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List of Abbreviations

CC	Criminal Code
CCP	Code of Civil Procedure
CPC	Criminal Procedure Code
CO	criminal offence, crime
CoE	Council of Europe
DV	Domestic violence
EC	European Commission
EU	European Union
GBV	Gender-based violence
IPAB	investigative, prosecuting and adjudicating bodies (police, public prosecutor, court)
LAFCVC	Law on Assistance and Financial Compensation for Victims of Crime
LLA	Law on Legal Aid
LPDV	Law on Protection against Domestic Violence
LOC	Law on the Obligations and Contracts
MoJ	Ministry of Justice
PACE	Parliamentary Assembly of the Council of Europe
VAW	Violence against Women

Definitions

In this publication, the following definitions of violence against women, gender-based violence against women, and domestic violence, as provided in Article 3 of the Istanbul Convention, are being used:

- *violence against women* is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threat of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public in private life;
- *GBV* shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;
- *DV* shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.

Introduction

“Victims¹ of violence against women and girls² in Czechia do not receive proper compensation³, and this institute does not serve its purpose.” This hypothesis, based on the many years of experience with direct work with victims of domestic and sexual violence, has prompted us, i.e., *proFem – centrum pro oběti domácího a sexuálního násilí, o. p. s.*, to examine the issue of compensation for victims of gender-based violence.⁴ Therefore, we deep-dived into this topic in 2021 and 2022 together with our colleagues from partner organisations in Bulgaria (Bulgarian Gender Research Foundation) and Hungary (PATENT) as part of the European Commission’s international project, *VICO – Compensations for victims of gender-based violence*.

The main deliverables include detailed research data regarding the reality of awarding compensation based on a study of nearly 600 judgments in criminal matters, a comparative analysis of the situation in Bulgaria, Czechia, and Hungary, and a list of best practices used as an inspiration for a set of recommendations to improve the current situation. You now hold the critical data, conclusions, and insights identified and formulated during the project. The bottom line is that **victims of gender-based violence may only rarely obtain justice and financial compensation.**

This publication is designed for the broader knowledgeable public and experts, particularly those working with victims of criminal offences and those interested in compensation for violence against women and girls. It aims to present new objective data on compensation to victims of gender-based violence, introduce this topic in the Czech and Central European context, present the relevant Czech laws and regulations – simply to take a comprehensive approach to this topic and give inspirational examples from abroad and proposals to resolve and improve this situation. Despite the recognised focus on victims of violence against women and girls, our research conclusions may be transferred and applied to other victims of criminal offences because other groups of victims, too, can face similar structural barriers in the approach to compensation as we describe in our study.

The reasons for conducting our research also included the motivation to improve the position of victims of violence against women and girls, help fill in the gap in data, and open the much-needed debate on victim compensation and exercising their rights in general. All that also remains the most fundamental aspiration of this publication.

¹ In the Czech environment, the word ‘victim’ may be perceived as a designation of a passive person subjected to violence. Some people are not willing to identify with this term. It means that this attitude may consequently act as an obstacle on their way to getting help, especially if such people see themselves as autonomous and someone whom others should not control. Nevertheless, our organisation sees ‘victims’ as people who are often very active and address their situation intensively, which is why we deal with this term accordingly.

² For the purpose of this report, the terms ‘gender-based violence (GPN)’, ‘gender-based violence against women’, and ‘violence against women and girls’ are used as synonyms.

³ For the purpose of simplification and the sake of clarity, this publication uses the term ‘compensation’ as a summary and concise designation of the institute of compensation for injury (in criminal and civil cases) and financial assistance to victims (i.e., monetary assistance).

⁴ Considering the nature of this issue, which predominantly affects women, we work with most terms in their feminine gender.

I. Why do we need compensation for victims and why do we need to talk about it?

To start with, let us briefly contemplate why compensation for victims of crime and victims of violence against women and girls is needed, its role and meaning, and why it is crucial to deal with it.

Considering the ordeal a victim faces after a committed criminal offence, it is hard to imagine the sum that could mend the fear, trauma, and frequently mental and physical consequences. Violent crimes significantly reduce the victim's quality of life for several years or even their entire life, which also happens quite often. Victims have long-lasting psychological and physical problems reflected at many levels of their day-to-day reality. Such problems must be understood as non-material damage or injury. **In such a situation, financial compensation represents the absolutely minimum satisfaction.** However, victims do not often get even that (as shown in our research presented below).

The purpose of compensation must be emphasised in this context. The purpose is only rarely accentuated, yet it plays a vital role in perceiving this issue's significance. The sense of compensation is to **provide victims with at least symbolic compensation for all damage and injuries** experienced in connection with the committed crime. Such injuries include both specific consequences and impacts of the criminal offence and the **actual commission of the crime**, which is, as such, a torturing and devastating intrusion on human rights.

In addition – if someone becomes a victim of crime, it also **significantly infringes** on both the individual and **society**. For a legally consistent state and its systems to work, there must be legally binding rules ensuring a remedy in the case of their violation. **It also means compensation for the victims of legal rules violations**, i.e., victims of crimes. Of course, not all violations of standards represent the same infringement on society. In criminal law, we may use the crime's nature and gravity as the basis, which reflects individual chapters of the Criminal Code. Nonetheless, the very substance of violence against women undoubtedly represents a group of very serious crimes.

Therefore, compensation must be viewed as being **as important as punishing the offender**⁵. It must be noted that the public interest in punishing the offender and compensation for victims is hardly comparable, yet we can see a few common denominators. It is in society's interest that the state is involved in both parties' return to their regular and proper roles in society and everyday life. Thus, we may conclude when comparing the purpose of punishment and the purpose of compensation for (particularly) non-material damage that they represent **equally significant aspects of the committed crime**. Both institutes are used as a remedy and to protect society, while differences can be seen in the subject and especially in the manner of enforcing the rights arising from these aspects.

Offenders, who intentionally caused the entire situation, face immediate punishment if they are convicted. However, contrary to that, the state lets the victim, who faces a difficult situation occurring through none of the victim's fault, enforce her rights on her own. In other words, punishment means the state's right that is enforced automatically while the victim's right to compensation is not.

⁵ ASHWORTH, A. PUNISHMENT AND COMPENSATION: VICTIMS, OFFENDERS AND THE STATE. *Oxford journal of legal studies* [online]. Oxford University Press, 1986, 6(1), 86-122 [cit. 2022-09-09]. ISSN 0143-6503. Available from: doi:10.1093/ojls/6.1.86.

In addition, it remains generally problematic for experts to sufficiently describe, calculate, and prove non-material damage, let alone for the person who experienced a traumatic event such as violence against women. Therefore, it must be made sure and apparent that committing such serious crimes should, as a material violation of fundamental human rights, represent **the only condition for a victim to receive compensation**⁶.

All the same, victims are required to know what steps they must take. Thus, the following scenario can often occur in practice: Someone becomes a victim of crime, which substantially reduces the quality of her life for several years, and causes physical and mental problems, most likely trauma, too. The victim takes the criminal proceedings as a synonym for a way to justice, which should be reached through punishing the offender and compensating the victim's ordeal because it is what society, as a whole, should never yield in case of a committed (violent) crime. However, the victim is suddenly required to know that she must claim such compensation, when she should do it, that she must describe her mental torment or other non-material damage in detail and calculate and prove the compensation sum. This process is highly strenuous for a victim without a legal background. In a situation when the victim does not have a lawyer's assistance, the court often refers her to civil proceedings due to shortcomings in her application.

In such a case (which is not unreal at all), the victim gets neither assistance nor compensation, which strongly undermines the victim's confidence in the system. That means that in the current legal setting, victims face enormous uncertainty and are more likely to encounter secondary victimisation and intensify their negative mental experiences. Nevertheless, **it must be in society's interest to punish offenders and provide victims with as broad support as possible.**

Our practice has shown that compensation for victims of violence against women is an exacting issue that is, in many aspects, a big unknown both for non-specialists and experts. The sophisticated nature of this topic, combined with the specifics of violent crimes against women, results in omitting this issue even though it is highly topical and urgent. From a society-wide perspective, compensation for damage and monetary assistance represents **a symbolic and the slightest satisfaction that the state can provide to the victim.** To improve and make the institute of compensation more efficient, it is an absolute must to open up the discussion on the current system settings, map out the reality and collect the relevant data systematically. Such information is provided in the next chapter of this publication.

⁶FULLER, L. L. Morálka práva. Praha: Oikoymenth, 1998.

II. National research data

The following chapters are devoted to specific results from extensive research that individual countries have processed – both compensation from offenders and financial assistance from the state are included.

1. Czech Republic

The legislation analysis was followed by the second research stage, i.e., the collection of documents. It lasted from the spring to the summer of 2021. First, we addressed the Ministry of Justice, which shared the statistics of financial assistance paid to victims of selected offences in 2019-2020. Shortly, we started collecting judgments in criminal cases based on free access to information. We used the following selection criteria: (i) the judgment concerned at least one offence of the following: rape⁷, ill-treating a person living in the same household,⁸ or stalking⁹, (ii) the offender was convicted in a final judgement, (iii) the injured party was a woman, (iv) the judgement was delivered in 2019-2020.

According to the available data, 460 persons received a final judgment for rape, 469 for domestic violence, and 381 for stalking in the above period. However, these figures do not differentiate the victim's gender.¹⁰ Of these 1,310 relevant judgments, we requested 556 decisions from 72 courts (63 district courts, two municipal courts, and seven regional courts), i.e., about 42 per cent. To get as an adequate and representative sample as possible, we selected courts in terms of the court instance, region, municipality, and size. In addition, we included courts from both central and peripheral areas and courts from regions with a higher occurrence of socially excluded locations.

These judgments regarded 611 injured parties who were subjected to the following offences: 313 rape cases, 216 cases of ill-treating a person living in the same household, and 122 stalking cases (in various concurrence stages).

Although GBV includes many violence manifestations,¹¹ we focused our research only on the three offences mentioned above, considering the Central European context, the Czech Criminal Code, and research feasibility. Yet, we need to emphasise that even the chosen offences are different and specific.

The third phase involved the study of the judgments using the content analysis method. During analysis, we monitored the crucial variables - the cardinal ones (i.e., mainly the amount of claimed and awarded compensation amount) and the nominal ones (e.g., the offender's relationship to the victim or court's arguments when ruling on the claim). We entered the judgement information into a table, which we subsequently used to extract the final findings.

Finally, we used the analysis conclusions as the base for semi-structured interviews. They aimed to explore whether the findings correspond to the respondents' practical experience and supplement them with insights beyond the judgments. In the autumn of 2021, we conducted 14 interviews with the representatives of lawyers (5), the judiciary (3), public prosecutor's offices (2), the nonprofit sector (2), and the Police of the Czech Republic (2). We performed the interviews based on three interview

⁷ The provisions of s. 185 of the CrC.

⁸ The provisions of s. 199 of the CrC.

⁹ The provisions of s. 354 of the CrC.

¹⁰ InfoData statistics: Přehledy statistických listů: Přehled o pravomocně odsouzených fyzických osobách podle paragrafů – právní předpis TRZ2009. (2019, 2020). [online]. [cit. 2021-01-05. Available at: <https://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html>.

¹¹ E.g., female circumcision, forced marriages, abusing girls, sexual harassment, femicide, trafficking with women and girls, forced sterilisations and abortions, forced pregnancy, abusing the girls' and women's rights in online space.

scenario types. The interview outputs have qualitative nature and explorative character. The principal investigator analysed the interview records using open coding, i.e., by creating common codes and categories for the respondents' statements. Subsequently, they were related to the results of the quantitative analysis of data from the judgments.

As for methodological obstacles and limits, first of all, we need to point out that it is impossible to check whether the courts had provided us with all judgments meeting the defined conditions under the Free Access to Information Act. The provided judgments could depend on the search system or filter or accuracy with which each court records statistical data on judgments. It also turned out that some courts had not made available even the information on the compensation sum as part of the obligatory anonymisation or had not even added the sum when additionally requested.¹² The data set also included judgments whose wording had not contained specifications of the claimed sum at all.¹³ We used these two groups of judgments to read the basic information about claims for compensation for loss. However, we could not include specific sums in averages. Last but not least, it is also important to note that 260 judgments involved GBV in concurrence with another offence.¹⁴ All of this could have impacted the amount of the claimed and awarded compensation. This situation may also differ from GBV cases committed separately.

1.1. Compensation by the offender

The strongest finding from research is that **nearly 80 per cent of the injured do not get any compensation for the non-material loss**. The primary conclusion is that of the sample of 611 injured parties, 79 per cent (480) did not get any compensation for non-material loss. As for material loss, 93 per cent (570) of all injured did not get any compensation. However, material loss is not necessarily always present in all GBV cases. It does not need to be of a great extent (e.g., ruined clothing), or it may be related to another offence of property nature committed in concurrence. Therefore, our report will mainly deal with practice related to the non-material loss.

Below is a more detailed breakdown of the success rate of the injured, factors affecting the success or failure, and details showing that the fact that a clear majority of the injured did not claim compensation at all plays a substantial role in interpreting this data.

It is also a significant finding that the **injured party claimed compensation for non-material loss at all, only in 27 per cent** (168) of decisions. This figure stood at nine per cent of the injured (58) in the case of material loss. As for the differences among offences, compensation for non-material loss was claimed by the highest number of the injured in the case of rape. On the contrary, only an infinitesimal number of victims, only seven out of 105 (7%), claimed compensation for non-material loss in the case of stalking.¹⁵ Our interviews also showed that it might be because victims of stalking primarily want to stop harassment, and compensation for loss remains secondary.

Claiming compensation for loss governed by the civil-law principles and provisions fully depends on the injured party's activities. Seeking compensation for loss is crucial so that GBV victims can systematically and regularly obtain compensation for what they have experienced. It is absolutely substantial to identify the barriers to submitting the claims. Therefore, we focused our interviews on

¹² A total of three (3) judgments.

¹³ A total of 27 judgments

¹⁴ Often, e.g., s. 175 (blackmailing), s. 198 (ill-treating a person in custody), s. 173 (robbery), s. 205 (theft), s. 303 (dangerous threatening), etc.

¹⁵ Regarding the specific numbers of the injured claiming compensation, compare (in the context of a possible concurrence of analysed offences): Appendix: Table 3 – Detailed information about the success rate in claiming non-material loss by individual offences.

what discourages injured parties from this process. The respondents' statements have offered many explanations for this low number. The reasons may be divided as follows:

(1) Personal barriers

- Ties to the offender, often personal. The injured who often have some kind of a relation to the offender are **frequently afraid of another escalation of the situation** and possible consequences if they should also seek financial satisfaction. If the offender and victim have children, they can also have concerns that the offender would not pay support and maintenance. That means that if the offender pays compensation, he will not have money to pay support and maintenance. Sympathy may also play a certain role when the injured sympathise with the offender - next of kin (for instance, a son or a grandson).
- There are also concerns about **social rejection related to the stereotype that victims file criminal complaints purposefully** only to gain property benefits.
- Concerns related to useless claims. Some injured parties do not believe that they could actually get any compensation. They are afraid that the court will not award them anything or that the offender does not have enough money, which the injured party may know.
- **Lack of support** and resort from other people.

(2) System barriers

- Insufficient real awareness of the injured of this right or possibility to use expert services of assisting organisations.
- Complexity of proceedings for laymen, challenging knowledge about the auxiliary proceedings and concept of non-material loss.
- Frequently, lacking legal representation of the injured by an attorney, or insufficient and low-quality representation.
- Complexity of calculating and proving loss, which the unrepresented injured only seldom dare to do.
- Financial burden for the injured, in particular costs of representation and expert opinion.
- Distrust of the system and IPAB, especially the police, concerns regarding a non-empathetic and untrusting approach, trivialisation, or incorrect interpretation of efforts to get compensation.

The next finding is that **about 75 percent of the injured claiming loss receive at least some compensation**. If the injured had overcome the barriers described above and decided to lodge a claim, 79 per cent of the injured sought compensation for non-material loss and 71 per cent of those claiming material loss received at least some financial satisfaction. But we have, in fact, not seen any significant differences in the success rate among individual crimes.

It must be noted that **half of the 131 injured who had been awarded compensation for non-material loss received less than CZK 70,000**.¹⁶ The average sums awarded in compensation for material and non-material loss are at about¹⁷ 50 per cent of the average of the sums claimed. The highest awarded compensation for non-material loss was CZK 1,412,165 for a brutal rape concurrent with an attempt to murder the injured party.

The highest average sums concerned rape (average claimed sum: CZK 322,225; awarded sum: CZK 163,228), which may be related to the highest number of injured parties claiming compensation for

¹⁶ It must be said that the sum does not and could not include the judgments, where the sums had been anonymised or not mentioned, cf. the methodological obstacles mentioned above.

¹⁷ 82 It is an average of all judgments, not only of the claims awarded.

loss associated with this offence. The analysis of judgments and interviews has also shown that some injured parties underestimate their claims.¹⁸ Furthermore, they do not claim late payment interest or other costs associated with the proceedings at all.

We have, in particular, examined the chance of vulnerable victims¹⁹ to obtain compensation. Of the total number of claiming victims, 74 were vulnerable victims. Comparing vulnerable victims and non-vulnerable victims has shown that both categories have a similar success rate.

More vulnerable victims sought CZK 222,730 on average for material loss. They received about the same sum on average. In compensation for non-material loss, they claimed CZK 347,514 on average, and courts awarded them CZK 190,169 on average. That means more vulnerable victims received significantly higher average sums in terms of material loss (by CZK 96,477) and non-material loss (by CZK 49,088) than non-vulnerable victims.

Also, very important finding is that **courts refer about 25 per cent of the injured to a civil proceeding.** Hence, courts refer about every fourth injured party seeking compensation for loss to the civil proceeding. Specifically, it is 29 per cent (37) of the injured claiming compensation for non-material loss and 21 per cent (17) of those claiming material loss. The research has shown primary situations when it happens:

- The injured party did not sufficiently calculate and specify her claim.
- The injured party did not sufficiently justify her claim, ideally with an expert opinion.
- The injured party did not sufficiently prove a causal relationship between the offence and loss caused.
- The evidence procedure related to the injured party's claim would be too difficult and could delay the criminal proceeding.

Especially the interviews have shown a great need to objectify the claim, ideally with an expert opinion, without which courts do not pay too much attention to the claim. Without an expert's opinion, which is not typically ordered by the court even though it could be,²⁰ courts often reduce the claim or refer the case to the civil proceeding. They argue that the claimed sum cannot be sufficiently precisely determined or that they find the sum unreasonable. This happens when they claim all types of non-material loss, including those where an expert opinion is not necessarily needed (primarily mental torment).²¹ Furthermore, courts often confuse individual types of non-material loss and their discovery.

The financial costs of the expert opinion for the injured is a big problem and challenge. Also, **the injured always risks that she will need to bear the costs if the claim is not awarded or cannot be enforced.**

¹⁸ For instance, the judgment of the District Court in Most, File No. 6 T 58/2018, states that the claim for non-material loss of CZK 50,000 for long-standing physical and psychological, and social ill-treatment, which also continued during the victim's pregnancy, "is not an overexaggerated sum. On the contrary, it is modest, as the injured could have claimed a higher sum due to the circumstances".

¹⁹ For the purpose of this research, we see a victim bearing any vulnerable characteristics as a 'vulnerable victim'. Hence, it is a broader meaning than the statutory definition of a particularly vulnerable victim set out in s. 2(4) of the VoCA. Therefore, we also included the following victims in this category: pregnant women, homeless women, traumatised women, or women in a subordinate position to the offender (employees, patients).

²⁰ Cf. s. 151a of the CPC

²¹ Cf. Judgment of the Supreme Court of 5 February 2019, File No. 25 Cdo 2635/2018; judgment of the Constitutional Court of the Czech Republic of 9 February 2021, File No. II. ÚS 1564/20. 88 The provisions of s. 43(3) of the CPC: "If there are not sufficient grounds to decide on the claim and if fundamental reasons do not prevent it, [...], the court informs the injured party how the injured party can supplement the documents and gives the injured party a reasonable time limit and determines it."

All interviews have also accentuated and expressed concerns about the low number of overburdened experts in this field.

In the interviews, the respondents have also mentioned their experience that even though the IPAB often have supporting documentation related to the claim in the early stages of the proceeding, they do not notify the injured party if they regard it as insufficiently grounded. But in fact, this approach is not compliant with the Criminal Procedure Code. The respondents have also voiced another obstacle in the case of minor children, which is the incorrect assertion of the claim by the children care authority on behalf of child victims. They also said that many judges see the auxiliary procedure as something far away from and not belonging to the criminal proceeding and believe that loss should be exclusively addressed in the civil proceeding.

However, the claim's reference to the civil proceeding brings many pitfalls for the injured. That is why the injured rarely continue to the civil proceedings. Some respondents said that they had never experienced that the injured would have subsequently turned to a civil court. It is because it represents another financial, time and energy investment, which many of them do not want to or cannot go through after a challenging criminal proceeding. In the civil procedure, the injured also lose their protection, granted to them by the Criminal Procedure Code as victims or particularly vulnerable victims. Besides, if the injured fails to handle the evidence requirements of the criminal proceeding, the likeliness of their success in the civil suit remains open. Therefore, if the injured party is referred to a civil court, it virtually means her claim will be dismissed.

The auxiliary procedure represents a significant burden and financial costs for the injured. The auxiliary procedure may be highly challenging for the injured party. In particular, if an attorney does not represent her, she must overcome many internal and external barriers on her path to compensation.

First and foremost, our respondents stated that it was the overall burden on the injured party's psychological state and energy. The auxiliary procedure is associated with the injured party's necessary activity and engagement regardless of how devastated she might feel after the offence. This process may be highly burdening and discouraging for the injured party after the offence due to the demanding character of the evidence procedure and calculation of the non-material loss. They also voiced their criticism that many rights and advantages are awarded to the injured only upon her request. She does not have any automatic entitlement as the accused. That means that **the injured party must be generally warier and more observant during the procedure.**

Secondly, the respondents mention significant financial costs, primarily attorney's fees and costs of the expert opinion. According to the research, the chance to get compensation is lower without these two institutes.

Also, important to consider that **the injured parties are not often represented by an attorney or are not represented appropriately and with quality.** The interviews also expressed the need for quality representation of the injured parties. Representation by an attorney turned out to be a crucial counterweight to the procedure's complexity, which may discourage the injured from seeking compensation. It also impacts the injured party's engagement in the auxiliary procedure. A quality attorney advises the injured party of her rights, explains the meaning of compensation for loss and guides her through the entire auxiliary procedure, thus increasing her chance to succeed. However, the option to be represented by an attorney is available only upon an application, which is not an ideal solution, as several respondents said. Instead, it would be desirable to introduce automatic attorney appointments from the respective list. Generally, it would be appropriate to secure available legal assistance to all.

On the other hand, there were also respondents saying that **many attorneys do not know the auxiliary procedure**, have no experience with it, and do not defend the injured party's interests and rights in this regard actively and sufficiently. According to the respondents, this is reflected in lacking explanations of this right to the injured, belated submissions of applications for compensation or insufficient substantiation of the claimed sum. Therefore, the need to raise awareness and gather experience and specialisation mentioned above also applies to attorneys.

In the analysed judgments, we could identify patterns, arguments, and criteria the courts consider when deciding on the claims and the awarded sums. First, we need to point out that courts often justify the decisions on the claims only briefly and shortly. In most cases under review, only one brief paragraph of the judgment was devoted to the decision on the claim.²² Furthermore, the reasons contained many vague legal terms without additional explanations. Typically, the court adapted the sum based on the 'court's discretion', without any specification of the facts on which the discretion is based or relies.²³ Of course, the court's discretion is desirable, but if the court does not expand on its motivation and uses this term only as general justification, it deserves a discussion. The court should not use vague legal terms as a free licence to deal with claims in this arbitrary manner.

Also, courts often use the argument of the established compensation practice, either at their court or at other and higher-instance courts in general. It is appropriate that courts know the practice and consider similar decisions. However, the limits set should not be seen rigidly and without a possibility to change. If a court, ipso iure, followed the established practice, it could mean a lack of an individual approach to each case. Furthermore, it creates a circle supporting one and the same approach to compensation, which can hardly be abandoned, and which can be ineffective and inaccurate with respect to the special vulnerability and needs of victims of GBV.

