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

2011/0129(COD) - 25/10/2012 - Final act

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

LEGISLATIVE ACT: Directive 2012/29/EU of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA.

CONTEXT: this Directive replaces the provisions of Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. In particular, it seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial, namely to establish minimum standards on the protection of victims of crime at the EU level.

CONTENT: following a first reading agreement, the European Parliament and Council adopted a Directive establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA, currently in force.

Principles and purpose: the new Directive establishes **minimum standards on the rights, support and protection of victims of crime** in every European Union Member State.

The key purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings regardless of the place where the damage occurred in the EU. Several key principles are established to guarantee victims the protection to which they are entitled. Member States shall ensure that:

- victims of crime should be **recognised and treated in a respectful, sensitive and professional manner** without discrimination of any kind, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings
- victims must not undergo **discrimination of any kind** based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health.

Definition of a “victim” within the meaning of the Directive: the status of the victim is clarified so that this 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.

Knowing that such family members (the spouse, the person who is living with the victim in a stable relationship in a joint household, the relatives in direct line, the siblings and the dependants of the victim) can also suffer damage because of the offence committed and be considered as “indirect victims” of the crime, it is stipulated that these people should also benefit from protection under this Directive. However, Member States should be able to establish procedures to limit the number of family members who can benefit from the rights set out in this Directive.

Status of the victim: the Directive sets the framework surrounding the status of the victim. The Directive provides for the following main provisions:

- **Minors**: if the victim is a child, their best interests 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. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail;

- **Persons with disabilities**: the disability of victims of crime should be taken into account while fully respecting the physical, mental and moral integrity of these people. In any case, Member States shall ensure that victims with disabilities are able to benefit fully from the rights set out in this Directive on an equal basis with other citizens;

- **Victims of terrorism**: the Directive foresees that these persons may therefore need special attention, support and protection due to the particular nature of the crime that has been committed against them. These people often need social recognition and respectful treatment by society and their security should be protected;

- **Women**: particular support should be given to women, who may be victims of all kinds of discrimination and violations of the fundamental freedoms (including rape, sexual assault and harassment, trafficking in human beings, slavery, forced marriage, female genital mutilation and so-called "honour crimes"), especially if the alleged perpetrator is a **family member**. Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.

Rights conferred by the Directive: the Directive has several chapters devoted to the various rights of victims:

1)Information and support: the Directive provides for the following rights:

- **Right to understand and to be understood**: Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority. Communications with victims should be in simple and accessible language, taking into account the personal characteristics of the victim (including any disability). Lastly, victims may be accompanied by a person of their choice in the first contact with a competent authority, if this is required.
- **Right to receive information from the first contact with a competent authority**: Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive. Among these are highlighted, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation, but also the procedures for making complaints with regard to a criminal offence and how and under what conditions they can obtain protection or compensation or a form of restorative justice. In general, **the extent or detail of information may vary depending 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 the relevance, at each stage of proceedings, of such details.
- **Right of victims when making a complaint**: Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a

Member State, stating the basic elements of the criminal offence concerned. If the victim does not understand the language, they will be able to receive a translation or language assistance as appropriate.

- **Right to receive information about the case**: the Directive details the list of information to be available to the victim on the matter. These include: any final judgment in a trial (as well as the reasons for the judgment), the state of the procedure, the time and place of the trial, or hearing in the case of appeal against a judgment given on the case in question. The victim should also receive specific information regarding the release or escape of the offender, at least in cases where there may be an identified danger or a risk.
- **Right to interpretation and translation**: upon the request of the victim, Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided with **interpretation free of charge**, at least during any interviews or questioning of the victim during criminal proceedings. The victim may also benefit from a translation of all information necessary for the exercise of their rights during criminal proceedings. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim. However, it is not obligatory to translate everything. There shall be no requirement to translate passages of essential documents which are not relevant for the purpose of enabling victims to actively participate in the criminal proceedings. In some cases, **an oral translation or oral summary of essential documents may be provided**, on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.
- **Right to access victim support services**: victims, but also family members, shall have access to victim support services, in accordance with their needs and the degree of injury. The services in question must be free, confidential, or specialised in some cases (notably depending on the seriousness of the offence). It is also expected, in particular, that Member States shall provide on their territory, shelters or any other appropriate interim accommodation for victims where they can receive targeted support, safe from any form of reprisal.

