

CHALLENGES BEFORE VICTIMS' PROTECTION IN BULGARIA IN VIEW OF HARMONISING PROTECTION FRAMEWORKS THROUGHOUT THE EUROPEAN UNION

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Bulgaria's current effort to protect its victims of crime within a modern criminal justice framework dates back to a short period of time between 2006 and 2007, when the Bulgarian *Criminal Procedure Code* (hereinafter, *CPC*)¹ and the *Law on Assistance and Financial Compensation to Victims of Crime* (hereinafter, *Law on Victims' Assistance*)² entered into force.

The *CPC* defines the direct victim of a crime as the physical person, having sustained material or moral damage from the relevant act. In case of death of the direct victim, the victim capacity passes on to the indirect victims – his/her heirs. The *Law on Victims' Assistance* is a specific law with a narrower scope, regulating the assistance and compensation to victims of terrorism, premeditated murder, premeditated grave bodily injury, carnal abuse and rape, out of which grave injuries have ensued, human trafficking, crimes, committed by order or in execution of a decision of an organised criminal group, as well as other serious (carrying a punishment of more than 5 years of imprisonment) premeditated crimes as a legally stipulated result of which death or grave bodily injury have occurred. It defines explicitly the category of indirect victims of such crimes by including in it, in case of the direct victim's death, his/her children, parents, spouse or the person, with whom he/she co-habited. The *Law*, carrying a specific legal framework on the status of victims of specific crimes, is a document, attempting to follow international and EU standards in the area more closely than the *CPC*. However, both the assistance and the financial compensation it regulates are applicable only to its specific circle of victims, which, partly due to harsh financial realities, is, at present, fairly narrow.

Victim support organisations, other members of the civic sector, involved in judicial reform and strengthening the capacity of the criminal justice system, among which the Center for the Study of Democracy (CSD), as well as institutions, tasked with improving the position of those harmed by crime, have identified in the last few years four main challenges before victims' protection in Bulgaria in view of harmonising protection frameworks throughout the Member States of the European Union.

¹ National Assembly of the Republic of Bulgaria (2006): Наказателно-процесуален кодекс [Criminal Procedure Code] (State Gazette 86/28.10.2005), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135512224> (12 November 2013).

² National Assembly of the Republic of Bulgaria (2007): Закон за подпомагане и финансова компенсация на пострадали от престъпления [Law on Assistance and Financial Compensation to Victims of Crime] (State Gazette 105/22.12.2006), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135540550> (12 November 2013).

1. Transposition of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA³

According to Article 27 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (hereinafter, the 2012 Directive), all Member States should bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 16 November 2015. With this deadline approaching, the transposition of the Directive is undoubtedly the largest normative and practical challenge Bulgaria currently faces in improving its victim protection framework.

In 2014 Bulgarian Ministry of Justice initiated a legislative effort to amend the *Law on Victims' Assistance*, based on the challenges faced throughout the years since its entry into force. However, the timing of the project has coincided with the period, during which Bulgaria has to take most decisive steps in transposing the 2012 Directive into its primary and secondary legislation. Therefore, the CSD, as member of the working group to draft the amendments to the *Law*, undertook a number of steps to raise the awareness of responsible authorities about the need to transpose the Directive both in the country's *CPC* and the *Law on Victims' Assistance*, as suggested by the transposition technique options, offered as guidance by the European Commission.⁴

As one of those steps, the CSD offered to institutions a comprehensive overview of Directive's principles and concrete provisions to be transposed immediately into the *Law on Victims' Assistance* and be followed by timely and adequate harmonisation of the *CPC* with EU norms.

According to the overview, the following areas had to be further regulated in the *Law*:

- ***Right of victims to understand and be understood and right to receive information from the first contact with a competent authority (Articles 3-4 of the Directive)***

³European Parliament and Council of the European Union (2012): Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, pp. 57-73), Strasbourg: European Parliament and Council of the European Union, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF> (22 June 2014).

⁴European Commission (2013): DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Brussels: European Commission, available at: http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf (20 June 2014), p. 5.

The Law on Victims' Assistance should strengthen the rights to understand, be understood and receive information in an unequivocal way, parallel to widening the group of organisations and institutions, tasked to inform victims about their entitlements. At the time of drafting the present article, this group is fairly narrow (bodies of the Ministry of Interior and victim support organisations) and the right to information under the Law can be construed narrowly as limited only to the victims of the crimes, for which the Law allows compensation. Moreover, tackling unnecessary delay, which should not be allowed in dealing with victims, could prove a challenge in a system, where immediacy is still liberally implemented. The individual approach towards victims, proclaimed widely throughout the Directive, is also to be developed further both in Bulgaria's specialised law and in its *CPC*.

