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FINANCIAL COMPENSATION GUIDE CASES CONCERNING WOMEN VICTIMS OF CRIME

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INTRODUCTION

The EU Directive of 2012¹ was a significant milestone in setting minimum binding practices and even if EU Member States transposed its provisions into their national legislations, still more actions need to be implemented to ensure better rights protection for victims of crime, including also access to an equitable financial compensation.

A significant percentage of all victims of crime are women. Violence against women is a widespread problem also in the European Union and there is a need to do more in order to protect women, including better access to the criminal justice system.

In practice there are still many challenges that women victims face when claiming compensation, such as: lack of comprehensive information on financial compensation, difficulties in receiving compensation from the offender, costly procedures, restrictive-time limits, insufficient access to legal assistance.

The benefits ascribed to financial compensation are both practical and symbolical. A primary objective of compensation schemes is to address the financial impact of crime on the victim, such as medical costs or loss of income. While some victims believe that no amount of money will compensate them for their experience, it is important to stress that money represent a symbol or value and importance, and is necessary in order to send the message that the community care about those who have been harmed by the crime. Another strength of the compensation is its potential to empower victims. At its best, the compensation process may help to restore the victim's sense of control and validate their experiences of trauma. In addition to these benefits of compensation for all victims of crime, there may be also specific benefits – for example in the case of women affected by domestic violence, when the award of financial compensation may actually enable them to leave the abusive relationship.

It is important to stress that the courts must always establish a balance between the damages and the financial compensation that can be awarded to the victim. Many times the damages cannot be quantified according with mathematical criteria, but by analysing a whole range of indicators and evidences it is possible to grant an amount that can be considered a “just satisfaction”.

By making an overall analysis of the jurisprudence it is possible to find frequent situations when judges appreciate differently the factual situation and the evidences administrated in certain cases. Sometimes there are different opinions between judges (judge first court vs. judge appeal court) in the way of assessing the damages and the amount of compensation that should be granted to the victim.

It is important to grant financial compensation by estimating the sufferings based on scientific data and also performing an interpretation of data in a personalized manner, on a case-by-case basis taking into account victim's age, gender, personality, duration and intensity of the physical and psychological harm. The amount of financial compensation must really represent a concrete possibility of alleviating sufferings.

¹ 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, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>

This publication addresses judges and prosecutors involved in criminal cases, in cases that have as legal object to grant financial compensation to women victims of crime. It is also targeting lawyers that provide legal assistance to women victims of crime. The publication addresses topics such as European and national legal framework concerning financial compensation, relevant indicators and evidences to assess the pecuniary and non-pecuniary damages suffered by women victims of crime.

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CHAPTER 1

EUROPEAN LEGAL FRAMEWORK

The EU has put in place various pieces of legislation that facilitate access to compensation for victims of crimes.

The first measure adopted at the EU level to safeguard victims' rights, including compensation, is the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.² Aimed to secure minimum rights for crime victims, this Decision set out provisions whereby victims are guaranteed the right to be heard, the opportunity to participate in proceedings, protection and compensation. With respect to the latter, the Council Framework Decision requires each Member State to ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings.³ In addition, it requires Members States to take appropriate measures to encourage the offender to provide adequate compensation to victims.

Subsequently, Directive 2004/80/EC on compensation to crime victims was adopted to allow individuals who have fallen victim to crime to apply for financial compensation regardless of where in the European Union the crime was committed.⁴ The objective of Directive 2004/80/EC is to tackle the victims' difficulties in accessing adequate compensation, which can be challenging either because the offender does not have the necessary financial resources, or it has not been possible to identify or prosecute the offender.

The Directive requires all Members States to set up a compensation scheme for victims of violent intentional crimes, committed in their respective territories, that guarantees fair and appropriate compensation to victims. Entered into force on 26 August 2004, the Directive required all Member States to set up national schemes offering fair and appropriate compensation by 1 July 2005.

While the organisation and operation of such schemes was left to the discretion of each EU country, the Directive also set up a system of cooperation between national authorities to facilitate access to compensation for victims throughout the EU. According to this system of cooperation, victims of crimes committed in a Member State other than the one in which they usually live may apply for financial compensation under the following procedure:

² Official Journal of the European Union, Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001F0220&from=EN>.

³ Official Journal of the European Union, Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, Article 9, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001F0220&from=EN>.

⁴ Official Journal of the European Union, Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0080&from=EN>.

- Victims may ask an authority in the country in which they live (i.e. assisting authority) for information on how to apply for compensation.
- The assisting authority transmits the application directly to the national authority of the EU Member State in which the crime was committed (i.e. deciding authority), which is responsible for assessing the application and paying out the compensation.
- All communication concerning the application for compensation must be carried out in the language of the deciding country. In order to facilitate this, the European Commission has drawn up standard forms for the transmission of applications and decisions relating to compensation to victims.⁵
- A system of central contact points in each EU country, created by the Directive, facilitates cooperation in cross-border situations.

In 2012 the EU took another important step towards ensuring the rights of victims of crime by adopting the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, which replaced the 2001 Council Framework Decision.⁶

This Directive, which entered into force in November 2015, currently constitutes the cornerstone of the EU victims' rights policy.

Concerning compensation, it requires Member States to ensure that victims are offered information on several matters including how and under what conditions they can access compensation. This, from their first contact with a competent authority.⁷ Most importantly, the Directive provides for the victims' right to obtain a decision on compensation by the offender within a reasonable time during criminal proceedings and provides that Member States shall promote measures to encourage offenders to provide adequate compensation to victims.⁸

Most recently, on 4 October 2017 the President of the European Commission Jean-Claude Juncker appointed Joëlle Milquet as his Special Adviser for compensation to victims of crime. The Special Adviser's mandate included the preparation of a report on how to improve access to compensation for victims of crime, which was published in March 2019.⁹

⁵ Official Journal of the European Union, Commission Decision of 19 April 2006 establishing standard forms for the transmission of applications and decisions pursuant to Council Directive 2004/80/EC relating to compensation to crime victims, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006D0337>.

⁶ Official Journal of the European Union, 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, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>.

⁷ Official Journal of the European Union, 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, Article 4(e), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>.

⁸ Official Journal of the European Union, 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, Article 16, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>.

⁹ European Commission, *Strengthening victims' rights: from compensation to reparation - For a new EU Victims' rights strategy 2020-2025*, available at:

The report tackles the main problems that victims of crime currently face when claiming compensation in European Union and identifies the causes of these problems, such as difficulties in accessing justice or state compensation related to a lack of information, insufficient support and overly restrictive eligibility criteria or procedural hurdles. The report also includes recommendations to improve State compensation (e.g. facilitating victims' access to compensation through mandatory emergency and upfront payment by the State by adopting legislative changes at EU level) and offender compensation schemes (e.g. introducing the possibility for criminal judges to impose compensation measures in a form of accessory penalties).

CHAPTER 2

NATIONAL LEGAL FRAMEWORK

2.1. ROMANIA

For the material and moral damages suffered as result of the crime, the victims are entitled to compensation that can be obtained either by initiating civil action against the perpetrator within or concurrently with the criminal proceedings or by obtaining state financial compensation. The relevant legal provisions are included in the Criminal Procedural Code¹⁰ and in the Law 211/2004 on certain measures for the protection of victims of crime¹¹

Initiation of civil action in criminal proceedings – applicable law articles 19 -26 Criminal Procedural Code

The civil action can be undertaken by the victims or by their successors, who will become civil parties against the defendant and, as applicable, against the party with civil liability. If the victims lack or have limited competence, the civil action can be initiated on their behalf by their legal representatives or, as applicable, by the prosecutor. The civil action may be initiated by a written or oral petition no later than the start of the judicial examination procedure. The plaintiff has to indicate the nature and the scope of the claim, as well as the reasons and evidences on which such claim is based. This civil action is exempted from judicial stamp fees.

Concerning the civil claims, the defendant, the plaintiff and the party with civil liability may conclude a settlement or mediation agreement, according with the law. The defendant, based on the consent of the party with civil liability, may accept all or part of the civil party's claims, and the court shall order indemnifications, to the extent of such acknowledgment. A civil action shall remain under the competence of the criminal court in case of death of the civil party, if the heirs shall made explicit their choice to continue the civil action within 2 months as from the date of such death.

Settlement of civil actions in civil courts –applicable law Criminal Procedural Code articles 27-28

- The injured party or its successors did not filed a civil action in the criminal trial.
- The injured party and its successors filed a civil action in the criminal trial, but the court has left the civil action unsolved, and the evidences administered during the criminal proceedings may be used before the civil court.
- The injured party and its successors filed a civil action in the criminal court, but the trial was suspended.

¹⁰ Romanian Criminal Procedural Code available at <https://wolterskluwer.ro/codul-de-procedura-penala/>

¹¹ Law no.211/2004 on certain measures for the protection of victims of crime available on <http://legislatie.just.ro/Public/DetaliiDocument/52468>

- If the civil action was initiated by the prosecutor and if based on evidences it results that the damage has not been fully covered, the difference may be requested before the civil court.

The civil court is not bound by the final sentence on acquittal or termination of criminal proceedings in respect of the damages or guilt of an author of a crime. On the other hand, a final sentence of a civil court settling a civil action does not have *res judicata* authority before criminal judicial bodies in respect to the existence of a criminal act, the person having committed it and his/her guilt.

Financial compensation granted by the state to victims of certain crimes – applicable law chapter V, Law 211/2004 on certain measures for the protection of victims of crime

Financial compensation can be granted on request to *the following categories of victims*¹²:

- Victims of attempted murder, or first degree murder, victims of bodily harm, victims of a crime committed with intent that resulted in bodily harm of the victim, rape, sexual intercourse with a juvenile and sexual assault, victims of human trafficking, victims of terrorism and victims of other deliberate offenses committed with violence as stipulated in the Criminal Code.
- Spouse, children and dependants of persons deceased as a result of the crimes mentioned above.

The financial compensation is granted to these victims if the offense was committed on the territory of Romania and the victim is: Romanian citizen; foreign citizen or stateless person legally residing in Romania; a citizen of a Member State of the European Union, legally present on the territory of Romania at the time the offense was committed; or a foreign citizen or a stateless person residing in the territory of a Member State of the European Union, legally present on the territory of Romania at the time the offense was committed. In the case of the victims who do not fall into the categories of persons mentioned, financial compensation shall be granted on the basis of the international conventions to which Romania is a party.

The Law establishes a number of requirements that must be met in order to be granted financial compensation:

1. The victim should have reported the crime to the criminal investigation authorities within 60 days from the date of the offense. In the case of spouse, children, dependants the 60 days shall be calculated from the date when the person became aware of the offense; when it was physically or psychically impossible for the victim to report the crime, the 60 days deadline shall be calculated from the cessation of the incapacity state.
2. When the perpetrator is known, financial compensation may be granted to the victim if the following conditions are met:
 - The victim submitted the claim for financial compensation within one year, thus:

¹² Article 21 Chapter V Law 211/2004 on certain measures for the protection of victims of crime

-from the date of the final judgment of the criminal court sentencing or acquitting the defendant, in certain cases; or granting civil compensation or deciding on the termination of the criminal trial, in certain cases

- from the date when the prosecutor dropped the charges, in certain cases;

- The victim filed a civil action in the criminal proceedings, except when the charges were dropped on the grounds mentioned in the criminal procedural code;
- The perpetrator is insolvent or absconding;
- The victim did not obtain full reparations for the losses from an insurance company.

When the victim is in incapacity to make a claim for financial compensation, the one year deadline shall run from the date when the incapacity state ceased.

3. When the perpetrator is unknown the victim may make a claim for financial compensation within 3 years from the crime.

4. When the victim is underage and his/her legal representative did not made a claim for financial compensation within the deadlines mentioned, these deadlines shall run from the moment when the victim will turn 18 years old.

Type of losses for which state financial compensation may be claimed:

▪ In the case of victims that request compensation: hospitalization and other categories of medical costs incurred by the victim; losses resulting from the destruction, degradation or rendering useless of the victim's assets or loss of possession of assets as a result of the crime; earnings of which the victim is deprived as a result of the crime.

