

NOVELTIES PROPOSED BY THE EUROPEAN COMMISSION ON VICTIMS' RIGHTS PROTECTION AND ITS RELEVANCE FOR SERBIAN AUTHORITIES

Abstract: An estimated 75 million people in the European Union fall victim to crime every year reflects the significant impact of criminal activities on considerable portion of the population. Crime victims may experience a range of physical, emotional, and financial consequences, underscoring the importance of effective legal frameworks, support services, and policies to address their needs. The protection of victims' rights is a crucial aspect of the criminal justice system in the EU. The EU has taken steps to enhance the right and protection of victims through initiatives such as the Victims' Rights Directive and the EU Strategy on Victims' Rights. The Victims' Rights Directive, adopted in 2012, establishes minimum standards for the rights, support, and protection of victims of crime across the EU. The Directive aims to ensure that victims are recognized, treated with respect, and have access to information, support services, and fair treatment throughout the criminal justice process. In June 2022, the European Commission conducted an evaluation of the Victims' Rights Directive as part of its commitment outlined in the EU Strategy on Victims' Rights 2020-2025. The Strategy focuses on enhancing victims' rights, ensuring their effective implementation, and addressing emerging challenges in this area. Following the evaluation, on July 12, 2023, the European Commission proposed amendments to the Victims' Rights Directive. The objective of the revision is to contribute to a well-functioning area of freedom, security, and justice, emphasizing efficient recognition of judgements, improved crime reporting, and victim-centered justice, including the improved access to compensation from the offender. In the article the evolution of victim protection in European Union law, the impact of the Victims' Rights Directive, as well as proposed amendments to the Directive will be assessed. Since, Serbia is in the EU accession process and aligning of the national framework with the EU acquis, the article will focus on implications of proposed amendments on Serbian policy and legislation. The proposed amendments will be analyzed against National Strategy on the Rights of Victims and Witnesses of Crime in the Republic of Serbia and accompanying Action plan for 2023-2025 and its implementation results, highlighting some criticisms of the new directive's proposal also raised by some Member States.

Key words: victims' rights, protection, access to compensation, victim-centered justice

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1. INTRODUCTION

Historically, international law has paid little attention to the needs of crime victims, or crime in general. The unique nature of international law can help to explain this. As is well known, and as a result of the international community's predominantly interstate structure, international norms are developed to address state interests and objectives. In this context, states' attention to persons or individuals has been limited to specific areas of international law. This is true, for example, of human rights, international criminal law (in terms of individual criminal responsibility), and international humanitarian law. However, the treatment of victims appears to differ across these branches. Thus, in terms of fundamental human rights, victims are recognised when a state violates an international obligation; however, this branch of international law does not consider violations of international obligations by non-state actors. Individuals can be considered victims in international criminal and humanitarian law as a result of acts committed by other individuals (including those performing public functions) and non-state actors. In both cases, international responsibility is solely on individuals, and the victims are identified as such. As a result, despite the importance of the topic, international standards have ignored or failed to adequately consider the victims.

Therefore, the recognition and protection of victims' rights in international law have seen significant developments since the 1980s (Braun, 2019: 2).¹ The focus on victims' rights is crucial for ensuring a fair and just criminal justice system that recognizes and addresses the needs of those who suffered harm.² The challenge lies in translating these international norms into national laws and practices (Holm, 2022: 529). Different countries may implement these norms in various ways based on their legal traditions and systems (Groenhuijsen, 2013: 32).

While the European Commission states that an estimated 15 percent of Europeans, or 75 million people of the European Union,³ fall victim to crime every year, it does not provide specific details about the nature of the crimes or the experiences of the victims. In the context

¹ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985). This Declaration contains several concepts of 'victim' (Arts. 1 and 18), as well as a list of rights to which victims are entitled, primarily the right to access justice and fair treatment, which is linked to reparation (specifically Art. 12-13), as well as the establishment and strengthening of judicial and administrative mechanisms to enable victims to obtain redress (Arts. 4-7). See, also, more recently the UN Commission on Human Rights Resolution 2005/35 of April 19, 2005, which establishes 'Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law'. There is still no general international treaty on victims. In fact, there is only one treaty on victims within the framework of the United Nations relating specifically to victims of enforced disappearance - in force since 23 December 2010 - namely the 2006 [International Convention for the Protection of All Persons from Enforced Disappearance](#).

² These rights are found in all general human rights treaties: European Convention on Human Rights from 1950, International Covenant on Civil and Political Rights adopted in 1966, American Convention on Human Rights adopted in 1969 and African Charter on Human and Peoples Rights from 1981. In the Council of Europe's system, victims' right to access justice has not always been considered compatible with the guarantee of defendants' rights, and only recently has this right been recognised as having the same legitimacy as defendants' rights.

