible reactions to the victimisation and understanding of the variety in forms of SGBV.

[https://www.pcar.org/sites/default/files/resource-pdfs/friends\\_and\\_family\\_guide\\_final.pdf](https://www.pcar.org/sites/default/files/resource-pdfs/friends_and_family_guide_final.pdf)

In contrast, a supportive environment can encourage the victim for accessing services (Fleming, Lynch, Hakas & Belanger, 2018). This shows the importance of providing information and support for the people in the informal network of the victim (see also ‘health and wellbeing’). When family and friends of the victim are well-informed and receive the support they need, they can be better supporters for the victim (e.g. not blaming the victim and avoid secondary victimisation) and to encourage the victim to report the crime and seek help. Past experiences with services, the CJS and informal relationships can also be a factor in this regard. Research shows that victims who had negative experiences with formal and/or informal support in the past are less likely to participate in services (Sit, 2018; Patterson, Greeson & Campbell, 2009).

## 5.3. Organisational barriers

Some of the barriers to accessing services are associated with the way of providing services to victims. This is especially relevant for victims of SGBV because of high under reporting of such crimes. If access to victim support services is made a condition of or linked to reporting the assault to authorities, for example, this will reduce the number of women who will access the services (Carbone-Lopez, Slocum & Kruttschnitt, 2016). Therefore, a refusal to press charges or give evidence should not impede a



victim's access to services.<sup>130</sup> Additionally, if information about the existence of and routes into victim support services is only available through the police, then this will also reduce the numbers of women who will be able to access help. In recognition of the low levels of reporting sexual crimes to the authorities, services and programmes should ensure that they can be easily accessed outside and independent of criminal justice service mechanisms. Access to support services should not be conditional on the harm reaching a particular legal threshold, but instead on whether the woman considers herself to have been a victim of SGBV (see also 'legal and policy context').

Additionally, given the chronic underreporting of SGBV, the length of time between the incident and accessing the support service should not serve as a barrier to assistance. Indeed, professionals should recognise the many barriers to women reporting SGBV, such as self-denial regarding the assault, and have an awareness of how "...the self-blaming incredulity, the efforts to normalise the situation by carrying on as usual and the profound post-traumatic stress disorder that sometimes accompany such a traumatic event" can all contribute to reports not being made immediately following the SGBV incident (Angiolini, 2015, p. 52).

It is essential that a variety of agents who may come into contact with victims are aware of the presence of services<sup>131</sup>, are active in signposting victims and understand referral routes and criteria in

#### Spotlight on practice

Victim Support Switzerland has produced a series of videos in sign language, explaining their services and how to access them.

<https://www.aiuto-alle-vittime.ch/en/brief-information-victims-support/sign-language/>

order to avoid that victims do not report. Self-referral is also an important route into services that should be available. To increase the likelihood that victims become aware of the existence of help services it is important to make information available in multiple

languages (see also 'receiving information and being understood') and in many locations such as pharmacies, doctors' surgeries, public toilets, places of worship and supermarkets (Angiolini, 2015).

An additional challenge for services who work with victims of SGBV comes with the fact that these types of victimisation are highly gendered harms and that victims of SGBV do often have a strong preference for female workers when participating to services. Almost 80% of the 176 woman who completed a questionnaire whilst attending a SARC preferred female forensic physicians and almost 75% indicated a preference for a female crisis worker. In that same sample, nearly half of the women (43,6%) indicated that they would have refused the forensic examination if they had to see a male medical (Chowdhury-Hawkins et al., 2008). This is due to pragmatic and organisational reasons not

<sup>130</sup> Istanbul Convention (2014), article 18; Victims' Directive (2012), article 8.5.

<sup>131</sup> Victims' Directive (2012), article 4.

always possible, which may lead to a decrease in victims reporting the crime and participating in services.

#### 5.4. Sociocultural barriers

As elaborated earlier, the context in which the victimisation takes place has an important impact on the experience of the victim (see also ‘understanding the context of SGBV’). These challenges may also manifest in accessing services. The sociocultural context of the society and the community where the victim finds herself in may lead to barriers in accessing services.

Certain norms, stereotypes and taboos around gender, sex and sexual offences often hold victims back in accessing services, possibly due to stigma and shame (Carson, Babad, Brown, Brumbaugh, Castillo & Nikulina, 2020; Stoner & Cramer, 2019). Challenges around talking about sex and abuse are common in most societies but may effects be enhanced within certain groups. . One Latin-American survivor explained in a focus group about cultural barriers: “...my family is very reserved when talking about sex. So by simply saying “abuso sexual” you are already talking about sex. And it’s like a taboo between us and that’s why we can’t define these terms, because our families have not taught us how to define these terms.” (Arhens et al., 2010, p. 210). Traditional norms and gender roles for instance (see also ‘social context’) may also prevent woman from seeking help. The belief that men dominate woman can normalise sexual victimisation and lead to the victim not perceiving the victimisation as such

#### Spotlight on practice

Rape culture, an environment where sexual victimisation is normalised caused by social attitudes towards gender and sexuality, is a common given on college campuses. The organisation ‘It’s on Us’ tries to change this harming culture by developing and providing tools for universities that can be used for raising awareness and teaching students about SGBV and how to react when it happens to them or other students.

<https://www.itsonus.org/toolkit/educational-tools/>

(Angiolini, 2015; Ahrens et al., 2010). Cultural patterns such as so called ‘familism’ is another example of a cultural barrier, which is seen in societies that are more focussed on community rather than individual well-being. Causing distress, shame and harm to the family, by for instance coming forward with their sexual victimisation, is often discouraged. It is considered appropriate to resolve such matters within that family (Arhens et al., 2010; Mennicke, Bowling, Gromer & Ryan, 2019).

Norms and stereotypes are often expressed in rape myths (Bates, Klement, Kaye & Pennington, 2019; Bitton & Jaeger, 2019). These are very prevalent in broader society and also in services that work with victims, such as the CJS (see also ‘social context’ and ‘practitioner skill and training’). In a sample of college students who were assaulted on campus, rape myths seemed to be an important factor in deciding whether or not to turn to formal on-campus resources. The rape myths that they believed,

### Spotlight on practice

The Spanish government funds the 016 Women's helpline, which provides women victims of gender violence with free, confidential professional care, advice and information. The service is available 24/7 in 51 languages. The telephone number will not appear on a telephone bill or in the list of previously dialled numbers

and are culturally reinforced, made them think their victimisation was unworthy of attention. Some of the examples these students gave during the interview were "Because I invited him over", "I willingly got drunk. Though I was unable to physically say no, I still made the choice to drink", "The lines were blurred between consensual sex and rape", and "I was not injured" (Mennicke, Bowling, Gromer & Ryan, 2019, p. 11).

## 6. Participation

The three key elements of effective practice contained in this cluster are receiving and understanding information; participation, agency, empowerment and independence and being heard and understood.

### 6.1. Receiving and understanding information

- Articles 3 (right to understand and to be understood), 4 (right to receive information from the first contact with a competent authority), 5 (right of victims when making a complaint), 6 (right to receive information about their case), and 7 (right to interpretation and translation).

A number of studies demonstrate that when victims lack information this can lead to distress, dissatisfaction and disengagement with the CJS (Clark, 2010; Frazier & Haney, 1996; Kelly, Lovett, & Regan, 2005; Regehr, Alaggia, Lambert, & Saini, 2008; Sims & Myhill, 2001). Considering this, the attention given to the provision of information in a number of legislation and policy relating to the justice interests of victims is to be expected. The recently published EU Strategy on Victims' Rights 20-25 (European Commission, 2020) also points out that member states should take actions in bettering access to information for victims. Such action is necessary despite the 2012 Victims' Directive focussing on several aspects related to information, including the tailored manner of communication taking personal features of the victim into account<sup>132</sup>, information about the different options victims have (e.g. compensation, decision not to prosecute, restorative justice) and what they entail<sup>133</sup>, guidance on the frequency, timing and medium of receiving information<sup>134</sup>, and an emphasis on the importance

<sup>132</sup> Victims' Directive (2012), art. 3, 5, 7.

<sup>133</sup> Victims' Directive (2012), art. 4, 6.

<sup>134</sup> Victims' Directive (2012), art. 3, 6.

of victims receiving information and this in a simple and accessible language.<sup>135</sup> It is also important that a high level of awareness exists amongst populations women regarding victim support services, so that they would be aware of the support available for instance should they become victimised. When services are unknown by victims they are rendered effectively inaccessible (see ‘availability and access’). According to a 2012 survey of women in the EU, on average one in five (19%) had no knowledge of national victim support services (FRA, 2012). This figure was 53% in Greece, 19% in Italy and 15% in Spain (FRA, 2012).

Information is, according to empirical findings, considered important to victims to make an informed decision whether to engage in a criminal justice process or not, and if they decide to engage, to be prepared for the CJP (Clark, 2010, p. 31). Informational justice is a relevant concept in this regard (Laxminarayan, 2013). This refers to the “explanations provided to people that convey information about why procedures were used in a certain way or why outcomes were distributed in a certain fashion” (Colquitt et al., 2001, p. 427). If victims are well-informed and procedures of the criminal justice system (CJS) are explained to them, they may understand these better and this might change their reactions towards these procedures (Greenberg, 1993) and the CJS. When prosecutors decide, for example, to halt proceedings due to a lack of evidence, providing accurate information to the victim regarding the decision can help to negate some of the distress that victims may experience (Clark, 2010).

#### Spotlight on practice

The Thuthuzela Care Centres (TTC), one-stop centres in South-Africa, try to provide a scheduled, documented appointment after the first encounter with the victim. This seems to be an important factor regarding victim participation in follow-up care. Victims who were given a formal follow-up appointment invitation whilst attending a previous support session were more likely to engage with the service than victims who were only given a verbal invitation for follow-up care.

(Holton, Joyner & Mash, 2018)

<sup>135</sup> Victims’ Directive (2012), art. 3.

### Learning from past experiences

Inspectors from the Crown Prosecution Service Inspectorate examined letters sent to victims in different types of court cases across the 14 prosecution areas of England and Wales (HMCPSI, 2020). Of the 70 letters reviewed from cases of rape and serious sexual assault, only 18.6% were deemed to be of sufficient quality, which was lower than for the overall sample (24.1%). Furthermore, compared to the overall sample, a higher proportion of the letters in rape and serious sexual assault cases were rated as not clearly understandable (31.4% vs 28.8%) and as not containing empathy (42.1%). In addition to the quality of such letters requiring improvement, it was also found that the timeframe within which victims received letters needed to be enhanced. The inspectorate highlighted the need for further staff training in order to improve performance on these matters.

Her Majesty's Crown Prosecution Service Inspectorate. (2020). Victim Communication and Liaison scheme: letters to victims - A follow up inspection. Accessed at: <https://www.justiceinspectorates.gov.uk/hmcpsi/inspections/victim-communication-and-liaison-scheme-letters-to-victims/>

#### 6.2.1. Participation, agency, empowerment and independence

- Articles 6 (right to receive information about their case), 7 (right to interpretation and translation), 10 (right to be heard), 11 (rights in the event of a decision not to prosecute), 12 (right to safeguards in the context of restorative justice services), 13 (right to legal aid), 22 (individual assessment of victims to identify specific protection needs), and 23 (right to protection of victims with specific protection needs during criminal proceedings).

A number of legal instruments emphasise the importance of giving victims opportunities for (active) participation in criminal proceedings<sup>136</sup>. According to the 2012 Victim's Directive, to use one example, Member States have a duty to facilitate victim participation, this includes providing information (e.g. regarding options)<sup>137</sup>, providing services to facilitate participation (e.g. translation)<sup>138</sup>, providing support (e.g. legal aid.)<sup>139</sup>, and providing a safe environment (e.g. safety measures in court)<sup>140</sup>. The importance of opportunities for participation extends beyond court processes. Daly (2017) argues that victims should be able to play an active role, that is participate, in many aspects of case, defining participation as:

<sup>136</sup> See *inter alia*: Victims' Directive (2012), EU Charter of Fundamental Rights (2000), European Convention on Human Rights (1950).

<sup>137</sup> Victims' Directive (2012), articles 6, 11 and 12.

<sup>138</sup> Victims' Directive (2012), article 7.

<sup>139</sup> Victims' Directive (2012), article 13.

<sup>140</sup> Victims' Directive (2012), articles 22 and 23.

