

University "St.Kliment Ohridski" - Bitola
Faculty of Security - Skopje

Security *Horizons*

**THE EURO - ATLANTIC VALUES
IN THE BALKAN COUNTRIES**

 **Hanns
Seidel
Stiftung**

Number **2**



ISSN 2671-3624

Skopje

SECURITY HORIZONS

ISSN 2671-3624



Hanns
Seidel
Stiftung

INTERNATIONAL SCIENTIFIC CONFERENCE
**THE EURO-ATLANTIC VALUES
IN THE BALKAN COUNTRIES**

22-24 SEPTEMBER 2020, Ohrid

Volume I, No. 2

Skopje, 2020

<https://fb.uklo.edu.mk/zbornik/>

БЕЗБЕДНОСНИ ХОРИЗОНТИ

ISSN 2671-3624



Hanns
Seidel
Stiftung

МЕЃУНАРОДНА НАУЧНА КОНФЕРЕНЦИЈА ЕВРОАТЛАНСКИТЕ ВРЕДНОСТИ И БАЛКАНСКИТЕ ЗЕМЈИ

22-24 СЕПТЕМВРИ 2020, Охрид

Година I, Број 2

Скопје, 2020

<https://fb.uklo.edu.mk/zbornik/>

Издавачи:

Универзитет „Св. Климент
Охридски“ Битола
Факултет за безбедност – Скопје

За издавачите:

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Климент Охридски“ – Скопје
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за безбедност – Скопје

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Проф. д-р Цане Т. Мојаноски
Корица: Зоран Цоцовски

Печати:

АД „Ван Гог“ - Скопје

Адреса на издавачите:

Факултет за безбедност
1000 Скопје
П. Фах 103
тел: 022546211

**Универзитет „Св. Климент
Охридски“**

1ви Мај б.б. 7000 Битола,
тел: 047223788

Publishers:

University “St. Kliment Ohridski”-
Bitola
Faculty of Security- Skopje

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Layout design:

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Print:

“Van Gog” - LTD Skopje

Address of the Publishers:

Faculty of Security
1000 Skopje
P.O. Box 103
tel: ++389(0)22546211

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UDK: 343-058.6:341.24(4-672EY)
343-058.6:343.1(497.7)
DOI: 10.20544/ICP.11.01.20.p20
Original Scientific Paper

**THE DIRECTIVE OF THE EUROPEAN UNION ESTABLISHING
MINIMUM STANDARDS ON THE RIGHTS, SUPPORT AND
PROTECTION OF VICTIMS OF CRIME AND MACEDONIAN
CRIMINAL PROCEDURE LAW**

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*“In the first place, we witness to a serious change of social values by putting the interest of protecting victims in criminal proceedings ... Justice is not just to punish an offender, but also to restore the consequences of offenses, this particular aims to prevent new victimization”- Ivo Josipović - Former President of the Republic of Croatia (28.11.2012)**

Abstract

In 2012, the European Union Directive (2012/29 EU) was adopted establishing minimum standards on the rights, support and protection of the victims of crime replacing the Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. Both documents are legally binding of the general kind, the first of that kind, when it comes to victims of crime and EU legislation.

The purpose of this paper is to introduce the importance of this Directive for promotion of the position and rights of the victim of crime and the necessity for its implementation in national legislation. Moreover, the Republic of North Macedonia, as a country that has already started the accession negotiations for EU membership, must take into account the minimum standards on the rights, support and protection

* <https://pravosudje.gov.hr/vijesti/zastita-zrtava-u-kaznenom-postupku-jedan-je-od-prioriteta-reforme-pravosudja/138/> accessed on 26.3. 2020

of victims of crime as one of the conditions for gaining this status in the EU in the framework of harmonization of national with European legislation. In this regard, we can point the implementation of the Victims' Rights Directive as one of the priorities of Serbia in the negotiations for its accession to the EU (specifically foreseen in the Action Plan for Chapter 23 - Judiciary and Human Rights).

The main method used in this paper will be the content analysis of the Victims' Rights Directive and of domestic legislation regarding the (non) existence of provisions which imply its consistent application.