³ See: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en.

of the European Union, victims of crime are generally defined as individuals who have suffered harm, including physical or mental injury, emotional distress, or financial loss, as direct result of criminal offenses.

The experience and needs of victims can vary widely depending on the type of crimes, the circumstances, and the effectiveness of support and justice systems in place. Victim support services, legal assistance, counseling, and protection measures are crucial components of addressing the needs of crime victims and ensuring their rights are expected.

The European Union has embarked on a long path from the 2001 Framework Decision to the measures and directives in place, to enhance the rights, support, and protection of victims of crime across member states and to establish common standards. These measures aim to provide a more victim-centric approach to justice and support system. In the primary legislation, Article 47 of the Charter of Fundamental Rights of the European Union, is a significant provision that addresses the rights of victims in the context of criminal proceedings. Article 47 of the Charter underscores the principles of fairness, access to justice, and effective remedies for individuals involved in legal proceedings, including victims of crime. It reflects commitment of the EU to upholding fundamental rights and ensuring the victims are treated with dignity and respect within the criminal justice system.

However, the EU Commission wanted to revise the 2012 Directive after discovering flaws in its practical implementation. Although it improved the victim safety framework overall, the Commission's evaluation revealed specific issues with each of the rights in the 2012 directive that require targeted improvements, such as a lack of clarity and precision regarding the rights formulated in the directive and a large margin for flexibility in transposition by Member States.

In the context of Serbia, EU victims' rights legal framework is important for Serbia's EU accession process. In March 2012, the European Council granted Serbia the status of a candidate country,⁴ and the initiation of Serbia's accession negotiations in January 2014 intensified efforts to align national legislation with EU *acquis*. According the 2013 Screening report for Chapter 23, Serbia needs to implement measures to align legislation and practice with the Victims' Rights Directive (Kolaković-Bojović, 2020: 42). Specifically, Serbia needs to improve the position of victims, including increasing the quality and scope of support for victims, improving services and support networks across the country to assist victim and witnesses during all stages of criminal proceedings, and improvement of the position of particularly sensitive categories of victims.⁵ As a response to the Screening report, the Government of Serbia adopted Action plan for Chapter 23 in April 2016 which incorporated whole set of activities with the aim to strengthen victims' status and position.⁶

Novelties in the regulation of victims' rights proposed by the European Commission will be assessed against Serbian legislative and policy framework, with the aim to identify areas that need to be improved to ensure full alignment with the EU *acquis*.

⁴ European Commission, Commission Opinion on Serbia's application for membership of the European Union, Brussels, COM (2011) 668, 12 October 2011.

⁵ Full Report is available at: [https://www.mpravde.gov.rs/files/Screening-report-chapter-23-serbia%20Official%20\(3\)%201.pdf](https://www.mpravde.gov.rs/files/Screening-report-chapter-23-serbia%20Official%20(3)%201.pdf).

⁶ 2016 Action plan for Chapter 23 and 2020 Revised Action plan for Chapter 23 are available at: <https://mpravde.gov.rs/tekst/30402/revidirani-akcioni-plan-za-poglavlje-23-i-strategija-razvoja-pravosudja-za-period-2020-2025-22072020.php>.

2. A LOOK AT THE FIRST MEASURES ADOPTED IN THIS FIELD

Within the EU legal order, the protection of victims can generally be traced back to the rulings of the Court of Justice that have led to the progressive affirmation of the protection of fundamental rights in the EU legal order, as well as of the victims' rights.⁷ Article 47 of the Charter of Fundamental Rights not only recognises the fundamental right of victims to access the justice system for the protection of all their rights, but also places an obligation on the Member States to ensure effective judicial protection of those rights at national level. Moreover, thanks to the principle of effectiveness, the Court of Justice had already extensively established that national law must not make it impossible or excessively difficult to apply rights derived from Union law. However, legislation specifically dedicated to victims was adopted with the Council Framework Decision (2001/220/JHA) of 15 March 2001 on the standing of victims in criminal proceedings,⁸ and then with Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.⁹

Council Framework Decision 2001/220/JHA of 15 March 2001 was adopted under the then Title VI of the Treaty on European Union (TEU) 'Provisions on police and judicial cooperation in criminal matters' (now Title V, Chapter 4 TFEU) and is no longer in force, having been replaced by Directive 2012/29 (Peloso, 2016; Diamante, 2016; Conigliaro 2012; Allegrezza, 2015) with the main aim of consolidating the protection granted to the offended person 'in the process' and 'from the process'. The most obvious limitation of the Framework Decision was that it could not produce direct effects. Consequently, all Member States were obliged to take all necessary national measures to make the victim's position in criminal proceedings effective. Moreover, the Framework Decision had a 'narrow' interpretation of the notion of victim, not including family members in the event of the victim's death, contrary to the case law of the Strasbourg Court¹⁰. However, the Framework Decision gave priority to vulnerable persons and, thanks to the interpretation of the Court of Justice, imposed an obligation of conformity interpretation on national courts (Cherubini, 2006: 157).¹¹ In addition, it also