*“Being informed of the options and developments in a case, including the different types of justice mechanisms available; the ability to address offending and victimisation in meetings with admitted offenders and others; and the ability to ask questions and receive information about crimes (e.g. the location of bodies or the motivations for an admitted offender’s actions); [...] active participation in shaping the elements of redress, including optimal modes of implementation; being informed of negotiations and having a say (or vote) in ratifying a redress scheme (or settlement agreement); and understanding how the process works” (p. 115-116).*

This definition makes clear that the provision of information is inherent in participation (see also ‘receiving information and understanding’).

Further, providing victims with full information and allowing them to make informed decisions provides them with a sense of agency. Agency is an important aspect of participation, and such feelings can be achieved when, for example, victims are able to choose whether or not to participate in a restorative justice procedure<sup>141</sup> (Ullman & Townsend, 2008). A 2017 study of gender violence victims in Spain found that the removal of agency within the CJS, defined as legal professionals making decisions that affect victims without those victims being able to understand or

#### Spotlight on practice

The UK Nia organisation produced a guide for women and girls who have experienced sexual violence, which aims to empower women to take steps towards self-determination. The overall tone of the leaflet is reflected in one of the first statements, which is “sexual violence does not have to dictate the rest of your life, or define who you are. You are so much more than this experience”. The leaflet sets out the rights that women have, discusses self-care possibilities and coping mechanisms, and also contains sections on the choices regarding boundaries, consent and sexuality.

[https://niaendingviolence.org.uk/resources/my-rights-my-self-my-choice-my-hopes/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=my-rights-my-self-my-choice-my-hopes](https://niaendingviolence.org.uk/resources/my-rights-my-self-my-choice-my-hopes/?utm_source=rss&utm_medium=rss&utm_campaign=my-rights-my-self-my-choice-my-hopes)

influence the situation, made victims feel discomfort (Cubbels & Calsamiglia).

In meaningful participation victims are involved in the co-construction of their justice system experience, rather than merely being subjected to it. The lack of control over their CJP involvement disempowers victims (McGlynn, Downes & Westmarland, 2017). The opposite experience, creates empowerment. Empowerment is important and features as a core standard of the Rape Crisis National Service Standards, which states “organisations promote empowerment and self-help to enable service users to take control of their lives and inform the delivery and development of services” (Rape Crisis, 2018, p. 6). Empowerment is two folded and consists of both a psychological sense of power and also a real ability to influence processes and outcomes (Goodman et al., 2007; Cattaneo & Goodman,

<sup>141</sup> Victims’ Directive (2012), article 12.

2010). Applied to the CJS, an empowering experience would be “one where the victim felt she had

#### Spotlight on practice

The Engage, Motivate, Protect, Organize, Self-Worth, Educate, Respect (EMPOWER) Clinic in New York provides specific examples of empowering language that their practitioners can use when interacting with SGBV victims.

- “You are strong”; “you survived”; “it’s okay, this can be hard”
- “It is normal to feel stressed about this”
- “I’m so glad you are sharing this with me”
- “I believe you. It took a lot of courage to tell me about this”
- “It’s not your fault, you didn’t do anything to deserve this”
- “You survived something very difficult that was not your fault”
- “This has had an impact on your life”
- “I am so sorry that happened”
- “You are not alone”

See: (Ades et al., 2019).

been able to express her wishes and saw those wishes reflected in decisions or responses at various points in the court process” (Cattaneo & Goodman, 2010, p. 484). Indeed, empowerment should be understood holistically. Beyond the CJS it relates to women taking control of diverse aspects of their lives, including the economic and the social as they move away from reliance on assistance and into independence (Pertek, Phillimore & McKnight, 2020). Empowerment leads to independence. One of the principles underpinning the Women’s Aid National Quality Standards is a “shared goal for services is independence for women survivors, defined as sustainable safety and wellbeing for themselves and their dependent children” (Women’s Aid, 2018, p. 7). Peer support forums and self-help groups are

arenas that can encourage participation and lead to empowerment and independence for SGBV victims as they receive and provide support (see ‘the internet’ above).

### 6.3. Being understood and being heard

- Articles 3 (right to understand and to be understood), 5 (right of victims when making a complaint), 7 (right to interpretation and translation), 10 (right to be heard), and 17 (rights of victims resident in another Member State).

Another key element of participation relates to victims being understood and heard in the process. Similar to other actions that increase participation, listening to victims’ experiences leads to empowerment (see also ‘participation, agency, empowerment and independence’). Many steps can be taken to increase a victim’s ability to be understood and heard such as giving them a role in their process through, for example, giving evidence during criminal proceedings.<sup>142</sup> In acknowledgement of the fact that contact with the CJS can be stressful for victims (see also ‘health and wellbeing’), the Victim’s Directive has provided an entitlement for victims to be accompanied by a person of their

<sup>142</sup> Victims’ Directive (2012), article 10.

choice in the first contact with a competent authority.<sup>143</sup> This support can help them to, amongst other things, tell their story and be understood. Where victims make a complaint they should be able to either do this in a language that they understand or they should be provided with translation support.<sup>144</sup>

In addition to translation between different languages, ensuring understanding may require a form of translation between people of different generations within a language. For example professionals should be aware that elderly people they may use different words and terminology regarding matters of SGBV compared with younger people, particularly with respect to anatomy (Burgess et al., 2005).

Processes of understanding and being heard, and the act of giving a victim a voice goes beyond that of having one's words received and comprehended. Daly (2017, p. 116) defines the concept of 'voice' as:

#### Spotlight on practice

The Speak Out for Support (SOS-VICS) project was carried out in Spain from 2012 to 2014 and developed a best practices guide for professionals, such as lawyers, police and prosecutors, who work with interpreters in the field of GBV. But also a training manual was presented for interpreters who work in such context. If they are not well-trained for this purpose, secondary victimisation may be experienced by the victim. Furthermore, they developed multilingual informational videos and information leaflets for GBV victims GBV.

<http://sosvicsweb.webs.uvigo.es/blogs/ver.php?id=127>.

*"Telling the story of what happened and its impact in a significant setting, where a victim-survivor can receive public recognition and acknowledgement. Voice is also termed truth-telling and can be related to participation in having a speaking or other type of physical presence in a justice process".*

Sharing experiences about what happened and the consequences for their lives helps SGBV victims to better understand the experiences they went through and provides an opportunity to redress the power imbalances, often inherent in SGBV (McGlynn, Downes & Westmarland, 2017). Again, this aspect of participation can facilitate empowerment.

## 7. Protection

The three key elements of effective practice contained in this cluster are protection of safety and security; privacy; and dignity.

<sup>143</sup> Victims' Directive (2012), article 3.

<sup>144</sup> Victims' Directive (2012), article 5.



### 7.1. Protection of safety and security

- Articles 12 (right to safeguards in the context of restorative justice services), 18 (right to protection), 19 (right to avoid contact between victim and offender), 20 (right to protection of victims during criminal investigations), 21 (right to protection of privacy), 22 (individual assessment of victims to identify specific protection needs), and 23 (right to protection of victims with specific protection needs during criminal proceedings).

Safety and security are important needs for SGBV victims. Whilst these terms can be defined broadly, for the purposes of this paper, and following the 2012 Victims' Directive, attention will be given to safety and security from repeat victimisation (i.e. from perpetrators) and from secondary victimisation (i.e. from justice and intervention services).

Repeat victimisation in the form of further assaults, retaliation or intimidation, which could take the form of physical or psychological harm.<sup>145</sup> European research shows that 22% of the woman who experienced SGBV perpetrated by a non-partner were also victimised on at least one subsequent occasion. With respect to woman victimised by their partner this number increases to 50% (FRA, 2014). The fear of retaliation and intimidation can be a cause of not reporting the crime (WHO, 2012; Thompson, Sitterle, Clay & Kingree, 2007; Jones, Alexander, Wynn, Rossman & Dunnuck, 2009). The protection of personal data is also a measure to protect victim safety<sup>146</sup> (see also 'privacy'). If professionals working with SGBV victims can explain legal measures, such as injunctions, and other mechanisms, such as anonymity protocols, for the protection of women, this may offer assurances that encourage victims' engagement (see also 'practitioner skill and training').

The victims' concerns, fears and wishes should be the key in determining the measurements that are considered necessary (see also 'participation, agency, empowerment and independence').<sup>147</sup> A victim's *sense* of safety is concerned with their perceptions, which are not necessarily the same as the reality of the situation, and must be given consideration. The feeling of safety can be increased in therapeutic settings (Regehr & Alaggia, 2006) but also by justice professionals through, for example, keeping the victim informed (see also 'receiving and understanding information' and 'learning from past experiences' in this section).

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<sup>145</sup> Victims' Directive (2012), art. 18.

<sup>146</sup> Victims' Directive (2012), article 21.

<sup>147</sup> Victims' Directive (2012), preamble (58).

The perpetrator is not the only agent who can cause further victimisation following a sexual assault. Protection needs regarding the CJS thus refer to the prevention of secondary victimisation. However, victims' safety and the interests of the victim should also be protected outside of the CJS, such as in restorative justice processes.<sup>148</sup> In

acknowledgement of the extent of the impact of negative experiences with professionals from the CJS or other support services, the further traumatisation caused is sometimes referred to as the 'second rape' (Madigan & Gamble, 1991). A lack of trust in authorities, that is a sense of not being safe with authorities, is a significant factor for many victims and discourages reporting. Some victims have been known to first report a lesser crime to the police and only later mention the SGBV, if and when they feel they can trust and will be protected (Angiolini, 2015). Professionals should not infer from the delayed disclosure that victims are not being truthful and should be

mindful of the importance of building a trusting professional relationship when working with these victims. This lack of trust can be understood within the framework of traumatisation. People who experience traumas involving high levels of betrayal, as many SGBV victims do, have lower levels of trust in general and particularly in relationships (Gobin & Freyd 2014) (see 'service quality and delivery'). Interactions with professionals that victims find unsatisfactory are frequently related to being exposed to insensitive treatment, often motivated by rape myths (see 'social context' above).

#### Spotlight on practice

The National Ugly Mugs project works to end violence perpetrated against sex workers. The organisation provides practical support, such as allowing sex workers to check if telephone numbers or email addresses of potential clients have been reported as being linked to a person who may pose a danger. They also provide service users with safety alerts. Sex workers may be reluctant to report experiences of sexual victimisation to the police for a number of reasons, including the fear of being identified as a sex worker. If service users choose to report victimisation to the police, project staff can support them to do so.

Importantly, the project also documents acts of violence towards sex workers that may not otherwise have been recorded.

<https://uglymugs.org/um/>.

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<sup>148</sup> Victims' Directive (2012), article 12.

### Learning from past experiences

The State wide Automated Victim Information & Notification (SAVIN) program provides an automated system with notifications for the victim about the status of the offender (e.g. parole hearing, prison release). This works by empowering the victim and also contributes to their sense of control and safety. However, when evaluating the system project staff noticed some challenges and areas of improvement. In addition to automated messages, some states also provided manual notifications. In this case the victim could call in and someone would provide the information via the telephone instead of via a text message, email or letter. For this task call centres were used to answer calls from victims. These people had no experience nor training in working with victims or knowledge about victim support services. They only provided the specific information that was asked for, which concerned the status of the offender. Automated and manual notification systems can be very useful and helpful for victims, although more is needed than just providing information. There should be a safety net when victims require more support after certain notifications. When a victim who has experienced sexual violence, for instance, calls in or receives a messages that her offender will be released soon, it is understandable this causes distress. They understandably may feel the need to receive specialised support or tailored information. A possible way in providing this within automated notification systems could be to add an option for the victim to dial a number when they want to speak to someone, so the victim is informed about certain services and follow-up is offered.

Retrieved from an interview with Seri Irazola (2020) – researcher and evaluator of SAVIN in 2013

The Victims' Directive discusses secondary victimisation broadly but the main guideline related to its prevention states that services should be "...able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner".<sup>149</sup> This is closely related to 'dignity', which is discussed below.

An important tool presented in the Directive regarding the safety of victims, is the Individual Assessment. This tool is specifically intended to assure protection for the particular vulnerable, such as SGBV victims. These victims have an overall higher risk of experiencing repeat and secondary victimisation (see also 'prevalence and characteristics of sexual and gender-based violence').<sup>150</sup> This assessment should be on a case-by-case basis when possible, so personal characteristics and nature and circumstances of the crime can be taken into account.<sup>151</sup> This is especially important because of the variety of victims' experiences which is also related to the increased vulnerability of some SGBV victims, such as those with disabilities (see also 'types of sexual victimisation'). Based on this assessment, special protection needs and special protection measures could be identified and be

<sup>149</sup> Victims' Directive (2012), preamble (61).

<sup>150</sup> Victims' Directive (2012), preamble (55).