Keywords: *EU Victims' Rights Directive of Crime (2012), minimum standards, national legislation, harmonization of legislation*

INTRODUCTION

In 2001 the Council of the European Union adopted Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings that according to its nature a legal binding document for victims' rights. (Каракамишева & Ефремова, 2009)¹ Nevertheless, the knowledge of the victims, their rights and the need for assistance, support and protection have been constantly evaluated, i.e. have showed an upward line especially the standards for these issues have been increasing. In this context, within the framework of the so-called The Stockholm programme- an open and secure Europe serving and protecting citizens that was adopted at meeting held on 10 and 11 December, 2009² by the European Council, the Commission and Member States have been asked to examine how to improve legislation and practical support measures for protection of victims, by giving special attention, as **a priority, the support and recognition of all victims.** Furthermore, a newspaper if the result of perceived "weaknesses" of the Framework Decision, the European Commission adopted a document entitled: *Strengthening victims' rights in the EU*³ which was prior to the Directive establishing minimum standards on the rights, support and protection of victims of crime in 2012. In this regard, the document *Resolution of the Council on roadmap for strengthening the rights and*

¹... framework making new instruments introduced by the Treaty of Amsterdam and provided for in Chapter VI of the Treaty on European Union have a higher binding capacity as well as greater authoritative attitude, and aim to approximate and harmonize laws and regulations of Member States (more on this Каракамишева, Т., Ефремова, В. (2009)

² This document is published in the "Official Journal by the European Union", C 115/1, 4.5. 2010.

³ Brussels, 18.5. 2011 COM (2011) 274 final, SEC (2011) 580 final; SEC (2011) 581 final

protection of victims, in particular in criminal proceedings by (so called "Budapest Plan")⁴ was adopted by the Council of the European Union on 10 June, 2011. In the aforementioned resolution it is stressed that the level of the Union should act in order to strengthen the rights, support and protection of victims of crime (recitals (2) of the introductory part of the Victims' Rights Directive).

Finally, the Framework Decision of 2012 was replaced by the DIRECTIVE 2012/29/EU of THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA⁵ (hereinafter: Directive on the Rights of Victims). Its adoption is an important step in advancing the rights of victims of crime, both for EU Member States and for our country, which has been granted the status of a country that began EU membership negotiations on 25.03.2020. It is a directive of general type, i.e. a document dealing with issues related to the rights of victims of crime in general. The adoption of the Victims' rights Directive is due to the commitment of the EU to protect victims of criminal offenses and the establishment of minimum standards in relation to it, having in mind the ultimate aim "... further important steps to be implemented towards a higher level of protection of victims in the Union as a whole, especially in criminal proceedings." (recitals (4) of the introductory part of the Directive).

LEGAL NATURE AND PURPOSE OF THE VICTIMS' RIGHTS DIRECTIVE

We shall briefly dwell on the legal nature of directives in general as an EU legal instrument⁶, and above all for their obligation and the means of

⁴This Resolution was adopted at the 396th Justice and Home Affairs council meeting Luxemburg, 9 and 10 June 2011.

⁵This Directive was published in „Official Journal of the European Union“, L 315/57 of 14.11. 2012. I do not notify that for the purpose of this work is used as well as the version of the Directive in Croatian language: Direktiva 2012/29/EU Europskog parlamenta i Vijeća od 25. listopada 2012. o uspostavi minimalnih standarda za prava, potporu i zaštitu žrtava kaznenih djela te o zamjeni Okvirne odluke Vijeća 2001/220/PUP, published in „Službeni list Eurpske unije“ L 315/57 od 14.11. 2012.

⁶Directives as a legal instrument fall within the sources of EU law, together with *treaties, regulations, decisions, international treaties and international treaties that are part of the EC, EUROATOM, EC and EU, general principles of law and common law, conventions between Member States and the case law of the European Court of Justice.*

implementation in the national legislation” ... the directives should be taken in the national law of the country to which the directive refers. As the most common type of EU reference, directives are not directly applicable but can have a direct effect. They are binding on the state party in terms of the tasks to be accomplished, the state has right to choose the form and methods for their accomplishment. The most acceptable means of applying the directives is the process of harmonization of laws.” (Каракамишева & Ефремова, 2009: 185)⁷

In this context the question arises as a relation between the introductory part of the Directive and its normative part (systematized in specific chapters concerning the rights of victims of crime, designated as minimum standards when it comes to these victims). Namely, what is the nature of the provisions that are part of the introductory with respect to the so-called normative part of the Directive, primarily in relation to their (non)obligation. Also, are these two parts complementary and successive? We have raised these questions, taking into account the legal aspects of this work. In order to answer the questions, the attention should be paid to DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU.⁸ Namely, analysing every Article of the Victims’ Rights Directive, the mentioned document of implementation in particular refers to the adequate recitals systematized in the introduction (e.g. Article 1- recitals 9 -14; Article 2- recitals 19 and 20 etc.). That, above all, means that they are mutually complementary and successive. Although, according to us, the recitals have an explanatory role in the first place, and the Articles referring to the normative part represent their operationalization and are in a “firmer” form, i.e. formalized and as such, by their nature, binding. Thus, a formulation that is often used in provisions (Articles) of the rights of victim: “Member states shall ensure that victims...”). (emphasized by the authors)

The purpose of the Directive is to ensure that victims receive the necessary information, support and protection as well as to enable them

⁷ Directives are the laws of the European Community which give results within the Community, as they indicate what resources should be used for each Member State separately to achieve better results in its development.”