⁷ Judgment of the Court of 2 February 1989, *Ian William Cowan v Trésor public*, Case 186/87, par. 17. "[...] That reasoning cannot be accepted. When Community law guarantees a natural person the freedom to go to another Member State the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. It follows that the prohibition of discrimination is applicable to recipients of services within the meaning of the Treaty as regards protection against the risk of assault and the right to obtain financial compensation provided for by national law when that risk materializes [...]"

⁸ 2001/220/JHA: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, OJ L 82, 22.3.2001, p. 1–4.

⁹ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004, p. 15–18.

¹⁰ This definition was contrary to the caselaw of the ECHR, which instead accepts a 'broad' interpretation of the notion of victim. So much so that the Court also accepts that close relatives of persons who have died for reasons other than natural causes may invoke the rights guaranteed in Article 2. It is similarly towards relatives when a person is subjected to ill-treatment contrary to Article 3 or is deprived of liberty in violation of Article 5 ECHR.

¹¹ See judgment of the Court (Grand Chamber) of 16 June 2005, *Criminal proceedings against Maria Pupino*, Case C-105/03. Ms Pupino, a kindergarten teacher, was accused of inflicting serious injuries on her pupils. Article 8 of the Framework Decision contained specific protections for 'vulnerable' victims. A preliminary reference to the Court of Justice of the European Union was made on the application of this provision. The CJEU held that young children allegedly abused by their teacher were 'vulnerable'

covered certain victim support measures before or after criminal proceedings, necessary to mitigate the effects of the crime, as well as the involvement of specialized services and victim support groups before, during and after criminal proceedings, and the need to provide appropriate training to persons coming into contact with victims (O'Driscoll, 2023: 303).

As far as Council Directive 2004/80/EC is concerned, in addition to being still in force, it constitutes the significant step, at the level of the European Union, of the initiative already taken by the Council of Europe with its Convention on the Compensation of Victims of Violent Crimes, the objective of which is the full compensation of crime victims. To achieve its objectives, Directive 2004/80/EC bases its action on two fundamental principles. On the one hand, the principle that crime victims in the European Union should be entitled to fair and appropriate compensation in respect of the losses they have suffered regardless of where in the European Union the crime was committed. However - like the 1983 European Convention - a loophole remains in that the directive does not protect victims who are not habitually resident in an EU Member State (Article 1). The crime for which the victim can claim compensation must necessarily be a 'violent intentional crime'. The other principle is territoriality. According to it, compensation is paid by the competent authority of the Member State in whose territory the crime was committed (Article 2). The basic idea here is a combination of the principle of freedom of movement existing in the European Union with the aim of removing all obstacles between Member States. Therefore, when EU law guarantees an individual freedom of movement then, as a corollary, protection for any harm caused to him within a Member State must also be guaranteed.¹²

For this reason, the directive provides for a series of measures to achieve the objective of effective compensation. It constitutes 'minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and on their rights to compensation for damages, including legal costs' (recital 3). At the same time, the directive establishes a system of cooperation (submission of an application for compensation) to facilitate crime victims' access to compensation in cross-border situations by identifying an assisting authority, for example in providing all necessary information, and a deciding authority, present in the Member State where the crime was committed and empowered to decide on the application for compensation).

3. THE VICTIMS' RIGHTS DIRECTIVE 2012/29/EU

The Treaty of Lisbon has played a pivotal role in providing a legal foundation for European institutions to elevate the standards of protection for victims of crime. Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) serves as the basis for the adoption of Directives through the ordinary legislative procedure that replaced framework decisions in the area of criminal law (Pemberton, Groenhuijsen, 2011: 2). These Directives are designed to establish minimum rules on the rights of victims of crimes within the European Union and harmonize national legislation among Member States. The aim is to facilitate mutual recognition of judgements and judicial decisions, as well as to enhance police and judicial cooperation in criminal matters that have a cross-border dimension.

victims within the meaning of the Framework Decision. Therefore, they were entitled to the specific protection provided by it. The national court had to interpret national law 'as far as possible in the light of the wording and purpose of the Framework Decision'.

¹² See *supra* note 9 and Judgment of the Court (Second Chamber) of 5 June 2008, *James Wood v Fonds de garantie des victimes des actes de terrorisme et d'autres infractions*, case C-164/07.

