

Supporting victims of gender-based violence: A way to justice for victims*

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1. The reality of victims

Seeking justice in a gendered world is a complicated affair. Justice is supposed to be blind, yet when justice systems are not able to factor in inequalities and struggles through which disadvantaged groups have to go through to approach justice systems, outcomes may be – unjust.

As most other things that are women into the fabric of our societies, crime too is a very gendered phenomenon. For example, even though they represent about 51% of the population, only 37% of intentional homicide victims in the EU were women¹. Yet, two in three of the female victims of homicide were killed by family members or intimate partners. The statistics for murdered men victims of domestic abuse were not relevant to mention in the Eurostat report².

In another example, one in three women in the EU self-identify as victims of domestic violence over their lifetimes, even more – 44%, have been victims of psychological abuse. That's almost half of all European women³. However, unlike homicide that can hardly go unreported, psychological abuse is much harder to prove, much more complicated to even be recognised by the victim herself, and ultimately mostly goes unreported.

* The article has been subjected to double blind peer review, as outlined in the journal's guidelines.

¹ Eurostat, *Crime statistics*, June 2022, available at : https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Crime_statistics#In_2020.2C_women_accounted_for_37_.25_of_the_victims_of_intentional_homicide.

² *Ibid.*

³ EU Fundamental Rights Agency (FRA), *Violence against women: an EU-wide survey. Main results report*, March 2014, available at: <https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>.

Like domestic violence, women are much more likely to become victims of sexual violence. As with domestic violence, incidence of this type of crime is worryingly prevalent. According to the Eurostat data for 2015, 90% of victims of rape were female, while 99% of the persons convicted for rape were male⁴. During the same year, 2% of women above the age of 15 responded to have been sexually assaulted in the preceding 12 months⁵. Applied to the entirety of the total female population in the EU in the same year would indicate that about a total of 5,2 million women in the EU were victims of sexual violence over the course of the year. Yet, only 215,000 cases, or 4% of the total number of projected cases of sexual violence was reported to the authorities, according to Eurostat⁶. Further, at the same time period, only 16,500 cases of conviction for rape and sexual assault were recorded in the EU.

Meaning that only 0,3% of all victims of sexual violence achieved vindication in the criminal justice system⁷. So, a conclusion is imposing itself – justice systems are largely unequipped to recognise and accommodate the needs of victims of gender-based violence.

Let's take the example of a married woman, who has small children and who finds herself in a situation of coercive control⁸, where there is no bruises, broken bones or other visible injuries. Very few legal systems criminalise coercive control, and even when they do, it is one crime that is very difficult to prove. The woman may be educated and aware of the jurisprudence, understanding that proving domestic violence by coercive control might be complicated.

She starts divorce proceedings, where she needs to face her (often manipulative) abuser. She needs to share custody of her small children with him. He might start manipulating children too, wanting to get back at her for daring to divorce him. He will normally put roadblocks on every step of her way to freedom from a harmful marriage, and will take his children hostages whenever possible and needed. In the divorce proceedings her allegations of violence get dismissed, as she never filed an official criminal complaint against her husband.

Her divorce proceedings take some time, her claim for the division of conjugal property even longer. The now ex-husband avoids paying maintenance, eventually

⁴ Eurostat, *Violent sexual crimes recorded in the EU*, 2017, available at: <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20171123-1>.

⁵ FRA, *supra* note 3.

⁶ Eurostat, *supra* note 4.

⁷ It needs to be recognised that this type of calculation has its methodological limitations. The reality is that it is quite difficult to compare the crime, reporting and conviction rate captured during the same 12 months. To understand the real rate, longitudinal studies would need to be conducted, which observe crimes through time, as it is hardly unlikely that all convictions in one year are related to crimes that were committed, reported and prosecuted during the same 12 months.

