



SARA Law Research Center

International Journal of Legal and Social Order, <https://www.ccdsara.ro/ijlso>

ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188

Nº. 1 (2022), pp. 106-117

LEGAL PROTECTION OF VICTIMS OF CRIME IN THE EUROPEAN UNION

N. DIACONU

Nicoleta DIACONU

"Spiru Haret" University Bucharest, RO.

Email: nicoled58@yahoo.com

ORCID ID: <https://orcid.org/0000-0002-4315-9471>

Abstract

European law and the national law of the Member States contain provisions for the legal protection of victims of crime. These sources aim to grant victims the fundamental right of access to justice.

However, the application of victim rights regulations varies from one Member State to another. These differences lead to different approaches to victim support. In this context, it is necessary to standardize the methods of supporting victims of crime at the European level, as well as to improve the institutional system for their application.

Key words: *victim; criminal offence; international crime; human trafficking; domestic violence.*

INTRODUCTION

1. INTRODUCTORY ASPECTS REGARDING THE NOTION OF "VICTIM"

The free movement of persons is a basic element of the Internal Market of the European Union¹ and a fundamental right recognized by the European citizens. art. 45 of the Charter of Fundamental Human Rights.

Given the fact that more and more people travel, live or study in another EU country, they can become potential victims of crime.

Every year, around 15% of Europeans, 75 million people in the European Union are victims of crime².

The concept of "victim of crime" is interpreted differently from one legal system to another. Some Member States define the term "victim" narrowly in their

¹ Regulated in principle by the provision. Art. 45 et seq. TFEU and developed by Directive 38/2004.

² The notion of crime refers to all crimes committed in a certain territory in a certain period (<https://dexonline.net/definitie-criminalitate>)

legislation, excluding "indirect" victims such as family members. Other Member States do not define this notion at all.

The term "victim" is interpreted differently depending on the branch of law or legal science considered. Thus, the notion has different interpretations in criminology, criminal law or criminal procedural law.

The findings of the European Agency for Human Rights suggest that the legislation of some European Union member states may require changes in this regard to be consistent with the EU Victims Directive³.

In a broad sense, you are considered a "victim of a crime" if you have suffered physical, moral or material damage as a result of an incident considered a crime according to the national legislation in force. Victims of a crime are also family members of a person who died as a result of a crime and who suffered damages as a result of that person's death.

According to Article 2 letter (a) of Directive 2012/29/EU, the notion of victim means

- a natural person who has suffered damage, including damage to his physical, mental or emotional integrity, or economic damage, directly caused by a crime;

- family members of a person whose death was directly caused by a crime and who have suffered damages as a result of the death of that person;

Article 3 describes, in a general way, how the interests of victims must be taken into account: "Member States shall take appropriate measures to assist victims so that they understand and can make themselves understood from the first contact and during any subsequent interaction necessary that they have with a competent authority in criminal proceedings, including if the information is provided by that authority.

Member States shall ensure that communications to victims are made in plain and accessible language, verbally or in writing. Such communications take into account the personal characteristics of the victim, including any disability that may affect the ability to understand or be understood.

Unless it is contrary to the interests of the victim or would adversely affect the conduct of the proceedings, Member States shall allow victims to be accompanied by a person of their choice on the occasion of the first contact with a competent authority, when, due to the impact of the crime, the victim requests assistance to understand or to be understood."

The Victims Directive requires that family members of the victim are included in the definition of the victim (in relation to victims whose death is a direct cause of a crime) so that they too have access to support services in accordance with their needs and the severity of the damage suffered as a result of the crimes committed against the victim. Therefore, the term "family members" as

³ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012.

LEGAL PROTECTION OF VICTIMS OF CRIME IN THE EUROPEAN UNION

well as other key terms such as "particularly vulnerable" should be interpreted broadly⁴.

Romanian legislation does not contain a legal interpretation of the notion of "victim of crimes". The Criminal Procedure Code uses the notion of a person injured by a crime. According to art. 79 of the Civil Code - "the person who suffered a physical, material or moral injury through the criminal act is called an injured person".

Law no. 211/2004 regarding some measures to ensure the information, support and protection of victims of crime⁵ offers a potential definition of the notion of a victim. Thus, according to the provisions of art. 34 lit. a) – a victim of crime is a natural person who has suffered damage of any kind, including damage to his physical, mental or emotional integrity or economic damage, directly caused by a crime, as well as family members of a deceased person as a result of a crime and who suffered damages following the death of the person in question.

