

## **Participation in criminal proceedings of crime victims in the European Union. Critical opinions and proposals de lege ferenda**

**Bogdan Gheorghe BÎRZU, Ph.D in progress**  
„Titu Maiorescu” University, Bucharest, Romania  
birzu\_bogdan@yahoo.com

***Abstract:** In the paper it was examined the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 on establishing the minimum standards for the protection of the rights, support and protection of crime victims and on replacing the framework decision 2001/220/JAI, in respect of certain specific rights of the crime victims. During the examination, the main rights, which must be granted to crime victims, in case the victim, is a national of another Member State, were highlighted. Also, the examination took into consideration the provisions of the Romanian which regulates those rights, provisions that are rated as suitable European standards. The innovations refer to the examination performed, as well as the critical opinions and proposals formulated de lege ferenda, which are meant to contribute to the improvement of the European legislative system. The work can be helpful to both practitioners and theorists in this area.*

***Keywords:** rights of the victim of an offence; the offence committed on the territory of another Member State; the rights of victims who are residing in another Member State.*

### **Introduction**

As it is supported in the doctrine, the registered scientific and technical progress, as well as widening the process of democratization in several States, created the possibility of easily moving persons and goods, leading to the development of human society as a whole. The unquestionably beneficial effect for the entire humanity, created some advantages in the broad possibilities of proliferation of the phenomenon of crime, worldwide [1]. In this context, a general analysis of the forms of manifestation of international crime points out at first the diversification of methods of action, organization and logistics, which is often perfect, of those involved in such events.

*In recent years, in addition to terrorism have been developed and other forms of crime: trafficking in human beings and drug trafficking of weapons, trafficking in raw, trafficking in human beings for the purpose of immigration, etc., criminal activities which, although not up to the danger posed by terrorism, can constitute topics of analysis and concern at the level of any State [2].*

In these conditions, international judicial cooperation in criminal matters was necessary, in our opinion, because it was the only way to prevent and combat more effectively transnational crime and also to grip and prosecute the persons who committed various crimes and are hiding in the territory of other States [3].

Amid the emergence of the need for improved forms and methods of international judicial cooperation in criminal matters, new forms of cooperation have emerged that have been added to those already existing. As time passes, some forms that have proven their effectiveness in time have been improved so as to ensure prevention and more effectively combat crime of all types [4].

According to the provisions of the Romanian special law, *the main forms of international judicial cooperation in criminal matters are: extradition, handing over under a European arrest warrant, the transfer of proceedings in criminal matters, recognition and enforcement of judgments, the transfer of sentenced persons, legal assistance in criminal matters and other forms of international judicial cooperation in criminal matters* [5].

One of the fundamental objectives laid down at EU level is to ensure that an area of freedom, security and justice, in the territories of all Member States. The application of this extremely important objective meant the adoption of a coherent legal system applied in the Member States, as well as the establishment of bodies designed to ensure implementation of the legal instruments of the European Community.

The evolution of crime and particularly that organized cross-border crime has resulted in the modification and supplement of the existing legal instruments, together with the adoption of others meant to contribute to improving the known forms of cooperation or to implement other such forms of cooperation.

We mention here, apart from terrorism, which manifests itself increasingly active within the European Union, the phenomenon of immigration, which in our view will have more and more harmful effects on the economic and political developments of the European Union [2].

## **1. European juridical instruments to defend the rights of crime victims**

Thus, along with improving the legislative system meant to contribute to the professionalization of structures with specific attributes for identifying and prosecuting the persons who have committed offences in the territory of the European Union, gradually legal instruments designed to help defend the rights of crime victims were adopted.

Among the first European normative acts adopted with the aim of ensuring the protection of crime victims, by respecting some of their rights include the framework decision 2001/220/JAI of the Council of 15 March 2001 on the status of victims in criminal proceedings [6].

Subsequently after discovering that some rights of crime victims in the criminal proceedings were violated, other legal instruments were adopted, such as:

- The Stockholm Programme - an open and secure Europe serving the citizens and for their protection [7];

- Council directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 regarding European protection order [8];

- 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 [9];

- Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating sexual abuse of children, sexual exploitation of children and child pornography [10];

- European Parliament resolution of 26 November 2009 relating the elimination of violence against women [11];

- European Parliament resolution of 5 April 2011 relating to the priorities and structure of a new framework of EU policy to combat violence against women [12].

## **2. Vision European legislator with on victims' rights in criminal proceedings**

In the same context was adopted the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 by laying down minimum standards for the rights, support and protection of crime victims and replacing the framework decision 2001/220/JAI [13].

Given its importance, we will proceed to a brief examination of this European legal instrument focusing on the main rights of crime victims that must be met by judicial bodies in criminal proceedings.

We will also make reference to the provisions of the Romanian law which regulate the rights of crime victims in criminal proceedings.

