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

2011/0129(COD) - 12/09/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 611 votes to 9, with 13 abstentions, a legislative resolution on the proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between Parliament and Council.

Purpose: the preferred approach is that of strengthening the rights accorded to victims in seeking to provide them with support from the moment at which the crime took place. Victims of crime must be treated with respect and dignity at all stages of the legal proceedings and, from a practical point of view, in a language that they understand.

Recalling that the main purpose of the directive is to ensure that victims of crime receive appropriate support and protection and are able to participate in criminal proceedings, irrespective of where the crime has taken place, Members stipulate that Member States shall ensure that victims are recognised and treated in a respectful, sensitive , individual, professional and non-discriminatory manner in all contacts with victim support or restorative justice service or any competent authority, operating within the context of criminal proceedings. In this regard, victims shall not be submitted to **any form of discriminatory treatment** based on their race, colour, ethnic or social origin, genetic characteristics, language, sexual orientation or residence status. It is also stipulated that the rights set out in this Directive are not made conditional on the **victim's residence status** in their territory or on the victim's citizenship or nationality.

Specific characteristics of certain categories of victims: it is stipulated that:

- If the victim is a **child**, the best interest must be a primary consideration. Child victims should be considered and treated as the full bearers of rights set out in this Directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views;
- The same process is to be applied to **victims with disabilities**;
- **Victims of terrorism** may need special attention, support and protection due to the particular nature of the crime that has been committed against them. Victims of terrorism can be under significant public scrutiny and often need social recognition and respectful treatment by society.
- **Gender-based violence** is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called ‘honour crimes’. Victims of violence in close relationships may therefore be in need of special protection measures.

Definition of a ‘victim’ within the meaning of the Directive: the statute of the victim is clarified: a person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them.

Given that **family members of a victim** could be harmed as a result of the crime, such family members, who are indirect victims of the crime, should therefore also benefit from protection under this Directive.

Member States should, however, be able to establish procedures to limit the number of family members who can benefit from the rights set out in this Directive.

Information and support: this Chapter has been revised with a view to strengthening and clarifying the rights conferred by the Directive:

- **Right to understand and to be understood:** the information and advice provided by the competent authorities, the victim support services and the justice services should, as much as possible, take different forms in order to be able to be understood by the victim. In this context, Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any necessary interaction they have with any competent authorities in the context of criminal proceedings, including where information is provided by such authorities. Communications with victims must be offered in a simple and accessible language, either orally or in writing and such communications shall take into account personal characteristics of the victim including any disability which may affect their ability to understand or to communicate. Unless this would be contrary to the interests of the victim or the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with competent authorities, where the victim requires assistance to understand and to be understood due to the impact of the crime.
- **Right to receive information from first contact with a competent authority:** provisions were added to the range of information that the victim can be offered. These include the type of support they can obtain and from whom, including where relevant basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation. It is stipulated that the extent or detail of that information may be varied based on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and its relevance at each stage of proceedings.
- **Right of victims when making a complaint:** new provisions are introduced to improve the complaints procedure. Member States shall ensure that victims receive written acknowledgement stating the basic elements relating to the crime of any formal complaint of a criminal offence made by them to their competent authority. If the victim does not understand the language, he can receive the necessary linguistic assistance or a translation, if necessary. This acknowledgement should include a file number and the time and place for reporting of the crime in order to serve as evidence that the crime has been reported, for example in relation to insurance claims.
- **Right to receive information about their case:** important new provisions are added to the victim's right to receive information about their case. These include the time and place of the trial, or hearing related to an appeal of a judgment in the case. The victim should also be given to victims regarding the release or the escape of the offender where they have so requested, at least in cases where there might be danger or identified risk of harm to the victims, unless there is an identified risk of harm to the offender which would result from the notification. Where there is an identified risk of harm to the offender which would result from the notification, the competent authority should take into account all risks when determining an appropriate action. Victims should receive information on any right to appeal of a decision to release the offender, if such a right exists in national law.
- **Right to interpretation and translation:** provisions regarding the right to interpretation and translation have been revised in order to clarify the framework in which this right shall be applied. In particular, there shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling victims to actively participate in the criminal proceedings. In certain cases, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings. Member States shall ensure that the competent authority assesses whether victims need translation and assistance of an interpreter. Translation and interpretation, as well as any consideration of a challenge of a decision not to provide translation or interpretation, shall not unreasonably prolong the criminal proceedings.
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- **Right to access victim support services:** it is specified that family members shall have access **to victim support services in accordance with their needs and the degree of harm suffered as a result of the crime committed against the victim**. These services should be free of charge and confidential, as well as specialised, in some cases.
- **Support available from victim support services:** besides the support already envisaged in the Commission's proposal, it is stipulated that victims should be able to receive advice relating to the risk of retaliation, intimidation and repeat or further victimisation and how to prevent or avoid it. **Specific needs of victims should at least include**: i) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of retaliation, intimidation or repeat or further victimisation; ii) targeted and integrated support for victims with specific needs, **such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling**. In any event, all possible efforts shall be made to avoid any risk of secondary and repeat victimisation by the offender. To that end, Member States should be encouraged to introduce, especially in relation to court buildings and police stations, feasible and practical measures enabling the facilities to include amenities such as separate entrances and waiting areas for victims.

