

An overview of the law concerning protection of victims of crime in the view of the adoption of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime in the European Union

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Abstract Based on his direct experience in the negotiation of the new directive establishing minimum standards for victims in criminal proceedings (Directive 2012/29/EU), the author makes an in-depth analysis of the newly introduced rights and of the amended provisions, leading to an increased level of protection for crime victims in the EU. He explains the legislative context, making a short overview of the existing instruments at Council of Europe and EU level. He provides important insights as regards the negotiation of the text of Directive 2012/29/EU and points out some of the key achievements resulting from its adoption.

Keywords Victims' rights · European Protection Order (EPO) · Stockholm programme

1 Introduction

In recent years international and supranational institutions, in particular the Council of Europe, the European Union and the United Nations, have boosted standard-setting

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activities in the area of protection rights of victims, leading to important developments in legislation and practice. They have adopted many instruments in the criminal law field to strengthen the protection of victims, both in the form of binding and non-binding instruments. Nevertheless, none of those instruments has encompassed such a vast and comprehensive obligation to establish common minimum rights related to victims of crime on the international level as 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, recently adopted by the European Union.¹

2 Legal instruments in the United Nations

The United Nations contributed to standard-setting in the area of victims' protection by adopting the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in November 1985.² This provides for the definition of victims of crime and abuse of power, introduces the concept of abuse of power as a violation of internationally-recognised norms relating to human rights and bans discrimination in the treatment of victims.

A more comprehensive approach towards the protection of victims' rights was set out in the United Nations Convention on Transnational Organised Crime signed in Palermo in 2000 (hereinafter referred to as the Convention of 2000).³ This establishes *inter alia* the possibility of physically protecting an individual who may play a compound role in criminal proceedings, both as a victim and as a witness. The Convention of 2000 provides further assistance and protection to *all* victims. The Convention also provides a legal base for mutual legal assistance, if a victim is located in the territory of a requested State.

Other legal bases for mutual legal assistance may be found in the United Nations Convention against Corruption, adopted in 2003,⁴ as well as in the 2003 Protocol to the Convention of 2000 to prevent, suppress and punish trafficking in persons, especially women and children (hereinafter referred to as the Protocol of 2003).⁵ This last measure is aimed at protecting and assisting victims of trafficking of human beings. It extends the catalogue of means of assistance to and protection of victims of trafficking in person (Article 6 of the Protocol of 2003).⁶

¹OJ L 315, 14.11.2012, p. 57.

²Published on the website of the United Nations: <http://www2.ohchr.org/english/law/victims.htm>.

³Published on the website of the United Nations: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

⁴Published on the website of the United Nations: http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

⁵Published on the website of the United Nations: http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf.

⁶B. Bohacik, Report on the standing and rights of victims in criminal proceedings, CDPC (2010) 16, published on the website of the Council of Europe: http://www.coe.int/t/dghl/standardsetting/pc-oc/PCOC_documents/CDPC_2010_16%20-%20e%20_Report%20on%20victims_.pdf.

3 Legal instruments of the Council of Europe⁷

The Council of Europe' standards on the protection and rights of victims include both binding standards (Conventions) and non-binding policy guidelines (Recommendations). Some deal specifically with victims, others deal with specific forms of crime and include provisions on victims.

As early as in 1977, the Council of Europe adopted a first legal text dealing specifically with victims, Resolution (77) 27 on the compensation of victims of crime.⁸ This text served as the basis for the adoption of the European Convention on Compensation of Victims of Violent Crimes in 1983.⁹ This Convention was the first legally-binding European instrument in this area.

Recommendation R (85)11 on the position of the victim in the framework of criminal law and procedure¹⁰ underlines that it must be a fundamental function of criminal justice to meet the needs and to safeguard the interests of the victim. The Recommendation provides rules to ensure that the needs of the victim will be taken into account throughout all stages of the criminal justice process.

Two years later, in 1987, the Council of Europe adopted Recommendation R (87) 21 on assistance to victims and the prevention of victimisation (hereinafter referred to as the 1987 Recommendation).¹¹ It contains rules relating to support services (both general such services and those relating to specific categories of victims) as well as to other forms of assistance (including structured programmes and awareness-raising measures with an emphasis on especially vulnerable victims).

