

THE IMPACT OF THE “VICTIM’S DIRECTIVE” ON THE ROMANIAN SUPPORT LEGISLATIVE FRAMEWORK

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Abstract: The Romanian legislative framework on victim support and protection has undergone several substantial changes after Romania has signed the Protocol of Palermo and several other international treaties on domestic violence and gender equality. Part of the provisions of different special laws were absorbed into the provisions of the New Criminal Code and supplemented by the provisions of Law 211/2004 on some measures to ensure the protection of crime victims. Next, the national legislation has been aligned to the provisions of the European Union through the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. May 2018 represents a new milestone for the Romanian victim protection laws, as it marks the transposition of the “Victims’ Directive”, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. The present article aims to analyse the impact this directive has on the national victim support legislation and the practical novelties which this brings about.

Key words: EU Directive, rights, victims, information, protection, compensation

Through the Decree number 385 from the 27th of April 2018, the President of Romania has approved the Law No. 97/2018 on some protection measures of

victims of crimes, which is going to enter into force from the 5th of May 2018 and which is transposing the provisions of the Directive 2012/29/EU, also known as the “Victims’ Directive”.

Due to the fact that the Romanian law 211/2004 on some measures to ensure the protection of victims of crimes has already foreseen most of the rights and protection measures which the new directive contains, law 97/2018 modifying law 211/2004 is not changing the substance of the latter but it does however bring along some provisions which should be very helpful for the victims.

The objectives of this directive, as stated in Article 1, are “[...] to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. Member states shall ensure that victims are recognised 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.”

Therefore, the main rights which the directive highlights are:

a) *Right of information*

The directive refers at this point to the right of the victims to understand and be understood, to be informed from the first contact with authorities about all their rights and about the procedures of how to practically access the tools to exercise their rights as well as to be informed about the case.

With regards to the right to understand and be understood (Art. 3 - Art. 7 of the Victims Directive) the Romanian legislative framework has specific provisions in the Romanian Criminal Procedure Code and in the law 211/2004.

The Romanian Criminal Procedure Code, under Article 81 states the fact that the rights of the victims in criminal proceedings are:”a) to be informed of its rights; [...] d) to be informed, within a reasonable term, on the status of the criminal investigation, upon explicit request, provided that they indicate an address on the territory of Romania, an e-mail address or a electronic messaging address, to which such information can be communicated; e) to consult the case file, under the law; f) to be heard; g^1) to receive an interpreter, free of charge, when they cannot understand, cannot express themselves properly or cannot communicate in the Romanian language; h) to be assisted or represented by a counsel; i) to use a mediator, in cases permitted by law; j) other rights set by law.”

These provisions are corroborated with the provisions of law 211/2004, which under Art. 4 states that: “(1) Judges in the case of the offenses for which the preliminary complaint is addressed to the court of judges, prosecutors, officers and police officers have an obligation to inform the victims concerning: a) services and organizations providing psychological counselling or any other forms of assistance, depending on its needs; b) the criminal prosecution body to which they can make a complaint; c) the right to legal assistance and the institution where they can address

the exercise of this right; d) the conditions and procedure for granting free legal aid; e) the procedural rights of the injured party, the injured party and the civil party; [...].

After the 5th of May 2018 when the provisions of law 97/2018 are going to enter into force, Art. 4 of law 211/2004 is going to be modified, in terms of the fact that two new provisions are going to be added under letter paragraph “6” and “7” stating that: “6) On the occasion of first contact with the authorities, the victim may be accompanied by a person chosen by her to facilitate communication with them. 7) When filing the complaint according to art. 289 of the Law no. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, the victim will receive a written confirmation thereof. The confirmation will include the registration number of the complaint as well as data on the act for which the complaint has been filed.”

We consider that the two new provisions which are going to enter into force are essential for the victims because of a number of reasons: when a victim has a first contact with the authorities, depending on her psychological state, current traumas, possible previous negative experiences with law enforcement representatives, level of education, level of integration in the community, she might feel unsafe and might be very vulnerable. Such a context would lead, on behalf of the victim, to an unclear declaration, an incomplete declaration, lack of understanding her rights because of lack of attention and focus caused of the stressful circumstances and, eventually, the abandonment of the complaint shortly after it was filed. On the other hand, on behalf of the authorities, the above described circumstances can lead to an unclear record of the declaration, an incomplete report, procedural gaps which can lead to an unsustainable case in the front of the prosecutor who approves the start of the criminal investigation. All these negative circumstances, however, are in the benefit of the perpetrator who can get away with the crime committed without being held liable from a criminal perspective. If the victim is supported by a person with whom he/she feels confident the communication barriers can be easily overcome, especially if this person is a representative of a victim support service, therefore, if this person is a professional psychologist or social assistant.

With regards to the second new provision, we must say that this was a very much expected one. Up until the 5th of May 2018, if a victim has filed a complaint to a police officer, he/she has recorded it but was not able to give the victim a registration number until the complaint was recorded at the prosecutor’s office from where it came back to the police with a unique registration number. In this time span, the victim had no proof of the complaint in his/her hands. Such a lack of evidence has caused several difficulties if a victim has hired an attorney for instance after filing a complaint because the attorney firstly needed to identify which police officer has recorded the complaint and only after having done so could the attorney consult the file and seek for further procedural steps.

Also, we welcome the provisions of the directive stating that the victims need to be informed in such a way that the victims understand the information transmitted. As before mentioned different communication barriers usually arise especially during the first contacts between victims and law enforcement representatives. Several researches have revealed the fact that an enumeration, in technical legal language, by the law enforcement representatives, of the victims' rights and procedural aspects related to the case have not led to a full understanding of the statements made. On the contrary, several victims did not understand the information shared with them and did not understand which tools they have to exercise their rights as victims.