▪ In the case of the spouse, children and dependents that request compensation: funeral costs of the persons deceased as result of the crime, support that the victim was deprived of as result of the crime.

The state financial compensation is limited to the equivalent of *10 national minimum gross base wages* for the year in which the victim made the claim for financial compensation. The amount paid by the perpetrator as civil compensation and the indemnity obtained by the victim from an insurance company are subtracted from the state compensation that will be granted.

The state financial compensation claim shall be submitted to the County Court of geographic jurisdiction in the area where the victim resides. The claim shall be settled by two judges of the *Crime Injuries Compensation Board set up in each County Court*.

Claiming financial compensation in cross-border situations

The provisions of Directive 2004/80/CE on compensation of crime victims in cross-border situations were transposed into the national law in Chapter 5¹ of Law no. 211/2004, but also in the Order no. 1319/C/2008 of the Minister of Justice for the implementation of the procedure for provision of financial compensation to victims of violent intentional crimes committed in the cross-border situations provided for by Law no. 211/2004 instating certain measures for the protection of victims of crime. These regulations provide the right of a victim subjected to crime in another Member State than that of his/her residence to claim compensation from an authority or entity of the Member State in question. A special

procedure is instated for the filing and submission of financial compensation claims when the victim is subject to a crime committed in an EU Member State and the access of Romanian citizens to financial compensation from the EU Member State where the crime was committed is facilitated.

2.2. BULGARIA

The right to compensation for damages inflicted on crime victims in Bulgaria is part of the complex group of rights provided to them by the Bulgarian legislation (Criminal Procedure Code, Law on Assistance and Financial Compensation of Victims of Crime, Law on the Protection of Persons Endangered as a Result of Criminal Proceedings, etc.), part of their general right of defence as participants in criminal proceedings.

The general right of victims to compensation for damages can be executed via several avenues: a civil claim within the framework of criminal proceedings, or a separate one before the civil court after the end of the criminal trial, or an administrative procedure for state-provided compensation.

As regards civil claims within the criminal process, according to the Criminal Procedure Code (CPC) (Art. 84 et seq.), victims or their heirs can join the trial proceedings as civil claimants. Civil claims cannot be brought before the criminal court if they are made under the Civil Procedure Code. The request to file a civil claim can be written or oral, against the defendant or other persons with civil liability under the case. The victim-civil claimant can take part in the trial proceedings, ask for security of his/her claim, acquaint himself/herself with the case and make the necessary excerpts, present evidence, make requests, notes and objections and appeal the court acts violating his/her rights and lawful interests, all within the remit of defending his/her civil claim. Deciding on the civil claim cannot be a reason to postpone the trial of the criminal case. When the trial is terminated, the civil claim is not reviewed, but it can be submitted to the civil court.

Prosecutors can file civil claims on behalf of children or victims with disabilities who cannot properly protect their interests (Art. 51, CPC).

Even during the pre-trial proceedings, the first instance court can impose security measures for the future civil claim or expenses made (Art. 73, CPC).

Civil claimants can have an attorney if they prove they cannot pay for one, wish to have one and the interests of justice so require (Art. 100, para. 2, CPC); they get their expenses reimbursed by the defendant if they make a request in this respect, and if he/she is sentenced (Art. 189, para. 3, CPC).

The issue whether to honour the civil claim and whether in full or in part is decided by the sentence, which civil claimants can only appeal concerning their claim (Art. 301, para. 1, CPC). When the court has failed to rule on a civil claim, adjudication is made by an additional sentence within the time limit for appeal (Art. 301, para. 3, CPC).

As for the benefits and concerns, regarding civil claims, criminal courts would often not accept the claim on the grounds that it would slow down the proceedings. Civil courts are victims' only recourse when the case was closed via an agreement, because in that case only the material damages are covered (Art. 381, para. 3, CPC). According to a recent interpretative decision by the Supreme Cassation Court (1/2016 of 21 June 2018), compensation for non-material damages resulting from the death of a relative can be asked by an extended circle of persons, while this circle remains limited for the criminal trial. According to practitioners (Animus, 2018) victims are usually only witnesses and they rarely join proceedings as civil claimants, especially victims of trafficking who may be suggested they had also committed something bad, and victims of low education level, or from smaller cities and villages; the submission of civil claims also depends on the access to and quality of legal aid.

No specific guidelines or criteria exist in primary or secondary law for awarding material and non-material damages. They should be sought in relevant case law.

State financial compensation is given only for property damage, only for victims of terrorism, intentional murder, attempted murder, intentional grievous bodily injury, sexual abuse, rape, trafficking in human beings, crimes committed upon order or by decision of an organised crime group, and other serious intentional crimes, of which death or serious bodily injury has resulted as a material consequence (Art. 3, par. 3, Law on Assistance and Financial Compensation of Victims of Crime). Financial compensation covers medical treatment costs that are not covered by the National Health Insurance Fund, lost income, court expenses, lost alimony, funeral costs, other pecuniary damage (Art. 14). The Fund compensates for pecuniary damage up to BGN 10,000, lost alimony is up to BGN 10,000 for each dependent child (Art. 13). State compensation is awarded by the National Council for Assistance and Compensation of Victims of Crime, which is an inter-institutional body, helping streamline practices regarding victims and develops significant information activity. Citizens experience difficulty in gathering all necessary documents to prove damage sustained and in getting informed about the state compensation mechanism - although authorities are obligated to inform, they often do so formally.

2.3. GREECE

In Greece each victim of a crime can join the criminal proceedings as a civil party and claim for compensation for pain, suffering and moral damage. Under Greek national law, the above civil action does not have the concept and scope of financial compensation, because of the fact that the civil party usually applies for a symbolic sum (44 euros) on a provisional basis and not for the entire amount of the claim and the above mentioned is lodged mostly in order for the victim to have legal representation during the trial. If the court declares the accused guilty, it will order that the victim be paid this symbolic sum in compensation. For this reason, the victim has to bring a separate legal action before the civil courts.

As far as the civil procedure is concerned, each individual can request compensation for material and moral damages deriving from an unlawful act against him or

her, based on articles 914 and 932 of the Greek Civil Code. The above requests are lodged before a civil court, which judges and assesses the quantification of material and moral damages and also the causality between the offence and the damage caused. In cases of violence against women, psychiatric reports play a serious role in both the assessment of the moral damage of a victim, but also in establishing causality between the offence and the damage. Specifically, the Civil Court is obliged by Law to take into account each psychiatric report, whereas a public psychiatric report has probative value.

Furthermore, based on article 5 of the Law 3500/2006 on the moral compensation of victims of domestic violence, the compensation for moral damages of article 932 of the Greek Civil Code cannot be under the amount of 1,000 euros unless the victim requests a lower amount. The above article is a safeguard concerning the minimum amount of compensation of victims of domestic violence.

Moreover, the Law 3896/2010 entitled “Application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation” (Directive 2006/54/EC), also entitles an employee to request compensation from her employer when the issues of gender inequality surface, including cases of sexual harassment. Specifically, based on article 23 of the above Law, the victim of acts of gender-based inequality can request compensation for moral and material damages, whilst the burden of proof lies with the employer. The victim can lodge a request upon the Civil Court (labor courts) concerning the above compensation.

Furthermore, the Law which applies regarding financial compensation for damages suffered by victims of violent crimes is Law 3811/2009. Specifically, victims of violent crimes committed in Greece and who have residence in Greece or any other country of the E.U, are entitled upon their request, based on the Law 3811/2009, to reasonable and appropriate compensation from the Greek State. The above claim of damages can arise only in the below cases: a) if the offender had no recourse to compensate the victim, b) when the identity of the offender cannot be ascertained, c) when the offender cannot be prosecuted or punished and d) when the victim has no other means of being compensated.

It is important to state that article 4 of the Law 4531/2018 amended various parts of the national legislation in order to ameliorate the adaptation of the provisions of the articles of the Convention of the European Council (Istanbul Convention) on preventing and combating violence against women and domestic violence. Specifically, the above article amended article 8 par. 2 of the Law 3811/2009, which until then only covered medical expenses and hospitalisation, loss of income for a reasonable period of time and funeral expenses for victims of crime. With the above amendment the compensation of victims includes the costs of specialized psychological and psychiatric support in cases of lack of public infrastructure, the costs of changing environment and residence, particularly the costs of moving and of obtaining necessary household appliances.

Also, concerning the amount of compensation it is important to underline that before the above amendment article 8 par. 2 of the Law 3811/2009 determined the level of compensation based on the contributory fault of the victim, whereas now the level of compensation regarding psychological and psychiatric support is determined by a joint decision of the Ministers of Justice, Health and Economic Affairs and the level of compensation regarding the change of environment and residence by a joint decision of the Ministers of Justice and Economic Affairs.

The request of the victim for the above compensation can be lodged upon the Greek Compensation Authority. It is important to state that with the above amendments

the Greek Compensation Authority has to examine the request of the victim within three months of its submission and issue a decision within three months of examining the victim's application. Thus, this accelerates the completion time of the requests and compensation of victims.

2.4. ITALY

The possibility for victims of crimes to access financial compensation in Italy is regulated by various legislative instruments.

With respect to the possibility to request compensation from the perpetrator of a crime, Article 185 of the Criminal Code states that for all criminal offences restitution must be guaranteed, in accordance with the rules of civil law. If a criminal offence has caused material or non-material injury, compensation must be paid by the offender and any other person who, pursuant to civil law, is liable for the offender's actions.

Victims may choose between two different paths for obtaining reparation of the injury they have suffered.

On the one hand, they may join the criminal proceedings as a civil party, which means that they may bring their civil action as part of the criminal proceedings in which they are involved. In this case, the criminal court will assess the injury and award damages or merely state that there is a right to damages and refer the parties to the civil courts, which will determine the amount owed. According to Article 74 of the Code of Criminal Procedure, during the criminal proceedings a civil action for damages may be brought by anyone who has suffered injury as a result of the offence, or by their heirs, against the defendant and any person liable in civil law.

On the other hand, victims may also bring civil proceedings directly and separately from the criminal proceedings by filing a claim for damages before the ordinary civil courts.

Victims of crimes may seek compensation for any injury - both material and non-material -, medical expenses, legal assistance, technical advice and other expenses incurred and documented, provided that they have arisen as a consequence of the offence.

With regard to the possibility for victims to obtain financial compensation from the State, relevant legislative instruments include Legislative decree no. 204/2007 and Law no. 122/2016.¹³

Legislative decree no. 204/2007 was passed to implement the Directive 2004/80/EC of 29 April 2004. However, this decree transposed the Directive only partially, as it was aimed to assist Italian victims of crimes committed in other Member States in obtaining adequate compensation, but did not include any reference to the compensation scheme that States were required to set up under Article 12 of Directive 2004/80/EC.

¹³ Gazzetta Ufficiale, Law no. 122/2016, available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2016-07-07:122!vig=>. This law was subsequently amended by Law no. 167/2017, available at: www.gazzettaufficiale.it/eli/id/2017/11/27/17G00180/sg.

Subsequently, Italy adopted Law no. 122/2016 in order to fully implement Directive 2004/80/EC. This law recognises the right of the State to compensation for victims of violent intentional crimes, without prejudice to the provision of compensation for victims of certain specific crimes under other legal provisions, if more favourable. Under Article 11, this law states that the right to compensation is recognised to the victims - or other beneficiaries if the offence has led to the death of the victim - in case of murder, sexual violence and extremely grievous bodily injury. Victims of other crimes have the right to compensation for the medical and social care expenses incurred as a result of the offence.

Article 12 of Law no. 122/2016 defines the requirements for victims to access State compensation.

First of all, the victim must have already unsuccessfully brought an action to claim damages against the perpetrator of the crime, provided that he or she is known and has been condemned with a final judgement. Secondly, the victim must have not contributed, even unintentionally, to the commission of the criminal offence. Thirdly, the victim must have not been convicted by a final judgment or, at the time of filing the request, has not been subjected to criminal proceedings for one of the offences covered by Article 407, paragraph 2, letter a) of the Code of Criminal Procedure and for offences committed in breach of the rules that counter income tax and VAT evasion. Finally, the victim must not have already received by a public or private entity, as a consequence of the offense suffered, a sum of money that is equivalent or superior to the amount of the State compensation indicated for that crime.

