



Towards fair and  
effective  
compensation  
scheme to victims  
of sexual violence

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# **Fair and Appropriate?**

**Compensation of Victims of Sexual Violence in EU Member States:**

**Greece, Italy, Latvia, the Netherlands and Spain**

**Part II: State and Offender Compensation:**

**Survey, Good Practices and Recommendations**

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# 1. Introduction

## 1.1. Vulnerability of victims of sexual crimes

The last 20 years, victims of crime have received increased attention in the criminal trial process. Various EU legislation, in specific the Victims' Rights Directive 2012/29/EU,<sup>1</sup> has established important victims' rights, such as the right to receive information, respectful treatment, legal support, victim support and compensation. Most EU member states have implemented the legislation and the position of victims has clearly been strengthened. Now that victims of crime are in the spotlight, it is a good opportunity to also focus on specific vulnerable groups of victims in criminal law: victims of sexual crimes.

Victims of sexual crimes require special attention for several reasons. Firstly, the scale in which sexual violence occurs is significant: according to a report of the European Agency for Fundamental Rights (FRA), it is estimated that 3.7 million women in the EU are subjected to sexual violence every year.<sup>2</sup> In total 11% of women have experienced some form of sexual violence since they were 15 years old. 5% of women have been raped since the age of 15.<sup>3</sup> The FRA did not include sexual violence to men. What is known about men is that 10% of victims of violent sexual crimes are men, the majority (90%) of the victims are women.<sup>4</sup> Of the perpetrators, 99% are men, 1% are women.<sup>5</sup>

Secondly, victims of sexual crimes need support in their search for justice. Only 14% of victims of sexual violence report their offense to the police.<sup>6</sup> Sexual crimes are often associated with shame and stigma and often mentioned in relation to secondary victimisation. About 25% of victims of sexual crimes do not dare to report the crime because of shame and 12% does not report because they think they will not be believed. Victims of *physical* violence also do not report because of shame or not being believed but the percentages are much lower, respectively 8% and 2%.<sup>7</sup> Of the victims of sexual crimes who report to the police, about 46% are not satisfied with the treatment received by the police.<sup>8</sup>

Reporting rates seem to vary hugely between countries. According to Eurostat, the number of sexual violence offences - relative to the population - is highest in Sweden, with 178 violent sexual crimes per 100 000 inhabitants, ahead of Scotland (163), Northern Ireland (156), England & Wales (113) and Belgium (91). For rapes, the highest rates were recorded in England & Wales (62 rapes per 100 000 inhabitants) and in Sweden (57). The rape statistics

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<sup>1</sup> Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, OJ 2012, L 315/57, ELI: <http://data.europa.eu/eli/dir/2012/29/oj>

<sup>2</sup> European Union Agency for Fundamental Rights (FRA) (2014). Violence against women: an EU-wide survey. Main results report. See <https://fra.europa.eu/en/data-and-maps/violence-against-women-survey/survey-information>.

<sup>3</sup> European Union Agency for Fundamental Rights (FRA), 2014.

<sup>4</sup> Eurostat, see <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20171123-1?inheritRedirect=true>

<sup>5</sup> Eurostat, see <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20171123-1?inheritRedirect=true>

<sup>6</sup> European Union Agency for Fundamental Rights (FRA), 2014.

<sup>7</sup> European Union Agency for Fundamental Rights (FRA), 2014.

<sup>8</sup> European Union Agency for Fundamental Rights (FRA), 2014.

for the countries participating in the FAIRCOM project were from high to low: The Netherlands (10), Latvia (8), Spain (3), Greece (1) and Italy (0 per 100 000 inhabitants). For Italy, it should be noted that the law talks about sexual violence (*violenza sessuale*) and not rape (*stupro*), so it is more accurate to use the statistic of sexual violence reported by the Eurostat, which is 8.9 for 100.000. Eurostat specifically mentions on their website: “It should be borne in mind that the figures do not necessarily reflect the actual number of violent sexual crimes. Rather they show to what extent such crimes are reported to and recorded by police. Therefore, the variation between countries is also influenced by general awareness and attitudes to sexual violence offences”.<sup>9</sup> Differences between countries can also be a consequence of different definitions of rape.<sup>10</sup>

Thirdly, in addition to low reporting rates, victims of sexual crimes furthermore suffer from high attrition rates in criminal law. An international review on studies on sexual crimes showed that only three in ten victims of sexual crime will proceed past the police to the next procedural stage.<sup>11</sup> Only one in ten will result in conviction.<sup>12</sup> Attrition studies alert us to the fact that current police and court processes are poorly equipped to address the realities of sexual victimization; and for a large proportion of victims, the criminal justice system is not engaged at all.<sup>13</sup> Data from Spain shows less attrition but still significant: in 2017, the police registered 11.692 sexual offenses. In 8894 cases (76%), the police knew the identity of the offender, 6796 offenders (58%) were arrested and only 2270 (19%) were convicted.<sup>14</sup>

Finally, there are indications that victims of sexual violence do not always receive fair compensation when they are entitled to it according to the EU Compensation Directive 2004/80/EC. European legislation prescribes that victims in all European member states must be able to claim ‘fair and appropriate’ compensation if they have been the victim of (sexual) violence. In practice, however, there are major differences between member states in the extent to which victims of sexual violence can claim compensation.<sup>15</sup> This diversity leads to undesirable inequality and injustice, which can lead to secondary victimisation.

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<sup>9</sup> European Commission > Eurostat > Products Eurostat News > Violent sexual crimes recorded in the EU. Accessed April 2020

<sup>10</sup> In Europe, there are eight countries which define rape as sex without consent (meaning that coercion or violence is no longer a requirement): United Kingdom, Ireland, Belgium, Cyprus, Luxembourg, Iceland, Germany, and Sweden (<https://www.amnesty.org/en/latest/campaigns/2018/04/eu-sex-without-consent-is-rape/>)

<sup>11</sup> Daly & Bouhours, 2010.

<sup>12</sup> Daly & Bouhours, 2010. A meta-analysis of 21 studies of prosecution of child abuse cases showed a different pattern, being more optimistic for child cases as compared to adult cases: for the child abuse cases, at least 72% of cases were carried forward without dismissal, and conviction rates were 94% (Cross, Walsh, Simone, Jones, 2003). When the victims are under-aged a variable that influence the decision not to prosecute a case is the lack of support by their parents (Tamarit et al. 2016).

<sup>13</sup> Daly & Bouhours, 2010.

<sup>14</sup> Soletto, 2019.

<sup>15</sup> Joëlle Milquet (2019), Special Adviser for compensation to victims of crime to the President of the European Commission, Strengthening victims’ rights: from compensation to reparation — For a new EU victims’ rights strategy 2020-2025, [https://ec.europa.eu/info/sites/info/files/strengthening\\_victims\\_rights\\_-\\_from\\_compensation\\_to\\_reparation.pdf](https://ec.europa.eu/info/sites/info/files/strengthening_victims_rights_-_from_compensation_to_reparation.pdf).

## 1.2. The importance of fair and appropriate compensation

Criminal law can undertake to provide justice to victims of (sexual) crime in several ways, such as bringing the offender to justice, giving a voice to victims in criminal proceedings and providing support and compensation. This report is about the extent to which victims of sexual crimes can access compensation. The right to fair and appropriate compensation to victims is one of the basic victims' rights and needs. Compensation serves different goals: it is needed to compensate the material and non-material damages due to the crime. Compensation also is considered an acknowledgement of harm.<sup>16</sup> The right to compensation also brings a certain empowerment: it gives the victim a formal position in criminal and other proceedings or strengthens that position. In short: it serves as a vehicle to give the victim agency.

When it comes to compensation to the victims of violent crime, there are several routes that can be considered. In theory, the primary route would be via civil law. The violent crime will constitute a tortious act according to civil law, and the offender will be liable to the victim for full compensation of all damage suffered as a consequence of this acts. Although in theory civil procedure is an important route for compensation, in practice it is not. As will be discussed a number of times below, several European policy documents and legal instruments acknowledge the fact that, in practice, there are major obstacles to civil redress. In the first place, only in a minority of cases the offender is identified, caught, and prosecuted. Second, civil procedure, which entails, among other things, meeting the required burden of proof, the necessity of legal representation, and the necessity of private enforcement of the decision, is often simply too expensive, time consuming and burdensome for private citizens such as the victims of violent crime to be a feasible route to compensation. And last but not least, perpetrators of violent crime often do not have the financial means to pay compensation or to comply with a judgment ordering them to do so. It comes to no surprise that, according to the FAIRCOM partners, the civil route is hardly used. This is supported by available empirical data from the Netherlands. In 2010, only 50 victims of violent crime- or sexual offence<sup>17</sup> have claimed compensation from the offender in civil court in the Netherlands.<sup>18</sup> Therefore, in this report the civil route is not discussed in detail.

In practice, the two main routes to obtain compensation are: 1) offender compensation in the course of criminal proceedings by means of a so called 'adhesion procedure'<sup>19</sup> and 2) state compensation. The most common route in most countries is offender compensation, meaning that compensation is to be claimed from the offender in the course of criminal proceedings. The victim has to join the criminal proceedings as a (civil) party. If compensation is awarded to the victim, the offender has to pay. An adhesion procedure can considerably lighten the procedural burden compared to a civil procedure, but cannot solve other problems such as the fact that only a minority of perpetrators are identified, caught and prosecuted, and that they

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<sup>16</sup> E.g. Holder & Daly, 2018; Milquet, 2019.

<sup>17</sup> It is not known how many of the 50 cases were sexual offences. No further specification was made about the percentage of sexual offences

<sup>18</sup> Schrama & Geurts, 2012.

<sup>19</sup> Adhesion procedure, adhesive procedure or ancillary proceedings is a procedure through which a court can rule on compensation for the victim of a criminal offence. Rather than pursuing damages in a separate civil action, the victim files a civil claim against the offender as a part of a criminal trial. See the DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU, footnote 39, [https://ec.europa.eu/info/sites/info/files/13\\_12\\_19\\_3763804\\_guidance\\_victims\\_rights\\_directive\\_eu\\_en.pdf](https://ec.europa.eu/info/sites/info/files/13_12_19_3763804_guidance_victims_rights_directive_eu_en.pdf).

often lack the financial means to actually compensate the victim. State compensation schemes emerged in the seventies based on the view that the state should take responsibility not only for an offender's rehabilitation, but also for that of crime victims. The state has a duty to protect citizens from crime or to prevent conditions that cause victimisation. Payments are made in recognition of a sense of public sympathy and of social solidarity with a victim.<sup>20</sup> In the 1983 European Convention on the compensation of victims of violent crimes,<sup>21</sup> state compensation was considered particularly necessary when the offender has not been identified or is without resources. In the 2019 report of the Special Advisor to the President of the European Commission for the compensation to victims of crime, Joëlle Milquet,<sup>22</sup> it is emphasised that victims' rights are part of the fundamental human right of access to justice. In this perspective, victims of crimes against the person have a right to justice, and criminal justice serves to redress the wrong done to victims. If an offender, by committing a violent crime, calls the victims' rights into question, victims can legitimately expect that their legal community comes to the defence of their rights. In the light of the right to an effective remedy, criminal proceedings assert the victims' rights as much as they preserve the identity of a community of law based on human dignity and human rights.<sup>23</sup> If one wanted to put it in more philosophical terms, one could say that offender compensation is based on principles of fundamental rights, responsibility and corrective justice, and state compensation is based on principles of fundamental rights, solidarity and distributive justice.<sup>24</sup>

### 1.3. European legislation and policy

Various legal frameworks on compensation have been put into place to establish that victims in all Member States have access to compensation. The first milestone was the above mentioned European Convention on the Compensation of victims of violent crimes in 1983,<sup>25</sup> which came into force in 1988, and has been ratified by 26 of the 47 Council of Europe member states.<sup>26</sup> It contains the obligation to compensate the victims of intentional and violent offences resulting in bodily injury or death. As was mentioned above, state compensation was considered particularly necessary for those cases where the offender has not been identified or is without resources. In 2004, the European Council adopted Directive 2004/80/EC relating to compensation of crime victims (hereinafter: the 'Compensation Directive'),<sup>27</sup> which obliges Member States i.a. to have a compensation scheme which guarantees 'fair and appropriate' compensation to victims of violent intentional crimes (Article 12). In 2011, the Council of Europe adopted the Convention on preventing and combating violence against women and

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<sup>20</sup> Holder & Daly, 2018.

<sup>21</sup> European Convention on the compensation of victims of violent crimes, ETS No 116, [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116).

<sup>22</sup> Joëlle Milquet, Special Adviser for compensation to victims of crime to the President of the European Commission, Strengthening victims' rights: from compensation to reparation — For a new EU victims' rights strategy 2020-2025, [https://ec.europa.eu/info/sites/info/files/strengthening\\_victims\\_rights\\_-\\_from\\_compensation\\_to\\_reparation.pdf](https://ec.europa.eu/info/sites/info/files/strengthening_victims_rights_-_from_compensation_to_reparation.pdf)

<sup>23</sup> Milquet 2019, p. 1.

<sup>24</sup> The concepts of corrective and distributive justice stem from Aristotle, Nicomachean Ethics, Book V, see <http://classics.mit.edu/Aristotle/nicomachaen.5.v.html>

<sup>25</sup> European Convention on the compensation of victims of violent crimes, ETS No 116, [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116).

<sup>26</sup> [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116/signatures](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116/signatures)

<sup>27</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ 2004, L 261/14, ELI: <http://data.europa.eu/eli/dir/2004/80/oj>

domestic violence (hereinafter: the ‘Istanbul Convention’),<sup>28</sup> which came into force in 2014 and has currently been ratified by 34 out of 47 Members.<sup>29</sup> It contains among other things the obligation to ensure that victims have the right to claim compensation from perpetrators, and that ‘adequate’ State compensation shall be awarded (Article 30). Finally, in 2012, the European Parliament and The Council of the European Union adopted Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (hereinafter: the ‘Victims’ Rights Directive’),<sup>30</sup> obliging Member States i.a. to ensure that victims are entitled to obtain a decision within a reasonable time on compensation by the offender in the course of criminal proceedings (i.e. by means of an adhesion procedure) (Article 16).

Although almost all Member States have carried out the legal transposition of the Directives, according to the 2018 report of the EU Committee on Civil Liberties, Justice and Home Affairs and Committee on Women’s Rights and Gender Equality,<sup>31</sup> the question of their practical application and efficiency remains open in several EU countries. The 2019 report of the Special Advisor to the President of the European Commission for the compensation to victims of crime, Joëlle Milquet (hereinafter the ‘Milquet report’),<sup>32</sup> identifies many problems in the actual realisation by victims of the right to compensation established by the Directives. The problems that victims face include lack of information, numerous procedural obstacles, costly procedure, restrictive time limits, and insufficient allocations from national budgets. The rejection rate is high and the amounts granted are low.

In December 2019, the Council published its conclusions on victims’ rights,<sup>33</sup> in which it noted improvements in the access to compensation, but it was also considered evident that measures to improve victims’ access to justice and to compensation are required. The possible revision of the Compensation Directive could also be considered depending on the outcome of the ongoing evaluation. In order to consider future action in the area of victims’ access to compensation, more information should be provided in relation to difficulties encountered in implementing the Compensation Directive. In addition, more information on national criteria for compensation and definitions of intentional violent crimes in Member States is needed. The Council did not consider the harmonisation of compensation and of state compensation schemes possible. However, it could be explored whether the definition of victims entitled to state compensation could to some extent be harmonised. The new European Commission was invited to draw up a comprehensive EU strategy on victim’s rights, which should include a systematic approach to ensure victims’ effective access to justice and compensation. The

<sup>28</sup> [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210)

<sup>29</sup> [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures)

<sup>30</sup> Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, OJ 2012, L 315/57, ELI: <http://data.europa.eu/eli/dir/2012/29/oj>

<sup>31</sup> Jiménez-Becerril Barrio & Mlinar (2018). EU Parliament Report on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2328(INI)), 14 May 2018, [https://www.europarl.europa.eu/doceo/document/A-8-2018-0168\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-8-2018-0168_EN.html)

<sup>32</sup> Joëlle Milquet, Special Adviser for compensation to victims of crime to the President of the European Commission, Strengthening victims’ rights: from compensation to reparation — For a new EU victims’ rights strategy 2020-2025, [https://ec.europa.eu/info/sites/info/files/strengthening\\_victims\\_rights\\_-\\_from\\_compensation\\_to\\_reparation.pdf](https://ec.europa.eu/info/sites/info/files/strengthening_victims_rights_-_from_compensation_to_reparation.pdf)

<sup>33</sup> Council conclusions on victims’ rights, OJ 2019, C 422/05, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XG1216\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XG1216(01))

existing legislative framework on victim's rights should be evaluated. Special attention should be paid to the review of the EU rules relevant to compensation.

In its report of May 2020 to the European Parliament and the Council on the implementation of the Victims' Rights Directive,<sup>34</sup> the European Commission concluded that this implementation is not satisfactory. This is particularly due to incomplete and/or incorrect transposition. There are also numerous concerns on the practical implementation of the Directive. Shortcomings in implementation of some key provisions of the Directive, such as access to information, support services and protection in accordance with victims' individual needs, were found in most Member States. The Commission has 21 on-going infringement proceedings for incomplete transposition of the Directive against Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden. If necessary, the Commission will open further infringements proceedings for incorrect transposition and/or incorrect practical implementation.

#### 1.4. EU Strategy on victims' rights 2020-2025

On 24 July 2020, the European Commission announced its new EU Victim's Rights Strategy<sup>35</sup> which is based on five priorities: (1) effective communication with victims and providing for safe environment for victims to report crime; (2) improving protection and support of the most vulnerable victims; (3) facilitating victim's access to compensation; (4) strengthening cooperation and coordination among all relevant actors; and (5) strengthening the international dimension of victim's rights. Key actions on facilitating victims' access to compensation involve the European Commission monitoring and assessing the EU legislation on compensation, including state compensation, offender's compensation and if necessary proposing measures to complement this framework by 2020. Member States are to evaluate national compensation schemes and, if necessary, eliminate the existing procedural hurdles; ensure that fair and appropriate state compensation for violent, intentional crimes, including victims of terrorism is reflected in the national budgets; take actions to ensure that victims are not exposed to secondary victimisation during the compensation procedure, and cooperate with other Member States in cross-border cases. The European Network on Victims' Rights and the European network of contact points for compensation are to explore how to improve their cooperation and increase the efficiency of the latter. The Victim support organisations are to engage with the national compensation authorities to offer support, exchange best practices and mutual training activities.

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<sup>34</sup> Report from the Commission to the European Parliament and the Council on the implementation of 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, COM/2020/188 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0188>

<sup>35</sup> Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the regions, EU Strategy on victims' rights (2020-2025), COM/2020/258 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0258>

## 1.5. This FAIRCOM Report Part II

The above will have made clear that a great deal of effort has been made to improve access to compensation for the victims of violent crime, but that there is still a great deal of work to be done. This applies in particular to the victims of sexual crime. The high number of victims of sexual crimes, the high attrition rates and the low chances of receiving justice and compensation, plus the current efforts of the EU on improving access to compensation, are the context of the current research & collaboration project called FAIRCOM. The aim of FAIRCOM is to contribute to justice for victims of sexual crimes in the EU by improving the possibilities for obtaining compensation. FAIRCOM is being conducted by a collaboration of academics and NGOs in five European countries: Spain, The Netherlands, Italy, Greece and Latvia.<sup>36</sup>

This FAIRCOM Report Part II is the follow-up of FAIRCOM Report part I, that presented the first results of an investigative study on State Compensation and Offender Compensation in the five partner countries: Greece, Italy, Latvia, the Netherlands and Spain.<sup>37</sup> These reports are part of one and the same ‘living document’: the content of Part I has been updated and complemented and is included in Part II. The aim of this Report Part II is to describe the different routes to compensation in each participating country, to describe good practices and provide recommendations for an effective and efficient compensation process for victims of sexual crimes. The overall aim of FAIRCOM is to contribute to the empowerment of victims of sexual crimes in their search for justice. It is considered important to conduct research and to contribute to improvement of policies and practices aimed at bringing justice to victims of sexual crimes. FAIRCOM is financed by The EU Justice Program (2014-2020).

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<sup>36</sup> See <https://sexualviolencejustice.eu/>

<sup>37</sup> Elbers et al, Fair and Appropriate? Compensation of Victims of Sexual Violence in EU Member States: Greece, Italy, Latvia, the Netherlands and Spain. Part I: A Survey of State and Offender Compensation (January 31, 2020). Available at SSRN: <https://ssrn.com/abstract=3548082> or <http://dx.doi.org/10.2139/ssrn.3548082>



## 2. Obligations of EU member states

### 2.1. Overview of legal instruments

As regards the obligation of EU Member States to promote access to compensation for victims of sexual crimes, in addition to any national legislation, various international legal instruments are relevant. An overview of legal instruments can be found in Box 1. The Milquet report emphasises that the right to compensation of victims of violent crime is part of the fundamental human right of access to justice. According to the European Court of Human Rights (ECHR), the right to an effective remedy of Article 13 of the European Convention on Human Rights (ECHR), entails the right to be compensated within the framework of criminal justice.<sup>38</sup> As was mentioned above, the European Convention on the Compensation of victims of violent crimes of 1983,<sup>39</sup> has been ratified by 26 of the 47 Council of Europe Member States. Of the countries of the current FAIRCOM partners only Spain and the Netherlands have ratified this Convention, Greece only signed, Italy and Latvia did not sign.<sup>40</sup> The Council of Europe Istanbul Convention<sup>41</sup> has currently been ratified by 34 out of 47 Members.<sup>42</sup> Of the countries of the current FAIRCOM partners, Spain, the Netherlands, Greece and Italy have ratified this Convention, Latvia only signed. On the issue of compensation, the subject matter of these Council of Europe Conventions overlaps considerably with that of the EU Directives. Since the European Convention on the Compensation of victims of violent crimes of 1983 only applies in two of the five current FAIRCOM jurisdictions, and its subject matter is almost entirely covered by the other applicable legal instruments, it is not discussed further below. The Human Rights instruments are not being discussed either, because the principle enshrined in them has been fleshed out in much greater detail in the other instruments.

