Rights, support and protection of victims of crime: minimum standards

2011/0129(COD) - 18/05/2011 - Legislative proposal

PURPOSE: establish minimum standards on the rights, support and protection of victims of crime.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: this proposal is part of a legislative package which aims at strengthening the rights of victims in the EU and which also includes the following two other elements: a communication on strengthening victims' rights in the EU and a proposal for a Regulation on mutual recognition of protection measures in civil matters.

The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice, the cornerstone of which is the principle of mutual recognition of judgments and other decisions of judicial authorities taken in civil and criminal matters within the Union. It has already acted on the rights of victims in criminal proceedings through Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. Whilst improvements have been achieved in this area, the objectives of the Council Framework Decision have not been fully realised.

The European Parliament has also called upon the Council to adopt a comprehensive legal framework offering victims of crime the widest protection5. In its resolution of 26 November 2009 on the elimination of violence against women, the Parliament **called on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women**, not least by employing preventive measures and called on the Union to guarantee the right to assistance, protection and support for all victims of violence. Declaration 19 of the protocols to the Treaty on the Functioning of the European Union also calls on Member States to take all necessary measures to prevent and punish acts of domestic violence and to support and protect the victims of such violence.

Judicial cooperation in criminal matters in the Union is based on the principle of mutual recognition of judgments and judicial decisions. Mutual recognition can only operate effectively in a spirit of confidence, whereby not only judicial authorities but all those involved in the criminal justice process and others who have a legitimate interest in it can trust in the adequacy of the rules of each Member State and trust that those rules are correctly applied. Where victims of crime are not subject to the same minimum standards throughout the EU, such trust can be reduced due to concerns over the treatment of victims or due to differences in procedural rules.

Common minimum rules should thus lead to increased confidence in the criminal justice systems of all Member States, which in turn should lead to more efficient judicial cooperation in a climate of mutual trust as well as to the promotion of a fundamental rights culture in the European Union.

It is for this reason that the Commission is now proposing this legislative framework.

IMPACT ASSESSMENT: the European Commission considered **five options**: retention of the status quo (option 1) and four other policy options (options 2, 3a, 3b and 4).

- ***Option 1 – Status Quo***: retention of the status quo. No action at EU level.

- ***Option 2 – Low level of obligation***: least prescriptive option. Imposes minimum obligations on Member States to establish systems or services with minimum detail on what standards should be achieved. When necessary to take legal measures, this option requires the least changes in national procedural laws.
- ***Option 3a – Medium level obligation***: medium prescriptive option. Imposes medium level of obligation on Member States for all measures to establish services and rights and imposes provisions on what such services should be while defining minimum details on what standards to be applied. The level of obligations on Member States is low and does not require Member States to establish Restorative Justice Services (RJS) but only to ensure that safeguards and minimum quality standards are applied where RJS are used.
- ***Option 3b – Medium/High level obligation***: medium prescriptive option. Imposes medium level of obligation on Member States for all measures to establish services and rights and imposes provisions on what such services should be while defining minimum details on what standards to be applied.
- ***Option 4 – Highest level of obligation***: the most prescriptive option. Imposes a range of obligations on Member States to establish services and rights. It also imposes more detailed provisions on what such services should be and the exact standards that should be applied.

The impact assessment concluded that it was necessary to replace the 2001 Framework Decision with a new Directive containing concrete obligations on the rights of victims. **Option 3a** was the preferred option of the Commission. Legislation should be followed with practical measures to facilitate implementation. It would also be a first step in this field with further studies and action envisaged, in particular in relation to compensation of victims and legal aid for victims.

LEGAL BASIS: Article 82(2) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the Directive intends to replace the 2001 Framework Decision with a new Directive containing concrete obligations on the rights of victims. A number of provisions of Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings have been maintained in their original form or have been amended only to the extent necessary for clarity of drafting.

The following comments concentrate on those areas which introduce substantive changes to the Framework Decision:

Definitions: the purpose of this Directive is to ensure that **all victims of crime benefit from minimum standards throughout the EU**. In particular, this Directive makes provision for support and protection to be given to family members of victims since such persons are often also harmed by the crime and may themselves be at risk of secondary victimisation as well as victimisation or intimidation by the offender or his associates. All provisions in this Directive are also applicable to family members of a victim whose death has been caused by a criminal offence since such persons have specific and legitimate interests in the proceedings beyond those of family members of surviving victims and are often recognised as representatives of the victim.

Information rights and right to understand and to be understood:a series of provisions are provided in order to ensure that victims receive sufficient information in a form they can understand to enable them to fully access their rights and to ensure they feel treated in a respectful manner. Such information should be available from the moment a victim makes a complaint of a criminal offence as well as on a regular basis throughout criminal proceedings and in relation to the progress of the case. Sufficient detail should be provided to enable victims to make informed decisions about their participation in proceedings and how to access their rights, in particular when deciding whether to request a review of the decision not to prosecute. The victim may not understand the language of the information or there may be other factors such as the victim's age, maturity, intellectual and emotional capacities, literacy levels and any disabilities.