- ***Right of victims to access victim support services and the support they provide (Article 8-9 of the Directive)***

Accessing victim support services independently of whether the victim has made a formal complaint with regard to a criminal offence to a competent authority is a right to be firmly regulated in the *Law on Victims' Assistance* especially in view of the substantial number of crimes, about which victims in Bulgaria never complain or stumble upon 'police filters', and the general distrust of the police and justice system.⁵ In addition, the referral of victims by the competent authority that received the complaint and by other relevant entities to victim support services should be clearly established and supported by relevant secondary legislation to tackle the often lacking inter-institutional co-ordination.

- ***Training of practitioners and provision of data and statistics (Articles 25, 28 of the Directive)***

Stipulating explicitly the need for training practitioners coming into contact with victims both in the *Law on Victims' Assistance* and the specialised laws could be the necessary first step to raise the awareness of various authorities about the issue and boost the allocation of financial resources for training purposes. On the other hand, Member States are obligated to regularly provide data and statistics to the European Commission as to how victims have accessed the rights set out in the Directive. This effort requires a consistent and robust data gathering and statistical framework, which has proved a major challenge for Bulgarian institutions involved.⁶

Bulgarian authorities have shown a high degree of responsiveness to CSD's proposals and have designed a comprehensive set of amendments to the *Law on Victims' Assistance* to harmonise it with the 2012 Directive. It remains to be seen how those amendments would go through Parliament and whether they would be followed by timely and pertinent modifications to the *CPC*, other specialised laws and institutions' internal rules and codes of conduct.

⁵ Center for the Study of Democracy (2013): *Crime Trends 2012-2013: Policy Brief N 41*, October 2013, Sofia: Center for the Study of Democracy, available at: <http://www.csd.bg/fileSrc.php?id=21575> (22 June 2014).

⁶ Center for the Study of Democracy (2013): *Assisting and reintegrating child victims of trafficking in Bulgaria: legal, institutional and policy framework*, Sofia: Center for the Study of Democracy, available at: <http://www.csd.bg/fileSrc.php?id=21155> (22 June 2014), p. 7.

2. E-tools to improve the position of victims of crime

Prior to transposing the 2012 Directive, another legislative effort was taken, again spearheaded by the CSD, to improve the situation of victims through the wider introduction of e-tools in the criminal process.

Although the initial Concept for development of e-justice in Bulgaria did not include criminal procedure for reasons of it being highly intrusive on citizens' rights and the draft of the Concept ultimately publicised included it only summarily,⁷ it was established that Bulgaria seriously lags in introducing electronic tools in the relations between criminal justice authorities and citizens, especially in the area of crime complaints. Many good, mostly multilingual, practices have been present throughout EU Member States, including specialised electronic portals in Belgium and Lithuania, e-complaint forms in Finland, and other electronic options in countries like France and the Netherlands.⁸ At the same time, efforts in Bulgaria to digitise the process of crime reporting have been mostly sporadic, with main institutions' websites offering neither e-forms for crime complaints, nor multilingual support.

Therefore, several urgent amendments to the Bulgarian *CPC* were proposed by the CSD on this and other occasions:

- options to report a crime electronically, with subsequent validation of the report in accordance with the Code's rules – to be further developed in the legislation, regulating the work of investigative police;
- options to inform the victim about the progress of criminal proceedings electronically;
- options for victims and other parties, excluding suspects, defendants and their counsels, to receive notifications electronically;
- options for wider application of videoconference in pre-trial and trial phase to accelerate the completion of investigations of crimes committed both abroad and in the country and ensure greater victims' safety.

Earning the vocal support of authorities involved and legal scholars alike, most of the proposed new norms were included in a short piece of legislation, amending the Code.⁹ Moreover, in its

⁷ Ministry of Justice of the Republic of Bulgaria (2012): Концепция за електронно правосъдие [Concept on E-justice], Sofia: Ministry of Justice of the Republic of Bulgaria, available only in Bulgarian at: https://mjs.bg/Files/Koncepcia_e-pravosadie.doc (22 June 2014), p. 34.

