

## **Providing information and support to victims of crime in the European Union. Some critical opinions**

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***Abstract:** The present work presents a brief examination of the provisions of the Directive 29/2012/EU of the European Parliament and of the Council of 25 October 2012 by laying down minimum standards on the rights, support and protection of the crime victims and replacing the framework decision 2001/220/JHA of the Council, particularly in relation to providing information and support to the victims of offences committed in the territory of another Member State other than the State of residence of the victim. In addition to an examination of the provisions of the European regulatory action, we proceeded to the review and summary of certain provisions of the Romanian law through which these rights of the victim, are regulated under national law. The value of this work consists in the examination conducted, and in the critical opinions and proposals de lege ferenda, proposals designed to contribute to improving the European legislative system in the domain. The study can be useful to academic, as well as practitioners with concrete attributes in the activity of preventing and combating crime of all types. Through this work is continued the complex research carried out in the area of international judicial cooperation in criminal matters, materialized in the publication of several books (treatises, monographs), as well as studies and articles published in specialty magazines or in the volumes of domestic or international conferences.*

***Keywords:** offence; rights of the Crime victims; the right to receive information.*

### **Introduction**

Against the background of an increase in crime at the international level, in recent years the world' states show a reaction of solidarity, which resulted in the intensification of the judicial cooperation' activities in criminal matters [1]. Against this backdrop, with the passage of time in Europe have crystallized more forms of international judicial cooperation in criminal matters: extradition, European arrest warrant, the transfer of proceedings in criminal matters, recognition and enforcement of foreign judgments, legal aid and others [2].

In recent doctrine it is argued that without diminishing the importance of other forms of international judicial cooperation in criminal matters, recognition and enforcement of foreign judgments is the basis, foundation, from which it departs every time in the complex activity of judicial cooperation between States and, implicitly, the mutual trust in these judicial decisions handed down by the judicial bodies empowered by a State or another [3].

In another opinion (recent), it is argued that the most complex form of international judicial cooperation in criminal matters, which basically constitutes the basis of the cooperation activity in criminal matters as a whole, is the recognition and enforcement of criminal judgments and judicial documents emanating from a competent authority of another State [4].

As distinct form of international judicial cooperation in criminal matters, valued as the most important in relation to other forms recognized by world States with democratic political regimes of the

world [5], recognition and enforcement of foreign judgments was perfected on a permanent legislative, and at present it is indispensable to the complex activity of preventing and combating all types of crime.

Securing an area of freedom, security and justice is one of the most important objectives of the European Union, which is based on the principle of mutual recognition and confidence of judgments in criminal matters, adopted by the competent authorities of another Member State.

On the other hand, the Union has undertaken to ensure a high level of protection of victims of crime in its territory, especially when they are citizens of another country, in this sense the framework decision 2001/220/JHA of 15 March 2001 on the status of victims in criminal proceedings [6] is adopted.

On the basis of the Stockholm Program - an open and secure Europe serving the citizens and for their protection [7], adopted by the European Council at the meeting of 10-11 December 2009, the Commission and the Member States have been invited to examine the modalities for improving the legislation and practical measures of assistance for the protection of victims.

Moreover, art. 82 para. 2 of the Treaty on the functioning of the European Union (TFEU) provides the establishment of minimum applicable rules in the Member States in order to facilitate mutual recognition of judgments and judicial decisions, as well as police and judicial cooperation in criminal matters with a cross-border dimension, in particular with regard to the rights of victims of crime.

At the same time, in the resolution of 10 June 2011 on the roadmap for strengthening human rights and the protection of victims, especially in criminal proceedings (known as the roadmap of Budapest), the Council considered that, at the level of the Union, a series of actions to consider strengthening the rights of victims of crime support and protection should be carried out.

Against this backdrop, at European Union level several enactments and resolutions were adopted, such as:

- Council directive 2011/99/EU of the European Parliament and Council of 13 December 2011 regarding the European protection order [8], which lays down the legal mechanism applicable for the mutual recognition by Member States of the measures of protection in the field of crime;

- Council directive 2011/36/EU of the European Parliament and 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 Council of 13 December 2011 on combating sexual abuse of children, sexual exploitation of children and child pornography [10], which deals with, inter alia, the specific needs of special categories of human trafficking victims, of sexual abuse of children as well as sexual exploitation and child pornography;

- European Parliament resolution of 26 November 2009 relating to 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]; by adopting this legal instrument, the European Parliament has proposed a strategy to combat violence against women, domestic violence and female genital mutilation which would provide the basis for future legislative instruments in the field of criminal law in combating gender-based violence, including a framework for combating violence against women (policy, prevention, protection, prosecution, concrete steps and partnership), followed by an action plan of the Union. As regard of the international regulations in this area, these include the United Nations Convention on the elimination of all forms of discrimination against women (CEDAW) adopted on 18 December 1979, the recommendations and decisions of the CEDAW Committee and the Convention of Europe Council on the prevention and combating violence against women and domestic violence adopted on 7 April 2011.

