

## VICTIM PROTECTION IN CRIMINAL PROCEEDINGS AT EUROPEAN LEVEL

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**Abstract:** *The protection of victims of crime is a priority, both in the European Union and in the Member States. Crime is, on the one hand, a detriment to society and, on the other, a violation of the individual rights of victims, so that they must first be recognized and then treated by the judicial authorities with respect, attention and professionalism, without discrimination. This study aims to present in a non-exhaustive way the regulation of victims' rights, including its evolution, and the protection of criminal proceedings, emphasizing the role of victims in criminal proceedings and the standards pursued by the Union in this area, including their consolidation in the coming years.*

**Keywords:** *victims, rights, protection, crime, directive.*

### 1. General Aspects of Crime Victims and the Need to Protect their Rights

In the past years, there has been an increase in the awareness of all judicial bodies of the need and role of the protection of victims in criminal proceedings, which has led to a recognition at both the European and national levels of the member States, including Romania, that victims of crime have rights in the criminal justice system. This has led to a closer application of the need to protect these victims, to regulate and, subsequently, to protect their rights.

Every year 15% of the members of the European Union or in other words about 75 million Europeans are victims of crime. According to Eurostat, the statistical office of the European Union has reduced some types of crime between 2012 and 2016 (the last year for which official statistics are available), such as robberies, which have fallen by 24%, or car thefts, which have decreased by 36% between 2008 and 2016.

A slight downward slope is also noted in the case of other crimes such as theft, robbery or kidnapping, or the most serious, such as homicides, which decreased by 21% between 2008 and 2013 (however, approximately 5,000 homicides are committed annually in the European Union). At the same time, there is an increase in crimes against sexual integrity and freedom, of 8% between 2013 and 2016, after being on an upward

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trend since 2008, but also, in general, the complaints made by victims in the courts, approximately 1.1 million annually.

However, many of the victims do not report the crimes committed against them to the authorities, one of the main reasons being that they put themselves in an often embarrassing and discriminatory position, both before the courts, but especially before the perpetrator, but more consider that they will not win the case, that their rights are not respected and defended, as are those of persons accused of committing crimes.

On the other hand, the competent authorities that come into contact with victims in the context of criminal proceedings (be they judicial bodies or victim support services) must take into account all their particularities, their immediate needs, while protecting them against secondary and repeated victimization, including against intimidation and revenge by perpetrators, thus ensuring real and effective access to justice.

It is clear that criminal proceedings can only take place with the active participation of victims, and it is essential that they have the right framework to adequately present the circumstances of the offences and to be able to provide clear and concrete evidence to the judiciary. In this regard, however, it is important that victims are treated with dignity and respect and that they know their rights in order to exercise them properly.

## **2. European Legal Framework for the Protection of Victims of Crime**

Protecting victims of crime and their rights in criminal proceedings has been one of the priorities of the European Union and, implicitly, of the Member States for many years.

The Union's primary and secondary legislation, the Charter of Fundamental Rights ("the Charter") and the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention on Human Rights"), provide and call on States to actively protect victims of crime.

The Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in 1950, does not specifically regulate the rights of victims, but through its case law, the European Court of Human Rights has interpreted the rights of the Convention and required states to protect victims, especially in proceedings by creating a balance between their rights and the rights of the accused.

In 1977, the Committee of Ministers adopted the first Resolution on victims and one of the first at an international level, namely Resolution no. 27 on the compensation to victims of crime, which recommended that states compensate persons who have suffered serious bodily injury as a result of criminal offences and those dependent on persons who have died as a result of the crime, even if the perpetrator could not be prosecuted.

In the same vein, in 1983, the Convention on the Compensation of Victims of Violent Crimes was adopted, which stipulates the obligation of states to compensate both direct victims and their dependants in the event that the victims die as a result of the crime.

The regulations at the level of the Council of Europe were continued, receiving a higher legal value, by the legislation adopted at the level of the European Union. Thus, one of the first regulations adopted at this level with regard to the protection and rights of victims is the Council Framework Decision 2001/220 / JHA of 15 March 2001 on the

status of victims in criminal proceedings.

