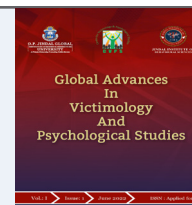


Online ISSN: 2583-5335

## Global Advances in Victimology and Psychological Studies



# Latest European Achievements and New Challenges in Victimology and Victim Protection: *Towards victim-centred criminal justice system*

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### Abstract

This paper explores the recent achievements of victimology thought that have been considered while the European Union and other European and global institutions approve new instruments protecting crime victims. After 2011 when the "Victim package" was adopted by the European Commission the victim of crime become a subject of privileged attention for the European penal policy. Important acts as Directive 2011/99/EU of the European Parliament and the Council on the European Protection Order, Directive 2012/29/EU of the European Parliament establishing the minimum standards on the rights, support and protection of victims of crime, the EU Strategy on victims' rights 2020-2025 have been approved and are in a process of implementation. These instruments, as well as some fundamental Council of Europe and United Nations documents are under scrutiny. The issue of wider introduction of restorative justice is raised as an indisputable instrument in favor of the victims of crime. The unsolved problems are also identified. The new challenges to be met in order to make the environment more friendly for victims are indicated and some decisions are offered.

**Keywords:** Crime Victim Protection, European Instruments, Recent Victimology Advancements, Restorative Justice

Recently, crime victim protection has become a global concern. It is a high priority for supranational institutions like the United Nations (UN), European Union (EU), Council of Europe, national governments, even the non-governmental sector. The increased crime rate, the numerous criminal "innovations", and enhanced victimisation not only on European but on global scales required an adequate response. However, in the rule of

law state in which we pretend to live, combating and prosecuting crime should be exercised provided the human rights of both offenders and victims are strictly observed. While the European Convention of Human Rights, respectively the case-law of the European Court of Human Rights long time has protected, in my opinion, predominantly the offender's rights, victims, despite

some essential international instruments adopted, have remained marginalised in domestic and international law.

Happily, during the last decade, these changed. As an engine for this significant shift, I identify the European Union, which tried to reach a balance between the offenders' and victims' rights. In 2009 the Council of the EU adopted a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings<sup>1</sup>. Several directives followed - about the right to information, access to lawyer, translation and interpretation, strengthening the presumption of innocence, etc. Soon after that, with a resolution from 2011, a *Roadmap for Strengthening the Rights and Protection of Victims of Crime, in particular in the framework of criminal proceedings*<sup>1</sup>, was adopted too. This was the actual shift of the paradigm, the expression of the tendency in the European policy in criminal justice for enhanced protection of victims of crime, which has taken note from the latest achievements of victimology theory. Although some significant for victim's rights and different kinds of crime victims acts have been already approved within the Union, such as Council Framework Decision 2001/220/ JHA of 15 March 2001 on the legal status of victims of crime in criminal proceedings, Council Framework Decision 2002/475/JHA on combating terrorism, Directive 2004/80/EC of 29 April 2004 on the compensation of victims of crime, etc., the true "boom" came in 2011 when the European Commission announced with the Roadmap the development and adoption of the so-called "*Victims Package*", which included a number of essential tools.

In its resolution of 2011, the Council of the EU explicitly and emphatically states that victims' rights are high on the agenda and actions should be taken at the level of the Union to provide adequate protection. This was because the way the victims are treated by the authorities determines the effectiveness of EU justice systems in the eyes of the general public. So, the crime victim becomes the new "icon" of the European penal policy.

The Roadmap for Strengthening the Rights and Protection of Victims provided for several groups of measures:

- Adoption of a Directive on minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA of 2001 on the standing of victims in criminal proceedings.
- Adoption of a Recommendation or recommendations on practical measures and best practices for the implementation of this Directive.
- Adoption of the Regulation on the mutual recognition of protection measures in civil matters to supplement the already submitted draft Directive on the European Protection Order on actions in criminal cases.
- Review of Directive 2004/80/EC of 29 April 2004 on the compensation of victims of crime.

Over the years, the European Union has consistently implemented these goals and has taken appropriate actions.

