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Victim's Rights - Comparative Approach within EU Legislation

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Abstract: Usually is talking about offender rights and rarely about victim's rights. This study aims to analyse victim's rights especially in Romanian legislation from all points of view. Having involuntarily fallen victim to crime, the person is often unaware of what information is available. It is therefore important that the onus is not put on the victim to request a certain piece of information. Victims of crimes need to have their important role in the criminal proceedings and he or she has to know about the extension of them rights. Not least, the study is focus on the right of the victim to *receive* information, not to be made responsible for the practicalities surrounding its delivery.

Keywords: interpretation; hearing; assistance; support; advice

1. Introduction

Victims need information on what their rights are and what services they can access, in order to participate in the criminal justice process or access any other rights. Victims' right to information is therefore one of the most important rights in the aftermath of crime.

The costs for initiating criminal proceedings against a person who has committed a crime represent an obstacle for the victim of that offense, so it is necessary to provide free legal assistance to victims if it meets certain conditions stated by national or international law (in the case of cross border crime).

In some circumstances the legal systems of the EU Member States provides exemption from all or some of the costs or support costs for benefits and providing a public defendant who will provide legal assistance in the prosecuting phase or in front of a court, or paying a modest fee for legal counsel.

2. Legislation

Art. 6 paragraph 3 letter c from the European Convention of Human Rights regulated *the right to legal counsel*, that guarantees the right of the accused to be assisted without charge by a lawyer if he does not have the means to pay a defense counsel when the justice interests requires it (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).

In all of the EU Member States there is a legal assistance system, but if there is a dispute between two or more parties and at least one of them lacks sufficient financial resources to promote a lawsuit or has insufficient financial resources to benefit from the services of counsel during the trial, the party may apply for legal aid under national regulations.

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A comparative analysis of national legal assistance status highlights the existence of fundamental differences in structure of legal assistance systems in the Member States.

Regarding the organization of systems in some states the overall goal seems to be to ensure in general legal services and access to justice, while in other countries only the poor can apply for legal aid [Council Framework Decision on the Standing of Victims in Criminal Proceedings (2001/220/JHA), 15 March 2001].

2.1. Legal Assistance in Criminal Trials

Juridical cooperation in criminal matters between the Member States should be organized in order to encourage public specialist awareness, as well as to simplify and accelerate the passing of requests for assistance between Member States. Member States have their own legislation that establishes how it provides legal assistance in criminal trials (Ashworth & Redmayne, 2005).

3. The Procedure Regulated by Romanian Law

The free legal assistance is provided until the end of trial, regardless of the stage of the trial in which is the person benefiting from this right. Individuals involved in criminal proceedings can benefit from the free legal assistance under the following conditions:

- a) If the person is a murder victim or attempted murder, grievous bodily injury, rape, child abuse and human trafficking.
- b) If he or she is a civil party, injured party or civilly liable responsible party and the judicial authority considers that for some reason, he/she cannot make his/her defense, then the judicial authority may, ex officio or at the request of the person concerned, take measures for the appointment of a public defendant.
- c) If a police report was filed within 60 days from the date of the offense and if the person is unable to claim offense, the 60 day period begins on the cessation of the impossibility.
- d) If he or she is the spouse, the child or other dependent person of the victim who died as result of a crime of murder.
- e) If he or she filed the police report within 60 days from the date of the offense and is unable to claim offense, the 60 day period begins on the cessation of impossibility.
- f) If the gross monthly income per family member does not exceed the minimum wage.
- g) The services that can be provided to the victim of a crime of murder or attempted murder, grievous bodily harm, rape, child abuse and human trafficking are: free counselling, free medical care and free legal aid (if the above conditions are met).

Romanian legislation provides for several forms of free legal assistance in criminal matters, namely:

- a) Art. 89 Criminal Procedure Code - free legal assistance approved by the courts, the prosecution authorities or local public administration authorities, where the assistance of the accused or defendant is required and mandatory, and he does not have a chosen defense counsel.

b) Art. 90 Criminal Procedure Code - free legal assistance granted by the court to the injured person, civil party and civilly responsible, ex officio or upon request, when it is considered that he/she would not be able to make one's defense.

The disadvantage of this regulation from the Criminal Procedure Code is that the injured person receives free legal assistance to trial, but the appointment of the public defendant is at the discretion of the judge and there are no criteria to establish this right.

Experience has shown that such a measure is very rarely disposed in favour of a victim, even if, theoretically, there are no specific obstacles that prevent the appointment of a counsel in such cases.

c) Art. 18 of Law no. 211/2004 regarding the protection of the crimes victims - free legal assistance granted at the request of a crime victim or civil party, provided that the person be a victim of a very serious crime - respectively the injured person be the victim of an attempted homicide, murder or aggravated murder; an offense of grievous bodily harm, an intentional offense that resulted in a grievous bodily injury of the victim; rape, sexual intercourse with a minor and sexual perversion - or to have a low income (monthly income per family member of the victim to be at best equal to the minimum gross salary per economy set the year the victim applied for free legal assistance) (Law no. 211 2004 regarding the protection of the crimes victims).

According to Law no. 211/2004, legal assistance request submitted by the victim benefits from special treatment, meaning that the victim may state that he has a lawyer, whose fees will be covered entirely or part of the amounts allocated to this purpose, unlike other cases under the Criminal Procedure Code - article 173 paragraph. 3 of the Criminal Procedure Code - when the victim does not have this possibility, the lawyer is appointed by the Bar Association. The amount of the legal assistance for these people is equivalent to two minimum gross salaries per economy, higher than the fees allocated to lawyers appointed by the Bar Association in accordance with article 173 of the Code of Criminal Procedure, and the requests for free legal assistance for the enforcement of judgments are exempt from stamp duty.

Providing free legal assistance is conditioned, for all categories of crimes victims, by committing the offense in Romania or in the case of crimes committed outside Romania, by the victim's quality of Romanian citizen or foreign citizen legally residing in Romania, and by the development of criminal proceedings in Romania, meaning there must be a link between the Romanian state and the victim of a crime as for psychological counseling (Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, OJ 16.12.2008, L 3).

d) Art. 68 of Law no. 51/1995 on the organization and the lawyer profession practice - free of charge legal assistance approved by the Dean of the Bar Association at the request of the injured party, civil party or civilly responsible party, if the rights of the indigent party would be prejudiced by the delay.

Law no. 51/1995 regarding the organization and the lawyer profession practice may be applied where judicial assistance would be sought directly the Bar Association by an injured party, civil party and civilly liable responsible party under the following circumstances: if the rights of the indigent party would be affected by the delay or in cases where the local Bar Association of considers that those persons are unable to pay the fee.

4. Conclusions

The legislative framework in place ensures the right of person's defense within vulnerable situations, in which the case defense deprivation would have serious consequences.

We think that in certain crimes, the victim rights should be extended even in post- enforceability period of offender as follows:

- the victim must be notified by judicial when the offender is put on probation.
- in case of violence crimes, the measure of victim protection should be granted even in post-enforceability period (e.g. the interdiction of offender to stay close the victim).
- to announce the victim about any changes within the conviction decision.

5. References

Ashworth, A. & Redmayne, M. (2005). *The criminal process, Third Edition*. Oxford: Oxford University Press.

*** Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, OJ 16.12.2008, L 3.

*** Council Framework Decision on the Standing of Victims in Criminal Proceedings (2001/220/JHA), 15 March 2001.

*** 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.

*** Law no. 211 2004 regarding the protection of the crimes victims.