<sup>151</sup> Victims' Directive (2012), preamble (56), art. 22.

applied. During trial, for example, it can be harmful for the victim to unexpectedly come into contact with the offender (Brooks-Hay, Burman & Bradley, 2019). Providing screens in the court room or allowing pre-recorded statements or video-link evidence could prevent further traumatisation or victimisation (Counihan, 2019). When working with victims it is important for professionals to not only prioritise victim safety through proper consideration of her individual characteristics, needs and interests, but to be aware of the importance of a victim's sense of feeling safe. Such measures contribute to a sense of dignity for the victim, which entails upholding a sense of an individual's personal integrity and their sense of being valued and respected (see also 'dignity').

## 7.2. Privacy

- Articles 21 (right to protection of privacy), and 23 (right to protection of victims with specific protection needs during criminal proceedings).

Privacy is a fundamental right rooted in article 8 of the European Convention on Human Rights. Privacy refers to the protection of personal information about the victim and is "an important means of preventing secondary and repeat victimisation, intimidation and retaliation and can be achieved through a range of measures including non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim"<sup>152</sup> (see also 'protection of safety and security'). This general concept of privacy is reflected in four related notions: confidentiality, informed consent, informative self-determination and shame. These will be elaborated in turn.

Although the terms are used interchangeably, privacy and confidentiality are not the same. While privacy refers to a right rooted in the law, confidentiality is seen as an ethical duty. The latter is often linked to a relationship between client/patient and certain professionals such as victims' advocates, police officers, support services etc. Confidentiality, therefore, helps to uphold privacy. These terms do not have the same meaning for all CJS actors, but rather they are all established in their own legal framework and according to their objectives (Ovretveit, 1993; Cole, 2011). Although the Victims' Directive states that victims have the right to access confidential victim support services<sup>153</sup>, there may be situations in which professionals are not able to maintain confidentiality, for example if they learn that a vulnerable person is at serious risk of harm, and these limitations should be made clear to service users (Rape Crisis National Service Standards, 2018).

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<sup>152</sup> Victims' Directive (2012), preamble (54).

<sup>153</sup> Victims' Directive (2012), article 8.

One of the principles that should be key to this concept is that the information shared by the victim should be owned by the victim. Therefore the victim should decide what happens with their information (see also ‘participation, agency, empowerment and independence’). Victims can, for

#### Spotlight on practice

The Amethyst Sexual Assault Referral Centre (SARC) in Wales allows women to be seen directly at the time of their appointment. There is no communal waiting room, which avoids the situation in which women unwittingly self-identify themselves as victims to the other people in the waiting area.

<https://www.aiuto-alle-vittime.ch/en/brief-information-victims-support/sign-language/>.

example, choose to waive their anonymity and release the professional from some aspects of their commitment to confidentiality. The professional can then share the information provided by the victim within the agreed limits. An important concept in this matter is informed consent. This refers to the fact that the victim is well-informed about, for instance, with whom the information will be shared, for what

purpose and what the consequences of that might be. In that way the victim can make a well-informed decision about whether he/she would like to share the information or not (see also ‘receiving and understanding information’). This informed consent can be given via a written document or through oral permission, depending on the protocols of the service concerned.

SGBV victims often receive additional special protection regarding their privacy and anonymity. Several countries introduced laws that shield these victims’ identity from public release due to the nature of the crime. This results in different forms of protection. In Belgium for instance, a victim of SGBV can request a trial behind closed doors to protect their privacy.<sup>154</sup> In the United Kingdom SGBV victims have automatic anonymity for the rest of their lives. This means their identity, or any information that might lead to their identity, may not be published in public records, by (social) media or any other way of making information public.<sup>155</sup> For SGBV victims, the maintenance of anonymity can contribute to preserving their sense of dignity (see also ‘dignity’) and can encourage victims to report the crime to the police. SGBV victims often experience negative emotions such as a sense of shame, a feeling of humiliation, and the fears of being blamed and of public scrutiny (Weiss, 2010). These negative emotions can be a reason for victims to not report the crime (Zinzow & Thompson, 2011) and/or to withdraw from legal proceedings (Angiolini, 2015). Ensuring anonymity can therefore encourage victims to report. Whilst such measures are important and necessary, arguably, the perceived need for anonymity for SGBV victims and not for other types of victims could be considered, to some extent, to

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<sup>154</sup> Art. 190, CPC.

<sup>155</sup> Sexual Offences Act 2003.

reinforce the notion that to be the victim of a sexual assault is shameful. Talking about the social taboo around rape, one victim stated:

*“Even some friends and family found it extremely difficult to deal with me after it happened and I was shocked by the ignorance and insensitivity I encountered. I realised that rape is still a very misunderstood crime and, because it is such a taboo subject that people prefer not to think or talk about, it became and remains my ‘dirty, little secret’. The fact that a victim accepts anonymity – something I did not for myself but to protect other members of my family – just adds to that sense of secrecy and hidden shame”* (Angiolini, 2015, p. 51).

Indeed, in some communities reporting of SGBV is discouraged to protect the ‘honour’ of the family and women who do so are shunned (Angiolini, 2015). It is important, therefore, for professionals to recognise the complexity around this and similar issues.

### 7.3. Dignity

- Art. 18 (right to protection), 23.2.a (interviews in special premises), 23.2.b. (carried by through professionals trained for that purpose), 23.2.c (by the same person), 23.2.d (of the same sex), and 23.3.c (avoid unnecessary questioning concerning the victim's private life not related to the criminal offence).

Dignity is a crucial human right<sup>156</sup> and can be seen as the compass to protect and promote other human rights (Gewirth, 1992). In other words, dignity is the underlying value and cause for other human rights (Shultziner & Rabinovici, 2012). Whilst the importance in international law is clear, the general understanding of the concept is less so (Becker, 2001; Jacobs, 2016).

Although many definitions are available from different perspectives, in the definition adopted here human dignity is defined as ‘self-worth’ and violations of dignity are seen as “humiliation and other threats and injuries to people’s self-worth” (Shultziner & Rabinovici, 2012, p. 109). Respecting a person’s dignity, therefore, requires respecting their self-worth (Killmister, 2010). Self-worth is associated with upholding an individual’s personal integrity and their sense of being both valued and respected (Shultziner & Rabinovici, 2012). Treatment with dignity should be “a process of reflecting worth and value back to the individual through word or deed” (Jacobson, 2007, p. 295). Dignity in this context then relates to the substance and the style of interaction. That is, what is done and how. Parent (1992, p. 47) defines this as “to be entitled not to be subject to or victimized by unjust attitudes or acts of contempt”. Focus should be on treatment that encourages self-worth and integrity of the victim (Jacobson, 2007). When the dignity of a person is not respected, it is likely that humiliation is

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<sup>156</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

experienced, which can be defined as “diminishing and lowering a person physically, psychologically, symbolically, publicly, individually, or collectively” (Shultziner & Rabinovici, 2012, p. 111).

With respect to the CJS, treatment with dignity can be obtained by treating the victim as a subject and not as an object (Horovitz, 2011). That is, understanding them as a human being with wishes, values, needs and beliefs. This means that when a victim is only seen as, for example, a witness in the investigation and trial stage (e.g. repeated questioning or aggressive witness cross-examination during trial) they are not treated with dignity. The CJS reduces the victim merely to a witness whereby they have no voice, self-determination and there is a lack of a victim-centred and trauma-sensitive approach for example (see ‘service quality and delivery’). This can be harmful for the victim and can be seen as secondary victimisation (Antonsdóttir, 2018). There is a strong relationship between dignity and secondary victimisation in the CJS (also see ‘protection of safety and security’). The Victims’ Directive also connects these concepts and states that the right to dignity should be promoted<sup>157</sup> and that measures should be taken to protect treatment with dignity, for instance to avoid repeat and secondary victimisation.<sup>158</sup> It is emphasised in the Directive that this is especially necessary during questioning and testifying<sup>159</sup> and professionals working with victims at these stages should take particular care to ensure that victims experience a sense of dignity. To ensure that victims are treated with dignity (protection of self-worth, respected and valued) and therefore are not humiliated, it is important to take the personal characteristics of the victim into account such as religion, age, disabilities, mental difficulties, legal status etc. The treatment should also be tailored to their special needs and interests.<sup>160</sup> The Directive specifically mentions the following practices which contribute dignity being applied to victims (of SGBV): interviews in special premises<sup>161</sup>, carried by through professionals trained for that purpose<sup>162</sup>, by the same person<sup>163</sup>, of the same sex<sup>164</sup>, and avoid unnecessary questioning concerning the victim's private life not related to the criminal offence.<sup>165</sup>

Although dignity is especially linked to questioning and testifying in the Victims’ Directive, the concept relates to many other concepts included in this framework. Letting victims participate, giving a voice, giving information, protecting privacy etc. contributes to a treatment with dignity. As the human right of dignity is a compass to protect and promote other rights (Gewirth, 1992) and is the underlying value of the other human rights (Shultziner & Rabinovici, 2012), so is dignity a compass and underlying value

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<sup>157</sup> Victims’ Directive (2012), preamble (66).

<sup>158</sup> Victims’ Directive (2012), preamble (52).

<sup>159</sup> Victims’ Directive (2012), art. 18.

<sup>160</sup> Victims’ Directive (2012), preamble (56).

<sup>161</sup> Victims’ Directive (2012), article 23.2.a.

<sup>162</sup> Victims’ Directive (2012), article 23.2.b.

<sup>163</sup> Victims’ Directive (2012), article 23.2.c.

<sup>164</sup> Victims’ Directive (2012), article 23.2.d.

<sup>165</sup> Victims’ Directive (2012), article 23.3.c.

for all actors in the CJS to develop towards a respectful, sensitive, tailored, professional and non-discriminatory treatment of SGBV victims.<sup>166</sup>

In a practical sense, a sense of dignity is often conveyed through interpersonal communication between SGBV victims and professionals. A sense of dignity is undermined when victims feel denigrated, judged or stereotyped. Women in prostitution, for example, can often be subjected to such experiences. Even well intended ‘advice’ that is not in-line with how an individual views themselves or their situation can be damaging and cause a person to withdraw from or avoid services

#### Spotlight on practice

The National Advocacy (NAP) Project was established by Rape Crisis Scotland (RCS) in 2016 to improve the experience of victims of sexual violence of going through the CJS. They provided 24 hour victim advocacy to men and woman reporting a case of sexual violence. Victim Advocates are specifically trained to protect the interests of the victim. During the CJS the risk at experiencing secondary victimisation is high for victims of sexual violence. The advocates are there to protect the victim from such experiences and safeguard the dignity of victims by treating the victim with dignity but also by making sure the CJS is treating the victim with respect and dignity.

<https://www.rapecrisisscotland.org.uk/national-advocacy-project/>

(SWARM, no date). Another important way that victims of sexual abuse can be shown dignity is through sensitivity with respect to the language and terms that are used to describe them and also to describe their experiences (see also discussion of language and terms in ‘practitioner skill and training’). Some people who experience SGBV reject the term ‘victim’ in favour of ‘survivor’ (Van Dijk, 2009; Fohring, 2018), and such preferences should be respected.<sup>167</sup> A common mistake that practitioners can make for instance is infantilising older victims. Bows (2018) illustrates the way that older people tend to be viewed as lacking agency by highlighting that the term ‘elder abuse’ is problematic because of its use to describe acts against groups considered to have high vulnerabilities such as the disabled, children and the elderly, whereas terms such as ‘rape’ and ‘assault’ are

generally applied to other groups. Other assumptions that should be avoided include rape myths, including the myth that older people are never sexually assaulted because they are sexually undesirable (Bows, 2018). Another example is that the term ‘revenge porn’, which is problematic because the term ‘porn’ implies that there was some degree of choice in the creation of the image, because it implies that images have to be classifiable as ‘pornographic’ in order to be considered inappropriate, and because there is an assumption that the perpetrator is motivated by sexual gratification (McGlynn & Rackley, 2017). The term ‘image-based sexual abuse’ is preferable because it places an emphasis on the harm that is done to victims by such acts (McGlynn & Rackley, 2017).

<sup>166</sup> Victims’ Directive (2012), art. 1.

<sup>167</sup> See footnote 1 above that deals with the use of the term ‘victim’ throughout this report.



Further, and importantly, some victims also reject this term because they do not want to be associated with taking part in pornography because of its sordid connotations.<sup>168</sup> Finally, women who have been prostitutes may consider themselves to be survivors of prostitution or as victims of sexual exploitation while others may consider their activities to be legitimate employment and prefer the use of the term 'sex worker' (SWARM, no date). Professionals who work with SGBV victims should have an understanding of the social and political connotations of the different terms and should be able to act with sensitivity and accommodate the preferences of individual women.