Comparatively analysing the two legal texts, the following conclusions emerge⁶:

- The special law refers only to natural persons, while the organic law has a wider interpretation, including also legal persons;

- The approach of the code seems broader, as it refers to any person, not only to natural persons, like the special law, but it is less precise in relation to the special law, which also includes family members of the natural person in the notion of the victim.

- The special law refers to damage/injury resulting from the crime, while the criminal procedure code refers to the criminal act.

- The special law conditions the status of a victim of a direct causal link between the offence (the act provided for by the criminal law) and the injury/damage. The same condition does not appear as clearly from the text of the criminal procedure code, which only speaks of an injury caused by a criminal act.

2. CONCERNS OF THE EUROPEAN UNION CONCERNING THE PROTECTION OF VICTIMS OF CRIME

2.1. Protection of victims through legal instruments

From a legislative point of view, EU primary law and Member States' national law provide guarantees for the protection of victims' rights in different areas and at different levels.

Article 47 of the Charter of Fundamental Rights of the European Union guarantees all persons in the EU the right to an effective remedy.

⁴https://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-victims-crime-eu-support_summary_ro_0.pdf

⁵ Published in the Official Monitor of Romania, Part I, no. 505 of June 4, 2004.

⁶ Flaviu Ciopec, flaviu.ciopec@e-uvvt.ro. - "The victim, the injured person and the civil party in the criminal process", <https://drept.uvt.ro/administrare/files/1634397557-articol-flaviu-ciopec.pdf>

Although the European Union has created a legislative and institutional system that allows for the respect of victims' rights, some reports⁷ show that victims of crime are still unable to fully exercise their rights in the European Union, due to the difficulties they face in accessing justice, lack of information and lack of appropriate support.

The content of these reports shows that the legal instruments have not yet achieved their objective, due to their incomplete transposition or incorrect implementation in the national legal systems.

The complexity of the judicial systems in the member states of the European Union and the differences between them, as well as the costs incurred due to the cross-border character of the disputes, should not prevent access to justice for European citizens.

Judicial cooperation between the member states must be carried out in such a way that litigants are informed about this assistance system and are encouraged to use the benefits of legal assistance, the role of cooperation being highlighted to simplify and speed up the transmission of requests for assistance between member states.⁸

European Union regulations aim to protect victims who have suffered because of committing a variety of crimes, such as:

- attempted murder and aggravated murder;
- a crime of bodily injury;
- an intentional crime that resulted in bodily harm to the victim;
- a crime of rape, a sexual act with a minor or sexual assault;
- a crime of human trafficking or trafficking of minors;
- a crime of terrorism;
- any other intentional crime committed with violence.

The European legal framework for the protection of victims of crime comprises a robust set of regulations setting out victims' rights.

*A. Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime*⁹.

The Victims Directive is, to date, the most important legislative development regarding victims' rights at EU level¹⁰.

⁷ Report on the implementation of the Victims' Rights Directive - COM(2020) 188 final; Report on the implementation of the European Protection Order Directive. COM(2020) 188 final, Brussels, 11.5.2020 -COM(2020) 187 final

⁸ Cristinel Ioan Murzea, "Free access to justice in the light of Directive 2003/8/EC on improving access to justice in cross-border disputes", Vol. "Public safety and the need for high social capital", Publishing House Pro Universitaria 2020, p.36.

⁹ Published in JOUE - L'315/57 14.11.2012 RO J L315/57. In Romania, harmonization with Union law was achieved through Law no. 97/2018.

¹⁰ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-victims-crime-eu-support_summary_ro_0.pdf

LEGAL PROTECTION OF VICTIMS OF CRIME IN THE EUROPEAN UNION

The main objectives of the directive are to ensure that victims of crime receive the appropriate information, support and protection and that they can participate in criminal proceedings regardless of where the harm occurred in the EU.

The Directive sets minimum standards for victims of all types of crime, regardless of the victim's nationality or residence status. According to the directive, family members of deceased victims are considered victims.

The directive establishes the following rights¹¹:

- to hear their case before the court;
- to review the decision of a court not to initiate criminal prosecution;
- to reimburse their expenses;
- to receive legal assistance;
- to recover stolen goods.

*B. Directive 2011/99/EU on the European Protection Order (EPO) in criminal matters*¹².

The directive allows victims of violence, especially domestic violence and harassment, to continue to benefit from protection against perpetrators when they move to another EU country. In order to issue a European protection order, there must be a national protection measure in force in that EU country that imposes one or more of the following prohibitions or restrictions on the person who poses a danger¹³:

- prohibition to move to certain places or defined areas where the protected person resides or visits;
- a prohibition or regulation of contact, in any form, with the protected person, including by telephone, by electronic means or by regular mail, by fax or any other means; or
- a prohibition or regulation of approaching the protected person at a distance smaller than that provided for.