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<sup>38</sup> ECtHR *Center of Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, 17 July 2014, <http://hudoc.echr.coe.int/eng?i=001-145577> (para 149)

<sup>39</sup> European Convention on the compensation of victims of violent crimes, ETS No 116, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116>

<sup>40</sup> See [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116/signatures](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116/signatures)

<sup>41</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence (2011), CETS No.210, [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210)

<sup>42</sup> [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures)

## Box 1. Overview of legal instruments on compensation for victims of sexual crimes

### International:

- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Adopted by General Assembly resolution 40/34 of 29 November 1985, <https://legal.un.org/avl/ha/dbpjvcap/dbpjvcap.html>  
(Only politically binding ('soft law'))

### Council of Europe

- European Convention on Human Rights (ECHR) (1950), ETS No. 005, <https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/7435985>  
(Article 13: Right to an effective remedy)
- European Convention on the compensation of victims of violent crimes (1983), ETS No 116, [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116), currently ratified by 26 out of 47 Members [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116/signatures](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116/signatures)
- Council of Europe Convention on preventing and combating violence against women and domestic violence (2011), CETS No. 210, [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210), currently ratified by 34 out of 47 Members [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures)  
(the 'Istanbul Convention')

### EU:

- Charter of Fundamental Rights of the European Union, 7 July 2017, OJ 2016, C 202/389, ELI: [http://data.europa.eu/eli/treaty/char\\_2016/oj](http://data.europa.eu/eli/treaty/char_2016/oj)  
(Article 47: Right to an effective remedy and to a fair trial)
- Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, OJ 2001, L 82/1, ELI: [http://data.europa.eu/eli/dec\\_framw/2001/220/oj](http://data.europa.eu/eli/dec_framw/2001/220/oj) (no longer in force).
- Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ 2004, L 261/14, ELI: <http://data.europa.eu/eli/dir/2004/80/oj>  
(the 'Compensation Directive')
- Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, OJ 2012, L 315/57, ELI: <http://data.europa.eu/eli/dir/2012/29/oj>  
(the 'Victims' Rights Directive')

## 2.2. EU Compensation Directive of 2004

When one takes note of the provisions of the Compensation Directive of 2004 for the first time, it may appear that it primarily concerns the obligations of Member States to provide compensation and to facilitate applying for and obtaining it in cross-border situations. However, an explicit decision of the European Court of Justice in 2016 left no doubt that the Directive requires each Member State to have a compensation scheme in place for victims of any violent intentional crime committed on its territory, regardless of their place of residence, thus also in strictly national cases.<sup>43</sup> The central provision of the Directive is Article 12(2), which reads:

Article 12(2). All Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.

The Compensation Directive calls for a compensation scheme that guarantees fair and appropriate compensation. In any national jurisdiction of a country governed by the rule of law, the victim of a crime will have a civil claim for compensation against the perpetrator. This is an indispensable condition for the enjoyment of fundamental rights such as the right to property and the right to an effective remedy. Yet civil liability law does not amount to a ‘scheme of compensation’ in the meaning of article 2(2). The rationale behind the Compensation Directive is that, for a variety of reasons, it is rarely feasible for victims to actually obtain compensation from the offender on the basis of civil law. As was mentioned above, criminal offenders are by no means always identified or caught, they often lack the necessary financial means to actually pay compensation, and civil procedure is often simply too expensive, time consuming and burdensome for private citizens such as the victims of violent crime. Civil law, therefore, far from guarantees fair and appropriate compensation. In this context that the Directive calls for compensation paid by the state, as is made explicit in Article 2:

Article 2. Compensation shall be paid by the competent authority of the Member State on whose territory the crime was committed.

As we will see in the following chapters of this report, the amounts of compensation that are granted by state compensation schemes vary greatly between the different Member States. The question of what exactly amounts to ‘fair and appropriate’ compensation was only recently put before the European Court of Justice. In its landmark decision of 16 July 2020,<sup>44</sup> the Court of Justice of the European Union (ECJ) not only ruled that a Member State that did not properly transpose the Compensation Directive within the appropriate time is liable towards crime victims residing in that Member State for the damage caused by this breach of EU law, the ECJ also sets out a framework for the interpretation of Article 12(2).

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<sup>43</sup> ECJ 11 October 2016, *European Commission v Italian Republic*, C-601/14, ECLI:EU:C:2016:759, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62014CJ0601>

<sup>44</sup> ECJ 16 July 2020, *Presidenza del Consiglio dei Ministri v BV*, C-129/19, ECLI:EU:C:2020:566, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62019CJ0129>

The facts of the case were as follows. In 2005 an Italian citizen was the victim of violent sexual crimes committed in Italy by perpetrators who were convicted and received prison sentences, and ordered to pay the sum of € 50.000 by way of damages. Since their whereabouts were unknown, this sum could not be recovered. The victim initiated legal proceedings against the Italian state for having failed to correctly and fully transpose the Compensation Directive, and was granted € 90.000 by the court of first instance, a sum that in appeal was reduced to € 50.000. The case was put before the Italian Supreme Court of Cassation, who referred questions to the European Court of Justice for a preliminary ruling. In the course of these proceedings, on the basis of a Ministerial Decree of 31 August 2017, the victim had become eligible for state compensation in the form of a fixed sum of € 4.800.

The ECJ decided that, in the absence of any indication in the Compensation Directive as to the amount of compensation deemed to be ‘fair and appropriate’, it must be held that Article 12(2) allows Member States a discretion in this regard, and that it is ultimately for the national court to decide, with regard to the national provisions establishing the compensation scheme concerned, that the sums awarded amount to ‘fair and appropriate compensation’. As the compensation is not paid by the offender but by state, it shall not be required to cover the entire material and non-material loss suffered by the victim, but amounts should not be purely symbolic or manifestly insufficient and should compensate, to an appropriate extent, the suffering to which the victims have been exposed. Fixed amounts are permitted as long as they vary according to the severity of the violence suffered, and in such a way that they are sufficiently varied to avoid that the amount, in regard to the circumstances of a particular case, can be manifestly insufficient. Sexual violence is likely to give rise to the most serious consequences of violent intentional crime. Consequently, subject to verification by the national court, the ECJ held that the fixed rate in question of € 4.800 for the compensation of a victim of sexual violence, did not appear, at first sight, to be enough.

As a comment it could be added that, although this last decision was phrased in general terms, in this particular case the actual damage suffered by the victim apparently amounted to at least € 50.000. It may have been that this circumstance was relevant to this last decision. However that may be, as we will see in the following chapters of this report, some state compensation schemes of the countries of the FAIRCOM partners grant amounts that, in spite of the wide margin of discretion accorded to the Member States, very likely do not meet the criteria set out by the ECJ in this decision.

### 2.3. Council of Europe Istanbul Convention of 2011

The Istanbul Convention specifically addresses sexual violence, which is considered gender-based violence because it affects women disproportionately. Article 5(2) provides that States shall take the necessary legislative and other measures to exercise due diligence to, among other things, provide compensation for acts of violence committed by non-State actors. The main provision on compensation is Article 30, which provides that States must provide adequate compensation where the damage is not covered by other sources:

## Article 30. Compensation

1. 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.
2. 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. This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety.
3. Measures taken pursuant to paragraph 2 shall ensure the granting of compensation within a reasonable time.

According to the Explanatory Report to the Istanbul Convention,<sup>45</sup> paragraph 1 of Article 30 establishes the principle that it is primarily the perpetrator who is liable for damages and restitution. This does not preclude an interim state contribution to the compensation of the victim. A victim urgently needing help may not be able to await the outcome of often complicated proceedings, the Explanatory Report continues. In such cases, the state or the competent authority may subrogate in the rights of the person compensated for the amount of the compensation paid, or, if later the person compensated obtains reparation from any other source, may reclaim totally or partially the amount of money awarded. In the event that state compensation is paid to the victim because the perpetrator is unwilling or unable although court-ordered to do so, the state shall have recourse against the perpetrator.

### 2.4. EU Victims' Rights Directive of 2012

According to the recent report of the European Commission on its implementation,<sup>46</sup> the Victims' Rights Directive is the major EU level instrument applicable to all victims of crime and the cornerstone of EU victims' rights policy. Its objective is to ensure that all victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. Victims shall be recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner by all actors coming into contact with them. The Guidance Document on the transposition of the Directive<sup>47</sup> explains that its core objective is to deal with victims' needs in an individual manner, based on an individual assessment and a targeted and participatory approach towards the provision of information, support, protection and procedural rights. Special attention is given to special support and

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<sup>45</sup> Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, CETS No. 210, <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>

<sup>46</sup> Report from the Commission to the European Parliament and the Council on the implementation of 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, COM/2020/188 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0188>

<sup>47</sup> DG Justice Guidance Document related to the transposition and the implementation of Directive 2012/29/EU, European Commission, DG Justice, December 2013, [https://ec.europa.eu/info/sites/info/files/13\\_12\\_19\\_3763804\\_guidance\\_victims\\_rights\\_directive\\_eu\\_en.pdf](https://ec.europa.eu/info/sites/info/files/13_12_19_3763804_guidance_victims_rights_directive_eu_en.pdf)

protection for victims of certain crimes, including victims of genderbased violence, predominantly women, due in particular to the high risk of secondary and repeat victimisation, of intimidation and of retaliation. The Directive also insists on a child sensitive approach, whereby the best interests of a child victim must be the primary consideration throughout their involvement in criminal proceedings.<sup>48</sup>

The main provision on compensation is Article 16, which requires that Member States must provide for an adhesion procedure<sup>49</sup> to enable victims to obtain a decision on compensation by the offender in the context of criminal proceedings:

Article 16. Right to decision on compensation from the offender in the course of criminal proceedings

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.
2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

As was explained above, the rationale for the adhesion procedure is closely related to the rationale for state compensation. Even in case a criminal offender is identified, caught, and prosecuted, civil procedure is often full of procedural hurdles, expensive, time consuming and burdensome to be an appropriate route to compensation for the victims of violent crime. The right to claim compensation in criminal proceedings is also a logical and effective cornerstone for the empowerment of the victim and for his position in those proceedings. It serves as an important vehicle to give the victim agency.

The Guidance Document on the transposition of the Directive notes that Article 16 only deals with compensation of the offender, and not from the State, and identifies a number of legal questions that inevitably arise in this context on the subsidiary role of the State:

“What happens if a convicted offender is not in a position to provide compensation and is lacking the means? How can the victim get a compensation decision enforced? Do Member States foresee a proactive role for the State in their systems? Can the State advance payment to the victims and then reclaim and recover the money from the offender? The practice in Member States varies significantly and options to ensure effective implementation are multiple, but should be evaluated from the beginning of the transposition process.”<sup>50</sup>

As will be explained in the chapters below, Greece currently does not have an adhesion procedure in place. This option no longer exists since the adoption of the new Greek Code of

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<sup>48</sup> DG Justice Guidance Document related to the transposition and the implementation of Directive 2012/29/EU, page 4.

<sup>49</sup> For an explanation of ‘adhesion procedure’ see footnote 19.

<sup>50</sup> DG Justice Guidance Document related to the transposition and the implementation of Directive 2012/29/EU, page 37.

Criminal Procedure in 2019.<sup>51</sup> Consequently, victims have to resort to civil proceedings. This situation raises the question of the meaning of the exception in the last sentence of Article 12(1), i.e. “except where national law provides for such a decision to be made in other legal proceedings”. Would the option to resort to civil proceedings, as is generally available to any citizen with a civil claim, be enough to allow this exception to apply?

As was mentioned above, in any national jurisdiction of a country governed by the rule of law, the victim of a crime will have a civil claim for compensation against the perpetrator. The possibility to resort to civil proceedings with a civil claim is an indispensable condition for the enjoyment of fundamental rights such as the right to property and the right to an effective remedy. Within the national jurisdictions of the Member States of the EU, which are governed by the rule of law and the protection of fundamental rights, the possibility for citizens with a civil claim, whether arisen from a crime or any other circumstance, to resort to civil proceedings is taken for granted. Against this background, an interpretation of ‘other legal proceedings’ in Article 12(1) in which the existence of the possibility to resort to civil proceedings would be considered sufficient for the exception to apply, would render Article 12(1) entirely meaningless, because it is obvious that such exception would always apply in all cases. This makes it rather unlikely that such an interpretation would be correct.

According to the Guidance Document on the transposition of the Directive, the wording of Article 12(1) allows a broader interpretation of ‘other legal proceedings’ as was the case in in the predecessor of the Directive, the Framework Decision of 2001,<sup>52</sup> the corresponding Article 9 of which had a slightly different wording (‘where, in certain cases, national law provides for compensation to be awarded in a another manner’). This wording allowed only for an *ad hoc* exception, according to the Guidance Document, not a general one. It continues:

Thus, if the victim is claiming compensation from the offender outside the criminal proceedings, for instance, through a separate civil claim, the exclusion in the Article applies.<sup>53</sup>

This clearly relates to the situation where the victim has already decided, for whatever reasons, to initiate civil proceedings before criminal proceedings begin. He or she is, of course, always free to make that choice, and it seems only logical that, once the victim has made that choice, the way to an adhesion procedure needs no longer to be open to him. This is something completely different from an interpretation of Article 12(1) in such a way that the mere *option* for the victim to resort to civil proceedings is already enough to make the exception apply.

However this may be, as duly emphasised in the very first part of the Guidance document, the authoritative interpretation of EU law, such as the Victims’ Rights Directive, is the exclusive

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<sup>51</sup> Laws 4619/2019 and 4620/2019, ratifying respectively the new Criminal Code and the Criminal Procedure Code, Government Gazette of the Hellenic Republic of 11 June 2019. The adoption of the new Criminal Procedure Code entails the abolishment of the concept of the civil plaintiff in criminal law cases (in Greek “πολιτικός ενάγων”) which has now been replaced by the concept of the person appearing before the criminal court for the support the indictment (Article 63 et seq of the Code of Criminal Procedure).

<sup>52</sup> Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, OJ 2001, L 82/1, ELI: [http://data.europa.eu/eli/dec\\_framw/2001/220/oj](http://data.europa.eu/eli/dec_framw/2001/220/oj) (no longer in force).

<sup>53</sup> DG Justice Guidance Document related to the transposition and the implementation of Directive 2012/29/EU, page 36.

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competence of the European Court of Justice. It is ultimately up to the ECJ to decide on the interpretation of the exception of ‘other legal proceedings’. Nevertheless, we allow ourselves the observation that Greece, by not having an adhesion procedure in place, probably does not comply with the Directive.

## 3. Method

The FAIRCOM reports have been prepared as follows. In addition to undertaking the analysis of the obligations of Member States as set out above, a desk research was conducted, describing the compensation schemes in the participating countries - Spain, the Netherlands, Italy, Greece, and Latvia. On the basis of the results thereof, workshops were organised in each country to determine the local strengths, weaknesses, opportunities, and threats (SWOT analysis) of each country and to discuss good practices from other countries based on the report. From early on, several drafts of the reports were discussed among the FAIRCOM partners, who at all stages have provided additional information about their national jurisdictions.

### 3.1. Desk research

The desk research consisted of describing and analysing the offender and state compensation schemes of the partner countries. The description of compensation schemes on the European justice portal website was used as a basis.<sup>54</sup> This description is made up of each Member State's answers to the same set of questions about offender compensation and state compensation. The list of questions is displayed in Appendix 1. The EU justice portal was accessed in October 2019. At that time, the website indicated that information had been updated in March 2019.

The answers of the five FAIRCOM countries to the questions is summarized in two tables: one on offender compensation (Appendix 2) and one on state compensation (Appendix 3). Similarities and differences were summarised, analysed and described (see section 4.1 of this report). Each FAIRCOM partner contacted compensation experts in their country to validate and complete the data. Furthermore, FAIRCOM partners provided empirical data and explanations regarding their own jurisdictions if available. The results were published in FAIRCOM Report Part I. Some legislative reforms were implemented since Report part I, therefore the information is updated in this FAIRCOM Report Part II.

### 3.2. Workshops

Based on Report Part I, the FAIRCOM partners each organised one or more workshops with legal professionals in their country. The aim of the workshop was to discuss FAIRCOM Report Part I, and to derive national strengths, weaknesses, opportunities, and threats (SWOT analysis). Additional feedback from the FAIRCOM partners on the description of the compensation schemes (desk research) from Report Part I has been adapted in this Report Part II.

In Spain, The Netherlands, Italy and Latvia face-to-face workshops were organised which were held between end of February until early March 2020. In Greece a face-to-face workshop was scheduled for early March but had to be cancelled due to the COVID-19 outbreak. Input of individual participants was collected through email end of March 2020. In June 2020 Greece organised an online workshop with 48 lawyers and trainee lawyers. The workshop that

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<sup>54</sup> [https://e-justice.europa.eu/content\\_compensation-67-en.do](https://e-justice.europa.eu/content_compensation-67-en.do) Website accessed October 2019

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was scheduled in Barcelona also had to be cancelled due to COVID-19. Instead, a short questionnaire was sent to several professionals at the end of April 2020.

The number of participants in the workshops were between 16 (the Netherlands) and 48 (Greece). The participants were police officers, lawyers, judges, public prosecutors, representatives from the Ministry of Justice, from rape centres and from victim support, court clerks, and members of Higher Council of the Judiciary, and/or representatives from the state compensation funds.

The workshops took on average 2 to 3 hours. The meetings were audio-recorded. The minutes and SWOT analysis were provided for this report in English by each FAIRCOM partner. A comprehensive analysis is provided in section 4.2 of this Report Part II.

Based on the description of the compensation schemes, the empirical data available, and the SWOT analysis per country, good practices and recommendations have been drawn up. Additionally, all partners prepared a visualisation of the journey of a victim of sexual crime who is seeking compensation. Recommendations are based on the principles of fair and appropriate compensation, as the outcome of an efficient and effective procedure, from the perspective of the victim.

## 4. Results

This result section reports of 1) the desk research describing the two routes to compensation – offender and state compensation – in the five countries of the current FAIRCOM partners, and 2) the workshops, in which each country described the strengths, weaknesses, opportunities and threats, resulting in a SWOT analysis per country.

### 4.1. Desk research

Below the differences and similarities are summarized based on the information that the countries of the FAIRCOM partners have provided on the EU portal regarding offender and state compensation, complemented with information provided by the FAIRCOM partners, and in some cases also by national experts who were consulted.

#### 4.1.1. Offender compensation

##### How and at which time during the trial can one file a compensation claim

In all countries except Greece, an adhesion procedure is available to victims of crime, allowing them to file a claim for compensation against the offender as part of the criminal trial. In **Greece** this option no longer exists since the adoption of the new Code of Criminal Procedure.<sup>55</sup> Consequently, victims have to resort to civil proceedings. In the other four countries one needs to file a compensation claim before the beginning of the oral proceedings of the criminal trial. Only in **Italy**, the declaration can also be submitted at the hearing. The way in which one needs to file the claim varies between a written form (the **Netherlands**), both oral and written (**Spain** and **Latvia**), and written and only by a lawyer (**Italy**).

*In **Spain**, the law on the standing of victims of crime in practice provides that public prosecutors are obliged to request compensation for the victim from the defendant regardless of the victim's role in proceedings, unless the victim waives this right (La Strada International, 2018).*

##### What compensation can be claimed for

In the adhesion procedure in the **Netherlands**, **Italy** and **Spain** the civil law principle of full compensation applies, and as a consequence one can claim compensation for economic loss such as damaged goods, medical costs, travel costs, loss of income, legal costs, and non-pecuniary harm such as pain and suffering. In **Greece**, the principle of full compensation applies too, because compensation must be sought via civil action. In **Latvia**, victims usually ask for compensation of medical treatment, legal costs, material damage and moral injury; compensation for loss of income is not common. In **Italy** ‘technical advice’ can also be compensated. Technical advice is necessary, especially when claiming physical damage, to ascertain the presence of a causal link and to quantify the amount. In **Spain**, legal costs can be included but is a separate issue of the court decision, not a part of the compensation.

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<sup>55</sup> See footnote 51.

### Compensation amounts awarded

*Research in the **Netherlands** showed that until 2012, the maximum amount of compensation that was awarded in criminal trials on sexual offenses was € 949.929 euro (Lunnemann, 2013). The highest awards are mostly made in cases of human trafficking and forced prostitution, because in these cases, in order to simplify the court's decision-making, the loss of income is simply set at the minimum wage of € 500 per day. Awarded compensation for pain and suffering ranged between € 300 and € 3.000. Sexual crime to children: € 10.000, forced prostitution € 17.500, violent rape with permanent physical injury € 30.000 (Lunnemann, 2013).*

*Research in **Spain** showed that the median amount that was awarded in sexual violence cases (n=2763) between 2012 and 2015 was € 13.700 (Soletto, 2019). However, the median amount actually paid to victims was only 166 euro (1,2% of € 13.700). One third of the cases did not receive any compensation, 33% did get their compensation awarded, and 33% got part of it paid (Soletto and Grane, 2018). A study of sexual violence against minors showed that the mean amount that was awarded in 2345 cases involving minors between 2011 and 2014 was € 13.532 (Tamarit, Guardiola, Hernandez Hialgo, Padro-Solanet, 2014).*

*In **Greece** only 7 civil law cases were found between 2011 and 2016 of victims of claiming compensation via civil law procedure. The amount awarded ranged between € 3.000 in case of sexual harassment at the workplace (adult victim) and € 250.000 euro in case of sexual or indecent acts involving a minor under 10 years of age, by a person who is accountable for minor's supervision or caring (father of minor). Court costs were also awarded, separat from the compensation (Non-published data; personal communication with Greek partner).*

### Form needed?

The **Netherlands** and **Spain** have a specific compensation/damages form that victims can use to substantiate their damages. **Italy**, **Greece** and **Latvia** do not have a form. **Italy** indicates that the application should include specific kind of information (administrative details mainly). In **Greece**, an action against the offender before a Civil Court is needed. This action must include information about sexual crime, criminal procedure and criminal court judgement, evidence and elements that establish victim's material loss and pain and suffering.

### Standard form increases likelihood of award

*Research in the **Netherlands** on awarded financial compensation in criminal court showed that using a standard form increases the likelihood of compensation being awarded (Kool et al., 2016)*

### Evidence needed

In all five countries, one needs to specify economic losses with receipts, and loss of income by providing evidence of income. In **Italy** also medical certificates and witnesses are to be provided. In **Latvia**, economic damages should be supported by evidence, but for pain and suffering, only the amount needs to be indicated.

### Court fee

Criminal courts in the **Netherlands, Spain, Italy** and **Latvia** do not charge a fee. In **Greece** a civil action is needed to claim compensation. The civil court fee is proportionate to the amount of compensation claim. It is 0.8% of the claimed amount, plus surcharges of approximately 32% as a court fee (for example, if the claimed amount is € 1000, the court fee is € 8 and the surcharges are € 2.56 (32% of € 8). In addition, there are lawyer's fees to be paid.

### Legal aid

In all five countries, legal aid is available for victims with low incomes. Additionally, in all five countries, specific arrangements are in place for victims of sexual crimes, regardless of income. In the **Netherlands**, victims of severe violent crimes and of sexual crimes have access to state-funded victim lawyers up to 11 hours of work. In **Spain**, legal aid is usually only available for low incomes, however, an exception is made for the victims of gender violence<sup>56</sup> and trafficking, allowing them to access state funded victim lawyers regardless of income. The legal aid includes lawyer assistance for the duration of the case until two years after the resolution. In **Italy**, state funded legal aid is in place for victims of sexual violence, abuse and stalking, regardless of income. The adhesion procedure can only be entered into with a lawyer, legal representation is obligatory. **Greece** has a list of crimes for which state funded legal aid is available, that is, victims of trafficking of slaves, human trafficking, sex tourism, abduction of a minor, corruption of a minor, child pornography, indecent acts with minor for payment, minor victims of rape, sexual abuse, indecent acts, and incest. Domestic violence cases, including sexual crimes, also receive state funded legal aid. **Latvia** provides free legal aid and state programs that offer social rehabilitation including legal assistance for victims: 1) adult victims of violence can receive up to 20 consultations – legal, psychological based on individual need. 2) for victims of trafficking – where social rehabilitation program includes also legal assistance. The victim can receive support for 6 months, including legal support – consultations, preparation of documents, and when needed support in litigation. If a criminal process is initiated then the victim can have legal support up to 3 years. The victim chooses a service provider and based on this the chosen NGO can request money for legal consultations from the state. It does provide free legal aid to minors and poor or disadvantaged adults. In all other countries legal aid is available for low incomes.

