

European Perspectives on Rights for Victims of Crime

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I. Introduction: The EU framework on victims' rights

Unlike other initiatives seeking to consolidate the area of “freedom, security and justice,” it would be justified to consider the EU action on victims' rights as a clear success story. Improving the rights, support, protection, and participation of victims in criminal proceedings, alongside capturing and punishing the offenders, has been a focus of Union policy during the past few years, especially since the need for action in this field had been identified as a strategic priority by the Commission in the Action Plan implementing the Stockholm Programme of the European Council.¹ The Commission's concrete proposals were presented in a Communication issued on 18th May 2011 under the title “Strengthening Victims' Rights in the EU,” which set out the goals that should be pursued in order to reinforce existing national measures and to ensure that victims of crime (including victims of gender-based violence, trafficking in human beings, child sexual exploitation and abuse, and terrorism) experience a minimum range of rights, on a non-discriminatory basis, across the EU.² This package of proposals included a Directive on the position of crime victims in criminal proceedings as well as a new mutual recognition mechanism aiming to afford victims, or potential victims (e.g., of domestic violence), who benefited from a protection measure in their Member State of residence, the same protection when crossing the borders of another Member State.

The legislative process in respect of the measures proposed in the above “Victims Package” has already been completed. The most essential element of this package is without doubt the landmark Directive 2012/29/EU establishing minimum standards on the Rights, Support and Protection of victims of crime, which was adopted in October 2012,³ replacing the Framework Decision on the same subject, adopted back in 2001.⁴ This far-reaching instrument aims to ensure that victims are recognized and treated with dignity and respect, in an efficient, professional, and individual manner, and that the special needs of vulnerable victims are properly addressed. More specifically, it aims to ensure that victims receive the support they need to recover and overcome emotional, practical, administrative, and legal difficulties; that they can participate in proceedings and receive and understand relevant information; and that they are protected throughout criminal investigations and trials.

With this Directive in place, and taking into account the combined subsidiary effect of the 2011 Directive on the European Protection Order,⁵ the 2011 special Directives on Human Trafficking⁶ and Child Sexual Exploitation,⁷ the 2013 Regulation on the mutual recognition of protection measures in civil matters,⁸ the older 2002 Framework Decision on combating terrorism,⁹ and the 2004 Directive on the compensation of crime victims,¹⁰ there is now a comprehensive legislative basis at the EU level to ensure that victims of all types of crime, whatever their nationality or country of residence, and wherever in the EU the crime takes place, receive proper procedural rights, support, and protection in the criminal justice systems of the Member States. In short, victims' rights legislation at the EU level has never been stronger.

II. The way forward: Three perspectives on the European victim protection regime

Despite this success, it is not yet time to rest on one's laurels. The improved EU legal framework notwithstanding, in many aspects, the needs of victims in national criminal proceedings have still not been sufficiently addressed in practice, and the level of victims' rights continues to differ significantly across Member States. Accordingly, there is much to be done, especially on the national level. We recommend, more specifically, that three perspectives on the short-term development of victim protection regimes across Europe be followed concurrently in order to achieve the intended results: a) the common perspective of all EU Member

States, which calls for the timely creation of coherent national victim protection schemes; b) the separate perspective of each individual Member State, which involves promoting focused action, namely the one best suited to addressing country-specific needs and particularities; and c) the established, general perspective followed by the Greek EU Presidency, which favours a balanced and measured approach, affording comparable attention to both the rights of the victims of crime and the rights of (vulnerable) persons – suspected or accused – in criminal proceedings.

1. The common perspective: Creating coherent national victim protection schemes

In several countries across the EU, national victim protection measures are not based on a general or overarching scheme. Instead, there sometimes exist fragmented programs and initiatives of limited scope, inadequate pieces of legislation, and incoherent practices. Accordingly, even the implementation of the standards laid down in the old 2001 Council Framework Decision, which called for addressing victims' needs "in a comprehensive, coordinated manner, avoiding partial or inconsistent solutions which may give rise to secondary victimisation,"¹¹ cannot be considered satisfactory. To name but only a few examples,¹² in eight Member States, there appear to be no generic victim support services available (i.e., services aimed at all rather than specific categories of victims), and in further two States, the main generic victim support organisation does not maintain contact with its counterparts in other countries. In the majority of Member States, there is no special unit or service providing support to victims of crime at trial, and in several States, victims do not have the right to be accompanied by support persons during trial. Police are legally obliged to provide information concerning both victim support services and compensation in just over half of Member States. In some States, there is still no legal obligation to provide information concerning victims' rights and their role in criminal proceedings. Furthermore, in practice, there are still considerable gaps, due to the non-prioritisation and the lack of knowledge of victim's needs.