Right to access victim support services: victims should have access to support services which provide information and advice, emotional and psychological support and practical assistance which are often crucial to the recovery of victims and help them cope with the aftermath of the crime and with the strain of any criminal proceedings. S**upport should be available from the earliest possible moment after the commission of a crime** irrespective of whether it has been reported. Such services can prove particularly important in regard to a victim's decision to ultimately report a crime. Equally, victims may require support both during the period of any proceedings and in the long term. Support services may be provided by governmental or non-governmental organisations and should not involve excessive procedures and formalities which might reduce effective access to such services. Support may be provided in a variety of ways such as face-to-face meetings, by telephone or other remote means in order to maximise the geographical distribution and availability of services. Certain groups of victims including victims of sexual violence, bias crime such as gender based violence and race hate crime, and victims of terrorism often require specialist support services due to the particular characteristics of the crime they have fallen victim to.

Although the provision of support should not be dependent on a victim making a complaint of an offence to the police or other competent authorities, such authorities are often best placed to inform victims of the possibility of support. **Member States are therefore encouraged to establish appropriate conditions to enable the referral of victims to victim support services**, including by ensuring that data protection requirements can be adhered to.

Right to be heard: it is ensured that the victim has an opportunity to provide initial and further information, views or evidence during criminal proceedings. The exact extent of this right is left to national law and may range from basic rights to communicate with and supply evidence to a competent authority through to more extensive rights such as a right to have evidence taken into account, the right to ensure that certain evidence is taken or the right to make interventions during the trial.

Rights in the event of a decision not to prosecute: victims should be able to verify that established procedures and rules have been complied with and that a correct decision has been made to end a prosecution in relation to a specific person. Precise mechanisms for a review are left to national law. However, such a review should as a minimum be carried out by a person or authority different to the one that took the original decision not to prosecute.

Right to safeguards in the context of mediation and other restorative justice services: restorative justice services encompass a range of services whether attached to, running prior to, in parallel with or after criminal proceedings. They may be available in relation to certain types of crime or only in relation to adult or child offenders and include for example victim offender mediation, family group conferencing and sentencing circles. The proposed Directive ensures that where such services are provided, safeguards are in place to ensure the victim is not further victimised as a result of the process. Such services should therefore have as a **primary consideration the interests and needs of the victim**, repairing the harm to the victim and avoiding further harm. Participation of the victim should be voluntary which also implies that the victim has sufficient knowledge of the risks and benefits to make an informed choice. It also means that factors such as power imbalances, and the age, maturity or intellectual capacity of the victim which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim should be taken into consideration in referring a case to and in conducting a restorative process. Whilst private proceedings should in general be confidential, unless agreed otherwise by the parties, factors such as threats made during the process may be considered as requiring disclosure in the public interest. Ultimately any agreement between the parties should be reached voluntarily.

Right to reimbursement of expenses: this provision is consistent with the 2001 Framework Decision in providing to victims who participate in criminal proceedings the right to reimbursement of expenses. It

also provides for reimbursement where the victim attends the trial without participating in the proceedings as such. The purpose is to ensure that victims are not prevented from attending the trial and seeing justice done, due to their own financial limitations.

Identification of vulnerable victims: victims should be treated in an individual manner and that a consistent mechanism is established to identify vulnerable victims who may require special measures during criminal proceedings. All victims of crime are per se vulnerable and accordingly require sensitive and careful treatment. However, some victims are particularly vulnerable to further victimisation or intimidation by the accused or suspected person or his associates. In addition, some victims are particularly at risk of being further distressed or harmed by their involvement in criminal proceedings whether through the giving of evidence or through other forms of participation. Such victims require special measures in order to minimise the likelihood of further harm occurring.

The proposed Directive provides that the vulnerability of victims to such harm be determined by the personal characteristics of the victim and by the nature or type of crime a victim has suffered. The majority of children and persons with disabilities are at particular risk of harm due to their personal characteristics. **As a group they can immediately be identified as vulnerable and in the majority of cases in need of special measures**. Victims within other categories based on the nature or type of crime, such as victims of sexual violence, including exploitation, and victims of human trafficking are also in most cases vulnerable to further victimisation during proceedings.

