

TOWARDS A MORE RESPONSIVE VICTIM-CENTERED APPROACH OF THE CRIMINAL JUSTICE SYSTEM (RE-JUST)

Current Practices in the National Criminal Justice System National Report Bulgaria

May 2020



Financed by the Justice Programme of the European Union

Contents

1. Foreword.....	3
2. National legislation regarding the protection of victims' rights.....	3
3. Legal challenges encountered by victims in accessing the justice system.....	7
4. Judicial practices to protect victims' rights	9
5. Final conclusion.....	11

Author:

Miriana Ilcheva, Center for the Study of Democracy

This publication has been produced with the financial support of the Justice Programme of the European Union. The contents of this publication are the sole responsibility of coordinator and partners and can in no way be taken to reflect the views of the European Commission.

1. Foreword

This national report was written as part of the project Towards a More Responsive Victim-Centered Approach of the Criminal Justice System (RE-JUST) in the month of May 2020. Information was collected through several methods:

- desk research of relevant legislation, policies, planned policy measures and draft laws;
- written requests for information to the Ombudsman of the Republic of Bulgaria, the Ministry of Foreign Affairs, the National Commission for Combatting Trafficking in Human Beings, the Sofia Regional Court, the Ministry of Justice, the National Legal Aid Bureau, the Social Assistance Agency, the National Police General Directorate, the Association of Prosecutors in Bulgaria and the Union of Judges in Bulgaria. Requests resulted in informational conversations with representatives of the Ministry of Justice and the National Commission for Combatting Trafficking in Human Beings and three written replies from the Social Assistance Agency, the National Police General Directorate and the Ombudsman of the Republic of Bulgaria. Other institutions/organisations did not provide a reply presumably due to administrative difficulties resulting from the COVID-19 outbreak and the country's declared emergency situation (13 March-13 May 2020);
- the Center's long-term monitoring and studies of the situation of victims of crime in the country.

2. National legislation regarding the protection of victims' rights

The place of the victim in Bulgarian criminal procedure has been definitively confirmed with the adoption of the current Criminal Procedure Code (CPC),¹ while past opinions often claim that there is no such specific procedural figure. Victims' rights are regulated both in procedural legislation and in other acts, concerning victim support, legal aid, as well as different specific victim groups.

A prominent place is given to the right of the victim **to be informed of his/her rights in the whole criminal proceedings** pursuant to Art. 75, para. 1 of the CPC. The victim's right of defence also mandates authorities to explain to persons their rights, but, as this obligation is not specifically postulated, it would hardly be implemented in practice. The overall obligation for informing victims about their rights even before the start of criminal proceedings, from the first contact with the competent authority, has been put into practice in Art. 6 of the Law on Support and Financial Compensation of Victims of Crime (LSFCVC).² Informing should be done, taking into account the state of the victims, including their age, orally or in writing by a special form in a language victims understand (Art. 6a, LSFCVC). Although practicing lawyers think informing of victims is abided by fairly strictly, the implementation of obligations like taking into account the state of the victim, which are regulated outside the procedural code, is highly doubtful.³ Regarding the projections of the right to information of victims in the trial phase, its volume is

¹ Criminal Procedure Code, in force as of 29 April 2006, promulgated SG issue 86/28 October 2005, last amendments/supplements SG issue 83/22 October 2019.

² Law on Support and Financial Compensation of Victims of Crime, in force as of 1 January 2007, promulgated SG issue 105/22 December 2006, last amendments/supplements SG issue 63/4 August 2017.

³ Чинова, М. (2013) Досъдебното производство по НПК: Теория и практика, Sofia: Ciela Norma, p. 142.

directly dependent on the victim's joining of proceedings as civil claimant or private accuser. If the victim has not joined the proceedings, he/she has rights as a witness and basically no entitlements outside of that.

Further, victims can **participate in proceedings in accordance with what is stipulated in the procedural code**, like appeal the refusal of the prosecutor to institute criminal proceedings (Art. 213, CPC), get presented with the case file if the victim has requested so (Art. 227, para. 2, CPC), presence, practically always upon permission of the respective authority,⁴ at investigative actions as safeguard for the right to participation in proceedings (Art. 224, CPC).⁵ The participation of the victim in the trial is again largely dependent on his/her procedural role as a party – civil claimant, private accuser – or witness.