This situation can only be addressed through the concerted action of national authorities, aiming at the creation of coherent victim protection schemes, as set out in the EU legislation and especially in the Victim's Directive. It should be clear that the demands for a modern, coherent legal framework on victims' rights are high. As a rule, extensive national coordination among competent authorities by means of the preparation of effective implementing measures will be needed. Therefore, the Greek Presidency urged Member States to take immediate action, if they have not yet done so, to ensure the proper and timely transposition and implementation of EU instruments into national laws and policies.

The key word here is "timely." The EU legislation on victims must be adopted and the relevant rights made fully available to victims by the transposition deadlines in 2015. As of January 2015, the two protection measures (the Directive on the European Protection Order and the Regulation on the mutual recognition of protection measures in civil matters) should be fully operational in all Member States. By 16 November 2015, the Victims' Directive should be transposed into national laws, regulations, and administrative provisions. Indeed, despite the difficult financial and budgetary reality in most EU countries, there appears to be adequate political momentum to act on these obligations and raise the standards of victim protection. Thus, it appears there is a good chance that the intended goal shall be achieved sooner rather than later. To a large extent, this will be due to the efforts of the Commission, which released a valuable Guidance Document related to the transposition and implementation of the Directive. This Guidance Document was launched on the occasion of the European Day for victims of crime (22 February 2014) and presented at the workshop on the Victims' Directive held in Brussels on 28 March 2014.

In this context, one should bear in mind not only that the Victims' Directive is more ambitious and far-reaching than the Framework Decision of 2001 it replaced, but also that there are more mechanisms to

ensure its effective and timely enforcement: The Directive has both primacy over conflicting national law and “direct effect,” in the sense that, once the time limit given for its transposition expires, victims of crime can immediately invoke its provisions to assert their rights before national courts. Moreover, the Commission can be expected to initiate infringement proceedings against Member States that will not have fulfilled their obligations from the instrument by the set deadline or that will have applied it poorly or incorrectly. Non-governmental organisations active in the field of victim protection and support will have the possibility to issue complaints to the Commission, pressing for the effective implementation of the Directive, as well as increased opportunities to bring corresponding proceedings before national courts.¹³

2. The individual perspective: Promoting focused action

While all Member States must work towards establishing coherent victim protection schemes, each one of them should assess the specific needs arising within its own, individual criminal justice system and determine the areas in which focused action, above and beyond the minimum standards of the Victims Directive, is necessary. This would lead to measures more closely linked to national conditions and surroundings and would be more likely to effect a tangible improvement of the situation of victims in the country involved. For example, some States may consider as a priority area the provision of support services to victims; or the individual assessment of victim’s needs; or measures for the benefit of specific groups of victims of crime (e.g., victims of gender-based violence, hate crime, and homophobic crime).

In Greece, one important area of focus, at least at a theoretical level, is “restorative justice”, an idea which can be traced as far back as ancient Greek philosophy and Aristotle’s “Nicomachean Ethics” (“diorthotikon” or “epanorthotikon dikaion”).¹⁴ Restorative justice is a highly dynamic concept in criminal justice policies and programmes, which goes beyond purely financial compensation, focusing on victim-offender mediation, the repairing of the harm done by the crime, and the recovery of the victim as a result of a voluntary and organised process (e.g., in cases of juvenile delinquency, domestic violence, financial offences, minor assaults, injuries by negligence, etc.).¹⁵ As a cost-effective alternative to, or in combination with the formal judicial process, it aims to restore victims to the position they were in before the crime, by giving them, if they so wish, an opportunity to confront their offenders face to face. It also gives the offenders the opportunity to take responsibility for their actions.

The Victims Directive requires in Art. 1 that victims “are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services,” and contains in Art. 2 par. 1(d) a definition of restorative justice as “any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.” Moreover, Art. 12 sets out the fundamental safeguards that need to be applied when providing restorative justice services, in order to prevent secondary and repeat victimisation, intimidation, and retaliation. Unlike Art. 10 of the 2001 Framework Decision on the standing of victims in criminal proceedings, the Directive does not include an obligation for Member States to “seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure,” nor does it in any way entail a requirement for Member States to introduce restorative justice services if they do not already have such a mechanism in place. Indeed, even under the previous regime, the Court of Justice of the EU, in its rulings in the *Eredics & Sápi* and *Gueye/Salmerón Sanchez* cases, had confirmed that the choice of the offences for which mediation is to be available is for the Member States to determine, on criminal justice policy grounds, and that, consequently, Member States are not required to make possible recourse to mediation/restorative justice for all offences.¹⁶ Nevertheless, most Member States appear to have legislation making some form of criminal mediation or restorative conferencing available, especially for less severe cases, such as misdemeanours and petty offences.¹⁷

