

Protection of Victims of Crimes in the Republic of Slovenia

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Abstract

The author discusses the rights of victims of crime set out in Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 and in the laws of the Republic of Slovenia. The author notes that victims of crime have long been rather neglected participants in the criminal procedure. The main focus of attention was on the accused and his or her rights.

In recent times, there has been growing awareness that victims and perpetrators of crime are equally important. Therefore, the European Parliament and the European Council issued a Directive with a view to improving the situation of victims of crime in all EU Member States.

This Directive transposed a number of new rights of victims of crime into the laws of the Republic of Slovenia. Even though the author doubts that the rights of victims of crime transposed into Slovenia's laws by Directive 2012/29/EU will significantly improve the treatment of victims in criminal proceedings, he rates them as positive as they stir up awareness that, in addition to the accused, criminal proceedings involve victims of crime whose rights and interests need to be protected.

Keywords: Directive, Slovenia, victim of crime, injured party, rights of victims of crime

I. Introduction

Victims of crime have long been rather neglected participants in the criminal procedure. The main focus of attention was on the accused and his or her rights. A comparison between the rights of the accused (perpetrator of a crime) and the victim in criminal proceedings shows that the accused has many more rights than the victim. The disparity between the rights of one and the other is so great that, in my opinion, the principle of equality before the law guaranteed by Article 14 of the Constitution of the Republic of Slovenia¹ and the principle of equal protection of rights guaranteed by Article 22 thereof are violated². The undisguised privileging of perpetrators of crimes at the expense of victims of crimes shows that in criminal proceedings the rights of

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¹ In Slovenia, everyone is guaranteed equal human rights and fundamental freedoms, irrespective of national origin, race, gender, language, religion, political, or other conviction, material standing, birth, education, social status, disability, or any other personal circumstance.

² Everyone is guaranteed equal protection of rights in any proceeding before a court and before other state authorities, local community authorities and bearers of public authority that decide on their rights, duties or legal interests.

victims are completely neglected at the expense of protecting the rights and interests of the accused (perpetrators of crimes). This gives rise to the question as to why the Criminal Procedure Act is adapted to suit the perpetrators of criminal acts (i.e. those breaking the law) and not to the victims of crime.

The continuous introduction of new alternative criminal sanctions reasonably strengthens the feeling that they have been tricked and left without adequate legal protection because the perpetrators have not received a fair punishment. This raises serious doubts about justice and the rule of law, which are the foundation of any democratic social order.

In recent times, there has been growing awareness that victims and perpetrators of crime are equally important. Anyone can become a victim of crime. Several million people are victims of crime in the European Union every year. According to Eurostat, 30 million crimes against people or property occur every year, and there are many crimes that are never reported. A crime often affects more than one person, and indirectly also those close to the victim. According to this data, it can be estimated that the number of direct victims of crime probably reaches 75 million each year.

These figures show how important it is to ensure that appropriate and effective measures are taken regarding the rights of victims of crime or traffic accidents in their own country or when traveling or staying abroad. This is a cross-border as well as an internal problem that requires action at the EU level.

The EU has already taken measures concerning victims' rights in criminal proceedings, and most Member States provide some level of protection and assistance for victims. However, the role and the needs of victims in criminal proceedings still generally do not receive enough attention, and the extent of victims' rights still varies widely across the EU.

The European Commission has noted that there is obvious correlation between victims' rights and crime prevention. Therefore, the Commission has been taking action for many years aimed at preventing crime and violence and ensuring greater road safety. Prevention is crucial both for short and medium-term reduction in the incidence of crimes and accidents, as well as for changes in attitudes towards crimes or reckless behavior that can bring positive, long-term and lasting results.

The Commission points out that minimum standards should be applied in all Member States. Today, victims of crime are guaranteed a certain level of protection and support in most Member States. However, the role and the needs of victims in criminal proceedings are still not fully addressed by national judicial systems. With a certain minimum level of guarantees and standards applied in all Member States, judicial cooperation will be easier, the quality of justice will be better, and people's confidence in the very concept of "rights" will increase.