*C. Regulation (EU) no. 606/2013 of June 12, 2013, on the mutual recognition of protection measures in civil matters, (consolidating the Directive on the European protection order)*¹⁴;

The regulation ensures that civil protection measures are recognized throughout the EU.

The objective is to guarantee that, without going through lengthy procedures, victims of acts of violence (domestic) whose physical and/or mental integrity is threatened and who benefit from a protection measure ordered in an

¹¹ <https://eur-lex.europa.eu/RO/legal-content/summary/better-protection-for-victims-in-criminal-proceedings.html>

¹² JO- L 338, 21.12.2011, p. 2–18.

¹³ <https://eur-lex.europa.eu/RO/legal-content/summary/european-protection-order-supporting-crime-victims-eu-wide.html>

¹⁴ JO- Nr. L 181, 29.06.2013, P. 4 – 12.

EU country benefit from the same level of protection in other EU countries if they settle or travel there.

*D. Directive 2004/80/EC on compensation for victims of crime*¹⁵

The directive requires all EU countries to have compensation systems for victims of premeditated international criminality committed through violence on their territories. The organization and application of such systems are left to the discretion of each EU country. Based on these national systems, a system of cooperation at the EU level is established.

*E. Directive 2011/36/EU of the European Parliament and of the Council of April 5, 2011, on preventing and combating human trafficking and protecting its victims, as well as replacing Framework Decision 2002/629/JHA of the Council*¹⁶

The Directive establishes minimum rules on the definition of offences and criminal sanctions in the field of human trafficking. The directive also introduces common provisions, taking into account the gender perspective, to ensure better prevention of this category of crimes and better protection of their victims. The Directive mentions that human trafficking is a gender-differentiated phenomenon, with men and women often being trafficked for different purposes. For this reason, assistance and support measures should also be gender-differentiated where appropriate. Triggers may differ depending on the sectors involved, such as human trafficking in the sex industry or labour exploitation, such as construction work, agriculture or domestic servitude¹⁷.

*F. The European Union has also signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)*¹⁸

The Istanbul Convention aims to prevent violence, protect victims and bring perpetrators to justice. The convention establishes that the tolerance and non-punishment of acts of violence against women such as rape, domestic violence, sexual harassment, forced marriage or forced sterilization constitute violations of human rights and forms of gender discrimination. Women have the right to live safely in both public and private spaces, on the street or at work, as well as at home.

2.2. The role of the European Union institutions regarding the protection of victims

A. The role of the European Parliament

¹⁵ JO L 261, 6.8.2004, pp. 15-18

¹⁶ JO- L 101, 15.4.2011, p. 1-11

¹⁷ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:RO:PDF>

¹⁸ Adopted by the Council of Europe on May 11, 2011. The Istanbul Convention was signed by the EU in 2017. It represents the benchmark for international standards in the field. At the moment, all member states of the European Union have signed the convention, and 21 have ratified it.

LEGAL PROTECTION OF VICTIMS OF CRIME IN THE EUROPEAN UNION

The European Parliament is fully committed to the respect of fundamental rights in the Union and the protection of victims of international crime.

The human rights protection mechanisms are:

- The ordinary legislative procedure, through which the Parliament together with the Council adopts normative acts having as its central element the protection of fundamental human rights in general and the protection of the rights of victims of crime, in particular.

- The petitions

Through the Maastricht Treaty, two new rights are recognized for citizens of the Union, those being the right to petition and the right to address a mediator.

Any citizen of the Union has the right to petition the European Parliament. Any citizen of the Union, as well as any natural or legal person residing or having its registered office in a member state, has the right to present, individually or in association with other citizens or persons, a petition to the European Parliament on a subject related to the domains of activity of the Union and which concern him or her directly.

- The mediator

The institution of the mediator is an innovation brought by the Maastricht Treaty.

The European Parliament elects a mediator, empowered to receive complaints emanating from any citizen of the Union or any natural or legal person with residence or statutory seat in a member state and related to cases of bad administration in the action of community institutions or bodies, with the exception The Court of Justice and the Court of First Instance in the exercise of their jurisdictional functions. If the mediator found a case of bad administration, he notifies the respective institution, which has a period of three months to take measures. The mediator will draw up a report that he will submit to the Parliament and the concerned institution, the author of the complaint being informed of the result of the investigation.

The Ombudsman presents an annual report to the Parliament on the results of the investigations carried out. The appointment of the mediator is made after each election of the European Parliament for a period corresponding to its legislature, his mandate can be renewed.

