



Victims' rights in EU Legislation

- Directive 2012/29/EU –**
- Mutual recognition of protection orders -**
- Compensation to victims of crime -**

EXPLANATORY SCREENING FOR SERBIA
Analytical examination of the acquis

Chapter 23 Judiciary and fundamental rights

26 September 2013

Why Rights of crime victims in EU law?

- **ECHR** : *need to safeguard victims' rights and their proper place in criminal proceedings and required operational measures to protect victims with due respect to exercise of rights of defence*
- **EU approach**: focus on victims' individual needs and getting the right balance between victims and suspects / accused persons

= **The "Victims' Package"** and **Budapest Roadmap** in 2011



Victims Rights - EU Legislation:

- (I) **Victims** Directive 2012/29/EU
- (II) Mutual recognition of **protection orders**
- (III) **Compensation** Directive 2004/80/EC



- Scope:
 - Natural persons (not legal persons)
 - Crimes committed in EU and criminal proceedings taking place in the EU (for extra-territorial offences)
 - Irrespective of victims' residence status
 - Both victims and their family members

- Ensure minimum rights for all victims, all crimes
- Recognise special needs of *vulnerable victims*
- Ensure clear, concrete obligations
- Directive is just one step – practical measures and further action required (Budapest Roadmap)

Why a new instrument on victims' rights ? Can the EU legislate?

- Failure of 2001 Framework Decision on the standing of victims in criminal proceedings
 - **No Member State has fully implemented the Articles**
 - **Commission no enforcement powers to ensure compliance**
- Lisbon Treaty – Legal basis to develop **minimum standards** on victims' rights to facilitate judicial cooperation
- Minimum standards increase the trust between Member States in the fairness of criminal justice systems

Victims Directive 2012/29/EU – Approach

- Treat victims as individuals
- Meet the needs of victims:
 - Respect and recognition
 - Protection
 - Support
 - Access to justice
 - Compensation and restoration

Victims Directive - Content

- **32 Articles (Art. 1-26 operational)**
- **Art. 1 - Objectives**
 - Ensure that crime victims receive appropriate information, support and protection and are able to participate in criminal proceedings
 - MS to ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner in all contacts with competent authorities/services
 - Child sensitive approach

Victims Directive - Content

- **Art. 2 - Definitions**

- "Victim" is a natural person who has suffered harm directly caused by a criminal offence, and family members of deceased victims
- "Family members" include also non-married partners
- Right to limit the number of and prioritise among family members

Victims Directive - Content

- **Art. 3 to Art. 7 - Rights related to information**
 - Right to understand and be understood – interpretation and translation
 - Right to get written acknowledgement of complaint
 - Right to receive a range of information from first contact with competent authorities
 - Right to receive information about victim's case throughout criminal proceedings



Victims Directive – Content

Art. 3 Right to understand and be understood + Art. 7 Right to interpretation and translation

- Information in simple and accessible language from the first contact with authority, in written or orally
- “Obligation of result” in context of the proceedings, accordingly with their procedural role - if essential to exercise their rights
- **Interpretation** , upon request, during investigation – in police questioning and judicial phase - in hearings
- Right to challenge decision on interpretation/translation
- Right to be accompanied by person of choice



Victims Directive - Content

Art. 4 Right to receive a range of information

- instrumental to exercise all rights granted

- From first contact , without delay
- About how to make complaint and their role in the proceedings incl. remedies
- What is available support, protection measures, restorative justice services
- How to claim legal aid/advice, compensation, interpretation and translation, reimbursement of costs



Victims Directive - Content

Art. 5 : Right to receive written acknowledgment of the complaint -

- basic elements of the offence: type of crime, time and place, any damage and harm it caused
- formal elements: file number, time and place of reporting crime, contact details for communication
- Possible also upon delayed reporting
- Linguistic assistance in reporting and free of charge translation of the document



Victims Directive - Content

Art. 6 Right to receive information about their case

- To be *notified* without delay :
 - decision to initiate or to end investigation or not to prosecute
 - time , place of the trial and nature of charges
 - release or escape of the offender
- Further information (state of play, final judgment) - with respect to victim's procedural role
- Obligation to state reasons and respect for victims' autonomy



Victims Directive - Content

Art. 10-17 Rights related to participation in criminal proceedings

- Right to be heard, to get reimbursement, legal aid, recovery of property and compensation
- **Safeguards** for restorative justice processes
- Victims residents in another MS– **right to report offence in country of their choice** (of offence or residence) + mechanism for transmission and hearings
- **Right to review** a decision not to prosecute

Victims Directive - Content

- **Art. 18-21 – Rights related to protection**

Range of measures including physical protection to protect victims and family members from secondary and repeat victimisation, intimidation and retaliation:

- Avoiding contact with offender - separate waiting areas in new courts
- Safeguards **when interviewing victim during investigations** : no delayed, unnecessary and excessive interviews or medical examinations + right to be accompanied
- Protection of privacy, personal integrity and data

Victims Directive - Content

Art. 22-24 Recognition of victims with specific protection needs

- Individual assessment to determine who would need **specific protection and measures in the course of proceedings** due to personal vulnerability
- Criteria: personal characteristics, type or nature of the crime and circumstances of the crime
- Children always presumed to be vulnerable
- Particular attention given some categories of victims
- Range of special measures to protect such victims during criminal proceedings

Challenge : gather and disseminate best practices how to best do "individual assesment"

Victims Directive - Content

Art. 25 – Training for the practitioners

General and specialist **awareness training on victims' needs** enable them to recognise these needs and to deal with victims in impartial, respectful, professional manner

- ***compulsory* for police officers and court staff**
- *to be available* for judges, prosecutors and lawyers
- *to be encouraged* for victim support and restorative justice services

Victims Directive compared to previous instrument - 2001 Framework Decision?