## 8. Redress

The three key elements of effective practice contained in this cluster are health and wellbeing; vindication and validation; and compensation.

### 8.1. Health and wellbeing

- Articles 3.3 and 20.c (right to be accompanied), 8 (right to access to victim support services), 18 (right to protection), 19 (right to avoid contact between victim and offender), and 23 (right to protection of victims with specific protection needs during criminal proceedings).

The following section provides some examples of what research and practice has revealed about the steps that can be taken to help women to reduce the impacts of their victimisation and to return them to a position of health and a sense of wellbeing. Attention will not be given here to issues of medical help because justice professionals are not primarily involved in providing such support to SGBV victims.

Literature (Campbell & Ahrens, 2003; Haskell & Randall, 2002; Jina & Thomas, 2013; Lomax & Meyrick, 2020; Loya, 2014) shows that SGBV victims experience for instance mental health consequences (e.g. PTSD), physical health consequences (e.g. injuries, sexually transmitted infections and diseases, pregnancy, gynaecological complaints, and somatic issues such as pelvic pain), financial consequences (e.g. time off, job loss, inability to work), legal consequences (e.g. secondary victimisation from CJS involvement) and social consequences (e.g. stigmatisation, no support by family members, relationship strains). It is clear that experiencing SGBV can significantly affect victims in different domains in their life. Consequently, SGBV victims often have complex needs and support is crucial in coping with the consequences of SGBV (Hester & Lilley, 2018). In all cases, services should have a holistic and targeted approach (SWARM, no date; Bouvier, 2014; Vandenberghe, Hendriks, Peeters, Roelens & Keygnaert, 2018)<sup>169</sup> focused on minimising distress and further suffering. Steps to protecting the health and

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<sup>168</sup> Response from a victim of imaged-based sexual abuse. Accessed at: <https://voic.org.uk/tag/revenge-porn/>.

<sup>169</sup> Victims' Directive (2012), article 8.3.b.

wellbeing of victims should be built into all interventions and processes in order to provide a client-centred approach (Vandenberghe et al., 2018).

SGBV, and particularly rape and sexual assault, can be extremely traumatic and cause enduring disruptions to physical and psychosocial functioning (Lomax & Meyrick, 2020). Unsurprisingly, therefore, SGBV victims find it important that services can offer them long-term help (OSCE, ODIHR & UN Women 2020), and where this is not possible within one service or programme, victims should be signposted to other relevant assistance so that continuous and holistic service can be provided (see also ‘coordination and cooperation’). The Victims’ Directive also emphasises the need for support “before, during and for an appropriate time after the criminal justice proceedings”.<sup>170</sup>

With respect to providing support during the CJS it is important to minimise any discomfort and distress that can be caused by the justice process (see also ‘protection of safety and security’). This can be done by taking practical measures. The 2012 Victims’ Directive emphasises the need to avoid “visual contact with the offender, his or her family, associates or members of the public”<sup>171</sup> and to provide “separate entrances and waiting areas for victims”.<sup>172</sup> Although the Directive mentions situations that are most likely to occur during trial (contact between victim and offender, visual contact with accused, testimony without being present, to be accompanied), attention should also be given to other stages and situation during the CJP. Research (Westerland & Alderson, 2013; Frazier et al., 2011) shows, for example, that there is a connection between participation (see also ‘participation, agency, empowerment and independence’) and the extent to which SGBV victims experience distress. The more control victims feel over their circumstances and their recovery process, the less they experience distress and this will even decrease the risk of developing post-traumatic stress. The latter is also related to secondary victimization (see ‘protection of safety and security’). Responses and attitudes that increase feelings of humiliation, shame and self-blame for example (see also ‘dignity’), contribute to a negative mental and physical health, including traumatic feelings and heightened distress (Campbell & Raja, 1999; Scoglio, Marine & Molnar, 2020; Orth & Maercker, 2004).

The 2012 Victims’ Directive specifically refers to the provision of victim support services which should provide support regarding information, advice and support relevant to victims’ rights, referrals to specialised services, emotional support, advice on practical and financial issues arising from the crime and on secondary and repeat victimisation.<sup>173</sup> This right to support is not limited to victims but is extended to family members.<sup>174</sup>

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<sup>170</sup> Victims’ Directive (2012), art. 8 §1.

<sup>171</sup> Victims’ Directive (2012), article 23.3.a.

<sup>172</sup> Victims’ Directive (2012), preamble (53).

<sup>173</sup> Victims’ Directive (2012), art. 8.

<sup>174</sup> Victims’ Directive (2012), art. 8.

Whilst the majority of SGBV victims do not report their victimisation to authorities, many do seek support from personal networks, and such people have the potential to be an important source of

### Spotlight on practice

The Havens project for SGBV victims provides information on how best to support someone who has experienced sexual violence. Suggestions provided on the website include listen, don't question; believe them; let them show how they're feeling; and respect their decisions. Additionally, the Havens provides links to services that the support person can access in order to receive support for their own wellbeing.

<https://www.thehavens.org.uk/family-friends/providing-support/>.

support. In one study, one in three victims sought informal network support, (Kingi & Jordan, 2009). In some cases, the role of those people close to victims can be to help victims to understand and recognise that they have been in abusive situations. In other cases, such support could take the form of accompanying a victim as they seek professional support (see also 'being understood and being heard'). Whilst this informal support is beneficial, the people in those networks often lack the knowledge and skills needed to be most effective. Generally speaking, therefore, a combination of

informal and formal support should be pursued (Kingi & Jordan, 2009).

## 8.2. Vindication and validation

- Articles 1 (ensure that victims are recognised), 5 (rights of victims when making a complaint), 9 (support from victim support services), 12 (right to safeguards in the context of restorative justice services), 14 (right to reimbursement of expenses), 16 (right to decision on compensation from the offender in the course of criminal proceedings), 22 (individual assessment of victims to identify specific protection needs), and 25.5 (training shall aim to enable the practitioner to recognise victims).

Validation and vindication are important factors for victims and, according to Daly's model of victim interests, are essential elements in a victim's sense of justice following experiencing harm. The concept of validation is related to confirmation of the status as the harmed party and recognition of the victimisation experience, it involves:

*"Affirming that the victim is believed (i.e. acknowledging that offending occurred and the victim was harmed) and is not blamed for what happened. It reflects a victim's desire to be believed and to shift the weight of accusation from their shoulders to others (family members, a wider social group or legal officials)" (Daly, 2017, p. 116).*

### Spotlight on practice

One In Four is an NGO based in Ireland that works to break the cycle of sexual violence, and has offered restorative justice (RJ) services since 2012. RJ is a process in which the victim and the perpetrator, and sometimes community members or others who have been impacted by the harm, actively participate together to resolve the issues arising from the harm. The encounters can take place face-to-face, often with a trained facilitator, or indirectly, such as through letters. In cases of SGBV RJ does have risks but when carefully organised, and following extensive preparation of all parties, can have a number of benefits. Positive experience of victims following RJ include having the opportunity to be heard and receiving a sense of 'closure'.

See: <https://www.oneinfour.ie/> and

Validation is particularly relevant in the context of sexual victimisation because of the high levels of blame (self-blame and being blamed by others), guilt and shame that can be experienced, and the potential negative effects that this can lead to. Victims report that such feelings often lie behind a refusal or reluctance to report SGBV (Angiolini, 2015). In addition to self-blame, some victims experience a sense of self-loathing as a response to the trauma of rape (Angiolini, 2015). Further, being believed seems to be very important for SGBV victims. Angiolini (2015, p. 57) reports that "... complainants of rape are uniquely sensitive to the response of those to whom they report and any sign of disbelief can have a negative impact on their willingness to engage with the criminal justice process". SGBV victims remain sensitive to the perception that they are not believed. It is important that professionals who work with

victims understand these mechanisms and are sensitive to such victim needs.

Daly's concept of vindication, which is linked to that of validation, is concerned with vindication of the law (confirmation of the moral and legal wrongness of the harm) and also vindication of the victim (confirmation that the particular victim was wronged by the particular victim). According to Daly (2017, p. 117) vindication

*"...requires that others (family members, a wider social group, legal officials) do something to show that an act (or actions) was wrong by, for example, censuring the offence and affirming their solidarity with the victim. It can be expressed by symbolic and material forms of reparation (e.g. apologies, memorialisation, monetary payments or financial assistance to victims) and standard forms of state punishment."*

Vindication can be particularly important for victims whose victimisation experience does not fit with predominant social attitudes regarding sexual harm (see also 'social context' and 'practitioners skill and training'). Cases of SGBV perpetrated by women on other women is one such example, and often in these cases victims feel that their experiences are trivialised (GALOP, no date). For such victims it is essential that their victimisation is not delegitimised in services or in public discourse (GALOP, no date). Another group for whom vindication is often lacking is women in prostitution. Crimes against these

women that take place within the context of that sex work often receive little attention (ICRSE, 2020) in public discourse and such women seldom feel recognised as victims. This often has negative implications regarding them getting their, often complex, needs met.

One possible way of experiencing validation and vindication is for the perpetrator to be classified, in a social and/or legal way, by themselves or others as the person who caused the harm (see also ‘legal and policy context’). Offender accountability is another element of Daly’s model, which she describes as (Daly, 2017, p. 119):

*“Requiring that alleged perpetrators are called to account and held to account for their actions; and if admitting to or convicted for offences, expecting that they will take active responsibility for their wrongful behaviour, by for example, sincere apologies or expressions of remorse and completing prescribed justice requirements.”*

Perpetrator accountability can be achieved within the CJS, through mechanisms such as prosecution and the offender’s payment of adequate compensation to victims (see also ‘compensation’).<sup>175</sup> Perpetrator accountability can also be achieved through a restorative justice processes, a pre-requisite of which is that the perpetrator acknowledges the basic facts of the case.<sup>176</sup>

Many actions commonly associated with victim support, therefore, can be understood as actions of vindication. However, given the low reporting and high attrition rates common in cases of SGBV, vindication is not always easily achieved through the traditional justice system. The importance of support systems for victims not being dependent on engagement in the CJS is again highlighted.

### 8.3. Compensation

- Articles 4.1.e. (receiving information about how and under what conditions they can access compensation), 9 (support from victim support services), 14 (right to reimbursement of expenses), and 16 (right to decision on compensation from the offender in the course of criminal proceedings).

Ensuring that the victim has access to compensation can contribute to the sense of validation and vindication. This is not only considered to be important for victims, but it is considered to be a right that is emphasised in a number of European legal instruments.<sup>177</sup> In a 2019 European Commission report on compensation (Milquet, 2019, p. 16), the concept has been described as:

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<sup>175</sup> Victims’ Directive (2012), article 16.

<sup>176</sup> Victims’ Directive (2012), article 12.

<sup>177</sup> See, *inter alia* \* Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, Istanbul Convention (2014), article 30, Victim’s Directive (2012).

*“A specific form of reparation provided to victims when replacement or recovery is not possible. This applies for instance for victims of rape or terrorism where the experience, psychological consequence or other cannot be erased. The financial compensation can pertain to pecuniary (monetary) or non-pecuniary losses. Money will be used not to replace but form a monetary substitute for the pre-victimisation status. But money is insufficient to provide reparation for victims.”*

Milquet emphasises that the concept of compensation is wider than merely that of financial recompense, and extends to the support afforded to victims more generally. Victims should be compensated for criminal injuries and damages incurred. Victim support services have an obligation to inform victims about access to national compensation schemes (see also ‘receiving and understanding information’).<sup>178</sup> Further, Member States are required to make provision in national law that provides victims who incur expenses as a result of participation in criminal proceedings, are given the possibility of being financially reimbursed for those costs.<sup>179</sup> Compensation should come from the offender or, if such recompense will not be forthcoming from the offender, then the compensation should be paid by the state (Milquet, 2019).<sup>180</sup> Despite the 2012 Directive, victims are

unlikely to receive financial compensation in practice (Milquet, 2019) and there are vast differences between member states with respect to the mechanisms and practices of compensation (Elbers et al., 2020).

In addition to this right of reimbursement, the Victims’ Rights Directive<sup>181</sup> outlines the victim’s right to be given a timely decision on the compensation that will be received from the offender unless such a decision will, by law, be provided during alternate legal proceedings. Indeed, the act of being

#### Spotlight on practice

In October 2020 the first permanent memorial in the US for sexual violence victims was opened. The memorial depicts two prominent metaphors: *“mosaic and a ripple effect. The mosaic represents that even broken pieces can be put together to create something whole and beautiful. The ripple effect represents the multiplying power of breaking the silence; by telling our stories, we unconsciously give other survivors permission to tell theirs”*.