If we consider the specific criteria used by courts when assessing claims, the character of the offence plays a primary role. In particular, they examine the duration of the offence, its gravity, method of performance, and special circumstances (e.g., the victim's vulnerability). To put it simply, the more severe and long-lasting offence, the more it is reflected in the injured party's compensation. On the other hand, we cannot identify with some courts' opinion that shortly lasting or „small" violence does not cause harm and is not worth due compensation.²⁴ Each experience following a criminal offence is highly subjective, and there is no direct proportion, which would reduce the suffering as a result of a

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²³ For instance, the judgment of the District Court in Přebram, File No. 3 T 77/2019, ruled to reduce the claim of CZK 90,000 submitted by a victim of domestic violence to CZK 18,000 as follows: "the court determined the compensation sum at its discretion and in the reasonable amount (the court regards the sum of CZK 18,000 as absolutely adequate to mental torments suffered by the injured through the acts of the defender)".

²⁴ In case 30 T 181/2019, the District Court for Prague 5 awarded compensation for non-material loss of CZK 3,000 while the claimed sum was CZK 10,000. The offender raped several women; the claiming victim had been paranoid, timid and unable to go out on her own; she experienced flashbacks since the incident. The court argued that "it has considered the fact that the defendant touched the injured only on one breast (unlike the other two injured), which means such an action is not that severe. The injured party's subjective problems are presumably only temporary".

short time or minor intensity of the assault.²⁵ Special emphasis is put on the offence's consequences. Court often examines if the acts caused PTSD to the injured. If not, they tend to belittle the act's impact.²⁶ Nonetheless, the equation **that if there is no PTSD, there are no consequences, and the harm is not worth compensating does not apply.**²⁷ We can use an example of the harm's trivialisation without PTSD giving an example of a girl raped by her father. The court assessed that if there is no PTSD and the injured could push the act out of her mind, it means that she "is not definitely affected by this fact".²⁸

Another argument that is frequently used when reducing the claimed sum is the offender's material and personal situation. The defender's lack of means is then used as a reason for the reduction. In this respect, courts often argue with general legal principles, particularly the principle of reasonableness, decency, fair tolerability, and proportionality. However, it must be emphasised that the anguish caused by a criminal offence often marks the victim until the end of life and has immense consequences. In this light, the concerns that compensation for loss could be „liquidating" for the offender and his property seem to be absolutely inappropriate.²⁹

The experience of our respondents also confirms that if the case concerned property (material) loss or property crimes, no one would assess the defender's wealth and possible enforceability of the claim as a decisive factor for the offender's duty to pay damages. However, courts have a different view of non-material loss, and a lack of funds basically improves the offender's situation. Legitimacy and

²⁵ In the case 19 T 57/2018, the District Court in Opava reduced the claimed sum for non-material loss for attempted rape from CZK 100,000 to CZK 20,000 because "the degree of the defender's violence was not extraordinarily intensive as no other loss has been found besides surface injuries such as bruises and grazes. It has neither been proved that the injured would suffer from intensive psychological experiences after the act, which would be indicative of significant fears of the defendant".

²⁶ The District Court in Přeborn decided in case 2 T 71/2019 about the claim submitted by a victim of DV, stalking, including physical (bruised ribs, hits, pushing, punches into chest and head) and psychosocial violence (ban to go out, be in contact with relatives and friends, mobile phone checks, destruction of things) without the proved development of a PTSD. The court stated that although "it has been really proved that the defendant's acts caused certain and provably established psychological torments and physical harm to the injured, although they do not show signs of severely damaged health, and even though it is appropriate that the defendant pays compensation for non-material loss, it should not be in the claimed extent, i.e., CZK 50,000, because the court believes that the defendant's acts did not reach such a substantially serious intensity and did not cause any permanent consequences, and the above sum is inadequately high".

²⁷ The District Court in Mladá Boleslav (File No. 17 T 32/2019) reduced the sum claimed for non-material loss to CZK 200,000 by stating that "the non-material loss calculated by the injured at CZK 300,000 is inadequately high considering the fact that the defendant's acts were serious yet did not factually cause any permanent consequences; she was not diagnosed with the post-traumatic stress disorder."

In its judgment under File No. 6 T 13/2020, the District Court in Most decided to refer the entire claim to a civil proceeding because "the opinion of the expert in health care, field of psychiatry, shows that she currently does not manifest any symptoms of post-traumatic stress disorder or other forensically significant mental disorder or phenomena typical of a mistreated person".

²⁸ The judgment of the Regional Court in Hradec Králové (File No. 9 T 1/2020) reads: "There is currently no evidence showing that the defendant's acts would have left any marks on the injured party. It can be noted that the minor was able to push out this matter and is definitely not affected by this fact. It has neither been proved that the injured party - minor child - would have any psychological problems in the period after the defender's criminal act on her [...]. No other negative traces have been established either, which could have a permanent or long-lasting or negative impact on the injured due to the defender's acts."

²⁹ For instance, the Regional Court in České Budějovice assessed the case 20 T 17/2018, when a cousin raped a child - his minor cousin, by stating that "the holding on non-material loss and its amount must always be based on the findings related to the situation of the [...] defender so that the court's decision is not liquidating for the offender." The court awarded CZK 20,000 to the injured party in compensation for non-material loss instead of the claimed CZK 50,000.

proportionality of the fact that the injured party suffers a loss only because the offender is not wealthy is then disputable. The argument with the offender's personal situation and the possible infringement of the offender's personal relations by the duty to pay compensation may be given similar consideration.³⁰ This controversy is also supported by the interviews when our respondents said there was only one loss and one liability. There is no rational reason why a non-wealthy person should be less liable. Likewise, it is irrational and illegitimate that a wealthier offender should technically pay more.

In conclusion, it must be noted that the **courts' arguments unfortunately still contain the elements of stereotyping**, accusing the victim and reflecting such accuses in the final compensation amount, which is the result of their failure to understand the victimology profile of victims of GBV. Examples may include judgments stating that the injured party failed to leave the shared household and torturing partner on time,³¹ that she contributed to creating the circumstances of attempted rape because she remained with the offender despite the first physical assault,³² that she contributed to her being raped because she was drunk³³ or that she did not change a job after the rape and attempted murder, hence she was not so much affected and her social position would be aggravated.³⁴ This is also related to the **stereotypes about offenders and excusing their behaviour**. We can give an example of a raped girl, in which the court found circumstances for reducing the sentence under the lower sentencing limit. For the defendant, who is "a socially stable person leading an orderly life",³⁵ "this act is not typical, and considering his sexual orientation on adult women, it is really an extraordinary excess".³⁶

1.2. Financial assistance by the state

Regarding to financial assistance the finding is that **is awarded to an absolute minimum of victims of GBV**. In the years 2019-2020, the Ministry of Justice received 590 applications for financial assistance. Of this number, the Ministry acknowledged the entitlement of 114 victims.

³⁰ The judgment of the District Court for Prague 4, File No. 52 T 164/2020, reads as follows about a husband ill-treating his wife and children: "In this respect, the court has not found any real reason and base for imposing another obligation on the defender to pay as it is apparent that any newly imposed obligation could instead, on the contrary, worsen the relations to the injured".

³¹ In its judgment under File No. 5 T 23/2017, the District Court in Kladno noted that it "has also considered the fact that when the injured could confide her unfavourable situation to a witness, she ignored her advice to leave the defendant and avoid the assaults and remained in the relationship, which also deepened her daughter's anguish".

³² In the case 19 T 57/2018, the District Court in Opava rebuked the injured that until the criminal offence, she had requested various forms of assistance from the convicted person, sought to be close to him even after the end of their life together, and remained in his presence even after a physical fight and spent a night with him although "she must have been aware of the risk of another conflict escalating to violence by the defendant". All of this "contributed to the conditions for continuing the event forming the body of the offence".

³³ The judgment of the Municipal Court in Brno (File No. 3 T 60/2020) states the following: "It is true that the injured party did not provoke the defendant at all, but on the other hand, her drunkenness undoubtedly contributed to the defendant's behaviour."

³⁴ Judgment of the Regional Court in Brno (File No. 1 T 8/2019): "As the injured continues working in the same job after the assault as before, it is apparent that her social position has not been weakened."

³⁵ The judgment of the Regional Court in Hradec Králové (File No. 4 T 11/2018).

³⁶ *ibid.*

Of this number, assistance went only to 21 victims of rape and ill-treating a person living in the same household³⁷ in the total amount of CZK 2,130,306.³⁸ They received CZK 101,443 on average; but half of these victims obtained sums lower than CZK 50,000. No victim received more than CZK 200,000.

The 21 injured represent about two per cent (2%), i.e., an absolute fragment out of 929 victims, in whose cases the offender had received the final judgment of conviction in 2019 and 2020, not to speak about of the total number of real cases of violence committed against women. Therefore, this type of assistance gets only to a minimum number of victims of GBV.

The finding that the **provision of financial assistance takes disproportionately long and does not serve its primary purpose**, i.e., to provide help to bridge acute crisis, permeated a clear majority of interviews. The procedure lasts around 1.5 years on average. It absolutely clearly emerged that the duration of the procedure for providing financial assistance combined with the low number of injured parties receiving financial assistance is against the Code of Administrative Procedure and the actual purpose to help the victim bridge the period after the criminal offence. It makes financial assistance a non-functional tool and is an example of bad practice.

2. Bulgaria

In Bulgaria the analysis of the problem has been conducted through a review of the case law, as well as conducting interviews with affected persons and representatives of relevant institutions.

2.1. Case law analysis

For the purposes of this analysis, judicial acts have been selected (full texts of the sentences and decisions), issued in criminal and civil cases in the period 2015 – 2021 and in which the court has ruled on the merits of criminal and/or civil liability of perpetrators of acts of GBV (sexual violence and stalking) and domestic violence (all forms), in which the victims have filed or have had the opportunity to file civil claims for the damages caused by these acts. All examined court acts were used in the editions in which they were published by the courts and available in the legal information systems in Bulgaria and in Bulgarian (with deleted personal data).

The criterion "gender-based violence" has been applied after analysing the data from the judicial acts on the relationship between the perpetrator and the victim and the motives for the act. The criterion of "domestic violence" is applied in the same way, based on data from judicial acts.

The total number of selected criminal acts of the analysed types, for which final judicial acts have been pronounced by the criminal courts during the selected period – both in cases of general and private nature - is 612. Of these, in 184 cases the victims either did not file civil claims for damages in criminal proceedings at all, or these claims have not been accepted for joint consideration by the courts.

It is noteworthy **that in almost all these cases the victims were not represented by a lawyer in the proceedings** but this is not a sufficient indicator of the reasons why there is no court ruling on a civil claim. However, in several of the analysed cases, the defendant had been charged with multiple crimes of the same type committed by him against several victims, and in these cases only a small proportion of the victims filed civil lawsuits, which was done through lawyers, while the other victims of the same type of crime were not represented by a lawyer and did not file civil claims.

In these 612 cases, the perpetrators were men in 584 of them and women – in 28 of them. 3 out of these female perpetrators acted in various forms of aiding and abetting with men in committing the crimes for which they were convicted. For the remaining 25 female perpetrators, court records show

³⁷ Five cases involved rape committed concurrently with another criminal offence, and one case involved rape concurrent with DV.

³⁸ For details, cf. Appendix: Table 5 Data on providing financial assistance.

that they had been accused by their ex-husbands or ex-partners of various forms of psychological and emotional domestic violence (insult, slander, threats, harassment), mainly related to visitation contacts with children, previous divorce cases, as well as complaints filed by these women with the police, requests for protection and other actions seeking institutional intervention for the protection of their own safety.

The perpetrators in only 13 of the acts under analysis were completely unknown to their direct victims. In the remaining 599 cases, the data from the judicial acts are indicative that there was a history of the relationship, a previous or ongoing personal relationship. In the cases for which more specific data are available, the perpetrators were: spouses - 25, ex-spouses - 42, partners - 37, ex-partners - 63, fathers - 32, other family members - 4 (brother, cousin), relatives - 20, in-laws - 8, family acquaintances - 22, acquaintances from the Internet - 16, neighbours - 12, teachers / trainers / caretakers - 19, colleagues - 10, other acquaintances related to workplace - 39.

In 72 of all these cases, the victims were provided with free legal aid during the criminal court proceedings, and in 67 of these cases the victims were persons under the age of 18 and only 5 were adults. In at least 246 cases, the victims have authorized a lawyer to represent them in the proceedings before the court at their own expense, but due to incomplete data, it is quite possible that this number might be higher.

The Supreme Court of Cassation also had the opportunity to rule on 70 of these 612 cases. Other appeals have been filed in more than 2/3 of the cases, but a negligible number of them are those related to the civil claim.

The activity of the victims for appealing against the judicial acts in the criminal proceedings and for participating in the court hearings before the courts of appeal and Supreme Court of Cassation marked a significant decrease, regardless of the outcome of the civil claim (according to the data in the decisions). Legal aid is often used only in the first instance court proceedings. In most cases, the appointed special representatives (lawyers) were more active in this regard. The appeals concerning the civil claim did not reveal any new relevant evidence and no requests for collecting evidence were made in connection with the determination of a higher amount of the requested compensation.

The perpetrators as accused, on the contrary - in most cases they appealed more often the judicial acts in the criminal part, but not always in the civil part. From the data on what they expressed in the open court hearings, it is evident that more arguments and complaints have been stated regarding criminal liability. In a large number of cases, **and even in the case of significant sums awarded for compensation of the damages, their complaints have either not been lodged at all or have not been very seriously substantiated.**

Out of a total of 428 cases in which the victims filed civil claims for compensation in the criminal proceedings, 116 claims were fully granted and 221 claims were partially upheld. The proceedings were terminated or 91 claims were rejected, most of which were terminated due to the termination of the entire criminal process – on various grounds. In a small number of cases, the civil claims were rejected – mainly when the defendant was found not guilty and acquitted of the charge because the act did not constitute a crime or any other tort.

In some of the analysed cases, the same indictment contained more than one different crime against the same victim. In these cases, separate claims for damages were made for compensation of the damages from each crime committed by the same perpetrator and the court accordingly ruled on each of them separately with separate reasonings. Arguments for the overall harm and intersecting forms of discrimination do not appear to have been raised by the civil claimants and this aspect has not been the subject of the court's reasoning. In fact, these judicial acts do not contain reasons for the

discriminatory nature of the acts, especially on the grounds of sex, except in cases where sex and/or age were relevant to the criminalisation of the act itself.

More than half of all the reviewed acts of GBV constitute various forms of sexual violence, including rape and fornication – a total of 369. Of these acts' fornication comprises 105 acts, rape – 95, attempted rape - 10. In the majority of them, the victims were children - a total of 188, most often under the age of 14. Given that crimes against children are reported by their closest adults and against the background of data from detailed research on this topic with statistical significance, it can be highly likely to assume that determination of women to report crimes of sexual violence is declining when they are adults and that there is a very high percentage of unreported and undisclosed acts of this kind against adult women.

Of all these acts under analysis, femicides and attempted murders of women are 75, of which 44 falls within the scope of domestic violence.

There is a total of 164 other crimes committed in the context of domestic violence, of which 22 are death threats, 102 are bodily injuries (varying degrees) and 8 are various illegal intrusions into another's home (housebreaking).

There is no data on how many signals have been submitted for violations of the protection orders against domestic violence, but the criminal cases under Article 296, para 1 of the Penal Code for the period from 2018 to September 2021 are only 149. In 32 of them (21%) plea bargain agreements have been reached with the prosecutors, approved by the court and thus the perpetrators have achieved a lighter punishment.

At the same time, 154 other cases of crimes, including essential elements of domestic violence, but not explicitly defined as committed under the "conditions of domestic violence" according to the indictment, were decided by the courts and no civil claims were brought in these cases. 69 are the acts of serious intentional crimes, the description of which fully corresponds to the definition of GBV (including murder, attempted murder, attempted murder, coercion, moderate bodily harm, illegal entry into another's home), which ended with convictions in which proceedings no civil claims have been filed.

Apart from the criminal proceedings, in parallel with it or after its completion, a total of 185 civil cases have been resolved on claims for compensation for crimes of the type under consideration. Less than 10% of them were initiated by applicants who did not participate in a criminal case on the matter but had protection orders issued against domestic violence and claimed compensation for the violence suffered. In this group of cases, **almost all claims were rejected due to lack of evidence**. The overwhelming majority of applicants did not appeal and these decisions entered into force as unappealed.

The vast majority of the successful claims in the analysed case law such as nonpecuniary damages awarded in the penal cases. Compensation for pecuniary damage from these particular crimes is rarely claimed and, in such cases, the claims had been proven according to objective criteria and evidence that the court has admitted and assessed.

The property status and financial situation of the perpetrator are considered irrelevant for determining the amount of compensation because it is not a punishment, but a consequence of the committed tort. The courts have considered as relevant the socio-economic situation and the standard of living in the country at the respective time of the commission of the act. When this moment is quite remote in time due to lengthy proceedings, the real damages are increased and even the interest occurred on the awarded sum for compensation from the day of the damage until the final payment can hardly cover the loss of the injured person.

With regard to criminal liability, only the highest possible standard of proof is being applied, which is "in an undoubted manner" (Article 303, para 2 of the CPC). For the tortious civil liability to be applied, however, this standard is not always practically achievable, especially when it comes to non-pecuniary damages from violated fundamental rights, freedoms and legitimate interests of the individual and the establishment of their causal link with the committed crime.

To assess the amount of non-pecuniary damage, the courts follow the criterion of the law - "equity", as well as the criteria adopted in case law and mainly from the certain decisions of the Supreme Court of Cassation, which are binding on other courts. According to them, "the court is guided by the actual amount of these pains"³⁹, their "nature and intensity, the duration, the time interval in which they have been endured, the prognosis for their possible disappearance, and whether they have affected the overall physical and mental status of the injured person for the future".⁴⁰

In a claim for damages from the loss of a deceased loved one, the court would examine the relationship between the civil claimant and the deceased, how strong, lasting and significant the relationship had been between them to determine whether to uphold the claim and to what extent. The damage of emotional and mental nature in gender-based violence is characterized by the fact that they are caused by many factors, manifested at all levels of personal realization, whose accurate and complete detection is not always possible. Therefore, "... in cases of such crimes, the indirect and often practically and legally imperceptible consequences of the offense, that are ever present and almost always at the edge of misconception, are unavoidably leading us to the adoption of the probable, and not the logical, causality sequence, in order to rightfully pinpoint the just amount of compensation for the victims."⁴¹

There are no publicly available data on the course of the enforcement process and the development of these proceedings, which are the last but particularly important stage in the process of obtaining compensation. The practical implementation of the LAFCVC in cases of the analysed type is not very developed. The law limits this possibility to compensation only for property damage. There is no evidence of compensation granted for damages from such crimes and as of now, there is only one case known of compensation granted to a woman – victim of trafficking.

2.2. Interviews/focus group with relevant stakeholders

In order to compare and verify the findings from the case law analysis, semi-structured interviews were conducted with victims of this type of violence - 20 personally injured women, 6 women - mothers of victims, 4 women - daughters or relatives of victims, 2 persons (a man and a woman) – heirs of deceased victims, as well as with some representatives of some institutions – 5 interviews.

Out of all the 32 women victims or relatives of victims of gender-based violence interviewed, it was found out that in all cases applications for protection orders against domestic violence had been submitted, in which only 2 of the applicants were denied protection, and in another 8 cases, after an emergency protection order was initially issued, the final judicial act refused it. Respondents shared that the idea of seeking compensation for the violence they had suffered was not considered during the first at least 2 years after the violence had been committed and that the priority had been their survival and protection of children. Only in 14 of the cases, this opportunity had been considered as a possible step and after the end of the criminal case, respectively – after the case under the LPDV, of

³⁹ Decision No. 5 / 02.02.2021 in penal case No. 961 / 2020 of the Supreme Court of Cassation, 1st penal division

⁴⁰ Ibid.

⁴¹ CSD. Financial Compensation Guide Cases concerning Women Victims of Crime. Sofia: CSD, (2019) <https://csd.bg/publications/publication/financial-compensation-guide-cases-concerning-women-victims-of-crime/>

which only 8 have consulted a lawyer specifically on this issue. In just 2 of these cases, claims for compensation had been filed, which are now pending. In 3 other cases, the documents for filing the applications are being prepared. There are also 3 separate cases, in which the issue of compensation was raised and resolved through an out-of-court settlement, including the refusal of victims to seek protection for domestic violence and agreeing not to file complaints with the prosecutor's office about the violence.

Most respondents find it difficult to estimate how much they could compensate them. **They also fear that the court procedures would bring them back to the memories of the experience they prefer to avoid.** Almost all of them had become aware of the type and extent of actual damage in their personal and social realization over the years later. Some had taken actions to ensure their safety first, which they find very difficult to assess and prove as damage caused by violence (selling a home and buying a new one, changing jobs and professions, moving to another city with the child, change of the child's school with a more distant one from the abuser, change of their general practitioner). For 18 of these women, nothing can provide them relief for the violence they have experienced, but providing safe distance from the perpetrator and the places associated with him could possibly help them cope. Most of the respondents who would not seek monetary compensation from the perpetrator claim that either he had no provable income or funds or his property status is well concealed and inaccessible. None of them see a connection between the perpetrator's ability to pay compensation and his ability to care for the children by providing alimony or fulfilling another parental obligation.

Respondents from the institutions confirmed the difficulty that victims themselves may not always be witnesses in cases (for example, in private and civil cases in which they are private plaintiffs or civil claimants) and even when they are witnesses, they find it difficult to reveal their real experiences and situations in such consistency and detail as to be a convincing source of facts.

To conclude there is a strong and urgent demand for a systematic and integrated approach to ensure the right of victims of gender-based violence to justice, a fair trial and qualified legal protection, including full compensation for the damage they have suffered, in fair amounts and within a reasonable time. This approach should start with the legislation with clear and detailed definitions, including the regulation of terms of limitation and their suspension in these cases, as well as with clearly applicable criteria and adequate procedures and rules.

The right to compensation can and should be secured at the earliest possible stage after the identification of the perpetrator and even before the beginning of the case on the matter of compensation. Not only the future collection of awarded compensation depends on the preliminary guarantee measures for the claim, but sometimes also the development and duration of the proceedings too. The state can also benefit from such guarantee measures when taken in advance.

The criteria for access to compensation from the state are very restrictive and they cannot be met by these victims under the current LAFCVC. The scale of the problems related to the compensation of these victims and their multifactorial conditionality requires a comprehensive and in-depth approach.

3. Hungary

In the course of the research, we reviewed the available international legal material and the relevant Hungarian legal background, collected statistical data in the framework of public interest data request, examined judicial practice, and conducted in-depth interviews with both victims and experts.

The research period covered the period between 2015 and 2020; we focused on the judicial practice of financial compensation in cases where a final judgement was made during this period. Cases where the judgement of the first or second instance became final before 2015 but the judgement of the third

instance was delivered during the research period were also included. A major challenge when reviewing the files was that criminal and civil courts do not record the gender of the litigants.

We did not receive any cases claiming compensation/restitution specifically related to violence against women from the courts, presumably because they do not collect such data and had neither the will nor the capacity to satisfy our request. As a result, we undertook a targeted selection of anonymised, publicly available files ourselves and conducted a search of court files in the Collection of Court Decisions⁴² in two areas: we examined 1) the prevalence and characteristics of civil claims in criminal proceedings for violent crimes against women covered by the research, and 2) the characteristics of civil actions for non-material damages and restitution following violent crimes against women covered by the research.

During the research, we identified 106 criminal cases and 10 civil cases, which amounted to a detailed review of a total of 236 files.⁴³ We knew of 2 other cases due to our work, so, in total, we analysed in detail 12 cases in civil proceedings. We would like to add that 2 of these actions dealt with the same set of offences, one in which the abuser was the defendant and the other in which the hospital and the doctors directly providing the care were the defendants. These were only the cases where it could be established beyond reasonable doubt that the claimant was a woman. Although the results are not 100% representative due to the lack of cooperation from the courts and the inadequacy of data collection, the experience from our other research activities and, more importantly, from our decades of victim support fieldwork indicate that the results show a realistic rate of the activity of victims of violence against women regarding compensation litigation.