### Lawyer involvement and compensation amount

*In the **Netherlands**, research showed that lawyer involvement did not increase the chances of compensation being awarded (Kool et al., 2016). It has not been investigated whether the amounts are higher if a lawyer is involved, nor what happens in case of more complex claims such as future loss of income. In understanding this outcome, one should keep in mind that in the **Netherlands** assistance by trained volunteers of victim support is easily available and much used. Empirical research in **Spain** shows that lawyer involvement increases the awarded amount of the compensation, but does not increase the received compensation amount (Soletto & Grane, 2018). Other research in the **Netherlands** has suggested that lawyers are important to prevent secondary victimisation of victims of sexual crimes, especially when they are involved early in the process, during the interrogation (Elbers, Meijer, Becx, Schijns, Akkermans).*

<sup>56</sup> Gender-based violence is when a victim is a current or former spouse or child of the offender, or a minor or limited ability person living together with the offender.

*In **Spain**, victims can be a party to the criminal trial (private prosecution) when they engage a lawyer. As a party they have full powers to claim for compensation, penalties to be imposed to the defendant and also to appeal the judgement. A recent study on court cases in 2019 showed that victims who acted as a party received significantly more compensation than victims who did not participate in the procedure as a party (Tamarit & Arantegui, pending publication)*

#### Grounds for dismissal or refusal of the claim

In all five countries, the main reason for dismissal of the claim is acquittal of the case/defendant. In the **Netherlands**, the judge can declare (a part of) the claim inadmissible if the claim forms a disproportionate burden to the trial, i.e. if it is too complicated to be decided upon in the criminal procedure. In **Spain**, a claim is dismissed if the perpetration of the crime is not duly proven, or if it is concluded that a crime was committed but there are not sufficient reasons to accuse particular person(s) as perpetrators. In **Italy** a claim is also refused if parties already agreed on a penalty, or if the trial includes a minor. In **Greece** a claim is refused according to the provisions of civil procedure, for instance when the claim has not been lawfully filed or is not founded on law.

#### Appeal against the court decision

In the **Spain, Italy and Greece**, one can appeal in case of (partly) dismissal of the claim. In the **Netherlands**, the victim does not have an independent right of appeal. His right to appeal depends on whether one of the parties to the main proceedings, that is to say, the prosecution or the defendant, have lodged an appeal. If that is the case, the victim cannot claim a higher amount than in first instance, a denial of his claim can be appealed, but the decision that the claim is to be considered inadmissible (for being too complicated) cannot be appealed, and the victim is only left the option to resort to the civil court. In **Spain**, a requirement for appeal is that the victim has appeared in person at the proceedings. The victim can appeal as a party to the trial (private prosecution). This can be done, for example, if the prosecution has decided not to start the trial. In that case, the victim's lawyer can start a trial, if the judge agrees that there is enough material to proceed. The final decision of the criminal court may be appealed against within a short timeframe. In **Italy**, one can appeal in respect to the claim for damages. However, an appeal on the item of damages does not impact on the findings concerning the criminal liability of the defendant. This can lead to a conflict between a judgment at first instance that acquits the defendant and the judgment on appeal that orders the reparation of injury. In **Greece**, one can appeal according to the provisions of civil procedure, i.e. in case of (partly) dismissal of the claim.

#### Enforcement of the judgement against the offender

In all countries except the **Netherlands**, the victim has to see for himself how to actually collect from the offender the compensation that was awarded by the court. In all countries, the victim can try to enforce the judgement in accordance with the ordinary rules of civil procedure, e.g. by having a bailiff confiscate the offender's assets. However, as was mentioned above, offenders often do not have sufficient financial means for this option to be realistic. In **Spain**, if the offender has been declared partially insolvent, the state will provide compensation, for which the victim has to apply for state compensation. This involves the limitations, however, that state compensation is capped to € 2.689 and only compensates

therapeutic treatment. In theory, the state may pursue the offender if he does not pay. However, in practice, this does not happen. In **Italy**, **Greece** and **Latvia**, state compensation is also in place, which can (partly) replace the compensation awarded. In **Latvia**, victims with personal injury are exempted from the enforcement fees of court registered bailiffs.

The **Netherlands** has a special enforcement procedure in place for all damages awarded by the criminal courts, to which an advance payment scheme is added. Both are carried out by the Central Judicial Collection Agency (CJIB; *Centraal Justitiele Incasso Bureau*), the administrative body that collects all court-ordered fines, state fines and penalties (e.g. traffic fines). When a criminal court orders an offender to pay damages to a victim, this is considered to be a specific kind of criminal fine. Consequently, the CJIB will take care of the collection of the money from the offender, not to the benefit of the state as normally is the case with criminal fines, but to the benefit of the victim whose loss the court has ordered to be compensated. Non-payment can result in (additional) detention.<sup>57</sup> In addition to this, when the sum is not collected from the offender in full within 8 months after the verdict became irrevocable, the CJIB will make an advance payment of the awarded sum to the victims, and will try to take recourse on the offender. In the case of violent and sexual crimes, there is no maximum to the amount of the advance payment and the full award will be paid. For other crimes, the maximum advance payment is € 5.000. The CJIB checks whether the victim already received state compensation. If that is the case, the money collected from the offender will be used to indemnify the state compensation fund. Insofar as the sum collected exceeds the compensation paid by the state compensation fund, the surplus goes to the victim.

Another instrument that allows enforcement of the judgement in the **Netherlands** is that, for certain crimes that meet specific criteria of severity, the police can place a preservation order on bank accounts and other assets of the suspect during the police investigation in order to guarantee payment of any compensation that may be awarded by the court later on.

Dutch Central Judicial Collection Agency recovers 70% from the offender

*Research in the Netherlands showed that the success of the Central Judicial Collection Agency in recovering the money from the offender is strongly dependant on the height of the amount. In case of sexual crimes, about 70% is recovered from the offender (Kuipers & Van Rij, 2018). Almost all (95%) is recovered in the lowest category of damages (€ 0 – 1.100); in the highest category (€ 31.000 – € 850.000) 10% is recovered within 6 years (Kuipers & Van Rij, 2018). Annually, the Central Judicial Collection Agency advances on average a total of € 8.9 million to all victims of crime (not specifically sexual crimes). Taken into account that 35% in total is not recovered, the annual costs for the taxpayer are about € 3.1 million (Kuipers & Van Rij, 2018) which is about € 0,17 per inhabitant (3.1 million / 17.9 million inhabitants in the Netherlands)*

<sup>57</sup> It is unknown how often this happens in practice

### Enforcement Central Judicial Collection Agency - Costs per country

*We estimated how much it would cost per country to have a government agency, such as the CJIB in the Netherlands, advancing the compensation awarded to the victims of all crimes and recovering the money from the offender in a similar way as is done in the Netherlands. This calculation is based on Gross Domestic Product (GDP), at purchasing power parity (PPP) per capita, i.e., the purchasing power parity (PPP) value of all final goods and services produced within a country in a given year, divided by the average (or mid-year) population for the same year, per country.<sup>58</sup> Ideally, we would have also included in our calculations the current number of sentences awarding compensation per country, but we do not have the necessary statistics to do that.*

*Using GDP PPP is useful when comparing differences in living standards between nations as it takes into account the relative cost of living and the inflation rates of the countries. We have used the GDP PPP and the CJIB costs from the Netherlands as a starting point to calculate the potential costs of a CJIB advance payment scheme if it would be implemented in the other countries. According to the International Monetary Fund, the GDP (PPP) of the Netherlands is 56.838. The annual costs of the CJIB are 3.1 million euro after 6 years (for all crimes). To calculate the potential costs per country of a facility comparable to the CJIB in the other countries, we took the GDP (PPP) for each country and calculated the costs by calculating 3.1 (million) times (x) GDP (PPP) of the country, divided by the GDP (PPP) of the Netherlands. The results are presented in Table 1.*

*Table 1. Potential annual costs per country of a facility comparable to the Dutch CJIB, taking into account the relative cost of living and the inflation rates of each country (in the absence of applicable national data, based on the number of judgments currently awarded in the Netherlands)*

	GDP (PPP) per capita	Annual costs (after 6 years) (million euro)
Netherlands	56,383	3,1
Spain	40,139	2,2
Italy	39,637	2,2
Greece	29,123	1,6
Latvia	29,901	1,6

#### 4.1.2. State compensation

##### Type of crime and injury

State compensation systems are in place for victims of intentional criminal offenses. What constitutes a compensable crime and other eligibility requirements vary widely. For instance, the extent to which ‘violence’ is a constituent part of sexual offences varies from country to country. In the **Netherlands** state compensation is available in case of all violent or sexual

<sup>58</sup> [https://en.wikipedia.org/wiki/List\\_of\\_countries\\_by\\_GDP\\_\(PPP\)\\_per\\_capita](https://en.wikipedia.org/wiki/List_of_countries_by_GDP_(PPP)_per_capita)

crimes. For sexual crimes any kind of coercion is enough. In **Spain**, the Spanish Penal Code includes two main legal typologies: sexual aggression (which entails violence) and sexual abuse. It has been made explicit that financial aid is awarded to victims of sexual offences also when these crimes are committed ‘without violence’. Injuries giving rise to entitlement to financial aid are those which prejudice physical integrity or physical or mental health and which cause the victim temporary incapacity lasting more than six months, or at least 33 % permanent disability. The fund in **Italy** compensates all sexual crimes. Since February 2020, victims of sexual crimes receive € 25.000 (except in less serious cases).<sup>59</sup> Medical expenses up to € 10.000 can be added. In **Greece**, according to Law 4689/2020 on state compensation – which was implemented in May 2020 - there are two categories of sexual crimes that are eligible: a) in case the sexual crime was committed with intent, b) in case the victim is a minor and the sexual crime is human trafficking, rape or sexual abuse of a minor, sexual act with a minor or in front of a minor, soliciting children for sexual purposes, child pornography, pornographic representations of minors, prostitution or trafficking for sexual exploitation of a minor, and indecent acts involving a minor for payment. As a consequence, sexual crimes against adults qualify if they were committed with intent. In **Latvia**, a victim is entitled to state compensation if the victim has been subjected to rape, indecent or sexual assault, or a victim of human trafficking. Chapter 16 of the Latvian Criminal Law<sup>60</sup> involves a list of criminal offences against morality and sexual inviolability.

#### Eligible relatives of survivors

In the **Netherlands**, relatives of direct victims can receive compensation if they suffer psychological damage due to witnessing (the immediate consequences of) a violent crime. In practice, this mostly applies to relatives of deceased victims. Nevertheless, it could be that relatives are being directly confronted with a sexual crime. The relative has to prove psychological injury by an independent medical assessment. In **Spain, Italy, Greece and Latvia**, relatives of survivors are not eligible for compensation, except in case the primary victim died.

#### Availability to non-EU nationals

In the **Netherlands, Greece and Latvia**, no distinction is made between victims from the EU or non-EU member states. In **Spain**, a non-EU national will receive compensation if the victim’s country of residence grants similar aid to Spaniards. In **Italy**, a non-EU national will receive compensation if the victim resides in an EU member state. In all five countries, victims are only able to claim compensation if the crime was committed in that country. If the crime was committed in another country, state compensation institutions in **Spain, Greece, the Netherlands and Latvia** will assist in the application process in the other country. **Italy** has not specified whether they provide such support.

#### Police report

In the **Netherlands and Italy**, a police report is recommended but *not* required when applying for state compensation, whereas in **Spain, Latvia and Greece** a police report is required. In the **Netherlands**, a police report is important but not always necessary, especially in the case of minor age victims. Other objective information can also be considered sufficient, such as a

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<sup>59</sup> The assessment of the seriousness of the case involves variables such as the methods of execution by the offender and the means used, the degree of coercion exercised over the victim, his/her physical and mental conditions and his/her psychological characteristics

<sup>60</sup> <https://likumi.lv/ta/en/en/id/88966>

police ‘declaration’ (a ‘declaration’ is when a victim wants to inform the police of the crime, but does not want an official report being drawn up nor an investigation to be started) or a report of the Child Protection Service, or a report from a registered health care professional. The essence of this is that some sort of objective information has to be provided to substantiate the victim’s claim that a crime was committed. The victim’s statements alone are not sufficient. In **Greece** it is noteworthy that there is a time limit for reporting to the police: the crime should be reported to the police or the public prosecutor within 3 months<sup>61</sup> after the crime. The idea behind this time limit is that a report must be made quickly in order to find the offender. Only when serious reasons have prevented the victim from reporting, the three-months limit starts to run once those reasons cease to apply.

#### Await outcome police investigation or court

In the **Netherlands** and **Latvia**, victims can apply for state compensation without having to await the outcome of the criminal case. Eligibility is established independent from criminal prosecution. In **Spain, Italy** and **Greece** victims have to await a final verdict of the court. In **Spain**, victims are only eligible to claim state compensation if there is a court decision ending the criminal proceedings against which no further remedy is available. In **Italy**, in case the offender is unknown, the criminal case needs to be archived as ‘case with unknown offender’. In **Greece**, a victim has to await a final court judgement with the criminal conviction of offender, or, in case the offender is not able to be prosecuted or convicted, the victim has to await a final exculpatory court judgement.

#### Seek compensation from offender first?

In the **Netherlands** and **Latvia**, it is not needed to seek compensation from the offender first. The procedure to claim state compensation exists independently. In **Spain** and **Italy**, it is required to seek compensation from the offender first, through participation in the criminal trial. State compensation can be claimed only when recovering damages from the offender is impossible, because the offender is unknown, acquitted or insolvent. In **Greece**, if the offender is unknown, the victim can apply for state compensation after the case is archived as ‘case with unknown offender’. If the offender is known but lacks the necessary resources or cannot be prosecuted or convicted, it is required that a) there is a final judgement with a criminal conviction (if the offender lacks resources) or a final exculpatory judgement (if the offender cannot be prosecuted or convicted), b) the victim has initiated a civil procedure that ended in a final court judgement awarding compensation, and c) the offender lacks the necessary resources to pay the awarded compensation.

#### Offender not identified or not convicted

In the **Netherlands, Italy, Greece** and **Latvia** it is possible to claim state compensation if the offender is not identified or cannot be prosecuted. In the **Netherlands** and **Latvia** this follows from the independent entitlement to state compensation. In **Italy** and **Greece**, the victim will need to show an official statement by the court that the crime has been committed by an unknown person. In **Greece**, victims are also eligible to state compensation if the offender does not have the resources to compensate. In **Latvia**, the victim also has the right to the State compensation when the perpetrator cannot be held criminally liable under criminal law, for example, in case the offender has not yet reached the age at which criminal liability sets in. In

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<sup>61</sup> Since the new Law 4689/2020 about state compensation, this time limit has changed from 5 days until three months after the crime

**Spain**, it is possible to claim state compensation in case the offender is unknown and there is a final decision from the court dismissing the case.

#### Time limit for application

The timeframe within which victims must submit their application ranges from 60 days after the criminal trial (**Italy**) to 10 years after the offense (the **Netherlands**). **Spain** and **Greece** use a time limit of 1 year after the court decision. Since 2019, **Latvia** applies a 3-year timeframe.<sup>62</sup>

#### Average time to application

*In the **Netherlands**, research showed that the average time period between sexual crime and application for state compensation appeared to be 6 years (Mulder, 2013). For that reason, the Netherlands has extended the original 3-year time limit to 10 years.*

#### Losses/expenses

In all five countries, the funds indicate that the compensation they provide is to compensate for both pecuniary and non-pecuniary loss. The **Netherlands** and **Spain** use multiple fixed amount categories. **Latvia** has two fixed amount categories. **Italy** awards one fixed amount, which can be lowered in less serious cases. **Greece** does not have fixed amounts: calculation of the amount is in accordance with Greek Law 4689/2020 and 3811/2009, should be fair and appropriate, including medical costs, psychological support, loss of earnings (over a reasonable period of time), change of environment and address, and funeral costs. Consequently, there is also no fixed maximum

The **Netherlands** uses six categories between 1.000 and 35.000 euro. 1) € 1.000, 2) € 2.500, 3) € 5.000, 4) € 10.000, 5) € 20.000, 6) € 35.000. These are all-in compensation categories, meaning that the amount is to cover both financial and non-financial losses which are not further specified. The categories relate to crime severity. Variation between categories depends on whether the crime involved penetration, the period of the abuse, what extent of violence, and the age of the victim. For example, the amount of compensation in case of rape is € 5.000. In **Spain**, the compensation in case of temporary or permanent incapacity is a number of months times the minimum daily amount (the so called 'IPREM'). For 2017, 2018, 2019 and 2020, the IPREM was established at € 537,84 per month.<sup>63</sup> In case of sexual crimes, compensation is only paid for therapeutic treatment, covering harm to the mental health of victims. Compensation for therapeutic costs consists of monthly instalments of the IPREM, until the maximum (5\*IPREM) is reached. The maximum is € 2.689. In **Italy**, the compensation in case of sexual assault is a fixed amount of € 25.000 plus € 10.000 medical expenses, except in less serious cases.<sup>64</sup> In **Latvia**, the amount of compensation in case of indecent or sexual assault is a fixed amount of € 1.075. In case of rape or sexual violence the compensation is a fixed amount of € 1.935.<sup>65</sup> In case of death, the amount is 5 times the minimum wage, which amounts to € 2.150.

<sup>62</sup> 3 years since the law on state compensation to victims was amended 1st January 2019

<sup>63</sup> [www.irpf.eu/iprem.html](http://www.irpf.eu/iprem.html)

<sup>64</sup> See footnote 59.

<sup>65</sup> [www.tm.gov.lv/en/news/the-state-compensation-to-victims-is-to-be-increased](http://www.tm.gov.lv/en/news/the-state-compensation-to-victims-is-to-be-increased)

### State compensation amounts

*State compensation amounts vary widely. In the **Netherlands**, the average state compensation amount paid to victims of sexual crimes in the years 2016, 2017 and 2018 was about € 5.283 euro (unpublished empirical research data). For **Spain**, the average compensation amount awarded in state compensation for victims of sexual crimes was € 688 (Soletto, 2019b). Email correspondence between the Spanish FAIRCOM partners and the Spanish Ministry of Economy in 2019 revealed that between 1998 and 2018, the average amount paid by the state was € 1.375.*

### Single/monthly payment

Payment mostly occurs in a single payment (**Netherlands, Italy, Greece and Latvia**) except for **Spain**, where a victim can apply several times, up to the maximum of € 2.689 (see section above on losses/expenses). In practice, it often turns out to be a one-off payment. In **Italy**, in the event that the state compensation fund has insufficient financial means available in the applicable year, those entitled to compensation can access the fund for a part in that year, and in subsequent years for the remainder, which is distributed without any additional charges, interest or revaluations.

### Victims' own responsibility

In four out of five countries, reproachable behaviour of the victim that is supposed to have contributed to the crime taking place, if such behaviour has occurred, is taken into account. The claim will be rejected or reduced. In addition to being considered partly responsible for the occurrence of the crime, two countries also take other factors into account. In **Italy**, it is taken into account whether the victim has been convicted of a violent crime or is subject to criminal proceedings regarding a violent crime. In **Greece**, the claim is only rejected if the victim failed to cooperate with the authorities (e.g. refuse to testify, to hide material evidence or to neglect to bring material evidence).

### Victims' financial situation

In the **Netherlands, Italy, Greece and Latvia**, the victims' financial situation is not relevant to the amount awarded. In **Spain**, in case of violent crimes in general, the victim's income is taken into account, but in case of sexual violence, the victim's income is *not* taken into account.

### Advance payment

An advance payment is possible in the **Netherlands and Spain**, but not in **Italy, Greece and Latvia**. In the **Netherlands**, provisional payment is possible in case the victim has insufficient resources to pay for treatment for the injury. Merely a difficult financial situation is not sufficient. In **Spain**, advance payment (called interim aid, meaning aid before the final court decision is received) is possible in case of a precarious financial situation, that is, only if the victim's income is less than the minimum wage. € 900 for treatment costs is payable in advance.

### Evidence

In the **Netherlands and Latvia**, victims only need to include a court decision or police report if one is available. In the **Netherlands** the state compensation fund does not necessarily require a police report, but some other objective evidence that the offence occurred is

required.<sup>66</sup> In **Latvia**, in case the criminal proceedings are still ongoing, written proof issued by a person directing the proceedings (a police officer or a prosecutor or a judge) is needed. If a court decision or police report is not available, victims should provide other objective evidence of the plausibility that the offence occurred. In **Spain**, in order to claim therapeutic costs, mental health damages must be proven by a report from a judicial medical examiner. **Greece** and **Italy**, the court's decision must be enclosed with the application. Additionally, in order to claim therapeutic costs, mental health damages must be proven by a report from a judicial medical examiner. In **Greece** and **Italy**, a court decision is required, but this could also involve the statement that the offence was committed by an unknown person. Proof of identity of the applicant must be provided in all countries.

#### Number of applications

*In the Netherlands, the number of applications for state compensation in 2018 for sexual crimes was n=1210 (Annual Report Schadefonds Geweldsmisdrijven, 2018). In Spain, the total number of state compensation requests for sexual crimes in 2018 was n=85 (Soletto, 2019b). Related to the size of the population of both countries, the difference is about a factor 38 (47,7 m/17,8 m x 1210/85 = 38,15)*

#### Award/rejection rate

*In the Netherlands, the percentage of sexual crime applicants who received compensation was 72%; which implies that 28% of applications was rejected (own empirical research – yet unpublished). In Spain, 11 of the 85 victims (13%) received compensation, the others were rejected. The main reasons for rejection was that no costs were actually incurred for therapy (Soletto, 2019b). Email correspondence between the Spanish FAIRCOM partners and the Spanish Ministry of Economy in 2019 revealed that between 1998 and 2018, in total 1.356 victims have applied for state compensation, of which 272 (20%) was granted. Unpublished data from Greece has shown that in 2019, 10 victims have applied for state compensation and all applications have been denied.*

#### Administrative charges

The funds in the **Netherlands, Spain, Italy** and **Latvia** do not charge for applying for state compensation. **Greece** charges an administration fee of € 50.

