

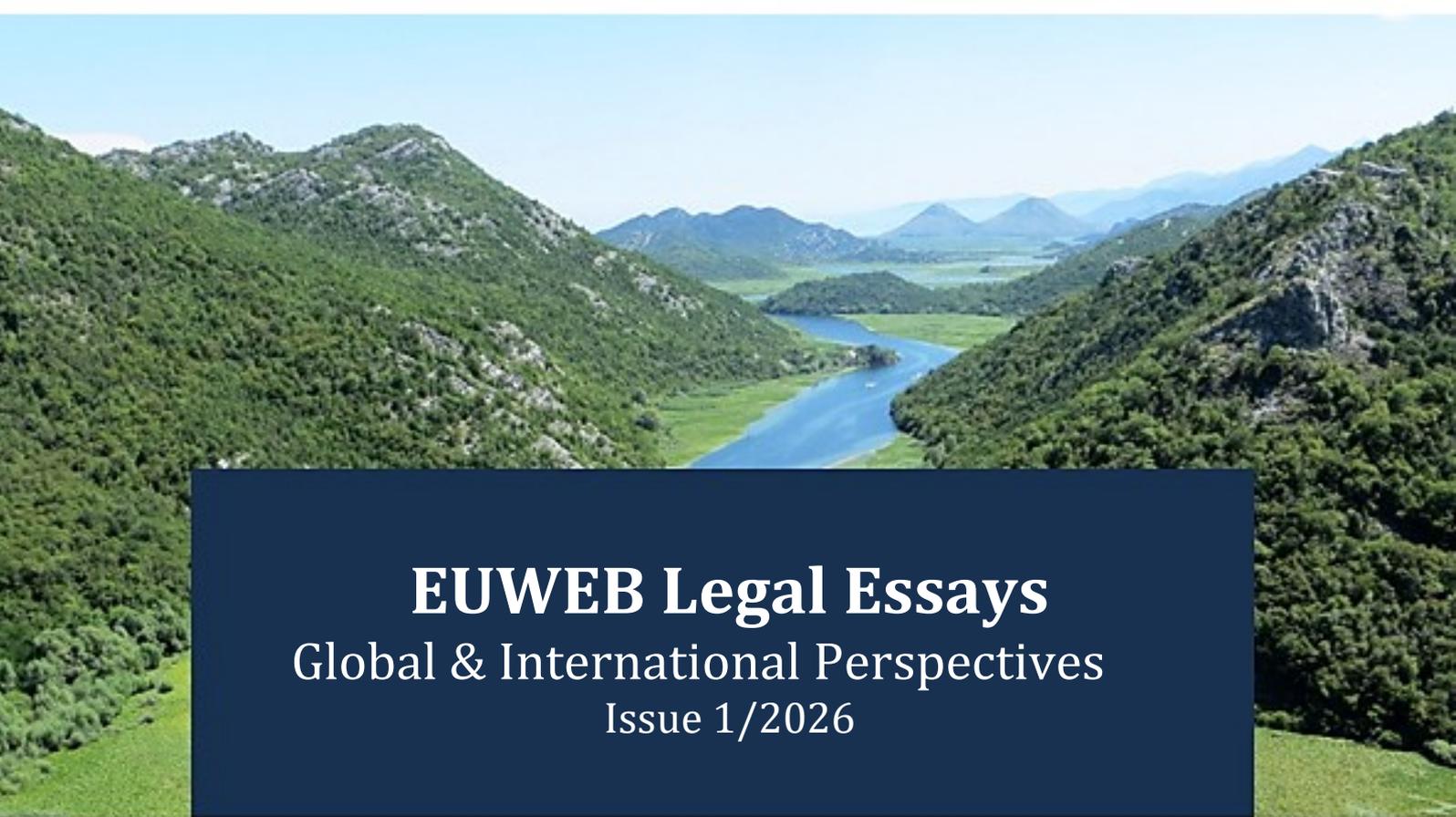
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# PROTECTING THE INNOCENT: REMOVING BARRIERS TO FREE LEGAL AID FOR VICTIMS OF VIOLENT CRIMES

*by Jasmina Dimitrieva\**

SUMMARY: 1. Victims' Journey: the Story of Eva. – 2. In the Shoes of the Victim: Being Eva. – 3. Eva's Exit from the Vicious Circle: Access to Free Legal Aid. – 4.1. Free Legal Aid in the Legal Instruments of the Council of Europe and European Union. – 4.2. European Union Directives and Access to Free Legal Aid for Victims. – 5. The Case of North Macedonia: From Principles to Practice. – 6. Conclusion.

*“Hope and fear cannot occupy the same space. Invite one to stay”.*

MAYA ANGELOU

## 1. Victims' Journey: The Story of Eva

Eva is a young girl, barely 19 years old. Living solely with her old and indigent grandmother, she learnt since young age that the life was hard. Eva had to abandon her dream about studying to become a medical doctor and had to get an employment as a cleaner in a private company. The owner was over 40 years old, but he treated her with sincerity, at least Eva thought so. When he proposed to her, she willingly accepted, despite a considerable age difference. Eva was hopeful of her future married life, looking forward to also helping her grandmother. However, hope was soon replaced by fear. Soon after she got married, her “husband” started physically abusing her. Eva often had to cover her bruises and lie to her grandmother about how she got injured. By time, things only got worse. By use of violence and threats Eva was forced into prostitution. Whenever Eva would refuse to provide sexual services, she would get slaps, kicks, cigarette burns by her “husband”, and get brutally raped by the “clients”.