⁸ Source: Factsheets on rights of victims of crime in criminal proceedings, available at https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-en.do (22 June 2014).

⁹ Ministry of Justice of the Republic of Bulgaria (2012): Закон за изменение и допълнение на Наказателно-процесуалния кодекс [Law on Amending and Supplementing the Criminal Procedure Code], Sofia: Ministry of Justice of the Republic of Bulgaria, available only in Bulgarian at: <https://mjs.bg/Files/ЗИД%20НПК-28.11.-final.doc> (22 June 2014).

assessments of government's judicial reform strategies the CSD has also consistently proposed a number of measures for accelerated introduction of e-justice. However, all e-justice amendments were stalled due to political tensions and the latest e-justice strategy of the government¹⁰ does not foresee any significant steps in the criminal justice field.

Introduction and further development of e-tools for criminal case management, including relations with victims, have been at the forefront of states' criminal justice agenda in the last several years.¹¹ Therefore, the further delay in introducing e-justice tools in Bulgarian criminal procedure, including such concerning victims, could result in further hindrances in their protection, their access to justice and the respect of their rights, especially in cross border cases and cases involving vulnerable groups. It would impact negatively the interaction of the Bulgarian judicial system with the judicial authorities of other Member States.

3. Legal aid to victims of crime

Legal aid to victims of crime in Bulgaria has been subject of significant progress, but has also faced a number of normative and practical problems in the last few years. CSD's country report on improving protection of victims' rights¹² identified a number of positive developments, as well as further needs in the area.

According to the Bulgarian *Law on Legal Aid*¹³, free state-provided legal aid for consultation in view of reaching an agreement before court proceedings or of instituting proceedings and for preparation of documents for instituting proceedings, so called 'primary legal aid', is given to the following recipients, including victims of crime:

- persons and families eligible for monthly or targeted support under the social support legislation;
- persons, accommodated in specialised social institutions or using other social accommodation;
- children, accommodated in foster families or families of relatives;

¹⁰ Ministry of Justice of the Republic of Bulgaria (2014): Секторна стратегия за въвеждане на електронно управление и електронно правосъдие 2014-2020 г. [Sectoral Strategy on Introducing E-Government and E-Justice], Sofia: Ministry of Justice of the Republic of Bulgaria, available only in Bulgarian at: https://mjs.bg/Files/Strategy_MJ-2014_635279697128265703.docx (22 June 2014).

¹¹ For more information, please see Center for the Study of Democracy (2012): E-Tools for Criminal Case Management within Selected EU Member States (CD), Sofia: Center for the Study of Democracy, available at <http://www.csd.bg/artShow.php?id=15850> (22 June 2014).

¹² Center for the Study of Democracy (2013): Improving Protection of Victims' Rights: Access to Legal Aid, Research paper on legal framework and best practices: Country report - Bulgaria, Sofia: Center for the Study of Democracy, available at <http://www.csd.bg/fileSrc.php?id=21771> (22 June 2014).

¹³ National Assembly of the Republic of Bulgaria (2006): Закон за правната помощ [Law on Legal Aid] (State Gazette 79/4.10.2005), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135511185> (12 November 2013).

- as supplemented in 2013, children at risk and victims of domestic or sexual violence, or human trafficking, who do not have means, but wish to be defended by an attorney.

Further on, based on the right of the victim under the *CPC* to have counsel, in practice pre-trial authorities can and do receive, as well as rule on, requests from the above groups for procedural representation during the pre-trial phase.

Legal aid for trial representation concerns victims having entered trial as civil claimants or private accusers, who do not have means for paying an attorney, wish to have one and the interests of justice so require. Victims of lesser crimes, triable by a 'private complaint', submitted directly to court, are also eligible for legal aid.

Legal aid practitioners deem the conditions for granting legal aid fairly restrictive because of the fairly low threshold of indigence, set by referral to the social assistance legislation.

Legal aid is organised by the National Legal Aid Bureau and the bar councils.

Stakeholders admit that there is lack of adequate training, following international and EU standards, for institutions and organisations involved in legal aid to victims. Trainings for working with specific vulnerable groups are still within the realm of future plans. Still, the National Legal Aid Bureau takes significant effort to organise regional trainings at least once a year, where information is given, based on legal aid providing attorneys' specific needs and questions.

