

PROTECTION OF VICTIMS OF CRIMES IN ROMANIA: COMPLIANCE WITH THE LEGAL PROVISIONS OF THE EUROPEAN UNION

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Abstract: *Criminality is a violation of the individual rights of victims and victims of crime should be recognized and treated with respect, care and professionalism, without being discriminated against. Victims of crimes should be protected against secondary and repeated victimization, intimidation and revenge, receive adequate support in order to facilitate their recovery and have adequate access to justice. Child victims must be supported taking into account their ability to form their own opinions. States should ensure that victims with disabilities have the opportunity to enjoy their rights in full measure, as well as with other citizens, including by facilitating access to the premises where criminal proceedings take place and access to information. The Romanian state ensures, at legislative level, specialized services to victims of crime, taking into account the legal provisions adopted at the European Union level, the national legislation being convergent with the European one, but also presenting specific particularities.*

Key words: *victims of crime, individual rights, European Union*

1. Introduction

Through Chapter III of the Treaty on the Functioning of the European Union (TFEU), entitled "Judicial Cooperation in Civil Matters", the EU Member States proposed themselves to adopt measures to draw near the laws, regulations and administrative provisions of the Member States. According to Article 82 para. (2) of the TFEU, "to the extent that it is required for facilitating the mutual recognition of judgments and judicial decisions, as well as for the police and judicial cooperation in cross-border criminal matters, the European Parliament and the Council, acting by directives in accordance with the ordinary legislative procedure, may lay down minimum rules. These minimum rules take into account the differences between legal traditions and systems of law of the Member States. These relate to: a) the mutual admissibility of evidence between

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Member States; b) the rights of persons in criminal proceedings; c) the rights of victims of criminality; d) other special elements of the criminal procedure which the Council has previously identified through a decision; for the adoption of this Decision, the Council will act unanimously after getting the approval of the European Parliament. The adoption of minimum rules (...) shall not prevent Member States from maintaining or adopting a higher level of protection of persons. "

2. Protection of the Victims of Crime According to the Rules Adopted by the European Union

Therefore, the European Union committed to protecting victims of crime and setting minimum standards in this regard. Within this step, the Council of the European Union adopted Framework Decision 2001/220/JHA of 15 March 2001 concerning the status of victims within criminal proceedings, Framework Decision 2002/629 /JHA/ of 19 July 2002 on combating human trafficking, Directive 2004/80/EC of the EU Council of 29 April 2004 on compensation to crime victims, and during its meeting on 10-11 December 2009, adopted the Stockholm Program - an open and secure Europe attending on citizens and protecting them. Member States were invited to examine the manners to improve legislation and practical measures for supporting the protection of victims, with priority given to support and recognition provided for all victims. In 2009, the European Parliament also adopted its Resolution of 26 November on the elimination of violence against women.

During 2011, at EU level there have been adopted a number of documents that underline the need to protect victims of crime, and in particular vulnerable people. Thus, the European Parliament adopted the Resolution of 5 April 2011 on the priorities and structure of a new framework for EU policy to combat violence against women. The European Union Council adopted its Resolution of 10 June 2011 concerning a roadmap for strengthening the rights and protection of victims, particularly within the criminal proceedings. And in the same year the European Parliament and the EU Council adopted 3 important directives in this field: Directive 2011/36/EU of 5 April 2011 on preventing and combating human trafficking and protecting its victims, Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse on children, sexual exploitation of children and child pornography and Directive 2011/99/EU of 13 December 2011 on the European protection order.