Article 13 of Law no. 122/2016 describes the procedure to access State financial compensation. The application for compensation shall be submitted by the victim and shall be accompanied by the following documents, whose lack represents a ground of inadmissibility of the application:

- a copy of the judgment of conviction or a final decision concluding the trial because the perpetrator of the crime is still unknown;
- documents certifying that an action has already unsuccessfully been brought against the perpetrator of the crime to claim damages;
- a statement proving that the victim has not committed the crimes mentioned above or proving that those other than the victims that entitled to apply for compensation (such as the family members of the victim in case of his or her death);
- medical records showing the costs incurred for treatment or a certificate of death of the victim of the crime.

The application for State compensation shall be submitted within sixty days from the final decision concluding the trial because the perpetrator of the crime is still unknown, or from the latest legal action that has unsuccessfully been brought to claim damages, or from the day on which the judgment against the perpetrator has become final.

The amount of State compensation for victims of crimes was defined by Decree of 31 August 2017 of Ministry of the Interior and the Ministry of Justice in agreement with the

Ministry of Economy and Finance.¹⁴ This Decree, which was passed with 6 months of delay with respect to the deadline set by Law no. 122/2016, introduced the following figures for victims' compensation:

- Murder: 7,200 euro; or 8,200 euro for the children of the victim if the crime has been committed by a partner or ex-partner;
- Sexual violence: 4,800 euro;
- Other crimes: 3,000 euro for refund of medical expenses.

2.5. SPAIN

Law 35/1995, of December 11¹⁵, on aid and assistance to victims of violent crimes and against sexual freedom, and its development in the Regulations on Aid to Victims of Violent Crimes and against Sexual Freedom, approved by the RD 738/1997, of May 23, are the legal instruments that regulate the way in which the Spanish State compensates the victims of these crimes.

This compensation is not based on the patrimonial responsibility of the State, which derives from the incorrect operation of its services. The legal nature of this law is not to indemnify survivors, it rather responds to an obligation of assistance that the State imposes on itself in order to socialise the risk arisen from violent and sexual crime. In other words, we are looking at a public aid granted by the State as a sign of solidarity with the victims. This state compensatory system is open exclusively to direct and indirect victims of intentional and violent crimes, as well as to victims of crimes against sexual freedom, even when these crimes do not have a violent nature.

The damages eligible for compensation will be: serious bodily injuries, serious damages in the physical or mental health, as well as death. As established in art 4.2 "Bodily injuries or damages to the physical or mental health will have to be of sufficient importance so that, according to Social Security legislation, a declaration of permanent disability in any of its grades or a situation of temporary disability exceeding six months takes place".

The General Budget Law of the State for 2018, through its Fifth Final Provision, modified this Law 35/1995 including important improvements in the conditions of access to these aids to victims *who are considered victims of gender violence*. This reform was one of the demands of the State Pact regarding gender violence, the novelties are:

The aids are available to a wider range of beneficiaries. National women from any other State who are in Spain at the moment of the crime will be able to access these aids. This applies regardless the administrative situation of the requester as long as the affected person is victim of gender violence in the terms stated in the Organic Law 1/2004 of

¹⁴ Gazzetta Ufficiale, Decree of Decree of 31 August 2017, Determination of the amount of compensation for victims of violent intentional crime, available at: www.gazzettaufficiale.it/eli/id/2017/10/10/17A06802/sg.

¹⁵ Law 35/1995, of December 11, on aid and assistance to victims of violent crimes and against sexual freedom. <https://www.boe.es/eli/es/l/1995/12/11/35>

December 28 on measures of comprehensive protection against gender-based violence (gender violence in the context of partner or ex-partner). Therefore, these women will be able to access the financial aids provided that the crimes committed against them are the result of an act of violence against women.

The rest of women affected must comply with another requisite to access this state compensation. At the time of the crime, they need to have Spanish or community citizenship. For those who don't comply, they must habitually and legally reside in Spain or, failing that, they need to be nationals of a State in which similar grants are recognised to the Spanish ones. This requirement excludes, from the scope of application, the great majority of victims of human trafficking, whose protection constitutes one of the current priorities of the EU, as well as other victims of gender violence when the crime occurs outside the context of their partner or ex-partner.

On the other hand, *the amount of the aid is increased in cases where the victim is a victim of gender violence*. Likewise, in cases of death, the aid will be increased by twenty-five percentage to beneficiaries who are minor children or disabled adults.

The period to request the financial aid it is also extended from one to three years (one of the main demands of the State's Pact) in cases where the affected person is a victim of gender violence (within the context of partners and ex-partners)

The law foresees the possibility of *granting provisional aid* before a final judicial decision terminates the criminal proceeding. Provisional aid will be granted provided that the precarious economic situation, in which the victim or his/her beneficiaries would have been left, is accredited. However, in cases where the victim of the crime is considered a victim of gender violence, provisional assistance may be granted regardless of the economic situation of the victim or her beneficiaries.

Regarding the *degree of application of the law*, according to the latest data available -dated October 2015, the total number of requests made reached 10,832, of which only 29.77% have been granted.

A referent of a state compensation system in the Spanish legal framework can be found in Law 29/2011 on recognition and comprehensive protection for victims of terrorism. In this case, the responsibility lies with the state as a consequence of its failure to protect its citizens. In contrast to the Law 35/1995, the Law 29/2011 states that the procedure shall be initiated by the Ministry of the Internal Affairs. Law 35/1995 establishes that must be the survivors themselves should initiate the proceedings. In addition to this, the Law 29 /2011 gathers a much broader coverage of the damages to be covered, including also extraordinary aids, labour rights, educational aids, etc. There is also another difference to be noted, the one regarding the financial amount of the aids and the number of aids available.

As concerns the financial compensation due by the aggressors, the criminal code regulates the civil liability derived from the criminal offense, which consists in the obligation to return the goods or to repair or compensate for the damages that the events may have caused. Therefore, it is generated an obligation to indemnify the victim of the crime for the

damages suffered with the occasion of the punishable act. This obligation holds liable the offender or any other relevant person.

The injured party of a crime is allowed by law to:

- choose between demanding civil liability in the civil jurisdiction or in the criminal jurisdiction, as regulated in Art. 109 Penal Code;
- waive the right to demand civil liability;
- expressly reserve the possibility of exercising the action for damages in a subsequent trial before the civil jurisdiction. If this does not happen, in principle the penal sentence must rule on civil liability.

Therefore, the aggrieved party may choose between demanding liability derived from the offense in criminal proceedings, which can be quantified in the sentence that ends the procedure, or demanding through civil proceedings. When demanding through civil proceedings it will be necessary to take new actions before the civil courts

Cases of violence against women represent a matter of concern for us. In practice, when presenting them the different actions to be taken, women are informed about the possibility of demanding civil liability, and in most cases they waive their rights to do so because their main interest is to be able to live in freedom. They also fear that the economic claim could be seen as the main motivation of their complaints. Likewise, it is important to point out the difficulty found in quantifying the emotional damage that violence inflicts on them.

Therefore, reality shows that there are very few women victims of gender violence who manage to get access to the necessary information and means in order to claim compensation, and even fewer are those who finally receive payment for it, since there are numerous barriers and obstacles that prevent victims from accessing this right; among them, in addition to those mentioned, we find: the lack of awareness among professionals who, in one way or another, are involved in the criminal process, the lack of access to legal advice and adequate information, the lengthy criminal and civil proceedings and, in cases of foreign victims, the return or deportation to their country of origin before judgment is rendered.

CHAPTER 3

INDICATORS FOR THE ASSESSMENT OF PECUNIARY AND NON-PECUNIARY DAMAGES

3.1. CAUSALITY BETWEEN THE OFFENSE AND THE DAMAGES

In general, compensation for damage can be awarded insofar as the damage is the result of a violation found. Therefore, a clear causal link must be established between the damage claimed and the act that has been committed, that has to be unlawful and culpable.

The importance of establishing a causal relationship between the offence and the damage caused lies in the principle that a person should be liable only for such damage and to such an extent that he/she has caused by his/her acts. In other words, in order for a person to bear liability for the damage he/she caused, a causal relationship must be established between his or her unlawful act and the consequence. Various theories have been developed for establishing a causal relationship.

Among these theories, there is the so-called “theory of the equivalence of the terms” (*conditio sine qua non*) that sets forth a decisive criterion for the question of whether the relevant act was a necessary condition for the occurrence of the damage, in particular meaning that the damage would not have occurred if it was not preceded by such an act. The causality in the sense understood by the theory of the equivalence of terms could be called “reasonable causality”. Therefore, the acceptance of the equivalent terms theory, combined with the principle “all or nothing” that governs the law of compensation (meaning that the obligation to compensate either covers all the damage or that it is not born at all) sometimes can lead to the rejection of the liability when the existence of a causal link (in the sense of logical causality) between the legitimate reason of liability and the damage is only possible. The unfair results of the traditional perception of causality could be lifted by accepting the responsibility of the offender, even and when it is only possible that his/her act caused critical damage, in the sense of the theory of the equivalence conditions. If we can accept this position, the causal link, as a condition for the declaration of responsibility should not be perceived as a requirement of a certain relationship of cause and effect (logical causality) but as a possibility that the damage from the behaviour constitutes the legitimate reason responsibility (probable causality).

This is very important as far as the violent acts against women and their compensation are concerned. First of all, in order to determine the bond between the crime committed and the rightful compensation adjudged, we should further examine the content of the contested legally protected interests. That is to say taking into account which of the victim’s interests were violated and further affected the quality of the victim’s life after the crime. Because of the high correlation between the damage and the compensation adjudged, each protected and subsequently violated interest is unavoidably seen and classified in accordance with its importance and attributable value, set forth by the legal systems around the world. For example, a crime against women could be anything from a violent murder, rape, sexual harassment or even a verbal abuse of the dignity. The

distinction here serves as a highly important factor in matters of quantifying the compensation. It is true that not every crime affects the woman in the same depth and that this distinction should never be overseen when it comes down to determining the amount of the compensation. The principle of proportionality is here ever-present and plays the most important role in matters of matching the causal relationship to the damage inflicted and, of course furthermore, to the entitled compensation.

However, even this somewhat clear distinction between violated legal interests in legal terms and how it can help the judge to compensate the victim in accordance with the severity of her damage, both material and moral, should not be strictly defined by the limits of a logical causality. More specifically, it is important to underline the fact that no matter how clear the legal distinction among violated legal interests concerning crimes against women and because of the extremely personal nature of these crimes, a *“logical causality approach”* would seem inadequate or even almost ignorant to important factors that cannot always be abundantly proven. This is exactly where the acceptance of the principle of logical causality concerning these particular crimes fails, and its sequence is so fragile that it could be objectively broken, depriving the victim of a just compensation, only because she cannot prove for example how the crime influenced her will to work, her relationships with her peers etc. This is why a probable causality between the crime and the damage should and actually could be enough concerning the quantification of the compensation. Facts and processes that lie in the inner world of the victim can always be simply supposed but never fully proven. Not all consequences of a crime can be seen, accounted for, or be directly and undoubtedly connected to the crime under examination, and this is actually why any collateral damage should not be overlooked in case of failure to be objectively perceived, understood and proven. Overall, in cases of such crimes, the indirect and often practically and legally imperceptible consequences of the offense, that are ever-present and almost always at the edge of misconception, are unavoidably leading us to the adoption of the probable, and not the logical, causality sequence, in order to rightfully pinpoint the just amount of compensation for the victims.

3.2. THE PRINCIPLE OF EQUITY WHEN ASSESSING DAMAGES

In September 1977, the Committee of Ministers of the Council of Europe adopted the Resolution (77) 27 on the compensation of victims of crime. This recommended that the member States should provide for state compensation of victims, or dependants of victims, of intentional violence where compensation could not be ensured by any other means, and set out guidelines. The Resolution (77) 27 accepted equity and social solidarity as the basic principles of compensation. These same principles underlie the European Convention on the Compensation of Victims of Violent Crimes.