The legal nature of the Framework Decision and the lack of obligation to transpose its provisions into the law of the Member States have led to major differences in the degree of protection and support of victims and the recognition of their rights before the courts.

Subsequently, Council Directive 2004/80 / EC of 29 April 2004 on the compensation to victims of crime was adopted, which emphasized that they should be entitled to fair and adequate compensation for the damage suffered, regardless of the country in which the crime was committed, so that a system of cooperation is needed in order to facilitate victims' access to compensation in cross-border situations.

At the European level, a number of Victims' Rights Conventions have also been adopted, but with occasional applicability, in regulated areas, targeting specific categories of victims. These are the Convention on the Prevention of Terrorism, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, and the Convention on Combating Trafficking in Human Beings, all adopted in 2005, and the Convention on the Protection of Children against Sexual Exploitation and of sexual abuse, adopted in 2010.

Through the Stockholm Program - an open and secure Europe serving and protecting citizens (2010/C 115/01), the European Council emphasized, on the one hand, the importance of legal support and protection for victims, especially groups, the most vulnerable, i.e. people who are victims of gender-based violence, domestic violence or who are victims in a Member State other than their nationality or where they reside, and on the other hand, reaffirmed the need to ensure and respect their rights, support and their protection, through an integrated and consistent approach at Union level, including the adoption of a package of legislative measures.

In this regard, the Program explicitly requested the analysis of the appropriateness of creating a single legal instrument on victim protection, by bringing together Council Directive 2004/80/EC of 29 April 2004 on compensation to crime victims and Framework Decision 2001/220 /Council JHA of 15 March 2001 on the status of victims in criminal proceedings.

A first step was achieved by the Council by adopting its resolution of 10 June 2011 on the roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings (2011/C 187/01), which reaffirmed the need for legislative action or other measures to strengthen the rights and protection of victims of crime, in particular in criminal proceedings.

Following all these acts and recommendations, more than 10 years after the entry into force of the Framework Decision, the main rules on the protection and recognition of victim status in criminal proceedings have been adopted at the EU level, namely Directive 2012/29/ EU laying down minimum rules on the rights, support and protection of victims of crime, which replaced Framework Decision 2001/220/ JHA.

The Directive, which entered into force on 16 November 2015, is in line with the principles recognized by the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights, respecting fundamental rights and promoting mainly the right to dignity, the right to life and physical integrity and mental

health, the right to liberty and security of person, respect for private and family life, the right to property, the principle of non-discrimination and equality between women and men, the rights of the child, the elderly and persons with disabilities, and last but not least the right to a fair trial.

It should be noted that the Directive applies to offences committed in the European Union as well as to criminal proceedings taking place in the Union, conferring rights on victims of extraterritorial offences only in proceedings taking place in a Member State.

### **3. Defining the notion of "victim" in criminal proceedings, at the European level**

Before moving on to the presentation of the rights they enjoy in European proceedings, we must first establish the scope of the notion of "victim". In a current speech, "victim" in criminal proceedings means the person against whom an offence has been committed.

As mentioned above, the first regulation of the rules for the protection of victims of crime and their rights in criminal proceedings was made at the European level by the adoption of Council Framework Decision 2001/220 / JHA of 15 March 2001 on the status of victims in criminal proceedings.

On this occasion, the first definition of the term "victim" was also provided as a natural person who has suffered harm, including impairment of his or her physical or mental integrity, moral suffering or material loss, directly caused by acts or omissions which infringe the criminal law of a Member State.

However, it was found that this definition is quite restrictive, thus narrowing the scope of holders who could benefit from protection in criminal proceedings. Thus, with the adoption of Directive 2012/29 / EU laying down minimum rules on the rights, support and protection of victims of crime, a new definition of the term "victim" was provided.

Article 2 of the Directive states that "victim" shall mean both the natural person who has suffered harm, including injury to his or her physical, mental or emotional integrity, or economic harm, directly caused by an offence and family members of a person whose death was directly caused by an offence and who have suffered damage as a result of that person's death.

Family members represent the spouse, the person living with the victim, being engaged in an intimate relationship and managing current affairs with her in a stable and continuous manner (domestic partner), direct relatives, siblings, and people dependent upon the victim.