We conducted in-depth interviews with 1 victim support officer,⁴⁴ 6 lawyers, 1 forensic medical expert, 1 forensic psychiatric expert, and 2 forensic psychology experts, as well as 10 victims involved in the crime of violence against women in some form.⁴⁵

A common denominator among the women surveyed was that the crimes were committed by their current or former partners. Due to the strikingly low number of women claiming financial compensation, we extended the interviews to women who did not claim financial compensation, in order to explore the reasons behind the underutilisation of this option.

⁴² Collection of Court Decisions [online]. Courts of Hungary. Available: <<https://birosag.hu/birosagi-hatarozatok-gyujtemenye>>

⁴³ The experience gained from researching the Collection of Court Decisions shows that it is not possible to accurately filter results for either crimes committed or violations of personality rights, so hits unrelated to the subject of the search are frequent, and the same files may appear repeatedly within the same search hit. Since all compensation actions would have involved reviewing an unmanageable number of documents, even for the period specified, which naturally would have been unrealistic, we focused our search on civil files on actions for violation of the right to "bodily integrity and health". Files that appeared in these search results but were for other violations of personality rights, however, which corresponded to the acts and subjects of violence against women that were the subject of the research, ended up being included in the files to be reviewed. Even under these circumstances, the identification of the files of violence against women that were the subject of our research meant the inspection of approximately 3,700 files. In some of the anonymised decisions, the gender of the parties could not be established, so they were not included in the research.

⁴⁴ The purpose of the interview with the victim support officer was to correctly interpret the legal environment. The research does not include any statements made by the victim support officer during the interview.

⁴⁵ The following offences were prosecuted: minor physical assault, three counts of grievous bodily injury, life-threatening physical assault, domestic violence, sexual violence, minor physical assault, three counts of stalking, defamation, forgery, attempted murder, vandalism, and robbery. In several cases, long-standing domestic violence was also present in the lives of the victims, which in most cases was not part of the criminal proceedings.

3.1. Compensation by the offender

Regarding to the findings of concerning compensation by the offender that may be claimed from the offender Based on the Hungarian Criminal Code (Act C of 2012, hereinafter: HCC), several acts may constitute a criminal offence committed within the framework of violence against women due to their gendered nature and the context in which they are committed. This research examines the practice of material and non-material damages in the case of three criminal offences: domestic violence, sexual violence, and stalking.⁴⁶

There was a total of four cases where the civil claim was not brought by the woman at the centre of the intimate partner's offence but by a relative or aid of the woman who was also involved in the offence, and one case where the civil claim was brought by a representative of the State.

In the 9 cases examined in the context of domestic violence, only 2 cases were specifically prosecuted and convicted under the offence of domestic violence, while in the other 7 cases, other offences were identified, but in the latter cases, it was observed that they all corresponded to the sociological concept of intimate partner violence, and in 2 cases, the offence of domestic violence could have been clearly identified, as all the elements of the offence were present.⁴⁷

Both of the convictions for domestic violence also established the offence of stalking, with 1 of the convictions also establishing the offences of trafficking in human beings and aggravated pimping. Physical assault was the most frequently reported offence in most of the cases examined, i.e., in 4 cases, followed by violation of personal liberty and homicide in 3 cases, and theft and robbery in 2 cases. The same offender typically committed several offences against the woman and/or her relative. Regarding the identity of the perpetrator, the (former) partner or spouse was involved in 5 cases, the (former) partner or spouse of the descendant was involved in 2 cases, and in the other cases, there was a romantic relationship between the victim and the perpetrator. In one case, the direct victim was a minor.

A civil claim was present in a total of 7 of the cases investigated. In one of these cases, the victim brought the claim for non-material damage, in 3 cases, for material damage caused by the commission of the offence (2 cases for material damage caused beside the commission of a crime of violence against women and 1 for material damage caused by the commission of physical assault),⁴⁸ and in 3

⁴⁶ According to the statement of the Unified System of Criminal Statistics of Investigating Authorities and of Public Prosecution (ENyÜBS), starting from the second half of 2018, the number of domestic violence victims was 1,652 women and 180 men, the number of sexual violence victims was 750 women and 220 men (195 of them children), and the number of stalking victims was 9,824 women and 5,756 men. ENyÜBS's system does not show the gender of the offender for a given victim, but the number of offenders for a given offence is available separately. Accordingly, starting from the second half of 2018, 1,216 men and 71 women have been convicted of the crime of domestic violence, 838 men and 21 women have been convicted of the crime of sexual violence, and 7,445 men have been convicted of stalking, with the judgment being final. For the latter crime, no data on female offenders were found in the system. Number of offences committed by location [online], BSR – Criminal Statistics System, Ministry of the Interior, [viewed date 3 January 2022], Available: <<https://bsr.bm.hu/Document>>

⁴⁷ In practice, the facts of the criminal offence of domestic violence are rarely used. Moreover, the Collection of Court Documents did not allow for a detailed search of the files on the crime of domestic violence, so no conclusions could be drawn on the frequency of pursuing civil claims.

⁴⁸ In one case, damage worth HUF 400,000, in another case, damage worth HUF 90,000, and in another case, damage worth HUF 15,600 were claimed (the latter for the victim's sibling). Only the latter was fully judged by the court. However, the court of the second instance acquitted the perpetrator for lack of evidence, so the civil claim, which was decided on the merits by the court of the first instance, was referred to be satisfied in another lawful manner also in this case [based on Section 335 subsection (1) of the old CCP].

other cases, no information was provided on the legal basis of the claim. The claim was filed by the victim or their legal representative in 5 cases (in 1 case, the claim was filed by the victim's sibling in addition to the victim's legal representative, and in another case, by the victim's father in addition to the victim).

One case was fully adjudicated for compensation regarding the victim's sibling who died as a result of the crime,⁴⁹ and in another case, the victim sought to pursue their claim for compensation through civil proceedings. In all other cases, the court ordered the claim to be satisfied in another lawful manner. In 3 cases, the legal basis for referring the case to be satisfied in another lawful manner was various limbs of Section 335 subsection (1) of Act XIX of 1998 on Criminal Procedure (hereinafter: old CCP): the "inadequacy of the civil claim and the nature of the claim which cannot be pursued in criminal proceedings", that the victim "did not indicate the title or the specific amount of the claim" or "could not indicate to the court the exact amount of the civil claim or the evidence supporting it", and in one case that "the victim is deceased and their legal successor has not been notified to the court". In one file, the court dismissed the civil claim and referred it to be satisfied in another lawful manner on the basis of the new CCP and on the grounds that its adjudication would "**significantly delay the conclusion of the proceedings**".⁵⁰ In this court judgement, there was already a reference to Act LXX of 2020 on summary proceedings for compensation for damage caused by a criminal offence and for restitution. The court ruled on special treatment in one case.⁵¹ In more than half of the cases of sexual violence (23 cases), the perpetrator was the father or foster father, in 12 cases, it was a relative, in 7 cases, it was an acquaintance,⁵² in 2 cases, it was a former partner, and 1 case, the relationship between the victim and the perpetrator was romantic but not at the level of a civil union. 39 cases involved minors, in 29 of which the victim was a child under 12 years of age. The mother was indicated as a co-perpetrator in 2 files, besides the stepfather. In addition to sexual violence, there were also several cases where other crimes had also been committed.⁵³ There was only one case of a civil claim for restitution brought by the victim's legal representative which was referred by the court to be satisfied in another lawful manner based on Section 335 Subsection (1) of the old CCP on the grounds of the claim not being admissible on the merits. The court emphasised that "only claim for damage caused as a direct consequence of the offence identified can be brought under civil law". One interviewee reported regarding the attitude of the judiciary during the criminal proceedings for the case of sexual violence committed against her that, because she had forgiven the perpetrator, the acting judge declared that she could not pursue a civil claim in criminal proceedings. The court ruled on special treatment in three cases.⁵⁴

⁴⁹ In the same case, the civil claim submitted by the victim's representative, according to which the court should order the defendant to pay the victim HUF 509,975, the sum paid by the relatives of the deceased victim to the Victim Support Service, was ordered by the court to be satisfied in another lawful manner. The reasoning behind the decision was that this amount was not considered to be "damage caused by the commission of the offence".

⁵⁰ Pursuant to Section 56 subsection (1a), Section 556 subsection (6), and Section 560 subsection (1) point I) of the CCP.

⁵¹ In a total of 5 out of 7 cases of first instance judgments, the legal institution of special treatment could have been applied.

⁵² The perpetrator was considered to be an acquaintance if there was a relationship of trust between the victim/victim's immediate environment and the perpetrator, such as a family friend, a classmate's parent, a fellow student at university, and the cleaner in a condominium.

⁵³ There were 6 cases of child endangerment, 5 cases of physical assault, 4 cases of stalking, 3 cases of sexual abuse, homicide, and indecent exposure; a small number of cases (1-2 cases) involved, among other things, sexual coercion, violation of personal liberty, theft, animal cruelty, misuse of firearms or ammunition, robbery, trafficking in human beings, and misuse of personal data.

⁵⁴ In 28 of the first instance judgments, the legal institution of special treatment could have been applied.

In the vast majority of stalking cases (78%), i.e., in 42 cases, the perpetrator was the (former) spouse or (former) partner,⁵⁵ and in 8 cases, the perpetrator was in some other kind of romantic relationship with the victim (also including the case of a rejected suitor). The son of the mother involved in the crime was the perpetrator in 2 cases. In 1 case, a dance teacher stalked his pupil and the pupil's mother, and in 1 other case, a father who sexually assaulted his daughter stalked the person helping her. In 1 case, the victim of the stalking was not only the woman but also her new partner,⁵⁶ and in 4 cases, a minor was involved (typically the child of the woman concerned). It was also observed that, typically, in addition to stalking, several other offences were also committed.⁵⁷

Out of the 54 proceedings, 6 cases involved the enforcement of a civil claim, of which 4 were brought by the victim (who was, in 1 case, the sibling of the woman concerned and, in another case, the victim was the aid of the woman affected by intimate partner violence), 1 by the victim's legal representative, and 1 by other parties concerned. In the latter case, the other party concerned was a company seeking to assert a civil claim for criminal damage caused to property owned by the Hungarian State. A victim of stalking lived in this apartment. She refused the advances of a male acquaintance, after which the rejected suitor stalked her repeatedly over the phone and climbed into her garden on multiple occasions, and then, he set fire to the apartment she lived in with petrol bought at a local petrol station.

In another case, the victim's sibling, also a victim, brought a civil claim against their sibling's former partner for lost wages as a form of material damage, and for non-material compensation, as well as a monthly annuity. After the break-up, the man stalked the woman on the phone, sent her messages containing death threats, and also stalked her in person. As a result, the woman was being escorted to the bus stop by her sibling when the ex-partner attacked her with a knife, causing serious bodily injury resulting in permanent disability and serious deterioration of health. In a further case, the perpetrator's ex-wife, as the victim of life-threatening physical assault, brought a civil claim for compensation for material damage and two days' wages for community service in relation to the offence; the stalking in this case was committed by the ex-husband against the woman's mother and her son. In one case, a claim for restitution was made for an unknown amount.

The claim was decided in full in only one case, in another case, it was decided in part, and in the other cases, the court referred the claim to be satisfied in another lawful manner. In the judgement of the case where the civil claim was fully adjudicated, the court also found the perpetrator guilty of the offence of criminal damage together with the offence of stalking, and the civil claim was adjudicated in the amount of HUF 67,300 for the latter offence. The partial judgement was made in similar circumstances in another case where the real proponent of the civil claim was the aid of the woman concerned; after the woman's previous stay in a women's shelter, she ran away with her children, fearing that her ex-husband would soon be released from prison. The man stalked his ex-wife, their two children, as well as the woman's aid. In the case of the woman and one of her children, no criminal

⁵⁵ In one case, the husband stalked his wife's mother and child, while the court found that he had committed grievous bodily harm against his wife, endangering her life. This case was treated as an offence committed by a spouse.

⁵⁶ In a further 5 cases, the ex-partner committed other crimes of violence against the woman's new partner.

⁵⁷ In 28 out of 54 cases, i.e., in 52%, stalking was paired with the offence of physical assault. In addition to physical assault, homicide (attempted or preparations) was reported very frequently, in 14 cases, while breach of domicile and violation of personal liberty was involved in 8 cases, endangering a minor was involved in 7 cases, and vandalism and sexual violence were involved in 4 cases. In addition to the above-mentioned offences, there was a small number (1-3 cases) of false accusations, causing public danger, domestic violence, defamation, criminal damage, violation of privacy, slander or libel, incest, and failure to comply with the obligation of aliment, perjury, misuse of personal data, theft, robbery, trafficking in human beings, aggravated pimping, dangerous driving, coercion, abuse of illicit pornographic material, and occupational crimes.

proceedings were initiated for stalking as there was no private motion, but the government office proposed a private motion for one of the woman's children – so, one of her children was included in the conviction as a victim, alongside the woman's aid. The aid was severely physically assaulted by the former partner and several others for supporting the woman.⁵⁸ The partially awarded civil claim was for material damage (HUF 26,450); the court ordered the compensation of the loss of income suffered by the victim due to her inability to work as a result of the assault to be satisfied in another lawful manner.

In 3 cases, the civil claim was referred to be satisfied in another lawful manner by the court on the basis of Section 335 subsection (1) of the old CCP. In one case, it was dismissed on the grounds that the assessment of the claim would go beyond the scope of the criminal proceedings and would lead to "unnecessary delay in the main criminal proceedings", and in another case, on the grounds that "other circumstances preclude the substantive assessment of the motion in the criminal proceedings". In two cases, the claim was referred to be satisfied in another lawful manner based on the new CCP, on the grounds regarding restitution that "the adjudication of the civil claim on the merits, in particular because of the deficiencies of the action, would significantly delay the conclusion of the proceedings",⁵⁹ and in 1 other case, on the grounds that the civil claim was not brought by the victim. In this court judgement, there was already a reference to Act LXX of 2020 on summary proceedings for compensation for damage caused by a criminal offence and for restitution. The court ruled on special treatment in 1 case.⁶⁰

It is clear **that the criminal courts only made full or partial judgments regarding material damage claims**. The criminal courts also refused to award lost wages as material damage, and it was the same for assessing monthly annuity, even in the case of lower amounts.⁶¹ Prior to 1 January 2021, it was not possible to adjudicate claims for non-material damage or restitution in criminal proceedings; however, claims for restitution were nevertheless made several times, even in the case of victims acting with legal representation.⁶² The judgments reviewed were not uniform as regards the actual amount of civil claims: specific amounts were given in less than half of the files. In 1 of the 14 cases, the court of the second instance reviewed the decision of the court of the first instance on the civil claim, referring the civil claim on the merits to be satisfied in another lawful manner.

The low proportion of substantive adjudication of civil claims was confirmed by several of the professionals interviewed who said that, in their experience, civil claims do not fit into criminal proceedings at all and that criminal judges do not like to deal with them because they lack the civil law knowledge necessary to apply the legal instrument effectively – they prefer to leave the decision on compensation claims to the civil courts. At the same time, their experience also confirms that it would be useful and beneficial for victims of crime to be able to pursue their property claims in criminal

⁵⁸ In its judgement, the court found the perpetrators guilty based on Section 160 subsection (1) of the Hungarian Criminal Code on attempted murder.

⁵⁹ Pursuant to Section 56 subsection (1a), as well as Section 556 subsection (6), and Section 560 subsection (1) point I).

⁶⁰ In 25 of the first instance judgments, the legal institution of special treatment could have been applied.

⁶¹ In 1 case, the victim of serious physical assault resulting in permanent disability and serious deterioration of health in connection with the stalking of their sibling claimed HUF 1,029,000 in lost wages and HUF 50,000 in monthly annuity, and in another case, the ex-wife of the perpetrator claimed HUF 50,000- and two-days' community service wages in connection with the life-threatening grievous bodily harm committed against her in addition to stalking.

⁶² HUF 2 million in one of the cases assessed in the scope of domestic violence, HUF 10 million in 1 case in connection with serious physical assault causing permanent disability and serious deterioration of health in connection with stalking and in 1 case of sexual violence.

proceedings. However, civil cases did not include a much higher proportion of claims for compensation or restitution following domestic violence, sexual violence or stalking. One respondent, a lawyer, was representing someone in a civil case for compensation and restitution for grievous bodily injury, and although it was not because of domestic violence, it was in the context of intimate partner violence. Other lawyers reported that they had encountered in the order of 20-30 cases relating to the three offences that were the focus of the research but that civil proceedings or other claims had actually been brought in a total of 5 cases.

We were not able to analyse the length of the proceedings on the basis of the anonymised civil decisions, which unfortunately did not include the time of the start of the action, but we were able to look at the time taken between the first and second instance. It took on average 7.5-8 months for the court of the second instance to reach a decision on the merits of the appeal, but again it shows that case management in the capital is slower, adding that in our sample, it took the Győr Court of Appeal the longest, 18 months, to overturn the first instance decision. It should be noted here that there was not a single case where the first instance judgement became final without an appeal, and in all the cases examined, one – sometimes both – of the parties exercised the right to ordinary appeal. Only one decision showed the date on which the action was brought, so it was possible to trace precisely that the first instance judgement was delivered 4 years and 7 months after the action was brought, while the case was finally closed 5 years and 8 months after the action was brought.

With regard to the background, it is worth noting that the cases examined were characterised by the fact that the defendant had been convicted by a final judgment of a criminal offence or a violation of equal treatment against the claimant before the compensation action was brought. Of the cases examined, there was a total of 1 case where no criminal proceedings for an act constituting the basis of the violation of personality rights were conducted prior to the compensation action, there were 2 cases where the criminal proceedings were conducted in parallel with the action for restitution, and 1 case where the compensation action was preceded by proceedings before the Equal Treatment Authority for sexual harassment.⁶³ It should be noted that even in the 1 case where the claimant did not initiate the criminal proceedings, the court, in its reasoning, held this to their disadvantage. It can therefore be concluded that victims almost only dare to go to court for restitution and compensation if a final court judgement has previously found the perpetrator liable for the offence. This fact in itself excludes a significant proportion of survivors of violence against women from suing for the violation of their personality rights as the latency rate of this form of violence is very high in Hungary, many do not seek help from the authorities in the first place, and many more do not receive effective protection. A contributing factor to latency, and thus a further obstacle to bringing proceedings for compensation or restitution, is the fact that the legal framework does not take into account the reality of battered women, such as the length of the time limit for bringing a claim. For example, in a basic case of sexual violence,⁶⁴ a private motion gives the victim only 30 days from the commission of the crime to file a complaint. The level of traumatising is particularly high⁶⁵ in victims of sexual violence, and very often

⁶³ The Equal Treatment Authority ceased to exist on 1 January 2021, and its functions were merged into the Office of the Commissioner for Fundamental Rights: Az alapvető jogok biztosa veszi át az Egyenlő Bánásmód Hatóság feladatait [online], the website of the Office of the Commissioner for Fundamental Rights, [viewed date: 12 January 2022], Available:

<<https://www.ajbh.hu/-/az-alapveto-jogok-biztosa-veszi-at-az-egyenlo-banasmod-hatosag-feladatait>>

⁶⁴ Section 197 subsection (1) point a) of the HCC.

⁶⁵ Severe trauma symptoms can persist for up to 2 weeks after the crime in 94% of women survivors, while in 65% of women survivors, these symptoms can persist for over 30 days after the crime. In: Barbara Olasov Rothbaum, 'Edna B. Foa,' David S. Rigs,' Tamera Murdock,' and William Walsh. A Prospective Examination of Post-

it is a serious barrier to their ability to assert their rights.⁶⁶ As a result, in many cases, there is no official notification that a crime has been committed, and therefore no criminal proceedings. In practice, this means that a significant proportion of victims of sexual violence are deprived of the possibility of having a realistic chance of claiming compensation and restitution for the crime they have actually suffered – the effects and negative consequences of which they bear regardless of the failure to initiate legal proceedings and for which they would be entitled to compensation.

Our experience has shown that criminal prosecutions happen either in the most serious cases or only in cases where the victim takes care of the production and obtaining of evidence. While we do not know whether this practice developed because the civil courts required prior criminal proceedings or because the parties did not want to risk claiming restitution/compensation in the absence of a criminal conviction, it is currently the standard practice, which we could only test through targeted trials.

As far as previous offences are concerned, the most common were minor assault and grievous/life-threatening bodily injury within intimate partner violence, but the cases also included stalking, vandalism, criminal damage, breach of domicile, misuse of personal data, misuse of personal data, defamation, libel or slander, violation of personal liberty, misuse of firearms, attempted murder, endangering a minor, sexual violence, and child pornography. It should be noted here that, with the exception of two cases (attempted murder and repeated sexual violence against a child under 12), the perpetrators did not receive a prison sentence but a fine, probation or reprimand.

Clearly not independently of this, the abuse continued after the punishment. It is also clear from the analysis of the cases that, while probation had a noticeable deterrent effect on subsequent offending, reprimands and fines had none.⁶⁷ Of the forms of violence on which compensation was based, 10 cases involved psychological abuse. These included threatening to publish defamatory photos, posting defamatory Facebook posts, spitting on the abused woman, going to the abused woman's workplace and bringing her into disrepute, sending letters to the abused woman's boss, berating the victim, stalking via text messages, coercive control⁶⁸ and threatening stalking, preventing visitation for years, and procedural/legal stalking. In a total of 8 cases, we found evidence of physical assault, ranging from a slap through broken bones to life-threatening or permanent injuries caused by pouring lye on the victim's genitals. Verbal violence was recorded in one action (we assume that it happened much more often), where the claimant mainly complained that the defendant called her a "dirty gypsy whore", even though she is not of Roma origin. Sexual violence was the basis for compensation in 2 actions: in one case, the systematic rape of a girl between the ages of 8 and 17 by her biological mother and stepfather, while in the other case, the sexual harassment of 3 women in public employment by the municipality's mayor was the basis for the compensation claim.⁶⁹

Traumatic Stress Disorder in Rape Victims. *Journal of Traumatic Stress*, Vol 5, No. 3, 1992, Wiley Online Library, New Jersey, p. 463.

⁶⁶ Herman, Judith. *Trauma és gyógyulás - Az erőszak hatása a családon belüli bántalmazástól a politikai terrorig*. Budapest: Háttér Kiadó, 2011, p. 65. Original publication: Herman, Judith Lewis. *Trauma and Recovery. The Aftermath of violence - from Domestic Abuse to Political Terror*. New York: Basic Books, 1997.

⁶⁷ We refer to Article 45 of the Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011 (hereinafter referred to as the Istanbul Convention), which provides that offences against women on the basis of their sex shall be "punishable by effective, proportionate and dissuasive sanctions, considering their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition."

⁶⁸ As part of the abuser's toolkit, it covers acts that, without the direct use of force, are likely to cause the victim to behave in a way that is consistent with the abuser's will.

⁶⁹ The latter was defined in the lawsuit not as a criminal offence under the Hungarian Criminal Code but as stalking under Section 10 subsection (1) of Act CXXV of 2003 on Equal Treatment.

Regarding the identity of the parties and their relationship to each other, the perpetrator was a man and the victim was a woman in all but one case. In 1 case, the perpetrators were the parents, i.e., 1 man and 1 woman, who abused their daughter, and in 1 case, the woman as well as her new spouse were the targets of the assault. In 8 of the 11 cases, the former partner, former suitor, former spouse, former civil partner was the defendant as the perpetrator of the offences; in 1 case, it was the stepfather or mother; in 2 cases, the former employer was the defendant, and in one case, the police station, which had failed to order personal protection, was also sued as a second-degree defendant, together with the perpetrator.

The acts committed were reported as violations of the rights to human dignity, honour, bodily integrity and health, personal liberty, respect for private and family life, the inviolability of the private sphere, the protection of privacy, equal treatment, image and sound recording and freedom of self-determination in actions for violations of personality rights. In all cases of physical assault, the court found a violation of the right to bodily integrity and health, and typically found at least two violations of personality rights in each case. Thus, in the case of one claimant, a clerk who arrived at her workplace with a black eye and a limp, in addition to the violation of the right to bodily integrity and health, the violation of human dignity was established. According to the court, the man who installed a GPS tracker in the car of his former partner and thus followed his former partner's every move for months violated her right to private life. In another case, the court ruled that making pornographic recordings of a minor was an activity that violated not only the girl's human dignity but also her right to image and audio recordings. The Pécs Court of Appeal, with its judgement no. Pf.20.148/2016/5, ruled that the defendant violated his former civil partner's right to the commercial use of her images by sharing on his own Facebook page an album called "Album of Shame", in which he shared pictures of her in an alcohol-induced state; furthermore, the man violated the claimant's right to privacy by disclosing specific information about her health and addiction issues to her ex-husband, who then filed a lawsuit to change the exercise of parental rights over their children. In addition, the court in this case also found that the defendant "violated the claimant's right to a private life and contact as, by threatening to publish photographs of the claimant, he forced the claimant to communicate with him on the internet daily and violated the claimant's right to health by occasionally mixing Xanax into the claimant's drink."

