

PROTECTION OF VICTIMS OF CRIME. THE EUROPEAN AND DOMESTIC APPROACH

The legal consequences of the adoption of the
Directive establishing minimum standards on
the rights, support and protection of victims
of crime in the EU

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THE LEGAL CONSEQUENCES OF THE ADOPTION OF THE DIRECTIVE ESTABLISHING MINIMUM STANDARDS ON THE RIGHTS, SUPPORT AND PROTECTION OF VICTIMS OF CRIME IN THE EU

Legal instruments of the Council of Europe in the field of victims protection:

- Resolution on the compensation of victims of 1977;
- European Convention on Compensation of Victims of Violent Crimes of 1983;
- Recommendation on assistance to victims and the prevention of victimisation of 1987;
- Recommendation Rec (2006) 8 on assistance to crime victims

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Standards on victims protection contained in CoE instruments on specific forms of crime:

- ◉ Convention on the Prevention of Terrorism (2005)
- ◉ Convention on ‘Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005)
- ◉ Convention on Action against Trafficking in Human Beings (2005)
- ◉ Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2010)
- ◉ Convention on preventing and combating violence against women and domestic violence (2011)
- ◉ Medicrime Convention (2011)
- ◉ Draft Convention on trafficking in Human Organs (to be adopted in 2013)

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Legal instruments on victims' protection in the EU:

- ◉ Framework Decision *on the standing of victims in criminal proceedings (2001/220/JHA)*;
- ◉ The unsatisfactory effect of the implementation of the FD deemed by the Commission;
- ◉ Council Directive *relating to compensation to crime victims (2004/80/EC)*;
- ◉ Resolution of the European Parliament (EP) to the Council on the development of a European Union criminal justice area (INI/2009/2012);
- ◉ Council Conclusions on a strategy to ensure fulfillment of the rights of, and improve support to, persons who fall victim to crime in the European Union, adopted in 2009

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- ◉ Council Resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings,
- ◉ EU has been called for the adoption of following measures:
 - ◉ the right to translation and interpretation (measure A),
 - ◉ the right to information on rights and information about the charges (measure B),
 - ◉ the right to legal advice and legal aid (measure C),
 - ◉ the right to communication with relatives, employers and consular authorities (measure D),
 - ◉ special safeguards for suspects or accused persons who are vulnerable (measure E).

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- ◉ Council Resolution of 10 June 2011 *on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings ('the Budapest Roadmap')*,
- ◉ The Council called for the following actions to be taken in order to strengthen the rights of, support for, and protection of victims of crime:
- ◉ Measure A: A Directive replacing Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings;
- ◉ Measure B: Recommendation or recommendations on practical measures and best practices in relation to the Directive set out in Measure A;

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- ⊙ Measure C: A Regulation on mutual recognition of protection measures for victims taken in civil matters;
- ⊙ Measure D: Review of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (particularly whether existing procedures for the victim to request compensation should be revised and simplified),
- ⊙ Measure E: The Commission is invited to propose through Recommendations practical measures and suggest best practices to provide guidance to Member States in the process of dealing with the specific needs of victims.

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- ◉ The Initiative for a Directive of the European Parliament and of the Council on the European protection order proposed by Belgium, Bulgaria, Estonia, Spain, France, Italy, Hungary, Poland, Portugal, Romania, Finland and Sweden, 7 January 2010;
- ◉ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order;
- ◉ The mechanism established by the Directive allows to transmit ,a need of protection' of a victim who may be endangered by a criminal act posing a danger to his life, physical or psychological integrity, dignity, personal liberty or sexual integrity, in order to continue the protection in the territory of other Member State.

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- ◉ the European Commission submitted on 18 May 2011 a package of instruments aimed at improving the current system of protection of victims.
- ◉ The package consists of:
- ◉ Communication on protection of victims of crime,
- ◉ Proposal for a Directive *establishing minimum standards on the rights, support and protection of victims of crime*,
- ◉ Proposal for a Regulation *on mutual recognition of protection measures in civil matters*.

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The Directive *establishing minimum standards on the rights, support and protection of victims of crime*

- ◉ The Council reached a general approach on the draft Directive under the Polish Presidency in 2011.
- ◉ The trilogue with the European Parliament in 2012 under the Danish Presidency, finished in June 2012;
- ◉ The European Parliament adopted the draft Directive on 12 September 2012;
- ◉ The Council adopted the draft Directive on 4 October 2012;
- ◉ The Directive published in the Official Journal of the EU (OJ of 14.11.2012, L 315/57);
- ◉ Entry in force: November 16, 2015.

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Key issues raised in the negotiations:

- ◉ definitions (*family members of a deceased victim, family members of a living victim*);
- ◉ access to specific rights depending on the role of victims in the criminal justice system of MS;
- ◉ vulnerable victims - victims with specific needs (*the personal characteristics of the victim, the type or nature of the crime, the circumstances of the crime*),
- ◉ gender - based violence and violence in close relationship.

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- ◉ Main rights provided for by the Directive:
- ◉ right to understand and to be understood (Article 3),
- ◉ right to receive information from the first contact (4),
- ◉ right to information about the case (Article 6),
- ◉ to interpretation and translation (Article 7),
- ◉ right to have any decision not to prosecute reviewed (Article 10),
- ◉ right to legal aid (Article 13),
- ◉ right to reimbursement of expenses (Article 14),
- ◉ right to the protection (Articles 18 - 23)
- ◉ training of practitioners (Article 24)

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- ⦿ The direct effect of the Directive in case the state has not implemented the directive correctly or within the time limit prescribed,
- ⦿ if the expiry date for the implementation of a directive has passed and the directive is clear and unconditional, an individual may rely on the directive against the state

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Thank you for your attention



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