⁸ The full title of the document is: 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

participation in criminal proceedings (Article 1 of the Directive), with particular role supported with appropriate rights corresponding to their position during procedure, there is a tendency of victims' rights to be balanced and objective as far as it is possible comparing to the rights of offender (without prejudice to the question their rights). Besides, Member States may be guided by national legislatures and to decide whether victims will recognize the status of a party to the proceedings, or will only participate in the proceedings.

"The Victims' rights Directive is an important new European legislative text and it is one of those that the Union can be proud of," said Vivian Reding, EU justice Commissioner "Every year 75 million people in the EU are victims of crime. Increasing the rights agreed under EU law will provide everyone with the right to better protection, information and support. Victims must not be forgotten (and invisible-*our note*) as well as they must be dealt with fairly. Citizens who have been victims of crime have the right to do so." In this context, it is very important to point out the importance of the Directive as part of a wider, in fact strategic EU objective: "The introduction of minimum rules for victims of crime is part of the broader EU objective of seeking to build a single European area of justice, enabling citizens to exercise a full range of fundamental rights and to have confidence in the justice system throughout the EU." (Europska komisija, 2014)

STRUCTURE OF THE VICTIMS' RIGHTS DIRECTIVE

The Directive is systematically divided into five sections: a relatively extensive and highly significant introductory section divided into 72 recitals, a normative section containing the victims' rights systematized into three groups (see below), other provisions (including those which refer to the education and training of persons dealing with victims) and the final provisions (with particular reference to the provision concerning the replacement of the previous document, more precisely the Framework Decision of the Council of 2001 with this Directive).

The introductory part of the Victims' Rights Directive sets out the basic documents and activities that preceded its adoption and thus provides an overview of the situation in this area. At the same time, in this section, the provisions that in the normative part are operationalized in separate articles are adequately explained.

Victims' rights within the Directive are systematized, relatively speaking, in three groups: 1) rights relating to the **provision of information and support** (Articles 3-9); 2) rights related to **the victim's participation in criminal proceedings** (Articles 10-17) and 3) rights related to the **protection of victims and recognition of victims with specific protection needs** (Articles 18-24).

On this occasion, we would try to mention the basic principles i.e. rules from the Victims' Rights Directive as well as their implementation in the national legislation of Member States should be considered.

- the rights stipulated in the document are minimum victims' rights with possibility the states to increase the rights' list in order to provide a higher level of their protection;
- they are applied without discrimination, regardless of citizenship or country of residence of the victims of criminal offenses (of course, if the country of residence is a member of the EU) and irrespective of the seriousness of the offense;
- the victims and (under certain conditions) family members should have access to support services and to be protected from further damage, regardless of whether the crime was reported and whether they participated in criminal procedure;
- Member States are obliged to provide adequate training for the needs of victims for officials likely to come;
- They encourage cooperation between Member States and coordination of state organs, bodies and agencies in their dealings with the exercise of the rights, support and protection of victims of crime.
- For specific categories of victims (trafficking in human beings, children as victims of sexual exploitation and child pornography, gender-based violence) EU legislation establishes special protection and support provided for in specific documents.

At the very end of this section of this work and in the context of the meaning of the Victims' Rights Directive we would remind that the EU has succeeded in many cases in harmonizing Member States' legislation through the strong effect of its *aqui communautaire*. This legislation, which is harmonized according to EU standards, is required from countries as the Republic of North Macedonia, which are interested in this matter and take

appropriate action.⁹ Following that direction, we can point out the implementation of the Victims' Rights Directive as **one of the priorities** of the Republic of Serbia in the negotiations for its accession to the EU (specifically foreseen in the Action Plan for Chapter 23 - Judiciary and fundamental human rights). (Nikolić- Ristanović, 2019)¹⁰ Due to this, it becomes clear that the reform of penal legislation in our country, among other things, should move in this direction.

The question that follows is whether as a result of consistent conduction of activities for the harmonization of our legislation with the EU legislation and related reforms we would be talking about accepting a new model of criminal procedure that means proactive participation of the victim/ the injured party, more precisely for the "... model of criminal procedure which involves the victim's participation (victim participation model) which is based on *equality with the victim, respect and esteem his/her dignity*".(Simeonović- Patić & Kesić, 2016) In this occasion we will tackle the question if precisely this model of criminal procedure has been promoted.i.e.it has been taken into account of international documents (the UN, the Council of Europe, the Council of the European Union, etc.) that are related fully or partially to the rights of crime victims.