⁸ Coercive control is often defined as «an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim». For more on coercive control see e.g. Woman's Aid, *What is coercive control?*, available at: <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/coercive-control/>.

moving to a different country in an attempt to hide his income. The woman needs to seek cross-border support to find out about his income. He starts avoiding reporting his income by setting up off-shore companies through which he does his business. He is seeing children sporadically, often enough to disturb their and their mother's life. She is now a life-long victim of economic and psychological abuse. She is helpless, having fallen within the cracks of tax evasion, absence of cross-border collaboration and the inability to pay the cost of legal representation in multiple countries, while she also needs to provide for her children all by herself.

Or, take another example in which a young woman goes out with her friends and wakes up in the middle of the night in an unknown room, being raped by three men. She starts screaming and they let her leave the apartment. She finds her way home and tells her sister about what happened. Her sister takes her to the hospital where a rape-kit was taken and blood tests run. By the time she came to the hospital, any rape drugs have already evaporated from her system, but DNA evidence was identified. The rapist was identified, but there was no prosecution, because in the absence of evidence that she was drugged, the legislation requires active resistance from the victim. And she could not resist because she was drugged.

In the former example, the victim actually never attained that standing, as she never filed a criminal complaint to the police – not being confident that the behaviour that was directed towards her had even been criminal. In the latter, the victim was certain that what had happened to her had been a criminal act, yet, the evidentiary requirement was not met and the conditions for the prosecution were not satisfied.

2. The human rights discourse

The modern human rights standards, which are grounded through the UN instruments, globally and reinforced for the Europeans through the Council of Europe framework have been built on the legacy of horrors of World War II. The main driver for getting a consensus behind the guarantees for rights and freedoms contained in the European Convention of Human Rights, or the two International Covenants was the political consensus of the time that horrors seen and experienced by millions in the first half of the century were never to be seen again. Human rights discourse was there to protect the individuals from the repercussions of the state, not to guard them from each other.

So, just looking into Article 6 of the ECHR, which is presented as a right to a fair trial reveals an unbalanced picture. Its first paragraph gives a right to a fair and public hearing to all, in all proceedings dealing with their civil rights and obligations. But it also grants a fair and public hearing to all in the determination of criminal charges against them – hence granting a fair trial in criminal proceedings only to the perpetrator, not to the victim. Going further, this same provision contains two more paragraphs, establishing very specific rights in criminal proceedings – again only to the

perpetrator. Only perpetrator has the right to be informed, be represented or to be given appropriate time to prepare for trial.

Hence, victims of crimes had to be brought into this discourse through a back door – case-law. Over time, this has happened by means of the so-called procedural limb of the ECHR’s substantive articles, such as right to life (Article 2), prohibition of torture (Article 3) and slavery or forced labour (Article 4) or freedom of thought, conscience and religion (Article 9).

This uneven protection consequently descended into national criminal legislation, where the offenders have a clear set of rights and guarantees and where a significant effort has been made to ensure that these rights function in practice. Because, the consequence of not respecting the rights of the offender are strict – there can be no prosecution, convictions may be quashed by human rights mechanisms, prisoners may be set free and awarded eye watering compensation amounts if their rights are not respected.

This is not to say that rights of persons criminally prosecuted by the state have to be removed to make space for the victim. Far from it. Those rights are there for a reason, and should not be infringed. Yet, if the presumption of innocence is granted to all of the accused, even to those who recorded themselves and then disseminated the harrowing recording of gang raping a young woman, we need to grant similar guarantees to all those to claim to have been harmed by a criminal act – to the young woman who was raped, to the victim of coercive control or to anyone else who might claim to have fallen victim of a crime. Presumption of victimisation could be made to coexist in the same courtroom with a presumption of victimisation.

3. Rights of victims of crimes

A change started happening for victims with the adoption of the UN Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985⁹. But, as far as the UN is concerned, this is also where the change stopped. There has been no UN convention that would give more power to the basic principles, hence leaving rights of victims at the level of good intentions and weak action.

