

## VICTIMS AND WITNESSES SUPPORT IN THE CONTEXT OF THE ACCESSION NEGOTIATIONS WITH EU

Milica Kolakovic-Bojovic

*Institute of Criminological and Sociological Research, Belgrade*

*kolakius@gmail.com*

**Abstract:** EU legislation and standards presented during the screening process within the Chapters 23 & 24 related to rights of victims, including Directive 2012/29/EC, inter alia, envisage the establishment of victim support services. The purpose of such services is to provide victims and witnesses (hereinafter: VW) with the information on their rights and obligations and the ways to enforce them, as well as information on available support services, in order to help them overcome the consequences of crime and to constructively participate in criminal proceedings, which would then increase efficiency and quality of criminal proceedings. The shortcomings in the area of VW are affecting the justice system at large by covering all types of crime. The legislative framework in Serbia does not provide for nationally institutionalized support for VWs and there is no relevant strategic framework that covers this issue. Lack of relevant strategic policy framework influences strategic approach for development and definition of the system as well as development and adoption of policies in this area. The treatment of VWs is regulated ad hoc, inter-institutional cooperation is poor and there is a need to standardize overall support and protection from initial contact with the police, prosecution, courts, all the way to the completion of the proceedings. To improve this area Serbia needs to create VW support services network based on the maximum usage of existing (non)governmental capacities and linkage of all relevant providers into the unique network. Serbia needs to develop the referral mechanism and introduce coordination points in relevant institutions as well as to boost inter-institutional cooperation and cooperation with CSOs and other relevant providers as well as raising awareness on possibilities that system enables. These activities will provide a starting point for exercising the victims' rights according to acquis and also enable safe participation of VWs in criminal proceedings.

**Keywords:** victims, witnesses, European Union, Chapters 23&24, Directive 2012/29/EC.

## Requirements of the negotiation process

Screening of the alignment of the normative framework in the Republic of Serbia with relevant *acquis* within chapters 23 & 24 started by the end of 2013 divided in two phases: explanatory screening, aimed at presentation of the relevant *acquis* and EU standards to the Serbian authorities; bilateral screening, aimed at presentation of an alignment level of the Serbian legislative and institutional framework with the *acquis* and EU standards to the European Commission (hereinafter: EC). As a result of the screening process the EC submitted the screening reports<sup>1</sup> for both chapters during the 2015. Issue of VWs position has been tackled through the recommendations for both chapters: in Chapter 24 through the Subchapter Organized Crime: in Chapter 23 through the Subchapter Fundamental Rights, that deals, in details with procedural safeguards. Negotiation groups for both chapters have submitted detailed action plans to address EC's recommendations.

### Normative framework and transposition of the *acquis* within chapters 23 & 24

The United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>2</sup>, adopted by the UN General Assembly in 1985, was a substantive leap forward in the process of legislative developments for victims of crime worldwide. Since then the protection of victims of crime became a field of intensive legislative activities through the adoption of policy decisions and legal instruments. The most important for victims of crime are the EU Council Framework Decision on the Standing of Victims in Criminal Proceedings (2001) and the EU Directive on Compensation to Crime Victims (2004).

The Framework Decision (2001/220/JHA)<sup>3</sup> was a way to regulate position of victims in cross-border criminal proceedings, but the most important step made in order to ensure that victims of crime are given non-discriminatory minimum rights across the EU, irrespective of their nationality or country

1 Screening Report for Chapter 23, [http://seio.gov.rs/upload/documents/eu\\_dokumenta/Skrining/Screening%20Report%2023\\_SR.pdf](http://seio.gov.rs/upload/documents/eu_dokumenta/Skrining/Screening%20Report%2023_SR.pdf); Screening Report for Chapter 24, [http://seio.gov.rs/upload/documents/eu\\_dokumenta/Skrining/izvestaj\\_skrininga\\_24\\_sr.pdf](http://seio.gov.rs/upload/documents/eu_dokumenta/Skrining/izvestaj_skrininga_24_sr.pdf).

2 *The United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power*, A/RES/40/34, adopted on 29 November 1985, 96th plenary meeting.