2) Participation in criminal proceedings: the role of victims in the criminal justice system and the ability to take an active part in criminal proceedings can vary from one Member State to another in the function of the national system. In consequence, the Directive sets a series of criteria to establish whether the victim has the right, by virtue of national law, to take an active part in criminal proceedings. The Member States are free to determine which of these criteria will be applicable in determining the scope of the rights provided for in the Directive. In general, the following rights are foreseen within this framework: the right to be heard, the rights granted in the event of a decision not to prosecute, restorative justice, legal aid, reimbursement of expenses and return of property.

Member States shall ensure that their competent authorities can take appropriate measures **to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed**, particularly with regard to the organisation of the proceedings. Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed. To this end, the authorities of the Member State where the criminal offence was committed shall, in particular, be in a position to: i) take a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority; ii) have recourse to video-conferencing and telephone conference-calls to make statements.

3) Protection of victims and recognition of those with special needs: a framework of protection of victims that provides that the protection is extended not only to the victims themselves, but to their family members, if necessary. The following are foreseen:

- **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. When necessary, such measures shall also

include procedures established under national law for the physical protection of victims and their family members;

- **right to avoid contact between victim and offender**: Member States shall, where necessary, organise the criminal proceedings so as to enable avoidance of contact between the offender, on the one hand, victims and their family members, on the other. To this end, they will have to put in place, in particular in the courts, local police and gendarmerie, separate entrances and waiting areas;
- **right to protection of victims during criminal investigations**: among other measures, it is foreseen that interviews of victims are conducted without unjustified delay and that the number of interviews of victims is kept to a minimum and only where strictly necessary for the purposes of the criminal investigation;
- **right to protection of privacy**: protecting the privacy of the victim can be an important way to prevent new injury. This protection may impose a series of measures, including the non-disclosure or the disclosure of information concerning the identity or place of residence of the victim. This is of particular importance for child victims, including the non-disclosure of their name;
- **right to an individual assessment of victims to identify specific protection needs**: a major innovation of the directive provides an **individual assessment** carried out as soon as possible, to effectively identify risks faced by victims. These evaluations should be carried out for all victims to determine if they are exposed to the risk of a new injury (in particular, risk of secondary and repeat victimisation) and what specific protection measures should be taken. The individual assessments shall take into account the personal characteristics of the victim (age, gender, disability, residency status, communication difficulties, links of kinship or dependence on the perpetrator of the offence, etc). If the victim is a child, they shall always be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation or to intimidation. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes and of their greater or lesser vulnerability. If the victim's situation changes, the assessment updated throughout the criminal proceedings;
- **right to protection of victims with specific protection needs during criminal proceedings**: if an assessment identifies specific requirements for a victim, special measures may be taken, particularly in regard to hearings, limiting contacts with the perpetrator of the offence. Procedures will be further strengthened if the victim is a child (e.g. hearing by audiovisual recording, provision of a special representative, etc).

Training of practitioners: the provisions have been planned to provide training so that practitioners of justice , including officials likely to come into contact with victims (police officers and court staff such as judges and prosecuting authorities, including lawyers), so that the persons concerned are better informed on the needs of victims. The training will aim, above all, to enable practitioners to recognise and deal with victims with respect and professionalism and in a non-discriminatory manner.

Cooperation and coordination of services: it is foreseen that public services should work in a coordinated manner and be involved in all new administration. Such cooperation shall be aimed at least at the following points: i) the exchange of best practices; ii) consultation in individual cases; and iii) assistance to European networks working on matters directly relevant to victims' rights. Measures shall also be taken aimed at raising awareness of the rights set out in this Directive (information and awareness raising campaigns, where appropriate, in cooperation with relevant civil society organisations and other stakeholders).

Provision of statistical data: Member States shall, by 16 November 2017, and every three years thereafter, communicate to the Commission available data showing how victims have accessed the rights set out in this Directive.

Report: the Commission shall, by 16 November 2017, submit a report to the European Parliament and to the Council, on the implementation of the Directive, notably in relation to the establishment of victim support services and on the matter of identifying the specific needs of victims, accompanied, if necessary, by legislative proposals.

Territorial arrangements: the United Kingdom and Ireland will take part in the adoption of this Directive. Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
ENTRY INTO FORCE: 15.11.2012.

TRANSPOSITION: 16.11.2015.