A focused approach to restorative justice would, first of all, promote the introduction, development, and coordination of restorative measures, taking into account the basic principles enshrined in the provisions of the Victims Directive.¹⁸

aa) Restorative justice services should serve, as a primary consideration, the interests of the victims, taking into account their vulnerability. The relevant measures should be applied only when the victims voluntarily participate in the process. The victims should be able to withdraw their consent at any stage of the process, without this affecting their status within the criminal justice system. Equally, neither the offender nor the victim should be coerced to accept an outcome. For example, the opportunity offered by Greek law to the perpetrator of a misdemeanour against property to pay the value of the capital as well as the default interest and in this way be exempted from penalty (Arts. 384 par. 3 and 406A par. 3 of the Greek Penal Code), even if the victim has not been consulted, cannot be considered an example of restorative justice.¹⁹

b) The victims, as well as the offenders, should be fully informed on the elements and guiding principles of the restorative justice process, their rights, and the possible consequences of their participation as well as the procedures for supervising and enforcing any potential agreement. Throughout the entire process, they should be allowed to consult or be supported by legal counsel and have access to a translator or interpreter, when necessary. In cases involving children, in their best interest, it should be provided for that their parents or legal custodians be involved.

c) The offender should have acknowledged the basic facts of the case. Nonetheless, this acknowledgment and his/her voluntary participation should not automatically be considered an admission of guilt for the purposes of the traditional criminal justice process. The restorative justice process must also safeguard the fundamental procedural rights of the offender.

d) Information disclosed during restorative justice processes should, in principle, remain confidential and not be subsequently used, unless otherwise agreed by the parties or as required by international human rights legislation or by national law, due to an overriding public interest.

e) The referral of cases to restorative justice services should be based on a well organized and effective system providing guidelines on the conditions for such referral, taking into consideration factors, such as the nature and severity of the crime, the ensuing degree of trauma for the victim, and the admission of responsibility by the offender. In addition, the maturity and intellectual capacity of the victim, which could influence his/her ability to make an informed choice or could prejudice a positive outcome of the restorative process, should be taken into account.

Above and beyond these basic principles, which form part of the obligations of all State parties, there is much that can be done on a national level to further enhance the safeguards and ensure the quality of restorative justice procedures. In addition to promoting targeted national restorative justice programmes, with the cooperation of all relevant stakeholders, including NGOs and academia, and to creating centralized institutions for the provision or coordination of restorative practices, the following measures could be envisaged as elements of a plan for focused action:²⁰

a) The collection of specific factual and statistical data on the law and practice of restorative justice, also from a comparative perspective, that will directly reflect the needs of victims as well as those of decision makers and practitioners involved in providing restorative justice services.

b) The analysis of the information collected and use of the above data to develop special provisions for particular groups of victims or offenders (e.g., juveniles and young offenders), as well as evidence-based, practical guidelines for providing restorative justice, with the aim of improving victims' safeguards.

c) The development of training programmes and accreditation materials for professionals in authorities and agencies involved in restorative practices (e.g., the police, prosecutors, judges, victim support service providers, prison and probation staff) as well as the introduction of codes of conduct, with the aim of raising awareness about the competences of said professionals and improving their skills and knowledge on how they treat and interact with victims.

3. The perspective followed by the Greek EU Presidency: Upholding a balanced and measured approach

Finally, the enhancement of victims' rights, support and protection should be carried out by means of a balanced and measured approach. There are still voices in Europe that overstress the elements of antagonism between victims and offenders. According to this view – which has also gained a foothold in public opinion –, the movement to emancipate the victim in the criminal process and make certain he/she is treated in a respectful, supportive, and non-discriminatory manner may necessitate a more reserved approach to the legal status of the person suspected or accused of having committed the crime. In other words, the development of victims' rights is intertwined with the acknowledgment that too much attention has been paid to the legal rights of defendants. In order to restore a reasonable balance, we may need to shift our basic concern in the direction of the victim, at the expense of the offender and possibly the privileges he/she has so far enjoyed. In this context, the question is sometimes raised as to “whether prioritizing the issue of the protection of victims might render the effort to forge common minimum standards for the rights of the defence less effective.”²¹

We do not quite share this concern. As most European victim support organizations would agree, one can certainly be in favour of victims' rights without being against offenders' rights. Efforts to guarantee the participation and protection of victims in criminal proceedings are not intended to jeopardise the traditional legal status of the accused.²² Even if the existence of elements of conflict cannot be denied, victim protection and support should not in principle be seen as a “zero-sum game”.²³ The emancipation of the victim in the criminal justice system does not entail that offenders' rights are taken lightly. Quite the contrary: A system that pays attention to fair trial rights and especially to the rights of vulnerable offenders (such as children and persons with serious psychological, intellectual, physical, or sensory impairments) may well lead to lower rates of recidivism and thus less victimization in the future.