Firstly, *Directive 2011/99/EU of the European Parliament and the Council on the European Protection Order*<sup>2</sup>, establishing a mechanism for mutual recognition of protection measures in criminal matters between the Member States was adopted. The Directive was initiated by a proposal of 12 Member States, including Bulgaria, and was adopted by all members of the EU, except Denmark and Ireland, with a forecast of issuing 100 000 European protection orders per year. The objectives of the Directive are:

- To facilitate and improve the protection provided to victims or potential victims of crimes that travel between the EU Member States.
- To avoid the necessity to create parallel proceedings for the use of a protection measure.
- To prevent new crimes and mitigate the effects of previous offences.

<sup>1</sup>Official Journal of the European Union C 295, 4.12.2009, <https://eur-lex.europa.eu/oj/direct-access.html>

<sup>2</sup>Official Journal of the European Union C 178, 28.06.2011, <https://eur-lex.europa.eu/oj/direct-access.html>

The Directive lays down rules allowing a judicial or equivalent body in a Member State in which a measure is adopted to protect a person from a criminal act committed by another person that could jeopardise their life, physical or psychological integrity, dignity, personal freedom or sexual integrity, to issue a European protection order (EPO) enabling a competent authority in another Member State to continue the protection of the person on the territory of that other Member State. Adequate victim protection includes activating appropriate mechanisms to prevent a repeat offence or even a new, more severe crime (gender-based violence, harassment, abduction, human trafficking or sexual exploitation, etc.) by the same aggressor against the same sacrifice (Chankova, 2012).

The EPO Directive provides for the Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 11 January 2015 and in such a way ensures higher standards for protecting the rights of the victims of crimes. The Directive is a balanced tool, taking into account all interests. It is currently transposed in all the Member States bound by it by the adoption of national laws. Bulgaria also adopted the European Protection Order Act in 2015.

However, the implementation of the EPO Directive was not so great as expected. The existing wide variety of legal systems and protection orders within European states are causing considerable difficulties and reducing the number and scope of European orders issued. The European Commission found out that after the transposition of the EPO Directive, only a minimal number of European protection orders were issued and applied in the Union. Most Member States do not have a registration system for the protection measures they have undertaken. This puts citizens in a dilemma to restrict their mobility or to retain, albeit in limited thresholds, the protection measure. These and many other problems led to the adoption of the *European Parliament Resolution of 19 April 2018 on the implementation of Directive 2011/99/EU on the European Protection Order*<sup>3</sup>. It requires the established “gap” in communication and coordination

between issuing and executing countries to be overcome. To that purpose, transnational cooperation and standardisation and digitisation of European protection orders are strongly recommended. Following scientific and technological progress, it even promotes the use of GPS technologies, relevant applications in smartphones and other innovations, not only for persons with protection measures but also for further potential and actual victims, especially victims of violence based on gender. No recent reliable statistics are available due to the restricted movement of people during the COVID-19 pandemic, but there are indications that the situation is improving.

In 2012, *Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 was adopted establishing the minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*<sup>4</sup>. The adoption of Directive 2012/29/EU (Victims’ Rights Directive) was conditioned by the following circumstances:

According to the official statistics on a European scale, more than 30 million crimes are registered each year in the EU, not calculating non-reported offences. Often, crimes affect more than one victim, and along with them suffer their relatives. It is estimated that about 75 million people become victims of crime each year. At the same time, the 2001 Framework Decision has not been fully enforced and implemented, and governments within the Union have failed to ensure the due protection of victims of crime.

In the Victims’ Rights Directive envisaged are a number of specific instruments addressing particular needs of victims of a certain type of crimes. There is, however, a common understanding that minimum standards for the rights of all victims were necessary, regardless of the kind of offence or circumstances and place of its execution. The Victims’ Rights Directive responded to this need; that is why in the victimology theory, it is often called the *New Magna Charta of Victims’ Rights*.