The memorial honours victims’ strength and courage and brings awareness to the pervasive nature of sexual violence and that the community *“believes them, supports them, and stands with them in solidarity”*.

<https://www.survivorsmemorial.org/>.

<sup>178</sup> Victims’ Directive (2012), articles 4.1.e and 9.

<sup>179</sup> Victims’ Directive (2012), article 14.

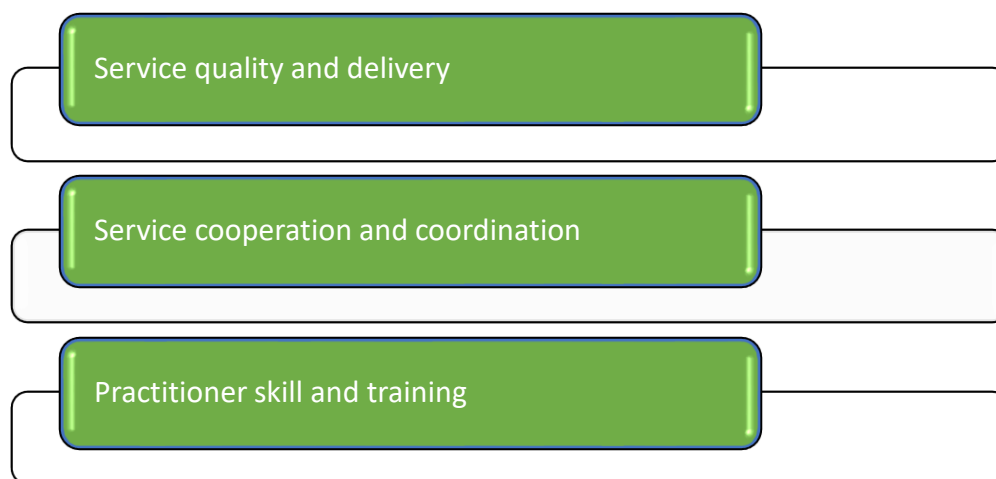
<sup>180</sup> Milquet, J. (2019). Strengthening Victims’ Rights: From Compensation to Reparation. Luxembourg: Publications Office of the European Union. Accessed at: [https://ec.europa.eu/info/sites/info/files/strengthening\\_victims\\_rights\\_-\\_from\\_compensation\\_to\\_reparation\\_rev.pdf](https://ec.europa.eu/info/sites/info/files/strengthening_victims_rights_-_from_compensation_to_reparation_rev.pdf).

<sup>181</sup> Victims’ Directive (2012), article 16.

compensated has benefits for victims beyond the material. The symbolic relevance of receiving compensation is that it serves as a clear signal regarding the status of the victim as the wronged party who is not to blame for their victimisation (see also ‘validation and vindication’). Such a message can be particularly valuable in cases of SGBV, in which feelings of shame and being shamed are common (see also ‘prevalence and characteristics of sexual victimization’). In its function of meeting the broad needs of victims, compensation is recognised as being a factor that contributes to reparation (Milquet, 2019).

## Cluster C: System orientation

This cluster contains three central topics (1) service quality and delivery (2) service cooperation and (3) practitioner skill and training. There are no further subdivisions made within these topics.



## 9. Service quality and delivery

- Articles 1.1 (appropriate information, support and protection; treated in a respectful, sensitive, tailored, professional and non-discriminatory manner), 8.1 (confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings), 8.4 (public or non-governmental victim support services, organised on a professional or voluntary basis), and 9.3.b (targeted and integrated support for victims with specific needs, such as SGBV victims, victims of gender-based violence and victims of violence in close relationships).

Programmes and services for SGBV victims should be evidence based, victim-centred, gender-sensitive and based in respect for human rights<sup>182</sup> (OSCE, ODIHR & UN Women 2020) (see also ‘dignity’). Victim-centred practices are those that systematically prioritise victim needs “...to ensure the compassionate

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<sup>182</sup> Victims’ Directive (2012), article 1.

and sensitive delivery of services in a nonjudgmental manner”<sup>183</sup>. In such services, practitioners receive continued and extensive training and supervision (Vandenberghe, Hendriks, Peeters, Roelens & Keygnaert, 2018) (see ‘practitioner skill and training’). It is also essential that services and approaches to working with SGBV victims are trauma informed. This means that professionals are aware of how trauma can manifest and present in victims, and how to avoid amplifying or replicating the effects of trauma (Sweeney et al., 2019). Sweeney et al. (2019), for example, discuss how psychiatric approaches to SGBV victims may inadvertently recreate some of the trauma of the experience through various means of silencing victims. It is helpful for practitioners to realise that along with the more commonly understood reactions of ‘flight’ or ‘fight’ to a situation of acute stress, tonic immobility, or the ‘fear-freeze’ response, is also a reaction that can and should be understood as a normal victim response (Bracha, 2004). Particularly in jurisdictions where proof of force is necessary for more serious convictions to be brought successfully, this can be problematic (Schiewe, 2019). As previously mentioned, low levels of trust that victims can also be understood within the context of their experience of trauma (Gobin & Freyd, 2014).

One way of guaranteeing these quality standards is for services and programmes to be grounded in principles and standards that support the best outcomes for victims, and for these standards to be the basis for service evaluation and monitoring. Good examples of such principles for services for SGBV victims include the 2018 Women’s Aid National Quality Standards and the 2018 Rape Crisis National Service Standards. Rape Crisis principles include a commitment to the 9 principles are: (1) understanding sexual violence and its impact (2) safety, security and dignity (3) diversity and fair access to services (4) advocacy and support (5) empowerment and participation (6) confidentiality (7) a co-ordinated, multi-agency response (8) challenging social tolerance of sexual violence and holding perpetrators accountable and (9) accountability and governance (Rape Crisis, 2018). These principles should be clearly set out and evident in practice.

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<sup>183</sup> <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/#:~:text=Key%20Term%3A%20The%20Victim%2DCentered,services%20in%20a%20nonjudgmental%20manner.>



### Spotlight on practice

In 2016 the Thuthuzela Care Centres (TCC) in South-Africa developed a feedback system for their services. This consisted of a mobile application through which service users could rate the services on a scale of 1 to 5, which contains: (1) the quality of services, (2) staff, (3) the physical environment and (4) the quality of information and advice at the centres. The clients could also provide free-form comments. Research on the app showed that this feedback led to changes within the service that increased client satisfaction.

(Johnson, Mahlalela & Mills 2017).

In order for such principles to be integrated into every day working practices it is necessary to have an organisational culture that encourages and supports such practices and the underlying principles and values (Sweeney et al., 2019). The organisational culture, therefore, is essential and contributes to the quality of a service and delivery of practices. In the absence of such leadership, good theoretical structures may not be implemented in practice (see also ‘learning from past experiences’ in this section). For example, McMillan (2015) found that police officers who were assigned to supporting SGBV victims often struggled because of the tasks of supporting victims often being at odds with the ‘real’ police work of catching criminals. Strong management and leadership structures

are necessary to ensure that the professionals who support victims themselves have adequate support (McMillan, 2015; Vandenberghe, Hendriks, Peeters, Roelens & Keygnaert, 2018) (see also ‘practitioner skill and training’).

There are many accounts of women who do not seek help because of a fear of being judged or shamed (see *inter alia* ICRSE, 2020; Anderson & Overby, 2020). Programmes and services not only need to have a culture that is supportive of victims but to also clearly communicate their non-judgemental stance so that the environment is created where a SGBV victim feels safe enough to seek help and to tell their full story (see also ‘protection of safety and security’)<sup>184</sup> (see also ‘practitioners skill and training’). Continued monitoring and evaluation of services and programmes, which can be internal or carried out by external bodies, can lead to development and improvement and is vital in this regard (OSCE, ODIHR & UN Women 2020). It is advantageous if staff members have mechanisms for raising concerns and expressing suggestions regarding practices. It is essential that service users have a say regarding how services are delivered, evaluated, monitored and developed (Perôt, Chevous & Survivors’ Voices Research Group, 2018; Sweeney et al., 2019). Feedback systems between service users and staff have been shown to improve services in various ways (see spotlight on practice). TAMPEP (2019), for example, recognises the value that migrant women in prostitution have in contributing to the creation of the policies and services that address their needs.

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<sup>184</sup> Victims’ Directive (2012), article 1.1.

## 10. Service cooperation and coordination

- Articles 8.1 (confidential victim support services), 8.2 (facilitate referral to victim support service), 8.3 (specialist support services in addition to, or as an integrated part of, general victim support organisations), 9.1.b (information about or direct referral to any relevant specialist support services in place), and 12.2 (referral of cases, as appropriate to restorative justice services) and 26 (cooperation and coordination of services).

The 2012 Victims' Directive indicates that victims should be referred to the appropriate services,<sup>185</sup> and at first contact with a competent authority.<sup>186</sup> Organisational structures should facilitate and ease the maximum access to services for the greatest number of victims (see also 'availability and access'). Responding fully to the complex needs of SGBV victims requires cooperation between professionals within and between different sectors and disciplines (see Vandenberghe, Hendriks, Peeters, Roelens & Keygnaert, 2018). Police, legal professionals, policy makers, health care services, victim assistance services, victim advocates, community groups and organisations that represent the interests of women should collaborate with the aim of enhancing the provision and delivery of services to SGBV victims (Haskell & Randall, 2019).<sup>187</sup> Wherever possible, such services should cooperate to enable a 'single point of access' and/or a 'one-stop-shop' for victims<sup>188</sup> to avoid that victims need to make multiple visits to multiple locations and see different professionals (see also 'protection of safety and security' and 'health and well-being'). Indeed, where such collaboration is absent, the experiences and outcomes for SGBV victims tends to suffer (Chliaoutakis, Papadakaki & Angelopoulou, 2012). The absence of integrated support services can cause stress for SGBV victims, cause difficulties and lead to missed opportunities in providing support and guidance in their different needs (Health and Justice Armed Forces and Sexual Assault Referral Centre Team, 2018; Walker, Majeed-Ariss, Riley & White, 2018). A further advantage of such cooperation is the

### Spotlight on practice

Co-advocacy can be seen as an effective way of cooperating. This entails victim support services collaborating with other advocate organisations within the community, to ensure specialised advocacy for special needs groups. Deaf Unity is an example of an organization specialised in providing victim advocacy services to DDBDDHH-people\* who have experienced sexual violence.

\* Deaf, DeafBlind, DeafDisabled, and Hard of Hearing (DDBDDHH)

<https://deafunity.org/>

development of widely used and understood protocols and procedures, which is essential for equity and continuity of health and other types of victim care (Vandenberghe, Hendriks, Peeters, Roelens & Keygnaert, 2018). However, it is important that the privacy and confidentiality rights of the victim are

<sup>185</sup> Victims' Directive (2012), articles 8.2, 9.1.b. and 12.2.

<sup>186</sup> victims' Directive (2012), article 4.

<sup>187</sup> Victims' Directive (2012), article 8.4.

<sup>188</sup> Victims' Directive, Preamble, recital 62.

respected and organisations use information sharing protocols (see also 'privacy'). A further benefit of collaborative working is sharing best practice. This is particularly important in areas where practice is still developing and emerging, such as in work with older SGBV victims (Bows, 2018). Where practitioners collaborate by sharing experiences and ideas about practice, this can contribute to a climate of ongoing professional development.

In general, victims of sexual and intimate partner violence have less trust in the police than they do in other victim support services (FRA, 2019, p. 68). One aspect of cooperation between services could be for organisations that sit outside of the CJS to encouraging women to report and/or seek support for experiences of SGBV where this is appropriate (FRA, 2019, p. 69). Several services do operate in this way (e.g. National Ugly Mugs). Such intermediaries can provide assistance with reporting, and this is particularly effective where they have the confidence of victims. A 2020 ICRSE report on the experiences of 47 migrant women in prostitution in Europe who were crime victims revealed that of those who did report the crime to police, half did so with the support and assistance of a sex worker collective or NGO. Such services clearly have an important role to play in this regard, however, there is a need for such services to have independence from authorities extends beyond the police and also to state actors such as immigration authorities (SWARM, no date). Services do not always work in collaborative and coordinated ways. For example, research with support service professionals in England and Wales highlighted the lack of collaborative working between SGBV support organisations and NGOs with a mandate for supporting older people as leading to less favourable outcomes for service users (Bows, 2018).

