

## **Theory and Practice: Women Victims of Sexual Violence in Criminal Justice Systems**

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### **ABSTRACT**

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

Almost a decade ago, the Directive 2012/29/EU envisaged an individual assessment for all victims, considering his/her personal circumstances and the nature and special characteristics of the crime, expressly mentioning sexual violence. The report explores how well criminal justice system (CJS) treat victims of sexual violence in Greece, Italy and Spain. This study shows the gap between the black letter law and the law in action. Although the VRD implementation has led to some improvements in certain areas, many challenges remain as acute as ever.

The content will address two topics. On the one hand, an approach to the common and specific obstacles that victims of sexual crimes face when they try to engage with the CJS in three European Member States. On the other hand, a collection of best and promising practices with regard to the treatment of victims of sexual violence during the criminal process and an assessment framework based around nine key elements of effective practice (KEEPS).

**Keywords:** woman victims of sexual violence; obstacles criminal proceedings; criminal justice professionals training; policy recommendations; Directive 2012/29/EU.

## I. Introduction

The Directive 2012/29/EU on victims rights (VRD) envisaged an individual assessment for all victims, considering his/her personal circumstances and the nature and special characteristics of the crime, expressly mentioning sexual violence.

This paper is part of RE-TREAT project<sup>1</sup> (878566 — RE-TREAT — JUST-AG-2019/JUST-JACC-AG-2019). The overall aim of RE-TREAT project is to boost procedural and organisational changes in the criminal proceedings within the CJS in order to improve their responsiveness to the particular needs of women victims of sexual crimes. The paper will focus in two topics.

- An approach to the common and specific obstacles that victims of sexual crimes face when they try to engage with the CJS.
- A collection of best and promising practices with regard to the treatment of victims of sexual violence during the criminal process and an assessment framework based around nine key elements of effective practice (KEEPS).

## II. Transnational overview on Sexual violence, victims and Criminal Justice System

### 1. The case of Greece, Italy and Spain: Preliminary

Between March 2019 and October 2019, Greek, Italian and Spanish RE-TREAT project partner prepared national reports on the current situation regarding the treatment received by sexual victims within their CJS; these reports identifying the state of practice *ad intra*. However, to add some empirical data (qualitative and quantitative) on the CJS in sexual victims is more difficult in some countries than other. The level of accessibility to experts, to statistical data, even for the case-law is quite diverse. If we add Covid-19 to this scenario, it has been even more complex. The area of the expert interviewed and the fruitfulness of the information obtained varied significantly from one to another country-report.

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

This transnational overview tends to go beyond their internal borders and provide a wider picture on drawbacks faced by the victims of sexual crime. It gives a panoramic picture of the evolution of sexual crimes in these countries and the challenges that victims of sexual crimes face before, during and after the criminal procedure according to the ideal standards of the Istanbul Convention and VRD.

## 2. An approach to sexual violence crimes

### A. A paradigm shift

The three criminal codes have progressively dissociated itself from the protection of the prevailing moral sexuality within society to focus on the protection of individual sexual freedom. This radical change came, both in Italy and in Spain, mainly in the 90s. By contrast, in Greece, these developments have only taken place recently (2019).

### B. Sexual consent

In all three legal systems, sexual consent is now considered a central legal concept. Insofar as the protected legal interest in these crimes is sexual freedom, consent of the parties involved is implicitly or explicitly considered to exclude the criminal nature of the conduct.

### C. Age of valid sexual consent

In these three CJS sexual violence suffered by adults is regulated differently from that suffered by children. The main divergence on this point is the “age” that is established as relevant for the purposes of sexual consent; that is, the age from which it is recognized that a person can validly consent to a sexual relation. With regard to this matter, Spain stands out as the most conservative one by setting the age of valid sexual consent at 16 years old; Italy, 14 years old and Greece, 15 years old.

