

LEGAL TRENDS IN THE PROTECTION OF VICTIMS IN ROMANIA

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Abstract: *In the pandemic context, the number of cases of violence, especially of domestic violence has increased. After the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards of rights, support and protection of victims of crime, the Romanian legislation on the matter has changed. So, Law no. 97/2018 regarding some measures to protect the victims of crime, Emergency Ordinance no.24/2019 for the amendment and completion of Law no. 211/2004 and others normative acts have been adopted to complete the legal framework. The author is trying to answer the question of whether these measures are sufficient to ensure a real protection for victims, even during periods of health crises?*

Key words: *Directive 2012/29/EU, victimization, victims' rights, protection of victims, legal trends*

1. About Directive 2012/29/EU

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards of rights, support and protection of victims of crime, replacing Council Framework Decision 2001/220/JHA on the Status of Victims in Criminal Proceedings, significantly strengthens the rights of victims and their family members to information, support and protection, as well as procedural rights in criminal proceedings. Also, the directive requires Member States to ensure that officials who are likely to come into contact with victims (regarding the needs of victims) are properly trained and encourage cooperation between Member States and national services to coordinate their actions on victims' rights. Other novelties of the Victims Directive as compared with the 2001 Decision are: also applicable to the victims' family members, individual approach to each victim, individual assessment to identify vulnerable victims and special protection measures, child sensitive approach, accessibility of information/communication, extended right to information (from the first contact

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throughout the criminal proceedings), stronger obligation to provide victim support; right to review decision not to prosecute. (Directive 2012/29/EU)

Consequently, together with the other European countries, Romania tried by the 16th November of 2015 (transposition deadline), to adapt its legislation to the minimum standards stipulated in the mentioned directive. It is structured into six thematic Chapters: General Provisions; Provision of Information and Support; Participation in Criminal Proceedings; Protection of Victims and Recognition of Victims with Specific Protection Needs; Other Provisions; and Final Provisions.

The core objective of this Directive is to deal with the victims' needs in an individual manner. So, in December 2013, on the European Commission's site an explanatory working paper related to the transposition and implementation of Directive 2012/29/EU was published. The purpose of that guidance document was to facilitate the effective and timely transposition of Directive 2012/29/EU by the European Union (EU) Member States that are bound by its provisions. This document is intended to assist the Member States to have a common understanding of the provisions contained in the Directive.

Knowing that the transposition and implementation of this Directive will be a complex and sometimes challenging process, the Directorate General Justice of the Commission gives its views and suggestions for each of the Directive's Articles. The recommended manner is to combine legislative, administrative and practical measures. The document contains references to 28 articles, but one of the most appreciated clarifications concerns the definitions contained in art.2 because it makes a lot of concept delimitations. For example, it defines a crime victim as "*a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State*" (Directive 29/12/EU), regardless of whether the offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship that exists between them.

The definition of "*victim*", according to the meaning of the Directive, also covers family members of the deceased victim, who have suffered harm because of the respective person's death which had been directly caused by a criminal offence. (Directive 2012/29/EU). Also, the concept of '*Family members*' refers to the spouse, the person who lives with the victim in a committed intimate relationship (i.e. same - or different-sex), in a joint household and on a stable and continuous basis, the relatives in the direct line of descent (i.e. parents and children), the siblings and dependants of the victim (i.e. other than dependant children).

Moreover, the criterion of *committed intimate relationship* is related to a joint household and to a stable and continuous basis which presupposes close emotional ties and financial interdependence between two persons (as if they were formally married). (European Commission, DG justice, December 2013)

However, every Member State must assess each Article of the Directive to determine the most suitable instrument of transposition for the different objectives set in the directive, considering for each its own criminal justice systems.

In January 2016 the infringement procedure was applied by the European Commission against Romania. Due to this measure, the Parliament adopted Law no. 52/2016 for

amending and supplementing Law no. 272/2004 on the protection and promotion of the rights of the child.