As far as the ECHR is concerned, in *Varnava and Others v. Turkey* (application no. 16064/90 para. 224¹⁶), in *Cyprus v. Turkey* (Application no. 25781/94 para.56¹⁷), and in

¹⁶ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-94162%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-94162%22]})

¹⁷ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-144151%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-144151%22]})

Georgia v. Russia (Application no. 13255/07 para.73¹⁸), the Court confirmed that for the calculation of the award in respect of non-pecuniary damages the “guiding principle is equity, which above all involves flexibility and an objective consideration of what is just, fair and reasonable in all the circumstances of the case, including not only the position of the applicant but the overall context in which the breach occurred. Its non-pecuniary awards serve to give recognition to the fact that non-pecuniary damage occurred as a result of a breach of a fundamental human right and reflect in the broadest of terms the severity of the damage (also noted in Al-Jedda v. UK (App. No. 27021/08, para. 114¹⁹) and Al-Skeini and Others v. UK (Application no. 55721/07 para. 182²⁰). According to the Court, the award in respect of non-pecuniary damage “involves flexibility and an objective consideration of what is just, fair and reasonable in all the circumstances of the case”.

The Court’s Practice Directions put it as follows: *“Furthermore, the Court will only award such satisfaction as is considered to be ‘just’ (équitable in the French text) in the circumstances. Consequently, regard will be to the particular features of each case. The Court may decide that for some heads of alleged prejudice the finding of violation constitutes in itself sufficient just satisfaction, without there being any call to afford financial compensation. It may also find reasons of equity to award less than the value of the actual damage sustained or the costs and expenses actually incurred, or even not to make any award at all. If the existence of such damage is established, and if the Court considers that a monetary award is necessary, it will make an assessment on an equitable basis, having regard to the standards which emerge from its case law”.*

As far as the elements of the “equity principle” used by the Court for the calculation of awards made in respect of non-pecuniary damage are concerned, these are: a) the seriousness of the violation, b) the applicant related factors and c) the overall context related factors.

Equity therefore is an important indicator for the quantification of damages and shall be used in cases of violent acts against women. The judge must show flexibility and objective consideration of what is just, fair and reasonable in the circumstances of the case bearing in mind for the calculation of the compensation all the three above mentioned elements: the seriousness of the offense (that means its intensity and duration as well as its consequences and the harm caused), the victim’s related factors (such as age, background, psychological and physical health and contributory negligence) and the overall context related factors (such as for example the local economic circumstances).

This *ad hoc* examination of the above mentioned factors serves, after all, a kind of equity which cannot and should not be overlooked in both legal and social-economic terms. Subsequently, it is profoundly clear that the same factors that should be taken into account concerning the equity of a judge’s rule in the matters of compensational rights for the victims also constitute some of the factors that led to the birth of the criminal behaviour, in the first place. Any by chance contributory negligence of the victim put aside, the social-economic environment in which the criminal behaviour was generated and perpetrated,

¹⁸ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-189019%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-189019%22]})

¹⁹ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-105612%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-105612%22]})

²⁰ <https://www.refworld.org/pdfid/4e2545502.pdf>

also constitute the framework in which a specific crime shall be prevented confronted or compensated. Should the Justice Systems around the world work on the most effective way of confrontation, that is to say prevention, the same unchanged elements would be taken into account in order to effectively reform the legislation and ensure a minimum of preventive protection.

3.3. VICTIM SOCIO-PROFESSIONAL CONTEXT

The socio-professional situation of the victim and how it was affected by the offence is a significant factor in quantifying material and moral damages in cases of violence against women as crime is universally deemed to negatively impact the victim's employment: the victim may find it impossible to return to work after the victimising experience, their work performance may be adversely affected, resulting in demotion, loss of pay, and possibly dismissal.²¹

The impact on “the ability to obtain and maintain gainful employment” is said to be an important consequence of victimisation, and this being a factor in the quantification of damage, extensively researched in terms of domestic/partner violence. Women victims of domestic violence have been reported to suffer from lower productivity, higher absenteeism, job turnover and ultimately unemployment, thus higher likelihood of receiving public assistance. Impact has been seen on at least two levels: physical injuries from violence may prevent women from being able to work, short or long-term, while violence can also cause psychological distress negatively affecting work productivity. Among other types of crime, rape has been reported to significantly affect victims’ work adjustment.²² Thus, indicators to be explored by deciding bodies and translated into amount of damage and resulting compensation are distress caused by the loss of the employment status and lower assessment of the victim’s work performance, length of absenteeism at work and period of unemployment/reliance on social support and resulting in loss of income and moral damage.

Several types of crime have been specially studied in terms of their impact on victims’ professional situation.

Cases where the crime, such as sexual assault or harassment, occurred at work are looked at separately as a specific category affecting victims’ work more profoundly.²³ Although both men and women could experience sexual harassment, it is more commonly reported among women, especially women working in the hotels, restaurants, and health care sectors. Apart from health problems - mental health problems and cardiovascular diseases - due to prolonged stress exposure, they also have other consequences, such as lower morale, higher absenteeism, job turnover, lower productivity, lower organisational

²¹ Canadian Resource Centre for Victims of Crime (2005) *The impact of victimisation*

²² Hanson, R., Sawyer, G., Begle, A., Hubel, G. (2010) The Impact of Crime Victimization on Quality of Life Author manuscript; published in final edited form as: J Trauma Stress. 2010 Apr; 23(2): 189–197.

²³ Canadian Resource Centre for Victims of Crime (2005) *The impact of victimisation*

commitment, lower job satisfaction and lower performance.²⁴ Thus, in order to assess the damage related to the victim's work situation, decision-making bodies may have, within the limits of applicable legislation and admissible evidentiary means, to go deeper into workplaces' organisational culture and the specific place of the victim, which may yield additional evidence of the nature of the crime committed and the material and moral damage it has inflicted on the person.

Among other crimes, affecting predominantly women, stalking has been a subject of specific research, as victims of stalking are said to "experience significant lifestyle changes", including quitting or losing their jobs because of "stalkers" constant phone calls to their workplace, threats of violence directed at their colleagues or employers and indirect job disruption'.²⁵ Similar to sexual harassment at work (see above), decision-making bodies may be in significant difficulty assessing the level of damage and ruling on compensation as stalking is often committed using digital means, and large amounts of electronic evidence may have to be assessed both on the crime itself and the damage incurred. Then, in order to assess the level of damage inflicted, the impact of all the aspects of stalking on the victim's work environment should be explored in detail.

Damages have been claimed to impact not only the victims' professional, but also social situation: victimisation is said to cause "impaired functioning" of the victims' social relationships, especially to victims of sexual assault. As for the domestic violence context, social isolation is a "common phenomenon" and a frequent part of the abusers' tactics. As a result, women victims have a lower level of social support, leading to increased emotional distress. Moreover, many victims withdraw from others after experiencing a crime.²⁶ Stalking is also known to have "devastating effects on victims' social life and relationships".²⁷ Regarding victims' social situation, the level of distress from withdrawal and diminishing/lacking social support should be explored by all evidentiary means admissible under the respective legal system and resulting compensation for moral damage should be awarded accordingly.

A factor further away from the victim's actual damages, but still to be taken into account, is that victimisation may also exacerbate safety concerns and "predict" less overall life satisfactions, although the data from that area of research is not seen as sufficiently robust.²⁸ This can also be seen as an indicator for distress to be explored by various evidentiary means and can translate into appropriate compensation.

²⁴ Gervais, R, Sexual harassment and victimisation: what happens in the workplace, OSHwiki.eu

²⁵ Korkodeilou, J (2016) 'No place to hide': stalking victimization and its psycho-social effects. Manchester: University of Salford

²⁶ Hanson, R., Sawyer, G., Begle, A., Hubel, G. (2010) The Impact of Crime Victimization on Quality of Life Author manuscript; published in final edited form as: J Trauma Stress. 2010 Apr; 23(2): 189–197.

²⁷ Korkodeilou, J (2016) 'No place to hide': stalking victimization and its psycho-social effects. Manchester: University of Salford

²⁸ Hanson, R., Sawyer, G., Begle, A., Hubel, G. (2010) The Impact of Crime Victimization on Quality of Life Author manuscript; published in final edited form as: J Trauma Stress. 2010 Apr; 23(2): 189–197.

3.4. VICTIM-OFFENDER RELATION

Directive 2012/29/EU²⁹, adopted on 25 October 2012 by the Member States of the EU, establishing minimum standards on the rights, support and protection of victims of crime within the EU, explicitly referring to the victims of gender-based violence between partners, to sexual violence and violence within personal relationships. It reflects in Article 15 the right to the recovery of property and sets out in Article 16 the guarantee that, in the course of the criminal proceedings the victim will obtain a decision on compensation by the offender, within a reasonable time. This Directive also emphasises in Recital 38 that “Specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as *the relationship between victims, offenders, children and their wider social environment*”.

The Istanbul Convention, approved by the Council of Europe in 2011, as a legally binding regional instrument in Europe comprehensively addressing the different forms of men’s violence against women, being the first European treaty setting out a broad set of legally binding obligations to address all forms of violence against women, establishes in its articles that the application thereof by the parties of the Convention’s provisions, *in particular the measures to protect the rights of victims, shall be secured without discrimination on any ground* such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.³⁰

The said Convention specifies in Article 30 on compensation, that “Parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention”. Likewise, it is specified in that same article that “Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions within a reasonable time. This does not preclude Parties from claiming redress for compensation awarded from the perpetrator, as long as due regard is paid to the victim’s safety”. This Convention sets out in Article 46, as aggravating circumstances that must be taken into consideration that “*the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority; the offence was committed against a person made vulnerable by particular circumstances*”.

In conclusion, both the Istanbul Convention and the European Directive on victims of crime (2012/29/EU), establish as a circumstance to be taken into account when assessing damages, the guarantee of reparation, and as an aggravating circumstance of any crime, a relationship between the victim and the assailant. Should this relationship not be taken into

¹Directive 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. <https://www.boe.es/doue/2012/315/L00057-00073.pdf>

²Council of Europe Convention on preventing and combating violence against women and domestic violence. Article 4 - Fundamental rights, equality and non-discrimination. <https://rm.coe.int/1680462543>

account, it would be ignoring an important factor generating vulnerability, in the same way as the fact of belonging to a national minority, sexual orientation or gender identity, as examples of circumstances that may aggravate the impact of the crime. The relationship between victim and assailant may be used as an indicator of the severity of the injury.

Of particular importance in this context is to consider that reparation and compensation shall apply in domestic, common-law or intimate relationships, in the case of violence against women involving the partner or ex-partner, as well as when such relationships involve children who are a product of the relationship; in other words, when the assailant is the father (or stepfather). The European Directive on victims of crime (2012/29/EU) is clear in this regard, Recital 17 states that: "Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, intimidation and retaliation connected with such violence". The Recital 18 "Violence in close relationships is a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust. Women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially or as regards her right to residence".

Situations of sexual violence or child sexual abuse, committed by a relative or person close to the victim (when the assailant has the role of a teacher, educator, coach, member of a religious group, family friend, etc.), can also be placed within the framework of the casuistry defined above by the articles of the Directive, being understood as situations in which the assailant is a person whom the survivor should be able to trust. The closer the assailant's family relationship with the person against whom he is exercising violence is, or the greater the power the said assailant wields in the relationship (relatives, teachers, managers, doctors, security forces or persons with authority and/or power over the girl, adolescent or woman), therefore the greater the damage caused, the greater the injury to be repaired. Women who suffer harassment, sexual or any other form of violence, in an irregular administrative situation, or migrants, also represent an example of how the power relationship between the woman and the assailant can aggravate the damage and consequently, require special reparation and compensation, as well as in the case of violence against women in the framework of employment relationships. Older women, who have fewer resources and personal abilities due to their age, and women who live in rural environments, where violence against women is invisible and justified, and where, furthermore, there are fewer social and police protection resources than in urban areas, must also be taken into account, for example the Roma women, who are clearly in a situation of powerlessness, and who also represent one of these especially vulnerable collectives³¹.