### D. Violence or intimidation as differentiation

The three CJS expressly distinguish between two types of attack sexual freedom, depending on whether violence and intimidation apply or not. However, this distinction is more specific in Greece and Spain. In Italy, sexual crimes are only punished when they are perpetrated with violence, intimidation or abuse of authority; all in all, the case-law interpretation is quite extensive and it includes acts with sexual content that are performed in a surprising way, in such a way that the victim cannot resist.

### E. Disparity in the punishment

A considerate disparity has been observed when it comes to aggravating or mitigating sexual crimes. The three legislators have chosen to aggravate (e.g. group sexual assaults), but in others, this consensus has not been found (e.g. both Italy and Spain have understood it necessary to aggravate these crimes when dangerous weapons are used in their commission, as opposed to Greece).

Additionally, for punishment, Spain distinguishes between sexual crimes that imply vaginal, anal or oral carnal access, or inserting body parts or objects into either of the former two orifices and those that do not. This distinction cannot be found neither in Greece nor in Italy. It is remarkable that some circumstances have an opposite effect within the different CJS (i.e. “chemical manipulation”).

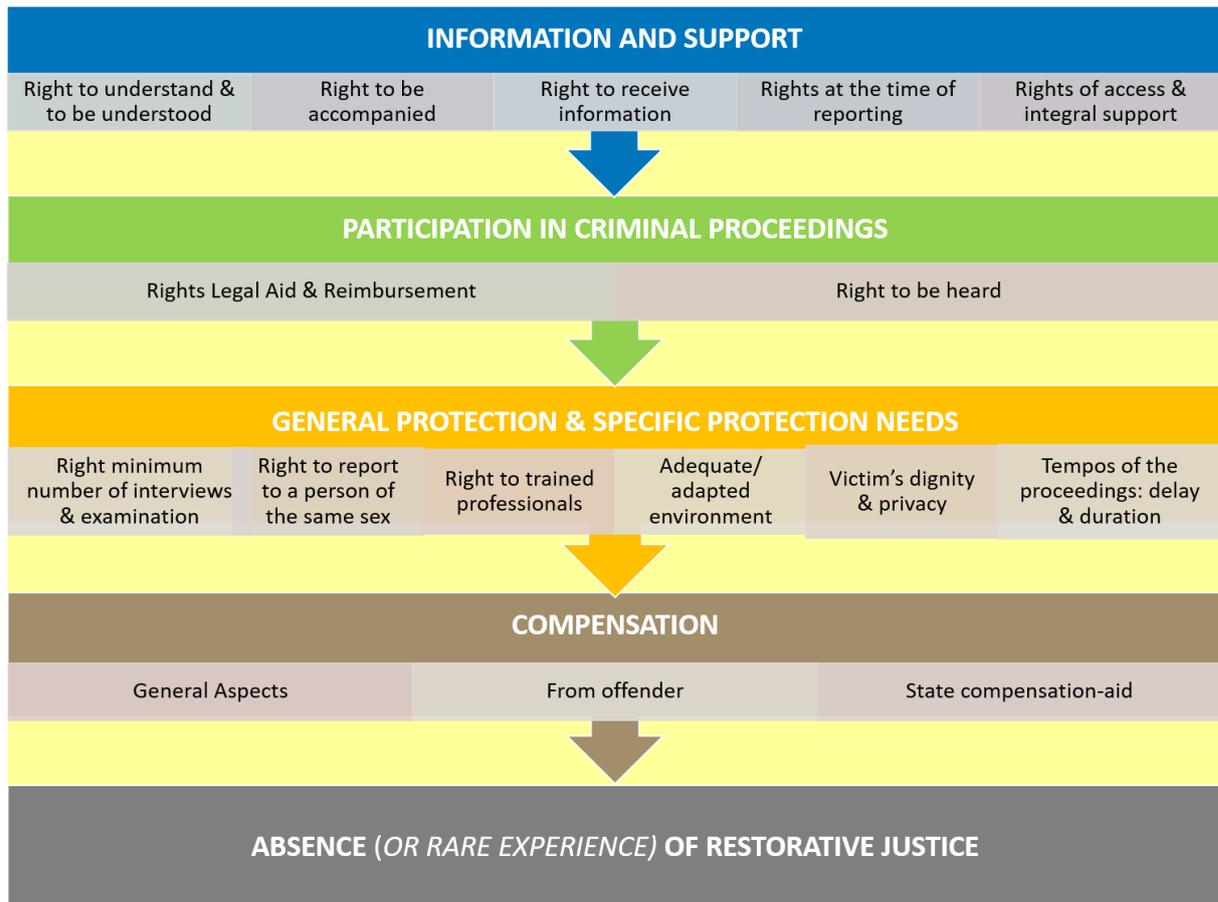
### F. Increase of the severity

It is complicated to make a comparison, but in recent years, it seems clear that there has been an upward increase the severity of the penalties imposed for this kind of offences (i.e. Italian Law 69/2019, or the Spanish Organic Laws 11/1999 and 5/2010).

### G. Semipublic crime

Generally speaking, in the three CJS, sexual offences are configured as a sort of intermediate category between public crimes (that is, those that are prosecuted ex officio, without the need of the victim's participation) and private crimes (those that are prosecuted at victim's request), being the former predominant over the latter. The biggest difference lies in the effectiveness of a victim intervention after the start of the procedure. In Italy, the victim report is irrevocable; in Greece, the victim can decide if he/she does not want to go ahead with the prosecution.

### 3. Theory and practice in the treatment of the victim of sexual violence: a directive-based perspective



### A. Information and support

Despite a growing interest of CJS professionals to make information on the dynamics of criminal procedures more accessible, this is an aspect that needs to be improved. Victims interviewed consistently express confusion, a lack of understanding and great uncertainty during the process of the criminal proceedings. It is thus necessary to improve the communication techniques and tools used in the different phases of the proceedings. Most likely, the lack of a fluid communication results – as noted both by the professional interviewed and victims - from an insufficient training of several professionals involved in CJS for sexual violence.