After the last deadline established for the transposition of the Directive into national law, on January 2019, the Romanian Parliament adopted the following laws:

- Law no. 97/2018 regarding some measures to protect the victims of crime
- Law no. 174/2018 regarding the modification and completion of Law no. 217/2003 for the prevention and combating of domestic violence

Also, the Emergency Ordinance no.24/2019 completes the legal framework in this field.

2. Chronological Presentation of the Romanian Legal Framework

We will start the presentation with provisions from the Criminal Procedure Code related to the injured person/victim, because it is important to differentiate between these two concepts.

Therefore, Law no. 135/2010 on the Criminal Procedure Code (in force since February 1, 2014) used 2 terms: victim and injured person. According to Article 79, an injured person is a person who has suffered a physical, material or moral injury through the criminal act. (CPC)

Therefore, the injured person is the natural or moral person who suffered through the criminal act a physical, moral or material injury, *only* if he participates in the criminal trial/process/proceedings. If he had accepted to be a party in the criminal trial, he became a special passive subject of the crime, but if he is not willing to, he could be called as a witness in the same trial if the judicial body decides that it is necessary. The Criminal Procedure Code also provides, in art. 81, the rights of the injured person. In the criminal case, the injured person has the following rights:

- a) the right to be informed about their rights;
- b) the right to propose the administration of evidence by the judicial bodies, to raise exceptions and draw conclusions;
- c) the right to make any other requests regarding the settlement of the criminal side of the case;
- d) the right to be informed, within a reasonable time, about the status of the criminal prosecution, at his express request, provided he indicates an address on the territory of Romania, e) the right to consult the file, according to the law;
- f) the right to be heard;
- g) the right to ask questions to the defendant, witnesses and experts;
- g¹) the right to benefit free of charge of an interpreter when he does not understand, does not speak well or cannot communicate in Romanian. In the cases, urgent technical means of communication may be used, if it is considered that this is necessary and does not prevent the exercise of the rights of the injured person;
- g²) the right to benefit from translation into a language he understands, when he does not understand the Romanian language;
- h) the right to be assisted by a lawyer or represented;
- i) the right to call a mediator, in the cases allowed by law;

j) other rights provided by law.

Some of these provisions are in accordance with the Directive.

Another law which completes the regulation on the victim's status is Law no. 255/2013 regarding the implementation of the Criminal Procedure Code (in force also since February 1, 2014- site)

For example, art.48 changes the art. 24 from Law no. 678/2001 regarding the prevention and combating of human trafficking, amended with the following content:

"(1) The court hearings in the cases regarding the crime of trafficking in minors, provided by art. 211 of the Criminal Code, and of child pornography, provided by art. 374 of the Criminal Code, are unpublished. The parties, their representatives, lawyers, representatives of the National Agency against Trafficking in Persons, as well as other persons whose presence is deemed necessary by the court, may attend the meetings.

(2) In the cases regarding the offenses mentioned in chap. VII of Title I of the special part of the Criminal Code and in the cases regarding the offenses to facilitate the illegal stay in Romania, provided by art. 264 of the Criminal Code, and of child pornography, provided by art. 374 of the Criminal Code, the obedience of the minor who has not reached the age of 14 years is done in the presence of at least one of the parents or another legal representative, while the appointment of a psychologist, respectively of a representative of the General Direction of social assistance and child protection."

From the same Law no.678/2001, art.26 was changed with the following content:

"(1) The victims of the crimes of trafficking in persons are granted special protection and assistance, physical, legal and social.

(2) The privacy and identity of the victims of human trafficking offenses are protected.

(3) Victims of human trafficking offenses have the right to their physical, psychological and social recovery.

(4) Minor victims of human trafficking offenses are granted special protection and assistance in relation to their age.

