

**Dobrinka Chankova**

South-West University, Blagoevgrad, Bulgaria

ORCID 0000-0001-7518-1991

chankova@law.swu.bg

## New Challenges in Crime Victims Protection in Bulgaria

**Keywords:** crime victims protection, victim support organizations and institutions, rights of victims of crime in Bulgaria

**Summary:** The article explores the latest development of the legal regulation of crime victims protection in Bulgaria and some practical dimensions of the daily work of victim support organizations and institutions involved. Increased society victimization requires more effective legal actions and relevant compliance measures with the most advanced European and global standards. The Bulgarian legislator is trying to follow the best models in victim rights protection as it is an essential obligation of a member state of the European Union. However, some deficits and delays in the transposition of the recent European acts are observed. The implementation activities of the specialized state authorities and the non-governmental sector are critically analyzed. Recommendations to meet the new challenges and proposals for further actions for improved victim's support are offered.

### Nowe wyzwania w ochronie ofiar przestępstw w Bułgarii

**Słowa kluczowe:** ochrona ofiar przestępstw, organizacje i instytucje wspierające ofiary, prawa ofiar przestępstw w Bułgarii

**Streszczenie:** Artykuł analizuje najnowsze zmiany w regulacjach prawnych dotyczących ochrony ofiar przestępstw w Bułgarii oraz niektóre praktyczne aspekty codziennej pracy organizacji i instytucji wspierających ofiary. Wzrost wiktyimizacji społeczeństwa wymaga bardziej skutecznych działań prawnych oraz odpowiednich środków zgodności z najbardziej zaawansowanymi standardami europejskimi i światowymi. Bułgarski ustawodawca stara się podążać za najlepszymi wzorcami w zakresie ochrony praw ofiar, jako że jest to podstawowy obowiązek państwa członkowskiego Unii Europejskiej. Obserwuje się jednak pewne braki oraz opóźnienia w transpozycji najnowszych aktów europejskich. Krytycznej analizie zostały poddane działania implementacyjne wyspecjalizowanych organów państwowych i sektora pozarządowego. Zaproponowano zalecenia mające na celu sprostanie nowym wyzwaniom oraz propozycje dalszych działań na rzecz poprawy wsparcia ofiar.

While victimology is pretty young science in Bulgaria and victims of crime protection is a relatively new priority for the Bulgarian legislator and relevant institutions, some achievements, although with a rather late date, could not be denied. In the last two decades numerous statutory and by-law acts have been adopted and prac-

tical measures have been taken for an effective victim of crime protection and support. It could be generalized, that finally the victim was discovered and recognized<sup>1</sup>.

The basic act, providing explicit regulation of the legal status of the victim in criminal proceedings, is the Penal Procedure Code (2006). For the first time, a special Chapter eight was dedicated to the procedural position and rights of the injured party at pre-trial proceedings. Furthermore, his/her opportunities to participate as a private /accessory/ prosecutor, private complainant or a civil claimant in the court procedure were stipulated. Measures for protection of witnesses and victims during proceedings were envisaged.

The Support and Financial Compensation for Victims of Crime Act (2007) and the Rules for its implementation which regulate the extra-procedural protection of victims of crime are the next very important acts. Besides compensation by state, although rather limited and only for the most severe crimes, psychological, health and other assistance were provided. A special body with large competence was established – National Council for Support and Compensation for Victims of Crime.

A number of other acts, such as the Protection of Persons Threatened with Criminal Proceedings Act (2005), Protection against Domestic Violence Act (2005), Combating Trafficking in Human Beings Act (2003) and various by-law have also been enacted. Thus, the victim of crime was gradually receiving due attention from the Bulgarian legislator, who, with the development of the democratic processes in the country, endeavoured to adhere more fully to the international standards for victims of crime.

Since 2007 Bulgaria has been a member state of the European Union and as such should strictly observe the European rules and transpose the European law in its domestic legislation, including that in relation to victims of crime. It should be explicitly stated that the crime victim is high on the agenda of politicians, legislators, legal practitioners and scholars, as well as the general public within the European Union (EU). And that is logical, as every year, nearly 15% of European citizens, or about 75 million people across the Union, fall victims of crime<sup>2</sup>. In 2011 the European Commission adopted a Road map for Strengthening the Rights and Protection of Victims of Crime, in particular in the framework of criminal proceedings<sup>3</sup>, aimed at improving Union law and practice. In addition to the considerable volume of followed-up legislation (directives, regulations, framework decisions, etc.), the Union has given victims the extreme political attention expressed recently in the election of the Counselor on victims to the President of the European

<sup>1</sup> D. Chankova, *Crime victims: the new „icon“ of Bulgarian Penal Policy?*, „Karaganda State University Journal“ 2013, No 4 (72), pp. 78-40.