As far as the victim's accompaniment, Spanish professionals interviewed agree that in practice the victim is not allowed to make her statement accompanied by the person of her choice, but by a Victim Support Office member. Italian prosecutors point out that the victim may be accompanied by his/her lawyer or trusted person, unless that person holds information on the facts or could potentially act as a witness in the case. However victims miss a professional accompaniment. This situation reflects a clear departure from the victims' interests and well-being, especially if we consider that a victim of a sexual offence does not always have the support of his/her closest environment, neither a public one. The absence of this near support has a dramatic impact on them.

There seems to be a great discrepancy between the way in which professionals claim to act in the three countries and the first-hand opinion of the interviewed victims. In Greece, opinions vary according to the type of professional. Thus, whether the victim receives the information or not depends on the good will of the professional. Both the Italian and the Spanish professionals interviewed admit that this step is, in practice, reduced to a mere formality of checking.

This lack of procedural information provokes great insecurity and uncertainty, although legal aid and advice improves considerably the victim's opinion on this issue. Victims assessed their experience very negatively as they were questioned and, sometimes even discouraged from making the complaint.

There are victim support services, with a greater or lesser degree of specialization in sexual violence, in all three countries. Victims are informed of their existence; however, some aspects are very far from meeting all the needs of a victim of sexual violence in all three CJS; furthermore, both in Italy, Greece and Spain significant differences in terms of access to support services and multidisciplinary nature of the support have been found between rural and urban (LOGAN et. alii).

## B. Participation

The great discrepancy explained before improves the victim receives legal aid, but the CJS present significant variations. While Italy guarantees the right to legal aid of sexual victims, this is not always the case in Spain, where in general the victim has to meet certain requirements to access to this right. The critic around this problem has led to an amendment of the law, which is currently under discussion.