POSITION OF THE VICTIM IN THE LAW ON CRIMINAL PROCEDURE

Macedonian criminal legislation (substantive and procedural), after the independence of our state (more precisely since 1991) is continually characterized in improvement of the position of victims, including injured parties, whereby one can see the detachment both positive and negative tendencies. However, according to our estimates, speaking in general, the positive tendencies have been prevailing therefore we will try to explain that in the further notice. Those changes are in both substantive as well as procedural legislation, though, because of the extent restrictions of our work, we will keep to the latter, as in the Victims' Rights Directive which is the

⁹ On 25.03.2020, our country received a status to start negotiations with the EU.

¹⁰ More details on the activities of R. Serbia in this regard: Nikolić- Ristanović, V. (2019) Od žrtve do pobjednika- Viktimologija kao teorija, praksa i aktivizam, "Prometej", Beograd, p. 193.

subject of our interest. The changes in criminal substantive legislation will be mentioned only in a function of the purpose of this work.

Whether the 2010 Law on Criminal Procedure¹¹ in force that replaced the first Law on Criminal Procedure (hereinafter: LCP) in the independent Republic of Macedonia adopted in 1997,¹² justifies expectations in terms of victims i.e. injured parties. We do specify that one of the priorities of the strategic reform documents in the area of Macedonian criminal legislation (Крапац Калаџиџев, Камбовски, Бужаровска, 2007), has been the improvement of the victims' situation as well it is one of the pillars of this reform. In this context is the question is whether victims i.e. injured parties have rights which allow them an active role in the proceedings as a party, not only as a participant in the proceedings.

Essential novelty in the 2010 LCP is to distinguish the rights of the victim from the rights of the injured party, which means that the legislator has adopted a modern decision according to which the victim is entitled to certain rights (Article 53 LCP), regardless of whether or not he / she participates in the criminal proceedings. Consequently, his/ her rights are reinforced by a list of rights belonging to the injured party, which, in addition to the rights he/she has as a victim of a crime, also include the rights recognized as a participant in the proceedings (Article 57 LCP). But immediately conclude that the position which the injured party has pursuant to our LCP is not allowed to have the status of a party in the proceedings, namely that can be if the party is involved in a civil suit i.e. a proposal. We stress that in terms of the victims' rights there has been made distinction regarding that the victims' rights in general (regardless of the case or characteristics of the victims), rights relating to victims as particularly vulnerable categories (specified as **threatened or deeply emotional victims**, according to Article 54 LCP), because of their special characteristics, and the victims' rights linked to specific crimes where the victimization level has been increased due to the nature and severity (consequences) of particular cases (against sexual freedom and gender morality, humanity and international law- Article 55 LCP). Additionally, to these, there are victims of

¹¹ Law on Criminal Procedure ("Official Gazette of the Republic of Macedonia" No. 150/2010, 100/2012, 142/2016 and 198/2018).

¹² The first Macedonian Law on Criminal Procedure was adopted at a session of the Assembly of the Republic of Macedonia, held on 26 March 1997 (Official Gazette of the Republic of Macedonia, No. 15/1997).

gender violence (primarily those related to domestic violence) as well as cases of hate, which have recently become one of the current topics and have been incriminated in more crimes (listed as aggravating or square circumstances under the Criminal Code) but this is not accompanied by changes in procedural law in respect of their special protection. We are obliged to note that one of the drafts of the valid LPC, and the significant changes in terms of the status and rights of the victim in the law, respect for their rights was before deferred as one of the fundamental principles of our criminal procedure. Due to different understandings within the Commission, this proposal was not accepted i.e. omitted from the final version of the LPC. Besides the fact that one of the authors of this work was summoned as an expert regarding issues related to victims, who was not permanent member of this Commission. Our opinion is that this proposal, which would have been properly operationalized in favour of injured parties as well as it would have paved the way of the acquisition of status parties in the proceedings.