In 2012, the Council of the European Union and the European Parliament adopted Directive 2012/29/EU laying down minimum rules on the rights, support and protection of victims of crime and replacing the Council Framework Decision 2001/220/JHA. According to this document, crime is a violation of the individual rights of victims. As a result, "victims of crime should be recognized and treated with respect, attention and professionalism, without being discriminated against in any way, on any grounds such as race, color, ethnic or social origin, genetic traits, language, religion or faith, political or any other opinion, membership in a national minority, goods held, birth, disability, age, gender, gender identity and how they express their gender, sexual orientation, their status from the residence or health point of view. "

This directive sets the **minimum rules with regard to the rights, support and protection of the victims of crime**, and Member States may extend these rules in order to provide a higher level of protection. Certain categories of vulnerable people, who need special protection, are listed separately:

- Child-victims should be considered and treated as full beneficiaries of the rights provided by the Directive and they should be allowed to exercise their rights in such a way as to be taken into account their ability to form their own opinions.
- Member States should guarantee that victims with disabilities have the opportunity to enjoy to the full the rights provided in the Directive, in the same way as other citizens, including by enabling access to the premises where criminal proceedings take place and access to information.
- victims of terrorism may require special attention, support and protection, taking into account the specific nature of the crime committed against them.
- Women-victims of gender-based violence and their children often need special support and protection due to the high risk of secondary and repeated victimization, the risk of intimidation or revenge associated with such violence.
- victims of violences caused by close relationships might need special measures of protection; women are disproportionately affected by this type of violence, and the situation can be more serious if the woman is dependent on the perpetrator economically, socially or in terms of her right of residence.
- family members of a person whose death was directly caused by a crime could be harmed as a result of the crime, are indirect victims of the crime, therefore, they should also benefit from protection.

Member States are encouraged to set up appropriate conditions in order to enable *victims to be referred to victim support services*, and repeated referrals should be avoided.

Restorative justice services can prove to be extremely beneficial to the victim, but require protection barriers in order for secondary and repeated victimization, as well as intimidation and revenge to be prevented.

Participation in criminal proceedings should not incur costs for victims. Member States should reimburse victims for the costs necessary in connection with their participation in criminal proceedings. Member States should be able to impose, within the national law, conditions for the reimbursement of expenses, such as deadlines for requiring reimbursement, lump sums for subsistence and travel costs and maximum daily amounts for loss of income.

Recoverable goods that are seized during criminal proceedings should be returned to the victim of the crime as soon as possible, apart from exceptional circumstances, such as a dispute concerning ownership, possession of the property or if the goods in question are illegal.

There should be available *measures to protect the safety and dignity of victims and their family members against secondary and repeated victimization, as well as intimidation and revenge*, such as cessation actions or temporary protection or restriction orders.

Protecting the private life of the victim can be an important means of avoiding

secondary and repeated victimization, as well as intimidation and revenge, and can be achieved through a number of measures, including not disclosing or limiting the disclosure of information about the identity and address of the victim. This protection is particularly important for child victims, including the non-disclosure of the name of the child.

Any clerk involved in criminal proceedings who is likely to come into personal contact with a victim should be able to receive an appropriate initial and continuous training, at a level adequate to the contact with that victim, so that it can identify victims and their needs and to treat them in a respectful, considerate, professional and non-discriminatory manner. The persons likely to be involved in the individual evaluation for identifying the specific protection needs of victims and to set the need for them to benefit from special protection measures should receive specific training with regard to the manner of carrying out such an evaluation. The Member States should provide such training for police and court employees. Moreover, the training should also be promoted for lawyers, prosecutors and judges, as well as for practitioners who provide victim support or restorative justice services. That obligation should include *training on specific services of victim support to which the victim should be directed* or specialized courses where their work is primarily for victims with special needs, as well as *adequate psychological training*, as the case may be.

For victims of crime to benefit from the rightful assistance, support and protection, *public services should work in a coordinated manner and should be involved in all administrative levels* - at Union level, as well as at national, regional and local level. The victims should be assisted in finding and contacting the competent authorities so as to avoid repeated referrals. Member States should consider developing "sole access points" or "sole counter" that approach the multiple needs of victims involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation.