3 *Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings* (2001/220/JHA)

of residence, was adoption of the EU Directive establishing minimum standards on the rights, support and protection of victims of crime on the strengthening of the position of victims of crime: EU/2012/29 (hereafter: Victims Directive).<sup>4</sup> The deadline for transposition of the Victims' Rights Directive was set on the 16<sup>th</sup> of November of 2015. The core objective of the Directive is to deal with victims' needs in a comprehensive way through the five specific areas of victims' needs, namely: the need to be recognized and treated with respect and dignity; to be protected and supported; to have access to justice; and to get compensation and restoration.<sup>5</sup>

When it comes to the victim support (Articles 8 and 9 of the Directive), the EU Directive stipulates that victims should have access to victim support services before, during and after the criminal proceedings. Victims should be able to access victim support services without necessarily filing a complaint. The Member States are required to ensure that access to any victim support services (in a confidential manner and free of charge) is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

The EU Directive 29/2012/EU states that family members as well should have access to victim support, "accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim" (Article 8(3)).

Another obligation of the Member States is to facilitate the referral of victims by the competent authority receiving the complaint to victim support services. That usually assumes passing on the victims information to the victim support (state or CS) organization (Article 8(2)).

Article 9 of the Directive stipulates that the Member States are obliged to provide, as a minimum, provide these important aspects of victim support is providing:

- information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;

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4 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.

5 Altan, L., *Analysis of victims' rights and services in Serbia and their alignment with EU Directive 2012/29/EU* (unpublished), 2016.

- information about or direct referral to any relevant specialist support services in place;

- emotional and, where available, psychological support;
- advice relating to financial and practical issues arising from the crime;
- unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat of victimization, of intimidation and of retaliation. (Article 9 of the Directive).

Directive also prescribed that the Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime and to ensure that shelters and other appropriate interim accommodation as well as targeted and integrated support for victims with specific needs is provided. Unless these services are provided by other public or private services, specialist support services should be developed and provided.<sup>6</sup>

Important component of the victims support is providing relevant information. Directive prescribes not only an obligation for Member States to organize mechanism of informing but also sets a basic framework for how that information should be provided. Basically, there are four levels of information provision for victims:

a) Awareness raising of rights amongst general population. Such awareness is essential to ensuring a general knowledge of the system, to promoting reporting of crime and to helping empower victims to exercise their rights (Article 26);

b) Provision of information on rights and services to victims;

c) Provision on information on the criminal proceedings;

d) Information on impact of crime, reactions to crime and crime prevention.

When it comes to the information provided to the victims they should be targeted, simple, understandable and accessible, provided in a timely manner, balancing the proactive provision of information with the needs of the victim. (Articles 3-69)

Beyond right on information, Directive deals with right on interpretation and translation. According to Article 7(1), when a victim doesn't speak the language that is used during the criminal justice proceedings he or she

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<sup>6</sup> European Union Agency for Fundamental Rights, *Victims of Crime in the EU: The extent and nature to support victims*, [http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support\\_en\\_0.pdf](http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf).

should be provided with interpretation, free of charge, during any interview or court hearing, in accordance with his/her role in proceedings. This right includes right to receive translated copies of documents related to their case in a language they can understand.

Important aspect of Victims Directive is victims' protection. In accordance with Articles 18 and 19 victims and their family members should be protected from secondary and repeat victimization, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members. Directive stipulates that is important to avoid contact between victims and their family members, where necessary and the offender should be avoided within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact. Special protection should be provided for vulnerable victims, that requires existence of the methodology for timely individual assessment (Articles 22 & 23) taking into account personal characteristics, type or nature of the crime<sup>7</sup> and the circumstances of the crime.

Having in mind necessity of specialization of the police officers, judicial office holders, court staff and lawyers in the area of victims' rights, under Article 25, Directive provides obligation of training. It should consist of both general and specialist training and aim at increasing their awareness of the needs of victims and enabling the practitioners to recognize victims and to treat them in a respectful, professional and non-discriminatory manner.