#### Institution

The five countries of the current FAIRCOM partners all have a state compensation fund in place. In the **Netherlands**, the fund is called the Dutch Violent Offences Compensation Fund. In **Spain** compensation is provided by the Directorate-General for Personnel and State Pension Costs. In **Italy** the fund is the Revolving Fund for the Support of Victims of Mafia crime, Extortion, Usury and Intentional Violent Crimes. In **Greece**, the fund is called The Compensation Authority. **Latvia** has the Legal Aid Administration. The state compensation fund in these countries fall under different ministries. The state compensation funds in the **Netherlands, Greece** and **Latvia** fall under the Ministry of Justice. The state compensation

<sup>66</sup> In the Netherlands, in practice, victims with an ongoing or finished criminal trial had significantly higher chances to get their claim approved (unpublished research). A police report did not significantly increase the chances of the claim being awarded. Other objective evidence could be, for example in case of sexual violence against a minor victim, medical information can suffice to support the plausibility of the case. However, this does not apply to adults.

fund in **Spain** under the Ministry of Finance, and the **Italian** state compensation fund under the Ministry of the Interior.

Ministry of Justice / Finance / Interior

*It could make a difference which ministry is involved with the compensation. Being part of the Ministry of Justice, instead of for example the Ministry of Finance, would express that compensation is about justice, rather than about money.*

Do victims need to present themselves in person?

In **Netherlands, Spain, Italy** and **Latvia**, applications can be made in writing and the victim does not need to present himself in person. In **Greece**, there is an application form and this application form must be lodged, along with all the supporting documents, to the Hellenic Compensation Authority, in person by the victim or by the victim's assignee.

Time until decision

The maximum duration until decision between the five countries ranges between 1 month in **Latvia** to 6 months in the **Netherlands, Greece** and **Spain**. In **Italy** no time frame has been specified other than that the decision has to be reached 'without delay'.

Timeliness and satisfaction

*In the Netherlands, 93% of applications reach a decision within the maximum timeframe of six months (Annual report Schadefonds Geweldsmisdrijven, 2018). Victims' satisfaction with the compensation was found to be related more to the timeliness of the decision, and the information provided, than to the actual amount they received (Kunst, Koster, & Van Heugten, 2017; Mulder, 2013).*

Can victims challenge the decision?

In all five countries victims can challenge the decision. In **Italy** and **Greece**, appeal is possible in accordance with the standard rules of administrative law. The time limit for challenging the decision ranges between one month (**Spain, Latvia**), 6 weeks (the **Netherlands**) to four months (**Greece**) after the decision.

Legal aid or victim support available?

In the **Netherlands**, no state funding is available for a lawyer assisting in the application, but trained volunteers or professionals of Victim Support the Netherlands, a state funded NGO, can assist.<sup>67</sup> In **Spain**, victims can request free legal aid if they have low income. Victims of gender-based violence, meaning victims battered or raped by their partner or ex partners, are entitled to receive free legal advice immediately before filing the complaint, and to free defense and representation by a lawyer and representative in all proceedings and administrative procedures resulting directly or indirectly from the violence suffered.

<sup>67</sup> Victim Support the Netherlands is an NGO organization, state-funded, run by both paid employees and volunteers. In case of severe crimes, specialized case managers (paid employees) are put on a case. National coverage: 26 locations spread across the country. Their services include practical and emotional support (N=43.622), accompany at criminal trial (N=5.801), support in substantiating the damages (N=18.720), to inform and to advise (N=144.532), support in writing an victim impact statement (N=4.276), and referral to medical support (N=959).

Applicants can go to the relevant Crime Victim Support Offices. In **Italy**, there is no state funded legal aid available to assist in the application for state compensation. However, victim support organizations do exist.<sup>68</sup> In **Greece**, since the application form for state compensation can be lodged in person by the victim or the victim's assignee, there is no state funding for a lawyer to assist in this application. Victims can apply for legal aid for a state-funded lawyer and for legal costs: a) for a procedure before an Administrative Court, if the victim seeks to lodge an appeal against the decision of the Hellenic Compensation Authority, b) for procedure before a criminal court and before a civil court, legal aid is provided to victims who are eligible for state compensation. In **Latvia** there is no state funding available for a lawyer, but the Legal Aid Administration provides the necessary assistance in the process of applying for state compensation.

## 4.2. Workshops

In the workshops, the strengths, weaknesses, opportunities and threats (SWOT analysis) were determined for each of the five countries of the current FAIRCOM partners. In this section, these SWOT analyses are presented together with illustrations of the victim's journey in applying for offender and state compensation.

### 4.2.1. Greece

In Greece, the workshop was planned for the half of March but could not proceed because of the global Covid-19 crisis which unfolded from March 2020 onwards. Instead, 10 victim lawyers were consulted at the end of March 2020, mainly by email, some by phone. In June 2020, an online workshop was organised at which 48 lawyers and trainee lawyers were present. It was considered a strength that a state compensation claim can be made in case that the criminal court's decision is exculpatory (meaning that the suspect is found not guilty) or in case that the offender cannot be found or prosecuted.

An opportunity was that implementation of a European compensation scheme at a national level could address the problem of underreporting. Compensation schemes should be encompassed and applied in all EU Member States. It was also considered important to focus not only on the theoretical part of compensation scheme implementation, but to its applicability in the judicial process. This discourse was considered an important opportunity for legal professionals to become more familiar with the compensation process and its efficacy at courts. It was also recommended that special treatment, information systems and psychological support for child victims of child sexual abuse should be adhered to, and it was noted that the introduction of a forensic interview could contribute to the evidence. It is important that all parties concerned are aware of the compensation schemes and their efficacy for the well-being of victims.

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<sup>68</sup> Victim support organisations in Italy are private and state-founded organisations. There is national coverage: 18 organisations exist across the country. Bigger regions offer a major number of services. Run mainly by volunteers, but in case of severe crimes, specialized case managers (employees) are put on a case. The support all sorts of victims (victims of crime, sexual crimes, property crimes, traffic accidents, organized crime).

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A weakness is that both criminal and civil procedures take too long and victims may become discouraged during the process. Another weakness is the administration fee for state compensation, which is € 50 according to present Greek law (which previously was € 100). Finally, the Hellenic Compensation Authority shared data showing that only a small amount of applications for state compensation have been made. None of them were accepted by the Compensation Authority because applicants did not submit a judgment of a Criminal Court together with their application.

A threat is that victims of sexual violence feel constrained in reporting the crime and claiming compensation because of fear of shame and stigma, lack of evidence, and sometimes the victim's financial dependence on the offender. Another threat is that the majority of legal professionals is not aware of the victim's right to apply for state compensation under specific circumstances. Most of the participants were not aware of Greek Law 3811/2009, which transposed the EU Compensation Directive into national law and established the Hellenic Compensation Authority, the responsible authority for state compensation's administration. This is rather remarkable, given that this national legislation has been in force for more than 10 years.

Table 2 shows the SWOT analysis that was developed by the Greek FAIRCOM partner based on the input of the consulted legal professionals. Figure 1 shows the Greek victim journey.

Table 2. SWOT analysis Greece

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> <li>• The <b>legal framework</b> for offender compensation and state compensation <b>exists</b> and the compensation for victims of sexual violence is considered <b>to be full</b>.</li> <li>• There is state-funded <b>legal aid, regardless of income</b>, for victims of sexual violence.</li> <li>• A claim for <b>state</b> compensation can be made in case that the criminal court's decision is <b>exculpatory</b> or in case that the offender <b>cannot be found or prosecuted</b>.</li> <li>• Decisions of the Hellenic Compensation Authority for state compensation are <b>delivered in time</b>, i.e. within 6 months after application.</li> </ul>	<ul style="list-style-type: none"> <li>• Despite the fact that a claim for state compensation should be able to be made free of charge, in Greece there is an <b>administrative fee of €50</b>. This fee should be abolished.</li> <li>• Both criminal and civil procedures <b>take too long</b>. Victims should receive offender compensation within a short period of time.</li> <li>• <b>Information</b> that is provided on the website of the Hellenic Compensation Authority (e.g. information about state compensation rights, requirements for state compensation and attached documents that should be lodged with the application form) is not available in the <b>English language</b></li> </ul>
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> <li>• An EU <b>common compensation scheme and legal framework</b> (e.g. a compensation scheme that is defined by a Regulation rather than by a Directive) can easily be applied in compliance with Greek National legislation</li> <li>• Legal professionals (e.g. lawyers, judges, public prosecutors) and other professionals (e.g. police detectives, psychologists) could become <b>more aware of the compensation scheme</b> and should <b>be obliged to inform</b> victims of their rights, via an information system or in person.</li> <li>• <b>Minor victims of child sexual abuse</b> should receive <b>special treatment</b>. They should be provided with all the essential information and psychological support, not just once, in order to make a decision in a neutral, self-composed way, and to avoid the involvement of family or friends as they may influence, guide, intimidate, etc. the victim.</li> <li>• Legal judgements that award <b>high amounts of offender compensation might prevent (re)offending</b>.</li> <li>• <b>Mainstream use of a forensic interview protocol</b> and the connection of legal procedures in order to induce a climate of safety and efficacy for victims of sexual crimes</li> </ul>	<ul style="list-style-type: none"> <li>• There is <b>underreporting of sexual crimes to the police</b> due to: 1) fear of <b>not being believed</b>. In case of child abuse the absence of a protocol for a forensic interview for children abuse contributes to underreporting, and 2) fear of being confronted with <b>shame and stigma</b>. This fear is more common if the victim is a minor or a well-known person or lives in a small town.</li> <li>• Victims do not have enough <b>evidence</b> of psychological consequences of the crime</li> <li>• Victims are <b>financially dependent on</b> offenders [e.g. wife (as victim) is financially dependent on her husband (as offender), minor (as victim) is financially dependent on an adult (as offender)].</li> <li>• State compensation does <b>not include pain and suffering</b>. Not including pain and suffering is an ineffective response to the victim's need for protection and fair compensation. The most important need of victims of sexual crimes is to mentally recover after abuse and to receive compensation for the consequences of the violation of their personal integrity.</li> </ul>

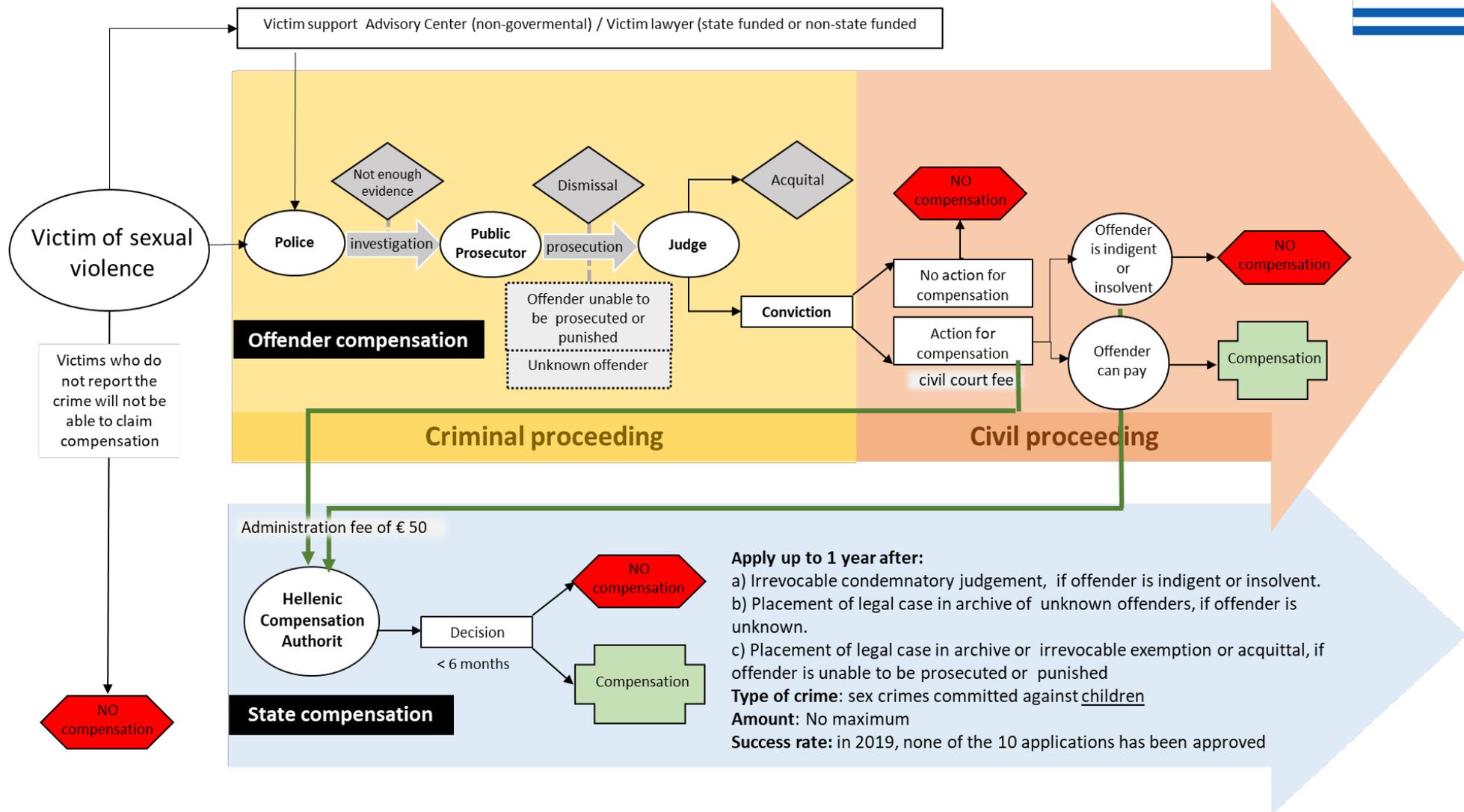


Figure 1. The Greek victim journey

### 4.2.2. Italy

In Italy, two workshops were organised: one in Tivoli on 27 February and one in Sassari on 4 March. There were 39 attendees in total, coming from the police, Public Prosecution Service, lawyers, judges, health services, anti-violence centres, Victim Support organisations, researchers, schools, and a local institution. The discussion in the two workshops is summarised and clustered into Strengths, Weaknesses, Opportunities and Threats.

#### Strengths

The EU Compensation Directive was transposed into national legislation in Italy with Law 122/2016, which established the state compensation modalities for victims of sexual violence on a fixed basis. In November 2019, a new Inter-ministerial Decree (effective after the publication in the Official Gazette on January 24<sup>th</sup>, 2020) was issued which increased the amount of compensation to be received. Victims of sexual violence are eligible to a fixed amount of € **25.000** (except in ‘less serious’ cases).<sup>69</sup> Medical expenses of up to €**10.000** can be added to this amount, if documented. Before the new Inter-ministerial Decree, the maximum amount for sexual violence was € 4.800.

#### Weaknesses

One of the first problems that emerged from FARICOM Report Part I is the **attrition rate**, meaning the difference between crimes committed and those actually sanctioned. In addition to the **low reporting rates**, starting from the first contact with the police, taking charge of the case and moving to the subsequent procedural stages, there is a victim drop out: in fact, the victim almost disappears in the bureaucratic tunnel of compensation. The procedure that the victim is forced to go through in order to obtain compensation is very cumbersome, since the **criminal trial first needs to be concluded** in order to make a claim for damages. Only in case the offender is not in a position to pay the compensation, it is possible to apply for state compensation. The dispersion of police reporting and the lengthy procedural process create many difficulties in collecting statistics on sexual violence, creating a real hidden world. On the one hand, **shame** and **social stigma** caused by the victim’s condition play an important role in preventing the victim from reporting, but on the other hand, responsibility must also be attributed to the way in which the person is **received, listened to**, and in which the **case is managed**: taking care of these aspects can help the victim to proceed all the way up to the application for compensation.

#### Opportunities

The discussion was opened on the **need of legal assistance**, which is fundamental during all phases. It would be opportune to concentrate a greater effort not on the procedural phase, but on the beginning phase, when violence emerges. According to police, a big step forward could be made by focusing on the establishment of **funds to protect victims**. The presence of a territorial (local) network consisting of professionals and volunteers who work to provide support to victims, could help to address these needs. Currently, the anti-violence centres provide great support to the victims, but without funding. In the debate, the idea emerged to obtain funding for structures that already provide support in the territory. A further step would be to focus on training for professionals who work in contact with the victims and on **increasing social awareness** of the work of anti-violence centres and legal aid, in accordance with the Istanbul Convention of 2011.

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<sup>69</sup> See footnote 59.

The group of Italian experts also considered the need to have objective **evaluation systems** for the **risk of revictimization**. The proposal is to provide scientific and objective tools to operators of victim support and anti-violence centres in the territory that allow to help sexual crimes victims to prevent revictimization.

It was also discussed whether it is correct to restrict compensation only to monetary compensation. Which additional form of compensation could be useful for the recovery of physical, psychological damages and one's own identity? Police pointed out that local authorities are already overwhelmed with important costs to support women and children, such as for shelters for women and their children. For example, the municipality of M., a small city close to Rome, with 6.000 inhabitants and numerous children and women in assistance: 50% of the population is foreign and the women are usually subjected to economic blackmail by men. Eliminating this economic inequality and helping victims to achieve independence, would mean guaranteeing them greater freedom. It is necessary to make the victim **informed about her rights** and consequently more autonomous: a competent victim.

An important weakness with respect to compensation was related to the fact that there is still much to be done in terms of **acknowledging and being aware of the needs of victims** of sexual violence. According to what emerged during the workshops, compensation should be placed within a wider context that deals with the needs of the victim. Rather than a welfare policy, it would be appropriate to carry out a project that aims to build victims' autonomy in order to help them to stop the violence. The desired transformation is from a welfare policy to an active policy, which helps people find a job, access micro-credits and other subsidies that allow them to remain free and autonomous, also from an economic point of view. Victim compensation does not only concern the economic aspect, but it is part of a restorative process that aims to recognize the damage suffered by the victim, restoring dignity and recovering his/her centrality within the process.

According to Italian law, victims of sexual violence can request for **free legal aid**, but the community is **not always aware of this right**. Therefore, the lawyers' point of view was that the State has already prepared tools to support victims in terms of legal support, but that these should be better utilized, **increasing citizens' awareness**. Also in this way the victim is made aware, autonomous, informed and competent. On the other hand, it should be emphasized that specialized lawyers have developed great sensitivity and culture in this field, fundamental aspects that allow them to be a real point of reference for their clients throughout the trial, a sort of accompaniment.

The discussion also addressed the topic of making available compensation before the sentence is issued (**advance payment**). All the lawyers that were present in the workshop agreed that it is not appropriate to pay the compensation in advance, because the defendant may not be declared guilty. Judges must necessarily be *super partes*: the judge must assess the issues in a neutral way, taking into account both the needs of the victim and the presumption of innocence of the accused, as at this stage there are *potential* victims and *potential* perpetrators.

The advance payment that was considered legitimate is preventive **sequestration of assets**, which is applied before the final sentence for some crimes (ex art. 316 of the Italian penal code). In case of murder committed against the spouse (also in case they were separated or divorced), the Public Prosecutor asks for sequestration of the assets of the defendant, as long

as they are the other party to the civil union or the person linked by emotional relationship and stable coexistence, to guarantee compensation for civil damages suffered by the children of the victims (minors or adults economically not self-sufficient). Preventive sequestration of assets can also be ordered at the request of the civil party if there is a justified reason to believe that the guarantees of the civil obligations deriving from the crime are missing or dispersed. During the workshop it was suggested that the precautionary measure of preventive sequestration of assets has the potential to be applied in sexual violence trials.

### Threats

It was considered a threat to the system that the anti-violence centres have lawyers and psychologists ready to work almost **voluntarily**: their fees are being paid after providing the service, which is late. Another threat is that the anti-violence centre cannot send the victim declaration to the judge, if the judge did not order that. If the declaration/ evaluation report is not signed by a psychologist, the anti-violence centre cannot send it to the judge either. In fact, it seems that Italy produces further difficulties to those who request compensation, denying/**not recognising** a violated person, which causes secondary victimisation.

Victim Associations pointed out that there is a **lack of Italian data** about the extent to which Victim Support Associations are being requested to take part in the trial as a civil party to support victims in criminal prosecutions. This is an additional way to provide support. It would be interesting to understand to what extent Victim Support in other European countries support victims.

Table 3 displays the SWOT analysis on state compensation and Table 4 on offender compensation. Figure 2 shows the Italian victim journey.