Whilst collaborative working is widely recognised as an effective practice, several studies and reports highlight pitfalls that should be avoided when working in a multi-agency context (Campbell, Patterson & Lichty, 2005; Cole, 2018; International Association of Forensic Nurses, 2018; Foundation for Professional Development, 2016). Tensions may occur when several professionals work on one case. Such tensions may originate in the different objectives, roles and goals that professionals have in their interactions with the victim. Challenges may also arise with respect to the sharing and use of information between professionals, for example around guarantees of confidentiality with respect to any legal proceedings (see also 'privacy'). Such issues can lead to poor collaboration and misinformation, which outweighs the goal of multi-agency practices. However such tensions are not insurmountable. A UK sexual assault referral centre (SARC) reported that it was able to avoid such

tensions due to staff validating each other's role and 'talk the same language' (Robinson, Hudson & Brookman, 2009).

#### Learning from past experiences

The Sapphire project in the UK was put in place to increase reporting and prosecution of sexual violence but also to decrease secondary victimization for the victims of sexual violence. Teams of police officers were specially trained to specialise in the reporting and investigating of sexual offences. The Sapphire Unit aimed to improve the numbers of sexual offences that were investigating, and the teams achieved their targets. However, in 2008 a case of a woman reporting a rape, came to the attention of the Independent Police Complaints Commission (IPCC). The case was filed as 'no crime' because, according to the officers, it was a case of consented sexual intercourse. Yet the woman had reported this as rape. The IPCC investigation into the case shed light to the actual methods used for achieving the Units' successes. Officers encouraged victims to retract allegations in cases of sexual violence where the officers thought the case would not be strong enough to go to court, or when officers thought victims would later withdraw. This avoided that the case would be recorded as an unsolved crime, because there no case was recorded at all. The deputy chairwoman of the IPCC, Deborah Glass, stated:

*"The approach of failing to believe victims in the first instance was wholly inappropriate. The pressure to meet targets as a measure of success, rather than focusing on the outcome for the victim, resulted in the police losing sight of what policing is about – protecting the public and deterring and detecting crime." (p. 4).*

After the IPCC investigation, performance indicators have changed. The police performance review has been revised and now contains criteria linked to victim satisfaction.

IPCC Independent Investigation Learning Report (2013).

## 11. Practitioner skill and training

Articles 1.1 (treated in in a respectful, sensitive, tailored, professional and non-discriminatory manner), 23 (right to protection of victims with specific protection needs during criminal proceedings), and 25 (training of practitioners).

This section gives attention to some of the salient points that need to be considered with respect to the training of justice professionals to work with SGBV victims. Practitioner training should focus on providing an in-depth knowledge of SGBV, the contexts in which it presents, and an understanding of the importance of having a victim-focused approach that focuses on the individual needs of the victim (see also 'context of sexual victimisation'). The following section briefly touches on some of these examples to make the case of both the need for training, the benefits of practitioner training and also examples of what can be learnt from research about approaches to training justice professionals.

The ways in which professionals interact with SGBV victims can be greatly influenced by the training that they receive. Training delivered to judges on intimate partner violence, for example, produced “...a more informed and thoughtful judicial response to the problem (Helling, 2005 as cited in Jaffe et al., 2018, p. 498). A similar effect could be expected from training on other forms of SGBV victimisation. The training of professionals can be an important and effective exercise that can have long lasting and positive influences on behaviour change (Jaffe et al., 2018) and bring about positive outcomes for victims.

Haskell and Randall (2019, p. 34) conclude that “[o]ne of the key recommended best practices, given

#### Spotlight on practice

The survivor’s trust is an umbrella organisation with approximately 120 members who are based in the United Kingdom and Ireland which provide specialist support for women, men & children who have survived rape, sexual violence or childhood sexual abuse. An interview conducted with a senior staff member with responsibility for training highlighted a number of important points that legal professionals should be aware of:

- The variety of types and presentations of SGBV, including its occurrence in different places (e.g. workplaces), within different relationships (e.g. marriages).
- The dynamics of coercive control
- Person-centred, trauma informed approaches, including the neurobiology of trauma responses
- Unconscious bias
- Reflective practice
- The importance of not undermining types of victimisation (e.g. with female perpetrators)
- Victims health and welfare should never be a second priority. Support (and possibly therapy) should be available to victims.

See: <https://www.thesurvivorstrust.org/>

the complexities of victim responses, is the need for criminal justice professionals to have specialised in-depth training and education across all sectors of the system on the neurobiology of trauma, violence, and abuse, and the social contexts of victim responses”. The recognition of the complexity of the victimisation experience and the need for a service that is non-judgemental, person-centred and trauma-focused is widely recognised (SWARM, no date; Artinopoulou, Koufouli & Micheal, 2018; WHO, 2020) (see also ‘dignity’). Angiolini (2015, p. 54) states, “[p]olice officers and prosecutors, as well as jurors, need to be alert to the wide range of human responses to trauma of this nature and why so many responses defy common understanding of what may be anticipated as normal and honest”. For example, victims may not immediately raise an incident of SGBV when they first come into contact with authorities and this should not be interpreted as reflecting on the truthfulness of the accusation (Angiolini, 2015). Further, the UNDOC adds to this that professionals working with SGBV victims need to have an appreciation of the dynamics of power and control that are often at play in such harms (UNODC, 2019).

Research indicates that victims are negatively impacted when the practitioners who work with them hold rape myth confirming beliefs, lack specialised training and have limited experience working with that particular client group (Ranjbar, Res & Speer, 2013) and positively impacted when the professionals have specialist training (Rumney et al., 2020), are experienced (Powell & Cauchi 2013; Paratt & Pina, 2017) and do not have rape myth supporting beliefs (Gubb & Turner, 2012). The attitudes of professionals are extremely important for SGBV victims (Chowdhury-Hawkins et al., 2008)

Research also demonstrates that in some cases a professional's attitudes, including victim blaming and rape myths beliefs, can be positively changed through training (Rumney et al., 2020). For example,

#### Spotlight on practice

Independent Sexual Violence Advisers (ISVAs) are highly skilled specialists trained to provide individualised and impartial support, information and advice to sexual violence victims. Victims do not need to make a police report in order to access ISVA support. The seven essential elements of the ISVA role are:

1. Tailoring support to the victim's individual needs
2. Providing accurate and impartial information to sexual violence victims
3. Providing emotional and practical support
4. Providing support before, during and after criminal and civil court proceedings
5. Acting as a single point of contact
6. Ensuring the safety of victims and their dependants
7. Providing a professional service

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/647112/The\\_Role\\_of\\_the\\_Independent\\_Sexual\\_Violence\\_Adviser\\_-\\_Essential\\_Elements\\_September\\_2017\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/647112/The_Role_of_the_Independent_Sexual_Violence_Adviser_-_Essential_Elements_September_2017_Final.pdf)

McKee, Mueller-Johnson and Strang (2020) report on a randomised control trial regarding training different police officers groups: rape case detectives, student officers and two groups of uniformed response officers. The treatment group displayed an overall positive change in attitudes towards rape victims compared to those who did not receive training. Whilst this effect was measured across all groups combined, it was not visible within all police groups separately. A 2017 systematic literature review indicated that training police officers can be beneficial with respect to raising awareness and understanding around rape myths, and how such attitudes can impact on victims. However, the long term effectiveness of training may be eroded by factors such as a rape myth supporting working environment (Parrat & Pina, 2017). Professionals who do not receive specialised training regarding the experiences of sexual assault victims may be ignorant of their own pre-conceptions and the potential influence that these beliefs can have on their work (Kushmider, Beebe, & Black, 2015). In addition to reducing rape myths, training can also contribute to other assumptions being reduced. However, in order to be effective, such training should not only address how ideas related to victim and crime scene characteristics

(such as victim intoxication) and also attitudes (such as ideas about gender roles and ‘just world’ beliefs) influence rape myths. Further, it is important that professionals gain an understanding of the insidious nature of coercive control. Additionally, the professional characteristics (such as the presence of a sexualised environment and the available resources) and also the personal characteristics of officers (such as age and personal experience) should also be taken into consideration (Parrat & Pina, 2017). For example, research indicates that female police officers have lower acceptance for rape myths compared to male counterparts (Hayes, Lorenz & Bell, 2013; Rich & Seffrin, 2012; Rich & Seffrin, 2014; Sleath & Bull, 2015). It can be expected that attention for such factors are also necessary when considering training other professional groups.

An important training need for professionals concerns communicating with victims. Sex and SGBV are sensitive and somewhat taboo topics. Without strong communication skills professionals are unable to engage and encourage SGBV victims (Chliaoutakis, Papadakaki & Angelopoulou, 2012). One example is the need for sensitivity to the language and terminology used (see also discussion of language and terms used in ‘dignity’). For example, some victims object to the term ‘recovery’ as they feel that the experience of SGBV is something that they have to learn to live with rather than something that they can ever completely leave behind them (Ranjbar, Res and Speer, 2013). Similarly, many victims prefer the term ‘non-recent child abuse’ to ‘historic child abuse’ arguing that whilst they may have been subjected to abuse as a child, the experience does not only exist in the past for them and is very present in their everyday experiences.

Many of the important training needs for this group are focused around the particular experiences of SGBV victims. For example, legal professionals need to be aware of the stress and difficulties that many of victims experience due to their contact with the CJS (see also ‘health and wellbeing’). Angiolini (2015, p. 56) presents an account from a woman who was raped by a stranger, who was eventually convicted for the crime, “ ‘Many times during the process it would have been easier to walk away and try to move on’ ”.

The need for increasing practitioner skill and ability extends beyond those who work with women who have already been identified as SGBV victims. Many other professionals may suspect or come to know about SGBV and these practitioners should be

equipped to provide an adequate first response and to signpost women to appropriate services. This is particularly important given that research indicates that SGBV victims are often very sensitive to the

#### Spotlight on practice

In August 2020 a new law was established in Belgium that requires all magistrates to participate in a training about sexual violence and domestic violence. All active magistrates should be trained by August 2022 and all new magistrates should complete the training within two years after starting their mandate.

Chapter 5 of the law of July 31, 2020: [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2020073103](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2020073103)

responses of others to their victimisation experience (Angiolini, 2015). Research indicates that such interventions, when well executed, would be welcomed by women. 87% of the 42,002 women sampled in a 2012 survey felt it would be appropriate for doctors to ask women who presented with certain injuries if they had been caused by violence and only 8% felt this should not be done (FRA, 2012). There is, therefore, a role to be played by public facing professionals more generally and consequently a training need also exists for those individuals. However, the need to understand the landscape with respect to available services is something that is needed for all professionals who work with SGBV victims, and also represents its own training need.

It is essential that training for professionals also addresses the emotional impact that such work can have, and also provides practitioners with tools for self-care (Bows, 2018). Peer support networks between professionals can be of use in this regard. Supportive leadership and management structures are essential for practices that encourage self-care to be embedded into practice (see 'service quality and delivery').



