

# THE NOTION OF VICTIM IN INTERNATIONAL AND EUROPEAN JUDICIAL PROCEEDINGS

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## **Abstract**

*One of the greatest tests of the quality of our justice systems is how well we treat our victims - appropriate treatment is a demonstration of our societies' solidarity with each individual victim and recognition that such treatment is essential to the moral integrity of society.*

*It is therefore crucial not only to combat and prevent crime, but also to properly support and protect individuals who do fall victim to crime.*

*Both legislative and practical measures have been put in place to provide an adequate level for the protection of victim's rights throughout the EU, and in accordance with international provisions.*

**Key words:** "victim", "European level", "International recognition", "Human Rights"

**JEL Classification:** K14, K33

The notion of victim had its greatest recognition in the A/RES/40/34 Declaration of 1985, which achieved a fundamental step for humanity, restated also in more recent times<sup>2</sup>, because it implied that the victim was considered on the level of human rights.<sup>3</sup>

The Declaration – A/RES/40/34 – explains how the term victim is intended to indicate “people who, either individually or in a collective sense, have suffered some kind of harm, above all an offence to their physical or mental integrity, a moral sufferance, a material loss or a serious violation of their fundamental rights, caused by actions or omissions which violate the existing criminal laws in a European Union state, including those which prohibit, on a penal level, abuses of power”.

At the European level the same notion has been taken up again, and officially documented, by means of for example, the Council Framework Decision<sup>4</sup> on the victim's role in the trial, whereby in art. 1 the following definition is offered: “victim shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State.”

In reference to trafficking the notion of victim is explained both in the Protocol to prevent, suppress, and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo 2000)<sup>5</sup> which is supplemented by three Protocols: the Protocol against trafficking in persons, which came into force on 25 December 2003, the Protocol against the smuggling of migrants by land, air and sea – which came into force on 28 January 2004, and the Protocol against the illicit manufacture of and trafficking in firearms, which came into force on 3 July 2005, and in the text of The Council of Europe Convention on action against trafficking in human beings<sup>6</sup>, reserved to trafficked persons. Art. 4 of The Council of Europe Convention said that: “Victim shall mean any natural person who is subject to trafficking in human beings as defined in this article.” In the Article 2 we can read the Convention's Scope: “This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organized crime. Article 3 - Non-

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<sup>2</sup> Commission on Human Rights resolution 2003/34-E/CN4/RES/2003/34

<sup>3</sup> The United Nations Convention Against Transnational Organized Crime, Palermo 2000, adopted by the General Assembly of the United Nations on 15 November 2000

<sup>4</sup> The Council Framework Decision 2001/1220/JHA, dated 15 March 2001

<sup>5</sup> The United Nations Convention against Transnational Organized Crime, adopted by the General Assembly of the United Nations on 15 November 2000, came into force on 23 September 2003.

<sup>6</sup> The Council of Europe Convention on action against trafficking in human beings (Warsaw, 16.05.2005) which came into force on 01.02.2008

discrimination principle. The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” These people, in reality, have also been categorized as vulnerable victims already by the additional Protocol on Trafficking, when in defining illicit behavior it refers to situations of “abuse of power or of a position of vulnerability”.<sup>7</sup> So, in the article 3 of Prot. Suppl. Transnational Organized Crime Convention Palermo 2000, the international definition of “trafficking” is “

a) Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include as minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article.”<sup>8</sup>

The international definition of “vulnerable victim” could now be considered included in the text of the Recommendation concerning the assistance to the victims of crimes adopted by the European Committee on the criminal problems.<sup>9</sup> So, “every Member State ensures that the particularly vulnerable victims may benefit from a specific treatment which responds most appropriately to their situation” (art. 2 – the Council Framework Decision 2001), the following provisions cover the same theme.

From this context it can be inferred that the victims can be vulnerable due to their personal characteristics: physical or psychic disabilities, tender age as minors or for reasons connected to the type of crime they fell victim to - sexual abuses, organized crimes, domestic violence - and finally, even when indirectly, because they are foreigners who therefore have linguistic difficulties.

In the Project of conclusion of the Presidency relative to the conference on the protection of vulnerable victims and their position in penal procedures<sup>10</sup>, as recognized that the need for special protection of the victims in situations of vulnerability deserves due attention in order to create an effective form of protection and, at the same time, a fair trial for the victims or the accused, a formal invitation was made to the European Union states to promote an effective application of their internal legislation on the subject, with particular attention to the training of those working in the field of justice.

In the context of the European Union it is worth also pointing out the programmed choices included in the Stockholm program.<sup>11</sup>

In the Stockholm program is illustrated the first of the political priorities established, in the title “Promoting the rights of citizens: a Europe for rights” – the second paragraph.

