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Crime victims: the new «icon» of Bulgarian penal policy?

This article explores the latest development of crime victims related policies and practices in Bulgaria. The newest achievements are identified and analyzed. The relevant operative legislation is scrutinized. Both the strong and the weak points of its implementation are commented. The application of restorative justice, as an essential element of the modern penal policy orientated towards crime victims, is promoted. The challenges, related to the transposition of the new European Directives, concerning victims, are discussed.

Key words: crime victims, protection of victim's rights, compensation, restorative justice, Bulgaria and EU.

I. BACKGROUND

Long time crime victims were the «forgotten party» in the Bulgarian criminal justice system. They were totally neglected and marginalized. The whole attention was concentrated to the offender. This was particularly valid after joining the European Convention on Human Rights in 1992. The protection of procedural rights of the perpetrators of crime were even hypertrophied by the Bulgarian legislator and judicial practice. No doubt, rights to liberty and security and to a fair trial are essential human rights, and the numerous applications versus Bulgaria sent by the accused persons to the European Court of Human Rights were important factors which needed to be respected. However, the rights of crime victims were not protected on reciprocity basis.

Despite the fact that Bulgaria had already declared observance to the United Nations Declaration on justice for victims of crimes and abuse of power 1985 and the other relevant UN and Council of Europe instruments, crime victims remained for decades in the periphery of the legislature, state institutions and even of the non-governmental organizations (NGOs). The only sector that paid due attention to crime victims and periodically sent alarming messages about their legal status and practical situation, were the research centers and some university professors (Bochev, 1986; Stoinov, 1993; Belova, 1998).

II. THE BIG SHIFT OF THE PARADIGM

Fortunately, recently the victims of crime in Bulgaria seem to receive increased attention from governmental institutions, NGOs, academia, etc. (Stankov, 1999, Panev, 2004). The victims were rediscovered and recognized — from an «invisible» subject of social reality and criminal proceedings, often isolated from their own case, they have become more noticeable figure in law, political strategies and media. The attention was related to the negotiations and accession process of Bulgaria to the European Union when numerous recommendations for following the minimal standards for victims of crime protection have been sent to the government. Among the most important documents marking the new tendency in Bulgarian crime policy, were the National Strategy for the Support and Compensation of Crime Victims (2006), the Strategy to Continue the Judicial Reform in the Conditions of full EU Membership (2010), the National Concept of Penal Policy of the Republic of Bulgaria for the period 2010–2014 and the newest one — the Concept on State's Policy on Juvenile Justice (2011). Having in mind the basic postulates of the Treaty of Lisbon and the Stockholm Program for an Open and Secure Europe Serving and Protecting Citizens, these concepts offer far-seeing perspective in compliance with the common European policy towards victims.

In Bulgaria the universality of the rights of crime victims is not questioned and theoretically they are treated as an inherent part of human rights. Traditionally, even in the customary law, there are mechanisms for their protection. Currently there is relatively modern legislation providing the victims with many rights.

1. It could be dare said that one of the biggest achievements from the recent times was the Penal Procedure Code 2005 [1] (Chinova and Ivanova, 2005; Chinova, 2013). The Code for the first time regularized the procedural status of the injured party in a separate chapter. After the amendments from 2008 [2] the current standing of crime victims in penal proceedings could be described as follows:

According to the Art. 74 of the Penal Procedure Code injured shall be the person, who has suffered material or non-material damages from the crime. In case of a death of that person this right shall transit to his/her heirs.

The injured is entitled of specific rights both in pre-trial and court procedure. Most of the rights could be fully exercised during the court proceedings when the injured could be constituted as a private prosecutor, private complainant or civil claimant. However, according to the Art. 75 during the pre-trial procedure *the injured* has the following rights: to be notified of his/her rights in the penal procedure; to receive protection of his/her safety and his/her close persons; to be informed about the course of the penal procedure; to participate in the procedure; to appeal the acts which lead to disclosure or suspension of the penal procedure; to have a trustee. The injured can enjoy these rights if explicitly has demanded to participate in the pre-trial procedure and has stated a summoning address in the country.