A similar definition had already been mentioned earlier, in Recommendation no. 8 of 2006, which defines "victim" as both a natural person who has suffered harm, including physical or mental harm, emotional suffering or economic loss, caused by acts that infringe the criminal law of a Member State, and the immediate family who are direct dependants of the victim.

Even though many years have passed since the entry into force of the Directive, some EU Member States have so far not harmonized their national provisions with European regulations. The first example of this is the very definition of the term "victim", with several states offering a narrow definition in their legislation, excluding "indirect"

victims, such as family members. Other states, such as Romania as we will see, do not define this notion at all.

However, it has been shown that the use of the term "victim" should be made with caution when referring to a person who claims to have been the victim of a crime. This is because the rights of victims in criminal proceedings must be correlated with the rights of the accused person (suspect or defendant in Romanian law), and one of his main rights is to be recognized the presumption of innocence during the trial (the defendant is found guilty only when which a court of law decides, definitively, that he is guilty).

Therefore, in situations where the evidence in the criminal proceedings also seeks to prove the existence of the crime, all those involved in these proceedings must be very careful when using the term victim of the crime. The situation is completely different when there is no problem with the crime itself, the object being only the identification and prosecution of its perpetrator.

#### **4. Victims' Rights in Criminal Proceedings regulated at the European Level**

From a legislative point of view, victims' rights are enshrined in both primary and secondary EU law and in the instruments of the Council of Europe and the United Nations (UN) and are also enshrined in national law. These mainly concern the right to respectful treatment, the right to protection, the right to support, the right of access to justice and the right to compensation.

The most important regulation in the field of victims' rights is found, as mentioned above, in Directive 2012/29 / EU (Victims Directive), whose important role derives from the attempt to have common minimum standards for the protection of victims' rights in EU Member States, as at the national level there are many differences in the interpretation of victim protection standards, mainly due to historical realities and the way the victim is perceived in the legal relations of criminal procedural law, which leads to different approaches related to crime victims' support.

##### **4.1. Victims' rights covered by Council Framework Decision 2001/220 / JHA of 15 March 2001**

The first important step in trying to correlate and systematize the rights and modalities of support for victims of crime has been taken at the EU level by the adoption of Council Framework Decision 2001/220 / JHA of 15 March 2001 on the status of victims of crime in criminal proceedings.

Since art. 2, emphasizes the obligation of States to ensure that victims have a real and appropriate role to play in the criminal law system and that they must be treated with due respect for their dignity and the recognition and observance of their rights in criminal proceedings is mandatory.

Among the most important rights regulated by the Framework Decision are the right to information (art. 4), the right to legal assistance (art. 6) and to the reimbursement of expenses incurred by criminal proceedings (art. 7), the right to protection (art. 8), the right to compensation (art. 9).

Thus, victims have the right to be informed from the first contact with the judiciary, in a language they understand, about the organizations they can turn to for support, the type of assistance they can receive, the possibility to file a complaint, the stages of the criminal proceedings, the conditions under which they can obtain protection, counseling and legal assistance, compensation, including when the victim lives in another state. Once the criminal proceedings have been initiated, the victim has the right to be informed of their conduct and the outcome of his / her complaint, including the court's decision.

Although the need for victims who do not speak or understand the language in which criminal proceedings are conducted to have the right to translation and interpretation was emphasized, it was not regulated in the same way as for victims who can speak the respective country's language.

Instead, the need to protect victims involved in criminal proceedings was recognized, with states stipulating that they guarantee an appropriate level for both victims and their families, both in the face of possible retaliation by perpetrators and for the protection of privacy and of the privacy of the image of the victims or their family, including by avoiding contact with the accused before the courts, but also by forcing him to pay compensation.

The need for cooperation between Member States was also mentioned so that the victim could lodge a complaint in a state other than the one in which the crime was committed.

Special attention was paid to victim support and protection services, their purpose being to provide them with information, but also to support them during the procedures, including by accompanying them, but also by helping them after their completion.

At the same time, it was mentioned the need for all judicial bodies that come into contact with victims in criminal proceedings to benefit from specific training, focused on the needs of victims, so as to try as much as possible not to create conditions conducive to secondary victimization.