A very typical series of abusive behaviour was also sanctioned by the Budapest High Court in judgement nr. P.24.138/2010/80 when it ruled that the ex-husband had violated the claimant's, a police officer's, right to respect for private life and family life and to live in a family by not ensuring the right of visitation with her child who lived with him for 2 years and 3 months, and had violated the claimant's personality right to the inviolability of the private sphere by sending three letters concerning her private life and her alleged misconduct to the commander of the police station by which she was employed, and by disclosing to her employer the results of a forensic psychologist's examination of the claimant in a child maintenance and custody case – the latter also violated her right to privacy. "Furthermore, the defendant also violated the human dignity of the claimant by having sought and continuing to seek to discredit her professionally and as a private person by making the above statements and by his subsequent actions in initiating further (prosecution) proceedings, by initiating various civil and criminal proceedings."

It can also be said that the amount of restitution/non-material compensation awarded is quite low by international standards, and as clients are often inspired by US examples, it often happens that they file their claim for an amount that is orders of magnitude higher than what they end up receiving. Of the 11 cases examined (1 is still pending and no judgment has been made, not even at first instance), a total of 1 case was dismissed, while in all other cases, some amount of compensation/restitution for

the violation of personality rights was awarded. This 1 case was also somewhat exceptional, as the woman who was assaulted sued the hospital (with our help) that treated her injuries for failing to comply with their duty to report the assault to the police.

Out of the remaining 10 cases, there were only 2 cases where the court awarded the full amount claimed, and in the other cases, it reduced it considerably compared to the amount claimed. These 2 actions were characterised by very serious injuries suffered by the claimant. In one case, the court awarded HUF 15 million for non-material damage to the new spouse of the abused woman as he was shot in the neck by the woman's former partner, leaving him paralysed and helpless, HUF 3 million to the woman, and HUF 1 million each to the children, while in the other case, the court awarded the HUF 25 million claimed to the woman whose former partner poured caustic lye on her and left her in a dazed state in the apartment.⁸⁷ There were some extreme cases where, instead of the requested HUF 6 million for non-material damage, the injured party received HUF 1 million, or instead of HUF 30 million, the court ruled that HUF 15 million of restitution was a proportional compensation, but the majority of cases were characterised by smaller reductions: instead of HUF 1 million, the court awarded HUF 600 thousand, 500 thousand, 400 thousand or 300 thousand, instead of HUF 3 million, the court awarded HUF 1 million, and instead of HUF 2 million, the court deemed HUF 1.5 million to be proportional.

Of the 10 proceedings in which the court upheld the claim in full or in part and which were already settled with a final decision, the court of the second instance did not change the amount of the restitution/non-material damages awarded in 8 cases, it increased it from HUF 1 million to HUF 2 million in 1 case, and in another case, it reduced it from HUF 1 million to HUF 750,000. Apart from the amount of the restitution awarded, in general, the court of the second instance only made minimal changes to the first instance decision regarding the cases we examined. As an example, the court dismissed the violation of the right to family life at the first instance because the parties were no longer living together at the time of the violations, in another case, the amount of the duties to be paid was corrected, but there were also examples of the amount of the litigation costs being changed, or that the public satisfaction ordered at the first instance was changed by the court of appeals to an apology in a private letter.

In almost all the decisions on the merits, the court dealt in detail with the aspects of the assessment of non-material compensation and restitution.⁷⁰ In the cases included in the research, the amount of non-material compensation and restitution ranged between HUF 300,000 and HUF 25 million, which did not show a significant difference compared to the compensation awarded to victims of crimes other than violence against women. In this area, the application of the law is relatively uniform; therefore, the amount of compensation/restitution is determined on the basis of principles that are known in advance and of established legal practice. In its decision no. Pfv.22.932/2016/6, the Curia stated that when determining the amount of non-material compensation, the decisions of other cases

⁷⁰ In older cases, referring to Section 339 subsection (1) and Section 355 subsection (2) of Act IV of 1959 (old Civil Code), it was established that the compensation for non-material damage must be capable of mitigating the damage caused with benefits of the order of magnitude of the monetary compensation and of approximating the extent to which the victim's impaired quality of life can actually be improved. In several cases adjudicated under the new Civil Code, the court has pointed out that the primary purpose of restitution is by no means to punish the perpetrator, but the reparative and preventive function of this legal institution is much more emphasised – reflecting on the reasoning of Section 2:52 of the new Civil Code, according to which "restitution is an indirect compensation for the violation of personality rights by means of pecuniary satisfaction and is also a private law punishment". In almost all the judgements, the court referred to Section 2:52 subsection (3) of the new Civil Code, according to which the amount of the restitution must be determined as a lump sum, considering the circumstances of the case, in particular

of judicial practice suitable for comparison must also be assessed, which, however, cannot mean an examination based on a mechanical quantifiable comparison. In its judgement no. Pf.20.240/2018/5, the Győr Court of Appeal, for example, stated that the amount of non-material compensation exceeding HUF 15 million "has been applied in judicial practice in cases where the injured party has suffered such a degree of damage to their health that it deprives the victim of the possibility of a future that may be considered humane or of living a full life, even if only partially." Giving an example of this, they cited a case where the court awarded 22 million forints in non-material compensation to a person who had fallen into a coma due to a traffic accident, 14 million forints in non-material compensation to a person who suffered brain damage and was unable to care for himself or move without using a walker, and 12.5 million forints in non-material compensation to a person who had suffered hemiplegia. The cases studied also show that the amount of non-material compensation/restitution awarded to remedy a single or minor injury caused by physical or psychological violence is usually below HUF 1 million, while the amount awarded to compensate for a radical deterioration in the quality of life caused by extreme violence is typically not more than HUF 20 million.

While, in principle, various psychological and mental illnesses do give rise to a claim for restitution, physical injuries are currently the focus of court cases, which are always proven by an expert psychologist or psychiatrist.⁷¹ The expert may only examine the questions specified by the assignor, so the prior knowledge on the part of the court (and the investigating authority in criminal cases) has a special weight in determining what psychological injuries the expert may examine. The experts interviewed shared that the main obstacle to establishing psychological injury was the lack of relevant questions in court proceedings.

It is noteworthy that in only three of the cases examined were claims for compensation for material damage brought, two of which were deemed unfounded by the court. Annuity was awarded in only one case, to the victim and her family who almost died in the attack, and although they managed to save her, she was still paralysed and unable to support herself. In her case, the court found the additional costs of transport, medical expenses, nursing care allowance, and household allowance to be justified, and also considered the loss of income and loss of earnings due to the loss of work value.

Knowledge of intimate partner violence did not feature prominently in the reasoning of court judgments, but **there was an attitude of blaming women**. For example, the courts considered it a failure of the victim to comply with her duty to mitigate damage if she did not report the assault immediately after the assault or did not move away from her abuser soon afterwards.⁷²

⁷¹ The forensic experts interviewed were mostly assigned to cases of sexual violence, with a smaller proportion assigned to cases of domestic violence, and least typically to cases of stalking.

⁷² From judgement no. Pf.20.069/2015/7 of the Győr Court of Appeal: "The claimant's personality right was not violated by the defendants, and the failure to notify is not causally connected to the violation suffered by the claimant and to the harm suffered by her as a result of the violation. The claimant could have prevented and mitigated the damage suffered by her by filing a report or especially by separating from her husband. The failure to do so was considered by the court as a breach of the duty to mitigate the damage, and the claimant's claim was dismissed." From judgement no. P. 20.512/2015/4. of the Budapest Environs Regional Court: "The court also ruled that the claimant had remained in the shared apartment even after the defendant caused her injuries, she had not moved away in order to restore her physical and mental condition and for her own peace of mind, and had thus contributed to the possibility of the repetition of the defendant's violations." From judgement no. P.25.191/2013/30 of the Budapest High Court: "Contrary to the claimant's submission, they did not find her claim that her sense of fear became permanent justified. After the assault, the claimant continued to live with the defendant for almost 2.5 years (...), she continued to fulfil her duties after the assault, her lifestyle did not change substantially, and her functionality was not affected by the pain. (...) The ongoing litigation between the parties continues to maintain the conflicted relationship, which – subject to what is stated in the expert's report – can

Finally, we would also like to mention the level of detail characterising the reasoning of the judgements. In general, the decisions on the merits seem to be to the point, but do not go into excessive detail either in the presentation of the case or in the reasoning. In this context, it should be noted that second instance decisions are, by definition, much shorter than first instance decisions. Among the documents reviewed, there were also extreme ones: the Budapest High Court's judge described their decision in 26 pages, while we also found judgements of the first instance 5 or 6 pages long. No marked difference was found between the quality and detail of the reasons given in the decision rejecting the application and the decision granting it.

3.2. Financial assistance by the state

There are also important findings regarding to state monetary assistance. In the period between 2015 and 2020, 162 cases of sexual violence, 297 cases of domestic violence, and 396 cases of stalking were reported to the Victim Support Service in the Budapest territorial jurisdiction. At the national level, decisions on immediate monetary assistance in the period between 2015 and 2020 amounted to 13,017 adjudicated applications, while no such figure was available for state compensation. Of the victims we interviewed, two had applied for financial support from the Victim Support Service, both had applied for and received state compensation, and one victim had applied for and received immediate monetary assistance from the Victim Support Service.

There is little information available on the granting or refusal of immediate monetary assistance and on how the specific amounts are determined, beyond the fact that they are assessed on a means-tested and case-by-case basis, and the definition of a crisis situation, which is open to individual interpretation, is also available. This places considerable decision-making responsibility on the respective victim support officer to assess eligibility and determine the specific amount, and it is not possible to monitor whether different victim support services decide in the same way on the request for immediate monetary assistance for victims in comparable situations. One of the victims, who applied for both immediate monetary assistance and state compensation, did not understand why she did not receive the maximum amount of state compensation following her brutal assault when the long-term consequences of her injuries and the costs involved would have justified it.

A general theme from the interviews with the victims was that most of them were not aware of the Victim Support Service and were not aware of what services were available to them. Many victims would have liked to use the psychological, mental, and legal assistance offered, had they been aware of the possibility. Two victims reported that their claims for financial support were rejected by the Victim Support Service⁷³ on the grounds that financial support is not applicable to the crimes committed against them (and in one case against their child).⁷⁴ Although there is currently no financial benefit available in Hungary to provide support for leaving an abusive relationship, it may be in principle possible to have part or all of a rent deposit covered as part of housing expenses or to get a monthly rent payment in the form of immediate monetary assistance if the victim of domestic violence would like to escape from the flat shared with the abuser. In the course of our work, we encountered a case, where, following a restraining order due to domestic abuse, the woman was unable to cover the rent on her own and was therefore awarded a monthly rent payment. And if a woman fleeing an abusive relationship to a crisis shelter would need to travel to another municipality, support for her travel costs may also be available.

be linked to the subjective pain of the claimant, as the claimant herself is actively involved in maintaining the conflicted relationship (...)"

⁷³ In both cases, a government office with jurisdiction outside the capital acted.

⁷⁴ These offences included homicide, endangering a minor, vandalism, stalking, and physical assault.

At the Victim Support Service, the most typical examples of serious health detriment in the context of state compensation claims may be physical injuries resulting from a crime, but also psychological trauma like PTSD (post-traumatic stress disorder) may be a basis for state compensation. The causal link between the injury and the crime must be proven first and foremost by the requesting party, and it can be proven by a certificate obtained from the police, medical documents or hospital release forms indicating that the injury healed beyond 8 days. Normally, the police will order the taking of evidence, and an expert will be called in state compensation proceedings when further clarification of the circumstances is needed – for example, in the case of psychological injury, a forensic medical expert is typically involved. However, the victim of the crime also has the possibility to submit an expert's report on psychological damage. Furthermore, under compensation, it is possible to have the costs of going to court reimbursed – if the victim of the crime can prove the costs.

However, not only the level of assistance but also its duration was discussed during the interviews. One victim reported that she had only 3 months of state compensation compared to 8.5 years of court proceedings, even though the medical costs of the injuries she suffered as a result of the crime committed against her had amounted to millions.

Both victims found the amount of state compensation to be insufficient to cover their expenses in view of the striking severity and long-term consequences of the crime committed against them. One of the victims also reported that she had been subjected to degrading treatment in the procedure to establish her eligibility for state compensation: the appointed forensic medical expert had trivialised her injuries, the authorities had questioned whether they were a result of a crime committed against her, and there had been a debate about whether the medical interventions should be considered a luxury. When, in fact, “sight is not a luxury, it is fundamental,” she said. According to Section 24 subsection (1) point e) of Act CXXXV of 2005 on Crime Victim Support and State Compensation, the employee of the Victim Support Service shall, after assessing the needs of the victim, inform the victim about the possibilities of avoiding re-victimisation, considering the type of crime or infringement against property. However, the preparation of a risk assessment and safety plan together with the victim is not part of the Victim Support Service's procedure. Those who reached out to the Victim Support Service reported somewhat different experiences, but a common denominator was that they felt that the victim support officers did not know how taxing their situation was and could not help them in any meaningful way because they lacked specific knowledge about intimate partner violence. There were also experiences where the victim felt that her words and credibility were doubted, and she felt like she was being a nuisance because she had turned to the authorities.

In the past, it was not common for the Victim Support Service to find out about a person's victimisation from other authorities (such as the police); victims had to contact the victim support system themselves, provided they knew which services to turn to and for what kind of help. The lack of information on this issue was identified as a serious problem by several victims during the interviews.

In light of this, the introduction of the so-called opt-out system, whereby the Victim Support Service directly contact victims of crime, starting from January 2021, seems to be a positive change.⁹³ Another amendment to the law, effective from 1 January 2021, means that the Victim Support Service will now accept applications from victims via e-mail. However, this research does not yet have data on the impact of the newly introduced opt-out system and the effectiveness of contacting victims.

The obstacles to the enforcement of claims for crimes of violence against women and the low number of cases brought are the result of a combination of factors. Many victims are not aware of the possibility of bringing actions for compensation or restitution, of asserting property claims in the form of civil claims in criminal proceedings, or of the forms of monetary assistance available from the state,

nor are they adequately informed in the way required by law. Moreover, the scope for pursuing claims for damages in criminal proceedings is very limited, with the result that it is precisely the victims of crime who, due to the nature of the crime committed against them, are most in need of the legal instrument – which is intended to reduce the procedural burden in order to spare victims, with the Victims' Rights Directive aiming at this explicitly – but who end up missing out on the benefits: victims of violent crime and of crimes with the potential for violence.

It is also common that victims do not want to be involved in more proceedings, as the procedural difficulties of providing evidence in compensation/restitution proceedings risk re-traumatisation, especially given the complete lack of victim protection measures they already experienced in the pre-trial criminal proceedings.¹⁰¹ These victim protection measures, which are at least present in principle in criminal cases, are not even reflected in the law when claiming damages and/or restitution for a criminal offence in civil cases; the violent history is left completely unreflected in civil law, which discourages victims of violence from asserting their substantive rights.

Even if the victim wishes to initiate proceedings, this is often done when the specific case is already barred (statute of limitations), or the legislator does not consider the act to be legally significant, or the lawyer themselves carries out a preliminary screening to see whether they consider the case to be successfully arguable in court – thus, the judicial practice already has an impact on the rate of initiation of cases.

In addition, the amount of restitution awarded is not commensurate with the heavy financial and emotional burden of litigation – coupled with the realistic possibility of a counter-attack by the abuser if the case is successful –, and it simply does not make it profitable for victims of violence against women to bring actions for compensation/restitution under current Hungarian case law.

III. Legal context

Compensation for victims of gender-based violence related crimes is crucial for the process of their full recovery and re-gaining their life free from violence. In order to understand the urgent need to pay more attention to compensation for victims of GBV in public space it is necessary to understand that even though the legal framework, international context and public opinion on this topic could be different in each state, the effect of GBV crimes on victims is the same.

In particular, it is necessary to dwell on non-property damage. **Each victim of gender-based violence will experience mental suffering that will reduce their quality of life** for several years, not uncommonly for life. The violence they experienced affects numerous aspects of their lives, victims often feel loss of control, anxiety and helplessness as well as a serious loss of trust.

Moreover, post-traumatic stress disorder (PTSD) is not an exception for such traumatic events. According to American Psychological Association's Diagnostic and Statistical Manual of Mental Disorders (DSM)⁷⁵ PTSD is when the victim was subjected to situations where there was a real threat to their lives or that result of severe injuries, or if they experienced sexual violence. Typical signs of PTSD are flashbacks, dissociation, overstimulation and others.

In cases where the traumatic event lasts for a longer period of time or is repetitive and the victim cannot escape and stays in a traumatic situation as a result of the coercive control the offender has over her (such cases constitute for example torture, slavery, genocide, long-lasting domestic violence

⁷⁵ RABOCH, Jiří, Michal HRDLIČKA, Pavel MOHR, Pavel PAVLOVSKÝ a Radek PTÁČEK. *DSM-5®: diagnostický a statistický manuál duševních poruch*. Praha: Hogrefe - Testcentrum, 2015, liv, 1032 stran ; 26 cm. ISBN 978-80-86471-52-5.

or repeated childhood sexual violence or physical abuse). The World Health Organisation describes the difference between PTSD and CPTSD (Complex PTSD).⁷⁶ Symptoms of CPTSD are usually more severe and last longer than those of PTSD. Also, there may be serious and long-lasting problems with regulating emotions, the victim's sense of self-worth may decrease significantly following trauma from long-lasting and overwhelming events, and they may feel defeated or worthless.

The enumeration of the above is only a fraction of the consequences and negative impacts that the commission of a crime of GBV has on victims and just another argument why the states must provide compensation for these victims, either from their own sources or from the perpetrator.

In the following chapter, the emphasis is mainly on the legal context as a starting point for legislation in individual states. We will also touch on the European regulation and then on the individual states that participated in the research.

1. International and European context

Gender based violence is a complex issue that is a human rights violation as well as a form of discrimination. First of all, it is therefore necessary to mention the human rights conventions, which generally must not be in conflict with the legal regulations of individual states. In particular, these are the International Covenant on Civil and Political Rights (+ the Optional Protocol), the International Covenant on Economic, Social and Cultural Rights (+ the Optional Protocol), the Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women (+ Optional Protocol), the Convention on Rights of the child (+ Optional Protocol) and the Convention on the Rights of Persons with Disabilities.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (better known as the Istanbul Convention) aims to protect women against all forms of violence and to prevent, prosecute and eliminate gender-based violence. The Czech Republic, Bulgaria and Hungary have not ratified the Istanbul Convention.

The lack of regulation means that victims of GBV are subject to the same general, universal substantive and procedural rules as victims of other crimes, although their vulnerability and special needs as victims of such a specific type of violence would need to be considered at some stages of the criminal process. This leads to non-recognition, misunderstanding and non-perception of GBV as a specific, structural problem whose causes, course and consequences differ from non-gender-motivated crimes. This helps to maintain persistent socio-cultural stereotypes and myths related to this violence and its victims, which often result in misunderstanding and inappropriate approach of state administration authorities.

The Victims' Rights Directive (2012/29/EU) provides for appropriate information to be secured to victims not only of GBV - their rights, support and protection in criminal proceedings and also how compensation from the offender can be enforced. In case of victims of sexual violence and abuse among relatives according to the Directive there is a need to take specific protective measures to prevent secondary or repeat victimisation or intimidation.

The following are also important rights of victims:

- The right to information
- The right to file a criminal complaint
- The right to interpretation and translation

⁷⁶ 6B41 Complex post traumatic stress disorder, ICD-11 for Mortality and Morbidity Statistics, Available at: <https://icd.who.int/browse11/l-m/en#/http://id.who.int/icd/entity/585833559>

- The right to access victim support services
- The right to participate in criminal proceedings
- The right of guarantee in relation to restorative justice services
- The right to legal aid
- The right to a compensation decision from the offender
- The right to return property
- The right to protection
- The right to prevent contact between the victim and the offender

Member states must ensure that victims of GBV can pursue their claims for compensation against the offender in the criminal proceedings and on the other hand encourage the offender to pay victims the compensation awarded by the court.⁷⁷

2. Czech Republic

As for the level of equality among women and men within the European Union (EU), the Czech Republic has long occupied below-the-average positions. The most significant challenges for the Czech Republic primarily include differences in pay, a low representation of women in decision-making positions, a disadvantaged position in the labour market, persisting gender stereotypes in society, and ineffective and insufficient system reactions to the occurrence of GBV.

But in fact, **violence against women remains a persisting and common socio-cultural phenomenon** in the Czech Republic. Each year, women report about 640 rapes, 470 cases of domestic violence, and 340 stalking cases. However, these figures are only a fragment of all actually committed crimes. Despite these developments, the Czech Republic is not sufficiently engaged in collecting the relevant data in this respect and providing end-to-end assistance to victims. As a result, this issue has been long underestimated and trivialised.

The Czech law, in general, contains absolutely neutral formulations and does not consider the different causes and consequences of GBV compared to other violence types. Hence, there are basically no mechanisms specifically aimed at protecting and supporting the victims of GBV. These gaps in the law mean that the victims of GBV are subject to general, universal rules applicable to victims of other criminal offences even though their specific vulnerability and special needs should be considered. All of this results in the fact that GBV as a specific, existing, and structural problem is not recognised and is ignored, although its causes, course, and consequences are different from other crimes. This situation contributes to the maintained and persisting socio-cultural stereotypes and myths related to this type of violence, which fuel the lack of understanding and inappropriate approaches of the IPAB to the victims of GBV.

An exception to this rule might be the criminal offence of cruelty, i.e., ill-treating a person living in the same household⁷⁸, where there are particular and specific mechanisms of protecting victims (eviction⁷⁹, a preliminary measure to protect against DV⁸⁰). However, even these provisions are formulated neutrally and do not perceive this act as an act of GBV. Besides the binding regulations, there are also support documents dealing with GBV.

⁷⁷ Victims' Rights Directive, Article 16

⁷⁸ The provisions of s. 199 of the Criminal Code.

⁷⁹ The provisions of s. 44 and the following provisions of the PCRA.

⁸⁰ The provisions of s. 400 and the following provisions of Act No. 292/2013 Sb., Act on Special Judicial Proceedings.

They include the Action Plan of Preventing Domestic and Gender-based Violence 2019-2022⁸¹, the Strategy of Equality among Men and Women 2021-2030⁸², and the Crime Prevention Strategy¹¹. The Action Plan is developed, and its implementation is evaluated by the Committee for Preventing Domestic Violence and Violence against

Women of the Government Council for Equality among Women and Men. The Committee members include the non-profit sector representatives, and they meet regularly to discuss the GBV-related issues. As for the implementation of the EU and international law in Czech legislation, the Czech Republic has amended or adopted⁸³ 67 legal regulations in connection with the implementation of the two crucial EU directives on victims.⁸⁴ They include amendments to the Criminal Procedure Code, Criminal Code, Act on Public Prosecutors' Offices⁸⁵, on the Legal Profession⁸⁶, on Social Services,¹⁶ and the Act on the Police of the Czech Republic. Still, the most significant provision is the Act on the Victims of Crime of 30 January 2013, which incorporated a clear majority of individual rights stipulated by the directives. On the contrary, the Czech Republic has not yet ratified the Istanbul Convention even though it had adopted a majority of other existing international treaties on human rights.

In the first research stage, we mapped out and analysed the existing laws on losses and monetary assistance using the desk-research method. This stage resulted in the following part of the report, dealing with the legal framework and the specific rules that have the greatest relevance for exploring GBV and the rights of GBV victims to claim damages.

As indicated above, the Czech laws do not define criminal offences expressly designated as GBV. All crimes have completely neutral formulations. Yet, the Criminal Code defines many offences under which GBV acts can be prosecuted and subsumed. The relevant offences are against human dignity in the sexual area, against family and children, and many other crimes such as stalking, dangerous threatening, blackmailing, bodily harm, severe bodily harm, and murder.