With regard to the right to be heard, there are also discrepancies between the CJS professional and the victims' experiences. Victims felt questioned when making their complaints, frustrated by the treatment received from the police and investigative judge/prosecutor (even women sometimes). In relation to questions, victims underline that they are numerous, direct and specific and that they often prevent from expressing the details in their own words and at their pace; in their view, rather than listening actively, questioned the victims.

## C. General protection and specific protection needs

Women interviewed consistently highlight the devastating effect of several steps and attitudes. For example, narrating the events over and over again; trying to answer a large number of specific questions for which they do not always have an answer; and feeling questioned when

they do not meet the demands because they do not remember a detail or they are confused. The negative effect of these factors is also stressed by all professionals.

Often, the repeated statements respond to a lack of cooperation and coordination among operators and/or institutions. Victims interviewed underline this aspect and demand more and better *inter* and *intra*-professional communication.

There is also variation across different procedures, despite being all victims of sexual violence. This seems to depend on the police station where the complaint is made, even within the same region. It is therefore necessary to agree on standardized protocols and guarantee their widespread application so that all victims are equally granted their right to an integrated protection.

There is a mixed picture of the right to have the interview conducted by a police officer of the same sex. In practice, in Greece and Italy, a victim of sexual violence cannot exercise this right. According to the reports, the victim does not seem to receive information on this right in Italy and Greece.

Security forces try to overcome this deficit with good will and responsiveness, but unfortunately this cannot replace an adequate training, nor does it avoid episodes of re-victimization. In fact, training and expertise is one of the common demands among most of the interviewees, especially with respect to police forces, lawyers, victims and victim assistance services. The lack of training varies significantly from one country to another. In the recent years the three CJS have experienced some developments, although the lack of human resources and the work load is consistently highlighted as the cause of not being able to assist victims adequately (MONROE et. alii).

In broad terms, police stations are not adequately prepared to receive victims of sexual violence. Police facilities are not welcoming and do not include spaces specifically prepared to assist the victims. Equally, when victims arrive to hospitals and health care centers to request a physical examination, private rooms where the victim can present his/her situation are not available, a fact which compromises seriously the victim's privacy and dignity. In addition, this reporting situation might deter women from coming forward.

Significant discrepancies have been observed with respect to measures to avoid visual contact between victims and offenders, to ensure that the victims may be heard without being in the courtroom and to allow hearings to take place without the presence of the public. While these measures are generally applied to child victims, with some differences, their application to adult victims of sexual violence is still rare. Spain and Italy seem to be at a similar better level than Greek. In both countries they will be heard behind closed doors adopting simple physical protection measures rather than resorting to technological solutions such as a videoconference from another room.

Although a positive evolution has been observed in terms of the questioning, it does not avoid these questions in practice. This problem depends, both on the adequate training of the professionals.

In practice, sexual victims still suffer serious attacks on their privacy. In Greece, according to some of the interviewed operators, it is not uncommon for the names of the victims to appear in the media.

Time is another variable that negatively affects the protection, safety and dignity of the victim, and leads to unavoidable re-victimization. Unfortunately, the criminal proceedings can last for years in the three CJS, and during that time victims are not always provided with the support and information.

