

## TOWARDS COHERENT EUROPEAN CRIME VICTIMS POLICIES AND PRACTICES

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**Abstract:** *This study explores the latest developments on the European scale of the policies and practices towards victims of crime. Due to many economic and political factors a lot of people are in movement and exposed to the risk of becoming victims of crime. During the last decade the statistics already records enhanced victimization of the global European society. These have provoked numerous legislative actions and practical initiatives in order to ensure safety, to prevent falling victims to crime and to protect better victim's rights and needs. The European Protection Order Directive, Victims' Directive and Convention against domestic violence, are among the most advanced legal acts worldwide. However, it is observed that their implementation in Europe is asymmetric and sometimes problematic. This paper explores the role of the national governments and specialized agencies and mainly the deficits in their activities leading to the non-usage of victims of all the existing opportunities. The newest supra-national acts aiming at the acceleration of transposition and ratification of these important for the building of victim-friendly environment documents, are discussed. Practical recommendations for a more effective victim protection are developed.*

**Keywords:** crime victim, European Protection Order, violence against women, minimum standards, support, rights

### 1. Background

During the last decade of the European Union (EU) policy, there is a clear tendency of commitment to the protection of victims of crime. Despite the fact that previously significant separate acts have been adopted within the Union, the true boom came in 2011 when the European Commission announced the development and forthcoming adoption of the so-called “Victims Package”, which included a number of important tools.

In its resolution of 10 June 2011, on the Roadmap for Strengthening the Rights and Protection of Victims of Crime, in particular in the framework of criminal

proceedings[1], the Council of the EU states that victims' rights are high on the agenda and action ought to be initiated at the level of the Union in order to provide effective protection. The EU had already adopted the Roadmap for the rights of the accused and there was the obvious need to take adequate measures in relation to the victims in order to put an end to the practice of paying more attention to the perpetrator in the highly victimized European society.

The Roadmap for victims provided for several groups of measures: adoption of a specific Victims' Directive, a Regulation on the mutual recognition of protection measures in civil matters, review of some

existing documents, etc.

Over the years, the European Union has consistently implemented these goals and has taken appropriate action.

## **2. The new EU instruments**

Firstly, *Directive 2011/99/EU of the European Parliament and the Council on the European Protection Order*[2] was adopted. The Directive was initiated by a proposal of 12 Member States, including Bulgaria and was adopted in 2011 (with the exception of Denmark and Ireland), with a forecast of issuing 100 000 EU protection orders per year. The objectives of the Directive are:

- To facilitate and improve the protection provided to victims or potential victims of crimes that travel between the Member States of the EU.
- To avoid the necessity to create parallel proceedings for the use of a protection measure.
- To prevent new crimes and mitigate the effects of previous crimes.

The Act stipulates that a judicial or equivalent body in a Member State where a protection measure is adopted in order to defend a person from a criminal act committed by another person that could jeopardize their life, health and other important personal values, may issue a European Protection Order (EPO) that enables a competent authority in another Member State to keep up the protection of the person on the territory of that other Member State. Effective victim protection includes the activation of proper mechanisms to prevent a repeat offense or even a new, more violent crime (gender-based violence, harassment, abduction, human trafficking or sexual exploitation, etc.) by the same aggressor against the same sacrifice. That is why EPO represents a further increase in judicial cooperation between Member States, in accordance with the operative legislation on the level of the Union[3]. The Directive is a balanced tool, taking into account all intertwined

interests, and mainly victims' needs, and strengthen the understanding that the primary objective of the EU's criminal policy is citizens, to ensure that their freedom and security are the hands of sound legal systems.

The Directive is currently transposed in all the Member States bound by it by the adoption of national laws. Bulgaria also adopted the European Protection Order Act[4]. In their implementation, however, despite the undisputed consensus on the need to take these measures, some deficiencies have been identified leading to the adoption of the specific resolution. As it concerns a number of other issues covered by this article, it will be discussed further.

Immediately thereafter, *Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 was adopted establishing the minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*[5]. The adoption of Directive 2012/29/EU was conditioned by the following circumstances:

According to official statistics[6], more than 30 million crimes are registered each year in the EU, while making it clear that no crime is reported for many criminal offenses. Often, crimes affect more than one victim, and along with them their relatives suffer. It is estimated that about 75 million people become victims of crime each year. At the same time, the 2001 Framework Decision has not been fully enforced and implemented, and governments within the Union have failed to ensure the protection of victims of crime. Despite the specific instruments addressing the specific needs of a particular group of victims, there was, however, a common understanding that minimum standards for the rights of all victims were necessary, regardless of the type of offense or circumstances and place of its execution. The Victims' Directive responded to this

need.