Next, victims during the pre-trial can make **requests, notes and objections**, present evidence and make evidentiary requests throughout the investigation. The requests, notes and objections of the victim, who is witness, civil claimant or private accuser during the trial are well regulated and studied by the legal doctrine and the victim as such does not have any such rights.

Victims can appeal the **acts which lead to terminating or suspending criminal proceedings**, as they infringe upon their rights and lawful interests to have the offender punished and get compensation for the damage inflicted.

Victims have the right to **counsel**. Legal theory rightfully points out that Bulgarian law regulates no case of obligatory defence of the victims, neither under the procedural legislation, not under the Law on Legal Aid,⁶ this is only available under the 'special representation' of children and people of limited legal capacity (Art. 101, para. 1-2, CPC). There is no free legal aid for victims without an indigency criterion either. The CPC regulates the right of the victim to counsel at the pre-trial stage (Art. 75, CPC), as well as, in case of indigency, at the trial stage if he/she has joined proceedings as civil claimant or private accuser (Art. 100, CPC), thus the victim as such does not have right to counsel at trial. Victim support law lists free legal aid among the forms of support to victims (Art. 8, para. 1, item 3, LSFCVC), but refers to the Law on Legal Aid for detailed regulation. The fragmented legal framework of the right to counsel leaves formally and practically a number of victims without adequate legal aid and means to exercise fully their right of defence.

Victims have the right to **protection of their security and that of their close ones**. The CPC regulates that right in general in Art. 75, para. 1 and several of its elements and aspects are found in:

- the protection of witnesses under Art. 123 – personal physical protection and secret identity – including by using special investigative means;
- measures for procedural coercion, directed towards the protection of the victim, under Art. 67 – prohibition to directly approach the victim, prohibition to contact the victim in

⁴ Чинова, М. (2006) Пострадалият по новия НПК, *Съвременно право* 1/2006, р. 66.

⁵ Павлов, Ст. (1993) Осигуряване на гражданите право на защита в наказателния процес, *Правна мисъл*, 3/1993, р. 12.

⁶ Law on Legal Aid, in force as of 1 January 2006, promulgated SG issue 79/4 October 2005, last amendments/supplements SG issue 24/22 March 2019.

any form, including phone, electronic or ordinary mail or fax; prohibition to visit certain towns/villages, areas or locations, where the victim resides or visits. They are strongly criticized by the legal doctrine due to the lack of factual premises for their imposition.⁷

Within the framework of the protection of witnesses Art. 123, para. 8 of the CPC refers to the protection programme under the Law on Protection of Persons Threatened with Regard to Criminal Proceedings.⁸ The Law on the European Protection Order is also relevant for the protection of victims,⁹ it transposes in Bulgarian legislation Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order.

Next, the victim has the right **to be informed about the conduct of criminal proceedings**. However, this is only valid for the actions enabling him/her to exercise his/her right of defence. The CPC has a number of specific provisions on notifying the victim about procedural actions, related to his/her options to participate. After the latest amendments in the criminal and criminal procedural legislation from the beginning of 2019 a substantial gap has been filled in in the transposition of the 2012 Directive on the rights of victims. Victims with special protection needs are to be informed about the postponement of the execution of the offender's penalty (Art. 417a, CPC) as well as about the violation, revocation or replacement of his/her house arrest or detention in custody (Art. 67a, CPC).

Regarding **the victim's right to translation and interpretation**, when he/she is not in command of the language of proceedings, Bulgarian, the appointment of an interpreter is a general postulation of the procedural code (Art. 21, para. 2), but during the pre-trial the victim only has a specific right to get a translation of the decree for terminating or suspending criminal proceedings (Art. 75, CPC). The victim as witness is also specifically entitled to an interpreter (Art. 142, para. 1, CPC). In the rest of the cases the victim, whether a party to proceedings or not, in contrast to the detailed postulation on interpretation and translation for the accused, can only get interpretation based on the above general norm of the procedural code.