What are the rights with which we can illustrate the active role of the injured party in our LPC? They would include the right of the injured party (including the private lawsuit) in the course of this procedure, the following should be performed: to point out all the facts and propose evidence, inspect the files, question the defendant, witnesses and experts, make observations and explanations regarding injured parties' statements and to give other statements and to put other proposals, as well as the right to review files and objects serving as evidence (Articles 64, paragraphs 1-3), which prescribes the obligation of the Public Prosecutor (hereinafter: the Public Prosecutor-PP) to meet the injured party and the private lawsuit for rights cited in the preceding paragraphs (paragraph 4). Furthermore, the rights of the injured party related to inspection of the record (Article 92), as well as the right during the investigative process in order the public prosecutor to be proposed that he/she could take certain actions in order to realise the prescribed rights (Article 293 LPC).¹³

¹³ In this context, we would mention the experience of the Republic of Serbia citing Nikolic-Ristanovic, V., who explains the current LPC of Serbia which deprive some rights of the victim (according to their law : injured party) provided in the previous PCU containing decisions in which the victim "had a greater number of rights that are essential for its active role in criminal proceedings and access to justice."Nikolić- Ristanović, V. (2019) *Od žrtve do pobednika- Viktimologija kao teorija, praksa i aktivizam*, "Prometej", Beograd, p.208-209.

On the other hand, our LCP suspend an injured party right of a subsidiary lawsuit that the previous law had. Namely, in Article 42 of LCP, it is generally prescribed decision when a public prosecutor may waive from criminal prosecution, according to which in cases prescribed by law can waive criminal prosecution until the completion of criminal proceedings. Waiving of the public prosecutor has adequate arrangements in relation to the phase of post the arch that leads about a particular criminal part. On this occasion we will dwell on decisions related to the role of the injured party in cases of such waiving.

The right of the injured party to react to the decisions of the public prosecutor and to be the corrector of the public prosecutor possible unethical or illegal conduct is in accordance with the decision prescribed in Article 301, paragraph 4 LCP, regarding the completion of the investigative procedure, according to which he/she may file a complaint with the Senior Public Prosecutor. However, on this occasion we can conclude that the injured party has a proper stroke at all stages of the procedure. In addition to that is the decision by which he/she can submit a complaining the case of adoption orders by the public prosecutor to stop the investigation, in this situation there is a deadline for complaints well as the deadline for a response by a senior public prosecutor.

However, the decision contained in Article 341 LCP regarding the waiver of indictment by the public prosecutor, confirming the abolition of the right of the injured party to prosecute (to submit a subsidiary lawsuit) as an important right of the injured party and in addition to his/her active role in the procedure. Namely, that right is transformed into less in its meaning, the right of the injured party to submit a complaint against a decision to stop a direct procedure to the senior public prosecutor (Article 341, paragraph 3).

The Institute of conditional postponement of the criminal prosecution, it is regulated with Article 43 of the LCP, in paragraph 1 is specifically prescribed that the public prosecutor with the consent of the injured party (emphasized by the author) may postpone criminal prosecution for a criminal offense for which a penalty of imprisonment up to three years is prescribed if the suspect is ready to act according to the instructions of the public prosecutor and to meet specified obligations with which reduce or remove harmful consequences of the criminal act, an end is put to the harassment that is a result of the criminal offense i.e. this is done in order the suspect to be reintegrated. Taking into consideration this decision, the aforementioned

institute of conditional postponement of prosecution is viewed not only as an expression principle of opportunity applied by the Public Prosecutor in performing duties but also as one of the restorative mechanisms.

Moreover, regarding the institute in adopting a judgment based on agreement between the public prosecutor and the suspect which is stipulated in our LCP (Article 483, paragraph 2), according to which is given limited role of the injured party in terms of the type and the amount of the indemnification claim (Article 484). Also, there is a restriction to injured party and that is the type and the amount of the indemnification claim may be subject of bargaining if there is a consent by the suspected person as well as Article 490 (paragraph 4) in accordance with another opportunity that is at the disposal of the injured party if he/she is not satisfied with the decision on the type and amount of the awarded legal claim, he/she may exercise his/ her right in a civil procedure, which must be admitted is the difficult way for the injured party to exercise this right!

What are the positive novelties in the LPC which among the other issues are as well related to the rights, support and protection of victims provided for in the Victims' Rights Directive?

Above all, there are decisions on preventing secondary and repeat victimization. Besides the previously mentioned articles that refer to victims' rights (Articles 53-55 LPC) and rights of injured parties (Article 57 LPC) as significant in this regard we indicate Article 232 LPC which prescribes a special regime for examination of particularly¹⁴ vulnerable victims and witnesses are systemized within Chapter XVIII of the LPC concerning evidence. However, there is no doubt that the mentioned article is of limited scope as it concerns the examination of particularly vulnerable victims and witnesses. Determination of this category of persons is according to prescribed criteria; the obligation to pay particular attention by the authorities; separation in special facilities outside the premises of the body conducting this procedure; carrying out the examination by experts; and appointing a victim's proxy are significant innovations, so far unknown in our procedural legislation. We stress that with these decisions of our LCP almost

¹⁴ Regarding the legislator's wording "particularly vulnerable" "we wonder whether the legislator knows of "not particularly vulnerable victims and witnesses...". Hence, we consider the word "particularly" "is not necessary or that is tautology. In support of our suggestion is Article 54 LPC where only "vulnerable categories of victims" is used.

fully complied with the standards set in the Victims' Rights Directive when this category of victims and witnesses is implied to (Article 20). Nevertheless, we wonder about the need of protection to secondary and repeat victimization of the others that is to say "ordinary" categories of victims who also need such protection.