It is in Article 1 where the purpose is defined, which is to make sure that victims get appropriate information so that they could effectively participate in the criminal process and stand up for their rights. Victims should be recognized as such and treated with respect, discretion and professionalism without any discrimination. It is important to be protected from secondary and repeated victimization, intimidation and retaliation, receive adequate support for faster recovery and sufficient access to justice. As stated by the further provisions and the safeguards provided to carry out these tasks, the standards as a starting point, although called minimal, are indeed high. However, the possibility remains for Member States to provide wider protection for victims.

The Directive pays particular attention to certain categories of victims who need specific protection. First of all, these are children as victims of crime. Next there are disabled victims. Victims of terrorism also enjoy privileged attention. Last but not least, the focus of the Directive is on the victims of violence, and in particular gender-based violence.

The Directive has developed in detail a number of rights that should be provided to the victims, both in and outside the criminal proceedings. Art. 12 should be pointed out in particular - access to and safeguards while in contact with restorative practices, explained in the Directive. Although quite cautious, the act stimulates restorative climate in criminal justice systems. Member States should consider the development of a “single access point” or “one stop shop” to meet the multiple needs of victims. That is why the Directive 2012/29/EU marks the beginning of a new age in the policies and treatment of victims of crime within a European context. The tasks it places on Member States are more than ambitious. Implementation will require time, resources, experience. But the Directive, in spite of some imperfections,

generally substantially raises the standards for victims. From the previously “invisible and neglected subjects” of the criminal process and social reality, they have become the new “icon” of modern European criminal policy.

Due to the exceptional importance of the Directive, the European Commission in 2013 issued specific *Guidance to Member States on transposition and implementation* [7]. Although legally non-binding, they are a credible interpretation of EU law in this area.

Despite the many studies, there are no published reliable statistics, but there are indications that most of the Member States have complied with the Directive and have adopted relevant legislation. Moreover, united by the idea that victims deserve more, they have unified their practices through numerous European projects. In this respect, the important role of non-governmental organizations in many Member States ought to be emphasized. [8] However, it should be pointed out that Bulgaria also transposed the Directive, but in a “Bulgarian way”, incomplete and inconsistent, leaving a number of tasks for the future. One of these is the introduction of Restorative Justice (RJ) as an instrument for the benefit of victims, unlike other European states that have provided this option to victims of crime. Bulgarian politicians still lack sensitivity to this issue, although society accepts and expects restorative justice.

### **3. The contribution of the Council of Europe to a common victim policy**

The first attempts to establish standards in the area of the rights of victims are linked to the Council of Europe, they concern the state compensation for the damage suffered and date back to the 1970s. A number of acts have been adopted over time, mainly recommendations that outline the foundations of the modern framework of victims' rights and fundamental principles. Although they are optional, they have had

an impact on the policies and practices of the Member States of the Council of Europe.

The recent years have put a new regulatory challenge on the countries – the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence of 2011* [9], also known as the Istanbul Convention. It is of particular importance to the legal framework of the countries for the protection of victims, as women's movements are of key historical importance for the evolution of the victims' rights. [10] A number of member states of the Council of Europe have already ratified the document, others have only signed it, and in states like Bulgaria, there has even been considerable resistance at the level of the institutions and the general public. In the end, amendments and supplements to the Bulgarian Penal Code criminalizing some forms of domestic violence [11], but incompletely and unsatisfactorily, were adopted without the victims being able to benefit from all the achievements of the Convention. At the same time, the European Union has signed and is preparing to join the document [12], which is supported, both at political and expert level. Although accompanied by a number of contradictions and debates, the Convention is seen as a fundamental and comprehensive human rights instrument covering a number of forms of violence against women, which sets an ambitious standard for the prevention, protection and support of victims, including a number of requirements towards the material and procedural legislation of the states.