### **Current situation in VW support sector**

So far initial steps were made towards improvement of the treatment of VWs in criminal proceedings in the past period with numerous rather small scale initiative and pilot projects.<sup>8</sup>

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<sup>7</sup> Particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organized crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

<sup>8</sup> Throughout support of Norwegian Project "Improving delivery of Justice in Serbia Offices of VWs services" in High Courts in Belgrade, Novi Sad and Nis and Basic courts in Leskovac and Vranje

The legislative framework in Serbia does not provide for nationally institutionalized support for VWs and there is no relevant strategic framework that covers this issue. Lack of relevant strategic policy framework influences strategic approach for development and definition of the system as well as development and adoption of policies in this area. Also, there is no Action Plan for efficient implementation of strategic framework which would define measures and activities needed to be implemented within defined timeline based on cost assessments. The treatment of VWs is regulated ad hoc and there is no system that would standardize overall support and protection from initial contact with the police, prosecution, courts and until the completion of the proceedings. There is a lack of interinstitutional cooperation and as well as all relevant actors participating in provision of support to VWs. Deficiencies of the system are currently compensated with fragmented support through CSOs and international projects and programs supporting area of VW support and protection.

It is clear that some of the issues are regulated within the AP 23, AP 24, and NJRS, but there is no national strategic document and accompanying AP that would regulate comprehensively all the issues relevant for the

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provision of furniture and equipment has been secured aimed at ensuring adequate treatment of VWs. With a support of the British Embassy Service for provision of information to VWs at the High Public Prosecution Office in Belgrade, has been established as a pilot program. During the first phase, information to VWs on their rights in criminal proceedings throughout brochures, telephone and electronic communications have been provided.

Throughout the implementation of the OSCE project in Serbia “Institutionalizing a Network of Victim-Witness Support Services”, services for VWs have been established at 25 High Courts in the period 2012–2014. High Court in Belgrade performs administrative and technical tasks, tasks related to assistance and support for VWs, as well as operations for providing the conditions for the application of procedural provisions of the Law on organization and jurisdiction of state authorities in war Crimes Proceedings. Additionally, the Project supported drafting of Guidelines that were adopted by the High Judicial Council (HJC) which regulate manner of approach and system of operation for these services. Additionally, Rulebook of the HJC has been changed and competences of the Service in the High Court in Belgrade have been expanded to other cases, including war crime cases. The support mentioned above was followed capacity building activities for judges, prosecutors, and court support officers, public prosecutions support officers, court guards and Judicial Academy trainees. Since 2013 the new Criminal Procedure Code has been applied, according to which the prosecution is in charge of investigation. That is the reason why there was a requirement to support establishment of services for support and protection of victims/witnesses in public prosecutors’ offices so that targeted persons can receive the necessary information and support already in the stage of investigation. In that sense with a support of the British Embassy Service for provision of information to VWs at the Higher Public Prosecution Office in Belgrade, has been established as a pilot program. Through OSCE Project since December 2015 Information VW Services at the Public Prosecution Office (PPO) in Novi Sad, Nis and Kragujevac, have been established. Non procedural protection of the aggrieved parties/witnesses is provided by the Ministry of the Interior under its specialized unit “Unit for Protection”. This unit has limited jurisdiction and no comprehensive approach in this area. Since 2015 OSCE Project supporting institutionalization VWW Services at the Ministry of Interior as well.

position of victims and witnesses. The expert analysis from the fact-finding mission on Chapter 23 - war crimes, for, dated 13.03.2015, has shown that the Victim Witness Support Service at Special Departments of Belgrade Higher Court needs to be improved, including providing adequate staffing, training and equipment and developing joint working procedures with the prosecutor's office.

It is very significant that OSCE Project produced draft of the recommendation with steps for establishment and improvement of the network for VWs services with participation of all relevant state and judicial authorities and CSOs. Steering committee of the Project comprises of representatives of HJC, RPPO, SPC, Ministry of Justice (hereinafter: MoJ), Ministry of Interior (hereinafter: MoI), Victimology Society of Serbia and representatives of the academic society. Additionally SC agreed on the structure of initial model of national network. With the final adoption of recommendations, guidelines for establishment and further development of VWs services at national level will be defined. Also, recommendations will identify areas which need to be further supported. OSCE Project coordinates its activities with comparative overview and alignment with Acquis which will be prepared within MDTF Expert Analysis. Result of the comparative analysis will contribute to assess possible obstacles that other countries had during their establishment of the system.