In sum, the report established¹⁴ that much progress was made in providing adequate legal aid to victims of crime as part of the overall process to improve their situation. This was witnessed by, *inter alia*:

- the 2013 amendments in the *Law on Legal Aid*, expanding considerably the circle of victims of crime, eligible to receive state-provided legal aid;
- the efforts of the National Legal Aid Bureau to ensure a qualified pool of attorneys with proper specialisation, to the extent possible, who are part of the National Legal Aid Register and as such are able to provide high quality legal aid to victims;
- the recent launch of a much awaited initiative for a national hotline for primary legal aid and pilot consulting centres in two of Bulgaria's most vulnerable regions - Sliven and Vidin.

Still, several recommendations were made to improve the process of providing legal aid to victims:

¹⁴ Center for the Study of Democracy (2013): *Improving Protection of Victims' Rights: Access to Legal Aid*, Research paper on legal framework and best practices: Country report - Bulgaria, Sofia: Center for the Study of Democracy, available at <http://www.csd.bg/fileSrc.php?id=21771> (22 June 2014), p. 20.

- regarding **research**, a thorough study was necessary of relevant legislation, policies and practices of EU Member States, regarding legal aid and advice to victims of crime; relevant policies and practices should be transposed in close cooperation with Member State entities which generated them;
- regarding **institutional capacity**, the National Legal Aid Bureau was recommended to use all channels via which its knowledge base for working with victims of crime could be expanded, including cooperation with bar councils and victim protection NGOs;
- regarding **practical framework**, the experience of the national primary legal aid hotline and pilot consulting centres was to be analysed carefully and replicated via other consulting centres;
- regarding **general and specialised training**, the existing efforts to give attorneys involved general training on working with victims and specialised legal and psychological knowledge on their particular situation had to be strengthened and enhanced.

In the long term, the work of the National Legal Aid Bureau should be adequately planned and funded to ensure effective administration of justice, high quality legal aid and equal access to justice for citizens, including victims of crime. It is also necessary to constantly promote legal aid and to increase public confidence in the institution of state-provided counsel.

4. State compensation

The last, but not least important challenge before victim protection in Bulgaria the present article will elaborate upon is also the cause of greatest hope, since it is already tackled through a legislative effort (see above) and drafting is underway in a joint effort by institutions and civic sector involved.

After a long period of identifying and analysing problems in applying the *Law on Victims' Assistance*, the National Council for Assistance and Compensation to Victims of Crime, the main interinstitutional body entrusted with victim care, came out in 2013 with a decision¹⁵ to initiate a working group to amend the *Law*. The decision offered a succinct overview by authorities involved of problematic issues of normative and practical nature, showing, at the same time, a clear stand to overcome obstacles and improve victims' situation. Among problems identified and proposals made have been:

- expanding the circle of serious premeditated crimes to entail assistance and compensation for their victims, including medium bodily injury;

¹⁵ National Council for Assistance and Compensation to Victims of Crime (2013): Протокол от заседание на Националния съвет за подпомагане и компенсация на пострадали от престъпления 19.03.2013 г. [Minutes of the Session of the National Council for Assistance and Compensation of Victims of Crime of 19 March 2013], Sofia: National Council for Assistance and Compensation to Victims of Crime, available at http://www.compensation.bg/Documents/protokol_19_03_2013.doc (22 June 2014).

- making procedures for providing compensation easier, including creating a mechanism for providing advance compensation before the closing of criminal proceedings, Bulgaria being one of the few countries without such possibility;
- expanding the group of institutions and organisations, tasked with giving information to victims;
- including social aid among the forms of assistance to victims;
- more detailed regulation of the interaction of the National Council with victim protection NGOs.

The amendments are still at drafting stage and, together with those transposing the 2012 Directive, will be a test for the political will of government and Parliament to improve the situation of citizens, harmed by crime, in an adequate manner, consistent with EU legislation and current developments.

In conclusion, as witnessed by the overview of problematic areas of victim protection in Bulgaria, the situation of victims is a clear reflection of many of the general challenges before the country's criminal justice system as a whole. The use of electronic tools, the co-ordination among institutions and their co-operation with the civic sector are indispensable components of every EU Member State's modern criminal policy and have to be implemented by both normative and policy steps. In this sense, Bulgarian authorities and NGOs involved have to, like their counterparts throughout Europe, re-define the balance between the entitlements of the defendant and those of the victim and work on both in their correlation to achieve efficient and effective functioning of criminal justice and the higher trust of the general public.