Table 3. SWOT analysis Italy - State compensation

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> <li>• <b>Easily accessible</b>: no police report is needed, no administrative fees</li> <li>• The <b>amount of compensation</b> for intentional violent crimes was <b>increased</b> by the Decree of November 22nd, 2019. For sexual violence the maximum compensation is now € 25.000, which can be increased with a sum equivalent to documented medical and assistance expenses up to a maximum of € 10.000</li> <li>• Compensation is paid in a <b>single payment</b></li> </ul>	<ul style="list-style-type: none"> <li>• State compensation process is <b>secondary to the offender compensation process</b>, as the outcome of the criminal trial must be awaited.</li> <li>• The decision is "<b>without delay</b>": but the period within which the sentence must be issued is not defined</li> <li>• Having to provide <b>necessary tests</b>: medical certificates, medical records, copy of the sentence</li> <li>• In the case of an unknown / insolvent author, a <b>court order is required</b> confirming that the crime committed by unknown persons</li> <li>• The timeframe to <b>submit the application</b> is <b>within 60 days</b> after the court confirmation that the crime was committed by unknown persons / or the final conviction of the offender</li> </ul>
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> <li>• Establishment of <b>funds to protect victims</b>, allowing them to be economically independent and making them more competent victims (aware of their rights)</li> <li>• <b>Trainings</b> for professionals (enhance awareness)</li> </ul>	<ul style="list-style-type: none"> <li>• Lawyers and psychologists of Anti-Violence Centres work almost voluntarily (the <b>fees are paid too late</b>)</li> <li>• Anti-violence centres <b>cannot send the evaluation report</b> to the court, because the judge did not order the hearing of the victim. This is a further denial of the committed violence</li> <li>• Victim Support Associations sue as a civil party to claim damages for victims during the trial but there is a <b>lack of data</b> about this</li> </ul>

Table 4. SWOT analysis Italy - Offender compensation

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> <li>• <b>Free legal assistance</b> is available for victims of sexual violence, abuse and stalking as a special agreement</li> <li>• <b>Provisional payment</b> can be obtained at the request of the civil party</li> <li>• The criminal court <b>does not charge commissions</b> for court costs</li> </ul>	<ul style="list-style-type: none"> <li>• There is <b>no standardised form</b> available (nor required), but victims need to provide necessary documentation and information to the civil party, lawyer and offender</li> <li>• <b>A lawyer is mandatory</b></li> <li>• <b>Evidence needed:</b> medical certificates, specified and proven damage form</li> <li>• Since the civil trial for compensation is a separate procedure from the criminal trial, the appeal of the civil claim for victim compensation does not affect the verdict relating to the criminal liability of the offender</li> <li>• Possible <b>conflict between first instance sentence</b> that acquits the defendant <b>and appeal sentence</b> that accepts the claim for damages</li> <li>• The judgment <b>cannot be challenged immediately</b></li> </ul>
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> <li>• Objective <b>evaluation systems</b> for the <b>risk of revictimization</b></li> </ul>	<ul style="list-style-type: none"> <li>• Anti-violence centres have lawyers and psychologists ready to work almost <b>voluntarily</b> and the <b>fees are paid too late</b></li> </ul>

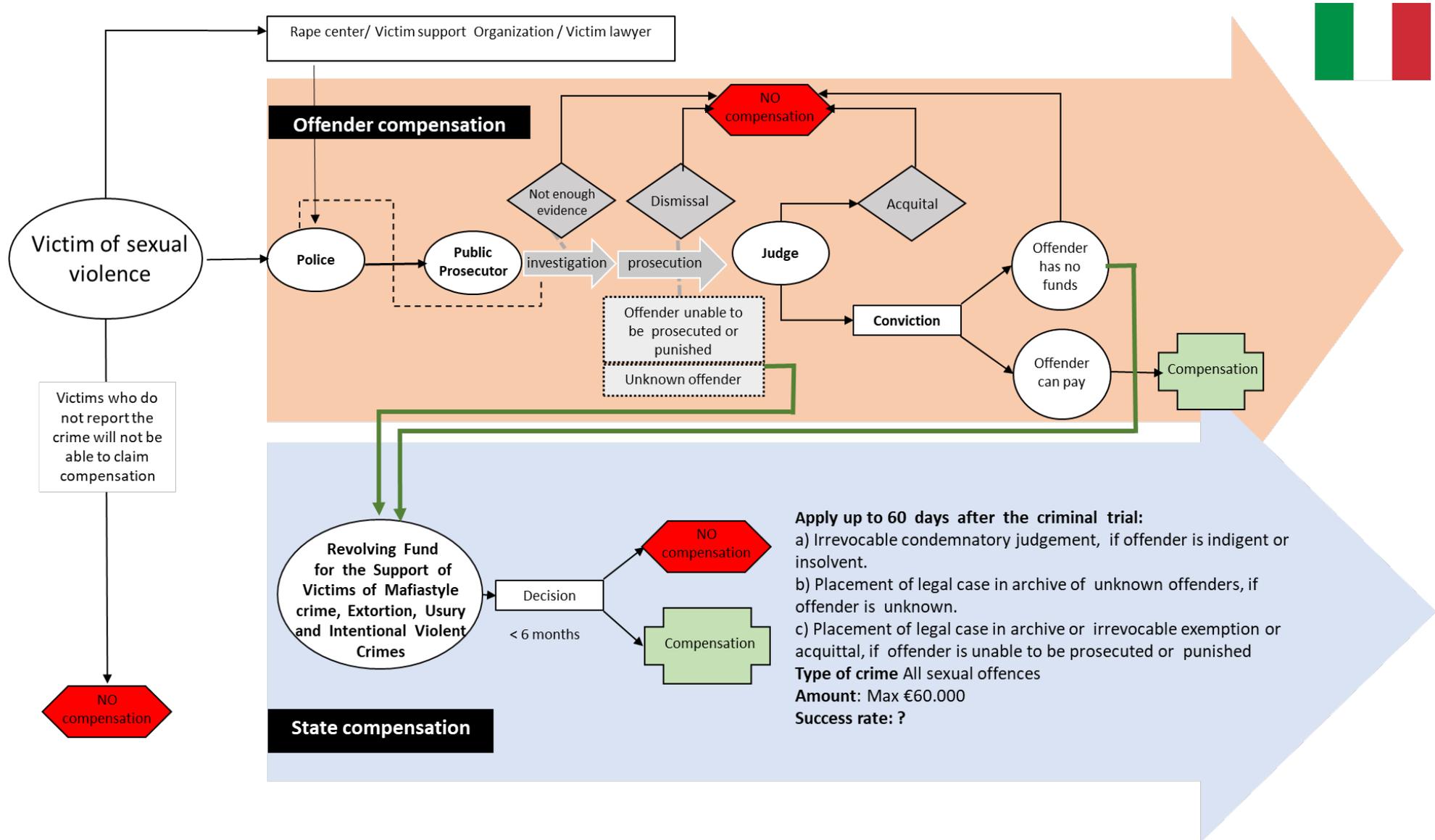


Figure 2. The Italian victim journey

### 4.2.3. Latvia

In Latvia a workshop was organized on 24 February in Riga. 23 Participants were present coming from MARTA centre, Ministry of Justice, Ministry of Interior, The Legal Aid Administration, the Ombudsman, lawyers, court, NGOs, feminist forum and academia. The report of the meeting was anonymized and the discussion was structured into Strengths, Weaknesses, Opportunities and Threats.

#### Strengths

The representative from the Legal Aid Administration pointed out that there are **no cases of compensation claims being rejected** in cases of sexual violence. There are **three state funded support service programmes**: 1) the state funded social rehabilitation programme for victims of violence, 2) the state funded social rehabilitation programme for victims of human trafficking, and 3) legal consultation programme provided by the Legal Aid Administration are available that might provide free support in cases of victims of sexual violence wanting to file a claim for a compensation. It was pointed out by the representative from the Ministry of Justice and the Legal Aid Administration that the fact that Latvian system provides **flexible use of the compensation** is a strength

The representative from the Legal Aid Administration noted that although the Law requires a decision whether the compensation will be awarded to be made in the duration of a month, often the process is faster and the victim may actually **receive the compensation in as little as 25 days**. The participants from some of the NGOs were pleasantly surprised by this and complimented the practice, as this differs from the usual experience with responses to requests from governmental institutions.

The representative from the Ministry of Internal Affairs asked whether the claim is evaluated repeatedly in cases where the claimant files **additional** (meaning from both offender and state) **request for compensation for non-material damage**. A judge explained that the court can re-evaluate the amount of compensation awarded, and the representative from the Ministry of Justice clarified that the court evaluates the sum awarded in relation to the sum claimed in cases where the claim has been satisfied partially; the court harmonises its decision with similar cases in other European countries. A judge and a lawyer pointed out that there might be cases in which the court had no knowledge of the initial court decision made, and that these require additional proof in cases regarding the adhesion procedure.

In response to comparative data that all countries provide some **free legal consultations** in cases of sexual violence compensation claims, the representative from the Legal Aid Administration pointed out that there is a **ready-made template** to file a claim for state compensation which requires no legal knowledge to complete. The representative from the Ministry of Justice responded and explained that it seems the question is related to criminal proceedings and offender compensations, where legal advice is necessary to apply.

Many of the features of the Latvian compensation system were deemed to be good practice already. The representative from the Ministry of Justice and the representative from the Legal Aid Administration agreed that state compensation is **easy to access** in Latvia, which is a considerable strength.

Another strength that was identified by the judges and the lawyers present is that there is **no need for the offender to be identified** and brought to justice in order to apply for and receive the state compensation.

One judge stressed the advantage of the victims being able to **receive state compensation even before the final court ruling** regarding the case (if it is brought against an offender). The representative from the Legal Aid Administration added another strength of the existing **model of cooperation**, cases in which the **police** sends information about eligible cases directly to the **Legal Aid Administration** and the administration contacts the victim, sometimes even sending them the template for the application for the compensation along with a postage paid envelope to return it, and **still some of the victims do not apply** for the compensation. A lawyer noted that possibly these victims might have already received their offender compensation and thus feel that they do not require state compensation, while the representative of the Legal Aid Administration retorted that they do not possess information regarding this.

The representative from one NGO stated that the **helpline** that is available gives out information about the possibility of receiving compensation, especially if the person has provided details that give cause for the helpline operator to believe that the victim is entitled to compensation; they are asked if they will contact the Legal Aid Administration. However, both the representatives from two NGOs noted that often with sexual violence the issue is that the crime has happened but has **not been reported to the police**, thus is neither included in statistics, nor qualifies to receive compensation (a case has to be filed and the victim identified legally to apply for a compensation).

The importance of **easily accessible information** about rights to compensation was stressed. The specific mental state of the victims of sexual crimes was again noted. The representative from the Ministry of Justice noted that the Latvian legal system is **empathetic** and often its employees go above and beyond what is required in the Law and that not everyone will ask for compensation.

#### Weaknesses

Firstly, the **3 years time limit** to apply for compensation may not be enough, as the research in the Netherlands indicates that many victims report the crime after approximately six years. The representative from the Ministry of Justice explained that the 3 year limit is not from the moment of the crime itself, but from the moment of the court ruling. The representative from the Legal Aid Administration explained that the limit is referring to 3 years from the moment that all the necessary conditions for someone to qualify for compensation have been fulfilled, and when the person has become aware of their qualifying for the compensation. The representative from the Ministry of Justice further added that decisions are made on a case-by-case evaluations, and that their data shows that most people return to claim compensation after **half a year or a year**, and that they have no knowledge of any cases where a compensation claim in cases of sexual violence would have been denied because the time limit of 3 years has been exceeded.

The representatives from NGOs expressed **doubts about whether the police always refer** the victims to the Legal Aid Administration to apply for the compensation. However, the representative from the Legal Aid Administration retorted that it should be this way. The

representative from the Ministry of Justice explained that the police are obliged to inform the victim about the opportunity but not required to send any documentation to other institutions. The representatives from the NGOs pointed out that it would be a great asset if there was a **referral mechanism** for the police to refer the victims to victim support service providers. The representative from the Legal Aid Administration elaborated that seminars are held for police investigators about the process, there are brochures to be handed out to victims, however, the police are often the point of first contact for the victims.

It was debated whether the **limited hours of free legal counselling** is to be considered a weakness. The representative from the Legal Aid Administration noted that for representation in criminal proceedings the person must be considered as living under the poverty threshold, otherwise they cannot apply for free aid, unless they have turned to the investigator of the process with a request for legal representation and have been awarded support, the Legal Aid Administration provides a lawyer. The representative from the Ministry of Justice noted that there are two different processes. A judge argued that in cases of sexual violence free legal aid is available for everyone, not just people from disadvantaged and low-income groups. It was concluded that depending on the decision of the investigator of the process, it is technically possible for anyone to receive free legal help.

It was discussed whether the Legal Aid Administration helps the victims to understand what charges to file for. The representative from the Legal Aid Administration noted that unless legal help has been awarded, people are not consulted on the spot. The representative from the Ministry of Justice explained that to complete the template for the application for compensation **no legal knowledge is needed**, as well as no legal knowledge is needed to file a request for legal aid. In cases where there are clarifications necessary, a single free consultation may be awarded to figure out whether a case must be brought before the court.

The **amount of the state compensation (5 minimum wages)** was identified as relatively low. It was asked how the sums for the offender compensation are determined. The judges noted that it is dependent on the victims claim. A judge noted that the claim for offender compensation in criminal proceedings can only be **filed in the first instance**, so it is imperative that the victim is informed timely about their right to compensation and asked if they want to file for it, if have not filed yet. The representative from the Forum of Intersectionality noted that prevention programmes should also include information on the availability of compensations, creating awareness of the existence of a compensation system, before they become victims of sexual violence, as once the crime has happened not everyone is in a state of mind that allows to focus on this. The representative from the Legal Aid Administration noted that if a claim for an offender compensation has not been filed in criminal proceedings, it is always possible to file for it in civil procedure. A judge further added that once the ruling has come into effect, any losses can be filed for in civil proceedings, but state compensation is important, because case proceedings are slow and sometimes the offender has no financial means at all. The representative from the Ministry of Justice noted that the ministry pays the compensation and does not follow the court proceedings (meaning compensation is paid regardless of the court outcome), so even if the offender is deemed not guilty. This was considered a strength.

### Opportunities

Opportunities in the existing system and the recommendations were analysed.

**Compensation for loss of income** seems not to be practiced in Latvia. A judge noted that claims can be made and the court will then evaluate. However, another judge pointed out that these are considered very difficult to prove. The representative from the Ministry of Interior outlined the good practice in Scandinavian countries where in cases of sexual exploitation a defined set of **formulae** exists to **calculate the loss of income**. This was considered a good practice which could be adapted.

It was suggested that a **universal mechanism for referring** victims to apply for compensation could be put in place for the victims' helpline, crisis centres, social services. First other institutions that detect victims should refer the victim to the service providers and second all stakeholders should have knowledge to advise to apply for compensation and seek legal support. The representative from the Legal Aid Administration retorted that they hold regular seminars for the employees of social services so all locals should have the information. A communication plan is developed every year to directly target the areas of the country where people apply for compensations the least. The representative from the learning centre MKB (i.e. the organization working with perpetrators) expressed their concern that often in **regional municipalities** there might be an issue with **access to legal advice** as some of the social services simply do not have a staff lawyer. The representative from Skalbes (i.e. the organisation working with victims of crime. They operate an emergency line for victims of crime, funded by the state) agreed that access is an issue as often people from regions do not have the means to travel to a larger city that has social services to get help, and furthermore they often would not turn to the local social services even if they did have a lawyer because they fear stigma.

Another opportunity that was noted is that, since the **sum of money that the victims receive is relatively low**, it might be possible to **separately cover medical expenses**, as in Latvia there are **no specialised rape centres**. Individual approach and police evaluation immediately referring the victim to a lawyer and victim support services would also be beneficial. There was a discussion about the reasons why victims of sexual crimes so often **do not seek help** and compensation, noting the stigma, fear, and the complex mental state of victims after the crime. The representative from the Ministry of Justice argued that any obstacles that might prevent victims from claiming compensation are personal, not procedural. The representative from the Legal Aid Administration noted that the **application can be filed remotely**, either digitally with an electronic signature or by mail. A judge and a lawyer noted the specific complexities in cases where the victim is a child abused by the mother's current partner, where the woman might be unwilling to admit the crime. The judge suggested that a referral mechanism from doctors could be an opportunity, as often the medical staff are the first or the only ones to be informed about the violence that has taken place. The representative from the learning centre MKB suggested that **one free legal consultation** could be awarded to every victim. The representative from Skalbes provided a good practice from Estonia where victims can receive free help without an officially filed police report. It is suggested that **insurance policies** could cover the compensation, but the representative from the Ombudsman's office noted that there is no framework on a national level on what should be insured, the state does not dictate insurance policies. One judge further added that even the compulsory medical insurance causes issues with people not being able to afford it.

**Lack of specific statistics** regarding sexual crimes was raised by the representatives from the NGOs, as the information is collected without differentiating types of crimes for which

compensations are awarded. A judge noted that if it were possible to analyse the sexual violence compensations separately, possibly the data would show that it is **might be feasible to raise the amount of money** received if there are not that many cases per year. The representative from the Ministry of the Interior agreed that the lack of statistics is an issue but stressed that the procedure in place is good and reliable. Everyone agreed that further research would be beneficial to improve the system.

### Threats

It was discussed whether becoming a **victim of sexual crimes in other European countries** is considered a potential threat of not having access to the compensation. The representative from the Legal Aid Administration explained that there is an international system in place and any Latvian national who has suffered sexual violence in any European state can choose to either claim the compensation through the local authorities or turn to the Latvian Legal Aid Administration which then takes it upon themselves to contact the local responsible authorities and prepares the necessary documentation. Each country has similar institutions that can provide this process in the other direction, contacting the Latvian Legal Aid Administration in cases where foreign nationals wish to claim compensation in Latvia. Information about this opportunity has been shared publicly, and there are 6-7 cases per year. The representative from the Ministry of Justice noted that the names of these institutions might differ in other countries, and that they are under different parts of the national institutions – in Latvia under the Justice system, while in other countries under the Welfare system etc., as countries have different judicial systems. However, the victim does not need to know which institution to turn to, as it can be done through their origin country's responsible institution, at least in Latvia, as the Legal Aid Administration provides this service. She also noted that the title of the project “fair and appropriate” makes one consider the **amount of money** awarded, which is obviously often **too low** in Latvia.

The efficiency of offender compensation system was inquired about, and a judge noted that **money cannot be recovered if the offender has no income**, no property to be sold, no resources. The representative from the Ministry of Justice noted that that is a state-wide issue. Table 5 displays the Latvian SWOT analysis. Figure 3 shows the Latvian victim journey.

Table 5. SWOT analysis Latvia

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> <li>• Receive the state compensation <b>before the final court ruling</b></li> <li>• Latvian system provides <b>flexible use of the compensation</b></li> <li>• State compensation decision in as little as <b>25 days</b></li> <li>• <b>No need for the offender to be identified</b></li> <li>• <b>Model of cooperation</b>, cases in which the <b>police</b> sends information about eligible cases directly to the <b>Legal Aid Administration</b></li> <li>• Latvian legal system is <b>empathetic</b> and often its employees go above and beyond what is required in the Law in providing information</li> <li>• Employees of Latvian legal system most often go above and beyond what is required in the Law in <b>providing information</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Lack of specific statistics</b> regarding sexual crimes</li> <li>• Claim for offender compensation in criminal proceedings can only be <b>filed in the first instance</b>, so it is imperative that the victim is informed timely about the right to compensation</li> <li>• <b>Limited hours</b> of free legal counselling could be a weakness</li> <li>• The time limit to apply for state compensation is 3 years, which may be a limitation, but most people return to apply for compensation after <b>half a year or a year</b></li> </ul>
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> <li>• <b>Lack of specific statistics.</b> Possibly the data would show that it might be feasible <b>to increase the amount of money</b> received if there are not so many cases per year.</li> <li>• <b>Compensation for loss of income</b> seems not to occur in Latvia. Scandinavian countries have <b>formulae</b> to calculate the loss of income. A good practice which could be adapted.</li> <li>• Since the compensation that victims receive is relatively low, it might be possible to <b>separately cover</b> physical &amp; mental <b>health expenses</b></li> <li>• <b>Mechanism for referring</b> victims to apply for compensation could be devised</li> <li>• <b>One free legal consultation</b> could be awarded to every victim within the state programme for the rehabilitation of adult victims of violence</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Amount of money</b> received is often <b>too low</b></li> <li>• <b>Money cannot be recovered</b> if the offender has no income</li> <li>• In Latvia there are <b>no specialised rape centres</b>.</li> </ul>

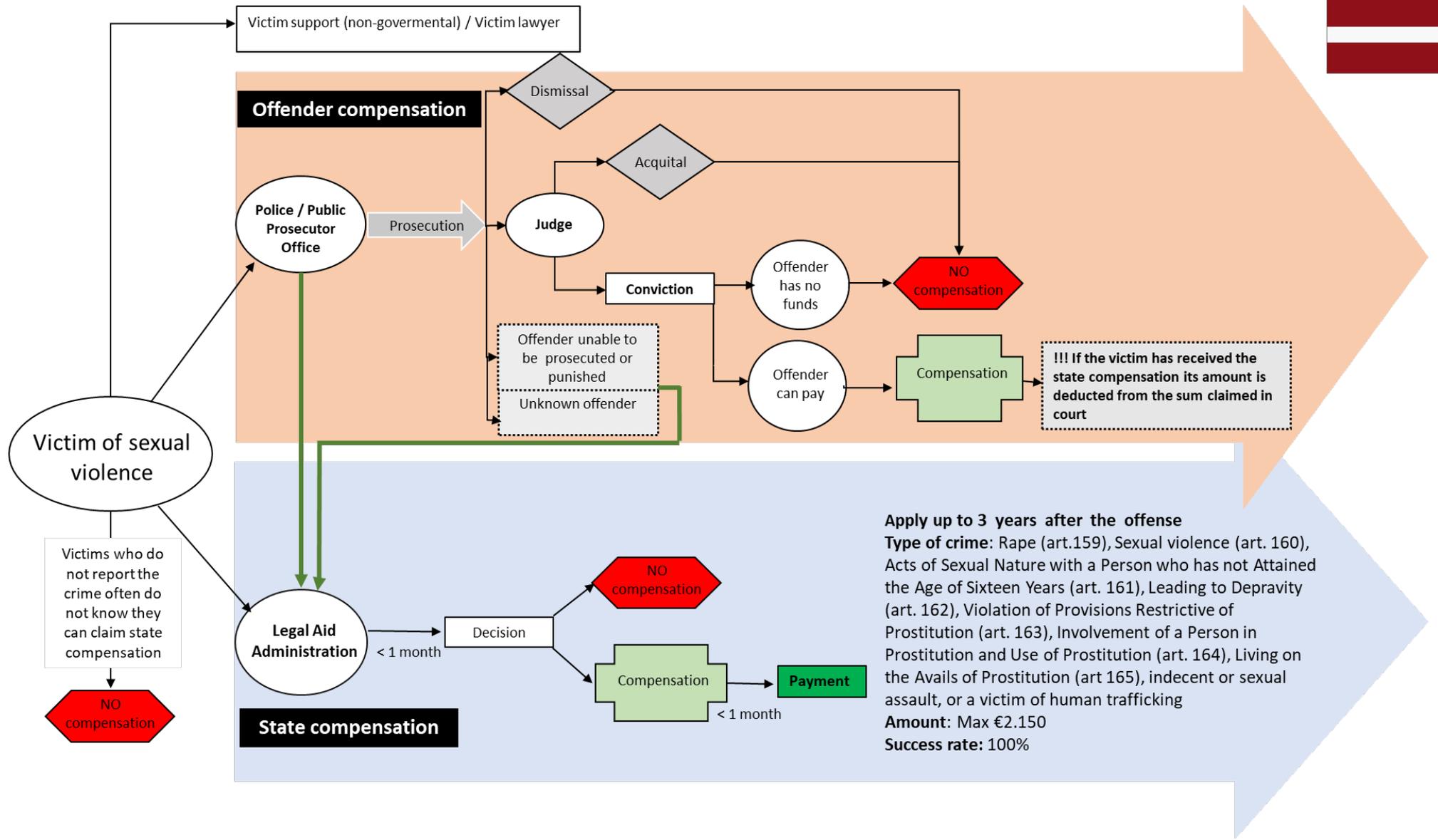


Figure 3. The Latvian victim journey

#### 4.2.4. Spain

The Spanish workshop was held in Madrid on 23 February 2020. In total 22 people were present: prosecutors, magistrates and magistrate assistants, lawyers, counsels from the Ministry of Justice, professors, member of the judicial council (1 of the 20 councils heading the management of the Judiciary), and the director of the school of prosecutors.

A second workshop was planned in Barcelona in early March. However, this workshop had to be cancelled due to COVID 19. Instead, the FAIRCOM partner in Barcelona sent a questionnaire to legal professionals. They received four responses: from a lawyer working at a victim aid foundation, a judge, a lawyer from the justice administration, and two members of the Justice Department of the Catalan Autonomous Government who drafted their response together. These results are presented separately, after the results of the workshop in Madrid.

The starting point for the workshop was the FAIRCOM Report Part I in which several recommendations were made in regard of state compensation: (i) Its availability **regardless of the outcome** of the judicial process; (ii) Availability in case of **unknown offender**, not prosecuted or not convicted and regardless of the victim's collaboration with the Prosecutor's Office; (iii) Extension of **time limits to apply** for the compensation; (iv) Resolution within an **appropriate time** and without imposing **administrative fees** to the victim. In regard of offender compensation, the FAIRCOM Report Part I recommended: (i) To improve the **enforcement** of the judicial award of compensation; (ii) Possibility to **adhere** to the criminal proceedings; (iii) Availability of a free **lawyer**; (iv) Development of a **standard application form** and (v) Non-application of **court fees**.