The Commission emphasizes that fundamental rights must be respected. Appropriate treatment of victims is consistent with the range of fundamental rights recognized by the Charter of Fundamental Rights of the European Union (EU Charter) and the European Convention on Human Rights (ECHR)³. Therefore, it is necessary to ensure the actual

³ Fundamental rights are the following: the right to human dignity, the right to life, the right to personal integrity, the right to respect for private and family life, the right to protection of personal data, the right to property, the right to freedom of movement and residence, the right to equality before the law, the rights of children and the elderly, the right to inclusion of people with disabilities, and the right to an effective legal remedy.

recognition and respect of the victims' rights, especially their human dignity, private and family life and property, while also ensuring the fundamental rights of others, e.g. the accused. EU measures will raise the standards of fundamental rights for everyone involved in criminal proceedings – victims, the accused or remand prisoners, thus ensuring that rights are not restricted unnecessarily and disproportionately.

The commission notes that meeting the needs of victims contributes to reducing the overall costs of crime. Strengthening the rights of victims has a positive effect on individual victims and on society as a whole. Meeting the needs of victims before, during and after the criminal procedure can significantly reduce the overall cost of crime. This includes tangible costs in the economic and health sector as well as in the criminal justice system, and intangible costs, such as the victim's pain, suffering and reduction of quality of life. Victims who are respected, supported and protected will recover sooner, both physically and emotionally, enabling them to get back to their normal lives more quickly. This will limit loss of earnings, absenteeism from work as well as the need for further health care. Well-treated victims are also likely to become more actively involved in the proceedings, which increases the likelihood of successful prosecution and sentencing, which in turn reduces repeat offending and impunity.

The Commission believes that particular attention should be paid to the victims of crimes. According to the commission, victims need the following:

- recognition and respectful treatment,
- protection,
- support,
- access to justice,
- return to the state before crime took place (if this is possible due to the nature of things).

Particular attention should be paid to special categories of victims. This category includes victims of terrorism, victims of traffic accidents and particularly vulnerable victims. The categories of vulnerable victims include children, persons with disabilities and victims of sexual violence and human trafficking. In addition, victims may be vulnerable for other reasons related to their personal characteristics (e.g. a high level of fear or distress, a risk of bullying or repeated violence, or a personal, social or economic situation that makes it difficult for the victim to face the consequences of the crime or understand court proceedings), and/or due to the type and characteristics of the crime (e.g. terrorism, organized crime, prejudice-motivated crime or gender-based violence). For example, victims of organized crime are particularly vulnerable to intimidation and repeated violence by perpetrators and may require special protective measures⁴.

As a member of the European Union, Slovenia is bound by the provisions 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/PNZ. First, I will present the provisions of this Directive, followed by the rights of victims of crimes under the laws of the Republic of Slovenia.

⁴ Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, Strengthening the rights of victims in the EU EU /* KOM/2011/0274 final */ s. 1-4. Available at: <https://eur-lex.europa.eu/legal-content/SL/TXT/?uri=CELEX:52011DC0274>.

II. 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/JHA⁵

The directive has a rather extensive preamble and thirty-two articles. There are some observations in the preamble that deserve our attention. The European Parliament and the Council declare that the European Union is committed to protecting victims of crime and to establishing minimum standards in this area.

Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognized and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. Victims of crime should be protected from secondary and repeat victimization, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.

The rights set out in this Directive are without prejudice to the rights of the offender. The term 'offender' refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence.

A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them. It is possible that family members of victims are also harmed because of the crime. Such family members, who are indirect victims of the crime, should therefore also benefit from protection under this Directive.

Justice cannot be effectively achieved unless victims can properly explain the circumstances of the crime and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure that victims are treated in a respectful manner and that they are able to access their rights. Interpretation should therefore be made available, free of charge, during questioning of the victim and in order to enable them to participate actively in court hearings, in accordance with the role of the victim in the relevant criminal justice system.

Persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection. Specialist support services should be based on an integrated and targeted approach, which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment.

⁵ Official Journal of the European Union L315/57.

The risk of secondary and repeat victimization, of intimidation and of retaliation by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a coordinated and respectful manner, enabling victims to establish trust in authorities.

Victims who have been identified as vulnerable to secondary and repeat victimization, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings⁶.

The Directive is divided into six chapters and contains thirty-two articles. Chapter 1 contains general provisions. Article 1 defines the objectives of the Directive. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States must ensure that victims are recognized and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, should prevail. The child and the holder of parental responsibility or other legal representative, if any, should be informed of any measures or rights specifically focused on the child.

