

Joint statement on the EU Proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime:

Equal access to justice and protection for all victims of crime, regardless of status

Introduction

The undersigned organisations welcome the legislative efforts of the European Commission towards a pan-European protection system for victims of crime¹. While pleased with certain elements of the proposal, such as the delinking of support and practical assistance from the decision to report a crime, prevention of secondary and repeated victimisation and individual assessment mechanisms for vulnerable victim identification, we are very concerned with significant shortcomings in the text of the proposal.

As the proposal stands now, it fails to address the specific situation of migrants with an insecure migration status and thus does not guarantee equal access to justice and protection mechanisms for all victims of crime. It is crucial to uphold the right to the security of a person recognised in the EU Charter of Fundamental Rights and take measures for the effective realisation of this right for all persons in the EU.

Persons with an insecure migration status

Persons with an insecure migration status are third country nationals who for varying reasons do not hold a valid residence permit or visa authorising their stay in the country (irregular migrants) or whose residence permit is dependent on a third person (employer, spouse or another family member).

Irregular migrants who have become victims of crime are not able to access justice mechanisms because of possible ramifications on grounds of their migration status and consequently remain disproportionately vulnerable to physical and sexual abuse, exploitation, so-called “honour” killings, and trafficking into forced labour or the sex industry. Despite their increased exposure to ill-treatment, migrants without a valid residence permit or visa risk arrest and deportation if they contact the police.

¹Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime COM(2011) 275 final
http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_275_en.pdf

Lack of independent migration status is a very common challenge for female migrants in particular, who risk losing their status when reporting a crime committed by an employer, spouse, or another family member as their residence permit or visa is often dependent on /tied to this relationship. This dependency factor puts migrant women in an especially vulnerable position, creating a power imbalance which very often amalgamates into violence.

In some EU Member States, support structures, such as women's shelters, may deny access to those with an irregular migration status and exclude a particularly vulnerable group of women from essential protection and support. It is important to guarantee that funding for generalised or specific support services does not specifically exclude certain groups of victims such as persons in an irregular migration situation.

Migrants with an insecure status are not only more likely to become victims of crime but they are, due to their status, highly vulnerable to further victimisation and intimidation and should therefore be recognised in the directive as vulnerable due to personal characteristics. Safeguards, such as giving a temporary residence permit, will prevent irregular migrants from becoming a "zero risk victim" and help combat impunity. The text of the proposed directive should safeguard the right to access to justice of all victims of crime and ensure that all victims can report a crime without fear of being arrested or deported.

Victims of trafficking

It is widely acknowledged that, due to failing identification processes, the majority of trafficked persons are not recognised as victims of trafficking, but often regarded as irregular migrants. Even if they are identified by law enforcement as victims, they have to cooperate with the authorities in the criminal case against the perpetrators in order to be protected under the regulations of the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting the victims. It is generally known many trafficked persons do not dare to press charges against their traffickers, and are therefore excluded from protection and support. These trafficked persons depend on the proposed Directive, as it provides for access to support and practical assistance from the earliest possible moment irrespective of whether the crime has been reported to authorities. But if the proposed Directive will not effectively include people with an insecure migration status, a large group of victims of trafficking in human beings will be withheld from their right to protection and support and be deported without justice being done.

Recommendations

In order to facilitate justice and enable all victims to report crimes, seek assistance and fully participate in criminal proceedings, it is of utmost importance that EU member states should:

1. Ensure that protection of the safety of persons is the main duty of the police

Prevention, protection, investigation and sanctioning of crime should take precedence over any proceedings concerning the migration status of the victim.

2. Recognise the increased vulnerability caused by migration status

Persons with an insecure migration status face an increased risk of human rights violations. Migration status should be considered as a factor that increases vulnerability.

3. Put in place procedural safeguards

The following procedural safeguards should be put in place to enable migrant victims with an insecure migration status to report a crime:

- a) No deportation file concerning the victim shall be opened in connection with the reporting of a crime;
- b) A temporary residence permit should be given to the victim of crime with an irregular migration status, as soon as possible. If the defendant is in control of the migration status of the victim an independent residence permit or visa should be given to the victim. In case of conviction of the perpetrator, a permanent residence permit may be issued to the victim.

4. Ensure that victim support services are available to all victims regardless of status

Victim support services, whether provided by governmental or non-governmental organisations, should be made available to all victims regardless migration status from the moment a crime takes place as well as throughout criminal proceedings and after such proceedings in accordance with the needs of the victim.

5. Ensure that funding for support services is not dependent on the beneficiaries' migration status

European, national or local funding should not require generalised support services to limit access to victims on grounds of migration status.

6. Guarantee free legal aid for all victims

Free legal aid shall be made available to all victims who lack sufficient resources, including those in an irregular migration status. (EU Charter of Fundamental Rights Art. 47)

7. Ensure non-discriminatory victim compensation

If assets are confiscated from the offender, they should be used for the compensation of victims and any public funds allocated for the compensation of victims should not exclude those with an irregular residence status.

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