On 24 June 2020, The European Commission has adopted the first **EU Strategy concerning the rights of the victims (for 2020-2025)**. The main goal of this strategy is to ensure that all victims of any crime, regardless of where in the EU or under what circumstances the crime took place, can fully rely on their rights. The strategy carries forth five key priorities: effective communication with victims and a safe environment for victims to report crimes; improving the support and protection of the most vulnerable victims; facilitating victims' access to compensation; strengthening cooperation and coordination among all relevant actors; strengthening the international dimension of victims' rights.

The Report from the Commission to the European Parliament and the Council on the transposition of the Victims' Rights Directive shows that **victims of crime still cannot fully exercise their rights in the EU**. The difficulties of victims in getting access to justice are mainly due to a lack of information and the fact that they do not benefit from sufficient assistance and protection. Victims are often likely to be the object of secondary victimization during criminal proceedings and when requiring compensation. It is even more difficult for people who are victims of crime while travelling abroad to have access to justice and compensation. For the most vulnerable victims, such as

victims of gender-based violence, child victims, victims with disabilities, aged victims, victims of crimes caused by hate, victims of terrorism or human trafficking, it is particularly difficult to experience a criminal trial and to deal with the consequences of the crime of which they were the victim.

Most Member States have not yet entirely transposed the minimum standards agreed upon in the EU rules regarding the victims' rights. The Commission has started 21 actions for finding the failure to fulfill obligations for the incomplete transposition of the Directive for the rights of the victims against the following countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, **Romania**, Slovakia, Slovenia and Sweden. The full implementation of these instruments requires the setting up of appropriate structures which would provide general and specialized assistance and protection services in accordance with the specific needs of victims (Report from the Commission to the European Parliament and the Council on the transposition of the Directive for the rights of the victims (COM(2020) 188 final)).

The main goal of strengthening the coordination and cooperation at EU and national level is to ensure that all relevant actors work together with a view to guaranteeing the access of victims to justice. Pursuant to the EU rules on the rights of the victims, all victims of the crime should benefit from recognition and should be treated in a respectful, professional, adapted to needs and non-discriminatory manner. At national level, it is essential to bring together all persons with whom victims get into contact. These include police authorities, judicial authorities, court staff, victim support services, practitioners and compensation authorities. In the case of victims, it is also essential to involve medical staff, teachers, social services staff or from detention centers. Moreover, the entire society should be involved in the steps for ensuring that all victims receive recognition, are respected and can exercise their rights to the full.

3. Protection of Victims of Crimes according to Romanian Legal Provisions

One of the first normative acts that sets rules through which victims of crime can be protected is Law 217/2003 for preventing and combating domestic violence. According to this law, "the Romanian state, through the competent authorities, develops and implements policies and programs aimed at preventing and combating domestic violence, as well as the *protection of victims of domestic violence*." The victim of domestic violence has the right to "respect for his/her personality, dignity and privacy, to be informed about the exercise of his/her rights, to special protection, adequate to his/her situation and needs, to services of guidance, rehabilitation, social reintegration, as well as free medical care and free legal assistance and advice".

In addition, the central and local public administration authorities have the obligation to ensure the exercise of the right to information of victims of domestic violence on institutions and non-governmental organizations that ensure psychological counseling or any other form of assistance and protection to the victim, depending on his/her needs, the criminal investigation body to which they can complain, the right to legal assistance and the institution where they can apply for the exercise of this right, the conditions and

procedure for granting free legal aid, the procedural rights of the injured party, the injured party and the civil party, the conditions and procedure for granting financial compensations by the state, according to the law, the measures that can be ordered by the provisional protection order and, as the case may be, by the protection order, the necessary steps for their issuance and the court proceedings.

By Law 211/2004 concerning certain measures for ensuring the information, support and protection of victims of crime, the measures of information, support and protection granted to all victims of crime are regulated. According to this normative act, "every person who is a victim of a crime has the right to be recognized as such from the time of identification, to be treated with respect, professionalism, to benefit from individualized protection and support, to get financial compensations and to restore his/her rights. The members of his/her family enjoy the same rights. The measures of information, support and protection, including the evaluation, are not conditioned by the introduction of a complaint before the criminal investigation bodies".