Article 2 contains definitions. For the purposes of this Directive, 'victim' means:

- (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
- (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm due to that person's death. 'Family member' means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim, as determined by national law.

Chapter 2 of the Directive regulates the provision of information and support to victims. Victims have the following rights:

- the right to understand and to be understood (Article 3);
- the right to receive all the necessary information from the first contact with a competent authority (Article 4);
- the right to receive information about their case (Article 6);
- the right to interpretation and translation (Article 7);
- the right to access victim support services (Article 8);
- the right to support from victim support services (Article 9).

Article 5 regulates the rights of victims when making a complaint. Member States must ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.

⁶ Highlights from the preamble.

Chapter 3 regulates the victims' participation in criminal proceedings. This Chapter regulates the following rights of victims of crime:

- the right to be heard (Article 10);
- rights in the event of a decision not to prosecute (Article 11);
- right to safeguards in the context of restorative justice services (Article 12);
- the right to reimbursement of expenses (Article 14);
- the right to the return of property (Article 15).

Article 13 regulates the right to legal aid. Member States must ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid are to be determined by national law.

Article 16 regulates the right to decision on compensation from the offender in the course of criminal proceedings. Member States must ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

Article 17 regulates the rights of victim residents in another Member State.

Chapter 4 regulates the protection of victims and recognition of victims with specific protection needs. This Chapter regulates the following rights of victims of crime:

- the right to protection (Article 18);
- the right to avoid contact between victim and offender (Article 19);
- the right to protection of victims during criminal investigations (Article 20);
- the right to protection of privacy (Article 21).

Article 22 regulates individual assessment of victims to identify specific protection needs. Article 23 regulates the right to protection of victims with specific protection needs during criminal proceedings. Article 24 regulates the right to protection of child victims during criminal proceedings.

Chapters 5 and 6 of the Directive contain other and final provisions. Pursuant to Article 27, Member States must bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 November 2015. Despite this provision, the Republic of Slovenia adopted the Act Amending the Criminal Procedure Act, which did not implement the provisions of the Directive until April 2019.

III. The Rights of Victims of Crimes under the Laws of the Republic of Slovenia

In the Republic of Slovenia, the rights of victims of crimes are regulated by the following acts:

- the Criminal Procedure Act (hereinafter: *ZKP*)⁷;
- the Social Assistance Act⁸;
- the Domestic Violence Prevention Act⁹;

⁷ The Criminal Procedure Act, unofficial consolidated version NPB of 15 May 2019, available at the websites of the National Assembly of the Republic of Slovenia.

⁸ The Social Assistance Act – unofficial consolidated version NPB11 of 20 May 2019, available at the websites of the National Assembly of the Republic of Slovenia.

⁹ The Domestic Violence Prevention Act, unofficial consolidated version NPB 2 of 16 May 2018,

- the Enforcement of Criminal Sanctions Act (hereinafter: ZIKS)¹⁰;
- the Witness Protection Act¹¹;
- the State Legal Aid Act¹²;
- Compensation to Crime Victims Act¹³.

The rights of victims of crimes are clearly explained in the brochure “The Rights of Victims of Crimes” published by the Ministry of Justice and the Ministry of the Interior of the Republic of Slovenia¹⁴.

Pursuant to the aforementioned legislation, victims of crimes have the following rights:

- the right to be treated with special care and consideration when this is necessary due to the victim's vulnerability, e.g. due to age, health, infirmity or other similar circumstance. (Article 18a of the ZKP)
- the right to use mother tongue or the language that the victim understands (Article 8 of the ZKP);

(4) the right of attendance of a supportive person of the injured party's choice at pre-trial and criminal proceedings, unless this would be against the interest of pre-trial or criminal proceedings or the injured party's benefits (paragraph four of Article 65 of the ZKP);

- the injured party's right to be represented in the proceedings by a lawyer. Juvenile victims of certain criminal acts must have a lawyer all the time since the commencement of criminal proceedings. If the juvenile injured party does not choose an attorney him or herself, the lawyer is appointed by the court. (Article 65 of the ZKP);
- the right to free medical, psychological and other assistance and support from social work centers and other organizations (indent one of paragraph one of Article 65a of the ZKP and Article 14a of the Social Assistance Act);
- the injured party's right to be informed of the possibilities of assistance and measures provided by the Domestic Violence Prevention Act (indent two of paragraph one of Article 65a of the ZKP);
- the injured party's right to avoid undesired contact with the suspect or the accused, unless such contact is necessary for the successful conduct of the pre-trial and criminal proceedings (paragraph five of Article 65 of the ZKP);
- the injured party's right to be, in order to ensure his or her safety, informed of the release or escape of suspects or accused persons from remand or remand in custody at home (paragraph four of Article 65a of the ZKP);
- the injured party's right to request notification of the leave, release or escape of a prisoner (Article 30b of the ZIKS);

available at the websites of the National Assembly of the Republic of Slovenia.