Against this backdrop, it was adopted the directive 2012/29/EU, of the European Parliament and Council of 25 October 2012 which laid down the minimum standards concerning rights, support and protection of crime victims and which replaced the framework decision 2001/220/JHA of the Council [14].

Considering this subject to be highly topical, we will proceed to an examination of this European legal instrument, by highlighting the main rights that must be ensured to the crime victims, as well as the support given by the victim support services within the Member States of the European Union.

## **1. Victims' rights with regard to the categories of information that may be provided**

In criminal proceedings, the victims of crime benefit from the provision of special categories of information relating to the compliance with the following rights: *the right to understand and to make themselves understood, the right to receive information from the first contact with the competent authority, the rights when formulating a complaint, the right to receive information concerning his own cause and the right of interpreting and translation services.*

Taking into account the importance of knowledge and above all the respect for these rights, we will proceed to a brief examination thereof, as they set out in the European legal instrument.

**1.1. *The right to understand and to make themselves understood.*** The compliance with this law establishes the obligation for Member States to provide assistance to victims so that they can understand and be understood since the first contact with the judicial authorities and also during any subsequent interactions, during the criminal proceedings.

For the implementation of this right it is also necessary that all communications to the victim should be performed in a simple and accessible language, both verbal and written; in this regard, they will take into consideration any disabilities that may affect the victim's ability to understand or express themselves.

Victims have the option of requesting to be accompanied by a person chosen by them in the first contact with the competent authority, assuming that, due to the impact of the offence, he shall request assistance in order to understand or make themselves understood; There is no doubt that this situation will not be incident in the cases in which it is contrary to the interests of the victim or would affect the normal course of the criminal proceedings (art. 3 of the examined European legal act).

If we relate to the provisions of the Romanian law we note that at the present time this right is expressly mentioned in the provisions of article 4, par. 3 of law no. 211/20014 concerning measures for the protection of victims of crime, with subsequent amendments and additions.

**1.2. *The right to receive information from the first contact with a competent authority.*** Since the first contact with the competent authorities, the victims will receive the following information, without unnecessary delays, the necessary information to enable them to exercise the rights provided for in the examined European regulatory act:

a) *type of support that victims can receive*, from which authorities or persons, including (if applicable) basic information on access to health care, any type of specialized assistance, including psychological assistance and alternative accommodation;

b) *procedures relating to the formulation of a complaint* about a crime and the role of the victims in such proceedings; We consider that in this case, it will proceed to explain the conditions of substance and form which must be fulfilled in order for the complaint to be taken into consideration;

c) *manner and conditions under which victims can obtain protection*, including measures of protection that may be provided by the competent authorities of the concerned Member State;

d) *manner and conditions of access to legal advice*, legal assistance and any other form of advice;

- e) *manner and conditions under which victims can have access to compensations;*
- f) *manner and conditions under which victims have the right to interpretation and translation;*
- g) if victims are resident in another Member State than the one where the offence has been committed, *any action, proceeding, or specific tool that is available to defend their interests* in the Member State where first contact with the competent authority is established;
- h) *procedures available for the formulation of complaints*, if their rights are not respected by the competent authority;
- i) *contact details for communications* regarding their cause;
- j) *available reparative justice services;*
- k) *manner and conditions under which victims may reimburse expenses incurred* as a result of participation in criminal proceedings.

As regards the scope and degree of detail of the information mentioned above, we point out that these may vary depending on specific needs and personal situation of the victim, as well as on the type or nature of the offence (art. 4 of the examined European legal act).

This right is provided for in the provisions of article 4 and 5 of Law no. 211/20014 concerning measures for the protection of victims of crime, with subsequent amendments and additions.

**1.3. *The rights at the time of the formulation of a complaint.*** All Member States shall take measures to ensure that victims receive a written confirmation of registration of the complaint formulated and submitted to the competent authority of a Member State.

The victims wishing to make a complaint relating to an offence and that do not understand or do not speak the language of the competent authority will be able to submit the complaint in a language which they understand or will receive the necessary language assistance, when they are on the territory of another Member State, other than that in which they reside.

If they request it, the victims who do not understand or do not speak the language of the competent authority will receive, free of charge, a translation of the written confirmation of registration to their complaint, in a language that they understand (article 5 of the examined European legal act).