As for victims, the Victims of Crime Act (the 'VoCA') defines the victim as an individual to whom (i) bodily harm, (ii) material or non-material loss was or was reportedly caused by committing a crime, (iii) or to whose detriment the offender has enriched himself by committing a crime.⁸⁷ Victims are also victims of acts that are not criminal due to the offender's insanity or low age.⁸⁸ The term 'victim' is also

⁸¹ Úřad vlády ČR (Office of the Government of the Czech Republic). Akční plán prevence domácího a genderově podmíněného násilí na léta 2019-2022 (Action Plan of Preventing Domestic and Gender-based Violence 2019-2022). April 2019. [online]. [cit. 2012-12-17]. Available at:

<https://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/dokumenty/AP-DN---grafikaFINAL.pdf>.

⁸² Úřad vlády ČR (Office of the Government of the Czech Republic). Strategie rovnosti žen a mužů na léta 2021-2030 (Strategy of Equality among Men and Women 2021-2030). February 2021. [online]. [cit. 2012-12-17]. Available at: https://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/Aktuality/Strategie_rovnosti_zen_a_muzu.pdf.

⁸³ 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; Council Directive 2004/80/ES of 29 April 2004, relating to compensation to crime victims.

⁸⁴ National transposition of the 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. EUR-Lex (2021) [online]. [cit. 2021-5-21]. Available at: <https://eur-lex.europa.eu/legal-content/cs/NIM/?uri=CELEX:32012L0029>.

⁸⁵ Act No. 283/1993 Sb., on Public Prosecutors' Office.

⁸⁶ Act No. 85/1996 Sb., on the Legal Profession.

⁸⁷ The provisions of s. 2(2) of the VoCA.

⁸⁸ The provisions of s. 2(2) in conjunction with s. 2(1) of the VoCA.

expanded to include selected survivors if the victim died as a result of the committed crime (so-called indirect victims).⁸⁹

The same law defines the term '**particularly vulnerable victim**', meaning a victim subject to a higher risk of occurrence of secondary loss or intimidation by the offender.⁹⁰ This category includes children, disabled people, persons of high age, and victims of selected crimes, e.g., of human trafficking, rape, or ill-treating a person living in the same household. Particularly vulnerable victims may also include victims of other crimes against dignity in the sexual area or crimes involving compulsion, violence or threat of violence, etc. if there is a higher risk of secondary victimisation in the given case.

The law provides victims with several special rights, for which they can apply in the criminal proceedings. First, the IPAB must comply with the request of a particularly vulnerable victim. Thus, particularly vulnerable victims have the right to gratuitous legal aid (psychological, social, legal), free representation by an attorney, limited contact with the offender, or protection during interrogation. That means that the status of a particularly vulnerable victim can be an effective procedural tool to protect victims of GBV.

The criminal proceedings also introduce the term 'the injured party', i.e., those who 'suffered from a bodily harm or material or non-material loss resulting from the committed crime or at whose detriment the offender has enriched himself'.⁹¹

2.1. Compensation from the offender

The injured (party) can claim damages as part of the criminal proceedings from the offender concerning the loss incurred in relation to the committed crime.⁹² In addition, the victims suffering from a bodily harm or victims of sexual violence who suffered non-material loss can ask for financial assistance from the state.⁹³ The following part of the report will focus on these two concepts.

Investigative, prosecuting and adjudicating bodies must always deal with the crime both in case of compensation for loss and financial assistance. The proceeding may start with reporting a criminal offence or based on the police or public prosecutor's own findings. Anyone can file a criminal complaint. The law does not set out any particular time limit to submit a criminal complaint, but the offender's criminal liability for the crime is subject to a limitation period. In the case of some offences, the criminal prosecution can commence or continue only with the victim's consent.⁹⁴

Compensation for loss from the offender means providing financial compensation from the convicted offender to the injured party for the loss caused by a committed crime.

The compensation may be claimed with a civil action without any relation to the criminal proceedings. However, a victim faces many obstacles in such proceedings: they must prove that the loss occurred; they must pay a court fee and do not enjoy specific protection rights and measures described below as they do in criminal proceedings.

The claim may also be asserted in the criminal proceedings within an auxiliary procedure. Also, in such proceedings, the rules on compensation for loss are governed by the general provisions of the Civil

⁸⁹ The provisions of s. 2(3) of the VoCA.

⁹⁰ The provisions of s. 2(4) of the VoCA.

⁹¹ The provisions of s. 43(1) of the CPC.

⁹² The provisions of s. 43(3) of the CPC.

⁹³ The provisions of s. 23 and the following provisions of the VoCA.

⁹⁴ Under s. 167 of the CPC.

Code.⁹⁵ The central part of our research will deal mainly with these proceedings. If the injured party claims damages in the criminal proceedings, the application must be submitted during the trial in court at the latest, before the start of the discovery/evidence procedure.⁹⁶ Should the parties agree on an agreement on guilt and punishment, the application must be filed upon the first hearing on such an agreement at the latest. The time limit to submit a claim of the injured party is a procedural limit, which the Rules of Criminal Procedure do not allow to return. If the application is submitted first after the start of the evidence procedure, the court notes that the injured party can no longer exercise the claim to compensation for loss in the criminal proceedings. Yet, this resolution does not change anything regarding the injured party's position in the next stages of the criminal proceedings and the possibility to seek damages in a civil suit.

The compensation for loss may be awarded to the injured party only if the offender is convicted for the crime. This situation excludes any chance for compensation if the offender is acquitted due to a lack of evidence and in the case of conditional discontinuance of the prosecution.

The judgement issued by a first-instance court in the holding on the compensation for loss may be contested with an appeal; then, the court's decision is reviewed by an appellate court. While the injured party may only appeal the holding on the compensation for loss, the defendant may appeal all judgement holdings.⁹⁷

The injured party may file the application for compensation for loss in the criminal proceedings, either in person or through an attorney. The application may also be submitted orally in the protocol or in writing by mail, via a data box or filing office of the competent police authority or court. There is no prescribed obligatory form for this application. Nonetheless, it must clearly state the reasons for and the amount of the sought compensation.

The mere calculation of loss cannot be regarded as a due and proper application. Hence, the injured party must document the reason for and amount of the loss. If the injured party fails to do so, there is a risk that the claim will be dismissed or referred to the civil procedure. Therefore, the injured party's interest is that the claim is ideally as precise as possible and documented with documentary or other evidence (medical reports, interrogation of witnesses, examination). An expert opinion plays a substantial role. The injured party may have it prepared at the injured party's costs, or the costs may, in specific cases, be paid by the state. The state does so always when the loss is an element of the facts of a crime.

The amount of loss must be given in a specific sum or at least a minimum sum if the injured party does not have information about the total amount yet.⁹⁸ There are no minimum or maximum limits of compensation that the injured party may claim. The injured party may specify the application depending on the results of the evidence produced until the court repairs to the final deliberations, which also applies to the appeal procedure. According to the *ne eat ultra petita partium* principle, the court is bound by the injured party's application, so it cannot award a higher amount than is claimed.

The injured party may also exercise the right to damages (property, material loss) and non-material loss.

⁹⁵ Under s. 2894 and the following provisions of the CC.

⁹⁶ And cf. s. 43(3) of the CPC in conjunction with s. 206(2) or s. 175a(2) of the CPC.

⁹⁷ The provisions of s. 246(1)(b) and (d) of the CPC.

⁹⁸ Cf. s. 43(3) of the CPC.

Damage means any loss of property or material loss. When determining the amount of material loss, the usual price at the time of the damage is applied. It must also be considered what the injured party must purposefully spend to restore or replace the thing's function. Such items may also include the costs associated with health care⁹⁹ (costs of spa treatment, medical accessories, and aids), which are covered in the actual incurred amount. Special categories include lost income¹⁰⁰ or lost pension. They are mostly addressed in civil proceedings due to the fairly complicated evidence procedure.¹⁰¹

The non-material loss may be any loss not reflected in the injured party's property sphere. Non-material loss includes reparation money.¹⁰² The claim to compensation for pain means the compensation for pain in a broader sense, i.e., both physical and psychological suffering. The compensation amount is set based on the Methodology on Compensation for Non-Material Bodily Harm prepared by the Supreme Court of the Czech Republic in cooperation with medical professionals.¹⁰³ This category also includes compensation for a diminished social position.¹⁰⁴ It means compensation for permanent health consequences and obstacles to a better future. The compensation amount is calculated under the Supreme Court's methodology mentioned above. However, it must be noted that this methodology contains only recommendations that may be followed in the calculation.

It is also possible to compensate for non-material loss related to natural rights.³⁷ It means loss caused to the victim's fundamental rights such as honour or dignity and mental anguish. This category is not subject to any single methodology, and courts determine the compensation amount by the principles of reasonableness. In any case, courts may be inspired by the decision-making practice of other courts in similar cases.

In case of acquittal, the court may refer the injured party only to civil proceedings by law. When deciding on the defendant's guilt, the court must issue a decision on the claim as follows:

- The court fully satisfies the injured party's claim and orders that the defendant compensate the injured party's loss in the required amount.
- The court awards the injured party's claim only partly; the remaining part of the claim is referred to civil proceedings.
- The court refers the entire injured party's claim to a civil suit. If any part of the claimed sum is awarded, this judgement serves as an enforcement order under which the injured party may, if need be, seek the amount from the offender.

As for the reimbursement of expenses associated with the injured party's participation in the criminal proceedings, this right arises for anyone who was awarded pecuniary compensation for loss, at least partly.¹⁰⁵ However, the court may acknowledge the right to compensation even if this claim is not awarded. The injured party must apply under which the court imposes, among others, a duty on the convict to pay the injured party's costs associated with her participation in the criminal proceedings, in whole or in part. However, this order cannot be prevented by the nature and circumstances of the

⁹⁹ The provisions of s. 2960 of the CC.

¹⁰⁰ The provisions of s. 2962(1) of the CC.

¹⁰¹ The provisions of s. 2963 of the CC.

¹⁰² The provisions of s. 2958 of the CC.

¹⁰³ Supreme Court's Methodology of 12 March 2014, Ref. No. Cpjn 14/2014, issued in the Collection of Judicial Decisions and Opinions of the Supreme Court of the Czech Republic, No. 6/2014.

¹⁰⁴ The provisions of s. 2958 of the CC.

¹⁰⁵ The provisions of s. 154 of the CPC.

case. The decision on this convict's duty is issued by the presiding judge of the first-instance court.¹⁰⁶ The claim must be asserted within one (1) year from the legal force of the judgement of conviction; otherwise, this right ceases to exist.

The injured party's costs associated with the compensation procedure may include expenses incurred for the attorney, acquisition of expert reports, opinions or testimonials, expenses related to transport to the procedural act (travel expenses), cash expenses on printing, copying documents, electronic media. The related indirect costs may also include the costs of psychological or psychiatric assistance needed due to the difficulties posed by the criminal proceedings on the injured party's psyche.

2.2. Financial assistance by state

Financial assistance means the state's pecuniary assistance to a victim of a criminal offence, subject to the fulfilment of the statutory conditions. It aims to help overcome an aggravated social situation, often resulting in victimisation.¹⁰⁷ Still, it is not a compensatory institute or concept. Instead, it is a social benefit. The state does not provide compensation to victims. While the injured party gets compensation within criminal or civil proceedings, the state's financial assistance is provided to the victim as part of an administrative procedure. This area is regulated by the VoCA.

Besides, financial assistance also partially works as reparation money.¹⁰⁸ Financial assistance is provided if non-material loss, bodily harm or damage resulting from a death caused by an offence has not been compensated in full. With the provision of financial assistance, the victim's entitlement to compensation of money spent passes to the state up to the amount of the financial assistance provided.

The application for financial assistance may only be submitted by (i) the victim to whom (serious) bodily harm was caused as a result of a criminal offence, (ii) a person falling in the category of the specific group of the next of kin, who is a survivor of the victim who died as a result of a criminal offence, (iii) or the victim of an offence against human dignity in the sexual area and a child victim of ill-treatment of a person in custody, to whom non-material loss was caused.¹⁰⁹ That means that victims of domestic violence or stalking experiencing psychological violence, i.e., not physical or sexual, are not entitled to financial assistance.

Financial assistance is granted if a court finds the offender guilty or acquits the offender on the grounds of insanity. However, if there are no justified doubts that the criminal offence occurred, financial assistance can also be granted if (i) the case is adjourned because the offender was not found, or the offender is not criminally liable on the grounds of insanity, (ii) the prosecution is discontinued¹¹⁰ or (iii) the decision on guilt has not become legally effective.¹¹¹ However, the state does not provide financial assistance in some situations,¹¹² for instance, when the victim is prosecuted as a co-accused, when the victim did not consent to the offender's prosecution or if the victim failed to provide the necessary assistance, in particular, if the victim did not file a criminal complaint without undue delay or on serious grounds.

¹⁰⁶ The provisions of s. 155(4) of the CPC.

¹⁰⁷ The provisions of s. 23 and the following provisions of the VoCA.

¹⁰⁸ Especially in connection with s. 25(2) in conjunction with s. 33 of the VoCA.

¹⁰⁹ The provisions of s. 24(1) of the VoCA.

¹¹⁰ Under s. 172(1)(d), (e) or s. 172 (2) of the CPC.

¹¹¹ The provisions of s. 26 of the VoCA.

¹¹² The provisions of s. 27 of the VoCA.

The application for financial assistance can be submitted in writing in person, by mail or data box or through an attorney based on a power of attorney. The application is filed at the Ministry of Justice no later than within two years from the day the victim learned about the loss caused by an offence, but no later than within five years from the offence being committed. Otherwise, the right ceases to exist.¹¹³ Both time limits are preclusive. To observe the limits, the application must be delivered to the Ministry of Justice on the last day of the time limit at the latest.

The application for financial assistance must contain the victim's identification data and the respective appendices¹¹⁴ (primarily the most recent decision of the IPAB on the offence or submission of a criminal complaint, information on the loss caused, the victim's property relations, medical reports). A guiding application form is available on the Ministry's website.¹¹⁵ According to the VoCA, the Ministry of Justice is expected to decide on the application no later than within three months from the commencement of the proceedings. This time limit may be extended.¹¹⁶

The costs associated with filing the application for financial assistance primarily include expenses related to the attached opinions and medical reports, attorney's fees, and cash expenses for printing out the application.

The law determines fixed maximum financial assistance amounts to be provided to the victim subject to the performance of specific conditions.¹¹⁷ These sums have not changed since the law's legal effectiveness, i.e., since 2013. Important aspects include the fact that sexual violence victims can obtain financial assistance only for costs of psychotherapy, physiotherapy, or another specialised help related to remedying the loss.¹¹⁸

Considering the victim's social situation, financial assistance does not need to be awarded or may be reduced if the victim has failed to use all statutory means to claim compensation for the loss from the offender.¹¹⁹ This decision depends on administrative considerations when assessing the victim's social circumstances and the victim's access to asserting the rights to compensation for the loss incurred.

2.3. Victims' rights

In general, each victim has the right to **comprehensible communication and assistance in the criminal proceedings**. The IPAB has an obligation to advise the victim, in an appropriate and comprehensible way, of the victim's rights to enable the victim to fully exercise such rights and accomplish the satisfaction of claims.¹²⁰ Hence, the victim has the right to obtain the necessary information from the first contact with the respective IPAB.¹²¹

Specifically, the IPAB also has an obligation to advise the injured party of the option to seek satisfaction of the claim to compensation for loss caused by a criminal offence.¹²² Also, they need to inform the

¹¹³ The provisions of s. 30 of the VoCA.

¹¹⁴ The provisions of s. 31 of the VoCA.

¹¹⁵ Justice.cz. The questionnaire for the purpose of applying for financial assistance for victims of crime, available at: <https://www.justice.cz/web/msp/obeti-trestnych-cinu-penezita-pomoc?clanek=dotaznik-pro-ucely-podani-zadosti-o-penezitou-pomoc-obetem-trestne-cinnos-1>.

¹¹⁶ The provisions of s. 30(3) of the VoCA.

¹¹⁷ The provisions of s. 28(1) of the VoCA.

¹¹⁸ Also, cf. s. 25(1) of the VoCA.

¹¹⁹ The provisions of s. 29 of the VoCA.

¹²⁰ The provisions of s. 2(15) of the CPC.

¹²¹ The provisions of s. 8(1) of the VoCA.

¹²² The provisions of s. 46 of the CPC.

injured party, also without the injured party's request, on the conditions and extent of the right to financial assistance, including the advice on the time limit to apply.¹²³

Such information can be provided to the victim at any time during the proceedings, either in writing or orally, in a comprehensible manner.¹²⁴ The advice should correspond to the victim's needs and vulnerability in the context of the offence's nature and gravity.¹²⁵ The victim who cannot speak Czech has the right to receive all such information in the official language of the country where she is a citizen, or another language, which the victim declares to master.¹²⁶ The victim also has the right, upon request, to receive a translation of documents in the criminal proceedings.

Similarly, victims have the right to **receive, at any time, information about the status of the criminal proceedings** (except for cases when such information could endanger the actual proceedings).¹²⁷ Still, the injured party must show an active interest in the criminal proceedings. Ideally, the injured party should regularly inquire about the status of the proceedings.

Last but not least, victims have **the right to access specialised assistance services**.¹²⁸ It primarily means psychological counselling, social counselling, providing legal information,¹²⁹ or restorative programmes. Expert help is rendered by entities registered in the register of providers of aid to victims of crime if the purpose of assistance requires it. Most of these services are provided by non-profit organisations, targeting victims, and their nearest. The provision of such services is independent of whether or not a criminal complaint has been filed. In addition, the centres can provide victims with information about compensation options, financial assistance, and the related application process.

Besides general counselling, the injured party has the right to be represented by an attorney in all stages of the criminal proceedings. Such attorneys may include lawyers, relatives, or friends who do not act as witnesses in the criminal proceeding. Only a lawyer can render legal services for a fee. A victim proving that she does not have enough funds can ask the court for being awarded the entitlement for being represented by an attorney for free or at a reduced rate.¹³⁰ Particularly vulnerable victims have the right to gratuitous representation by an attorney ipso iure. If such a victim does not choose an attorney, the presiding judge (or a judge in the pre-trial procedure) appoints, upon the victim's request, a lawyer entered in the register of providers of assistance to victims of crime.

3. Bulgaria

The terms “gender-based violence” and “violence against women” have not yet been introduced in the Bulgarian national laws and accordingly, no data and statistics are collected officially and systematically for these acts, and these terms are not being used as such in the case-law of the national courts (with some rare exceptions).

While it is widely acknowledged that the state response to GBV and DV should include legislative and other measures for prevention, protection and support, punishment, and compensation, the specifically tailored such measures in Bulgaria, are mainly those addressing prevention and protection

¹²³ The provisions of s. 8(1) (g) of the VoCA.

¹²⁴ The provisions of s. 8(2) of the VoCA.

¹²⁵ The provisions of s. 13 of the VoCA.

¹²⁶ The provisions of s. 12 of the VoCA.

¹²⁷ The provisions of s. 11 (1)(b) of the VoCA.

¹²⁸ The provisions of ss. 4 and 5 of the VoCA.

¹²⁹ The provisions of s. 6 of the VoCA.

¹³⁰ The provisions of § 51a(1) of the CPC.

and support for the victims. With regard to the issues related to the compensation of such victims the national framework remains generally neutral and gender-neutral.

The victims of GBV crimes and offences can seek compensation for the damages they have suffered on general grounds – based on the civil tort liability of the perpetrator. Dependent on whether the act of such violence is only a tort, a crime or an act of discrimination, the civil claim can be brought before the criminal court or in the civil court proceedings. The legal ground would be the same (tort liability), however, there are significant differences in the procedural rights and possibilities for the civil claimant, in the procedural defences and in the access to evidence and means of proof, and in the rules and the extent of the burden of proof in the different proceedings. The duration of the proceedings, their development, as well as the costs and expenses also might vary significantly. Compensation in the Bulgarian legislation is not legally defined and cannot serve as a penalty for the offence committed against them.

3.1. Substantive regulation

The acts of GBV do not constitute specific separately defined criminal offences in Bulgaria with regard to their nature. They can be covered under the definitions of different other crimes fully (i.e., physical violence or rape) or partially (i.e., female genital mutilation as bodily harm) as long as they fulfill the constituent elements of the respective criminal offences. Even in such cases, however, neither the motives of the perpetrator, nor the other preconditions and conditions, nor the consequences related to the sex of the injured woman, nor the very discriminatory nature of the offense are defined in law as signs of the crime.

Harassment (particularly in the workplace or in educational institutions) and sexual harassment are explicitly defined in detail as offences under the Law on Protection against Discrimination (LPD) but these definitions do not have a criminal nature. These acts can still be used as grounds for civil claims for compensation based on tort liability. The explicit criminal provision of Article 162, para 1 in the CC (CC) on crimes against equality does include the crime of preaching or inciting “discrimination, violence or hatred” against another person based on various grounds for discrimination. However, neither sex nor gender is mentioned among them.

DV is a specific type of offence in Bulgaria. It is explicitly regulated as a ground for imposing protection measures for the victim, and only in some cases also to protect the victim's children. These measures provide prevention and protection for the future but they do not have a punitive or compensatory character. Domestic violence has been addressed in Bulgaria since 2 April 2005 through the Law on Protection against Domestic Violence (LPDV) and is legally defined in art. 2, para 1 of LPDV as any act of physical, sexual, emotional, psychological, and economic violence, as well as the coercive restriction of private life, personal freedoms or personal rights. The attempt at such acts i.e., when the act of violence has not been actually completed, is also defined as domestic violence. Article 2, para 2 of LPDV stipulates that any domestic violence in the presence of a child shall be considered as psychological and emotional violence against that child. This civil law provides only protection measures in the form of protection orders issued by civil courts in a very expeditious, inexpensive, and accessible civil procedure. These protection orders can be emergency protection orders – issued within 24 hours after the submission of the application, and protection orders – issued with the final court decision in the case.

The only opportunity for the victims in such cases to apply for compensation remains the lodging of a civil claim separately, under the general procedural rules based on the tort liability of the perpetrator for the violence committed. In such a lawsuit, the plaintiff will bear the burden of proof to establish that the violent act has been committed by the defendant, the harmful result caused, and the causal

link. Domestic violence is not separately criminalised in Bulgaria as such and only some of its forms can fall within the definitions of other crimes.

Sexual violence and rape are criminalized under the section on “Debauchery” (Articles 149-159) of the CC, including several types of sexual offenses such as rape, molestation, forced prostitution, systematically providing premises for fornication, solicitation, or coercion of another person to use narcotic substances or analogy thereof for the purpose of prostitution, intercourse, or fornication. None of these provisions refers to domestic violence as an aggravating circumstance.

Rape is criminalised under Article 152 of the CC and the definition includes only vaginal penetration with a bodily organ. The definition includes **only vaginal penetration with a bodily organ**. The provision is not gender-neutral and it can only be committed against a female person. The constituent elements of rape are that the victim is “unable to defend herself and without her consent,” that the act is committed “by compelling her by force or threat,” or that the perpetrator renders her “into a helpless state”. The mere lack of consent is not enough for the act to be qualified as rape. Marital rape is not explicitly criminalised and the nature of the relationship between the perpetrator and the victim in a rape crime is not specifically addressed. Sexual harassment is not criminalised at all.

Sexual harassment has been treated since 2003 under the Law on Protection against Discrimination as a separate type of discriminatory act of behaviour, and is defined as: “any unwanted conduct of a sexual character expressed physically, verbally or in any other manner, which violates the dignity or honour or creates hostile, degrading, humiliating or intimidating environment and, in particular when the refusal to accept such conduct or the compulsion thereto could influence the taking of decisions, affecting the person.”

Stalking was defined as a term and as a separate crime in Bulgaria with the amendments to the CC from January 2019. The new provision of Article 144a, para 1 of the CC reads: “*Whoever systematically stalks another and this could arouse reasonable fear for his life or health, or for the life or health of his relatives if the committed does not constitute a more serious crime...*” and stalking is also considered “*any conduct of a threatening nature against a specific person, which may be expressed in the persecution of the other person, showing the other person that he has been observed, entering into unwanted communication with him through all possible means of communication*”. DV is envisaged as an aggravating circumstance when the stalking is committed in such a relationship. More severe penalties are provided for some crimes of psychological and emotional violence when committed in conditions of domestic violence – kidnapping, coercion, threats. Other criminal offences of a similar nature, like threats and slander, are still regulated regardless of the existence of domestic violence circumstances as a prerequisite for a stricter criminal responsibility.