¹⁰ The Enforcement of Criminal Sanctions Act, unofficial consolidated version NPB 6 of 12 March 2018, available at the websites of the National Assembly of the Republic of Slovenia.

¹¹ The Witness Protection Act, unofficial consolidated version NPB 3 of 11 May 2018, available at the websites of the National Assembly of the Republic of Slovenia.

¹² The State Legal Aid Act, unofficial consolidated version NPB 4 of 15 April 2015, available at the websites of the National Assembly of the Republic of Slovenia.

¹³ The Compensation to Crime Victims Act, unofficial consolidated version NPB 1 of 5 November 2010, available at the websites of the National Assembly of the Republic of Slovenia.

¹⁴ The Rights of Victims of Crimes (brochure), the Ministry of Justice and the Ministry of the Interior, the Police, Ljubljana, 2019.

- the injured party's right to protective and other measures to ensure his or her personal safety under the Criminal Procedure Act and the Witness Protection Act. This right encompasses the following:
 - sound recording of the interrogation of the witness (injured party) younger than 15 years of age (paragraph one of Article 84 of the ZKP);
 - collecting information (before the police) performed by the same person or by a person of the same sex (Article 148b of the ZKP);
 - interrogation with the assistance of a professional and in premises adapted to this purpose (paragraphs five and six of Article 240 of the ZKP);
 - protection of the witness's personal data and interrogation using technical means, such as the screen for the witness (Article 240a of the ZKP);
 - interrogation via videoconference (paragraph one of Article 244a of the ZKP);
 - exclusion of the public from the main hearing (Article 295 of the ZKP);
- the injured party's right that the rights referred to in paragraph five of Article 65 and paragraph six of Article 240 of the ZKP must also be taken into account by an expert during the examination or interview for the preparation of an expert opinion (Articles 264 and 264a of the ZKP);
- the injured party's right to obtain a certificate or a copy of the crime report on reporting a crime (Article 147a of the ZKP);
- the injured party's right to be informed about the progress of his or her case and his or her role in pre-trial or criminal proceedings (paragraph three of Article 65a of the ZKP);
- the injured party's right to be informed of the details of the contact person of the competent authority responsible for communication about his or her case (indent eight of paragraph one of Article 65a of the ZKP);
- the injured party's right to call attention to all facts and to present evidence in the criminal proceedings, and to access and copy the file (Article 59 of the ZKP);
- the injured party's right to give opinion on the intended dismissal of a criminal charge for an offence punishable by a term of imprisonment exceeding eight years (paragraph four of Article 161 of the ZKP);
- the injured party's right to assume the prosecution when it is abandoned or not initiated by the state prosecutor (Article 60 and paragraph two of Article 63 of the ZKP);
- the injured party's right to file a motion to enforce a property claim (Articles 100-111 of the ZKP);
- the injured party's right to state legal aid in accordance with the provisions of the Legal Aid Act;
- the injured party's right to be informed of the method and conditions for exercising the right to compensation for victims of violent intentional crimes under the Compensation to Crime Victims Act;
- the injured party's right to payment and reimbursement of the costs of criminal proceedings (Article 92, paragraph four of Article 96 and Article 97 of the ZKP);
- the injured party's right to appeal against judgment (paragraph four of Article 367 of the ZKP)¹⁵. In the Act Amending the Criminal Procedure Act (ZKP-N)¹⁶ the injured party's right to appeal was broadened somewhat to allow the injured

¹⁵ The Rights of Victims of Crime (brochure), *op. cit.*

¹⁶ Official Gazette of the Republic of Slovenia No. 22/19.

party to appeal against the judgment by which the court dismissed the charge or acquitted the accused of the charge (the accused previously had no such right). However, the right to appeal against the judgment by which the court found the accused guilty is still limited. The injured party may challenge such a judgment only with regard to the decision on the indemnification claim, the publication of the final judgment and the decision on costs¹⁷.