In the European Union, however, progress for all victims was more palpable. In 2001, the EU adopted the Framework Decision on the standing of victims in criminal proceedings, which was followed shortly by the 2004 Directive relating to compensation to crime victims.

Within the Council of Europe, a landmark instrument was adopted in 2011 – in the form of Convention on Preventing and Combating Violence Against Women and

⁹ Full text of Basic principles is available here: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse#:~:text=Victims%20should%20be%20treated%20with,harm%20that%20they%20have%20suffered.>

Domestic Violence (the Istanbul Convention). The Istanbul Convention was the first comprehensive human rights instrument that put the victims of a certain type of crime within the center of the discourse.

The adoption of the Istanbul Convention was closely followed by the EU in 2012, when Directive establishing minimum standards on the rights, support and protection of victims of crime – the Victims’ Rights Directive (hereinafter: «the Directive») – the first ever comprehensive instrument to guarantee rights to all victims of all crimes in Europe.

The Directive puts the victim at the center and for the first time ever grants specific, palpable rights to victims themselves – irrespective of whether they reported the crime or not, or of whether criminal proceedings are ongoing. However, this has only been a first step. Victim Support Europe (VSE) conducted EU-wide research in 2018, to look into the practical implementation of the Victims’ Rights Directive across the EU. The research which went on for two years, and included in-depth consultations with almost 1,000 experts and stakeholders across the 26 Member States of the EU that implement the Directive¹⁰, concluded not only that there was not a single state in the EU that fully implemented the Directive in practice, but also that not a single article of the Directive was fully implemented across all of the EU¹¹. The Directive, while certainly having had effect in a number of Member States, where victims were more and more becoming part of the discourse, was simply not working for victims.

4. *Vision for victims*

In the gendered society, gender-based violence is often seen as a just consequence for victims’ own infractions. She is asking for it – by not cooking lunch, by going out with her friends, by not resisting when she is being raped by three men who are each twice her size. Victims are thought by their surroundings to doubt themselves and to blame themselves first, before they start being blamed by their environment or even the people who are there to support them and help them. They are to blame for not having chosen a better partner¹² or for not making sure that their

¹⁰ Denmark, holding a historic exemption from application of justice and home affairs policies and legislation remains in opt-out from the application of the Victims’ Rights Directive and hence was not subject to the study.

¹¹ Victim Support Europe, *Vociare synthesis Report*, 2018, available at: https://victim-support.eu/wp-content/uploads/2021/02/VOCIARE_Synthesis_Report.pdf.

¹² Nezavisne novine, *Zašto nisi izabrala boljeg* (in Serbian: Why haven’t you chosen better), 2007, available at: <https://www.nezavisne.com/novosti/drustvo/Zasto-nisi-izabrala-boljeg/15401>.

drinks were not spiked¹³, it is their underwear that is being spread to all to see in courtrooms¹⁴ where they are seeking justice from what had been done to them.

Rather than staying true to their commitment to ratify the Istanbul Convention¹⁵, the European Union is currently working towards adopting a new Directive on violence against women¹⁶ and is committed to adopt amendments to the Victims' Rights Directive to improve it, there is already a lot to be done within the existing legislative framework.

Victims' rights directive already recognises a number of rights, that if properly implemented would make victims' experiences much less agonising and traumatic. For example, Article 22 of the Directive, requires states to conduct an individual needs assessment for protection of all victims who enter criminal proceedings. This assessment is aimed at protecting victims from four elements: intimidation, retaliation, repeat victimisation and secondary victimisation.