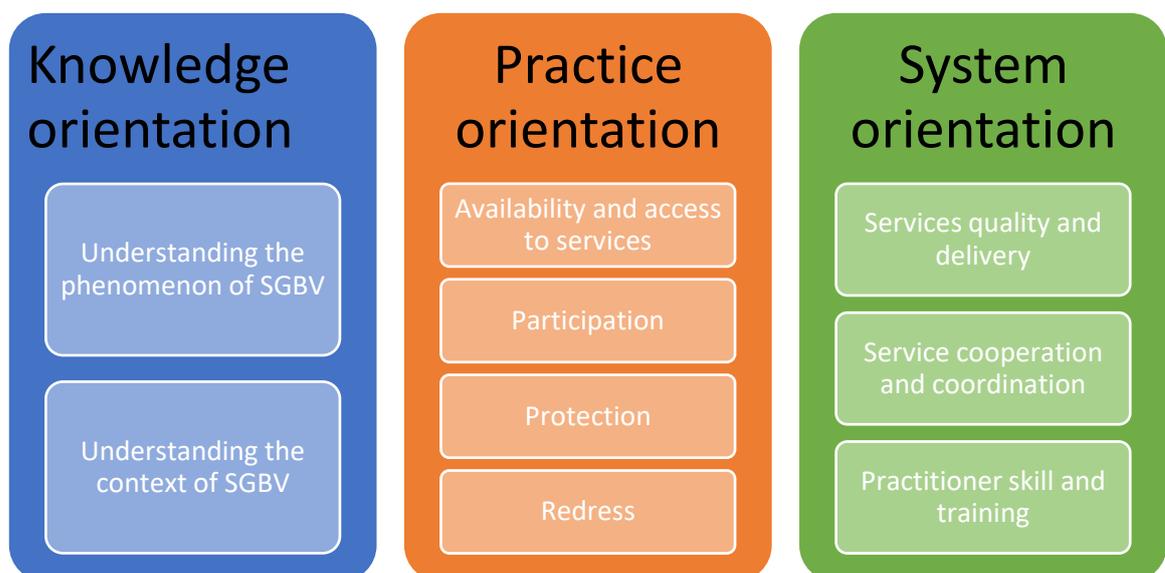
Studies conducted reveal a very negative opinion on the adequate and effective compensation. On one side, the question of the *sum*. On the other side, attention must be paid to the obstacles to *effectively collect* the established compensation. In the three CJS, victims of sexual violence may request compensation by the offender. However, while in Spain and Italy victims of sexual violence may obtain this compensation in the course of the criminal proceedings, in Greece requires resorting to an autonomous civil proceeding. The three CJS envisage the possibility to request compensation from the State as a *subsidiary* route in those cases in which the offender is not able to pay the compensation.

The possibility of establishing restorative justice programs in the area of sexual crimes under consideration seems very unlikely in the three countries. The simple question becomes a very controversial among professionals. However, some of the characteristics of sexual victimization suggest that victims might benefit because it does not question the credibility of the victim's account and in which her feelings and interests can be better addressed (OLALDE ALTAREJOS; MERCER & STEN MADSEN; KEENAN & ZINSSTAG). These benefits cannot ignore the potential cost of the risks derived from this mechanism and, especially, re-victimization, manipulation, pressure and instrumentalization.

### III. Best and promising practices

Sexual violence victims experience many barriers to engaging with CJS, and front-line actors play a crucial role in shaping the experiences of and justice outcomes for such women. CJS professionals can be supported in their role through training and guidance frameworks.

The policy context that surrounds the work of these actors can either facilitate or hinder effective practices when working with woman victims of sexual violence. Based on previous papers from the authors on good practices in the treatment of woman victims of sexual violence within the CJS, and also on practice standards for judicial professionals.



Nine key elements of effective practice (KEEPS) were identified and distributed across three clusters: ‘knowledge orientation’, ‘practice orientation’ and ‘system orientation’. At the centre of the three clusters victims’ justice interests can be found, emphasising the importance of having a victim-centred approach. These recommendations contribute to the implementation of the VRD.

## 1. Availability and access to services

The accessibility of justice is a marker of the quality of effective justice systems (HAUSER). Victim support and legal services should exist in sufficient numbers, be well enough resourced to provide sufficient capacity to meet victim needs, be known about and easy to access.