States differ in the approach and speed of ratification and implementation of the document. However, it obliges them to make a comprehensive review of their legislation and practices to see what substantive, procedural and institutional protection they offer to victims of violence against women and domestic violence. Moreover, better protection of these victims

will result in better protection for crime victims as a whole by placing them and their fundamental rights at the heart of the efforts of the states. On the other hand, however, new offences, integrated victim protection systems, research resource and data collection as well as reporting to GREVIO's Special Committee of the Council of Europe seem to be imposing too many demands on states, hence the difficulties of perceiving of the document in national legal systems.

More recently, at the end of 2018, the Committee of Ministers of the Council of Europe also adopted *Recommendation CM/Rec (2018) 8 to Member States concerning Restorative Justice in Criminal Matters*. As explicitly mentioned in its preamble, a prerequisite for its adoption is the increasing interest in RJ by the Member States, which takes into account its benefits to criminal justice systems and to victims in particular. At the same time, it is noted that the development in the countries is different, flexible and asymmetrical. For this upward, but still uneven distribution, where the RJ's potential is not fully utilized, there is much scientific evidence that the recommendation takes into account. The value of the recommendation comes mainly from the new strong impetus given to the Member States, which should provide their citizens with the privileged opportunity to benefit from the RJ. This is necessary because all European citizens should have equal rights and opportunities. It is unacceptable that, from an orthodox legal point of view, due to inaction or negligence of their commitments, states deprive individuals under their jurisdiction of the merits of the RJ. Therefore, the recommendation urges the governments of the Member States to stick to the principles set out in the Annex thereto, and when developing the RJ to make its text available to all national authorities, agencies and individuals concerned, and first of all judges, prosecutors, police, prisons, probation services, children's agencies,

victims and restorative practices.

#### **4. Analysis of the implementation of victims' tools within a European context**

All these acts, taken consistently and systematically over time, show increased concern for the victims of crime in Europe - potential and real. Undoubtedly, there is a common will to ensure citizens' safety and humane treatment and protection for victims of crime. Sometimes, however, there is a significant discrepancy between good intentions and results, as established by the European Commission itself and the European Parliament. This has led to the adoption of *the European Parliament Resolution of 19 April 2018 on the implementation of Directive 2011/99/EU on the European Protection Order (2016/2329 (INI))* [13]. While reaffirming the clear commitment to comply with all the above mentioned acts, the resolution far exceeds its initially stated objective and takes into account the strengths and weaknesses in its application, and it also identifies measures for better results in the interests of victims. The resolution stresses that the existing wide variety of legal systems and protection orders within European states are causing considerable difficulties and are reducing the number and scope of European orders issued. It is worriedly pointed out that after the transposition of the EPO Directive, only seven European protection orders were issued and applied in the Union. Most Member States do not have a registration system for the protection measures they have issued, and there is no such system at European level, which makes monitoring and evaluation difficult. This puts citizens in a dilemma to restrict their mobility or to retain, albeit in limited thresholds, the protection measure. A “gap” in communication and coordination between issuing and executing countries has been established. To that end, effective transnational cooperation, as well as the standardization and digitization of European protection orders, including the

protection of families, are strongly recommended. It is even recommended to use GPS technologies, relevant applications in smartphones and other innovations, not only for persons with protection measures but also for other potential and real victims, and especially victims of violence based on gender. The resolution recognizes that traditional approaches are being challenged, but considers that control, oversight, monitoring of persons causing harm, including preventive measures, is necessary. Therefore, tasks are assigned to all specialized European institutions, such as the Fundamental Rights Agency, the European Institute of Gender Equality, national non-governmental organizations and others to carry out stricter monitoring, as their activities are financially assisted. Information campaigns are particularly important to explain to victims their widening rights and the opportunities for their use, including in cross-border cases. Emphasis is placed on training - professionals, society, victims, and especially the encouragement of women that are victims of various forms of violence and trafficking to report to be protected. It is proposed that the E-justice portal of the European Commission should include a special section for victims (victims' corner), and a digital platform for identifying gender-based violence that contains important information about victims and is easy to use.

#### **Conclusion**

We find all of the afore mentioned measures reasonable and justified, and their undertaking – as a matter of urgency. However, there remains the persuasion that it is difficult to comply with so many and divergent measures, often by different legal orders - at the level of the European Union, the Council of Europe, national legislation. It is necessary to conclude that a common *European Code for Victims* is needed to overcome the problems of the fragmentary arrangement and domestic law and to

provide uniform protection for all victims of crime within a European context.

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