In practice, two main obstacles have been identified for the implementation of this right: the reach and the scope. Regarding the former issue: the assessment should be done in a timely manner – meaning that in most cases it should be done by the police. While very few police forces are required to systematically do this assessment for all victims, victims of gender-based violence are 'lucky' that for them, individual needs assessment for protection is conducted more often than for other victims. However, this is only done for victims who report their crimes, and only within the framework of criminal proceedings, and even there it does not work for victim. Hence, our victim of coercive control who never reported the crime will never benefit from this protection, while our victim of rape will only have this protection for a very short period – until her charges were dropped. The victim of coercive control will have to go to a civil trial to claim divorce, child custody, maintenance or division of marital property. She might request to relinquish her married name in administrative proceedings. Those are all non-criminal environments, where the staff is routinely not

¹³ Get to Text, *Nina Fuchs: My nightmare only started after I was raped*, August 2020, available at: <https://gettotext.com/nina-fuchs-my-nightmare-only-started-after-i-was-raped/>.

¹⁴ BBC, *Irish outcry over teenager's underwear used in rape trial*, November 2018, available at: <https://www.bbc.com/news/world-europe-46207304>.

¹⁵ The process of EU accession began in 2015 but has been blocked in the Council since 2017, due to the failure to obtain consensus among the Member States. Namely, as six Member States have had strong objections against the Convention, which was not ratified within their national context, the Commission President committed to pursue a bespoke EU instrument as a compromise. See more at: European Parliament, *Violence against women: MEPs demand the EU ratify the Istanbul Convention*, February 2023, available at: <https://www.europarl.europa.eu/news/en/press-room/20230210IPR74805/violence-against-women-meps-demand-the-eu-ratify-the-istanbul-convention#:~:text=Six%20years%20after%20the%20EU,agreement%20of%20all%20member%20states>.

¹⁶ European Parliament, Legislative train schedule, *Legislative proposal on combating violence against women and domestic violence*, available at: <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-legislative-proposal-on-gender-based-violence>.

made aware of issues relevant to victims and where procedures are insensitive of any such issues.

Regarding the latter, the scope, while it appears to be correctly set out to the four elements of intimidation, repeat victimisation, retaliation and secondary victimisation, the final point seems to be an issue of contention, to say the least.

European Institute of Gender Equality (EIGE) defines secondary victimisation as «when the victim suffers further harm not as a direct result of the criminal act but due to the manner in which institutions and other individuals deal with the victim. Secondary victimisation may be caused, for instance, by repeated exposure of the victim to the perpetrator, repeated interrogation about the same facts, the use of inappropriate language or insensitive comments made by all those who come into contact with victims»¹⁷. As this is the type of consequence that the victim suffers by those who are supposed to protect her and as it is happening within an institutional framework – in a nutshell, reporting the crime causes secondary victimisation. This bears consequence to both victims and those who commit secondary victimisation. Victim become hesitant to report, motivated by the need to protect themselves when others will not. Those who commit it tend to become defensive, finding themselves to be blamed of not doing their jobs properly. Which stands true, even when this impropriety is done with the best of intentions to help the victim, or more often due to the over interpretation of the right of the offender.

In such an environment, a vicious circle is being created: victims are hesitant to report, as they are afraid of repercussions; when they report they are exposed to secondary victimisation, which causes them to experience the justice system negatively. Such victims are less likely to report the crime again, but so are also their friends and family who may become disillusioned about the justice system. This in turn may cause a circle of victims' supporters who are themselves being hesitant to report a crime when it happens to them. And happen it most likely will, because the estimate is that up to 15% of EU residents fall victim of serious crime every year¹⁸.

To break the circle, systematically respecting all rights of victims at all times, comes with the potential of reducing secondary victimisation, more reporting, better evidence provision and more efficient justice systems.

5. Needs of victims of gender-based violence

Victim Rights Directive is built around the realisation that almost all victims demonstrate some level of the basic five needs: respect and recognition, support and

¹⁷ EIGE Thesaurus, *Secondary victimisation*, available at: <https://eige.europa.eu/thesaurus/terms/1358>.

¹⁸ European Union, *Victims' Rights in the EU: Victims' needs*, available at: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en.

information, access to justice, protection and compensation or restoration. All of these need to be appropriately responded to, as victims recover from crime.