There is little data regarding the extent of the damage in the special circumstances described above at the EU Member State level, so it is important that the said states commit themselves to improve the investigation of the injury caused and the need to repair and compensate, in order to improve their performance in the field of human rights. A good proposal that could be extended to all the countries of the European Union would be the possibility of conducting research through interviews and group approaches to the different

³¹ Gender-based violence against women: a survey at the EU level. Summary of conclusions https://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_en.pdf

professionals working as defenders of human rights, who can illustrate the relationship between the injury and the confluence of the different factors described above³².

3.5. THE IMPAIRMENT OF THE ABILITY TO WORK

Violence against women, in its so disturbingly many forms, has fortunately nowadays reached a level of consciousness and awareness that earlier has been unimaginable. In this continually transforming judicial frame, among its countless aspects and sensitive factors to be taken into account, there is the one that actually “sees” women under the pure light of social and political existence, as active members of society, equal to their male peers. It is true that, beside the everlasting subject of equality between genders when it comes down to salary, working hours, sexual harassments and “unseen” prejudice against women, the initiatives taken by the European Justice System for women now aim to further the protection, and to ensure the appropriate compensation for the acclaimed victims. Of course, this change entails the recognition of the so many ways in which a violent crime against a woman influences not only her emotional and mind state, her psychological and physical health, but also all the aspects of her social life, including of course her ability to work.

This is actually why it is primarily important that the ability to work after having suffered a violent crime should be taken into account by the jurisdiction that will determine the amount of the compensation received by the female victim.

As far as the evaluation of the compensation received in case of impairment of the ability to work is concerned, first of all and almost instinctively, this kind of compensation becomes perceptible in the legal terms of civil law. Should a female worker lose permanently or temporarily the ability to work as a result of violent crime against her, the compensation will either way be adjudged. That is to say that the compensation received at the end will essentially be the aftermath of a rather strict analyse of numbers, counting days of missed work and lost incomes. The essential point of misdirection in these cases, often created by the “youth” of those new born defence mechanisms in the Justice System, as well as misinformation, is that the victim’s understanding of what she lawfully deserves as compensation for her affected ability to work depends on the general income earned from the work. This is why it is essential, not only in legal clarifying terms, but also in the subject of perception, that the victims know and fully understand that whatever their disability to work, their losses will be met and satisfied to their extend. This primarily means that when it comes down to pinpoint the amount of the compensation to be received, the judge should always take into consideration the monthly net amounts that the victims were deprived of as a result of the offense against them, as well as any further losses, such as missed professional opportunities.

Another aspect of this clarification is the sense of security provided to the victims. In terms of material damage, the prevention of the victim’s feeling financially insecure and cut off socially (which unfortunately is the case more than often), not only sustains the victim’s bond with society, but also releases her from overload stress, that is to say, ensuring her survival. Also, the creation and enforcement of these kind of guarantees, undoubtedly amplifies the courage of the victims in terms of stepping up and denouncing

³² OHCHR. “What are human rights?” <https://www.ohchr.org/SP/Issues/Pages/WhatareHumanRights.aspx>

the crimes committed against them-a problem that has count many steps forward and yet has to count many more.

In every aspect of the subject of the adjudged compensation however, it should be strongly underlined that the above analysis serves as the minimum of the statutory protection provided to these women. In matters of compensation, it is highly essential to understand and evaluate the fact that each case should be considered individually and ad hoc, in order to ensure that not only the material, but also the moral pain of the victim will be, at least legally, satisfied.

3.6. Hospital and other medical expenses

A sensitive, substantial chapter in the prosecution of perpetrators of violence is the evaluation of the material and moral damages entitled to the victim resulted from the crime. Therefore, the act of justice covers not only the penal consequences of the crime, but also compensations – going back to the first ever recorded codes of Law (Hammurabi)–.

Such compensations may be stipulated by legal stakeholders in the sentencing phase of a criminal trial, or may be sought through an entirely independent action in civil court, if the victim or her legal representatives intent to make a claim.

An algorithm to calculate such expenses may be proposed though not without limitations or controversy. A human and fair justice should avoid estimations of “prices and costs” of crime.

Victims often claim compensations proportional to their own emotional experience, and subjective assessment of facts. On the other hand, judges and prosecutors need to rely on both subjective and objective evidence. The need of objective evidence is met by an evaluation of costs.

This section proposes a general framework for such evaluations.

We will observe the distinction made in various systems of law between material and non-material damages. Hospital expenses and the cost of medical and psychological care represent material compensations for material damages.

In this respect, a good starting point is to observe the evaluation of the criminal act:

a) as a function of law: severity of the crime

b)through the forensic, psychological, and economic point of view: consequences of the criminal act

General guidelines

One inalienable right of every citizen is the right to health³³. Therefore, citizens contribute to national healthcare or social security funds and benefit from medical care in case of injury. Healthcare systems separate levels of care in basic and advanced care, and in hospital and ambulatory services. Disability benefits are a separate entity and should be considered as a separate section.

One of the criteria for estimating the costs it is the *number of days of continuous medical care needed*, i.e. hospitalisation and ambulatory.

³³ Tinari, FD: The Practice of Forensic Economic: An Introduction, *Eastern Economic Journal* Vol. 36, No. 3 (Summer 2010), pp. 398-406

Forensic accounting³⁴ should be employed to systematically calculate direct and indirect healthcare expenses borne by the victim and her family in the aftermath of a criminal act. Evidence, in such cases, draws from at-the-scene records, hospital charts, medical recommendations and days of medical leave, but also best practice guidelines and approved medical protocols, according to the national law. Such expert reports may be asked for by the legal stakeholder to estimate the gross medical expenses related to the criminal act, from the first moment to the first police complaint, to the time of trial and estimated rehabilitation of the victim.

Therefore, hospital bills, travel expenses incurred by the family, accommodation and lodging (where applicable), expenses for day-to-day necessities (food, water, etc.), unpaid leave for the purpose to assist, accompany the victim during her hospital stay, may arguably be introduced in a calculation algorithm. An analysis of the prior revenue of the victim and the loss thereof through incapacitation shall be added to the report.

The crux of the matter is always to whom does such compensations belong. As direct consequences to the violent act, the victim shall bear the temporary or permanent loss of her social, physical and psychological autonomyⁱ that may be briefly called “pain and suffering”. The effect is very profound and there may be the case of prolonged medical care and often economic consequences.

The legal stakeholder should consider the medical expenses and investigations (prosthetics, reconstructive surgery, advanced medical imaging) covered by patient and/or her family or clearly recommended by the attending physician, or the physician team in respect of best practice guidelines and evidence based medicine shall be accounted.

The legal stakeholder shall be informed of the extent of medical coverage through basic insurance, according to national laws. They usually involve a “minimum standard of care”. On the other hand, for ethical, moral, and material reasons, in the case of victims of criminal violence medical care should be provided at “gold standard” level. Controversies

A first, evident problem arising from the above is that the cost for healthcare, across the EU, varies considerably. Therefore, a dangerous consequence could be that the crime is cheaper in some parts of the continent, compared to others.

National and international conventions should consider “gold standard” practices in the cases of violent crimes that result in bodily harm. Therefore, when national resources are technically exceeded, and the best medical care could be provided elsewhere, this should be affordable to the victim. Such is the case of victims subjected to severe or complex burns that may result in permanent disability (arson, chemical burns etc.), and who can be transferred to national or international specialized centers to achieve better results. Furthermore, in the case of definitive disability or infirmity, the cost of prosthetics may exceed the national healthcare budget through healthcare insurance. Again, minimum-standard care should be replaced in this case by best practice guidelines. Victims should be entitled to reimbursements and full coverage for such technology.

A second issue involves cases where the crime occurred in a country other than the victim’s homeland, or in the country of residence where medical coverage is ensured *through* travel insurance packages. In this case, additional costs may have to do with limited coverage of insurances, but also with repatriation, supplementary charges which may be poorly or ambiguously stipulated in the insurance bill, or over-charges directly linked to the medical consequences of the crime. For example, while the court is called to judge a crime

³⁴ <https://www.oatext.com/Noneconomic-damages-due-to-physical-and-sexual-assault-estimates-from-civil-jury-awards.php>

of violence by strictly considering the criminal aspects of the act, the legal stakeholder could be put in the awkward position to estimate medical costs and rights to compensation, transnationally. Rogatory commissions may be mandated and transnational expert reporting required. For these sometimes complex situations forensic accountability needs to become part of the standard of judgment, and national stakeholders should facilitate its implementation.

A third problem concerns those cases where, as a direct result of the assault, the victim is temporarily or permanently incapacitated in her *compos mentis*. This may be due to prolonged coma, vegetative states or organic states incompatible with *compos mentis* (i.e. severe brain trauma), but also when the psychiatric state of the victim is partly or completely deteriorated. The legal stakeholder shall take notice of an assumed guardian (family member, next of kin), or will decide upon one, by a separate decision.

Of due note, loss of psychological autonomy and its level don't jeopardize the fundamental human rights of the person concerned. A subjective "experience" of disability or the lack thereof - as it is sometimes the case with comatose victims - should be considered a variable severity in financial compensation, and shall not invalidate the forensic economic evaluation. An expert report may review both costs of daily-medical care directly associated with the needs of the victim, and also estimate the living costs for the caretaker identified by the legal-stakeholder. The legal status of the caretaker, his/her rights and duties should be clearly, and unambiguously, spelled out by the legal stakeholder, who should also state mechanisms of financial traceability of money granted to prevent further victim abuse, or mistreatment.

Loss of liberty, loss of chance

A special observation concerns indexes of adjustment in the calculation of due compensations where - by the nature of the crime - the victim lost liberty (of movement, of pursuing life's goals, etc.) and chance (at starting a family, having children, being a productive member of the community).

A special attention should be granted to those victims who, by virtue of personal vulnerability, lost not only various freedoms, but also a chance to normal and decent life. When the victim is a minor, a schoolchild, a student, a professional-in-training, a young career woman, or when the victim is considered vulnerable by way of previous, or newly resulted, temporary or permanent disability, the estimation of damages should be indexed by a factor left to the wisdom of the legal stakeholder and contextualized to that particular case, after ascertaining all variables. Covering loss of chance is not compensation *per se*, but rather part of the rehabilitation and redress process to be used in conjunction with estimated disability.

3.7 CONSEQUENCES OF THE OFFENCE UPON OTHER FAMILY MEMBERS

Family members, both in case of a victim's death or survival after the criminal act, have been subject of substantial attention in the assessment of the impact of victimisation and resulting compensation the decision-making bodies may award.

Victimisation touches upon not only the victim but also the victim's immediate family, relatives, neighbours, and acquaintances, with long-standing effect, "for years or even for a lifetime".³⁵ Marital and other relationships are likely to be very much affected by crime, emotionally, psychologically and, last but not least, financially. For example, apart from financial losses, the murder of a family member has also been said to decrease survivors' rates of employment.³⁶ Thus, resulting moral and material damage on immediate family members, whether the direct victim has survived or not, should be established by relevant evidentiary rules and according to applicable case law, and compensation should be awarded to those eligible for it/having put out a claim.

Studies have been concentrating on the impact of crime on children and parenting. Children are at the forefront of authorities' and service providers' attention as potentially the most vulnerable among a victim's family members due to their young age, continuous physical and mental development and the resulting devastating effect of the crime against their parents have upon them. The physical and emotional impact of the criminal act on them should be assessed via relevant evidence like medical and psychological expert opinions and various accompanying factors should be explored: absence/drop-out from school, lower school records, withdrawal from school friends/activities, (harmful) media exposure.

As concerns parenting, researchers report mixed impact of domestic violence on women victims' parenting role. Apart from cases of increased empathy and caring, theories proposed, in general, that the partner's violence has a negative impact on the victim's parenting abilities due to the victim's physical and emotional distress, as well as mental health problems, including depression. The negative effects found have been reduced patience and motivation, increased agitation and irritability, harsh discipline tactics.³⁷ Impaired parenting abilities may point to harm to both victim parents and their children which should be explored by all admissible evidentiary means and may translate into corresponding compensation for moral damage.