<sup>2</sup> European Commission, *Victims' Rights* – [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/victims-rights\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/victims-rights_en) [last accessed on 29 December 2020].

<sup>3</sup> „Official Journal of the European Union“ C 178, 28.06.2011.

Commission. In 2019, the counselor, Ms Joëlle Milquet, comes out with a special report entitled “Strengthening victims’ rights: from compensation to reparation”<sup>4</sup>.

The victim’s proclamation as the “new icon” of the European criminal policy has had a positive effect on the victim’s status in Bulgaria. In fulfilment of their commitments of the EU Member State, the Bulgarian Government and Parliament have taken significant steps to improve domestic legislation and practices in relation to victims of crime. Thus, as a result of the transposition of *Directive 2011/99/EU of the European Parliament and the Council on the European Protection Order*<sup>5</sup>, a Law on the European Protection Order (2015) was adopted. The guiding principle is the free circulation of protection measures in criminal matters within the European Union<sup>6</sup>.

Particularly important measures have been taken as a result of the transposition of *Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing the minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Victims’ Directive)*<sup>7</sup>. The Directive has developed in detail several rights that should be provided to the victim, both in and outside the criminal proceedings. As a result of its transposition important changes have been made to the Penal Procedure Code, Support and Financial Compensation for Victims of Crime Act and some other acts.

At the same time, it cannot be denied that the transposition of the Directive was carried out in a “Bulgarian way”, incomplete and inconsistent. For example, Article 3 regulates the opportunity victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood (so called “persons of support”). This possibility for the victims is not a fact in the Bulgarian law yet. In practice, except by a lawyer, including a spouse, a nascenting or descending relative (Article 91, paragraph 2, in conjunction with Article 100, paragraph 3 of the Penal Procedure Code), victims, regardless of their mental and emotional state and ability to understand the events, could not be accompanied by anyone during their contacts with the competent authorities and this casts serious doubt on their ability to effective participation in the criminal procedure. The practice attempts to fill this void and various supportive non-governmental

---

<sup>4</sup> J. Milquet, *Strengthening Victims’ Rights: from Compensation to Reparation. For a new EU Victims’ Rights Strategy 2020–2025*, European Commission, Brussels 2019.

<sup>5</sup> „Official Journal of the European Union” L 338/2, 21.12.2011.

<sup>6</sup> See D. Chankova, *The European Protection Order: A New Instrument in Support of Victims of Crime, The European Future of Bulgaria*, Collection of Materials from the Annual Conference of the Faculty of Law, University of National and World Economy, 2012.

<sup>7</sup> „Official Journal of the European Union” L 315/57, 14.11.2012.

organizations (NGOs) accompany the victims in their contact with the institutions, promoting a better understanding between the authorities and the victims. There is also an unwritten practice in the records of some courts of recognizing the social workers or psychologists as representatives of the victim and providing him/her with information on the progress of the case. However, this is a purely practical decision which is not based on any norms in the legislation and, accordingly, such a accompaniment can be denied at any time. That is why the Bulgarian legislator owes an immediate reaction in this regard.

Non-transposition of Art. 12 of the Victim's Directive also should be pointed out in particular. It regularizes the access to and safeguards for the victim while in contact with restorative justice services. Although quite cautious, the Directive stimulates restorative climate in criminal justice systems. Restorative Justice (RJ) is largely recognized as an instrument for the benefit of victims. Unlike other European states that have provided this option to victims of crime, Bulgarian politicians still lack sensitivity to this issue, although according to many surveys society accepts and expects restorative justice. But the legislator should respond soon as at the end of 2018, the Committee of Ministers of the Council of Europe adopted *Recommendation CM/Rec (2018) 8 to Member States concerning Restorative Justice in Criminal Matters*<sup>8</sup>. As explicitly mentioned in its preamble, a prerequisite for its adoption is the increasing interest in RJ by the Member States (Bulgaria has been a member state of the Council of Europe since 1992), which takes into account its benefits to criminal justice systems and to victims in particular. At the same time, it is noted that the development in the countries is different, flexible and asymmetrical. For this upward, but still uneven distribution, where the RJ's potential is not fully utilized, there is much scientific evidence that the recommendation takes into account. The value of the recommendation comes mainly from the new strong impetus given to the Member States, which should provide their citizens with the privileged opportunity to benefit from the RJ. This is necessary because all European citizens should have equal rights and opportunities. It is unacceptable that, from an orthodox legal point of view, due to in action or negligence of their commitments, states deprive individuals under their jurisdiction of the merits of the RJ. Therefore, the recommendation urges the governments of the Member States to comply with the principles set out in the Annex there<sup>9</sup>.