In 2006 it was decided to update the 1987 Recommendation. With the adoption of Recommendation (2006) 8 on assistance to crime victims,¹² the Council of Europe delivered its most comprehensive legal instrument specifically dealing with victims. This measure contains a definition of 'victim'. Its recommendations include assisting victims' rehabilitation in the community, at home and in the workplace, as far as possible in a language that they can easily understand, and including the provision of medical, social and psychological care, financial support, and counselling. Vulnerable victims are specifically provided for. The Recommendation pays particular attention

⁷The content of this chapter is a result of knowledge gained by those involved in working within the Council of Europe who shared their knowledge to the author. Knowledge of the identity of these persons has been kept to the writer, who expresses his gratitude for their help.

⁸Published on the website of the Council of Europe: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=595033&SecMode=1&DocId=659298&Usage=2>.

⁹Published on the website of the Council of Europe: <http://www.conventions.coe.int/Treaty/en/Treaties/Html/116.htm>.

¹⁰Published on the website of the Council of Europe: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=605227&SecMode=1&DocId=686736&Usage=2>.

¹¹Published on the website of the Council of Europe: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=608023&SecMode=1&DocId=694280&Usage=2>.

¹²Published on the website of the Council of Europe: <https://wcd.coe.int/ViewDoc.jsp?id=1011109&Site=CM>.

to the role of public and victim support services, for which minimum standards are defined, as well as criminal justice and other agencies in the community. It also deals with the creation of specialised centres for victims of certain types of crimes. The right to effective access to other remedies—insurance, compensation, confidentiality, training issues related to agencies involved, coordination and cooperation, mediation, research issues—are also covered. The Recommendation adds value as it covers natural persons who are victims of all types of crimes, including non-violent crimes and crimes committed through negligence, rather than being restricted to specific crimes, as noted with regard to the Conventions listed below.

All the following conventions of the Council of Europe's relate to specific forms of crimes aiming at combating them efficiently, as well as protecting the victims of these crimes:

- the Convention on the Prevention of Terrorism, signed in Warsaw on 16 May 2005;¹³
- the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, signed in Warsaw on 16 May 2005;¹⁴
- the Convention on Action against Trafficking in Human Beings, signed in Warsaw on 16 May 2005;¹⁵
- the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, signed in Lanzarote on 25 September 2010;¹⁶
- the Convention on preventing and combating violence against women and domestic violence, signed in Istanbul on 11 May 2011;¹⁷
- the Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health, signed in Moscow on 28 October 2011.¹⁸

It should also be recalled that the European Court of Human Rights regularly contributes to standard-setting in the field of victims' rights, in particular through its case-law on Article 6 of the European Convention on Human Rights (concerning the right to a fair hearing).

¹³Published on the website of the Council of Europe: <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/196.htm>.

¹⁴Published on the website of the Council of Europe: <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/198.htm>.

¹⁵Published on the website of the Council of Europe: <http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=8&DF=02/01/2013&CL=ENG>.

¹⁶Published on the website of the Council of Europe: <http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=201&CM=8&DF=02/01/2013&CL=ENG>.

¹⁷Published on the website of the Council of Europe: <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

¹⁸Published on the website of the Council of Europe: <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/211.htm>.

4 The European Union's legal environment in relation to protection of victims of crime

The European Union has successfully established an area of freedom of movement and residence, from which citizens benefit increasingly by travelling, studying and working in countries other than that of their residence. However, the removal of internal borders and the increasing exercise of the rights to freedom of movement and residence have led as a consequence to an increase in the number of people who become victims of a criminal offence and become involved in criminal proceedings in a member state other than that of their residence.

For more than a decade the protection of victims of crime has been an important element of the area of freedom, security and justice. Twelve years ago, the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (hereinafter referred to as the Framework Decision 2001/220/JHA)¹⁹ laid the ground for common European Union standards of protection.