### A. Individual barriers

SGBV is a particular form of victimisation that comes with additional challenges for the victim, such as shame, (self-)blame and doubting the victimisation itself. The latter can occur for instance when the phenomenon is not corresponding to the more ‘typical’ forms of SGBV. For example non-consensual condom removal is less known as a form of victimisation and is not always recognised in legal frameworks as an offence. The victim might therefore also doubt herself whether or not she was victim of a sexual offence. Also when SGBV occur in the context of drinking, the victim might doubt their experience of SGBV.

### B. Interpersonal barriers

Victims are more likely to also question their experience and therefore not participate in support services when they are doubted and disbelieved (CARRETTA, et. alii.). Even when the victim does not experience negative reactions from others, there is still a fear of negative responses, stigma and judgement, which discourages accessing services. Contrastingly, a supportive environment can encourage victims for accessing services (KENNEDY & PROCK; ULLMAN et. alii.).

### C. Organisational barriers

Organisational structures may cause barriers to accessing services, which is particularly relevant due to the low reporting of SGBV. A refusal to press charges or give evidence, for example, should not impede victims’ access to services (CARBONE-LOPEZ et. alii.).

### D. Sociocultural barriers

The sociocultural context of SGBV victimisation significantly impacts how it is experienced and can influence accessing services (CARSON, et. alii.). Norms, stereotypes and taboos around gender, sex and sexual offences often hold victims back in accessing services, possibly due to stigma and shame. Challenges around talking about sex and abuse are common in most societies but may effects be enhanced within certain groups. Norms and stereotypes are often expressed in rape myths (BATES, et. alii.).

## 2. Participation

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

### **A. Receiving and understanding information**

When victims lack information this leads to distress, dissatisfaction and disengagement with the CJS. Despite the VRD focussing on several aspects related to information, knowledge of victim support services remains low.

### **B. Participation, agency, empowerment and independence**

A number of legal instruments emphasise the importance of giving victims opportunities for (active) participation in criminal proceedings. According to the VRD, States have a duty to facilitate victim participation, this includes providing information (e.g. regarding options), providing services to facilitate participation, providing support, and providing a safe environment. Meaningful participation means that victims are involved in the co-construction of their experience within the CJS, rather than merely being subjected to it. The lack of control over their CJS involvement disempowers victims. The opposite experience, creates empowerment.

### **C. Being understood and being heard**

Listening to victim's experience, such as by allowing them to speak during their legal case, can lead to empowerment. Such sharing helps SGBV victims to better understand their experiences and provides opportunities to redress the power imbalances often inherent in SGBV (MCGLYNN, et. alii).

## **3. Protection**

### **A. Protection of safety and security**

Safety and security are important needs for SGBV victims. Whilst these terms can be defined broadly, for the purposes of this paper, and following the VRD, attention will be given to safety and security from repeat victimisation (i.e. from perpetrators) and from secondary victimisation (i.e. from justice and intervention services). The impact of negative experiences with professionals from the CJS or other support services, the further traumatisation caused is sometimes referred to as the 'second rape' (MADIGAN & GAMBLE).

### **B. Privacy**

A fundamental right rooted in the ECHR, privacy refers to the protection of personal information about the victim and is an important means of preventing secondary and repeat victimisation. SGBV victims often experience negative emotions such as shame, a feeling of humiliation, and the fears of being blamed and of public scrutiny (WEISS). These emotions can be a reason for victims to not report the crime (ZINZOW & THOMPSON) and/or to withdraw from legal proceedings (ANGIOLINI). Ensuring anonymity can therefore encourage victims to report.

### **C. Dignity**

Dignity is a crucial human right and can be seen as the compass to protect and promote other human rights or as the underlying value for other human rights. Whilst the importance in international law is clear, the general understanding of the concept is less so. Dignity is often conveyed through interpersonal communication between SGBV victims and professionals and can be undermined when victims feel denigrated, judged or stereotyped. Dignity can be

conveyed through sensitivity to language and terms that are used to describe victims and their experiences.