There are many other inconsistencies of the current Bulgarian legislation with the Victim's Directive. One of them concerns the very concept of the victim. The

---

<sup>8</sup> See [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016808e35f3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3) [last accessed on 29 December 2020].

<sup>9</sup> D. Chankova, G. Georgieva, *Towards Coherent European Crime Victims Policies and Practices*, „Conference Proceedings” Vol. XXV, No 2, 25th International Conference *Knowledge-Based Organization*, 13-15 June 2019, „Nicolae Bălcescu” Land Forces Academy Publishing House, Sibiu 2019.

Bulgarian legislator still uses mainly the term “injured party”, which is narrower. Therefore, the subject of future harmonization is the promotion of the notion of victim, including the perception of direct and indirect victims.

Another task for the future legislator is the gradual introduction of the category of “particularly vulnerable victim”. European and global standards provide many examples of such victims whose treatment is initially subject to specific rules. Leading among the mare children, the elderly and victims of sexual and gender-based violence. They may also be included in such a definition in Bulgarian law, and their vulnerability, as opposed to the victim with specific needs for protection, who is a subject of expertise, could be initially established. The provisions can be extended to include legislation on sparing interrogation, currently covering only child victims and witnesses – use of “blue rooms” introduced for child interrogations, presence of specialists, and special treatment by the competent authorities. As particularly vulnerable victims can be considered the victims of specific serious crimes, subject to financial compensation – murder, grievous bodily harm, trafficking in human beings, etc.

Besides, the reflection and recovery period is an institute established in connection with the protection of victims of trafficking. However, consideration should be given to whether the criminal process should take into account individual elements of the regulation of this period – the common need of all victims calmly and without pressure to consider whether to cooperate in the areas of justice, while at the same time receiving protection and assistance and not be removed from the country concerned if they are foreigners – and apply them to all victims.

The recent year shave put a new regulatory challenge on European countries, Bulgaria included – the *Council of Europe Convention on Preventing and Combining Violence against Women and Domestic Violence of 2011*<sup>10</sup>, also known as the Istanbul Convention. A number of member states of the Council of Europe have already ratified the document, others have only signed it, and in states like Bulgaria, there is even considerable resistance at the level of the institutions and the general public. In the end, amendments and supplements to the Bulgarian Penal Code criminalizing some forms of domestic violence, but incompletely and unsatisfactorily, were adopted without the victims being able to benefit from all the achievements of the Convention. Although accompanied by a number of contradictions and debates, the Convention is seen as a fundamental and comprehensive human rights instrument covering a number of forms of violence against women, which sets an ambitious standard for the prevention, protection and support of victims, as well as a number of requirements for substantial and procedural legislation of states.

---

<sup>10</sup> Council of Europe Treaties No 210 – <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210> [last accessed on 29 December 2020].

However, along with the progress in recognizing and further regulating victims' rights, the system ensuring victims' involvement and their support in the criminal process shows some imperfections, both at national and European level. In many countries, the transposition of the EU law has failed to achieve a holistic approach to victims' rights, and many groups, such as women, children and foreigners, remain insufficiently protected. According to a recent document by one of the largest victims' rights advocacy organizations, the EU can no longer take only partial action on these rights and should adopt laws and policies that, in addition to specific rules for some groups of victims, benefit all victims of crime<sup>11</sup>. This is especially valid for Bulgaria. As it became clear, the legal framework for victims is too fragmented. This creates several practical problems. That is why the idea of a more complete arrangement, for example, in a special comprehensive chapter of the Penal Procedure Code, is defensible. One might also consider adopting a separate law on crime victims, by analogy with other advanced countries such as Japan.

There are also deficits in victim support practices in Bulgaria. As the state does not manage to take care of all victims adequately, most of the activities are delegated to non-governmental organizations. And while this is logical in a developed civil society, there are still some weaknesses. Non-governmental organizations are not always adequately resourced to fulfill their functions. Many of them rely on projects. Specializing in working with vulnerable groups is not always enough. This puts many victims at risk.