With a view to granting specialized services, in the organizational structure of each general directorate of social assistance and child protection, a department is set up to support victims of crime, a structure within which at least three specialists will work, respectively: social worker, psychologist, legal advisor.

In the case of **child victims of violence**, the evaluation and provision of support and protection services are performed by the specialized departments of intervention in situations of abuse, neglect, trafficking, migration and repatriation within the same institution, according to Law no. 272/2004 on the protection and promotion of children's rights, republished, with subsequent amendments and completions, and Annex no. 1 to the Government Decision no. 49/2011 for the approval of the Framework Methodology on the prevention and intervention in multidisciplinary and networked teams in situations of violence against children and domestic violence and the Methodology of multidisciplinary and interinstitutional intervention on children exploited and who are at risk of exploitation through work, child victims of human trafficking, as well as Romanian migrant children victims of other forms of violence on the territory of other states.

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

In the case of **victims of human trafficking**, identification, referral, assistance and protection are also ensured by specialized institutions according to Law no. 678/2001 on preventing and combating human trafficking, as subsequently amended and supplemented, and the National Mechanism for identifying and referring victims of human trafficking.

The judicial bodies, as well as any other state institutions that, in the exercise of their powers, come into contact with persons who are potential victims of crime, will inform these on the possibility of contacting the Service for Supporting Victims of Crime (SSVI), respectively social services departments and providers that have special competence to support victims (CSV), depending on the crime committed. For the purpose of providing

adequate support and protection measures, the Service for Supporting Victims of Crime, respectively the departments and providers of social services, evaluate each person who has been identified as a victim of a crime. With a view to avoiding secondary victimization, the victim evaluation is ensured as soon as possible from the time of identification, so that the number of statements, medical/psychological /social evaluations be reduced to a minimum. The institution that performed the evaluation report is under an obligation to make it available to the judicial bodies, upon their request, in copy, in accordance with the law, when the victim participates in the criminal process as a witness, injured person or civil party.

The Ministry of Justice and the Ministry of Administration and Interior, with the support of the Ministry of Communications and Information Technology, should ensure the functioning of a permanently available telephone line for informing the victims of crime.

By Order no. 173/2021 for the approval of the Methodology for multidisciplinary and inter-institutional evaluation and intervention in providing support and protection services for the victims of crime, it is pursued to “improve multidisciplinary and inter-institutional intervention in providing support and protection services for victims of crime, in order to ensure respect for their rights and the compliance with the general principles laid down by the law ”.

The informative materials regarding the functioning of CSVI/SSVI and the list of social service providers holding an operating license for CSVI/SSVI from the county / sector of Bucharest are published on the DGASPC website. The information materials concerning the services of support and protection for the victims of crimes, drafted in accordance with the minimum quality standards are communicated, through the care of social service providers, to the following public or private institutions/structures, from the administrative-territorial unit where the social service operates: police units; sanitary units and family practitioners' offices; educational units and institutions; social service providers; any other units which, by the nature of the activity carried out, may come into contact with victims of crime. The identification data of the social service providers holding an operating license for CSVI and SSVI are entered into the Single Electronic Register of Social Services, published on the website of the Ministry of Labor and Social Protection.

The Ministry of Internal Affairs, the Ministry of Justice, through the National Probation Directorate, the Ministry of Labor and Social Protection, the county councils, respectively the local councils of the sectors of Bucharest, through DGASPC, collaborate in the field of information and specialization of the personnel establishing direct links with crime victims, with regard to the new provisions for victims of crime.

4. Conclusions

Both at the European Union level and at the level of the Romanian state, the required legal framework to ensure the protection of victims of crime has been created. In Romania, the legislative framework has been gradually improved, the last document adopted in this regard being Order no. 173/2021 for the approval of the Methodology

for evaluation and multidisciplinary and inter-institutional intervention in providing support and protection services for the crime victims. This normative act is to be implemented by the institutions that have competences to that effect, institutions being at different administrative levels and with different subordination. The operation of a permanently available hotline for informing victims of crime should also be ensured.