Eva's tragic story can be told in the name of many other persons who are caught in a vicious circle of domestic violence, human trafficking, and/or gender-based violence. Regardless of their names, backgrounds, personal characteristics, they all experience severe suffering, outrage upon their dignity, fear and hopelessness.

According to the European Union Agency for Fundamental Rights (FRA) more than 22 million persons in EU experienced physical violence in one year<sup>1</sup>. According to Eurostat, in 2023, 243 715 sexual violence offences were registered, showing a 5.5% increase compared to 2022<sup>2</sup>. The same year the EU registered 10 793 victims of trafficking<sup>3</sup>.

The victims are in need of all the assistance they can get, considering their traumatizing experience, as well as their personal situations, which may indicate a high level of vulnerability due to age, nationality, health situation, gender, race, poverty level. Many of crime victims continue to suffer from psychological and physical injuries after

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<sup>1</sup> EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA), *Stepping up the Response to Victims of Crime*, Luxembourg, 2024, p. 4.

<sup>2</sup> EUROSTAT, *Crime Statistics - Statistics Explained*, available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Crime\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Crime_statistics).

<sup>3</sup> EUROSTAT, *Trafficking in Human Beings Statistics*, available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Trafficking\\_in\\_human\\_beings\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Trafficking_in_human_beings_statistics).

the crime had been committed, living many of them impoverished and unable to protect their legal rights in the modern-day complex legal systems.

The European regional organisations, in particular, the European Union (EU) and the Council of Europe (CoE), recognize the victims' needs for assistance. Indeed, there are a number of important EU Directives and CoE treaties, which provide for different types of assistance to victims of violent crimes. On the part of the EU, those instruments include the EU Victims', the domestic violence and the anti-trafficking directives<sup>4</sup>. The CoE, as the European human rights organization has contributed to the victims' rights protection by the following treaties: the European Convention on Human Rights (ECHR), the Convention on Action against Trafficking in Human Beings, the "Lanzarote" and the "Istanbul" Conventions<sup>5</sup>.

Moreover, access to free legal aid for victims of serious crimes has become an emerging right in the new century. It emerged in the European human rights' construction following an increased understanding of the need to enhance legal protection to victims of human trafficking, domestic violence and gender-based violence. In the contemporary society, characterized by a complex and expensive legal system, which is based on the rule of law and on the non-discrimination principles, access to free legal aid is a must to effectuate legal protection of victims of violent crimes. This holds true especially for victims of human trafficking, domestic violence and gender-based violence.

The goal is to shed light on the right to access to free legal for victims of violent crimes, looking through the prism of the relevant European instruments, the case-law of the European Court of Human Rights (ECtHR) and by examining the case of North Macedonia. This paper examines the positive sides and gaps in legislation and practice on free legal aid depending on the crimes' categorization. Moreover, it presents arguments in favour of conceptualization of the minimum standards for access to free legal aid for victims, and examines its counter-arguments. Indicators such as eligibility, proof of the victims' status, their standing and procedural rights in criminal proceedings are cross-examined in the selected EU and CoE documents, as well as in the country's case study. The methodology includes desk research of the relevant papers on victimology and analyses international and national legislation, reports of international bodies (CoE, FRA, EU), the ECtHR case-law, and highlights expert discussions on this topic. The story-telling method is used in order to translate the general and sometimes abstract notions and rights into more accessible and concrete situations, which require their application.

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<sup>4</sup> Directive 2012/29/EU of the European Parliament and of the Council, *establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, of 25 October 2012, in OJ L 315, of 14 November 2012, p. 57; Directive 2011/36/EU of the European Parliament and of the Council, *on preventing and combating trafficking in human beings and protecting its victims*, and replacing Council Framework Decision 2002/629/JHA, of 5 April 2011, in OJ L 101, of 15 April 2011, p. 1, as amended by Directive (EU) 2024/1712 of the European Parliament and of the Council, *amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, of 13 June 2024, in OJ L 2024/1712, of 24 June 2024; Directive 2024/1385 of the European Parliament and of the Council, *on combating violence against women and domestic violence*, of 14 May 2024, in OJ L, 2024/1385, of 24 May 2024.

<sup>5</sup> Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 005 of 4 November 1950, entered into force on 3 September 1953; Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Memorandum, CETS No. 197 of 16 May 2005, entered into force on 1<sup>o</sup> February 2008; Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS No. 201 of 25 October 2007, entered into force on 1<sup>o</sup> July 2010, Council of Europe Convention on preventing and combating violence against women and domestic violence, CETS No. 210, of 11 May 2011, entered into force on 1<sup>o</sup> August 2014.