Anyone who has suffered harm or damages may seek redress from the tortfeasor. Common ground is that under Article 45 of the Law on Obligations and Contracts (LOC), according to which “*everyone is obliged to repair the damage he has caused to others through his own fault.*” Tort liability is intended to ensure the negative interest of the creditor. It repairs the damage suffered by a person, i.e. it is the source for covering the losses that have occurred in the legal sphere of the victim.

In the criminal proceedings, compensation can be sought and granted only for the damage that is a direct consequence of the criminal act itself - the subject of the accusation as pointed out in the indictment act, but not from any other source. And since every crime is a tort, the legal ground of this claim is tort liability. There is a contradictory practice¹³¹ as to whether these damages (pecuniary or

¹³¹ Compare, Decision No. 175 / 19.10.2017 in penal case No. 677 / 2017, SCC, 1 criminal division and Decision No. 412 / 13.01.2016 in penal case No. 1397 / 2015 SCC, 3 criminal division [in Bulgarian]

non-pecuniary) should also be constituent elements of the crime in order for a civil action to be admissible or not in criminal proceedings.

When a claim for compensation is initiated against the perpetrator, the court awards monetary equivalent for all damages that are proven to be directly and immediately caused by the guilty and wrongful act of the defendant - pecuniary, non-pecuniary sustained damages, lost profits, including predictable future damages, for which it is certain that they will occur (i.e. loss of opportunity and ability to work).

In upholding the claim, the court also awards the court fees and costs incurred by the applicant, in proportion to the accepted part of the claim. When the court is to award some expenses (attorney's fees), the defendant has the opportunity to object to the excessiveness of attorney's fees (i.e. if the attorney's fee is above the minimum under Ordinance No 1 / 09.07.2004 on the minimum amounts of attorney's fees). When the court upholds the objection on excessiveness, it awards a reduced amount of these costs, but not lower than the minimum under the said Ordinance.

The financial compensation by the state to victims of crime can be provided in the form of a one-time payment to each victim or to a victim's heir and cannot exceed the amount of 10 000 BGN. Only in cases when the compensation is for the alimony and provided to children – heirs of the victim under 18 years of age and is covering the loss of alimony, the amount is up to 10 000 BGN per person (Article 13 of LAFCVC). The financial compensation may cover, together or separately, only pecuniary damages and only those which are a direct consequence of the crime, and are established as: medical expenses, except for the expenses, which are covered by the budget of the National Health Insurance Fund; 2. lost income; 3. costs for legal aid in court and other costs and expenses related to the proceedings; 4. lost alimony; 5. funeral expenses; 6. other pecuniary damages.

The compensation that can be claimed to be paid by the perpetrator who has directly caused the damage is not limited in amount. The claimant is obliged to indicate the grounds and the amount of the claimed compensation and the court cannot award a higher amount. This compensation can theoretically be defined in cash or in kind, but in practice, only financial compensations apply. According to Art. 51 of the LOC, the compensation may be payable once or periodically.

In case of awarded compensation for lost working capacity, it can be reduced or increased, "*if the working capacity of the injured party changes in connection with the damages caused*" (Article 51, para 3 of the LOC). When the injured party has contributed to the damage, the compensation may be reduced, but the objection of complicity must be proved.

Compensation for non-pecuniary damage is awarded by the court based on the principle of equity (Article 52 of the LOC). There are no specific guidelines or criteria existing in primary or secondary law for awarding material and non-material damages. They should be sought in the relevant case law.

In all cases, the compensation can be obtained only after the entry into force of the decision determining it. Preliminary enforcement is not admissible, but guarantee measures for the claim for damages may be sought by imposing restrictions on certain property rights of the debtor to ensure that the future decision will be enforced.

3.2. Procedural regulation

The main means of compensating damages from the acts under analysis is the civil claim against the perpetrator, which is always based on tort. This claim can be brought in the criminal proceedings only

in its judicial phase or separately - before a civil court. The other possibility is to claim compensation from the state which is not applicable to all victims of GBV crimes.

The victim may participate in the criminal legal proceedings as a witness, as an assisting party to the public prosecutor, as a civil claimant and as a private plaintiff (in criminal cases for privately prosecutable crimes). The exercise of the right to complain or to participate in criminal proceedings in another capacity is not a necessary prerequisite for bringing a civil claim for compensation of the damages.

The law distinguishes between crimes that can be prosecuted following a complaint by the victim (private prosecution) directly to the court and publicly prosecutable crimes that require public prosecution (investigation). In addition, the investigation of middle bodily harm caused to an ascendant, descendant, spouse, brother or sister, as well as some other acts, although publicly prosecutable, requires a complaint from the victim to the prosecutor's office and the proceedings cannot be terminated upon withdrawal of such a complaint (Article 161 of the CC). Many of the privately prosecutable crimes, i.e. insult, slander, threat, minor bodily injury, can constitute gender-based violence or domestic violence in their nature.

A civil action in the criminal court proceedings, whether the crime is a publicly or privately prosecutable one, may be based only on the charge of the crime committed, which constitutes an act legally defined as a tort. The hearings of the civil claim cannot become a reason for postponing the criminal case (Article 88, para 2 of the CPC) and the court always decides whether to accept the civil claim for joint consideration in the same criminal proceedings and when it refuses the ruling is not subject to appeal. Financial compensation from the state can be sought under the special administrative procedure before the National Council for Assistance and Compensation to Victims of Crime at the Ministry of Justice but only after the completion of criminal proceedings and only if the victim is not otherwise compensated.

The public authorities and the victim support organisations have the obligation to inform immediately the victims of crime or their heirs of their opportunities to access free psychological help and support, as well as any other specialised assistance they may receive. However, the availability of specialised social services for victims of gender-based violence and domestic violence in Bulgaria is quite scarce.

The Law on Social Services (2019) regulates the possibility of free and immediate access for the victims of domestic violence and in a crisis situation to social services based on their individual needs. However, this new law does not provide specialised social services for victims of this particular type of violence. Such activities are carried out on a project basis and with external support. The lack of sustainable state support for specialised and accessible services for these victims increases the risks to the realisation of their rights, including their right to compensation.

The Law on Legal Aid (LLA) and the procedural legal regulation envisage the possibility of providing free legal aid to certain categories of persons if they prove that they do not have the material resources to pay for the legal service. According to Article 22, para 1, point 7 of the LLA, free legal aid is provided to *"victims of domestic or sexual violence or trafficking in human beings who do not have the means and wish to use legal aid"*. A decision on granting free legal aid is taken by the state body that is deciding in the respective proceedings (Article 25, para 1 of the PPA).

In the pre-trial criminal proceedings, the victim may have a lawyer at her/his own expense. A special representative – a lawyer is appointed to the victim when she/he is incapacitated or partially incapacitated and her/his interests contradict the interests of his guardian or trustee. (Article 101, para 2 of the CPC). In the trial phase of criminal proceedings, the civil claimant is entitled to free legal aid,

but only if "she/he provides evidence that she/he is unable to pay attorney's fees, wishes to have a lawyer and the interests of justice so require" (Article 100, para 2 of the CPC).

In civil proceedings, the court instructs the parties on the possibility and conditions for access to free legal aid, which consists of providing free legal representation by a lawyer (Article 94 of the CPC) and is granted at the request of the party and on the basis of a court ruling, which indicates the type and scope of the free legal aid provided. The criteria are related to the material capabilities of the person and have to be proven.

The limitation period for filing a claim for compensation for damages caused by tort, including a crime, is 5 years (Article 110 of the LOC). The term begins to expire from the date the perpetrator has been identified (Article 114, para 3 of the LOC). This period shall not be suspended until a civil action for damages has been brought to court and shall not be influenced by the development of the criminal proceedings unless a civil action has been brought.

The statute of limitations does not run (stops) only during the "claim process". In some cases, this period may not be sufficient and might expire before the final decision in a criminal case or even while the pre-trial phase is pending, during which it is not possible to file a civil action. Unless a civil claim has been submitted, the pending criminal proceedings, both in their pre-trial and court phase, shall not be considered a „trial on the right „of the victim to compensation for the damages from that same crime, including in case when these proceedings have ended with an effective conviction or a plea bargain agreement, and shall not be grounds for suspension of the limitation period.¹³²

The private complaint for a privately prosecutable crime has to be submitted to the court not later than 6 months after the day the victim has learned that the crime has been committed, or after the day the victim has been notified that the pending criminal proceedings have been suspended on the grounds that the crime is prosecuted on the complaint of the victim. The complaint for a publicly prosecutable crime is bound only by the terms of limitation for criminal prosecution of the respective crime.

A civil claim in the criminal proceedings may be filed only before the beginning of the disposition session of the court, and in cases of a privately prosecutable crime – only until the beginning of the judicial investigation before the first instance court (Article 85, para 3 of the CPC).

According to Article 114, para 3 of LOC and the case-law of the Supreme Court of Cassation¹³³, the right to compensation for the damages resulting from a tort, arises from the day the perpetrator has been identified and it becomes due from that same moment because it is then that the debtor falls into delay according to Article 84, para3 of the LOC²¹.

The application for financial compensation by the state is to be submitted within one year from the entry into force of the conviction, or the plea bargain agreement to resolve the case in pre-trial proceedings, or the prosecutor's decision or the judicial act by which the criminal proceedings were terminated or suspended – only on the ground of „failure to identify the perpetrator” of the criminal act (Article 18 of the LAFCVC and Article 12 of the LAFCVC). Gathering all the evidence required to obtain compensation from the state can be a difficult, lengthy, complicated and expensive process.

¹³² section 2 of the Interpretative Ruling No. 5/ 05.04.2006 of the Supreme Court of Cassation, т. 2 от Тълкувателно Решение No 5 от 05.04.2006 г. на ВКС [in Bulgarian]

¹³³ Interpretative Ruling No. 5/ 2005 of the Supreme Court of Cassation, Тълкувателно решение No5 / 2005 г. на ОСГК и ОСТК на ВКС [in Bulgarian]

The procedure is entirely administrative and does not provide opportunities for free legal aid under the LLA.

For the successful filing and proving of the civil claim for compensation, as well as for the submission of the request for compensation by the state with all the required evidence as annexes to it, it is especially important to collect and preserve all existing relevant and necessary evidence. Due to the nature of this type of violence and the damage it actually causes to victims, this process can take a lot of time, effort and expense.

The victim of a crime acquires the status of a party in the judicial phase of the criminal proceedings only through a particular ruling of the court on this issue. Without an explicit judicial act, her/his right to a party is not presumed.

Victims can request free legal aid under the LLA just for a preliminary consultation on the matter and for the preparation of documents for filing the case under facilitated conditions, but only if their *"income, certified by a document of the relevant competent authority, does not exceed the nationally established amount of the poverty line."* This insurmountable requirement for some very poor people is a serious obstacle to the exercise of their rights in relation to protection against violent crimes, including seeking redress.

In criminal proceedings of a general nature, the burden of proof lies with the prosecutor and the investigating authorities, and the victim may thus benefit from the evidence gathered and presented in the same case. He/she has the right to present evidence, but only in the court phase as a civil claimant (Article 87 of the CPC). In criminal cases of a private nature, the victim, as the plaintiff, bears the entire burden of proof on his own. The same refers to the civil cases.

In civil proceedings, only the entered into force sentence of the criminal court is binding on the civil court, which considers the civil consequences of the act, whether the act was committed, its illegality and guilt of the perpetrator (according to Article 300 of the CCP), but not any other acts of the court or the prosecutor of the same criminal case. It is admissible for the civil court to request and apply all other materials from the criminal case, as the assessment of their admissibility and relevance to the civil claim can be made with the decision on the merits.

The hearings and decision of cases within a reasonable time is a basic principle of the criminal process (Article 22 of the CPC) and a basic principle of civil proceedings (Article 13 of the CCP). There is no legal definition of the term. The affected party has the right to file a claim against the state for compensation for the violation of this right under Article 2b of the Law on the Liability of the State and Municipalities for Damages and this compensation may amount up to BGN 10,000. The assessment of the duration of the proceedings is always specific to the case in question, the consideration is made given the overall duration and subject matter of the proceedings, factual and legal complexity of the case, the conduct of the parties and their legal or procedural representatives, the conduct of other participants in proceedings and that of the competent authorities, and other facts, which are relevant for the proper resolution of the dispute.

The examination of the applications for compensation by the state is bound with a term of 1 month, which, if necessary, may be extended up to 3 months (Article 24, para 1 of the LAFCVC).

The decisions of the courts on claims for compensation may be separately taken – in civil cases or in criminal proceedings as a mandatory part of the sentence of the court of first instance, respectively - the decision of the court of appeal or the Supreme Court of Cassation (Article 301, para 1, point 10 of the CPC). This includes the court's ruling on the authorship of the act, guilt, whether the act is in breach

of the law, the harm and the existence of a causal link. In both cases, the court decision is enforceable once it enters into force.

The court shall make pronouncement on the civil claim also in cases where it finds the defendant not guilty, criminal responsibility being extinct, or where the defendant should be exempted from criminal responsibility. (Article 307 of the CPC). Civil liability can also exist without criminal liability, in cases where criminal incompatibility does not exclude civil tort. Only in cases where the prosecution is terminated before the first instance verdict is pronounced, the civil action is not being considered and is left to the civil court to rule on it¹³⁴.

The civil claimants may appeal the sentence only in respect of the result of the civil claim and when their rights and legitimate interests have been violated (Article 318, paragraph 5 of the CPC). Their legal and procedural representatives also have such a right on their own.

Decisions on applications for financial compensation from the state are issued by the National Council within the Ministry of Justice. The procedure is entirely administrative and does not provide for the possibility of personal participation of the victim or his /her attorney. These acts are not subject to appeal, even when they refuse to provide compensation (Article 24, para 5 of the LPFCVC).

The civil claimant in the criminal proceedings has rights that she/he can exercise only within the limits that are necessary to prove the grounds and amount of the civil claim. He may take part in legal proceedings; to demand the imposition of measures to secure his future civil claim from the stage of the pre-trial proceedings (Article 73 of the CPC); to get acquainted with the case and take the necessary copies; to present evidence; to make requests, remarks and objections and to appeal against the acts of the court, which infringe his rights and legitimate interests. Requests, notes, objections, as well as appeals against acts that infringe his rights and legitimate interests may be submitted electronically, signed with a qualified electronic signature (Article 87 of the CPC).

In civil proceedings, the applicant has all the procedural rights and possibilities and may also ask the court to allow guarantee measures for the civil claim - during the case or in advance, prior to it. In the latter case, and if the request is accepted, the court will set a deadline for filing the claim.

In criminal proceedings, the victim has the right to receive protection for her/his security and that of her/his relatives, as well as to have a procedural representative (lawyer) starting from the pre-trial phase (Article 75, para 1 of the CPC). As a witness, she/he is entitled to protection measures in criminal proceedings. This type of protection is intended to guarantee the needs of the criminal proceedings and cannot continue after their completion.

At the proposal of the prosecutor with the consent of the victim or at the request of the victim, the court may prohibit the accused person from approaching immediately the victim personally and/or contacting the victim in any form, including by telephone, e-mail or regular mail and fax, as well as visiting certain settlements, regions or sites in which the victim resides or visits (Article 67 of the CPC).

The prosecutor or the court, at the request of the witness or with her/his consent, shall take measures for her/his immediate protection when there are sufficient reasonable grounds to suspect that the testimony has caused or may pose a real danger to the life or health of the witness, her/his ascendants, descendants, brothers, sisters, spouse or persons with whom she/he has a particularly close relationship. The protection of the witness is temporary and is carried out through: personal physical protection or secrecy of identity (Article 123 of the CPC).

¹³⁴ Decision No. 13 / 12.01.2012 in penal case No. 2971 / 2011 of the Supreme Court of Cassation

There is also a special Law on the Protection of Persons Endangered in Connection with Criminal Proceedings, which regulates the prerequisites and the procedure for providing special protection by the state to persons endangered in connection with criminal proceedings and persons directly related to them when they cannot be protected by the protective measures provided for in the CPC. Special protection is provided through a preliminary protection and protection program and may also include activities to provide social, medical, psychological, legal and financial assistance to support the integration of the individual.

In some cases where the victim, due to being in a "helpless state" or in a state of "dependence on the perpetrator", cannot defend her/his rights and legitimate interests, the prosecutor may intervene in private proceedings (Article 48 of the CPC) in any stage of the proceedings in the case and undertake the maintaining of the criminal charges. In such extremely severe cases, the prosecutor may initiate the case of a private nature instead of the victim (Article 49 of the CPC). When the victim due to a minor or physical or mental disability cannot defend his rights and legitimate interests on his own, the prosecutor may also file a civil claim in his favour in the criminal proceedings (Article 51 of the CPC).

The criminal court may impose measures to protect the victim at her/his request or at the proposal of the prosecutor with the consent of the victim, but only for the duration and for the purposes of criminal proceedings (Article 67 of the CPC). These are restrictions on the immediate approach of the victim, contact with her/him in any way, visits to certain places, areas or sites that the victim lives or visits. These measures are lifted at the end of the case.

There is an obligation to notify the victim of any violation of detention measures or house arrest by the accused person, but this applies only to a victim with "specific protection needs" (Article 67a of the CPC). The law also provides for measures for immediate protection of witnesses to be applied when there are "sufficient grounds to assume that the testimony has arisen or may pose a real danger to the life or health of the witness, her/his ascendants, descendants, brothers, sisters, spouse or persons with whom she/he has a particularly close relationship" (Article 123 of the CPC). These measures are physical protection and keeping the identity of the witness secret.

According to Article 83, para 1, point 4 of the CCP, fees and costs in the proceedings in the case shall not be paid by the applicant in claims for damages from tort, but only when resulting from a crime for which a sentence has been pronounced and entered into force. This also applies to civil claims in criminal matters. Where the criminal proceedings have otherwise ended or have not taken place at all, the applicant is obliged to pay a fee of 4% on the amount of the claim, as well as all other costs (for forensic examinations, for summoning witnesses, for obtaining certificates and documents, etc.), unless the court explicitly releases her/him from this obligation.

Court fees and costs in the proceedings shall not be paid by physical persons for whom it has been recognized by the court that they do not have sufficient means to cover them. The court shall rule on the application for release from the duty for costs and expenses considering: 1. the income of the person and her/his family; 2. the property status, as certified by a declaration; 3. marital status; 4. the state of health; 5. employment; 6. age; 7. other ascertained circumstances.

The expenses for the legal aid and assistance when the civil claimant has a lawyer of his choice and at his own expenses, are also part of the possible expenses in the proceedings. At the end of the oral hearings in the civil case and before announcing it for decision, the civil claimant should present an exhaustive list of the costs she/he claims and has to present all the evidence for them (Article 80 of the CPC).

4. Hungary

Currently, there are several ways for victims of crime to get financial compensation in Hungary. Under Act CXXXV of 2005 on assistance to crime victims and on state compensation, which was adopted to comply with Directive 2004/80/EC relating to compensation to crime victims, they may be entitled to claim immediate monetary assistance and state compensation from public funds. It is also possible to claim financial compensation against the perpetrator. On the one hand, this can be done by asserting a civil claim under Act XC of 2017 on Criminal Procedure, as reformed following the provisions of the Victims' Rights Directive, and by claiming damages in civil proceedings and claiming restitution for violation of personality rights.

Directive 2012/29/EU of the European Parliament and the Council (hereinafter: Victims' Rights Directive) establishing minimum standards for the rights, support, and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA, in addition to providing a comprehensive definition of the crime of gender-based violence and violence committed in a close relationship,¹³⁵ explicitly provides for the right of victims of crime to have compensation from the offender decided in criminal proceedings.¹³⁶

The Victims' Rights Directive focuses on aspects of victim protection in connection with compensation for damage caused by a criminal offence and expects Member States to create a legislative environment that follows these aspects.

4.1. Compensation by the offender

In civil proceedings, the court is not, as a rule, bound to a particular method of proof or to the use of particular means of proof and is therefore free to use the parties' pleadings and any evidence that can establish the facts.¹³⁷ If, however, the action for compensation or restitution is brought because of the property right (financial) consequences of the *res judicata* judgement of a previous criminal offence, the facts of the case are determined by the judgement in criminal matters – the civil court is bound in this respect by the decision of the criminal court,¹³⁸ and it takes evidence regarding the actual amount and causation.

The facts alleged in the action must be proven by the party who has an interest in having them accepted as true by the court.¹³⁹ Along these lines, the victim of the crime is expected to submit the motions for evidence to the court, to name possible witnesses, and to attach documents. In criminal proceedings, on the other hand, the victim appears at most as a witness but has the right to make a motion in relation to the assertion of the civil claim.¹⁴⁰

In criminal proceedings, according to current regulations, a claim for compensation for damage caused as a direct consequence of the charged offence, as well as a claim for the recovery of ownership or the payment of money, may be asserted as a civil claim. However, it is important to note that the definition of damage in criminal law¹⁴¹ differs from its definition in civil law. According to the definition in Act V

¹³⁵ See paragraphs 17 and 18 of the Preamble to the Victims' Rights Directive.

¹³⁶ Article 16 of the Victims' Rights Directive

¹³⁷ Section 263 subsection (1) of the Civil Procedural Law

¹³⁸ Section 264 subsection (1) of the Civil Procedural Law

¹³⁹ Section 265 subsection (1) of the Civil Procedural Law

¹⁴⁰ Section 543 subsection (3) of the Civil Procedural Law

¹⁴¹ According to Section 459 subsection 16 of the Hungarian Criminal Code (HCC), damage is the depreciation of property and economic loss caused by the offence; according to Section 459 subsection 17 of the HCC, economic loss is the damage to property and loss of economic gain.

of 2013 on the Civil Code (hereinafter: Civil Code), compensation serves to compensate for damage caused by unlawful and wrongful conduct, such as the depreciation of property, loss of economic gain, and economic losses suffered by the injured party. The definition of criminal damage, however, does not include the costs necessary to remedy the economic losses suffered by the victim. Therefore, the latter cannot be enforced as a civil claim before the criminal court.¹⁴²

However, as of 1 January 2021, a claim for restitution may also be asserted in criminal proceedings. Concerning a claim for restitution the court is not taking evidence, so restitution may only be asserted as a civil claim if the perpetrator does not contest the amount of the restitution and declares willingness for payment.¹⁴³

Restitution, which was introduced in its new form by the new Civil Code into the Hungarian legal system,¹⁴ may be claimed as monetary compensation for non-material injury caused by a violation of personality rights, also covered by the Civil Code.¹⁴⁴ Although the compensation for the injury is monetary, the purpose of restitution is not to compensate, as the violation of personality rights for which the restitution was awarded has no specific monetary value – its purpose is to provide a benefit of another kind that can be considered proportionate to the injury and to provide monetary satisfaction as a private law punishment.¹⁴⁵

The Civil Code protects personality rights in general and against all persons, which protection derives from human dignity. Irrespective of this, certain personality rights are specifically mentioned in the legislation, thus, violations of life, limb, and health; violations of personal liberty, privacy, and private residence; violations of honour and reputation; violations of the right to privacy and personal data protection; violations of the right to image and sound recording; and discrimination against a person are especially considered violations of personality rights.¹⁴⁶

There are three ways in which the court can decide on a civil claim in criminal proceedings: it can grant it, reject it or, in cases provided for by law, refer it to the civil court. Section 560 subsection (1) of Act XC of 2017 on the Code of Criminal Procedure (hereinafter: CCP) lists in detail the cases of referring the civil claim. It may do so, for example, if it terminates the proceedings, acquits the accused and does not find them liable for the offence,¹⁴⁷ or if the civil claim was submitted late or by someone other than the victim. Formal deficiencies in the application for a civil claim¹⁴⁸ also result in the referral to the civil court. In practice, the most common reason for referring to the assertion of a civil claim is that the adjudication of the claim would significantly delay the conclusion of the proceedings¹⁴⁹ or that other circumstances preclude its substantive adjudication in criminal proceedings.