Although the member states were obliged to implement the 2001 Framework Decision with all due diligence, the report prepared by the Commission²⁰ after the expiration of the time prescribed in the Framework Decision pointed out that the aim of harmonising legislation in the field of victims' rights had not been achieved owing to the wide disparity in national laws. Moreover, the implementation was effected in many cases in the form of non-binding instruments, such as guidelines, charters and recommendations. Therefore, the effect of the implementation of the Framework Decision of 2001 was deemed unsatisfactory.

Outside the field of judicial cooperation in criminal matters, Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims²¹ introduced a system, which allows victims to quickly obtain compensation in another member state.²² However, this itself was not enough to provide for more efficient victims' protection.

Under the Stockholm Programme, *An open and secure Europe serving and protecting citizens*, adopted by the European Council at its meeting on 10 and 11 December 2009 (hereinafter referred to as the Stockholm Programme), the Commission and the member states were asked to examine how to improve legislation and practical support measures for the protection of victims, with particular attention paid to support for, and recognition of, all victims, including victims of terrorism, as a priority.²³

The need to take specific action in order to establish a common minimum standard of protection of victims of crime and their rights in criminal proceedings throughout the European Union was highlighted in a few subsequent instruments, such as:

¹⁹OJ L 82, 22.3.2001, p. 1.

²⁰COM (2009) 16 final, 20.4.2009.

²¹OJ L 261, 6.8.2004, p. 15.

²²See: *Kuczyńska* [5], p. 64.

²³OJ C 115, 4.5.2010, p. 1.

- the Resolution of the European Parliament to the Council on the development of a European Union criminal justice area,²⁴ in which the European Parliament called for the adoption of a comprehensive legal framework offering victims of crime the widest protection, including adequate compensation and witness protection, notably in organised crime cases, and;
- the Council Conclusions on a strategy to ensure fulfilment of the rights of, and improve support to, persons who fall victim to crime in the European Union,²⁵ adopted in 2009, in which the Council stressed *inter alia* the necessity to develop victim support.

In recent years most activities undertaken in the framework of judicial cooperation in criminal matters focused on repressive aspects. The mutual recognition of different kinds of penalties and the stepping up of European Union efforts aimed at combating serious offences was the main strand of action. This approach was fully understandable, as it was necessary to ensure that criminals could not abuse open European borders to get away and evade punishment. The European Union has also focused on strengthening the procedural rights of suspects and accused in criminal proceedings.

On 30 November 2009, the Council adopted a resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings,²⁶ in which the European Union legislator called for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communication with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E).

The first measure adopted pursuant to the Roadmap (measure A) was Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.²⁷ The second measure (measure B) was Directive 2012/13/EU of the European Parliament and the Council of 22 May 2012 on the right to information in criminal proceedings.²⁸

These activities of the European Union have been deliberately highlighted in order to show the lack of proportionate development of the European Union legislation in the field of victims' protection. Therefore, new policy was needed to improve the approach taken to victims throughout Europe.

The Lisbon Treaty provided legal grounds to take strong action in this field. Further, the Stockholm Programme expressly mentioned the protection of victims as one of its priorities. The *Resolution on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings*, adopted by the Council during

²⁴Document INI/2009/2012.

²⁵Published on the website of the Council: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/110726.pdf.

²⁶OJ C 295, 4.12.2009, p. 1.

²⁷OJ L 280, 26.10.2010, p. 1.

²⁸OJ L 142, 1.6.2012, p. 1.

the Hungarian Presidency in 2011, translated these objectives into a list of concrete actions to be undertaken in the European Union.²⁹

The Roadmap mentions the following measures to be taken in order to strengthen the victims' rights:

- Measure A: Directive replacing Council Framework Decision 2001/220/JHA;
- Measure B: Recommendation or recommendations on practical measures and best practices in relation to the Directive set out in Measure A;
- Measure C: Regulation on mutual recognition of protection measures for victims taken in civil matters;
- Measure D: Review of the Council Directive 2004/80/EC (in order to assess whether existing procedures for the victim to request compensation should be revised and simplified, and to present any appropriate legislative or non-legislative proposals in the area of compensation of victims of crime);
- Measure E: The Commission was invited to propose through Recommendations practical measures and suggest best practices to provide guidance to member states in the process of dealing with the specific needs of victims.