## 2. In the Shoes of the Victim: Being Eva

When there is a victim, there must be a perpetrator, a batterer, a predator. Trying to explain why certain persons are victimized, certain theories in the victimology focus on the relationship of these two. They look at the so-called “contribution of the victim to his or her victimization” by facilitation, precipitation, and provocation, which are identified as the victim’s blameworthy actions<sup>6</sup>. The criticism is that the imbalance of powers between the victim and the perpetrator has been overlooked in these theories<sup>7</sup>. The life style theory also underscores the victim’s blameworthy actions, as it states that some fall prey to criminals due to their choice of a lifestyle, e.g., drug and alcohol abuse, promiscuity, etc.

Other theories look at the vulnerabilities and risk factors, such as mental disorder, low income, poor education, age, unfamiliarity with language and customs<sup>8</sup>. They stress the responsibility of the state to provide sufficient safeguards and protection to these vulnerable groups. Theories on the victim as a new social type that needs to be heard, seen and whose victimhood needs to be recognised have been laid out, considering the ever-changing society<sup>9</sup>. The victim does not need any longer to be just a shadow, small and invisible.

Human rights’ protection has also prompted a shift towards greater recognition of the status of the victim, which enables their greater access to assistance and protection. Such a “pro-victim” shift may have been also driven by the gathered knowledge about the suffering inflicted upon the victim, undermining her or his physical and mental health and well-being. Often, the victim suffers symptoms of Post-Traumatic Stress Disorder (PTSD) and may feel consequences long after the incident of his or her victimization<sup>10</sup>. The more severe violence and abuse, which the victim was subjected to, the more serious are the symptoms of PTSD, such as hyper-vigilance, depression, dissociation, even suicidal tendencies<sup>11</sup>. Victims of human trafficking may be experiencing PTSD, as a memory disorder, which brings a significant difficulty for them during criminal proceedings.<sup>12</sup> These victims may be stigmatized, and their personal data leaked to the public. Victims of domestic violence and human trafficking are also often blamed for their pitiful situation, attacking their credibility in an attempt to dismiss their case. They are facing allegations about their immorality, disobedience, aggression, foolishness, mental disturbances, etc. All of the above creates an impediment for the victim to let go of the past and move forward.

Victim profiling examines the characteristics that make individuals more susceptible to victimization with respect to certain types of crime, with the aim to identify vulnerable groups<sup>13</sup>. In addition to physical description, other collected data include marital status, personal lifestyle, personality traits, victim’s occupation, level of education, place of residence, medical history, networks and any past criminal records<sup>14</sup>. When considering gender aspects, in predominantly patriarchal societies, the gender stereotypes generate

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<sup>6</sup> A. KARMEN, *Crime Victims an Introduction to Victimology*, Ninth Edition, Boston, 2015, p. 162.

<sup>7</sup> J.K.NORGAARD, B.ROCKBUCK, *Victimology*, in S. HASSAN, D. LETT (eds.), *Introduction to Criminology*, Surrey, 2022, p. 5.

<sup>8</sup> A. KARMEN, *op. cit.*, p. 166.

<sup>9</sup> L.B. MAZUR, *The Victim Observations on a New Social Type*, in *Human Studies*, Vol. 46, 2023, pp. 583-605, p. 590, 602.

<sup>10</sup> J.K.NORGAARD, B.ROCKBUCK, *op. cit.*, p.17.

<sup>11</sup> P. SOUTHWELL, M. BREWER, B. DOUGLAS-JONES, *Human Trafficking and Modern Slavery Law and Practice*, London, 2018, p. 228, 229.

<sup>12</sup> P. SOUTHWELL, M. BREWER, B. DOUGLAS-JONES, *op. cit.*, p. 227.

<sup>13</sup> Z. BJELAJAC, *Victim Profiling*, in *Kultura Polisa*, Vol. 22, Issue 1, 2025, pp. 32-46, pp. 35-37.

<sup>14</sup> Z. BJELAJAC, *op. cit.*, pp. 35-36.

the ways of education, treatment and expectations. Usual expectations of the society for the women are to be submissive, humble, care for the family, which explains higher numbers of female victims of certain crimes, such as trafficking, and domestic violence<sup>15</sup>.

Nowadays, there is a strong pro-victim movement demanding inclusion of the victims' (or survivors') perspective in the state response to certain types of crime, in particular, the victims/survivors of human trafficking<sup>16</sup>. Listening to the voices of the victims/survivors of human trafficking and engaging their experience helps strengthen the institutional response to human trafficking<sup>17</sup>.

When looking at the Eva's victim profile, this story's heroine, it transpires that she has been experiencing intersectionality of vulnerabilities, considering her age, background, family and economic situation, gender, poverty and the level of education. Her situation, coupled with her personal traits put her at risk of domestic violence and human trafficking for sexual exploitation. The imbalance of power in her marriage due to age, the level of maturity and economic situation contribute to her victimization by her spouse, but also by the users of her forced sexual services.

Eva's life is difficult, full of fear, stress and regret. She is afraid for her and her grandmothers' lives. Eva has a feeling of guilt and questions her own judgment and sanity. She is wondering what she has done so wrong that deserves such a harsh punishment. Eva is distancing from her friends to suffers in silence. Trapped in a vicious cycle of abuse and violence, she feels there is nobody to turn to for help to preserve her dignity as a human being.