<sup>3</sup>Official Journal of the European Union L 338/2, 21.12.2011, <https://eur-lex.europa.eu/oj/direct-access.html>

<sup>4</sup>Official Journal of the European Union C 390, 18.11.2019, <https://eur-lex.europa.eu/oj/direct-access.html>

The Directive is a pretty good instrument, paying due attention to victims right to appropriate information so that they can effectively participate in the criminal process and defend their rights. It advocates that victims of crime should be recognised as such and treated with respect, discretion and professionalism without any discrimination. In all contacts with a competent body acting within the criminal proceedings, there should be taken into account the personal circumstances and immediate needs, age, sex, possible disability and maturity of the crime victims, while at the same time their physical, mental and moral integrity is fully respected. It is stated that victims of crime should be protected from secondary and repeated victimisation, intimidation and retaliation, receive adequate support for faster recovery and have sufficient access to justice – the critical points of contemporary victimology, which the document observes. The Directive standards, although called minimal, are high, indeed. At the same time, the possibility remains for the Member States to extend the rights contained therein to provide more comprehensive protection for victims. The Victims' Rights Directive pays particular attention to certain categories of victims who need specific protection - children, disabled victims, victims of violence, especially gender-based violence. This is the next achievement of modern victimology – enhanced support of particularly vulnerable victims, involving civil society organisations (Center for the Study of Democracy, 2015). The subject of attention of the Directive is also the individual assessment of victims in order to identify their specific protection needs - so essential for their proper treatment. Moreover, in the frames of the European project “Towards a more responsive victim-centred approach of the criminal justice system” (RE-JUST), an Action plan for developing victim-centred and trauma-informed criminal justice systems was offered. Trauma-sensitive communication is recommended. Multidisciplinary cooperation, inter-agency coordination and transnational referral

mechanism across the European Union are considered vital (Berbec, Fernández, *et al.*, 2020).

Due to the exceptional importance of the Directive, the European Commission in 2013 issued *Guidance to the Member States on its transposition and implementation*<sup>5</sup>. Although legally non-binding, they are a credible interpretation of EU law in this area and are relevant to the judgments of the Court of Justice of the European Union.

Recent European surveys show that the Directive has been transposed in most EU countries, but not always entirely. This applies to Bulgaria, too, regrettably. Some deficiencies in regulation have been discovered - e.g. Art.12 - the right of guarantees within the context of restorative justice services. The Directive does not sufficiently promote restorative justice (RJ), which is considered by the theory and practice beneficial to victims (Gavrielides, 2014); hence, RJ is not widely used in all European countries. Currently, open public consultation on the evaluation of the Directive is going; hopefully, it will be revised, and better results will be achieved. But the perception remains that it is difficult to comply with many divergent measures, often from different legal systems - at the level of the European Union, the Council of Europe, national legislation. It can be concluded that a *common European Code for Victims* is needed to overcome the problems of fragmentary international regulation and domestic legislation and to ensure uniform protection for all victims of crime in a European context. Probably it will be a step towards the adoption of the UN Convention on Victims, remaining long years as a draft.

The last component of the EU Victims package - *Review of Directive 2004/80/EC of 29 April 2004 on the compensation of victims of crime* is not finalised yet. But in 2019, the milestone report of the Special Adviser Mrs Joelle Milquet to the President of the European Commission entitled “Strengthening victims’ rights: from compensation to reparation” was published. It offers

<sup>5</sup>Official Journal of the European Union L 315/57, 14.11.2012, <https://eur-lex.europa.eu/oj/direct-access.html>

a totally new right-based approach to victims, instead of the current needs-based approach, a shift from monetary compensation to full reparation, restitution, support and care. Many well-grounded proposals are offered in this report, e.g. advance payment of the compensation from the state, shortly after the crime, when the victims feel most vulnerable and helpless, and not after the conviction, respectively plea bargaining; covering medical and other urgent expenses, overcoming the significant differences in the compensation sums in separate counties, etc. The actual advancement of the victimology theory is the concept that the victim is no longer pleading for help based on their vulnerability but demanding that the state take it seriously what it owes to the individuals living on its territory and their human rights. The state is no longer in the comfortable and patronising position of the Good Samaritan but a duty-bearer indebted to the individuals living under its jurisdiction as rights-holders (Milquet, 2019).

Moreover, states should cease to act primarily from their solid and high position and regard compensation as an act of benevolence, but rather as an obligation to their citizens to whom they have not ensured freedom and security and who have been victimised. It is not heretical to think about the provision of compensation by the state together with the redress by the perpetrator, due to the exceptional nature of the circumstances in which the victim found himself, without provoking the concepts of unjust enrichment or positive discrimination, and to work for the proclamation of victims' rights as fundamental human rights.