Trying to summarize situation in practice, we identified several key problems in VWs support sector.

The existed support is fragmentized and many victims of crime don't reach victim support services. Sometimes that's caused by the fact that most victim support is focused on particular groups of victims, depended on age, gender or type of crime (e.g. women or victims of domestic violence or human trafficking) but dominant problem is lack of adequate geographical allocation of services accompanied with lack of centralized referral mechanism and pure coordination between existed services.

Resources are insufficient to provide consistent and qualitative victim support, especially in state institutions relies on existing human resources. Additional tasks of providing information and support to victims and witnesses overburdens the existing human resources. At the same time victim support established in state institutions is not accompanied by increased skills training of staff and lacking the necessary technical and practical resources. Quality standards for victim support are not transparent and volunteers are not included in victim support provision enough.

When it comes to right on information, current situation is unsatisfying regarding sufficiency of knowledge amongst the wider public about victims' rights and victimization. In parallel, there is insufficient legal implementation of information rights following first contact with authorities. Some information which should be provided without undue delay, is provided later in proceedings (not provided on first contact with a victim) in an inconsistent manner (between individuals as well as between organizations), without adequate proactive approach to victims.

The same goes for right on translation, because there are no enough detailed legislative provisions in place and translation requirements are not always met in practice.

One of the biggest problems lays in protection of especially vulnerable witnesses regarding avoiding their contact with offenders as well as in repeated testimonies.

It has been said that the qualitative training is the precondition for adequate VWs support, from the first contact, via individual assessment, to special support.

Serbian normative framework requires amendments in this part followed with adoption of high quality curriculum and sustainable system of training implementation.

### **Strategic approach**

Important steps in establishment of functional VWs support system has been made through the National Strategy for Judicial Reform for 2013-2018 that stipulates establishing special services in courts and PPO's for helping and supporting aggrieved parties and witnesses. Additional provisions are contained in the Action Plan for Ch. 23 (Activities 3.7.1.16-3.7.1.20) and the Action Plan for Ch. 24 (Activities 6.2.8.4, 6.2.11.1, 6.2.11.2, 6.2.11.8 and 6.2.11.10).

These activities show strong decision of the Republic of Serbia to introduce a systematical approach in the victim/witness support system. To this end, re-organization and upgrading of the currently available support services is planned for the forthcoming period. This process will be performed throughout the three phases presented below, regulated in detailed by the Action plan for Chapter 23.



### *Analytical phase*

In line with the AP Ch23, a comprehensive analysis is being conducted for the purpose of future establishment of the VW support services. With the support of MDTF Project. The ultimate objective of the project is to assist the Serbian Government, as part of its accession process, to develop a national system of victim support services which complies with EU Directive 2012/29 EU through:

a) Normative analysis (alignment of the Serbian normative framework with relevant international standards);

b) Institutional analyses taking into account all the currently available experience in provision of VW support (ongoing and/or past projects, existing services in the prosecutors' office, courts and CSOs), as well as previous analyses;

c) Comparative analyses of victim support system in five selected EU member states vis-à-vis Serbian system and propose up to three options for Serbia;

d) Fiscal impact assessment in terms of development and financial sustainability of the VWs support network. Such Analysis should be considered later during development of the Strategy for definition of the phases and timeline for its realization. OSCE project already has considered proposal on sustainability of the system based on the comparative overview defining possible approach for establishment of sustained system (various models - through implementing Law on confiscation of assets, through financing the system from the funds collected by the institute of criminal prosecution delay or applying the Rulebook on allocation of funds from the criminal prosecution delay ), but it is expected that Analysis will provide more details on this issue;

e) Project Infrastructural Assessment will prepare analysis of the needs for the adaptation and renovation of premises in courts and public prosecution offices based on the current overview of infrastructural conditions in relation to the particular requirements for support and protection of victims and witnesses. Later, results will support to asses required future investments into the judicial infrastructural aiming to enhance network of services.