The victim as **witness** has a whole range of separate rights, which he/she would not have only as victim. The witness (Art. 122, para. 1, CPC) has the right to use notes, regarding his/her testimony, to receive remuneration for the workday lost, to have his/her expenses reimbursed (he/she would not have such reimbursement if only a victim) and request revocation of the acts, infringing upon his/her rights and lawful interests. He/she can also consult a lawyer, if his/her answers would incriminate himself/herself or his/her close ones. Regarding witnesses, and not all victims, Bulgarian law has also regulated, in transposition of the 2012 Directive, special protection needs, for the establishment of which expert opinions may be sought (Art. 144, para. 3, CPC). In comparison with the detailed regulation of the individual assessment of specific needs under the Directive, Bulgaria has transposed those provisions in a rather limited fashion.

⁷ Чинова, М. (2013) Досъдебното производство по НПК: Теория и практика, Sofia: Ciela Norma, p. 143.

⁸ Law on Protection of Persons Threatened with Regard to Criminal Proceedings, in force as of 25 May 2005, promulgated SG issue 103/23 November 2004, last amendments/supplements SG issue 11/7 February 2020.

⁹ Law on the European Protection Order, in force as of 6 July 2015, promulgated SG issue 41/5 June 2015, last amendments/supplements SG issue 33/26 April 2016.

The rights of the victim during trial to receive compensation from the offender through a civil claim and to maintain private accusation again depend on his/her joining or not the proceedings as a party.

The LSFCVC regulates support for all victims of crime of general nature (more serious crimes prosecuted ex officio - Art. 3, para. 1) and **financial compensation** for a limited group of victims of crimes of higher public danger, like terrorism or human trafficking. Financial compensation is a relatively poorly known instrument of a limited nature, not encompassing any ongoing or urgent expenses victims may have as a result of their victimization. The number of compensations awarded is also relatively limited.

Bulgarian law is part of the supranational tendency of special attention towards certain groups of victims, among which the victims of human trafficking, domestic violence, minors and juveniles. **No specific provisions exist on victims of terrorism, sexual or other type of gender-based violence, hate crime, few provisions exist on foreign victims.**

Minor victims, in their capacity as witnesses (Art. 140 of the CPC), are always questioned in the presence of an educational specialist, psychologist and parent/guardian, if needed (those same persons take part in the interviews of **juveniles**, if the competent authority deems that necessary). Minors and juveniles can also benefit from measures to avoid the contact with the defendant, including special premises and videoconferencing, and interviews behind closed doors (Art. 263, para. 3, CPC). Interviews with minors are also to be minimized to the extent possible (Art. 280, para. 6, CPC), although this is rarely applied in practice, and their testimony is read in court (Art. 281, para. 1, item 6, CPC). The Social Assistance Agency and child protection departments work actively with children victims on protection measures in the family environment and using various social services. Multidisciplinary approach is widely used.¹⁰

Victims of domestic violence are currently protected in a mixed fashion. On the one hand, civil law protection is given to them under the Law on Protection against Domestic Violence, which defines the concept of domestic violence, whom it can be inflicted by, as well as a range of protection measures, which civil courts can impose. On the other hand, long expected amendments in the Criminal Code in 2019 introduced in criminal law the notion of 'domestic violence', emphasizing on its systematic nature (Art. 93, item 31, Criminal Code), which attracted criticism from a number of practitioner due to the serious nature even of non-systematic violent acts. What would be the relationship between civil and criminal protection of domestic violence victims is an open issue before legislature and practice, while the serious crimes, resulting from domestic violence, have for a long time been studied by the legal doctrine and practice.¹¹

Victims of human trafficking have occupied a special place among specific groups of victims and their situation is regulated by the Law on Combatting Human Trafficking (LCHT).¹² It regulates the

¹⁰ Letter by the Social Assistance Agency to the Center for the Study of Democracy No 94M-00-0106#1/07.05.2020

¹¹ Котларова, А. (2015) Домашното насилие като изключително тежко престъпление по чл. 38-38а НК: изследване на съдебната практика, *Общество и право*, 5-6/2015.