In the court procedure the injured, who has suffered damages from a crime, which is subject to prosecution from the public prosecutor, shall have the right to participate as a *private prosecutor* (in comparative aspect referred as *accessory prosecutor* — Art. 76). The private prosecutor shall maintain the indictment at the same time with the public prosecutor. The private prosecutor may also maintain the indictment after the prosecutor declares that he/she does not maintain it (in comparative aspect explained as *subsidiary prosecutor*). The private prosecutor shall have the following rights: to become acquainted with the case and to make the necessary extracts; to submit evidence; to participate in the court procedure; to make requests, notes and objections and to appeal the acts of the court, where his/her rights and legitimate interests are harmed (Art. 79).

The injured by a crime, which is a subject to prosecution on a complaint of the injured, may bring and maintain indictment before the court as a *private complainant* (in comparative aspect explained as *private prosecutor* — Art. 80). The complaint shall be submitted within six-month period from the day, when the injured learned about the commitment of the crime, or from the day, on which the injured has received a message about discontinuing of the pre-trial procedure on the ground that the crime shall be a subject to prosecution on complaint of the injured. He/she shall have the right to require assistance from the bodies of the Ministry of Interior for collection of data which they cannot collect on themselves.

The injured and his/her heirs, as well as the legal persons who have suffered damages from the crime, may file a civil claim for a compensation of the damages and to establish themselves as *civil claimants* in the court procedure (Art. 84). However, the civil claim cannot be filed in the court procedure if is filed under the procedure of the Civil Procedure Code. The civil claim in the court procedure may be filed as against the defendant as well as against other persons who shall bear civil liability for the damages caused by the crime. The civil claimant and the private complainant have similar rights like private prosecutor.

It could be summarized that the injured currently enjoys a high status in the criminal proceeding, he/she is not only a «witness» anymore.

2. As a prospective member-state of the European Union, before acceding, the Republic of Bulgaria had to transpose the Council of the European Union Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims. It was done by the adoption of the Support and Financial Compensation to Crime Victims Act 2006 [3]. The objective of the Act is recognition and guaranteeing the rights and the lawful interests of the crime victims, according to the European and international standards. Various types of support are regulated (psychological, legal, medical, etc.), as well as provisions of financial compensation from the state, although rather limited. Under the law, support and financial compensation may be granted to the victims, who have suffered damages from the following crimes: terrorism; deliberate homicide; deliberate serious bodily harm; sexual molestation and rape, as a result of which serious health damages have been caused; trafficking of people; crimes, committed by an order or in fulfilment of a decision of an organised criminal group, as well as other serious deliberate crimes as a result of which death or serious bodily harm have been caused as *corpus delicti* consequence.

According to the Art. 3, paragraph 1 of the abovementioned law, under the terms and following the procedure of this law, support may be granted to victims, who have suffered material and non-material damages

by the mentioned types of offences, and financial compensation may be granted to victims, who have suffered material damages. In compliance with the Bulgarian legal system, compensation for non-material damages may be granted to crime victims only «by justice» and that is why financial compensation for non-material damages suffered as a result of an offence committed is always provided by a judge. In addition, according to the Art. 3, paragraph 2, where the victim has passed away as a result of the crime, the right of receiving financial compensation and support shall pass to his/her children, parents, spouse or the person, with whom he/she was in actual cohabitation. In compliance with Art. 1, paragraph 1, support and financial compensation are granted by the state to victims of crime — Bulgarian citizens or citizens of Member States of the European Union (furthermore, under the terms and following the procedure of this law, support and financial compensation may also be granted to foreign citizens in the cases, provided for in international agreements, to which the Republic of Bulgaria is a party — Art. 1, paragraph 2 of the law).

A special chapter of the Support and Financial Compensation to Crime Victims Act is dedicated to informing crime victims of their rights. It is an obligation of the bodies of the Ministry of Interior and the victim support organizations. In compliance with the Art. 8 the forms of support to the crime victims shall be: medical support upon state of emergency; psychological consultation and help; free legal aid; practical assistance. The free psychological consultation and help shall be provided by expert — psychologists from the victim support organizations financed by the Ministry of Justice. The crime victims can receive legal aid under the terms and following the procedure of the Legal Aid Act.