The introduction of restorative mechanisms also contributes to the improvement of the victim's position, including his/her more active role in criminal proceedings both inside and the criminal process (before and after the procedure). Which are they? In this context we will mention, above all, the mediation (which is covered in details as a separate procedure in separate chapter as well as in Articles 491- 496), reconciliation hearing (Article 475), as already mentioned as well as commented- conditionally postponement of prosecution (Article 43). But we will not talk about the significance and benefit for victims by establishing restorative mechanisms (which sadly, according to our knowledge, sadly, have never been practiced).

At the same time, we would particularly espouse the right to compensation for the material and non-pecuniary damage caused to victims by a state fund (within the scope of the victims' rights listed in Article 53 of the LCP) in case of possibility of damages not being recovered from offender that needs to be regulated by a special law.¹⁵

MACEDONIAN CRIMINAL PROCEDURE LAW AND THE VICTIMS' RIGHTS DIRECTIVE

Within this part of our work, we would give an introductory and general indication which notifies that one of the weakness of our Criminal Procedure Law is even though that most victims' rights i.e. injured parties are prescribed and even listed in the LCP, they are not operationalized as the victims' rights contained in the Directive. This refers to the three groups of victims' rights (which we will address in the remainder of the question), with some of these groups as a whole being less represented in our criminal procedure law. Probably it is due to the realization that part of these rights by their very nature do not belong to the criminal proceedings. But the fact is

¹⁵ Draft law on Payment of Compensation to Victims of Crime, Skopje, September 2019. It is a law that has been announced and drafted for a long time, but unfortunately, it has not been adopted yet by the Macedonian Parliament.

that these rights are not only complementary to those prescribed in the LCP, but are indispensable for the creation, we would have liberty to say, of a system of assistance, support and protection for victims of crime, as well as of their successful implementation. One of the possibilities how to overcome this situation is the commitment that will be exhibited in the concluding part of our work.

Next is a brief comparative overview of the provisions of the Victims' Rights Directive and their implementation in our Criminal Procedure Law. Due to the restricted scope of our work, we would have to focus on the Law on Criminal Procedure. As we have mentioned earlier victims' rights in the Directive are systematized into three groups.

The first group of the victims' rights refers to giving information and support to the victims (Chapter 2 of the Directive).

Right to understand and be understood (Article 3) - we can conclude that this right is not formulated in such a firm way i.e. prescribed in our LCP. However, certain provisions apply to this right. There is also an interesting possibility provided for in the mentioned article, since the first contact with competent official body, the victims should be supported by a person that they will choose during the whole procedure but only under certain conditions (paragraph 3). This possibility is also provided under certain conditions in our country, which we have already discussed about.

Right to obtain information from the first contact with the competent body (Article 4)- details about what type of information is stated can be seen from (a) to (k) emphasizing the need that victims should be given information "without undue delay". The scope and details of information depends on the particular needs and circumstances of the victim as well as the type and nature of the offense.

Right of victims in filing charges (Article 5)- stipulates obtaining written formal charges filed by the victim concerning his/ her case (paragraph 1), and those who do not understand or speak the language of the authorities are entitled to obtain translated documents free of charge (paragraphs 2 and 3). The Decision in Article 55 (paragraph 2) of the LCP is quite modest and refers only to a particular category of victims of crime against gender freedom and sexual morality, humanity and international law. We wonder why this does not apply to victims at all, even to the vulnerable category of victims.

Right of victims in obtaining information on their cases (Article 6). It is much more elaborated than in our legislation -e.g. paragraph 1, items a) and b), paragraphs 2-6 (the last one covers six sub-items) with many modalities and enabling victims at any time to revoke their decision on the need for information, and Member States should take this into account.

Right of victims to oral and written translation (Article 7)- it is stipulated the use of modern communication technologies for the interpreter's testimony, at the same time the right of defence should not be disturbed. The right is elaborated in detail in eight paragraphs. Paragraph 8 creates a dilemma, since it determines a general clause according to which this right for translation "must not postpone criminal procedure unreasonably."