This right is provided for in art. 4 of law No. 211/20014 concerning measures for the protection of victims of crime, with subsequent amendments and additions.

**1.4. *The right to receive information relating to their own cause.*** On the territories of Member States, victims of crime will be informed, without undue delay, in respect of their right to receive the following information concerning the criminal proceedings instituted as a result of the complaint concerning the infringement affecting the victim:

- any decision to not proceed or terminate the investigation or prosecutions against the offender;
- date and place of the trial and the nature of the allegations against the offender.

Also in relation to their role in the justice system, victims shall be informed accordingly without undue delay with regard to their right to receive the following information:

- any final judgment rendered in a criminal case;
- information allowing the victim to know the stage of the criminal proceedings, except in exceptional cases where the proper conduct of the case could be affected by such information.

The information concerning the decisions of the judicial bodies mentioned above (we have in mind the decision not to continue, to stop, not to prosecute or the final decision rendered as a result of a trial), will involve the motivation or a succinct summary of the decisions' motivation, except in the case of a judgment of a jury or a judgment in which the motivation is confidential in which case the motivation is not provided in accordance with the law.

In all the circumstances the victim's desire to receive or not to receive the information referred to above will have binding force for the competent authorities, except where such information must be submitted by virtue of the right of the victim to have an active participation in criminal proceedings. Any change in the choice of the victim, will be taken into consideration by the competent bodies of the concerned Member States.

Also, assuming that the person in preventive detention, prosecuted or sentenced, had been released or escaped from prison, the victim will be informed. At the same time, victims will be informed of any relevant measures adopted for their protection in the event of release or escape of the offender.

Victims will receive, on request, the information referred to above, at least in cases where there is a danger or where a risk of injury is identified at their address, except where there is an identified risk of injury at the address of the offender which would result in notification (article 6 of the examined European legal act).

This right is provided for in art. 4 of Law no. 211/20014 concerning measures for the protection of victims of crime, with subsequent amendments and additions.

**1.5. The right to an interpreter and translation services.** As regards the right to interpretation and translation, victims who do not understand or do not speak the language used in the criminal proceedings may benefit, upon request and free of charge, from interpreting services, depending on the role in the criminal proceedings from the relevant criminal justice system, at least at the hearings and interviews of the victim during criminal proceedings in front of the research bodies and judicial authorities, including during interrogations by the police, as well as interpreting services at the time of active participation at hearings in the Court and any interim hearings that are necessary.

In criminal proceedings, without bringing prejudice to the rights of the defense can be used technical means of communication, such as videoconferences, phone or Internet, except the cases when it is required the physical presence of the interpreter in order for the victims to be able to properly exercise their rights or to be able to understand the procedure.

Victims who do not understand or do not speak the language used in the criminal proceedings can benefit, upon request and free of charge, in relation to the role in the criminal proceedings of the relevant criminal justice system, from the translation of the essential information necessary to the exercise of their rights during criminal proceedings in a language that they understand, insofar as this information is made available to victims. Translations of such information shall include, at least, any decision on the termination of criminal proceedings concerning the offence suffered by the victim, and at the request of the victim, the motivation or a brief summary of the motivation of that judgment, except in the case of a judgment of a jury or a judgment in which the motivation is confidential, in which case the motivation is not provided in accordance with the law.

According to the European regulatory provisions, Member States shall ensure that victims who are entitled to receive information concerning the date and place of the trial, who do not understand the language of the competent authority will receive, on request, a translation of the information to which they are entitled.

In relation to the way in which these provisions are formulated, we have some reservations that ultimately lead to the violation of the right to interpretation and translation, since, in our opinion, in the context of a criminal trial, all victims are entitled to receive information about the date and place of the trial that has as object the prosecution of the case in which they had the status of victim.

We appreciate that the presence of the victims at the trial cannot be mandatory, but not the right to information about the date and place where this process takes place.

At the same time, the victim may submit a reasoned request through which he requests that a document from the file to be considered essential. You can't impose an obligation on the judicial bodies

empowered to translate those parts of the essential documents that are not relevant with the objective of enabling the victim to participate actively in the criminal proceedings.

From the interpretation of the provisions referred to above it shows that the judicial bodies of the Member State in question are those that determine what parts of the documents are essential for the cause and the victim only has the opportunity to request that a document should be considered essential.

Under certain circumstances, an oral translation or an oral summary of the essential documents may be provided in the place of a written translation, provided that such an oral translation or oral summary does not impair the fair character of the procedures.

In cases where the victim's request is denied, he may challenge the measure's refusal, according to national law.