So, it must be acknowledged that there has been a significant evolution in the approach and treatment of the victim of crime. And although the rights of the victim have not yet been elevated to the level of fundamental human rights, or at least not explicitly enshrined as such, in the basic universal and regional international instruments, in the constitutions and national laws of all modern developed countries claiming to be rule-of-law states, the protection of victims of wrongful acts violating their rights and interests is an inevitable commitment of public authorities. This understanding is supported by Art. 13 of

the European Convention on Human Rights and Art. 47 of the EU Charter of Fundamental Rights governing the right to an effective remedy. The doctrine and the legislator accept that the victims of crimes have the right to access justice, and the function of the criminal justice system is to "straighten things out", to restore balance. Therefore, when a crime has been committed, and the victim's rights are affected, he or she can reasonably expect - and even demand - to be protected. A similar interpretation is contained in the case-law of the European Court of Human Rights.

This vision is shared in the EU Fundamental Rights Agency numerous documents (2014, 2019), also in the new *EU Strategy on victims' rights 2020-2025*<sup>6</sup>.

Taking into account the global trend of the vulnerability of each of us, especially the increased risk in a pandemic and quarantine, when the cases of domestic and sexual violence, cybercrime, hate crime and others raise, the strengthening of the framework for victim support and protection is becoming critical. At the same time, the Strategy recognises that due to the fragmentary nature of the relevant regulation, as well as due to other factors, victims are not able to fully enjoy their rights within the Union. The criticism is not only of the incomplete transposition of the directives by the states but also of the creation of practical preconditions for their implementation. It is believed that much more can be done to fully empower victims. In this regard, aplomb is placed on effective communication and building a safe environment for them to report crimes. Global and national campaigns to raise the awareness of victims and to improve the training of law enforcement agencies to work with them are entirely justified.

A special emphasis of the Strategy is the most vulnerable victims - children, victims of terrorism, of gender-based, sexual and domestic violence. To that purpose, the European Commission recommends the construction of family houses as a safe place for them, where they can receive support and advice. The victims of racism and xenophobia and the members of the LGBTI society are also a concern. Despite the proverbial sensitivity and even

<sup>6</sup>DG JUSTICE GUIDANCE DOCUMENT related to the transposition and implementation of 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-Ref. Ares (2013)3763804 - 19/12/2013, [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu\\_en#documents](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en#documents)



resistance in some countries, evolution is needed in this regard - legal, moral, psychological, administrative, etc. The victimology thought and the European Victims Rights Strategy repeatedly underline the need for enhanced care for victims of disabilities, the elderly, victims of organised crime and, above all, the ongoing trafficking in human beings. Newer arguments are presented for the necessity of privileged protection of migrant victims, including those resulting from climate change, as well as victims of detention. The intention to build a Platform for Victims' Rights and to appoint a Victims' Rights Coordinator is to be welcomed. However, they should not rest intentions, even in the current hard times.

The theory has always insisted on better education on victimology of the young people, practitioners, the whole society. Now, this recommendation is more valid than ever.

Speaking about the EU achievements benefiting victims, although with some approximation, the European Investigation Order Directive 2014 deserves to be mentioned as this relatively new mechanism for cooperation between countries helps the crime to be investigated, the offender punished and victims - protected. Moreover, in the current Internet and digital era, when the role of e-evidence is essential for detecting many computers and other related crimes, the European Commission proposed on 17 April 2018 new rules in the form of a *Regulation of the European Parliament and the Council on European Production and Preservation Orders for electronic evidence in criminal matters* and a *Directive of the European Parliament and of the Council laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings*. Unfortunately, the COVID-19 pandemic delayed the process of their adoption, so this challenge remains too.

The role of the Council of Europe for victims' protection should also be recognised- historically, many conventions and recommendations have been adopted, improving the "climate" for victims.

The recent years have put a new regulatory challenge on the countries - *the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence of 2011* (Council of Europe, 2011), also known as the Istanbul Convention. A number of member states of the Council of Europe have already ratified the document, others have only signed it, and in states like Bulgaria, there has even been considerable resistance at the level of the institutions and the general public. Although accompanied by many contradictions and debates, the Convention is seen as a fundamental and comprehensive human rights instrument covering several forms of violence against women, which sets an ambitious standard for the prevention, protection and support of victims, as well as some requirements towards the material and procedural legislation of the states.