Right to access victim support service (Article 8) and *Right of support from victim support service* (Article 9). These services as well as NGOs as entities that can assist victims/ injured parties are not mentioned in the LPC at all. It is important that these services act not only during, but also before and after the criminal procedure and that their services are free, and that the principle of confidentiality must be respected when it comes to victims. Also, family members of the victim have the right of access to these services under certain conditions which are stipulated in Article 8. Besides the general services, there are so called specialist victim support services.

The second group of victims' rights set out in Chapter 3 of the Directive refer to their **participation in criminal proceedings:**

Right of hearing (Article 10)- victims to be heard and to be able to adduce evidence. *Special rules regarding the hearing of a child*, taking into account his or her age and maturity. However, they leave the rules to be laid down in national law.

Rights in the event of a decision not to prosecute (Article 11)- details of the various cases concerning the non- prosecution and according to differences in the position of the victim in the particular penal system. The decisions in our LCP regarding this right are explained in more detail in the previous section of this work.

Right to safeguard within the Damage Correction Service (Article 12)- we do not have such official services and therefore in order to implement the Directive in national law, such services will have to be set up.

Right to legal aid (Article 13)- is conditioned by the status of a party in criminal proceedings. Regarding the legal assistance of victims in our LCP there are provisions and conditions under which it can be used. Namely, it is

referring to the victims of crimes against sexual freedom and morality, humanity and international law entitled before the examinations to discuss with free counsellor or attorney, provided that part of the procedure, i.e. only as injured parties (Article 55, paragraph 1, item 1). In our view, the dilemma is: Does the provision of Article 53, paragraph 1, item 13 also apply to this right?!

Right to reimbursement of costs (Article 14)- is a matter of cost incurred on the basis of "active participation in criminal proceedings", according to victims'/ injured parties' position in the specific legal system. This right of the victims / injured parties is not foreseen in our country.

Right to property restitution (Article 15)- property that is confiscated during the criminal procedure, which should be returned to the victim without delay, unless necessary for the purpose of the procedure itself. In this regard, the provisions of the LCP for the transfer of objects (Article 115), the return of objects (Article 119) and the provision of temporary security to a third party (Article 120). So, it is a set of rights available to the injured party to enable him/her to exercise his right to restitution.

Right to a decision on compensation by the offender during the criminal proceedings (Article 16) - it is preferable that the injury should be compensated by the offender during the criminal proceedings and within a reasonable time unless national law provides for such decisions to be taken another (for example civil) proceedings. Paragraph 2 is important in which State is required to initiate measures and stimulating the offender to make compensation to the damage/injury. This right is not explicitly mentioned in the LCP, even when it is exercised in the so-called property and legal claim provided in the adhesion procedure prescribed by "retention" i.e. with a clause normally used by judges to evade a claim and direct the injured party to litigation.

Rights of victims residing in another country (Article 17) - above all, this refers to the victims who are citizens of the EU countries this Directive is Mandatory for them. Surely those provisions are in favour to strengthen EU law and one European area of justice to be created, which is one of the goals of the Directive.

The third group of rights provided for in the Directive, contained in Chapter 4: **Protection of victims and recognition of victims with special needs of protection.**

Right of protection (Article 18) – to victims and their family members of secondary and repeat victimization intimidation and retaliation, including protection against emotional and psychological harm, as well as protection of the dignity of victims (and their families as needed) throughout of examination and testimony. This is a relatively new prescribed law but not in a comprehensive manner in the provisions of the LCP. Besides, it is not mentioned what is the specific function of the law of protection as it is clearly stated in the Directive.

Right of avoiding contact between the victim and the perpetrator (Article 19) is implemented in the LPC (Article 232, paragraph 6), according to which a specific category of victims is entitled to this right.¹⁶

Right to Protection of Victims During Criminal Proceedings Investigation (Article 20) - detailed case law (in four prescribed cases) and has already been commented on its implementation in the previous section of this work.

Right to privacy (Article 21) is in principle prescribed in the LPC, as one of the rights of the injured party but not to the victim (Article 57, paragraph 1, item 14) and it is without development.

Individual assessment of victims to determine the specific needs of protection (Article 22) - in the Directive are thoroughly listed and developed criteria as well as the basis for this assessment. The provisions of Article 54 and Article 232 of the LCP which basically are device f this assessment, strengthened by the rights of victims of crime of effective psychological and other professional assistance and support by the authorities, institutions and organizations to help the victims (Article 53, paragraph1, item 3) i.e. with the help of a psychologist, social worker or other professional (Article 232, paragraph 4). We do note that this is applied in cases when victims give testimonies and during the examination of all stages of the proceedings. However, it is necessary to work on developing an appropriate methodology for individual assessment.