The Directives that implement the victims' rights legal framework are grounded in the Resolution approved on June 10, 2011,¹³ by the European Council, outlining a Roadmap for strengthening the rights and protection of victims, especially in criminal proceedings. This roadmap outlines priority measures aimed at ensuring a minimum level of victims' rights, support, and protection throughout the European Union, regardless of their place of origin or residence.

The Victims' Rights Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime is a significant outcome of this roadmap, replacing Framework Decision 2001/220/JHA as a first binding instrument on the legal position of victims at the supranational level (Groenhuisen, Pemberton, 2009: 43). It addresses the standing of victims in criminal proceedings and establishes comprehensive provisions for the rights, support, and protection of victims. The Victims' Rights Directive is a horizontal instrument, meaning it applies to victims of all crimes. In addition, the EU instruments of a horizontal nature are the 2004 Compensation Directive¹⁴ and EU rules on protection orders.¹⁵ The EU has adopted specific directives addressing victims of particular crimes, such as human trafficking,¹⁶ sexual exploitation of children,¹⁷ counter-terrorism,¹⁸ and fraud.¹⁹ These specific legislative efforts aim to respond to the particular challenges posed by these crimes and ensure adequate protection for victims (Balsamo, 2018 :160).

Directive 2012/29/EU provides a wide scope for defining victims, since it covers not only individuals who have directly suffered harm from a criminal offense but also family members of a person whose death resulted from a criminal offense, and who have suffered harm as a result of that death. According to the Victims' Rights Directive adopted in 2012, a person is considered a 'victim' if they have suffered harm including physical, mental or emotional harm (injuries, trauma, or emotional distress as a result of a criminal offense), or economic damage due to a criminal act. The category of victims is extended to close relatives of homicide victims (Klip, 2015: 178).

The Directive emphasize the importance of recognizing the individual needs and rights of victims, ensuring their access to information, support services, and the right to participate in

¹³ Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the right and protection of victims, in particular in criminal proceedings (2011/C 187/01).

¹⁴ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

¹⁵ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order and Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters.

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

¹⁷ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

¹⁸ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

¹⁹ Directive 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA. PE/89/2018/REV/3.

criminal proceedings. Victims are granted specific rights throughout criminal proceedings, including the right to information, the right to support and protection, the right to participate in proceedings, and the right to access victim support services (Diaconu, 2022: 110).

Victims have the right to obtain relevant information in an understandable form from the moment of first contact with competent authorities and throughout the proceedings. This includes the right to be informed of the suspect's release or escape. Victims also have the right to interpretation, translation, and access to specific confidential support services.

The Directive ensures specific evidentiary safeguards, granting victims the opportunity to be heard during proceedings and submit evidence. Victims have rights related to decision review, legal aid, reimbursement of expenses, and the return of seized property (Lupària, 2015: 4).

States are required to facilitate the referral of cases to mediation and restorative justice services, subject to certain conditions. Victims are protected from secondary victimization, intimidation, and retaliation. Although, secondary victimization is subject to vagueness its interpretation may vary depending on the context and the perspective of those using the term (Pemberton, Mulder, 2023: 2). The concept is valuable in drawing attention to the importance of treating victims with sensitivity, empathy, and respect throughout their interaction with various systems. Reducing secondary victimization is crucial for creating a more supportive and just environment for those who have experienced harm. Specific guarantees include the right to avoid contact with the offender within premises where proceedings are conducted and protection during investigations.

Victims are entitled to support services to help them cope with the consequences of the crime. Special protection measures may be considered for vulnerable victims, including children, with enhanced documentation through audiovisual recording of all interviews with children during investigations. The Directive emphasizes individual assessment and approach to identify specific protection needs and the special vulnerability of particular victim (Leonaite, Markina, Pall, 2022: 287).

Victims have the right to claim compensation for the harm suffered, and member states are encouraged to establish compensation schemes. The Directive emphasized the principle of non-discrimination, ensuring that victims are treated with dignity and respect regardless of their personal characteristics (Kolaković-Bojović, Grujić, 2020: 247).

It is important to note that the specific legal definitions and provisions related to victims may vary across EU member states, and national legislation may further specify who qualifies as a victim and what rights they are entitled to, since EU member states were required to transpose its provisions into their national legislation. The transposition involves creating or amending laws, regulations, and administrative provisions to align with the Directive's requirements. Furthermore, the member states designate competent authorities responsible for implementing and enforcing the Directive's provisions and ensure that professionals who are likely to come into contact with victims, such as police officers, prosecutors, and judges, receive appropriate training. Moreover, the member states monitor the implementation of the Directive, as well as relevant EU institutions, including EU Fundamental Rights Agency and evaluate its effectiveness to ensure that the rights and protections afforded by the Directive are effectively implemented and upheld throughout the EU (Holder, Kirchengast, Cassell, 2021: 12). The overarching goal is to establish common framework that enhances the rights and protection of victims throughout the European Union.