##### Strengths

Different strengths of the Spanish system were identified, such as the possibility for the victim to participate in the criminal proceedings as a **private prosecution**. Victims are more satisfied with and strengthened by the criminal procedure when they are **duly informed** by their lawyers rather than by the final decision of the process.

##### Weaknesses

Legal practitioners highlighted weaknesses such as difficulties in measuring psychological damage suffered by victims of sexual violence. In this regard, the amounts usually are estimated considering the scale of road traffic injuries established in Law 35/2015, of 22 September to reform the system for assessing the damage caused to persons in road traffic accidents. As a consequence, calculated **amounts do not take psychological injury into account**.

Apart from that, the Spanish judicial system barely spends time to discover the **assets** of the offender and **ensuring** his compliance with the compensation order (despite the fact that judges are obliged to do so). To avoid this, **precautionary measures** could be agreed upon, in a single day, by the help of the Judicial Neutral Point (*Punto Neutro Judicial*) (in which the economic history of the accused can be found out. The action of the staff of the judicial office in relation to this issue is essential).

In addition, the **difficulty of establishing a concept of compensation** was discussed, highlighting what should be the main basis of the compensation: (i) compensation (aid) for physical damages, (ii) compensation for moral damages or (iii) compensation by the State. It

was concluded that the concept of the compensation should include: reasonable amounts of money and to cover all damages and expenses resulting from the crime.

### Opportunities

Legal practitioners pointed to opportunities such as the possibility of setting up an **early State aid system to compensate survivors** and to avoid secondary victimization that could be suffered during the process. Moreover, professionals pointed out the opportunity to include victim-offender **mediation** as a form of non-pecuniary reparation to the victim, respecting the provisions of the Istanbul Convention.

From a legal point of view, the possible approval of the Draft Act on the Protection of Sexual Freedom and against sexual violence crimes was discussed. The focus was on the idea that it is a good opportunity to include certain **support measures** for victims as compensation, information and support from victim support offices. On the other hand, it was agreed that compensation should be available to the victim after the filing of the complaint. In order to avoid false reports, it was considered that it is necessary to have **objective confirmation** (proof and judicial resolution) that the crime has taken place.

Would it be appropriate to set a **scale of compensation**? It was agreed to set a **maximum amount** to be paid in advance by the State. In addition, it would be useful if legal aid lawyers would help victims to prepare the compensation application.

Finally, it is fundamental to improve new measures to accompany the victims throughout the process (**psychological assistance, lawyers, standardised forms...**) This aims at **empowerment** of the victims so that they have sufficient psychological capacity in order to initiate, as soon as possible, the criminal process.

### Threats

Several threats were also noted, such as the reluctance of different legal operators to place the **victim at the centre of the process** despite the legislative changes that were made in Spain, notably through the Law 4/2015, of the Statute of the Victim of the Crime (result of the Victims' Rights Directive). Moreover, there are lawyers that, instead of seeking compensation for the victim, focus their strategy on the final punishment of the accused, in order to strengthen reliability of her testimony and to avoid speculations that the victim is motivated by the seeking of financial benefit. With regard to the **time limit for applying** for state compensation, this presently is only one year. The option to extend it to 10 years (like in the Netherlands) or to make it equal to the term of prescription (limitation period) of the crime was discussed and considered appropriate.

### Workshop Barcelona

As indicated, the workshop in Barcelona was substituted by a short questionnaire, answered by four professionals:

1. **What are the *obstacles* that you consider most relevant for victims of sexual crimes (adults or minors) to get effective compensation?**

Concerning minors, a major difficulty is **proving that there has been abuse**. In fact, most of the cases that reach the justice system end in **dismissal**.

With respect to compensation, it was said that the provisions of Law 35/1995 regarding compensation are **insufficient**, since they refer only to very serious physical or psychological damage, and private psychological treatment of the damages caused by the crime. Furthermore, the compensation for most physical and psychological damages (determinable by sentence) are established as civil compensation, and **more often than not the amount is not paid** (the offender can for instance become insolvent), or not in due time, or not in full. Finally, it was also mentioned that some **victims are reluctant to accept financial compensation from the offender** for considering it “dirty money”.

**2. Give at least one example of a good practice that favours effective compensation for the victims of these crimes.**

One professional mentioned that the **Victims Support Offices** (*Oficines d’Atenció a les Victimes del Delicte*, OAVD, that are specialized in victims’ support) are doing a good job. They could go a little further, not only by guiding the victims when asking for compensation, but also giving them information about what to expect from the judicial system, so that they do not feel disappointed. Another professional mentioned that the **submitting applications for state compensation** before the Catalan Autonomous Government involves an easy procedure, which in itself is a good practice. The follow up of the petitions is also quite easy by contacting the services involved. A third professional wrote that using **restorative justice** procedures when possible **can favour civil compensation payment** agreements, in addition to promoting forgiveness and meeting the victim's possible need for the offender to acknowledge the wrong done. A final good practice that was noted was that, In Catalonia, sexual violence against a woman is **legally classified as gender violence**, according to Law 5/2008 and Decree 80/2015, which is considered a good way to access compensation. However, on the other hand female victims must be able to **prove serious physical or mental injury** (that is, requiring medical assistance), which leaves many victims out.

**3. What improvements could be made to create opportunities for effective compensation to the victims?**

One person answered that an improvement would be to **revise the criteria for granting compensation** as far as damage or injury are concerned. Another suggestion for improvement was that a **specific official should be specifically trained in compensation** to accompany victims throughout the process and to be able to foresee what can be done before the offender becomes insolvent. Some lawyers are already doing a good job in this field, but not in all cases. Another suggestion was to grant compensation **regardless of the financial situation of the offender**. The obligation to compensate victims of sexual violence should be established by law. In addition, the evaluation should include emotional impact, which can be especially severe in child victims. Finally, it was argued that **criminal enforcement services** should ensure that the compensation is paid, both in full and on time. It would be useful to have automatic systems and procedures to **investigate and seize assets**, so as the offender cannot free himself from the duty of payment.

**4. Which actors do you think should be responsible for the effective implementation of these improvements?**

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Mainly, those responsible for **legislation**. Also, the legal operators responsible for the investigation and conviction of crimes, in order to get a full understanding of the scope of the consequences and the type of damage, and clear the path to a fair sentence. Creating **specialized judicial bodies** or designing specific training in the matter would be of great interest. **Training** is also essential for all teams and professionals involved in counselling and intervention with the victim, including the police.

Table 6 and 7 display the Spanish SWOT analyses for respectively state and offender compensation. Figure 4 shows the Spanish victim journey.

Table 6. SWOT analysis Spain - State compensation

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> <li>• Its <b>existence</b> and that some victim may have received some aid</li> <li>• The Spanish system does not apply administrative <b>fees</b></li> </ul>	<ul style="list-style-type: none"> <li>• It is subject to the <b>crime report to the authorities</b></li> <li>• Many victims <b>unaware of its existence</b> and many do not understand its limitations.</li> <li>• The <b>documents</b> to be sent by the victim are many and <b>complicated</b></li> <li>• <b>Limitation to expenses</b> on psychological therapeutic treatment</li> <li>• <b>Limit to compensation amount:</b> about € 2.500 maximum</li> <li>• High percentage of applications <b>denied</b></li> <li>• <b>Payment</b> only in very few cases and low amounts</li> <li>• The <b>institution</b> that manages the procedure is not installed in the Ministry of Justice but in the Ministry of Finance State's Treasury</li> </ul>
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> <li>• Clearly <b>disassociate compensation (by the offender) from state compensation</b>. State compensation should be <b>available</b> after <b>reporting to the police or other public services</b>. Compensation may be used to pay for medical or therapy expenses or for whatever the victim considers <b>appropriate</b>, such as a travel, security or self-recovery activities. The state should pay the victim and then take recourse on the offender for that amount</li> <li>• Some <b>legislative reforms</b> should be carried out.</li> <li>• Reparation for victims of sexual violence by the state is a topic that creates <b>great social interest</b>.</li> <li>• To create a <b>compensation fund</b> (an independent organisation).</li> <li>• The system would involve society which would show <b>solidarity</b> with the victim in an effective way and not merely by testimony.</li> </ul>	<ul style="list-style-type: none"> <li>• The <b>documentary requirements</b> for victims at certain times, and the <b>refusal of the aids</b> because of the high standards for granting it (for example, having suffered serious injuries), further victimized the injured part.</li> <li>• The <b>lack of judicial control</b> in granting these aids, could generate <b>mistrust</b>.</li> <li>• There may be a risk of not establishing the necessary procedural guarantees to <b>prevent fraud</b>.</li> <li>• The <b>state budget</b> may not be sufficient to cover all compensation.</li> </ul>

Table 7. SWOT analysis Spain - Offender compensation

<p><b>STRENGTHS</b></p> <ul style="list-style-type: none"> <li>• The possibility of the victim to participate in the process as a party (<b>private prosecution) with a lawyer.</b></li> <li>• The joint procedure, in the same criminal proceeding, of <b>civil and criminal actions.</b></li> <li>• The existence of <b>victims' care offices</b> and the obligation to provide information to victims.</li> <li>• To contemplate the <b>reparative effort</b> within the <b>penitentiary treatment</b>, art. 72.5 of the General Prison Organic Act and 90 of the Criminal Code.</li> </ul>	<p><b>WEAKNESSES</b></p> <ul style="list-style-type: none"> <li>• Activities concerning <b>civil liability</b> are usually not initiated at the same time as the activities concerning criminal procedure. In practice, the offender's <b>assets</b> are being investigated some months or years after the crime, when they have already <b>disappeared</b>. The system for searching and pursuing the <b>offender's assets</b> is not effective.</li> <li>• The concept of compensation does not generally include <b>moral damage</b>, focusing on the assessment of injuries (days of cure/days of disability) and consequences.</li> <li>• In practice, <b>very long periods of time</b> are set for the payment of the compensation, with amounts that are very small in comparison to the total amount to be compensated. There are <b>delays</b> in the processing of civil liability claims.</li> <li>• Victims have to <b>pay their lawyer</b> (although not in domestic violence or victims without economical means)</li> </ul>
<p><b>OPPORTUNITIES</b></p> <ul style="list-style-type: none"> <li>• It is a good time, now that a <b>new Act against sexual violence</b> is under discussion, to overcome the difficulties identified.</li> <li>• To establish a <b>state compensation, separate from offender compensation</b>, or if preferred as an aid or advanced pay by the state. The state is to be enabled to take recourse on the offender for the compensation it awarded to the victim.</li> <li>• It is possible to design flexible procedural measures that <b>guarantee</b> the collection of the <b>compensation</b> and avoid non-payment due to the common situation of offender insolvency.</li> <li>• To try to raise awareness about the importance of <b>empathy</b> with the victim translated into the <b>reparative effort</b> and the use of <b>restorative practices</b>.</li> </ul>	<p><b>THREATS</b></p> <ul style="list-style-type: none"> <li>• Judges award significant compensation, but this <b>compensation is usually not actually paid to the victim.</b></li> <li>• The <b>insolvency of the offender</b> is easily declared</li> <li>• There is a <b>lack of unity inn judicial criteria</b> to estimate the compensation (there is variety between judicial decision making)</li> <li>• The <b>financial situation of the accused</b> is not discussed during the oral trial and sometimes in the investigation.</li> <li>• The grounds for the decision on compensation in the judgment are usually scarcely explained.</li> <li>• The Supreme Court's interpretation of the requirements for <b>accessing to parole</b> (STS 59/2018), does not take reparation seriously.</li> <li>• The justice system <b>denies</b> its inefficacy</li> </ul>

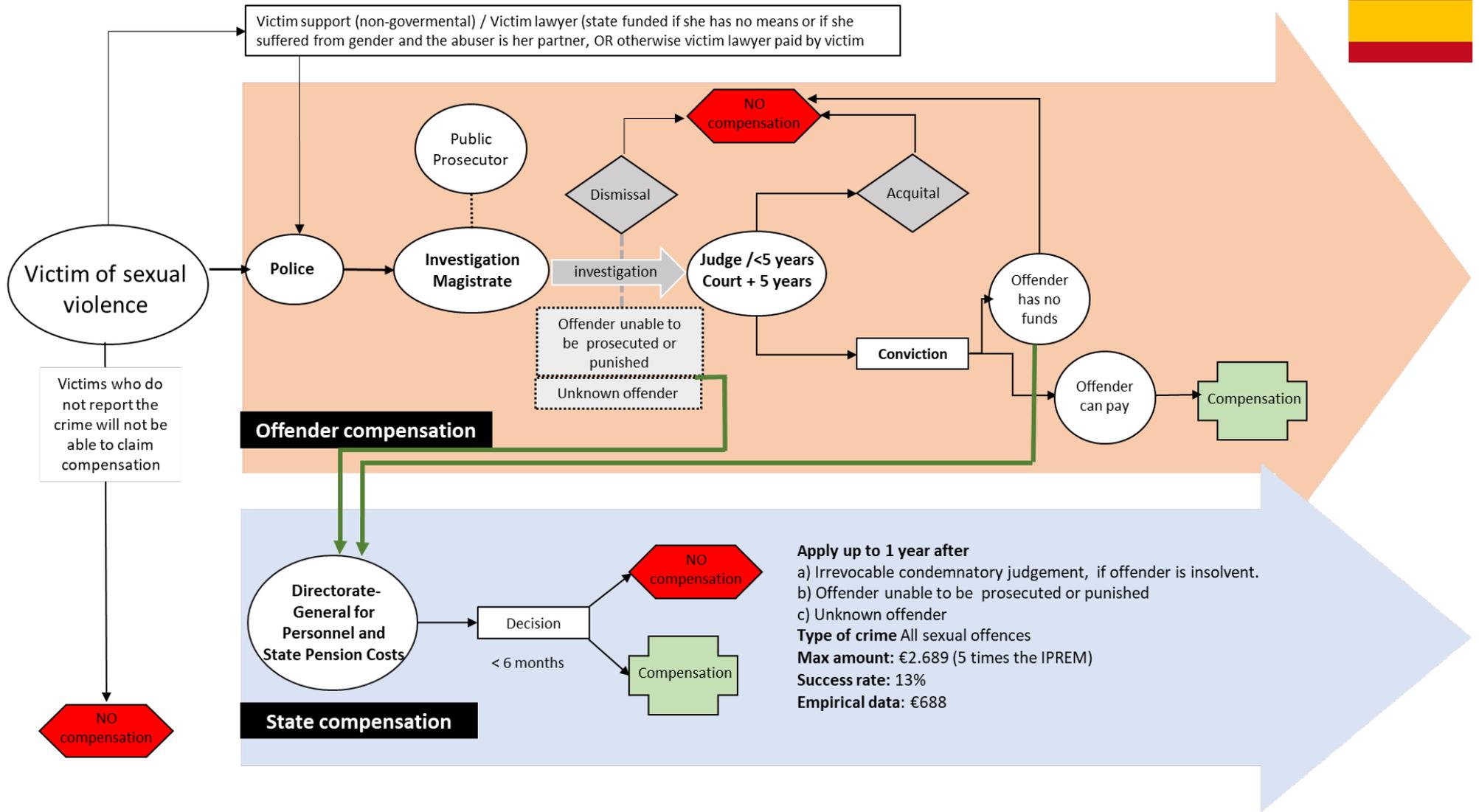


Figure 4. The Spanish victim journey

#### 4.2.5. The Netherlands

In the Netherlands, a workshop was organized on 20 February in Amsterdam. 16 attendees were present from the following organizations: the police, victim support, the state compensation fund, public prosecution service, victim lawyers, rape centre, judiciary, and academia. A representative of the Ministry of Justice provided input via email.

##### Strengths

In addition to the list of the strengths that was presented to the attendees beforehand in the Dutch SWOT table, participants added that in the Netherlands, there are **specially trained sexual violence police detectives and public prosecutors**, and special interrogation manuals for victims of sexual crimes.

##### Weaknesses

The **compensation amounts** that are awarded **differ considerably** between courts and also between judges. More standardization is needed. There is an **implicit bias** in the height of the **compensation amount** in relation to the **severity** of the crime. A victim who was raped by a stranger is awarded more than a victim of incest, whereas incest generally creates a more severe and complex trauma than a single rape. Judges should look more at the severity of the trauma, rather than to the nature of the crime. The state compensation fund said they do take into account aggravating circumstances, such as incest in foster care, as it is considered double victimisation.

Judges **do not motivate their decision** on compensation sufficiently. They often just state: “considering the circumstances, the court considers this amount to be reasonable”. Judges should have a standardized way to determine the compensation for non-monetary harm. It should also be clear that some crimes are so evidently harmful that victims no longer should have to demonstrate the consequences, e.g. in case of rape, the non-monetary harm should speak for itself, and victims should not have to explicate the consequences. **Stigma** does hamper the report of crime to the police, but the **lack of privacy** is a bigger problem: the fact that the victim’s address is often registered in the criminal file that is made available to the offender, the fact that the trial is public and that everybody can see that you are a raped person. Victims are often **ashamed** and do not want the offender to be prosecuted, because the offender is somebody known to them. However, the consequence is that if the crime and the offender are not reported, victims often do not become aware that they can claim compensation.

**No international collaborations** exist for the police or public prosecutors, only with regard to child sex tourism or child porn. Developing international collaborations could be an opportunity.

##### Opportunities

**Online sexual violence** is a growing phenomenon. The route to compensation is difficult. State compensation can be awarded if coercion is involved. Usually no violence is involved in posting photos etc., but coercion can be proven in case of threatening, stalking, or a large age difference between victim and offender.

The **application** process to claim state compensation being **easily accessible** (low-threshold) was originally mentioned as a strength, but the attendees indicated that in practice the application process is not so easily accessible. Officially the state compensation fund does not

necessarily require a police report but, in practice, without a police report, in most cases victims will not be awarded compensation. Objective information is required, and that is difficult to provide in case of rape, for example. Sometimes victims can provide medical information, but that is also not really objective information, because it is based on the narrative of the victim. In case of incest, which is often not reported to the police, the state compensation fund will more likely accept medical (psychological) reports as contributing to evidence. The plausibility test of the state compensation fund might be made less strict in some cases. The state compensation fund is examining what other information could be used by victims to add to the plausibility of the occurrence of the crime. It was suggested by some of the participants to also consider a stay in a women's shelter or the rape centre as objective information. It is acknowledged that an acute resort to the rape centre does not guarantee truthfulness, but accepting it nonetheless as a sufficient indication could be a deliberate choice, made to prevent the majority of 'honest' applicants to suffer from a few 'dishonest' applicants.

Already in the early stages of prosecution, the police can place a **preservation order on the assets** of the offender. This can be considered a good practice. However, research has shown that in practice last year only 300 to 400 preservation orders have been placed, out of the total 13.500 cases in which compensation has been awarded.<sup>70</sup> A problem is that in half of the cases in which a preservation order was placed, victims in the end did not ask for compensation. More prioritization and better communication between the professionals is needed. Ideally the police would contact victim support or the victim lawyer to ask for an estimate of the loss suffered by the victim. Another possibility, which is currently being investigated by the Public Prosecution service in The Hague, is to place a preservation order in case of appeal by the offender (and this has not been done before). It is being investigated in how many cases the court of first instance has awarded € 5.000 or more, in which the offender has appealed. In these cases, it is still worthwhile to place a preservation order. If there are more than 5 cases, the public prosecution service will consider developing national policy rules around it. Placing a preservation order on the assets of the offender requires some extra police work, because it has to be investigated whether the offender has assets such as money, a house or a car. But it also gives an important signal that the police are siding with the victim, and make efforts to make the offender pay.

Currently there is research being done exploring the possibility to put an **end to the exclusion of liability for deliberately inflicted damage** in liability **insurance policies coverage** for private individuals. Up to 99% of the Dutch population is covered by voluntary liability insurance for private individuals, which covers the liability of the insured other than for instance compulsory motor vehicle insurance, and therefore compensates victims of damage accidentally inflicted by the insured, but not damage that was deliberately inflicted, such as in case of crimes. The researchers are working to put before the legislator the option to introduce legislation that either (1) compulsory includes deliberately inflicted damage in the coverage ('third party insurance coverage'), or that (2) makes compulsory an add-on to these policies that provides coverage to the insured for damage suffered by violent crimes ('first party insurance coverage').

### Threats

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<sup>70</sup> Goedvolk, Jongebreur, van der Maas-Vos, Van der Velpen, 2018.

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Dutch victims who become a **victim of sexual violence abroad** can apply for compensation abroad. This occurs around 30 to 40 times a year, but due to a myriad of obstacles this generally does not result in compensation being received.

Table 8 shows the Dutch SWOT analysis that was created partly before the workshop to guide the discussion. Not all topics were discussed in the workshop. Some adaptations and additions were made based on the discussion. The victim journey to claim compensation in the Netherlands is displayed in Figure 5.