#### **4.2. Victims' rights covered by Directive 2012/29 / EU of the European Parliament and of the Council of 25 October 2012**

The first article of the Directive emphasized the purpose of its adoption, namely to ensure that victims of crime receive adequate information, support and protection in order to be able to participate in criminal proceedings, being treated with respect, care and professionalism, adapted in an individualized and non-discriminatory manner.

The analysis of the rights provided for in the Directive shows that it takes over a number of rights regulations in the same way as the Framework Decision, while with respect to others it offers extended protection, while also regulating some new rights.

The first category includes, for example, the right to legal assistance to victims in criminal proceedings, with Member States being obliged to ensure that they have access to it in accordance with their national law. Moreover, similar to the provisions of the Framework Decision, States must reimburse victims for expenses incurred in their

participation in proceedings, as well as for goods that have been, for example, stolen from them and which are not absolutely necessary for the ongoing proceedings.

In line with the Framework Decision, the Directive regulates the situation where the offence is committed in one Member State and the victim resides in another Member State, providing for the possibility for him to lodge a complaint with the judicial authorities of his State of residence.

Among the most important provisions are those contained in art. 18, The right to protection, which gives Member States the obligation to ensure measures to protect victims and their families, both against secondary and repeated victimization and against reprisals by defendants, but also against the risk of harm, including mental and dignity protection during the proceedings, as is the case of the submission of testimonies before the courts.

In this regard, it is expressly provided that conditions should be created to prevent victims and their families from interacting with accused persons during criminal proceedings, by even creating separate spaces where they can wait until their hearing by the judiciary.

In the second category, that of the rights for which there have been additions made by the Directive to the rules of the Framework Decision, the protection of victims in proceedings, by the authorities primarily, the right to privacy, the rights of victims with special needs and training practitioners who interact with them may be mentioned.

Thus, the Directive provides that in order to protect victims in criminal proceedings, their hearing should take place as soon as possible, but the number of hearings should be kept to a minimum and repeated only if absolutely necessary, as should medical examinations, and victims may be accompanied by a legal representative and a person of their choice. It also provides for the need to make victims aware of their rights, in order to reduce the risk of victimization and minimize the impact of crime.

At the same time, it is stipulated that Member States must ensure the protection of the right to privacy of victims and their family members, and with regard to child victims, Member States must take all measures to avoid the provision of information that would lead to their identification.

An important place is given to the protection of victims with special needs (such as victims of terrorism, organized crime, trafficking in human beings and minors, sexual violence, domestic violence, gender-based violence, etc.), first, through the authorities, states must identify victims, and following individualized assessments to identify their specific needs, taking into account the victim, but also the type and manner of committing the crime.

Along the same lines is the obligation for Member States to train in various forms specialists who interact with victims during criminal proceedings, whether they are criminal prosecution bodies or judges so that they can identify the needs of victims and be able to interact with them in a professional, impartial and respectful way.

The third category is that of rights in respect to which the Directive offers wider protection than the Framework Decision, including the right to receive information, the right to understand and to be understood, the right to interpretation and translation, as well as the right to review the solution of not initiating criminal proceedings.

Thus, the Directive stipulates that during criminal proceedings, communication with victims must be conducted in plain, accessible language, orally or in writing, and when necessary interpretation/translation must be provided, at least during hearings and with important legal instruments, so that victims can exercise their rights, including the right to challenge the quality of interpretation.

It also regulates the right of victims to receive information on the place and date of judicial proceedings, accusations against defendants and any decision, both conviction and non-prosecution for example, but at the same time, the victims are granted the right to not receive any information about a possible escape of the defendant, if they do not want it.

In the same context, the Directive introduces a new law, namely that, although they are not obliged to prosecute any crime, it must be ensured that the victim can challenge a possible solution of not initiating criminal proceedings in the case of high-profile offences. . This right only concerns this type of solution, and it is not the one given by the courts.

On the other hand, from the analysis of the provisions of the Directive, it can be mentioned that it does not give victims the possibility to initiate criminal proceedings, although some national laws allow it, and does not apply in any way to victims of legal persons, but only to natural persons.

## **5. European Perspectives and Strategies to Increase the Protection of Victims in European Proceedings**

As this paper shows, the rights of victims in criminal proceedings and the need to protect them are among the main goals of the European Union.