¹² Law on Combating Human Trafficking, promulgated SG issue 46/20 May 2003, last amendments/ supplements SG issue 81/15 October 2019.

cooperation and coordination among the **state** and local authorities (Art. 1, LCHT) and creates an interinstitutional group of a National and several local commissions for combatting trafficking, shelters for temporary placement of victims and protection and support centres. There is a special protection status, if persons agree to cooperate with authorities – it includes continuous residence permit for third country nationals and prolongation of the stay in the shelters (Art. 25, LCHT). In accordance with the country's international commitments, there is an express process of victim identification, as well as a reflection period of one month (or up to two months if the victim is a child) where the victim should be informed of his/her rights and could agree to cooperate with authorities (Art. 26, LCHT).

3. Legal challenges encountered by victims in accessing the justice system

According to a number of academics, practitioners and other experts on victim support, Bulgaria suffers from insufficient transposition of EU law combined with the **long-standing weaknesses of the country's criminal procedure** like fragmentary approach, low level of specialization for working with vulnerable groups and lack of sufficient guarantees for protecting their rights.¹³

As stated above, the regulation of the status of victims in Bulgarian criminal procedure and their support is found in **several legislative documents** of different normative ranks. A substantial part of those norms regulates issue of procedural nature and their place outside the procedural code leaves doubts as to whether criminal procedural authorities would implement them in full and whether gaps or contradictions may arise between them and procedural norms, affecting the victims negatively.

Specific challenges are found in a number of areas, out of which we would point out to the right to information and the referral to relevant services.

Regarding **the right to information**, the scope of the obligation of institutions and support organisations seems relatively full, but more problems can be found in the manner victims are informed. The requirement of a number of standards, including the 2012 Directive (Art. 4), to inform the victim 'from the first contact with the competent authority' is implemented by the Bulgarian victim support law by the phrasing 'immediately', which, however, does not cover 'from the first contact' and leaves some space for discretion. According to experts, formalistic attitude is seen among authorities towards victims and little consideration of their specific state, possible injuries and psychological traumas, although police admit citizens expect from them not only to discover the crime and detain the offender, but also to offer understanding and listen to their complaints.¹⁴ According to the LSFCVC the information of victims about their rights is done orally and in writing through an established form (Art. 6a, para. 2) – a document of several pages containing practically quotes from the relevant legislation, somewhat arranged by rights of victims. As such, the form does not meet the requirement for communicating in 'simple and accessible language' (Art. 3, para. 2 of the 2012 Directive). Thus Bulgarian legislation regulates a fairly wide general obligation for informing victims about their rights, but does not seem to

¹³ See, for example, Baldry, A. (2016) *Enhancing the professional capacity of the Bulgarian police to deal with cases of domestic violence and violence against women: Training the trainers manual* Strasbourg: Council of Europe, p. 7

¹⁴ Letter of the National Police General Directorate to the Center for the Study of Democracy No 328600/22222/13.05.2020

contain sufficient guarantees for its timeliness and the simple and accessible nature of information. A question also arises as to whether the obligations for giving information should be consolidated in unified provisions on the rights of victims, preferably in a separate, expanded chapter of the procedural code.