Taking due account of the urgent need to make the rights of suspects and accused on one side and victims on the other side, the European Commission submitted on 18 May 2011 a package of instruments aimed at improving the then system of protection of victims. The package included a Communication on protection of victims of crime as well as a proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime³⁰ and a proposal for a Regulation on mutual recognition of protection measures in civil matters (hereinafter referred to as the European Protection Order—EPO—in civil matters, as opposed to the EPO in criminal matters proposed in a new Directive, to be discussed below).³¹ The package contains necessary components which aimed to supplement the horizontal mechanism to protect victims and strengthen their rights. It supplemented the initiative taken by the member states for a Directive on the European Protection Order, which concerned the mutual recognition of protection measures taken in criminal matters. The Directive of the European Parliament and of the Council 2011/91/EU of 13 December 2011 on a European Protection Order,³² adopted under the Polish Presidency in 2011, established a mechanism allowing a judicial or equivalent authority in a member state in which a protection measure had been adopted with a view to protecting a person against a criminal act endangering his life, physical or psychological integrity, dignity, personal liberty or sexual integrity, to issue a European protection order enabling a competent authority in another member state to continue the protection, following criminal conduct, or alleged criminal conduct.

²⁹Published on the website of the Council: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/122529.pdf.

³⁰COM (2011) 275 final, 2011/0129 (COD).

³¹Document 10613/11 COPEN 123.

³²OJ L 338, 21.12.2011, p. 2.

5 Negotiations on the Proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime

The negotiations on the draft Directive started under the Polish Presidency in 2011 and in the course of this period the Council reached a general approach on this file. This led to the start of the trilogue with the European Parliament in 2012 under the Danish Presidency which finished in June 2012. This enabled the Council and the European Parliament to adopt the Directive establishing minimum standards on the rights, support and protection of victims of crime in the first reading. This finished the process of the negotiations and afterwards the publication of the Directive in the Official Journal of the European Union. The time has now started in which the member states must fulfil the standards provided for in the Directive at national level. This will establish a mechanism for the protection of victims making use of the right to free movement in the European Union which will enter into force in the whole European Union on 16 November 2015.

The member states reacted positively from the very beginning to the draft Directive. They supported the idea of the necessity to enhance as quickly as possible victims' protection. Nevertheless, during the negotiations some key issues were raised which were problematic for the member states due to divergent models of the protection established in particular national systems. The most problematic issues successfully solved under the Polish Presidency included:

5.1 Definitions

Article 2 contains definitions applicable for the purpose of this Directive, such as the definition of a victim (see Article 2.1(a) and as regards family members, Article 2.1(b)).

In addition, a distinction is made between family members of a victim whose death has been directly caused by a criminal offence and who has suffered harm as a result, and family members of victims who do not fall within the definition of victim, but are still granted a number of the rights under this Directive.

During the working group meetings, a majority of member states agreed that family members should be defined by national law. This view was strongly opposed by the Commission.

Since the very beginning of negotiations, delegations have stressed the need for limiting the number of family members of victims pointing out that the notion of "family members" would potentially include a large number of persons. Member states' concerns related to, in particular, fears that the course of criminal proceedings might be affected, and regarding the likely delay of proceedings and the additional administrative burden and increased costs. In cases of large families, of internal conflicts of interests between family members and of cases concerning sexual abuse involving family members, it was felt the number of family members who would be granted the rights under this Directive might have to be limited.

The compromise worked out by the Council and approved by the European Parliament allows member states to establish procedures aimed at determining which family members of deceased victims may have priority in relation to the exercise of

the rights under this Directive. This means that member states may additionally establish procedures limiting the number of family members who otherwise would have rights under this Directive (for instance the right to access victim support services).