Particularly acute is the need to improve the referral to support services. The idea of a "single access point" or "one stop shop" to meet the multiple needs of victims is not fully realized in Bulgaria. It is recommended that a common coordination mechanism be drawn up in accordance with a comprehensive and integrated approach prescribed by international standards. In setting up this mechanism, the experience of developing and implementing the National Mechanism for Referral and Assistance to Victims of Trafficking in Human Beings, approved by the Council of Ministers in 2016, should be used. A future common referral coordination mechanism could address a number of conceptual issues regarding victim identification. These include the assessment and management of risk on a case by case basis. On the base of common risk principles, numerous ancillary tools can be developed for law enforcement institutions, the Prosecutor's Office and victim support organizations, where, using specific indicators, the risk can be identified as low, moderate or high and an appropriate plan can be elaborated to avoid repeat victimization. Clarifying the main risk assessment indicators could also lead in the longer term to preparing appropriate changes to key legislative provisions. Some

---

<sup>11</sup> Victim Support Europe (2019) *European Elections 2019. Victim Support Europe Manifesto*, Victim Support Europe, Brussels 2019.

of them could even be transposed by special laws into the basic regulation of the criminal process within the rules governing the protective measures for participants in the proceedings, including victims. On the longer term, within the framework of a future common referral mechanism, the national legal system could benefit from the experience of a unit such as the Victims and Witnesses Section of the International Criminal Court, possibly establishing common victim assistance and protection service. It can be established on the basis of the inter-institutional structure of the National Council for Support and Compensation for Victims of Crime and retain it as a governing body with increased powers to define activities and allocate financial resources. In the very long term, at least part of the functions of the Attorney General's Office under the Protection of Persons Threatened with Criminal Proceedings Act may flow into such a structure. The experience of figures such as the Victims Commissioner in countries such as Australia could also be used.

The rights of victims of crime in Bulgaria are subject to a periodic introduction of new legislative provisions as well as intentions to improve existing ones. The legislature and the competent authorities are under severe public pressure to more effectively and equitably address the situation of these individuals in the criminal procedure, as well as to offer various forms of assistance to them, especially in cases of gross criminal offenses that provoke the reaction of citizens. However, this approach is becoming less acceptable. Instead of campaigning, partial measures, the need for a comprehensive approach to victims' rights is increasingly being unrecognized. The Bulgarian legislator and other state institutions should respond to all these challenges without delay<sup>12</sup>.

## References

- Chankova D., *Crime victims: the new "icon" of Bulgarian Penal Policy?*, Karaganda State University Journal, 2013, No 4 (72).
- Chankova D., *The European Protection Order: A New Instrument in Support of Victims of Crime*, *The European Future of Bulgaria*, Collection of Materials from the Annual Conference of the Faculty of Law, University of National and World Economy, 2012.
- Chankova D. and Georgieva G., *Towards Coherent European Crime Victims Policies and Practices. Conference Proceedings*, Vol. XXV, No 2, 25th International Conference "Knowledge-Based Organization", 13-15 June 2019, "Nicolae Bălcescu" Land Forces Academy Publishing House, Sibiu, 2019.
- Council of Europe Treaties No 210, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210> (last accessed on 29 December 2020).
- EU Strategy on victims' rights, <https://ec.europa.eu/info/policies/justice-and-funda->

<sup>12</sup> EU Strategy on victims' rights – [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/eu-strategy-victims-rights-2020-2025\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/eu-strategy-victims-rights-2020-2025_en) [last accessed on 29 December 2020].

- mental-rights/criminal-justice/protecting-victims-rights/eu-strategy-victims-rights-2020-2025\_en (last accessed on 29 December 2020).
- European Commission, *Victims' Rights*, [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/victims-rights\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/victims-rights_en) (last accessed on 29 December 2020).
- [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016808e35f3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3) (last accessed on 29 December 2020).
- Milquet J., *Strengthening Victims' Rights: from Compensation to Reparation. For a new EU Victims' Rights Strategy 2020-2025*. Brussels: European Commission.
- Official Journal of the European Union C 178, 28.06.2011.
- Official Journal of the European Union L 338/2, 21.12.2011.
- Official Journal of the European Union L 315/57, 14.11.2012.
- Victim Support Europe *European Elections 2019. Victim Support Europe Manifesto*. Brussels: Victim Support Europe.