Compensation under the Support and Financial Compensation to Crime Victims Act may be granted by the State if the crime victim has not received such compensation in any other way. The compensation is granted after coming into effect of: the conviction sentence, including the cases where the case has been considered in the absence of the defendant; the prosecutor's or judicial act, by virtue of which the penal proceedings have been terminated (with some exceptions); the prosecutor's or judicial act, by virtue of which the penal proceedings have been suspended due to non-detection of the perpetrator of the crime. The financial compensation is in the form of granting a monetary sum.

The National Council for Compensation of Crime Victims, which was established at the Ministry of Justice in 2007, is the body competent to consider the filed by the victims applications for financial compensation. The Council drew up a model of the application for financial compensation in Bulgarian, English, German and French language; develops the policy, the planning and the presentation of legislative and practical initiatives in the sphere of supporting the crime victims; carries out international co-operation in the field of supporting crime victims, etc.

Considering the necessity of raising public awareness and the knowledge on the possibilities provided by the Support and Financial Compensation to Crime Victims Act, the Ministry of Justice has worked out a specialised Internet website of the National Council for Compensation of Crime Victims [4]. The website intends to make available to all persons and foreign institutions comprehensive information on the Bulgarian compensation scheme. Furthermore, the Ministry of Justice continues its activity on conducting seminars and workshops on the issues of compensation to crime victims, in view of raising awareness on the topic among legal professionals and representatives of the legal doctrine.

3. Lately Bulgarian legislator is paying privileged attention on anti-trafficking of persons issue. Worldwide trafficking in human beings is recognised as a serious violation of human rights. Human trafficking impairs the honour and dignity of the victims and, in some cases, their right to life. As a form of organised crime, trafficking in human beings undermines the basic principles of the law order and the democratic standards of society.

Bulgaria is considered primarily as a country of origin and transit and to a lesser extent a destination for victims of human trafficking. The unfavourable economic situation in the country continues to stimulate the migration of potential and actual victims of human trafficking in the European Union and the non-European countries. That is why relevant measures have been undertaken (Pushkarova, 2012).

In 2002 the National Assembly adopted amendments by which in the Penal Code was created a new Section called «Trafficking in human beings» — Art. 159 a, 159 b and 159 c. All these articles define trafficking in human beings as recognized by the relevant international instruments providing the needed legal basis to prosecute perpetrators of this type of crime and impose on them effective punishments. In cases where the trafficking was committed in respect to a child, specific qualified *corpora delicti* exist where the penalties imposed are more severe. In 2006 new amendments to the Bulgarian Penal Code were adopted, namely in Art. 159 a, para. 3, by which was enlarged the scope of the criminal prosecution of trafficking through the criminalisation of trafficking in respect to a pregnant woman to the purpose of selling her child.

In 2009 new supplements to the Penal Code were adopted by which were increased the penalties for trafficking in human beings (both the length of the penalty deprivation of liberty as well as the relevant fines). So, under Art. 159 d where trafficking in human beings can be qualified as dangerous recidivism or has been committed at the orders or in implementing a decision of an organised criminal group, the punishment shall be deprivation of liberty from five to fifteen years and a fine from BGN twenty thousand to one hundred thousand. In such cases courts can impose confiscation of the property of the perpetrator. A new *corpus delicti* was also introduced, through which was criminalised the use of (taking advantage of) a victim of human trafficking for acts of debauchery, forceful labour, dispossession of bodily organs or holding her/him in forceful subjection, regardless of her/his consent. Through the abovementioned new offence in the Bulgarian legislation was introduced the provision of the Council of Europe Convention on Combating Trafficking in Human Beings. One of the main reasons for the introduction of the new offence was the necessity to raise the effectiveness of the counteraction and criminal prosecution of trafficking by addressing the problem of the so called «search» and «use/taking advantage» of the victims of trafficking in human beings.