Accordingly, the Stockholm Programme has also placed a strong focus on strengthening of the rights of suspected or accused persons in criminal proceedings, resulting so far in the 2010 Directive on interpretation and translation,²⁴ the 2012 Directive on the right to information,²⁵ and the 2013 Directive on access to a lawyer.²⁶ As noted by the Commission, the EU's action in this field intends to “raise the standards of fundamental rights for everyone affected by criminal proceedings – whether victim, accused or detainee, whilst ensuring that any limitation of these rights occurs only where necessary and proportionate.”²⁷

Following this general perspective, at the beginning of 2014 the Greek Presidency likewise selected and tabled for discussion a Commission Proposal for a “Directive on procedural safeguards for children suspected or accused in criminal proceedings,” aiming at ensuring that suspects or accused who are children are recognized and treated with respect, dignity, and professionalism, whenever they are in contact with the competent authority acting within the framework of criminal proceedings.²⁸ This should also facilitate the re-integration of children into society after they have been confronted with the criminal justice system. The Proposal was presented together with a Commission Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings and vulnerable persons subject to European arrest warrant proceedings.²⁹ Already, at the JHA Council of 6 June 2014, a general approach was reached on the text of the proposed Directive.

III. A look into the future

We believe that advancing victim protection under the three perspectives described above, will lend substance to the achievements already made, both at the national and EU levels. Looking to the future, one could perhaps envisage further legislative measures, such as:

- A revised, improved version of Council Directive 2004/80/EC relating to compensation to crime victims that would simplify existing procedures for the victim to request compensation, as contemplated by the Commission and the Council;³⁰
- An amendment to the Rome II Regulation³¹ that would address the issue of the law applicable to limitation periods in road traffic cases across borders, as contemplated by the Commission;³²
- A new Directive on restorative justice in criminal matters that would define the basic rules under which restorative justice procedures should be implemented in the EU Member States, as recently proposed by a group of Greek academics.³³

Further legislative action may also be needed in relation to specific categories of victims, such as victims of terrorism, organised crime, and gender-based violence, with a view to improving their situation. At this point, however, our short-term priority should be to consolidate what has already been achieved, by creating coherent national victim protection schemes, by promoting focused action for the benefit of victims, and by upholding balanced and measured criminal justice policies.

* Revised version of a speech delivered on behalf of the Greek EU Presidency for the opening of the “Victim Support Europe” Annual Conference, Warsaw, Poland, 15 May 2014.

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1. COM(2010) 171 final. See also The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens, O.J. C 115, 4 May 2010, § 2.3.4.; and Commission Work Programme 2011, COM(2010) 623 final, § 3.↵
 2. COM(2011) 274 final. See also Resolution of the Council on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings (the Budapest Roadmap), 3096th Justice and Home Affairs Council meeting, Luxembourg, 9 and 10 June 2011, O.J. C 187, 28 June 2011, p. 1. On the status of victims in EU criminal law up to this point, see Fichera, *eucrim* 2011, p. 79ff.↵
 3. O.J. L 315, 14 November 2012, p. 57.↵
 4. Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings, O.J. L 82, 22 March 2001, p. 1. See Groenhuijsen/Pemberton, The EU Framework Decision for victims of crime: Does hard law make a difference? *European Journal of Crime, Criminal Law & Criminal Justice* 17 (2009), p. 43ff.; Wieczorek, A needed balance between security, liberty and justice. Positive signals arrive from the field of victims’ rights, *European Criminal Law Review* 2 (2012), p. 141ff.↵
 5. Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, O.J. L 338, 21 December 2011, p. 2. In relation to this initiative, see Jiménez Becerril/Romero Lopez, The European Protection Order, *eucrim* 2011, p. 76ff.↵
 6. 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, O.J. L 101, 15 April 2011, p. 1.↵
 7. Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, O.J. L 335, 17 December 2011, p. 1.↵
 8. Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, O.J. L 181, 29 June 2013, p. 4.↵
 9. Council Framework Decision 2002/475/JHA on combating terrorism, O.J. L 164, 22 June 2002, p. 3.↵
 10. Council Directive 2004/80/EC relating to compensation to crime victims, O.J. L 261, 6 August 2004, p. 15.↵
 11. Preamble, § 5.↵
 12. Findings from the FRA’s project on *victim support services and victims’ rights* in the EU, presented at the experts’ workshop on the Victims’ Directive which took place on 28 March 2014 in Brussels.↵
 13. Peers, Guidelines for transposition – The EU Directive on Victims’ Rights (2012/29/EU) and homophobic and transphobic crime victims, ILGA Europe, Dec. 2013, p. 4.↵
 14. Book V, 5. See Artinopoulou, Restorative Justice in Greece, in: Pitsela/Symeonidou-Kastanidou (eds.), *Restorative Justice in Criminal Matters – Comparative Research in 11 European Countries*, 2013, pp. 101-102, as well as Patsourakou, *Die Stellung des Verletzten im Strafrechtssystem*, 1994, p. 170.↵
 15. See already UN ECOSOC, Resolution 1999/26, Development and implementation of mediation and restorative justice measures in criminal justice, adopted on 28 July 1999; Council of Europe Recommendation R(99) 19 on Mediation in Penal Matters, adopted by the Committee of Ministers on 15 September 1999; UN ECOSOC Resolution 2000/14, Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2002,