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## Appendix I: Summary of clusters, key elements of effective practice, and practice examples

Cluster	Global key elements	Specific key elements	2012 Victims' Directive	Summary of the content	Examples of evidence in practice
A					
KNOWLEDGE ORIENTATION	Understanding the phenomenon of SGBV	Types of SGBV		<p><b>Focus KEEP:</b> there are many forms of SGBV which often do not correspond to the 'real rape' and have specific characteristics and consequences that should be taken into account.</p> <p><b>Importance KEEP:</b> professionals who work with victims of SGBV should be aware of the different types of sexual victimisation in order to respond accordingly and to believe the victim when they report a less known (different from the 'real rape') phenomenon.</p>	Non-contact SGBV (e.g. sharing sexual images) is a severe crime and can have different consequences for the victim (e.g. sexual images of the victim on the internet that are difficult to remove permanently).
		Characteristics of SGBV		<p><b>Focus KEEP:</b> SGBV is a particular type of victimisation which has particular characteristics and consequences for victims of SGBV.</p> <p><b>Importance KEEP:</b> professionals who work with victims of SGBV should be aware of these characteristics to make sure they reduce negative impacts and consequences of these characteristics and avoid further victimisation.</p>	<p>Highly gendered: 1/10 women in Europe has experienced a form of SGBV since the age of 15.</p> <p>Underreporting is extremely common: around 13% of women who experienced non-partner SGBV reported to the police – due to for instance shame and self-blame, which is very common for this type of victimisation.</p>

	Understanding the context of SGBV	Legal and policy context	<p><b>Focus KEEP:</b> legal frameworks can reflect the social context of SGBV, but can also change the social context and attitudes in society. Vice versa as well, social context and social movements can send a message to policy makers and can lead to changes in legislation that are more in line with practice and victims interests or needs.</p> <p><b>Importance KEEP:</b> professionals who work with victims of SGBV should be aware of the barriers in working with these victims caused by legislation and know how to cope with these challenges. In addition, these challenges should be addressed to authorities so victims needs are communicated.</p>	<p>Non-consensual condom removal is only recently recognised in legal frameworks in a few countries, despite the prevalence of the phenomenon and consequences for the woman who experience it.</p> <p>When a women in prostitution becomes victim of SGBV in a country where prostitution is illegal, she will most likely not report the victimisation because of fear to be penalised herself.</p>
		Social context	<p><b>Focus KEEP:</b> the social context in which the SGBV occurs influences the experience of the victim. The attitudes towards and assumptions about SGBV that are prevalent in society are related to how people (in the CJS) and society in general respond to and treat victims of SGBV.</p> <p><b>Importance KEEP:</b> professionals who work with victims of SGBV should be aware of the fact that SGBV is a social and not an individual problem. Different aspects in society contributes to the experience of the victim, which should not be overlooked when working with these victims.</p>	<p>Societies with subordinate roles for women are more likely to shame or disbelieve women who come forward with their sexual victimisation.</p> <p>Rape myth and victim blaming attitudes in society (e.g. 'no' means 'yes'; "She was wearing revealing clothing, so she asked for it").</p> <p>Slut shaming as a normal phenomenon in society, where even highly placed individuals in society do it publicly.</p>

		The internet		<p><b>Focus KEEP:</b> because of the internet new forms of and opportunities for sexual victimisation are present in society. These result in different experiences and consequences for victims. But in contrast, the internet space can be a platform for victims to share their experiences (voice).</p> <p><b>Importance KEEP:</b> professionals who work with victims of SGBV should be aware of the different (and constantly evolving) forms of sexual victimisation happening on the internet. This brings along different experiences and consequences, to which professionals should adjust. They should respond accordingly to the needs of victims of such events and supplement/adjust their services when necessary.</p>	<p>Constancy and enduring nature of victimisation experience when victimised by 'image-based sexual abuse'.</p> <p>#metoo as a platform to share experiences and encourage women to come forward and report sexual victimisation.</p>
		Global crises		<p><b>Focus KEEP:</b> global crises seem to influence the experiences of victims of SGBV. It influences the prevalence of SGBV and service provision for victims of SGBV.</p> <p><b>Importance KEEP:</b> professionals who work with victims of SGBV should be aware of the impact that global crises has on SGBV, including the increased risk that exists for (certain) women to become a victim of SGBV and the barriers that it cause in effective support for these victims.</p>	<p>COVID-19: the Revenge Porn Helpline discovered that In August 2020 reported cases were 63% higher than in August 2019.</p> <p>Migrant crisis: migrant (undocumented) women experience economic and social challenges (e.g. unstable housing), which makes them more vulnerable to becoming a victim of SGBV.</p> <p>Global financial downturn: a lack of funding for victim support services in Greece led to a problematic situation in providing continuous services to victims of SGBV.</p>



Cluster	Global key elements	Specific key elements	2012 Victims' Directive	Summary of the content	Examples of evidence in practice
<b>B</b>					
	Availability and access to services	Individual barriers	Articles 4, 7, 8, 13, 14, 15, 17	<p><b>Focus KEEP:</b> victim services should be widely available for all victims. Barriers to access services should be eliminated as much as possible. Awareness of variety in the population of victims of SGBV is important.</p> <p><b>Importance KEEP:</b> avoiding secondary victimization by not discriminating certain victims based on individual differences. Encouraging victims of SGBV to seek help, report the crime, etc.</p>	<p>Free services.</p> <p>Not required to make an official complaint in order to access victim support services.</p> <p>No limits to access, or additional services, for victims with special needs such as victims with (physical and/or mental) disabilities, complicated migration status, etc.</p> <p>Awareness of intersectionality and the possible barriers that comes with this to access support.</p>
		Interpersonal barriers	Articles 4, 7, 8, 13, 14, 15, 17	<p><b>Focus KEEP:</b> victim services should be widely available for all victims. Barriers to access services should be eliminated as much as possible.</p> <p><b>Importance KEEP:</b> avoiding secondary victimization by the informal network of the victim by informing family and friends about SGBV and how to support and interact with the victim. This to encourage the victim to seek help and access services.</p>	<p>If friends and family have negative reactions towards the victim about the sexual assault (e.g. not believing them, minimalising the events, blaming the victim etc.), victims will less likely report the crime and seek help because they fear a similar reaction of the professionals.</p> <p>Providing family and friends of the victim with relevant information (e.g. what not to say to victims of SGBV, how to support victims of SGBV etc.) can increase the likelihood that victims seek help and/or report the crime.</p>

		<b>Organisational barriers</b>	Articles 4, 7, 8, 13, 14, 15, 17	<p><b>Focus KEEP:</b> victim services should be widely available for all victims. Barriers to access services should be eliminated as much as possible.</p> <p><b>Importance KEEP:</b> the way services are organised/made available in society can lead to barriers for the victim. These barriers should be avoided as much as possible in order to encourage the victim to seek help and access services.</p>	<p>Because of the gendered nature of the crime, the majority of woman who are victim of SGBV prefer female professionals in services. It could be a reason for woman not to pursue with help or with the (forensic) investigation if there are no female professionals.</p> <p>Victims do not always want to report the crime immediately to the police but do need support services. Support should not be a requirement for accessing help.</p> <p>Seamless and smooth signposting should be a priority for professionals (in all kinds of settings) when working with victims of SGBV.</p>
		<b>Sociocultural barriers</b>	Articles 4, 7, 8, 13, 14, 15, 17	<p><b>Focus KEEP:</b> victim services should be widely available for all victims. Barriers to access services should be eliminated as much as possible.</p> <p><b>Importance KEEP:</b> avoiding secondary victimization based on their own sociocultural background and surroundings. This to encourage the victim to seek help and access services.</p>	<p>In some communities 'familism' is a factor which discourages victims to seek help or report the crime. These communities believe such events are family matters and should be dealt with within the family. The victim could therefore 'decide' not to report or get involved with services.</p> <p>In some communities/cultures talking about sex is a taboo and therefore talking about a sexual assault is not tolerated. Which makes the barrier towards services stronger.</p> <p>Rape myths present in society/community may discourage victims to seek help or report the crime.</p>
<b>PRACTICE ORIENTATION</b>	<b>Participation</b>	<b>Receiving and understanding information</b>	Articles 3, 4, 5, 6, 7	<p><b>Focus KEEP:</b> provision of information and the importance of providing tailored information.</p> <p><b>Importance KEEP:</b> increasing CJP participation, improving access to support, minimising distress etc.</p>	<p>Information about services, justice system processes, etc.</p> <p>Information provided about compensation, decisions not to prosecute, restorative justice etc.</p>

					Information provided in a timely and accessible manner (different languages, large print / braille) etc.
		Participation, agency, empowerment and independence	Articles 6, 7, 10, 11, 12, 13, 22, 23	<p><b>Focus KEEP:</b> providing the victim with information leads to the opportunity of deciding to what extent and how she wants to participate in the CJP or other services outside the CJS (agency). Being independent and having the option to make decision for herself, works empowering.</p> <p><b>Importance KEEP:</b> improving the wellbeing and independence of victims of SGBV and decreasing secondary victimization by including the victim as much as possible in her own case and process.</p>	Deciding whether or not to participate in restorative justice process, to access compensation, to proceed an investigation or prosecution, to access victim support, etc.
		Being understood and being heard	Articles 3, 5, 7, 10, 17	<p><b>Focus KEEP:</b> creating an environment where victims of SGBV can express themselves. So possible obstacles should be eliminated as much as possible.</p> <p><b>Importance KEEP:</b> minimizing stress for victims of SGBV when expressing themselves, understanding better their own experiences, redress the power imbalance, increasing sense of empowerment.</p>	<p>Being able to tell their story and how it impacted them.</p> <p>Being accompanied when interviewed.</p> <p>Having an interpret available.</p>

PRACTICE ORIENTATION	Protection	Protection of safety and security	Articles 12, 18, 19, 20, 21, 22, 23	<p><b>Focus KEEP:</b> the risk of secondary and repeat victimization should be reduced to a minimum.</p> <p><b>Importance KEEP:</b> preventing secondary and repeat victimization. Increasing the safety of the victim. Avoiding humiliation and further victimization by the CJS.</p>	<p>Using an individual assessment to estimate the risk of repeat victimisation for example.</p> <p>Being aware of rape myths, the role of shame and (self-)blame, etc. when working with victims of SGBV.</p>
		Privacy	Articles 21, 23	<p><b>Focus KEEP:</b> victims should be informed about what happens with the information they provide and should be protected</p> <p><b>Importance KEEP:</b> giving the victim the right to decide what happens with the information, this increases the sense of control and empowerment. Keeping information private can also contribute to the safety and sense of safety for the victim, which leads to minimization of distress.</p>	<p>Trial behind closed doors when not being/feeling safe. Restrictions on publishing information about victims of SGBV in public documents.</p> <p>Formal document for waiving confidentiality.</p>
		Dignity	Articles 18, 23	<p><b>Focus KEEP:</b> actors in and out the CJS should treat the victim in a sensitive and respectful way that does not harm the victims' self-worth. Additionally, the situation in which the victim interacts with professionals should be as comfortable as possible for the victim.</p> <p><b>Importance KEEP:</b> avoiding secondary victimization and humiliation. Increasing the sense of self-worth and sense of feeling valued and respected. Minimization of distress and increasing well-being.</p>	<p>Being aware of language used (e.g. 'victim' vs. 'survivor').</p> <p>Not asking questions about private life that are not related to the crime.</p> <p>Providing separate and victim-friendly interrogation rooms.</p> <p>Taking the individual characteristics of the victim into account (e.g. sexuality, religion, race, etc.).</p>

PRACTICE ORIENTATION	Redress	Health and wellbeing	Articles 3, 8, 19, 20, 23	<p><b>Focus KEEP:</b> providing services on all domains that are affected by the offence at any stage of the CJS.</p> <p><b>Importance KEEP:</b> minimization of distress and increasing the well-being of the victim.</p>	Providing specialized victim support services. Special measures during court (e.g. avoiding visual contact with offender).
		Vindication and validation	Articles 1, 5, 9, 12, 14, 16, 22, 25	<p><b>Focus KEEP:</b> the victim's story should be believed and this should be acknowledged by the different agents involved in the CJP and outside the CJP, by different means and at any time.</p> <p><b>Importance KEEP:</b> increases the victims' sense of justice. Can decrease the level of blame (by themselves or others), guilt and shame.</p>	<p>Being aware of and avoiding rape myth beliefs.</p> <p>Having a clear criminalization of offences (e.g. non-consent condom removal is not clearly classified and this might lead to not prosecuting).</p> <p>Accountability of offender might be achieved by prosecuting, restorative processes, payment of compensation, etc.</p>
		Compensation	Articles 4, 9, 14, 16	<p><b>Focus KEEP:</b> compensation, in the form of financial redress or other forms that may contribute to redress for the victim, should be available and easy to access.</p> <p><b>Importance KEEP:</b> increasing sense of validation, vindication and reparation.</p>	Financial compensation schemes, reimbursement and access to support services.

