



**european
sex workers
rights
alliance**

Feedback by European Sex Worker's Rights Alliance (ESWA): Revision of the victims' rights acquis

The European Sex Worker's Rights Alliance (ESWA) – previously the International Committee on the Rights of Sex Workers in Europe (ICRSE) - is a sex worker-led network representing 111 organisations and member groups in 35 countries across Europe and Central Asia. Our aim is to ensure that all sex worker voices are heard, and that their human, health and labour rights are recognised and protected. With our actions and approach inspired by our membership community, we work to build a strong, vibrant and sustainable network that mobilises national, regional and international advocacy activity towards long-term, systemic change.

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ESWA welcomes the Commission's initiative to revise the EU Victims' Rights Directive. ESWA supports **Option 2) b) Legislative initiative amending the Victims' Rights Directive - Broader scope of the legislative amendments.**

Access to justice for sex workers in Europe is a considerable challenge and a key area of work for ESWA. ESWA published a report '[Undeserving victims? Community report on migrant sex workers victims of crime](#)' that analyses 49 cases- sex workers' testimonies regarding policing, reporting a crime and access to justice. This report has been based on the evidence collected in 10 EU countries. The report clearly reveals that there is still lack of implementation of the Directive in practice- mainly by the front-line police officers. It however, also points out, how specific prostitution laws and diverse municipal bylaws prevent sex workers victims of crime to enjoy protections and rights under the EU Victims' Directive and consequently make sex workers more vulnerable to crime.

Sex workers bear a high burden of violence in Europe, including physical, sexual, and psychological violence. However, despite increasing recognition of violence against women and other marginalised groups as a human rights and gender equality priority by European Union (EU), crimes against sex workers that occur within and outside the context of sex work are frequently overlooked. Migrant sex workers are estimated to comprise the majority of the sex worker population in Western Europe, and a significant segment of the community in Central-Eastern Europe.

Implementation of Article 1 (1) of the Directive:

The directive should apply to victims in a non-discriminatory manner, including with respect to their residence status.

EU Member states fail in implementation of the Article 1 (1) of the VRD. When seeking access to justice, communities that face multiple or intersectional oppression and discrimination such as sex workers, migrants or undocumented migrants, face requirements and restrictions to which other victims are not subjected. Although selling sex itself does not constitute a criminal offence in any of the EU countries, sex workers are fined through administrative and municipal laws and bylaws. Sex workers, who are exposed to high risk of violence seek strategies how to better protect themselves from violence as they for numerous reasons cannot rely on the help of police. For example, many sex workers decide to work together in order to increase their safety- e.g. by sharing a flat. Working together constitutes pimping crime in

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many EU jurisdictions and consequently sex workers working together are prosecuted- or threatened to be prosecuted for pimping as a result of reporting. The report found that fears of sex workers who decided not to report violence and crime were well founded. Among the disabling factors that prevented sex workers to report were:

- Fear of the consequences of reporting as an (undocumented) migrant: detention and deportation. Similarly migrants with regular status or EU citizens can lose their migration status and be deported from their residence country if their activity as sex worker is known by authorities.
- Fear of the consequences of reporting as a sex worker: fines and prosecution for sex work related offences (soliciting, brothel keeping), being outed, and losing custody of one's child.
- Fear of being evicted from one's home or apartment where sex workers work/live. Landlords may face prosecution for profiting from renting flat to sex workers which also falls into 'third party criminalisation' (i.e. profiting from sex workers' income / pimping laws). Secondly, the EU facilitation directive may expose landlords that rent flats to undocumented migrants to be prosecuted for facilitating irregular migration.
- Fear of negative consequences of reporting for others: co-workers or apartment owners fined or prosecuted for third-party offenses. 'Third party offences' cover all offences within which third parties may profit from prostitution of others- including flatmates, flat owners, drivers....
- Previous negative experiences with and general distrust towards police

The evidence collected by the report also pointed out that, in some cases, police officers who expressed sympathy to sex workers victims of crime advised them not to fill a report due to the consequences of coming to light as an (undocumented) migrant and/or a sex worker and risking detention and deportation. In summary, (undocumented) migrant sex workers, due to the intersection of criminalisation of sex work and migration do not have the same rights as other victims under the EU Victims' Directive.

Recommendations:

- As rightfully pointed out by the Call for feedback as well as by the EU Victims' Rights Strategy, under-reporting of crime is one problem area, related to the lack of a safe environment and personal safety for victims. **By amendment of the Article 5 Right of victims when making a complaint** to introduce a **mandatory firewall** between access to the justice system and immigration enforcement. It is necessary to have same standard in all EU countries so that undocumented migrants can rely on the provisions of the Victims' Directive without discrimination.
- Similarly, in cases of sex workers victims of crime, sex workers who face high levels of gender based violence, biased motivated crimes and hate crimes are afraid to rely on the criminal justice system due to risk of being prosecuted or fined themselves. The **directive should be amended in a way to either introduce a non-punishment clause or insist on mandatory soft law measures that will enable highly criminalized and stigmatized communities to come forward and to report crime without fear or risk of negative repercussions.**
- Set up national victims' rights strategies with the involvement of representatives of marginalized groups and communities with high prevalence of crime such as sex workers. Ensure that members of marginalized communities take part in the monitoring and evaluation of such strategies and policies. This is in line with the claim of the call under the option 2) b) to strengthen multiagency cooperation when working with victims of crime.