4. IDENTIFIED CHALLENGES IN THE EU VICTIMS' PROTECTION SYSTEM

While the EU Victims' Protection System, as outlined in Directive 2012/29/EU, represents a significant step forward, there are still challenges and areas where improvements can be made. In June 2022, the European Commission conducted an evaluation of the Victims' Rights Directive as part of its commitment outlined in the EU Strategy on Victims' Rights 2020-2025 (Nafize, 2023: 2). The Strategy focuses on enhancing victims' rights, ensuring their effective implementation, and addressing emerging challenges in this area. Following the evaluation,²⁰ on July 12, 2023, the European Commission proposed amendments to the Victims' Rights Directive.²¹

The challenges in the EU Victims' Support System are multifaceted and can impact the effectiveness of the support provided to victims of crime. Some of the identified challenges include consistency in implementation, awareness and accessibility, resource constraints, training and sensitization, coordination and cooperation, protection of vulnerable victims, compensation mechanisms, cross-border cases and technological challenges.²²

The level of support and protection for victims can vary significantly across different EU member states due to the difference in the implementation of the Victims' Rights Directive.²³ Ensuring consistent implementation of the Directive across all member states can be challenging. Difference in legal systems, cultures, and practices may lead to variations in how the rights, support, and protection measures are applied.

Many victims may not be fully aware of their rights or find it challenging to access support services available to them, which can hinder their ability to seek help. Efforts are needed to raise awareness among victims and the general public about the existence of these rights and the available support.

Victim support services may struggle with limited funding, staffing, and training, affecting the quality and availability of support. Law enforcement officials, legal professionals, and support service providers may require specialized training to effectively implement the Directive.²⁴ Sensitization to the needs of specific victim groups, such as victims with disabilities, is crucial (Jubany, Klett-Davies, Roiha, 2022: 273).

Enhancing coordination and cooperation among different stakeholders, including law enforcement, legal professionals, support services, and NGOs, is essential for providing holistic assistance to victims, since lack of coordination can result in gaps in support.

²⁰ European Commission (2022) Commission staff working document Evaluation 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, SWD(2022) 179 final.

²¹ Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, COM/2023/424 final.

²² European Commission (2023) Commission staff working document Impact assessment report, Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, SWD (2023) 246 final.

²³ FRA – European Union Agency for Fundamental Rights (2023) Underpinning Victims' Rights – Supporting Services, Reporting and Protection, p. 51.

²⁴ *Idem*.

While the Directive includes provisions for the protection of vulnerable victims, ensuring that these provisions are effectively implemented and tailored to the specific needs of each victim remains a challenge (Wolf, Werner, 2021: 812).

Ensuring that victims have access to compensation mechanisms and that these mechanisms are effective in providing redress can be challenging. Financial constraints and differing compensation systems across member states may impact victims' access to justice.

Addressing the specific challenges associated with cross-border cases, where victims may reside in a different member state from where the crime occurred, requires increased cooperation and harmonization.

As technology evolves, ensuring that victims can benefit from technological advancements, such as remote participation in proceedings, while safeguarding their rights presents both opportunities and challenges.

5. PROPOSED NOVELTIES

The proposed amendments to the Victims' Rights Directive put forward by the European Commission aim to strengthen the rights, support, and protection of victims of crime within the European Union. The proposed amendments focus on key objectives to enhance victims' experiences throughout the criminal justice process. The main objectives and elements of the proposed amendments could be grouped in following measures: improved access to information and reporting, enhanced support for vulnerable victims, effective participation in criminal proceedings, reinforcement of compensation rights, improved use of electronic communication, additional support for vulnerable victims and enhanced statistics collection.²⁵

In relation to improved access to information and reporting the proposed amendments envisage establishment of a universal EU-wide Victims' telephone helpline, as well as creation of a comprehensive website with information in multiple languages, suitable for persons with disabilities, and equipped with technology for chats and emails. Furthermore, the amendments proposed facilitation of crime reporting, including for victims in detention and irregular migrants.

Vulnerable victims are targeted through facilitation of access to free psychological support, especially for vulnerable victims, for as long as necessary and support services required to remain operational during crises. Enhanced support includes improved individual needs assessment, initiated from the first contact with authorities, with physical protection measures added to specialized protection measures.

In the criminal proceedings the amendments introduce establishment of victims' right to assistance in court to ensure effective participation. Additional measure is empowerment of victims to challenge decisions affecting their rights, regardless of their formal status under national law and strengthening option for victims to participate in criminal proceedings via teleconferencing.