Both interpretation and translation as well as examination of a contestation to a decision to not provide translation or interpretation, should not extend the criminal proceedings in an unreasonable manner (art. 7 of the Act the examined European legal act).

This right is provided for in art. 4 of law No. 211/20014 concerning measures for the protection of victims of crime, with subsequent amendments and additions.

## **2. Support rendered to the victims by the support services of the crime victims**

All Member States shall take measures to ensure the victims access to the confidential services of victim support, free of charge, acting in the interests of the victims, before, during and for a period following the cessation of proper criminal proceedings. Also, family members will have access to victim support services in accordance with their needs and the seriousness of the injury suffered as a result of the offence committed against the victim.

Specific measures shall be taken for the establishment of specialized services, free and confidential to support the victims in addition or as an integral part of the General services of victim support, or to enable victim support organizations to call on existing specialized entities offering such specialized support. Both the victims and their family members have access to these services in accordance with their specific needs, and eventually with the degree of injury suffered as a result of the offence committed against the victim.

As regards the organization of these services, they can be set up as public or non-governmental organizations and can be organized on professional or voluntary basis.

In all circumstances where access to victim support services will not depend on the formulation by the victim of a formal complaint before the competent authorities in respect of an offence (article 8 of the examined European legal act).

As regards the powers of these services, the European Act stipulates that they will provide at least:

- information, advice and support relevant to the exercise of the rights accruing to victims, including the access to national public systems for compensation in the case of criminal damage, as well as on the role of victims in criminal proceedings, including preparation for participation in the process;

- information relating to any relevant support services;

- emotional support and, if available, psychological;

- advice on financial and practical aspects of subsequent offences;

- except if it is provided by other public or private services, counseling on the risks of secondary and repeated victimization or intimidation and retaliation, as well as preventing them.

Measures will be taken to encourage the victim support services for giving special attention to the specific needs of victims who have suffered considerable damage as a result of the seriousness of the offence.

Also specialist services for victim support will establish and make available at least:

- shelters or any other provisional accommodation for victims who need a safe place due to an imminent risk of secondary and repeated victimization or intimidation and revenge;
- targeted and integrated support for victims with specific needs as well as victims of sexual violence, the victims of gender-based violence and the victims of violence in close relationships, including support in case of trauma and counselling (art. 9 of the examined European normative act).

### **3. Protection of victims of crime in Romanian law with regard to providing information and support**

In the Romanian law the protection of victims of crime is governed by the provisions of Law no. 211/2004 on measures for the protection of victims of crime [14], with the subsequent amendments and additions.

From its adoption until the present time, the act has undergone numerous changes and additions once the adoption of the following laws: the Emergency Ordinance of Government No. 113 of 17 October 2007 [15], law No. 76/2012 [16] and law no. 255/2013 [17].

In order to ensure the protection of victims of crime, the act regulates the measures for informing the victims of crime regarding their rights, as well as psychological counseling, free legal aid and financial compensation, the Ministry of Justice through the Superior Council of Magistracy and Ministry of administration and Interior having the obligation to ensure staff specialization, which establishes direct links with the victim.

Without proceeding to the examination of the normative act to which I have referred to, we should keep in mind that according to its provisions, the authorized judicial bodies have the obligation to notify victims of offences relating to:

- services and organizations which provide psychological counseling or any other forms of assistance to the victim, according to his needs;
- the prosecuting authority at which they can make a complaint;
- the right to legal assistance and the institution where they can go for the exercise of this right;
- the conditions and procedure for granting free legal assistance;
- procedural rights of the injured person and of the civil party;
- the conditions and procedure in order to benefit from the provisions of article 113 of the Code of criminal procedure, as well as the provisions of law no. 682/2002 on witness protection, with subsequent amendments; we note that according to the provisions of art. 113 Criminal procedure code, *when the conditions laid down in the law relating to the status of a threatened or vulnerable witness or for the protection of private life or dignity are satisfied, the prosecution may order vis-à-vis the injured party or civil party the protective measures provided under article 125-130, which properly applies*; in the art. 125-130 are laid down provisions relating to the protection of threatened witnesses and vulnerable witnesses;
- the conditions and the procedure for the granting of financial compensation by the State;
- the right to be informed, if the defendant will be deprived of liberty, respectively, sentenced to a penalty involving deprivation of liberty, with regard to their release in any way, according to the Code of criminal procedure.

All the information given above will be brought to the attention of the victim by the judicial body to which he is presented.

The information referred to above shall be notified to the victim in a language that he understands, and is handed out under signature a form with the information mentioned above; if the victim is unable or refuses to sign, a report will be drawn up.