More recently, at the end of 2018, the Committee of Ministers of the Council of Europe also adopted *Recommendation CM/Rec (2018) 8 to the Member States concerning Restorative Justice in Criminal Matters*<sup>7</sup>. As explicitly mentioned in its preamble, a prerequisite for its adoption is the increasing interest in RJ by the Member States, which considers its benefits to criminal justice systems and victims in particular. At the same time, it is noted that RJ development in the countries is different, flexible and asymmetrical. For this upward but still uneven distribution, where the RJ's potential is not fully utilised, there is much scientific evidence that the recommendation takes into account. The value of the Act comes mainly from the new strong impetus given to the Member States, which should provide their citizens with the privileged opportunity to benefit from the RJ. This is necessary because all European citizens should have equal rights and options. It is unacceptable, from an orthodox legal point of view, due to inaction or negligence of their commitments, states to deprive individuals under their jurisdiction of the merits of the RJ. Therefore, the recommendation urges the governments of the Member States to comply with the principles set out in the Annex to it, and when developing the RJ to make its text available

<sup>7</sup>Available from: <https://eur-lex.europa.eu/legal-content/BG/TXT/PDF/?uri=CELEX:52020DC0258&from=EN>

to all national authorities, agencies and individuals concerned, and first of all judges, prosecutors, police, prisons, probation services, children's agencies, victims and restorative practices. The potential of RJ for crime victims is the key theme of 2021 International RJ week (21-28 November), according to the main promotor - the European Forum of Restorative Justice<sup>8</sup>.

Moreover, recently many cities in Europe, e.g. in the UK - Bristol, Hull; in Belgium- Leuven; in Italy - Palermo, Como; in Poland - Gdansk, Wroclaw and in other countries have acquired or are working to obtain the status of Restorative City. This does not require a change in legislation - national or local, just a perception of a restorative ethos and ideology and practice. In schools and universities, municipalities, neighbourhoods, institutions and entire ecosystems of these cities, the idea of restoration is on a pedestal. Everything is done in the gentlest, ecological, humane, restorative way possible. This is especially true for conflict resolution and decision-making based on restorative values - inclusion, participation, respect, responsibility, solidarity. The aim is to strengthen relations, encourage active civic behaviour, build a victim-friendly environment and view conflict as an opportunity for change, not so much as a problem. This idea deserves attention.

The latest input in this direction came from the UN, launching in 2020 the second edition of the *UN Handbook of RJ* (United Nations, 2020, the first edition from 2006), which is helpful guidance for member-states in their efforts to introduce new models of RJ as a more humane and modern paradigm of criminal justice and a better response to crime.

For a long time, RJ was considered appropriate when it came to minor acts committed by juveniles or persons for whom the crime was a random fact in life. The practice has shown, and doctrine has evolved significantly, that RJ is particularly relevant in cases of serious encroachment. Thus, it is now unquestionably accepted that RJ performs exceptionally well in a wide range of situations, including serious crimes involving multiple victims or perpetrators, hate crimes, intra-group conflicts, and a wide range of

systemic or institutionalised human rights violations. It makes it possible to fully use its therapeutic function in relation to the trauma experienced and brings other benefits for the victims, related to the guarantees for their increased safety, the tools for overcoming possible imbalances, etc. Thus, it has recently become clear that RJ is particularly applicable to intimate partner violence, namely domestic violence, sexual violence, violence against children, hate crimes, etc. (Sherman and Strang, 2012).

The brief overview shows that the acts, adopted consistently and systematically over time, are an expression of increased care for victims of crime in Europe and globally. Undoubtedly, there is a common will among international institutions and the modern rule of law states to ensure the security of citizens and the humane treatment and protection of victims of crime. Sometimes, however, there is a significant discrepancy between good intentions and results, which has already been established at different levels. And while the legal framework, although with some approximation, can be considered satisfactory, the great challenge remains its practical implementation, which is the criterion for the adequate protection of victims (Chankova, 2019).

There are signs that victimology theory and practice are moving in the right direction to better protect the rights of victims of crime. The commitment of the institutions is becoming more and more visible, the role of the specialised non-governmental organisations is growing, the academic circles are giving their contribution. But much remains to be done in the future.

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