#### 4. Redress

##### A. Health and wellbeing

The consequences that SGBV victims experience include financial, legal, social and to mental and physical health. A holistic, client-centred and targeted approach, focused on minimising distress and further suffering is required (VANDENBERGHE, et. alii.). Steps to protecting the health and wellbeing of victims should be built into all interventions.

##### B. Vindication and validation

Validation and vindication are important factors for victims. Validation is related to confirmation of the status as the harmed party and recognition of the victimisation experience (Daly). Validation is particularly relevant in the context of sexual victimisation because of the high levels of blame (self-blame, being blamed by others), guilt and shame that can be experienced, and the potential negative effects that this can lead to, such as a refusal or reluctance to report. Vindication is linked to validation and is concerned with vindication of the law (confirmation of the moral and legal wrongness of the harm) and also vindication of the victim (confirmation that the particular victim was wronged by the particular victim). Vindication can be particularly important for victims whose victimisation experience does not fit with predominant social attitudes regarding sexual harm such as in SGBV perpetrated by women on other women.

##### C. Compensation

Ensuring that the victim has access to compensation can contribute to the sense of validation and vindication. This is not only considered to be important for victims, but it is considered to be a right that is emphasised in a number of European legal instruments. Compensation is wider than merely that of financial recompense, and extends to the support afforded to victims more generally (MILQUET). Victims should be compensated for criminal injuries and damages incurred. Victim support services have an obligation to inform victims about access to national compensation schemes (see also ‘receiving and understanding information’). Further, Member States are required to make provision in national law that provides victims who incur expenses as a result of participation in criminal proceedings, are given the possibility of being financially reimbursed for those costs. Compensation should come from the offender or, if not forthcoming from the offender, then compensation should be paid by the state.

#### 5. Service quality and delivery

Programmes and services for SGBV victims should be evidence based, victim-centred (systematically prioritising victim needs, compassionate and non-judgemental), gender-sensitive and respect human rights. In such services, practitioners receive continued and extensive training and supervision. Additionally, practitioners should know how trauma can manifest and present in victims, and how to avoid amplifying or replicating trauma. One way of guaranteeing these quality standards is for services and programmes to be grounded in principles and standards that support the best outcomes for victims. These standards should be clearly set out, evident in practice, and the basis for service evaluation and monitoring.

## 6. Service cooperation and coordination

The VRD indicates that at first contact with a competent authority victims should be referred to the appropriate services. Organisational structures should facilitate and ease the maximum access to services for the greatest number of victims (see also ‘availability and access’). Responding fully to the complex needs of SGBV victims requires cooperation between professionals within and between different sectors and disciplines. In general, SGBV victims have less trust in the authorities and the police than they do in other victim support services. One aspect of cooperation between services could be for organisations that sit outside of the CJS to act as intermediary organisations between victims and authorities.

## 7. Practitioner skill and training

The ways in which professionals interact with SGBV victims can be greatly influenced by the training that they receive (BOWS). Training should focus on providing practitioners with an in-depth knowledge of SGBV, the contexts in which it presents, and an understanding of the importance of having a victim-focused approach that focuses on the individual needs of the victim. An important training need for concerns communicating with victims (Ranjbar, et. alii; RUMNEY et alii.; PARATT & PINA). The attitudes of professionals are extremely important for SGBV victims. Sex and SGBV are sensitive and somewhat taboo topics. Without strong communication skills professionals are unable to engage and encourage SGBV victims (CHLIAOUTAKIS, et. alii.). One example is the need for sensitivity to the language and terminology. For example, some victims object to the term ‘recovery’ as they feel that the experience of SGBV is something that they have to learn to live with rather than something that they can ever completely leave behind them. Similarly, many victims prefer the term ‘non-recent child abuse’ to ‘historic child abuse’ arguing that the experience remains current.

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<sup>1</sup> RE-TREAT Reports available at: <https://sexualviolencejustice.eu/re-treat-project/?lang=es>; see in particular: the three National Reports; the Comprehensive Report and the Practices Standards.