### 3. Eva's Exit from the Vicious Circle: Access to Free Legal Aid

Eva fits the profile of the new social type of the victim referred to above. There is no victim, without assistance. The victim, once recognised, is incorporated in formal state, local, academic strictures<sup>18</sup>.

What is the way out for Eva from this hell? How can she obtain recognition of her victimhood and access the victims' assistance structures, considering her current circumstances? Who can provide her with accurate information about her rights and legal procedures? Who can protect her?

Without legal representation, it will be extremely difficult to navigate the complex criminal justice system and enforce her rights, even when her case reaches the authorities. The first test to pass is whether or not there is a criminal case of trafficking and domestic violence, as determined by the police. Therefore, there are many arguments in favour of enabling access to free legal aid for victims like Eva, victims of human trafficking, domestic violence and gender-based violence.

One of the vulnerabilities, which put at risk heroines like Eva at risk of victimization is poverty. In the majority of the cases, victims of human trafficking, domestic violence and gender-based violence do not have any resources as their incomes are fully controlled by the perpetrators or, they belong to disadvantaged social categories. When rescued, they

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<sup>15</sup> COUNCIL OF EUROPE, *Labour trafficking in North Macedonia: risk factors, trends and challenges*, Skopje, 2022, p. 20.

<sup>16</sup> INTER-AGENCY COORDINATION GROUP AGAINST TRAFFICKING IN PERSONS, *Ensuring Ethical Survivor Inclusion*, Vienna, 2025, p. 3.

<sup>17</sup> I. HAINZI, *Inclusion of Survivors in the Policy Development Process and Operational Response to Trafficking in Human Beings Practical Guidance*, Vienna, 2022, pp. 9-10.

<sup>18</sup> L.B. MAZUR, *op. cit.*, p. 598.

might not even have a place to go to, due to a lack of money to cover basic needs, let alone funds to cover lawyers' fees.

A lack of funds and resources operates as a double barrier. Authorities, responsible to provide access to free legal aid, also complain about being put in a difficult budgetary situation. In many cases, the lawyers represent the victims *pro bono*, or for lower fees. However, such a situation makes access to free legal aid dependable on the availability and good will of the lawyers. In many cases, it is the Non-Governmental Organizations (NGOs) that provide legal aid to certain categories of victims, but that also depends on donations, or public funding. A lack of public funding cannot and should not serve as an excuse to deny the right to legal representation to victims from the initial stage of reporting or detecting the crime until the final court judgment.

Other arguments in favour of enabling access to free legal aid to victims include proper enforcement of their rights and efficient fight against crime, which in turn contributes to a fair trial and a more just society. Victims often suffer a long-term harm inflicted by the perpetrator. They may be disoriented, have a PTSD, may even suffer a memory loss, all of which puts them in unfavourable position when giving evidence to the competent bodies<sup>19</sup>. Quality legal representation will counterbalance the above disadvantages. It will be vigilant of the authorities securing procedural protection to the victim, such as protection of the private data, protection of his/her security and examination in a physical absence of the accused and/or his or her lawyer.

The victim might feel that the institutions do not trust his or her story, or might feel threatened by the police. It is in the interest of justice and equal treatment of the victims to provide free legal aid at the earliest stages of the proceedings. Moreover, providing free legal aid to the victims should be envisaged *ex officio* by the institutions, as the victim might not even be aware of the existence of such right.

In some instances, trafficking victims may be forced to commit crimes by the traffickers, or are staying illegally in a country. Without access to free legal aid, they might not be able to access the status of the victim and may be at risk of being treated as perpetrators and convicted for crimes they had been forced to commit.

Access to, *ex officio*, free legal aid from the initial reporting of the crime or its detection, increases the chances that the crime the victim was subjected to will be properly and promptly investigated. It increases the victim's prospect of success to access compensation, services or remain in the country, in case of a foreign victim. In light of the above, access to *ex officio* free legal aid should be granted to the victim in a pre-investigative phase, during investigation, indictment and criminal proceedings.

#### **4. Free Legal Aid in the Legal Instruments of the Council of Europe and European Union**

CoE, the European champion organisation in the human rights protection, has been established in 1949, after the II world war. As a standard-setting organization, it has several legally binding multilateral treaties, which warrant an examination to discern foundations for access to free legal aid for victims, such as Eva.

EU as a supranational organisation has demonstrated its commitment to the human rights' protection, through its *acquis communaitaires*. The European Charter of Fundamental Rights of the European Union (CFREU); the Directives on Victims, Violence against Women and Domestic Violence and Human Trafficking are important

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<sup>19</sup> J.K. NORGAARD, B. ROCKBUCK, *op. cit.*, p. 17.

for establishing access to free legal aid for victims of human trafficking, domestic and gender-based violence<sup>20</sup>.

#### *4.1. Supporting the Vulnerable: Free Legal Aid in the Council of Europe Human Rights Instruments.*

The investigation of the human rights instrument relevant for access to free legal aid starts from the ECHR<sup>21</sup>. All CoE member states must ratify this overarching human rights convention, otherwise they cannot retain their membership in this distinguished organisation. Art. 6 of ECHR guarantees the right to free trial. However, its criminal limb only gives the right to free legal aid to defendants under certain criteria. The victim's right to free legal representation in criminal proceedings is not explicitly embedded in the wording of this Article of ECHR<sup>22</sup>.