As the implementation of the Directive was not carried out within the deadline set and completed by all states, but also due to the need to increase the protection of victims, the first Strategy on Victims' Rights was drawn up at the EU level, applicable during the years 2020-2025 and made public on 20.06.2020.

The presentation emphasized the need to make it possible for all victims of crime, millions of people at the EU level each year, to have access to justice, regardless of the state in which the crime was committed, and to have permanent access to assistance and protection in criminal proceedings. It was emphasized that recent Commission reports on the transposition of the Victims' Rights Directive and the European Protection Order Directive have shown that further progress is needed for these instruments to reach their full potential, as most Member States have not yet transposed all minimum standards on victims' rights.

The strategy aims to provide a framework for the Commission's work in the period 2020-2025 on the rights and protection of victims of crime, with the European Union aiming to prevent and combat in particular gender-based violence, racial, anti-Semitic, homophobic or transphobic hatred and to provide assistance and protection to victims of such crimes.

The strategy addresses the issue of victims' rights in two main directions: on the one hand, it aims to strengthen the capacity of victims of crime to act, and on the other



hand, to cooperate with the Member States in defending their rights.

To meet the two goals, five key priorities are proposed: effective communication with victims so that they report crimes; improving the assistance and protection provided to the most vulnerable of victims - risk categories; facilitating victims' access to compensation; strengthening cooperation and coordination among all relevant actors; strengthening the international dimension of victims' rights.

The emergence of this Strategy was also determined by the new realities of today's world, including those caused by the COVID-19 pandemic, which requires prompt and appropriate reactions from the authorities, as with the imposition of measures to limit the movement of people, there was an alarming increase of certain types of crimes, such as domestic violence, child sexual abuse, racist or xenophobic hate crimes.

Moreover, part of the lives of many people has moved online, which has led to an exponential increase in cybercrime offences, including online sex offences (including against minors), identity theft and property offences (online payments), security password theft, etc.), and their victims do not always have the necessary digital skills or do not know who to turn to for relevant assistance regarding their rights.

There is also currently an increased risk for victims of domestic violence, as they remain under the same roof as perpetrators and their access to assistance and protection is limited.

At a national level, it is important that all persons providing assistance and protection to victims: either judicial authorities (including police, prosecutor's offices or courts) or victim support services, medical staff, social services staff or detention centers are trained in such a way as to recognize the quality of their victims and to protect their rights.

At an international level, it is necessary to ensure coordination and cooperation at the level of the Member States, ensuring their cooperation in order to guarantee the victims' access to justice.

At the same time, the Commission will continue to monitor the implementation of the relevant rules at the European Union level, including the provisions of the Victims' Rights Directive.

It also stipulates the need for the European Commission to launch campaigns at the Union level to raise awareness of victims' rights and to promote the provision of specialized assistance and protection to victims with specific needs, to promote training activities for judicial authorities and law enforcement, but also for European funding for national victim support organizations, as well as the promotion of restorative justice services, including the provision of online support services and the declaration of victim support services as essential services, facilitating cooperation between Member States.

At the same time, Member States must ensure the full and correct implementation of the Victims' Rights Directive and other Union legislation on victims of certain crimes, launch national awareness-raising campaigns on victims' rights, but also support the civil society to strengthen victims' rights, including through European funding, to develop integrated and specific assistance services for the most vulnerable victims.

Emphasis is placed, at the same time, on the need to establish national strategies on victims' rights at Member State level, ensuring a coordinated and horizontal approach to

victims' rights, leading to more resilient societies with strong societal links, to prevent crime and manage its consequences for the victim.

Last but not least, for the protection of victims of crime at the Union level, the Commission will set up the "Victims' Rights Platform", which will bring together all relevant institutions regarding victims' rights, with the participation of the European Victims' Rights Network (ENVR), the European Union Network of National Contact Points for Compensation, the European Network of Equality Promoters (EQUINET), the Union Counter-Terrorism Coordinator, Eurojust, the European Union Agency for Fundamental Rights (FRA), the European Union Agency for Training in Equality Law Enforcement (CEPOL), the European Institute for Equal Opportunities for Women and Men (EIGE) and the civil society.

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