5.2 Access to specific rights depending on the role of victims in the criminal justice system of member states

The role of victim in the criminal justice system varies in each member state, depending on the national system. There are member states where the victim plays an important role in criminal proceedings and where their status is equal to that of the suspects or accused. Nevertheless, there are also systems where the role of the victim is rather poorly provided for and may be limited only to the role of witness or to a participant in the proceedings, excluding the position as a party. Therefore, to cover the solutions provided for in the legislation of all member states some criteria were set out in order to define the role of the victim. These criteria are as follows:

- the national system provides for a legal status as a party to the criminal proceedings;
- the victim is under a legal requirement or is requested to actively participate in criminal proceedings, such as witnesses; or
- the victim has a legal entitlement under national law to actively participate in criminal proceedings and is seeking to do so, where the national system does not provide for a legal status as a party to the criminal proceedings.

Thus it was possible to reach the compromise on the definition of the role of the victim in relation to the following rights: the right to information about the case (Article 5), to interpretation and translation (Article 7), the right to have any decision not to prosecute reviewed (Article 11), the right to reimbursement of expenses (Article 14) and the right to appoint a special representative for the child victim if the holders of parental responsibility are precluded from representing the child (Article 24 let.b);

5.3 Definition of vulnerable victims

The definition and scope of rights granted to this specific category of victims caused intense discussion from the very beginning as to whether establishing a presumptive list of vulnerable victims was the right approach. The necessity to carry out an individual assessment for the purposes of including specific victims in the above-mentioned category was the preferred solution for most member states. It had been stressed that any victim could be vulnerable, and a mechanism of individual assessment to determine whether this was the case should be established.

The Commission proposed to make a presumptive list of vulnerable victims. Nevertheless, many delegations objected strongly to having any pre-designated categories—different points of view were expressed on which criteria should be used for establishing these categories, some wanted to include victims of terrorism or victims of domestic violence as well as victims of other types of crime just as severe. Many supported individual assessments as a basis for inclusion in the category of vulnerable victims, to be carried out in accordance with national procedures on a

case-by-case basis. The latter position was the ground for the compromise reached by the Council. No exemplification of vulnerable victims was included in the operative part of the text but specific categories were inserted in the preamble.

This approach was changed in trilogue with the European Parliament due to the strong opposition of the European Parliament. This led to change in the notion of this category of victims. The term *vulnerable victims* was replaced by the notion of *victims with specific protection needs*. Also the categories of victims who might be covered by this notion were specified. In this regard victims of terrorism were mentioned, as were those of organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime; and victims with disabilities. Nevertheless, the mechanism of individual assessment remained unchanged: such assessment is required to be based on:

- (a) the personal characteristics of the victim;
- (b) the type or nature of the crime; and
- (c) the circumstances of the crime

In the context of the individual assessment, particular attention is to be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; and victims whose relationship to and dependence on the offender make them particularly vulnerable. For the purposes of the Directive, child victims are presumed to have specific protection needs, due to their vulnerability.

5.4 Gender-based violence and violence in close relationship

In the opinion of the European Parliament, the protection of victims of gender-based violence and violence in close relationship was very important. In this respect the Stockholm programme was invoked, as both categories of victims were mentioned as among the most vulnerable victims.

The Stockholm programme mentions this category of victims explicitly in Sect. 2.3.4, stating that those who are most vulnerable or who find themselves in particularly exposed situations, such as persons subjected to repeated violence in close relationships, victims of gender based violence, or persons who fall victim to other types of crimes in a member state of which they are not nationals or residents, are in need of special support and legal protection.

In order to reach a compromise with the European Parliament, a solution had to be found regarding how to deal with victims of gender-based violence in the context of the Directive. In the preliminary part of the trilogue, the European Parliament insisted on having a definition of ‘*gender-based violence*’ and of ‘*violence in close relationship*’ included in the operative part of the text (Article 2). The member states strongly opposed this approach. In the course of negotiations, the European Parliament agreed on having the definition of both categories of victims mentioned elsewhere in the Directive as long as the issue was sufficiently covered and the necessary assistance, support and protection to this type of victim provided.