A specific Combating Trafficking in Human Beings Act was adopted in 2003 (last amended in 2013). For the purpose of this Act «Trafficking in human beings» means the recruitment, transportation, transfer, concealment or acceptance of human beings, regardless of their own will when it is carried out for the purpose of exploitation; «Exploitation» means the illegal use of human beings for debauchery, removal of a physical organ, tissue, cell or a bodily liquid from the victim, forced labour, begging or keeping in forced subjection, slavery or servitude; and «Victim» means any person who has become a subject of trafficking in human beings (THB). The law defines the legal obligations of the different state authorities involved in combating THB and the relations between them, as well as promotes the effective cooperation between the governmental and nongovernmental sector in this field. The Act has a special focus on measures to prevent and combat trafficking and measures for protection and assistance to women victims and children victims. Placing trafficking victims who collaborate with the investigation under special protection was explicitly regularized.

It has to be explicitly mentioned that recently Bulgaria has fully transposed the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims into our domestic legislation. For this purpose a fundamental amendment was introduced to the Penal Code. According to the new Art. 16 a an act should be considered not culpably committed where perpetrated by a victim of human trafficking provided this person has been forced to do it in a direct relation to that quality. Furthermore, new elements of the special qualified *corpora delicti* of Art. 159 a and Art. 159 b of the Penal Code have been added. Extra protection of some categories of victims of human trafficking has been provided in the Combating Trafficking in Human Beings Act.

4. Some other relatively new legislative acts — Protection of Persons Threatened in Connection with Criminal Procedure Act 2004, Protection Against Domestic Violence Act 2005, Child Protection Act 2000 etc. stipulate protection and assistance for separate types of victims.

III. VICTIMS' RIGHTS — BETWEEN WORDS AND ACTIONS

Although currently in Bulgaria exists a quite comprehensive legal framework for crime victims protection, many aspects could be criticized.

The operative legislation is not perfect, and is not properly and fully applied. One of the deficits of legal regulation is that the injured is excluded from the procedure of the settlement of the case by the agreement between the public prosecutor and the defence counsel of the accused (plea bargaining). There are not enough efficient procedural mechanisms for the full implementation of the stipulated rights. Because of the low rate of detection of crime and of sentenced persons a significant part of the victims cannot avail themselves of their rights. The lengthy procedure often takes away the due restitution and reparation.

Moreover, the victims of violent crimes are also not well protected by the Support and Financial Compensation to Crime Victims Act. According to the National Council for Compensation of Crime Victims Database very few of them (less than 30 yearly) receive limited compensation. Next, the list of crimes envisaged by the law, is rather narrow — it should be broaden. The compensation should be paid in advance by the state. That is why some legislative changes should be undertaken without delay.

There are problems with the existing infrastructure and coordination between different agencies working in the field. Indeed, a number of non-governmental organizations dedicated themselves to the protection of victims of violence, human trafficking and other forms of organized and conventional crime, have been registered. Usually they are established for the benefits of victims but within the framework of different projects. When their funding comes to an end, the organizations suspend their services. Presently, there are very few specialized governmental structures working in this area.

It seems there is an existing «gap» between the declared good objectives and the low level of their implementation. That is why society dissatisfaction is increasing and the risk of raising punitive populism is more than evident. Hence, a lot should be done for information dissemination, education, prevention and proper application of law (Fikov, 2009).

IV. THE NEW CHALLENGES

Two important crime victims — related acts have been adopted recently on the European level.

Last year 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 was approved [5]. The Directive considers crime as a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised 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. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. According to Directive, victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.

The main purpose of the Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. Special attention is paid to children and women as crime victims. The rights related to victim's participation in criminal proceedings are provided for in details.

The Directive lays down minimum standards, although rather high. Member States may extend the rights set out in this Directive in order to provide a higher level of protection.

Directive 2012/29/EU does not address the conditions of the residence of victims of crime in the territory of the Member States. Member States should take the necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality. Reporting a crime and participating in criminal proceedings do not create any rights regarding the residence status of the victim. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 November 2015.