However, trafficking, domestic and gender-based violence cases have been examined under several articles of ECHR. The ECtHR case-law has been also examined to find out, if access to free legal aid for victims was tackled in the relevant context.

Art. 4 prohibits slavery and forced labour, as well as trafficking in human beings<sup>23</sup>. In the case of *S.M. v. Croatia*, ECtHR reiterated the general principles it applies when examining cases on human trafficking for sexual exploitation. Access to free legal aid was examined by ECtHR under 'support given to the applicant', along with other types of assistance<sup>24</sup>. It noted, in particular, that there was: "(...) *free legal assistance [provided] through the State-funded and State-supported programme carried out by a non-governmental organisation*"<sup>25</sup>. While provision of free legal aid was noted by ECtHR, it is unclear, if it will be actually required that publicly funded free legal aid is provided to trafficking victims in order to satisfy the principle of 'providing support to the applicant'.

In the case *M. and Others v. Bulgaria and Italy*, concerning ill-treatment of an underage Roma girl who was married according to the "Roma tradition", ECtHR' examined the applicants' complaint about a lack of legal assistance at their questioning by the police. The complaint was looked at under art. 3 of ECHR<sup>26</sup>. It concluded that the complaint was manifestly-ill-founded as: "*an interpreter or a lawyer or both accompanied the first and third applicants during the different stages of the interrogation*". In this case, ECtHR made it clear that no free legal aid, *per se*, is required by ECHR at the initial police questioning.

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<sup>20</sup> Charter of Fundamental Rights of the European Union, in OJ C 326, of 26 October 2012, p. 391; Directive 2012/29/EU, cit.; Directive 2011/36/EU, cit.; Council Directive 2004/80/EC, cit.

<sup>21</sup> Art. 6, para. 1, reads as follows: "*1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.*"

<sup>22</sup> COUNCIL OF EUROPE/EUROPEAN COURT OF HUMAN RIGHTS, *Guide on Article 6 of the European Convention on Human Rights, Right to a Fair Trial, Criminal Limb*, Strasbourg, 2025.

<sup>23</sup> Article 4, reads as follows: "*1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour (...)*"; European Court of Human Rights, Judgment of 7 January 2010, Application No. 25965/04, *Rantsev v. Cyprus and Russia*, para. 282.

<sup>24</sup> European Court of Human Rights, Judgment of 19 July 2018, Application No. 60561/14, *S.M. v. Croatia*, paras. 61 and 69.

<sup>25</sup> *Ivi*, para. 72.

<sup>26</sup> European Court of Human Rights, Judgment of 31 July 2012, Application No. 40020/03, *M. and Others v. Bulgaria and Italy*, paras. 115 and 117.

In a more recent case *N.C. v Türkiye*, ECtHR examined the complaints about secondary victimization under arts. 3 and 8 of ECHR<sup>27</sup>. The applicant is a trafficked and sexually exploited child below the age of 15. ECtHR found a violation, *inter alia*, on the account that the applicant was not adequately cared for in the course of the proceedings<sup>28</sup>. Although free legal aid was not explicitly mentioned, in its judgment ECHR made a connection to CoE Lanzarote and Istanbul Conventions to give a clarification on what was meant by “adequate protection”.

The Istanbul Convention unambiguously grants the right to free legal aid to victims of gender-based and domestic violence “under the conditions provided by their [countries] internal law”<sup>29</sup>. Its Explanatory Memorandum clarifies that art. 57 “does not give the victim an automatic right to free legal aid”<sup>30</sup>. It is up to each State Party to the Istanbul Convention to define the criteria which will enable the victim to have effective access to a court. The Explanatory Memorandum somehow ties access to free legal aid to civil proceedings (most probably for compensation) by taking ECtHR case-law under art. 6 of ECHR as a guiding example. It also refers to access to free legal aid as stipulated by art. 15 para 2 of CoE Convention on action against trafficking in human beings<sup>31</sup>.

The Convention on action against trafficking in human beings and its Explanatory Memorandum address the issue of free legal aid for victims of human trafficking.<sup>32</sup> Art. 15, para. 2 sets out the right to free legal aid in accordance with the national law, due to the complexity of court and administrative procedures ensuing from the victimhood. So, access to free legal aid is not an automatic right. This Convention also does not specify whether or not the victim should be provided with free legal aid at the initial contact with the authorities. Moreover, it does not specify, if the victim should request free legal aid, or free legal aid is provided *ex officio*. Similar to the Explanatory Memorandum of the Istanbul Convention, this Explanatory Memorandum highlights the right to access to free legal aid in civil proceedings in the interest of justice as enunciated by art. 6, para. 1 of ECHR and ECtHR case-law<sup>33</sup>.

The Lanzarote Convention provides for access to free legal for child victims of sexual abuse<sup>34</sup>. Paragraph 225 of its Explanatory Memorandum commits the ratifying states to provide free legal aid, but only “where warranted”<sup>35</sup>. It follows that the ratifying states are not obliged to provide such access in each and every situation of alleged sexual abuse of children and not in every stage of the proceedings. Actually, the child victim of sexual abuse and exploitation would be granted free legal aid when it has a standing as a party to criminal proceedings. Similar to the Istanbul Convention, access to free legal aid is granted in accordance with the internal law, but the domestic systems of the CoE countries varies considerably. Again, a connection is made with art. 6, para. 1 of ECHR and the

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<sup>27</sup> European Court of Human Rights, Judgment of 9 February 2021, Application No. 40591/11, *N.C. v. Türkiye*, para. 105.