- Legally binding and enforceable !
- NEW: Applies also to victims' family members
- Accessibility of information & communications
- **Extended list of information**
- Stronger obligation to provide victim support
- NEW: Right to review decision not to prosecute
- **Individual assessment** to identify vulnerable victims and special protection measures
- Child friendly justice, including special protection measures
- **Training of practitioners**

- BUT some key rights limited to victims with **formal role!**



II. EU Legislation on Protection measures (PM)

- **May help** when offender intimidates or threatens to (re)assault the victim
- generally issued by judicial authorities, but also by the police
- "*non-facere*" - require the offender "not to do"
- In **criminal matters** - usually after the trial, in addition to or instead of a regular penalty
- In **civil matters** - usually before the trial, less heavy in evidence

Why EU legislation on cross – border protection measures?

- PM exist in all Member States (MS) but are valid in the territory of one State ...
- Differences in qualification and admission of evidence – victim may not receive the new PM in another MS

EU response: no harmonization, but **mutual recognition** – measure of 1^oMS is transmitted and recognized in the another MS

EU Legislation cover measures irrespective of their legal nature

- If original protection measure is **criminal** - the act/conduct is qualified as criminal and "the element of criminal procedure" appears in the adoption of PM - **"EPO Criminal"** applies (**Directive 2011/99/EU on the European Protection Order**)
- If original protection measure is **civil = EPO Civil** applies (**Regulation (EU) 606/2013 on mutual recognition of protection measures in civil matters**)

Directive EPO Criminal and Regulation EPO Civil Comparison/1 What measures are recognised?

- List of measures: exhaustive, **three main types** that cover most of the people at risk. Applies to combination of prohibitions and regulations:

(1) to **enter** the place where the victim resides, works, studies or visits regularly;

(2) to **contact**, by any means, with the victim

(3) to **approach** the victim closer than a certain distance

Comparison/2 Measures issued by which authority?

- **Regulation EPO civil** : PM issued by *judicial* and *administrative* authorities (excluding police) can be certified to circulate in the EU if its 1. *impartiality* 2. *possibility of appeal to a judicial authority* are guaranteed
- **Directive EPO Criminal** : judicial and *equivalent* authorities



Comparison/3 What mechanism of mutual recognition?

- Special feature of EPO Criminal: Recognition "in 3 steps" + Role of "adaptation" (Articles 9 and 11):
 1. First MS adopts the original protective measure
 2. It issues the document : **European Protection Order** and sends it to second MS(of execution)
 3. Second MS does not apply the measure as received but **adopts a new measure** corresponding "*to the highest degree possible*" to the original measure = It provides the victim with a measure **available in place under its own national legislation**, should it be criminal, civil or administrative ...
- Special feature of EPO civil – **recognition is limited in time to 12 months**



Comparison/4 What mechanism of mutual recognition?

No appeal against the issuing of *certificate* or *European Protection Order (EPO)*

No review of substance of original measure in second MS

Grounds for refusal of recognition:

Few in EPO Civil Regulation (just *public order* and *irreconcilability*), but many in EPO Criminal Directive including requirement of *double criminality*

Comparison/5 And what about sanctions?

- **Directive EPO Criminal**: if offender violates PM adopted in second MS, sanctions are possible only if this is provided by second MS in similar situation
- If no sanction available in second MS – obligation to report violation to first MS , possibility of sanctions there
- **Regulation EPO civil** : silent on sanctions (due to legal base) but obligation *to give full effect* to the protective measure



Comparison/6 And what transmission mechanism?

Directive EPO Criminal – direct contact between authorities or sending via central authority

Regulation EPO civil – quick, simple and direct mechanism of circulation for PM by a *certificate*: victim brings the certificate to second MS and decides whether or not use it there

Challenges:

Effective and timely transposition in all MS:

Victims' Directive :16 November 2015

EPO Criminal :11 January 2015

EPO Civil :11 January 2015 (direct effect)



III. EU legislation on compensation to victims

Compensation: Crime victims should be entitled to fair and appropriate compensation for the injuries they have suffered, regardless of place of the crime (in the EU)

EU response - Directive 2004/80/EC on compensation to crime victims:

- obligation to set up **national compensation scheme for victims of violent intentional crime** committed in the MS territories
- access to compensation for victims in **cross-border situations**

Finalised study on new initiative on compensation



European
Commission

Thank you!