To reinforce compensation rights the proposal incorporates strengthening the rights to compensation by requiring victims to receive a decision on compensation from the offender within the criminal proceeding. Furthermore, the proposal introduce obligation for member states to guarantee victims compensation directly and promptly after the judgement.

²⁵ Wahl, T., 2023, Commission Proposes Reform of Victims' Rights Directive, Euclid, available at: <https://euclid.eu/news/commission-proposes-reform-of-victims-rights-directive/>.

Improved use of electronic communication is ensured through obligation for member states to provide a possibility for victims to exercise their rights to information and access justice using electronic communication.

The proposal envisaged additional support for vulnerable victims such as children, elderly persons, persons with disabilities, and victims of hate crime, by ensuring adequate and additional support for them.

To improve completeness, consistency, and comparability of data, the proposal introduced modification of the article on the collection, production, and dissemination of statistics on victims of crime.

6. SOME CRITICAL ISSUES OF THE PROPOSED NEW DIRECTIVE ON VICTIMS' RIGHTS

Therefore, the overall objective of the proposal is to contribute to the creation of an area of freedom, security and justice based on the efficient recognition of judgments and judicial decisions in criminal matters, on a high level of security through increased reporting of offences, and on victim-centred justice that enables victims to exercise their rights through a set of specific measures, such as access to information, strengthening of protection, specialised assistance for vulnerable victims, facilitated access to compensation. However, it does so perhaps excessively, so much so that the German Bundesrat, citing the principles of subsidiarity and proportionality, considers that: *“the proposed directive contradicts these requirements by referring to the legal basis of Article 82 section 2, c TFEU. This does not take into account the fact that this stipulation does not permit the global harmonization of national procedural law, however”* (points 2 and 3).²⁶ *On the other hand, the Italian Senate evaluates the aims of the European initiative as positive on the whole, considers that the proposal respects the principle of subsidiarity, but that it can be improved with regard to the principle of proportionality* (pp. 2-3).²⁷

Moreover, the proposal is critical because in facilitating the reporting of crimes, including for detained victims and irregular migrants (Art. 5 bis, par. 3), it does not clarify how to limit, for instance, the transfer of personal information to migration authorities. If there is a risk of personal data being shared, some undocumented victims are unlikely to report crimes to the police because of the risk of deportation. Moreover, allowing the sharing of sensitive data violates the fundamental human rights of undocumented migrants to privacy and data protection, in line with Articles 7 and 8 of the Nice Charter and the GDPR.²⁸ The provision should therefore be amended to ensure that a victim's residence status is never shared without the consent of the relevant parties, including migration authorities. It would also not adequately address how detained victims should report a crime from 'closed' facilities.

The proposal then suggests to facilitate access to free psychological support, in particular for all vulnerable victims, for as long as needed (i.e. not only in the short term) and according to individual needs. Victims' access to support services would be strengthened by requiring that support services remain operational even in a crisis. This last aspect is not well received

²⁶ <https://secure.ipex.eu/IPEXL-WEB/document/COM-2023-424/debra>.

²⁷ <https://www.senato.it/service/PDF/PDFServer/BGT/1401703.pdf>.

²⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88.

by the Bundesrat, which complains that it is too burdensome for the member states: “Further criticism relates to the requirement for the member states to have the medical examination, psychological support, the filing of criminal charges and the hearing of all child witnesses in criminal proceedings by the investigating judge to take place on the same premises as this involves enormous logistical and financial costs. Furthermore, such a detailed requirement for the local concentration and localization of authorities and courts constitutes a disproportionate interference with the right of member states to organize their administration by themselves”. The Italian Senate aligns itself in this sense: “Critical elements emerge with regard to the need to harmonise some of the provisions of the proposal with the principles of the Italian legal system, with reference, [...] to the provision that the competent authorities pay directly to the victim the amount awarded as compensation, then subrogating to the same in the right against the convicted person [... As far as the financial impact is concerned, although the burden on the Member States is expected to decrease in the long term, some costs are likely to increase in the short term, including the burden linked to the obligation for the Member States to set up a system for collecting, producing and disseminating statistics on crime victims and to send these data to the Commission (Eurostat) every three years, which entails measures to adapt the existing systems for recording cases and compiling these statistics” (p. 3).

Moreover, the right of victims to obtain a decision on compensation from the offender only in the criminal proceedings is not compatible with the Italian national system in which there is no prejudicial relationship between the criminal trial and the civil trial with regard to compensation for damages, which can be claimed in one or the other forum, at the plaintiff’s choice” (p. 3). Indeed, the alternation between the two solutions allows the victim to obtain compensation in the forum and in the manner he or she considers most appropriate, giving the system a certain flexibility. A full adaptation to the directive as amended by the current proposal would therefore lower the degree of protection for the victim in national law.