Taking into account some provisions which can cause some dysfunctions in the cooperation activity between the Member States, we will also formulate some critical opinions aimed at contributing to the improvement of the legislative system at European Union level.

The rights identified by the European legislator, which should be respected in criminal proceedings, are as follows:

- the right to be heard;
- rights in the case of a decision not to prosecute;
- the right to guarantees in the context of reparative justice services;
- the right to legal assistance;
- the right to the reimbursement of expenses;
- the right to restitution of property;
- the right to obtain in criminal proceedings a decision on compensation from the author of the offence; and
- rights of victims who are residing in another Member State.

We will carry out their examination, in the light of the rules laid down in the European regulatory act mentioned above.

**a. *The right to be heard.*** Each Member State shall take measures to ensure the hearing of victims during criminal proceedings and their opportunity to present evidence.

In case the victims are children, they will be provided with a special procedure which will take into account their age and maturity.

In the hearing of both cases, adults and minor victims, the rules of procedure applicable are those of the national law of the concerned Member State.

**b. *Rights in the case of a decision not to prosecute.*** According to the European regulatory provisions, Member States shall take measures to ensure that victims of criminal offences, in accordance with national law, have the right to seek review of a decision not to prosecute.

If, in accordance with national law, the victim's role is determined only after adopting a decision of criminal prosecution, the Member States ensure that at least the victims of serious infringements are entitled to seek the review of the decision not to prosecute.

In this sense, the victims will be informed without delay of their right to receive, and that, on request, they receive sufficient information to decide whether or not to request the review of a decision not to prosecute.

Assuming that the decision not to prosecute is taken by the highest prosecuting authority whose decision is not subject to appeal under national law, the appeal can be resolved by the same authority.

The European legal act stipulates that the provisions referred to above do not apply to the decision of the Prosecutor not to prosecute, where such a decision leads to an out-of-court solution, if national law contains such provisions (article 11 of the examined European regulatory).

If we refer to the Romanian national law which will be applicable in all circumstances in which the victim of an offence is a citizen of another Member State, and the offence was committed on the territory of Romania or against a Romanian citizen or a foreign citizen lawfully residing in Romania, we note that against the solutions of ranking or wavering of prosecution adopted by the Prosecutor, the victim may

introduce, in accordance with the provisions of art. 339, a complaint to the hierarchically superior prosecutor or the competent court, in accordance with the provisions of art. 340 when the original complaint was rejected by the prosecutor hierarchically superior to the Prosecutor's case (the one who disposed the solution criticized by the victim).

From the examination of the provisions of the Romanian law compared to the provisions of the European normative act, we can appreciate that Romanian law grants more rights to the victim. In such cases the court competent to judge the cause may be referred to in the first instance.

**c. *The right to guarantees in the context of reparative justice services.*** Member States shall take measures to guarantee the protection of the victim against the secondary and repeated victimization, as well as intimidation and revenge that should be applied when resorting to any service of reparative justice.

It is intended that such measures are taken to ensure that the victims who opt to participate in the process of reparative justice benefit, upon request, from access to services of safe and competent reparatory justice in compliance with at least the following conditions:

- recourse to reparative justice services if it is in the interests of the victim, according to considerations on safety and with his free and informed agreement, which may be withdrawn at any time;
- before accepting to participate in the process of reparative justice, the victim shall receive full and objective information about the procedures and their results, as well as information on the procedures for supervision of the implementation of any agreement;
- the offender has acknowledged the basic facts of the case;
- any agreement is concluded on a voluntary basis and may be taken into account in any subsequent criminal proceedings;
- discussions within the procedures of reparative justice that do not take place in public are confidential and shall not be disclosed subsequently, except the case when the parties give their consent in this respect or if this is provided for in the national law having in mind the prevalent public interest.

In all circumstances the Member States shall facilitate the sending of such cases, where it is the case to the services of reparatory justice, including through the establishment of procedures and guidelines with regard to the conditions of such references (art. 12 of the European Normative Act).

As we observe the above provisions govern the terms under which it is guaranteed the victim protection against secondary and repeated victimization, as well as intimidation and revenge when the victim tries to use any service of reparative justice.

**d. *The right to legal assistance.*** According to the European regulatory provisions, Member States shall ensure that victims have access to legal assistance, when they have the quality of party to criminal proceedings, in accordance with their internal law (art. 13 of the Act).

In accordance with Romanian law, this right is ensured by the victim of the offence in accordance with the provisions of article 93-96 CPC.

**e. *The right to the reimbursement of expenses.*** Member States shall provide victims who participate in the criminal proceedings with the possibility to reimburse expenses incurred as a result of their active participation in these procedures, depending on the role in the relevant criminal justice system, in the conditions laid down by national law (article 14 of the European legal Act).