<sup>28</sup> *Ivi*, paras. 105, 66 and 67.

<sup>29</sup> *Ivi*, Article 57.

<sup>30</sup> Council of Europe Treaty Series – no. 210, *Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence*, Istanbul, 2011, para. 295

<sup>31</sup> *Supra*, para. 294.

<sup>32</sup> *Supra*, Article 15 para. 2; paras 193, 195-198 of the Explanatory Memorandum.

<sup>33</sup> *Supra*, para. 196 reads: “...the person concerned should be able to present their case properly and effectively”.

<sup>34</sup> *Supra*, Article 31, paras 2 and 3.

<sup>35</sup> Council of Europe Treaty Series No. 201, *Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, Lanzarote, 2007, para. 225.

right to free legal aid in cases when civil rights and obligations are determined in court proceedings<sup>36</sup>.

This inter-connectedness of CoE legal instruments demonstrates the will of CoE member states to grant access to free legal aid to certain categories of victims, under certain conditions. The complexity of the proceedings and the “*interest of justice*” have been invoked, as a justification. It is important to assess whether or not the victim would be able to “*present their case properly and satisfactorily*” in view of all circumstances of the case and “*the emotional character of a situation*”. From the examined legally binding instruments, it follows that in criminal proceedings free legal aid should be granted to victims of domestic and gender-based violence, of human trafficking and to victims of child sexual abuse and exploitation. Under Article 6, para 1. of ECHR, the right to free legal aid can be granted in the interest of justice when the victim is claiming compensation for the injustice inflicted upon her or him, that is, “*in the determination of the [victim’s] civil rights*”.

One cannot escape the impression that the right to free legal aid has been constructed narrowly in the above instruments with respect to the police and opened criminal investigations. Namely, the above-mentioned legal instruments also envisage providing full information to the victims about proceedings, as well as help with the reporting (e.g. operating hot lines) and protection from the secondary victimisation. Anecdotal evidence suggests that at the initial stage, when a crime is reported or detected, many of the victims’ experience mistrust by the police, their statements are not considered credible, the police lack sufficient capacity, as a result their cases are dismissed without being properly investigated. This is especially the case of the victims coming from the marginalised strata of the society. Therefore, free legal aid must be made available to the alleged victims, right from the initial reporting, or detection of the crime, so that their cases would have a better prospect of investigation and adjudication.

Furthermore, victims are questioned several times, before trial. Their statements serve as evidence and in many cases, it is the crucial evidence against the perpetrator. Therefore, child victims and victims of trafficking, domestic and gender-based violence must be provided with free legal aid in all the instances when they undergo the police and social workers’ screening and interviews by prosecutors and preliminary procedures’ judges. In the contrary, their rights to procedural protection and privacy might be jeopardised, as well as their right to a compensation.

The victims from the above-mentioned categories need an immediate access to free legal aid. There should be no delays caused by the examination of their indigency. The state can recover the lawyers’ fees at a later stage. In addition, the conditions to access free legal aid may be very strict, or difficult to be proven by the victim, which would again operate as a barrier to an effective enjoyment of this right.

Although NGOs provide free legal aid to certain categories of victims, it cannot be guaranteed that free legal aid is always provided in a consistent, systematic and sustainable manner, if NGOs fall short of public funding. In addition, how would the NGOs learn of each and every victim needing free legal aid, if not (timely) informed by the authorities.

The examination of the EU legal instruments below aims to determine whether any of the concerns outlined above have been addressed herein.

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<sup>36</sup> Ivi, para. 226.

#### 4.2. European Union Directives and Access to Free Legal Aid for Victims

The EU Charter on Fundamental Freedoms explicitly grants free legal aid “to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice”<sup>37</sup>. The scope of this Article is broader in comparison to the scope of art. 6, para. 1 of ECHR, as it provides access to free legal aid in all types of proceedings for the victim, including criminal proceedings<sup>38</sup>.

Art. 13 of the EU Victims’ Directive provides for access to legal aid for victims of crime within the framework of participation in criminal proceedings<sup>39</sup>. Although the term ‘victim’ is broadly construed in Art. 2, para 1, lett. (a), the right to legal aid is narrowly construed. In particular, it is only mentioned in the context of criminal proceedings, “where they [the victims] have the status of parties to criminal proceedings” under conditions determined by national law. It appears that the national authorities have a considerable discretion to regulate when, how and to who free legal aid will be provided. Art. 9 of this Directive contains a wording, which can be interpreted as providing (free) legal aid in the context of support services for the victims, at least in a form of advice, support and information<sup>40</sup>. Whereas it could be interpreted that legal aid should be accessible also during a preliminary phase of criminal proceedings, the wording is broad and it does not provide clearly for provision of free legal aid. For example, a qualified right to free legal aid during victim’s initial interview by the police is nowhere clearly enunciated. This Directive also does not specify that the support mentioned in its art. 9 should (and must) be given by a qualified lawyer. Nonetheless, this Directive does mention targeted, integrated and specialised support for certain categories of victims, suggesting that the EU countries should be more mindful of protection of the rights of victims who experienced sexual violence, gender-based violence and violence in a close relationship<sup>41</sup>. Access to free legal aid, *mutatis mutandis*, could be also provided under this Article during preliminary proceedings, but that would require an extensive stretch of the Directive’s Art. 9, para. 3, lett. (b) to interpret it as guaranteeing the right to free legal aid to victims belonging to the above enumerated categories.