Cluster	Global key elements	Specific key elements	2012 Victims' Directive	Summary of the content	Examples of evidence in practice
C					
SYSTEM ORIENTATION	Service quality and delivery	/	Articles 1, 8, 9	<p><b>Focus KEEP:</b> services should be evidence-based, gender-sensitive, victim-centered and trauma-informed. Important factors that contribute to this are for example: the organizational culture, training and monitoring and evaluation.</p> <p><b>Importance KEEP:</b> ensuring best practices based on current knowledge about the population. Preventing secondary victimization by for instance avoiding rape myth beliefs and judgmental attitudes towards victims of SGBV.</p>	Applying quality standards such as: advocacy and support, challenging social tolerance of sexual violence, empowerment and participation, etc.
	Service cooperation and coordination	/	Articles 8, 9, 12, 26	<p><b>Focus KEEP:</b> the organization of services should facilitate an easier and more comfortable access for victims.</p> <p><b>Importance KEEP:</b> minimization of distress and maximization of support offered and accessed.</p>	Holistic and seamless support provision (e.g. one-stop shops).
	Practitioners skill and training	/	Articles 1, 23, 25	<p><b>Focus KEEP:</b> professionals working with victims of sexual violence should be competent for that purpose. Training can help to achieve this goal but is no guarantee for competence. Factors like personal attitudes and approaches also impact the competence of the practitioner.</p> <p><b>Importance KEEP:</b> preventing secondary victimization by being informed and aware of factors that are important for victims of SGBV when interacting with the CJS such as sensitive and considerate language use.</p>	<p>Understanding the complexity of SGBV and trauma.</p> <p>Being aware of attitudes and beliefs that impact the victims' experience negatively.</p>

## Appendix II: Examples of how to apply the Key Elements of Effective Practice Framework

<b>ORGANISATION:</b> Victim Support Netherlands (VSN) <b>COUNTRY:</b> The Netherlands <b>SUMMARY:</b> VSN provide an holistic and easy-accessible support for victims of all kinds of crimes. They also have more specialised teams and support for particular crimes such as SGBV. Their main aims of the service is to provide the victim with emotional support, support regarding the CJS and support regarding compensation.	
<b>INFORMATION RETRIEVED FROM:</b> Interview with VSN employee + website VSN ( <a href="https://www.slachtofferhulp.nl/english/">https://www.slachtofferhulp.nl/english/</a> )	
<b>A: KNOWLEDGE ORIENTATION</b>	<b>Examples of evidence</b>
<b>Understanding the phenomenon of SGBV:</b> types of SGBV; characteristics of SGBV	<ul style="list-style-type: none"> <li>The department of Knowledge, Research &amp; Development facilitates the organization by developing a policy based on knowledge, research and the most recent developments or trends. This also in the context of new trends and developments regarding sexual offences.</li> <li>Website provides information about diverse types of SGBV (e.g. sexual assault, rape, sexual abuse, grooming, sexting, sextortion, loverboys, human trafficking, sexual intimidation and child sexual abuse).</li> </ul>
<b>Understanding the context of SGBV legal and policy context:</b> legal & policy context; social context; global crises	<ul style="list-style-type: none"> <li>The department of Knowledge, Research &amp; Development facilitates the organization by developing a policy based on knowledge, research and the most recent developments or trends. This also in the context of new policies or laws, changing situations or contexts (e.g. COVID-19 crisis) etc. regarding sexual offences.</li> </ul>
<b>B: PRACTICE ORIENTATION</b>	<b>Examples of evidence</b>
<b>Availability and access to services:</b> individual barriers; interpersonal barriers; sociocultural barriers; organisational barriers	<ul style="list-style-type: none"> <li>Victims can contact VSN through Facebook, Twitter, chat, email and phone</li> <li>Victims can find a broad range on information about SGBV and the possibilities after experiencing SGBV on their website (the website also provides specific information for victims of SGBV in a specific context such as: abuse in the catholic church, abuse in sports clubs).</li> <li>Victims can share their story online and anonymously on the platform of the VSN-website (mostly victims who are not yet known by VSN; in order to give victims a platform to share their story and to see that they are not alone; to make the step towards seeking help and maybe even reporting the crime smaller).</li> <li>VSN organises peer support groups.</li> <li>Victims are not obligated to report the crime in order to receive help.</li> <li>Service is completely free.</li> </ul>
<b>Participation:</b> receiving & understanding information; participation; agency, empowerment & independence; being understood & being heard	<ul style="list-style-type: none"> <li>Victims can share their story online and anonymously on the platform of the VSN-website (mostly victims who are not yet known by VSN; in order to give victims a platform to share their story and to see that they are not alone; to make the step towards seeking help and maybe even reporting the crime smaller).</li> <li>Information and support is offered regarding the right of including a Victim Impact Statement during trial.</li> </ul>
<b>Protection:</b> protection of safety & security; privacy; dignity	<ul style="list-style-type: none"> <li>Information and support about restraining order is offered if relevant.</li> </ul>

<b>Redress:</b> health & well-being; vindication & validation; compensation	<ul style="list-style-type: none"> <li>• Compensation schemes are offered (e.g. Violent Offences Compensation Fund (<i>Schadefonds Geweldsmisdrijven</i>); compensation via CJS; compensation;...).</li> <li>• Victim-offender Mediation (<i>Perspectief Herstelbemiddeling</i>) is offered if relevant.</li> <li>• Signposting to different services is offered when relevant.</li> </ul>
<b>C: SYSTEM ORIENTATION</b>	<b>Examples of evidence</b>
<b>Service quality and delivery</b>	<ul style="list-style-type: none"> <li>• VSN has their own Academy where they develop, provide and guide training for their workers (based on the work of the department of Knowledge, Research and Development).</li> </ul>
<b>Service cooperation and coordination</b>	<ul style="list-style-type: none"> <li>• Cooperation with: Center after Sexual Violence (<i>Centrum na Seksueel Geweld</i>), The Violent Offences Compensation Fund (<i>Schadefonds Geweldsmisdrijven</i>), Victim-offender Mediation (<i>Perspectief Herstelbemiddeling</i>), independent psychologist and psychiatrists.</li> <li>• The different departments work closely together and support each others work (e.g. case managers, department of Knowledge, Research and Development).</li> </ul>
<b>Practitioners skill and training</b>	<ul style="list-style-type: none"> <li>• Online training: starter package for new workers that they can run through in the first weeks of their employment. Very interactive training (e.g. “what would you do in situation x?” – they can then choose one of the options provided, the ‘better’ answer is explained afterwards. Several other online training on more specific topics are also provided.</li> <li>• Specialized training in real-life: for SGBV there is a 3 days training for all workers in which they practice certain situations with actors and role-play (these are now due to the corona-restrictions also online via videocall).</li> <li>• Workers (payed or voluntaries) are expected to have a good knowledge about for instance the (un)common stress reactions after SGBV (e.g. emphasizing that it is a normal reaction to an abnormal situation), what happens during the offense (e.g. freeze reaction are very common, having an orgasm during the offense is a normal physical reaction and is no sign that you enjoyed it), the prominence of shame and guilt after experiencing SGBV, how to deal with these feelings/emotions and when/where to find help, how the CJS works and what the possible outcomes are, compensation schemes, specific contexts in which SGBV occurs (e.g. loyalty principle when SGBV occurs in family circle, honour-related violence and their specific difficulties,...).</li> <li>• Workers can be empathic and know how to listen and interact properly with victims of SGBV (e.g. giving them a lot of recognition and confirmation).</li> </ul>
<b>CONSIDERED AS: BEST PRACTICE</b>	



<p><b>ORGANISATION:</b> Centres after Sexual Violence (<i>Centra na Seksueel Geweld</i>)</p> <p><b>COUNTRY:</b> Belgium</p> <p><b>SUMMARY:</b> the Centres after Sexual Violence provide holistic care and support for victims of SGBV. The centres are located in the hospital and victims can receive medical care, psychological care and a forensic examination. At the same place victims can also file their complaint if they want to. Medical and psychological follow-up care is provided if wanted.</p>	
<p><b>INFORMATION RETRIEVED FROM:</b> interview with staff member at the Institute for the Equality of Women and Men + evaluation rapport of the pilot project (Baert &amp; Keygnaert, 2019)</p>	
<b>A: KNOWLEDGE ORIENTATION</b>	<b>Examples of evidence</b>
<p><b>Understanding the phenomenon of SGBV:</b> types of SGBV; characteristics of SGBV</p>	<ul style="list-style-type: none"> <li>The training provided to all actors focussed on knowledge about SGBV, the consequences that come with it for the victim and their surroundings and the functioning of the Centres after Sexual Violence. Examples of topics that were provided were: medical, psychological and forensic aspects of SGBV experienced by male, female, minor victims and vulnerable victims (e.g. victims with disabilities, victims under the influence of alcohol or drugs etc.).</li> </ul>
<p><b>Understanding the context of SGBV legal and policy context:</b> legal &amp; policy context; social context; global crises</p>	<ul style="list-style-type: none"> <li>Recently an expertise center in SGBV is established that is linked to the centers. Their aim is to conduct research on the topic of SGBV, make factsheets and collect all the developments in Belgium (and wider) on these topics, this in collaboration with all stakeholders. This to improve knowledge regarding the topic and eventually improve services and policy.</li> </ul>
<b>B: PRACTICE ORIENTATION</b>	<b>Examples of evidence</b>
<p><b>Availability and access to services:</b> individual barriers; interpersonal barriers; sociocultural barriers; organisational barriers</p>	<ul style="list-style-type: none"> <li>The centres are available 24/7 without appointment.</li> <li>The centres are expanding and additional centres are established at the moment of conducting the research to improve availability and access for victims around the country. The government aims to establish one centre in every province.</li> <li>A chat service is available for victims.</li> <li>A cooperation is established with the Immigration Office to grant victims without legal documents a special statute of 'victim' so they are protected for a particular amount of time. This should encourage them to report the crime or seek help without being afraid of getting arrested. Improvement on this regard is still required.</li> <li>Cooperation with local services working with particular vulnerable groups (such as homeless people, people working in prostitution) are established in order to reach these victims as well. Outreach work is aimed for on this regard.</li> </ul>
<p><b>Participation:</b> receiving &amp; understanding information; participation; agency, empowerment &amp; independence; being understood &amp; being heard</p>	<ul style="list-style-type: none"> <li>The victim decides whether or not the case goes to the CJS (they can also decide to collect the evidence and decide later in time to proceed with legal steps).</li> <li>There is a close cooperation with the victim support services of the 'Justice Houses' ('Justitiehuisen') which are part of the government. These victim support services contact the victims immediately after receiving the case from the Public Prosecutor and provide support and information regarding the CJS.</li> <li>Translators are available but improvement is needed in order to provide this service 24/7.</li> </ul>
<p><b>Protection:</b> protection of safety &amp; security; privacy; dignity</p>	<ul style="list-style-type: none"> <li>Attention is also given to the people around the victim. In order to avoid secondary victimisation by friends and family, information and support is also provided to them.</li> <li>Research showed that the police interview done at the centre by specialised police officers was done in a respectful way. Victims who first went to the police station to report the crime have various experiences on this regard.</li> </ul>

	<ul style="list-style-type: none"> <li>• Research showed that victims experienced the reception and service in general as respectful and warm, also because of the sufficient time that was taken for the reception and care-taking of the victim.</li> <li>• The Forensic examination and the first medical care take place on one occasion so the victim does not have to for example undress twice if this is not strictly necessary.</li> <li>• The forensic examination is less invasive and more victim-centered than it used to be: the forensic nurse starts the examination based on the story of the victim.</li> </ul>
<b>Redress:</b> health & well-being; vindication & validation; compensation	<ul style="list-style-type: none"> <li>• Police interview that take place in the centres are recorded so victims do not have to repeat their story multiple times. The legal framework for using these interviews in court are not yet in place for all victims but plans are made to do so (for minors and vulnerable victims, such as victims with disabilities, there already is a legal framework on this regard). Victims have the opportunity to refuse.</li> <li>• Follow-up psychological support is offered.</li> </ul>
<b>C: SYSTEM ORIENTATION</b>	<b>Examples of evidence</b>
<b>Service quality and delivery</b>	<ul style="list-style-type: none"> <li>• The centres were evaluated after the first year and this resulted in a thorough research report (Baert &amp; Keygnaert, 2019) and recommendations that are/will be explored and implemented.</li> <li>• The centres are victim-centred and all staff involved is trained for that purpose.</li> <li>• Recently an expertise center in SGBV is established that is linked to the centers. Their aim is to conduct research on the topic of SGBV, make factsheets and collect all the developments in Belgium (and wider) on these topics. This to improve knowledge regarding the topic and eventually improve services and policy.</li> </ul>
<b>Service cooperation and coordination</b>	<ul style="list-style-type: none"> <li>• All actors involved in the service delivery of the center (judicial and support) are taking the training together which seems to benefit their cooperation. It contributes to understanding each actors aims and role and this seems to benefit trust.</li> <li>• There is a clear cooperation established that is victim-centered: there only is a cooperation between the center and the CJS if the victim wants to. The police/CJS is not informed about the offense if the victim does not want to.</li> <li>• Support regarding the CJS is provided by the 'Justice Houses' ('Justitiehuisen') discussed above. The centre opted for this cooperation because the Justice Houses work for the Justice Department and have the most accurate information about the case and the proceedings of the CJS. There was no need to include an extra actor on this regard.</li> </ul>
<b>Practitioners skill and training</b>	<ul style="list-style-type: none"> <li>• Specific training is provided for all actors involved in the operation of the centre. Every actor also had their own job-specific training besides the general training that was similar for all actors. A part of their training was to receive victims of SGBV with an open and non-judgmental attitude towards the victim.</li> <li>• A part of the general training (all actors, including police officers) was a simulation of the steps that a victim in the centre goes through.</li> <li>• Additional training is provided based on the needs of the forensic nurses.</li> </ul>
<b>CONSIDERED AS: BEST PRACTICE</b>	