The European Parliament’s request was met by inserting a reference to victims of genderbased violence and violence in close relationships into Article 9.3, which

deals with “*support available from victim support services*” (targeted and integrated support for victims with specific needs), in Article 22.3 which exemplifies victims with specific protection needs, and in Article 26.2 which relates to the obligation imposed on the member states to provide co-operation that aims at reducing the risk of secondary and repeat victimisation, in particular concerning victims of gender-based violence and of violence in close relationships as well as by adding explanatory recitals in the preamble describing the phenomenon of gender-based violence and of violence in close relationship (see Recitals 17 and 18). The recitals were aligned to the Council of Europe Convention of 7 April 2011 on preventing and combating violence against women and domestic violence.

6 The main achievements resulting from the adoption of the Directive 2012/29/EU

The rights set out above were of particular importance to the member states, to the Commission and to the European Parliament. This does not mean that other rights set out in the Directive were less crucial. Nevertheless, during the negotiations other rights did not cause as many problems as those mentioned in the text above.

In general, all rights covered by the Directive are granted to all victims. Nonetheless, there are some examples where only specific types of victims are provided with some of those rights. The application of particular rights may be limited due to the following reasons:

- (a) the role of the victim in the criminal justice system may result in victims having full access to the rights laid down in the Directive or on the contrary, may exclude victims from the exercise of some or of most rights, with the rights’ application depending on whether or not they play such a role under domestic law (see above);
- (b) cost-free access to interpretation and translation is to be granted to victims who do not understand or speak the language of the criminal proceedings concerned, upon their request (Article 7 of the Directive 2012/29/EU). However, access to interpretation and translation may be applied at the request of the victim and limited to specific information, such as translation of a final judgment in a trial or information enabling the victim to know about the state of the criminal proceedings, unless, exceptionally, the proper handling of the case might be adversely affected by such notification;
- (c) the right to legal aid is restricted to victims having the status of parties to criminal proceedings—which means that this right applies only to those member states where the possibility exists for a victim to be a party to criminal proceedings under national law (Article 13 of the Directive 2012/29/EU);
- (d) the legal possibility to be reimbursed for expenses incurred as a result of participation in criminal proceedings is limited only to victims playing an active role (Article 14 of the Directive 2012/29/EU). This means that member states are required to reimburse only the necessary expenses of victims in relation to their participation in criminal proceedings, and should not be required to reimburse victims’ legal fees. The member states may also impose conditions in regard to

the reimbursement of expenses in national law, such as time limits for claiming reimbursement, standard rates for subsistence and travel costs and maximum daily amounts for loss of earnings (see Recital 47 of the preamble to Directive 2012/29/EU);

- (e) some rights are granted only to victims who are residents in a member state other than that where the criminal offence has occurred. These persons have the right to make a complaint to the competent authorities of the member state of residence, in the event that they have not done so in the member state where the offence occurred (if they were unable or, in the event of a serious offence—as determined by national law of that member state—if they do not wish to do so). Those victims shall have recourse to the provisions laid down in the Convention on Mutual Assistance in Criminal Matters between the member states of the European Union of 29 May 2000³³ on a hearing to be provided with use of video conferencing or telephone conference calls (Article 17 of the Directive 2012/29/EU);
- (f) victims having specific protection needs resulting from the personal characteristics of the victim, the type or nature of the crime or the circumstances of the crime may benefit from special treatment as provided for in Articles 22, 23 and 24 of the Directive 2012/29/EU.

Although some limitations exist in the applications of specific rights to all victims, the general assessment of the content of Directive 2012/29/EU is obviously positive. A comparison with Framework Decision 2001/220/JHA leaves no room for doubt that the Directive 2012/29/EU is a modern and an effective tool to strengthen victims' rights throughout the European Union. In addition, it should be pointed out that the following rights provided for in the Directive have either extended already-existing standards or set out a new mechanism of protection in order to meet victims' needs:

- (a) Directive 2012/29/EU extends the scope of the definition of a victim to family members and defines them (see Article 2.1(a) and 2.1(b)). This allows them to benefit from the victim's rights set out in the Directive in the event that the victim's death was directly caused by a criminal offence and they have suffered harm as a result of the victim's death. Framework Decision 2001/220/JHA had limited the notion of victim only to persons who had suffered harm as a consequence of the crime committed (Article 1a). In both instruments rights were granted to family members, notwithstanding the fact that the victim had survived. Nevertheless in the Directive, the number of such rights is wider (covering the right to protection, the right to access victim support services, the right to avoid contact with the offender and the right to protection of privacy);
- (b) the right to understand and to be understood has been clarified and extended in such a manner that it refers to the obligation imposed on the competent authority to make contact with the victim in simple and accessible language, taking account of personal characteristics of the victim, including any disability which may affect the ability to understand or to be understood, as well as allowing the

³³OJ C 197, 12.7.2000, p. 3.

- victim to be accompanied by a person of their choice (Article 3 of the Directive 2012/29/EU);
- (c) support is to be given by victim support organisations—although this right existed under the Framework Decision 2001/220/JHA, it had been related to the obligation of member states to promote involvement in the initial reception of victims and in undertaking specific actions in favour of victims (Article 13 of the Framework Decision 2001/220/JHA). Directive 2012/29/EU now provides for the general right to support to be given by victims support organisations before, during and for an appropriate time after criminal proceedings. This support should be available also for family members (Article 8). Article 9 of the Directive lists rights the victims should be provided with, such as emotional and psychological support, information about national compensation schemes, advice on practical and financial issues arising from the crime, and advice relating to the risk of, and prevention of, secondary and repeat victimisation;
 - (d) protection of victims, however set out in the Framework Decision 2001/220/JHA, has been elaborated more scrupulously, repeating some methods of protection already listed in the sectoral directives relating to combating specific form of crimes, such as 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 (hereinafter referred to as the Directive 2011/36/EU)³⁴ and Directive 2011/92/EU of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, and repealing Framework Decision 2004/68/JHA (hereinafter referred to as Directive 2011/92/EU).³⁵ Both of them cover set of rights provided for all victims as well as those limited only to vulnerable victims (such as children). Thus, Directive 2012/29/EU complements existing instruments and adapts the innovative mechanism of protection to several factors: circumstances (physical protection, protection of privacy or right to avoid contact with offender), stage of criminal proceedings (investigation, trial) and to the specific needs (Articles 22–24 of Directive 2012/29/EU);³⁶
 - (e) restorative justice is becoming one of the most important ways to take into account interests and needs of the victim, and to repair the harm done to the victim as well as to avoid further harm. This approach responds to the arguments raised by many activists, who urge victims to arrange to meet the relevant offenders

³⁴OJ L 101, 15.4.2011, p. 1.

³⁵OJ L 335, 17.12.2011, p. 1.

³⁶In this respect EU legislator changed up to now used notion of ‘vulnerable victims’ needlessly which was widely represented through all the instruments in relation to specific categories of victims (such as the Framework Decision 2001/220/JHA, the Directive 2011/36/EU or the Directive 2011/92/EU) replacing it by a new, however, not understandable and confusing notion of ‘victims with specific protection needs’. Although the idea left behind seems to be crystal clear—not to stigmatise victims, it is up to the competent authorities to assess whether there is a real need to provide victim with protection and to adapt appropriate measure to his or her needs. At the end, everything relies on the assessment of the competent authority, whereas the old term highlighted the personal situation of the victim resulting in application of a specific type of protection.

- face-to-face in the presence of mediators, demand an explanation, and insist that the wrongdoer take responsibility and make amends for the damage and for the hardship they have inflicted.³⁷ Under the new solutions set out in Article 12 of the Directive 2012/29/EU, all sorts of restorative justice should be promoted;
- (f) the right to a review of a decision not to prosecute. Despite the fact that there are some exclusions from the application of this right set out in the Article 11.4 of the Directive 2012/29/EU, it is nevertheless one of the most crucial rules.³⁸ This may give rise to contestation by the victim of a decision rendered by an investigative power and, as a consequence, the subjecting of it to judicial review. This rule strengthens the right of the victim to control the appropriateness of the decision taken and the efficiency of the acts undertaken in the investigative part of criminal proceedings;
- (g) last but not least, the training of professionals counts as one of the most important achievements of the Directive. Framework Decision 2011/220/EU had only mentioned this idea whereas the Directive treats it as a tool to strengthen victims' rights. This is to be achieved by ensuring training for practitioners who are likely to come into personal contact with victims and also for victim support services. As a consequence, it should help practitioners to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner (see Recital 61 and Article 25 of Directive 2012/29/EU).