The proposal for a directive, in strengthening the right of victims to legal aid, also provides for the possibility of challenging decisions affecting their rights, regardless of their formal status, under national law in criminal proceedings. The Italian Senate foreshadows here a risk of a clear misalignment with the legal system: “Critical elements emerge with regard to the need to harmonise some of the provisions of the proposal with the principles of the Italian legal system, with reference, for example, to the rules concerning the possibility for victims to challenge decisions irrespective of their participation in the trial” (p. 3).

Rights to compensation would be strengthened by giving victims the right to obtain a decision on compensation from the offender only in the course of criminal proceedings (thus eliminating the possibility of resorting to another procedure as in the current directive) and by making it mandatory for Member States to provide compensation to the victim directly and swiftly after the judgement. Precisely, the state should compensate the victim promptly, with subsequent recourse to compensation from the offender. In contrast to civil society, this is not much appreciated by the German Federal Council, which states: “the Bundesrat rejects the proposed rule regarding the transfer of an offender’s obligation to pay damages to the states as provided for by law, also due to considerable concerns regarding the financial impact on the budgets of the German Länder” (point 6).

While welcoming efforts to establish more standards for needs assessment, several observations are made. It is proposed that the individual needs assessment should last “as long as necessary” (Art. 5bis) according to the needs of each victim. Strongly supporting the high focus on victims’ needs, civil society recommends more detailed rules to define the meaning

of “for as long as necessary”. However, given their specialised expertise, it should be the organisations supporting the victims, and not the police authorities, who should carry out the support assessment. Undocumented victims tend to be afraid to interact with public authorities, and in particular with the police, because of the risk of being arrested and ordered to leave the territory of the state. The need to take return decisions against any third-country national staying irregularly on the territory of a Member State creates a clear contradiction between the protection of victims and immigration rules at both EU and national level. Furthermore, the emphasis on relevant experiences of discrimination in the context of the victim’s personal characteristics, which should be taken into account in the needs assessment (Art. 22(2)(a)), is supported. Moreover, undocumented victims should be considered as a group that would require special attention.

Concerning measures to ensure adequate and additional support for identified vulnerable victims, such as minors, the elderly, persons with disabilities, and victims of hate crimes, Article 23 of the proposal requires states to apply protective measures such as the continuous or temporary presence of law enforcement authorities, disqualification, restraint or protection orders. If the offence involves the holder of parental responsibility, states must consider the best interests of the child first. Therefore, civil society is generally satisfied with the proposed amendments with regard to individual assessment, especially with regard to the support services provided for children (Art. 9a of the Proposal). However, they recommend that administrative support and legal aid should be included in the list of services, as the child will have *de facto* and *de jure* less capacity to act in these aspects. This is particularly important for migrant children, who are particularly vulnerable to exploitation, violence and crime due to their social isolation, irregular and/or precarious residence status.

Finally, the Proposal is welcomed by the EESC Opinion on the revision of the directive on victims’ rights of 5 March 2024,²⁹ underlining the importance of the amendments to improve the individual assessment of victims and their support throughout the judicial process. However, again with regard to the assessment of victims, the EESC regrets that in the individual assessment of the risk posed by the offender, mental health problems have also been included among crimes and dangerous behaviour, and calls for this reference to be removed from the text (point 1.5).

7. RELEVANCE FOR SERBIAN FRAMEWORK

Proposed amendments of the Directive address not only challenges identified in EU member states, but also areas recognized by Serbian policymakers in the Strategy on the Rights of Victims and Witnesses of Crime in the Republic of Serbia for period 2020-2025.³⁰ To ensure positive assessment of the compliance of Serbian legislation with the EU *acquis* and achievement of interim benchmarks for Chapter 23 Serbian authorities should have in focus improvement of access to information for victims, improvement of reporting by establishing universal number, as well as right to compensation from the offender in the criminal proceedings.

²⁹ Opinion of the European Economic and Social Committee on Revision of the victims’ rights directive (COM(2023) 424 final — 2023/0250 (COD)), EESC 2023/03943, OJ C, C/2024/1592, 5.3.2024. “Although there should be no hierarchy between victims and types of crime, some victims may need additional support and protection measures. The EESC recommends that the Commission develop detailed guidelines with the Member States on the different authorities that should be in charge of carrying out the assessment” (point 1.2).

³⁰ Government adopted Strategy on the session on July 30, 2020.