(5) Women victims of the crime of trafficking in persons, as well as those who are at high risk of becoming victims of these crimes, are given specific social protection and assistance. "

A special law is Law no. 97/2018 regarding some measures to protect the victims of crime. Since December 2018, police officers may issue provisional protective orders, for five days, in cases of domestic violence, according to the following procedure: the call is received at the emergency number 112, then a police crew goes to the residence where violence was reported and discusses with the victim.

During the intervention, the police can take measures to separate the victim from the aggressor and eliminate the immediate risks. Then, the police officers inform the victims and aggressors of what rights and obligations they have, and also about the measures that will be taken after the short assessment of the situation at the residence. Thus, one police officer will complete a risk assessment form which contains 21 questions. If the answer is **yes** to two of the first seven questions, the policeman will qualify the situation as presenting an **"imminent risk for the victim"** and will be able to release the provisional protection order.

Another law is Law no. 174/2018 regarding the modification and completion of Law no. 217/2003 on the prevention and combating of domestic violence. (Site) We selected the changes concerning essential articles as follows:

Art. 3. -....., domestic violence means any inaction or intentional action of physical, sexual, psychological, economic, social or spiritual violence that occurs in the family or domestic environment or between spouses or former spouses, as well as between current ones or former partners, regardless of whether the aggressor lives or has lived with the victim.

Art. 4. - Domestic violence manifests itself in the following forms:

b) **psychological violence** - imposing personal will or control, provoking states of tension and psychological suffering in any way and by any means, by verbal threat or in any other way, blackmail, demonstrative violence on objects and animals, ostentatious display of weapons, neglect, control of personal life, acts of jealousy, coercion of any kind, lawless pursuit, supervision of the home, workplace or other places frequented by the victim, making phone calls or other types of communications by means of transmission to distance, which by frequency, content or moment they are issued creates fears, as well as other actions with similar effect;

c) **physical violence** - bodily harm or health by striking, tearing, tugging, hair pulling, pricking, cutting, burning, strangling, biting, in any form and intensity, including masking as a result of accidents, by poisoning, intoxication, as well as other actions with similar effect, submission to exhausting physical efforts or activities with high degree of risk to life or health and bodily integrity, other than those from the letter. e);.

f) **social violence** - imposing the isolation of the family, community and friends, the prohibition to attend the educational institution or the workplace, the prohibition / limitation of professional achievement, the imposition of isolation, including in the common dwelling, the deprivation of access to the living space, the possession of identity documents, intentional deprivation of access to information, as well as other actions with similar effect;

g) **spiritual violence** - underestimating or diminishing the importance of satisfying the moral-spiritual needs by prohibiting, limiting, ridiculing, penalizing the aspirations of family members, access to cultural, ethnic, linguistic or religious values, prohibiting the right to speak in the mother tongue and to teach children to speak in their mother tongue, imposing adherence to unacceptable spiritual and religious beliefs and practices, as well as other actions with similar effect or similar repercussions. "

Also, art. 5, letters a) -c) have been amended and now they have the following content:

a) the ascendants and descendants, their brothers and sisters, their spouses and their children, as well as the persons who became relatives by adoption, according to the law;

b) the spouse and / or the ex-spouse / former spouse; siblings, parents and children from other relationships of the spouse or former spouse;

c) persons who have established relationships similar to those of spouses or parents and children, current or former partners, whether or not they lived with the aggressor, ascendants and descendants of the partner / partner, as well as their brothers and sisters;

Art. 5, paragraph 2 is inserted, with the following content:

(2) For the purposes of this law, the victim is understood to be the natural person who is subjected to one or more forms of violence provided for in article 4, including the witnesses to these forms of violence.

We believe that the definition of the victim is more consistent, complete and closer to the recommendations of the Directive as is it now, in art.5.