Currently, on the website of the Ministry of Internal Affairs, in the *Public Information* section, *Useful* subsection, we find an uploaded document named *Useful information on the rights of the crime victims*. This document can also be found on some of the websites of the county police inspectorates.

At the level of the General Directorates of Social Assistance and Child Protection, **departments to provide specialized services to victims of crime** have been set up, but the direction and information of victims of crime by the institutions that get into contact with them is still taking place at a minimum level, the existence of these services not being sufficiently known both to the victims and to the institutions that should inform and redirect the victims of crime.

The Code of Criminal Procedure of Romania comprises provisions regarding the **hearing of the injured person and the measures that may be ordered by the judicial bodies in order to protect them**. During the criminal prosecution, the hearing of the person will be recorded by technical audio or audio-video means when the criminal investigation body deems it necessary or when the person has expressly requested it and the recording is possible.

In the case of injured persons for whom it has been established, in accordance with the law, the existence of special protection needs, the judicial body may order one or more of the following measures: **hearing in premises designed or adapted for this purpose**; hearing them through or in the presence of a psychologist or other victim counseling specialist. Regarding the difficulties found in practice, 2 of the prosecutor's offices that provided information showed the **lack of a logistical base** (a room specially designed for hearing victims, insufficient audio/video recordings at the level of criminal prosecution bodies), but also the reluctance of victims to the real efficiency of the protection measures that could be ordered (Report on the rights of victims of crime in Romania, 2020).

For victims of certain categories of crime, the **possibility to provide free legal assistance upon request** is provided. In order to request free legal assistance, the victim must have notified the criminal investigation bodies or the court within 60 days from the date of committing the crime (in the case of the spouse, children, dependents of the deceased person, this time is calculated from the date on which the victim became aware of the commission of the crime).

The request for free legal assistance will be lodged to the court in whose district the victim resides and will be settled by two judges within the Commission for granting financial compensation to victims of crimes, by conclusion, within 15 days from the date of filing. During 2019, out of 20 courts that were asked about the submission of these requests, only 3 courts had registered 8 requests, and in 6 of them it was approved to provide free legal assistance to victims (Report on the rights of victims of crime in Romania, 2020).

The protection measure consisting in the **granting by the state of the financial compensations to the victims of certain crimes** targets only certain categories of victims, the same categories of victims for which free legal assistance is granted whether the crime was committed on the Romanian territory and the victim is a Romanian or foreign citizen who lives legally in Romania.

Law No. 211/2004 also sets the categories of damages incurred by committing the crime for which the victim is granted financial compensation, that is: hospitalization expenses and other categories of medical expenses incurred by the victim; material damages resulting from the destruction, degradation or bringing to a state of disuse of the victim's property or from its dispossession by committing the crime; the gains that the victim is deprived of from committing the crime; funeral expenses; the keeping that the victim lacks due to the crime commission.

As concerns the **continuous professional training** of judges, prosecutors, lawyers, but also of the specialized auxiliary staff of the courts and prosecutor's offices, very few magistrates participated, between January 2019 and December 2019, in seminars, conferences, trainings which had as their theme the empathic communication with the victim, the avoidance of re-traumatizing, the legal protection of the child's rights. (Report on the rights of victims of crime in Romania, 2020).

I found in this paper the **convergence of the legal provisions of the European Union and of the Romanian state in the area of the victims of crime protection**. But the implementation of these provisions must be accelerated, by designing working procedures among the institutions that have competences in this field and by training and specializing the staff of these institutions, for an efficient collaboration to the benefit of victims of crime.

There are still many steps to be taken to create a network of professionals who collaborate to ensure real protection for victims of crime, in order to create the procedures and links required for the legal provisions in force at the moment to be known by victims and professionals in various institutions which can be involved in assessing their situation and implemented.

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