- The temporary commission of inquiry

Another possibility to highlight the Parliament's control attributions is the establishment of a temporary Commission of Inquiry.

The Commission investigates individual cases, strictly determined regarding accusations of crime and bad administration of the application in Community law, its existence ending by submitting its report with the conclusions of the investigation carried out.

The legal provision does not make any reference to the quality of the active subject, so it can be considered that these accusations can be made by any

citizen of the Union, by individuals or legal entities, by community institutions or by member states.

B. European Union Agency for Fundamental Rights (FRA)

Created in 2007¹⁹, the Agency replaces the European Observatory of Racist and Xenophobic Phenomena, which had the role of assessing the proportions and evolution of racist, xenophobic and anti-Semitic phenomena at the level of the European Union, in order to establish measures and actions against them.

The headquarters is in Vienna, Austria. The agency provides the competent institutions and authorities of the EU and its member states with assistance in the field of fundamental rights in the context of the application of Community law.

However, the agency does not deal with individual complaints or make normative decisions.

The agency advises EU institutions and national governments on fundamental rights, in particular in the following areas:

- discrimination
- access to justice
- racism/xenophobia
- data protection
- the rights of victims of international crimes
- children's rights.

C. The role of the judicial bodies of the European Union

The administration of justice in the EU is carried out by the Court of Justice of the EU, in collaboration with national courts.

The Court of Justice of the EU is a jurisdictional system comprising the Court of Justice and the General Court. The Court of Justice of the EU ensures that EU law is interpreted and applied uniformly in all EU countries.

The Court of Justice holds assignment powers. Common law courts are national courts. The Court renders judgments in the cases assigned to it according to the jurisdiction established by the text of the treaties regarding:

- interpretation of legislation (preliminary rulings) - the national courts of EU countries are obliged to guarantee the proper application of European legislation, but there is a risk that the courts of different countries interpret the legislation differently. If a national court has doubts about the interpretation or validity of an EU law, it can ask the Court of Justice for an opinion. The same mechanism can also be used to determine whether a national law or practice is compatible with EU law.

- compliance with the law (actions for non-fulfilment of obligations or infringement procedures) - these are actions brought against a national

¹⁹ By Regulation (EC) no. 168/2007 of the Council of 15 February 2007 (OJ L 53/2 22.2.2007).

LEGAL PROTECTION OF VICTIMS OF CRIME IN THE EUROPEAN UNION

government that does not fulfil its obligations under European legislation. These actions can be initiated by the European Commission or another EU country. If the targeted country is found to be at fault, it has an obligation to remedy the situation immediately. Otherwise, a second action can be brought against her, which can lead to a fine.

- actions to annul some EU legislative acts) - if a member state, the EU Council, the Commission or (under certain conditions) the European Parliament considers that a certain EU legislative act violates the fundamental rights or the treaties of the Union, it can ask the Court of Justice to cancel that act. Individuals can also ask the Court to annul an EU act that directly concerns them, and which infringes their rights recognized by European legal instruments.

- actions in determining the failure to act - the Parliament, the Council and the Commission have the obligation to adopt certain decisions in certain situations. If they do not do so, member state governments, the other EU institutions and (under certain conditions) individuals or businesses can lodge a complaint with the Court.

- sanctioning the EU institutions (actions for contractual or tortious damages) - any person or company that has suffered as a result of an action or lack of action on the part of the EU institutions or their employees can bring an action against them through the Court.

D. The role of Europol

On the European level, the states of the European Union have established the Europol structure, in order to improve police cooperation in the fields of international organized crime.

The objectives of Europol aim to improve the effectiveness of the competent services of the Member States and cooperation in terms of preventing and fighting terrorism, drug trafficking and other serious forms of international crime, for which some indications reveal the existence of a criminal structure or organization and if two or more member states are affected by these forms of crime in a way that, due to the scale, gravity and consequences of the crimes, requires joint action by the member states²⁰.

CONCLUSIONS

Although legislative and institutional progress has been made in the field, victims of crime still cannot fully exercise their rights in the European Union. Victims' difficulties in accessing justice are caused by a lack of information and because they do not benefit from sufficient assistance and protection. Also, most

²⁰ Petru Tărchilă, "Cross-border organized crime, criminal activity with a potential danger for the security of the person", Vol. "Public safety and the need for high social capital", Editura Pro Universitaria 2020, p. 210.