Right to protection of victims with special needs of protection during criminal proceedings (Article 232). The LCP (Articles 54 and 55) is provided within the provisions on the victims' rights as well as some specific

¹⁶The injured party or witness of paragraph (1) of this article is not allowed to be faced with the accused and the other witnesses only upon their request (Article 232, paragraph 6 LCP). It is about examining "particularly vulnerable victims i.e. witnesses. "

provisions that operationalize this right important for the particularly vulnerable categories!

The right to protection of children as victims in the criminal procedure (Article 24) - for us these rights are specifically regulated by provisions contained in the Law on Children Justice¹⁷ in particular (the fifth) part, in chapter sixteen with title: Protection of a child as an injured party or a witness in a criminal proceeding (Articles 145-153). Analysing the already mentioned provisions, we briefly can conclude that the standards of the Directive are respected in the alleged law when it comes to children as victims.

Within the section of the Directive entitled as: **Other Provisions** (Chapter 5) very important for the realization of the prescribed rights of victims, special attention is paid to: *Employee training* (Article 25). These are persons who are likely to come into contact with victims, such as police and judicial staff, who are provided with general and specialist training to the level required for their contact with victims in order to raise their awareness of the needs of victims in order to provide them with assistance. the treatment of victims was made impartial, cautious and professional (Paragraph 1).

The issue of which other entities should be trained in the area of rights and protection of victims is regulated in paragraphs 3-5 of the same article together with the provision of general specialized training (in particularly judges and state prosecutors) by those who are liable for such training (Paragraph 2). It is no coincidence that this standard for the training of staff working with victims (general and specialized) is an issue that the Directive pays distinct attention, believing that the only way victims will receive quality service when it comes to their rights. In our legislation, this issue is mentioned in several provisions but without special insistence, except as an exception, on the responsibility of the state for the realization of such training and education. The exception to this is the Law on justice for children where is insisted on continuous training (through a year) of persons working with child victims of crimes (social workers, prosecutors, judges and lawyers).

¹⁷The Law on justice for children is published in the "Official Gazette of the Republic of Macedonia" No. 148/2013, and its amendments in the Official Gazette of the Republic of Northern Macedonia, No. 152/2019.

This chapter ends with provisions of Article 26 that refer to *cooperation and coordination of the services of State Member States* to increase the availability of victims to their rights set out in the Directive in national law. This involves: (a) exchanging best practices; (b) consulting in individual cases; and (c) assisting European networks dealing with issues directly related to victims' rights

INSTEAD OF A CONCLUSION

If to the above stated is added a restrictive approach in prescribing certain rights of the victim (e.g. the right to compensation by a State compensation fund and citation to a special law that has not been adopted yet etc.), or even the abolition of some pre-established rights (right to file subsidiary complaint), then the area for the victim's rights to be granted is even bigger notwithstanding the recent progress that has been made in this area. We can also add that part of the rights are stipulated but not precisely defined, which leaves possibility for their inconsistent or incomplete implementation. Besides, a particular problem might also occur due to the fact that our justice authorities are not sufficiently sensitized for victims' rights as well as overall for their role, place and significance in the procedure (police procedure, prosecution procedure and court procedure).

Finally, we would incline to considerations and recommendations *de lege ferenda* that choice of the Law on Criminal Procedure as a central law on the rights of victims of crimes (which include assistance, support and protection) is not the best decision because the rights of the victim are not limited to their participation in criminal proceedings. "Currently the rights are regulated by laws and bylaws in different areas", therefore the result of this is "too many norms and normative non-compliance (for example different definitions of victim)." (Hrvatski pravni centar, 2017)¹⁸ Hence, there is a commitment of stipulating the rights of the victim by **a special law** (some authors call it "Charter of Victims") that would stipulate the victims' rights out of criminal proceedings. In this way, we would also confirm the thesis

¹⁸ More details: Preporuke za unapređenje sustava podrške žrtavama po projektu "Ciljana i rana procjena potreba i podrška žrtvama kaznenih djela" Hrvatski pravni centar, Ministarstvo za pravosuđe i Ured za ljudska prava i prava nacionalnih manjina Vlade RH/ <http://www.hpc.hr/wp-content/uploads/2017/12/TEVNAS2Preporukezaunapredjenjesustavapodrskertzvamakaznenihdjela.pdf> accessed on 25.03. 2020

related to the victims' rights in the Directive, according to which they are broader than victims' rights within the framework of criminal proceeding.

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