¹⁴² Komáromi, Brigitta. Kártérítés a büntetőperben (A polgári anyagi és eljárásjogi szabályok érvényesülése a büntetőeljárás bírósági szakaszában), Az új Btk. [online], Budapest, HVG-ORAC Kiadó, 2015. Available: https://ujbtk.hu/komaromi-brigitta-karterites-a-buntetoperben/#_ftn3

¹⁴³ Akác, József; Belegi, József; Belovics, Ervin; Csák, Zsolt; Czine, Ágnes; Kónya, István; Láng, László; Márki, Zoltán; Mészár, Róza. Büntetőeljárás jog I-II. - új Be. - Kommentár a gyakorlat számára [online], Budapest: A HVG-ORAC Lap- és Könyvkiadó, 2021. Jogkódex

¹⁴⁴ Section 2:52 subsection (1) of the Civil Code

¹⁴⁵ Lábady, Tamás. Sérelemdíj versus nem vagyoni kártérítés, *Állam-és Jogtudomány*, 2016/1. p. 41-42.

¹⁴⁶ Sections 2:42-2:43 of the Civil Code

¹⁴⁷ In the event of finding an infringement, it will decide on the merits of the submitted civil claim.

¹⁴⁸ In the case it does not contain the provisions of Section 556 subsection (2) points a)-c) of the CCP.

¹⁴⁹ This is the case if the court could already decide on the main criminal issue, but further procedural steps and the taking of evidence are needed to decide on the civil claim. In: Fejesné Varga, 2017

In this context, it is worth mentioning Act LXX of 2020, which entered into force on 9 July 2020 and introduced the legal institution of summary proceedings for the compensation of damage caused by a criminal offence and of restitution for violating personality rights through the crime to the Hungarian legal order. In order for a claim for damage caused by a criminal offence or for restitution to be enforceable in summary proceedings, the court must have previously established *res iudicata* that the offence was committed, no civil claim was adjudicated, and no civil action was brought. The novelty of summary proceedings is that the court gives the case priority over others, meaning that its general deadline for acting is no more than eight working days,¹⁵⁰ which in practice can mean 2-3 months until the actual decision is made. As a general rule, the court will decide the case out of court and, if a hearing is necessary, it must be held primarily by electronic means and by means of an online application.

This prevents unnecessary meetings between the victim and the offender.¹⁵¹ In certain cases, the criminal court will itself send the civil claim to the civil court with jurisdiction under the law, which will file the claim as a new case; otherwise, the claim can be asserted within the framework of summary proceedings by means of a separate application initiating proceedings.¹⁵²

The criminal court decides on the merits of the civil claim up to the amount of the damage established in the judgement. In the case of an adjudication on the merits, the court either grants the claim or rejects it, which in both cases results in a judgement establishing *res iudicata*, so the claim cannot be brought again – due to the same legal basis in a civil action – even if it is rejected.¹⁵³ Furthermore, an adjudication on the merits is only possible when the amount of the damage caused by the criminal offence is resolved. Accordingly, an adjudication on the merits may be a full or a partial adjudication, in which case the part beyond the amount awarded must be referred to the civil court.¹⁵⁴ Anything beyond the amount awarded does not result in *res iudicata*, so it can be asserted in a civil action.¹⁵⁵

The court will reject a civil claim if there is no damage at all or if there is no causal link between the commission of the crime and the damage.¹⁵⁶

The law does not allow for an appeal against an order to refer a civil claim to the civil court, but the victim of the offence has the right to appeal against the order on the merits. Furthermore, in the event

¹⁵⁰ Section 6 of Act LXX of 2020 on summary proceedings for compensation for damage caused by a criminal offence and for restitution.

¹⁵¹ Act LXX of 2020 on summary proceedings for compensation for damage caused by a criminal offence and for restitution has been promulgated [online], Magyarország Bíróságai, Hírek [viewed date: 5 January 2022] <https://birosag.hu/hirek/kategoria/ugyfeleknek/kihirdettek-buncselekmennyel-okozott-kar-illetve-serelemdij-megteritese>

¹⁵² Section 32 of the explanatory memorandum to Bill T/13954 amending certain acts in order to eliminate abuses of the compensation procedure for prison overcrowding, Section 560 subsection (3b) of the CCP, and Section 7 of Act LXX of 2020 on summary proceedings for compensation for damage caused by a criminal offence and for restitution.

¹⁵³ Dicső Gáborné Harsányi, Beáta Andrea: A polgári jogi igény elbírálásának szabályai az új Be. tükrében, Az új Btk. [online], Budapest, HVG-ORAC Kiadó, 2019. Available: https://ujbtk.hu/dr-dicso-gaborne-dr-harsanyi-beata-andrea-a-polgari-jogi-igeny-elbiralasanak-szabalyai-az-uj-be-tukreben/#_ftn2

¹⁵⁴ Dicső Gáborné Harsányi, 2019

¹⁵⁵ Komáromi, 2015

¹⁵⁶ Dicső Gáborné Harsányi, 2019

of an appeal against any provision of the judgement, the Court of Appeal will also decide ex officio on the ancillary issues of the case.¹⁵⁷

Thus, it replaces the provision on a civil claim which has not been adjudicated by the court of first instance, for example, in cases where, despite the specific damage caused by the offence, the court of first instance referred the civil claim to the civil court.¹⁵⁸ This would also serve as a safeguard to ensure that ordering a claim to be referred to civil court cannot be exercised by the court for "convenience".¹⁵⁹

The civil court determines the amount of the restitution as a lump sum, considering all the circumstances of the case. In its assessment, the court must take into account, in particular, the gravity of the violation, its repetitive nature, the degree of imputability, and the impact of the violation on the victim and their environment.¹⁶⁰ The rules on liability for damages apply to the conditions for the obligation to pay restitution, with the exception that proving further disadvantages beyond the fact of violation of personality rights is not required.¹⁶¹ The decisions of the civil court regarding compensation is to grant it fully, partially or to reject the claim.

The Code of Civil Procedure (hereinafter: CPL) regulates, among other things, cost exemption, cost deferral, and fee deferral within the scope of legal aid. In the case of cost exemption, the party concerned is not obliged to pay the cost in advance or to advance and pay any additional costs incurred during the proceedings. The right to cost deferral covers the advance payment of duties and the costs incurred in the course of the proceedings. The court decides in its judgement about bearing the costs, so the party entitled to cost deferral may also be ordered to pay them in the case of subsequent loss in the action.¹⁶² Act CXXVIII of 2017 on the application of legal aid and the right to charge costs in civil and administrative court proceedings expressly provides for cost deferral in actions for compensation for damage caused by a criminal offence or for the payment of restitution incurred in connection with a criminal offence, which is the subject matter of the action and is the right of the party.¹⁶³ Until 31 December 2020, the parties to the action for the payment of restitution were entitled to the right to cost deferral due to the subject matter of the action without any further restriction.

4.2. Financial assistance by the State

Immediate monetary assistance as a form of financial compensatory aid provided by the state is intended to remedy an existential crisis resulting from a criminal offence (and an infringement against property). It is considered a crisis situation if, as a result of what has happened, the victim is unable to meet their daily living expenses or if any other expenses arise that they cannot pay or whose payment would jeopardise their livelihood.

Application for monetary assistance is possible only within 8 days of the crime (or infringement against property) being committed, at any regional office of the Victim Support Service.¹⁶⁴ The aid can only be

¹⁵⁷ Fejesné Varga, 2017

¹⁵⁸ Komáromi, 2015

¹⁵⁹ Dicső Gáborné Harsányi, 2019

¹⁶⁰ Section 2:52 subsection (3) of the Civil Code

¹⁶¹ Section 2:52 subsection (2) of the Civil Code

¹⁶² Section 102 subsection (1) of the Civil Procedural Law

¹⁶³ Section 3 subsection (1) point f)

¹⁶⁴ An amendment to the law effective from 1 January 2021 increased the deadline for applying for immediate monetary assistance from 5 days to 8 days. State compensation can be claimed within 1 year instead of 3 months. Kedvezően változott az áldozatsegítési törvény [online], Komárom-Esztergom Megyei Kormányhivatal, [viewed date: 28 December 2020], Elérhető: <https://www.kormanyhivatal.hu/hu/komaron-esztergom/hirek/kedvezoen-valtozott-az-aldozatsegitesi-torveny>

used for specific purposes, such as housing, clothing, travel, food, medical expenses, and funeral expenses.¹⁶⁵ Immediate monetary assistance is not compensation, it is not awarded on a means-tested basis but on an equitable basis, examining all the circumstances of the case. A citizen of any Member State of the European Union residing in Hungary or a Hungarian citizen residing in Hungary who has been the victim of a crime during their legal stay abroad is entitled to immediate monetary assistance only in cases if a crime was committed against them which was intentional and violent in nature.

Another form of monetary assistance by the state is state compensation, which is available to victims who have been the victim of an intentional crime of violence against a person and who have suffered serious damage to their bodily integrity or health as a result.¹⁶⁶ In addition to the victim, certain close relatives and descendants of the victim, and the person who arranged for the burial of the deceased victim, may also be entitled to state compensation. The amount of the damage and the causal link with the crime must always be proven. A request for state compensation can be submitted to any regional Victim Support Service within 1 year of the commission of the crime. State compensation can be paid as a lump sum or as a regular monthly payment, in the form of a monthly annuity.

A prerequisite for being eligible for immediate monetary assistance or state compensation is that the victim reported the crime, which must be attached to the application, or, failing this, the Victim Support Service will obtain the certificate from the determining authorities. A certificate of victim status is also required, which is issued by the police or the Victim Support Service.¹⁶⁷ Act CXXXV of 2005 on Crime Victim Support and State Compensation disposes of victim status. Accordingly, a natural person who is the victim of a crime committed in Hungary and the victim of an infringement against property committed in Hungary and who has suffered a disadvantage as a direct consequence of the act committed against them, in particular physical or mental injury, emotional distress or damage to property, is considered to be a victim if they are a national of Hungary or any Member State of the European Union, a national of a state outside the European Union legally residing in the European Union, a stateless person, a person identified as a victim of trafficking in human beings, or a person entitled to such rights on the basis of an international agreement or the principle of reciprocity between the state of their nationality and Hungary.

The application can be submitted to any Victim Support Service and must be accompanied by an expert's report or medical documents confirming the severity of the damage and documents proving the extent of the damage (e.g., invoice, receipt, preliminary price quotation or any other document). In case of claiming an annuity (not a lump sum), an expert's report or medical certificate attesting incapacity for employment needs to be attached.

In the case of state compensation, a distinction is made between the assisting authority and the deciding authority.¹⁶⁸ When claiming state compensation, the assisting authority provides information, requests documents from the claimant and the bodies concerned, such as the police, and submits them to the deciding authority, which decides on the state compensation accordingly. Currently, only the Government Office of the Capital City Budapest operates as a deciding authority, with all other

¹⁶⁵ This is relevant in situations where the relative of a fatal victim (e.g., the family of a woman who was murdered, or the abused woman in the case of a child murdered by an abuser) is the one claiming immediate monetary assistance.

¹⁶⁶ Such offences include physical assault, vigilantism, and sexual offences; however, stalking, defamation, and breach of domicile, among others, do not give rise to a claim for state compensation.

¹⁶⁷ According to the law, a victim certificate can be issued by the court and the prosecutor's office as well (see Act CXXXV of 2005, Section 11 subsection (1)), but in practice, victims are usually referred by these authorities to victim support services.

¹⁶⁸ Section 29 subsection (2) of Act CXXXV of 2005 on Crime Victim Support and State Compensation

partner authorities – the county government offices – acting as assisting authorities. On the other hand, all victim support services are entitled to establish immediate monetary assistance.

If a decision is made within 3 years that the act was not a criminal offence (infringement) or that the damage/extraordinary expenditure has been recovered from other sources, the monetary assistance, or part of it (up to the amount recovered), must be repaid. This obligation applies when the amount is actually in the possession of the victim of the offence, after which the obligation to report arises.

The maximum amount of the monetary assistance in 2021 was HUF 158,168 and the maximum amount of state compensation was HUF 2,372,520.

4.3. Victims' rights

A right that can be exercised in the context of criminal proceedings is the crime victim's right to information, on which Act XCIII of 1990 on Duties (Duties Act) contains important provisions on certain proceedings and procedural rights exempt from duties - and thus do not entail any costs for the applicant.¹⁶⁹ While the authorities may, in the interests of the procedure, limit the right of access to file, this shall not extend to the bundle of documents that has been generated in the course of a procedure at which the applicant was or could have been present. Access to the expert's report drawn up in the context of the procedure may not be restricted either.

In addition to providing monetary assistance and certificate of victim status, the Victim Support Service helps victims of crime to resolve the arising emotional, psychological, and other problems among other things by: providing information on victims' rights, obligations, and options; providing emotional support; providing practical assistance; and providing legal advice and assistance in obtaining legal representation. A citizen of any Member State of the European Union who is a resident of Hungary or a Hungarian citizen who is a resident of Hungary and who has been the victim of a crime during their legal stay abroad is also entitled to these victim support services, without any further conditions.

As a rule, the Victim Support Service provides information on criminal proceedings to be initiated or already in progress for a criminal offence. However, for more complex legal issues, the victim of a crime may also have the option to seek specialised legal assistance. Free legal advice or representation by an advocate can be obtained from the Legal Aid Service for both non-contentious and contentious legal issues.¹⁷⁰ The assistance is available if the applicant qualifies as a person in need, which is established based on income, or the receiving of certain benefits.¹⁷¹ If the applicant is not entitled to free legal assistance, they may still be able to have the costs of legal assistance and representation by an advocate advanced by the state. In this case, the court will decide about bearing the costs in the judgement.

The victim of a crime may be assessed differently as the cost of the legal services is borne by the state also in the cases if the income level is higher, but not exceeding twice the amount of revenue establishing eligibility for costs advanced by the state. This requires the Victim Support Service to establish the victim status.

¹⁶⁹ Examples are the procedure for granting exemption from court costs, the first-time issuance of a copy of the documents of a procedural act to the victim at which they were or could have been present and the first-time issuance of a copy of a document proving that a complaint was made orally or in writing before the police.

¹⁷⁰ Legal assistance is not only available in criminal but also in civil and administrative cases.

¹⁷¹ For more information on this, see Section 5 subsection (2) of Act LXXX of 2003 on Legal Assistance.

Under the Victim's Rights Directive, victims of crime and witnesses in criminal proceedings also have the right to qualify as persons entitled to special protection.¹⁷² Special protection⁴⁸ is designed to ensure that the authorities provide greater protection for a witness or victim because of the circumstances of the crime or the victim's personal circumstances so that the victim's bodily integrity is protected, and they can participate in the proceedings without intimidation or influence. The circumstances justifying special protection may include in particular the age of the person concerned; their mental, physical or health condition; the particularly violent nature of the act that is the subject of the proceedings; and the relationship of the person concerned with another person involved in the criminal proceedings. Children, disabled persons, and victims of sexual offences are considered, without any further action required, victims entitled to special protection by the law.

Special protection can be used as a basis for a variety of measures, including ordering the video or audio recording of a witness statement; allowing the party concerned in proceedings for offences against sexual freedom and offences against the person committed by a relative to be questioned by an official of the same sex; waiving the confrontation of a witness who requires special protection; allowing the victim or witness to be heard after the accused has been removed from the courtroom; in the case of children, creating the possibility to be heard in a room designated for this purpose (a children's hearing room); strengthening the right to the presence of an aid¹⁷³ chosen by the victim; placing greater emphasis on data protection and restricted data handling; allowing the option to request that the public be excluded from hearings. Special protective measures apply to children under 18 and 14.¹⁷⁴

IV. Compensation in Central European comparison

Victims have the personal right to claim and obtain compensation and other assistance related to harms and damages caused by the GBV crimes they have suffered. For the proper, timely and successful exercise of this right a competent support is needed. There are no specialised mechanisms to support the victims of GBV crimes with regard to claims for compensation and/or financial assistance.

In all the three countries, most of the rights under the Victim's Directive are transposed into the national legislation with the important distinction that the gendered nature of all these crimes is not mentioned. No alternative approaches have been introduced in this respect. This results in challenges in the implementation in cases of GBV crimes.

Ideally, victims can be supported by a lawyer as their representative prior and during the proceedings, and in some cases, they can also authorise a close relative to represent them. Some categories of victims, due to their particular vulnerability and the vulnerable situation and increased risk factors they experienced, are also entitled to special protection, assistance measures, services and support funded by the state, provided by relevant state authorities or by civil society organisations.

¹⁷² Articles 18-24 of the Victim's Rights Directive

¹⁷³ A person providing psychological or technical support to the victim.

¹⁷⁴ Accordingly, in the case of victims and witnesses under 14 years of age, the exclusion of the presence of the accused and the defence; the prohibition of confrontation; and, in the case of 14–17-year-olds, the prohibition of confrontation if the person concerned does not consent to it; the video and audio recording of the testimony; and the involvement of a forensic psychologist may be ordered.

At the legislative level, the nature of GBV, its underlying causes and inevitable harmful consequences are not recognised and specifically addressed in laws. Where relevant legal provisions exist and can be applied for the prosecution of GBV crimes, they also do not include the core elements of this type of violence, which makes it specific in its manifestations, in the circumstances and factors that are conducive to its occurrence, and in the inner dynamics of its development.

These gaps in the laws mean that the victims of GBV who are all women, can only rely on the general, universal rules applicable to victims of other criminal offences even though their specific vulnerability and special needs should be considered. All of this results in the fact that GBV as a specific, persisting, repetitive and structural problem is not recognised, not addressed and is even ignored, although its causes, course, and consequences are different from other crimes. This situation contributes to the maintained and persisting socio-cultural stereotypes and myths related to this type of violence, which fuel the lack of understanding, formalistic and stigmatised attitudes and inappropriate approaches to the victims of GBV.

This substantially limits the opportunities of victims to identify and report the GBV crimes based on their most essential characteristics and effects, and accordingly, to claim compensations for all the harms, losses and damages they suffer from them.

Thus, **the transposition of the relevant EU law is not complete, adequate and effective.** For some of the rights granted also to the victims of GBV crimes, as to many other crime victims, there are no specific legal mechanisms for their implementation. Where such mechanisms exist, the analysis of the implementation reveals that they are not appropriate and do not serve their purpose in the cases under analysis.

At the policy level, there are no measures particularly intended to facilitate the victims in exercising their right to compensation for this type of damages. It seems that policy makers do not consider the victims' right to compensation as an imminent part of the prevention and protection against this type of violence. The same refers even to victims of DV, who are predominantly women and the offences are gender-based.

At the operational level, there are not many convincing examples of co-ordinated and productive cooperation even among the state authorities, and the partnership with the specialised social society organisations that are service providers. This situation brings an additional risk for victims to get lost in a circle of divergent and disorienting referrals, advice and messages, and thus increase their doubts and uncertainty to exercise their right to compensation.

At the personal level, the identification and assessment of all the damages of GBV crimes and offences is a difficult and often long process, in which victims may need a very qualified professional help of different types. It is crucial for them to understand their own situation and what they can and cannot expect from the development of a possible claim for compensation. They also need to know how to prepare for the long journey to get redress, and consider the possible outcome.

Although the right to information is legally guaranteed and the relevant information is being provided, there is still no clear indication that it has reached the victims in a very comprehensive manner. The quality of the information provided might have a crucial role in the decision of the victim on whether to claim for compensation. The common approach, as reported by the researchers, is to present the victim a densely written text with all the legal provisions that possibly could be relevant in her particular case and ensure her signature in the end. Instead, this information needs to be conveyed in an understandable and pragmatic manner. Victims might often need assistance and also assisting information to make their decisions. Victims of GBV need clear and reliable guidance in exercising their

right to receive compensation. They usually are or have been in special personal, intimate or other close relation with the offender and often dependent on him in many different ways – material, emotional, related to common children, or other.

The lack of access to specialised support services for their specific legal needs and available qualified legal aid are significant factors for the low number of claims. It is not known whether such victims have also filed claims for compensation from the state.

Many victims still remain unaware of their rights and fail to exercise them according to the legal prescriptions. Even those who have formally received such information have not initiated claims for compensation. It is not enough for victims of such acts to be only aware of the existence of the rights they are entitled to, nor even to be consulted on how to exercise them. It is necessary to have qualified and responsive providers of the relevant measures, services and a specialised system of legal aid at all stages of criminal and/or civil proceedings, including in the enforcement phase, as well as in claiming compensation from the state.

All types of compensation for damages resulting from GBV crimes require the initiative of the victim in the reporting of the crime, typically in due time. It also appears to be strongly dependent on the state authorities that decide on the criminal liability of the offender for the respective crime.

Compensation by the offender can be claimed in unlimited amounts, which still need to be well substantiated and backed up with relevant evidence. Such compensations have the potential and can be more adequate in amounts and can provide real redress, when they are well reasonably assessed and awarded in reasonable time. In many cases, however, the proceedings are prolonged and, thus, exhaustive for the victims.

There are serious obstacles for the victims to reach relevant information on their rights and to collect all the relevant evidence on their own. Many victims confirm that they had not been aware of their rights, especially with regard to compensation. Due to the fact that their first priority is their safety and protection, the collection of evidence for the future claim for compensation is often underestimated and neglected, or the victims have been unaware about their rights. When the investigation of the crime has been discontinued or terminated, they do not always have access to the evidence collected in the criminal case.

The main challenge in the assessment of evidence is the still persisting lack of the definition of GBV and the treatment of GBV crimes only as violations against the personal integrity, property etc., but not also as violations of human rights, and sometimes as violations of the whole complex of the victims' human rights. The gendered nature of these rights is rarely referred to in the case law, if at all. Instead, the lacking definitions of GBV in laws and in the jurisprudence leave a space for misconceptions, stereotypes and prejudice.

After all, even if a court awards the compensation, the decisions are usually not voluntarily executed. The subsequent complexity or even impossibility to enforce the decisions on compensation from the offender is yet another obstacle that victims face on their way to redress.

Compensation and financial assistance by the state can be received on rare occasions and the amounts are already small enough to provide effective relief. They cannot serve as an alternative to the full compensation by the offender.

The barriers that are still existing for the majority of victims to apply for compensation for the damages they have suffered requires a holistic approach and integration of their right to compensation with the other state obligations related to prevention and protection against GBV.

V. Examples of good and poor practice

In the following chapter, individual countries will focus on the good and bad practices on victim's compensation encountered in the research.

1. Czech Republic

The Czech Republic signed and ratified a clear majority of human rights treaties, including the majority of their protocols and also implemented essentially all victims' rights from the EU law. On the other hand, the Czech Republic has not yet ratified the Istanbul Convention.

There are several strategy policy documents focusing on prevention of GBV and aiming at gender equality. There is also a specific, complex legal norm concerning the victims of criminal offences and their rights, Act No 145/2013 Coll., on Victims of Crimes.

The law recognises "particularly vulnerable victims", including also victims of sexual violence, and grants them special protection and rights. Particularly vulnerable victims have the right to legal representation free of charge. In contrast there is no broad guaranteed access to legal representation free of charge for all victims. Concerning the legal aid provided by the NGOs, which should be supported by the state (Ministry of Justice), there are several practical issues: contacts to the services are not distributed effectively by the Ministry, nor the Police; funding for these services is decreasing every year; the state does not check nor ensure the quality of provided services.

Even when missing the gender lens in the criminal law, there are many defined offences under which GBV acts can be prosecuted and subsumed. Also, there is a special criminal offence and legal framework concerning domestic violence and stalking. However, the Czech legal order is entirely gender neutral and does not recognise gender nature of certain crimes. There is no crime targeting GBV specifically.

The advice given by the investigative, prosecuting and adjudicating bodies (police, public prosecutor, court) ("IPAB") to the victims on their rights is not effective and sufficient. Victims do not often know their rights, or that they may cooperate with specialised NGOs. There are also limitations and gaps in terms of specialisations and education of the IPAB and attorneys in topics of compensation and GBV.

Good practice to mention is that there is a number of engaged NGOs which provide victims with social, legal, and psychological counselling and conduct advocacy activities. Their activities are co-supported by the Ministry of Justice.

Victims have the choice to claim compensation either through a civil action, or in the criminal proceedings (so-called auxiliary procedure). **The civil branch for claiming compensation is practically not used at all** as it is rather complicated and victims lose the rights and protection granted to them in the criminal procedure.