*Future steps*

Based on the action plans for chapters 23 & 24, the next step in establishing VWs support network should be drafting and adoption of an overarching strategy for improvement of the VWs position accompanied with dedicated Action plan during the 2017. It's extremely important to establish joint Working group formed by MoJ for these actions, which will be comprised of representatives of MoI, MoLESVA, HJC, SPC, RPPO, academic society and CSOs. Strategy will define scope and timeline for the alignment of the Serbian legal framework, mechanism for establishment of network through linkage the existing providers and their capacities, etc.

Action plan should define steps/phases for development of the sustainable, institutional and organizational system for protection of victims, roles of services for support, continuous improvement of exiting capacities and sustainability.

Based on the activities done so far through the project activities as well as of recommendation drafted through the OSCE project, key stakeholders agreed that initial model should be based on the following principles: maximum usage of existing governmental and non-governmental capacities; linkage of all relevant government or non-government providers into the unique network for the whole territory; develop and establishment of the referral mechanism at the level of high courts, high prosecutorial offices and police administrations; introduce coordination contact points in order to establish formal types of communication between MoJ and MoI through cooperation with MoLESVA. Furthermore, reform activities should include strengthening capacities of existing services, boosting inter-institutional cooperation and cooperation with CSOs and other relevant providers that are currently providing support to victims as well as raising awareness that system enables. These activities will provide a starting point for exercising the victims' rights according to EU standards and also enable safe participation of VWs in criminal proceedings.

In parallel or shortly after adoption of the Strategy, there is a need to conduct alignment of the legal framework with EU Acquis through criminal procedural changes and changes of judicial and organizational legal framework in the field of victim and witness protection and support.

As the amended normative framework requires effective implementation, there is a need to strengthen the existing institutional capacities and enhancing cooperation and coordination among relevant government

authorities (MoJ, MoI, Ministry of Labour, Employment, Social and Veteran Affairs (hereinafter: MoLESVA) as well as cooperation of existing VW services established within higher courts, higher prosecution offices and Police administration as well as with relevant CSOs, academic community and Centers for social work and protection. That could be done through the development of instructions for interinstitutional cooperation (for example Protocols defining coordination and cooperation throughout implementation of aligned legal framework).

One of the key steps to establish earlier described initial VWs support service model is developing centralized referral mechanism for the whole territory of the Republic of Serbia accompanied with call centers and data base (registry), which will contain comprehensive information and data relevant for victims and witnesses assistance at national level, detailed contact information, available providers and web portal.

Process of improvement of the VWs support system should be followed by strengthening of competences between judicial and prosecutorial function holders, court staff, police officers and lawyers. The lack of training of practitioners on victims' issues can cause secondary victimization which can have a strong impact on e.g. rehabilitation of victims and their trust in the justice system. To avoid gaps in training curriculum and structure of trainees, the previous step is to prepare training needs assessment (hereinafter: TNA) in order to develop model of trainings on victims-witness's rights and support. This evaluation should also measure the impact on knowledge and skills of practitioners and also in victims experiences with the services provided by these practitioners.

According to the TNA it will be possible to develop Manuals for different institutions & actors relevant for provision of support as well as to organize the comprehensive trainings to all stakeholders focused on new legislative framework as well as on skills and knowledge of victims' needs, and how to treat victims in a non-harmful, non-discriminatory and respectful manner.

Precondition for continuous improvement of VWs position is availability of precise data on their structure as well as on the structure/type of provided support. The easiest way to collect and analyze data on VW support is to develop comprehensive database which will be used by different levels of institutions and providers. This issue is connected with establishing monitoring and reporting mechanism in the area of rights of victims and witnesses.

Changed approach to the VWs right requires improvement of public awareness in that area, through conduction of media promotional campaign and organization of roundtables aimed at promoting the policy framework and AP for the system of protection and support of VWs, including preparation of informative materials, brochures etc.

The last but not less important is improvement of infrastructure for VWs services in courts, prosecutors' offices and police stations. Basic infrastructural investments include equipment for VWs offices and waiting rooms (ICT equipment, telephone lines, internet connections and furniture). Full alignment of infrastructure with Victims Directive requirements takes a years and considerable funds.

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