In Article 7, after paragraph 2, five new paragraphs, paragraphs 3 to 7 were inserted, with the following content:

(3) The central and local public administration authorities responsible for preventing and combating domestic violence have the obligation to collect relevant statistical data, disaggregated and at regular intervals on cases of domestic violence. These data are collected in order to monitor the functioning of social services for victims, as well as for the study of the causes and effects of domestic violence and are centralized by the National Agency for Equal Opportunities between Women and Men, which has the obligation to carry out a national and annual study by counties on domestic violence.

The last paragraph of this law admits that this law partially transposes the provisions of art. 9 para. (1) lit. b) and c) and par. (3) lit. a) and b) of Directive 2012/29/EU of the European Parliament and the Council.

In the end of the legal framework outline, The Emergency Ordinance no. 24/2019 for the amendment and completion of Law no.211/2004 on some measures to ensure the protection of victims of crime , as well as other normative acts (site) explicitly announce that the Romanian legislation must also transpose the last articles from the Directive, namely art.8 – Right to access victim support services, art.9- Support from victim support services, art.22- Individual assessment of victims to identify specific protection needs.

The title of the law was amended and it has the following content: "*Law on some measures to ensure information, support and protection of victims of crime,*"

After Article 3, six new paragraphs have been inserted, with the following content (site Emergency Ordinance no. 24/2019):

(1) In order to provide support and protection services for crime victims, in the organizational structure of each general directorate, a compartment is established to support crime victims, the structure in which at least three specialists will function, respectively: social worker, psychologist, legal counselor.

(2) The compartment provided in par. (1) is established by reorganization, within the limit of the number of positions currently approved and provided that the expenditure ceiling, including the personnel ones, approved by the budget for 2019 is included.

(3) In the case of children victims of the violence, the evaluation and the provision of the support and protection services provided in the present law is made by the specialized departments of intervention in situations of abuse, neglect, trafficking, migration and repatriation within the general direction, according to Law no.272/2004 regarding the protection and promotion of the rights of the child, republished, with the subsequent modifications and completions, and the annex no. 1 to the Government Decision no. 49/2011 for the approval of the Framework Methodology regarding the prevention and intervention in the multidisciplinary team and in the network in

situations of violence against the child and domestic violence and of the Methodology of multidisciplinary and interinstitutional intervention regarding the children exploited and at risk of exploitation through work, children victims of human trafficking, as well as Romanian migrant children victims of other forms of violence on the territory of other states.

(4) In the case of victims of domestic violence, the support and protection services provided in this law are provided by the specialized institutions according to Law no. 217/2003 for the prevention and combating of domestic violence, republished, with subsequent amendments and completions.

(5) In the case of victims of human trafficking, identification, referral, assistance and protection are also provided by specialized institutions according to Law no. 678/2001 regarding the prevention and combating of human trafficking, with subsequent amendments and completions, and the National Mechanism for identifying and referring victims of human trafficking.

(6) Within the public services of social assistance from the level of the municipalities, the cities, the communes can set up the Service for Supporting Victims of Offenses only if the number of requests justifies the existence of such a service on their administrative-territorial radius.

(7) The support and protection services provided to the victim of a crime may also be provided by private providers of social services.

(8) The provisions of art. 2 also applies to the social service providers provided in par. (3) - (6).

(9) The services provided in par. (1) and (3) - (7) carry out their activity in compliance with the legal provisions regarding the protection of personal data.

3. Conclusion

As can be seen, the objective of incorporating the provisions of the Directive into national law has been achieved in stages, close to the deadline.

The legislation regarding the rights and protection of victims is now generous, so, theoretically the legal framework is ample and established.

Although, some support services have been renamed, others established, but they are underfunded. During the pandemic, many NGOs disappeared for various reasons.

From the academic environment, a deep involvement is required in the following directions:

- to set up the Romanian Society of Victimology, with three branches in the country with a related Journal/site/ departments;
- to organize an annual conference dedicated to *Victimology, victimization, victims in Romania*;
- to publish two volumes resulting from each edition of the national conference with articles, one in Romanian, another in English.

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