In the first part of this paragraph entitled “Europe built on fundamental rights” it states that: “The European Union is based on common values and respect for fundamental rights. After the entry into force of the Lisbon Treaty, the rapid accession of the European Union to the European Convention on Human Rights is of key importance. This will reinforce the obligation of the Union, including its institutions, to ensure that in all its areas of activity, fundamental rights are actively

<sup>7</sup> The Supplementary Protocol of the Palermo Convention 2000

<sup>8</sup> The Council Framework Decision 2001/220/JHA

<sup>9</sup> The Council of Europe Plenary Session dated on 3/7 April 2006

<sup>10</sup> European Council Decision, Brussels 30-03-2009, n. 7855/1/09

<sup>11</sup> Document 17024/09, Brussels, 02-12-2009

promoted. The case law of the Court of Justice of the European Union and the European Court of Human Rights will be able to develop in step, reinforcing the creation of a uniform European fundamental and human rights system based on the European Convention and those set out in the Charter of Fundamental Rights.”

In the third part of the second paragraph of the Stockholm program, in the so-called “Vulnerable groups” (2.3.3.), said: “all forms of discrimination remain unacceptable”. The European Union and the Member States must make a concerted effort to fully integrate vulnerable groups, in particular the Roma community, into society by promoting their inclusion in the education system and labor market and by taking action to prevent violence against them. For this purpose, Member States should ensure that the existing legislation is properly applied to tackle potential discrimination. The European Union will offer practical support and promote best practice to help Member States achieve this. Civil society will have a special role to play.”

Vulnerable groups in particularly exposed situations, such as women – victims of violence or of genital mutilation or persons who are harmed in a Member State of which they are not nationals or residents, are in need of greater protection. Appropriate financial support will be provided, through the available financing programs.

The need for additional proposals as regards vulnerable adults should be assessed in the light of the experience acquired from the application of the 2000 Hague Convention on the International Protection of Adults by the Member States which are parties or which will become parties in the future. The Member States are encouraged to join the Convention as soon as possible.

In the same Stockholm program, with reference to “Victim of crime, including terrorism”, it is stated that: (2.3.4) “Those who are most vulnerable or who find themselves in particularly exposed situations, such as persons subjected to repeated violence in close relationships, victims of gender based violence, or persons who fall victim to other types of crimes in a Member State of which they are not nationals or residents, are in need of special support and legal protection. Victims of terrorism also need special attention, support and social recognition. An integrated and coordinated approach to victims is needed, in line with the Council conclusions on a strategy to ensure fulfillment of the rights of, and improve support for persons who fall victims of crime.”

The European Union states must examine how to improve legislation and practical support measures for protection of victims and to improve implementation of existing instruments, offer better support to victims otherwise, possibly through existing European networks that provide practical help and put forward proposals to that end, and examine the opportunity of making one comprehensive legal instrument on the protection of victims, by joining together the Directive on compensation to victims and the Framework Decision on victims, on the basis of an evaluation of the two instruments. Increased use of the financing programs should be made in accordance with their respective legal frameworks.

The notion of victim appears rich in meaning and the subject of particular interest at an International level, where increasing special attention is being paid to the victims, paying greater attention to their vulnerability, and specifically to the various forms of organized crime, in so much as weak individuals who can at the same time be called to testify about the serious events they have been subjected to. Their protection appears especially important when bearing in mind the substantial prejudices they are subjected to in the form of serious delinquency. The rights of the victims have long been neglected and numerous initiatives have been launched, regarding their role in the world justice or to ensure that they receive fair compensation and to allow depend upon measures of concrete help which may ensure their total recovery.

People falling victim to crime have a range of needs, varying from victim to victim. To meet these individual needs, it is necessary that all victims are treated individually. However, the needs of victims can be grouped in the following five broad categories:

- **respectful treatment and recognition** as victims, both within the justice system and more widely by society;

- **protection** both from intimidation, retaliation and further harm by the accused or suspected and from harm during criminal investigations and court proceedings, such as by avoiding repeated interviewing of the victim;

- **support**, including immediate assistance following a crime, longer-term physical and psychological assistance and practical assistance during proceedings to help victims understand, participate and to reduce their distress;

- **access to justice** to ensure that victims are aware of their rights and understand them both linguistically and legally, are able to provide additional information and to participate in proceedings; and

- **compensation and restoration**, whether through financial damages paid by the State or by the offender or through mediation or other form of restorative justice that allow victims to face the accused, with a view to reaching a voluntary agreement between them on how to repair the harm to the victim.

The Council Framework Decision on the standing of victims in criminal proceedings from 2001, establishes basic rights for victims of crime within the EU. The Member States had to adapt their legislation in line with the requirements of the Framework Decision by 2006. Implementation reports published in 2004 and 2009 however concluded that this EU legislation had not been effective in achieving minimum standards for victims across the EU.