The EU revised anti-trafficking Directive does not envisage an automatic access to free legal aid for adults and children. The authorities have first to examine the victims’ financial situation in order to grant them free legal aid, including free legal counselling<sup>42</sup>. While this Directive stipulates that a lawyer providing free legal aid shall be appointed “without delay” the assessment of the victims’ financial situation, which must be properly documented, will undoubtedly take some time. In addition, it is not clear if this right is granted during the initial screening of the police, which is a crucial factor in the identification chain of human trafficking victims.

The EU Directive on combating violence against women and domestic violence in Recital 32 of its Preamble for the first time mentions that: “Member States can extend legal aid, including free legal aid, to victims when reporting criminal offences (...)”<sup>43</sup>. Nonetheless, these victims may have access to free legal aid only when provided by the national law. It transpires that this Directive does not set forth a harmonised approach for

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<sup>37</sup> Art. 47, para. 3 of CFREU.

<sup>38</sup> EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA), *EU Charter of Fundamental Rights*, 2007, available at: <https://fra.europa.eu/en/eu-charter/article/47-right-effective-remedy-and-fair-trial>.

<sup>39</sup> Art. 13, Directive 2012/29/EU.

<sup>40</sup> Art. 9, para. 1, letts. (a) and (e), Directive 2012/29/EU.

<sup>41</sup> Art.9, para. 3, lett. (b), Directive 2012/29/EU.

<sup>42</sup> Art. 12, para, 2 and art. 15, para, 2, Directive (EU) 2024/1712.

<sup>43</sup> Recital 32, Directive (EU) 2024/1385.

the EU countries in this regard. Furthermore, this Directive implies that assessment of the victims' financial situation will be required by the members states. If so, it emphasises that the authorities must not only check the funds owned by the victims, but they must also check whether or not she has an effective access to them<sup>44</sup>. Art.14, para. 2 of this Directive refers to the EU victims' Directive as *lex generalis* regulating victims' access to free legal aid. The need to include legal professionals when dealing with domestic and gender-based violence cases is further asserted in Recital 78 of this Directive's Preamble. Furthermore, the Directive is clear that legal aid must be provided in the context of specialised services. It is straightforward that the state must ensure sufficient human and financial resources, including funding for NGOs, if such services are provided by them<sup>45</sup>.

There is no doubt about the usefulness of the above-mentioned directives, as they set the joint framework to provide access to free legal aid to victims of crime for EU countries. Nonetheless, access to free legal aid depends on the assessment of the economic situation of the victim, a time-consuming exercise, which is required regardless of their personal circumstances. Access to free legal aid seems to be mostly tied up to the participation of the victim in the criminal trial. In such a case, the state can recover the costs for the legal representative of the victim from the convict. But how about protecting legal rights of the applicants in the previous stages of criminal proceedings? There is still no clear mentioning of access to free legal aid during the initial screening interview by the police, which is important for determining the status of a victim, so that they can enjoy their rights set out in the above-mentioned legal instruments. Moreover, legal representation at the initial reporting, detecting of the crime or initial hearing is crucial also because the victim may face charges of illegal stay in the country, or of crimes she or he was coerced into committing.

## 5. The Case of North Macedonia: From Principles to Practice

North Macedonia is a member state of CoE, and has ratified ECHR, the Convention on action against trafficking in human beings, the Istanbul Convention and the Lanzarote Convention. It is an aspiring country for a membership in EU, and therefore transposes the EU Directives in its national law.

Access to free legal aid for victims is regulated by a number of domestic laws, which include the Law on Criminal Procedure, the Law on Free Legal Aid, the Law on Prevention and Protection of Women against Violence and Domestic Violence, and the Law on Justice for Children<sup>46</sup>. Art. 53, para. 3 (1) of the Criminal Procedure Law stipulates that the victims of crimes punishable by at least four years of imprisonment shall have the right to a counsel paid by the budget. Its Art. 55 para. 1 (1) envisages consultation with legal representative before a hearing of the victims of gender-based violence and human trafficking, provided that she participates in criminal proceedings. The Commentary to the Law on Criminal Procedure interprets this provision as giving the right to the victim to a legal counsel which is, or should be *pro bono*, respectively<sup>47</sup>. Indeed, for trafficking victims, the prosecution and judges tend to appoint *pro bono* legal

<sup>44</sup> Directive 2024/1385, cit. the Preamble. See also Art. 14, para. 2.

<sup>45</sup> Art. 25, para. 1, lett. (b), para. 3 and para. 4, Directive 2024/1385.