While all victims have some level of these different needs, it is possible to respond to certain types of victimisation by recognising specific needs of some victim groups. For victims of gender-based violence, these needs might include: being supported by a person of the same gender, having accommodation in a shelter, receiving support with finding employment, going to family therapy, having access to rape-crisis centers etc.

Finally, each individual victim will experience different types of needs and will have to have their individual care-plan, in line with their personal situation. This means, for example, that some women will have no regard for whether they are being supported by a male or a female psychologist, while some others might even prefer to be supported by a man. And while there might be situations in which victims' preferences cannot be fully responded to, it may be important to understand the level of these needs, prioritise them and plan in an effort to respect victim's preferences and allowing them to regain control over their lives also through allowing them to be the owners of their own recovery.

As such, victims' needs can be presented through a pyramid:

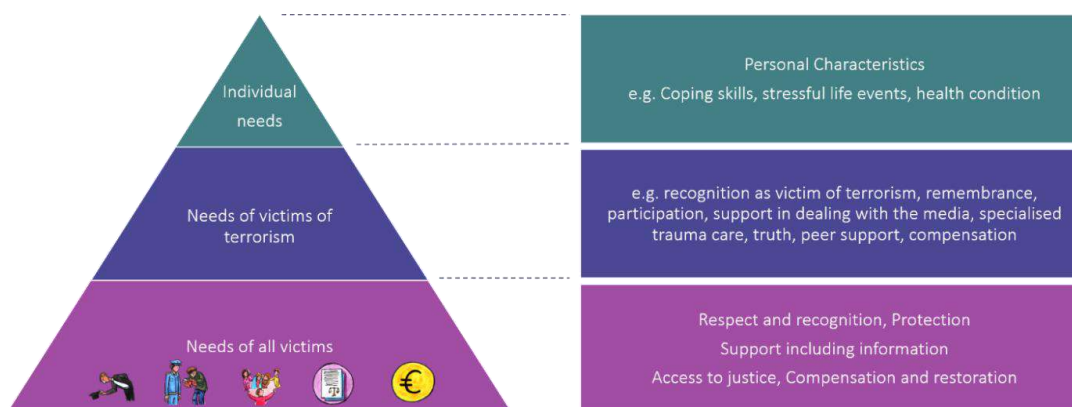


Image 1: the pyramid of victims' needs¹⁹

5. National framework for victim support²⁰

Victim Support Europe has worked relentlessly since their foundation in 1990 to improve experiences of victims of crimes – though making victims' rights a reality

¹⁹ VSE, *supra* note 11.

²⁰ For a detailed description and more information on the national support framework, see VSE, National Framework for Comprehensive Victim Support, November 2022, available at: <https://victim->

not just in legislative instruments but also in practice. One important part of that vision is building national victim support frameworks which are able to respond to all needs of victims – regardless of what those needs are and of who is expect to respond to them.

While the framework involves almost all sectors of a society: law enforcement, judiciary, private sector, or societal services such as education, health or social services, the main pillar of responding to the needs of victims is a robust system of services that are built to specifically support victims. The Victims' Rights Directive grants victims this right – mainly through Articles 8 and 9, but also throughout the text of the directive.

A satisfactory national victim support framework should be built on a basis of a robust and well-resourced nation-wide system of generic victim support services. Such services should be able to receive and provide basic support to all victims of all crimes – reported or unreported, and also available to conduct an assessment of victims' support needs depending on their individual situation. This generalist support should then be complemented by a number of specialist service providers who are able to respond to specific needs of victims, depending on their personal situation. These specialist services can be organised around a number of criteria, such as: the type of crime (terrorism, cybercrime, homicide etc.), type of support (e.g. legal aid, psychological support), type of victim – which is the type of services where victims of gender-based violence will receive the majority of support; or inter-agency multi-factor services which require several criteria and which are deployed in complex cases (for example MARACs – multi-agency risk assessment centers, where victims of domestic violence at high risk of reoffending benefit from a specific approach in which a number of agencies collaborate to ensure support).