Another important European instrument — Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order [6] was also passed. Quoting the Council of the EU Resolution of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, the Directive insists that mechanism should be created to ensure mutual recognition among Member States of decisions concerning protection measures for victims of crime. In a common area of justice without internal borders, it is necessary to ensure that the protection provided to a natural person in one Member State is maintained and continued in any other Member State to which the person moves or has moved. It should also be ensured that the legitimate exercise by citizens of the Union of their right to move and reside freely within the territory of Member States, in accordance with Article 3(2) of the Treaty on European Union and Article 21 of the Treaty on the functioning of the EU, does not result in a loss of their protection. The Directive should be transposed by 11 January 2015.

Bulgaria as a regular EU member should take all steps timely so that the crime victims could enjoy fully their rights. Despite of the economic difficulties, we need more sensitivity, so victims needs have to be met.

It should be mentioned that Bulgaria is facing one more challenge with regard due victims protection. Restorative justice, one of the most attractive modern policies in criminal justice worldwide and a recognized instrument for victims of crime protection, is getting more and more supporters in Bulgaria (Chankova, 1996, 2002 and 2011; Trendafilova, 2001; Panev, 2008). The Bulgarian Mediation Act was adopted in 2004 [7]. It introduced mediation as an alternative method for resolution of family, civil, administrative and other disputes between natural and/or legal persons. A much praised achievement of the law is the Article 3, paragraph 2, which provides for mediation in criminal matters, as envisaged in the Penal Procedure Code. Bulgaria belongs to the continental system of law; hence for mediation in penal matters to be implemented, a detailed legislative regulation is necessary. Despite the explicit requirement of the law to that end, the Penal Procedure Code of 2005 did not provide for any cases where mediation could be applied and left this issue to subsequent amendments. Nevertheless, the current legislation leaves room for the application of restorative justice methods to so called complainant's crimes — when the criminal proceedings are instituted by the

initiative of the victim. Restorative practices are also applied in juvenile cases, in prisons, in community matters, although on a limited scale. Definitely, it should be broaden.

In the meantime a number of NGOs have started and successfully implemented trainings of mediators, judges, prosecutors and other professionals in the field. The National Association of Mediators, the Institute for Conflict Resolution, the Union of Bulgarian Jurists and others work intensively in this area.

The academics, on their part, contribute likewise: special courses in alternative dispute resolution, restorative justice and mediation in criminal matters were introduced in the New Bulgarian University and in South-West University, as well as in the Institute for Postgraduate Studies with the University for World and National Economy. According to the recent surveys, restorative justice enjoys wide support among criminal justice practitioners and society at large (Chankova, 2006; Chankova, Georgieva and Bakalov, 2008). Let's hope that restorative justice will progress and will further serve the victims needs.

As a conclusion, there are many achievements, but also unsolved problems of protection of victims of crimes in Bulgaria. It is interesting to follow whether in the near future the rights of crime victims will be a tangible reality in Bulgaria.

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Д. Чанкова

Қылмыс құрбандары: Болгария қылмыстық саясатының жаңа «белгісі» ме?

Мақалада Болгариядағы саяси құрбан қылмыстары және әдістерімен байланысты соңғы кездегі жетістіктері зерттелген. Автор жаңа табыстарды тандестіріп саралаған. Тиісті қолданыстағы заңнамалардың толық мәні ашылған. Оның күшті және осал жақтарын енгізуге түсінігі берілген. Қылмыс құрбандарына бағытталған, қазіргі қылмыс саясатының құрамы тәрізді, әділ сотты қайта жаңғыртуды қолдануда әсер етеді. Құрбандарға қатысты жаңа еуропалық директивалардың орын ауыстыруына байланысты мәселелер талқыланды.

Д. Чанкова

Жертвы преступлений: новый «icon» Болгарии уголовная политика?

В статье рассмотрены проблемы, связанные с поведением жертв преступления и методы расследования преступных действий в Болгарии. Идентифицированы и проанализированы научные изыскания последних лет, касающиеся этих вопросов. Тщательно исследовано соответствующее действующее законодательство. Отмечены сильные и слабые стороны его внедрения. Показано применение восстановительного правосудия как существенного элемента современной уголовной политики, ориентированной на жертв преступления. Обсуждены проблемы, связанные с перемещением новых европейских Директив относительно жертв преступлений.