*Member States have not yet fully transposed the minimum standards agreed in EU rules on victims' rights.*²¹

In this context, the European Commission elaborated to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - the Communication "EU Strategy regarding the rights of victims (2020-2025)"²²;

The Commission renews its commitment and establishes a robust policy framework to protect vulnerable people, empower victims, bring offenders to justice and compensate victims.

The Commission calls on Member States and civil society to get involved to prevent and combat violence and to provide assistance and protection to victims of cross-border crime.

The EU Strategy on Victims' Rights (2020-2025) identifies key priorities to concretely support victims of crime. The strategy proposes concrete actions, which will be developed with full respect for fundamental rights, to bring criminals to justice, protect victims and help them rebuild their lives.

Through this strategy, the key actions to be carried out by the European Commission, the Member States and civil society within each of the five priorities are presented, as follows:

1. Strengthening the capacity to act of victims of crime, consisting of the following key actions:

- the launch of an EU and national campaign to ensure a greater level of awareness regarding victims' rights and promote the provision of specialized assistance and protection to victims with specific needs;

- promoting training activities for judicial and law enforcement authorities;

- providing EU funding for national victim support organizations and relevant community-based organizations to provide information and provide assistance and protection to victims, as well as promote restorative justice services.

2. Improving the assistance and protection given to the most vulnerable victims, with the following expected actions:

²¹ Conclusions from the reports on the implementation of the Child Sexual Abuse Directive (COM/2016/0871 and COM/2016/0872) and the Trafficking in Human Beings Directive [COM(2016) 722 final]. The Commission launched 21 infringement actions for incomplete transposition of the Victims' Rights Directive against the following countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden.

²² http://www.cdep.ro/afaceri_europene/afeur/2020/fi_2975.pdf

LEGAL PROTECTION OF VICTIMS OF CRIME IN THE EUROPEAN UNION

- *promoting the provision of integrated and specific assistance to victims with special needs, such as children, victims of gender-based violence or domestic violence, and victims of racist and xenophobic hate crimes;*

- *evaluation of the introduction of minimum standards regarding the physical protection of victims, including minimum conditions regarding the adoption of protective measures and the modalities of their application;*

- *evaluation of tools at the EU level to allow the reporting of crimes by victims who are migrants, regardless of their residence situation, as well as by victims in detention.*

3. Facilitating victims' access to compensation, aiming at:

- *assessment of national compensation systems and, if necessary, removal of existing procedural obstacles;*

- *ensuring that compensation from the state for premeditated crimes committed through violence, including for victims of terrorism, are reflected in national budgets;*

- *taking measures so that the victims are not subject to secondary victimization during the compensation procedure;*

- *ensuring cooperation with other member states in cross-border cases within the relevant EU structures.*

4. Strengthen cooperation and coordination between relevant stakeholders, aiming at:

- *the establishment of the Platform for victims' rights to bring together the relevant actors from the EU level in the field of victims' rights;*

- *the creation of national strategies on victims' rights that have a comprehensive approach to victims' rights and involve all those who are likely to come into contact with victims;*

- *the undertaking of actions to create a more resilient society by promoting greater involvement of civil society in actions at the national level.*

5. Strengthening the international dimension of victims' rights, with the following actions:

- *strengthening cooperation with international and regional partners, such as the United Nations and the Council of Europe, to promote high international standards for victims' rights;*

- *using EU funds and political dialogue to promote, support and protect victims' rights and ensure access to justice for victims in partner countries;*

- *promoting cooperation to improve assistance and protection for EU citizens who are victims of crimes in third countries.*

At the EU level, the Commission has launched a Platform on Victims' Rights, which will bring together all relevant actors. At the national level, Member States should establish national strategies for victims' rights. The Commission will appoint a coordinator for victims' rights to ensure the coherence and effectiveness of the various actions related to the victims' rights policy.

BIBLIOGRAPHY

Flaviu Ciopec, laviu.ciopec@e-uvv.ro. -"The victim, the injured person and the civil party in the criminal process", <https://drept.uvt.ro/administrare/files/1634397557-articol-flaviu-ciopec.pdf>;
Cristinel Ioan Murzea, "Free access to justice in the light of Directive 2003/8/EC on improving access to justice in cross-border disputes", Vol. "Public safety and the need for high social capital", Publishing House Pro Universitaria 2020, p.36;
Petru Tărchilă, "Cross-border organized crime, criminal activity with a potential danger for the security of the person", Vol. "Public safety and the need for high social capital", Editura Pro Universitaria 2020, p. 210.
http://www.cdep.ro/afaceri_europene/afeur/2020/fi_2975.pdf
https://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-victims-crime-eu-support_summary_ro_0.pdf
<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:RO:PDF>