Table 8. SWOT analysis The Netherlands

STRENGTHS	WEAKNESSES
<p><u>State compensation</u></p> <ul style="list-style-type: none"> <li>• <b>Long time to apply:</b> up to 10 years after crime</li> <li>• Quick decision (&lt; 6 months)</li> <li>• <b>Standardization</b> compensation because of categories</li> <li>• Victim acknowledgement due to <b>all-in symbolic payment</b></li> <li>• <b>Reasonable</b> compensation amounts</li> </ul> <p><u>Offender compensation</u></p> <ul style="list-style-type: none"> <li>• Well-organised <b>victim support</b> assisting victims with claim</li> <li>• <b>Standardisation</b> via compensation form</li> <li>• Amount <b>awarded = amount paid</b> because of Central Judicial Collection Agency</li> <li>• Before police investigation has started, the police can <b>seize assets</b> offender to the benefit of compensation to victims</li> <li>• Police and Public Prosecution have <b>specialized sexual crime officers</b></li> </ul>	<ul style="list-style-type: none"> <li>• Victims refrain from reporting to police because of <b>shame, cultural aspects and the desire not to have the offender prosecuted</b>. Because they don't report, victims do not become aware of the possibility of compensation</li> <li>• <b>Privacy</b> of victims is not protected in criminal trial/file</li> <li>• Standard number of state funded working hours of victim lawyer is low: 11 hours</li> <li>• Compensation <b>amount can differ between cases</b> supported by victim lawyer versus victim support</li> <li>• <b>Different criminal courts award different compensation</b> amounts in similar cases</li> <li>• Criminal court <b>lacks civil law knowledge</b> which causes compensation claims to be (partly) rejected easily (e.g. in case of loss of income)</li> <li>• Judges do <b>not sufficiently motivate</b> their decisions on the awarded compensation amount</li> <li>• The route to compensation for <b>online sexual violence</b> is difficult because of the requirement of violence</li> </ul>
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> <li>• <b>Referral</b> to state compensation via Rape Centres</li> <li>• Victims can claim back <b>medical excess</b> for health care costs they made at the Rape Centre via state compensation fund</li> <li>• <b>Individual assessment</b> by police to prevent secondary victimization</li> <li>• Some cities have a system for <b>early referral to victim lawyers</b> (<i>piket dienst</i>): i.e. police refer victim to lawyer directly after crime is reported</li> <li>• Legislative proposal to add <b>civil judge to criminal law process</b> to enhance chance of compensation claim acceptance (legislation currently on hold)</li> <li>• Potential to <b>extend insurance policies</b> to include personal injury after deliberate crime to make sure that victims with severe personal injury can receive compensation</li> </ul>	<ul style="list-style-type: none"> <li>• Dutch citizens who become victim of sexual crime <b>abroad</b> hardly receive compensation because of many de facto obstacles for compensation in other EU member states</li> </ul>

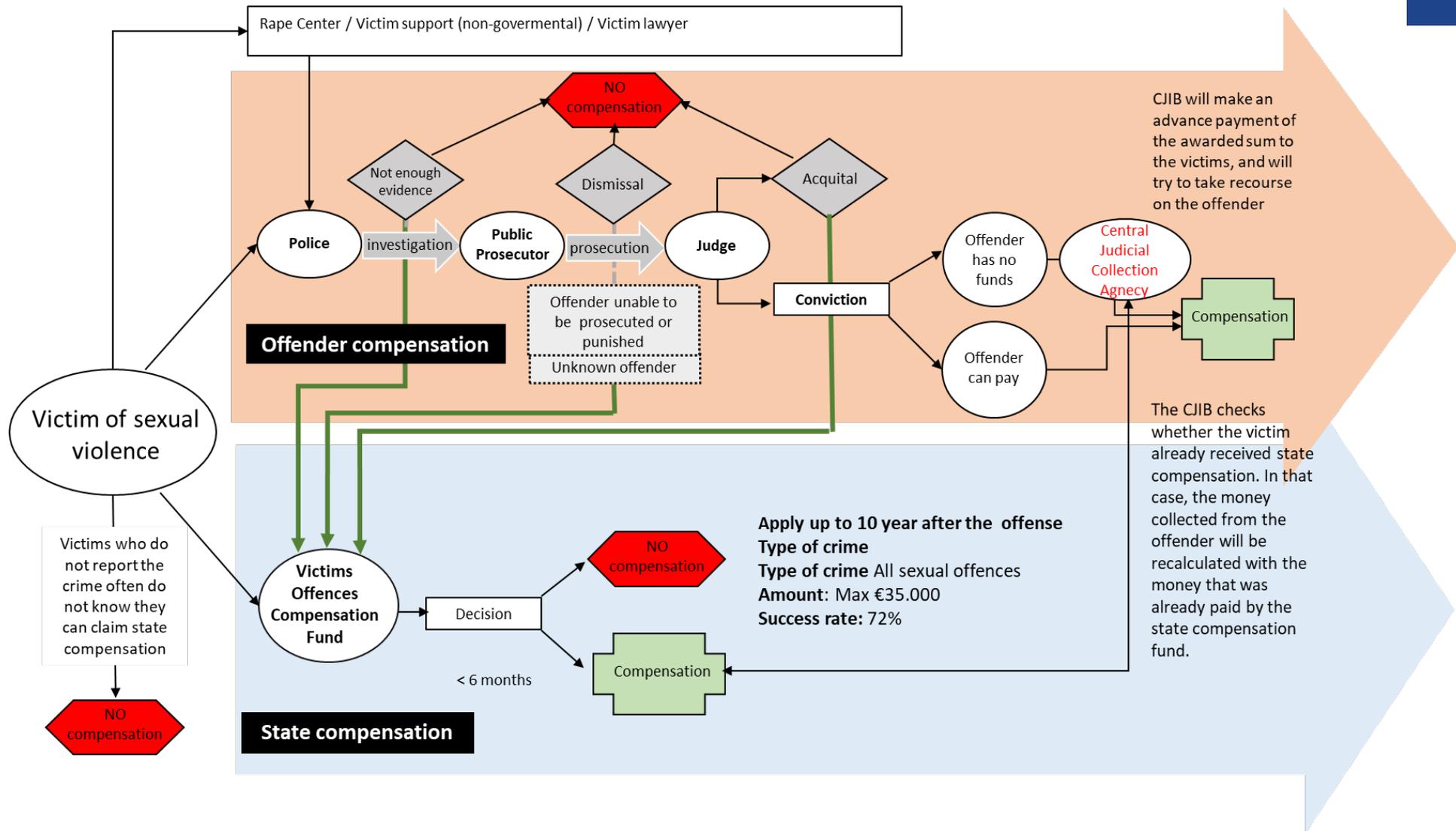


Figure 5. The Dutch victim journey

## 5. Discussion

In this chapter, the results of the desk research and workshops are discussed in the light of the obligations of EU member states as described in chapter 2 in general, and of the principle of ‘fair and appropriate’ compensation as enshrined in the Compensation Directive in particular. As the results have made clear, the countries of the current FAIRCOM partners show significant variation in the way offender and state compensation are organised and operate. First, we discuss the varieties relating to offender compensation, then we discuss the varieties relating to state compensation.

### 5.1. Offender compensation

**Enforcement of payment.** In the countries of most of the FAIRCOM partners, there are no special provisions for the enforcement of a compensation order issued by the criminal court against the offender, leaving the victim with only the option of private enforcement with all its burdens and limitations, which in many cases reduce it to a mere theoretical option. As a result, a large proportion of victims receive less compensation than they have been awarded, if not nothing at all. That is, of course, a rather unsatisfactory end result of an often lengthy, sometimes expensive and often onerous legal procedure. Empirical data from Spain shows that, of the money that was awarded to the victims by the criminal court, only a very small percentage was actually paid by the offender. Given the apparent scale of this problem, one might even question whether an adhesion procedure without special provisions for enforcement of the court decision qualifies as an ‘effective remedy’ within the meaning of Article 13 of the European Convention on Human Rights (ECHR). In the Netherlands a system is in place that promotes payment by the offender, and guarantees compensation for victims of serious violent crimes and sexual crimes. The Central Judicial Collection Agency (CJIB) not only assumes the task of collecting the awarded compensation from the offender, but also, in the case of serious violent crimes and sexual crimes, if necessary it advances it to the victim. From the amounts advanced to the victims, the CJIB eventually recovers 70% from the offenders. Another option to promote payment by the offender is the preventive sequestration of assets by the police or the prosecution, to the benefit of the victim (also called a ‘preservation order’ or ‘seizing the assets’ of the offender), which seems to be practiced (albeit only to a very limited extent) in some FAIRCOM countries, i.e. the Netherlands, Italy and Spain.

**Adhesion procedure.** Four of the five countries have an adhesion procedure in one form or another, only Greece does not have an adhesion procedure in place for compensation matters in criminal proceedings. Victims have to resort to civil procedure, with all its burdens and constraints.

**Legal aid.** In four out of five countries, legal aid for victims of sexual crimes is state-funded, regardless of income. Spain only has state-funded legal aid for victims of sexual violence if there is a relation between victim and offender (spouse, ex-spouse, child from victim or from spouse of the victim).

**Standardisation.** Four out of five countries do not have a standard application form to apply for compensation, whereas it was found in the Netherlands that a standard form increases the

likelihood of the compensation being awarded. Several FAIRCOM partners have mentioned a lack of consistency between courts and even between judges in the amount of compensation they award.

## 5.2. State compensation

**Varieties in eligibility - types of sexual crimes.** Most sexual crimes are considered to create eligibility for state compensation as long as there is some form of violence (or ‘intent’ in Greece). An exception – probably for all partner countries, but discussed at the workshop in the Netherlands - seems to be that most online sexual crimes do not create eligibility for state compensation, as the criterium of violence may not be fulfilled. In Greece, sexual acts in front of a minor, child pornography and pornographic representations of minors (in case that these crimes are committed online) are considered an exception to this, because they do create eligibility for state compensation.

**Varieties in the number of applicants.** The few empirical data that was available (official data about the number of applicants was only available in Spain and The Netherlands; data is from 2018) showed a huge variety in the number of applicants for state compensation, ranging from 10 applicants in 2019 (Greece), 85 applicants in 2018 (Spain) to 1210 applicants in 2018 (the Netherlands). There was also a large variety in the number of applications granted, ranging from all 10 applications denied in Greece in 2019, 20% of applications granted in Spain in 2019, to 72% granted in the Netherlands (years 2016-2018). Notable was that the representative from the Legal Aid Administration in Latvia claimed at the workshop that none of the compensation claims in sexual violence cases were rejected.

**Varieties in compensation amounts – ‘fair and appropriate’?** The highest maximum amount of state compensation awarded, on paper, ranges between around € 1.935 (Latvia) and € 35.000 (the Netherlands and Italy). Empirical data (only available for the Netherlands and Spain) showed that, in practice, the average amount paid ranges between € 688 (Spain) to € 5.000 (the Netherlands). The Netherlands and Latvia have standardised categories for the amounts of compensation to be awarded (respectively 6 and 4 categories).

As was discussed in section 2.2, the Court of Justice of the European Union has set out a framework for the assessment of what can be considered ‘fair and appropriate’ compensation. Member States have a discretion in this regard, and it is for the national court to decide, with regard to the national compensation scheme concerned, that the sums awarded amount to ‘fair and appropriate’ compensation. The compensation is not required to cover the entire material and non-material loss, but amounts should not be purely symbolic or manifestly insufficient and should compensate, to an appropriate extent, the suffering to which the victims have been exposed. Fixed amounts should vary according to the severity of the violence suffered, and vary sufficiently to avoid that the amount, in regard to the circumstances of a particular case, can be manifestly insufficient. The ECJ pointed out that sexual violence is likely to give rise to the most serious consequences of violent intentional crime. Subject to verification by the national court in question, the ECJ held that a fixed rate of € 4.800 for the compensation of a victim of sexual violence, did not appear, at first sight, to be enough.

In the light of this framework, it seems unlikely that the amounts granted in Spain and Latvia meet these standards because they are considerably lower than the amount of € 4.800 that was before the ECJ when it gave its decision. It is however difficult to draw conclusions about the other three countries. On the Netherlands, where the average amount of € 5.000 is just above the € 4.800 that the ECJ considered at first sight to low, it is difficult to comment because of the margin of discretion that lies with the Member States and ultimately with the national courts. On Greece and Italy it is difficult to comment because there are no data available. Greece did not have statistics about the amount of compensation paid by the state. Italy has adopted new legislation in 2020, increasing the amount of compensation paid, so statistics about average compensation paid in the new procedure are not available yet.

**Varieties in compensation paradigms.** Paradigms behind the compensation systems ranged from clear social security elements (Spain) to the symbolic acknowledgement of the harm (the Netherlands) to the principle of ‘fair and appropriate’ compensation (Greece).

**Varieties in access to state compensation.** In some countries, state compensation can be accessed only after offender compensation has been unsuccessfully sought (Spain, Greece and Italy). Other countries allow victims to access state compensation irrespective of whether criminal proceedings were initiated or not (the Netherlands and Latvia). Access to state compensation can also be limited by an administration fee. Most countries do not apply an administration fee, only Greece has a € 50 administration fee. Another way in which access to state compensation can be limited is because of short timeframes to apply. The time frame to apply ranged between within 60 days after the court decision (Italy) to 10 years after the crime (the Netherlands).

**Varieties depending on where the crime occurred.** According to the Compensation Directive, state compensation should be available across Member States. In theory, all partner countries do allow victims from other member states to apply if the crime occurred in their territory. State compensation organisations even offer help to their citizens to apply for state compensation in the country where the crime occurred. However, the agency of the Netherlands stated that, in practice, compensation applied for will for a variety of reasons often not be received from other member states. This problem was not recognized by the Latvian agency.

**Varieties in decision timeframes.** Decision timeframes for state compensation ranged from 25 days (Latvia) to ‘without delay’ (Italy).

### 5.3. Other topics

Some other topics emerged - mainly from the workshops – that are important in regard of the provision to victims of sexual crimes of fair and appropriate compensation.

**Empirical data.** In the course of the FAIRCOM project, it became clear that only very little empirical data is available regarding compensation of victims of sexual crimes. It was noted that more empirical data is needed in order to inform practice and policy, and to be able to make a change for victims of sexual crimes. It is essential to know at least the number of victims applying for compensation, the approval/rejection rate, and the amount being

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awarded/paid to victims in order to improve the legal practice. The FAIRCOM project has prompted some partners to start collecting data and/or to urge the authorities to provide data.

**Reporting rates.** Low reporting rates have been mentioned in all partner countries as a first problem with regard to ensuring compensation to victims of sexual crimes. This does not only concern offender compensation, but also in order to apply for state compensation it is required that victims report the crime to the police. Two countries have a state compensation scheme in place that is available irrespective of criminal law proceedings (the Netherlands and Latvia). Officially, a police report is not a necessary condition for an application for state compensation in these countries, although in practice, the likelihood of an application being granted is higher in case a police report has been filed (the Netherlands). Low reporting rates have been attributed to shame, the fear of stigma, and the lack of privacy. It has been noted that the way victims of sexual crimes are treated by the judicial system can be improved.

**Awareness of compensation schemes.** The (lack of) awareness of compensation schemes was often discussed in relation to fair compensation for victims of sexual crimes. Legal professionals (police, public prosecution, lawyers and judges), health care professionals, victim support and rape centres need to be trained, collaboration between them could be improved, referral should be optimised and information should be provided more adequately.

**Alternative forms of reparation.** The final overarching topic that was discussed was that compensation is just one of several forms of reparation. It was stressed that it is also very important to build victims' autonomy, to improve participation, to help dependent victims to find a job, access micro-credits and other subsidies that allow them to remain free and autonomous also from an economic point of view (Italy). It was also suggested to include victim-offender mediation as a form of non-pecuniary reparation to the victim (Spain). Restorative practices are more commonly applied in case of other types of crimes than sexual crimes, but special methods have been developed for partner violence. Empowerment of the victims is considered essential. Monetary compensation can provide empowerment, but in addition all other forms of empowerment should also be fostered.



## 6. Recommendations

### 6.1. Offender compensation

It is recommended to adopt measures promoting that the compensation awarded by the court will actually become available to the victim. Three good practices are recommended: **the collection of the awarded compensation from the offender by a governmental body** like the Central Judicial Collection Agency in the Netherlands, or at least the assistance of such body in the collection of the compensation. This could best be complemented by a **state advance payment scheme** in which if the awarded compensation is fully or partly advanced to victims of sexual crimes in case of (partial) insolvency of the offender, and subsequently recourse is taken on the offender by the state. Another promising avenue is the preventive **sequestration of assets** of the offender to the benefit of the victim as part of the police investigation or prosecution.

An easy to navigate and effective **adhesion procedure** should be in place. The rationale of Article 16 of the Victims' Rights Directive, requiring Member States to ensure that victims can obtain within a reasonable time a decision on compensation by the offender in the course of criminal proceedings, can be no other than that Member States are to provide an alternative to civil proceedings because they are burdensome and ineffective in actually obtaining compensation from the offender, not least in case of sexual crimes. Greece no longer has an adhesion procedure in place and victims have to resort to civil proceedings. As was argued in section 2.4, because of this Greece probably does not comply with the Directive.

**State-funded lawyers** and/or other forms of legal aid should be available for victims of sexual crimes who enter the criminal procedure, especially early in the process, e.g. supporting victims of sexual crime while being interrogated, which will reduce secondary victimization.

A **standard application form** is recommended, as using a standard form has proven to increase the likelihood of the application being awarded.

**No court fee** should be required in order to improve access to compensation

**Standardized compensation categories for (moral) damages** could increase the efficiency of the decision process and promote a fairer and more appropriate compensation.

### 6.2. State compensation

It is recommended to make state compensation available **to all victims of sexual crimes**, also sexual crimes that do not entail 'violence' in its usual meaning, such as online sexual crimes, in case of both adult and minor victims (for minors specific rules may apply).

Countries should take into consideration the framework set out by the European Court of Justice in regard of the **compensation amounts**. Amounts are not required to cover the entire material and non-material loss, but should not be purely symbolic or manifestly insufficient and should compensate, to an appropriate extent, the suffering to which the victims have been

exposed. If fixed amounts are used, they should vary according to the severity of the violence suffered, and vary sufficiently to avoid that the amount, in regard to the circumstances of a particular case, can be manifestly insufficient. Sexual violence is likely to give rise to the most serious consequences of violent intentional crime. A fixed rate of € 4.800 for the compensation of a victim of sexual violence does not appear to be enough.

State compensation should be available **independent from the outcome of criminal proceedings**. Most losses are suffered immediately or during the direct aftermath of a crime. Having to await the final decision of a criminal trial involves disproportional long waiting times, since most criminal procedures take many years, and as a consequence places an unacceptable burden on victims.

State compensation should be **available when the offender is unknown, not prosecuted or not sentenced**. A victim is not less a victim in those cases (UN Declaration of basic principles 1985; European Convention on the compensation of victims of violent crimes (1983)).

Objective information substantiating that the crime actually occurred can be required of applicants, but – at least in case of sexual crimes – state compensation should be made **independent on the victims' collaboration with the prosecution**.

The **timeframe to apply** for state compensation should be **long enough or flexible** in order to allow access to justice. Relevant in this case is the research showing that victims of sexual crimes in the Netherlands apply for compensation on average about 6 years after the event.

State compensation should be **decided upon timely**. It is found to be possible to reach a decision within 6 months after application. Distinguishing certain categories with **all-in symbolic amounts** covering both pain and suffering and economic loss at the same time might accommodate the timeliness of the decision.

**No administrative fees** should be charged to the application for state compensation, in order to improve access to compensation.

The **deciding authority** should be an independent organisation, which can be related to the Ministry of Justice Department (rather than the Ministry of Economy).

Specific attention should be given to **minors** who suffered sexual abuse. In Greece and Spain concerns have been mentioned about the support of minor victims of sexual crimes (e.g. ensuring that the compensation actually reaches the victim; therapeutic support to be granted directly by the state).

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## Appendix 1 - Questions regarding compensation at the EU justice portal

### Offender compensation questions

1. How can I claim damages or other means of redress/satisfaction from an offender in a trial (criminal proceedings), and who should I address this claim to?
2. At which point in the criminal proceedings should I present a claim?
3. What can I ask for in the claim and how should I present it (indicate a total amount and/or specify the individual losses, lost profits and interests)?
4. Is there a specific form for such claims?
5. What evidence do I need to present to support my claim?
6. Are there courts fees or other costs linked to my claim?
7. Can I get legal aid before and/or during the proceedings? Can I get it if I'm not living in the country where the proceedings take place?
8. When would the criminal court dismiss or refuse to adjudicate on my claim against the offender?
9. Can I appeal against such a decision or seek other means of redress/satisfaction?
10. If I am awarded damages by the court, how do I ensure the judgment is enforced against the offender and what help can I get to ensure this?

### State compensation questions

1. Which type of crime can I get compensation for?
2. Which type of injury can I get compensation for?
3. Can I get compensation if I'm a relative or dependent of a victim who has died as a result of a crime? Which relatives or dependants can get compensation?
4. Can I get compensation if I'm a relative or dependent of a victim who survived? Which relatives or dependants can get compensation in this case?
5. Can I get compensation if I'm not a national of an EU country?
6. Can I claim compensation from this country if I live here or am from here (this is country of my residence or nationality) even if the crime was committed in another EU country? Could I do this instead of claiming compensation in the country where the crime took place? If so, under what conditions?
7. Do I have to have reported the crime to the police first, to be able to claim compensation?
8. Do I have to await the outcome of any police investigations or criminal proceedings before I can claim?
9. Do I have to first seek compensation from the offender – if they have been identified?
10. If the offender has not been identified or convicted, can I still qualify for compensation? If so, what evidence do I need to present to support my claim?
11. Is there a time limit within which I have to claim compensation?
12. Which losses and expenses are covered by the compensation?
13. Is the compensation paid out in a single payment or monthly instalments?
14. In what way could my own behaviour in relation to the crime, my criminal record or failure to cooperate during the compensation proceedings affect my chance of receiving compensation, and/or the amount I receive?
15. In what way could my financial situation affect my chance of receiving compensation and/or the amount?

16. Are there any other criteria that could affect my chance of receiving compensation and/or the amount?
17. How will the compensation be calculated?
18. Is there a minimum/maximum amount that can be awarded?
19. Am I expected to quote the amount in the claim form? If so, do I get any instructions on how to calculate it or on other aspects?
20. Will any compensation I receive for my loss from other sources (such as my employer's or a private insurance scheme) be deducted from compensation paid by the authority/body?
21. Can I get an advance on the compensation? If so, under what conditions?
22. Can I get complementary or additional compensation (following e.g. a change in circumstances or worsening health etc.) after the main decision?
23. What supporting documents do I need to include with my claim?
24. Are there administrative or other charges to be paid when the claim is received and processed?
25. Which authority decides on compensation claims (in national cases)?
26. Where do I send the claim (in national cases)?
27. Do I need to be present during the procedure and/or when my claim is being decided?
28. How long does it take (approximately) to receive a decision on a claim for compensation from the authority?
29. If I'm not satisfied with the authority's decision, how can I challenge it?
30. Is there a special helpline or website I can use?
31. Can I get legal aid (help from a lawyer) when preparing the claim?
32. Are there any victim support organisations that can help me claim compensation?