- U.N. Doc. E/2000/INF/2/Add.2, §35. From among the vast literature, see von Hirsch/Roberts/Bottoms/Roach/Schiff (eds.), *Restorative Justice & Criminal Justice*, 2003.↵
16. CJEU Case C-205/09 *Eredics & Sápi*, Judgement of 21 October 2009, § 37ff; CJEU Joined Cases C-483/09 *Gueye* and C-1/10 *Salmerón Sánchez*, Judgement of 15 September 2011, § 72ff.↵
17. See Commission Report pursuant to Art. 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), 20 April 2009, COM(2009) 166 final, p. 8; see especially APAV (Portuguese Association for Victim Support), on behalf of Victim Support Europe, "Victims in Europe" – Implementation of the EU Framework Decision on the standing of victims in the criminal proceedings in the Member States of the European Union, 2009, p. 112ff. See also Pitsela/Symeonidou-Kastanidou/Antonopoulou/Karagiannidis, *Towards a new European perspective for restorative justice in criminal matters: Comparative analysis and proposals*, in Pitsela/Symeonidou-Kastanidou (eds.), op.cit., p. 311, p. 319.↵
18. *Ibid.*, p. 376ff.↵
19. *Ibid.*, p. 385.↵
20. See the project entitled "Restorative Justice in Europe: Safeguarding Victims & Empowering Professionals" (RJE), <http://www.rj4all.info>, as well as the recommendations of Artinopoulou, op.cit., p. 121.↵
21. Fichera, op.cit., p. 79.↵
22. As noted in § 12 of the Preamble to the Victims Directive: "The rights set out in this Directive are without prejudice to the rights of the offender."↵
23. See Groenhuijsen, Conflicts of victims' interests and offenders' rights in the criminal justice system – a European perspective, in: Sumner/Israel/O'Connell/Scarre (eds.), *International Victimology: Selected papers from the 8th International Symposium held in Adelaide*, 21-26 Aug. 1994, p. 163, 171ff., 175, who argues that possible conflicts between victims' and offenders' rights could be addressed by considering as a "basic line of demarcation" Art. 6 of the ECHR and by granting the courts the power to make, in some cases, a discretionary decision giving priority to one of the interests in question.↵
24. 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, O.J. L 280, 26 October 2010, p. 1.↵
25. Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, O.J. L 142, 1 June 2012, p. 1.↵
26. Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings as well as on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, O.J. L 294, 6 November 2013, p. 1.↵
27. Commission's Communication of 18 May 2011, "Strengthening Victims' Rights in the EU," COM(2011) 274 final, pp. 3-4.↵
28. COM(2013) 822 final.↵
29. O.J. C 378, 24 December 2013, p. 8.↵
30. See Commission's Communication of 18th May 2011, "Strengthening Victims' Rights in the EU," COM(2011) 274 final, p. 9; and Resolution of the Council on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings (the Budapest Roadmap), op.cit., Preamble § 8 and Annex, Measure D.↵
31. Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), O.J. L 199, 31 July 2007, p. 40.↵
32. See Commission Communication of 18th May 2011, "Strengthening Victims' Rights in the EU," COM(2011) 274 final, p. 9.↵
33. Pitsela/Symeonidou-Kastanidou/Antonopoulou/Karagiannidis, op.cit., p. 381ff.↵

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