In terms of specific cases of victimisation, particular attention has been given to very serious crimes like children exposure to violence, abuse of power and related child abuse, where "the effects can be passed on from one generation to the next".³⁸ Thus

³⁵ Canadian Resource Centre for Victims of Crime (2005) *The impact of victimisation*

³⁶ Hanson, R., Sawyer, G., Begle, A., Hubel, G. (2010) The Impact of Crime Victimization on Quality of Life Author manuscript; published in final edited form as: J Trauma Stress. 2010 Apr; 23(2): 189–197.

³⁷ Hanson, R., Sawyer, G., Begle, A., Hubel, G. (2010) The Impact of Crime Victimization on Quality of Life Author manuscript; published in final edited form as: J Trauma Stress. 2010 Apr; 23(2): 189–197.

³⁸ Canadian Resource Centre for Victims of Crime (2005) *The impact of victimisation*

harmful effects, related to possible compensation, may have to be explored over several generations in one family, taking into account applicable statutes of limitations.

Interestingly, research finds that while this is to be expected in connection with offences such as murder, torture, and rape, the crimes of assault, robbery, and burglary can also leave enduring feelings of powerlessness, insecurity, anger, and fear presumably both among victims and their family members.³⁹ Thus, under the national legislations in force and as far as possible, decision-making bodies should not limit themselves in assessing damages for typical “crimes against the person”, but should also take into account emotional and psychological impact of crimes, which are otherwise rather classified as crimes against property.

Another consequence of victimisation reported in the victims’ personal and familial context has been the disruption of intimate relationships due to the victim’s inability to function as spouse or intimate partner any more for reasons of anger, irritability, preoccupation with the trauma, affected ability to form attachments to other people.⁴⁰ Thus, victims’ separations or divorces from their spouses/partners can be considered as moral damage suffered as a result of violent acts and should be awarded commensurate compensation.

3.8. INTER-SECTORIAL FACTORS

Article 10 of Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity (OJEU of 15 July 2010, L 180/1) states: “The Member States shall introduce such measures into their national legal systems as are necessary to ensure real and effective compensation or reparation, for the loss or damage sustained by a person as a result of discrimination on grounds of sex, such compensation or reparation being dissuasive and proportionate to the loss or damage suffered. Such compensation or reparation shall not be limited by the fixing of a prior upper limit”.

This article is complemented by the General Recommendation No. 28, according to which the Committee on the Elimination of Discrimination against Women advised States’ Parties to recognise, in their legal instruments, such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibits them, and to adopt and pursue policies and programmes designed to eliminate these situations.

These intersecting forms of discrimination have been called multiple discrimination or intersectionality, a concept that reflects the consequences of two or more compounded systems of discrimination and refers to the way in which they contribute to creating layers of inequality.

³⁹ Canadian Resource Centre for Victims of Crime (2005) *The impact of victimisation*

⁴⁰ Hanson, R., Sawyer, G., Begle, A., Hubel, G. (2010) The Impact of Crime Victimization on Quality of Life
Author manuscript; published in final edited form as: J Trauma Stress. 2010 Apr; 23(2): 189–197.

The concept of intersectionality was introduced by law professor Kimberlé Crenshaw in 1989, as a questioning of judicial dogmatism and feminist and racial critiques of law. In the legal system of the European Union this has been expressed using the term multiple discrimination⁴¹, as a synonym of intersectionality.

The aspects developed through the term intersectionality are:

- the focus of attention is placed on the subject at the intersection between different systems of discrimination (sexism, racism, ...), whose experience of discrimination cannot be explained using social classification categories in isolation;
- the simultaneousness of the discriminatory factors is emphasised;
- the paradoxical effects of any analysis carried out, or any interventions or policies based on a single form of discrimination separately addressing race, gender and class, creating new dynamics of disempowerment.

If this new concept of intersectionality is not applied, the impact of the crossover of more than one discrimination would be invisible to a traditional analysis, which would break down and analyse each one of the discriminations, rendering invisible what comes into play when these discriminations intersect each other⁴². Therefore, it would not be necessary to identify and, consequently, compensate for these cases of discrimination.

The existence of multiple discriminations thus causes greater injury to the victim to the extent that they suffer discrimination for more than one reason and the relationship existing between these discriminations. This, seen from the compensatory point of view, can have consequences when determining the damage caused to the woman and therefore the damage for which reparation is due.

Thus, we can find situations in which, although the damage caused by violence could be the same, in reality, it translates into greater psychological and non-material damage due to the fact that other discriminations may be operative upon her person and due to the anguish this may generate. The crossover of discriminations and the perception and anguish of the person suffering can affect the attainment of social, economic, employment and improvement and other goals.

According to the Agency for Fundamental Rights of the European Union, attacks on women of Muslim appearance in a number of countries have been reported. The majority of Islamophobic acts committed in 2015 were directed against women (74% in France and 90% in the Netherlands)⁴³. We find another example, in [the testimony of] the Special Rapporteur on minority issues, who noted that Roma women were stereotyped as being promiscuous, exposing them to a greater risk of becoming victims of exploitation, sexual violence and gender-based violence⁴⁴.

⁴¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, recital 14 at <http://xurl.es/rqh1s>. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, recital 3 at <http://xurl.es/k2bks>.

⁴² The case that is usually mentioned as the starting point is *De Graffenreid v. General Motors* 1977. In this judgment, the possibility of resorting to justice for racial or sex discrimination was reaffirmed, [but] the possibility of claiming the combination of both was excluded (*De Graffenreid v. General Motors Assembly Division*, St. Louis, 413 F. Supp. 142, 143 (EDMo.1976)) <http://xurl.es/3gc3o>

⁴³ The European Union Agency for Fundamental Rights (usually known in English as the Fundamental Rights Agency; FRA), Current migration situation in the EU: hate crime, November 2016, p. 6. <http://xurl.es/cgl51>

⁴⁴ Report of the Special Rapporteur on minority issues, Rita Izsák, paragraph 34. <http://xurl.es/3odku>

Stereotypes and prejudices based on a combination of factors, such as race, ethnic origin, employment and ancestry, religion, gender, physical and mental disability, and sexual and gender orientation, among other factors, expose women and girls to a greater risk of suffering various forms of violence.

In response to this, we would argue for the need to broaden the frame of reference allowing us to see how the different types of violence affect every single woman suffering at any given moment: migrant women, women belonging to ethnic minorities, elderly women migrants or members of ethnic minorities or those with physical or intellectual disabilities, young or underage women migrants or those belonging to ethnic minorities, transgender women, women whose situation is aggravated by linguistic ignorance, women who profess minority religions in certain contexts, women with scarce economic resources, etc.

Only by taking all this into account can we see how compound discriminations can operate in different situations, aggravating the consequences of violence. Only based on this we can assess the real non-material and psychological damage suffered by each woman and compensate her accordingly.

CHAPTER 4

EVIDENCES IN FINANCIAL COMPENSATION CASES

4.1. FORENSIC REPORTS FOR THE ASSESSMENT OF THE PHYSICAL INJURIES

Violence against women continues to be a significant, pernicious societal problem⁴⁵. Domestic violence, assault, and rape are but a few instances where women are physically hurt, their life put in danger, and also, ashamed, humiliated, objectified, their dignity shattered. A correct, complete and, most of all, competent evaluation of injuries, both physical and psychological through forensic examination is crucial in the instrumentation of such cases involving violence and consequences of violent behavior suffered by the victim⁴⁶. Stakeholders involved in the act of justice need clear, easily understandable reports in order to set out sentences, and also to decide on compensation entitled to the victim, financial or otherwise.

This section is concerned with the documentation of *physical* injuries sustained by the person who was subjected to assault, aggression, physical coercion, rape or trafficking, as manifestations of violence. A separate section is dedicated to the *psychological* assessment of the victim.

The medical report

A forensic examination report will be drafted, after examination is completed and laboratory results are available. The national/local regulators may have specific templates or may emphasis a specific chapter of examination.

The medical report is the culmination of the medical investigation and, as such, it should fulfill the task, to (Ludes *et al*, 2017)⁴⁷:

- a) properly describe the state of health of the victim at the time of examination as a function of autonomy, *vs. his/her* need for continuous medical care
- b) the nature of sustained injuries in a clear, comprehensive language
- c) further observations from paraclinic evidence

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[http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630296/EPRS_BRI\(2018\)630296_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630296/EPRS_BRI(2018)630296_EN.pdf)

⁴⁶ <https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e>

⁴⁷ Ludes, A., Geraut, A., Vali, M., Cusack, D., Ferrara, D., Keller, E., Mangin, P., Vieira, D.N.: Guidelines examination of victims of sexual assault harmonization of forensic and medico-legal examination of persons *Int J Legal Med*. 2018 Nov;132(6):1671-1674. doi: 10.1007/s00414-018-1791-y. Epub 2018 Feb 21

d) correlations with the conditions, under which they were produced, by way of explaining the mechanism of injury, the intensity, and severity of consequences. The medical report should provide a mechanism by which injuries were produced, whether they are compatible with the victim's narrative, in a clear, unambiguous language. Evaluation of disability represents a useful corollary, in the ulterior assessment of financial compensations that should be granted to the victim.

Thus, forensic medical reports should include, at least:

- a. name of the authority commissioning the report
- b. purpose of the request
- c. name, qualifications, and status of forensic expert(s)
- d. name, surname, date of birth of the examined person
- e. modality of identification of the person
- f. date, place, and time of the medical assessment
- g. date of the drafted report
- h. synopsis of trauma history (narrative)
- i. (examinee's) list of complaints
- j. description of findings (medical examination, paraclinical evidence)
- k. list of samples

Legal stakeholders, such as judges and prosecutors, need to be explained, in clear and unambiguous terms, how the injury was produced. The narrative, recounted by the victim, is and *must* remain an important chapter of the report. Any system of justice that remains blind to the subjective horror and helplessness of the victim, how the crime is seen through *her* eyes, will not have achieved its purpose. Medical examiners, on the other hand, will be instructed to carefully note and document the narrative of the examined person with minimum interference. It is, furthermore, a standard of consistency in reporting, to match injuries to narrative (and not the other way round), for a higher degree of consistency.

When communication is not conducted in the native language of the victim, there shall be used a specialised translator. It is necessary to ensure that the translation in case had followed specialized training he/she does not belong to the (immediate) family of the victim. Culturally sensitive approaches represent a desired standard in the minimisation of discomfort, and also facilitate the interaction between the examiner and the examinee, which in other conditions would be impersonal and difficult to achieve. In the end, rapport and empathy may be the vital ingredients.

Stakeholders need to be aware that crimes of violence, though not invariably, are crimes of intent. Forensic reports of physical injuries are often exhaustive and overflowing with technical terms. Having said this, the main topics of concern in any report are:ⁱⁱ

i) *the vital intention to harm* (i.e. whether the intention was to kill or not, based on the nature of injuries): this depends on the used object, area of body targeted, number of injuries, but also what is called “maiming, shaming, blaming”, i.e. the perpetrator's intention to dehumanise the victim, by way of:

- a. acting with overwhelming force
- b. acting with the intent to cause pain and suffering

- c. acting with cruelty, or a need for dominance
- d. acting repeatedly, vicariously, without sign of remorse
- ii) *the intensity of physical consequences*, short term and long term. Massive trauma or repeated traumatisations create a fragile state of health. Chronic pain, movement disability, but also functional disability of various parts of the body create not only a context of subjective suffering, but also objective challenges in daily life. Forensic reports should contain dimensions/measures of disability, both self-reported and objectively measured.

- iii) *severity of physical injuries*. A threshold of extreme severity, for the stakeholder, is any injury that results in prolonged, or definitive, disability, or – by way of maiming or shaming – marginalises the victim in her life or her community. But standards of disability should include minimal standards, which – for all intents and purposes – are any need for medical care, as described through forensic reporting. Therefore, any injury that results in the need of facial or body reconstructive surgery, or injuries that result in vessel or nerve damage, life-long, complex scarring, or the loss of a body function (i.e. by way of organ damage or internal bleeding), are landmarks of severity.

For a better understanding of how forensic reports of physical injuries are achieved, a brief synopsis of steps is described below.