## Appendix 2 – Overview of information on offender compensation

<i>Offender compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
<b>How / At which point</b>	Before beginning of oral trial  Written application Using a form	Before beginning of oral trial  In person or in writing.  Prosecutor always asks for compensation	filed with the registry of the relevant court or submitted at the hearing civil party must have capacity to sue, so must have a lawyer (until completion of preliminary steps)	An action against the offender before a Civil Court is needed. This action must include information about sexual crime, criminal procedure and criminal court judgement, evidence and elements that establish material loss and pain and suffering.	Before beginning of oral trial  Written or oral
<b>What can be claimed</b>	No limit to amount Damaged goods, medical costs, travel costs, loss of income, legal costs, pain and suffering	Material damage (physical injury, loss of income) and psychological damage (pain and suffering). Physical damages: valued according the tables included in law 35/95. Patrimonial damages: valued according the loss suffered. Moral damages: decided by case law criteria. Not specified whether loss of income is compensable	Material and non-material, medical costs, legal costs, technical advice	Material damage (medical costs, physical injury, psychological support, loss of income), non-material damage (pain and suffering), travel costs, legal costs	Material damage (medical treatment costs, legal costs, damaged goods): evidence needed Pain and suffering: indicate amount
<b>Form needed?</b>	Yes	No	No	No	No



<i>Offender compensation</i>	Netherlands	Spain	Italy	Greece	Latvia
			<p>But the declaration needs to contain the following:                      a) particulars of the civil party and their legal representative; b) particulars of the defendant against whom the civil action is being brought, c) the full name of the lawyer representing the civil party and details of their authorisation to act; d) a statement of grounds for the claim; e) the lawyer's signature</p>	<p>But an action against the offender before a Civil Court is needed. This action must include information about sexual crime, criminal procedure and criminal court judgement, evidence and elements that establish material loss and pain and suffering</p>	
<p><b>Evidence needed</b> (besides national identity document)</p>	<p>Victim has to submit a form in which the damages are specified and substantiated                      Receipts of economic costs and expert calculations of</p>	<p>relevant invoices or quotations supporting your claim                      If you have applied for legal aid, you will be required to provide evidence of your income and assets.</p>	<p>The civil party may play a part in the evidentiary process, especially with regard to evidence of the type of injury suffered, the magnitude of the injury, etc. In civil proceedings, on the other hand, it is the victim who generally bears the burden of proof when it comes to providing evidence (e.g. medical certificates) showing the magnitude of</p>	<ul style="list-style-type: none"> <li>● Medical certificates</li> <li>● statements</li> <li>● Witnesses</li> <li>● Any other evidence</li> </ul>	<p>Material damages: evidence needed                      Pain and suffering: indicate amount</p>



<i>Offender compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
			<p>the injury suffered, though the burden of proof may be discharged by showing that there is a legal presumption in the victim's favour.</p> <p>Victim has to submit a form in which the damages are specified and substantiated</p> <p>The criminal judgment has become final, recognizing the offender guilty</p> <p>Judge sentences to pay legal charges and civil liability</p>		
<b>Court fee</b>	No	No	No	<p>Yes</p> <p>The civil court fee is proportionate to the amount of compensation claim. It is 8 ‰ = 0.8% (eight per thousand) of compensation claim. Plus to this amount (compensation claim X 0,8%) there are surcharges approximately 32% (i.e. compensation claim X</p>	No



<i>Offender compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
				0,8% X 32%). Also, there is lawyer fee.	
<b>Free (state-funded) legal aid for victims of sexual violence</b>	<p>Yes</p> <p>State-funded legal aid is available for victims with low incomes AND a special arrangement is in place for victims of severe crimes and sexual offenses: they have access to state-funded victim lawyers, regardless of income. About 11 hours of legal aid is funded.</p>	<p>Partly</p> <p>State-funded legal aid is available for victims with low incomes, AND a special arrangement is in place for victims of gender based violence to have access to state funded legal aid regardless of income. Gender based violence is when a victim is a current or former spouse or child of the offender, or a minor or limited ability person living together with the offender. Free legal advice immediately before filing complaint, and free lawyer in all proceedings The legal aid provided is active until two years after the conviction, if the victim has not changed his economical need situation.</p>	<p>Yes</p> <p>State-funded legal aid is available for low incomes, AND a special arrangement is in place for victims of sexual violence, abuse and stalking, to have access to state funded victim lawyers regardless of income A lawyer is obligatory</p>	<p>Yes</p> <p>State- funded legal aid is available for victims with low income AND state funded legal aid is also available for victims of trafficking in slaves, human trafficking, sex tourism, abduction of a minor, corruption of a minor, child pornography, indecent acts with minor for payment, minor victims of rape, sexual abuse, indecent acts, incest etc regardless of income</p>	<p>Partly</p> <p>State- funded legal aid is available for minor victims and poor or disadvantaged adults. AND also 2 state programmes that offer social rehabilitation including legal assistance for victims: 1) adult victims of violence can receive up to 20 consultations – legal, psychological based on individual need. 2) for victims of trafficking – where social rehabilitation program includes also legal assistance. The victim can receive support 6 months, including legal support – consultations, preparation of documents, when needed – support in</p>



<i>Offender compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
					litigation. If the criminal process is initiated then the person can have legal support up to 3 years.
<b>Reasons for dismissal / refusal of claim</b>	If it is not sufficiently proven that the offence The judge can declare the claim inadmissible if the claim forms a disproportionate burden to the trial, i.e. if it is too complicated.	If the perpetration of the crime is not duly proven, or if it is concluded that a crime was committed but there are not sufficient reasons to accuse a particular person(s) as perpetrators If the act has not been committed, if the act did not constitute a crime or if those tried as perpetrators, accomplices or accessories appear to be exempt from criminal liability	If the defendant is acquitted If parties already agreed on a penalty ( <i>richiesta di applicazione di pena</i> ) If the trial includes a minor	<ul style="list-style-type: none"> <li>• If the criminal prosecution does not proceed</li> <li>• If civil action has not been lawfully filed or claim is not founded by law</li> </ul>	Acquittal of the case
<b>Appeal?</b>	Yes, In case of (partly) denial of the claim, the victim can appeal. The amount of compensation cannot be altered in the court of appeal. In case the claim is considered inadmissible, the victim	Yes In case of dismissal of the case. Victim can appeal if they have participated as a formal part of the procedure ( <i>acusación particular</i> - private prosecution.	Yes In case the victim does not agree with the final decision about the compensation. Only appeal in respect to the claim for damages. The appeal to the civil damages does not impact on the findings concerning	Yes  Civil court of appeal	Yes In case the court did not examine claim, the victim can start a civil law procedure



<i>Offender compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
	cannot appeal to the criminal court, but has the option to go to the civil court.		the criminal liability of the defendant There can be a conflict between a judgment at first instance that acquits the defendant and the judgment on appeal that considers the reparation of injury.		
<b>Judgement enforcement</b>	Yes  By the Central Judicial Collection Agency. The Central Judicial Collection Agency pays victims the awarded compensation within 8 months after verdict has become irrevocable. Severe violent and sexual crimes receive the full amount, less severe crimes receive maximum of €5.000. Then the Central Judicial Collection Agency will take recourse on the offender. Non-payment by the offender can result in detention	No  The State can subrogate itself to the victim's rights against the party civilly liable for the crime, up to the full amount of the provisional or final aid you have been granted as victim or beneficiary (law 95). This is a very limited amount. In practice, this does not occur	No  At the request of the civil party, and provided there are proper grounds, the court will declare its order to make restitution and compensate for injury to be provisionally enforceable. An order to make a provisional first payment (provvisionale) is always enforceable immediately. Once the judgment becomes enforceable, the party can enforce it in accordance with the ordinary rules of civil procedure. It is unclear to what extent the civil route is	No  Only enforced by the enforcement process for civil judgements, meaning that victims can ask a bailiff to confiscate the offender's salary or assets.	No/Yes?  Free court registered bailiffs (= Debt collection agencies) initiate enforcement.



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<i>Offender compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
			used because there is no empirical data		

### Appendix 3 - Overview of information on state compensation

<i>State compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
<b>Type of crime &amp; injury</b>	All sexual crimes. For sexual crimes any kind of coercion is enough	All sexual offences even when these crimes are committed without violence. The Spanish Penal Code includes two main legal typologies: sexual aggression (which entails violence) and sexual abuse.	All sexual crimes.	a) sexual crime committed with intent, b) if victim is a minor, human trafficking, rape or sexual abuse of a minor, sexual act with a minor or in front of a minor, soliciting children for sexual purposes, child pornography, pornographic representations of minors, prostitution or trafficking for sexual exploitation of a minor, and indecent acts involving a minor for payment	Rape (art.159), Sexual violence (art. 160), Acts of Sexual Nature with a Person who has not Attained the Age of Sixteen Years (art. 161), Leading to Depravity (art. 162), Violation of Provisions Restrictive of Prostitution (art. 163), Involvement of a Person in Prostitution and Use of Prostitution (art. 164), Living on the Avails of Prostitution (art 165), indecent or sexual assault, or a victim of human trafficking
<b>Are relatives of survivors eligible?</b>	Yes, in case of trauma due to witnessing violence against relative	No, only when victim died	No, only when victim died	No, only when victim died	No, only when victim died
<b>Are non-EU nationals eligible?</b>	Yes	Yes (if country of victim grants similar aid to Spaniards in its territory)	Yes (if non-EU-national victim resides in an EU Member State)	Yes	Yes
<b>Eligibility if crime committed in other country?</b>	No Crime has to be committed in the Netherlands	No Crime has to be committed in Spain	No Crime has to be committed in Italy	No, compensation authority will assist	Yes entitled to claim compensation from the EU Member State in which the criminal offence was



<i>State compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
					committed directly or through the Legal Aid Administration
<b>Police report required?</b>	No	Yes	No	Yes Report should be within three months after crime or five days after major reasons, which have prevented the victim from reporting, cease to apply. The court may be flexible in the time limit only in case the delay in reporting didn't block the identification of the offender	Yes
<b>Await outcome criminal process?</b>	No  Criminal process does not need to be started or finalised	Yes  All indemnification means have to be exhausted, meaning that a victim has to await a final verdict of the court	Yes	Yes	No
<b>Seek compensation from offender first?</b>	No	Yes  Apply for state funding only in case that claiming damages from the	Yes  Apply for state compensation must be accompanied by	Yes  Apply for state compensation only in case that offender does not have	No Victims are not obliged to claim compensation from the offender in order to claim state compensation.



<i>State compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
		offender was unsuccessful, that is, when offender is insolvent	documentation demonstrating that proceedings to recover damages from offender have failed. Documentation should demonstrate that the offender could not compensate the damage	the resources or is not known or is not prosecuted or is incapable of condemnation	
<b>Apply in case of offender is unknown or unconvicted?</b>	Yes	Yes	Yes  If offender is insolvent, unknown, or acquitted  In case of an unknown offender, court order is needed that crime was committed by person unknown	Yes  If offender is insolvent, unknown, or acquitted  In case of an unknown offender, the case needs to be archived in record of unknown offenders	Yes  The victim has the right to the State compensation also if a perpetrator of a criminal offence or a joint participant thereof has not been identified or he/she in accordance with the Criminal Law shall not be held criminally liable (for example, person has not reached the age from which criminal liability sets in)
<b>Time limit for applying</b>	10 years after the offence	1 year after the court decision	Within 60 days following the order finding that the offence was committed by a person unknown, following the last step in	1 year from the date on which the claim arose (= court decision)	3 years from the day the victim has been recognised as a victim, or after the victim has become aware of that the fact that he is entitled



<i>State compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
			enforcement proceedings undertaken without success, or following the date that criminal conviction becomes final		
<b>Losses/expenses covered</b>	The payment is a fixed, one-off amount intended to compensate for pain and suffering and for any medical expenses you incur for treatment of the injury sustained during the crime or for any loss of earnings due to resultant incapacity for work	<ul style="list-style-type: none"> <li>• Material damage: only in case of serious injury (physical injury or harm to physical or mental health with permanent disablement or temporary incapacity &gt; 6 months)</li> <li>• Psychological damage: if the crime has caused harm to the victims' mental health, the aid will be the costs of therapeutic treatment</li> </ul>	<ul style="list-style-type: none"> <li>• Material damage: medical treatment, care and assistance, loss of earnings, loss of opportunity, legal fees and court costs, stolen or damaged property</li> <li>• Psychological damage: pain and suffering</li> </ul>	<ul style="list-style-type: none"> <li>• Material damage: medical costs, loss of earnings</li> <li>• Psychological damage: mental and psychological support, change of environment and address (meaning relocation in order not to be close to the offender or reunion with family, based on Istanbul convention)</li> </ul>	<ul style="list-style-type: none"> <li>• Moral injury,</li> <li>• physical suffering</li> <li>• loss of property, determined based on the consequences</li> </ul>
<b>Single/monthly payment</b>	Single payment	One or several payments	Single payment (unless there is not enough money left in the fund for that year, then multiple payments)	Single payment	Single payment



<i>State compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
<b>Impact of victims' own behavior / contribution to the crime</b>	Application may be rejected	Application will be rejected or reduced	Application will be rejected if victim has been convicted of a violent crime or is subject to a criminal trial regarding a violent crime	Application will be rejected if victim failed to cooperate with authorities	Amount can be reduced by 50% if victim has showed intense mental agitation
<b>Impact of victims' financial situation</b>	No	No Compensation for incapacity is reduced in relation to financial income, but therapeutic costs are not corrected for financial income	No	No	No
<b>Amounts (categories, min/max)</b>	<ul style="list-style-type: none"> <li>• 6 categories: <b>€1.000 - €35.000</b>;</li> <li>• Categories are all-in amounts, including a lump sum of material and moral damage in one</li> <li>• Symbolic payment, no compensation</li> </ul>	<ul style="list-style-type: none"> <li>• Victims of sexual offences can only claim financial compensation for therapeutic treatment to compensate the harm caused to the mental health of victims. Payment is done providing receipts or other documents, until max <b>€2.689</b> is reached which is the equivalent of 5 times the IPREM</li> </ul>	<ul style="list-style-type: none"> <li>• Since February 2020, victims of sexual crimes receive <b>25 thousand euros</b> (except for less seriousness). Medical expenses of up to <b>€ 10,000</b></li> <li>• In case of murder, the amount of compensation is fixed to € 50.000. If the murderer is someone close to the victim,</li> </ul>	<ul style="list-style-type: none"> <li>• Fair and appropriate compensation, not specific amount, reflecting actual damages, decided by Compensation Authority</li> <li>• No maximum</li> </ul>	<ul style="list-style-type: none"> <li>• Indecent or sexual assault other than above, or infected with HIV, Hep B or C: <b>€1.075</b></li> <li>• Rape or sexual violence, indecent or sexual assault: <b>€ 1.505</b></li> <li>• Rape or sexual violence, or morality or sexual inviolability of the minor victim has been violated, or the victim is a victim of trafficking in human</li> </ul>



<i>State compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
		<ul style="list-style-type: none"> <li>900€ are payable in advance, before the victim submits the required report to the State's Treasury Department about the treatment chosen</li> </ul>	€60.000 for the children of the victim		<p>beings with severe bodily injuries: <b>€1.935</b></p> <ul style="list-style-type: none"> <li>death: 100% <b>€2.150</b></li> </ul>
<b>Advance payment</b>	<p>Yes</p> <p>Provisional payment in case you have insufficient funds to undergo treatment for the injury</p>	<p>Yes</p> <p>Interim aid may be granted before the legal ruling ending criminal proceedings against which no further remedy is available is handed down, provided a precarious financial situation (i.e. &lt; IPREM).</p>	No	No	No
<b>Supporting documents / evidence needed</b>	<ul style="list-style-type: none"> <li>Application form</li> <li>Identity document</li> <li>If available: police report, judgement</li> <li>Medical information</li> <li>In case of sexual offenses, the Fund automatically</li> </ul>	<ul style="list-style-type: none"> <li>Circumstances violent crime, date, place</li> <li>Identity document</li> <li>Report to the authority</li> <li>Declaration on compensation and aid received</li> </ul>	<ul style="list-style-type: none"> <li>Court judgement convicting or order finding offence was committed by unknown person</li> <li>Documentation that damages claimed against offender have been without success</li> </ul>	<ul style="list-style-type: none"> <li>Identity card</li> <li>Residence permit</li> <li>Proof of medical expenses</li> <li>Yearly income</li> <li>Report offence</li> <li>Court judgement</li> <li>Insurance payments</li> </ul>	<ul style="list-style-type: none"> <li>If final judgement has not been reached, than add reference of proceedings, with time and place offence, guilt, initiation proceedings, information of the victim, representative, injury, expert findings,</li> </ul>



<i>State compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
	<ul style="list-style-type: none"> <li>assumes mental harm</li> <li>• Victim statement only is not enough Objective information needed (e.g. report Child Protection Service)</li> <li>• Plausibility of offense</li> <li>• An offender does not have to be convicted. However, the court motivation is important in the Fund's decision</li> <li>• Severity of injury</li> <li>• Medical information is helpful to determine the severity of the injury. Medical service providers need to be registered professionals.</li> </ul>	<ul style="list-style-type: none"> <li>• Copy of legal ruling ending criminal proceedings against which no further remedy is available</li> <li>• Information about the fact, complaint, other compensations received and the judicial decision must be provided (Law 35/95).</li> <li>• The State's Treasury Department might also gather further information in order to decide about the compensation.</li> </ul>	<ul style="list-style-type: none"> <li>• Medical certificate of health costs</li> <li>• A copy of the judgment of conviction for one of the offences or a final decision concluding the trial because the perpetrator of the crime is still unknown;</li> <li>• documents certifying that an action has already unsuccessfully been brought against the perpetrator of the crime to claim damages;</li> <li>• statement replacing an affidavit of the consolidated text;</li> <li>• medical records showing the costs incurred for treatment or a certificate of death of the victim of crime.</li> </ul>		<ul style="list-style-type: none"> <li>• If proceedings have ended, add final ruling</li> </ul>



<i>State compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
	<ul style="list-style-type: none"> <li>For rape or sexual assault, it is assumed that people have psychological injury and no proof is needed.</li> <li>The Fund can ask a medical assessor to assess the injury.</li> </ul>				
<b>Administrative charges?</b>	No	No	No	50 euro	No
<b>Institution / which ministry</b>	Dutch Violent Offences Compensation Fund  Ministry of Justice	Directorate-General for Personnel and State Pension Costs  Ministry of Finance State's Treasury Department	Fondo vittime di reati violenti intenzionali  Ministry of the Interior	The Hellenic Compensation Authority  Ministry of Justice	The Legal Aid Administration  Ministry of Justice



<i>State compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
<b>Victim needs to be present?</b>	No	No	No	No  Victim may be interviewed, either by relevant authority in member state of residence or by Greek Compensation Authority	No
<b>How long until decision</b>	Within 26 weeks (6 months)	<ul style="list-style-type: none"> <li>For disabling injuries, worsening of injuries, or death: <u>6 months</u>;</li> <li>For temporary incapacity: <u>4 months</u>;</li> <li>For therapeutic treatment following sexual offences and for funeral costs: <u>2 months</u>.</li> </ul>	Decision 'without delay'	<ul style="list-style-type: none"> <li>Examine within 3 months</li> <li>Final decision within 3 months after examining</li> </ul>	Within one month after the decision is notified to the victim
<b>Can victims challenge the decision</b>	Yes <ul style="list-style-type: none"> <li>Within <u>6 weeks</u></li> <li>With the Violent Offences Compensation Fund Committee</li> </ul>	Yes <ul style="list-style-type: none"> <li>within <u>one month</u> following notification.</li> <li>First with the National Commission for Aid and Assistance for the</li> </ul>	<ul style="list-style-type: none"> <li>There are no specific mechanisms in place</li> <li>In accordance with the standard rules applying to domestic administrative</li> </ul>	Yes <ul style="list-style-type: none"> <li>Within <u>four months</u>.</li> <li>Both victim and the Greek State are entitled to lodge an appeal before the Administrative Court of First Instance</li> </ul>	Yes <ul style="list-style-type: none"> <li>Within <u>one month</u> from its entry into force</li> <li>With the Legal Aid Administration which will be forwarded to the Ministry of Justice.</li> </ul>



<i>State compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
		Victims of Violent Crimes and Crimes against Sexual Liberty, later with the Ministry of Finance	measures taken by the same authority	(Dioikitikó Protodikeío).	
<b>Legal aid / Victim support?</b>	<ul style="list-style-type: none"> <li>• Helpline 070-4142000</li> <li>• No subsidised legal aid is available</li> <li>• Victim Support the Netherlands</li> </ul>	Applicants can go to the relevant Crime Victim Support Offices	<ul style="list-style-type: none"> <li>• No helpline</li> <li>• No legal aid</li> <li>• No victim support</li> <li>• Rete Dafne and Anti-violence Centres offer legal assistance. Also the Association ‘Avvocati per niente’.</li> <li>• The Ministry also provides online guideline with help how to lodge a state application</li> </ul>	<ul style="list-style-type: none"> <li>• Since the application form for state compensation is lodged in person by victim or victim’s assignee, there is no state-funded lawyer for this application. But, victim can apply for legal aid (state-funded lawyer and legal costs): a) in an Administrative Court, if victim seeks to lodge an appeal against the decision of Hellenic Compensation Authority before the Administrative Court, b) in a criminal court and in a civil court, legal aid is provided to victims of the above mentioned sexual crimes, that are</li> </ul>	<ul style="list-style-type: none"> <li>• No need for legal aid to apply for State compensation</li> <li>• The Legal Aid Administration provides the necessary assistance for the process of claiming State compensation</li> <li>• Toll-free helpline 116006 “Helpline for victims of crime” every day from 07:00 to 22:00 providing emotional and psychological support to victims of criminal offences</li> </ul>



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<i>State compensation</i>	<b>Netherlands</b>	<b>Spain</b>	<b>Italy</b>	<b>Greece</b>	<b>Latvia</b>
				eligible for state compensation.	

## Appendix 4 – Fact sheet

<p><b>Background</b></p> <ul style="list-style-type: none"> <li>• In total, <b>11% of women have experienced some form of sexual violence</b> since they were 15 years old. 5% of women have been raped since the age of 15</li> <li>• Victims of sexual crimes are considered to have a difficult status in the criminal process because of the nature of crime, associated with <b>shame and stigma</b></li> <li>• Victims of sexual crimes suffer from <b>high attrition rates</b> in criminal law. There are <b>low reporting rates</b></li> <li>• In some countries, only few victims of sexual crimes receive only <b>limited amount of compensation</b></li> </ul>	
<p><b>Aim</b></p> <p>The main objective of FAIRCOM is to contribute to justice for victims of sexual crimes in the European Union by improving the possibilities for victims of sexual crimes in the EU for obtaining <b>fair and appropriate compensation</b></p>	
<p><b>Method</b></p> <ul style="list-style-type: none"> <li>• Participating countries are <b>Spain, the Netherlands, Italy, Greece, and Latvia</b></li> <li>• An <b>analysis</b> of obligations of Member States was made on the basis of European policy documents and legal instruments</li> <li>• <b>Desk research:</b> data about the compensation schemes in the participating countries was collected by using the descriptions of the compensation schemes on the <b>European justice portal</b>, validated and complemented by compensation experts of participating countries and project partners</li> <li>• <b>Workshops:</b> in each participating country workshops were organised for practitioners who work with victims of sexual violence to discuss the main Strength, Weakness, Opportunity and Threat (SWOT). Illustrations of victim journeys were made.</li> </ul>	
<p><b>Findings</b></p>	
<p><u>State compensation</u></p> <ul style="list-style-type: none"> <li>• There is immense diversity in what constitutes a <b>compensable crime</b>, level of involvement or <b>collaboration with the prosecution</b>, <b>number</b> of applicants and compensation <b>amounts</b></li> <li>• There is also a difference in the apparent <b>compensation paradigms</b> behind the systems, ranging from the clear <b>social security</b> elements in Spain, to the symbolic <b>all-in amounts</b> in the Netherlands, and the principle of <b>full compensation</b> in Greece</li> <li>• Three of the five countries seem to consider state compensation as a <b>last resort</b>, to be accessed only after offender compensation has been unsuccessfully sought. The Netherlands and Latvia, however, allow victims to access state <b>compensation regardless of criminal proceedings</b>.</li> </ul>	<p><u>Offender compensation</u></p> <ul style="list-style-type: none"> <li>• Compensation that has been awarded in criminal court often cannot be <b>enforced</b> against the offender, only via a civil law procedure. A civil law procedure is a long and costly procedure, at the risk of finding the offender unable to pay, which is not an option for (most) victims.</li> <li>• Four out of five countries do not have a <b>standard form</b> to claim compensation</li> <li>• In all five countries, <b>legal aid</b> for victims of sexual crimes is <b>state-funded, regardless of income</b>.</li> <li>• Not all countries have an <b>adhesion procedure</b> in place for compensation matters in criminal proceedings. Instead a victim has to claim compensation through civil law which in practice is rarely feasible.</li> </ul>