IV. Conclusion

According to Gorkič, amendments to the ZKP (amended ZKP-N) referring to the position of the injured party significantly interfered with the relations between entities involved in the proceedings. This amendment strengthened the injured party's position in all areas: information, protection and participation in criminal proceedings. The strengthening of the injured party's position is largely the result of the transposition of Directive 2012/29/EU on the rights of victims and partly of the implementation of the decision of the Constitutional Court of the Republic of Slovenia from 2017. The new regulation reveals the conflict between the injured party and the suspect, i.e. the accused. The injured party as a participant in the criminal proceedings is placed alongside the state prosecutor and acts as an opposing participant to the accused. The amendment to the ZKP enabled the injured party to influence the outcome of the proceedings in a direction that is less favourable for the accused.

In Gorkič's opinion, changes in the injured party's position have fundamentally altered the relations between the parties to the procedure. With the new regulation of the injured party's position, it has become clear that criminal proceedings are conducted not only in the public interest, but also in the interest of the injured party. The injured party exercises his or her rights in criminal proceedings not only for moral satisfaction, but also for the exercise of property interests which can be critically impacted by the outcome of criminal proceedings¹⁸.

Although I agree with the views of my fellow expert Gorkič, I nevertheless believe that the rights of victims of crime transposed into Slovenia's laws by Directive 2012/29/EU will not significantly improve the treatment of victims in criminal proceedings.

It should be taken into account that certain rights of injured parties (victims) are mutually exclusive. If the injured party decides to participate more actively in criminal proceedings, this increases the risk of secondary victimization, revenge or intimidation. In short, in that sort of case, the protection against the negative effects of criminal proceedings is significantly reduced.

¹⁷ Paragraph 4 of Article 368 of the ZKP:

The injured party may challenge the judgment by which the court dismissed the charge (Article 357), acquitted the accused of the charge (Article 358), and the judgment by which the court found the accused guilty may only challenge the decision on the indemnification claim (point 7 of paragraph one of Article 359), publication of the final judgment and decision on costs. However, if the state prosecutor has taken the prosecution over from the injured party acting as prosecutor (paragraph two of article 63), the injured party may appeal on all grounds on which a judgement may be challenged (Article 370).

¹⁸ P. Gorkič in P. Plešec, P. Gorkič, *Criminal Code (KZ-1), unofficial consolidated version, Introductory explanations to the amendment of the ZKP-N and table of contents*, Official Gazette of the Republic of Slovenia [Uradni list RS], Ljubljana, 2019, pp. 12-13.

Although the injured party's right to appeal against court decisions has been significantly extended, the right to appeal the judgment by which the court found the accused guilty is still limited. The injured party may challenge such a judgment only with regard to the decision on the indemnification claim, the publication of the final judgment and the decision on costs. Even if the accused receives an extremely mild sentence or even an alternative criminal sanction (weekend imprisonment, house arrest, community service), the injured party does not have the right to appeal against the criminal sanction imposed. This situation reasonably arouses in injured parties the feeling that they have been tricked and left without adequate legal protection because the perpetrators have not received a fair punishment. This raises serious doubts among injured parties and the broader public about justice and the rule of law, which are the foundation of any democratic social order.

Victims have the right to assert indemnity claims in criminal proceedings. It is common knowledge that courts in criminal proceedings very rarely decide on property claims as well. As a rule, the injured party is referred to litigation (contentious proceedings), which is associated with lengthy court proceedings and also often costs. Even when injured parties are successful in litigation, they are often not reimbursed for legal costs, as perpetrators often have no assets. This happens even in cases where the amount of the resulting damage needs to be established for a proper legal qualification of the crime. A provision in law that criminal court should decide on an indemnity claim would have a positive effect, unless this would give rise to disproportionate difficulties or a disproportionate prolongation of criminal proceedings. It should be taken into account that there are also injured parties who are more interested in receiving compensation for their damage than in seeing the perpetrator punished.

Although I doubt that the rights of victims of crime transposed into Slovenia's laws by Directive 2012/29/EU will significantly improve the treatment of victims in criminal proceedings, I rate them as positive as they stir up awareness that, in addition to the accused, criminal proceedings involve victims of crime whose rights and interests need to be protected.

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