Interview

Each medical assessment is different, according to the patient's narrative, but also to her socio-economic background, culture and communication style. The examiner shall take notes about what happened in order to document the case (*anamnesis*). A complete medical history of the victim, i.e. prior illnesses, surgeries, implants, medical treatments, dietary habits, known allergies, substance use (coffee, alcohol, tobacco, OTC supplements, recreational drugs), life habits and practices shall be recorded (including any history of previous hospitalisations and the possibility of corroborating medical charts).⁴⁸

Inspection

A proper inspection of the body shall start from top to bottom (cranio-caudal), from front to back (sagittal) and then lateral (frontal) orientations, using anatomical charts. The examiner describes in *medical* terms the nature of lesions, the level of severity, intensity, and proper anatomical localisation. Scarring, abrasions, but also any anatomical particularity are noted down (birthmarks, nevi, hemangiomas, but also tattoos, piercings). Stakeholders should have a clear, schematised representation of injuries, their vital/non-vital nature, extension, extension to various parts and organs, and functional consequence.

Forensic photography adds an additional layer of information and may provide additional information (depth/age of lesions, the possibility of spectral analyses. etc.). Proper photographic documentation must include the technology used, in accordance with issued guidelines (where available), metric guides, dated and signed. Photographs

⁴⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757539/fsr-g-212-medical-forensic-examination-guidance-consultation1.pdf

Aggrawal, A., Salient Features Regarding Medicolegal Certificate, MAMC J Med Sci 2015; 1: 45 – 51

should be taken in direct lighting, unfiltered, and stored in raw format. When the photographer and the examiner are not the same person, detailed photos of affected intimate areas are to be taken by the examiner.

Medical examination

The examiner systematically reviews main body regions and organs. A minimum standard of health examination starts from cardiovascular, respiratory, neurologic assessments, and may – from case to case – involve more specific exams (ophthalmology, gynecology, surgery/neuro-surgery).

Indicators of severity and intensity may be direct or indirect. Direct indicators are bite marks, cutting or scratching lesions, gratuitous, pain inflicting injuries, burn marks, insertion of objects in natural body cavities, partial removing of hair or assault on face/intimate areas (breasts, buttocks, genital organ), tears and hemorrhaging in various body areas. Indirect indicators - where trauma is vicariously produced – are a documented history of repeated injuries in similar areas, the presence of fractures with various ages and signs of abnormal healing, scarring, tissue modification as a result of repeated beating/aggression.

Para clinical examination

Physical trauma affects the overall and local body function and balance. This results in bleeding (hemorrhaging), either external or internal, followed by various degrees of healing at the level of tissues and organs. Abnormal healing, incomplete healing or the presence of maiming or infection are usually documented. When hit with blunt force, the muscle, bone, connective tissue free proteins that circulate in the blood stream, sometimes affecting kidney and liver functioning. Loss of blood through penetrating injuries will result in altered CBC (cell blood count) and the possibility of infection. Electrolytes (sodium, potassium, calcium, magnesium) and enzymes (from the *kinase* family), liver markers (ALT/AST, GGT, LDH) may become elevated, resulting in temporary or permanent disability. All patients will be tested for common STDs (sexually transmitted-diseases), hepatitis B, C, and for HIV.

Ethical considerations for examiners⁴⁹

The examiner should refrain from making any suggestions/injunctions during the interview. Open-ended questions are preferred. The doctor may advise, at the beginning of the talk, that he/she will likely want to learn more specific details about various complaints, and in order to do this he/she shall use targeted questions, as well. Audiotaping, or videotaping of the medical interview may add a superior level of accuracy, but it may be traumatic for the victim. The victim needs to be informed whether such equipment is used and must be allowed to opt-out – if she wants to. At all times, the patient shall be informed that she does not have to answer questions she finds too painful/intrusive. The physician should be aware and pro-active to the re-traumatisation of the patient (see the section on

⁴⁹ <https://www.justice.gov/archives/ncfs/page/file/788576/download>

psychological assessment). That being said, questions left unanswered by the patient must be noted down. As a very important note, it is advisable that the examiner notes down *verbatim* the explanations given by the patient on his/her symptoms in order to prevent interpretation bias. Notes shall be taken in permanent ink, dated and signed, preferably by the examiner. When the examiner or any other person make additional notes those shall also be dated and signed. Abbreviations, where useful or necessary, shall be unambiguous and easily understandable for lay people.

Stakeholders of justice need to stay aware of the double nature of violent crimes, in general. On one hand, the physical injury results in suffering, temporary or permanent disability, and the need for medical care and rehabilitation. On the other hand, violent acts, by violent means, with a violent motivation, massively impact the victim's psychology and emotional well-being. Medical reports should include or should be accompanied by a psychological assessment of the victim, as part of a systematic body of evidence in order to help lawyers, prosecutors and judges achieve justice before a court of law.

4.2. PSYCHOLOGICAL REPORTS FOR THE ASSESSMENT OF MENTAL SUFFERINGS

A systematic documentation of the psychological consequences experienced by victims of violence and violent crime should be the standard in the instrumentation of legal cases. Ethical evaluation and reporting guidelines are similar to the general principles of forensic evaluation. What is unique to psychiatric and psychological forensic reports is that, more often than not they rely on repeated observations and evaluations.

This section will explore particularities and practical aspects in the psychiatric and psychological examination. A subsection will review feigning and malingering.

A psychiatric evaluation may be asked by the forensic examiner, as a continuation of complementary examinations (neurological, internal medicine, etc.). This may happen when a prior history of mental illness is documented, or – as is often the case – for the documentation of the victim's emotional reaction to acute trauma and *de novo* onset of psychological problems.

Acute psychological response to trauma lays on a continuum, from tearfulness, sadness and fear, to an aggregate of signs and symptoms of Acute Stress Disorder.

Acute Stress Disorder is a well-recognised psychiatric disorder that may happen in the days/weeks following trauma. Symptoms fall under five general categories: intrusive thoughts, altered mood, dissociative signs, avoidant behaviors, and hyper arousal⁵⁰.

These symptoms are often limited in time but may be severe enough to necessitate specialised medical care. A fraction of persons with ASD will go on to develop Post-Traumatic Stress Disorder, a debilitating condition that requires continuous attention by mental health professionals.

Proper documentation should include:

⁵⁰ <https://www.who.int/classifications/icd/icdonlineversions/en/>

i. A first assessment clinical interview and a psychometric evaluation, at the earliest convenience. The use of semi-structured interviews, questionnaires and VAS (visual-analogue-scales) has the advantage of testing-retesting validity, since such evaluations will occur dynamically, both part of the therapeutic and forensic process. They also increase by objective means the subjective and inter-subjective nature of clinical interviews.

ii. Continued monitoring for a number of sessions/meetings. There is a significant variability in time(s) needed to formulate a comprehensive report, and also a sensitive issue about time availability. For all intents and purposes, a minimum standard of evaluation is 2 – 3 hours, with a desired goal of 4 – 6 hours, over a period of days/weeks, with observation of further as the situation evolves.

In their assessment of such reports, legal stakeholders should be guided by various indicators of severity and intensity. The *de novo* onset of any psychiatric disorder in the aftermath of trauma is an indicator of severity. Proper documentation and treatment of any such condition should be plainly stated and explained in the report. Legal stakeholders are to be aware that it is often difficult to affirm a state of mental health of the victim before the examined events. That being said, this may be extrapolated from lack of prior psychiatric diagnoses in medical records, the level of psycho-social functioning, professional and personal biography. After surviving a violent assault, any such change in the victim's behavior is an indicator of temporal succession between adverse event, and onset of a psychiatric illness.

Symptom prevalence and severity may be represented through psychological assessment in interviews and questionnaires. Obvious limitations to purely quantitative approaches have to do with limited cross cultural validity of such tools, or their availability for forensic reporting in some countries.

Therefore, it is preferred a *mixed approach*, over a continued period of time.

Early documentation of trauma response is highly important, but it should *never* be forced upon the victim, as it may further stigmatise the person. Psychological support should be cultural sensitive, while the preferred attitude should be counselling. Professional reports of therapists, counsellors, attending psychiatrists may be helpful in the formulation of forensic psychological reports, where available.

As time passes, some of the former victims of violent crime (assault, rape, trafficking etc.) will develop signs of Post-Traumatic Stress Disorder (PTSD), depressive and/or anxiety disorders, somatisation disorders, sometimes substance use/abuse (including prescription medication for chronic pain). It is of paramount importance to recognise such signs and symptoms and the “silent window” between the event and the onset of psychological distress.

PTSD symptoms include intense fear, helplessness or horror and significant behavioral changes. In addition, victims re-experience the traumatic event by way of thoughts, bodily sensations and startling reflexes, and they persistently and actively avoid situations that remind them of the incident, and have persistent, high levels of anxiety and stress, that she did not have before the event.

Most recent criteria for PTSD (DSM-V⁵¹) include not only those events with a vital, “life-or-death” trigger and the person’s reaction of horror and helplessness, but also other situations where, by repeated aggression or violence, vicarious trauma may lead to similar psychiatric symptoms.

Feigning and malingering

Obtaining a solid, consistent clinical impression in psychiatry is a noble goal. However, occasionally the clinician, the examiner face unusual circumstances and unusual patients. This subsection covers signs of feigning and malingering where the victim has been subject to violent crime.

Feigning of somatic and psychological symptoms will be suspected either when subjective and objective clinical realities don’t overlap, or when the person displays gross exaggeration of suffering and/or pain. As already discussed, a person’s reaction to stress will invariably generate changes in behaviour, from co-dependency of family and the loved ones to isolation and detachment. Victims of violence don’t always recollect events properly and may have unstable, shifting mood. While feigned somatic symptoms may fall under the shadow of “psycho-somatic symptoms”, being therefore wrongly validated a systematic misrepresentation of facts and emotions may trigger warning signs that the examinee is biased and untruthful.

The fundamental difference between feigning and malingering has to do with the *motivation* behind the misrepresentation of psychological symptoms⁵². While victims who feign or over represent a particular constellation of psychological symptoms may be pushed to do so partly because of their overall psychological state or personality; malingerers engage in such behaviour with a clear purpose to obtain financial/disability privileges or to avoid prosecution or damages. A narrow line separates victim from aggressor, and it’s not always the clearest. Psychiatric forensic reports should clearly delimitate such matters.

There is no antidote to victims lying about their narrative, or the way they reacted to trauma. A systematic and careful interview, the use of corroborating evidence (where available), multiple interviews at disparate points in time, the use of independent informants may enhance the quality of psychiatric reporting. It is worth noting that there are very few psychological instruments which include “fake/feign” items, in order to flag untruthfulness but their use should be standard.

Some red flags include highly atypical or grossly bizarre claims, elements of psychosis which are unsubstantiated from secondary sources, low adherence to treatment or “professional shopping” and hopping (the excessive, frequent change of mental health professionals who are actively sought by the victim to validate their symptoms and beliefs) without a clear reason, active implication and involvement in the drafting of the forensic report (where applicable), collusion and contamination of evidence, self-medication and drug non-compliance. Finally, it should be noted that a clear case of malingering cannot be

⁵¹ <https://dsm.psychiatryonline.org/doi/book/10.1176/appi.books.9780890425596>

⁵² Walczyk, JJ, Sewell N, DiBenedetto MB: A review of approaches to detect malingering in forensic contexts and promising load-inducing lie detection techniques, *Front Psychiatry*. 2018 Dec 21;9:700. doi: 10.3389/fpsyt.2018.00700. eCollection 2018.

argued without that person's admission to any of the above, when confronted by either authority or medical professionals.

Peer review in psychiatric/psychological evaluation may be required in cases where feigning/malingering is suspected. It should be noted that a psychiatric board of experts may bring a distinct advantage over expert opinion, particularly in those cases where experts are appointed by the court. Conversely, a prolonged period of observation may yield more consistent results, rather than one single evaluation.

A brief synopsis of how psychiatric/psychological evaluations are presented below.