In criminal procedure there is an existing, functional auxiliary procedure in place, which, if leading to a sentencing judgement, may result in the compensation for loss for victims. However current provisions regarding conditional discontinuation of the procedure does not solve the issue of immaterial loss.

There are no strict conditions concerning the form of the application for compensation, it may even be submitted orally. There are also no minimum or maximum limits of compensation that the victim may claim. The court is bound by the victim's claim. But the standards concerning the quantification and specification of the claim are quite demanding.

The legal framework enables that the costs of the expert opinion regarding the loss might be paid by the state. In majority of the cases, it is the victim who bears the costs of specification of the sum of

loss, especially the expert opinions. A compensatory claim must be submitted at the latest before the discovery stage/evidence procedure at the latest. However, many victims of GBV are not present in the courtroom at such a moment to eliminate their contact with the offender.

The auxiliary procedure may represent a psychological and financial burden for the injured. Nearly 80 percent of all the victims do not get any compensation for non-material loss. Only an infinitesimal number of victims (7%) claimed compensation for non-material loss in the cases of stalking.

Three-quarter of victims do not raise a claim for compensation for loss due to many barriers. There are many personal barriers to the victims' willingness to claim compensation: personal ties to the offender, concerns about social rejection, concerns related to the uselessness of the procedure, lack of support from others. The system barriers are: insufficient awareness of her rights and the possibility to cooperate with specialised NGOs, complexity of the proceedings, lack of legal representation, financial burden and distrust in the system and IPAB.

About 75 per cent of those claiming compensation receive at least some money. In contrast About 25 percent of those claiming compensation are referred to civil suits. This practice actually means that their claim will be dismissed because the injured rarely continue in civil proceedings. Half of the victims who had been awarded compensation for non-material loss received less than approx. 2,855 EUR (CZK 70,000).

Good practice to mention is that if a victim is referred to the civil procedure, they do not have to pay the judicial fee.

Some judges see the auxiliary procedure as something far away from and not belonging to the criminal proceedings and believe that damages should be exclusively addressed in the civil proceeding. Courts often justify the decisions on the claims only briefly and shortly. When deciding on the claim, the courts tend to take into consideration: the character of the offence, its consequences (focusing on PTSD), the offender's material and personal situation.

In relation to guidance on determining the compensation amount, there is the Methodology on Compensation for Non-Material Bodily Harm prepared by the Supreme Court of the Czech Republic in cooperation with medical professionals, which might be used by the courts. But there are only a few expert witnesses and they are busy and overwhelmed.

Victims often may not effectively obtain compensation from the offender. The enforcement procedure where only the injured party bears liability might be difficult and challenging. They also tend to be not represented by an attorney in the criminal, particularly auxiliary, procedure, or they are not represented appropriately and with quality.

Victims still continue to face stereotypes, prejudices and misunderstanding of GBV by courts, also in the auxiliary procedure.

Social protection services tend to incorrectly assert the claim for loss in children's cases as their capacities in this regard are limited.

There is an existing tool of financial assistance provided to the victims by the state. However, it is not available to all victims of DV and stalking, in particular those experiencing psychological violence.

Victims of sexual violence may claim the financial assistance only to a limited extent within the defined cost categories. Unlike other victims, they may not ask for other incurred costs. The fixed sums of financial assistance are not subject to indexation, and their amount has not changed since 2013.

In practice, the financial assistance reaches merely a fraction of GBV victims. Half of the victims who were awarded financial assistance obtained less than approx. 2,038 EUR (50,000 CZK). Providing financial assistance lasts disproportionately long (approx. 1,5 years).

2. Bulgaria

Most of the relevant international, regional and EU standards have been adopted by the Bulgarian state. But the gender specific aspect of the cases under analysis is not addressed in laws, including case law.

The EU Victims' Directive is transposed in Bulgaria; however, this transposition was done very gradually and through various legal amendments, and the Directive is still not fully implemented in Bulgaria. The main challenge is the gender-neutral approach at the legislative and at the implementational level.

They can also use the criminal proceedings to claim for compensation without having to pay any court charges. But this results in very short time-limits for the victim of a crime that has been brought to court by the prosecutor to prepare an exhaustive civil claim (from the accusation to the date of the first court hearing).

They can benefit from the fact that the burden of proof is on the public prosecutor. However, the admission of the civil claim in the criminal proceedings is dependent on the court's ruling on the admissibility.

There are special protection measures for victims of DV with a fast procedure before a civil court under the special Law on Protection against Domestic Violence and the victims of DV can thus ensure their protection against further violence. Contrarily the Law on Protection against DV does not contain any procedural provisions for a claim for compensation, and thus the victims can only claim for the compensation in a separate civil case.

Collection of evidence in the criminal proceedings can be strongly supported by the investigation and prosecution of the crime carried out by the state authorities. On the other hand, **in civil proceedings the victim as claimant bears the burden of proof alone and cannot rely on support by the state authorities.**

In criminal proceedings the standard to prove the crime is that it should be "undoubtedly proven" which does always apply also to the civil claim in the same case. But the standard of proof is too high when applied to the civil claim - both in criminal and in civil court proceedings it would be sufficient to prove the damage as direct consequence of an illegal act, and the guilt of the perpetrator.

There are legal provisions for preliminary measures to safeguard the future execution of the decision on the compensation - both in criminal and in civil proceedings. Worth mentioning is the fact that there are not many examples, where such procedures have been used. There are serious obstacles for the execution of these decisions on the compensations granted.

The Criminal Procedure Code provides for special protection measures for victims and witnesses within the criminal proceedings. However, these provisions are aimed only to secure the criminal proceedings and can be valid only for time of their duration. These measures are not applied in privately prosecutable crimes.

There are special provisions in the Criminal Procedure Code authorising the prosecutors to:

- intervene in the criminal proceedings for a privately prosecutable crime to support the accusation and the civil claim on behalf of and in the interest of the plaintiff;

- to lodge a civil claim on behalf of and in the interest of the especially vulnerable victim before the criminal court.

But these provisions are very rarely applied, if at all. Victims are not aware how to ask the prosecutor to apply them. There are no clear criteria on when and how to prove and assess this vulnerability of the victims. There is no legal obligation for the prosecutor to do so and no opportunity to appeal when such a request has been denied.

In January 2019, the criminalisation of DV in Bulgaria finally happened with amendments to the Criminal Code. DV is now defined as an aggravating circumstance. For a crime to fall under the definition of DV, it requires systematicity of the acts of DV - at least three separate acts to be committed.

Stalking was criminalised in January 2019 as a separate crime with a broad definition. **At the same time stalking is not always identified and applied as it is not clearly differentiated from other similar crimes - most of the victims in these criminal cases did not claim compensation,** except one.

The Law on Social Services (2019) provides some free of charge and facilitated access to social services to victims of DV. On the contrary there are no state funded specialised support services for victims of GBV crimes and offences, and this refers also to victims of sexual violence. There is insufficiency of support services and the existing ones can offer short duration of the available support. The social services do not include referrals to free legal aid and consultations, and there is no specialised free legal aid for the victims within these services.

Victim support services are often provided by NGOs with well-trained experts and methodology to provide psychological aid and consultations, logistic and other support. Some of them are co-financed by the State or municipalities. Most of these activities are run on a project basis and thus they are not regular and sustainable but rather dependent on the financing they receive. The NGOs' support activities are not available everywhere, not even in all the big cities.

There is free legal aid for victims of DV based on the Law on Legal Aid and its recent amendments. However, the availability and accessibility of this free legal aid is not easy and fast. The free legal aid is not granted to all victims of GBV crimes and offences. Free legal aid does not cover all the phases of the judicial proceedings, it does not cover the enforcement procedure, and the administrative procedure for the applications for compensation from the state. Many victims do not seek or cannot afford legal aid in the criminal proceedings and thus fail to prepare and submit a claim for compensation. Many of them do not consider and do not claim compensation for all long-term damages from the crime because these damages are not identified in the due time.

Claims for compensation can be lodged within the criminal proceedings before the criminal court or separately - before a civil court - upon the choice of the victim, which would depend on how criminal proceedings will be initiated. In contrast there are substantial differences in the financial conditions and the access to evidence in the two types of the proceedings. This can often make the choice difficult.

Good practice is there are no strict legal requirements for the form of the civil claim in criminal proceedings - it can also be made orally. In civil cases the formal requirements are strict with regard to the content of the application, and the court has the competence to give instructions to the applicant how to comply with the legal requirements. Although meant as a facilitating rule for the civil claimants it can be also misleading to them and conducive to omissions that cannot be later corrected during the proceedings. There are no procedural rules and time to correct the grounds of the civil claim submitted in the criminal proceedings unless the accusation act has been changed respectively.

Claims for compensation of the damages that are a direct consequence of the crime are free of charge - both in criminal and in the civil proceedings. On the other hand, in the civil proceedings the claimants can be free of charge only when there is a final judicial act on the criminal responsibility and the guilt of the perpetrator.

Guidelines on Financial Compensation in Cases Concerning Women Victims of Crime have been published in 2019 by the Centre for Study of Democracy and other useful publications are available for the professionals involved in this sphere.

The amounts claimed as compensation for the damages of GBV crimes and offences are not limited. In practice, not all the damages are considered and assessed in the claims. In contrast There are still no legally prescribed rules or guidelines for the adequate assessment of this type of damages. There are no specifically focused training initiatives on a regular basis for these issues and the problems arising around the compensation for the victims.

The amounts granted as compensation for the damage's victims have suffered from gender-based crimes are always decided on the principle of equity as the only criterion of the law. In contrast there are no guidelines on how to apply this principle in such cases. The time of the crime is relevant for the decision on these amounts. Only damages that have directly resulted from the crime can be compensated, and this does not necessarily include violations of certain rights that might be substantially violated.

As a rule, established in case law, the offender's material condition and financial assets are not a criterion to decide on the amount of the compensation granted. But **the social and economic situation in the country and the living standard at the time of the crime are criteria that are applied when the amount of the compensation is decided.**

The decision of the criminal court is binding on the civil court with regard to whether the criminal act has been committed, its illegality and the guilt of the perpetrator, and the civil claimant will be free of charge when claiming compensation before the civil court. Even without such a court decision a claim for compensation can be admissible but with the full costs as generally applicable and with the burden of proof to substantiate the claim.

The criminal courts can issue a decision on the civil claim even in cases, where the criminal liability of the perpetrator has been precluded and the criminal case has been terminated on certain grounds - based on the tort liability of the perpetrator. However, the decision on compensation in such cases would be very much delayed and, thus, can hardly be as effective and sufficient as a redress for the victims. This rule has proven to be not always properly applied as the case law reveals.

As a rule, established in case law, the offender's material condition and financial assets are not a criterion to decide on the amount of the compensation granted. But the social and economic situation in the country and the living standard at the time of the crime are criteria that are applied when the amount of the compensation is decided.

Example of poor practice also is that **the courts' assessments on the civil claim in criminal proceedings are usually very brief and general.** Most of the relevant arguments, however, are to be found in the criminal part of the same acts.

Last but not least to mention is that the decision to claim compensation is usually taken at a later moment - often too late to lodge a civil claim.

3. Hungary

Legal institution of summary proceedings for the compensation of damage caused by a criminal offence and of restitution was introduced (in force since July 9th 2020). However, the definition of criminal damage does not include the costs necessary to remedy the economic losses suffered by the victim. Therefore, the latter cannot be enforced as a civil claim before the criminal court.

Special protective measures for crime victims based on the Victim's Rights Directive were introduced. But there is a lack of applying special protective measures by the authorities and the practice that the status of being a person receiving special measures ordered by the police is not automatically transferred to proceedings before the court (the court needs to make its own decision of ordering special measures).

Another example of poor practice is that no official, publicly available order for police officers exists on the rules of how to interrogate sexual violence victims in line with the provisions of the Victim's Rights Directive.

There is the possibility of asserting a civil claim for restitution in criminal proceedings (in force since January 1st 2021). However, the condition required by law is that a claim for compensation in criminal proceedings can only be asserted for damage caused as a direct consequence of the charged offence.

The civil court is bound by the decision of the criminal court establishing commission of a crime. On the other hand, the victim of a crime is obliged to provide evidence on causation - often meaning being subjected to the same (or very similar) forensic examinations as in the criminal proceedings and having to repeat the testimonies already provided in criminal proceedings. Despite being bound to the decision of the criminal court, the civil court may still order evidence to establish certain facts of the case.

There is a practice of first-time issuance of a copy of the documents of a procedural act to the victim at which they were or could have been present and the first-time issuance of a copy of a document proving that a complaint/report was made orally or in writing before the police are free of charge (see 2.3.1 Right to information). Despite being free of charge and the victims' right, authorities often provide copies about documents produced during criminal proceedings for victims as a favour, and ask for a fee also in cases where the law ensures exemption from duties.

The law is not clear about the procedural step, when the victim may submit their civil claim at the latest. Another problem is that as a rule, civil claims asserted in criminal proceedings are referred to the civil court.

No special protective measures are in place in civil proceedings, also in cases where the civil proceedings are connected to a crime, or follow criminal proceedings, where the victim was entitled to special measures.

While, in principle, various psychological and mental illnesses do give rise to a claim for restitution, physical injuries are currently the focus of court cases, which are always proven by an expert psychologist or psychiatrist. The expert may only examine the questions specified by the assignor. **There is a lack of relevant questions in court proceedings concerning psychological and mental injuries.** Therefore, successful restitution claims based on these grounds are scarce.

The courts consider as a failure of the victim to comply with her duty to mitigate damage, if she does not report the assault immediately after the assault or does not move away from her abuser soon afterwards. Even if the victim wishes to initiate proceedings, this is often done when the specific case is already barred (statute of limitations). Here, the law does not reflect on the reality of battered

and/or traumatised women, who first need to be safe from the abuser and/or recover from the physical/ psychological consequences from the violence/abuse before being able to start civil proceedings for compensation.

Many victims are not aware of the possibility of bringing actions for compensation or restitution, or asserting property claims in the form of civil claims in criminal proceedings.

The crime of stalking is commonly not taken seriously or investigated by the police and procedural stalking is not addressed by the authorities. And in general, the law does not consider all acts within the scope of Vaw/DV to be legally significant. Also, an important fact to mention is that the amount of restitution awarded is not commensurate with the heavy financial and emotional burden of litigation.

The police are obliged to inform the victim about the victim support services. In practice, authorities are not providing enough information about victim support services, especially not in written form. Providing information only verbally is insufficient.

There is a right to cost deferral and fee deferral due to the subject matter of the action. In contrast authorities are not providing information about immediate monetary assistance and state compensation, neither verbally, nor in written form nor in written form.

There is no obligation for healthcare workers to provide information about victim support services and monetary assistance by the state.

Representation by an advocate acquired through the Legal Aid Service (either free of charge or costs advanced by the state) is not functioning in practice, many advocates are not cooperating with clients and handling their cases with care.

The amount of state compensation in the most serious cases is not sufficient to cover the expenses of the victim.

VI. Recommendations

The last chapter deals with the recommendations that emerged from the research findings. Regarding on the conclusions which are unsatisfactory in the theme of victim's compensation, it is appropriate to think about the possibilities of how to change the current setting and what is needed for this.

1. Czech Republic

No matter how long the legislators resisted incorporating any rights of the injured in the Czech legal system, it must be stressed that the¹⁷⁵ fundamental rights of victims, i.e., also victims of GBV, have been an integral part of our legal system since 2013. However, there is still the need to reflect insights from practice because some provisions do not fit the victims' acute needs, mainly those of particularly vulnerable victims. In this respect, it is necessary to highlight the significant role of the non-profit sector, which is actively involved in helping victims and subjects the specific, disputable provisions to constant criticism and comes up with proposals for legislative changes.

As for the specific laws regarding compensation for loss from the offender, it is a problem that the claim cannot be asserted in case of conditional discontinuance of prosecution. If the criminal proceeding is discontinued, the injured party cannot seek financial compensation and becomes

¹⁷⁵ Or since 25/02/2013, 01/04/2013, 01/05/2013 and 01/08/2013, when the individual provisions of the VoCA became gradually legally effective.

disadvantaged even though the commission of an offence is proved. Another disputable rule states that the injured party should raise a claim at the trial before the evidence procedure at the latest.

However, many victims of GBV are not physically present in the courtroom at this moment at all due to their protection and to prevent their contact with the offender.¹⁷⁶ If a victim does not have sufficient information about this procedure before the trial, she cannot factually assert her right in any way.

As for financial assistance, we think it is a significant problem that the victims of DV and stalking who have experienced other than sexual violence without bodily harm are not entitled to this assistance by law. Also, when applying for financial assistance, victims of sexually motivated offences¹⁷⁷ are disadvantaged compared to the other eligible victim groups⁶⁸. It is because they can only apply for compensation of costs expended on psychotherapy, physiotherapy and other services directed at remedying non-material loss, not for a flat payment or other documented costs as other victim groups. The argument that these victims faced lesser victimisation and harm than the victims of bodily harm does not hold up; it may often be quite the opposite. Last but not least, it must be stressed that the fixed flat sums have not changed since 2013, regardless of the economic development. On the contrary, inflation had risen by more than 13 per cent since the adoption of the VoCA until 2020.¹⁷⁸

2. Bulgaria

The path of women and girls - victims of gender-based violence to compensation for their harms and damages is difficult, lengthy, complicated and expensive in Bulgaria. They often do not even make such an effort, especially if their safety remains at risk.

Their material, health, social and personal difficulties resulting from the violence they have experienced often take precedence over their right to compensation.

The decision to seek compensation is not the first thought of the victims, as they are often accused and stigmatised. Such a decision is made after the process of relative recovery and after thorough consultation with a lawyer who would accept to represent them in such a case in the court.

The lack of access to specialised support services for their specific legal needs and available qualified legal aid are significant factors for the low number of claims. It is not known whether such victims have also filed claims for compensation from the state.

It is not enough for victims of such acts to be only aware of the existence of the rights they are entitled to, nor even to be consulted on how to exercise them. **It is necessary to have qualified and responsive providers of the relevant measures, services and a specialised system of legal aid** at all stages of criminal and/or civil proceedings, including in the enforcement phase, as well as in claiming compensation from the state.

The fair compensation of the damages caused by such acts, requires comprehensive knowledge on the nature of the GBV, its essential differences from others, outwardly similar effects, the causes and

¹⁷⁶ JEŽKOVÁ, Veronika. Práve m proti násilí na ženách: Bílá místa české legislativy. Praha: proFem (2016), ISBN: 978-80-904564-7-1. Available at https://www.profem.cz/shared/clanky/678/BilaMista-Jezkova-proFem_WEBverze.pdf, p. 93-94.

¹⁷⁷ I.e., victims under s. 24(1)(d) in conjunction with s. 28(1)(d) of the VoCA.

¹⁷⁸ ČSÚ (Czech Statistical Office). Výpis ze statistického zjišťování (Statistical findings extract) (2021) [online]. [cit. 2021-11-22]. Available at: https://www.czso.cz/document/ts/10180/132433649/Inflace_2000_2020.pdf.

preconditions in which it occurs, the mechanism of its harmful effects, the specifics of the determining factors, and the overall consequences for the victims.

The personal emotional status and psychological processes in the personal world of the victim, the whole spectrum and dynamics of experiences driven by such criminal offences are not always manifested in ways visible even to relatives and, accordingly, possible to prove according to the procedural rules. This is not achievable without legal regulation backed up by institutional support and sustainable policy measures.

The effective implementation of the right to compensation for damages of this type of violence needs a special legal framework and, first of all, a legal definition that covers the actual dimensions of the damage and all their specifics by type, intensity, manifestations and duration.

The right to compensation is an element of the overall due protection of victims and as such could and should be a special type of protection measure against violence. The right to compensation of the victim should not be at the expense of the guarantees for the safety of the victims and it is inadmissible for the exercise of this right to become a factor increasing the vulnerability. Providing an opportunity for preliminary security for the claim for damages should be one of the first measures in the state's response, along with measures for the prevention and protection of victims and the investigation and punishment of the perpetrator.

3. Hungary

Although the Victims' Rights Directive mentions the victims of violent crimes against the person on several occasions, the definition of damage in criminal law and the condition that damage needs to be a direct consequence of the crime significantly restricts the assertion of civil claims. According to the case-law, direct damage is not, for example, the lease costs for a vehicle hired in lieu of a stolen car,¹⁷⁹ nor the cost of burying the deceased victim, since "it was not incurred directly as a result of the crime but only as a consequence".¹⁷⁹ This restrictive interpretation with regard to the indirectness of the damage caused by the criminal offence would also mean that a civil claim for compensation – with only a few exceptions¹⁸⁰ – can be enforced in criminal proceedings regarding crimes against property and economic crimes alone.¹⁸¹

According to the rules of the CCP, the victim may submit their civil claim at the latest at the procedural act at which they can first be present. Under the new procedural law, this is the preliminary hearing, which directly precedes the trial of first instance. At the same time, the CCP's provision on first instance trials again provides for the possibility for the victim or their representative to make a statement of a civil claim. In light of this, it is not clear whether the preliminary hearing or the first instance hearing constitutes the procedural step at which the victim can enforce their civil claim at the latest. In the course of our work, we encountered both solutions. This is particularly important because the court summons the accused and the defence to the preliminary hearing, but the victim is only notified, which means that the latter is not obliged to attend.¹⁸²

However, with regard to the civil law regulation of restitution, the interpretation of the relevant legal provision is not entirely clear as to whether or not the applicant is obliged to prove the economic loss related to the infringement, in addition to the fact of the violation of personality rights. While in the

¹⁷⁹ BH 1983.4.148, ÍH 2008.8

¹⁸⁰ As the crime of failure to pay alimony [Section 212 of the HCC] and a limb of domestic violence [Section 212/A subsection (1) point (b) of the HCC].

¹⁸¹ See Chapters XXXV–XLII of the HCC.

¹⁸² However, in the notification, the court informs the victim of the possibility of bringing a civil claim.

case of restitution, proving further disadvantages beyond the fact of violation of personality rights is no longer expected by the current legislation, views claiming the opposite are present both in legal literature and in practice.¹⁸³

¹⁸³ Lábady, Tamás. Sérelemdíj versus nem vagyoni kártérítés, *Állam-és Jogtudomány*, 2016/1., 43. oldal; Fézer, Tamás. Megőrizve megszüntetni! A sérelemdíj bevezetésének korai tapasztalatai. In: Gárdos-Orosz Fruzsina, Menyhárd Attila (szerk.): *Az új Polgári Törvénykönyv első öt éve*. Budapest, Társadalomtudományi Kutatóközpont Jogtudományi Intézet, 2019., 127. oldal

Conclusion

This research, which is part of an international European two years project based on an analysis of laws and decision-making practice and interviews with the relevant stakeholders, has brought many insights and findings regarding the theory and practice in compensating and providing financial assistance for GBV.

Compensation for victims of gender-based violence focused on the topic of compensation for victims of GBV supported by the European Commission. Studying this area has yielded significant new data confirming long-term practice and the assumption that compensation for damages in criminal proceedings or monetary assistance in the context of violence against women does not fully serve its purpose.

Women do not receive any compensation from the perpetrator, even if they are successful in their claim, the amount of the compensation is not high. Likewise, the data show that financial assistance from the state only amounts to absolute fraction and a minimum of victims of this violence. Overall, the institutions examined are hardly available for the victims, the path to them is full of systemic barriers, and even overcoming them does not mean success in the matter.

Although violence against women is still a persistent, common sociocultural phenomenon in the Czech Republic, Bulgaria and Hungary, it is becoming does not devote enough time to the collection of relevant data in this area, does not support comprehensive assistance victims, the topic has been underestimated and trivialized for a long time.

However, the research did not remain only at the stage of describing the problem and the problem statement, but also aimed at answers to the question of how to change and improve the actual state. That is why he also formulated specific recommendations and also mapped out useful foreign good practice. This can serve as further inspiration to shift the topic to ensure the real and effective fulfilment of victims' rights. This publication provides the necessary context needed for understanding the issue with all its specifics.

This publication is our contribution to the debate about concrete, but above all, life rights experiences of victims of violence against women and an effort to raise general and specific awareness of what it is victims face. In addition, it intends to provide suggestions and guidelines on how to make the reward system more efficient, and this ensures better fulfilment of all state obligations towards victims.