Right to access to information for victims is recognized as one of the priorities of the 2020 Strategy (Specific goal 3). The implementation of activities aimed to lead to the goal did not proceed at the planned pace, mostly due to lack of allocated human and financial resources. Information brochures for victims that should support victims to navigate through the proceedings and exercise their rights have not been printed and distributed, website intended to inform victims is functional but is not regularly updated,³¹ while the good practice of connecting websites of the courts and public prosecutor offices with this information page was not implemented. To improve access to information for victims it is necessary to fully utilize available resources and information and promote them among victims (i.e. link website Victims Support with websites of all courts and public prosecutor offices websites, print and deliver information brochure to health care centers and police stations since these are usually the first point of victims' contact with institutions). Furthermore, the Criminal Procedure Code should be amended to fully align with the EU Directive and to ensure comprehensive and systematic approach to access to information (Škulić, 2020: 69).

Authorities recognized importance of introduction of universal number for victims, however, the Feasibility study for introduction of universal number will be conducted by end of 2025, according to the Action plan for period 2023-2025. Having in mind timeframe set by the policymaker, it is clear that universal number cannot be introduced before 2026, which might cause challenges for exercising victims' rights.

Serbian legislation does not regulate in the general manner the procedure or standards for the individual assessment of victims' needs in relation to support and protection measures (Moussmouti i dr., 2019: 19). The importance of the protection of vulnerable victims should be properly reflected in the legislation and practice, as well as individual assessment of the victims to enable individual approach (Stevanović, 2019: 162).

Serbian legislation, Articles 252-259 of the Criminal Procedure Code³² (Kolaković-Bojović, 2020: 47) establishes victims' rights to compensation from the offender in the criminal proceedings, which is in line with Article 16 of the Victims Rights' Directive.³³ However, analysis of court jurisprudence shows that in practice the decision on the compensation claim of the injured party in the criminal proceedings is an exception instead of the rule, since the court as a rule refers the injured party to exercise the compensation claim in civil proceedings (Altan i dr., 2016: 8). This practice significantly prolongs the process of obtaining compensation, exposes the victim to additional costs, and burdens the judiciary with an additional number of cases. Although, the Strategy on the Rights of Victims and Witnesses of Crime in the Republic of Serbia for period 2020-2025 and accompanying Action plan for 2020-2022, envisaged adoption of Guidelines for the improvement of court practice in proceedings of compensation for victims of serious crimes in criminal proceedings and training on its application, it cannot be verified if the targeted value of 25 percent of decisions on compensation claims in criminal proceedings was reached.

Having in mind that Proposal for amending Directive 2012/29/EU put emphasis on reinforcement of compensation rights, Serbian judiciary should strengthen court practice and as a rule decide on the compensation claim in the criminal proceedings, instead of referring to the civil. The newly adopted Action plan for implementation of the Strategy on the Rights of

³¹ Website Victims and Witness Support - <https://www.podrskazrtvama.rs/en/>.

³² Official Gazette RS, No. 72/11, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021, 62/2021.

³³ Right to decision on compensation from the offender in the course of criminal proceedings.

Victims and Witnesses of Crime in the Republic of Serbia for period 2023-2025 foreseen set of activities for improvement of mechanism of deciding on compensation claim in the criminal proceedings (i.e. trainings, monitoring, mitigation measures, support in submitting claim), however, it has to be assessed if set goal will be reached by end of 2025.

8. CONCLUSIONS

Although the Proposal for Amending Directive 2012/29/EU has yet to be adopted, as noted alongside the significant innovations, there are also critical issues to be addressed. The Proposal, if adopted, suggests that member states would be given a period of two years to incorporate the amendments into their national legal frameworks. However, there is an exception for the use of electronic means of communication, where member states would have a four-year period to implement these changes. This timeline allows member states to adjust their legislation and practices with proposed amendments. Better understanding of the time-frame is important for Serbian authorities, and it is more or less aligned with the timeline envisaged in the 2020 Strategy.

While alignment of legislation with the EU *acquis* and the Victims' Rights Directive is feasible, the biggest challenge for Serbian institutions will be changes in practice and allocation of resources to ensure victims' access to information and support. In relation to the right to compensation, courts need to modify practice and decide on compensation claim in the criminal proceedings and avoid referring of victims to the civil proceedings. Since, the legal framework is aligned with the Victims' Rights Directive and Guidelines for deciding on compensation claim in criminal proceedings are adopted, there is a need to ensure its consistent application in practice.

Furthermore, victims should have access to information on their rights through websites of the courts and prosecutor offices, not only on the designated website, which might not be known to victims. In addition, to empower victims to exercise their rights and be informed on procedures and competent authorities, information brochures should be available in all institutions of first contact, such as health care centers and police stations.

Finally, considering that Proposal for amending Directive has to be adopted, policymakers and legislator in Serbia has to ensure compliance with the new EU framework. This shows how challenging is harmonization of national legislation and practice with the EU *acquis* due to its amendments during EU accession process.

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