Participation in criminal proceedings: noting that the role of victims in the criminal justice system and their possibility of actively participating in criminal proceedings may vary from one Member State to another, a series of criteria have been introduced to strengthen this right. **Member States should determine** which of those criteria will be applicable to determine the scope of rights provided for under Articles, where there are references to the role of the victim in the relevant criminal justice system. Generally speaking, thee following rights were strengthened in the framework: the right to be heard, rights in the event of a decision not to prosecute, to safeguards in the context of restorative justice services, to legal aid, **to reimbursement of expenses and to the return of property**.

Strengthening of the protection of victims and recognition of victims with specific protection needs: the framework for the protection of victims was strengthened to ensure that the protection does not only benefit the victims themselves, but also members of their family if necessary.

Provision has been made for the following:

- **A right to protection:** Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, 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;
- **Right to avoidance of contact between victim and offender:** Member States should, to the extent possible, plan the criminal proceedings so that contacts between the offender and the victims and their family members are avoided, such as by summoning the victim and the offender to hearings at different times;
- **Right to protection of victims during criminal investigations:** Member States shall ensure that during criminal investigations that the number of interviews with the victim is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of criminal investigations;
- **Right to protection of privacy:** protecting the privacy of the victim can be an important means of preventing further victimisation and can be achieved through a range of measures including non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim;
- **Right to the individual assessment of victims to identify specific protection needs:** this is a major innovation of the Directive and provides for an individual assessment, undertaken as soon as possible, to minimise the risks to which victims are exposed. Such assessments should be carried out for all victims to determine whether they are at risk of further .victimisation and what specific protection measures they require. Individual assessments should take into account the personal

characteristics of the victim such as age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender, etc. Child victims shall always be presumed to have specific protection needs due to them being vulnerable to secondary and repeat victimisation or to intimidation. The individual assessment shall be carried out with close involvement of the victims and take into account their wishes including where they do not wish to benefit from special measures. If the elements for the individual assessment have changed significantly, Member States shall ensure that the individual assessment is updated throughout the criminal proceedings;

- **Right to protection of victims with specific protection needs:** if an assessment determines that specific needs are required for a victim, special provisions should be made, particularly with respect to hearings and contacts with the alleged offender (s). Procedures would be strengthened if the victim is a child (e.g. audiovisual recording of hearing, etc.).

Training of practitioners: provisions have been added regarding the enhancement of the training of practitioners, **in particular for officials likely to come into contact with victims** (police officers and court staff but also lawyers) to sensitise them to the needs of victims and to deal with them in an impartial, respectful and professional manner.

Co-operation and co-ordination of services: for victims of crime to receive the proper degree of attention, support and protection, public services should work in a coordinated manner and be involved at all administrative levels. Such co-operation shall be aimed at least at: i) exchange of best practices; ii) consultation in individual cases; and iii) assistance to European networks working on matters directly relevant to victims' rights. Measures are also recommended to sensitise the public to the rights included in this directive by means of information and awareness raising campaigns, research and education programmes, where appropriate in co-operation with relevant civil society organisations and other stakeholders.

Data collection: in order to facilitate evaluation of the application of this Directive, Member States should communicate to the Commission relevant data related to the application of national procedures on victims of crime, including at least the number, type or nature of the reported crimes and, as far as such data is known and available, the number of the victims, their age and gender. Judicial data can include information on reported crime, number of cases that are investigated, prosecuted and sentenced.

Reporting: the Commission shall submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of action taken concerning the establishment of victim support services and the identification of victims' specific needs, accompanied, if necessary, by legislative proposals.

Non-extraterritorial nature of the measure: it is stipulated that this Directive applies in relation to criminal offences committed in the Union and to criminal proceedings that take place in the Union. It confers rights on victims of extra-territorial offences only in relation to criminal proceedings that take place in the Union. Complaints made to competent authorities outside the Union, such as embassies, do not trigger the obligations set out in this Directive.