Awareness of rights covered by the Directive allows a victim to understand the criminal proceedings and to be understood. This may be achieved also by access to interpretation and translation. All these rights are particularly important for victims travelling throughout Europe. We have to bear in mind that anyone might fall victim to a crime in a foreign country. Therefore, awareness of being treated in a respectful and sensitive manner in the host country in the same way as in the country of origin facilitates the quality of travelling and of living in different European Union countries.

The Directive improves not only the rights of European Union citizens but also all victims of crimes committed within the European Union even if they come from other countries. So the higher standards of victims' treatment will also positively change the view of how the European Union is perceived outside Europe.

Ensuring victims well-informed of their rights and about their case allows them real participation in proceedings if they want to attend the trial. Further, the right to reimbursement of expenses provides them with the possibility to observe justice being conducted even if they live far away from the proceedings.

Taking into account the amendments explained so far, it should be clear that Framework Decision 2001/220/JHA needed to be replaced with an instrument that would provide victims with new rights and would strengthen the already-existing standards of protection, all within a new system of effective control of the implementation of such rights into the national legal systems of the member states.³⁹

³⁷See: *Karmen* [4], p. 423.

³⁸See more of the importance of the said right: *Starzyński* [7], pp. 189–191.

³⁹See: *Buczma* [1], p. 23.

7 Conclusions

The importance of awareness of victims' rights has been strongly highlighted, as it is a pre-condition for victims to claim and benefit from their rights before the national courts or competent authorities.⁴⁰ Awareness of rights provided under EU law may be particularly important for victims in a case where the state has not implemented the directive correctly or within the time limit prescribed. That much said, it has to be pointed out at this point that if the expiry date for the implementation of a directive has passed and the directive is clear and unconditional, an individual may rely on the directive against the state.⁴¹

There is also another aspect to the responsibility of a member state in the event that it has not transposed or applied the Directive correctly. The Lisbon Treaty has strengthened the European Union's competence in the criminal justice area. This means that the Commission can bring an infringement case against that member state. Any citizen can complain about poor application of the rules and this makes this instrument a very strong tool for victims to enforce their rights.⁴²

Of course, the Directive itself may boost the protection of victims but a significant improvement of victims' protection will not be possible until there is a complete implementation of this Directive as well as the Directive on a European Protection Order. Taking into account that also that negotiations of the EPO in civil matters are most advanced it may be presumed that it will enforce a coherent system for the victims' protection within the European Union. Only then can we expect the establishment of a consistent and comprehensive mechanism for the protection of victims which enables them to be provided with access to the same rights irrespective of their nationality and their place of residence.

The setting-out of common minimum standards of victim protection will result in an increase of trust in the national justice systems of the member states in criminal matters which may give rise to more effective cooperation in criminal matters in the European Union. Therefore, the standards laid down in the Directive should also imply more efficient combating of trans-border criminality.⁴³

The protection of victims should become an essential element of the operation of judicial authorities, both at national and at European level. The way in which victims are treated by the authorities will often determine the perception of effectiveness of the European Union justice system in the eyes of the public. Taking into account that already nearly 12 million European Union citizens live in a member state other than their country of origin, this is of crucial importance. Hence, by proper implementation of the Directive the member states will demonstrate to their citizens that the new standards of treatment established by the Directive were worth waiting for.

⁴⁰See Case 9/70 *Franz Grad v Finanzamt Traunstein* [1970] ECR 825.

⁴¹*Craig, De Búrca* [2], pp. 280–281.

⁴²See speech of *Le Bail* [6].

⁴³See: *Grzelak, Ostropolski* [3], p. 141.

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