In 2011, the Commission therefore put forward a legislative package to strengthen the legal framework on victims' rights including a proposal for directly binding and effectively enforceable Directive establishing minimum standards on the rights, support and protection of victims of crime.

The **Directive establishing minimum standards on the rights, support and protection of victims of crime** - Directive 2012/29/EU - was adopted on 25 October 2012 and entered into force on 15 November 2012. The EU Member States have to implement the provisions into their national laws by 16 November 2015. DG Justice of the Commission has issued a guidance document to assist Member States in this process. This document aims to clarify the provisions of the victims' rights directive, helping to make the rights it lays down a reality everywhere in the EU.

The new Directive replaces the 2001 Framework Decision and includes the minimum standards that were established there on the rights to access information, support, protection and basic procedural rights in criminal proceedings. However, the Directive will bring significant value added compared to the current legal framework. Apart from being enforceable under the Lisbon Treaty and generally containing more concrete rights for victims and clearer obligations for Member States, it goes further than the Framework Decision in many ways:

**New rights and obligations:**

- **Family members** of deceased victims are defined as victims and benefit from all rights in the Directive; family members of surviving victims have the right to support and protection. Family members are widely defined and include also non-married intimate partners.

- **Accessible and understandable information** – All communication with victims must be made in a way that victims understand (linguistically or otherwise); an emphasis is made on child-sensitive communication.

- **Access to victim support** – Member States must ensure access for victims and their family members to general victim support and specialist support, in accordance with their needs. The Directive specifies the basic level of services that need to be provided. Support is not dependent on the victim having reported the crime. Member States must facilitate referrals from police to victim support organizations.

- **Specialist support services** must as a minimum provide shelters and targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender based violence and victims of violence in close relationships, including trauma support and counseling.

- **Review decision not to prosecute** – Victims have the right to be informed about a decision not to proceed with prosecution of the offender and will also have the entirely new right to have such decision reviewed.

- **Individual assessment to identify vulnerability and special protection measures** – All victims will be individually assessed to determine whether they are vulnerable to secondary or repeat victimization or intimidation during criminal proceedings. If they have specific needs, a whole range of special measures will be put in place to protect them.

Children are always presumed vulnerable and particular attention will be paid to some categories of victims such as victims of terrorism, organized crime, human trafficking, gender-based violence, violence in close-relationships, sexual violence or exploitation, hate crime and victims with disabilities.

**Strengthened rights and obligations compared to the Framework Decision:**

- **Information rights** – Victims will receive a range of information from first contact with authorities. Victims will also receive information about their case, including a decision to end the investigation, not to prosecute and the final judgment (including the reasons for such decisions), and information on the time and place of the trial and the nature of the criminal charges.

- **Interpretation and translation** - During criminal proceedings, victims with an active role have the right to interpretation and translation to enable their participation. Victims can challenge a decision not to receive interpretation and translation. All victims will receive a translation of the acknowledgement of their complaint.

- **Protection of all victims is reinforced** – The privacy of victims and their family members must be respected and contact with the offender avoided (all new court buildings must have separate waiting areas).

- **Restorative justice safeguards** – Victims who choose to participate in restorative justice processes (referred to as mediation in the Framework Decision) must have access to safe and competent restorative justice services, subject to some minimum conditions set out in the Directive.

- **Training of practitioners** has become an obligation and emphasis is also put on cooperation between Member States and at national level and awareness rising about victims' rights.

The new Directive considerably strengthens the rights of victims and their family members to information, support and protection as well as their procedural rights when participating in criminal proceedings. It also includes provisions that will ensure that professionals are trained on victims' needs and encourage cooperation between Member States and awareness raising on victims' rights.

As regards protection measures, two instruments were adopted to ensure mutual recognition of protection measures in the EU. The Directive on the European Protection Order of December 2011 was complemented by the Regulation on mutual recognition of protection measures in civil matters adopted in June 2013. These instruments will ensure that victims can rely on restraint or protection orders issued against the perpetrator in their home country if they travel or move within the EU.

## **Bibliography**

1. Commission on Human Rights resolution 2003/34-E/CN4/RES/2003/34
2. The United Nations Convention Against Transnational Organized Crime, Palermo 2000, adopted by the General Assembly of the United Nations on 15 November 2000
3. The Council Framework Decision 2001/1220/JHA, dated 15 March 2001
4. The United Nations Convention against Transnational Organized Crime, adopted by the General Assembly of the United Nations on 15 November 2000, came into force on 23 September 2003.
5. The Council of Europe Convention on action against trafficking in human beings (Warsaw, 16.05.2005) which came into force on 01.02.2008
6. The Supplementary Protocol of the Palermo Convention 2000
7. The Council Framework Decision 2001/220/JHA
8. The Council of Europe Plenary Session dated on 3/7 April 2006
9. European Council Decision, Brussels 30-03-2009, n. 7855/1/09
10. Document 17024/09, Brussels, 02-12-2009