Interview

A careful, empathetic communication should guide the relationship between the examiner and the examinee. The examinee shall be informed about the specific purpose of the discussion (forensic reporting), that it is not subject to confidentiality, but that the person has a right to not disclose information that she does not want to. This shall be documented, dated and signed by the examiner (where applicable), and by the patient⁵³.

There shall be performed an examination of the overall mental state of the person. The examiner shall note the general appearance of the patient, whether the person in case is time-space oriented, the easiness of visual/psychological rapport (eye-contact, communication flow). As part of the interview, the examiner shall invite the examinee to indirectly recount "what happened

Thought processes shall be explored qualitatively and quantitatively with the patient. Does the person feel her thoughts are accelerated, or slowed? Is there any thought blockage? Does the person return to obsessive thoughts or intrusive imagery? Are there any unusual, bizarre thoughts, or perceptual problems (pseudo-hallucinations/hallucinations) ?

Further directions of the interview concern that person's ability to operate basic mental functions, such as reasoning, mental calculus, use language, logical associations. The patient shall be asked whether she has issues concentration, recalling recent events or from the distant past. Short-term memory problems may be evident during the examination and they must be documented, as well as difficulty recalling some of the aspects of traumatic events (i.e. whether the examiner needs to come back to some details, or the person mentions them repeatedly, "in a loop").

Mood regulation since the time of the adverse event and during the interview shall be documented. It is noted that many victims of violence feel "numb" or "detached" (see above, dissociative states). Some will have irritability or sudden outbursts of anger, while others will have panic states, hyper-vigilance, alternating with eerie calm. This affect liability should be recorded "as such", without further interpretation of the cause. On the other hand, it is relevant the mood concordant with intrusive thoughts or memory flashbacks is relevant.

Questions about various biological rhythms and somatic complaints are also part of the psychiatric interview. Does the person have a good sleep quality? Does she wake up frequently overnight? Does she wake up earlier than before? Is the sleep restorative or does the patient feel heavy, tired after a night's sleep? Does the person have nightmares?

Symptoms of posttraumatic stress are inevitably filtered through the person's culture and education. Very often, somatic complaints such as chronic pain

⁵³ <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

(musculoskeletal, joints, visceral complaints) recurrent headaches, fainting spells, nausea, locomotor incapacitation, electric currents up-and-down the spine, are part of what is called the “idiom of trauma”, basically the cultural repertoire of grief and shock.

Changes in appetite, motivation, and drive shall be recorded. Activities of daily living shall be explored, as part of the psychosocial dimension of the interview. A sense of detachment, the tendency to either spend more time with the close ones or, on the contrary, a tendency to isolate oneself, and avoid the interaction with others represent changes in previous behaviour that shall be noted down.

In the end, there shall be prepared a comprehensive psychiatric report, together with a psychological evaluation. After the initial shock reaction, persons often may show a quasi-normal day-to-day functioning, and they experience significant distress and dysfunction later on, depending on initial stressors), the possible legal proceedings, as well, and the difficulties to readjust to a regular routine. The continuous need for treatment or the opportunity of psychotherapy/counselling should be taken as indicators of severity, rather than the opposite. Early restauration of day-to-day functioning is not predictive for subsequent disability, since psychological trauma often has long-term, unforeseeable consequences. It is for this particular reason that a comprehensive, dynamic, observation over a period of time after the initial event is desirable. The person’s adherence to treatment, or lack thereof, should also be documented to the extent possible.

Finally, an unique, distinctive challenge, is to make prognoses of disability based on psychiatric/psychological evaluation alone, in the context of feigning/ malingering, and also the limitations of such evaluations. A joint position from forensic-medical examiners, physical therapists, psychiatrists and psychologists involved may help the Court in establishing limits of disability and appropriate compensations (see section on disability).

4.3. WITNESS AND OTHER FAMILY MEMBERS TESTIMONY

Witness statements

In cases of violence, and in particular in cases of gender-based violence, the statements of the victim and the perpetrator may retrace the events in very different - if not even opposite - ways. The statements provided by witnesses are therefore crucial to describe the facts and the conduct of the individuals involved.

When individuals other than the victim and the perpetrator were present at the moment of the crime, their statements are fundamental not only to identify the offender, but also to assess the level of violence of the criminal act and the actual damage that the victim suffered as a result.

While the victim can forget or even remove some details of the crime because of its psychological consequences, witnesses are able to recall information in a more detailed and rational manner. In addition, victims may face difficulties or even feel ashamed to talk about the violence suffered during the trial, and witnesses may be able to provide the information that is lacking because of such difficulties.

Especially when medical reports on the physical damage suffered by the victim are not available, witnesses are able to give details on the type of violence inflicted on the victim and on her or his capability to prevent the occurrence of the act.

Witnesses' statements concerning the role that the victim has played on the occasion of the offence are particularly relevant in those States in which the legal framework excludes the victim's right to compensation if she or he has contributed, even unintentionally, to the offense. Witnesses can state how the victim reacted to the violent conduct and describe whether and how they sought to stop it and/or (partially) prevented the acts of the offender from becoming even more violent.

However, it is not always the case that third individuals have witnessed the crime. This is because offenders often commit violent acts in public spaces when no one else is present, or in private spaces, including the family house. In this case, individuals who knew the victim and/or the perpetrator and met them in the period of the violent act can anyway provide relevant statements concerning the behaviour of the individuals involved, with particular reference to any change that they might have observed in the behaviour of the victim as a result of the violence suffered.

Family members' statements

Determining the amount of compensation is a challenging issue: accessing fair and equitable compensation is extremely relevant for victims of crimes seeking justice and can play a significant role in the survivor's recovery process.

In the framework of restorative justice, it is not only important to guarantee that victims are heard in order to assess the material and moral damage they suffered, but also that individuals that belong to the community of the victims can contribute to the determination of the financial compensation owed by the perpetrator. Reference is made in particular to the family members of the victim, who can make an important contribution to the assessment of the damage suffered.

On the one hand, the family members of the victims may be able to provide additional details on the crime. In fact, although they may have not directly witnessed the offense, their role is particularly relevant in case they were the first ones to receive information on the violation after it took place.

In addition, whenever a crime has been committed by a family member of the victim, other family members can provide statements concerning previous criminal acts perpetrated by the offender that the victim may not recall or consider sufficiently serious. As far as domestic violence is concerned, it does not usually consist in sporadic episodes, but rather becomes part of the daily attitude of the partner. Nevertheless, the fear of not being believed and supported, the resignation and sense of personal failure, and a distorted perception of the seriousness of the violent conduct may prevent the victim to fully portray the criminal behaviour of the perpetrator. Testimonies by family members can be crucial in such circumstances.

On the other hand, family members of the victims can provide first-hand information on the consequences of the crime on the person who has experienced it. They can give information about how the habits of the victims changed after the violence, how they were feeling, and how the offense impacted their social and work life. In this sense,

the role of family members is particularly significant in assessing the moral damage suffered by the victim, as they can contribute to the assessment of moral damage by providing information on the causal link between criminal conduct and the resulting psychological harm.

Family members can contribute to the assessment of the financial compensation by demonstrating how the violent act impacted negatively not only the victim, but also her family.

The family members of the victims can talk about their own experience after the crime and state whether the offense has not only affected the behaviour of the victim, but also their own behaviour. For example, family members of the victim and in particular their children can face difficulties in elaborating the violence suffered by the woman. This can have consequences on their behaviour, their ability to sleep, their social relations and their academic performance.

4.4 EXPERTS OPINIONS

When a person suffers gender violence, in any of its forms, there is a situation of injustice for her and for society in general. Gender violence involves damage to an extreme degree, especially for the survivor of the same, in a physical and emotional, non-material and social, financial and professional sense, leaving long-term injury and consequences that, almost certainly, will never fade.

In order to guarantee the victim's recovery process, it is necessary to pay special attention to the reparation phase. Enabling access to material compensation for women who have suffered gender violence in any of its forms is part of the recovery process. In order to do this, it is necessary to start from a comprehensive assessment of the damage to the survivor as a result of the violence endured. Without a system for assessing damage, it is impossible to compensate each survivor individually and according to their situation and needs.

As indicated in the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter, the "**Istanbul Convention**"⁵⁴), it is necessary to have specialised reports from different professionals interacting with the survivor in order to assess any long-term injury and consequences at different levels.

The purpose of the specialised report is to provide technical evidence (medical, psychological, employment, etc.) allowing for a precise quantification to carry out the actual calculation of any compensation.

It is essential that access to compensation considers the different damage that the surviving woman may have endured:

Non-material damage: shame, grief, pain, offence, breach of privacy, esteem, peace of mind, establishing dependency relationships, stigma, loss of trust in their relationships, isolation, loss of social relationships and social network, life as a couple, of day-to-day habits and autonomy. It would be essential to take into account under this heading of injury to feelings, the damage to their life project⁵⁵: that the assault or assaults

⁵⁴ Istanbul Convention (article 49) <https://goo.gl/n6YnzT>

⁵⁵ Prepared by the IACHR (Inter-American Commission on Human Rights). <http://www.oas.org/es/cidh/>

damages their relationships, their access to enjoyment, sexual activity, leisure and the practice of sports, to undertaking training and working in a profession or holding a job, the object of which is the self-realisation of the person as an individual and as a member of society.

Damage to physical health: from injury, self-harm or attempted suicide, sexually transmitted infections, substance abuse, somatisation and psychosomatic disorders, overexertion, spontaneous abortions and miscarriages, and other long-term physical injuries.

Damage to psychological health (emotional and cognitive): assessment by a psychologist or a specialist in violence against women or gender violence who can evaluate the consequences suffered by the victim and their daughters and children and those closest to them. Post-traumatic stress disorder, (hereinafter "PTSD"), complex PTSD, dissociation (paradoxical adaptation syndrome, etc.), somatisation, anxiety, depression, suicidal thoughts or attempts, low self-esteem, emotional lability, guilt, shame and fear, sleep and eating disorders, impact on their sexuality and their sense of freedom, personality disorders, etc. Furthermore, there are injuries at the cognitive level: concentration and memory difficulties (dissociative amnesia), difficulties with organising and planning the day to day, narrative confusion or incoherence, distortion in the perception of one's own body, cognitive distortions and irrational ideations.

Damage to their social environment: family and those closest to them. To their daughters, children and ascendants or people who depend on the person who has suffered violence and how the survivor's situation impacts different spheres affecting them in turn. Damage may be a consequence of the long-term injury suffered by the victim as a result of the violence experienced, including serious physical or psychological illness, and even death, functional diversity caused by violence, or the survivor's absence, in which case compensation should be paid to their family and those close to them, special attention being paid to her dependents.

Financial and patrimonial damage: Includes expenses derived from the physical and emotional damage which have required an investment from the victim to assist their recovery: medical, psychological, psychiatric, and other treatments, the expenses deriving from having to change residence for physical and emotional security. Occasionally, assaults may include damage to the objects and possessions of the survivor of violence.

Damage to their professional development: being unable to continue with their professional career or their training, as a result of an assault or continued assaults. Calculate the "loss of earnings" derived from this damage.

Legal damage: being unable to access documentation since it is unavailable in a context linked to the crime, for example, or having to go through judicial processes that are often traumatic for survivors, etc. Furthermore, the violence suffered can impede access to social rights: sick leave, pregnancy, unemployment payments, pension, holidays, public housing and social security income, etc.

In order to prepare a comprehensive assessment of the damage, it is necessary that social, psychological, psychiatric, medical, employment, legal, health and educational reports be provided. For example, where the survivor or her daughters or children are harmed by the violence suffered by their mother and this is reflected in their academic performance and their behaviour and difficulties at school, it would be very useful to have reports from professionals working at the education centre.

Taking all of this into account means coordinating different resources, institutions and entities involved in intervening with the survivor and their environment, in order to collate various reports from which an assessment can be made of the victim's overall situation and the resulting long-term consequences at different levels.

In order to do this, it will be necessary to have social services, specialised services for gender-based violence, and specialised centres to address the other consequences of violence (support centres for people with substance dependence, etc.), family, children and young people support centres, health centres or hospitals, educational centres, insurance surveys and the intervention of any other professional who can provide information of interest regarding the condition of the victim and their environment.