The referral to support services is formally outside of the criminal procedure, but is of extreme importance for it, because it ensures the treatment of the victim's traumas, which is part of the process of his/her rehabilitation and full participation in the proceedings. The present state of Bulgarian law, however, **does not contribute to making this conceptual and practical link**. The support of victims and their participation in the criminal procedure are regulated in differently ranking pieces of legislation, between which there is no specific referral. The Bulgarian LSFCVC does not contain specific regulation of referral, although it is actively done in practice, with social authorities and law enforcement referring to support services and services themselves cooperating for fuller satisfaction of victims' needs.¹⁵ Police, for example, often render 'informal practical help' to victims such as taking him/her to a health center or safe place, providing shelter, clothes, food, etc.¹⁶ Information about rights and referral to competent authorities and services is also done by institutions like the Ombudsman¹⁷. The Criminal Procedure Code does not contain specific regulation of the matter either. In contrast to the EU and global standards, there is a lack of coordination mechanisms for referral of victims, with only one, on victims of trafficking, ranking as secondary legislation,¹⁸ and no such mechanism for victims of domestic and gender-based violence. There is also a co-ordination mechanism for cooperation in cases of children victims or at risk of violence and for coordination in crisis intervention, based on which children victims may be placed in crisis centres or use services like centres for social support.¹⁹ Despite the existence of an interinstitutional National Council for Support and Compensation of Victims of Crime, Bulgaria is far from creating a general referral mechanism for victims of all crimes or a centralized body dealing with their support. Neither are there specific mechanisms for the movement of victims' and their relatives' personal data or information about the proceedings among the different actors in the referral chains. This put this sensitive data at a great risk and can practically lead to violating the new rules on the protection of personal data, as well as the rights of victims. As witnessed by the Social Assistance Agency,²⁰ there are no specific rules in social support legislation on supporting victims of crime. Thus the social services system cannot answer fully their needs specific from those of other needy citizens.

¹⁵ See more on referral in *Manual on model practices for the identification, needs assessment and referral of victims* (2017). Athens: Centre for European Constitutional Law.

¹⁶ Letter of the National Police General Directorate to the Center for the Study of Democracy No 328600/22222/13.05.2020.

¹⁷ Letter of the Ombudsman of the Republic of Bulgaria to the Center for the Study of Democracy No 74-06/08.05.2020.

¹⁸ Council of Ministers (2016). *National Mechanism for Referral and Support of Victims of Trafficking*.

¹⁹ Letter by the Social Assistance Agency to the Center for the Study of Democracy No 94M-00-0106#1/07.05.2020.

²⁰ Letter by the Social Assistance Agency to the Center for the Study of Democracy No 94M-00-0106#1/07.05.2020.

4. Judicial practices to protect victims' rights

In connection with the practices for protection of the rights of victims, there are several main problems regarding **the participation of victims in the Bulgarian criminal proceedings**. One of the serious shortcomings is related to the inconsistent **right to information about the course of the proceedings** and the practical impossibility to obtain it at the trial stage if the victim has not been constituted as a party - a private accuser or a civil claimant. Bulgarian legislation has recently filled a huge gap and introduced the obligation to notify the victim of the release or escape of the alleged perpetrator from pre-trial detention or imprisonment (Article 6, paragraphs 5-6 of the 2012 Directive), respectively in the Criminal Procedure Code and the legislation on execution of penalties and detention in custody. It remains to be seen how the competent authorities will deal with this new obligation, so as not to create conditions for re-victimization of the victim and deepening of his/her fears and traumatic experiences.

Another problem is related to the **relatively poorly regulated right of victims to translation**. According to Art. 75 of the CPC, the victim has the right to receive a written translation only of the decree for termination or suspension of the criminal proceedings, if he/she does not speak Bulgarian. No transposition is made of the requirement in the 2012 Directive for the translation to cover information essential for the exercise of rights in criminal proceedings, and there is no methodology for assessing whether victims need interpretation and translation. All this, despite the settled general procedural right of every person who does not speak Bulgarian, of interpretation, puts before a serious test the exercise of the procedural rights of such a victim.

A serious gap is found in the **impossibility for the victim to be accompanied by a person of his/her choice**, as required by Art. 3 of the Directive, in his/her contacts with the institutions. In practice, except by a counsel, including a spouse, ascending or descending relative (Art. 91, para. 2 in conjunction with Art. 100, para. 3 of the CPC), victims, regardless of their mental and emotional state and ability to understand what is happening to them could not be accompanied by anyone during their contacts with the competent authorities and this seriously calls into question their ability to participate effectively in the proceedings. Practice tries to fill this gap and various service providing NGOs accompany victims in their contacts with the institutions, but this is a purely practical solution and such accompaniment can be refused at any time.

Related to the above problem is the lack of an explicit **opportunity for supporting NGOs to constitute themselves as "friends of the court"** and to certify the condition of the victim and the impact of his/her experience on his/her mental and emotional state, respectively on his/her witness capacity. Formally speaking, NGOs are completely outside the Bulgarian criminal process and in particular outside the system of forensic examinations, despite their serious role in the process of assisting victims.