The image below indicates how a national victim support framework should look like:

support.eu/wpcontent/files_mf/1673427018NationalFrameworkforComprehensiveVictimSupportcompressed.pdf



NATIONAL FRAMEWORK FOR COMPREHENSIVE VICTIM SUPPORT

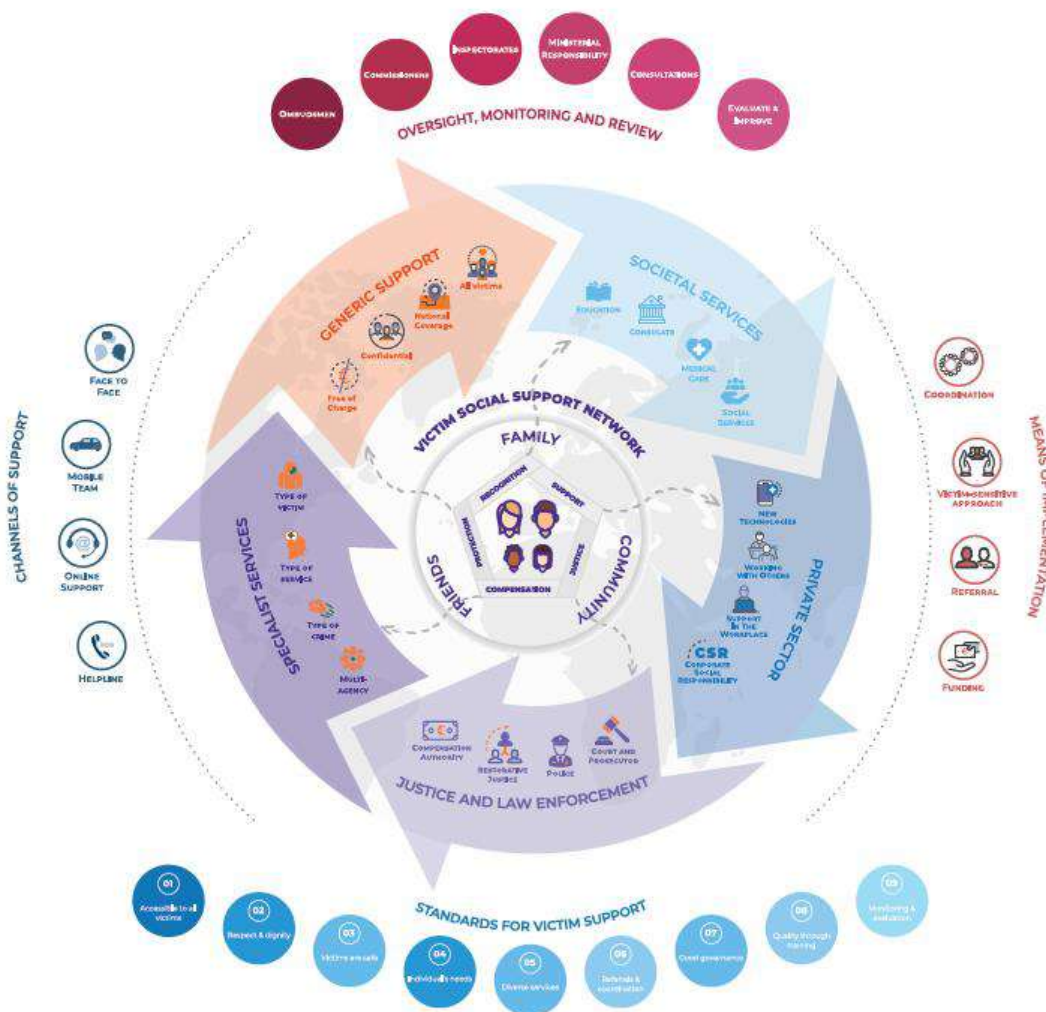


Image 2: the victim support framework infographic²¹

²¹ VSE, *Ibid.*

Both generalist and specialist organisations have their role in supporting victims of gender-based violence. Sometimes, victims of gender-based violence may feel more comfortable going to a generalist support, simply to avoid identifying themselves or having to prove as belonging to a specific gender. This is particularly pertinent for transgender persons, but also for those who want to avoid being labelled as victims of, say, domestic abuse, by going to an organisation that specialises in domestic violence. At other times, they may be a victim of a generic, non-gendered crime. However, the background of her being a victim of gender-based violence may be factored in the support that she will need. For example, a woman may be a victim of bank fraud through a scam scheme, but her situation may be exacerbated by the fact that she is anxious if her husband finds out about her losing the money and subjecting her to abuse. She might not be ready to report the coercive control, or physical violence but is just looking for ways to recover her lost money. In such a situation, a generalist organisation may be better suited to support her, at least partly, while she herself is reckoning with the fact that the fraud was not the only crime she was subject to.

Obviously, a well-developed national system would have a good structure of both generalist and specialist organisations, which both do their share of supporting victims of gender-based violence. Only through such a collaborative approach can the support needs of victims of domestic violence be fully responded to.

6. Conclusion

Women are disproportionately affected by certain types of crime, which requires putting into place a system of victim support which is able to respond to their specific needs. This requires a thorough understanding of the entirety of their needs, including the need for support.

Support needs to be provided in a variety of ways: through independent associations, court-based support or victim specialists in the police and other law enforcement agencies. Victims of gender-based violence need to be empowered to seek support but also able to choose where this support will come from.

What is important is to ensure that this support is available readily, free of charge and for as long as the victim might need it.