At the same time, the proposal recognises that victims are individuals who react in different ways to a crime and have different needs and vulnerabilities. Thus a victim may be vulnerable despite not falling into a specific vulnerable victim category. An individual assessment mechanism is therefore to be established to ensure that all vulnerable victims are identified and properly protected. Such an approach can be crucial in facilitating a victim's recovery and ensuring they are provided with the right assistance and protection during proceedings and afterwards. It maximises the ability to prevent secondary and repeat victimisation and intimidation and to enable the victim to effectively access justice. Nevertheless, such an approach must be carried out to an extent proportionate to the likelihood that criminal proceedings will be instituted and that specific measures will be required by the victim. In particular the severity of the crime and the degree of apparent harm suffered by the victim provides a useful indication of the extent of any particular individual assessment. The individual assessment should determine a victim's needs during proceedings and any requirements for referral to victim support services. Those public officials who first come into contact with a victim when a crime is reported should be trained and should have access to appropriate guidance, tools or protocols to enable them to carry out assessments of the needs of victims in a consistent manner.

Individual assessments should consider any factors which may increase the likelihood of a victim suffering further victimisation or intimidation during proceedings. In particular, the following factors should be taken into account: age, gender and gender identity, ethnicity, race, religion, sexual orientation, state of health, disability, relationship to or dependence on the suspected or accused person. Victims of terrorism require particular attention in any assessment given the varying nature of such acts ranging from acts of mass terrorism to targeted terrorism against individuals.

Right to avoidance of contact between victim and offender: this provision mirrors the approach taken in the 2001 Framework Decision with a view to ensuring that where a victim must attend a venue as a result of their participation in criminal proceedings, appropriate steps should be taken to ensure the victim does not have to come into contact with accused or suspected persons. This could be achieved by various means such as establishing separate waiting areas, and controlling the arrival of victims and the accused. Best practice and guidance offered to public officials can also act as an important source of information on how to assist in avoiding contact.

Right to protection of victims during questioning in criminal investigations:the proposal aims to prevent secondary victimisation by ensuring that the victim is interviewed as early as possible and that interaction with authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them. Decisions on when to carry out any interviews should as far as possible take account of the victim's needs as well as any urgency in relation to the gathering of evidence. Victims may be accompanied by a trusted person of their choice. Only in exceptional circumstances should this possibility be limited and then only in relation to a specific person. The victim should then be permitted to be accompanied by another person of their choice.

Right of protection of vulnerable victims including children during criminal proceedings: a series of measures aim to ensure that when victims have been identified as being vulnerable to further victimisation or intimidation, appropriate measures are taken to help prevent such harm. Such measures should be available throughout criminal proceedings whether during the initial investigative or prosecutorial phase or during the trial itself. The measures necessary will vary according to the stage of proceedings.

During criminal investigation, **minimum levels of protection are required in relation to any interviews with the victim**. These should be carried out in a sensitive manner and officials should have received appropriate training to this end. To this end, it may be necessary, according to the vulnerability of the victim, that interviews are only carried out in appropriate premises. This may mean premises which allow for video interviews or simply where furniture for example is adapted for children or persons with disabilities.

Vulnerable victims can find the interview process highly distressing, particularly where the crime is of a very personal nature. Establishing trust with the interviewer can be important and may only happen over a period of time. For this reason, this article requires that in most cases a **vulnerable victim is to be interviewed by the same person**. Exceptions are permitted for reasons of good administration, such as an urgent need to interview someone else or the unavailability of the usual interviewer. For similar reasons, in cases of sexual violence, victims should have the right to be interviewed by a person of the same gender.

During the trial itself, protection from intimidation, whether intentional or not, is also a relevant factor when determining appropriate protection measures. This proposal establishes minimum measures for this purpose as well as to **minimise the distress** of, in particular, testifying. Measures to enable the victim to avoid visual contact with the defendant are established as well as measures to exclude members of the public and press. In particular, in order to ensure that the fundamental rights of an accused or suspected person are respected, the decision on whether such measures are to be taken is left to judicial discretion. However, the fact that a victim is a child, a person with a disability, a victim of sexual violence or of human trafficking combined with the individual assessment should provide a strong indication of the need for a protection measure.

Given the particular vulnerabilities of children, additional measures should also be made available and utilised in normal circumstances. Interviews may be videotaped and used as evidence in court and that in appropriate cases, where a child does not have a representative, the judicial authority should appoint one.

Training of practitioners: it is provided to establish training requirements for public officials who come into contact with victims. Training should cover issues which will assist officials to treat victims in a respectful manner, to identify protection needs and to provide them with appropriate information to help them cope with proceedings and access their rights. Such training should cover issues such as awareness of the negative effects of crime on victims and the risk of causing secondary victimisation, skills and knowledge, including special measures and techniques, required to assist victims and minimise any trauma to the victim in particular from secondary victimisation, recognising and preventing intimidation, threats and harm to victims, the availability of services providing information and support specific to the needs of victims and the means of accessing these services. Additionally, it is ensured that those providing

victim support or restorative justice services should also be trained to an appropriate level such that they treat victims in a respectful and impartial manner and provide their services to professional standards.

BUDGETARY IMPLICATIONS: this proposal has no implication for the EU budget.