In the Romanian law, the victim's right to be reimbursed for the expenses incurred as a result of his participation in the criminal proceedings, which may be exercised within the framework of civil action in the criminal process, can be found in the provisions of article 19 of the CPC and the next ones

**f. *The right to restitution of property.*** According to the provisions of the same European legislation, the Member States shall ensure that, following a judicial decision, the recoverable assets seized during criminal proceedings shall be returned to the victims without delay, unless they are needed during the criminal proceedings, in accordance with the provisions of national law (article 15 of the European Normative Act).

Such provisions are also found in Romanian law and the judiciary authorities are paying lately particular attention at recovering the prejudice caused by the crime committed.

**g. *The right to obtain in criminal proceedings a decision on compensation from the author of the offence.*** In the course of criminal proceedings, victims have the right to obtain a decision on compensation from the author of the offence, within a reasonable period, except for the case when it is provided under national law, that such a decision shall be adopted in the context of other legal proceedings.

Member States shall promote the necessary measures to encourage offenders to adequately compensate their victims (art. 16 of the European Normative Act).

In the national law, the provisions concerning the possibility of obtaining compensation from the author of the offence can be found in the provisions of art. 19 and the next ones CPC.

With regard to the provisions through which offenders are encouraged to compensate the victims, can be found in art. 75 para. (1), letter d) CP, the action itself being interpreted as a mitigating circumstance leading to reduce by a third the minimum and maximum limits of the punishment provided for the offence committed.

**h. *Rights of victims who are residing in another Member State.*** According to the European regulatory provisions, Member States shall ensure that their competent authorities are in a position to adopt appropriate measures to minimize the difficulties that arise when the victim is resident in a Member State other than that in which the offence was committed, particularly as regards the conduct of the proceedings. For this purpose, the judicial authorities of the Member State in which the offence was committed have, in particular, the task:

- to take the victim's statement immediately after the formulation of the complaint relating to the offence by the competent authorities;

- to resort as far as possible to provisions concerning video-conferences and conference calls laid down in the Convention on mutual assistance in criminal matters between the Member States of the European Union of 29 May 2000 (14), for the purpose of hearing victims resident abroad.

In addition, Member States shall ensure that in cases where the victims of crime have no possibility of formulating a complaint in the Member State where the offence has been committed against them, they can do so in their State of residence; the same will apply in the case of serious offences.

At the same time, action will be taken so that the competent authority which has registered the complaint of the victim to transmit it without delay to the competent authority of the Member State in which the offence was committed, in the case when the power to initiate proceedings was not yet exercised in the Member State in which the complaint has been registered (art. 17 of the European Normative Act).

Such provisions are also found in the Romanian law and are applied when on the territory of Romania it was committed a criminal offence against a citizen of an EU Member State.

### **3. The Romanian Law and the reflection of the rights examined above**

A brief analysis of the provisions of the examined European regulatory act in which are laid down a series of rights of crimes victims committed on the territories of the Member States of the European Union,

by reference to the provisions of the Romanian law in this area, we can formulate a general opinion according to which, in Romania, these victims' rights are defended at an acceptable quality level, and sometimes even superior in relation to European law.

We highlight in this respect the adoption of a regulatory framework governing these rights, respectively, law no. 211/2004 on measures for the protection of crime victims, with subsequent amendments and additions.

Another normative act that provides for certain provisions expressly relating to the defense of the rights of crime victims is the Criminal procedure code entered into force on 01.02.2014.

Therefore, one can appreciate that at the present time in Romania, the main normative acts which defend a series of rights of crime victims are the two mentioned above, plus others, through which have been ratified a number of international legal instruments to which Romania is a party of.

However the Romanian law does not establish additional rights for the victim citizens belonging to another Member State of the European Union, but neither limits these rights under the acceptable limit for a Romanian citizen victim of an offence.

In these circumstances, one can appreciate that the rights of the victim of an offence committed in the territory of Romania, in circumstances where the victim is a national of a Member State of the European Union are the same as in the case in which the victim would be a citizen.

### **Conclusions, critical opinions and proposals de lege ferenda**

The adoption of European regulatory act was imposed amid the need for observance of the rights of victims of offences committed in the territory of another Member State of the European Union.

In essence, the European legal instrument ensures the fulfilment of the rights of foreign citizen victim at the same level as in domestic law.

With all its positive effects, we believe that the European regulatory act and some provisions are at least questionable.

Thus, we believe that given the particular situation in which the victim, found on the territory of another Member State, with all the disadvantages arising from here, we consider that it would be able to establish some special rules that lead to the settlement of such readiness.

Such provisions may include certain obligations for the judicial bodies of the Member State in which the offense was committed which refer to the need to pay greater attention to such cases.

There is no doubt that such provisions can be applied only in certain circumstances, regarding the complexity of the case.

Another observation relates to the need to establish provisions which oblige the judicial bodies of the Member State in whose territory the offence has been committed to repay the victim the goods which were the subject of the offence, while he has not left the territory of the State concerned, subject to the conditions in which this is possible.

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