The European Union is getting ready in the near future to adopt a set of new legislative measures to that effect – a generalist and a specialist directive. These two instruments should drive the national frameworks to be developed in line with the understanding that only through a robust generalist-specialist collaboration all victims, and in particular victims of gender-based violence can be fully and completely supported. It will, however, be up to national systems to create the best solutions that will work in any specific legal environment. In the hope that with joint action, more victims will come out, more victims will be recognised, supported, protected, given access to justice and eventually be granted compensation or restoration they deserve.

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Supporting victims of gender-based violence: a way to justice for victims

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ABSTRACT: Women have disproportionately subject to certain types of crimes. Human rights discourse has largely been unable to fully address the rights of victims of crime, and in particular women, given that historically the human rights instruments were aimed at protecting individuals from the state repression and not from each other. Victims of gender-based violence have specific needs for support, that might differentiate also relative to the type of crime they are subject to. National victim support frameworks need to be built to capture those needs and respond to them, to ensure the best possible environment for women to recover. The forthcoming EU legislation ensuring both rights of women victims and all victims of crime, including women and other victims of gender-based violence is the move in the right direction.

ABSTRACT: Le donne sono soggette in modo sproporzionato a certi tipi di crimini. Il discorso incentrato sui diritti umani è stato in larga parte incapace di sostenere pienamente i diritti delle vittime di reati, e in particolare delle donne, posto che, storicamente, gli strumenti per i diritti umani miravano a proteggere gli individui dalla repressione dello Stato e non gli uni dagli altri. Le vittime di violenza di genere presentano esigenze specifiche di sostegno, che possono differenziarsi anche in relazione al tipo di reato a cui sono soggette. È necessario creare quadri nazionali di sostegno alle vittime per centrare tali bisogni e rispondere ad essi, nonché per garantire il miglior ambiente possibile per le donne. L'imminente legislazione dell'UE che garantisce i diritti delle donne vittime e di tutte le vittime di reato, comprese le donne e altre vittime di violenza di genere, pare muoversi nella giusta direzione.

KEYWORDS: victims – EU Victims' Rights Directive – gender-based violence – victims' needs – national framework for victim support

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