Articles 8 Right to access victim support services and Art. 9. Support from victim support services

Right to access victim support services. The testimonies collected in our afore mentioned report revealed that, unless the report was filled with the help of a sex workers' rights community organization, NGO or collective, victims were rarely referred to appropriate victim support services by the competent authorities. In contrast, many of the cases were taken with indifference or discriminatory behaviours. The report reveals that police often adopt rigid standards about

what they consider as appropriate behaviour for women, and that they treat those who do not conform to mainstream gender norms such as sex workers in degrading and humiliating ways.

Community based organizations and sex workers collectives are important players in crime prevention and are often the only entities that can facilitate access to justice for sex workers victims of crime and victims facing intersectional discrimination (migrants, LGBTI, Roma, drug user...) as they have their trust and can reach out the most marginalized populations.

Recommendations:

- To **amend Article 8 of the VRD** Member states shall actively ally with community based organizations and NGOs working with marginalized or vulnerable communities to build trust and to effectively facilitate referral to victim support services and to increase reporting of crime.
- In addition to **amend the VRD in a way that Member states have a stronger obligation to establish and maintain effective referral and coordination mechanism for victims of crime** by involving representatives of organizations working with marginalized, vulnerable or criminalized communities- such as sex workers, migrants, LGBT, Roma, homeless, and other populations facing intersectional discrimination.

Article 22 (3)

Individual assessment of victims to identify specific protection needs regards victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics and regards victims of gender-based violence, sexual violence, and exploitation or hate crime.

Sex workers are over-represented in other marginalised communities such as migrants, people of colour, Roma, or LGBTQ people. Due to being trapped in a web of anti-sex work, anti-immigration, and misguided anti-trafficking policies, migrant sex workers represent one of the most precarious communities and are exposed to high levels of exploitation and violence.

The evidence collected for the above mentioned report was gathered predominantly from migrants selling sex, with a relatively high representation of women of colour and trans workers.

In most cases, their status as sex workers and migrants were decisive factors motivating the perpetrator of crime. However, other characteristics such as sex, gender, sexual orientation, and gender identity bias also very likely have motivated the respective perpetrators. Crimes against sex workers fall clearly under the definition of gender-based violence and hate crime. However, none of the victims interviewed was treated as a victim with specific protection needs. Again, sex workers were not taken seriously. In many cases, authorities implied that sex workers deserved violence or that violence was a 'part of the job'. The report points out that in particular the provision of Article 22 (3) that aims at protecting victims of gender based violence, hate crime and/or bias motivated crimes lacks its proper implementation due to discriminatory attitudes towards sex working victims of crimes, in particular migrant, LGBTI, Roma sex workers who face intersectional discriminations.

Similarly, **the implementation of Article 25 (5)** that requires training of practitioners that aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner doesn't have any affect to date.

Recommendations:

- To consider **binding measures on how to hold all relevant state actors accountable** for facilitating access to justice for marginalised communities, such as migrant sex workers. It can also introduce measures to enhance police accountability and transparency, and monitor their implementation by working with marginalised groups that are disproportionately policed.

- By **amending Article 22 to recognize that crimes against communities facing intersectional discriminations are often bias motivated** and such a group of victims should be considered as victims in need of individual assessment and specific protection needs.

General recommendations:

- To introduce **amendment to make data reporting and collection** on violence, gender-based violence and bias motivated crimes including against sex workers by meaningful participation of organisations working with groups at risk. Analyse critically such data in order to review policies that are ineffective or have significant negative effects on the ability to access justice.
- To **amend Art.13 Right to legal aid** that is limited only to victims that have status of parties to criminal proceedings. Ensure that victims can be **accompanied by a qualified free of charge legal representative** before, during and sufficient time after procedures.
- Consider **introduction of crime prevention as part of the directive**. Gender-sensitive and inclusive crime prevention strategies that are based on community empowerment and that involve populations facing intersectional discrimination such as sex workers, migrants, LGBT persons, Roma, and others at national, local, and municipal levels can be vital not only by preventing the crime, but also by building trust between marginalized communities and the public authorities (as envisaged by the EU Victims crime Strategy). It can be an opportunity to roll out regional, local, and municipal policies and protocols that allow marginalised communities facing a higher prevalence of crime, such as sex workers and their organisations, to participate in designing specific anti-violence programs that benefit their communities. Such provision can increase crime reporting among members of marginalised communities as a consequence of raised trust to the public authorities.

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