As with respect to the language used during the criminal procedures, the Romanian Criminal Procedure Code, under Art. 12, states the fact that “(1) The official language of the criminal proceedings is Romanian. (2) Romanian citizens who are members of national minorities have the right to speak in their maternal language before courts of law, while procedural acts shall be written in the Romanian language. (3) Parties and subjects in the proceedings who do not speak or understand the Romanian language shall be provided, free of charge, with the possibility to learn of the evidence in the case, to speak and to argue in court, using an interpreter. In the situations where legal assistance is mandatory, the suspect or defendant shall be provided, free of charge, with the possibility to communicate via an interpreter with their counsel so as to prepare the hearing, the filing of an avenue of appeals, or any other motion that has to do with the resolution of the case. (4) Judicial proceedings shall use certified interpreters, as under the law. Included in the category of interpreters are also certified translators, as under the law.” Therefore, the victims are entitled to receive free of charge translation services which facilitates their access to the Romanian judicial system. In Romania the translators who are entitled to participate in criminal procedures are certified by the Romanian Ministry of Justice, through the Minister of Justice. The complexity of the certification procedure ensures the high qualification of the translator in order to avoid misunderstandings of legal terms and thus judicial errors.

b) *Right to access and receive victim support services*

According to law 211/2004 the victims of crimes in Romania are entitled to free of charge psychological support, interpretation and translation, legal aid and financial compensation offered by the state. Besides these general provisions for the victims of all types of crimes, Art. 13 states the fact that “Victims of trafficking in human beings and domestic violence also benefit from the protection and assistance measures provided by Law no. 678/2001, as subsequently amended, or, as the case may be, by Law no. 217/2003 on the prevention and combating of domestic violence, as subsequently amended and supplemented.” The provisions of these laws state the fact that the victims of human trafficking and domestic violence are entitled to a protected shelter and to medical care.

With respect to the possibility of the family members to access victim support services similar to those to which the victims are entitled, the national legislative framework offers the family members this possibility in case they are considered indirect victims (ex. The children of the victims of domestic violence or human trafficking), in the cases in which the family members are vulnerable or protected witnesses (ex. They enter the national witness protection system) or in the circumstances in which the victim was murdered by the perpetrator, in which case the family members are entitled to all the rights to which the direct victim would have been entitled.

The challenge at this point arises in case of the victims of human trafficking as Romania is one of the very few countries of the European Union having the capacity to “export” throughout the years victims of human trafficking to more than 30 countries of the world, thus being ranked yearly, along with Bulgaria, among the top source countries of European human trafficking. With approximately 700 registered victims every year, unfortunately Romania is not having the capacity to provide state run shelters for adult victims of human trafficking and nor to provide any of the services to which the adult victims are legally entitled by state run institutions only by NGOs. This leaves the victim support field very vulnerable as the assistance services totally depend upon the availability and openness of NGOs to support the above mentioned services. A qualitative research conducted by the Romanian National Agency Against Human Trafficking has revealed that the above mentioned reasons have led to “problems regarding the regional bias in the quality of the assistance process. There are serious differences in the quality and the type of assistance services that a trafficking victim can access depending on the local situation at county level. There are regions in the country with a strong network of institutions (usually nongovernmental) where a victim of trafficking can access a variety of services, starting with long term residential assistance, proper medical assistance, proper legal assistance, school or professional (re)integration, but also regions where access to services is problematic. The main cause of this bias is the presence or absence in the area of NGO’s that can provide this type of services.” (Romanian National Agency Against Human Trafficking, 2015, p. 46)

c) *Right to compensation*

The Victims’ Directive, through Art. 16 states the fact that “Member States shall 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.” In the Romanian legislative system the victims of crimes are entitled to compensation from the offenders for both moral and material damages. The procedural aspects for these compensation measures are foreseen in the Romanian Criminal Procedure Code. Further on, the victims of crimes are also entitled to financial state compensation, under the conditions foreseen in law 211/2004. An important aspect however with regards to the compensation provided by the

offender is the fact that the offender must be found guilty through the courts decision in order to be hold responsible for providing the compensation for the victim. Therefore, the civil procedure through which the victim can claim compensation for the material and moral damages produced is hold still until the criminal decision has been taken. Depending on the complexities of crimes, such criminal decisions might be taken sometimes in years after the first complaint filed by the victims. In cases in which the perpetrators have purposefully hidden their assets in order to protect them from seizure and confiscation, the institution for extended confiscation can be applied which has the benefit of confiscating the goods produced through a criminal activity or used in order to produce a criminal activity but which are registered on the names of third parties and not on the name of the perpetrator.

Conclusion

After having signed the Protocol of Palermo, Romania's legislator has transposed its provisions into the provisions of law 678/2001 on preventing and combatting human trafficking. Later on, these were absorbed into the provisions of the New Criminal Code. These victim protection provisions were supplemented by the provisions of Law 211/2004 on some measures to ensure the protection of victims of crimes, which does not specifically refer to the victims of human trafficking but to all the victims of crimes. Next, the national legislation has been aligned to the provisions of the European Union through the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. The newest legislative modifications are going to enter into force in 2018 by means of transposing some few provisions of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA which have not been foreseen yet in the national legislation. These new provisions however are of such a nature that they equip the victims with more efficient tools to protect themselves during the criminal proceedings. With regards to the practical aspects of the protection measures foreseen by different laws however, the situation is not as good. Romania is lacking adequate institutional support services especially for adult victims of human trafficking, one of the most severe crimes which affect more than 700 Romanians yearly, making Romania the top source country of the European Union.

References

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