<sup>46</sup> Official Gazette Nos. 150/10, 100/12, 142/16 and 198/2018, *Law on Criminal Procedure*, of 18 November 2010; Official Gazette No. 11/2019, *Law on Free Legal Aid*, of 16 May 2019; Official Gazette Nos. 24/21 and 39/25, *Law on Prevention and Protection from Violence against Women and Domestic Violence*, of 27 January 2021, Official Gazette No. 66/2024 *Law on Justice for Children*, of 20 March 2024.

<sup>47</sup> G.KALAJDZIEV, G. LAZETIC, L. NEDELKOVA, M. DENKOVSKA, M. TROMBEVA, T. VITLAROV, P. JANKULOVSKA, T. KADIEV, *Commentary to the Law on Criminal Procedure*, Skopje, 2018, pp. 162, 166.

counsel. However, due to budgetary constraints of these institutions free legal aid is provided by the anti-trafficking NGOs<sup>48</sup>. The same analysis show that no *pro bono* legal counsel was provided by the prosecution and that only 1 trafficking victim was provided free legal aid by the court (2020- 2023)<sup>49</sup>. This means that access to free legal aid was largely depending on the availability of funding and resources of the anti-trafficking NGOs, which not always receive public funding, or receive it with a considerable delay. Regarding access to free legal aid at initial detecting and reporting of the crime or screening by the police, there has been some advancements as trafficking victims were appointed *pro bono* lawyers in accordance with the Law on Free Legal Aid, Article 49 in 2024-2025<sup>50</sup>.

The Law on Prevention and Protection of Women against Violence and Domestic Violence also stipulates access to free legal aid for women who are victims of gender-based violence and domestic violence<sup>51</sup>. This Law also envisaged legal services to be provided by the centers for social work. However, as in previous cases, the free legal aid is provided by NGOs (the Helsinki Committee, Meduza), who may or may not be registered to receive public funding for provision of free legal aid.

The Helsinki Committee noted in the 2025 Report on provided free legal aid to victims of gender-based and domestic violence that institutions often treated victims of domestic violence as they were the guilty ones, a problem that needed an immediate resolution<sup>52</sup>. Without any doubt, access to free legal aid in a systematic and a foreseeable manner would contribute to an improved treatment of victims of domestic and other violence, reduce the instances of secondary victimization and revictimization and enhance their institutional protection.

Regarding child victims, the Law on Justice for Children stipulates that in the police and criminal proceedings before the center for social work, the child victim has the right to be assisted by a specialized lawyer before giving a statement or requesting a compensation<sup>53</sup>. This Law only states that the child victim has equivalent rights like adults regarding access to justice, meaning the above-mentioned articles from the Law on Criminal Procedure are also applicable when the victim is not yet 18 years old.

It is worth mentioning that victims in order to have access to justice need not only hire a lawyer, but need to pay considerable fees for the medical expert report(s) as well as court and administrative fees, which may effectively bar them from enjoying their right to access to court.

In the case of Eva, as a victim of domestic violence and human trafficking, she should be able to obtain access to free legal aid at the initial police screening and during hearings by the prosecution and the court by the NGOs under the Law on access to free legal aid, under the Law on Prevention and Protection from Violence against Women and Domestic Violence and the Law on Criminal Procedure. However, the NGOs will have to learn about her case and have sufficient funding to provide free legal aid in all the stages of the proceedings. If Eva was living in a remote village, her prospects of access to free legal

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<sup>48</sup> B. BOZINOVSKA SILJANOVSKA, Z. DRANGOVSKI, I. ZDRAVKOVA, *Legislative Assessment of Access to (Free) Legal Aid to Human Trafficking Victims in the Republic of North Macedonia*, Skopje, 2024, p. 10.

<sup>49</sup> *Ibidem*.

<sup>50</sup> Macedonian Association of Young Lawyers registered with the Ministry of Justice for provision of free legal aid.

<sup>51</sup> Art. 20, (1) and (5), Art. 46 (7) and Art. 97, Law on Prevention and Protection of Women against Violence and Domestic Violence.

<sup>52</sup> N.PETKOVSKA, *2025 Report on provided free legal aid to victims of gender-based and domestic violence*, Skopje, 2025, p. 21.

<sup>53</sup> Art.167, Law on Justice for Children.

aid would be significantly limited. In addition, the NGOs would need to cover the costs for forensic medical examination to prove the allegations of brutality and sexual exploitation.

## **6. Conclusion**

International legal instruments of CoE and EU are great tools for providing access to free legal aid for at least certain categories of victims. However, access to free legal aid depends considerably on domestic law. Therefore, it is recommendable that the CoE and EU legal instruments lay down stronger foundations for access to free legal aid, at least for victims of gender-based violence, domestic violence and human trafficking and further clarify the minimal standards for access to free legal aid for child victims.

Victims, at least the categories enumerated above, must have access to free legal aid as soon as their case is detected, reported, or at their initial hearing in order to ensure proper investigation by the enforcement agency and better prospect of success at the trial.

The states should refrain from economizing at the expense of victims' access to free legal aid. In a long run it may prove more expensive, if the states fail to protect human rights of more and more victims, which could be averted by providing them with proper legal representation at each and every stage of preliminary and criminal proceedings.