The assessment of the specific protection needs introduced and required by the 2012 Directive (Art. 18 et seq.), which the latest amendments to the Criminal Procedure Code related to victims have attempted to introduce, represents a significant gap in the Bulgarian criminal process and a serious problem in the compliance of Bulgarian law with EU norms and other European and global standards. The individual approach to victims in assessing their specific protection needs is introduced by several scarce provisions related to possible expert opinions on such needs

(Article 144, paragraph 3 of the CPC) and rules for protection of such victims, mainly in their capacity as witnesses.

As stated above, there are also serious challenges before the victims' right to **legal representation and legal assistance**.²¹ Among the main problems is the quality of the legal aid provided, as, according to a number of practicing experts in victim assistance, there is no specialization in the protection of victims among ex officio lawyers, and there is usually no knowledge about the specifics of working with them and the traumatic situations they have gone through.

There are also challenges to the **right to safety and protection of the privacy of those affected by crime**.²² The constitutional ban on photographing persons without their permission and the hypotheses of closed-door hearings under the Criminal Procedure Code (Art. 263 - disclosure of facts from the intimate life of citizens, interrogation of a minor or juvenile witness) prove to be insufficient guarantees for the protection of this right given that the specific protection needs of witness victims cannot be adequately assessed.

A significant problem in the treatment of victims of crime in Bulgaria, including their participation in criminal proceedings, are **the deficits in the collection of uniform and comparable information**, which do not allow to establish the exact number of victims by types of crimes they have suffered, by gender, age and their various vulnerabilities. This lack of information does not allow bodies such as the Prosecutor's Office on pre-trial proceedings or the Supreme Judicial Council on the activities of the judiciary in criminal cases to carry out comprehensive monitoring of criminal proceedings and periodically report on their weaknesses in different groups of cases.

The weaknesses in the **specialization and training of the competent institutions involved with victims**, which are clearly required by the 2012 Directive, although recognized as a long-term goal,²³ are also crucial, and related to the deficits in data collection. There is a lack of general training for all officers who could contact victims in the course of their daily work - law enforcement and judicial authorities, but also medical professionals and social workers - as well as no specialization of staff to work with victims. There is also a lack of training on the specific vulnerabilities of victims of human trafficking, domestic and gender-based violence, sexual abuse and exploitation. The lack of appropriate training and specialization directly affects the criminal process and the situation of the victims in it.

²¹ See more on legal aid to victims in Добрева, Н. (2013), *Защита на правата на пострадали от трафик на хора в България: Подход, основан на международната регулация на правата на човека: Правен анализ*. Sofia: Animus Association Foundation, p. 32 and following.

²² See more in Добрева, Н. (2013), *Защита на правата на пострадали от трафик на хора в България: Подход, основан на международната регулация на правата на човека: Правен анализ*. Sofia: Animus Association Foundation, p. 53 and following.

²³ European Union Agency for Fundamental Rights (FRA) (2014). *Victims of crime in the EU: the extent and nature of support for victims*. Luxembourg: Publications Office of the European Union, p. 13.

5. Final conclusion

According to some classifications, the development of victims' rights is divided into three stages - firstly, pilot projects, victimization surveys and conferences, secondly, the establishment of a national center and multiplication of victim services, and, as a final stage, consolidation and integrating victim protection into the day-to-day work of the police and the judiciary.²⁴ In view of the state of its legislation on victims, Bulgaria is between the first and second stages of the described sequence. The country has passed the pilot phase of services and research/surveys and is currently seeking to expand its victim assistance infrastructure through the parallel development of procedural and assistance legislation. However, the aim of the institutions and organizations involved should be to create mechanisms for working with victims to be an integral part of every aspect of their daily activities. Fragmented legal norms, as well as the unsuccessful practices of stakeholders in informing victims of their rights and ensuring their participation in the proceedings, are currently not conducive to achieving this goal.

²⁴ Waller, I (2003) *Crime Victims: Doing Justice to their Support and Protection*, Helsinki: HEUNI, p. 11.