Assuming that the victim is a Romanian citizen that belongs to a national minority the information can be brought to his attention in his native language.

The fulfillment of obligations referred to above shall be recorded in an official report which shall be registered with the institution of which it is a part of the concerned judicial body (art. 4 of the legal act in question as amended by art. 68 of Law No. 255/2013).

Also, in order to assist the victims, the Ministry of Justice and the Ministry of Administration and Interior, with the support of the Ministry of Communications and Information technology, will ensure the operation of a telephone line available permanently for informing victims of crime, with free access to a single national number.

In order to help the victims, the information referred to above shall also be published on the website of the Ministry of Justice, Ministry of administration and Interior, police units and prosecution, as well as at the level of courts.

With regard to the psychological counselling, it shall be granted free of charge, on request, for victims of the following offences or category of offences: attempted murder and aggravated murder (articles 188 and art. 189, reported to art. 32 para. (1) CPC), violence in the family (art. 199 CPC), intentional offences which have had as a result the victim's injury, rape, sexual assault, sexual act with a minor and sexual corruption of minors (provided in article 218-221 CPC), ill-treatment applied to the minor (art. 197 CPC), as well as for the offences of trafficking and the exploitation of vulnerable people and their attempt.

Free psychological counseling mentioned above shall be granted for a period not exceeding 3 months, and in the case of victims who have not reached the age of 18 years, for a period not exceeding 6 months, provided that the offence to be committed on the territory of Romania, or if it is committed outside the territory of Romania, the victim must be Romanian or foreign citizen residing lawfully in Romania.

The normative act to which we refer, provides a series of provisions governing free legal assistance to victims of crime.

In an overall conclusion we can appreciate that by adopting the normative act to which I have referred to, the Romanian State had secured the protection of victims of crime at a high level, comparable to the European legislation in this field.

### **Conclusions and some critical opinions**

Examination of the manner how the European Union ensures from a legislative point of view the protection of victims of offences in relation to the provision of information and support, enables us to formulate some conclusions of assessment, but also some critical opinions aimed at improving the legislative system in the domain.

Thus, one can appreciate that the adoption of the European regulatory act was necessary amid the existence of dysfunctions in the legislative systems of some Member States, dysfunctions which often lead to the infringement of the victims of offences rights committed in the territory of certain Member States.

In this context one can appreciate the usefulness of the normative act examination at a time when the movement of persons and goods within the European Union is becoming more and more evident, and the possibility of victimization can occur at any time when a person is in the territory of a Member State other than his State of residence.

Although in its essence, the Act comes to regulate an issue quite controversial and often abandoned by some States, namely, the problem of supporting victims of crime. However, this rule seems to be insufficient and perfectible.

A first critical observation that we formulate aims the provisions of article 7, para. 4 which shows that *the Member States shall ensure that victims who are entitled to receive information concerning the date and place of the trial, in accordance with article 6, paragraph 1, letter b), and who do not understand the language of the competent authority, upon request, receive a translation of the information to which they are entitled.*

We believe that the wording of this text is at least perfectible, because the right to receive information regarding the date and place of the trial must be ensured to all victims. We believe that regardless of the nature of the offence, its severity, quality of victim or author, or all the time they were committed, the victims should be granted this right, which may not be restricted for any reason.

Another provision at least questionable is found in article 7 para. 5 which stipulates that *victims may submit a reasoned request for a document to be considered essential. It is not imposed the obligation to translate those parts of the essential documents that are not relevant to the objective of allowing victims to participate actively in the criminal proceedings.*

From the interpretation of the criticized text it follows that the essential documents which are required to be translated to the victim or some parts of it shall be determined by the judiciary bodies, and the victim only has the possibility to request through a reasoned request for a document or another to be considered essential.

We believe that in order to ensure the victim the opportunity to knowingly participate in the process, it is not necessary for the judicial bodies to lay down the essential documents, because the victim is the one that must say which translated documents he requests.

We consider that the text itself is useless, it should be reformulated so that the judicial bodies may no longer be able to refuse to translate some documents requested by the victim and denied by the judicial bodies on the grounds that they are not essential.

Another critical opinion refers to the possibility of judicial bodies to provide to the victim an oral translation or an oral summary of the essential documents in place of a written translation.

To avoid abuse, we believe that it is appropriate to mention in the text of article 7, para. 7 that this procedure constitutes an exception and should be complemented by a written translation.

One final observation that we formulate concerns the necessity to lay down some provisions aimed at obliging the Member State's judicial bodies to pay attention to such cases, which would be resolved in accordance with its domestic law, in a shorter period of time, taking into account the specific conditions of the victims of the offence.

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